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A Complete Collection Of State-Trials And Proceedings For High-Treason And
Other Crimes and Misdemeanours Commencing With The Eleventh Year of the
Reign of King Richard II. And Ending With The Sixteenth Year of the Reign
of King George III. ; With Two Alphabetical Tables To The Whole
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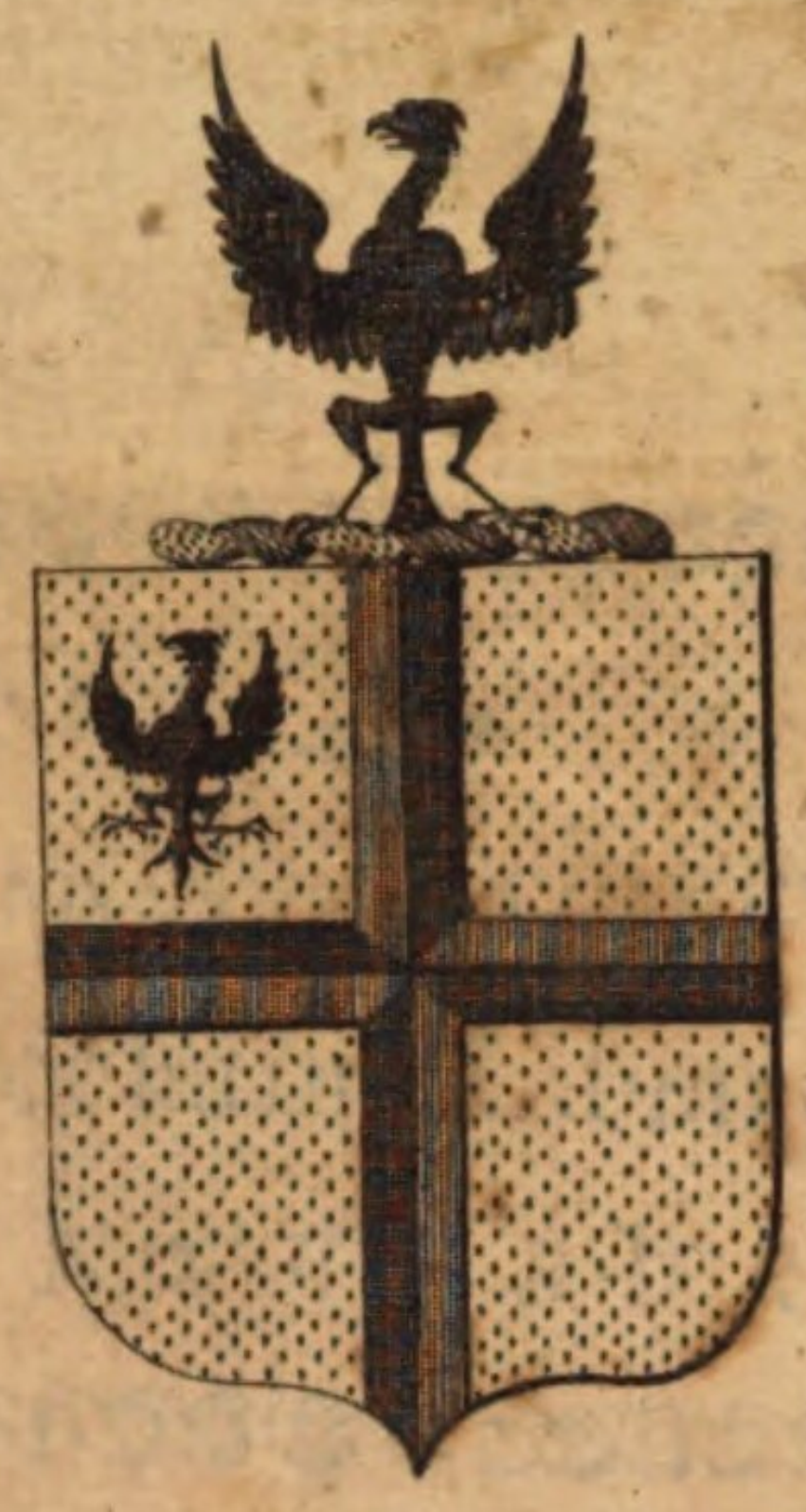

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A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
FOR
HIGH-TREASON,
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CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE THIRD.

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A Complete

A COMPLETE COLLECTION OF TRIALS, &c.

XCV.

The Trial of Sir Thomas Gascoigne, *Bart. at the* King's-Bench *for* High-Treaſon, *the* 11*th of* February 1679. Hil. 32 Car. II.

January *the* 24*th, Sir* Thomas Gascoigne *was brought to the Bar to be arraign'd.*

Cl. of Cr. SIR *Tho. Gaſcoigne*, hold up thy Hand.

Sir *Tho. Gaſc.* I cannot hear.

Clerk. He ſays he cannot hear.

L. C. J. * Then ſomebody muſt repeat it that ſtands by him.

* *Sir* William Scroggs.

Mr. *Recorder.* † Do you hear what I ſay to you?

† *Sir* George Jeffries.

Sir *Tho. Gaſc.* No, I cannot hear, I am very deaf.

Then the Clerk of the Crown went down cloſe to the Bar, and went on thus:

Cl. of Cr. Sir *Thomas Gaſcoigne*, hold up thy Hand. [*Which he did.*]

Thou ſtand'ſt Indicted by the Name of Sir *Thomas Gaſcoigne*, late of the Pariſh of *Elmett*, in the Weſt-Riding in the County of *York*, Bart. for that thou, as a falſe Traitor againſt our moſt Illuſtrious and Excellent Prince King *Charles* the Second, thy natural Lord, not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance, but by the Inſtigation of the Devil moved and ſeduced, the cordial Love, and true, due, and natural Obedience which true and faithful Subjects of our ſaid Lord the King ſhould bear to him, and of Right are bound to bear, wholly withdrawing, deviſing, and with all thy Power intending to diſturb the Peace and common Tranquillity of this Realm, and to bring and put our ſaid Lord the King to Death and final Deſtruction; and the true Worſhip of God in this Kingdom, by Law eſtabliſhed and uſed, to alter unto the Superſtition of the Church of *Rome*, and to move and ſtir up War againſt our ſaid Lord the King in this Realm, and to ſubvert the Government of this Kingdom; the Thirtieth Day of *May*, in the One and Thirtieth Year of our ſaid Lord the King's Reign, at the Pariſh of *Barwick* in *Elmett* in the ſaid County of *York*, in the Weſt-Riding of the ſame County, with divers other falſe Traitors unknown, didſt traiterouſly compaſs, imagine, and intend the Death and final Deſtruction of our ſaid Lord the King; and to change and alter, and wholly to ſubvert the ancient Government of this Realm; and to depoſe, and wholly to deprive the King of the Crown and Government of this Kingdom, and to root out the true Proteſtant Religion. And to fulfil and accompliſh the ſame moſt wicked Treaſons, and traiterous Imaginations and Purpoſes, the ſaid *Gaſcoigne*, and other falſe Traitors unknown, on the ſaid Thirtieth Day of *May*, in the One and Thirtieth Year aforeſaid, with Force and Arms, *&c.* at the Pariſh of *Barwick* aforeſaid, adviſedly, deviliſhly, maliciouſly and traiterouſly did aſſemble, unite, and gather together themſelves, and then and there did deviliſhly, adviſedly, maliciouſly, craftily, and traiterouſly conſult and agree to bring our ſaid Lord the King to Death and final Deſtruction, and to depoſe and deprive him of his own Crown and Government, and to introduce and eſtabliſh the Religion of the *Romiſh* Church in this Realm. And the ſooner to fulfil and accompliſh the ſame moſt wicked Treaſons and traiterous Imaginations and Purpoſes, thou the ſaid *Gaſcoigne*, and other unknown Traitors, then and there adviſedly, maliciouſly, and traiterouſly did further conſult and agree to contribute, pay, and expend divers large Sums of Money to divers of the King's Subjects and other Perſons unknown, to procure thoſe Perſons unknown traiterouſly to kill our ſaid Lord the King, and to introduce the *Romiſh* Religion into this Realm. And that thou the ſaid *Gaſcoigne* afterwards (to wit), on the ſaid Thirtieth Day of *May*, in the One and Thirtieth Year aforeſaid, at the Pariſh aforeſaid, didſt falſely, adviſedly, craftily, maliciouſly, and traiterouſly ſolicit one *Robert Bolron* to kill our ſaid Lord the King; and then and there, with an Intent ſooner traiterouſly to encourage the ſaid *Bolron* to undertake the killing and murthering of our ſaid Lord the King, offeredſt therefore to give and pay the ſaid *Bolron* 1000 *l.* of lawful Money of *England*; againſt the Duty of thy Allegiance, againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided. How ſay'ſt thou, Sir *Thomas Gaſcoigne*, art thou guilty of this High-Treaſon whereof thou ſtandeſt Indicted, and haſt been now Arraigned, or Not guilty?

Sir *Tho. Gaſc. Gloria Patri, Filio, & Spiritui Sancto*, I am not guilty.

Cl. of Cr. Not Guilty, you muſt ſay.

Sir *T. Gaſc.* Not Guilty; nor any of my Family were ever guilty of any ſuch Thing: I hope I ſhall be tried fairly.

Cl. of Cr. How will you be tried?

Sir *T. Gaſc.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Sir *T. Gaſc.* I deſire, that in order to my Trial, I may have a Jury of Gentlemen, of Perſons of my own Quality, and of my own Country, that may be able to know ſomething how I have lived hitherto; for I am above Fourſcore and five Years old.

L. C. J. Tell him he ſhall have a good Jury of Gentlemen of his own Country.

Sir *T. Gaſc.* And beſides, my Lord, I deſire to know when I ſhall be try'd.

Mr. *Att. Gen.* * Some time about the latter End of the Term, as ſoon as I can get a Jury up.

* *Sir* Creſwel Leviuz.

Sir *T. Gaſc.* I do not know whether I can produce all my Witneſſes at that time, if there be not a longer time allowed me; for I have a great many Witneſſes to fetch up: Theſe Witneſſes muſt be all here, or I can't make my Defence; and I know not how they ſhall be got hither in ſo little time.

L. C. J. Tell him he may have what Witneſſes he pleaſes, and the Aid of this Court to fetch them.

Mr. Juſt. *Dolben.* Name them who they are.

Mrs. *Ravenſcroft.* My Lord, ſome of his Witneſſes are at *Paris.*

Mr. Juſt. *Dolben.* Why, he will not be try'd yet this Fortnight.

Mrs. *Ravenſcroft.* They will not have time to come over between this and that.

Mr. Juſt. *Dolben.* Miſtreſs, he had reaſon to believe that he ſhould be try'd ſome time this Term, for ſo the Council order'd it; and therefore he ſhould have got his Witneſſes ready.

Mrs. *Ravenſcroft.* My Lord, he did not know where they were till a Week ago.

Mr. Juſt. *Dolben.* Look you, Mr. *Attorney*, here is a Lady that is, I ſuppoſe, ſome Relation to this Gentleman.

Mrs. *Ravenſcroft.* He is my Grandfather, my Lord.

Mr. Juſt. *Dolben.* She ſays a Fortnight's time will be too little to get his Witneſſes together for his Defence, becauſe ſome of the Witneſſes are beyond Sea at *Paris*, ſhe ſays.

Mr. *Att. Gen.* My Lord, I am willing he ſhould have as long time as the Term will allow of: But ſure that is long enough to get any Witneſſes from *Paris.*

L. C. J. What ſay you to Sir *Miles Stapleton?* I ſee he is join'd in the Indictment.

Mr. *Att. Gen.* My Lord, he is not come up yet.

L. C. J. Will you try the one without the other?

Mr. *Att. Gen.* Yes, my Lord, if we cannot have both: He is in the Hands of the Meſſenger at *York*; we have writ down to know the State of his Health to ſome of the Juſtices of the Peace, and the Meſſenger returns word, he is ſick and can't come: I have ſent down an *Habeas Corpus* to the Meſſenger to bring him up; let him return a *Languidus* at his Peril; that's all I can do.

L. C. J. Well, what Day do you appoint for Sir *Thomas*'s Trial?

Mr. *Att. Gen.* *Tueſday* come Fortnight I think will be a good Day.

Mr. Juſt. *Dolben.* By that time, Miſtreſs, you may get your Witneſſes; you muſt ſend a Meſſenger on purpoſe.

Mrs. *Ravenſcroft.* But if the Wind ſhould be contrary, my Lord, and they cannot be brought over?

Mr. Juſt. *Dolben.* 'Tis not an uſual Thing to have Winds long contrary between *Dover* and *Calais.*

Mrs. *Ravenſcroft.* But if it do fall out that he wants a material Witneſs at his Trial, I hope his Life will be conſider'd.

Mr. Juſt. *Dolben.* He ſhould have had them ready, he had warning before.

Mrs. *Ravenſcroft.* We could do it no ſooner, becauſe we knew not where they were.

Mr. Juſt. *Dolben.* He ſaith he hath a great many Witneſſes; are they all at *Paris?*

Mr. *Att. Gen.* There are a great many in Town, we know, already.

Mrs. *Ravenſcroft.* If we had known when exactly, we might have been more ready perhaps.

Mr. *Att. Gen.* But we could give no notice ſooner; it is early in the Term now. But there is time enough to get any Witneſſes.

L. C. J. Ay, you may ſend to *Paris* a great many times between this and that.

Mrs. *Ravenſcroft.* What if the Letter miſcarry, my Lord?

Mr. Juſt. *Dolben.* Why, you muſt ſend a ſpecial Meſſenger.

Mr. *Att. Gen.* My Lord, if you pleaſe, let it be *Wedneſday* Fortnight, the laſt Day but one of the Term; becauſe I would give him as much time to provide himſelf as I can.

Mr. Juſt. *Pemberton.* Well, Miſtreſs, you muſt ſend a ſpecial Meſſenger; we muſt not conſult your Conveniency; do it as well as you can, you have time enough.

Mr. Juſt. *Dolben.* Your Grandfather is a Man of an Eſtate; he may very well, in this Caſe, be at the Charge of a ſpecial Meſſenger.

Mrs. *Ravenſcroft.* But what if the Winds be contrary, muſt my Grandfather's Life be loſt?

L. C. J. We muſt give you that Favour we can by Law, and you muſt be content: Tell us at the Trial what you have done.

Then the Lieutenant of the Tower *was order'd to take the Priſoner back, and by Rule to bring him to the Bar on* Wedneſday *the* 11*th of* February: *On which Day the Priſoner being brought up, the Trial proceeded thus:*

Mr. *Att. Gen.* My Lord, here is an extraordinary Matter: Sir *Thomas Gaſcoigne* had a Rule for ſome Friend to aſſiſt him, by reaſon of the Defect of his Hearing; and now there are three of them that are got among the Jury.

L. C. J. No, no, they muſt come in of the inſide of the Bar.

Mr. *Att. Gen.* Pray let him tell which he will make choice of; for he is by the Rule to have but one.

Mr. Juſt. *Pemberton.* Tell him there can but one ſtay.

Counſel. He ſays one of them came out of the Country, and knows the Perſons that are the Witneſſes, which he does not himſelf.

L. C. J. Well, let the other come in, let him have them both.

Counſel. He ſays, the principal Man he depended upon is clapt up.

L. C. J. Well, we can't help that.

Then way was made for the Jury to come up to the Stand, and Proclamation for Information was made in uſual manner.

Cl. of Court. Sir *Thomas Gaſcoigne*, hold up thy Hand.

Sir *T. Gaſc.* I cannot hear what is ſaid.

Cl. of Cr. Thoſe good Men which were lately called, and have appeared, are to paſs, *&c.*

L. C. J. Tell him the Effect of it. If he will make any Challenges to the Jury, he muſt ſpeak to them before they are ſworn.

Hobart. If you will challenge any of the Jury, you muſt ſpeak to them before they are ſworn.

Sir *T. Gaſc.* I cannot hear who is called.

L. C. J. Tell him who is called.

Cl. of Cr. Sir *Thomas Hodſon.*

Hobart. This is Sir *Thomas Hodſon*, Sir.

Sir *T. Gaſc.* What muſt I ſay? Ay, or No?

Hobart. Do you except againſt him?

Sir *T. Gaſc.* No. [*Who was ſworn.*

Cl. of Cr. *Richard Beaumont*, Eſq;

Hobart. Do you challenge him, Sir?

Sir *T. Gaſc.* No.

Mr. *Att. Gen.* Pray, my Lord, here is Sir *John Cutler* in the Pannel, one that lives in Town, and is the Foreman of the Jury; I deſire the Court to take notice of his not appearing in particular.

Cl. of Cr. *John Gibſon*, Eſq;

The Priſoner challenged him.

Mr. Serj. *Maynard.* I perceive they ſkip a great many; pray call them as they are in the Pannel, and record their Non-appearance in Court.

Which was done accordingly; but their Names that did not appear, for brevity ſake, are omitted.

Cl. of Cr. *Nicholas Maleverer*, Eſq;

Mr. *Att. Gen.* We challenge him for the King. I perceive the beſt Gentlemen ſtay at home.

Mr. Serj. *Maynard.* Yes, 'tis ſo ſmall a Buſineſs.

Cl. of Cr.		
	Beckwith, Eſq;	Challenged by the Priſoner.
	Stephen Wilks, Eſq;	Sworn.
	Matthew Prince, Eſq;	Chal. by the Priſ.
	Thomas Graver, Eſq;	Chal. by the Priſ.
	Jervas Rockley, Eſq;	Sworn.
	William Walker, Eſq;	Chal. by the Priſ.
	John Dimmocke, Eſq;	Chal. by the Priſ.
	Samuel Jenkinſon, Eſq;	Chal. by the Priſ.
	Robert Leeke, Eſq;	Sworn.
	William Batt, Eſq;	Sworn.
	Richard Burton, Eſq;	Chal. by the Priſ.
	Robert Auby, Eſq;	Chal. by the Priſ.
	Charles Beſt, Eſq;	Sworn.
	Robert Long, Eſq;	Chal. by the Priſ.
	John Croſſe, Eſq;	Sworn.
	Barton Allett, Eſq;	Sworn.
	William Milner, Eſq;	Sworn.
	John Oxley, Eſq;	Sworn.
	Francis Oxley, Eſq;	Sworn.

Cl. of Cr. Cryer, count theſe.

Sir *Thomas Hodſon*,	Jur'	*Charles Beſt*,
Richard Beaumont,		*John Croſſe*,
Stephen Wilks,		*Barton Allett*,
Jervas Rockley,		*William Milner*,
Robert Leeke,		*John Oxley*,
William Batt,		*Francis Oxley.*

Cry. Twelve good men and true, ſtand together and hear your Evidence.

Cl. of Cr. Sir *Thomas Gaſcoigne*, hold up thy hand. Gentlemen, you of the Jury that are ſworn, look upon the Priſoner and hearken to his Charge. You ſhall underſtand, That he ſtands Indicted by the Name of Sir *Thomas Gaſcoigne*, late of the Pariſh of *Elmett*, *&c. Prout in the Indictment, mutatis mutandis.* Upon this Indictment he hath been Arraigned, and thereunto pleaded Not Guilty; and for his Trial hath put himſelf upon his Country, which Country you are, *&c.*

Then Proclamation for Evidence was made, and Dormer, *Eſq; of Council for the King in this Cauſe, opened the Indictment thus:*

Mr. *Dormer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Sir *Thomas Gaſcoigne*, Baronet, the Priſoner at the Bar, ſtands indicted for High-Treaſon, in conſpiring the Murder of his Majeſty, the ſubverting of the Government, and the introducing the *Romiſh* Religion: And for the effecting theſe Purpoſes, the Indictment ſets forth, That the ſaid Sir *Thomas Gaſcoigne*, Sir *Miles Stapleton*, and other falſe Traitors, on the 30*th* of *May* laſt, at the Pariſh of *Elmett*, in the Weſt-Riding of the County of *York*, did aſſemble together, and there reſolved to put their Treaſons in execution. And the better to accompliſh their ſaid Treaſons and traiterous Imaginations, they did agree to contribute ſeveral large Sums of Money to ſeveral of his Majeſty's Subjects unknown, to introduce Popery, to kill the King, and ſubvert the Government: And that Sir *Thomas Gaſcoigne* did ſollicit *Robert Bolron* to kill the King, and for that Service he was to pay him 1000 *l.* To this he hath pleaded Not Guilty: If the King's Evidence prove the Charge of the Indictment, your Duty is to find him Guilty.

Mr. Serj. *Maynard.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard the Indictment, and it hath been opened to you. There can be no greater Crime charged upon any, than that this Gentleman is accuſed of. The Deſign hath been to kill and murder the King, to change the Religion and the Government; and to effect this, they make Aſſemblies, they offer Money: and this, my Lord, we ſhall prove. 'Tis no new Crime, divers have ſuffered for the like already; and we ſhall not need to make any Aggravations, for indeed it cannot be aggravated more than the plain matter itſelf is. We ſhall call our Witneſſes, and prove it directly upon him, even by Two Witneſſes; and we ſhall prove, that he held Intelligence with one *Preſwicke* a Prieſt; Letters between him and that Perſon are found in his Cuſtody, and we ſhall produce one of them wherein it doth appear, that there was Intelligence between them, and Conſultations had about the Oath of Allegiance; and that *Pracid* did write to him, that it was a damnable Oath condemned by the *Scorbonniſts:* And upon that Point hangs the changing of Religion; for the Oath of Allegiance is the great Touchſtone to diſcover Men's Sincerity by, and the great Bond to tie them to the Government, and to the Proteſtant Religion. And we ſhall likewiſe prove another Paſſage in a Letter indorſed with the Priſoner's own Hand, wherein there is an Expreſſion to this purpoſe: *That if* England *be converted*, (the Prieſt writes this to him) *then how a Sum of Ninety Pound was to be diſpoſed:* Which was, as you ſhall hear, and we ſhall prove, in a Nunnery. *If* England *be converted*, that clearly ſhews what was their Intention, not only to deſtroy the King, but the Religion and the Nation; and ſo they were conſpiring not only againſt his Majeſty, but againſt God. That an old Gentleman that hath lived ſo long under the Peace of this Nation, and been ſo protected by the Government, which hath been ſo indulgent to Men of his Perſuaſion, ſhould be guilty of ſuch a Deſign, is a lamentable thing to think of; that he ſhould ſo offend the Law, which hath been ſo mild in its Execution againſt ſuch Men. We ſhall prove the Proffer of the 1000 *l.* and ſo leave it with you.

Mr. *Att. Gen.* My Lord, theſe two Papers we ſhall uſe in confirmation of that Evidence will be given by two Witneſſes, who I think will concur in the ſame thing; that is, the Conſpiracy for killing the King, and for the carrying on of the Plot. The Papers the Witneſſes will expound to you; the one is a Letter, as Mr. Serjeant hath opened it to you, to Sir *Thomas Gaſcoigne* from a Prieſt, wherein he does diſcourſe about 90 *l.* a Year at *Maunſton*, which Sir *Thomas* had purchaſed to ſettle upon a Nunnery called *Dolebank* in *Yorkſhire*; and therein it is ſaid, *You will be well adviſed to put in a Proviſo into the former Writing* (he meant for the Settlement), *That if* England *be converted, the* 90 l. *a Year ſhall be beſtowed at* Heworth, *or ſome other Place in* Yorkſhire. Your Lordſhip will hear by the Witneſſes, that there were ſeveral Places deſigned for theſe Nuns to inhabit, as *Dolebank* and other Places; and this Letter will concur with their Evidence, and they will prove, that this very place that they ſpeak of, was deſign'd for this purpoſe; and ſo it appears by the Papers taken in Sir *Thomas Gaſcoigne*'s Cuſtody. My Lord, there is another Letter which was mention'd, and which I believe may have a great Influence in this Cauſe, I am ſure it may be likely to produce very bad Effects; which is that Letter from the Prieſt, wherein he decries the Oath of Allegiance as a damnable thing condemned by the Doctors at *Sorbonne*, and other Prieſts from *Rome*. And this had its effect a little time before; for it was about the time that a matter of Thirty or Forty were convicted of a *Præmunire* in that County, for not taking the Oath of Allegiance, which they uſed to do before. And there will be ſome other concurring Evidence in this Cauſe, and is by ſome Papers taken in Sir *Thomas Gaſcoigne*'s own Hand; they are Almanacks, in which many of his own Memorials are, ſeveral Sums of Money mentioned to be paid, and returned to Prieſts at *London:* The Witneſſes will tell you it was returned for the Deſign of the Plot. There happens to be 900 *l.* return'd to Mr. *Corker*, who is now in *Newgate*; and ſome other Sums to *Harcourt*, who is executed; and ſome Money is paid to him, though I think not much, about 25 *l.* and ſeveral Sums are mention'd, and great Sums return'd to *London* by Sir *Thomas Gaſcoigne*, in five or ſix Years time, 5 or 6000 *l.* to what purpoſe I can't tell; they will give you an Account: I think he did live always in *Yorkſhire* himſelf, never uſed to come to Town; and what Occaſion he might have of returning Money, I don't know. We will call the two Witneſſes *viva voce*, and then uſe the other Evidence as we ſhall have occaſion to confirm them. Call Mr. *Bolron* and Mr. *Mowbray*. [*Who were ſworn.*

Mr. *Att. Gen.* Mr. *Bolron*, tell my Lord and the Jury what you know of Sir *Thomas Gaſcoigne.*

Mr. *Bolron.* My Lord, and you Gentlemen of the Jury, I came to live with Sir *Thomas Gaſcoigne* in the Year 1674, as Steward of his Coal-works; and in the Year 1675, a little before *Eaſter*, being in the next Room to Sir *Thomas Gaſcoigne*, I did hear *Charles Ingleby* and Sir *Thomas* in Diſcourſe together, and Sir *Thomas* did ſay he was very fearful his Eſtate would be liable to be forfeited to the King——

L. C. J. In 75 was this?

Mr. *Bolron.* Yes, my Lord.

L. C. J. What time in 75?

Mr. *Bolron.* A little before *Eaſter.*

L. C. J. Were you in the Room?

Mr. *Bolron.* I was in the next Room, and the Door was not ſhut; and Sir *Thomas* did ſay———

Mr. *Att. Gen.* Tell the Diſcourſe what it was.

Mr. *Bolron.* He ſaid he was reſolved to make a colluſive Conveyance of his Eſtate, for fear it ſhould be forfeited to the King. And *Charles Ingleby* ſaid, it was beſt ſo to do: and then he told Sir *Thomas* he would have the Defeazance made ready, which he would draw with his own hands; but he bid him be ſure to bring none but Proteſtant Witneſſes along with him to teſtify.

And in the Year 1675, I did go along with Sir *Thomas Gaſcoigne* to Sir *William Ingleby*'s of *Ripley*, and there I did ſee him receive colourably 1000*l.*

L. C. J. How do you know it was colourably?

Mr. *Bolron*. I did hear Sir *Thomas* tell *Charles Ingleby* ſo.

L. C. J. When was that?

Mr. *Bolron*. The 7th or 8th of *April*; the Deed bears the 8th of *April* 1675.

L. C. J. Was *Charles Ingleby* there at that time?

Mr. *Bolron*. Yes, when the Deed was ſealed; and he read it in the Preſence of the Witneſſes to be dated at that time.

Mr. Juſt. *Dolben*. What, That thouſand Pound was the Conſideration of the Deed?

Mr. *Bolron*. Yes, it was. Sir *Thomas Gaſcoigne* did part thereby with all his Eſtate for Seven Years, he allowing him 100*l.* a Year for his Maintenance, beſides the 1000*l.* at firſt paid. And this was done with that intent, for fear he ſhould be diſcovered in the Plot for killing the King———

L. C. J. How do you know that?

Mr. *Bolron*. I did hear Sir *Thomas Gaſcoigne* and Sir *Miles Stapleton* diſcourſe of it, and he ſaid it was for that End.

L. C. J. Where was that Diſcourſe?

Mr. *Bolron*. In Sir *Thomas Gaſcoigne*'s Bed-chamber.

Mr. Juſt. *Jones*. When was that?

Mr. *Bolron*. It was in or about the Diſcovery of the Plot.

L. C. J. But you ſay you ſaw the Deed ſealed?

Mr. *Bolron*. Yes, I was a Witneſs to it.

L. C. J. And you ſaw the Money paid?

Mr. *Bolron*. I and one *Matthias Higgringil* did help to count it.

Mr. Juſt. *Jones*. Were you a Proteſtant at that time?

Mr. *Bolron*. Yes, my Lord, I was at the time of the ſealing the Deed; but I did hear the Diſcourſe between Sir *Miles Stapleton* and Sir *Thomas Gaſcoigne* upon the Diſcovery of the Plot, when I was a Papiſt.

L. C. J. When was the Diſcourſe you ſpeak of with Sir *Miles Stapleton*, do you ſay?

Mr. *Bolron*. It was about the Diſcovery of the Plot.

L. C. J. After the Money paid?

Mr. *Bolron*. Yes, after the Money paid: And he ſaid to Sir *Miles Stapleton*, he had done well to make over his Eſtate.

L. C. J. That is an abrupt thing for him to ſay; how did he begin the Diſcourſe?

Mr. *Bolron*. They were diſcourſing about the Diſcovery of the Plot by Dr. *Oates* and Mr. *Bedloe*; and then Sir *Thomas Gaſcoigne* ſaid to Sir *Miles Stapleton*, I have done well to make over my Eſtate to Sir *William Ingleby*, to prevent a Forfeiture.

L. C. J. What ſaid Sir *Miles Stapleton*?

Mr. *Bolron*. I do not know what he ſaid very well.

L. C. J. You ſeemed but now, as if he had ſaid he was in the Plot.

Mr. Juſt. *Jones*. Did he own he was in the Plot?

Mr. *Bolron*. Yes.

L. C. J. When?

Mr. *Bolron*. At ſeveral times.

Mr. Serj. *Maynard*. Tell the manner how he was concerned.

Mr. *Bolron*. My Lord, in the Year 1676, I did hear Sir *Thomas Gaſcoigne* ſay to one *Chriſtopher Metcalfe*, that he was reſolved to ſend 3000*l.* to the Jeſuits in *London* for the carrying on of the Deſign.

L. C. J. What time in 76?

Mr. *Bolron*. The beginning of the Year 76.

L. C. J. To whom did he ſay ſo?

Mr. *Bolron*. To one *Chriſtopher Metcalfe*.

L. C. J. Were you a Papiſt then?

Mr. *Bolron*. Yes.

L. C. J. When came you firſt to be a Papiſt?

Mr. *Bolron*. About *Whitſuntide*, 75.

Mr. Juſt. *Jones*. You are a Proteſtant now?

Mr. *Bolron*. Yes, my Lord, I am ſo.

L. C. J. When did you turn Proteſtant again?

Mr *Bolron*. I turned Proteſtant upon the Diſcovery of this Buſineſs.

L. C. J. When?

Mr. *Bolron*. Either the beginning of *May*, or the latter end of *June*.

L. C. J. To whom did he ſpeak it?

Mr. *Bolron*. To *Chriſtopher Metcalfe*, who then lived in his Houſe.

L. C. J. What ſaid he?

Mr. *Bolron*. He ſaid he was to ſend 3000*l.* to the Jeſuits in *London*, for the carrying on of this Deſign.

L. C. J. Who was in the Room beſides?

Mr. *Bolron*. None but Sir *Thomas Gaſcoigne* and *Metcalfe*.

L. C. J. Where is that *Metcalfe*?

Mr. *Bolron*. He is ſince dead, I think.

L. C. J. What Diſcourſe had they about the Deſign?

Mr. *Bolron*. They were diſcourſing about it when I came in; and I remember he mentioned 300*l.* for *Corker*, 300*l.* for *Harcourt*, and 300*l.* for *Cornwallis*; and the reſt by 300*l.* a-piece to other Perſons.

Mr. *Att. Gen.* What Name did *Cornwallis* go by beſides?

Mr. *Bolron*. *Pracid*, my Lord.

Mr. *Att. Gen.* That's the Name that is to the Letter.

Mr. Juſt. *Pemberton*. Well, what do you know more?

Mr. *Bolron*. My Lord, Sir *Thomas Gaſcoigne* told this *Chriſtopher Metcalfe*, that he would return it by 300*l.* at a time, to prevent Suſpicion, by the Hands of *Richard Phiſick*; and about the beginning of the Year 77, I did hear Sir *Thomas Gaſcoigne* ſay, that he had returned it, and that if it had been a thouſand times as much, he would be glad to ſpend it all in ſo good a Cauſe.

L. C. J. Did he ſay he had returned all the 3000*l.*?

Mr. *Bolron*. Yes.

L. C. J. Did he tell you how it was to be diſpos'd of?

Mr. *Bolron*. It was to be diſpoſed among the Jeſuits for the carrying on of the Deſign.

L. C. J. That was in the general; but this 900*l.* you ſpeak of was to thoſe three Prieſts?

Mr. *Bolron*. Yes.

Mr. Juſt. *Jones*. You ſay he reſolved to ſend 3000*l.* to the Jeſuits at *London* about this Deſign; pray what was the Deſign? What did they ſay about the Plot at that time?

Mr. *Bolron*. My Lord, at other times I have heard them ſay it was for killing the King.

L. C. J. What ſaid *Metcalfe* to all this?

Mr. *Bolron*. He did allow of it, and thought it was the beſt way ſo to do. I have ſeen him return ſeveral ſums by *Richard Phiſick*.

Mr. Juſt. *Dolben*. Was *Metcalfe* a Papiſt?

Mr. *Bolron*. Yes, and he died ſo, as I have heard.

L. C. J. Was you in the Room when they firſt began the Diſcourſe?

Mr. *Bolron*. No, my Lord, I came in when they were diſcourſing.

L. C. J. You came in when they were talking, you ſay; but they did not ſtop talking becauſe you came in?

Mr. *Bolron*. No, my Lord, becauſe I knew of it: I was brought in by one *Ruſhton*, who was acquainted with the Plot, to know of it, and therefore they did not ſtop me when I came in.

L. C. J. You ſay he ſaid, I will return 3000*l.* to the Jeſuits in *London*: Did he ſay in what time he would ſend that 3000*l.*?

Mr. *Bolron*. No, but in 76 he ſaid he would do it.

L. C. J. And it ſhould be employed for carrying on of the Deſign?

Mr. *Bolron*. Yes, thoſe were the Words.

L. C. J. And in 77 you heard him talk with *Metcalfe* again? And then he ſaid, If it had been a thouſand times as much he would have ſent it?

Mr. *Bolron*. Yes.

L. C. J. Was no body there but he, Sir *Thomas Gaſcoigne*, and you?

Mr. *Bolron*. No body elſe.

L. C. J. Then go on with your Evidence.

Mr. *Bolron*. My Lord, in the Year 77 ſeveral Gentlemen did meet and aſſemble together at *Barnbow-hall* in the County of *York*, Sir *Thomas Gaſcoigne*'s Houſe; and their Reſolution was this, That they would build a Nunnery at *Dolebank*, in caſe that their Deſign and Plot of killing the King ſhould take effect, and the Roman Catholick Religion be eſtabliſhed in *England*: Upon which account, the Company there preſent did reſolve they would loſe their Lives and Eſtates to further it: And Sir *Thomas Gaſcoigne* did conclude he would give 90*l.* a Year for ever for the maintenance of this Nunnery: Upon which they all agreed, that after his Death he ſhould be canoniz'd a Saint.

L. C. J. Who were theſe Gentlemen?

Mr. *Bolron*. Sir *Miles Stapleton*, *Charles Ingleby*, Eſquire *Gaſcoigne*, my Lady *Tempeſt*, *Thomas Thwing*, Sir *Walter Vavaſor*, Sir *Francis Hungatt*, and *Robert Kilingbeck* a Jeſuit, and *William Ruſhton* a Romiſh Prieſt.

Mr. Juſt. *Pemberton*. Is he dead?

Mr. *Bolron*. No, he is fled beyond Sea.

L. C. J. Who elſe?

Mr. *Bolron*. Theſe are the Perſons I can remember at preſent.

L. C. J. There was a Woman there, you ſay?

Mr. *Bolron*. My Lady *Tempeſt*, my Lord, and one *William Ruſhton*, if you had not him before.

Mr. Juſt. *Dolben*. That was your Confeſſor?

Mr. *Bolron*. Yes, and engag'd me in the Plot.

Mr. Juſt. *Pemberton*. What was your Diſcourſe? Pray tell that.

Mr. *Bolron*. The Diſcourſe was upon eſtabliſhing a Nunnery at *Dolebank*, in hopes that the Plot of Killing the King would take effect: The Intention was to alter the Government, and to introduce the *Romiſh* Religion.

L. C. J. Who was it ſaid this?

Mr. *Bolron*. It was ſpoken by Sir *Thomas Gaſcoigne*, and the reſt of the Gentlemen.

L. C. J. In their Diſcourſe?

Mr. *Bolron*. Yes.

L. C. J. Did they ſpeak of killing the King?

Mr. *Bolron*. Yes, my Lord, Sir *Francis Hungatt* ſaid it ſeveral times.

L. C. J. How? Upon what Account?

Mr. *Bolron*. They were mutually reſolved, and they would talk that they would venture their Lives and Eſtates in hopes the Plot would take effect; and accordingly about *Michaelmas* 1677, or near upon, as I remember——

L. C. J. How long ſtaid they there?

Mr. *Bolron*. About ſix or ſeven Hours.

L. C. J. Were you with them in the Room ſtill?

Mr. *Bolron*. My Lord, I was ſometimes in the Room, and ſometimes out: What Diſcourſe I heard, I tell you; there was one *Barloe*———

L. C. J. What was that *Barloe*?

Mr. *Bolron*. I have had two Orders of Council for the ſeizing of him, and never could take him; he is a Prieſt.

L. C. J. Was he by?

Mr. *Bolron*. He went with them to take poſſeſſion of the Nunnery.

L. C. J. Was he not in the Houſe?

Mr. *Bolron*. No, not in the Room at that time.

L. C. J. Was there any Servant by in the Room when this Diſcourſe was?

Mr. *Bolron*. No.

L. C. J. Well, go on.

Mr. *Bolron*. Accordingly Sir *Tho. Gaſcoigne* did erect a Nunnery about the year 77, at *Dolebank*.

L. C. J. What, built it?

Mr. *Bolron*. He eſtabliſh'd it.

L. C. J. Who were the Nuns?

Mr. *Bolron*. Mrs. *Laſhals* was Lady Abbeſs, Mrs. *Beckwith* and Mrs. *Benningfield* were her Aſſiſtants, *Elling Thwing*, *Eliz. Butcher*, and others, were Nuns, according as I heard Sir *Tho. Gaſcoigne* ſay: And when they went by Sir *Tho. Gaſcoigne*, when one *Mary Root* was taking Horſe, Sir *Tho. Gaſcoigne* ſaid of her, There goes an old Maid and a young Nun.

L. C. J. Whither were they going then?

Mr. *Bolron*. To take poſſeſſion of the Nunnery.

L. C. J. Was it a new built Houſe?

Mr. *Bolron*. They call'd it a Nunnery in hopes their Plot would take effect.

L. C. J. Was it an old or a new built Houſe?

Mr. *Bolron*. Nay, I never ſaw it.

L. C. J. Whereabouts was this Houſe?

Mr. *Bolron*. It was near *Ripley*.

L. C. J. What, was that *Ripley* his Houſe?

Mr. *Bolron*. No, his Houſe is at *Barnbow*.

L. C. J. Who did it belong to?

Mr. *Bolron*. They went thither till the Buſineſs was done, and that was only till the King was kill'd, and afterwards they reſolved to reſide at *Heworth*.

L. C. J. How long ſtaid they there?

Mr. *Bolron*. They lived in this place near a year and half.

L. C. J. Till the Plot was diſcovered?

Mr. *Bolron*. Yes.

Mr. Juſt. *Jones*. How do you know they liv'd there?

Mr. *Bolron*. I have ſeen ſeveral times Letters come from their Hands.

Mr. Juſt. *Jones*. How do you know they came from thence?

Mr. *Bolron.* The Letters were dated from *Dolebank.*

L. C. J. Did he let them lie open?

Mr. *Bolron.* Sometimes he did.

L. C. J. What was in them?

Mr. *Bolron.* I don't know any of the Particulars, there was no great Matter in them.

L. C. J. Who writ them?

Mr. *Bolron.* The Name that I ſaw was *Pracid*, or from Mrs. *Laſhals.*

Mr. *Att. Gen.* They, or ſome of them.

L. C. J. You do not know whoſe Houſe it was?

Mr. *Bolron.* No, my Lord, not I.

L. C. J. Where is *Heworth-Hall?*

Mr. *Bolron.* *Heworth-Hall* is about half a Mile off of *York.*

Mr. Juſt. *Dolben.* Does not that belong to one Mr. *Dawſon?*

Mr. *Bolron.* It did, but it was bought of him.

Mr. *Att. Gen.* What other Place did you hear him mention?

Mr. *Bolron.* *Broughton*, my Lord, but I never knew that any were there.

L. C. J. Nor at *Heworth-Hall.*

Mr. *Bolron.* Yes, my Lord, ſometime one and ſometimes the other; ſome of them came to *Heworth-Hall*, and ſome to *Dolebank*; but *Dolebank* was the Place they did generally reſide at: And then Sir *Thomas* did eſtabliſh 90 *l.* a Year, which was purchaſed of Mr. *Tim. Maleverer*; and *Alver Aloftus* enjoys it.

L. C. J. How much was it?

Mr. *Bolron.* 90 *l.* a Year.

L. C. J. Where does it lie?

Mr. *Bolron.* It lies at a Place call'd *Mawſon*, near Sir *Thomas Gaſcoigne*'s Houſe.

L. C. J. Did he ſay he had ſeal'd ſuch a Conveyance?

Mr. Juſt. *Dolben.* I ſuppoſe he bought it of *Dawſon.*

Mr. *Bolron.* He bought it of *Maleverer.*

L. C. J. Is *Maleverer* a Proteſtant?

Mr. *Bolron.* Yes, my Lord.

L. C. J. Where is he?

Mr. *Bolron.* I can't tell.

Mr. Juſt. *Jones.* You did not ſee the Conveyance of it your ſelf ſeal'd?

Mr. *Bolron.* No, I refer to their Words for that.

Mr. Juſt. *Jones.* To what Purpoſe was it bought?

Mr. *Bolron.* To eſtabliſh a Nunnery.

Mr. Juſt. *Pemberton.* And they told him he ſhould be canoniz'd for a Saint when he dy'd?

Mr. *Bolron.* Yes, my Lord.

L. C. J. Well, go on, then.

Mr. *Bolron.* My Lord, about *March* laſt, to the beſt of my Remembrance, Sir *Thomas Gaſcoigne* and Eſquire *Gaſcoigne* being in their Chamber together, I was reading a book call'd, *The Lives of the Saints*, and Eſquire *Gaſcoigne* told Sir *Thomas* that he had been before the Juſtices of the Peace, and they had given to him and Mr. *Middleton* Licenſe to go up to *London*, which mention'd, that in Conſideration that there was a Suit in Law between *James Nelthorp* Eſq; and Sir *Thomas Gaſcoigne*, therefore it permitted the ſaid *Thomas Gaſcoigne* Eſq; and his Man to travel peaceably to *London.* And I did hear the other Copy read of Mr. *Middleton*'s Licenſe to travel into the South, and for his Occaſion into the South Parts was pretended to receive ſome Rents there. But I did hear Eſquire *Gaſcoigne* ſay to Sir *Thomas*, that he was reſolv'd as ſoon as he came to *London*, and had done with Mr. *Nelthorp*, that he would fly into *France*, and ſo would cheat the Juſtices, for he was reſolv'd not to come back to *Yorkſhire* again, but he would commit the Deſign in agitation into ſuch Hands as would do it, and would not fail, but he would not ſtay to ſee Execution.

L. C. J. You heard him ſay ſo?

Mr. *Bolron.* Yes, I did.

L. C. J. What ſaid Sir *Thomas?*

Mr. *Bolron.* He commended his Son's and Mr. *Middleton*'s Reſolutions.

L. C. J. What Room was it in?

Mr. *Bolron.* It was in Sir *Thomas*'s own Chamber.

L. C. J. Were there any Rooms near it?

Mr. *Bolron.* None that they could hear in, unleſs in the Chamber within, I don't know whether any one was there or no.

L. C. J. Could they hear in no Room that was near to them?

Mr. *Bolron.* Yes, in the Chamber within.

L. C. J. Was there no Servant there?

Mr. *Bolron.* Not as I know.

L. C. J. My Reaſon is, becauſe he muſt ſpeak very loud to make his Father hear him.

Mr. *Bolron.* Yes, he did, for I heard him in the Chamber-Window that I ſtood in againſt them, they were a little Way off me.

L. C. J. Becauſe, if any of the Servants were near, methinks they muſt needs be very cautious how they ſpoke ſo loud to make Sir *Thomas Gaſcoigne* hear.

Mr. *Bolron.* My Lord, he was not ſo deaf then as they ſay he is, and he ſeems to be now. And Eſquire *Gaſcoigne* alſo, becauſe he would be ſure there ſhould no Damage come to him, cauſed all his Goods to be ſold off his Ground, and Mr. *Middleton* ſold his very Houſhold-Goods.

L. C. J. He is a Papiſt too, is he not?

Mr. *Bolron.* Yes, he is ſo.

L. C. J. Was not he at the meeting with Sir *Miles Stapleton?*

Mr. *Bolron.* Yes, Mr. *Middleton* was one.

L. C. J. You did not name him before.

Mr. Juſt. *Pemberton.* But he ſaid a great many were there beſides thoſe he nam'd.

Mr. Juſt. *Dolben.* Yes, he did ſo. Well, go on, Sir.

Mr. *Bolron.* My Lord, laſt Thirtieth of *May*, the Day after Holy *Thurſday*, as I remember, being in Sir *Thomas Gaſcoigne*'s own Chamber, Sir *Thomas Gaſcoigne* bid me go into the Gallery next to the Prieſt's Lodgings, and after a little time one *William Ruſhton*, my Confeſſor, came to me, and aſked me, if I was at the laſt *Pontefract* Seſſions? I told him, Yes, and that I had taken the Oath of Allegiance, as others had done: Whereupon the ſaid *Ruſhton* told me, that I and all the others were damn'd for ſo doing, if we kept the ſame; therefore he bid me be ſure to come next *Sunday* to have Abſolution from him; for it was a damnable Sin to take that Oath, and he told me, he had Power from the Pope to abſolve me; and he added, that few Prieſts had that Power that he had.

L. C. J. Did he make you confeſs that as a Sin to him?

Mr. *Bolron.* No, my Lord, for I did make the Diſcovery ſoon after.

L. C. J. When was it you firſt turned Proteſtant?

Mr. *Bolron.* In *June*, my Lord, after that.

L. C. J. Then you were not a Proteſtant at that time?

Mr. *Bolron.* No, my Lord.

L. C. J. Were you a Papiſt when you took the Oath of Allegiance?

Mr. *Bolron.* Yes, my Lord, I was.

L. C. J. Why would not you, then, go and be abſolved according as your Prieſt bid you?

Mr. *Bolron.* I thought I had done nothing that was evil, becauſe ſeveral had taken the Oath with me, as you ſhall hear afterward.

L. C. J. Well, go on.

Mr. *Bolron.* I told him that ſeveral others had done it as well as I, that were Papiſts, and they judged it lawful; whereupon he ſaid, Away, and told me I was a Fool, and knew not how to judge of an Oath.

L. C. J. So you were ſatisfied the Papiſts might take the Oath?

Mr. *Bolron.* My Lord, I told him I thought it was no Sin to take that Oath, becauſe it was an Oath only to be true to my King and to my Country; and I told him that Mr. *Ellis*, Prieſt to Mr. *Vavaſor*, had written Commentaries upon the Oath, and juſtified the taking of it. Said he again, Mr. *Ellis* was a Fool, and his Superiors will call him to an Account, and check him for his Pains. But, ſaid he, by taking the Oath you have deny'd the Power of the Pope to abſolve you from it; but I tell you he hath a Power to depoſe the King, and had done it: And, ſaid he, you will merit Heaven if you will kill him.

L. C. J. Who ſpoke to you?

Mr. *Bolron.* *Ruſhton*, my Lord, ſaid it was a meritorious Act to kill the King.

L. C. J. But did Sir *Thomas Gaſcoigne*, or any of the Company, wiſh you to do that Thing?

Mr. *Bolron.* Not at that Meeting; but afterwards Sir *Thomas* did, my Lord, if you will give me Leave to go on.

L. C. J. What did he ſay?

Mr. *Bolron.* He told me he would aſſiſt me in the Act.

L. C. J. Who?

Mr. *Bolron.* *Ruſhton* did. And he told me the Pope had granted him the Power, that I ſhould have the Benefit of Abſolution if I would do it. I deſired him not to perſuade me to do ſuch a Thing, for I would have no hand in it; then he quoted a certain Place of Scripture to me, which was, *Thou ſhalt bind their Kings in Fetters, and their Princes in Chains.* Whereupon he concluded, and made this Expoſition, that the Pope had depoſed the King, and abſolved all his Subjects, and it was a meritorious Act to kill the King. And that unleſs the King would turn Roman Catholick, the Pope would give away his Kingdoms to another.

L. C. J. Well, go on.

Mr. *Bolron.* Then I told him I would have no hand in that Act and Deed; whereupon he anſwered me again, You may may hang me, if you pleaſe, for ſpeaking theſe Words. No, Sir, ſaid I, I will do you no Injury, if you do your ſelf none. So he bid me conſider what he ſaid, and come to him again, but I did not.

L. C. J. This was the Thirtieth of *May?*

Mr. *Bolron.* Yes, and the ſame Day as ſoon as I came down, I was told Sir *Thomas Gaſcoigne* had left Order with his Servants that I ſhould not depart the Houſe till he came in, and I ſtay'd there till about ſix of the Clock.

L. C. J. Did not you live with him then?

Mr. *Bolron.* I lived a little Way off the Houſe.

L. C. J. How far?

Mr. *Bolron.* About a quarter of a Mile.

L. C. J. Were you not his Servant?

Mr. *Bolron.* No, my Lord, not at that time.

Mr. Juſt. *Jones.* How long had you been gone out of his Service before?

Mr. *Bolron.* I went out of his Service about the Beginning of *July* 1678.

Mr. Juſt. *Pemberton.* Did Sir *Thomas Gaſcoigne* ſend you into this Gallery?

Mr. *Bolron.* Yes, my Lord.

Mr. Juſt. *Pemberton.* And there you found *Ruſhton?*

Mr. *Bolron.* My Lord, he was not there when I came, but he came as it were from Chapel.

L. C. J. You were his Servant when all the Gentlemen met at his Houſe?

Mr. *Bolron.* Yes, my Lord, I was.

L. C. J. When did you leave his Service, ſay you?

Mr. *Bolron.* The firſt Day of *July* 1678.

L. C. J. And this was in *May* 1678, was it not?

Mr. *Bolron.* No, in (79) my Lord, laſt *May.* My Lord, I watched and ſtayed till he came in, and took him as he came in. I went up Stairs with him, and when he came into his Chamber he calls me to him, and aſked me what Diſcourſe had paſſed between me and *Ruſhton?* I told him our Diſcourſe was concerning the Oath of Allegiance, and the Lawfulneſs or Unlawfulneſs of it. Then Sir *Thomas Gaſcoigne* took me by the Hand, and told me, Well, Man, if thou wilt undertake a Deſign that I and others have to kill the King, I will give thee 1000 *l.* and I will ſend thee to my Son *Thomas*, if he be in Town; but if he be not in Town, he ſaid he would give me ſuch Inſtructions that I ſhould find the reſt that were concerned in the Buſineſs———

L. C. J. The reſt, what?

Mr. *Bolron.* The reſt that were in the Plot.

L. C. J. That you ſhould know where to find them in *London*, you mean ſo?

Mr. *Bolron.* Yes, my Lord, if he were gone beyond Sea.

L. C. J. What ſaid you to him?

Mr. *Bolron.* My Lord, I told him I would have no hand in Blood, and would not do ſuch a wicked Deed, and deſired him to perſuade me no more. Then he deſired me of all Love to keep ſecret what he had ſaid. But afterwards I recollected that it was a very ill Thing, and went immediately to the Juſtices of the Peace.———

L. C. J. How ſoon did you go?

Mr. *Bolron.* Soon after.

L. C. J. To whom did you go?

Mr. *Bolron.* To Mr. *Tindal*, a Juſtice of Peace, and to Mr. *Normanton.*

L. C. J. Did you make an Oath there?

Mr. *Bolron.* Yes, that Sir *Thomas* promiſed me 1000 *l.*

L. C. J. And for what Purpoſe?

Mr. *Bolron.* For killing the King.

L. C. J. Did you put that in the Oath you made?

Mr. *Bolron.* Yes, my Lord.

L. C. J. What time was this after the Diſcourſe?

Mr. *Bolron.* It was about a Week, or ſuch a time.

L. C. J. Was it the next Day?

Mr. *Bolron.* No.

L. C. J. Was it within a Fortnight?

Mr. *Bolron.* Yes, I believe it was, my Lord.

L. C. J. Was it not a Month?

Mr. *Bolron.* No, it was not above a Fortnight, for Sir *Thomas Gaſcoigne* was apprehended in *July* or thereabouts, I believe, my Lord.

L. C. J. But was that the firſt time that Sir *Thomas* ever ſpake to you to kill the King, the 30th of *May?*

Mr. *Bolron.* Yes, my Lord.

Mr. Juſt. *Jones.* You ſay you left Sir *Thomas*'s Service in *July* 1678?

Mr. *Bolron.* Yes, the firſt Day of *July.*

L. C. J. How? Did you leave him in good Friendſhip?

Mr. *Bolron.* Yes, my Lord, in very good Friendſhip.

Mr. Juſt. *Jones.* Were you in good Correſpondence?

Mr. *Bolron.* I always went to his Houſe to hear Maſs, and oftentimes was there.

L. C. J. How came you to leave his Service?

Mr. *Bolron.* It was my own Fault I left it.

L. C. J. Why, it might be no Fault neither. But why did you leave it?

Mr. *Bolron.* My Lord, it was becauſe there was one *Henry Addiſon* and *Bennet Johnſon* did ſeek to take my Work and Service out of my Hands. Sir *Thomas Gaſcoigne* did deſire me to let them come in and ſee what they could do, and that I ſhould have my Salary, and that I ſhould gather in his Debts; I was willing to be rid of it, and told him, they that look'd after the Pit ſhould gather in the Debts, for I conceived elſe it would be but a double Charge to him.

Mr. Juſt. *Dolben.* This is only how he left Sir *Thomas* his Service; Sir *Thomas* thought the other Men could do it better than he, and ſo, ſaid he, then let them do your whole Work.

Mr. Juſt. *Jones.* But he ſays he did uſually reſort to the Houſe after he had left his Service, to hear Maſs.

Mr. Juſt. *Dolben.* They will aſk him ſome Queſtions, it may be.

L. C. J. Had you any Eſtate of your own when you left Sir *Thomas*'s Service?

Mr. *Bolron.* Yes, I had a Farm I rented of Sir *Thomas Gaſcoigne.*

L. C. J. What Rent?

Mr. *Bolron.* Fifteen Pound and a Mark a Year, after I was married.

L. C. J. When were you married?

Mr. *Bolron.* In *July* (75.), but afterwards I was there, and did ſtill Service.

Mr. *Att. Gen.* I think you have ſome Eſtate of your own beſides that?

Mr. *Bolron.* Yes, I have 7*l.* a Year.

Mr. *Att. Gen.* Well, will you for Sir *Thomas* aſk him any Queſtions?

Mr. *Babbington.* No.

L. C. J. Mr. *Bolron*, Pray what did the Juſtice ſay to you when you made this Oath?

Mr. *Bolron.* My Lord, thus: I was reſolved to come to *London*, and make my Confeſſion here, and deſired I might ſo do; whereupon one of the Juſtices was unwilling, but at laſt they ſaid I might do what I would.

L. C. J. You ſay, Juſtice *Tindal* it was ſworn before, what did he ſay when you made the Oath?

Mr. *Bolron.* My Lord, as I remember, he ſaid, he muſt give the Council an Account of it, and perhaps he ſhould not have an Anſwer of it in a Month after; ſo I thought it was better to come to *London*, and make a ſpeedy Diſpatch of the Buſineſs; for I did not know but the Prieſts in the mean time might eſcape.

L. C. J. But did Mr. *Tindal* do nothing upon that Oath that was made?

Mr. *Bolron.* Yes, he did make out his Warrant for the apprehending of one.

L. C. J. Did he not make out a Warrant for the apprehending of Sir *Thomas Gaſcoigne?*

Mr. *Bolron.* My Lord, I think they would have done it, but I deſired I might come to the Council.

Mr. Juſt. *Pemberton.* How long after came you there?

Mr. *Bolron.* As ſoon as I could get ready.

L. C. J. What time came you thither?

Mr. *Bolron.* My Lord, I ſet out upon *Monday*, and came hither to *London* upon *Wedneſday.*

L. C. J. Do you know what Month it was in?

Mr. *Bolron.* In *June* it was, I think.

L. C. J. And who did you come and apply yourſelf to in *London*, when you came there?

Mr. *Bolron.* My Lord, I had a Letter directed from Mr. Juſtice *Tindal* to his Brother *Tindal* in *London*, to carry me to the Council. I chanced to loſe this Letter at *Ware*, and loſing it there, I came to the *Green Dragon* in *Biſhopſgate-Street*, I was acquainted with the Man of the Houſe, and having told him ſome of my Buſineſs, he carry'd me before Sir *Robert Clayton*, and then we went to my Lord of *Shaftſbury*, Preſident of the Council, and preſently got an Order of the Council about me.

L. C. J. How long was this after Dr. *Oates*'s Diſcovery? When did *Oates* and *Bedloe* make their Diſcovery?

Mr. Juſt. *Pemberton.* This was a long time after, in *May* laſt.

Mr. Juſt. *Jones.* Did Mr. *Tindal* take your Examination in Writing?

Mr. *Bolron.* He took a ſhort Thing in Writing.

Mr. Juſt. *Jones.* Did you ſet your Hand to it?

Mr. Juſt. *Pemberton.* He reſolved to go to the Council, and tell them.

Mr. *Bolron.* I was not willing to tell the Juſtices all, for I had a mind to go to the Council.

Mr. Juſt. *Jones.* But you told them the great Matter of all, Sir *Thomas*'s Proffer to give you 1000*l.* to kill the King?

Mr. *Bolron.* Yes.

Mr. Juſt. *Jones.* Had you a Leaſe of your Farm under Sir *Thomas Gaſcoigne?*

Mr. *Bolron.* It was but a Leaſe paroll.

Mr. Juſt. *Jones.* For how long?

Mr. *Bolron.* For Nine Years.

Mr. *Babbington.* May I have leave to aſk him any Queſtions?

Court. Yes, yes, you may.

Mr. *Babbington.* You ſay you had a Leaſe of the Farm, a Leaſe paroll?

Mr. *Bolron.* Yes, I had ſo.

Mr. Serj. *Maynard.* Council muſt not be allowed in matter of Fact, my Lord.

L. C. J. But, Brother, this Man hath made a long Narrative.

Mr. Serj. *Maynard.* Ay, and a ſhrewd one too.

L. C. J. His Evidence is very great, and Sir *Thomas Gaſcoigne* does not hear any one Word.

Mr. *Bolron.* One thing more I would ſpeak to. It was in *September* 1678, a little before the Diſcovery of the Plot, I did hear Sir *Thomas Gaſcoigne* ſay, and tell my Lady *Tempeſt*, that he would ſend 150*l.* to *Dolebank*, in hopes the Blow would be given ſhortly.

Mr. Serj. *Maynard.* That is the ſame Word uſed by all the Witneſſes.

L. C. J. When was this?

Mr. *Bolron.* In *September* 78; the Plot was not known by us to be diſcovered then, as I know of.

L. C. J. Who did he ſpeak it to?

Mr. *Bolron.* To his Daughter, the Lady *Tempeſt.*

L. C. J. What ſaid ſhe?

Mr. *Bolron.* She ſeemed to like it very well; I did not hear any Thing to the contrary: And I heard a Letter read afterwards from *Cornwallis*, that he had received it, but it was too little for the carrying on ſo great a Deſign.

L. C. J. Who is *Cornwallis?*

Mr. *Bolron.* And it was for the arming the poor Catholicks when the Blow ſhould be given.

L. C. J. Is his Daughter living?

Mr. *Att. Gen.* Yes, ſhe is out under Bail.

Mr. *Recorder.* My Lord, I ſhall deſire to aſk but one Queſtion, which concerns the Priſoner at the Bar: How long after the Diſcourſe that you had with the Prieſt in the Gallery was it that Sir *T. Gaſcoigne* ſpoke to you of the ſame Thing?

Mr. Juſt. *Pemberton.* Mr. *Recorder*, if you aſk him but one Queſtion, let it not be that which he hath anſwered before; he ſays the ſame Day.

Mr. *Hobart.* I deſire to aſk him one Queſtion.

Mr. Juſt. *Pemberton.* No; tell Sir *Thomas* firſt what he hath ſaid, and ſee if he will aſk him any Queſtions.

Mr. *Hobart.* Sir *Thomas*, here is Mr. *Bolron* hath given Evidence againſt you, will you aſk him any Queſtions?

Mr. Juſt. *Pemberton.* Read your Minutes to him.

Then Mr. Hobart *repeated the firſt Part, about his coming to Sir* T. Gaſcoigne'*s Service, and the Colliery Conveyance.*

Mr. Juſt. *Jones.* Aſk him if he will aſk any Queſtions upon this Part. [*Which he did.*

Sir *T. Gaſc.* No, 'tis no great matter at all, for it is true; when 'twas I can't tell, there was ſomething I did ſeal to Sir *William Ingleby*, and ſome Money I had of him.

Then Mr. Hobart *repeated his Saying to* Metcalfe, *he would ſend* 3000 *l. to the Prieſts in* 76.

Sir *T. Gaſc.* How comes that? I deny that utterly.

Mr. *Bolron.* 'Tis all true that I have ſaid, by the Oath that I have taken.

Sir *T. Gaſc.* There is no ſuch Thing at all.

Mr. *Hobart.* He ſays it was return'd by Mr. *Phiſwick.*

Sir *T. Gaſc.* *Phiſwick* was a Servant to me, and return'd ſome Money for me ſometimes, but it was all for my Children, my Sons and my Daughters, and my Kinſpeople, to whom I paid Annuities; but it was a far greater Sum of the whole than 3000*l.* and for one great Sum of 1000*l.* you know how it was diſpos'd of.

Mr. *Hobart.* He ſays, that in the beginning of 77, you ſaid you had return'd this 3000*l.* to *London*, and if you had a thouſand times as much, you would give it for ſo good Cauſe.

Sir *T. Gaſc.* I never ſaid any ſuch thing, never thought of any ſuch thing in my Life.

L. C. J. Now tell him of the Meeting at *Barmbow.*

Mr. *Hobart.* He ſays, in the Year 77 there were ſeveral Gentlemen met at your Houſe at *Barmbow*

L. C. J. Name them. [*Which he did.*

Mr. *Hobart.* Theſe were all together with you.

Sir *T. Gaſc.* No ſuch Matter at all.

Mr. *Hobart.* And he ſaid all theſe Perſons did diſcourſe with you about eſtabliſhing a Nunnery at *Dolebank*, and another at *Heworth*, and another at *Broughton.*

Sir *T. Gaſc.* Not one Word of all this is true.

L. C. J. Tell him what he ſaid concerning killing the King.

Mr. *Hobart.* He ſays that the Nunnery was eſtabliſhed at *Dolebank*, and ſuch and ſuch were Nuns.

Sir *T. Gaſc.* He may ſay what he will, but not one Word of all this is true.

Mr. Juſt. *Dolben.* But you ſkip over the main Thing, what the Gentlemen reſolved upon at that Meeting.

Mr. *Hobart.* He ſays, theſe Gentlemen did reſolve the Buſineſs ſhould go on for the killing of the King, and that they would venture their Lives and Eſtates for it.

Sir *T. Gaſc.* I never heard of any ſuch thing as killing the King. Sir, did I ever ſay any ſuch thing?

Mr. *Bolron.* It was in your own Dining-Room, and in your own Chamber.

Mr. Juſt. *Pemberton.* He did not ſay ſo, I think, about their Meeting.

L. C. J. Yes, he ſays they all met at his Houſe, and there they had Diſcourſe of killing the King. In what Room was it?

Mr. *Bolron.* In the old Dining-Room.

Sir *T. Gaſc.* I deny it utterly; there was no ſuch thing: Some Perſons might be at ſeveral Times at my Houſe, but no ſuch Meeting, nor Words at all at one time or other.

Then Mr. Hobart *told him of Mr.* Gaſcoigne'*s and Mr.* Middleton'*s Licenſes to go to London, and Intention to go to* France.

Sir *T. Gaſc.* 'Tis very true, my Son did go to *London* for that End.

Mr. *Hobart.* And ſo Mr. *Middleton*, upon pretence of receiving Rent.

Sir *T. Gaſc.* I cannot tell about Mr. *Middleton.*

Mr. *Hobart.* He ſays, your Son would immediately fly into *France*, and commit the Deſign into other Hands; and you ſaid you approv'd of it: And this he heard you diſcourſe very plainly.

Sir *T. Gaſc.* But I plainly deny it all.

Mr. *Hobart.* He ſays you bid him go up (the 30th of *May*) to the Gallery to Mr. *Ruſhton.*

L. C. J. No, not to him, but when he was in the Gallery, *Ruſhton* came to him.

Then Mr. Hobart *repeated the Diſcourſe with* Ruſhton *about the Oath of Allegiance.*

L. C. J. You need not tell him what *Ruſhton* ſaid.

Mr. Juſt. *Dolben.* Yes, my Lord, it is convenient.

Mr. *Bolron.* For I told him our Diſcourſe about the Oath of Allegiance myſelf.

Then Hobart *repeated Sir* Thomas'*s further Diſcourſe and Proffer to him.*

Sir *T. Gaſc.* There is nothing of all this true: He might come there and talk with any Body, for what I know, but I was not with him.

L. C. J. But aſk him what he ſays to this, that he proffered him 1000*l.* to kill the King. [*Which he did.*

Sir *T. Gaſc.* Where ſhould you be paid it?

Mr. *Bolron.* I would not undertake the Deſign.

Sir *T. Gaſc.* Did you ever know I was Maſter of 200*l.* together in my Life?

Mr. *Bolron.* Yes.

L. C. J. Tell him, he ſays he would not undertake it, and therefore it was in vain to appoint where.

Sir *T. Gaſc.* I utterly deny it all, upon my Life; that's e'en juſt like the reſt, I never heard it before.

L. C. J. He puts it to you, Whether ever you ſaw him have 200*l.* together?

Mr. *Bolron.* I have ſeen 500*l.* at a time in the Houſe, and I have ſeen in *Phiſwick*'s Hand 700*l.* [*Which was repeated to him.*

Sir *T. Gaſc.* What *Phiſwick* might have of other Men's Monies I do not know, he never had ſo much Money of mine.

Mr. *Bolron.* My Lord, Sir *T. Gaſcoigne*, I believe, had at that time at leaſt 1200*l.* a Year of his own Eſtate. [*Which was repeated to him.*

Sir *T. Gaſc.* I wiſh he would make it good.

Mr. *Bolron.* My Lord, 'tis true enough: I believe he hath ſettled ſome Eſtate upon his Son, about 600*l.* a Year.

L. C. J. I can't tell what becomes of the Papiſts Eſtates, nor how the Prieſts drain them, but there are Men of very great Eſtates among them, but they are greatly in Debt.

Mr. *Hobart.* Will you aſk Mr. *Bolron* any Queſtions?

Mr. Juſt. *Jones.* You have not repeated to him one Part of the Evidence; that in *September*, 78, he ſaid to my Lady *Tempeſt*, he would ſend 150*l.* to *Dolebank*, in Hopes the Blow would be given ſhortly. [*Which was then repeated to him.*

Sir *T. Gaſc.* I know no ſuch thing at all; there is not one Word of all this true.

Mr. *Hobart.* Will you aſk him any Queſtions, or no?

Sir *T. Gaſc.* I know not what Queſtions to aſk, but where the Money ſhould be paid?

L. C. J. That can be no Queſtion, for the thing was never undertaken.

Mr. *Att. Gen.* Then pray, Mr. *Mowbray*, tell your Knowledge.

Mr. *Mowbray.* My Lord, and you Gentlemen of the Jury, I came to Sir *Thomas Gaſcoigne*'s in the Beginning of the Year 1674.

L. C. J. Were you his Servant?

Mr. *Mowbray.* Yes, my Lord, but never an hired Servant.

L. C. J. In what Quality did you ſerve him?

Mr. *Mowbray.* In his Chamber, my Lord, and continued with Sir *Thomas* until 76, in which time I did obſerve Mr. *Thomas Addiſon*, a Prieſt, *Fincham*, a Prieſt, *Stapleton*, a Prieſt, *Killingbeck*, a Prieſt, and *Thwing*, the elder and the younger, ſeveral times to viſit and confer with Mr. *William Ruſhton*, Sir *T. Gaſcoigne*'s Confeſſor.

L. C. J. Were you a Papiſt then?

Mr. *Mowbray.* Yes, I was.

L. C. J. Are you one now?

Mr. *Mowbray.* No.

L. C. J. Well, go on then.

Mr. *Mowbray.* I being very diligent in attending Mr. *Ruſhton* at the Altar, I became in great Favour with him, and was permitted to be in the Chamber when the Prieſts were in private with him, and I heard them often talk and diſcourſe of a Deſign laid for ſetting the Popiſh Religion uppermoſt in *England*, and how like the ſame was to take Effect in a ſhort time.

L. C. J. Who did ſpeak it?

Mr. *Mowbray.* The Prieſts in private with Mr. *Ruſhton*: I ſpeak now, my Lord, of the Plot in general; I come to Sir *T. Gaſcoigne* anon.

L. C. J. When? In what Year was this Diſcourſe?

Mr. *Mowbray.* In 1676.

L. C. J. Well, what ſaid they?

Mr. *Mowbray.* Why, they diſcourſed concerning the ſetting up the Popiſh Religion in *England*, and how like the ſame was to take Effect, and ſucceed, in regard that moſt of the conſiderable Papiſts in *England* had engaged to act for it; and if it could not be done by fair Means, Force muſt be uſed; and particularly declared, that *London* and *York* were to be fired.

L. C. J. In 76?

Mr. *Mowbray.* Yes.

L. C. J. What? Would they fire it again?

Mr. *Mowbray.* And I heard them often ſay, that the King in Exile had promiſed them——

L. C. J. Did they ſay the City was to be fired a ſecond time?

Mr. *Mowbray.* Yes, to further their Intentions.

Mr. Serj. *Maynard.* It was effected in *Southwark*.

Mr. *Mowbray.* And they did alſo declare, That the King, when he was in his Exile, had promiſed the Jeſuits beyond Sea to eſtabliſh their Religion whenever he was reſtored; which they now deſpaired of, and therefore he was adjudged an Heretick, and was to be killed.

L. C. J. Who did ſay this?

Mr. *Mowbray.* The Prieſts.

L. C. J. Who was the Heretick?

Mr. *Mowbray.* The King. Alſo I did hear Mr. *William Ruſhton* tell *Addiſon* and the reſt of the Prieſts——

L. C. J. Do you know which of the Prieſts ſaid the King was to be killed?

Mr. *Mowbray.* It was *Ruſhton*: *Ruſhton* and *Addiſon* were together, and he did declare to Mr. *Addiſon*, that according to Agreement, he had given the Oath of Secrecy and the Sacrament to Sir *T. Gaſcoigne*, Eſq; *Gaſcoigne* his Son, my Lady *Tempeſt* his Daughter, Mr. *Stephen Tempeſt*, and had communicated the whole Deſign to them.

L. C. J. Were you by when he ſaid this?

Mr. *Mowbray.* Yes, in his Chamber.

L. C. J. How long after the Diſcourſe of the Prieſts was this?

Mr. *Mowbray.* My Lord, he told them he had done it according to Agreement before; and they did approve of it, and had ſeverally engaged to be active, faithful and ſecret, and would do to the utmoſt of their Powers, as far as their Eſtates would permit, to eſtabliſh the *Roman* Catholick Religion in *England*: And about *Michaelmas*, 1676, there was another Meeting of theſe Prieſts, and others, where they declared, That the King was an Heretick, and that the Pope had excommunicated him, and all other Hereticks in *England*, *Scotland* and *Ireland*, and that Force was to be made uſe of.

Mr. Juſt. *Dolben.* When was that, Sir?

Mr. *Mowbray.* About *Michaelmas*, 1676.

Mr. Juſt. *Jones.* You were his Servant then?

Mr. *Mowbray.* Yes, my Lord: And then did *Ruſhton* produce a Liſt of Names of about 4 or 500, and he read them over, all of whom, he ſaid, were engaged in the Deſign; and he did read the Names of Sir *T. Gaſcoigne*, *T. Gaſcoigne*, Eſq; my Lady *Tempeſt*, Mr. *Vavaſor*, Sir *Francis Hungatt*, Sir *J. Savile*, the two *Townleys*, Mr. *Sherborne*, and others.

L. C. J. Did you ſee this Liſt?

Mr. *Mowbray.* I ſaw ſeveral Subſcriptions to it, and amongſt the reſt I ſaw Sir *T. Gaſcoigne*'s own Hand.

L. C. J. Do you know it?

Mr. *Mowbray.* Yes, very well.

L. C. J. And upon the Oath you have taken, do you believe that was his Hand to the Liſt?

Mr. *Mowbray.* Yes, my Lord, I do believe it was his Hand.

L. C. J. Did you know any other Hands? Do not you know his Son's Hand?

Mr. *Mowbray.* No, nor any but Sir *Tho. Gaſcoigne*'s.

L. C. J. It was in ſeveral Hands, was it not?

Mr. *Mowbray.* Yes, it ſeemed to me to be ſo.

L. C. J. What did they ſubſcribe to do?

Mr. Juſt. *Pemberton.* This was in 77?

Mr. *Mowbray.* No, it was about *Michaelmas*, 1676.

L. C. J. What was it for?

Mr. *Mowbray.* The Title of it was, as I remember, *A Liſt of them that are engaged in the Deſign of killing the King, and promoting the* Catholick Religion.

L. C. J. Was that writ on the Top?

Mr. Juſt. *Pemberton.* They were Words, I ſuppoſe, to that Effect.

Mr. *Mowbray.* Yes, it was to that Effect, my Lord.

L. C. J. Was it mentioned in the Liſt for *killing the King?*

Mr. *Mowbray.* Yes: And then they declared alſo, that the Pope had given Commiſſion to put on the Deſign, and proſecute it as quick as they could; and that he had given a plenary Indulgence of 10,000 Years for all thoſe that ſhould act, either in Perſon or Eſtate, for killing the King, and ſetting up the *Romiſh* Religion in *England*, beſides a Pardon and other Gratifications. And ſo much as to the Plot in general. Now, my Lord, I come to the Particulars as to the Priſoner at the Bar, Sir *T. Gaſcoigne*. About *Michaelmas*, 1676, much about that time, there was Sir *Tho. Gaſcoigne* and his Son, my Lady *Tempeſt*, and *Ruſhton* the Prieſt together; where I heard them hold ſeveral Diſcourſes of this Deſign about killing the King, and firing the Cities of *London* and *York*; and Sir *T. Gaſcoigne* did declare and aſſure Mr. *Ruſhton*, that he would not ſwerve from what he had ſaid, but would keep to the Oath of Secrecy he had given him, and that he would do to the uttermoſt of his Power for the killing of the King, and the eſtabliſhment of Popery.

L. C. J. Were you in the Room?

Mr. *Mowbray.* I ſtood cloſe at the Door, where I heard very well, the Door was not quite ſhut.

L. C. J. They did not know you were there?

Mr. *Mowbray.* No.

L. C. J. They would not truſt you with it, then?

Mr. *Mowbray.* They did not know I was there. And they did unanimouſly conclude, That it was a meritorious Undertaking, and for the good of the Church, and they would all venture their Lives and Eſtates in it.

L. C. J. *Ruſhton* was there, was he not?

Mr. *Mowbray.* Yes, *Ruſhton* was there; and Dr. *Stapleton*, a Prieſt, coming from another Door, and finding me at the Door, went in and deſired them to ſpeak lower, for there was one at the Door: Whereupon my Lady *Tempeſt* call'd me in, and order'd me to go below and entertain ſome Strangers: So much for the Particulars concerning Sir *T. Gaſcoigne*.

Mr. Juſt. *Pemberton.* Was Sir *Miles Stapleton* there at that time?

Mr. *Mowbray.* Yes, he was there.

L. C. J. Where?

Mr. *Mowbray.* In an upper Room.

L. C. J. Who were by?

Mr. *Mowbray.* Mr. *Gaſcoigne*, and the Prieſt, and my Lady *Tempeſt*.

L. C. J. This is all you ſay?

Mr. *Mowbray.* Yes, ſo far as to the Particulars of this Matter.

Mr. Serj. *Maynard.* Have you any more to ſay?

Mr. *Mowbray.* No, no more but theſe Particulars, unleſs ſome Queſtions be aſk'd.

Then Hobart *began to repeat this Evidence to Sir* T. Gaſcoigne, *how he came to be his Servant.*

Sir *T. Gaſc.* He came as a Boy to me, without hiring.

Then Mr. Hobart *repeated the Prieſt's Diſcourſe at* Ruſhton'*s.*

Sir *T. Gaſc.* I deny it all.

L. C. J. He was not preſent, this was a Diſcourſe among themſelves.

Then Hobart *told him about the Oath of Secrecy and the Sacrament.*

Sir *T. Gaſc.* No, there is no ſuch thing, there is not a Word of it true.

L. C. J. Then tell him of the Liſt. [*Which was done.*

Sir *T. Gaſc.* 'Tis a moſt impudent Lie.

Mr. *Hobart.* What ſay you to your Hand being to that Liſt?

Sir *T. Gaſc.* Not one Word of it.

Mr. *Hobart.* But he ſays 'twas your Name to it.

Sir *T. Gaſc.* He had a pair of Spectacles on, ſure, that could ſee any thing: Was it a printed Liſt, or a Written one?

Mr. *Mowbray.* It was written, your Name was put to it, with your own Hand-writing. [*Which was told him.*

Sir *T. Gaſc.* He makes what he will.

Then Mr. Hobart *repeated* Ruſhton's *declaring that he had given him the Sacrament of Secrecy.*

Sir *T. Gaſc.* I'll warrant you he hath gotten this Oath of Secrecy out of the News-Books; for I never heard of it before: Let me aſk thee: Didſt thou ever hear of it before you came to *London?*

Mr. *Mowbray.* Yes, Sir *Thomas*, I did.

Mr. *Hobart.* But will you aſk him any Queſtion?

Sir *T. Gaſc.* No; it is all falſe he ſpeaks, not a Word of Truth comes out of his Mouth.

Mr. Serj. *Maynard.* My Lord, We will now go on to another piece of our Evidence.

Sir *T. Gaſc.* I muſt leave it to the Jury to take notice of their Converſations and mine.

Mr. Serj. *Maynard.* Whereas he ſays he was never Owner of 200*l.* together, we will produce his own Almanack under his own Hand.

L. C. J. Do it, and we will ſhew it him, and ſee what he ſays to it.

Sir *T. Gaſc.* Why did not he diſcover it before?

Mr. *Hobart.* If your Lordſhip pleaſe, Sir *Thomas* deſires he may be aſk'd, Why he did not diſcover it before?

Mr. *Mowbray.* Becauſe the Papiſts did threaten me at ſuch a Rate, and I being a ſingle Perſon againſt them, durſt not.

L. C. J. When did you firſt diſcover it?

Mr. *Mowbray.* It was about *Michaelmas* laſt: The Papiſts did threaten me, that if I did diſcover it, they would take my Life away.

L. C. J. When did you turn Proteſtant?

Mr. *Mowbray.* When the Plot broke out, then I took the Oaths of Allegiance and Supremacy.

L. C. J. Why did not you diſcover it as ſoon as you turn'd Proteſtant?

Mr. *Mowbray.* My Lord, I was not in a Condition to make any Friends, or come up to *London* upon ſuch an Account: Beſides, my Lord, they did threaten me, and particularly after the Plot was come out, *Addiſon* did threaten me.

L. C. J. But this was a great while before the Plot broke out.

Mr. Juſt. *Dolben.* So long he continued a Papiſt, and then he would not diſcover.

Mr. *Mowbray.* This *Addiſon* was often with me, and he flatter'd me, and made me continue a Papiſt, leſt I ſhould diſcover it.

L. C. J. Where is he now?

Mr. *Mowbray.* He is fled.

L. C. J. What ſaid *Addiſon* when you did turn Proteſtant?

Mr. *Mowbray.* He ſaid if I did diſcover he would take away my Life.

L. C. J. I wonder they did not give you the Oath of Secrecy.

Mr. *Mowbray.* Yes, my Lord, I did receive it from *Ruſhton*'s own Hand.

L. C. J. When?

Mr. *Mowbray.* In 76.

L. C. J. Who received it with you?

Mr. *Mowbray.* It was given to me after the Communicants were gone from the Chapel.

L. C. J. What was the Oath?

Mr. *Mowbray.* He reſerved the Sacrament for me, and ſwore me by it, that I ſhould be faithful and ſecret, and ſhould not reveal any Diſcourſe I was privy to.

L. C. J. Reveal no Diſcourſe? What Diſcourſe did they mean?

Mr. *Mowbray.* Thoſe Diſcourſes when the Prieſts were in private with him.

Then Sir T. Gaſcoigne's *Almanack was produced.*

Mr. *Att. Gen.* Who proves Sir *Thomas*'s Hand? Is this Sir *T. Gaſcoigne*'s Hand?

Bolron and *Mowbray.* Yes, it is his Hand.

L. C. J. Shew it him himſelf. [*Which was done.*

Mr. *Hobart.* Is that your Hand?

Sir *T. Gaſc.* Yes, I think I ſaw it at the Council Table; this is my Writing, and I will juſtify every Word that is written there.

Mr. *Att. Gen.* Read that one Place.

Clerk. The 15th to *Peter* for 100*l.* to *Corker.*

Mr. *Att. Gen.* If your Lordſhip pleaſe, I deſire he may be aſked what that 100*l.* was for.

Mr. *Hobart.* Look you here, Sir, did you order 100*l.* to be paid to *Corker?*

Sir *T. Gaſc.* It may be I did.

Mr. *Hobart.* What was it for?

Sir *T. Gaſc.* For the Portion of a Child I had.

Mr. *Hobart.* What Child was that?

Sir *T. Gaſc.* I know not who it was, *Mary Appleby*, I think.

Mr. *Att. Gen.* Pray aſk him how it came to *Corker*'s Hands? Why it was returned to *Corker?*

Sir *T. Gaſc.* I know not that, becauſe we did not know where ſhe liv'd, ſhe was beyond Sea.

Mr. *Hobart.* Where is ſhe?

Sir *T. Gaſc.* She is at *Paris.*

Mr. *Att. Gen.* Here is another Book of his that does make mention of 900*l.* to Mr. *Corker*, upon an Agreement between them.

L. C. J. Aſk him how much money he might return to *Corker* from time to time. [*Which was done.*

Sir *T. Gaſc.* My Lord, I don't know, we have been ſeveral Years returning of money.

L. C. J. Hath he returned 8 or 900*l.* in all?

Sir *T. Gaſc.* No, I don't think ſo much.

Mr. *Att. Gen.* Pray aſk him how much was Mrs. *Appleby*'s Portion?

Sir *T. Gaſc.* Indeed I can't certainly ſay; but as the Rents came in I was to pay ſeveral Sums to ſeveral Perſons; it was 100*l.* a Year to that *Mary Appleby*, it may be 2000*l.* in all from firſt to laſt, but I ſhall ſatisfy you about that.

Mr. *Att. Gen.* Will you ſatisfy us anon why 900*l.* was paid in one Year?

Then the Book was ſhewn to Sir Thomas, *who owned it to be his Hand.*

L. C. J. Read it.

Clerk. Q. *Of Mr.* Corker, *what Bills, for how much, and to whom directed, he hath received of me ſince the 21ſt of* July, 1677, *to* June 1678, *vid. the Book, p.* 45. *and the great Book, fol.* 54: *where you may find* P. *for* 900l. *and agree in this Accompt*, Corker, *the 7th of* Auguſt, 1678.

Mr. *Att. Gen.* Firſt he makes a *Quere*, how much he returned, and then, ſays he, the 7th of *Auguſt* I and *Corker* agreed.

L. C. J. Let him read it himſelf. [*Which he did.*

Mr. *Hobart.* What ſay you to that, that you ſent ſo much Money to *Corker?*

Mr. Juſt. *Pemberton.* You muſt underſtand he is one of the Prieſts, and *Bolron* ſwears, that he intended to ſend 2000*l.* and by 300*l.* apiece, he reckons up 900*l.*

Sir *T. Gaſc.* It was a great many Years, and ſeveral times.

L. C. J. Tell him it was between *July* 77, and *June* 78.

Sir *T. Gaſc.* That does not appear.

Mr. *Att. Gen.* Yes, it does, by the Book.

Mr. Juſt. *Dolben.* Then how came you to return 900*l.* in one Year to *Corker?*

Mr. Serj. *Maynard.* And never had 200*l.* he ſays, together.

Mr. *Att. Gen.* Then here is another Paſſage in this Book, if it pleaſe your Lordſhip to have it read.

Clerk. Take Heworth *of an eaſy Rent of the Widow—and purchaſe the Reverſion of* Craddock—*and in the Interim* Dawſon.

Mr. Juſt. *Dolben.* Aſk him what he did mean by taking of *Heworth?*

Sir *T. Gaſc.* I took no Houſe there.

Mr. Juſt. *Dolben.* But did he agree to buy the Reverſion of it?

Sir *T. Gaſcoigne.* It was for my Niece *Thwing.* She was born in the Houſe, and was very deſirous to be in the Houſe.

Mr. Juſt. *Dolben.* Ay: But why did he take the Leaſe of the Widow, during her Jointure, and why buy the Reverſion?

Sir *Thomas Gaſcoigne.* I know no Reaſon but my Affection to her.

Mr. *Att. Gen.* Aſk him who he did intend ſhould live in the Houſe?

Sir *Thomas Gaſcoigne.* Nay, I don't know what they intended, my Niece *Thwing.*

Mr. Juſt. *Dolben.* Did you intend to buy it for your ſelf?

Sir *Tho. Gaſcoigne.* No, I lent her the Money.

Mr. Juſt. *Dolben.* Did you intend it for her?

Sir *Tho. Gaſcoigne.* I might do with it what I would.

Mr. *Att. Gen.* Aſk him if his Niece *Thwing* was a ſingle Woman, and was to have the whole Houſe to her ſelf?

Sir *Tho. Gaſcoigne.* She had her Brother with her.

Mr. *Hobart.* He ſays Mrs. *Ellen Thwing* was a Nun, Mrs. *Laſſels* was to be Lady Abbeſs, Mrs. *Beckwith* was her Aſſiſtant, and Mrs. *Cornwallis* and others were Nuns.

L. C. J. Aſk him if Mrs. *Laſſels* was not to be Lady Abbeſs, and live there?

Sir *Tho. Gaſcoigne.* I know nothing of it.

Mr. *Att. Gen.* Aſk him if there was not one Mrs. *Benningfield* to be there?

Sir *Tho. Gaſcoigne.* No.

Mr. *Bolron.* Yes, ſhe was to be there.

Mr. Juſt. *Jones.* Why, do you know any thing of her?

Mr. *Att. Gen.* She is in *York* Goal.

Mr. *Bolron.* No, ſhe is gone from thence: My Lord, *Ellen Thwing* was a Nun, and was ſent for from beyond Sea to inſtruct all them that ſhould be made Nuns; and this Father *Cornwallis* was Father Confeſſor to the Nuns. He is now in *York* Goal, taken with two Women.

Mr. Juſt. *Jones.* Aſk him what he meant by that Writing in the Almanack?

Sir *Tho. Gaſcoigne.* I did write things here for a Memorandum to help and aſſiſt my Niece, and the poor Children of my Brother; and ſo the Widow that was Sir *Walter Vavaſor*'s Siſter, was to ſell the Houſe, and one *Craddock* meant to ſell all the Lordſhip, and the Children were deſirous to keep the Houſe, and ſo they bought the Houſe and one Cloſe, and all the reſt was ſold; ſo I writ it only that they ſhould have the Aſſiſtance of Sir *Walter Vavaſor* to have the Houſe.

Mr. Juſt. *Dolben.* Pray aſk him what he means by the Words, *in the interim* Dawſon.

Sir *Tho. Gaſcoigne.* Nay, what do I know?

L. C. J. Aſk if Mrs. *Thwing* were not a Nun?

Sir *Tho. Gaſcoigne.* They did deſire, if they could not get that Houſe, that they might have another Houſe.

Mr. Juſt. *Dolben.* And all this for Mrs. *Thwing?* Aſk him if ſhe was not beyond Sea, and kept in a Nunnery.

Sir *Tho. Gaſcoigne.* Nay, I can't tell what ſhe was.

Mr. *Att. Gen.* Here is another Note in this Almanack, pray read it. It was firſt ſhewn to Sir *Thomas Gaſcoigne*, who owned it to be his Hand.

Clerk. Mr. Harcourt, *next Houſe to the Arch within* Lincoln's-Inn-Fields, *Mr.* Parr's.

L. C. J. No queſtion but he was acquainted with all the Prieſts about the Town, and had Directions to write to them.

Mr. Juſt. *Pemberton.* He hath been Prieſt-ridden by them, that is plain.

Mr. *Recorder.* Aſk him what he means by the laſt Mark there ſet under *London?*

Sir *Tho. Gaſcoigne.* I can't tell what it is, 'tis a Query.

Mr. *Att. Gen.* In the Almanack there is a Memorandum to acquaint Mr. *Thwing* with the whole Deſign; what it was I can't tell.

L. C. J. Ay, pray let's ſee that.

Mr. *Att. Gen.* This *Thwing* is a Prieſt in *Newgate* at this time.

Clerk. The 15th of April 1676. *Memorand. Acquaint Mr.* Thomas Thwing *with the whole Deſign.*

L. C. J. Now ſhew him that.

Sir *Tho. Gaſcoigne.* Look you, what is it you would have?

Mr. *Hobart.* What Deſign was that?

Sir *Tho. Gaſcoigne.* It was my providing Monies for him and his Siſter, that they ſhould tell how to purchaſe the Houſe.

Mr. *Att. Gen.* What, a Prieſt and a Nun?

Mr. Juſt. *Dolben.* They had vow'd contrary to that.

Mr. Juſt. *Pemberton.* Aſk him whether *Thwing* be not a Prieſt?

Mr. *Hobart.* Is not this *Thwing* a Prieſt? *Thomas Thwing?*

Sir *Tho. Gaſcoigne.* No, it was *Ferdinando Thwing*, that is now dead.

Mr. *Att. Gen.* No, but this is *Thomas Thwing*: Is he a Prieſt?

Sir *Tho. Gaſcoigne.* I do not know. What have I to do?

L. C. J. Then conſider how likely it was; he was to purchaſe an Houſe for a Prieſt and a Nun, for ſome ſuch Buſineſs as is ſworn.

Mr. *Hobart.* He ſays no, my Lord.

L. C. J. What is the Meaning of it, then, that he ſhould name the whole Deſign?

Mr. *Hobart.* He ſays, it was the Brothers and Siſters that lived next Door to him.

L. C. J. Ay, but 'tis ſaid, Acquaint *Thomas Thwing* with the whole Deſign.

Mr. *Hobart.* He might acquaint *Thomas Thwing* witb ſuch his Intention.

Mr. *Att. Gen.* We will now ſhew your Lordſhip a Letter, taken among the Papers of Sir *Thomas Gaſcoigne*, wherein is this Proviſo, talking of the Settlement, *In the formal Settlement, let this Proviſo be added, If* England *were converted, then to be diſpoſed ſo and ſo.*

L. C. J. Mr. *Bolron*, How came you by that Paper?

Mr *Bolron.* I took this Paper in Sir *Thomas Gaſcoigne*'s Chamber, with ſeveral others: I remember ſome had his Hand to them, others had not, and ſome were ſigned *Pracid*, and ſome *Cornwallis.*

L. C. J. Is there any Mark of his Hand to that Paper?

Mr. *Att. Gen.* Yes, there is a Mark in this of Sir *Thomas*'s own Hand, the Word *(Yes)* in the Margin.

Clerk. *Dolebank, June* the 9th, 78.

Moſt honoured Sir,

'AFTER moſt grateful Acknowledgments of all your charitable Favours, as to my own particular; I am alſo herewith to preſent moſt humble and hearticſt Thanks on behalf of your Niece, and Mrs. *Haſtings* here, who both would eſteem it a great Happineſs to ſee you here, as alſo my Lady, your honoured Daughter, to whom we beſeech our humble Reſpects may be preſented. I have ſent the Paper ſafely to good Mrs. *Beddingſield*, from whom ſhortly you will have religious Acknowledgments. I told her that I ſuppos'd you would judge fitting to inſert into the formal Writing the Proviſo, *viz. That if* England *be converted, then the whole* 90*l.* per Annum *is to be apply'd here in* Yorkſhire, *about or at* Heworth, &c. *The which, doubtleſs, will be as acceptable unto her, and as much to God's Glory as poſſibly can be imagined.* Now, deareſt Sir, let me not be too much troubleſom, ſave only to wiſh you from his Divine Majeſty, for whoſe everlaſting Glories greater Praiſe and Honour you do this moſt pious Action, the happy Enjoyment of that Glory everlaſting. I would laſtly adviſe you in God's holy Name, to compleat the Buſineſs by drawing the formal Writing as ſoon as poſſible; *and without making any*
YES. *material Alteration from what you have already ſigned, ſave only the Proviſo above written.* I ſhould be glad to know concerning the Receipt hereof; and when Sir *Miles* and your Son are likely to attend you to finiſh the Buſineſs: As alſo when Mr. *Pierpoint* ſhall be arrived. Theſe good Religious are very deſirous with your Approbation (and Mrs. *Bed.* at my coming from her wiſhed the ſame) to try for a Removal to Mr. *Dawſon*'s; the Impediments here being eſſential, as the Houſe incapable to receive more Scholars, with many other Inconveniencies alſo. Time permits no more, only we again expreſs our earneſt Deſires to ſee your *Honour* here with my Lady, as the greateſt Satiſfaction we can deſire: I remember you hinted to Mrs. *Bedding.* not long ſince, that perhaps you might ſee her at *Hammerſmith*; and how much eaſier you may come hither, we earneſtly beſeech you to take into Conſideration to the Purpoſe.

Moſt Honoured Sir,
Your Honour's moſt obliged
faithful Servant,
JO. PRACID.

L. C. J. I think it is pretty plain there was a Deſign of erecting a Nunnery.

Mr. Serj. *Maynard.* If *England* is converted, then the whole 90*l.* a Year to be employed in *Yorkſhire* about a rotten Houſe, which would be much for God's Glory.

L. C. J. What other Evidence have you?

Mr. *Recorder.* If your Lordſhip pleaſe, we have another Letter dated from *York* Caſtle, and the backſide of the Letter is indorſed by Sir *Tho. Gaſcoigne*'s own Hand, the Time when he received it.

L. C. J. When was it?

Mr. *Recorder.* The laſt *May*, he dates it from *York* Caſtle, where he was in Priſon, and therein gives Sir *Thomas* an Account of the Opinion of the Doctors of *Sorbonne* about the taking the Oath of Allegiance.

L. C. J. No doubt all of them do not approve of it.

Mr. Juſt. *Dolben.* As I believe this ſame *Pracid* was the Occaſion of ſo many Gentlemen refuſing the Oath of Allegiance; I convicted above forty of them in that Country for not taking of it.

Mr. Serj. *Maynard. Noſcitur ex comite.* You ſee if this be the Effect of it, what Reaſon we have to rid ourſelves of theſe Prieſts: One that dares write ſuch a Letter; and 'tis found in Sir *Thomas*'s Study.

Mr. Juſt. *Pemberton.* And Sir *Thomas*'s own Hand on the Back of it.

Mr. Serj. *Maynard.* My Lord, under Favour, I do take it, that the debauching of Men in point of Conſcience, that they may not take the Oath of Allegiance, is to ſet them looſe from the Government, and looſe from the King, and make them ready to arm when they have Opportunity.

Mr. Juſt. *Pemberton.* No doubt of it, Brother.

L. C. J. All the Jeſuits ſay they may not take it, but ſome of the *Sorbonniſts* ſay they may.

Mr. Juſt. *Pemberton.* But now you ſee they are againſt it.

L. C. J. Some will, and ſome will not allow it.

Mr. Juſt. *Jones.* They take or leave Oaths, as it is convenient for them.

Then the Letter being ſhewn to Mr. Mowbray, *and the Indorſement acknowledged to be Sir* Thomas'*s Hand, was read.*

Clerk. *York* Caſtle, *May* the 24th.

Honoured and ever deareſt Sir,

'LONGER Time having paſs'd ſince your laſt writing, it is fit to inform you how God's holy Providence diſpoſes concerning us. All the Out-priſoners being call'd into the Caſtle, (as you may have heard) Mrs. *Haſtings*'s Room was needed, and ſo ſhe went into *Caſtlegate* to reſide at the former Lodging of one Mrs. *Wait*, (who is now in the Goal) where ſhe remains with Mrs. *Wait*'s two Children, and their Maid-Servant, teaching the Children as formerly; alſo the *Moor*'s Niece goes daily thither; and Mrs. *Haſtings* lives without Charge as to Diet and Lodging, as I formerly told you; ſhe ſpends all her Time well, God be praiſed, and comes every Morning about Seven o'Clock to ſerve God at the Caſtle: But I and two others are much abridg'd of that Happineſs by her Room being left by her here. My Liberty of going abroad is reſtrain'd with the reſt, none being as yet permitted the leaſt ſince theſe laſt were forced to come in. Madam was here the other Day, and ſeem'd ſomewhat timorous about Mrs. *Haſtings*'s teaching: But moſt in the Caſtle perſuaded her that it was moſt commendable and moſt ſecure, and ſo ſhe reſts ſatisfied: Mrs. *Cornwallis* is recovered of her Ague, God be bleſſed: She deſires her dutiful Reſpects may be always preſented unto you, and intends herſelf to write to you. Mrs. *Wood* and her Companion are well, but dare not as yet walk in their own Garden. All our now Priſoners are chearful, and each of us comforted, in hopes that God will make all Catholicks of one Mind: For I have a Letter from our * Spr. at *London* (who was the ſame Day taken and carried to Priſon), wherein he declares, alledging Authority, *That the pretended Oath of Allegiance cannot be taken as it is worded; adding, that three Briefs have formerly been ſent from the Pope expreſly prohibiting it; and in the third it is declared damnable to take it.* And yeſterday *we had a Letter communicated amongſt us, ſent by Mr.* Middleton *(now at* Paris*) to his Friends here, containing the Atteſtation of all the* Sorbonne *Doctors againſt it; adding, that whoſoever here in* England *give Leave, they deceive People, and are contrary to the whole Catholick Church. There was alſo a Meeting ſome Years ago of all the Superiors both Secular and Regular, wherein it was unanimouſly declared, that it could not be taken.* Mr. *Hutchinſon (*alias *Berry)* who has lately printed a Pamphlet in Defence of the Oaths, has the other Day declared himſelf *Proteſtant* at St. *Margaret*'s, *Weſtminſter.* And ſo I reſt,

* *Mr. Record.* That is Superior.

Honoured Sir,
Your ever obliged,
J. P.'

Mr. Recorder. That is all, the other is private.

Mr. Att. Gen. If your Lordſhip pleaſe, we ſhall now prove by ſome Witneſſes, that he hath returned great Sums of Money, becauſe he ſaid, he never had 200*l.* together; and for this we call Mr. *Phiſwick.* *(Who was ſworn.)* Come, Sir, were you a Servant to Sir *Tho. Gaſcoigne?*

Mr. Phiſwick. Yes.

Mr. Att. Gen. For how long Time?

Mr. Phiſwick. For ſix Years and upwards.

Mr. Att. Gen. In that ſix Years time, what Sums of Money did you return to *London?*

Mr. Phiſwick. 'Tis abſtracted in a Note.

Mr. Att. Gen. Did you return all the Sums in that Note?

Mr. Phiſwick. I refer myſelf to my Almanack.

Mr. Att. Gen. Did you ſet down this Account?

Mr. Phiſwick. Yes, Sir.

Mr. Att. Gen. Then thus, Sir, pray what comes it to?

Mr. Phiſwick. Thoſe Sums do come to 6128*l.*

L. C. J. Whoſe Money was that?

Mr. Phiſwick. Part of it was Sir *Thomas*'s; part his Son's, and part my Lady *Tempeſt*'s.

L. C. J. Can you tell how much in any one Year you return'd upon the Account of Sir *Thomas?*

Mr. Phiſwick. Not unleſs I had my Almanack.

L. C. J. It will be endleſs to look over the Particulars.

Mr. Juſt. Pemberton. Can you make any Eſtimate in ſix Years how much you return'd for Sir *Thomas* himſelf?

Mr. Phiſwick. No, not without my Almanack, becauſe I returned Money for them all.

Mr. Att. Gen. My Lady *Tempeſt* and Mr. *Gaſcoigne*, it hath been proved, were in all the Diſcourſes.

L. C. J. But that hath not any Influence upon Sir *Thomas.*

Mr. *Phiſwick.* The Eſquire liv'd much in *London.*

Mr. Juſt. Dolben. What Eſtate had he to live upon?

Mr. Phiſwick. Betwixt 4 and 500*l.* a Year.

Mr. Juſt. *Pemberton.* What Eſtate had Sir *Thomas* beſides?

Mr. *Mowbray.* My Lord, I believe it was 1600*l.* a-year, beſides what Mr. *Gaſcoigne* had.

Mr. Juſt. *Dolben.* And what had my Lady *Tempeſt?*

Mr. *Phiſwick.* Three hundred Pound a-Year.

Mr. Juſt. *Dolben.* But ſhe liv'd in *Yorkſhire.*

Mr. *Phiſwick.* Yes.

Mr. Juſt. *Dolben.* So ſhe needed little Returns to *London.*

Mr. Juſt. *Pemberton.* But admit they had return'd all, there was 300*l.* a year to be return'd for Sir *Thomas.*

Mr. *Att. Gen.* My Lord, here is Mr. *Mawſon*, I think 2500*l.* was received by him.

Mr. *Phiſwick.* I paid in the Country, at *Leeds*, Money, that he paid here in Town.

Mr. *Att. Gen.* Here is the 25*l.* paid to *Harcourt*, I would aſk him whether it were the ſame *Harcourt* that was executed?

Mr. Juſt. *Pemberton.* I think not that material.

Mr. *Att. Gen.* My Lord, if you pleaſe, we will ſhew you the Examination taken before the Council, that Sir *Thomas* did own this *Bolron* had been his Servant, and never unfaithful, but always took him to be, as he now found him, a Fool.

Mr. Juſt. *Dolben.* If he object any Thing, it will come in properly by way of Reply.

Mr. *Att. Gen.* Then now we have done till we hear what the Priſoner ſays to it.

L. C. J. Tell him they have done with their Evidence againſt him; if he will have any Witneſſes examined, he muſt call them.

Mr. *Hobart.* The King's Evidence have been all heard, and ſaid as much as they can; the Court aſks you if you would call any Witneſſes, or ſay any thing for yourſelf? Have you any Witneſſes here?

Sir *Thomas Gaſc.* Yes.

Mr. *Hobart.* Name them, Sir.

Mr. Juſt. *Dolben.* Aſk what he will have done with them?

Mr. Juſt. *Jones.* Let him tell us to what purpoſe he will call them.

Sir *Tho. Gaſc.* To examine them to the Credit and Demeanour of theſ Men, and that there is no Probability in their Suggeſtions.

Mr. *Hobart.* Name them, Sir.

Sir *Thomas Gaſc.* They are all in that Note.

Mr. Babbington *was firſt examined.*

Mr. Juſt. *Pemberton.* Aſk Sir *Thomas* what he would have him aſked.

Sir *T. Gaſcoigne.* Look you, Sir, what do you know concerning the Difference between Mr. *Bolron* and I?

L. C. J. Well, what ſay you to that Queſtion?

Mr *Babbington.* My Lord, I have not been employed in Sir *Thomas Gaſcoigne*'s Buſineſs before the laſt Winter.

Mr. Juſt. *Dolben.* What do you know then?

Mr. *Babbington.* About Spring laſt Sir *Thomas Gaſcoigne* was conſulting with me about Money *Bolron* owed him upon two Bonds, and gave me Directions to ſue them. And likewiſe he was giving me Directions to deliver Declarations in Ejectment for gaining the Poſſeſſion of his Farm, becauſe he did not pay his Rent.——

L. C. J. How much were the Bonds for?

Mr. *Babbington.* I have them here, I think.

L. C. J. You need not look for them, you may tell us the Sums.

Mr. *Babbington.* The one is for twenty-eight Pounds, the other twenty, to the beſt of my Remembrance. Mr. *Bolron* having Notice of this, did deſire he would accept of a Conveyance of an Houſe he had at *Newcaſtle* for Satisfaction of his Debt. Sir *Thomas* was unwilling to accept of it, but I did prevail with him to accept it, not in Satisfaction, but as an additional Security; and the Deeds I have here that I drew for that End.

Mr. Juſt. *Pemberton.* What time was this?

Mr. *Babbington.* This was a little before laſt *Trinity-Term* begun. I have taken a Memorandum within a Day or two, if your Lordſhip will give me leave to look upon it.

Mr. Juſt. *Dolben.* Have you not had all this time to get your Papers ready?

Mr. *Babbington.* My Memory is very ſhort, indeed. But now I ſee about the third or fourth of *June*, Sir *Thomas* gave me Orders to deliver Declarations in Ejectment.

Mr. Juſt. *Dolben.* When did he firſt bid you queſtion him for Monies upon the Bonds?

Mr. *Babbington.* It was ſometime in *May.*

L. C. J. Did he tell you you muſt ſue him?

Mr. *Babbington.* Yes.

L. C. J. What then did *Bolron* ſay?

Mr. *Babbington.* *Bolron* did then deſire that Sir *Thomas* would accept of Security out of his Houſe at *Newcaſtle.* Sir *Thomas* was very hard to be perſuaded, but at length I did prevail with him, and I uſed this Argument, that it was not to lend ſo much Money upon that Security, but his Money was already out of his Hands, and elſe deſperate, and this was a further Security, and that it would not leſſen his other Security, and upon theſe Perſuaſions he did let me draw a Deed to that Purpoſe.

L. C. J. Was this ſome time in *May?*

Mr. *Babbington.* This Diſcourſe was in *May.*

L. C. J. Are you ſure of it?

Mr. *Babbington.* The Directions that I had for drawing the Deed was in *June*, but the Diſcourſe with Sir *Thomas* was in *May*, and I do perfectly remember it by a Circumſtance which I ſhall tell your Lordſhip. After the Deeds were Drawn (for drawing of which I had a Letter under *Bolron*'s own Hand, and if occaſion be, I have the Letter here to produce), I came from *York*, having been there, and appointed a Day for the ſealing of them. I came to the Houſe where *Bolron* lived, and Sir *Thomas* met me, and there I produced the Deeds, and he of himſelf was very ready and willing to the ſealing of them, but his Wife, who was joined in the Deeds with him, would not by any Means ſeal, unleſs Sir *Thomas* would deliver up the Bonds he had taken for the Money, but Sir *Thomas* did utterly refuſe to deliver up the Bonds.

L. C. J. What time in *June* was this?

Mr. *Babbington.* A little before *Whitſuntide.*

L. C. J. What time was that?

Mr. *Babbington.* That was the 14th of *June*, as I remember, that I delivered the Declaration; and the Day before, which was the 13th, to the beſt of my Remembrance, I had this Communication and Diſcourſe about ſealing the Writings, which the Wife refuſed to join in; but Sir *Thomas* would only take it as an additional Security, refuſing to deliver up the Bonds, but he would ſuſpend further Proſecution, and *Bolron* did then deſire no longer time than a Month for Payment of the Money. But his Wife, though ſhe were urged to ſeal the Writings would not be perſuaded, but utterly denied it. After we had ſpent a great deal of Time there, *Bolron* comes to me, and deſires me to come another Time, and he would perſuade his Wife to ſeal the Deed. Nay, ſaid I, 'tis not fit for me to come up and down unleſs it be to ſome Purpoſe, and your Wife will ſeal. Will! nay, ſays he, I will force her to it. My Anſwer was this, If you take theſe Courſes, Mr. *Bolron*, I muſt by no means be concerned in the Matter; for your Wife muſt paſs a Fine, and we muſt examine her ſecretly, and if ſhe tells me ſhe does it by your Force, I will not paſs it if you would give 1000 *l.* After this, about a Fortnight, he ſent for me to come and his Wife would ſeal.

L. C. J. By the way, are you a Proteſtant?

Mr. *Babbington.* Yes, I am, Sir.

L. C. J. And always was?

Mr. *Babbington.* Yes.

Mr. *At. Gen.* Yes, he is an Attorney at large, I know him very well.

Mr. *Babbington.* This was a Fortnight or three Weeks after that, the latter End of *June* he ſent for me to his Houſe, and that his Wife would be contented to ſeal. And this he deſired might be done on the *Tueſday*, which was *Leeds* Market-day, and I could not go. The next Day I called upon him at *Shippen-Hall*; he was then within, and deſired me to go up to *Barmbow* to Sir *Thomas Gaſcoigne*'s with him: He ſaid he ſhould go within two or three Days to *Newcaſtle*, for he had a Chapman that would lay down the Money, and take the Security of the Houſe, and he deſired he might have the Liberty to go thither to treat about it. I told him I did believe it would be no hard Matter to perſuade Sir *Thomas* to that, for he would be very glad of it. I went up with him to *Barmbow*, and as we went along, he aſked me if Sir *Thomas* did intend to ſue him upon his Bond? I told him I had Directions ſo to do. He aſked me likewiſe if he would turn him out of his Farm? I told him, Yes, if he would not pay his Rent; and the Truth of it is, he did then deny he had received the Declaration in Ejectment: But my Man afterwards made his Affidavit of Delivery, and had Judgement upon it. Afterwards I went up to Sir *Thomas*, and told him what *Bolron* deſired, and he conſented to it as readily as it could be aſked; and in coming away he told *Bolron*, that in the Management of his Coal-pits he did neglect very much, and did go Abroad, ſtaying away two or three Days together. To this *Bolron* made ſome Excuſe, and ſaid it was for collecting his Debts. Said Sir *Thomas*, I know not what you are about, but if you do well for your ſelf, I am ſatisfied.

L. C. J. How long had he been from him, and left his Service, then?

Mr. *Babbington.* I know not when he went, but this was in *June* laſt. After this we went back again, and in coming back he was very inquiſitive to the ſame Purpoſe; he was aſking me——

L. C. J. You ſay he chid him, and told him he was not a good Huſband in his Colliery.

Mr. *Babbington.* Yes; and as we came back he was inquiſitive whether Sir *Tho. Gaſcoigne* would ſue him, and turn him out of his Farm. I did then enter into the ſame Expreſſions, and told him, if he did not pay, he muſt be ſued.

L. C. J. You told me, Sir *Thomas* had agreed to ſtay ſo long, when was this?

Mr. *Babbington.* My Lord, this was after we had parted with Sir *Thomas.*

L. C. J. After Sir *Thomas* had promiſed him to ſtay ſo long Time, then, ſaid he, as you were coming Home, do you think he will ſue me, and turn me out of my Farm?

Mr. *Babbing.* Yes, ſaid I: *Well*, ſaid he, *then by God I will do that which I did not intend to do.* What he meant by it I cannot tell; but this was a little before he came to *London*, which I judge to be the latter End of *June*; and this is all I have to ſay.

Then Obadiah Moor *was called.*

Mr. Juſt. *Jones.* Did you tell Sir *Tho. Gaſcoigne* what he ſaid, Then I will do what I never did intend to do?

Mr. *Babbing.* I did never tell him, my Lord, for I looked upon it as an idle Expreſſion. And I will tell your Lordſhip why; becauſe this Man that is now to be examined did tell me how that he was bound for him, and that *Bolron*, to encourage him to be bound, ſaid, You need not fear, for if Sir *Thomas* ſues me, I will inform againſt him for keeping Prieſts in his Houſe; and I did look upon it as an idle Expreſſion.

Mr. *Moor.* My Lord, in *September* laſt was Twelve-month, Mr. *Bolron* did deſire me to be bound with him to Sir *Tho. Gaſcoigne.* Said I, I told him, Mr. *Bolron*, I have ſome ſmall Acquaintance with you, but I have no reaſon to be bound with you. Said he, Do not fear; there is my Brother *Baker* and *Stephen Thompſon* are to be bound as well as you. Said he, I will give you my Counter Security. That ſignifies nothing, ſaid I. You need not fear any Suits, ſaid he; for if Sir *Thomas* ſues me, I will inform againſt him for keeping Prieſts. Said I, When muſt this Money be paid? Said he, At *Candlemas* next. So we went and were bound; the one Bond was to be paid at *Candlemas* laſt, and the other in *Auguſt.* And after *Candlemas* he did not pay the Money; and ſaid I, Mr. *Bolron*, I don't like theſe Bonds, you muſt make new Bonds for my Security. I was afraid of being ſued, and I deſired Mr. *Babbington* to bring a Writ againſt him, which he did; and upon *Holy-Thurſday* I had two Bailiffs ready to arreſt him, but he could not be found; and I had two likewiſe the *Saturday* before at his Pits. Preſently after he came up to *London*, and made an Information; and on the 8th of *Auguſt* laſt I met him in *Ferry-Bridge*, and he came along with me; ſaid he, Mr. *Moor*, you and I have often diſcourſed of Sir *Tho. Gaſcoigne*, you may do me Good, if you do not, pray do me no Harm. You have been often at his Houſe. With that, I aſked him if he was concerned in the Plot? For, ſaid I, you have been often telling me, and ſworn it, and denied it utterly, that he was no more concerned than any body elſe. But I did but equivocate then, ſaid he, for I was a Papiſt, and if I had told 1000 Lies, or killed 20 Proteſtants, our Prieſt would have forgiven me for it. And ſo coming to *Farnborn*, two Miles from *Ferry-Bridge*, he plucked out ten Shillings, and ſaid, I have no more Money in my Pocket but this, but pray be kind, and do me no Harm, for you know I have denied it all along.

Mr. Juſt. *Jones.* Hath he done ſo?

Mr. *Moor.* Yes, ſeveral Times.

L. C. J. How came you to diſcourſe with him, and queſtion him about it?

Mr. *Moor.* Becauſe there was a general Diſcourſe in the Country, that there were few Papiſts but what were concerned, and guilty of the Plot.

L. C. J. When was that Diſcourſe?

Mr. *Moor.* The latter end of *September* was Twelve-month, when the Plot was firſt diſcover'd. And he ſaid, Sir *Thomas* was no more concerned than the Child that was to be born.

L. C. J. Had you any Diſcourſe with him about *May* laſt?

Mr. *Moor.* No, my Lord; in *Auguſt*, as I told you, I had.

L. C. J. When was the laſt time that he told you, Sir *Thomas* had not an Hand in the Plot?

Mr. *Moor.* I can't certainly remember, but I think it was in *February*, when I told him I would ſue the Bond, or have better Security. It was a ſmall time after *Candlemas.*

Mr. Juſt. *Jones.* What are you, a Proteſtant or a Papiſt?

Mr. *Moor.* A Proteſtant, bred and born ſo.

Mr. Juſt. *Pemberton.* He would have ſworn it no doubt at that Time, for he was under an Oath of Secrecy.

L. C. J. But you ſay *Auguſt* was the firſt time that he diſcourſed to you that Sir *Thomas* was in the Plot?

Mr. *Moor.* Yes.

Then Stephen Thompſon *was called.*

Mr. Juſt. *Dolben.* Well, what do you know of this Buſineſs?

Mr. *Thompſon.* My Lord, if you will give me leave to ſpeak, I know a great deal of the Unkindneſs betwixt Sir *Thomas* and Mr. *Bolron.* He came down to me, he was Sir *Thomas Gaſcoigne*'s Steward of his Colliery, and Sir *Thomas* liked not of his Accounts, and turned him forth. There was a great deal of Money owing to Sir *Thomas*, and he came to Sir *Thomas* to agree about it, and he deſired me to be bound with him to Sir *Thomas*: Said I, Mr. *Bolron*, how ſhall I be ſecured? Said he, There is a great deal of Money, of which I never gave Sir *Thomas* any Account, I will gather it in, and ſecure all; and ſo Sir *Thomas Gaſcoigne* knew nothing of it. So Bonds for 60*l.* were entered into to pay 28*l.* at *Candlemas*. So, Sir, when *Candlemas* came, and he did not pay the Money, I went up to him, and aſked him what he would do about this Money, what Courſe he would take to ſatisfy? Oh! never fear, ſaid he. Why, ſaid I, hath he any Hand in the Plot? If he hath, let us know it; for he had made a great deal of his Goods away, and then I thought I ſhould not be ſecured. Oh, ſaid he, he is ſinleſs of it.

L. C. J. Who did make away his Goods?

Mr. *Thompſon. Bolron* did.

L. C. J. When was this?

Mr. *Thompſon. Candlemas* laſt. For then I thought Sir *Thomas* might ſue me for the Money, and I would fain have known if Sir *Thomas* had any Hand in the Plot, and I preſſed him much to tell me. Then it paſſed on, and having a Writ out againſt me, I durſt not ſtir out myſelf, but I did ſend my Man to him to know what he did intend to do about it: He told my Man, Brother, tell thy Maſter he need not to fear at all. Why, ſaid my Man, do you know he hath any Hand in the Plot?——

Mr. Juſt. *Dolben.* That is but what your Man ſaid.

Mr. Juſt. *Pemberton.* Is your Man here?

Mr. *Thompſon.* No.

Mr. Juſt. *Dolben.* Therefore you muſt not urge that he ſaid to you, 'tis no Evidence.

Mr. *Thompſon.* On *Thurſday* after I went up to him myſelf, and got him to go up to Sir *Thomas*; and ſo when he came to Sir *Thomas*, he would give him no Time but a Fortnight to pay the Money; *Bolron* deſired but three Weeks Time, and he would procure him his Money; ſo away we came down. Said I, What do you intend to do in this Caſe? Said he, *If he do ſue me, I will do him an ill turn*; and ſoon after he went to *London*, and ſaid, he would go to ſell his Land at *Newcaſtle*: And a while after I went out to ſee if he were come again; and meeting him, it was when he was going to *London* again to carry on his Deſign, ſaid I, *Robert Bolron*, what do you ſay in this Caſe? You now are going to leave the Country; and how ſhall I be ſecured againſt Sir *Thomas*? Do not queſtion it, ſaid he, for I am to receive on the King's Account 30*l.*

L. C. J. Upon whoſe Account?

Mr. *Thompſon.* Upon the King's; concerning the taking Sir *T. Gaſcoigne.*

Mr. *Bolron.* But I never had a Farthing of it.

Mr. *Thompſon.* But, ſaid he, I will not take it, for another bids me 60*l.* and I know what *Oates* and *Bedloe* had, and I won't abate a Farthing of that.

L. C. J. When was this?

Mr. *Thompſon.* It was after he had taken him; and on *Holy Thurſday* he did ſay, *If he did ſue him, he would do him an ill turn.*

Then the Lord Chief Juſtice, *being to ſit at* Niſi Prius *at* Guildhall, *went off.*

William Backhouſe was next called.

Mr. Juſt. *Jones.* Let him aſk *Backhouſe* what he will.

Sir *T. Gaſc.* I would aſk him what Threats he gave to his Wife to ſwear againſt her Conſcience, and Promiſe of 500*l.* he ſhould gain by it.

Backhouſe. I ſerved the Warrant to carry the Witneſs before 'Squire *Lowther* and 'Squire *Tindall*: I was charged the 7th of *July* laſt to help fetch the Witneſſes before the Juſtices, and to take Sir *Tho. Gaſcoigne*, I and two of my Sons, and he opened the Door his own ſelf. When we had taken him, 'Squire *Lowther* directed us to bring the Witneſſes before him, and we did ſo. When we came to *Bolron*'s Houſe, his Wife was ſick on Bed, and I ſaid that ſhe muſt go before the Juſtice of Peace to ſwear againſt Sir *T. Gaſcoigne* for High-Treaſon: She ſaid ſhe knew nothing againſt Sir *Thomas*; but *Bolron* ſaid ſhe muſt go, or he would have her drawn at the Cart's Arſe.

Then Hamſworth *was called.*

Mr. Juſt. *Jones.* What will he aſk him?

Sir *T. Gaſc.* I aſk him about the threatning of his Wife.

Hamſworth. May it pleaſe you, my Lord, the ſame Day that Sir *Tho. Gaſcoigne* was taken, *Robert Bolron* came to his Wife, and told her ſhe muſt go to 'Squire *Lowther* to ſwear againſt Sir *Tho. Gaſcoigne*: She fell a weeping, and would not go by no means; he threatned if ſhe would not go, he would tie her to the Horſe's Tail.

Mr. Juſt. *Dolben.* Did he tell her what ſhe ſhould ſwear?

Hamſworth. I did not hear him, only to ſwear againſt Sir *Thomas.*

Mr. Juſt. *Dolben.* What ſhe knew, was it?

Hamſworth. Yes; and ſhe ſaid, ſhe did not know any thing of Miſdemeanour of Sir *Thomas Gaſcoigne* touching his ſacred Majeſty, or the Church Government.

Mr. Juſt. *Jones.* Art thou ſure ſhe ſaid thoſe Words?

Mr. *Mowbray.* My Lord, he is a Papiſt.

Hamſworth. I am a Proteſtant.

Mr. Juſt. *Pemberton.* How long have you been a Proteſtant?

Hamſworth. I was born ſo.

Mr. Juſt. *Jones.* Well, thou haſt added a few fine Words that I dare ſay ſhe never ſaid.

Mr. Juſt. *Pemberton.* Were you never a Papiſt?

Hamſworth. Yes, I was.

Nicholas Shippon *was called.*

Mr. *Mowbray.* This Man is a Papiſt too.

Mr. Juſt. *Dolben.* Do you think he is not a Witneſs, for all that?

Sir *T. Gaſc.* What Diſcourſe he had *May* 30, the Day after the Race.

Mr. Juſt. *Pemberton.* Well, aſk him what you will: What do you ſay?

Shippon. Mr. *Bolron* was with me the 30th Day of *May.*

Mr. Juſt. *Dolben.* What, *May* laſt?

Shippon. Yes, the Day after *Aſcenſion-day*: He came to my Houſe about two o'Clock in the Afternoon, and ſtaid at my Houſe all that Afternoon while an Hour after Sun-ſet before he went away; he came and brought a Letter with him to carry to *Newcaſtle*, and it was ſent away thither.

Mr. Juſt. *Dolben.* Are you ſure it was the Day after *Aſcenſion-day*? How if it ſhould fall out to be another Day?

Shippon. Yes, *Aſcenſion-day* was the 29th of *May*; he came to me about two o'Clock.

Mr. Serj. *Maynard.* Pray what Reaſon had you to take Notice of this?

Shippon. He came and brought a Letter to me that was to go to *Newcaſtle*, and deſired me, that my little Boy might carry it to a Kinſman's Houſe of mine; for he ſaid, he was afraid of the Bailiff, and did not care for ſtirring out; my Wife brought him ſome Meat and Drink, and he ſaid it was better than he had at Home; and ſhe ſaid ſhe was the more ſorry Things were no better with him.

Mr. Juſt. *Dolben.* But how came you to take Notice that this fell out the 30th of *May*?

Shippon. The Night before I met him coming from the Race, which was the 29th of *May*, and he aſked me if I ſaw any Bailiffs waiting for him; and I ſaid Yes; and he ſaid, It was well if he miſſed them; and he aſked me, if I ſaw *Bennet Johnſon*?

Mr. Juſt. *Jones.* How long was it you ſay he ſtaid?

Shippon. He came about two o'Clock, and ſtaid till an Hour and Half after Sun-ſet.

Mr. Serj. *Maynard.* What Religion are you of, Friend, let us know?

Mr. Juſt. *Dolben.* What ſay you to the Truth of this, *Bolron*?

Mr. *Bolron.* My Lord, there is not a Word of it true; for I was about two o'Clock at Sir *Tho. Gaſcoigne*'s; they were marking ſome Sheep, and I was there moſt of the Afternoon.

Mr. Juſt. *Jones.* Were you ever at his Houſe at any other time to ſend any ſuch Letter?

Mr. *Bolron.* I never ſent any ſuch Letter: Indeed that Day I was a little of the Afternoon at his Houſe, but I ſtaid there but Half an Hour; But I was moſt Part of the Afternoon at Sir *Tho. Gaſcoigne*'s ſeeing them mark Sheep.

Then Roger Gregſon *was called.*

Mr. Juſt. *Jones.* What do you ſay to him?

Sir *T. Gaſc.* Let him ſpeak his Knowledge.

Mr. Serj. *Maynard.* I deſire he may aſk the Queſtion, for he only generally refers to them what they know.

Sir *T. Gaſc.* What did he ſay to you about *Auguſt* laſt?

Gregſon. My Lord, I will tell you: We met about *Auguſt* laſt, *Robert Bolron* and I, about a Week before *Bartholomew-day*: We had ſome Diſcourſe; he came from *London* a little before that, and I aſked him how Sir *T. Gaſcoigne* did.

Mr. Juſt. *Dolben.* Was he apprehended in *Auguſt* laſt?

Gregſon. Yes, he was in the *Tower.* He ſaid, Well. I aſked him how he would come off about the Plot (as they call it)? Said He, he may come off well enough, but it will coſt him a great deal of Money. I then did aſk, how they came to fall out? And he ſaid it was long of that Rogue *Addiſon*, Brother to the Prieſt, who had called him to Account, or elſe he never had done Sir *Thomas* that Injury; and I ſuppoſe that was the Cauſe of it. And then we had ſome more Diſcourſe, and that Diſcourſe was this: He rides a little from me (he was on Horſeback) and came back again; ſaid he, I can tell you, the King was at *Windſor*, and one of the Privy-Council made an Attempt to ſtab the King, and the King made his Eſcape, and now they will believe my Informations the better.

Mr. Juſt. *Pemberton.* Go on.

Gregſon. That is all I have to ſay.

Mr. Juſt. *Jones.* What are you, a Papiſt?

Gregſon. No, I am no Papiſt, I deny it.

Mr. Serj. *Maynard.* Nor never was?

Gregſon. Nor never was.

Then James Barlow *was called.*

Mr. Serj. *Maynard.* My Lord, I conceive this Man ought not to be heard, for he is under an Accuſation of the ſame Crime; and we have had two Orders of Council to apprehend him.

Mr. *Att. Gen.* There was an Order of Council within this Fortnight to ſend for him up in Cuſtody.

Mr. Juſt. *Dolben.* There is nothing upon Record againſt him, and you may diſcredit his Teſtimony, but you cannot refuſe him; he is not to come upon his Oath.

Mr. *Sol. Gen.* * *Bolron* ſwears too, that he was at the Conſultation.

* Sir *Francis Winnington.*

Mr. Juſt. *Dolben.* Let us hear him what he ſays; we muſt leave it to the Jury what to believe.

Mr. Serj. *Maynard.* They would queſtion him about Mr. *Bolron*'s cozening, which ought not to be.

Mr. *Sol. Gen.* This Man hath ſworn againſt him.

Mr. *Hobart.* Why did you not indict him, Sir?

Mr. Serj. *Maynard.* Sir, you ought not to prate here.

Mr. Juſt. *Dolben.* Come, I doubt you are a little too pragmatical.

Mr. Juſt. *Jones.* If you had any Record of the Indictment to ſhew againſt him, we would not examine him.

Mr. *Hobart.* Will you aſk him any Queſtions, Sir?

Sir *T. Gaſc.* You know, Sir——

Mr. Serj. *Maynard.* That is not proper, he tells him what he knows.

Mr. Juſt. *Pemberton.* Look you, Sir, we did not intend that you ſhould come here to manage all as a Counſel; it was ſaid, he could not hear well, and ſo you were only to tell him what was ſaid.

Sir *Tho. Gaſc.* I would aſk him what he does know concerning taking of Money, and ſtealing from me?

Mr. Juſt. *Dolben.* But that muſt not be aſked. [*Which* Hobart *told him.*

Sir *Tho. Gaſc.* Then you muſt tell me what I muſt aſk.

Mr. Juſt. *Pemberton.* Come, you have been pragmatical, Sir, and made him a Brief, and he cannot manage it without you.

Mr Serj. *Maynard.* Did you write this Brief? [*Meaning a Brief in Sir* Tho. Gaſcoigne'*s Hand.*

Mr. *Hobart.* No, an't pleaſe you, Sir.

Then Mr. Ravenſcroft *offered to ſpeak what this Witneſs had told him.*

Mr. Juſt. *Dolben*. Look you, Mr. *Ravenſcroft*, if what he ſays tend any thing to this Buſineſs, that Sir *Tho. Gaſcoigne* comes to know of his ſtealing, and then turned him out of his Service, it is material; but if you come to tell a Story here of another Man's Knowledge, we can't ſpend our time ſo.

Mr. *Ravenſcroft*. It was not known but laſt Night to me; and if you will not let me tell you what it is, how ſhall you know it?

Mrs. *Ravenſcroft*. He is a chief Witneſs for my Grandfather, and I deſire he may be heard, for he diſcovered it but laſt Night to my Huſband.

Mr. Juſt. *Dolben*. If it tend any thing to this Buſineſs, that Sir *Thomas* turned him out of Doors, and therefore this Man bears him an ill Will—

Mr. Juſt. *Pemberton*. We had as good hear Mr. *Ravenſcroft*, however; but pray, Sir, make your Story ſhort.

Mr. *Ravenſcroft*. He came to me and ſaid theſe Words; *I have kept a Secret a long while, in which I have done very ill*—

Mr. Juſt. *Pemberton*. Then it does not tend at all to this Affair; for you muſt not come to tell a Story out of another Man's Mouth.

Mr. Juſt. *Dolben*. Pray ſit ſtill, Sir, and be quiet.

Mr. Juſt. *Jones*. Indeed you muſt be ſatisfied.

Mr. Juſt. *Pemberton*. If you have any other Witneſſes, call them, and do not ſpend our time.

Mr. Juſt. *Jones*. For the Jury muſt be told, that 'tis no Evidence coming out of another Man's Mouth.

Mr. Juſt. *Dolben*. 'Tis as if a Man ſhould come and ſay, I can ſay ſomething to Sir *T. Gaſcoigne*, when I know nothing but what another Man told me.

Mr. Juſt. *Jones*. Aſk Sir *Thomas* if he would have this *Barlow* examin'd?

Sir *T. Gaſc*. Yes.

Mr. Juſt. *Pemberton*. Then what Queſtions will you aſk him?

Sir *T. Gaſc*. What Conſpiracy was had to take away a great deal of Money from me; and how he concealed it, becauſe he would not do him a Miſchief?

Mr. Juſt. *Dolben*. What is that to Sir *Thomas*'s Life?

Mr. *Ravenſcroft*. I cannot tell you by bare Aſſertion, but if you will hear what I have to ſay, do. Laſt Night, late at Night, about Nine o'-Clock, *Barlow* came to me; ſays he, Mr. *Ravenſcroft*———

Mr. Juſt. *Dolben*. Come, don't tell us the Preamble, but the Story.

Mr. *Ravenſcroft*. Said he, I have a Thing that ſticks upon my Thoughts, which I doubt may endanger Sir *Thomas*'s Life.

Mr. Juſt. *Dolben*. Well, was it about taking Money?

Mr. *Ravenſcroft*. Said he, If I am ſilent, I doubt it will coſt Sir *Thomas*'s Life. Then I aſked him what it was? Says he, Mr. *Mowbray*, who is a Witneſs in this Court, and I, did juſt a little before his going away, combine, or rather he did ſeduce me—

Mr. Juſt. *Pemberton*. Was it about Money?

Mr. *Ravenſcroft*. Money is in the Caſe.

Mr. Juſt. *Dolben*. He did conſpire, what to do?

Mr. *Ravenſcroft*. If you will hear me, I will tell you.

Mr. Juſt. *Jones*. Pray do it quickly then.

Mr. *Ravenſcroft*. Did combine to rob Sir *Thomas* of a great Sum of Money; and whereas I held my Tongue, thinking not to ſpill his Blood, I ſee now if I do not tell the Truth, I ſhall make good his Credit, and ſo endanger Sir *Thomas*'s Life.

Mr. Juſt. *Dolben*. Well, I'll aſk you, or any Man alive now, two Men combine to rob Sir *Thomas*, whether one man be a competent Witneſs againſt the Credit of the other Witneſs? He makes himſelf a Rogue by combining, and you have made him a Knave by his own Confeſſion.

Mr. *Ravenſcroft*. I may perhaps err in that Word; he did not ſay combine, but the other ſeduced him.

Mr. Juſt. *Dolben*. You have told a Story to no Purpoſe.

Mr. Juſt. *Pemberton*. You think it a fine Thing to be a Catholick, and to appear briſk for them.

Mr. *Ravenſcroft*. Who ſays I am a Catholick?

Then George Dixon *appeared*.

Sir *T. Gaſc*. What do you know of any Conſpiracy of theſe People againſt me?

Dixon. My Lord, I was at *William Batley*'s in *Auguſt* laſt in the Morning at ten o'Clock, and Mr. *Bolron* and Mr. *Mowbray* came in, and called for a Flaggon of Drink; and when it was brought, they fell into a Diſcourſe together concerning Sir *Thomas Gaſcoigne* and my Lady *Tempeſt*. Says Mr. *Mowbray*, I know nothing of Sir *Thomas* but that he is a very honeſt Man.

Mr. Serj. *Maynard*. He was not bound to tell you what he knew.

Mr. Juſt. *Jones*. When was this, in *Auguſt* laſt?

Dixon. Yes; but, ſaid he, if I knew any thing againſt my Lady *Tempeſt*, I would diſcover it, for I would hang her if I could. And they ſat down at Mr. *Batley*'s Houſe to conſult what they ſhould do.

Mr. Juſt. *Pemberton*. Before you?

Dixon. Yes, I heard every Word.

Mr. Juſt. *Jones*. And what did they ſay?

Dixon. They ſaid they would meet at Mr. *Bolron*'s Houſe; and if they would compleat their Buſineſs, they ſhould be very well gratified.

Mr. Juſt. *Dolben*. Againſt whom?

Dixon. Againſt my Lady and Sir *Thomas*.

Mr. Juſt. *Dolben*. But you ſay, *Mowbray* ſaid he knew nothing againſt Sir *Thomas Gaſcoigne*?

Dixon. No; he ſaid he knew no Hurt by them.

Mr. Juſt. *Dolben*. How came they to ſay they would contrive their Buſineſs.

Mr. *Mowbray*. What Man is that, Mr. *Bolron*?

Mr. *Bolron*. I know him not, nor ever held any ſuch Diſcourſe.

Mr. *Mowbray*. Nor I.

Mr. Juſt. *Jones*. How far do you live off one from another?

Dixon. I live at *Leeds*, Mr. *Mowbray* knows me.

Mr. *Mowbray*. I don't know that ever I ſaw you.

Dixon. He hath drunk with me.

Mr. *Mowbray*. I know him not, nor where he dwells.

Mr. Juſt. *Dolben*. What Trade are you of?

Dixon. A Cloth-dreſſer by Trade, but I keep a Publick-Houſe.

Mr. Juſt. *Dolben*. This Diſcourſe was at *Leeds*, was it not?

Dixon. Yes.

Mr. Juſt. *Dolben*. They ſay both they do not know you, nay, they ſwear it. And 'tis very like you were but very little acquainted, would they let you hear them talk thus?

Dixon. We were as well acquainted as can be, but that he will deny it.

Mr. *Att. Gen*. Pray what Religion are you of?

Dixon. A Proteſtant.

Mr. *Att. Gen*. How long have you been ſo?

Dixon. All the Days of my Life.

Mr. *Att. Gen*. I can't but wonder at the Strangeneſs of your Acquaintance.

Mr. *Mowbray*. My Lord, I have not drunk at that Place which is near the old Church at *Leeds*, not this two Years.

Then William Batley *was called*.

Batley. And if it like your Honour, theſe two Gentlemen, Mr. *Bolron* and Mr. *Mowbray*, came to my Houſe, and called for a Pot of Drink.

Mr. *Att. Gen*. Do you not know this Man neither?

Mr. *Mowbray*. Yes, I do, but I was never three times in his Company in my Life.

Batley. I filled them a Flaggon of Ale, and when I had done I left them. They began to diſcourſe of the Plot, and Sir *Thomas Gaſcoigne*, and Mr. *Bolron*———

Mr. Juſt. *Dolben*. At your Houſe; where is your Houſe?

Batley. My Houſe is near the old Church at *Leeds*.

Mr. Juſt. *Dolben*. Is that the ſame Place the other Man ſpeaks of?

Batley. Yes. Says Mr. *Bolron* to him, Thou knoweſt that Sir *Tho. Gaſcoigne* hath been very ſevere againſt thee and me, and now here is an Opportunity offered us to take a Revenge upon Sir *Tho. Gaſcoigne*. *Mowbray* replied again, As for Sir *Thomas*, he is a very honeſt Man, and I know no Hurt by him; but as to my Lady *Tempeſt*, if I knew any thing againſt her I would hang her, for I would diſcover it. But thou knoweſt, ſays *Bolron*, that Sir *Thomas* ſues and troubles me, and if I do not make ſomewhat out againſt him, he will ruin me, and it muſt be done by two Witneſſes. To which Mr. *Mowbray* anſwered again, How ſhall we bring this Buſineſs about? If thou wilt but come to my Houſe, ſaid he, I will put thee in a Way to contrive it, and we ſhall have a conſiderable Reward. And *Mowbray* told him he would come to him ſuch a Day.

Mr. Juſt. *Dolben*. Was that Man that went out laſt, with you all the time they ſpake?

Dixon. Yes.

Mr. Juſt. *Dolben*. He does not ſay half ſo much as you do.

Mr. Juſt. *Pemberton*. Were you in the Room?

Batley. No, I was at the Stairs-head.

Mr. Juſt. *Pemberton*. What did you ſtand there for?

Batley. I hearing them diſcourſe of Sir *Tho. Gaſcoigne*, hearkened what they did ſay.

Mr. Juſt. *Dolben*. The other Man ſaid he was in the Room with them; were you in the Room?

Batley. I ſtood upon the Stairs.

Mr. Juſt. *Jones*. Were you in their Company at all that Day?

Batley. Yes, my Lord, I carried up a Flaggon of Ale.

Mr. Juſt. *Jones*. Was the Door left open?

Batley. Yes.

Mr. Juſt. *Dolben*. Would any Man talk in ſuch a Place as this, that all the World may hear them, when they are contriving to take away a Man's Life?

Mr. Juſt. *Pemberton*. You were in the ſame Room, *Dixon*, were you not?

Dixon. They were at the *Grice* Head, and we at the Foot.

Mr. Juſt. *Jones*. But the other ſays he was at the Top of the Stairs, the Head of the Stairs.

Dixon. We were at the Stairs-foot, and they were in the Room.

Batley. The Table they ſat at joined juſt upon the Head of the Stairs.

Mr. Juſt. *Jones*. Did you hear them down to the Stairs-foot?

Dixon. We did ſtand there to hear them diſcourſe.

Mr. Juſt. *Dolben*. Could you ſee them where you were?

Dixon. Yes, as fair as I ſee you.

Mr. Juſt. *Dolben*. Could they ſee you?

Batley. No, they could not.

Dixon. Yes, if they had looked down.

Mr. Juſt. *Dolben*. Why then I aſk you, Do you think, if you ſtood in ſo open a Place to be ſeen, and they had ſeen you, can you imagine that they would talk ſo about taking away Sir *Tho. Gaſcoigne*'s Life?

Batley. I do imagine they did not know I was there, nor believe any one heard or ſaw.

Mr. Juſt. *Pemberton*. Do you know how they came there?

Batley. They ſaid they came out of *Leeds*, and ſaid one Mr. *Legat* was to come that Way, who they were to ſpeak with.

Mr. Juſt. *Jones*. I aſk you if you were in the Room under them?

Batley. And if it like your Lordſhip, I ſtood at the Stairs-foot.

Mr. Juſt. *Jones*. Juſt now you ſaid it was the Stairs-head.

Mr. Juſt. *Pemberton*. Did you ſay any thing to them about this?

Batley. No; I did not open my Lips to them about it, but I told it to a Friend about three or four Weeks after.

Mr. Juſt. *Jones*. To whom?

Batley. To a Neighbour of mine: I ſuppoſe it was told Mr. *Babbington*.

Mr. Juſt. *Dolben*. What ſay you, Mr. *Babbington*? How came you to know of this?

Mr. *Babbington*. When the Commiſſioners of *Oyer* and *Terminer* were ſitting at *Leeds*, there was one came and told me, *George Dixon* could afford me ſomething that would be very advantageous for the Benefit of Sir *Tho. Gaſcoigne*.

Mr. Juſt. *Dolben*. Who was that Man?

Mr. *Babbington*. *Bennet Johnſon*, or *Francis Johnſon*.

Mr. Juſt. *Dolben*. Was that the Man you ſpoke to?

Batley. No, I ſpoke it to a Smith, one *Richard Loftus*.

Mr. *Babbington*. I'll tell you another Perſon I heard it from, that was Mr. Bailiff of *Leeds*.

Mr. Juſt. *Pemberton*. Well, was this the common Diſcourſe of *Leeds*?

Mr. Juſt. *Dolben.* He ſays ſo. Was it then preſently?

Mr. *Babbington.* The Bailiff did not tell me ſo ſuddenly.

Mr. Juſt. *Dolben.* Would it not have been to your purpoſe to have brought the Bailiff here?

Mr. *Babbington.* It was after the Commiſſion of *Oyer* and *Terminer* that I had it from him, which was in *October.*

Mr. *Bolron.* In the time of *Auguſt* I was not at *Leeds*, I was in *Northumberland* ſearching for Prieſts, and in the Biſhoprick of *Durham*, all but a little of the firſt of it.

Then Mrs. Jefferſon *was called.*

Mr. Juſt. *Pemberton.* What do you aſk her?

Sir *Tho. Gaſcoigne.* Pray be pleaſed to ſpeak to the Conſpiracy and Combination againſt me.

Mr. Juſt. *Jones.* Whoſe Combination? Come, Miſtreſs, what do you know?

Jefferſon. I aſked Mr. *Mowbray* one time what he knew concerning Sir *Tho. Gaſcoigne?* And he ſaid he knew nothing, but Sir *Thomas* was a very honeſt Gentleman for what he knew, and the beſt Friend he had.

Mr. Juſt. *Jones.* Is that all you know?

Jefferſon. He thought he was wrongfully accuſed.

Mr. Juſt. *Pemberton.* When was this? Was this after the time he was accuſed by *Bolron?*

Jefferſon. It may be it might be, I think it was in *Auguſt.*

Mr. Juſt. *Jones.* In *Auguſt* laſt?

Jefferſon. Yes.

Mr. Juſt. *Dolben.* But you muſt needs know (it was the Talk of the Country) when Sir *Thomas Gaſcoigne* was ſent for up to Town; was it after that time?

Jefferſon. Yes, I think it was.

Mr. Juſt. *Jones.* Then you ſay, you heard *Mowbray* ſay that Sir *Tho. Gaſcoigne* was an honeſt Gentleman, and he could ſay nothing againſt him.

Jefferſon. Yes, aſk him elſe.

Then Matthias Higgringil *was called.*

Mr. Juſt. *Dolben.* Was he one at the Meeting?

Mr. *Bolron.* He was at the ſealing the colluſive Conveyance.

Mr. Juſt. *Jones.* This *Higgringil* is a Proteſtant, is he not?

Mr. *Bolron.* I know not, I think ſo.

Mr. Juſt. *Dolben.* Come, Sir, what ſay you in this Matter?

Higgringil. To whom?

Mr. Juſt. *Dolben.* What can you ſay to the Buſineſs about Sir *Tho. Gaſcoigne?*

Sir *T. Gaſc.* Speak to the Threatnings to take away my Life.

Higgringil. I have nothing to ſay to *Bolron*; but *Mowbray* on the 25th of *September* laſt, being at an Alehouſe, Mr. *Legat* and he were together, conſulting how to diſgrace Sir *Thomas*, and take away his Life; and he calls me out to ſpeak with me: Now, ſaid he, I ſhall match them, for they have done what they could to diſgrace me.

Mr. Juſt. *Jones.* How did he mean that?

Higgringil. I ſuppoſe he had taken away ſome Money and Gold, and they ſpoke of it, and that was to diſgrace him.

Mr. Juſt. *Dolben.* Was it charged upon him?

Higgringil. It was ſuſpected always he had taken it away.

Mr. Juſt. *Dolben.* But was there any ſuch thing talked of in the Country?

Mr. Juſt. *Jones.* What did he ſay to you?

Higgringil. He ſaid, they did what they could to diſgrace him, and take away his Life, and he would requite them.

Mr. Juſt. *Pemberton.* Who, they?

Higgringil. Sir *Thomas Gaſcoigne* and my Lady *Tempeſt.*

Mr. Juſt. *Pemberton.* Why? Did Sir *Thomas* indict him?

Higgringil. No; but the Noiſe was about the Country.

Mr. Juſt. *Dolben.* When was this? In *September* laſt?

Higgringil. Yes.

Mr. Juſt. *Dolben.* What Profeſſion are you of, *Higgringil?*

Higgringil. An Huſbandman; I graze, and I farm a Farm.

Mr. Juſt. *Dolben.* You know this Man, do you not, Mr. *Mowbray?*

Mr. *Mowbray.* Yes; Sir *Thomas* employs him, he is a kind of Collector to him.

Mr. *Ravenſcroft.* He is no Papiſt.

Then Francis Johnſon *appeared.*

Mr. Juſt. *Dolben.* Well, come, what do you know?

Johnſon. He hath ſuſtained great Loſſes by him.

Mr. Juſt. *Dolben.* He! Who?

Johnſon. Sir *Thomas Gaſcoigne.*

Mr. Juſt. *Dolben.* By whom?

Johnſon. By Mr. *Bolron.*

Mr. Juſt. *Dolben.* What loſs hath he received?

Johnſon. The very firſt Month he entered, he wronged him of 3*l.*

Mr. Juſt. *Jones.* How do you know that?

Johnſon. I caſt up the Accompt myſelf.

Mr. Juſt. *Jones.* But he kept him two Years after that?

Johnſon. Yes, he did.

Mr. *Bolron.* My Lord, I loſt 3*l.* the firſt three Weeks, and Sir *Thomas* forgave me it, I don't deny it.

Mr. Juſt. *Dolben.* Do you know of any Malice between them, and that he ſaid he would do him any Miſchief?

Johnſon. No.

Then Mr. Pebles, *Clerk of the Peace in the County of* York, *was called.*

Sir *T. Gaſc.* I would deſire you to ſpeak of the Carriage of Mr. *Bolron* to you, Sir, what you know.

Mr. *Pebles.* My Lord, I was in *York* laſt Aſſizes, and Mr. *Bolron* came to me into a Room where I was with ſome Gentlemen, and aſked me how I did? and aſked me if I did not know him? I told him I did not remember him: Said he, I am the Proſecutor againſt Sir *Tho. Gaſcoigne.* So when he was ſat down, after a little while he deſired to diſcourſe with me, and aſked me, If a Man was indicted as a Traytor, whether it were fit to pay him Money? I owe, ſaid he, Sir *Tho. Gaſcoigne* Money, and I would know whether it be fit to pay it to him? Said I, I think you may ſafely pay him his Money before he be convicted, but then 'tis the King's, in my Opinion. Nay, ſaid *Bolron*, he is ſure to be convicted: Then ſaid I, I think it not ſafe to pay it, therefore I leave that to your own Diſcretion, whether you will or no. A little after he deſired to have my Opinion concerning the two Judges that came our Circuit, for I am mightily abuſed by them, ſaid he, they will not at all give me Audience; I came from the King and Council, and they ſlight me, and will not hear me ſpeak: Said I, I believe if you will go to them, they will hear you. I went to ſpeak with them, and they ſent ſome of their Servants out to know what I would ſay to them; but I have writ a Letter to them to tell them my Mind. But, ſaid I, I can't believe that any one will preſume to carry ſuch a Letter; but for that I will leave it to you. So I came away from him, and after he follows me out, and deſires to ſpeak with me again: Said he, I have ſomething againſt you concerning this Buſineſs in hand, I can do you a Prejudice if I will: Said I, God bleſs me, I know nothing of it, and I do not at all intend to court your Favour, I have no mind at all to that: Said he, I will not do it; and he ſpoke as if he had no Deſire to do it: I would not court him, but came away and left him: He followed me to the Street again, and ſaid, Will you help to apprehend a Traytor? Who is it, ſaid I? It is a Gentlewoman, ſaid he; a Woman greatly concerned in the Plot; you may apprehend her in the Street, and 'tis the beſt time. Now the Street was full, and I thought it a little unſeaſonable; ſo he looked after me, but I never offered to go from him: But, ſaid I, was ſhe in the Plot? Yes, ſaid he, ſhe was to be the firſt Lady Mayoreſs of *York* after the Plot took Effect, and the King was killed; but he did not lay hold upon her; ſo I parted with her. Then, ſaid he, I can have no Reſpect. Said I, I have nothing to do with you; I am Clerk of the Peace of the *Weſt-Riding* in this County, and am always ready to do my Duty there; ſo away I went and left him. The next News I heard was, he had procured a Warrant of the Council againſt me; and he brings the Warrant to a Juſtice of Peace, and that Juſtice of Peace told him there would be ſeveral Juſtices of Peace at *Leeds* within two or three Days after, and then they would examine the Buſineſs. I chanced to be in a Room with ſome Gentlemen, not knowing of the Warrant that was out againſt me; and this Gentleman that was the Juſtice of Peace called me into another Room, and told me of this Buſineſs: I admired at it, and told him I did know nothing of it, nor that I had diſobliged him, unleſs it was becauſe I did not give him the Compliment and Ceremony of my Hat, nor give him Money; neither did I know what Information he had procured that Warrant upon. He told me Mr. *Mowbray* and Mr. *Bolron* were in Town: So I deſired him to ſend for the other Juſtices into the Room, where he acquainted them with the Matter, and ſaid he, if you will we will examine it to-night; ſo they ſent notice to Mr. *Mowbray* and Mr. *Bolron*, that they would examine the Buſineſs that Night at ſix o'clock, and they came; and he was aſked what he had to ſay againſt me? He ſaid I had taken Money for keeping a Man from taking the Oath of Allegiance, and they had Witneſſes to prove it——

Mr. Serj. *Maynard.* Muſt he be here admitted to make his own defence?

Mr. Juſt. *Dolben.* Brother, let him go on.

Mr. *Pebles.* The Witneſs was called upon, and they aſked him to that Point, and he denied abſolutely upon his Oath that he gave me any Money, and alſo ſwore he had taken the Oath when it was tender'd to him. Then, my Lord, there was one Mr. *Dunford* an Attorney was ſpoken of, as if he could prove ſomething, but he was fourteen Miles off, and they could not ſend for him, and ſo I begg'd they would appoint another Time for hearing when he could be there; they appointed *Monday* following, and ordered me to attend, and one of the Juſtices of the Peace undertook to give *Dunford* notice. Accordingly I came there, but there was no Mr. *Bolron* nor Mr. *Mowbray*; but I deſired that Mr. *Dunford* might be examined upon his Oath, and they did take his Information in Writing, and he ſwore he knew nothing of it, neither did he ever give me Money upon ſuch Account.

Mr. Juſt. *Dolben.* You were not by when it was ſworn?

Mr. *Pebles.* I ſaw the Examination taken in Writing.

Mr. Juſt. *Pemberton.* And you were diſcharged?

Mr. *Pebles.* Yes; for he could not make out any thing at all.

Mr. Juſt. *Pemberton.* It was well for you he could not make it out.

Mr. *Pebles.* They ſaid they could prove it, and vouched theſe two Perſons, but both denied it upon their Oaths.

Mr. Juſt. *Dolben.* Is that all you know?

Mr. *Pebles.* That is all I can ſay in particular, I have not a mind to ſpeak againſt him in general, becauſe he is the King's Evidence.

Mr. Juſt. *Dolben.* You can ſay nothing of his Repute?

Mr. Juſt. *Pemberton.* You were a Stranger to him, you did not know him?

Sir *T. Gaſc.* I deſire he may ſpeak what Reputation he had among the Juſtices.

Mr. *Pebles.* I have no mind to reflect on the King's Evidence; and if I did, it would ſeem as if I ſhould ſpeak in Malice; he hath done me wrong, but I never did him any.

Mr. Juſt. *Jones.* But what is his Reputation generally?

Mr. *Pebles.* Truly, 'tis not very good in the Country.

Mr. Juſt. *Jones.* Among whom?

Mr. *Pebles.* The Grand Jury and the Gentlemen of the Country.

Mr. Juſt. *Jones.* Is it a common Fame in the Country?

Mr. *Pebles.* Moſt People diſcourſe ill of him.

Mr. Juſt. *Dolben.* Did he ſay he did not ſpeak with the Judges?

Mr. *Bolron.* No, my Lord, I did not.

Mr. Juſt. *Dolben.* You did ſpeak with us; indeed you would have had us allowed you a Guard for your Safety, which we could not do.

Mr. *Bolron.* Whereas he ſays I gave in a wrong Information, this ſame *Hunt* when he came before them confeſſed he gave him 40*s.* but he would not ſwear for what it was.

Mr. Serj. *Maynard.* 'Tis nothing to the purpoſe one thing or other that he hath ſaid.

Mr. Juſt. *Dolben.* 'Tis altogether uncertain; no body knows what to make of it.

Then Hardwicke *was called.*

Sir *Tho. Gaſc.* Do you ſpeak what Threats *Bolron* hath uſed to his Wife to ſwear againſt me.

Hardwicke. When the Purſuivants came up to *Barmbow*, the chief Conſtable ordered me to aſſiſt Mr. *Bolron* in Execution of the Warrant, and to carry the Witneſſes before a Juſtice. We went to *Robert Bolron*'s Houſe to take the Witneſſes, and there was his Wife, his Brother, and his Siſter: We were to carry them before a Juſtice, and they refuſed to go; his Wife pretended to be ſick and could not go, and they begg'd of us to excuſe them.

Mr. Juſt. *Dolben.* Who do you call they?

Hardwicke. His Wife, his Brother and his Siſter: *Bolron* told them they muſt go, and *William Backhouſe* and I ordered them by all means to go along with us; I ſuppoſe it was to teſtify what he had ſworn.

Mr. Juſt. *Jones.* What were they to do, did he tell them?

Hardwicke. They were to go to tell what his Teſtimony was above, as well as I underſtood the Diſcourſe.

Mr. Juſt. *Dolben.* We have had two Perſons to this purpoſe before. They ſay he would have his Wife go, and ſhe refuſed to go, and cried; but they do neither of them ſay he preſſed her to ſpeak any thing more than ſhe knew, or againſt her knowledge.

Mr. Juſt. *Pemberton.* No, one of the Witneſſes ſaid, he told her it was to ſpeak her Knowledge.

Then William Clow *was examined.*

Mr. Juſt. *Dolben.* Come, what ſay you?

Clow. The 22d of *May* laſt I had a Writ againſt *Bolron*, and my Man arreſted him and brought him to my Houſe.

Mr. Juſt. *Dolben.* At whoſe Suit?

Clow. At the Suit of one *Higgringil* that was Servant to Sir *Thomas*; and there I had him two Days, and would not carry him to the Goal, for he begg'd of me I would not; but then I told him I would keep him no longer there, for he had no Money for Lodging and Diet; but he begg'd ſo hard of me that I would but tarry till *Higgringil* came, and then he did not care what they did with him; for he would make Sir *Thomas* pay *Higgringil* his Debt that he owed him, or he would play him ſuch a Trick as he little dreamt of.

Mr. Juſt. *Dolben.* When was this?

Clow. The 21ſt or 22d of *May* laſt, or thereabouts.

Mr. Juſt. *Dolben.* *May* laſt?

Clow. Yes. And ſo *Higgringil* came over, and they did agree, and he gave him a Leaſe of an Houſe he lived in, and *Higgringil* took the Charge of both the Debts upon him.

Then Hobart *ſtood up.*

Sir *Tho. Gaſc.* Speak whether he pretended he writ a Letter to the Duke of *Monmouth* from *Leeds*.

Mr. *Hobart.* My Lord, I have nothing to ſay to that.

Mr. Juſt. *Jones.* What can you ſay then?

Mr. *Hobart.* All I can ſay is to the Sums of Money returned to Town.

Mr. Juſt. *Dolben.* He did not mention that.

Mr. *Hobart.* If you pleaſe to let me declare what I know about the returning of the Money.

Mr. Juſt. *Pemberton.* Pray ſpeak what you know of your own Knowledge.

Mr. *Hobart.* For moſt part of it, I know of the Payment of it, and to whom; 1800*l.* there was paid to Mr. *Trumbal* about the Purchaſe, it was paid at Mr. *Mawſon*'s: I was a Witneſs to the Deed, and to the Receipt.

Mr. *Att. Gen.* That is ſome, but what to the reſt?

Mr. *Hobart.* 200*l.* was paid to a Client of mine, 80*l.* was paid to one Widow *Cawſon* that was upon Bond.

Mr. Juſt. *Dolben.* How much was paid to Mr. *Corker?*

Mr. *Hobart.* Several Sums, above 300*l.* paid to *Corker* in ſix Years time.

Mr. Juſt. *Pemberton.* Nay, in four Years time.

Mr. *Hobart.* This 300*l.* and 300*l.* before I drew the Receipt for; and commonly he ordered me when Mr. *Corker* came for it, that I ſhould have a Receipt from Mrs. *Mary Appleby*; and it came back ſigned by her, to whom Sir *Thomas* was Guardian.

Mr. Juſt. *Dolben.* And was all this Money paid to *Corker* upon the Account of this *Appleby?*

Mr. *Hobart.* It was mentioned in the Receipt.

Mr. Juſt. *Dolben.* How much was ſhe to have by the Year?

Mr. *Hobart.* 100*l.* by the Year, or 2 ſometimes.

Mr. Juſt. *Dolben.* How came ſhe to have 900*l.* in four Years?

Mr. *Hobart.* My Lord, I will tell you; for that there was a great Arrear upon a Suit between Sir *Thomas* and Mr. *Appleby*, this Mrs. *Appleby*'s Father; and upon the hearing of the Cauſe, my Lord Keeper *Bridgman* was pleaſed to order, that this Money ſhould be paid to Sir *Thomas* for the Uſe of the Daughters; 200*l.* a Year, that is 100*l.* a-piece; and there was an Arrear for 3 or 4 Years during the Suit, about 2 or 300*l.* it was: I drew a Receipt for it, and Sir *Thomas* being preſſed for the Money by Mrs. *Appleby*, who went beyond Sea, he ſent to *Corker* to get the Money returned to her.

Mr. Juſt. *Dolben.* Ay, but you dance about the Buſh: Was there an Arrear of 500*l.?*

Mr. *Hobart.* For three or four Years, and Mrs. *Ravenſcroft* was one of the Siſters; her Part was paid when ſhe was married, but this Gentlewoman's was paid beyond Sea.

Mr. Juſt. *Dolben.* Were there Arrears from Sir *Thomas* to the Gentlewoman beyond Sea?

Mr. *Hobart.* Yes.

Mr. Juſt. *Dolben.* Are you ſure there was?

Mr. *Hobart.* Yes, Sir *Thomas* told me ſo.

Mr. Juſt. *Pemberton.* Who was to pay this Money?

Mr. *Hobart.* Mr. *Appleby*, by Order of my Lord Keeper.

Mr. Juſt. *Jones.* Sir *Thomas* was Guardian, was the Eſtate in *Yorkſhire?*

Mr. *Hobart.* It did ariſe out of Rents there.

Then one Culliford *was called.*

Mr. Juſt. *Dolben.* What ſay you? What do you know of this Matter?

Culliford. This Gentleman lodged at ſuch a time at my Houſe; the 4th of *June* 1677, he was at my Houſe 7 Weeks, and he was gone 3 Weeks and returned again; he was 3 Weeks away.

Mr. Juſt. *Jones.* What Gentleman was this?

Culliford. Mr. *Mowbray.*

Mr. Juſt. *Dolben.* What is that to the purpoſe?

Mr. Juſt. *Jones.* How do you apply that?

Mr. *Hobart.* Mr. *Mowbray* hath ſaid he ſent a Letter to the Duke of *Monmouth.*

Mr. Juſt. *Dolben.* There hath been no mention made of any ſuch thing: Have you any more Witneſſes?

Mr. *Hobart.* No.

Mr. Juſt. *Dolben.* Then aſk Sir *Thomas* what he hath to ſay for himſelf.

Mr. *Hobart.* Have you any thing to ſay to the Court for yourſelf?

Sir *Tho. Gaſc.* No, I refer myſelf to the Judgment of the Court.

Then a Woman Witneſs appeared.

Sir *Tho. Gaſc.* What do you know concerning *Mowbray*, whether he was ſuſpected of ſtealing when he was at my Houſe?

Witneſs. Yes, he was, my Lord; he would have given me 5*l.* to have gone away, and he did intend to have clapped me in Priſon, and to have laid it all upon me.

Mr. Juſt. *Dolben.* How do you know that?

Witneſs. He told me ſo.

Mr. *Mowbray.* This is a common Woman, and not to be believed.

Mr. Serj. *Maynard.* My Lord, we will reply but one ſhort thing in matter of Evidence. Much of this that hath been given by the Defendant hath been to take off the Credit of the Witneſſes; and for *Bolron*, they would ſuggeſt that he hath been diſhoneſt to Sir *Thomas*; but when Sir *Thomas* himſelf was examined to that Point before the Council, he ſaid he found him honeſt, but only accounted him a Fool.

Mr. Juſt. *Dolben.* That is proper for you to do now, Brother.

Mr. Serj. *Maynard.* And Sir *Thomas* being examined about *Ruſhton*, he ſaid he did not know ſuch an one, and then afterwards he did ſay he knew one of that Name. Here is Sir *John Nicholas*, the Clerk of the Council. [*Who was ſworn.*]

Mr. *Att. Gen.* Pray, Sir, do you know what Sir *Thomas Gaſcoigne* ſaid at the Council-Table?

Sir *John Nicholas.* He was aſked whether he knew *Bolron?* He ſaid, he knew him very well, he had been his Servant till within this Twelvemonth, or ſomething more; but for his Honeſty, he had nothing to ſay to it, till of late that he had not behaved himſelf ſo well, in giving Informations againſt him: But he did find him now, what he did always take him to be, a Fool.

Mr. Juſt. *Dolben.* What did he ſay about *Ruſhton?*

Sir *John Nicholas.* At firſt he did ſay, he did not know *Ruſhton* the Prieſt; but after it was brought to his Memory, he ſaid he knew one of that Name.

Mr. *Att. Gen.* 'Tis taken down in the Minutes; Sir *John*, look upon them.

Sir *John Nicholas.* He denied at firſt that he knew *Ruſhton* the Prieſt; and afterwards the next time he came to the Council, he ſaid he did deny it, becauſe he was afraid of an old Law againſt harbouring of Prieſts.

Mr. *Att. Gen.* If your Lordſhip pleaſe, we will now trouble you with a Witneſs or two in anſwer to what *Backhouſe* and *Hardwicke* have ſaid as to *Bolron*'s threatning of his Wife. We will call the Wife to give you an Account of that.

Mr. Juſt. *Dolben.* They did not charge him, that they preſſed her to ſwear falſly.

Mr. Juſt. *Pemberton.* That does not at all touch upon the Witneſs.

Mr. *Att. Gen.* If the Court be ſatisfied, we will trouble you with that no farther.

Mr. Juſt. *Jones.* I believe *Backhouſe* did ſay, That this *Bolron* would have his Wife go before the Juſtice of Peace; ſhe ſaid ſhe knew nothing at all, yet he would have her go and teſtify her Knowledge; and if ſhe would not, he would have her dragged at the Horſe's Tail.

Mr. *Att. Gen.* I think 'tis neceſſary to call a Witneſs or two to that. Firſt to call her herſelf. [*Then Mrs.* Bolron *was ſworn.*]

Mr. *Att. Gen.* What did your Huſband threaten you to make you ſwear againſt Sir *Thomas Gaſcoigne?*

Mr. Juſt. *Dolben.* Now you are upon your Oath, ſpeak the Truth.

Mrs. *Bolron.* No, never in his Life did he threaten me upon any ſuch Account.

Mr. Juſt. *Dolben.* Do you remember when the Conſtable came down to have you go before 'Squire *Lowther?*

Mrs. *Bolron.* Yes, my Lord.

Mr. Juſt. *Dolben.* How chance you did not go with him?

Mrs. *Bolron.* I was unwilling to go then, becauſe I could ſay little to the purpoſe.

Mr. Juſt. *Dolben.* Did he uſe any Threats to you to make you ſwear againſt Sir *Thomas?*

Mrs. *Bolron.* No, my Lord; but he would have me go, whether I ſaid any thing or no.

Mr. Juſt. *Dolben.* Did he ever deſire you to ſpeak any thing you did not know?

Mrs. *Bolron.* No, my Lord, never in his Life.

Mr. *Att. Gen.* My Lord, Mr. *Bolron* deſires to have this Woman, his Grandmother, be aſked whether he threatned his Wife? [*And ſhe was ſworn.*

Mr. *Sol. Gen.* She was by at that time.

Mr. Juſt. *Dolben.* Were you by at that time when the Conſtable came to carry the Witneſſes before Mr. *Lowther?*

Mrs. *Bolron* Sen. Yes.

Mr. Juſt. *Dolben.* Heark you, did not you ſee the Woman that went over there cry, and ſay ſhe was unwilling to go?

Mrs. *Bolron* Sen. Her Huſband ſaid ſhe ſhould go, though ſhe ſaid nothing.

Mr. Juſt. *Dolben.* But her Huſband did not preſs her to ſay any thing but what was Truth?

Mrs. *Bolron* Sen. No, indeed did he not.

Mr. Juſt. *Pemberton.* And did not ſeem to ſtick before?

Mr. *Att. Gen.* What can you ſay to this honeſt Man here, your Son?

Mr. Juſt. *Dolben.* I'll warrant ſhe will ſay he is honeſt ſtill.

Mr. *Att. Gen.* But here are a Company of People would make him a diſhoneſt Man.

Mrs. *Bolron* Sen. Sir *Thomas Gaſcoigne* ſaid he was as truthful a Servant as ever he had in his Life.

Mr. Juſt. *Dolben.* Did you hear him ſay ſo?

Mrs. *Bolron* Sen. I heard him ſay ſo in his own Chamber.

Mr. Juſt. *Dolben.* When?

Mrs. *Bolron Sen.* After he was married: And beſides, Sir *Thomas* did ſay he would do any thing he could for him, in relation he had been a true Servant to him.

Mr. Juſt. *Dolben.* Call Mr. *Phiſwick* again. (*Who appeared.*) Look ye, Sir, you are a Man that I ſee hath been truſted by all the Family of the *Gaſcoignes*, and you know in what Reputation he was.

Mr. *Phiſwick.* Sir, while I was his Fellow-ſervant, I knew no Ill by him.

Mr. Juſt. *Dolben.* Was he accounted an honeſt Man?

Mr. *Phiſwick.* I can ſay nothing to the contrary.

Mr. Serj. *Maynard.* Then, my Lord, to conclude, I deſire to ſpeak a word. On the one ſide here is an ancient Gentleman's Life in Queſtion, and that or his Death are to be the Iſſue of this Cauſe; on the other Side, here is the Diſcovery of a Plot upon which all our Lives, our Religion, and the Life of our King depend. It did require your Patience, and you have yielded it. Where lies the Queſtion? If theſe Witneſſes that have been examined be believed, there is no Queſtion but he is highly guilty of the Plot: The Witneſſes tell you, when there was no talk of the Plot, there was a Preparation of a falſe and fraudulent Conveyance to be drawn by Advice of Counſel; and why was this made? Leſt he ſhould forfeit his Eſtate. This is proved in the beginning. You find next a Meeting of the Prieſts, and there what they did does not concern this Gentleman at the Bar, till he took Notice of it, and then joined in it, and approved of it, and did declare it was a worthy Plot, a meritorious Plot for the Good of the Church, and at laſt particularly he would give 1000*l.* to *Bolron* to deſtroy the King and murder him. The other Witneſs agrees with him. And what is ſaid againſt all this? They have call'd and examined I think nineteen or twenty Witneſſes, three touching the threatning of his Wife, but that falls out to be nothing; two Alehouſe-keepers that ſtood at the bottom of the Stairs, and overheard their Diſcourſe; but you have all heard how they have contradicted one another, they had not agreed well enough together on their Story. All that the reſt do is meant thus, and ſo far they make ſomething of it, that there ſhould be a Debt due from this *Bolron* to this Gentleman, and ſo it were ſome Contrivance as if he would do it by way of Revenge; it does fall out many times that Men do quarrel, but this is a Buſineſs of another Nature. They ſay that he ſhould threaten he would ſerve him a Trick, or there were ſome ſuch Words; but under Favour, the Queſtion is of the Truth of his Teſtimony; now it is not likely, that they knew what his Teſtimony would be; and there is nothing againſt the other Witneſs that concurs with him, but the Fellows that were upon the Stairs, that talk one of one part of the Stairs, and the other of the other. The Matter is clearly, Whether the Witneſſes be to be believed, or whether there be any thing ſufficient offered to take off their Teſtimony. You will be pleaſed to obſerve as to what was ſpoken about the Money and the Nunnery: We brought you a Letter from the Prieſt who was mention'd to be one of them at the Meeting, *Pracid*, that writes and dates his Letter from the Place the Witneſs ſpeaks of, and there you will obſerve that in one of the Letters 'tis expreſs'd; *If* England *be converted*, (there is the main of the Plot) for all I ſuppoſe goes to that Purpoſe. Pray who thought of *England*'s Converſion at that Time? What led them into that, but a Conſciouſneſs of a Deſign to convert *England?* My Lord, another piece of a Letter there is concerning the Oath of Allegiance, you have heard it read, and every body knows what the Meaning of it is; it is the Engine of the Jeſuits, that if they can but draw Men off from their Fidelity to the King, whereof there is no Teſtimony ſo great as the Oath of Allegiance, they need not uſe ſo much of Equivocation; but that is an abominable Thing, and not to be endured, to go take off the Strength of that Oath that hath been taken by Men more honeſt than the reſt, and not ſuffering the reſt to take it at all: And it is a damnable Thing that they ſhould aſſert the King is an Heretick, and the Pope has depoſed him, therefore it is meritorious to kill him: But you have heard the Evidence fully, and it needs no Aggravation.

Mr. *Sol. Gen.* My Lord, I think the Evidence hath been already repeated by Mr. Serj. *Maynard*; and, my Lord, I think there is nothing in this Caſe, but only the Credit of the Witneſſes; for if they be to be believed, there is an Evidence as full as can be. I know your Lordſhip obſerves how it is introduced, how they are fortify'd in ſome Circumſtances, which Sir *Thomas* did at firſt deny. They tell you, that he had a pious Intent to found a Nunnery, and did proceed ſo far as to make a Settlement; this was deny'd by Sir *Tho. Gaſcoigne*, but hath been verified, and made out by his own Books and Letters writ to him, which were found in his own Cuſtody. This did Sir *Thomas Gaſcoigne* do with an Expectation of a ſudden Change; for the Letters do declare, that *England* was to be converted, as they called it, and therefore they had ſettled their Matters in order, and they thought fit to inſert that Proviſo in the Settlement, That if *England* ſhould be converted, then the Money was to be diſpoſed ſo and ſo. But your Lordſhip likewiſe obſerves, and you, Gentlemen of the Jury, what other Correſpondence Sir *Thomas Gaſcoigne* had with one *Cornwallis* or *Pracid* a Prieſt. He receives a Letter which ſhews you what the Principles of all the Catholicks are, how far they have proceeded to take away even the Oath of Allegiance, and the Conſequence of that how far it will go, when they think themſelves obliged in Conſcience to caſt off Fidelity to their Prince; and what Miſchiefs may enſue no Man knows, but we may in part imagine. You have already had ſufficient Diſcovery to make out the Uſe of this inſtilled Principle, and that is the Deſign to kill the King; for this you hear what the Evidence ſay. Mr. *Bolron*, one of them, is ſent to the Prieſt to be inſtructed by him; and by him was chid for offering to go againſt their Principles to take the Oath, and told him he was damned for ſo doing. And preſently after he was examined by Sir *Thomas Gaſcoigne* upon ſome Diſcourſe with him what *Ruſhton* had ſaid, who had moved him likewiſe to kill the King, as he ſays. Sir *Tho. Gaſcoigne* knew to what Purpoſe he ſent him thither, not only to renounce the Oath of Allegiance, but to carry on the Deſign which he had in hand, and did introduce, by laying aſide the Oath, and tells him he muſt engage in the Deſign to kill the King. He examines him what the other had ſpoke to him of, and he ſaid he knew it was more than bare chiding of him for taking the Oath of Allegiance; and he told him for his better Encouragement to go on, that if he would undertake, he ſhould have 1000*l.* And this is the Sum of *Bolron*'s Evidence, as to Sir *Thomas Gaſcoigne.* What then ſays *Mowbray*, the ſecond Witneſs? He was ſo faithful a Servant, and ſo diligent, that he was employed by *Ruſhton* the Confeſſor to attend him at the Altar, and being in ſervice immediate about him, and he being by that means ſo dear to him, waited upon him in his Chamber, and was privy to all the Conſultations held there. And he gives you an Account how long this Plot hath been in Agitation, for they had been diſcourſing a good while of it; and reſolved it ſhould be done, if not by fair Means, by foul, and tells you plainly by killing the King: And that he heard Sir *Thomas Gaſcoigne* himſelf declare that it was a meritorious Act to kill the King; and that as before he had the Oath of Secrecy given him by *Ruſhton*, ſo he did declare (which *Mowbray* ſtanding at the Door heard) that he would never ſwerve from the Oath, but he would aſſiſt to the utmoſt of his Power; and they that were with him ſaid, they would ſtand by it with their Lives and Fortunes; and when my Lady *Tempeſt* underſtood he was there, and was jealous of him, ſhe bid him go down, and entertain the Gueſts below Stairs. So here is an Evidence from two Witneſſes as full as can be in any Caſe, that Sir *Tho. Gaſcoigne* was privy to the Conſpiracy, and himſelf Partaker of it, to kill the King. All that hath been ſaid againſt 'em, is to vilify their Reputation. As to *Mowbray* I hear but little, only there are two Witneſſes that touch him; and indeed if theſe Witneſſes were to be believed, they ſay a great deal; that is, they were in an Alehouſe together, and heard them conſpire to take away the Life of Sir *Thomas Gaſcoigne.* Indeed *Mowbray* ſaid, for Sir *Thomas Gaſcoigne*, I know nothing but that he is a very honeſt Gentleman, but for my Lady *Tempeſt*, if I could hang her I would: That they ſhould hear them contrive this together, and conſpire how they ſhould take away the Lives of this Gentleman, and the others. Indeed, if theſe Men ſay true, 'tis a great Matter to take off the Credit of their Teſtimony; but you heard, Gentlemen, how they did vary; for the one ſaid, as I apprehended, at firſt he was in the Room, afterwards he was below Stairs. Aſk the one, Could you hear them? Yes. Could you ſee them? No; ſaid the other Yes. So that they were not well provided, as to that Matter, nor had they conſulted that Point well, where they ſhould agree to ſtand to overhear the Matter. Now if that be likely, they ſhould in the Preſence of two Perſons whom they did not know, and one of them they never ſaw, but in the Court, declare and diſcourſe of ſuch a Matter as this for the taking away the Life of Sir *Thomas Gaſcoigne*, then we have nothing to ſay to them, we muſt leave the Credit of that to you; you will obſerve their Variety in the Story, and the Improbability of the Thing. But then for Mr. *Bolron*, the Evidence againſt him is, that he is a very diſhoneſt Man, and that this is all out of Malice to Sir *Thomas Gaſcoigne*, becauſe he would ſue him upon his Bonds. You obſerve how he does behave himſelf under that Proſecution; all that he hath he is willing to part with for Payment of his Debt; he makes over his Eſtate for Satisfaction and Security, and does as much as an honeſt Man can do, all he had ſhall lie at ſtake: And as for Sir *Thomas Gaſcoigne* himſelf, he hath no ſuch Opinion of him in point of Diſhoneſty, for he declared he lived in his Service without Exception, and ſaid before the Council, he knew nothing of Diſhoneſty by him, but only this Information, and now he found him to be (what he always thought) a great Fool. Now whether he thought him a Fool for telling this Story, or what elſe, you may explain the Meaning of his Expreſſion; but as for any thing of Diſhoneſty, there is nothing againſt Mr. *Bolron*. He was in Debt, 'tis true, but what he had lay at Stake for the Payment of it, and as far as it would go Sir *Thomas* might take it; but that for Malice he ſhould come to ſwear againſt him, there is nothing clearly made out. One Witneſs ſays indeed, that he ſhould ſay, Does Sir *Thomas Gaſcoigne* intend to ſue me, then I will do what I did not intend to do. Whether that be a Speech of Malice or no, or rather does confirm the Truth of his Evidence, is left to your Conſideration: It ſhews rather, there was ſomething that he had in his Power to do before any Proſecution from Sir *Thomas Gaſcoigne*, or any occaſion of his Malice againſt him; it hath not the neceſſary Import of a malicious Speech, that he did intend not to do ſuch a Thing, and becauſe he was ſued did do it; that therefore is only Truth, and no Malice. For the other Matter that is ſaid againſt him, that he ſhould endeavour to ſuborn his Wife to ſwear falſly, that was by no means fully proved, but rather that Matter hath been ſufficiently clear'd; that though ſhe ſaid ſhe knew nothing, yet he would have her go, though ſhe ſaid nothing; and you hear what the Evidence hath been for Mr. *Bolron*, that he never did preſs her to ſwear falſly, nor threaten her if ſhe would not, but only deſired her to declare her Knowledge if ſhe knew any Thing, the Truth, and nothing but the Truth. Theſe are all the Objections made againſt the Credit of the Witneſſes; and I think if their Credit do ſtand, you cannot have a clearer Evidence to convict any one than hath been given you to Day; but that we leave to you, and ſubmit theſe Objections, whether they have any Weight in them, and whether they have not been fully anſwered.

Mr. Serj. *Moynard.* And our Evidence is given in all upon Oath, and theirs is not.

Mr. Juſt. *Jones.* Gentlemen, you of the Jury: The Priſoner at the Bar ſtands indicted for High-Treaſon, and for High-Treaſon of the higheſt Nature, for conſpiring to take away the Life of the King, and for endeavouring to change the Religion, the Proteſtant Religion into Popery; that is, contriving to extirpate the Religion of Proteſtantiſm here, and introduce Popery inſtead of it; and certainly greater Crimes than theſe no Man can be accuſed of. There have been produced, on the Behalf of the King, two Witneſſes, Mr. *Bolron* and Mr. *Mowbray*, both of them Servants to Sir *Thomas Gaſcoigne*, the Priſoner, and therefore might very poſſibly and probably enough be privy to all they have ſaid and teſtified in this Caſe. It does appear by them both, that Sir *Thomas Gaſcoigne* was a very early Man in the Plot (if they ſay true). We heard nothing of it till the Long Vacation (78); but it ſeems Sir *Thomas Gaſcoigne* was a Plotter and Conſpirator in the Year 75 or 76. And that he might be able to do this ſomewhat more ſafely, he contrives how he might convey away his Eſtate to prevent the Forfeiture; and he makes an Aſſurance of it to Sir *William Ingleby*, colourably, as the Witneſſes ſwear, for 1000 *l.* And it does appear likewiſe, as to the Introduction of the Popiſh Religion here, they began to ſettle a Nunnery, and it was fit to do ſo againſt *England* ſhould be converted; firſt, in ſuch a Place; but if it happened *England* were converted, then to be removed to another Place. There was at this Nunnery appointed an Abbeſs, an Aſſiſtant, and ſeveral Nuns; and Sir *Tho. Gaſcoigne* ſo well knew of this, that one of them that was appointed to be a Nun, at the time of her taking Horſe, he ſaid to her, *There goes an old Maid and a young Nun.* And there are Letters come from that very Nunnery, and from the Prieſt that was appointed to attend them as Confeſſor, which have been read to you. And there is another Preparation thought neceſſary to introduce this Plot, and that is, That all Papiſts might be ſeduced into an Opinion that it was a dangerous thing to take the Oath of Allegiance, and that it was a damnable Sin. For this Purpoſe Letters came from the Doctors at *Sorbonne*, and they determine it to be ſo, leſt any Man of that Religion ſhould be ſo good a Subject as to profeſs Obedience to the King in Temporals. Then the Plot goes on between Sir *Miles Stapleton*, Sir *Francis Hungatt*, Sir *Charles Vavaſor*, Sir *Tho. Gaſcoigne*, Mr. *Gaſcoigne*, *Middleton*, *Ruſhton*, my Lady *Tempeſt*, and a great Company more; all met together and conſulting in Sir *Tho. Gaſcoigne*'s Houſe, in his great Room, his old Dining-Room, to this Purpoſe, not only to bring in their Religion, but kill the King expreſly (ſo ſays the Witneſs). I think they had often talked of it before the Witneſs in the Prieſt's Chamber; for he being then a Papiſt was privy to his Maſter's Deſign, and the reſt of the Confederates, for killing the King, which was the only thing they deſired to effect, as the beſt way to bring in their Religion; and there was great Reaſon to do it, they ſaid too, for the King had not kept his Word with them when he was in his Exile; for they ſaid, he had promiſed, if he was reſtored to his Kingdoms, he would reſtore the Popiſh Religion; but now he was returned and had broke his Promiſe, and nothing more was to be done, the Pope having declared him an Heretick, but to deſtroy him; and this was that which was agreed among them. The 30th of *May* laſt, after divers other Conſults had about it, the Prieſt *Ruſhton* being at Sir *Tho. Gaſcoigne*'s Houſe, *Bolron* is deſired to go into the Gallery, and there preſently comes in *Ruſhton*, Sir *Thomas*'s Prieſt; *Bolron* acquaints him that he had been at the Seſſions, and taken the Oath of Allegiance. As ſoon as ever he heard it, he cries out, He had committed a damnable Sin, he muſt of neceſſity renounce it, and repent of it, and he could give him a Pardon, for he had an extraordinary Power, more Authority than others, he could give him Abſolution if he did repent of it, and that no Catholick muſt by any means take the Oath. A while after they had a Diſcourſe concerning killing the King; and the Witneſs ſays indeed, he was not actually in the Room, for he ſays he ſtood at the Door, and heard all the Diſcourſe, till at laſt the Lady *Tempeſt*, one of the Conſpirators, taking notice of his being there, ſent him down Stairs.

Mr. Juſt. *Pemberton.* That is *Mowbray*.

Mr. *Mowbray*. I was called into the Room, and then ſent down.

Mr. Juſt. *Jones.* 'Tis true, Brother, that was *Mowbray*: But as to *Bolron*'s Diſcourſe with *Ruſhton*; when Sir *Tho. Gaſcoigne*, who was not in the Houſe at the time *Bolron* was with *Ruſhton*, but had given a Charge he ſhould not go before he ſpoke with him: When he did come home and ſpoke with him, he takes upon him to go on with the Diſcourſe concerning the Plot, and he ſwears poſitively that he offered he would give him 1000 *l.* and this he ſwears he ſhould have paid him in *London*. This is expreſly the Teſtimony of *Bolron*. Now what ſays *Mowbray*? He tells you (tho' that is but Introduction to make his Evidence more probable) that there was great Reſort of Prieſts to the Priſoner's Houſe. He tells you of the Diſcourſe and Conſultation the Prieſts had in the Houſe, and that it was expreſly and preciſely for killing the King. He tells you, that he did ſtand at the Door and heard it, as I obſerved before; and he tells you too, which hath not been obſerved, that at that time there was produced a Liſt of four or five hundred Perſons that had engaged in the Deſign of killing the King: he did ſee the Liſt, he did ſee Sir *Tho. Gaſcoigne*'s Hand, which he very well knew and was acquainted with, and which might very well be, being his Servant. So that here is not only a Diſcourſe and Agreement by Paroll, that he ſhould be in the Conſpiracy; but if you believe him, he ſays, that here is actually the Hand of Sir *Thomas* to the Engagement to do the Villainy; and truly they that were of that Perſuaſion at that time, might eaſily be induced to it. For it was agreed amongſt them, that they ſhould have a plenary Indulgence of 10000 Years, and it was a meritorious Act; and tho' Sir *Thomas* perhaps was not ſo ready to contribute in all Things, yet hearing of the Meritoriouſneſs of the Act, and withal that he ſhould be canonized for a Saint for this Piece of Piety, he certainly might readily conſent to it. Mr. *Mowbray* indeed was aſk'd, Why he did not diſcover it ſooner? He tells you why, He was in fear of the Papiſts; he was threatned; and very like he might be poſſeſſed with Fear, and ſo might a Man of greater Conſtancy till the Buſineſs was diſcovered; and therefore he did not talk of it in the Country, but came up here, where it was more ſafe to diſcover it, and hath been here ever ſince. Beſides this Teſtimony of theſe Witneſſes, Gentlemen, there are ſome Papers produc'd, ſome that mention Money that hath been convey'd by Sir *Thomas Gaſcoigne*, in Confirmation of the Teſtimony of *Bolron* the firſt Witneſs, who does ſwear that he heard Sir *Thomas* ſay he would ſend 3000 *l.* to the Jeſuits to go on and proſecute this Plot; and afterwards he did hear him ſay, he had ſent the 3000 *l.* that he had promiſed. Now it does appear by Sir *Thomas*'s Almanack, that he had ſent ſeveral Sums; his Receiver *Phiſwick* did ſpeak of 6000 *l.* and he himſelf did give a Touch towards it. Indeed *Phiſwick* was a Receiver for Sir *Thomas*, and likewiſe for his Son, and for the Lady *Tempeſt*; but it is impoſſible, if they had ſent all the Money that ever they had; and conſidering too that the Lady *Tempeſt*, as appears by the Witneſſes, lived in the Country, that it could have amounted to near that Sum of Money; for ſhe had but 300 *l.* a-year, and the eldeſt Son had but 400 *l.* a-year, how then could 6000 *l.* be returned for them in four years time? 'Tis true, there is ſome Anſwer given as to that 900 *l.* by that Witneſs *Hobart*, who ſays there was a Suit, and 100 *l.* a-year decreed to be paid to Mrs. *Appleby*, Sir *Thomas*'s Niece, for ſo many Years, and he to take care of ſending that to her: and tho' that was but 100 *l.* a-year, yet there was a Decree, or ſome Order, to pay the Arrears with the other Money, which made it up 900 *l.*

The Evidence for the King againſt the Priſoner is but two Witneſſes, but they as poſitive and expreſs as poſſibly can be. What then is ſaid by the Priſoner, or the Witneſſes, in his Defence? There is one, that is *Shippon*, that gives ſome Teſtimony againſt the very Evidence, and the Poſſibility of it to be true in one part of it: For *Bolron*, he tells you, that the 30th of *May* was the time when there was that Conſult held at Sir *Tho. Gaſcoigne*'s in the Gallery with the Prieſt, that he ſtaid there till Night, and that then Sir *Thomas* talked with him, and made this Proffer to him for the Murder and Deſtruction of the King. Here comes a Witneſs, *Shippon*, and tells you, that that very 30th of *May*, *Bolron* was at his Houſe at 2 o'clock, and ſtaid an Hour or two after Sun-Set. If that were true that he were there all that time, it is not then true that he ſpeaks of about Sir *Thomas Gaſcoigne*; and it was impoſſible that he ſhould be at the Conſult at that time when he ſays he was there, and afterwards ſpoke to Sir *Thomas Gaſcoigne*. Now, Gentlemen, you have the King's Witneſs upon his Oath; he that teſtifies againſt him is barely upon his Word, and he is a Papiſt too, for that he was aſk'd, and he did confeſs himſelf ſo. I do not ſay that a Papiſt is no Witneſs, a Papiſt is a Witneſs, and he is a Witneſs in a Papiſt Cauſe, and for a Papiſt; but I muſt tell you, there is leſs Credit to be given to a Papiſt in a Cauſe of this Nature, who can eaſily believe they may have Indulgences and Pardons enough for ſaving one from the Gallows who is to be canonized for a Saint if the Plot take effect. He hath only affirmed it who is a Papiſt, the other who is a Proteſtant ſwears what his Evidence is.

Mr. *Babbington*, who was the firſt Witneſs examined for the Priſoner, he tells you there had been ſome Debates and Differences about Rent and Money that was owing by *Bolron* to the Priſoner. He laboured and interceded often on his Behalf; but at length not being able to prevail that he ſhould not be ſued, the Witneſs ſwears, I will then do that which I did not intend to do. What he meant by it is doubtful, and it is an ambiguous Speech; but to interpret it that he would ſwear falſly to take away a Man's Life, and ſo commit both Murder and Perjury, is hard to infer and conclude from ſuch doubtful Words. There are ſome Witneſſes that tell you, that is, *Moor* and others, that *Bolron* did ſay and ſwear that Sir *Tho. Gaſcoigne* was never concerned in the Plot: That might very well be, eſpecially if you take the Time when he did ſay this, he was a Papiſt a great while after Sir *Thomas* had engaged himſelf in the Plot; and while he was ſo, it is not unlike he would venture an Oath to ſave any of the ſame Perſuaſion and Religion he himſelf was of. But whatſoever he ſaid, it was not judicially, he was not bound to diſcover to him he ſpoke to; he is now upon his Oath, and you have heard what an expreſs Teſtimony he gives. As to what is ſaid concerning his Wife, that he ſhould endeavour to perſuade her, contrary to her Knowledge, to give Teſtimony againſt Sir *Tho. Gaſcoigne*, and therefore he is not to be believed here upon his own Oath, who would have his Wife forſwear herſelf to fortify him; there is no ſuch Thing; and it does appear by the Evidence of thoſe that are ſworn, that he was earneſt, and would have his Wife go and teſtify her Knowledge; but did not infuſe or intimate any thing to her ſhe ſhould ſay, whether ſhe did know it or no: And to aſſure you that, you have the Oath of the Woman herſelf, who hath been preſent here, and tells you the ſame thing. *Dixon* he comes and ſays, in *Auguſt* laſt, *Mowbray* ſaid he knew nothing of the Priſoner, which may be anſwered by his Fear; but concerning the two Witneſſes that Mr. *Sollicitor* did take notice, he did tell you, and 'tis plain, how very improbable it was two Perſons ſhould ſpeak in the Preſence of Strangers, and tell them they were about to take away the Life of another Perſon, the one of the Lady *Tempeſt*, who had done him a Diſpleaſure, the other of Sir *Tho. Gaſcoigne*; but *Mowbray* at that time ſaid he knew nothing of Sir *Tho. Gaſcoigne*; but, Gentlemen, beſides what was ſaid before, this is improbable any ſuch thing ſhould be, and you hear the Witneſſes, at leaſt one of them, that he never knew one of the two.

Mr. *Bolron.* I knew neither of them.

Mr. Juſt. *Jones.* I ſhould be very loth to omit any thing on the Witneſſes ſide, or that hath been materially teſtified againſt them on the Priſoner's. I did not conceive the Evidence given by Mr. *Pebles* to come to any thing at all. There was a Diſcourſe between *Bolron* and him at laſt Aſſizes; after ſome Talk *Bolron* tells him he had ſomething to ſay to him, and what was it? *Bolron* was told that he had diſcharged ſome Perſons that he ought not to do, (excuſed them for Money that did not take the Oath of Allegiance as they ought to have done) and it ſeems he did it here, and ſo far he went as to bring Witneſſes before the Juſtices of Peace to prove it. And although they did not give Evidence againſt Mr. *Pebles* in that very Particular, yet certainly he thought they would have ſaid ſomething; but that does not argue at all, that becauſe he did accuſe Mr. *Pebles* (as he thought juſtly in that Particular), therefore that now he ſhould falſly accuſe Sir *Thomas* in a Matter that concerns his Life ſo highly. There are ſome other Things that were ſaid by the Witneſſes that would tend towards the proving of ſome Malice in the Witneſſes towards Sir *Tho. Gaſcoigne*, and therefore they give in this Evidence: One thing indeed was ſpoken by *Hickeringil*; that is, it was generally reported in the Country, that *Mowbray* had taken away Money from Sir *Thomas Gaſcoigne*, and that *Mowbray* himſelf ſaid, that as they had endeavoured to take away his Fame and Life, now he had found an Opportunity to requite them. So ſaith the Witneſs, but 'tis not very probable. I leave it with you upon the Credit of the Witneſſes for the King, who have ſworn it upon their Oaths, and the others that go upon their Words, and not their Oaths, whether they have taken away the Force and Strength of the King's Evidence, which is as full, expreſs, and poſitive as can be by two Witneſſes.

Gentlemen, here is on the one Side the Life of an ancient Gentleman before you; on the other ſide there is a Conſpiracy againſt the Life of the King, who is the Breath of our Noſtrils, and whom God long preſerve. I know you being upon your Oaths will take into your Conſiderations both, and give a Verdict according to the Evidence you have heard.

Mr. Juſt. *Dolben.* I will tell you, Gentlemen, I cannot forbear ſaying one thing to you. There is ſome Evidence that makes it a very improbable thing to be true what Mr. *Bolron* hath ſaid; and yet Mr. *Bolron* having ſaid it ſo poſitively, and *Mowbray* agreeing with it, Probabilities muſt give way to poſitive Proofs. I ſaw you did obſerve it when it was mentioned; and 'tis true, to me it ſeems improbable, that at the very ſame time that Sir *Tho. Gaſcoigne* ſhould ſue him upon his Bond, and take a Courſe to turn him out of his Houſe, that he ſhould then be privy to ſuch a Conſpiracy; 'tis improbable either that Sir *Thomas* ſhould offer him ſuch a Sum of Money to kill the King, or if he had, that he ſhould afterwards take that Courſe at Law againſt him. Now for that I ſay this to you, You are to give a Verdict according to your Evidence. They have ſuch Secret Contrivances amongſt themſelves, (and he was a Papiſt at that time) that where there are two Men that poſitively tell you a thing that lies within their own Knowledge, and ſwear it is true, it is ſcarce any Improbability that ſhould weigh againſt ſuch an Evidence.

Mr. Juſt. *Pemberton.* And, Gentlemen, conſider withal as to that; for truly my Brother *Dolben* hath rightly minded you of that Improbability, for it was no more: But then you muſt conſider all the Circumſtances. 'Tis indeed at the firſt Bluſh improbable that a Man would communicate ſo great a Secret to another, if he did intend to ſue him for Money he ow'd him; but then 'tis likewiſe as improbable that he would provoke him by a Suit, if his Life were in his Hand; but conſider the delivering of the Leaſe of Ejectment, and thoſe things were the 13th of *June.*

Mr. *Babbington.* But I had ſued him before, my Lord.

Mr. Juſt. *Dolben.* The 2d of *June*, he ſays.

Mr. *Babbington.* I had Direction long before I did it.

Mr. Juſt. *Pemberton.* They threatned him the 2d, but they did not do it. But look you, Gentlemen, conſider this; I do not doubt but Sir *Thomas Gaſcoigne* was ſure that this Man durſt not diſcover any Thing of this, for they had given him the Sacrament and an Oath of Secrecy, which they look upon as a Tie among themſelves, as long as they continue in that Religion, not upon any Account whatſoever to be undone; and they have ſuch confidence in it, that they will truſt their Lives and every thing in a Man's Hand when they have given that Oath. Alas! how could theſe People have the Confidence to plot one with another, as they do, when they know their Lives are in the Hands of any one of all the reſt, but upon this Account? Do but ſwear them unto Secrecy, and give them the Sacrament of the Maſs upon it, and then they think ſuch a one is Proof enough againſt any Thing in the World, for that is Damnation if they break it, as their Prieſts tell them; but I doubt not but Sir *Thomas* thought he had them as faſt as can be upon that Lock. But as to Sir *Thomas*'s Evidence of thoſe two Men at *Leeds*, this is after the Accuſation of Sir *Thomas* that they ſpake of; and can any Man alive believe that they would go and plot to contrive the Death of theſe two Perſons in the Face of two Strangers, after he was accuſed? 'Tis ſo ſtrange an Evidence, that no Man alive can believe it to be Truth. Look you, Gentlemen, Perſons that go to contrive ſuch things as theſe are, go in ſecret, and hope they ſhould never be diſcovered, but by one of themſelves. Who would contrive when two be by? and, if they ſay true, might ſee them as well as hear them? though they did contradict one another in their Evidence; the one ſaid he was above, the other ſaid he was below; the one ſaid he might ſee them, the other not. Look you, Gentlemen, I do ſee that they do lay ſome Streſs upon this, that he was his Debtor, for that they ſeem to prove by their Witneſſes; but you muſt lay no great Streſs upon that at all, for the Money were not quit if Sir *Thomas* were found guilty; the Money is due to the King then; he ſaves nothing by it, his Money muſt be paid; let the Priſoner be found guilty or not guilty, 'tis all one to him. You muſt conſider this Caſe, Gentlemen: If you believe theſe Men are perjured Men, and have gone and contriv'd a malicious Deſign againſt a Man's Life, then God forbid they ſhould be believed any way: but it is a poſitive Evidence; and 'tis not an Evidence barely of itſelf, but introduced by a great many Circumſtances that went before; they tell you the whole Affair, that it does ſeem they have been privy to the Affairs of theſe Jeſuits all along, and Sir *Tho. Gaſcoigne*'s Houſe hath it ſeems abounded with them; he hath been very beneficial to that Sort of People, mighty charitable, as they call it, in Superſtition; and you muſt conſider, that nothing can ſeem ſtrange to them that will be ridden by Prieſts; they put them upon all the Immoralities and Villainies that can be found out for the Cauſe of Religion, as they call it; nothing can ſeem ſtrange that is teſtified againſt them. Therefore I muſt leave it to you, upon what you have heard, and upon their Credit, whether you believe the Witneſs or not.

Mr. Juſt. *Jones.* Ay, 'tis left upon their Credit that are your own Countrymen, better known to you than us.

Mr. Juſt. *Dolben.* Look you, Sir *Thomas Hodſon*, and the Gentlemen of the Jury, if you will come in again in any time we will ſtay in Court, otherwiſe you muſt lie by it all Night, for we can take no privy Verdict in this Caſe.

Mr. Juſt. *Pemberton.* Ay, we will ſtay and hear Motions a little while.

Then the Jury withdrew from the Bar, and after half an Hour returned again, and being call'd over gave their Verdict thus:

Cl. of Cr. Sir *Thomas Gaſcoigne*, hold up thy Hand. Look upon the Priſoner: How ſay you? Is he Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Not Guilty.

Cl. of Cr. Did he fly for it?

Foreman. Not that we know of.

Then the Verdict was recorded, and the Court roſe.

XCVI. *The Trial of* ELIZABETH CELLIER, *at the* King's Bench *for* High-Treaſon, June *the* 11*th*, 1680. Trin. 32 Car. II.

After the Jury were ſworn, the Clerk of the Crown read the Indictment, viz.

THE Jurors of our Lord the King do preſent, that *Elizabeth Cellier*, Wife of *Peter Cellier*, late of the Pariſh of St. *Clement Danes* in the County of *Middleſex*, Gent. ſtands Indicted, for that ſhe as a falſe Traitoreſs againſt our moſt Illuſtrious and Excellent Prince, King *Charles* II. her natural Lord, not having God before her Eyes, not weighing the Duty of her Allegiance, but by the Inſtigation of the Devil moved and ſeduced, and the cordial Love and true due natural Obedience which all faithful Subjects of our ſaid Lord the King towards him ſhould bear, and of right are bound to bear, utterly withdrawing, and deviſing, and with all her Might intending the Peace and common Tranquillity of this Kingdom to diſturb, and to bring and put our ſaid Lord the King to Death and final Deſtruction, and the true Worſhip of God in this Realm by the Law eſtabliſh'd and uſed, to alter to the Superſtition of the Church of *Rome*; to move and ſtir up War againſt the King in this Kingdom, and to ſubvert the Government of this Realm; the firſt Day of *November*, in the thirty-firſt Year of the ſaid King's Reign, at the Pariſh of St. *Clement Danes* aforeſaid, with divers other falſe Traitors unknown, traiterouſly did compaſs, imagine, and intend the Killing, Death and final Deſtruction of our ſaid Lord the King, and to change, alter, and utterly to ſubvert the ancient Government of this Realm, and to depoſe, and wholly to deprive him the ſaid King of his Crown and Government of this Kingdom, and to extirpate the true Religion within this Realm eſtabliſh'd; and to fulfil and accompliſh the ſame moſt wicked Treaſons and traiterous Imaginations and Purpoſes, the ſame *Elizabeth Cellier*, and other falſe Traitors unknown, the ſaid firſt Day of *November*, in the thirty firſt-Year aforeſaid, with Force and Arms, *&c.* at the Pariſh of St. *Clement Danes* aforeſaid, adviſedly, deviliſhly, maliciouſly, and traiterouſly aſſembled, united, and gathered themſelves together, and then and there deviliſhly, adviſedly, maliciouſly, cunningly, and traiterouſly conſulted and agreed to bring the ſaid Lord the King to Death and final Deſtruction, and to depoſe and deprive him of his Crown and Government, and ſo introduce and eſtabliſh the *Romiſh* Religion in this Kingdom; and the ſooner to fulfil and effect the ſame moſt wicked Treaſons and traiterous Imaginations and Purpoſes, the ſaid *Elizabeth Cellier*, and other unknown Traitors, then and there did contribute, pay and expend divers great Sums of Money to ſeveral unknown Perſons, to procure them traiterouſly to kill the ſaid King, and introduce the *Romiſh* Religion in this Realm; and for the better concealing of the Treaſons aforeſaid, the ſaid *Elizabeth Cellier* then and there did pay and expend to divers other Perſons unknown, divers other Sums of Money, falſly to impoſe the ſaid Treaſons upon ſome other Perſons unknown, againſt the Duty of her Allegiance, and againſt the Peace of our Lord the King, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided, *&c.*

John Gadbury Sworn.

L. C. J. Mr. *Gadbury*, What do you know concerning this Plot? Sir *William Scroggs.*

Mr. *Gadbury.* I know nothing of it, neither one way nor another.

L. C. J. Do you know of any Contrivance of Mrs. *Cellier*'s to kill the King?

Mr. *Gadbury.* No, rather the contrary.

L. C. J. Do you know of any Attempts to change the Government?

Mr. *Gadbury.* I will tell your Lordſhip what I do know, if theſe Gentlemen will not be too nimble for me. I have ſuffer'd a great deal of Prejudice of late in relation to a Plot, as if I had known of a Plot; but God is my Witneſs, I know of none, unleſs it were a Plot to bring Sir *Robert Peyton* over to the King's Intereſt. That Plot I had ſome concern in, and had ſome Knowledge of Mrs. *Cellier*'s Concern in it; but ſhe was ſo far from doing any Thing againſt the King's Intereſt, that ſhe was willing to bring over with him the three Gentlemen turn'd out of Commiſſion when Sir *Robert* was. So that how ſhe could be acting for the King and againſt the King at the ſame Time, I do not underſtand.

L. C. J. Mr. *Gadbury*, you are a Man of Learning, pray will you give your Teſtimony of the Things that you know in relation to Mrs. *Cellier*.

Mr. *Gadbury.* Mrs. *Cellier* was not committed upon my Accuſation; therefore, I hoped ſhe might have been tried without my Teſtimony. But when I was in danger of my Life, when I lay in the *Gate-Houſe*, Mrs. *Cellier* was reported to be a third Witneſs againſt me, and then I raked up every Trifle; but if I had thought it Treaſon, I would have diſcovered it before. And as to that particular Buſineſs concerning Mr. *Smith*, that *Smith* ſome time ſince did come to me, being my old Acquaintance, to aſk my Advice in his Affairs; and he had then an Affair of ſo great Moment, that it was neceſſary to aſk my Advice in it, which was to go to the Lords in the *Tower*. I aſked him, what to do? Saith he, I can ſay enough againſt Dr. *Oates* to ſerve them, and take off his Evidence, and aſked me if he ſhould do it. By no means, Mr. *Smith*, ſaid I. Mrs.

Cellier afterwards told me this *Smith* and one *Phillips* were willing to tell ſome Stories or other of Mr. *Oates* and Mr. *Bedloe*, and I told her this very Story; ſaith ſhe, You being acquainted with him, it is poſſible you may do ſome good upon him; and ſaith ſhe, I had as lieve as ten Guineas that you could do it.

L. C. J. That is, when that you adviſed Mr. *Smith* not to meddle with any thing againſt Dr. *Oates*.

Mr. *Gadbury*. She ſaid, ſhe did not care if ſhe had been at the Charge of ten Guineas, if he would be honeſt and diſcover the Truth. And, my Lord, ſhe did ſay ſhe had heard Mr. *Dangerfield* talk of a *Nonconformiſts Plot* that would off the *Popiſh Plot.*

L. C. J. Did ſhe ſay that ſhe had heard *Dangerfield* ſay there was a *Nonconformiſts Plot*, and that he was to have a Commiſſion among them? And did ſhe ſay, that ſhe had heard him ſay, that he hoped under the Colour of that the Popiſh Plot would go on? Or did ſhe ſay it of her own accord, that ſhe hoped that would carry on the Popiſh Plot?

Mr. *Gadbury*. My Lord, I cannot remember Particulars.

L. C. J. There is a great deal of difference between *Dangerfield*'s ſaying it, and her ſaying it.

Mr. *Gadbury*. I have no reaſon to ſpare her: But I am unwilling to ſpeak any thing that is contrary to Truth, though ſhe hath done me the greateſt Injury in the World.

L. C. J. How came you to talk of a *Nonconformiſts Plot?*

Mr. *Gadbury*. It was only common Diſcourſe, as it was at Coffee-Houſes.

Mr. Juſt. *Raymond.* Had you heard of it before ſhe ſpake of it, that you ſay it was common?

Mr. *Gadbury*. No, not till ſhe ſpake of it.

L. C. J. Did Mrs. *Cellier* tell you of any Popiſh Prieſts or Jeſuits coming hither from beyond the Seas?

Mr. *Gadbury*. Upon the going over of one *Clay*, I think ſhe did ſay ſhe heard there were ſome more coming over.

L. C. J. What to do?

Mr. *Gadbury*. God knows what.

L. C. J. Did ſhe ſpeak of any Plot or Contrivance to kill the King?

Mr. *Gadbury*. No, ſhe was always an Enemy to Plots, or elſe I would not have kept her company.

L. C. J. Did ſhe ſay there were, or that ſhe heard there were ſeveral Prieſts and Jeſuits coming over?

Mr. *Gadbury*. My Lord, I think ſhe ſaid ſhe heard it. And I have ſaid ſeveral times to her, the Popiſh Plotters would be deſtroyed: But ſhe anſwered, ſhe was afraid the Nation would be deſtroyed firſt.

L. C. J. Did ſhe ſay ſhe was afraid of it, or that the Nation would be deſtroyed firſt? I aſk you once more, we muſt try People according to their Oaths. By the Oath you have taken, when you ſaid you thought the Popiſh Plotters would be deſtroyed, what Anſwer did ſhe make?

Mr. *Gadbury*. She ſaid ſhe was afraid the Nation would be ſo; becauſe ſhe ſaid, abundance of the beſt of the Nation went into other Nations, to weaken our Nation, and ſpend their Money, and therefore ſhe was afraid the Nation would be deſtroyed before them.

L. C. J. What Diſcourſe had you with Mrs. *Cellier* paſſing through *Weſtminſter-Abbey?*

Mr. *Gadbury*. My Lord, my Memory hath been exceedingly bruiſed; but I remember, my Lord, as I was going through the *Abbey* in a rainy Afternoon, ſhe ſaid, this *Abbey* was formerly filled with *Benedictine Monks*, or ſomething to that purpoſe; and, ſaith ſhe, what if it ſhould be ſo again?

L. C. J. Are you a Proteſtant or a Papiſt?

Mr. *Gadbury*. A Proteſtant, my Lord.

L. C. J. He talks as like a Papiſt as can be, was it, what if it ſhould be filled?

Mr. *Gadbury*. She ſaid, what if it ſhould be again?

L. C. J. What did you ſay to that?

Mr. *Gadbury*. I only ſmiled to hear a Woman's Diſcourſe, my Lord.

L. C. J. You make all the Company laugh: What did ſhe ſay of the *Temple?*

Mr. *Gadbury*. That the *Temple* had been filled with *Friers* too.

L. C. J. And what then? Did ſhe talk of filling it again?

Mr. *Gadbury*. Saith ſhe, this Place was filled with *Benedictine Monks*, and the *Temple* with *Friers.*

L. C. J. This may do well enough: But what did ſhe ſay elſe concerning the *Temple?*

Mr. *Gadbury*. Nothing, my Lord.

Mr. Serjeant Maynard *ſaid ſomething to him here, which was not heard, but Mr.* Gadbury *replied,*

Mr. *Gadbury*. Mr. *Serjeant*, I was none of the Tribe of Forty-one.

Here Mr. Gadbury *was going to read in his Paper; but the Court told him that would not be allowed; but he might refreſh his Memory with it.*

L. C. J. Now tell me what ſhe ſaid: Mr. *Gadbury*, keep it in your Hand.

Mr. *Gadbury*. My Lord, ſhe put it by way of Interrogation to feel my Pulſe.

L. C. J. What did ſhe elſe?

Mr. *Gadbury*. There was nothing but tranſient Diſcourſe, my Lord.

L. C. J. We muſt aſk you what the Truth is, and you have looked upon your Paper. Now conſider what you ſay, and conſider that you are upon a ſolemn Occaſion, and are to teſtify it in the Preſence of God Almighty. I would have you tell plainly what it is, and neither to make it more, nor ſtifle it.

Mr. *Gadbury*. It was only tranſient Diſcourſe.

L. C. J. Say what it was. Was it, *This Place was once filled with* Benedictine Monks?

Mr. *Gadbury*. She ſaid that the *Abbey* had been filled with *Benedictine Monks*, as the *Temple* had with *Friers.*

Mr. Juſt. *Jones.* Look upon your Paper.

L. C. J. You have looked upon the Paper, and pray tell us what ſhe ſaid. Did ſhe ſay ſhe hoped to ſee this Place filled with *Benedictines?*

Mr. *Gadbury*. My Lord, I do not remember that Word *Hope.*

L. C. J. How long have you been acquainted with Mrs. *Cellier?*

Mr. *Gadbury*. Ten or a dozen Years.

L. C. J. Did ſhe never aſk you any Queſtions about the Life of the King?

Mr. *Gadbury*. My Lord, when the King was very ill at *Windſor*, and all People were fearful that he would die, ſhe did move the Queſtion to me.

L. C. J. What Queſtion?

Mr. *Gadbury*. To know, whether I thought his Majeſty would live or die? But it was her fear that he would die.

L. C. J. Had you ſeen the King?

Mr. *Gadbury*. No, my Lord.

L. C. J. How then did ſhe expect you ſhould give her an Anſwer? From your Art?

Mr. *Gadbury*. From my Art, my Lord!

L. C. J. Did ſhe deſire you to conſult your Art, how long the King would live?

Mr. *Gadbury*. She did as I ſaid.

L. C. J. What did you ſay to that?

Mr. *Gadbury*. I would not tell her, becauſe he was my Sovereign.

L. C. J. What anſwer did you make?

Mr. *Gadbury*. I told her I would not meddle with it.

L. C. J. She would have had you conſult your Art or Scheme, or whatever it is, to know whether the King would live or die?

Mr. *Gadbury*. It was ſomething of that.

L. C. J. And you ſaid you would not meddle nor make with it?

Mr. *Gadbury*. Yes, my Lord.

L. C. J. She deſired you to make a Scheme?

Mr. *Gadbury*. No, my Lord, I can't ſay ſhe mentioned a Scheme, but ſhe aſked the Queſtion.

Mr. Juſt. *Raymond.* What did ſhe aſk elſe?

Mr. *Gadbury*. Only that Queſtion.

L. C. J. How often do you believe ſhe ſpake of it?

Mr. *Gadbury*. Never, my Lord, but when he was ill. I will not baffle any thing that may conduce to the Safety of the King and Kingdom.

L. C. J. Indeed it is very conducible to the Safety of the King and Kingdom, if any go about to deſtroy him, and with evil Intentions to aſk how long he will live, and you ought in Duty to God and your Sovereign to declare it. Did ſhe ever make any Enquiries about the King's Death more than what you have ſaid?

Mr. *Gadbury*. No more, my Lord; and then ſhe was fearful he would die.

L. C. J. Did ſhe ſay ſhe would go to ſomebody elſe?

Mr. *Gadbury*. My Lord, when ſhe perceived me ſhy, ſhe ſaid, I ſee you are afraid of me, I will go to ſome other Aſtrologer.

L. C. J. For what?

Mr. *Gadbury*. To ſatisfy her Curioſity, as a great many do.

L. C. J. What Curioſities did ſhe aſk beſides this?

Mr. *Gadbury*. She would aſk me ſometimes about the Condition of Bodies, Whether they would be proſperous in the World, and ſeveral other Queſtions.

L. C. J. Were you nice in theſe Curioſities?

Mr. *Gadbury*. Truly, my Lord, I was ſhy of meddling with any thing, when I heard there was a Talk about Plots.

L. C. J. Was you nice to give her Satisfaction according to her Hopes concerning theſe Things you call Curioſities, queſtioning whether one ſhou'd be well wed, how many Children ſhe ſhou'd have, *&c.* were you ſcrupulous in that?

Mr. *Gadbury*. I think I might not be nice in that very particular.

L. C. J. How came it, then, that ſhe would go to another Aſtrologer?

Mr. *Gadbury*. She aſked me ſomething about Mr. *Dangerfield.*

L. C. J. For what?

Mr. *Gadbury*. How to get him out of Priſon.

L. C. J. Pray how came ſhe to ſay ſhe would go to another Aſtrologer? You were not ſhy to give her an Anſwer to theſe Queſtions?

Mr. *Gadbury*. It was ſomething about Mr. *Dangerfield*, my Lord, ſhe aſked me ſomething about ſome Deeds or Papers which he was to ſearch for, or ſeize, which concerned Mr. *Bedloe.*

L. C. J. She had better have gone to one of the Clerks than to a Conjurer for them. But why would ſhe go to another Aſtrologer?

Mr. *Gadbury*. Becauſe I was ſhy.

L. C. J. You were not ſhy in theſe Things about *Bedloe.* Did ſhe not ſay, when you refuſed to meddle with the Death of the King, that ſhe would go to another Aſtrologer?

Mr. *Gadbury*. Yes, my Lord.

L. C. J. Did you any thing for her at that time?

Mr. *Gadbury*. My Lord, I did calculate a Scheme, which ſince I found to be for Mr. *Dangerfield*, but I knew not for whom it was when I did it.

L. C. J. How! Can you apply one Scheme to any body?

Mr. *Gadbury*. My Lord, when Mrs. *Cellier* came to me, ſhe gave me the time of a Perſon's Nativity, and I ſet the Figure of the Heavens to that Sign, to know whether he were a Perſon fit to be truſted, her Huſband being a *French* Merchant, to get in Money.

L. C. J. For aught you know, *Dangerfield* was a Woman, and the Queſtion was, Whether *Dangerfield* was with Child, and he happens to be a Man——How did it fall out?

Mr. *Gadbury*. I have forgotten, my Lord.

L. C. J. When did you know it was for *Dangerfield?*

Mr. *Gadbury*. My Lord, never before I came before the King and Council; neither did I know his Name before, for he went by the Name of *Willoughby* before.

L. C. J. What other Diſcourſe had you with her? Did ſhe not at any time talk of Mr. *Dugdale?*

Mr. *Gadbury* She did ſay ſhe had heard of ſome People that were to diſcourſe with Mr. *Dugdale*; ſhe had heard ſuch a thing, but I don't know whether ſhe knew any thing of it or no.

L. C. J. What Diſcourſe had you about that?

Mr. *Gadbury*. She told me there was a Woman to go down to *Windſor* to beg Mr. *Dugdale*'s Pardon, for he was penitent for what he had ſaid in ſome Trial or other.

L. C. J. Call another Witneſs.

Mr. *Att. Gen.** Mr. *Dangerfield*, pray give the Court an Account of what you know of Mrs. *Cellier*, the Priſoner at the Bar.

Sir Creſwel Levinz.

Mrs. *Cellier.* My Lord, I except againſt that Witneſs.

L. C. J. Why ſo? You muſt ſhew ſome Reaſon, and then we will do you Juſtice in God's Name.

Mrs. *Cellier*. If I can prove he was whipp'd and tranſported, pilloried, perjured, *&c.* he is no Witneſs. The laſt time I was upon my Trial, he threatned ſome of my Witneſſes, that if they would not ſwear as he would have them, he would kill them.

L. C. J. If you can ſhew any Record whereby he is convicted of any thing that can by Law take away his Teſtimony, do it.

Mrs. *Cellier*. He has been indicted for Burglary.

L. C. J. (to Mr. Dangerfield) Was you indicted for Burglary?

Mr. *Dangerfield*. I will take it at their Proof.

Ralph Briſcoe, *a Witneſs for the Defendant, Sworn.*

L. C. J. Do you know *Dangerfield?*

Briſcoe. I remember one *Thomas Dangerfield:* I ſaw him burnt in the Hand at the *Old-Bailey*.

L. C. J. Is this the ſame Man?

Briſcoe. I do believe it is the ſame Man; but I have not ſeen him theſe ſeveral Years.

L. C. J. Let every body have their Right, in God's Name. Have you any more?

Mrs. *Cellier*. My Lord, I can prove him perjured.

L. C. J. Have you any Records to ſhew he was perjured? Is he convicted?

Mrs. *Cellier*. No.

L. C. J. Then you can't do it.

Mrs. *Cellier*. My Lord, I can prove him guilty of Forgery.

L. C. J. If you don't produce the Record, you do nothing.

Mr. *Recorder* *. That which ſhe calls Forgery, is not that which the Law calls Forgery; it is counterfeiting Guineas.

L. C. J. Can you ſhew he forged any Deeds? If you can prove that he hath committed Forgery, and be not convicted, it is no Error.

L. C. J. Have you your Pardon? She hath proved the Conviction of Felony, prove your Pardon.

Mrs. *Cellier*. I have the Copies of ſeveral Records here in Court, which will be ſworn to.

To which Mr. Dangerfield *pleaded his Majeſty's moſt gracious Pardon. To which Mrs.* Cellier *replied, That ſhe had a Copy of the ſaid Pardon in Court, but it did not extend to ſome of the Crimes for which he ſtood convicted; and then produced a Record, wherein it did appear he was outlawed upon a Felony. Upon which the Court commanded Mr.* Dangerfield *to go and fetch his Pardon; in the interim examining ſeveral of the King's Witneſſes.*

Thomas Williamſon *Sworn.*

L. C. J. Did you ever ſee *Dangerfield* and Mrs. *Cellier* in Company?

Williamſon. No, my Lord, but I have been employ'd for Mrs. *Cellier* in ſeveral Buſineſſes of Charity to get Priſoners out. When Mr. *Dangerfield* was in *Newgate*, ſhe employed me to get him out.

L. C. J. Why was ſhe ſo kind to *Dangerfield?*

Williamſon. My Lord, I don't know that; but ſhe bid me get him out, whoſoever ſtaid behind.

Mr. Juſt. *Raymond.* Why ſhould ſhe get him out? Did ſhe tell you what ſhe would do with him when ſhe had him out?

Williamſon. No, my Lord.

Mr. *Recorder.* We bring him for a Witneſs, that ſhe had a great Kindneſs for *Dangerfield.*

Margaret Jenkens *Sworn.*

L. C. J. What Diſcourſe have you heard between *Dangerfield* and *Cellier?*

Jenkens. I never ſaw them together but twice. It is a Year ſince I came from them.

L. C. J. When you ſaw them at Dinner or Supper together, what other Company was there?

Jenkens. Her Huſband was with her one time.

L. C. J. What did they talk about?

Jenkens. They were talking about the Priſoners that were condemned.

L. C. J. Where was it, at her Houſe?

Jenkens. No, at my Lady *Powis*'s Houſe.

L. C. J. How came you there?

Jenkens. I carried Notes backwards and forwards.

L. C. J. Did you never hear no Diſcourſe about the Plot?

Jenkens. No.

Suſan Edwards *Sworn.*

Mr. *Recorder.* What Intimacy have you known between *Dangerfield* and Mrs. *Cellier?*

L. C. J. Did you ever ſee them together?

Edwards. Yes, very often, my Lord. She ſaid, That the *Popiſh Plot* would turn to a *Preſbyterian Plot.*

L. C. J. Who did ſhe ſay that to? To *Dangerfield?*

Edwards. No, my Lord; but I have heard him ſay thoſe Words, and that he would make it his Intereſt it ſhould be ſo.

L. C. J. What did you ſay to him, when he ſaid he muſt turn Rogue, and diſcover all their Plots?

Edwards. I ſaid, he would be no greater Rogue than he was before.

L. C. J. You were pretty nimble with him.

Edwards. He thought he ſhould be hanged.

L. C. J. For what?

Edwards. If he did not turn Rogue he thought he ſhould be hanged.

(Edwards *to Mrs.* Cellier.) You were very often together in your Chamber.

Mrs. *Cellier.* Who gave you your Clothes?

Edwards. Her Huſband was gone to Church one Morning, and he was with her in her Chamber.

L. C. J. I can't ſee why you ſhould prove this Matter too far.

Mr. *Recorder.* *Suſan* is a civil young Woman.

Edwards. She ſaid ſhe would do my Buſineſs for me, and I go in danger of my Life.

Bennet Dowdal *Sworn.*

L. C. J. What do you know of any Intimacy between *Dangerfield* and Mrs. *Cellier?*

Dowdal. I have ſeen them together.

L. C. J. What did they talk about?

Dowdal. Mrs. *Cellier* propoſed a Match between Mrs. *Mary Ayrey* and I, and they uſed to talk of that when I was with them.

L. C. J. Did they talk of the Plot at any time?

Dowdal. No.

L. C. J. Did you ever hear them talk of the King?

Dowdal. No.

L. C. J. Have you any more?

Mr. *Recorder.* Not till Mr. *Dangerfield* comes.

L. C. J. (to Mrs. Cellier) Have you any Record to ſhew he was put in the Pillory?

Mrs. *Cellier.* Yes, my Lord.

Upon which the Copy of a Record from Saliſbury *was read, of his ſtanding on the Pillory for uttering counterfeit Guineas: As alſo a Copy of a Record of an Outlawry for Felony.*

L. C. J. What ſay you to this Outlawry?

Mr. *Recorder.* It is not the ſame Perſon.

L. C. J. We ought to be very careful in theſe Concerns, elſe we may do a Work this Day may make all the Kingdom rue it. It is a ſad thing that People of a vicious profligate Life, both before they came to *Newgate*, and all along in their Life-time, ſhould be ſuffered to be Witneſſes to take away the Life of a Woman. I queſtion whether he will come again, or no, he hath been gone a great while. Such are fit to be employed to find out, but hard to be believed when they find out.

L. C. J. Captain *Richardſon*, is this the Man that broke *Chelmsford* Goal?

Capt. *Richardſon.* My Lord, I can ſay nothing to that, but he was brought by an *Habeas Corpus* from thence to me.

L. C. J. Was he burnt in the Hand for Felony?

Capt. *Richardſon.* Yes, my Lord, I believe he was.

L. C. J. He made me believe as tho' he would fly, I believe he is. We will not hood-wink our ſelves againſt ſuch a Fellow as this, that is guilty of ſo notorious Crimes. A Man of Modeſty, after he hath been in the Pillory, would not look a Man in the Face. It appears that after he hath been burnt in the Hand, he hath been Outlaw'd for Felony, and ſo it doth appear by Record.

After about half an Hour's Stay, Mr. Dangerfield *returned and brought his Pardon; which was read, and the Word Felony omitted; and inſtead of* Utlagaria qualiacunque pro Feloniis quibuſcunque, *there was only inſerted;* Omnia Maleficia & Utlagaria qualiacunque; *which Omiſſion had made the Pardon defective, it being my Lord Chief Juſtice his Opinion, that the Word* Utlagaria *did only reach to* Outlawries *between Party and Party; by which his Evidence was wholly laid aſide.*

L. C. J. (to Mr. Dangerfield) Such Fellows as you are, Sirrah, ſhall know we are not afraid of you.

He produces us here a Pardon by the Name of *Thomas Dangerfield* of *Waltham*, and ſays, his Father and Kinſman are both of that Name and Place. Will you have him ſworn, whether his Father or Couſin *Thomas* were ever convicted of Felony? It is notorious enough what a Fellow this is, he was in *Chelmsford* Goal. I will ſhake all ſuch Fellows before I have done with them. Have you any more to ſay? Are there any *Waltham* Men here?

Mr. *Dangerfield.* My Lord, this is enough to diſcourage a Man from ever entering into an honeſt Principle.

L. C. J. What? Do you with all Miſchief that Hell hath in you, think to brave it in a Court of Juſtice? I wonder at your Impudence, that you dare look a Court of Juſtice in the Face, after having been made appear ſo notorious a Villain.

Mr. Juſt. *Jones.* Indeed, if he be the ſame Man, he is not fit for a Witneſs.

L. C. J. And that he is the ſame Man is very notorious. Come, Mrs. *Cellier*, what have you more to ſay?

Mrs. *Cellier.* Enough, my Lord.

L. C. J. You have ſaid enough already. Come, Gentlemen of the Jury, this is a plain Caſe; here is but one Witneſs in a Caſe of Treaſon, and that not direct; therefore lay your Heads together.

Which being done, they returned her Not Guilty: Upon which the Clerk of the Crown bid her down on her Knees; which ſhe did, and cried, God bleſs the King and the Duke of York.

L. C. J. Where is *Dangerfield?* Is he gone? Call him.

Who being come, the Court aſked if he had Bail for his good Behaviour?

Mr. *Dangerfield.* No, my Lord, but with the leave of the Court I will fetch ſome.

L. C. J. Let a Tipſtaff go with him, and return before the Court riſes.

Mr. *Dangerfield.* My Lord, that cannot be, for I can't return ſo ſoon.

L. C. J. Then let him be committed.

Which was accordingly done.

* *Sir* George Jefferies.

XCVII. *The Trial of* ROGER PALMER, *Eſq; Earl of* CASTLEMAINE, *in the Kingdom of* Ireland, *at the* King's-Bench, *for* High-Treaſon, June 23. 1680. Trin. 32 Car. II.

Roger Palmer, *Eſq. having been arraign'd of* High-Treaſon, *and pleaded Not Guilty, was this Day brought to his Trial.*

Cl. of Cr. CRYER, make Proclamation.

Proclamation for Silence.

Crier. O yes! Our Sovereign Lord the King doth ſtrictly charge and command all manner of Perſons to keep Silence, upon pain of Impriſonment.

O Yes! If any one can inform our Sovereign Lord the King, the King's *Serjeant at Law*, the King's *Attorney General*, or this *Inqueſt* now to be taken of the High-Treaſon whereof *Roger Palmer*, Eſq; Earl of *Caſtlemaine* in the Kingdom of *Ireland*, ſtands indicted, let them come forth and they ſhall be heard; for the Priſoner ſtands at the Bar upon his Deliverance.

Cl. of Cr.

Cl. of Cr. Cryer, make an O Yes.

Cryer. O Yes! You good Men that are impanneled to enquire between our Sovereign Lord the King, and *Roger Palmer*, Eſq; Earl of *Caſtlemaine*, within the Kingdom of *Ireland*, anſwer to your Names.

Cl. of Cr. Roger Palmer, Eſq; Earl of *Caſtlemaine*, in the Kingdom of *Ireland*, Hold up thy Hand: Theſe good Men that were lately called, and now here appear, are to paſs between our Sovereign Lord the King and you upon your Life or Death; if you challenge any of them, you are to ſpeak as they come to the Book to be ſworn, and before they are ſworn.

Sir *John Cutler*, Kt. Bar.
Sir *Regiland Foſter* Bar.
Henry Herriot Eſq;
Richard Cheney Eſq;
Thomas Johnſon Eſq;
John Roberts Eſq;

Jur'

Fr. Dorrington Eſq;
Hugh Squire Eſq;
Charles Good Eſq;
John Pulford Eſq;
Edw. Claxton Eſq;
Fr. Mayhew Gent.

Cryer. O Yes! Our Sovereign Lord the King doth ſtrictly charge and command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Cl. of Cr. Roger Palmer, Eſq; Earl of *Caſtlemaine*, in the Kingdom of *Ireland*, hold up your Hand.

You Gentlemen of the Jury that are now ſworn, look upon the Priſoner, and hearken to his Charge.

You ſhall underſtand, that he ſtands indicted by the Name of *Roger Palmer*, Eſq; Earl of *Caſtlemaine*, in the Kingdom of *Ireland*; for that he as a falſe Traitor againſt our moſt Illuſtrious and Excellent Prince and Lord *Charles* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland* King, Defender of the Faith, *&c.* and his Natural Lord; not having the Fear of God before his Eyes, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, his Cordial Love, true, due and natural Obedience, which true and faithful Subjects of our ſaid Sovereign Lord the King ought to bear towards him, altogether withdrawing; and contriving, and with all his Might intending to diſturb the Peace and common Tranquillity of this Kingdom, and to bring and put our Sovereign Lord the King to Death and final Deſtruction, and alter the true Worſhip of God within this Kingdom eſtabliſhed, to the Superſtition of the *Romiſh* Church; and to ſtir up and move War againſt our ſaid Sovereign Lord the King within this Realm of *England*, and to ſubvert the Government thereof; the twentieth Day of *June*, in the thirtieth Year of the Reign of our ſaid Sovereign Lord *Charles* the Second, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* at the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, with divers other falſe Traitors to the Jurors unknown, did traiterouſly imagine and intend the Killing, Death and final Deſtruction of our ſaid Lord the King, and to change and alter, and utterly ſubvert the ancient Government of this Kingdom, and to deſpoſe and wholly to deprive our ſaid Lord the King of his Crown and Government of this Realm of *England*, and to extirpate the true Proteſtant Religion: And to accompliſh and fulfil the ſame moſt wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid, the ſaid *Roger Palmer*, Eſq; Earl of *Caſtlemaine*, in the Kingdom of *Ireland*, and other falſe Traitors to the Jurors unknown, the ſame twentieth Day of *June*, in the thirtieth Year aforeſaid, with Force and Arms, in the Pariſh of St. *Giles in the Fields* aforeſaid, in the County aforeſaid, adviſedly, deviliſhly, maliciouſly and traiterouſly did aſſemble, unite, and gather themſelves together, and then and there adviſedly, deviliſhly, maliciouſly, ſubtilly, and traiterouſly did conſult and agree to bring our ſaid Sovereign Lord the King to Death and final Deſtruction, and to deprive him of his Crown and Government of *England*, and to introduce and eſtabliſh the Religion of the Church of *Rome*, in this Kingdom; and the ſooner to fulfil and accompliſh the ſame moſt wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid, he then and there did falſely, maliciouſly and traiterouſly promiſe divers great Rewards, and did pay divers Sums of Money to ſeveral Perſons unknown; and then and there falſely and traiterouſly did write divers Notes, to incite ſeveral other Perſons to accompliſh the Treaſons aforeſaid, againſt the Life of our Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in ſuch Caſe made and provided.

Cl. of Cr. Upon this Indictment he hath been arraigned, and hath pleaded thereunto *Not Guilty*; and for his Trial he puts himſelf upon God and his Country, which Country you are.

Your Charge is to enquire, Whether he be *Guilty* of the High-Treaſon whereof he ſtands indicted, or *Not Guilty?* If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time when the High-Treaſon was committed, or at any time ſince? If you find him Not Guilty, you are to ſay ſo, and no more; and hear your Evidence.

Cryer. O yes! If any one will give Evidence on the Behalf of our Sovereign Lord the King, againſt *Roger Palmer*, Eſq; Earl of *Caſtlemaine*, in the Kingdom of *Ireland*, let him come forth and he ſhall be heard; for the Priſoner now ſtands at the Bar upon his Deliverance.

Mr. *Bonithon.* May it pleaſe you, my Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for High-Treaſon; for that he intending to diſturb the Peace within this Kingdom eſtabliſhed, and to deſtroy and alter the Government, and to bring the King to Death and final Deſtruction, and to alter our Religion to the Superſtition of the Church of *Rome*, did, on the 20th Day of *June*, in the 30th Year of the Reign of our Sovereign Lord the King, conſult and treat with ſeveral other Perſons, and that he with theſe Perſons did agree to deſtroy the King, and alter the Religion, and cauſe Rebellion; and further to accompliſh theſe Treaſons, he did promiſe and agree to pay ſeveral Accompts, and depoſit ſeveral Sums of Money, and did likewiſe write and publiſh ſeveral Books.

To this he hath pleaded *Not Guilty*; if we prove theſe Things, you are to find him *Guilty*.

Mr. *Att. Gen.* * May it pleaſe your Lordſhip, my Lord *Caſtlemaine* here ſtands *indicted for High-Treaſon*; that is, *For deſigning to murder the King, and alter the Government and Law.* And this is but a Parcel of the Plot, which hath been carrying on a great while, and many Perſons tried for it, and ſome have ſuffered and been executed for it: And, my Lord, we will give your Lordſhip Evidence, *That my Lord* Caſtlemaine *hath at ſeveral times conſpired the Death of the King, and he hath reproved Perſons for not doing it.* And, my Lord, he hath been in Conſults among Jeſuits, where theſe Matters have been carried on, and this whole Deſign hath been negotiated; and my Lord *Caſtlemaine* hath been conſenting and agreeing to all theſe Matters, And, my Lord, when the Trials were in Hand, it did appear upon thoſe Trials there were many Perſons brought from St. *Omers* to be Witneſſes againſt Dr. *Oates*, to prove he was not in *England* at that time when he ſaid in his Depoſitions that he did conſult with the Jeſuits; and theſe Perſons my Lord *Caſtlemaine* had the Management and Inſtruction of at that time: And all along at the *Old Bailey* my Lord *Caſtlemaine* was preſent there, and did countenance theſe Perſons, and was an Interceſſor for them. Theſe are but Branches and Circumſtances; what is material we will prove by Witneſſes.

Mr. *Att. Gen.* Come, Dr. *Oates*, pray tell what you know.

Priſoner. My Lord, I have a long time wiſhed for this Day; and your Lordſhip may very well remember it. The Reaſon why I have ſo much deſired a Trial is, becauſe I thought it a means, and the beſt means, and the only means to ſhew to the World my Innocency, and alſo to ſhew to the World how much I have been calumniated by this Charge.

L. C. J. * What have you to ſay? Have you any thing to ſay againſt Dr. *Oates?*

Priſoner. No, my Lord: I only ſay this, Here I am a Priſoner at the Bar, and I have pleaded Not Guilty, and throw myſelf upon this Court; and therefore I am very willing to hear what this Man will ſay.

Dr. *Oates.* My Lord, I humbly move the Court, Whether or no I may uſe my own method?

L. C. J. Give your Charge, we direct nothing.

Dr. *Oates.* My Lord, in the Year 1677, I was ſent over into *Spain* by the Jeſuits that were here in *England*; where I remained for ſeveral Months, and tranſacted Buſineſs for them, and, my Lord, I returned from *Spain* in *November*, and brought ſeveral Letters from ſome *Engliſh* Fathers there; among which there was one directed for my Lord *Caſtlemaine.* My Lord, I did not deliver the Letter to him; but, my Lord, the Contents of the Letter was to this Effect——

L. C. J. How came you to ſee the Contents?

Dr. *Oates.* My Lord, I was at the writing of the Letter, and ſo I did ſee the Contents of it.

L. C. J. Did the Prieſts ſhew it you, or did you only ſee it yourſelf?

Dr. *Oates.* No, my Lord; it was ſhewn me by them: And the Contents of this Letter were, *That the Fathers in* Spain *were very zealous to concur with the Fathers here in* England *in the Deſign; which was the Subverſion of the Government, altering the Religion, and the Deſtruction of the King.*

L. C. J. Was that in the Letter?

Dr. *Oates.* No, my Lord, not in Words at Length.

L. C. J. What was, as far as you know, the very Expreſſion of the Letter?

Dr. *Oates.* The Word *Deſign*, my Lord.

L. C. J. Only that, to promote the Deſign?

Dr. *Oates.* Yes, my Lord; and under that Word we did comprehend all thoſe things; that is, as we uſually took it among one another.

L. C. J. Did you deliver this Letter to my Lord *Caſtlemaine?*

Dr. *Oates.* No, my Lord, I did not deliver this Letter; but when I went to St. *Omers*, we received an Account from my Lord *Caſtlemaine* of his Receipt of this Letter.

L. C. J. What did you do with it?

Dr. *Oates.* I left it with the Provincial, my Lord, who was then Mr. *Strange.*

L. C. J. Was it not given to you to give it to him?

Dr. *Oates.* It was given me to give the Lord *Caſtlemaine*; but being then a Stranger to him, I was willing to ſend one of his own Meſſengers with it.

L. C. J. Where was my Lord?

Dr. *Oates.* I can't tell, my Lord; I did not ſee him then; I went over to St. *Omers* in *December* 77, or the latter End of *November.*

L. C. J. Where were you when you gave this Letter to the Provincial?

Dr. *Oates.* I was in *London*, my Lord.

L. C. J. Where did you receive this Letter?

Dr. *Oates.* In *Spain*, my Lord, at *Valladolid*, of one *Armſtrong.*

L. C. J. Who was it directed to?

Dr. *Oates.* To my Lord *Caſtlemaine*; but I did not then know him, and ſo I gave it the Provincial, my Lord: I went over to St. *Omers* in the latter End of *November*, or the Beginning of *December* 77, and after I had been there ſome few Days, there did arrive a Pacquet from *London* to St. *Omers*, in which there was a Letter from my Lord *Caſtlemaine.*

L. C. J. To whom?

Dr. *Oates.* To the Fathers of the Society of St. *Omers*; in which my Lord *Caſtlemaine* gave them an Account of a Letter that he had lately received from *Spain.*

L. C. J. How did you know the Contents of this Letter?

Dr. *Oates.* My Lord, I was privy to their Letters.

L. C. J. Was you acquainted with my Lord *Caſtlemaine*'s Hand?

Dr. *Oates.* My Lord, I will give an Account of that; I did not know it then, but only as it was generally ſaid amongſt us.

L. C. J. How was it ſubſcribed?

Dr. *Oates.* *Caſtlemaine*, my Lord; and ſometimes, my Lord, he ſubſcribed himſelf *Palmer.*

L. C. J. How many Letters have you ſeen?

Dr. *Oates.* Several Letters.

L. C. J. Was this the firſt?

Dr. *Oates.* This was the firſt, as near as I can remember. And, my Lord, he gave an Account in that Letter, that he had received a Letter from *Spain*, and was glad the Fathers in *Spain* had ſo good an Opinion of his Integrity in the Cauſe.

L. C. J. Did he ſay from whom he had received it?

Dr. *Oates.* My Lord, I can't remember that; that he had received a Letter, I am certain.

L. C. J. Do you know what the Purport of the Letter was?

Dr. *Oates.* Yes, my Lord, I will give you a plain Account. My Lord, he wrote he had received a Letter from *Spain*, and that he was glad the Fathers in *Spain* had ſo great Confidence in his Integrity. And, my Lord, in *March* there came another Letter from my Lord *Caſtlemaine*; for my Lord *Caſtlemaine* had left ſome Things at *Liege*, wherein he did complain of the Fathers, that they made no more Haſte for to ſend his Things

to

* Sir *Creſwel Levinz.*

* Sir *William Scroggs.*

to him; ſome odd Things he had left there; and, my Lord, he gave an Account of a certain Letter he received from the Rector of *Liege*, whoſe Advice he did not like: for the Rector of *Liege* and the Rector of *Gant* were mighty zealous that the ſecular Clergy ſhould be perſonally preſent in this Affair.

L. C. J. Did he write ſo? I would have you ſay what he writ.

Dr. *Oates*. My Lord, I have told you, he gave an Account, that he was unwilling to have the ſecular Clergy engaged, becauſe they were a looſe ſort of Men, and of no Principles, and therefore he thought them not fit to be truſted. My Lord, in *April* there was a Conſult; I came over from *St. Omers* in *April*, ſome three, or four, or five Days before the Conſult, I am not able to gueſs at the particular Time, but it was near upon the Conſult. My Lord, this Conſult was divided into ſeveral Companies, after they had met at the *White Horſe* Tavern, wherein they did ſome Things that did relate to the Order, as to ſend Father *Cary* to *Rome*. And after they had divided themſelves into ſeveral Companies, wherein they did agree in ordering the Death of the King.

L. C. J. You were by?

Dr. *Oates*. My Lord, I was employ'd by them to give an Account of the Senſe of one Company to another.

L. C. J. Were you by when they concluded the Death of the King?

Dr. *Oates*. Yes, my Lord, I was then preſent.

L. C. J. Did you ſign among the reſt?

Dr. *Oates*. My Lord, I don't come here to accuſe myſelf.

L. C. J. You are pardon'd, if it be ſo.

Dr. *Oates*. My Lord, I did conſent. My Lord, in this Conſult they met together, and an Oath of Secrecy was adminiſtred; my Lord *Caſtlemaine* was there too within ſome few Days after the Conſult: That is, the Gentleman whom I accuſe for Treaſon, I ſay, did come, and enquir'd about the Copies of ſome Letters for to be ſent up into *Germany*, and did deſire, that an Agreement between them and the Monks might be made up, there being a Difference between 'em, ſo that they might have the Aſſiſtance of that Order to carry on the Deſign.

L. C. J. What Gentleman was this?

Dr. *Oates*. It was the Priſoner, my Lord, at the Bar.

L. C. J. Would the Gentleman let you hear him ſay, that he deſired Aſſiſtance to carry on the Deſign, and you a Stranger to him?

Dr. *Oates*. My Lord, I do not think I was a Stranger to him ſo much as he was a Stranger to me; he knew I was their Servant, and employ'd by them.

L. C. J. Would he ſay in your Hearing, that he deſired their Aſſiſtance to carry on the Deſign, and you did not know him?

Dr. *Oates*. My Lord, I did not well know him at that Time; and I brought ſeveral Meſſages from the Fathers, and from Mr. *Langhorn*, and gave them an Account before him.

L. C. J. How often had you ſeen him?

Dr. *Oates*. That time he was there, my Lord.

L. C. J. How many Meſſages had you?

Dr. *Oates*. I will tell your Lordſhip where I had been: I had been at Mr. *Simmonds*'s, who was then Confeſſor to the Earl of *Arundel*, who is ſince turned Proteſtant; Confeſſor to him, as he pretended, and we looked upon him to be. And I had been at Father *Cain*'s, who was in *Turnmill-ſtreet*; and I had been, my Lord, at Mr. *Langhorn*'s in the *Temple*; and ſome other Places which I do not now remember, it is ſo long ſince. So, my Lord, I gave them an Account of my Buſineſs, and I did ſee that Gentleman, but did'nt know his Name till, my Lord, in *June*.

L. C. J. When was this?

Dr. *Oates*. This was, my Lord, as near as I can remember, in *May*.

L. C. J. So you did not know his Name till three Weeks or a Month after?

Dr. *Oates*. No, my Lord, it was in the latter part of *June*.

Mr. Juſt. *Jones*. You ſaw him firſt in *May?*

Dr. *Oates*. Yes, my Lord.

Mr. Juſt. *Jones*. And you did not ſee him till after the Conſult? I don't aſk you whether he was there or no? But whether you ſaw him before the Conſult was ſign'd?

Dr. *Oates*. No, my Lord.

L. C. J. How did you come to know his Name?

Dr. *Oates*. My Lord, in *June* Mr. *Langworth* and I were going over *Lincoln's-Inn-Fields*, intending to go to the *Fountain* in *Fuller's-Rents*, becauſe there was a Sort of Drink that he loved, and we were to drink together, it was in the Evening; and ſo in our way as we went, we met with my Lord *Caſtlemaine*, whom Mr. *Langworth* did ſalute, and then we came back to Mr. *Fenwick*'s Chamber.

L. C. J. With whom did you come back?

Dr. *Oates*. With my Lord *Caſtlemaine*.

L. C. J. Did you know his Name?

Dr. *Oates*. Mr. *Langworth* told me it was the Priſoner at the Bar, my Lord, and the Priſoner at the Bar was giving an Account of ſome Letters he had received out of the Country; and Mr. *Langworth* was giving an Account how forward the Rector of *Liege* and the Rector of *Gant* were in offering to have the ſecular Clergy engaged with them; and ſome other Diſcourſe they had which I can't remember, but about the Deſign.

L. C. J. What did they talk of at that Time? You muſt, as near as you can, tell us what Diſcourſe they had.

Dr. *Oates*. I will give your Lordſhip this, they were ſpeaking of the Tranſactions of the Conſult, and how unanimous the Fathers were in ſigning the Conſult.

L. C. J. Who were ſpeaking of it?

Dr. *Oates*. Mr. *Langworth* and Mr. *Fenwick*, and my Lord *Caſtlemaine* was preſent.

L. C. J. They did talk of it?

Dr. *Oates*. Yes.

L. C. J. Did they mention the Particulars of that Conſult?

Dr. *Oates*. Yes.

L. C. J. What was that?

Dr. *Oates*. Laying aſide the King.

L. C. J. And what elſe?

Dr. *Oates*. And bringing in the Popiſh Religion, the Catholick Religion, I ſpeak their own Words.

L. C. J. And this Diſcourſe they had in the hearing of my Lord *Caſtlemaine?*

Dr. *Oates*. Yes; and my Lord *Caſtlemaine* ſaid, *Now he ſhould be revenged for the Injuries done to him.*

L. C. J. Go on.

Dr. *Oates*. I have nothing elſe to ſay of my Lord *Caſtlemaine* that I can think of at preſent.

L. C. J. Now, my Lord, you may aſk him what Queſtions you think fit.

Priſoner. Mr. *Oates*, repeat your Journey again.

Dr. *Oates*. My Lord, I ſay this: I went a Ship-board in *April*, I returned from *Valladolid* in *November*, I arrived in *London* in *November*, and ſtaid in *London* ſome Time, and then I went to St. *Omers* in *November* or *December*, New Stile or Old Stile; I ſtaid at St. *Omers*; from thence I went to *Watton*; then, my Lord, in the Month of *March* we went to *Liege*, and returned back again; in the Month of *April* we came hither, ſome time before the Conſult, and ſtaid here ſome time after.

Priſ. What time were you at *Liege*, pray, Sir?

Dr. *Oates*. In *March* 77.

Mr. Juſt. *Jones*. The end of 77?

Dr. *Oates*. No, my Lord, we were at St. *Omers* again in *March*.

L. C. J. You returned in *March* 77-8?

Dr. *Oates*. Yes, my Lord, the Stile does ſo alter.

Priſ. That is before *Lady-Day*.

Dr. *Oates*. Yes, my Lord, it was before *Lady-Day*, we arrived here in *London* in *May* or in *April*, and we ſtaid here ſome few Days.

Priſ. When did you come over again, pray, Sir?

Dr. *Oates*. My Lord, it is now two Years ago, or better, and I can't remember every particular time; my Lord, we were here in *May*.

Priſ. I will aſk him as many Queſtions as I think reaſonable; and when, my Lord, I do deſire Time, and he can't tell the Times, he muſt tell me ſo.

L. C. J. Mr. *Oates*, anſwer my Lord what Queſtions he aſks you.

Dr. *Oates*. I will tell my Lord *Caſtlemaine* as near as I can remember, my Lord.

Priſ. Mr. *Oates*, When was it you came over?

Dr. *Oates*. Really it was ſome few Days before the Conſult.

Priſ. How many Days do you think?

Dr. *Oates*. Really I can't remember.

L. C. J. I ſuppoſe you have your Memorials.

Dr. *Oates*. Really, my Lord, no.

L. C. J. Have you any thing more to aſk?

Priſ. Yes, my Lord, a great many Queſtions. Were you preſent, Mr. *Oates*, pray, at that Conſult, when I conſented to the King's Death? Was you by?

Dr. *Oates*. I was preſent at the Conſult; but I do not charge you to be at the Conſult.

L. C. J. He aſks you where it was he agreed to it?

Dr. *Oates*. At Mr. *Fenwick*'s Chamber, I remember it was about ſeven or eight o'Clock that we were going over *Lincoln's-Inn-Fields*.

L. C. J. How long might you be at *Fenwick*'s?

Dr. *Oates*. It was about eleven or twelve o'Clock I came away.

Priſ. When you met me in *Lincoln's-Inn-Fields*, was I in a Coach or on Foot, or was any body with me?

Dr. *Oates*. I can't ſay whether your Lordſhip had a Man with you, or no:

L. C. J. Was there any body with him?

Dr. *Oates*. I did not take notice of that.

L. C. J. You were two Hours together, pray let me aſk you this Queſtion, What was your Diſcourſe about?

Dr. *Oates*. That was part of the Diſcourſe, my Lord.

L. C. J. What? You have given us a very ſhort Account of it in four Lines: You were two Hours together, What was the main of your Diſcourſe about?

Dr. *Oates*. My Lord, I will give you as plain as I can, the Diſcourſe at that time.

L. C. J. Pray let us know what the main of your Diſcourſe was about.

Dr. *Oates*. One part of their Diſcourſe was about the Revenues of their Colleges, and how they had ſuffer'd by the *French*'s taking St. *Omers*, and what Loſſes they had ſuſtain'd by reaſon of the Change of Government by the Conqueſt; for the Crown of *Spain* had entail'd on the College of St. *Omers* five or ſix hundred a year, for the maintaining the Foundation of their Houſe, or Foundation-Rent, and it was taken away by reaſon of the Conqueſt that *France* had made over the *Spaniſh* Dominions there; and they were conſulting how they ſhould write to Father *Le Chaiſe* to be an Inſtrument to move the *French* King to reſtore this Annuity, that was a Settlement entail'd upon it.

L. C. J. How came you into this Diſcourſe?

Dr. *Oates*. This was after the other Diſcourſe.

L. C. J. How came you to diſcourſe this Affair here in *England?*

Dr. *Oates*. I will tell your Lordſhip as near as I can remember: When we met in *Lincoln's-Inn-Fields*, Mr. *Langworth* recommended me to my Lord *Caſtlemaine*, and bad me take notice of him. I can't ſay this is my Lord *Caſtlemaine*, but this is that Man I ſaw.

L. C. J. Did he call him by his Name?

Dr. *Oates*. He told him that I was ſuch a one, and that I was ſerviceable to them. And upon our way as we went to Mr. *Fenwick*'s Chamber, he enquir'd into the Cauſes of my coming over ſo ſoon again, for he ſaid I went over but laſt Month. Said he, *How came it to paſs he came over ſo ſoon again?* Saith he, *We wanted him to do ſome Buſineſs for us.* And there were more Particulars of the Tranſactions of the Conſult mentioned to my Lord *Caſtlemaine*.

L. C. J. How did they bring in the Particulars of that Deſign?

Dr. *Oates*. This is as near as I can remember.

L. C. J. How came they to talk of laying aſide the King, and bringing in the Catholick Religion?

Dr. *Oates*. My Lord, after they had given an Account of the Tranſactions of the Conſult: This was one part of the Conſult.

L. C. J. Pray how came they to bring it in, in Diſcourſe?

Dr. *Oates*. My Lord, they ſpake of the Particulars of it.

L. C. J. I wonder what introduced the Particulars: Was it to acquaint him with thoſe Particulars?

Dr. *Oates*. My Lord, I have nothing to ſay to that; they were Things ſo generally talked of by thoſe of the Jeſuitical Party, that whenever they met, they ſcarce did talk of any Thing elſe but of that, and ſo they did at this Time.

L. C. J. Pray tell me the whole Diſcourſe, as you can remember, that relates to this Time.

Dr. *Oates.* My Lord, I have told your Lordſhip we met with my Lord *Caſtlemaine* in *Lincoln's-Inn-Fields.* I have told you, my Lord, that we went to Mr. *Fenwick*'s; I have told you, my Lord, that after ſome Diſcourſe (how it was introduced I cannot be poſitive, but as I can remember) they were ſpeaking of my going over and coming again ſo ſoon, my going from the Conſult to St. *Omer*'s, and returning again into *England* ſo ſoon, and ſo one Word brought in another.

L. C. J. Did you know then that my Lord *Caſtlemaine* had ever heard of this Matter before?

Dr. *Oates.* My Lord, I don't know; but I am morally certain as to myſelf; but I can't ſwear he did.

Mr. *Att. Gen.* Did he ſpeak of it to him as a Stranger to it?

Dr. *Oates.* No.

Mr. Juſt. *Jones.* By the Letter you ſpeak of he knew before.

L. C. J. Anſwer my Brother's Queſtion, Was the Letter you had ſeen, before or after that Diſcourſe at *Fenwick*'s?

Dr. *Oates.* My Lord, that was after the Conſult.

L. C. J. Then you know he did know of the Deſign?

Dr. *Oates.* My Lord, I think not of the Particulars of the Deſign.

L. C. J. That is, he knew of this Deſign for the main. When you talk of the Deſign, you always mean the Conſult.

Dr. *Oates.* No, my Lord, when we ſay the Conſult, we mean what was agreed on at that Conſult, not concerning theſe Matters that were done ſix Months before.

L. C. J. Mr. *Oates*, Tell me, when you mention the Deſign and the Conſult, do not you always mean the Death of the King and the bringing in Popery?

Dr. *Oates.* Yes, my Lord, but the Terms are not convertible: For, my Lord, when we ſay the Conſult, there was ſomething elſe done, my Lord, at that Conſult which had not an abſolute Relation to the Deſign; and of that I will give your Lordſhip one Inſtance, as the ſending Father *Cary* to *Rome*, which they did in ſome three Years.

L. C. J. Some trivial Matters concerning their own Government, but the thing you talk of is the ſame Conſult and Deſign.

Dr. *Oates.* When I ſpeak of the Word Deſign, it was ſo taken among us, and ſo received by my Lord *Caſtlemaine.*

L. C. J. How can you ſay it was ſo receiv'd by him?

Dr. *Oates.* Becauſe he uſed the ſame Word, and anſwer'd us according to our Interpretation.

Mr. Juſt. *Jones.* My Lord, he ſpeaks of the Deſign thus: There was a Deſign for the killing of the King, there was a Deſign of the Prieſts and Fathers for it; but ſaith he, *Afterwards there was a general Conſultation*, and this Deſign came to be formed by this General Conſult, which my Lord *Caſtlemaine*, as he thinks, had no Knowledge of till the time they met together in *Lincoln's-Inn-Fields*, and afterward went and diſcourſed about it.

L. C. J. It is very fair, that he doth not know that my Lord *Caſtlemaine* had any Knowledge before the Conſult of this Buſineſs; but, he ſays, *The Deſign upon which the Conſult was, that he might know, which was to deſtroy the King, and bring in Popery.* And he ſays, my Lord *Caſtlemaine* did underſtand this Word Deſign in that Senſe they did; becauſe he anſwered their Letters according to their Interpretation of it. How do you know he underſtood the Word Deſign in its utmoſt Capacity as you underſtood it?

Dr. *Oates.* When we have our Words, we have our Keys whereby we underſtand them. But I will anſwer this Queſtion to the Satisfaction of the Gentlemen of the Jury. My Lord, he hath many times ſpoken in his Letters of introducing the Popiſh Religion, and annex'd it to the Word Deſign of promoting the Catholick Religion here in *England.*

L. C. J. Now methinks you have brought the Word Deſign to ſomething elſe than killing the King.

Dr. *Oates.* Yes, my Lord, the Subverſion of Religion and the Government.

L. C. J. Did he put in Government? Did he talk of bringing in the Catholick Religion, and altering the Government?

Dr. *Oates.* No, my Lord, I won't ſay that.

L. C. J. When we are examining concerning Men's Lives, we muſt be careful of their Words in ſuch Matters.

Dr. *Oates.* One part of my Evidence I have omitted, Your Lordſhip did aſk me how I came to know my Lord *Caſtlemaine*'s Hand. My Lord, ſometimes we received Letters from him ſubſcribed *Palmer*, and ſometimes ſubſcribed *Caſtlemaine*, ſometimes ſome other Name which I may not remember, and they were generally received as from him. And I have ſeen, my Lord, my Lord *Caſtlemaine* write; for that Night, as near as I remember, it was Poſt-night.

L. C. J. At *Fenwick*'s Chamber?

Dr. *Oates.* At *Fenwick*'s Chamber, and my Lord *Caſtlemaine* did write a Letter, ſubſcribed it and ſealed it, and I was fain to go to the General Poſt-houſe, it was ſo late.

Mr. Juſt. *Jones.* What, did he ſubſcribe then?

Dr. *Oates.* No, my Lord, I ſaw no more than the Superſcription.

L. C. J. Then you did not ſee his Name to it?

Dr. *Oates.* No, my Lord. My Lord *Caſtlemaine* did aſk, Why he had not Anſwers to ſuch and ſuch Letters? For ſeveral Letters I had ſeen which were not of much Moment.

L. C. J. I wiſh you had one that was of Moment.

Dr. *Oates.* It cannot be expected, my Lord, that I ſhould have them.

L. C. J. My Lord, aſk him what you pleaſe.

Priſ. You ſay, Mr. *Oates*, you received Letters from me in *Spain?*

Dr. *Oates.* I never ſaid ſo.

Priſ. You ſaw Letters in *Spain* from me?

Dr. *Oates.* Yes, I have ſeen Letters in *Spain* that were from you.

Priſ. Look you, Mr. *Oates*, pray let me aſk you a Queſtion, you ſaid this, That you did not know me when you met me at the Conſult?

Dr. *Oates.* What Conſult?

Priſ. At *Fenwick*'s Chamber.

Dr. *Oates.* I did not know you at *Wild-houſe.*

Priſ. There you met me firſt?

Dr. *Oates.* There I met the Priſoner at the Bar.

L. C. J. He ſays he did not know you at *Wild-houſe*, but he came to know you by *Langworth* in *Lincoln's-Inn-Fields*, and then you went together to *Fenwick*'s Chamber.

Priſ. Mr. *Oates*, Did not you ſay, that at *Wild-houſe* you did not know me, nor I you?

L. C. J. He ſays he can't tell whether you knew him or no, but he did not know you.

Priſ. Was I familiar with you?

Dr. *Oates.* No, my Lord.

Priſ. Did I talk Treaſon at *Wild-houſe?*

Dr. *Oates.* It was the Diſcourſe of the Day, but I do not remember every Particular of the Diſcourſe, but I remember what your Opinion was concerning the Rector of *Liege* and the Rector of *Gant.*

Priſ. Was there any thing about killing the King at *Wild-houſe?*

Dr. *Oates.* Really, my Lord, I can't remember, I won't charge it there becauſe I am upon my Oath; though I morally believe, as to my ſelf, that there was Diſcourſe bad enough there.

Priſ. Mr. *Oates.* Pray will you hear me? Then the Acquaintance I had with you was by Mr. *Langworth*, and then we went that Night to *Fenwick*'s Chamber, and there we ſtaid very long, and there we had all this Diſcourſe?

Dr. *Oates.* Yes.

Priſ. Look, Mr. *Oates*, Was there any body by beſides Mr. *Langworth* and Mr. *Fenwick?*

Dr. *Oates.* Really, my Lord, I don't remember any body was by, unleſs a Maid might come to fill a Cup of Drink or ſo.

Priſ. Mr. *Oates*, Pray, Mr. *Oates*, did you and I ever meet together after that time?

Dr. *Oates.* Really, my Lord, I can't be exact in that.

Priſ. Did you never ſee me nor diſcourſe with me after that time?

Dr. *Oates.* I cannot recollect my ſelf as to that, I cannot remember.

L. C. J. He does not remember that ever he was with you afterwards.

Priſ. You don't know whether ever I diſcourſed with you afterwards?

Dr. *Oates.* I don't remember.

Priſ. Very well, Mr. *Oates:* Look you, Sir, you don't remember that I ever had any Diſcourſe with you after that time; and no body was by but Mr. *Fenwick* and Mr. *Langworth?*

Dr. *Oates.* As I remember.

Priſ. Was not there another Prieſt there?

Dr. *Oates.* There is no body occurs to my Memory.

Priſ. Mr. *Oates*, you brought me Letters from *Spain?*

Dr. *Oates.* I brought a Letter from *Spain* directed to you in 77.

Priſ. Was I in Town or out of Town?

Dr. *Oates.* I delivered it to the Provincial.

Priſ. You went over to *Liege*; did not you ſee me there?

Dr. *Oates.* No, my Lord, I did not ſee you there, I only went to wait upon a Gentleman that was a Prieſt afterwards, that went to take Orders.

Priſ. Did you not ſee me at *Liege?*

Dr. *Oates.* No, my Lord.

Priſ. You were at *Liege*, did you ſtay there?

Dr. *Oates.* I lay there one Night.

Mr. *Att. Gen.* Have you any thing to aſk, my Lord?

Priſ. Preſently, my Lord.

Mr. Juſt. *Jones.* It is very reaſonable, my Lord ſhould queſtion you. You own him to be the Lord *Caſtlemaine:* When was it you did firſt diſcover this Buſineſs concerning my Lord *Caſtlemaine?*

Dr. *Oates.* My Lord, I did diſcover my Lord *Caſtlemaine* to be in the Plot the laſt Seſſions of the Long Parliament, and I accuſed my Lord *Caſtlemaine* this *Trinity-Term* was Twelve-months, and my Lord *Caſtlemaine* was committed: For when Mr. *Dangerfield* came in and accuſed my Lord *Caſtlemaine*, I brought a Charge a ſecond Time againſt my Lord *Caſtlemaine.*

Mr. Juſt. *Jones.* Did you diſcover all this then?

Dr. *Oates.* I did charge him for having an Hand in the Deſign in general.

Mr. Juſt. *Jones.* To the Parliament?

Dr. *Oates.* Yes, to the Parliament.

Priſ. You ſay, when I aſſented to the King's Death in *Fenwick*'s Chamber, that I ſaid I ſhould now find a Time to be revenged?

Dr. *Oates.* Pray, my Lord, don't put me to mention ſuch reflecting Evidence.

Priſ. When you were before the King, you did in Purſuance of this ſpeak of a Divorce.

Dr. *Oates.* My Lord, I will give Evidence as to that, if that my Lord comes to be indicted for his Prieſthood.

L. C. J. My Lord may aſk what Queſtions he ſhall think fit.

Mr. *Att. Gen.* My Lord ſays he has ſaid it, and what he ſaid in another Place he is not to treat now of.

Priſ. Suppoſe I can prove him an ill Man in any Place, is not that fit to be ſpoken of here? Since he hath brought the King upon the Stage, and ſince he hath accuſed me before the King and your Lordſhips of a Divorce, I aſk him whether he ſaw it?

Dr. *Oates.* I will tell your Lordſhip what I ſaid as to the Divorce: I heard it diſcourſed of generally among the Fathers beyond Sea, and this was ſome other Part of the Diſcourſe at *Wild-Houſe*; and I heard my Lord *Caſtlemaine* ſay that he had been at a great Charge to carry on that Buſineſs of the Divorce.

Priſ. At *Wild-houſe?*

Dr. *Oates.* At *Wild-houſe.* Now, my Lord, I took no Notice of it, becauſe it was not my Buſineſs. But, my Lord, after that there was a Prieſt's Chamber that was ſearched, and there was the whole Caſe ſtated; now what is become of the State of that Caſe, my Lord, I cannot tell.

L. C. J. By whom was that Caſe ſtated?

Dr. *Oates.* There was a Letter found, whereby my Lord *Caſtlemaine* ſhould have the Matter directed, in order to the carrying on the Divorce that was to be between him and his Wife *Barbara.*

Priſ. Did not you tell the King that you ſaw the Divorce in *Strange*'s Hand?

Dr. *Oates.* My Lord, I will tell you this, I gave an Account to the King, that I ſaw in *Strange*'s Hand an Account of a Divorce that was between my Lord *Caſtlemaine* and *Barbara* Ducheſs of *Cleveland.*

Mr. *Recorder* *. My Lord, if he aſk too many Queſtions that don't relate to this Matter, it is impoſſible to give an Account of every Particular.

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* *Sir* George Jeffries.

Priſ. My Lords, I humbly ſubmit this Caſe.

Mr. *Recorder.* Aſk him what you ſaid to ſuch a Man upon the 9th of *Auguſt* was Twelve-month, muſt he give an Account?

L. C. J. He muſt ſay he does not know.

Mr. *Recorder.* Indeed it is reaſonable that my Lord *Caſtlemaine* ſhould aſk him ſome Queſtions, and that Mr. *Oates* ſhould give him an Account.

Mr. *Att. Gen.* My Lord, will you give me leave to ſpeak? If he may aſk Queſtions about ſuch foreign Matters as this, no Man can juſtify himſelf.

L. C. J. This is not ſo mighty remote but Uſe may be made of it.

Mr. *Att. Gen.* If he ſhould aſk whether he were ſuch a Day at ſuch an Houſe, and tell him yes, and miſtake the Day; any Man may be catched thus.

Priſ. How can a Man be catched in the Truth?

Mr. *Att. Gen.* My Lord *Caſtlemaine* may, if he can, catch him in any Thing he gives in Evidence here.

Priſ. My Lord, if your Lordſhip over-rule me, I will ſay no more. Mr. *Attorney* ſays I come to catch him, I confeſs I do.

Mr. *Att. Gen.* You ſhould not aſk him foreign Queſtions.

L. C. J. He aſks a plain Queſtion; why do you labour ſo much that he ſhould not aſk, whether he had ſeen the Divorce? My Lord *Caſtlemaine*, I have aſked the Queſtion for you, Whether or no he ſaid he had ſeen the Divorce? And he does not remember whether he ſaid ſo or no.

Mr. *Att. Gen.* My Lord, I think, with your Lorſhip's leave, that he is not bound to anſwer Queſtions that are not to the Evidence.

L. C. J. If ſo be he would come to make Application, it may be well enough.

Mr. *Att. Gen.* I ſay it for the Method of the Evidence, my Lord, that I would not have theſe Excurſions.

Priſ. I deſire your Lordſhip that I may ſay out what I have to ſay. I ſay this, That no Man in the World that ſpeaks Truth can be catched, neither will Mr. *Attorney* ſuffer me to catch him.

Mr. *Att. Gen.* I ſay you have Liberty to catch him in any Thing that doth belong to the Evidence.

Priſ. I come to ſhew you the Fitneſs of it to this Affair. He comes and tells you, among other Conſults, of *Wild-Houſe*, and my meeting him in *Lincoln's-Inn-Fields*, the Recommendations of Mr. *Langworth*, and going to *Fenwick*'s Chamber, where we talked of altering the Government, and my aſſenting to kill the King: And ſince you have brought the King upon the Stage, I will refreſh your Memory a little; ſince you talk of revenging my ſelf, look you if you did not mention a Divorce to the King, and alſo to my Lord Chief Juſtice.

Mr. *Att. Gen.* My Lord, you are under a Miſtake.

Priſ. Pray give me leave, Mr. *Attorney.*

Mr. *Att. Gen.* You make ſuch Excurſions into foreign Matters.

Priſ. Mr. *Oates*, you did ſay you ſaw a Divorce. I aſk you whether you ſaw a Divorce, and where; or whether you ſaid ſo?

L. C. J. He ſays, he does not remember he ſaid ſo.

Dr. *Oates.* I do not remember whether I ſaid ſo or no, my Lord, I have it down, but indeed I did not ſet my Thoughts a-work.

Mr. *Att. Gen.* He hath given you an Anſwer that may ſatisfy you.

Mr. Juſt. *Raymond.* He hath Papers wherein he hath entered *Memorandums* to refreſh his Memory, but theſe Papers he hath not by him.

L. C. J. Then he may ſay, he hath not.

Mr. *Att. Gen.* That he hath already, my Lord.

L. C. J. Have you any more to ſay?

Priſ. I have, my Lord, if you will give me leave to write down two Words.

Priſ. Mr. *Oates*, you told my Lords the Judges that I did ſay, I was at great Expence about a Divorce?

Dr. *Oates.* Yes.

Priſ. That is very well, Mr. *Oates.*

Mr. *Att. Gen.* Call Mr. *Dangerfield.*

[*Dr.* Oates *was going out of the Court.*]

Priſ. May Mr. *Oates* go out of the Court?

Court. Yes, yes.

Dr. *Oates.* I will be within Call, my Lord.

Priſ. I only ſubmit it to your Lordſhips, Whether or no a Witneſs may go out of the Court?

Dr. *Oates.* I will ſtay then.

Mr. *Att. Gen.* Swear Mr. *Dangerfield.*

Priſ. Pray ſtay.

L. C. J. Why ſo?

Priſ. Here I am a Priſoner, my Lords, and ſubmit it to your Lordſhips, Whether or no Mr. *Dangerfield*, who hath had the Cenſure of this Court, may be a Witneſs? Whether or no Counſel ſhall ſhew Reaſons to your Lordſhip, whether he may ſpeak or no?

Mr. Juſt. *Jones.* You muſt ſhew your Exceptions that you have againſt him.

Priſ. My Exception is this: That he was convicted of Felony, that he broke Priſon, and was outlawed upon it. Beſides this, my Lord, he is a Stigmatick, hath ſtood in the Pillory, and was burnt in the Hand. Now I humbly beſeech your Lordſhips, that you will be pleaſed to hear what my Counſel can ſay: And then, my Lords, if you over-rule, I ſhall give place with all my Heart.

L. C. J. I think it reaſonable, if you deſire Council, that they ſhould be allowed to ſpeak.

Mr. *Att. Gen.* If your Lordſhip pleaſe, when my Lord's Exceptions appear.

Mr. Juſt. *Jones.* What are your Exceptions, my Lord?

Priſ. That I told you beforehand; he is an out-lawed Perſon, he is convicted of Felony.

Mr. Juſt. *Jones.* When was he outlawed?

Mr. *Att. Gen.* In the 27th Year of the King, and we ſay he hath a Pardon in the 30th Year of the King.

L. C. J. How do you prove he was burnt in the Hand, my Lord?

Mr. *Att. Gen.* When was he burnt in the Hand?

Priſ. Call *Briſcoe.*

Mr. *Att. Gen.* We bring a Pardon unto that, and that will reſtore him.

[*A Record produced.*]

Mr. *Att. Gen.* That Record we confeſs; ſhew the Pardon, ſhew the Pardon.

L. C. J. Now go to that for which he was burnt in the Hand.

Mr. *Att. Gen.* Here is a Pardon that extends to them all.

[*The Pardon read:* Decimo tertio die Januarii, Anno Regni, *&c.*]

L. C. J. This does not do it.

Mr. *Att. Gen.* Yes, my Lord, it does.

L. C. J. Is that the *Newgate* Pardon?

Mr. *Att. Gen.* Yes, my Lord.

L. C. J. We have had it in the Court.

Mr. *Att. Gen.* Yes, my Lord.

L. C. J. And Felony and Outlawry is in it.

Mr. *Att. Gen.* Yes, my Lord.

L. C. J. Where is that for which he was burnt in the Hand?

Mr. *Att. Gen.* For that we give an Anſwer; he was received to the Benefit of his Clergy; and he was burnt in the Hand, and his Pardon is after that too.

L. C. J. So it is.

Mr. *Att. Gen.* Then his Pardon anſwers them all.

L. C. J. Now you ſee, my Lord, you think *Dangerfield* ought not to be a Witneſs, who hath gone through ſo many Puniſhments, outlawed for Felony, and burnt in the Hand for Felony: Mr. *Attorney* makes Anſwer, We have a Pardon, and by that he is reſtored, as he ſays, to be a Witneſs again. If you deſire Council to ſpeak to this Point, Whether or no a Man branded and burnt in the Hand for Felony, and afterwards is pardoned, is capable of being a Witneſs? I ſee no Reaſon to deny it you.

Mr. *Att. Gen.* If there be Matter for Counſel to ſpeak, in that Caſe we muſt ſubmit, if your Lordſhip make it a Doubt.

L. C. J. I do for my own Part: In this I am clear; if a Man were convicted of Perjury, that no Pardon will make him a Witneſs, becauſe it is to do the Subject wrong. A Pardon does not make a Man an honeſt Man; it takes off Reproaches; and the Law is wiſe in that, the Law will not ſuffer endleſs Contumelies to be heaped upon Men, nor to be called perjured Raſcals, and ſuch Things; it is only to prevent upbraiding Language, which tends to the Breach of the Peace. But, in my Opinion, if a Man ſtands convicted in Court for Perjury, no Pardon can ever make him a Witneſs, and ſet him upright again. But that is a different Caſe from this; we are upon this ſingle Caſe, Whether a Man that is burnt in the Hand for Felony, whether a Pardon can ſet him right or no? For this I make more doubtful than the other; for a Man, may be, that hath committed a Robbery, would be afraid to forſwear himſelf; for though one is a great, the other is a greater Sin, and that in the Subject Matter; which conſidered, I think it reaſonable to allow my Lord Council to ſpeak to that ſingle Point, That a Perſon being burnt in the Hand for Felony, and afterwards pardoned, Whether he is capable of being a Witneſs?

Priſ. Then I do name Mr. *Jones*, Mr. *Saunders*, and Mr. *Darnal.*

L. C. J. Very well.

[*Mr.* Saunders *was called, but was not in Court.*]

L. C. J. Are you prepared, Mr. *Jones*, to ſpeak?

Mr. *Jones.* No, my Lord.

Mr. Juſt. *Jones.* My Lord, do you except againſt that one Particular?

Priſ. I ſtand upon both, his being pilloried and burnt in the Hand.

L. C. J. Will you admit that he ſtood in the Pillory?

Mr. *Att. Gen.* I know nothing of it.

L. C. J. I will tell you, my Lord, you will ſee whether it be neceſſary to protract this or no; for your Council will hardly undertake to argue unprepared about this Point; and if the Trial ſhould be adjourned, it would be very troubleſome. I think it the Duty of my Place to diſcharge my Conſcience for you and againſt you, as the Matter ſhall fall out; and if ſo be that you ſhould inſiſt upon it, and he be capable of being a Witneſs, ſuppoſing it ſo, yet I muſt ſay, you may give in the Evidence of every Record of the Conviction of any Sort of Crimes he hath been guilty of, and they ſhall be read. They ſay laſt Day there were ſixteen; if there were an hundred they ſhould be read againſt him, and they ſhall all go to invalidate any Credit that is to be given to any Thing he ſhall ſwear.

Priſ. My Lord, I humbly ſubmit myſelf to your Lordſhip; ſixteen we have, I bring but ſix, you ſhall have them, Mr. *Attorney*, when you pleaſe.

L. C. J. My Lord, if you think it worth your while to put it to Council to argue, Whether he may be a Witneſs, or whether you think it may be as well for you, ſuppoſing he be a Witneſs, the producing thoſe Things againſt him, or the Records of thoſe Crimes that he hath been convicted of; whether that will be as well for you or no, I leave it to yourſelf to do as you think beſt.

Mr. *Darnal.* I conceive, with Submiſſion to your Lordſhip, that he cannot be a Witneſs.

L. C. J. Are you prepared to ſpeak to it now?

Mr. *Darnal.* My Lord, I am ready to offer ſomewhat to your Lordſhip, why I conceive he ought not to be ſworn: But I deſire firſt, that the Pardon may be read, becauſe many Perſons and Offences are comprized in it.

L. C. J. It is a Pardon for Felonies and Outlawries of Felony in general.

Mr. *Darnal.* If the Perſons and their Offences are ſeverally and ſufficiently pardoned, then my Lord, I will proceed unto the other Point.

Mr. Juſt. *Jones.* The whole is good.

Mr. *Darnal.* Then, my Lord, I conceive, notwithſtanding this Pardon, Mr. *Dangerfield* ought not to be ſworn; and that no Perſon attainted of Felony (though pardoned) can be a Witneſs. My Lord, it hath been adjudged in 11 *Hen.* IV. *quadrageſimo*, That a Man attainted of Felony (as Mr. *Dangerfield* is) though he be afterwards pardoned, cannot be ſworn of a Jury. My Lord, the ſame Queſtion hath been reſolved ſince, in *nono Jacobi.* It is reported in Mr. *Brownlow*'s and *Goldſborough*'s Reports, *Folio triceſimo quarto.* And my Lord *Cook* in Mr. *Bulſtrode*'s ſecond Reports, 154. in *Brown* and *Craſhaw*'s Caſe, is of the ſame Opinion. He ſays, A Man attainted and pardoned cannot ſerve upon any Inqueſt; and that by the ſame Reaſon, the Teſtimony of ſuch a Man for a Witneſs is in all Caſes to be rejected.

L. C. J. Who ſays ſo?

Mr. *Darnal.* My Lord *Cook.*

L. C. J. Men do not ſlight my Lord *Cook*; where do you ſay that is?

Mr. *Darnal.* It is in Mr. *Bulſtrode*'s 2d Reports; in *Brown* and *Craſhaw*'s Caſe, *fol.* 154.

Mr. Juſt. *Jones.* But you ſhould have brought theſe Books hither.

Mr. *Darnal.* I ſuppoſe, Sir, they may be had in the Hall. My Lord *Cook* gives this Reaſon for it in that Caſe; he ſaith, that notwithſtanding his Pardon, he is not *probus & legalis homo.*

Mr. Juſt. *Jones.* That Pardon was before any Judgment; it was a Pardon of Felony before any Trial or Judgment; but here is a Conviction.

Mr. *Darnal.* My Lord *Cook* puts the Caſe there of a Man attainted. And, my Lord, *in duodecimo Jacobi*, it is reported in *Brownlow*'s Reports, *Fol.* 47.

Mr. Juſt. *Raymond.* Which of his Reports?

Mr. *Darnal.* I know but of one ſet out in his Name alone, the other (which is call'd the firſt Part) is ſet out in his and *Goldſborough*'s Name. I have Mr. *Brownlow*'s Reports here, and if your Lordſhip pleaſe you may ſee it.

L. C. J. What is the Page?

Mr. *Darnal.* 47, my Lord; the Caſe there reported is, the King pardon'd a Man attainted for giving a falſe Verdict; yet he ſhall not be at another time impannell'd upon any Jury; and the reaſon given there is, that though the Puniſhment was pardon'd, yet the Guilt remain'd.

Mr. Juſt. *Jones.* That is a very ſhort Note, and not ſo much in the Book as you have mentioned.

Mr. *Darnal.* I writ it word for word out of the Book, Sir, and I am ſure there is ſo much in my Book. My Lord, in Mr. Juſt. *Crooke*'s *Elizabeth*, *fol.* 686, in *Shelborn's* Caſe, it is held, that though the King may pardon *Simony*, yet he cannot enable a *Simoniack* to retain a Living.

L. C. J. The Act doth make him not capable.

Mr. *Darnal.* I conceive, Sir, it is upon the ſame Reaſon, becauſe the Pardon cannot take away the Guilt, though it may the Puniſhment of the Offence.

Mr. Juſt. *Raymond.* He can't diſpenſe with *Simony*, he can't give a Diſpenſation to take a Living.

Mr. *Darnal.* My Lord, upon theſe Reſolutions and the Reaſon of them, I humbly ſubmit it to your Lordſhip, whether Mr. *Dangerfield* (having been attainted of Felony, though he be ſince pardoned) can be a Witneſs.

Mr. *Att. Gen.* My Lord, with your Lordſhip's Favour, this is quite contrary to the conſtant and general Opinion, and contrary to the conſtant Practice: For, my Lord, with your Lordſhip's Favour, when a Man is pardon'd for any Crime, if a Man can't ſay he is a Felon, or he is perjured, then he can't be reckoned ſo to any Intent or Purpoſe whatſoever.

L. C. J. I told you before, it is conſonant to all the Reaſon and Law in the World, that a Pardon ſhould ſtop Men's Mouths from reviling Speeches that ſignify nothing; but it is one thing to ſay Men ſhall not go reviling, that can have no conſequent good, but which tends to the breach of the Peace, and another thing to ſay he ſhall be *Liber.*

Mr. *Att. Gen.* My Lord, when the King gives him a Pardon, it is as if he had never committed the Offence.

L. C. J. He may be Outlaw'd notwithſtanding the King's Pardon, and then it is not as if he had never committed the Offence.

Mr. Juſt. *Jones.* It reſtores him to wage Battel, and it makes him *liber & legalis homo*: For if a Man may wage Battel, he is *liber & legalis homo.*

Mr.. *Att. Gen.* Then, my Lord, if he be ſo, he ſhall be a Witneſs: For, my Lord, in the point of *Perjury*, a Man that after a Conviction of *Perjury* had a Pardon, hath been admitted ſeveral times.

L. C. J. Was the Exception taken, Mr. *Attorney?*

Mr. *Att. Gen.* Yes, my Lord, and he rejected before he had a Pardon.

Mr. Juſt. *Raymond.* How many Men have been Witneſſes that have been convicted of Felonies, after the Kings have pardoned them?

Mr. *Recorder.* I will not adventure to ſay that there hath been a particular Objection made, and ſo that the Court hath had the Debate of it; but I will undertake to give your Lordſhip ſeveral Inſtances of Men that have been convicted, and the Judges ſitting there knew them to be ſo convicted, and did not take Notice of it.

Mr. Juſt. *Raymond.* I ſpeak of *Witherington* particularly.

Mr. *Recorder.* He was a Witneſs, tho' every Man did know that *Witherington* was convicted. I beg your Lordſhips leaves to ſpeak it, that the Judges themſelves did know that he was convicted and had received Sentence of Death.

Mr. *Sol. Gen.* † The conſtant Practice of the Judges is a mighty Concluſion.

† *Sir* Francis Winnington.

L. C. J. What think you, Mr. *Attorney*, if a Man be convicted of Felony, and afterwards hath a general Pardon, is he a Witneſs?

Mr. *Att. Gen.* Yes truly, my Lord, it ſignifies the ſame thing, my Lord, as to be a Freeman again.

Mr. Juſt. *Jones.* He cannot be of a Jury, if he be attainted of Felony; and the Reaſon is, becauſe he is not *probus & legalis homo*; and why he ſhould not as well be of a Jury as a Witneſs I cannot underſtand.

Mr. *Att. Gen.* There is a great deal of difference, my Lord; a great many Men may be admitted to be Witneſſes, that cannot be admitted to be Jurymen.

Mr. Juſt. *Jones.* Shew me any Man that is excluded from a Jury and admitted to be a Witneſs, except in the caſe of kindred.

Mr. *Att. Gen.* An hundred.

L. C. J. Shew me any Man who being of a Jury was excluded, and yet made a Witneſs.

Mr. *Att. Gen.* A Villain was not admitted to be a Juryman, but a Villain was always to be a Witneſs, and that was a point of Infamy.

L. C. J. What Infamy was contained in being a Villain?

Mr. *Att. Gen.* He was a Criminal, he was not *liber homo.*

L. C. J. But tho' he be not a Freeman, he may be an honeſt Man.

Mr. *Recorder.* My Lord *Hobart* ſays, A Pardon takes away the Guilt.

L. C. J. It takes away Guilt ſo far as he ſhall never be queſtioned; but it does not ſet a Man as if he had never offended. It cannot in reaſon be ſaid, a Man guilty of Perjury is as innocent as if he had never been perjured.

Mr. *Att. Gen.* I ſay, if a Man be pardoned, he is as if he were not guilty.

L. C. J. If I were in my Lord *Caſtlemaine*'s Caſe, I would ſubmit it; but when he hath given his Teſtimony, my Lord ſhall have liberty to give in the Records againſt him of what Crimes he hath committed.

Mr. Juſt. *Jones.* I do confeſs, indeed, that my Lord *Hale*, in his little Book *Of the Pleas of the Crown*, ſaith, that a Man that hath had the Benefit of his Clergy is reſtored to his Credit.

Mr. Juſt. *Raymond.* If that Caſe be allowed, it is a plain Caſe; for there is no Man can wage Battel, but he that is *liber & legalis homo.*

Mr. *Recorder.* A Man broke Priſon, and therefore he could not wage Battel; he replies, the King hath pardoned me that Felony, and thereupon he is admitted to wage Battel.

Mr. Juſt. *Jones.* Where there is no Judgment given in the Caſe, and the King doth pardon a Man, that doth make a very great difference.

Mr. *Recorder.* In the Caſe of *Witherington*, my Lord Chief Juſtice did look upon the Records, and afterwards ſaid he was a good Witneſs, and was admitted.

Priſ. If you have Law by you, I muſt conſent.

L. C. J. Then you muſt conſent.

Mr. *Recorder.* There are ſeveral Perſons who have had Pardons after Robberies, and we are forced to make uſe of ſome of theſe Fellows.

L. C. J. Before Conviction.

Mr. *Recorder.* No, after Conviction, my Lord, I have known a Priſoner at the Bar, when my Lords the Judges have been there, to be a Witneſs; and if the Court had made any doubt, it would have been a Queſtion before this time of Day.

Mr. *Att. Gen.* My Lord, if you pleaſe, Mr. *Dangerfield* may be ſworn, if your Lordſhip pleaſes.

L. C. J. My Lord ſhall have the Benefit of excepting againſt his Credibility.

Then Mr. Juſt. Raymond *went down to the Court of Common Pleas, to know their Opinion.*

Mr. Juſt. *Jones.* Have you any other Witneſs in the mean time?

Mr. *Att. Gen.* No, my Lord, he is a principal Witneſs.

Mr. *Sol. Gen.* Beſides the common Practice, here is a Book that ſays he ſhall wage Battel.

Mr. Juſt. *Jones.* That is, when there is a Pardon before Conviction.

Mr. *Sol. Gen.* But here, my Lord, he ſays the *Reatum* is taken away; and then it takes away his Diſabilities too. The Difference can be nothing here before Conviction, and after; becauſe before Conviction he is diſabled from waging Battel: So that that makes no Difference before Conviction, and other Caſes after Conviction; and the Diſability is taken away by the Pardon, and he is reſtored to be a Freeman.

L. C. J. There is a Diſability upon Preſumption, though not upon Conviction.

Mr. *Sol. Gen.* There is the ſame legal Impediment in the one as in the other; but his Credit is left to the Breaſt of the Jury.

Mr. *Recorder.* When a Pardon comes, it takes away not only *Pænam*, but *Reatum*; and the Reaſon my Lord *Hobart* gives is——

L. C. J. Nay, give your Reaſon.

Mr. *Recorder.* For Felony is *contra Coronam & Dignitatem*, is a Fault againſt the King; and when the King pardons it, it ceaſes. And in another place it is ſaid, It pardons all Diſabilities incident to him.

Mr. Juſt. *Jones.* That is before Conviction, ſtill.

L. C. J. Don't my Lord *Coke* tell you expreſly, that the taking a Pardon doth not prove any Offence? You take a Pardon, it ought not to be concluded that you are guilty; but the proper Concluſion of a wiſe Man is, that you would be ſafe. It can't be thought that every Man that hath a Pardon in *England* is guilty of all thoſe Offences that are there Pardoned.

Mr. Juſt. *Jones.* There is a Difference between a general Pardon, and a particular Pardon: When a Man doth accept of a ſpecial Pardon, it muſt be intended that he hath ſome conſciouſneſs of Guilt, or elſe he would not take it; but he that is included in a general Pardon may be clear, becauſe all Men are included in it, unleſs ſome Perſons particularly excepted; and the Difference is taken in that very point, from accepting a general and a ſpecial Pardon.

L. C. J. That the Acceptance of a general Pardon doth not barely of itſelf intend Men to be guilty of the Crimes, is plain, and the Reaſon is moſt apparent; for beſides that Men be ſafe, ſo there be Times that give a Reaſon why Men ſhould have a Pardon, becauſe no Man knows when he is ſafe; Perjury ſo abounds that no Man can ſay he is ſafe, and that is a Reaſon why Men ſhould be very willing to accept of Pardons.

Cl. of Cr. Here's my Lord *Hale*'s Book about the Pleas of the Crown.

Mr. *Recorder.* He ſays, When the King hath diſcharged and pardoned him, he hath cleared the Perſon of the Crime and Infamy.

Mr. Juſt. *Jones.* It is ſo, no doubt.

Mr. *Sol. Gen.* May we paſs upon theſe Authorities?

Mr. Juſt. *Jones.* Sir *Francis*, we are not willing to go about it till it be concluded; for that purpoſe we have deſired my Brother *Raymond* to know the Judges Opinions of the *Common-Pleas.*

Mr. *Recorder.* He doth expreſly ſay, It hath reſtored him to his Credit; and in *Witherington*'s Caſe he did call for the very Records.

Mr. *Att. Gen.* If it reſtore him to his Credit, I hope it ſhall not blemiſh him ſo much when he is ſworn, that he ſhall not be believed.

L. C. J. We won't have any Prepoſſeſſion in that Caſe, his Crimes ſhall be all taken Notice of; is it fit to have Men guilty of all Sorts of Villainies, and not to obſerve it?

Mr. Juſt. *Jones.* In that very Caſe my Lord *Hobart* ſays, A Man may ſay of a pardoned Man, he was a Felon, though he cannot ſay now he is a Felon; and now what can be objected to this Caſe?

Mr. *Recorder.* Things may be objected againſt a Perſon, and his Credit left to the Jury; but the Queſtion now is, Whether he ſhall be a Witneſs or no?

L. C. J. We have Men grown ſo inſolent, they behave themſelves with that vile Inſolence, that now they take upon them to ſpeak againſt whole Societies of Men; as if ſo be there were any thing in them that ſhould render them better than their former Lives or Natures. Humility becomes Penitents, and no wicked Man is ſuppoſed to be a Penitent that hath not that; but theſe carry it with that Inſolency, as if they were not concerned themſelves, when God knows the beſt of them diſcover what they do, by being but Parties themſelves.

[*Mr. Juſtice* Raymond *returned from the Court of* Common-Pleas.]

L. C. J. I will tell you what my Brethren's Opinions are; he hath put it to them on both Accounts, That he was convicted of Felony, and burnt in the Hand for it; that he was outlawed for Felony, and hath a general Pardon. They ſay they are of Opinion, That a general Pardon would not reſtore him to be a Witneſs after an Outlawry for Felony, becauſe of the Intereſt that the King's Subjects have in him. But they ſay further, That where a Man comes to be burnt in the Hand, there they look upon that as a Kind of a more general Diſcharge than the Pardon alone would amount to, if he had not been burnt in the Hand. They ſay, If he had been convicted of Felony, and not burnt in the Hand, the Pardon would not have ſet him upright; but being convicted and burnt in the Hand, they ſuppoſe he is a Witneſs.

Mr. *Sol. Gen.* Swear Mr. *Dangerfield.*

L. C. J. The very Attainder is taken away, and ſo all is gone.

Mr. *Att. Gen.* Come, Mr. *Dangerfield*, are you ſworn?

Mr. *Dangerfield.* Yes, Sir.

Mr. *Att. Gen.* Pray tell what you know of my Lord *Caſtlemaine.*

L. C. J. I perceive my Brethrens Opinion is, That if a Man were convicted of Perjury, if there be no burning in the Hand in the Caſe, that a Pardon could not ſet him upright, becauſe of the Intereſt of the People in the Thing.

Mr. *Att. Gen.* Come, Mr. *Dangerfield*, are you ſworn?

Mr. *Dangerfield.* Yes, Sir.

Mr. *Att. Gen.* Then pray ſay what you do know of my Lord *Caſtlemaine.*

Mr. *Dangerfield.* About this time Twelvemonth, my Lady *Powis* ſent me with a Letter for the Priſoner at the Bar, my Lord *Caſtlemaine.*

L. C. J. Don't you know him?

Mr. *Dangerfield.* Yes, my Lord, this is the Perſon. And, my Lord, the Contents of that Letter I know not: But his Lordſhip made me ſtay till he wrote an Anſwer, and the Contents of the Anſwer, my Lord, were to this Effect: For I returned with the Anſwer to the Lady *Powis*, and ſhe opened and read it while I was preſent.

L. C. J. Aloud?

Mr. *Dangerfield.* Aloud, my Lord.

L. C. J. To you?

Mr. *Dangerfield.* To me.

L. C. J. Who was there?

Mr. *Dangerfield.* Mrs. *Cellier* was there beſides. And the Contents of this Letter were, *This Perſon I like well, and though he be no Scholar, he will ſerve to inſtruct the Youths as he ſhall be directed.* By the Youths were meant the St. *Omer*'s Witneſſes.

L. C. J. How do you know?

Mr. *Dangerfield.* Becauſe I know my Lord was employed for that Purpoſe. I know his Lordſhip did uſe to inſtruct the Youths; and it was a common ſaying among them, when one of them was out of his Part, they uſed to ſay, I muſt go to my Lord *Caſtlemaine.*

L. C. J. What Part?

Mr. *Dangerfield.* That which they were to ſay; and one of them did ſay, I am out of my Leſſon, I muſt go to my Lord *Caſtlemaine.*

L. C. J. When did he ſay ſo?

Mr. *Dangerfield.* Before the Trial, my Lord; and my Lord *Caſtlemaine* went along with them to the Trial, and his Lordſhip complained of ſome ill Uſage that the Witneſſes received there. His Lordſhip was one of the Perſons that employed me to get *Lane* out of the *Gate-Houſe*, my Lord, and his Lordſhip ſent me to a Sollicitor of his, whoſe Name was Mr. *Lawſon* (the Perſon is now in Court), to take an Account how far he had proceeded in this Affair. I did take an Account, and I proceeded in it afterwards, and got him diſcharged.

L. C. J. How came you into my Lord's Acquaintance?

Mr. *Dangerfield.* That was the firſt Time, when my Lady *Powis* ſent me with that Letter, my Lord. A pretty while after this, in the Month of *July*, I went to wait upon his Lordſhip at his Houſe at *Charing-Croſs*, the ſame Place where I found his Lordſhip before; and I was to take his Advice about ſome Letters that came from one *Nevil* alias *Paine.* Thoſe Letters and Liſt of Names I ſhewed his Lordſhip, and he gave his Approbation of them, and deſired good Store of Copies might be writ: For it was of Conſequence, and ought not to be neglected. And aſked me, Are there working Perſons employed in that Buſineſs? And ſaid he, Encourage them, and I will pay my Part. So, my Lord, after there were a great Number of Copies writ of theſe Letters, I writ a Letter to my Lord *Caſtlemaine*, to let his Lordſhip know that the People had finiſhed their Work, and that there was ſomething more to be done as a Gratuity; and then his Lordſhip in anſwer to this Meſſenger (who is here alſo in Court) with a Letter his Lordſhip ſent forty Shillings, for his Part. And Mrs. *Cellier* told me ſhe received forty Shillings, and diſpoſed of it to the Uſe intended; now, my Lord, the Contents of theſe Letters were to the ſame Effect with thoſe Letters and looſe Papers which I conveyed into Colonel *Manſel*'s Chamber; and theſe all tended to the promoting the Sham Plot, my Lord.

L. C. J. Pray tell me what was the Subject of theſe Letters; what was the Subſtance of them?

Mr *Dangerfield.* To the promoting the Sham-plot, my Lord.

L. C. J. That is a General no body knows what to make of.

Mr. *Dangerfield.* I will give your Lordſhip an Account in particular: The Contents of many of them were to this Purpoſe.

L. C. J. Were they not all alike?

Mr. *Dangerfield.* The Copies were the ſame, and there were ſo many Originals to draw Copies from.

L. C. J. Were not the Originals all to the ſame Purpoſe?

Mr. *Dangerfield.* Agreeable in Point of Senſe.

L. C. J. Pray tell us the Purpoſe of them?

Mr. *Dangerfield.* The Purpoſe was, that ſo many Letters ſhould be conveyed into the Houſes of ſeveral Perſons of Quality in this Kingdom, that were called Preſbyterians: For that was the Notion, that all Perſons that were not the immediate Promoters of the Catholick Intereſt, lay under, becauſe they looked upon that Notion to be moſt obnoxious.

L. C. J. Who and where?

Mr. *Dangerfield.* In general, my Lord.

L. C. J. In general, where?

Mr. *Dangerfield.* By my Lady *Powis*, and the Lords in the *Tower.*

L. C. J. Were you by when the Lords in the *Tower* did agree to it?

Mr. *Dangerfield.* When my Lord *Petre* and my Lord *Arundel* did.

L. C. J. What did they agree to?

Mr. *Dangerfield.* My Lord, the Thing is this: After they received an Account from one Mr. *Paine*, I brought a Billet from that *Paine*; wherein was contained a Ground or Scheme of the Preſbyterian-plot; ſo from thence it derived it's firſt Name, my Lord: So that when I came to diſcourſe with the Lords in the *Tower* about it, they called it the Preſbyterian-plot; and Mrs. *Cellier* and the Lady *Powis* ſaid, This is a Notion that will do the Buſineſs, as it is moſt obnoxious, and as beſt to our Purpoſe.

Mr. Juſt. *Jones.* How far was my Lord *Caſtlemaine* concerned in this?

Mr. *Dangerfield.* I have not heard his Lordſhip ſpeak of it under that Notion.

L. C. J. Pray let us hear what you can ſay againſt my Lord *Caſtlemaine.*

Mr. *Dangerfield.* Now, my Lord, ſome conſiderable Time after I had gotten *Lane* out of Priſon, I was employed by ſeveral other Perſons, his Lordſhip was one, and he ſent me to his Lordſhip's Sollicitor, that is now in Court. A pretty while after this, and the Letters and Liſts of Names, containing Matter to the ſame Effect as I told you before, as thoſe in *Manſel*'s Chamber, and all tending to the Credit of the Sham-plot, or the Preſbyterian-plot: Now, my Lord, a pretty while after this, in *Auguſt*, as near as I can remember; about the Middle of *Auguſt*, I went to wait upon his Lordſhip the very next Day after I had been treated withal in the *Tower* to kill the King, whom God preſerve, my Lord; and his Lordſhip had a Servant then in the Room, and he ſent his Servant down Stairs, and looked upon me with a very auſtere Countenance: Said he, Why would you offer to refuſe the Buſineſs for which you were taken out of Priſon?

L. C. J. To you?

Mr. *Dangerfield.* To me, my Lord.

L. C. J. Who was by?

Mr. *Dangerfield.* No body but his Lordſhip and my ſelf; for he ſent his Servant out before: So he aſked me, Why I would offer to refuſe the Buſineſs I was taken out of Priſon for? I aſked his Lordſhip, What that was? Said he, Was not you at the *Tower* Yeſterday? Yes, my Lord, I was. Would your Lordſhip have me kill the King, I ſuppoſe that's the Buſineſs? Yes, that is, ſaid he. Upon which my Lord fell into ſuch a Fury, that I was forced rudely to leave the Room, and went down Stairs. I think at the ſame time his Lordſhip was writing the Compendium of the late Plot; for there I ſaw ſome Words in a Paragraph that lay upon the Table, which I afterwards ſaw in that Book. There was Ink ſet upon the Table, and open in his Lordſhip's Hand. And his Lordſhip did uſe in his Diſcourſe to call his Majeſty Tyrant.

L. C. J. Have you heard him? In what Company?

Mr. *Dangerfield.* In his familiar Diſcourſe. As to aſk when his Majeſty will return from *Windſor?* Says he, When the Tyrant pleaſes. And I remember I heard his Lordſhip mention the Word Tyrant to Mrs. *Cellier* at *Powis-houſe.*

Mr. *Att. Gen.* How came that Diſcourſe about killing the King? What was the Occaſion of that Diſcourſe?

L. C. J. Had you refuſed it to my Lord?

Mr. *Dangerfield.* Yes, my Lord, I refuſed.

L. C. J. What did you ſay to him?

Mr. *Dangerfield.* I ſaid, any body but my King, my Lord.

L. C. J. He ſaid, Why did you refuſe to do that for which you were taken out of Priſon? What is that, my Lord? Was not you at the *Tower* Yeſterday? Why won't you do it? What is it, my Lord? Is it to kill the King? I ſuppoſe that it is, ſaith he, that your Lordſhip intends. Yes, ſays he, That is it, why won't you do it? That is what he ſays.

Mr. *Att. Gen.* That is the Evidence we give.

Mr. Juſt. *Jones.* You ſay he was very violent?

L. C. J. Was you ever in his Company afterwards?

Mr. *Dangerfield.* No, not after that, my Lord, that I know of.

L. C. J. What kind of Fury did he ſhew to you at that Time?

Mr. *Dangerfield.* My Lord, he was in a great Rage, as his Lordſhip is very cholerick; he was buſtling about, and I knew not what he intended to do, and I was unwilling to ſtand the Teſt of his Anger. His Lordſhip ſeemed by his Look to be meditating Revenge.

L. C. J. How?

Mr. *Dangerfield.* I ſay this, After his Lordſhip had ſent his Servant out of the Room, ſaid he, Why would you offer to refuſe the Buſineſs for which you were taken out of Priſon? Said he, Were not you at the *Tower* Yeſterday? Said I, Yes, my Lord, I was. Would you have me kill the King? Is that the Buſineſs? Yes, that it is, ſaid my Lord very angrily.

Priſ. When did you go to the *Tower?* Was this the next Day after it?

Mr. *Dangerfield.* The next Day after it.

Priſ. Mr. *Dangerfield*, Pray let me aſk you one Queſtion. Did not I threaten to kill you, or have ſome of my Servants kill you, if you came unto me again?

Mr. *Dangerfield.* One Time his Lordſhip ſaw me at my Lady *Powis*'s Houſe, and he ſhewed me a very particular Favour. I ſpeak it in the Preſence of Almighty God, nothing out of Revenge, nor for any Sort of Intereſt.

Priſ. Was I never angry with you but at that time?

Mr. *Dangerfield.* No, my Lord, I know not of any other Time that your Lordſhip was angry.

L. C. J. Now, what ſay you, my Lord?

Priſ. The firſt Thing I deſire to do, is, Here are two Gentlemen give in Evidence againſt me, the one is Mr. *Oates*, and the other Mr. *Dangerfield.* Mr. *Oates* ſays, That he in *Spain* did ſee ſeveral Letters from me: That when he came over into *England*, he brought a Letter from *Spain* to me, that that Letter was given to the Provincial, and the Provincial (he ſuppoſes) gave it to me. Now, my Lord, I only deſire this, that the firſt Thing that ſhall be done, is, that you will pleaſe to call Mr. *Parker*, who will ſhew you what a kind of Man Mr. *Oates* is. And I am glad, ſince you ſay that Mr. *Dangerfield* is a good Witneſs, that I can prove that every Word he ſays is a Lie. And ſo begin with Mr. *Oates*.

Priſ. I would offer you a Record, a Record of ſome particular Actions from *Haſtings*.

L. C. J. Read the Record.

The Record read.

L. C. J. What Uſe can you make of this?

Priſ. My Lord, the Caſe is only this, my Lord, I will tell you, here is Mr. *Oates*, this is only to ſhew what kind of Man this Mr. *Oates* is. Mr. *Oates* he comes and accuſes a Man at *Haſtings* for Buggery, there he is indicted and comes to his Trial, and then he is found innocent: Now, my Lord, I ſent for this Mr. *Parker*, to tell your Lordſhip what kind of Man this Mr. *Oates* was, and for that Purpoſe ſhew the whole Proceeding.

L. C. J. My Lord, you ſhall have all the Juſtice in the World; but we muſt have right done to the King's Evidence. You have brought in a thing, whereby all you can make againſt Mr. *Oates* is this, that he was the Proſecutor of a Man for the Crime of Buggery, and is ſuppoſed to have taken his Oath there, and notwithſtanding the Jury would not believe him, and found the Man Not Guilty.

Priſ. My Lord, I come to ſhew you the Motives how the Jury came to clear him, that is, by proving this Man was in another Place at that time, and ſatisfied the Court and Jury, that he was from Eleven o'Clock or ſooner, till Eight or Ten o'Clock with them in Company; where it was only the Malice that was between *Oates* and *Parker*; and ſeveral Witneſſes that were in the Place where he ſaid the Buggery was committed, ſaid that he was not there; and the Witneſſes poſitively ſaid they were with him, and all looked upon Mr. *Oates* as a deteſtable Man, and ſent him out of the Court.

L. C. J. Do you prove this by any but *Parker?*

Mr. Juſt. *Raymond.* This ought not to be admitted; for if it be, Mr. *Oates* ſtands here to anſwer all the Faults that ever he committed.

L. C. J. Here is the Caſe: Suppoſing it be true now, that Mr. *Oates* proſecuted a Man for Felony, and he gave Teſtimony, ſuppoſing it ſhould be ſo, and yet the Jury acquitted him; what uſe can you make of it? You can make no Inference; it is a thing we muſt allow all the Juries in *England:* For there is Witneſs generally given on both Sides; and when there are for the Plaintiff, the Defendant's Evidence are all perjured; and when for the Defendant the Plaintiff's Evidence are perjured.

Priſ. My Lord, this is the Inference. Thus much I make of it, that this *Parker* is innocent. *Oates* ſwears poſitively he did ſo, the other ſwears poſitively this Man was not there; to ſhew the Malice *Oates* had againſt him.

L. C. J. My Lord, you can go no further than you have gone. The Reſult of all is, that the Jury found him Not Guilty; for what Grounds no Man can come to ſay, but the Jurymen themſelves. No Man can tell what prevailed with the Jury to find him Not Guilty, that is in their own Conſciences, and theſe are Things that cannot be examined. His Jury, notwithſtanding Mr. *Oates* was the only Proſecutor, they found him Not Guilty, and it amounts to nothing.

Priſ. My Lord, there is another thing: While this Man was in Priſon, what does *Oates* do, but comes here to *London*, accuſes the Father, who was a conſiderable Man in the Town, a Juſtice of the Peace, and Mayor the Year before; accuſes him becauſe he ſhould not aſſiſt his Son; accuſes him before the King of ſpeaking ſcandalous Words; then he gets him by a Meſſenger brought up before the Council: The King was preſent at the Hearing, and there it was proved to the King, as the Order of Council ſhews, that he was an honeſt Man, and ſo the Council ſent *Oates* away with the greateſt Contempt, and freed the other Man.

L. C. J. Was this before the Plot was diſcovered?

Priſ. Yes, my Lord, in purſuance of it.

L. C. J. You ſaid it was that he ſhould not help his Son, his Son was not free.

Priſ. No, he was in Priſon, my Lord.

Mr. *Recorder.* My Lord may think it hard if he hath not ſome competent Liberty; but he muſt keep to the Buſineſs. You ſay, that notwithſtanding he hath the Opinion of the Court, that the Jury muſt take Notice; then the Jury muſt take Notice it ſignifies nothing.

Priſ. Very well. Having told you this, I deſire you would be pleaſed to take Notice, after *Oates* was thus forced to run away from *Haſtings*, here it ſeems he was converted to be a Papiſt, by a Perſon whom Mr. *Oates* hath ſince converted to be a Proteſtant; and you ſhall ſee what an Account this Gentleman will give of him.

L. C. J. What is his Name?

Priſ. Hutchinſon.

L. C. J. What will you do againſt him?

Priſ. Several things, my Lord.

L. C. J. You muſt not do it: If you are able to diſprove Mr. *Oates* in any of theſe Particulars, you may do it. If you alledge Teſtimony againſt the particular Matter he hath ſworn, you will do very well; but pray, my Lord, keep to that.

Priſ. I will, my Lord; I will ſubmit any thing to your Lordſhip's Commands; and therefore, my Lord, I will tell you for what Reaſon I ſent for this Man, to tell you how Mr. *Oates* went to *Spain*, and how he lived in *Spain*.

L. C. J. If you can ſhew the Jury any Reaſon why they ſhould not believe his Evidence, that will be very proper.

L. C. J. What is your Name?

Hutchinſon. My Name is *Hutchinſon*.

Priſ. Mr. *Hutchinſon*, pray ſay what you have to ſay, and not follow Mr. *Oates*'s Method: I only aſk you this Queſtion, Sir, Whether you did convert this Man, that is, reconcile him to the Church of *Rome?*

Hutchinſon. Yes, my Lord, that I did.

L. C. J. You ought not to aſk him ſuch Queſtions, you bring him in danger of his Life; you are not to aſk him ſuch Queſtions.

Mr. *Recorder.* Let us ſee the Statute-Book.

Cl. of Cr. It is High-Treaſon.

L. C. J. You thought this had been meritorious now, and it is High-Treaſon.

Mr. *Recorder.* This it is to abound in a Man's own Senſe. We muſt beg your Lordſhip's Advice in this.

L. C. J. Are you a *Proteſtant* now?

Hutchinſon. Yes, my Lord.

Priſ. He was a Prieſt, and confeſſes his Error.

L. C. J. Did you know *Oates* firſt in *Spain?*

Hutchinſon. No, my Lord, I knew him firſt here; and we were in Company, and I told him he could not be a true Prieſt, ſince he was of the Church of *England*.

Mr. *Att. Gen.* He offers ſuch Things as are not Evidence.

L. C. J. Pray what do you know of his Employment in *Spain?*

Hutchinſon. I received Letters from him when he was in *Spain.* He went over to ſtudy Philoſophy and Divinity there, and I ſaw his Recommendations to the Rector of *Liege.*

L. C. J. Did you ſee him?

Hutchinſon. Yes, my Lord, I did ſee him before he made this Diſturbance.

L. C. J. What Diſturbance? Do you know? What Diſcourſe had you with him?

Hutchinſon. I employed him in writing for me.

L. C. J. Writing what?

Hutchinſon. In writing certain Things againſt the Corruption of the Church of *Rome.* He had 10 *s.* I gave him, and this was before the Diſcovery he made (as he pretends) of the Plot. And he told me he would ſuffer no more for Conſcience-ſake: *It is an hard Thing*, ſaid he, *Mr.* Berry, *for a Man to want Bread*; upon which I gave him 10 *s.*

L. C. J. He ſays, Having been formerly with Mr. *Oates*, he employed him to tranſcribe many Things for him; and Mr. *Oates* ſaid to him, *He was reſolved no more to ſuffer for Conſcience ſake. How*, ſaith he, *not ſo? Oh, but, Mr.* Berry, ſaid he, *it is a very ſad Thing to want Bread.* And upon that, he ſays, he gave him 10 *s.* for his Pains in writing.

Hutchinſon. And hereupon, my Lord, in *May* was Twelvemonth he ſent for me, when I heard he had done ſome more Miſchief; and I went to him, my Lord.

L. C. J. That was after the Diſcovery?

Hutchinſon. Yes, my Lord, upon that he was very kind to me, and gave me 20 *s.* Said he, *Mr.* Berry, *you have been civil to me, and you ſhall never want any thing ſo long as I have it.* Said I, *Mr.* Oates, *are theſe Things true that you ſwear againſt the Jeſuits?* Said he, *As I hope for Salvation they are.* And that was the trueſt word he ſpake theſe three Years. *Then*, ſaid I, *Mr.* Oates, *anſwer me this only one Thing. There are an hundred and twenty Perſons that ſaw you every Day, and dined and ſupped with you at St.* Omers, *and theſe you have recommended to me for virtuous People, and I know them to be ſo.* He ſaid, *They are Outlaw'd Men.*

L. C. J. What did Mr. *Oates* ſay more?

Hutchinſon. He was with me frequently, my Lord.

Mr. *Recorder.* He paid your *Angel* well when he gave you 20 *s.*

Hutchinſon. Mr. *Oates*, ſpeak the Truth: There is a God in Heaven.

Dr. *Oates.* Shall I be allowed to ſatisfy the Court as to this Evidence? I will give the Court a very good Account.

L. C. J. The Subſtance is this; that you were poor. Is it true that he gave you 10 *s.?*

Dr. *Oates.* My Lord, I believe I might not have much Money among them.

L. C. J. And you ſaid, *You would ſuffer no more for Conſcience Sake?*

Dr. *Oates.* That is not ſo, my Lord.

L. C. J. And, *That it is an hard Thing to want Bread?*

Dr. *Oates.* My Lord, I never wanted Bread.

Hutchinſon. But you ſaid ſo to me, Mr. *Oates.*

Mr. *Att. Gen.* Hark, Mr. *Hutchinſon*———

Dr. *Oates.* To ſhew the Invalidity of this Evidence, my Lord, the Biſhop of *London* hath turned him out of his Living at *Barkin.*

L. C. J. What is that?

Dr. *Oates.* To ſhew that he is not fit to be truſted.

L. C. J. Why, you have never a Living.

Dr. *Oates.* Yes, I have, my Lord.

L. C. J. Where?

Dr. *Oates.* In *Kent*, my Lord.

L. C. J. How long have you had it?

Dr. *Oates.* I was reſtored to it laſt Summer.

Mr. *Recorder.* He ſays that he had Diſcourſe with him concerning his Prieſthood; whether Mr. *Oates* thought himſelf to be a good Prieſt; that is, as he was made by the Order of the Church of *England?*

Mr. *Att. Gen.* He ſays, He converted Mr. *Oates* to be a Papiſt.

Dr. *Oates.* And I have a Charge of High-Treaſon againſt that Man, for ſeducing me from my Religion, my Lord; I will ſwear he turned me to the Church of *Rome*, and I deſire it may be Recorded.

Dr. *D.* I have one thing to tell your Lordſhip, the Man is mad, he is diſtracted.

L. C. J. This Doctor of Divinity is a very honeſt Man, he will tell you.

Dr. *D.* He was my Curate at *Barkin*, and my Lord of *London* having ſome Information againſt the manner of his Preaching, ſent me word to *Rippon* he would provide me another Curate; on *Saturday* laſt, dining with him, my Lord told me he was diſtracted.

Mr. *Recorder.* His Behaviour is a very concurrent Teſtimony.

Mr. Juſt. *Raymond.* I appeal to my Lord, if I did not tell him, as he came into the Court, that he was a diſtracted Man.

L. C. J. Call another Witneſs.

Priſ. Here's a Gentleman was his School-fellow at *Valladolid.* I aſk you, Mr. *Armſtrong*, Whether you knew any Thing of Mr. *Oates* there?

L. C. J. How long had he been there?

Armſtrong. He was three Months there before me.

L. C. J. How long was he there in all?

Armſtrong. A matter of a Month.

L. C. J. Was he not there four Months?

Armſtrong. Yes, a matter of four Months in all.

L. C. J. He ſays, he had been there three Months before he came, and a Month after he came; and that then he was but a common Scholar.

Dr. *Oates.* My Lord, I will ſatisfy the Court when they queſtion me.

L. C. J. In what would you ſatisfy us?

Dr. *Oates.* About being a Scholar. I was ready to commence when they came; but being they were Strangers in the Town, not being Town-Scholars, and not undertaking Philoſophical Dictates, the Fathers did pray me to ſhew them the way to School; and I went with them two or three times.

L. C. J. Call another, my Lord.

Priſ. Mr. *Palmer* and Mr. *Doddington.*

L. C. J. Did you know Mr. *Oates* at St. *Omers?*

Palmer. Yes, my Lord, and he was an ordinary Scholar there, and din'd and ſupp'd with us.

L. C. J. You ſaid he din'd at another Table.

Palmer. Yes, my Lord, he did dine at a Table by himſelf, but it was at the ſame time.

Dr. *Oates.* Had I Scholars Commons? Pray, my Lord, aſk them that.

Palmer. He had the ſame Commons that we had; but they had a Reſpect for him, as he was an ancienter Man, and that was the Reaſon that he had more Freedom than the reſt.

Priſ. My Lord, he ſays he came from St. *Omers* at the Conſult: Pray, Sir, who did you come along with? Did you come with *Hilſley?*

Dr. *Oates. Hiſley* came with me in the Pacquet-Boat.

Priſ. Call Mr. *Hilſley* and *Oſbourne.* My Lord, this Gentleman—I would bring nothing to offend your Lordſhip, or nothing that hath been old, if it had not ſome new Inference from it; therefore, my Lord, this is the Reaſon that I ſent for Mr. *Hilſley.* Mr. *Hilſley*, did you come with Mr. *Oates* in *April* in the Pacquet-Boat?

Hilſley. No, my Lord.

Priſ. You left him at St. *Omers?*

Hilſley. Yes, my Lord.

Priſ. Now, my Lord, I have ſeveral Witneſſes to prove this. And pray, Mr. *Oſbourne*, tell my Lord what he ſaid to you.

Oſbourne. My Lord, about the latter end of *April* I heard Mr. *Hilſley* was in Town; I went to ſee him, and one time at a Coffee-houſe about the *Turnſtile* we fell in Diſcourſe.

L. C. J. My Lord, you ſay you have two Perſons of Quality: I will tell you, my Lord, what you ſhall expect; I will not be for one, and not for t'other; but be equal as near as I can. If he comes only to teſtify what *Hilſley* told him, it ſignifies nothing.

Priſ. I do depend upon *Hilſley*; but this is that *Hilſley* told him, that there was one *Oates* at St. *Omers.*

L. C. J. That is no Evidence, nor can Ladies of Quality prove by their own Experience what Mr. *Hilſley* affirms, that *Oates* came not over with him.

Priſ. My Lord, they can tell; and one Lady, a Proteſtant, that talking with this Gentleman before the Plot———

L. C. J. This is only Diſcourſe what another Man ſays; if Mr. *Oates* himſelf ſhould have ſaid ſo, then indeed it is proper: But to ſhew you this, it is impoſſible, ſuppoſing they ſpeak truth; that is, if they do witneſs what they do not, that long before they heard of the Name of *Oates*, this Gentleman ſhould tell them, one *Oates* was left at St. *Omers*; it ſignifies nothing.

Priſ. Does not that confirm Mr. *Hilſley*'s Teſtimony?

L. C. J. No, indeed.

Priſ. I only refer this to you, my Lord; *Hilſley* ſays, in *April* he did leave *Oates*, and here are four or five Witneſſes that *Hilſley* told them ſo.

Mr. Juſt. *Jones.* All that my Lord ſays, is this, that he did leave Mr. *Oates* at St. *Omers.* If it be objected, they are Catholicks, as they call them; ſays my Lord, *Hilſley* did tell this Story before there was any Plot. Why ſhould he tell them ſo? It is not in favour of that Religion that he ſpeaks; but the time of teſtifying ſuch a thing ſhews he ſpeaks true. This is all.

Priſ. This is the Inference; this is only to corroborate and ſhew you the Credit of his Teſtimony.

Mr. Juſt. *Raymond.* It may be a Miſtake, tho', and it is of no more Force than what he ſays now.

Mr. *Att. Gen.* They were all miſtaken in that Matter.

Dr. *Oates.* My Lord, he did leave me at St. *Omers*, but I overtook him at *Calais.*

L. C. J. Will you ſwear it, Mr. *Oates?*

Dr. *Oates.* I ſay, upon my Oath I did it.

L. C. J. It were a great Matter if you had any body to prove, that this Gentleman came alone; but that is ſtill but one Man's Teſtimony.

Priſ. But here is Confirmation to his Evidence that he could not invent it.

Mr. *Att. Gen.* You had 16 once, but the contrary was proved and believed, and ſo it may be again.

Priſ. Call Mr. *Gregſon* and Mr. *Rigby.* Mr. *Gregſon*, were not you Landlord to Mr. *Oates* before the Plot was diſcovered? How long before the Plot did he lie at your Houſe?

L. C. J. What time?

Gregſon. A Week before *Eaſter*, 77.

Mr. Juſt. *Raymond.* When did he go away from you, Sir?

Gregſon. The *Sunday* after *Eaſter-day.*

Mr. Juſt. *Raymond.* When did you ſee him again?

Gregſon. He came to me about *All Saints.*

Mr. Juſt. *Raymond.* The ſame Year?

Gregſon. Yes.

Dr. *Oates.* Who paid for my Quarters? Pray aſk him that, my Lord.

Gregſon. He paid for it himſelf.

Dr. *Oates.* Did not Mr. *Fenwick* pay for it?

Gregſon. He did after you came from St. *Omers.*

Dr. *Oates.* My Lord, when I came laſt from St. *Omers*, I went directly to his Houſe.

Priſ. Was not he in a poor Condition?

Gregſon. He was then indifferently poor.

Priſ. My Lord, this is only to prove his Condition.

Dr. *Oates.* My Lord, I had only what the Jeſuits allowed me.

L. C. J. You had nothing but what they allowed you?

Dr. *Oates.* Nothing elſe, my Lord.

Mr. Juſt. *Jones.* They allowed you a very ſcanty Living.

Priſ. Call Mr. *Littcott.* Mr. *Littcott*, Do you know any thing about a Divorce?

L. C. J. What ſhould he know?

Priſ. Pray, my Lord, don't diſcourage me.

Mr. Juſt. *Raymond.* But you muſt not aſk things that are not to the Purpoſe.

Littcott. My Lord, it was morally impoſſible there ſhould be a Divorce.

L. C. J. Was there any Endeavour by my Lord concerning it?

Littcott. There was no ſuch Deſign.

L. C. J. How was that? But pray mind, you will be morally not believed elſe: Do you know my Lord uſed any Endeavours, in order to obtain a Divorce?

Mr. *Recorder.* That is all that he ſays, *he never knew any thing.*

Priſ. I only ſay this, my Lord, Mr. *Oates* comes here and ſays, that he heard me ſay, that I did ſpend a greal deal of Money. Now if I ſatisfy the Court that I never ſpent a Farthing towards a Divorce———

L. C. J. If he had ſaid, your Lordſhip laid out Sums of Money, then it had been an Anſwer to that, if you could prove you had not.

Priſ. You know I ſtand here accuſed for a great Crime; pray give me leave.

Mr. Juſt. *Raymond.* If it were a matter of Moment, we would.

Priſ. Pray, my Lord, hear me: Here's a Man ſays, I ſpent a great deal of Money about a Divorce? I come to tell your Lordſhip, that this very Man, before your Lordſhips, and alſo before the King; and if your Lordſhips have forgot it, I will ſhew you Witneſſes that he ſpake it before the King, and before the Houſe of Commons, that I did actually ſue out a Divorce: Now I will ſhew, my Lord, that I neither could, nor did go about it.

L. C. J. We are not to take Notice of that now. If he did ſay a falſe Thing before the Houſe of Commons, we cannot take Notice of it now; for we cannot go to try whether he ſaid ſo, and whether that be true or falſe.

Priſ. I humbly beg, my Lord, if this Man that is upon his Oath hath ſworn before the King that he did actually ſee the Divorce, and I prove that it was impoſſible that he ſhould ſee the Divorce, becauſe it was impoſſible to get a Divorce———

L. C. J. What then?

Mr. Juſt. *Raymond.* You muſt not be permitted to prove that; it is not pertinent to the Queſtion.

Priſ. My Lords, with humble Submiſſion to you, he hath told me this before your Lordſhips, that I ſpent a great deal of Money about a Divorce.

L. C. J. My Lord, you will be ſatisfied, when we have acquainted you what the ordinary Proceedings of a Court of Juſtice are in Matters of this Nature: what is and what is not to be admitted. If you ſhould come to prove Mr. *Oates* had falſly ſworn a thing in another Court, and five or ſix Witneſſes ſhall come and ſay it is not true; we are not to hearken to it. The Reaſon is this: Firſt, you muſt have him perjured, and we are not now to try, whether that Thing ſworn in another Place be true or falſe: Becauſe that is the way to accuſe whom you pleaſe; and that may make a Man a Liar, that cannot imagine this will be put to him: And ſo no Man's Teſtimony that comes to be a Witneſs, ſhall leave himſelf ſafe. And this is another Caſe, If he ſwore in another Place what is contradictory to what he ſays now; then it is proper. If you could prove that he had ſworn in another Place that he never ſaw you, it is very proper: But now to us he ſays, that he doth not remember whether ever he had ſeen a Divorce, or that you had ſued out a Divorce. All that he remembers is, that you ſaid you had expended a great deal of Money about a Divorce, and this is all he teſtifies here.

Priſ. My Lord, my Evidence againſt Mr. *Oates* is this, that he waves what he ſaid before, when I came to aſk him, and ſays, I don't remember. Now, my Lord, if he lies in one thing he may in another.

Mr. Juſt. *Raymond.* No Man can remember all the things that ever he did in his Life.

Priſ. I have Witneſſes to appeal to, to witneſs every thing; and I repreſent it here to you, that I would with all my heart have indicted him of Perjury, but for Mr. *Attorney General:* For I employed two to attend the Clerk of the Peace for Copies of the Indictment againſt Mr. *Langhorn* and Mr. *Ireland*; they did come to the Clerk of the Peace; ſaith the Clerk of the Peace, I can't do it without Mr. Attorney's Authority. My Lord, ſaith he, I would give them you with all my Heart, but I muſt have leave from the Table.

Mr. *Att. Gen.* No, my Lord, I told you I would not give it you without you had an Order from the King, and the Council did not think fit to give it you.

Priſ. I think this a little pertinent.

Mr. Juſt. *Jones.* How doth any thing that your Lordſhip excepts againſt in this Gentleman's Teſtimony contradict it ſelf? All that you accuſe him of is, that Mr. *Oates* had ſaid he heard you ſay, you had ſpent a great deal of Money about a Divorce.

Priſ. I only ſhew, if you are pleaſed to hear it, that he reported to the King that he actually ſaw the Divorce.

Mr. Juſt. *Jones.* That agrees well enough with what he ſays now.

Priſ. He ſaid ſo in your Lordſhip's Hearing.

L. C. J. I don't remember it, if I did I would ſpeak of it; I don't remember it, upon my Word.

Mr. Juſt. *Raymond.* I proteſt I don't remember a Word.

Mr. Juſt. *Jones.* In the Court, did he ſay it?

Mr. Juſt. *Raymond.* Here we have all three that were preſent, I proteſt I don't remember it; but as to the Buſineſs of the Divorce, I might look upon it as impertinent, and ſo poſſibly might not mind what he ſaid.

Priſ. I only offer this to you; and if your Lordſhips command me to deſiſt, I will deſiſt.

Dr. *Oates.* I deſire my Evidence to prove that I was in Town.

Mr. Juſt. *Raymond.* Pray, Mr. *Oates*, you are an Evidence, you muſt be govern'd by Mr. *Attorney.*

L. C. J. It would be very fit, Mr. *Attorney*, to prove that Mr. *Oates* did come over with *Hilſley* in the Pacquet-Boat.

Mr. Juſt. *Raymond.* Mr. *Oates*, I remember very well, gave an Account of his coming over; ſaid he, I did come over with ſuch and ſuch Perſons, and among the reſt was Mr. *Hilſley.* This is only to prove that he was at the Conſult.

Mr. *Att. Gen.* We can prove it.

Records produced againſt Mr. Dangerfield.

L. C. J. Here is, that he was burnt in the Hand, and Out-lawed for Felony, Pilloried for Cheating, twice Pilloried; and ſee whether he was Whipp'd or no.

Mr. *Sol. Gen.* I know nothing of the Pillory.

Mr. Juſt. *Raymond.* Here was a Record of being burnt in the Hand, and a Record for putting away falſe Guineas.

L. C. J. For that he was to ſtand in the Pillory.

Cl. of Cr. Here is one Record for another Shilling Gilt.

L. C. J. Was that in the Pillory too?

Mr. *Att. Gen.* He was fined Fifty Pounds.

Cl. of Cr. Here are three in *Saliſbury* for three ſeveral Guineas, and he was adjudged to the Pillory for them all.

Mr. *Att. Gen.* It was all at one Aſſizes, my Lord.

L. C. J. My Brother try'd him.

Cl. of Cr. He was tried before Mr. Juſt. *Jones*, and to ſtand in the Pillory for all three.

L. C. J. What have you elſe to ſay?

Priſ. Call Mrs. *Cellier* and Mr. *Dowdal.*

L. C. J. What is your Name, Sir?

Dowdal. My Name is *Bennet Dowdal.*

L. C. J. What have you to ſay to him, my Lord?

Priſ. Mr. *Dowdal*, the Caſe is this, Mr. *Dangerfield* tells me I was angry with him at ſuch a time for a Buſineſs at my Houſe; Was I not angry with him at *Powis* Houſe for going to the Lords in the *Tower?*

Mr. *Att. Gen.* Then he did go about it?

Dowdal. Mrs. *Cellier* ſpake to me to ſpeak to Mr. *Dangerfield* not to be troubled at your Anger.

Mr. Juſt. *Raymond.* When was this?

Dowdal. After the Jeſuits died.

Priſ. He proves this, That Mrs. *Cellier* ſpake to him to pacify Mr. *Dangerfield*, and *Dangerfield* did tell him I was angry with him for going in my Name to the Lords.

Mr. Juſt. *Raymond.* He ſays no ſuch Thing, my Lord.

L. C. J. You muſt not aſk him what Mrs. *Cellier* ſaid.

Mrs. *Cellier.* This Day twelve-month he and I had been employ'd in writing Copies of ſome Letters, and I ſent him to my Lord to know if he would go ſomething towards the printing them, and he went from him to the Lords in the *Tower.* In an Hour and half after, my Lord came to me very angry: Mrs. *Cellier*, ſaid he, I thought you would not forfeit your Diſcretion to ſend ſuch a Raſcal to me; if you ſend him to me again, I will bid my Servants kick him. And, ſaid I to Mr. *Dangerfield*, you are not to note that; for he is a very good Man, and may be angry one time and pleaſed another; and I would have ſent him another time, and ſaid he, Pray, Madam, don't ſend me thither, I would rather go an hundred Miles of your Errand.

L. C. J. *Dangerfield*, That Diſcourſe you had with my Lord, was it before the Jeſuits dy'd, or after?

Mr. *Dangerfield.* What Diſcourſe?

L. C. J. When you diſcours'd about killing the King.

Mr. *Dangerfield.* No, my Lord, two Months after.

L. C. J. When was the time that theſe Words were ſpoken?

Mr. *Dangerfield.* When his Lordſhip was in that Paſſion.

L. C. J. When was that?

Mr. *Dangerfield.* My Lord, it was about the Middle of *Auguſt.*

L. C. J. Was you ever in his Company after?

Mr. *Dangerfield.* No, my Lord, I ſaw him once at *Powis* Houſe.

L. C. J. Had he ever been angry before?

Mr. *Dangerfield.* No, not till this time, my Lord.

L. C. J. Here Mrs. *Cellier* witneſſes, that this Day twelve-month, my Lord was extremely angry, inſomuch, that when ſhe would have had you go on an Errand, you would not.

Mr. *Dangerfield.* My Lord, that time I had been with my Lord *Caſtlemaine*, I went home to Mrs. *Cellier*'s Houſe, which I did then call my home, and ſaid I, my Lord *Caſtlemaine* is moſt violently angry with me.

L. C. J. When was this?

Mr. *Dangerfield.* This was the latter End of *Auguſt.*

L. C. J. But ſhe talks of this time twelve-month.

Mr. *Dangerfield.* It is no ſuch thing, my Lord.

Mrs. *Cellier.* I ſaid, Pray carry this Letter to my Lord *Caſtlemaine:* Pray excuſe me, ſaid he, I had rather go an hundred Miles than go by his Door.

L. C. J. Whereas *Dangerfield* ſays, he had this Diſcourſe in *Auguſt*, Mrs. *Cellier* ſays in *June* or *July*; this Day twelve-month particularly ſhe gave him a Letter, and he ſaid, Pray excuſe me, I would go an hundred Miles for you; but I would not go into my Lord's Company again if I could help it.

Priſ. My Lord, Mr. *Dowdal* can tell it.

L. C. J. Did he acknowledge to you my Lord's Anger in the beginning of *July?*

Dowdal. It was within a Week after the Jeſuits died.

L. C. J. I don't know that.

Dowdal. It was about the twenty-firſt of *June.*

L. C. J. Here are two Witneſſes, one ſays in *June* or the beginning of *July*; ſays Mrs. *Cellier*, this Day twelve-month he came and told me, my Lord was extremely angry with him. And ſhe would afterwards have had him carried a Letter: But he ſaid, Pray excuſe me, I would go an hundred Miles, but he would not go again to him if he could help it. And *Dowdal* ſays, he told him about that time of my Lord's Anger with him.

Mr. *Att. Gen.* Hold your Tongue, Mr. *Dangerfield.*

Mr. Juſt. *Raymond.* What Jeſuits?

Dowdal. The five Jeſuits.

Priſ. If you pleaſe, my Lords, I would only tell you this. My Lords, you ſee that theſe two Witneſſes teſtify that I was angry with Mr. *Dangerfield* in *June*; my Lords, I only ſay this to you, that when I was examin'd at the Council before the King of this Particular, my Lord Chancellor aſk'd him the Particulars of it, and he did confeſs this thing which I now prove. Now, my Lords, I infer this, if I was ſo angry with him for offering to go to the *Tower*, when he went to the *Tower* in my Name——

L. C. J. That they have ſaid, that you were very angry.

Dowdal. *Dangerfield* told me ſo, that he was angry about his going to the *Tower* in my Lord's Name, unknown to him.

L. C. J. Here are two Witneſſes to prove that my Lord was angry with him for going to the *Tower* in his Name; and they both teſtify he was extremely high, and refuſed to carry a Letter to my Lord; and yet he ſays, in *Auguſt* following he had this Diſcourſe.

Priſ. I have now only one thing to ſay what hath paſs'd between Mr. *Oates* and Mr. *Dangerfield.*

L. C. J. Do it as near as you can.

Mr. *Sol. Gen.* We have ſome other Evidence to anſwer this.

Mr. *Att. Gen.* If your Lordſhip pleaſe, we will call two or three Witneſſes to prove the Point. Firſt, to prove this laſt thing, that we have been in my Lord's Company later than my Lord ſpeaks of.

L. C. J. He ſays *Auguſt.*

Mr. *Att. Gen.* We will prove after that time, that is the time that pinches us.

Priſ. My Lady *Powis* is in Court, will you hear her?

Lady *Powis.* My Lord, I never did ſend a Letter by Mr. *Dangerfield* to any body in my life, nor I never read a Letter in Mr. *Dangerfield*'s Preſence, nor never had him ſo much in my Company to read a Letter or any Tittle to him.

L. C. J. I will tell you Gentlemen, what he ſays; Mr. *Dangerfield* ſwears he carried a Letter from my Lady *Powis* to my Lord *Caſtlemaine*, and there was an Anſwer brought back, and that that Anſwer of my Lord *Caſtlemaine*'s was read before him; and (you will do well to call Mrs. *Cellier* in again) my Lady *Powis* doth deny that ſhe ever ſent a Letter by him to my Lord *Caſtlemaine*, or any body elſe, by him in her Life; or that ſhe ever communicated any Letter to him: This is apt Evidence, this is the Truth of it; for it anſwers directly to what he ſays againſt my Lord *Caſtlemaine.*

Sir *Richard Barker.*

L. C. J. What ſay you, Sir *Richard Barker*, can you give an Account of *Oates?* When was Mr. *Oates* in Town? What time that you know of?

Sir *R. Barker.* My Lord, I remember we were once upon this before your Lordſhip.

L. C. J. In 78?

Sir *R. Barker.* Yes, my Lord; the Evidence that I gave, my Lord, was only this, that my Servants told me that Mr. *Oates* had been at my Houſe: It was before *Whitſontide* in *May* 78.

L. C. J. Did you ſee him then? When was it you ſaw him?

Sir *R. Barker.* My Lord, I ſaw him after.

L. C. J. How long after?

Sir *R. Barker.* My Lord, it was about the latter end of *June.*

L. C. J. He ſays, to his own Knowledge he ſaw him in *June.*

Mr. *Att. Gen.* But we have his Servants here too, *Philip Page*, and *Cecily Mayo.*

L. C. J. Do you hear, Mrs. *Cellier*; was there any Letters ſent by my Lord *Caſtlemaine* to my Lady *Powis*, that was read before you and *Dangerfield?*

Mrs. *Cellier.* No, my Lord.

L. C. J. Here are two Witneſſes; my Lady ſays there is no ſuch Thing, and Mrs. *Cellier* ſays it.

Priſ. There is another Thing, that is, the Teaching the Scholars at St. *Omers*, that I taught the Scholars their Leſſons.

—— *Turner.*

Mr. *Sol. Gen.* Pray inform my Lord and the Jury, what time it was you ſaw Mr. *Dangerfield* at my Lord *Caſtlemaine*'s.

L. C. J. What Month can you charge your ſelf to ſay you ſaw *Dangerfield* in my Lord *Caſtlemaine*'s Company?

Turner. I can't ſay juſt the time.

L. C. J. Might it be *Auguſt?*

Turner. I can't well tell, I think it might be about *July.*

Mr. Juſt. *Raymond.* Why do you think ſo?

L. C. J. You are not aſked to accuſe your ſelf in any thing, but when you ſaw them together.

Turner. I was coming down Stairs, my Lord.

Mr. Juſt. *Raymond.* You don't tell when it was.

L. C. J. Tell us whether you can tell or no: If you are doubtful, ſay you are doubtful; but ſpeak the Truth.

Turner. I can't be poſitive.

L. C. J. It might be in *June*, or *July*, or *Auguſt*; but you think *July.*

Turner. Yes, Sir.

Mr. *Sol. Gen.* The ſooner it is after that, the Evidence is the better againſt it.

Mr. *Att. Gen.* Madam, I think your Ladyſhip ſays you never ſent a Letter by *Dangerfield?*

Lady *Powis.* Yes, Sir.

Mr. *Att. Gen.* Nor did you never receive any Notes from him?

Lady *Powis.* I have received ſome Notes from Mrs. *Cellier*, which were his Writing.

L. C. J. But did you ever receive a Letter from my Lord *Caſtlemaine?*

Lady *Powis.* Never, my Lord.

—— *Woodman.*

Mr. Juſt. *Raymond.* What do you ſay, Mr. *Attorney?*

Mr. *Att. Gen.* Heark you, *Woodman*, were you ſent with any Letter?

Woodman. To whom?

Mr. *Att. Gen.* To my Lord *Caſtlemaine*, or any body?

Woodman. I was ſent with one Letter, it was Mrs. *Cellier*'s, my Lord.

L. C. J. To whom?

Woodman. To my Lord *Caſtlemaine*; as I remember, my Lord, I took it from Mrs. *Cellier*'s Daughter.

Mr. *At. Gen.* Did you ever receive any Money of my Lord *Caſtlemaine?*

Woodman. Yes, my Lord.

L. C. J. What was it? How much was it?

Woodman. About three Pounds, or thirty Shillings, I believe.

L. C. J. How do you believe it?

Woodman. To the beſt of my Thoughts it was.

Mr. *Att. Gen.* Was it for *Dangerfield?*

Woodman. My Lord, I don't know that.

L. C. J. Have you any more?

Mr. *Sol. Gen.* My Lord, I have this to ſay, to prove Dr. *Oates* was in *London* in *April* 78.

L. C. J. He doth not deny but he might be here too.

Priſ. I don't diſpute it, my Lord, I have only this one Word more. It is not of Treaſon, but it is againſt my Reputation; becauſe this Man, before your Lordſhip, I think, has accuſed me of it; and I think, my Lord, I ſhall give you very good Satisfaction: That is, that the Boys that came from St. *Omers* were not inſtructed and taught by me. Now, if you pleaſe, my Lord, to give me leave to ſhew it, I have done. Look my Lord, the thing that I can ſay, is this: Mr. *Littcott*—

Mr. Juſt. *Raymond.* You ſee he ſaid it was morally impoſſible.

Priſ. Pray, my Lords—

Mr. Juſt. *Raymond.* I will undertake you will ſay it is time loſt.

L. C. J. I will ſtay ſome time to obſerve to the Jury what I have taken notice of, with all my heart, but I ſhould be gone.

Priſ. I have done, my Lord, I would not ſay any thing to diſguſt any body.

L. C. J. Gentlemen of the Jury, I will deliver my Obſervations in this Cauſe as I would in any Cauſe, to the beſt of my Underſtanding, and I will make thoſe Obſervations that are as natural as I know how to do; and proper for you to take notice of. It is in vain to diſpute what my Lord ſtands indicted of: It is for attempting to murder the King, and change our Government and our Religion. To prove this there have been two Witneſſes only that are material, and that is Mr. *Oates* in the firſt place; and Mr. *Oates* his Evidence, the Sum of it is to be reduced———

L. C. J. Mr. *Attorney*, do you ſtand up to ſpeak any thing?

Mr. *Att. Gen.* If your Lordſhip pleaſes, we will ſum up the Evidence for the King, not to offend your Lordſhip.

L. C. J. If you would be ſhort, Mr. *Attorney*, we would not hinder you of any thing.

Mr. *Att. Gen.* I will be very ſhort.

If it pleaſe your Lordſhip, and you Gentlemen of the Jury, my Lord *Caſtlemaine* is here charged with High-Treaſon. The Proof that we have againſt him is by two Witneſſes, that is, Dr. *Oates* and Mr. *Dangerfield.* Mr. *Oates* he doth ſwear this, namely, That after the Conſult (for I will bring it in ſhort) that after the Conſult that was for killing the King and altering the Government, my Lord *Caſtlemaine* being acquainted with it at Mr. *Fenwick*'s Chamber, did hope it good Succeſs, and that he ſhould come to be reveng'd. Mr. *Dangerfield* he hath prov'd, That being treated with to kill the King, and having refus'd to do it, my Lord *Caſtlemaine* was very angry with him for it, and ſaid, *Why won't you do that for which you were taken out of Priſon?* Here are two Witneſſes expreſs. What is ſaid againſt Mr. *Oates* ſignifies nothing. As to Mr. *Dangerfield*, there are ſome Exceptions, which we muſt confeſs to be true; but he is a Witneſs, and, my Lord, ſuch Matters are to be expected to be proved by ſuch Witneſſes: For if a Man will diſcover Robberies, he muſt go to ſuch Perſons as do ſuch Things; and if Treaſons, it muſt be among them that have been employed in ſuch Things. Tho' he were a diſhoneſt Man before, yet he may be honeſt now: He was never guilty of any Treaſon but as he was employed among them. There are ſome Witneſſes brought to encounter him, and one is my Lady *Powis*, who, as he ſays, ſent him with a Letter to my Lord *Caſtlemaine*; but ſhe ſays ſhe did never ſend a Letter by him: And others ſay, he would never come at my Lord *Caſtlemaine* after he was angry, which was in *June.* Now for that, Gentlemen, you do hear *Turner* ſay, That in *July* or *Auguſt*, for he can't tell which, he thinks it might be *July*, he ſaw *Dangerfield* at my Lord *Caſtlemaine*'s; ſo that That encounters that Evidence.

L. C. J. If Mr. *Attorney* had not interrupted me, I would not have left out any thing of this Nature, for I would be certainly careful where the King's Life lies at ſtake: I would be ſure to preſerve my Sovereign above all things; and therefore no Man ought to think that I ſhould be partial in a Cauſe wherein our Religion, and the Life of the King and the Government is in Danger. But I muſt ſay on the other ſide, That there ſhould be good competent Proofs of theſe Things againſt thoſe accuſed, becauſe their Lives and Fortunes, and Honours, and all are at ſtake. And ſo, Gentlemen, we ſhall diſcharge our Conſciences to the beſt of our Underſtandings, and deal uprightly on both hands.

For the Caſe it ſtands thus: It is truly obſerved by Mr. *Attorney*, That there are but two material Witneſſes to the Charge of this Indictment, that is to ſay, Mr. *Oates* and Mr. *Dangerfield.* Mr. *Oates* his Teſtimony is in two Things; the one cloſe, the other is more remote. That more remote is, That he had a Letter to ſend to my Lord *Caſtlemaine*, which he gave to the Provincial to ſend it, and as he ſays, he ſaw a Letter ſubſcribed *Caſtlemaine*; and that afterwards by ſeeing him write a Superſcription, he could recollect the Character ſo well, that he believed that to be his Hand which he ſaw in *Spain* among the Jeſuits or the Fathers, as they call them there, to whom they communicated that Letter; wherein he mentioned the general Deſign, that is, the bringing in Popery, which is the bringing in the Catholick Religion, as they call it. That is more remote. He ſays, there were Letters paſs'd between them, wherein my Lord approved of ſome Things, and diſapproved of others, which related to the Deſign; by which, ſays Mr. *Oates*, we meant the whole Matter and Tranſaction of killing the King; and that doth appear by that Letter he ſaw of my Lord *Caſtlemaine*'s, for that annexes to deſign the advancing the Catholick Religion. The firſt time he ſaw him he did not know who he was; and there, at *Wild-houſe*, he ſays, That my Lord *Caſtlemaine* ſhould drop out ſome Words which were ſuſpicious, and one thing, as if he underſtood ſomething of this Matter that they had in Agitation.

But more particularly he ſays, That when he came to *Fenwick*'s Chamber, there was the great Matter. They talked before but of the Deſign in general, at *Wild-Houſe*; but afterwards meeting in *Lincoln's-Inn-Fields*, where he was told who he was, they went to *Fenwick*'s Chamber, where they fell a diſcourſing about ſeveral Things that related to the Concern, and at laſt they fell upon the Matter in hand, and ſaid, they were glad to ſee the Fathers ſo unanimous in this Matter: I aſked about what Matter? He ſaid, the killing of the King and bringing in Popery; to which, he ſays, that my Lord ſhould make anſwer, He wiſhed them good Succeſs in their Deſign, and that then he ſhould be revenged. This is the Subſtance of what Mr. *Oates* ſays; againſt whoſe Teſtimony, I muſt tell you, there hath been but little. There is but little thrown upon Mr. *Oates* by way of Diſgrace and Infamy; for that Verdict that the Jury found againſt his Evidence, it is not material, for then every Man muſt be accuſed when the Jury does not go according to the Teſtimony he gives. It is not to be denied, but there is ſomething ſaid againſt him in another Particular, and that is his coming over from St. *Omers*; where he ſays that Mr. *Hilſley* came over with him in the Pacquet-Boat, but Mr. *Hilſley* denies it; Mr. *Oates* would have ſalved it, by ſaying he left him at St. *Omers.* 'Tis true, ſays Mr. *Oates*, but I overtook him afterwards; but he ſays to the Point, that he came not with him. Now, it is not to be denied on the other hand, but Mr. *Oates* might be here, and my Lord of *Caſtlemaine* ſeems to admit it, and it is probable enough Mr. *Oates* might be here. This is all I remember in reference to Mr. *Oates.* You muſt weigh well with your ſelves how probable or not probable what he does ſwear is. But I muſt tell the Jury they are to weigh the Natures of People among themſelves, as they carry Probability or not, or elſe the Confidence of a Swearer ſhall take away any Man's Life whatſoever. And to that Mr. *Oates* ſays firſt, I underſtand not how he ſhould be ſo free, Mr. *Oates* being a Stranger to him, when he knew not my Lord, and doth not know whether my Lord knew him or no. But he ſays, my Lord muſt needs ſee the Jeſuits truſted him, and that might make him more confident: That afterwards going to *Fenwick*'s Houſe, he ſpoke broader in plain *Engliſh.* They were talking of a Deſign to kill the King and bring in the Catholick Religion; and Mr. *Oates* ſays, he wiſh'd them good Succeſs in the Deſign, and that then he ſhould be revenged. How far this Oath is to be taken or not, I muſt leave to your Conſideration.

The next is Mr. *Dangerfield*; for nothing infamous is proved againſt Mr. *Oates.* *Dangerfield* is a Man of whom there is enough. You ſee what Crimes there are; for it is the Duty of every Judge; and I can't ſee how he can diſcharge his Conſcience, and the Duty he owes to the Government, in reſpect of his Oath and Place, if he doth not make thoſe juſt Obſervations to the Jury which are done in all Caſes: That is to ſay, when Men have contracted great Crimes upon themſelves, tho' by Law they may be Witneſſes; yet it hath always been obſerved, and their Credit left to them to conſider of. You ſee how many Crimes they have produced, a matter of ſix great enormous Crimes; and by them you will ſee how far you ought to conſider his Teſtimony. Had Mr. *Dangerfield* been guilty only of being concerned in the Treaſon, and come in as a Witneſs, I ſhould have thought him a very competent Witneſs, for that is Mr. *Oates*'s Caſe; but they prove Crimes of another Sort and Nature, and whether the Man of a ſudden be become a Saint by being become a Witneſs, I leave that to you to conſider, and how far you are ſatisfied in the main.

The next thing is the Oppoſition to his Teſtimony. He hath ſworn that he carried a Letter from my Lady *Powis* to my Lord *Caſtlemaine*, and an Anſwer returned back from my Lord to her, and that my Lady *Powis* did read it in the Preſence of Mrs. *Cellier* and him. Of this my Lady *Powis* hath been aſked (it is true, they are not upon their Oaths, but that is not their Fault, the Law will not allow it), and my Lady *Powis* hath affirmed to it, as much as lay upon her to do, that ſhe never ſent a Letter by Mr. *Dangerfield* to my Lord *Caſtlemaine*, nor any body elſe. And whereas he ſays Mrs. *Cellier* was preſent, ſhe ſays ſhe knows of no ſuch Letter, nor was any read in her Company. And this is a contradicting his Evidence, ſuppoſing him to be a Man otherwiſe untouch'd. And whereas *Dangerfield* ſays, that in *Auguſt* he was with my Lord, and he ſaid, How chance you would not do that thing for which you were brought out of Priſon? *What? Would you have me kill the King? Yes*, ſaith he, *that is it.* And my Lord ſpeaking very angrily and very roughly, made him think it time to withdraw out of his Company, and never come into his Company more; and that this was the time of his Anger, and no other time, my Lord rather complimenting him, as he would ſay, with friendly Salutations. But they produce Witneſſes againſt this. Says Mrs. *Cellier*, This Day Twelvemonth; and ſays t'other, about a Week after the Jeſuits were executed, which was about the beginning of *July*, ſaith ſhe, I would have you carry a Letter to my Lord *Caſtlemaine*; ſaith he, I would not do that, I would go an hundred Miles upon another Errand, but I would not go to him. Another Witneſs ſays, my Lord was mighty angry with him, and told him the Cauſe, becauſe he went in his Name to the Lords in the *Tower.* Firſt, this contradicts what he ſaid, as if there had been no Anger before. The next is, that it is very improbable that my Lord ſhould be angry with him ſo much, that my Lord ſhould be very angry with him for going in his Name to the *Tower*, and afterwards for his refuſing to kill the King; when he ſaid, *Why did you not do that you came out of Priſon for? What, my Lord, to kill the King? Yes, that.* This is an Argument in Oppoſition to his Teſtimony.

The next is a Conſideration for his Teſtimony. *Turner* ſays, in anſwer to that, in *July* he takes it, but can't charge himſelf whether *June*, or *July*, or *Auguſt*, but he himſelf thinks *July*, that he ſaw him at the Lord *Caſtlemaine*'s Houſe. And the King's Council would gather from that, there could not be ſuch an Unwillingneſs to go before that time, it being after the time they ſpeak of that this Man ſaw him there. Whether or no it was in *June*, or *July*, or *Auguſt*, is ſomething uncertain. So that I have repeated, as near as I can, all that is ſubſtantial on either Part; and I have, according to the beſt of my Underſtanding, dealt fairly on both Sides, and obſerved to you what hath been ſworn againſt my Lord, and what hath been ſaid in Contradiction to what they ſwear, and what appears upon Record, as to *Dangerfield.*

There is a great deal of Difference between Mr. *Oates*'s Teſtimony and Mr. *Dangerfield*'s; for you may believe one, when you may perchance not believe another. There are not thoſe Things caſt upon Mr. *Oates* that are upon Mr. *Dangerfield.* Now I muſt tell you, tho' they have produced two, if you believe but one, I think (if ſo be my Brethren's Opinions be otherwiſe, I would be very willingly contradicted in this Matter) if two Witneſſes are produced, both ſpeaking materially to the thing, the one is believed, and the other not. Whether upon theſe two Witneſſes the Jury can find a Perſon guilty, or no? I am of Opinion, it is but one Witneſs, if you don't believe one; and I am ſure one is not ſufficient to find one guilty: And therefore if ſo be you are of another Opinion, let us deal fairly and above-board, that it may appear we deal rightly between the King and his Subjects, and ſo preſerve Men that are accuſed, and not guilty.

Mr. Juſt. *Jones.* I think, in the firſt place, my Lord hath very faithfully delivered the Evidence; and I do think it neceſſary, in a Caſe of Treaſon, that there muſt be two Witneſſes believed by the Jury.

Mr. Juſt. *Raymond.* I never heard any Man queſtion it. If the Law ſays there muſt be two Witneſſes produced, it ſays they muſt be both believed.

L. C. J. Now you have our Senſe of it.

[*The Jury went from the Bar, and returned.*]

Cl. of Cr. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Cr. Who ſhall ſpeak for you?

Jury. The Foreman.

Cl. of Cr. Roger Palmer, Eſq; Earl of *Caſtlemaine* in the Kingdom of *Ireland*, Hold up thy Hand, look upon the Jury.

Cl. of Cr. Is *Roger Palmer*, Eſq; Earl of *Caſtlemaine* in the Kingdom of *Ireland*, Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Jury. Not Guilty.

Cl. of Cr. This is your Verdict, You ſay he is Not Guilty, ſo you ſay all?

Jury. Yes.

XCVIII. *The Trial of* HENRY CARR, *at the* Guild-hall *of* London, *for a* Libel, July 2, 1680, 32 Car. II.

AN Information was filed in the *Crown-Office* againſt *Henry Carr*, which ſets forth, that a certain Plot of a traiterous Conſpiracy was lately had within this Kingdom of *England*, amongſt divers falſe Traitors of this Kingdom of *England*, to put to Death and murder our Lord King *Charles* II. and the Government of this Kingdom of *England*, and the ſincere Religion of God within this Kingdom of *England* well and piouſly eſtabliſhed, to deſtroy and ſubvert, and the *Romiſh* Religion within this Kingdom of *England* to introduce; and that alſo divers Traitors for High-Treaſon aforeſaid, were lawfully convicted and attainted, and other Perſons, for High-Treaſon, aforeſaid, were by due Courſe of Law tried and acquitted. Nevertheleſs, one *Henry Carr*, of the Pariſh of *Sepulchres*, *London*, Gent. knowing well the Premiſes, but minding, and maliciouſly intending the Government of the Kingdom of *England*, and the Adminiſtration of Juſtice in the ſame Kingdom to ſcandalize, and to bring the ſame in Contempt:

The firſt Day of *Auguſt*, in the Thirty firſt Year of our now Lord the King, at the Pariſh of *Sepulchres*, *London*, a certain falſe, ſcandalous and malicious Book, Entituled, *The Weekly Packet of Advice from* Rome, *or the Hiſtory of Popery*, maliciouſly and unlawfully hath printed, and cauſed to be publiſhed: In which Book is contained among other Things, as followeth: There is lately found out by an experienc'd Phyſician, an incomparable Medicament, call'd *The Wonder working Plaiſter*, truly Catholick in Operation, ſomewhat of kin to the *Jeſuits Powder*, but more effectual. The Virtues of it are ſtrange and various. It will make Juſtice Deaf as well as Blind, takes out Spots out of deepeſt Treaſons, more cleverly than Caſtle-Soap does common Stains. It alters a Man's Conſtitution in two or three Days, more than the Virtuoſos Transfuſion of Blood in ſeven Years. Is a great *Alexipharmick*, and helps Poiſons, and thoſe that uſe them. It miraculouſly exalts and purifies the Eye-ſight, and makes People behold nothing but Innocence in the blackeſt Malefactors. It is a mighty Cordial for a declining Cauſe, ſtifles a Plot as certainly as the Itch is deſtroyed by Butter and Brimſtone. In a word, it makes Fools wiſe Men, and wiſe Men Fools, and both of them Knaves. The Colour of this precious Balm is bright and dazzling, and being apply'd privately to the Fiſt in decent Manner, and a competent Doſe, infallibly performs all the ſaid Cures, and many others not fit here to be mentioned:

To the great Contempt of our Lord the King and his Laws, to the great Scandal of the Government of our now Lord the King, and the Laws of this Kingdom of *England*, and the Adminiſtration of Juſtice in the ſame Kingdom; to the evil Example of all others in ſuch a Caſe offending, and againſt the Peace of our Lord the King, his Crown and Dignity.

To which Information appeared in the Court of *King's-Bench*, *Henry Carr*, by his Attorney, *Benedict Brown*, the eleventh of *February*, and having heard the Information aforeſaid, ſaid that he was not Guilty.

Iſſue being join'd, it was tried by Writ of *Niſi Prius*, at the *Guild-hall*, before the Lord Chief Juſtice *Scroggs*, upon the Second of *July*, 1680, where a Jury was ſummon'd, whoſe Names are as followeth:

Benjamin Thorogood.
Richard Blackbourn.
Godfrey Richards.
Leonard Bates.
Philip Harman.
Francis Breerwood.
Thomas Kemble.
William Longman.
John Debman.
Lewis Wilſon.
Henry Laſhoe.
Thomas Salter.
Jeremiah Gregory.
Nicholas Bondy.
George Day.
Nicholas Dawes.
Richard Blaney.
Henry Averie.
Joſeph Hall.
William Bridges.
Thomas Lee.
Richard White.
Randal Dod.
Richard Bowater.

Of all which only Four appeared and were Sworn, *viz.*

Nicholas Bondy.
Leonard Bates.
Henry Averie.
Randal Dod.

Whereupon a *Tales* was prayed and granted, and then were ſworn and added to the principal Pannel, according to the Form of the Statute,

Nicholas Caplin.
Richard Cawtham.
Arthur Young.
William Yap.
James Wood.
Thomas Gilby.
John Odenſel.
Emanuel Conyers.

After which the Court proceeded, and the Recorder began to open the Offence, as follows.

Sir George Jefferies.

Mr. *Recorder.* This Perſon among others, intending to ſcandalize the Government, hath cauſed a Book to be publiſhed, which I have here in my Hand, called, *The Weekly Packet of Advice from* Rome; there are ſome Papers beſides what are bound up together, that are continued on, which, my Lord, would not be amiſs for us that are of the King's Council to take Notice of, not only for the Jury's Satisfaction, but likewiſe for the Satisfaction of this great Auditory, ſome whereof I know come to pick Advantage, and to know whether or no Raſcals may have Liberty to print what they pleaſe. Now all the Judges of *England* having been met together, to know whether any Perſon whatſoever may expoſe to the publick Knowledge any manner of Intelligence, or any Matter whatſoever that concerns the Publick: They give it in as their Reſolution, that no Perſon whatſoever could expoſe to the publick Knowledge any thing that concern'd the Affairs of the Publick, without Licence from the King, or from ſuch Perſons as he thought fit to entruſt with that Affair. But ſuch is the Age that we live in, that a Man that hath Wit enough to libel any Man in the Government, thinks he hath Licence enough to expoſe that Man to publick Knowledge alſo. And they do it under ſpecious Pretences, becauſe they think that any Man may be expoſed to the publick Cenſure that they can either call a Papiſt, or but popiſhly affected, and that Man is either the one or the other, that is not agreeable to every Raſcally Humour that ſome People affect. I acknowledge, my Lord, that any Man that will in a legal manner endeavour to ſuppreſs Popery, ought to be encouraged in his Endeavour, to the utmoſt; but if in caſe any Man will be tranſported with Zeal, becauſe he is of a Party, and under Pretence of endeavouring to ſuppreſs Popery, ſhould ſupport a Party, that Man ought to be detected. The Author of this Packet of *Advice from* Rome, or the Publiſher of it, Mr. *Carr*, that is now the Defendant, he thinks he can ſcratch the Itch of the Age, and that he may libel any Man concern'd in the Government, if he can but call him a Papiſt, or popiſhly affected; let a Man be never ſo honeſt, let a Man be never ſo much for the Support of that Religion that every honeſt Man ought to ſupport, that is, the Proteſtant Religion, as it is eſtabliſh'd by Law, without going to *Rome* or *Amſterdam* for Aſſiſtance. I will not mention the Perſons that are concern'd in it, but I will apply my ſelf wholly to this Matter, that it is the Opinion of all the Judges of *England*, that it is the Law of the Land, that no Perſon ſhould offer to expoſe to publick Knowledge any Thing that concerns the Government, without the King's immediate Licence. Now we are to try whether this Perſon expoſed this Thing to publick Knowledge, and that is the Matter, Gentlemen, that you are to try. The other is the Buſineſs of the Court; we are to ſay whether, if we prove the Fact, this Man is guilty of Puniſhment, and no doubt the Juſtice of the Nation will puniſh him. But when I ſee ſo many ſwarm about me, I am willing to hear what Proof there is.

Sir *Francis Winnington.* I am of Council for the Defendant, I only offer it to your Lordſhip, that the Information may be proved.

L. C. J. Here are two Things we are to keep to, the Matter of Proof according to the Information, and accordingly are we to proceed as in common Juſtice we find the Caſe to be. I muſt ſay that for the Priſoner, he has behav'd himſelf with as much Modeſty as in Duty and Honeſty he ought; but I find that Sir *Francis Winnington* puts you upon proving.

Sir *Francis Withins.* My Lord, we will prove it.

L. C. J. Let them that are not of the Jury go forth, the Jury is no more to be corrupted than the Judge.

Sir William Scroggs.

Sir *Francis Withins.* We muſt be allowed the firſt Part, that there was a Plot.

L. C. J. The Jury may take that upon their Oaths, they know there was a Plot, the certaineſt of any Thing of Fact that ever came before me.

Mr. *Stevens*, Printer.

L. C. J. Did Mr. *Carr* own he writ this Packet, had you any from him?

Printer. I had ſeveral from him.

L. C. J. Of whom elſe had you any?

Mr. *Recorder.* Beſides *Carr*?

L. C. J. You are upon your Oath; from whom ever had you any beſides?

Printer. I do not remember that I had any from any body elſe.

L. C. J. You printed them, did you?

Printer. Yes, my Lord, I did.

L. C. J. And you know of none from any elſe, but by him or his Orders?

Printer. No, my Lord.

Sir *Francis Winnington.* Shew him the Paper. Can you ſwear upon your Oath, that Mr. *Carr* did ſend or deliver to you that very Paper?

Printer. I can't tell that any body elſe did ſend it.

L. C. J. We muſt do here, as we do in all Caſes: He ſaith, I had divers of theſe Papers from him, I printed them, and I know of none that ever was but by him or his Order.

Sir *Francis Winnington.* He ſaith ſo, but, my Lord, the Information is to ſuch a particular Book Entituled, *A Pacquet of Advice from* Rome.

L. C. J. He ſays this in Anſwer to it, I can't charge my ſelf with this Particular, to ſay poſitively I had it from him: But this I can ſay, we had ſeveral from him, and I know of none elſe, but all were by him or his Order.

Sir *Francis Winnington.* Will your Lordſhip give me Leave to aſk him one Queſtion? Can you ſwear that any that came from him contained the very Matter in that Book? Was it the Matter or Words?

Mr. *Recorder.* Do you believe it?

Sir *Francis Winnington.* Good Mr. *Recorder*, let me alone. Can you ſay it is the very Matter contain'd in that Paper?

Printer. I can't ſay that.

L. C. J. It is not an eaſy Matter for a Man to remember the Matter of a Paper that is writ on all Sides. He ſwears that they had ſeveral; and that they had none, though he printed them, from any but him or his Order. This Queſtion Sir *Francis Winnington* aſks, Had you this particular Paper from him? He cannot ſwear it was the ſame he had from him; but he does ſwear, all the Weekly Intelligences were from him or his Order; he does not ſwear for the Matter of this Book, which no Man will do: But he does ſwear that theſe Papers were always by him or his Orders, and that ſeveral were received from him.

Mr. *Williams.* I aſk you upon your Oath, he brought it to you in Writing, did he not?

Printer. They came in Writing.

Mr. *Williams.* Have you any of theſe Papers to ſhew?

Printer. We did not regard them when they were printed.

L. C. J. His Cauſe ſhall be try'd very juſtly, and very indifferently.

Mr. *Williams.* Had you ever a Paper from *Carr*'s Hand, or no?

Printer. We had few from his own Hand.

Mr. *Williams.* Had you any?

Printer. I can't remember.

L. C. J. Had you any? You are upon your Oath.

Printer. My Lord, I can't remember.

L. C. J. Had you one, or two?

Printer. Indeed, my Lord, I can't remember, I can't ſay upon my Oath he ever brought one.

L. C. J. How then came you to ſay, you had ſeveral from him?

Printer. Ay, my Lord, from him, that is, by him, or his Order.

L. C. J. Are you ſure it was by his Order?

Printer. I did conceive ſo, my Lord.

L. C. J. Had he any Money?

Printer. From me?

L. C. J. Had he any Money from any body for printing any of theſe Papers, as you can remember?

Printer. I do ſuppoſe ſo, I have heard he had.

L. C. J. Did you give him any?

Printer. No, my Lord, I was not concern'd. The Publiſher, my Lord, was between him and me.

L. C. J. Who is that?

Printer. That is one *Curtis.*

L. C. J. Did *Curtis* pay him any Money?

Printer. I never ſaw him pay him any, my Lord.

L. C. J. Hath he owned at any time he had any Money?

Printer. My Lord, I never had any Occaſion for that Queſtion.

L. C. J. Have you talk'd with *Carr?*

Printer. Yes, my Lord.

L. C. J. Now I ſhall have you: For I do believe you are an honeſt Man. Did *Carr* ever own himſelf to you to be the Author of this Book, or any of theſe Papers?

Printer. My Lord, as I ſaid in the other Caſe, ſo I ſay in this, I had no Occaſion to diſpute it, I took it for granted.

L. C. J. Have you ever heard him own it?

Printer. I have heard him deny it.

L. C. J. How did you come to take it for granted that he was the Author, when he did once deny, but never own'd it? Anſwer me that Queſtion, and thou ſhalt be a brave Man.

Printer. My Lord, there was never Occaſion for that Diſcourſe.

L. C. J. Look you, Sir, you muſt anſwer me in a way agreeable to common Reaſon and Underſtanding. Why did you ſay juſt now, you took it for granted that he was the Author, and yet you ſay he hath deny'd it, and never owned it? Why ſhould you then believe he was the Author?

Printer. I don't ſay, my Lord, he never own'd it.

L. C. J. What Tricks we have in this World!

Mr. *Recorder.* I would aſk the Gentleman, I will not quarrel with him at all, if he thinks not in his own Conſcience he has reaſon to quarrel with himſelf. Did he ever own it to you?

Printer. I don't remember he ever own'd it to me in ſo many Words.

L. C. J. Did he treat with you in theſe Circumſtances as if he were the Author?

Printer. Yes, my Lord, I grant that.

Mr. *Recorder.* But do you ſwear it is ſo? We don't care for your granting: I aſk you upon your Oath, did you ever diſcourſe him as the Author of theſe Papers?

Printer. I ſuppoſed him to be the Author.

L. C. J. Did he deny it, or baulk when you diſcours'd him of this Matter?

Printer. My Lord, I muſt needs ſay as I ſaid before, it was taken for granted.

Mr. *Williams.* You had it in Writing, Where are thoſe Writings?

Printer. We ſeldom regard thoſe Writings.

L. C. J. It is hard to find the Author, it is not hard to find the Printer: But one Author found is better than twenty Printers found.

Mr. *Williams.* My Lord, I will aſk this Man a Queſtion. Upon your Oath, Who brought you that Writing?

Printer. What Writing?

Mr. *Williams.* That by which it was Printed: Who brought you that Paper?

Printer. I don't remember particularly I had any of Mr. *Carr* himſelf.

Mr. *Williams.* Can you name the Perſon that brought this Paper, or any one Perſon that brought any one Paper?

Printer. There was a little Boy.

Mr. *Williams.* Whoſe Boy?

Printer. Mr. *Carr*'s Boy.

Mr. *Recorder.* Now it is out.

Mr. *Williams.* Name the Boy.

Printer. I do not know his Name.

Mr. *Williams.* Can you name another, can you name any body elſe?

Printer. Truly, Sir, I don't remember any body elſe.

Mr. *Williams.* Now I will aſk you one Thing: Had you any Directions for the Printing this Paper?

L. C. J. To what Purpoſe was this written Paper brought to you?

Printer. To be printed, my Lord.

Mr. *Williams.* Who gave Directions?

Printer. It was the Publiſher that chiefly directed me.

Mr. *Williams.* Who was that?

Printer. I have named him.

Mr. *Williams.* Name him again.

Printer. *Curtis.*

Mr. *Williams.* Did *Carr* never direct you to print this Paper?

Printer. He did not deal immediately with me.

Mr. *Recorder.* When the little Boy came, who did you take him to come from? From Mr. *Carr*, or Mr. *Curtis?*

Printer. From Mr. *Carr.*

L. C. J. He ſays he was *Carr*'s Boy, and that he came from him: This I ſpeak to the Jury; and I promiſe you this, if my Life and Fortune were at ſtake, I would be try'd by this Jury at the Bar, and would do in this, as in all Caſes. Mr. *Carr* is looked upon as the Author of this Book; that it either came from him, or by his Order, his Boy (he can remember no body elſe) did bring it. This is now remaining only: Are you ſure Mr. *Carr* ſent him? Saith he, We talked with Mr. *Carr* ſeveral times.

Sir *Fr. Winnington.* Thus it is, my Lord, in the Information, *Malicioſe & illicite imprimi cauſavit & publicavit.* Now I would only aſk him a Queſtion, my Lord, Whether or no did Mr. *Carr* own to you that he ſent the Boy to have it printed?

Printer. No, Sir, I think not.

L. C. J. That is the ſame Queſtion aſked before. Did Mr. *Carr* ever own it as his, or no? Upon your Oath, Did *Carr* own this Packet to be his, when you diſcourſed with him about it?

Printer. My Lord, I humbly crave your leave to explain myſelf. I mean by the Diſcourſe I had, common Converſation, as the drinking a Glaſs of Wine; but I know not that ever we diſcourſed upon this thing.

L. C. J. I mean ſo: When you talked about this Matter, Did you take it, by his Diſcourſe, for granted, that he was the Man that publiſhed it?

Printer. I took it for granted, becauſe I had it from him.

L. C. J. What ſay you to this? Have you blamed *Carr* for writing too ſharply in this Book againſt the Government?

Printer. My Lord, I do confeſs I have.

L. C. J. What Anſwer hath he made, when you blamed him for writing too ſharply, as you thought? Did he deny that he did it?

Printer. I don't remember that.

L. C. J. What ſort of Anſwer did he make to excuſe it? That he thought it not too ſharp; or did he ſay, I care not.

Printer. My Lord, I can't particularly ſay what Anſwer he made.

L. C. J. When you blamed him, by the Oath you have taken, upon that Blame of yours, did he deny he wrote it?

Printer. No, my Lord, I do not remember he did.

Mr. *Williams.* Did *Carr* at any time deny he was the Author or Publiſher of it?

Printer. He hath at ſome times.

Mr. *Williams.* What did he deny?

Printer. That he was the Author.

Mr. *Williams.* Of what Book?

Printer. Of the Pacquet.

L. C. J. Did he deny he was the Author of this particular Book for this Week, or deny it in general? Did he deny in general that he was the Author of that Book that is called, *The Pacquet of Advice?*

Printer. I have heard him ſay ſometimes that he was not the Author.

Recorder. And ſometimes what?

Printer. I have heard him ſay ſome time or other that he was not the Author.

Mr. *Recorder.* And what elſe?

The Printer's Servant.

Mr. *Williams.* Are you acquainted with *Carr?*

Man. I never had any Converſe with him.

Mr. *Williams.* Do you know any thing of the *Pacquet of Advice?*

Man. I know we have had Pacquets from him: I fetch'd ſome from him.

Mr. *Williams.* What, from his Hands?

Man. Yes.

Mr. *Williams.* What, from his own Hands?

Man. Yes, in Pieces, no whole Sheets.

Printer. This is my Servant, I am not always there.

Sir *Fr. Winnington.* My Lord, I would aſk this Man a Queſtion. This printed Paper that is put in the Information, Did he ever deliver that to you?

Man. I can't ſpeak particularly to any one.

Mr. *Recorder.* But generally to all?

L. C. J. Have you done?

Mr. *Williams.* I aſk you a Queſtion.

L. C. J. If you could, Mr. *Williams*, ſhew me any Author beſides Mr. *Carr*, I would ſay ſomething.

Mr. *Williams.* Who brought you this Paper?

Man. Which Paper?

Mr. *Williams.* I don't ſpeak of this Paper particularly. Did any bring any beſides *Carr?*

Man. Yes, his Boy.

Mr. *Williams.* Did any body elſe bring any from any Place?

Man. No body elſe that I know of.

Mr. *Williams.* The Pacquet he brought you, had it been printed before? I aſk you upon your Oath, was it printed before he brought it?

L. C. J. Did he bring Papers to print that were never printed?

Man. They were never printed that I know of.

Mr. *Williams.* Did he bring any to print?

Man. I can't ſay he brought any.

Mr. *Williams.* Did Mr. *Carr* bring any?

Man. No, the Boy.

Mr. *Williams.* Who directed you to print them? Did *Carr* direct you?

Man. I can't tell, I am a Servant in the Houſe.

L. C. J. I will aſſure you, a *Non eſt Factum* can't paſs at this rate.

Mr. Juſt. *Jones.* Who did you take to be the Man that ſent you all the Pacquets?

Man. I very ſeldom took any, becauſe I was not always in ſight.

L. C. J. Who did you underſtand?

Man. I underſtood they came from Mr. *Carr.*

L. C. J. Have you any more? Read the Words in the Information.

Clerk, Friday *the 1ſt of* Auguſt 1679. There is lately found out by an experienced Phyſician, an incomparable Medicament, call'd, *The Wonder-working Plaiſter*; truly *Catholick in Operation*; ſomewhat of kin to the *Jeſuits Powder*, but more effectual. The Virtues of it are ſtrange and various. It makes Juſtice deaf, as well as blind, and takes out Spots of the deepeſt Treaſon more cleverly than *Caſtle-Soap* does common Stains. It alters a Man's Conſtitution in two or three Days, more than the *Virtuoſis Transfuſion of Blood* in ſeven Years. 'Tis a great *Alexipharmick*, and helps Poiſons, and thoſe that uſe them. It miraculouſly exalts and purifies the *Eye-ſight*, and makes People behold nothing but Innocency in the blackeſt Malefactors. 'Tis a mighty *Cordial* for a declining Cauſe; it ſtifles a *Plot* as certainly as the *Itch* is deſtroyed by *Butter and Brimſtone.* In a word, it makes *Fools wiſe Men*, and *wiſe Men Fools*, and both of them *Knaves.* The *Colour* of this *precious Balm* is bright and dazzling; and being applied privately to the Fiſt, in decent Manner, and a competent Doſe, infallibly performs all the ſaid Cures, and many others not fit here to be mentioned. *Probatum eſt.*

Sir *Fr. Winnington.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Council in this Cauſe for the Defendant: And the Queſtion is, Whether or no we muſt take the Information as it lies? And truly, for the firſt Part of it, whether there was a Plot or no, I do not intend to make Exceptions; for I believe there was one, and do intend to take it as in the Information. Gentlemen, we are to proceed now to this other Queſtion; which is, my Lord, Whether or no this *Defendant*, that is, *Carr*, did *falſly and maliciouſly*, and with *Deſign to ſcandalize the Government*, cauſe to be printed and publiſhed this falſe Libel that is in the Information. Now truly, my Lord, we that are for the Defendant, ſay we are not guilty. My Lord, we very well know how penal a Thing it is for a Man to be the Author of a Libel that relates to the Scandal of the Government. And, my Lord, whether this Defendant be guilty of this, or no, we muſt ſubmit that to your Lordſhip's and the Jury's Conſideration. They have produced two Witneſſes, that is to ſay, the Printer and his Man. Now, my Lord, there hath been going out for ſome Time, *A Weekly Pacquet of Advice from* Rome; and I did aſk the Witneſſes (for the Information points at one Paragraph, and puts the Paragraph *in hæc verba*)—I did aſk him whether or no he did ſend, or whether the Matter that he ſent is that contained in this Information. That he could not ſwear: but muſt be left in point of Evidence, it being, we allow, a very penal Matter. The ſecond Witneſs and the firſt Witneſs likewiſe ſay, there was a Boy; but whether that Boy came by his Maſter's Direction, he does not know. I aſked him if ever his Maſter ſent the Boy; he does not know, he ſays, that he ſent him. But the laſt Witneſs ſays, divers were had from the Hands of *Carr*; but whether it was the Thing that is now complained of, there is the Queſtion, and that is in the Dark: For, by your Lordſhip's Leave, I do not underſtand that ever this Man was complained of to any publick Magiſtrate for writing this Book; for it was thought he was a *Satyriſt* againſt *Popery*, and thought to be very well liked on till this Fault was found with it; and it may be very juſtly; whether or no we be guilty of this, is uncertain: For we know, in the Age we live in, there are too many Shams put upon Men; and who knows but that the Papiſts, that might have an Ill-will to this Mr. *Carr*, that hath been no Friend to them, might ſhuffle in this Paragraph, by that Means to have Juſtice come upon him? I would not contrive againſt common Evidence, where a Man is guilty to the Publick; but we know there are Abundance of Artifices in this Age to abuſe Men. For this Purpoſe I hope your Lordſhip and the Jury will expect that you ſhould have poſitive Evidence againſt him. Now granting your Lordſhip ſhould have conjectural Evidence that he did cauſe it to be printed and publiſhed, that this Man did write it, is, I ſay, very uncertain, for there is no poſitive Evidence. What a Man may have in his private Thoughts of it, is not enough: But, whether *ſecundum allegata & probata*, it ſhall be alledged and proved, that this Man was the Author of it. Now, my Lord, I ſay, I muſt ſubmit it to your Lordſhip, I ſay, that as to the cauſing it to be printed, or the cauſing it to be publiſhed, or that this individual Paragraph was writ by him in order to its being printed or publiſhed; my Lord, I ſay, there is but remote and conjectural Evidence, and an angry *Papiſt* might contrive this Way to have an innocent *Proteſtant* found guilty.

People. Hem——

L. C. J. You ſee what a Caſe we are in, Gentlemen; you ſee what a Sort of People we are got among. Go on, Sir *Francis.*

Sir *Fr. Winnington.* With your Lordſhip's leave I have one thing to put to your Lordſhip. The Information ſays, *falſe, illicite & malicioſe.* I know there are ſome Things that do imply Malice in themſelves. Truly, my Lord, I am upon a tender Point, and know not how to expreſs myſelf. I ſay, ſuppoſing it ſhould fall out that this Man writ this Book, and he might have ſome little Extravagancies in his Head in writing; whether this Man did it maliciouſly to ſcandalize the Government, as the Information ſays, is a Queſtion. Truly, my Lord, there is many an indiſcreet Act a Man may be guilty of, that cannot be called a malicious Act; and that is the ſecond Thing. There muſt be Evidence that this Man did it maliciouſly, or that he did it with a Deſign to ſcandalize the Government. If you be of Opinion that it is otherwiſe, that is in your Lordſhip's Breaſt; we are of the Negative, and we ſay we can't prove a Negative. But if you find him innocent, I ſuppoſe there will be no Cauſe to complain of him afterwards, for he had no Malice in his Heart.

Mr. *Williams.* My Lord, it can never be ſuppoſed that a good Man, and a good Subject, ſhould do an ill Action. If he be a very good Subject, if he be upon a Square in every Reſpect, a Perſon that loves his King, and loves the Government in Church and in State; if he be ſuch a Perſon, he cannot be thought guilty. My Lord, we will prove him to be ſuch a Man, and I hope the Gentlemen will believe us.

Call Mr. Sutton, *Mr.* Ayliffe, *and Mr.* Ambler.

Mr. *Williams.* Mr. *Sutton*, Do you know Mr. *Carr?*

Mr. *Sutton.* I know him very well.

Mr. *Williams.* How long ſince have you known him?

Mr. *Sutton.* Two or three Years.

Mr. *Williams.* Does he go to Church or Meeting?

Mr. *Sutton.* He hath been with me at Church often.

Mr. *Recorder.* Does he receive the Sacrament according to the manner of the *Church of* England?

Mr. *Sutton.* I was never with him at the Sacrament.

Mr *Williams.* Is he one of them you call Diſſenters?

L. C. J. Did he ever diſcourſe with you concerning this *Book?*

Mr. *Sutton.* My Lord, I have often ſpoken to him.

L. C. J. Has he diſowned he was the Author?

Mr. *Sutton.* He has ſometimes.

L. C. J. How do you believe it was upon that Diſcourſe?

Mr. *Sutton.* I do not think he is able to write ſuch a *Book.*

L. C. J. That is not the Queſtion, anſwer me what I aſk.

Mr. *Sutton.* It did ſeem ſomething like his *writing*, methought.

L. C. J. Did it ſeem by his Anſwer to your Diſcourſe with him?

Mr. *Recorder.* Pray tell us, Did you look upon him to be the Author?

L. C. J. By the Diſcourſe you had with him, How did it appear upon that Diſcourſe? Pray tell us plainly and clearly, how you do think, by the Diſcourſe you had with him concerning this Pamphlet, whether he was the Author or no?

Mr. *Sutton.* My Lord, about a Year, or a Year and half ſince, I did aſk him whether this *Book* were licenſed? He told me it was licenſed by Mr. *L'Eſtrange*; but he did not tell me he was the Author.

L. C. J. How did it ſeem by his Diſcourſe?

Mr. *Sutton.* I did apprehend he might write it.

Sir *Fr. Winnington.* My Lord, but the Queſtion is, whether he wrote this *Paragraph.*

Mr. Ambler.

Mr. *Williams.* Mr. *Ambler*, pray do you acquaint my Lord, do you know Mr. *Carr?*

Mr. *Ambler.* Yes, Sir.

L. C. J. How long have you known him?

Mr. *Ambler.* Three Years.

Sir *Fr. Winnington.* Of what Converſation is he, and how affected to the Government?

Mr. *Ambler.* He went to Church with me.

Sir *Fr. Winnington.* Do you look upon him as a Man well affected to the Government? Do you think he would maliciouſly write any Thing to ſcandalize the Government?

Mr. Juſt. *Jones.* How do we know how Mr. *Ambler* underſtands the Government?

Mr. *Recorder.* Mr. *Ambler*, Had you any Diſcourſe with him about the *Pacquet of Advice?*

Mr. *Ambler.* Never in my Life.

Mr. *Recorder.* Did you ever hear of the *Book?*

Mr. *Ambler.* Yes, Sir.

Mr. *Recorder.* Upon your Oath, Did you look upon him to be the Author?

Mr. *Ambler.* The common Report was, that Mr. *Carr* was.

Mr. Ayliffe.

Mr. *Williams.* Mr. *Ayliffe*, Do you know Mr. *Carr?*

Mr. *Ayliffe.* Yes, Sir.

Mr. *Williams.* Is he a conformable Man to the Government in *Church* and *State?* Does he go to hear *Common-Prayer?*

Mr. *Ayliffe.* I have ſeen him at Church, and at Divine Service.

Mr. *Recorder.* Did he behave himſelf reverently there?

Mr. *Ayliffe.* Yes, Sir.

L. C. J. Do you think he writ this?

Mr. *Ayliffe.* My Lord, I never aſked him.

Sir *Fr. Winnington.* My Lord, it ſeems he was accounted *the Author of the Books*; but whether of this particular one in the Information, we conceive not proved.

Mr. *Recorder.* If we ſhould not do right, we diſclaim that Service we owe to the Crown, and that Reſpect we owe to the Government as honeſt Men and as true *Proteſtants*, and as much againſt *Papiſts* as any Man whatſoever. I ſhall endeavour to give the World Satisfaction that this Man is guilty of this Offence. My Lord, for any Man to come and pretend that we muſt prove that a Man is malicious; or becauſe that a Man writes againſt the *Papiſts*, he muſt never therefore be convicted of Malice, ſurely is a ſtrange Argument. And I wonder to hear any Man that pretends to Reaſon, Men of Senſe, and Conſcience, and Underſtanding, ſo out of their common Senſe and Underſtanding, as to make that go as an Argument. Gentlemen, the Things themſelves beſpeak their Malice. For ſo we in our common Diſcourſe, when we bring our common Actions (of which you have heard a Number), if in caſe any Man call a Man *Thief*, we ſay he does falſly, and maliciouſly, and ſcandalouſly call a Man *Thief:* If we prove he called him *Thief*, the very Thing does intimate he does it falſly, ſcandalouſly, and maliciouſly; therefore the Thing itſelf is a ſufficient Indication of the *Malice* and *Depravity* of it. There's no Man but may know in plain *Engliſh* what's the Meaning of theſe Words; it is as plain as can be in the World: We muſt debauch our Underſtandings, and be as great *Doltheads* as they would make all Men that will not be of their Party, if we don't plainly ſee into the Meaning of theſe Words, that *Juſtice is to be bribed with Money.* In the next Place, Gentlemen, we do not come and ſay, that the *Information* lies againſt theſe very particular Words; that is a Miſtake of the *Information.* But the Information is, That he did cauſe to be printed and publiſhed a *Book*, in which among others there were ſuch Words as theſe; though if they had been the very Words themſelves, the very Words have been proved. Now, *There is no better Proof under the Heavens, than the Proof we have offered.* The Printer himſelf, he comes here and ſays, That *Carr* did acknowledge himſelf the Author, and he did generally publiſh the *Book*; I appeal if you do not believe it. This they would now come and excuſe; for they are glad to make a Raſcal of any of their Party, if they can but ſave a Man that is guilty. But Things come out with much Difficulty and much Straitneſs; and I muſt ſay, if ever any Thing were an Inſtance of *Popery*, then that Man is one of the Jeſuited'ſt Fellows that ever was; for he does *cant ſo like them*, that a Man can't tell how to govern himſelf. Who was it that ſhould write theſe Things? Truly, he had diſcourſed with him about the Matter. Who ſent the Boy? Do you know? Truly I can't tell: And wonderful great *Snuffling* and *Canting* before he comes to the Buſineſs. Beſides, what can there be more plain than the *Proof-pieces* before the publiſhing? T'other Man ſays, that he was the Man that fetched Pieces from *Carr*'s own Hand, and that he always looked upon it that all did come from *Carr.*

Now every Man that knows any Thing of Printing, knows this, that after it hath firſt taken the Preſs, it is always carried back again to the Author, to ſee whether it be done according to his Mind; and after that it comes to the publick View. And that this Man, *Carr*, is the Author, Mr. *Sutton* and the reſt of his Witneſſes, if they ſpeak according to Conſcience, they themſelves looked upon this very Man to be the Author. Their own Witneſſes looked upon it ſo. It was not only the private

Opinion of theſe Men, but the general Report of all. So that, my Lord, had it not been neceſſary to the Support of the Government, I ſhould have ſcarce troubled my ſelf to give your Lordſhip and the Jury this Trouble. But I muſt ſay, and I do believe, that there is no Man whatſoever, that ſtands to have Vices of this Nature convicted and puniſhed, but deſires the Proteſtant Religion may be ſupported to the utmoſt, and that Popery may be ſuppreſſed. But I ſay, whoever it is, that after this Evidence, who is bound by his Oath to go according to Evidence, ſhall acquit this Man, he muſt be a Man of a humming Conſcience indeed.

Sir *Fr. Withins.* I ſhall hint one thing to your Lordſhip in this Caſe: That it is an unlikely Thing that a Papiſt ſhould ſet out this Pacquet at this Time. For then, my Lord, how came it to paſs that Mr. *Carr* had none came out that Week; for his is *a Weekly Intelligence?* If Mr. *Carr*'s had come out, and this likewiſe, there had been ſome Pretence for this: But ſince there came out but one, that the Papiſts ſet out this is unlikely. They have not pretended to bring in any body elſe as the Author; but their own Witneſſes ſay, and they themſelves ſay, he was looked upon as the Author. Thoſe things that are done againſt the Government, are never done in the Face of the Government.

L. C. J. Really, Gentlemen, I thought not that this had been a Cauſe of that Moment that now I find it. For their very Diſturbance hath altered it from Mr. *Carr*'s, to a publick Concern: The Noiſe which they make, this Way that theſe People uſe, that with their Shouts and Noiſe attend the Cauſe, hath quite ſpoiled it: As in the Caſe of *Harris*. But thoſe People that did then attend him, leave following him in a Goal for five hundred Pounds, which may be five Shillings apiece had diſcharged him of, if they had been as free of their Purſes as they are of their Noiſes and Acclamations: So that in Truth they are only violent againſt the Government whilſt they can make Shouts and Noiſes, but if it comes once to deliver a Man from a penal Sum, they will let him rot in Goal. For ſo *Harris* ſent to me, that his Party had all forſaken him, and no Man would give him any thing. And this is for thoſe *Hummers*, thoſe brave Fellows that ſeem to eſpouſe a Cauſe, and yet leave their Party in Diſtreſs. But let them go away with this, that they prove themſelves hereby Enemies to the Government, and falſe to that Intereſt and Men that they ſeem to eſpouſe; that come only here to affront a Court of Juſtice with their Shouts and Noiſes, and will not relieve their Party: For this is the Complaint of *Harris*, and the Diſparagement of all Men that come to eſpouſe it. This Cauſe, the Truth on't is, I did not look upon to be of this Nature and Moment, when it was opened. For though there are in this very Paper upon which the Information is grounded, Words malicious and reflective enough; yet they were not ſo apparently appropriated, that a Man might obſerve an extraordinary Deſign in them. This I thought; but really the Caſe is altered even by thoſe Men. For I'll tell you, *Harris is poor, and his keeping in Priſon is principally occaſioned from the Manner of the Reception of his Puniſhment*, which he calls *his Pardon*. And therefore theſe Fellows, theſe Hummers, let them all know, whenever they come to eſpouſe a Cauſe of publick Concern againſt the Government, they ſpoil it; and when they are taken, then they ruin one another. And this is like to be ſo, for none will help them with a Groat. And this is the Miſfortune of that unfortunate Man *Harris*, that he hath no Place of Mercy left him from the King, becauſe he was attended with ſuch a Rabble as theſe People are, that have made a Noiſe here, and yet will give him no Help nor Aſſiſtance when he wants it: And let them know, it hath turned this Man's Cauſe into a publick Cauſe, becauſe here are People that do eſpouſe it, and the Government is hereby concerned much more than by any one Action that this *Carr* could have done. I have ſaid ſo much more of this, that I might ſhew you to what a ſad Caſe this is brought from what at firſt it was. For if it had paſſed without ſuch a Noiſe, as you ſee how they expreſs themſelves, I ſhould not have thought much Matter in it; and though you had convicted him, I ſhould have thought a better Sentence might have ſerved the Turn: But they have undone *Carr*, if you find him guilty; and ſo it's like to prove, whenever there is popular Attendance upon publick Cauſes that concern the Government.

The preſent Caſe it ſtands thus: Mr. *Carr*, here is an Information brought againſt him for publiſhing a printed Pamphlet called, *The Pacquet of Advice from* Rome, and in it there are recited ſome Particulars, which were obſerved to you before, which was not well done; but yet not ſo inſolently done as ſome perhaps do conceit. The Queſtion is, Whether he was the Author or Publiſher of this: You hear he is thought the Author, but ſay his Council, it is not plain; and that is true. But it ſeems by their own Witneſſes, to any Man's Underſtanding, that they looked upon him as the Author. But then, is he the Author and Publiſher of this particular Book? I had rather Mr. *Carr*, with all his Faults about him, and his Hummers, ſhould go away with Applauſe, and have him found not guilty, than do him wrong in one Circumſtance; for I come to try Cauſes according to the Truth of Fact; I come not to plead on one Side nor another; not to condemn Men that are innocent, nor to acquit them if they be guilty. Now it remains for you to conſider what Proofs you have, as to this particular Book againſt which the Information lies; and that's the Printer himſelf, who is one of the beſt Sorts of Evidence that can be had: For you very well know that Evidences of Fact are to be expected according to the Nature of the Thing. That is, Forgery is not to be proved ſo plainly, as to expect Witneſſes as you do at the ſealing of a Bond; for Men do not call Witneſſes when they forge a Thing. Therefore in Things of that Nature we are fain to retreat to ſuch probable and conjectural Evidence as the Matter will bear. I believe ſome of you have been of Juries at the *Old-Bailey*, and that even for Men's Lives, you have very often not a direct Proof of the Fact, of the Act, or of the actual Killing; but yet you have ſuch Evidence by Preſumption, as ſeems reaſonable to Conſcience. If there be a known Caſe in Men's Lives, certainly that ſhould govern in Offences, and eſpecially when Offences are of a Nature that reflect upon the Government. As for thoſe Words, *illicite*, *malicioſe*, unlawful; for that I muſt recite what Mr. *Recorder* told you of at firſt, what all the Judges of *England* have declared under their Hands: The Words I remember are theſe: When, by the King's Command, we were to give in our Opinion what was to be done in point of the Regulation of the Preſs; we did all ſubſcribe, That to print or publiſh any News-Books or Pamphlets of News whatſoever, is illegal; that it is a manifeſt Intent to the Breach of the Peace, and they may be proceeded againſt by Law for an illegal Thing. Suppoſe now that this Thing is not ſcandalous, what then? If there had been no Reflection in this Book at all, yet it is *illicite*, and the Author ought to be convicted for it. And that is for a publick Notice to all People, and eſpecially Printers and Bookſellers, that they ought to print no Book or Pamphlet of News whatſoever, without Authority. So as he is to be convicted for it as a Thing *illicite* done, not having Authority. And I will aſſure you, if you find any of thoſe Papers, I ſhall be more merciful in the Conſideration of their Puniſhment, if it be inoffenſive. But if ſo be they will undertake to print News fooliſhly, they ought to be puniſhed, and ſhall be puniſhed if they do it without Authority, though there is nothing reflecting on the Government as an unlawful Thing. The Reaſon is plain: So fond are Men in theſe Days, that when they will deny their Children a Penny for Bread, they will lay it out for a Pamphlet. And it did ſo ſwarm, and the Temptations were ſo great, that no Man could keep two Pence in his Pocket becauſe of the News. But ſtill they never repented of laying out their Money, till they found there was nothing againſt the Government. This is not worth a Farthing, there is nothing of Treaſon in it, we will not give a Farthing for it. Therefore this Book, if it be made by him to be publiſhed, it is unlawful, whether it be malicious or not. Now for the Matter, the Subject Matter. What, doth *Carr* think he hath too much Wit to fool us that are to try the Malice? It was ſillily writ, if he did not believe we underſtood it, and that were very intolerable in us; I hope I ſpeak plain: That is, the Sort of Books that he writ; it muſt be with an Intent People ſhould know what Reflections he made; and ſhall all Mankind know, and ſhall they that try the Cauſe not know it? If you find him Guilty, and ſay what he is guilty of, we will judge whether the Thing imports Malice or no. Sir *Francis Winnington* hath told you there are ſome Things that do neceſſarily imply Malice in them. If this Thing doth not imply it, then the Judges will go according to Sentence; if it doth, ſo that it concerns not you one Farthing, whether malicious or not malicious, that's plain. Now, there remains only one Thing, that is, Whether or no he was the Publiſher of this Book? For that we have this Evidence. The Printer tells you, he was the Perſon that they looked upon to be the Author of this Book, that he ſent this Book to be printed by his Boy. The Printer ſaith, that he often diſcourſed with him, and he took it for granted. His Boy brought it. To what Purpoſe? To be printed. The Printer's Servant ſays, they looked upon him as the Author, and I have fetched Sheet by Sheet, ſeveral Sheets from his own Hand. I will do Right in the Caſe, be it what it will, let him eſcape or not. Say his Council, Had you this particular Paper from him? I urge this as clearly, as their own Council have objected. For that you muſt conſider, whether he is the Author of the Book. You muſt take Evidence in this Caſe, as you do all the Year long; that is, in other Caſes, where you know there is an abſolute Certainty that the Thing is ſo: For human Frailty muſt be allowed; that is, you may be miſtaken. For you do not ſwear, nor are you bound to ſwear here, that he was the Publiſher of this Book; but if you find him guilty, you only ſwear you believe it ſo. God help Juries, if ſo be in Matter of Fact they ſhould promiſe otherwiſe. They can't ſwear it. Now the Queſtion is, Whether you have Evidence enough here to ſwear he was the Publiſher: For this is the main Thing, to prove that he is ſo. Now the Printer tells you that he knew the Man, that he had frequent Converſe with him about it, and that he took it for granted. Now conſider, when a Man talks at this rate, he does not ſay he was, but that he took it for granted; he does not as much as ſay he is. They will own he writ ſeveral Sheets of this Book; then, why not all this Book? Now we come to the more principal Matter of Fact, according to Reaſon and the probable Evidence of Things. That this Perſon is taken to be the Author, and that it was his Boy that brought theſe Papers to be printed. If you can't ſay he ſent him, you can give no Verdict while you live, if you expect that. The Printer ſays, he had been often diſcourſing with him, that his Boy brought them, and that he knew no other Perſon in the World that had any Pretenſions to be the Author, and if he were the Author, no doubt but he is the Publiſher. Whether or no any body elſe had an Hand in this, we don't know. If you are ſatisfied in your Conſciences that you believe he is not the Author, you muſt acquit him. If you are ſatisfied it is not he, you muſt find him Not Guilty. So that as you are honeſt Men and wiſe, as I believe you are; if you believe he was not the Publiſher of this Pamphlet, that he did not ſend his Boy to have it printed, but that he came of his own Head, you muſt find him Not Guilty.

The Jury went from the Bar, and nigh an Hour after returned, and brought him in Guilty.

L. C. J. You have done like honeſt Men.

Mr. *Recorder*. They have done like honeſt Men.

XCIX. *The Trial of* John Giles *at the* Old Bailey, *for Aſſaulting and Attempting to Murder* John Arnold, *Eſq*; July 14, 1680. 32 Car. II.

THE Seſſions began on *Wedneſday* the ſeventh Day of *July* 1680. The ninth Day Mr. *John Giles* was brought to the Bar to be tried; and there pretended that he had Witneſſes at *Monmouth*, who could teſtify very material Things for him, and therefore pray'd the Court to put off his Trial until the next Seſſions. Then the Court aſked him his Witneſſes Names, and what they could ſay? Which he then declared to the Court. Upon which Mr. *Arnold*, being preſent, and Proſecutor *(Tam pro Domino Rege, quam pro ſeipſo)*, the Court aſked his Conſent, and what he could ſay why the Trial ſhould not be put off; that ſo all the World might hereafter ſay, That Mr. *Giles* had all the Favour that he could reaſonably deſire, and what the Court could in Juſtice ſhew him, and that no manner of Excuſe might be left him.

After which Mr. *Arnold*, in a very pertinent Speech, declared part of the Fact and alſo of the Proceedings before his Wounding, as it had occurred between him and Mr. *Herbert*; and of his favourable and juſt Proceedings againſt Mr. *Herbert*, and alſo againſt *John Giles*, after the Fact was committed; and declared that *Giles* had ſufficient Notice of his Trial; but notwithſtanding he did ſubmit himſelf to the Judgment of the Court.

Thereupon the Court adviſed a Minute or two's Space; it was ordered, That the Court ſhould be adjourned until the *Wedneſday* following; by which time Mr. *Giles* might ſend to *Monmouth*, and have what Witneſſes brought up he could get.

And the Day appointed being come, and the Court being ſat, Proclamation was made according to Cuſtom. Then the following Jury were called and ſworn, *viz.*

Chriſtopher Plucknet,
William Dodd,
Anthony Nurſe,
John Burton,
Nathan Goodwin,
George Wood,
Jur'
James Partridge,
Lawrence Wood,
John Bradſhaw,
William Withers,
Edward Proby,
Rich. Bromfield.

Who, according to the Form of Law, were charged to enquire, Whether the Priſoner were guilty of the following Indictment upon which he had been arraigned, and had pleaded Not guilty?

Cl. of Cr. The Jurors of our Lord the King, upon their Oaths, do preſent, That *John Giles* late of the Pariſh of St. *Dunſtan in the Weſt*, in the County of *Middleſex*, Gentleman, not having God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, contriving, and maliciouſly, by a moſt wicked Conſpiracy, with divers other Malefactors to the Jurors unknown, forethought and had, intending one *John Arnold*, Eſq; a faithful Subject to the King, and one of the Juſtices of the Peace for the County of *Monmouth*, inhumanly to maim, wound, kill, and murder, the fifteenth of *April*, in the thirty-ſecond Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* with the ſaid Malefactors unknown, at the Pariſh of St. *Dunſtan in the Weſt* aforeſaid in the County of *Middleſex* aforeſaid, in and upon him the ſaid *John Arnold*, then and there being in the Peace of God and the King, unlawfully, voluntarily, and of his Malice forethought, with Force and Arms; that is to ſay, with Swords, Staves, and Knives, of Deſign, and by lying in wait, did make an Aſſault; and him the ſaid *John Arnold* did then and there beat, wound, maim, and evilly entreat, and the Throat and Face of him the ſaid *John Arnold* did grievouſly cut with a certain Knife; alſo divers almoſt mortal Wounds then and there to the ſaid *John Arnold*; that is to ſay, one Wound of the depth of ſeven Inches in his Body, between his Belly and his Left Pap, two Wounds upon his Breaſt, and two Wounds in his Left Arm, with certain Swords, did then and there give and impoſe, ſo that it was deſpaired of the ſaid *John Arnold*'s Life, and other Enormities then and there unto him did bring, to the great Danger of the ſaid *John Arnold*, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

Mr. *Gibbs*. Gentlemen, this is an Indictment againſt *John Giles*, the Priſoner at the Bar, for aſſaulting and intending to diſpatch and murder *John Arnold*, one of his Majeſty's Juſtices of the Peace, on the 15th Day of *April*. This *John Giles* and ſeveral others did intend to kill Mr. *Arnold*, and ſet upon him in *Jackanapes-Lane*, threw him down, and endeavoured to thruſt their Swords into him; but finding no Penetration there, they kneeled upon him, and with a Knife endeavoured to cut his Throat, and in one Place made a very large Gaſh, and cut his Face; he endeavouring to keep them from his Throat, they gave him a Wound in his Side ſeven Inches deep, between his Belly and Left Pap. They gave him ſeveral other Wounds. To this he has pleaded Not Guilty.

Mr. *Holt*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Council for the King, and the Indictment hath repreſented to you the moſt horrid, vile, and barbarous Aſſault that has been almoſt ever committed, and that any Man has heard of; and which I think ſcarce any thing in Hiſtory can parallel. It was, Gentlemen, in its Nature moſt cruel, by the giving him ſo many Wounds as are ſet forth in the Indictment; having firſt way-laid and ſurprized him near a Place, and at ſuch a Time, as was convenient for the Execution of their wicked Deſign. This Mr. *Arnold* having Occaſion to go through *Bell-Yard* between the Hours of ten and eleven of the Clock at Night, at the End of *Jackanapes-Lane*, he was ſuddenly ſeized by two Men, and by them hauled into the Lane, where they gave him ſeveral Wounds, and uſed him in a moſt barbarous Manner. And this did not ariſe from any private Difference or Animoſity that they could conceive againſt Mr. *Arnold*; but from a Cauſe more general, that is, the Proſecution of the horrid Popiſh Plot; againſt which Mr. *Arnold*, as became him, and according to the Duty of his Office, he being a Juſtice of the Peace, was a very zealous Perſon. Gentlemen, in the firſt place we will call Mr. *Arnold*, who ſhall plainly prove that this Priſoner at the Bar was one of the three Aſſaſſins; and he proves it by a miraculous Providence: For juſt before they ſeized upon him a Woman in *Bell-Yard* held out a Candle, which gave Mr. *Arnold* an Opportunity to ſee the Priſoner at the Bar, and did perfectly diſcern him. Gentlemen, though this is enough, conſidering the Integrity and Reputation of the Perſon; yet we ſhall fortify his Evidence by ſtrong and undeniable Circumſtances, Circumſtances that do particularly relate to this Matter. In the firſt Place, Gentlemen, the very Day that this Fact was done, this Perſon, though he had a good Sword by his Side, yet he did enquire where he might buy a more convenient Sword, and did deſire to know where he might have a Rapier, which was thought more convenient for this Deſign; and the very next Day after this Fact, though Mr. *Arnold*'s having Armour on was a Secret which no Perſons but Mr. *Walcup*, a Juſtice of the Peace, and Mr. *Arnold* himſelf knew; yet this ſame *Giles* could ſay, *Arnold* had Armour on; and if *Arnold* had not had Armour on, his Buſineſs had been done. And after this Fact was committed, this *Giles* goes into *Glouceſterſhire*, and being purſued by a guilty Conſcience, he durſt not ſtay there, for he was afraid, as he ſaid himſelf, of being apprehended for aſſaſſinating Mr. *Arnold*. After this, Gentlemen, he came to one *Darcy* a Cutler in *Monmouthſhire*, with his Sword which was broken, and deſired him to mend his Sword. *How now*, ſays he, *how came this Sword to be broken? Have you been fighting with the Devil?* *No*, ſays he, *I have been fighting with damn'd* Arnold. And at the very ſame time when theſe Villains thought they had effected their bloody Purpoſe, and gave Mr. *Arnold* his Diſpatch, one of them ſaid to him, *Now, Villain, if thou haſt any Life in thee, pray for the Soul of Captain* Evans; which *Evans* was a Prieſt executed in *Wales* upon Mr. *Arnold*'s Proſecution, at whoſe Execution this *Giles* was preſent, and dipp'd his Handkerchief in his Blood. Now, Gentlemen, conſidering all this, which we will make plain to you by Mr. *Arnold*, and all theſe Circumſtances; I ſuppoſe you will have ſufficient Evidence to find him guilty.

Mr. *Thompſon*. My Lord, and you Gentlemen of the Jury, the Indictment has been opened, and the Matter of it, that baſe Attempt made upon Mr. *Arnold*, that was a Juſtice of the Peace in *Monmouthſhire*, that is ſhewed in the Indictment. But I muſt crave your Lordſhip's Leave, that I may more particularly open this Caſe. This is a Caſe, Gentlemen, of very great Conſequence, and though it more immediately concerns Mr. *Arnold*, yet it highly concerns every Man preſent; you of the Jury, and I; nay, every other Freeman of *England*, which ought to be protected by the Laws, muſt needs be concerned at ſo great a Violation of them, and cannot but ſet our Faces againſt ſuch villainous and barbarous Attempts as theſe, wherein there did not want the Good-will of the Actors to make it a moſt barbarous and bloody Murder. In the Courſe of our Evidence, and the Method we will take to proceed in, it will be neceſſary to do theſe three Things. Firſt of all, we ſhall acquaint you with that which we apprehend to be the Reaſon and Occaſion of this horrid Fact. Next we ſhall tell you what that Fact was. And in the laſt place, enquire how far this Defendant is guilty thereof.

For the Firſt; give me leave to acquaint you with what we apprehend to be the true Reaſon of this Aſſaſſination. 'Tis notorious to moſt Men, but eſpecially to the County of *Monmouth*, where Mr. *Arnold* was a Juſtice of Peace, how active and diligent, how faithful and vigorous a Man he has been in the Diſcharge of his Duty to his King and Country, in putting the Laws in Execution againſt the Papiſts, and endeavouring to ſuppreſs Popery: This was the Ground of their Malice, as you will find by the Evidence, and by the ſeveral Threats that he had before this Act was done. But more particularly there was this occaſion; there was one whom they call'd Captain *Evans*, but indeed was Father *Evans*, a Popiſh Prieſt; this Man in *Monmouth* was taken by Mr. *Arnold*, and was proſecuted according to Law, and convicted. I mention this Circumſtance, becauſe our Evidence will refer to it, and that you will ſee out of the Actors own Mouths, if we may believe the Actors in this bloody Tragedy when they did the Fact: This Proſecution of Father Captain *Evans*, was no ſmall Occaſion of their Villainy which they acted upon Mr. *Arnold*. Theſe were the Grounds of their Malice, Gentlemen, and what happened to Mr. *Arnold* was the Effect. And I do the rather mention this Particular, that you may know what Sort of People theſe were that practiſed this Villainy upon Mr. *Arnold*; for it will be a neceſſary Circumſtance in our Proof againſt this Priſoner at the Bar, to ſhew that he is one of that bloody Tribe.

Gentlemen, the next Thing is to ſhew what this Fact was, and how it happened. Mr. *Arnold* had a Controverſy with one Mr. *Herbert*, another Juſtice of the Peace in *Monmouthſhire*: that Cauſe between them was to be heard before the King and Council the next Day after this Fact was committed: I mention Mr. *Herbert*, but I hope he is more a Gentleman than to be concerned in ſuch a Villainy. We will not at this time give any Evidence that relates to him: For truly I believe this could only be the Contrivance of a Jeſuit, and the Practice of a bigotted Papiſt. But thus it happen'd: Mr. *Arnold* going to attend his Council upon this Occaſion, to prepare himſelf for this Hearing that was to be before the King and Council; in *Bell-Yard* there he is ſet upon, there he is wounded, there he is murder'd, as theſe Aſſaſſins thought. And this Mr. *Arnold* will prove to you when he comes to give his Evidence. This to the Fact.

Gentlemen, the next is now to conſider how far this Man at the Bar is guilty of it; and for that, Gentlemen, we will give you Evidence of ſeveral Sorts:

1. The poſitive Proof of Mr. *Arnold* himſelf, who, as Mr. *Holt* has obſerv'd before, almoſt by a Miracle, diſcover'd the Defendant's Face; for a Light accidentally coming out of one of the neighbouring Houſes, and the Defendant looking at Mr. *Arnold* to ſee whether he was the Man they wanted, immediately upon that he was aſſaulted and carried into *Jackanapes-Lane*, and was wounded in ſeveral Places. This, Gentlemen, is plain, and will be poſitively prov'd; and then when this Man was taken up on Suſpicion, and was carried before a Juſtice of the Peace, and Mr. *Arnold* was ſent for, though Mr. *Arnold* had no private Intimation, no kind of Knowledge before-hand of *Giles*'s being taken; and there were ſeveral Men ſtood beſide this Man, yet though he had never ſeen him before, but at the time when the Fact was done, Mr. *Arnold* immediately charged him with the Fact, and as ſoon as he heard him ſpeak he knew his Voice. This was ſo plain upon *Giles*, that he had not the Power, though he might have had the Confidence, at that time to deny it: But inſtead of a Denial ſaid, The Matter could but amount to an Aſſault and Battery. In the next Place we have Evidence from the Defendant's own Mouth, which in a Caſe of this Nature ought to weigh as much as can be, and I think is as much as the Nature of the Thing is capable of. This Man the very next Day after Mr. *Arnold* had been thus aſſaulted, diſcourſing with one *Phillips* by Name, and relating the Buſineſs which happened to Mr. *Arnold*, and before he could know he had Armour on, as we will prove from the Circumſtance of the Time (what does *Giles* ſay?) Says he, *Damn him, rot him*, Mr. *Arnold*, ſaid he, *had Armour on.* And this, Gentlemen, could not be known by him at that time, if he had not been a Party in this baſe Attempt. And there is a Circumſtance that goes yet beyond this, which I would have you obſerve, that when Mr. *Arnold* was aſſaſſinated, when they made their Attempt, in the very Act were theſe Words uſed, *Damn him, rot him, he has Armour on.* Theſe very Words were ſpoken then, and upon that they fell to cut his Throat. We have this Circumſtance more; he had broken his Sword, and went to a Cutler, one *Darcy* by Name; this Man was a Papiſt, and ſays he, *Where haſt thou been* Giles, *fighting with the Devil? No, it was with damn'd* Arnold. This we will prove to you: Theſe are Evidences that are poſitive.

Some other Witneſſes we have, that will be very material to prove to you what ſort of Man the Defendant is: That he has declared there is no Plot; that thoſe that believe it are Rogues; and if ever any of the Lords in the *Tower* ſhould ſuffer, this Nation ſhould feel a bloodier War than ever it had done; by which you may ſee his bloody Nature. Gentlemen, beſides this we ſhall prove (according to their Cuſtom of Shamming) that he has from time to time pretended as if Mr. *Arnold* had done this Buſineſs himſelf, or ſome of his Friends, to revive the Plot. A very fine Contrivance indeed! for a Perſon to ſtab himſelf, and cut his own Throat, to revive the Plot. Theſe Things we will make out clearly to you: And I muſt tell you it is a notorious Crime, ſuch a Fact as has no Precedent: There's no Remembrance in Hiſtory, that I know of, of ſuch barbarous Attempts, except in the Caſe of Sir *Edmundbury Godfrey*, who was moſt barbarouſly murdered by this ſort of Men. And this Caſe, Gentlemen, differs from from that only in this, that there they accompliſh'd their Villainy upon him: But the Providence of God ſaved Mr. *Arnold*'s Life, and I hope to as good Purpoſe: For as Providence ordered That to confirm the Truth of the Popiſh Plot; ſo this Aſſaſſination of Mr. *Arnold* muſt convince all Mankind (not concerned in the Plot it ſelf) that this damn'd Popiſh Plot ſtill continues, and that 'tis high Time for all honeſt Men, as much as in them lies, to endeavour to ſuppreſs it. You, Gentlemen, will do your Duty in finding this Man guilty (if the Evidence we give ſatisfies your Conſciences that he is ſo, elſe God forbid), and then I doubt not but the Court will do their Duty, in putting ſuch an Exemplary Puniſhment upon this Villain, that may deter the like barbarous and bloody Attempts for the future.

Mr. Arnold *ſworn.*

Mr. *Thompſon.* Pray, Mr. *Arnold*, give an Account of this Buſineſs.

Mr. *Arnold.* My Lord, I was ordered by the King and Council to attend upon them the next Day after this Villainy befel me. I was upon the 15th Day of *April* in my Chamber in the Afternoon, and my Lord *Chandois* and ſeveral other Perſons came to my Chamber, and one *Evans*, one of the Meſſengers belonging to the Council, came to give me Notice that my Hearing (which I was inform'd was to be at Four in the Afternoon) was ordered to be at Ten in the Morning, which was the Reaſon I ſent my Servants out to give Notice of this Alteration to my Witneſſes and Council. And though I had reſolved not to ſtir out that Night, I went out with the Company to the *Devil-Tavern*, where we were, and ſtaid till about Ten, or paſt; and juſt as we were breaking up, I recollected that I had ſome Buſineſs with Mr. *Phillips*, who is a Counſellor at Law, and lives near the End of *Bell-Yard*. I deſired the Company to ſtay, and I would come to them in a Moment. I went to the Room where ſeveral Servants were, and called to ſome of them to go with me; For ſeveral of my Friends and Neighbours being in Town, I very often took their Servants with me, when mine were buſy or out of the way. As I went croſs *Fleet-Street*, I did ſee Two Men in Campaign-Cloaks follow me, and I thought them to be Servants belonging to ſome of my Company, who had followed me on my Calling; and as I came into *Bell-Yard*, one of them went faſter than I went, and got before me, and turned and looked earneſtly in my Face, and I went by him, when a Woman ſtanding in a Door about the middle of *Bell-Yard*, with a Candle in her Hand, I looked in his Face, and that Perſon was the Priſoner at the Bar; and when his Companion or Companions came up to him, I heard them laugh aloud; I took no Notice, but went on, and went as far as to that Houſe.

* Sir *George Jeffries.*

Mr. *Recorder*. *. You knew him before, Mr. *Arnold?*

Mr. *Arnold.* I did not know him ſo well before as to know his Face. At the Kennel at the End of *Jackanapes-Lane*, I looking down to find the Kennel, a Cloak was thrown over my Head, then I found very rough Hands upon my Shoulders, and they ran me into *Jackanapes-Lane*, juſt croſs the Lane, againſt the oppoſite Wall, and they run my Head ſo hard I think they broke it; I drew my Sword before, but before I could uſe it, I was ſtruck, and immediately upon that, one of them ſtruck me; then I apprehended what it was, but could not turn to make any Defence. I received a ſecond Blow and fell, and the firſt thing I was ſenſible of was a very ſharp quick Thruſt in my Side, and the Point at that Thruſt ran into my Belly; then I recovering began to make what Defence I could. With a broad Sword I was run through my Arm, and with a ſmall Weapon I was run through in another Place of my Arm. I had ſeveral other Wounds; one of them ſet his Foot hard upon my Breaſt, and kept me down, and he was, as I conceive, run into the Leg by one of his Companions; for I heard him ſay, *Damme, thou haſt ſpoiled my Leg.* They laughed all the while, and were exceeding merry. I had then on a Pair of Bodice of Whalebone, notwithſtanding which I had four or five Wounds in my Body through them, for they were not Proof, but they imagin'd they were, finding their Swords double ſometimes, and then ſaid one of them, *Damme, he has Armour on, cut his Throat.* Immediately one kneeled down, and gave me ſeveral Cuts in the lower Part of the Face, and I did what I could to defend my ſelf, but they have given me ſome indelible Marks, Characters that will never be obliterated while I live, and I am afraid I ſhall never be my ſelf again, by Reaſon of the Bruiſes in my Head and Breaſt. By a Candle in a Window, I conceive in Sir *Thomas Baldwin*'s Houſe, and ſome Women in his Yard, gave them the firſt Diſturbance, and a Boy coming by with a Link the ſame time, I both ſaw the Face of the Priſoner at the Bar again, and remember'd I ſaw him in the Lane juſt before. They then pulled the Cloak from off me, and I ſeeing the Light, and being eaſed of the Weight, I ſtrained all my Strength and cried out, and then ſome Company came in, who are here to prove it; but ſeeing me all Blood and Dirt, they ſtood gazing on me a time, but at laſt took me up and carried me into the *Sugar-Loaf*, and from thence I was carried to my Lodging, where all the Company I left came to me, and a Surgeon was ſent for, who is alſo here to prove his Knowledge of the Condition he found me in. And when they went away, they did not ſteal away as other Malefactors uſed to do, but clapt their Swords cloſe to their Bodies, and went away laughing aloud; but as they were going, one of them ſaid theſe Words, *Now, you Dog, pray for, or pray again for the Soul of Captain* Evans. Captain *Evans* was a Jeſuit, and was executed at *Cardiffe* for being a Prieſt; and I have been informed by ſeveral Perſons of good Quality, that when the Under Sheriff came to give him Notice that he had a Warrant for his ſpeedy Execution, the ſaid *Evans* being in a Game at Tennis, ſaid, *God damme, I will play out my Set firſt.*

Mr. *Recorder.* Mr. *Arnold*, I would know one thing: Will you undertake to ſwear poſitively that this Perſon was one of the Perſons who ſtept before you? Will you take it upon your Oath, That that Perſon, the Priſoner at the Bar, went before you?

Mr. *Arnold.* I will take it upon my Oath, as far as a Man can do, for one Man, 'tis poſſible, may be like another both by his Voice and his Face; I can ſwear I believe he is the Man.

Mr. *Thompſon.* You are ſatisfied upon the firſt ſight that you had of him in the Country, that he was the Man.

Mr. *Arnold.* Yes, Sir; and he can tell you that by a very good Token, for I had like to have run him thro'.

Mr. *Recorder.* We muſt not expect that there can be exact and poſitive Proof; for Men that commit Offences of this impudent Nature don't uſually call Witneſſes to be preſent to ſee them done; therefore we would come as near as we can to Circumſtances, whereby a Fact of ſuch a Nature is to be proved. Mr. *Arnold*, do you believe that the Priſoner at the Bar was one of the Perſons that went before you in *Bell-Yard?*

Mr. *Arnold.* Upon my Conſcience I do believe he was the Man.

Mr. *Recorder.* What o'Clock was it?

Mr. *Arnold.* About eleven o'Clock, or between ten and eleven.

Mr. *Recorder.* When the Link came there, was there three? And do you believe by the Light you had by the Link, that that was one of the Perſons that were there?

Mr. *Arnold.* I ſaw his Face and Habit, and believe he was.

Mr. *Recorder.* What Habit had he on?

Mr. *Arnold.* He had a grey Cloak, a Campaign Cloak, and a Coat, I think lin'd with Red. It is impoſſible to give an Account of every Particular under thoſe Circumſtances I was in.

Mr. *Recorder.* It is not to be expected that a Man under your Circumſtances ſhould be extraordinary preciſe in Circumſtances; therefore it is I aſked you, that according to the beſt of your Apprehenſion, you might acquaint the Court with thoſe Circumſtances that may be remember'd by the Jury, that they may ſee there be no Injury done to the Priſoner at the Bar, but that Right be done on both Sides, and that in every Circumſtance.

Mr. *Holt.* Now, Sir, we will call Mr. *Phillips*, with whom he had this Diſcourſe the next Day.

Mr. *Recorder.* Will the Priſoner aſk him any Queſtions?

Priſoner. Truly Mr. *Arnold* knew me in *Monmouthſhire*, and knew me as well as any Man in the City.

Mr. *Recorder.* Did you not very well know him?

Mr. *Arnold.* It is very poſſible I might ſee him, and often at Aſſizes and Seſſions, but not to know him; nor did ever know whether his Name were *Giles*, or what it was. Your Lordſhip ſees many Perſons here, and often, and it's poſſible do not know them; he lives I think a dozen Miles from me.

Priſ. That's a Wonder; if it pleaſe you, Sir, my Wife is a near Relation to you, both by Father and Mother, and I have ſpoken with you in your Chamber.

Mr. *Arnold.* 'Tis poſſible ſhe may, but I do not know it.

Stephen Phillips.

Mr. *Holt*. Pray, Mr. *Phillips*, give an Account of what Diſcourſe you had with *Giles* the Day after the Buſineſs was done.

Mr. *Phillips*. We went to the Tavern, and drank two or three Bottles of Wine, and we had ſome Diſcourſe concerning Mr. *Arnold*; it was about Eight or Nine o'Clock in the Evening the next Day, ſome Diſcourſe happened concerning his miſerable Condition, and how he was hurt, and of that Nature.

Mr. *Recorder*. How many was there in Company?

Mr. *Phillips*. One or two more.

Mr. *Recorder*. What Houſe?

Mr. *Phillips*. At the *Crown* Tavern in *New-Street*, in *Covent-Garden*; and among the reſt, Mr. *Giles* was talking of it, and ſaid he, *God damn him, God rot him, he had Armour on*; the Word was, *God damn him*, or, *God rot him, he had Armour on, they ſay*.

Mr. *Holt*. What time of Night was that?

Mr. *Phillips*. As near as I can remember, it was about eight or nine the next Day in the Evening.

Mr. *Thompſon*. The very Words that Mr. *Arnold* ſwears when they went to cut his Throat.

Priſ. My Lord, if you pleaſe, there was Mr. *Phillips* and another; and I ſpake nothing but what I heard as News, that they had killed him. if he had not had Armour on.

Mr. *Recorder*. For that Matter, Mr. *Giles*, you ſhall have your Time, and you may call up other Witneſſes, but the Gentleman poſitively ſwears you ſaid theſe Words; and if ſo, I'll aſſure you it does not look as if you were a-kin to him, or your Wife either.

Walter Watkins.

Mr. *Holt*. Mr. *Watkins*, What did you hear that *Giles* ſhould ſay in *Glouceſterſhire* about this Buſineſs?

Mr. *Thompſon*. What ſaid he about this Buſineſs of Mr. *Arnold*?

Mr. *Watkins*. My Lord, all I can ſay is this: I being at the ſtating ſome Accounts between Mr. *John Giles* and Mr. *Richmond*, I aſked Mr. *Giles* for ſome Horſehair to make a Fiſhing-Line: Mr. *Giles* replied, *That he had left very good Hair for me at a Farrier's in* Glouceſter; *for he and Mr.* Herbert Jones *made ſuch Haſte through the Town of* Glouceſter, *that they did not call for the Horſehair*. I aſked Mr. *Giles* what was the occaſion of his Haſte? Said he, *For fear we ſhould be ſtopp'd in our Journey, as ſuſpected to be concern'd in Mr.* Arnold*'s Buſineſs*.

Mr. *Recorder*. What time was that?

Mr. *Watkins*. About the 5th of *May*.

George Richmond.

Mr. *Holt*. Mr. *Richmond*, what can you ſay concerning this Thing?

Mr. *Richmond*. I deſired Mr. *Giles* to meet me, that we might even our Accounts; and upon the 5th of *May* laſt he met me, and I deſired Mr. *Watkins* to be preſent as a Witneſs.

Mr. *Recorder*. Where was it?

Mr. *Richmond*. At *Uſke*. And as we were making up the Account, ſaid Mr. *Watkins* to Mr. *Giles*, *Where is the Horſehair you promiſed me to make Fiſhing-lines? Giles* replied, *He left very good Horſehair at a Farrier's in* Glouceſter: And he aſked him, *Why he left it?* He ſaid, *He made Haſte for fear of being taken and ſtopp'd for Mr.* Arnold*'s Buſineſs*. I cannot ſay whether he called him Eſq; *Arnold*, or Mr. *Arnold*, or what; he ſeldom uſed to give him ſo good Words.

Walter Powel.

Mr. *Holt*. What do you know concerning *Giles* his being at the Cutler's?

Mr. *Powel*. If it pleaſe you, Sir, I was at the Cutler's.

Mr. *Recorder*. Name the Time when, and the Place where.

Powel. The 5th of *May*, at a Place called *Uſke* in *Monmouthſhire*, Mr. *Giles* and I we came there; and Mr. *Giles* aſked *Peter D'arcy*, Whether he would mend him that Sword or no? But Mr. *Darcy* had ſome Buſineſs that he could not get Time to mend it that Morning, but would do it in the Afternoon. Says *Darcy*, *Where have you been? You have been hot at it. What, have you been fighting with the Devil? No*, ſaid he, *with damn'd* Arnold.

Mr. *Recorder*. What did you ſay when the Cutler aſked him, Whether he had been fighting with the Devil? And he ſaid again, No, not with the Devil, but with damn'd *Arnold?*

Powel. *Peter Darcy* ſaid he muſt not ſpeak ſuch Words; and *Giles*'s Wife pluck'd him by the Coat, and bid him hold his Tongue.

Mr. *Darnal*. Who was by?

Powel. There was one *Peter Darcy*.

Mr. *Darnal*. Was one *John Jones* there?

Powel. I think there was another indeed by, the Apprentice.

Mr. *Recorder*. There was the Apprentice, but he does not know his Name, and *Darcy*, and *Giles* and his Wife.

William Richmond.

Mr. *Holt*. What did you hear *Giles* ſay about the Rapier?

W. Richmond. He aſked me in the Afternoon before Mr. *Arnold* was hurt, where he might buy a very good Rapier? I told him I could not tell. He then had a good Back-Sword in the Houſe.

Mr. *Gibbs*. Tell the Court what Acquaintance *Giles* had with Father *Lewis* the Jeſuit, ſince executed.

W. Richmond. My Lord, he told me he would go to the Executioner, and perſuade him not to execute Mr. *Lewis*, but I had the Executioner lock'd up, and I would not ſuffer him; but I did ſee him very active at the Execution, dipping Cloths in *Lewis*'s Blood.

Mr. *Thompſon*. What do you ſay as to his coming to his Lodging?

W. Richmond. We went to ſeveral Places that Day, and at eight or nine, or between eight and nine, we came to the *King's-Arms* in St. *Martin's-Lane*, and I left him at the Kitchen Fire, and went up into the Chamber, and drank a conſiderable Quantity of Drink; and as near as I can gueſs, it was between twelve and one o'Clock before he came to his Bed; for after I was going to Bed, about one of the Clock I heard *John Giles* come up the Stairs, and bid me good Night; he called at my Door juſt as I was pulling off my Breeches to go into Bed.

Mr. *Recorder*. What time was this?

W. Richmond. As near as I can gueſs, it was between twelve and one, or very near one.

Mr. *Recorder*. At what Houſe was it?

W. Richmond. The *King's-Arms* in St. *Martin's-Lane*.

Mr. *Recorder*. What did you ſay when the Maid was making the Bed?

W. Richmond. I aſked her who it was for? And ſhe ſaid, for a Man that was not willing to lie with any body.

Mr. *Recorder*. What time did you come to the Houſe?

W. Richmond. About nine.

Mr. *Recorder*. Did you ſtay in that Houſe till that Time?

W. Richmond. I lay in the Houſe, Sir.

Mr. *Recorder*. You were not out of the Houſe the while?

W. Richmond. No, Sir, I was not out of it.

Mr. *Recorder*. And you are ſure that you did not ſee him again till he came to your Door going to Bed?

W. Richmond. Yes, Sir.

Mr. *Recorder*. What Time was that?

W. Richmond. Nigh one.

Mr. *Thompſon*. You ſee the Contradiction between this, and what this Fellow ſays upon his Examination; where he ſays he was a-bed at Nine o'Clock.

Mr. *Recorder*. Where did you go at that time?

W. Richmond. We went to *Long-Lane*, to one *Philpot*'s, and ſhe told us her Huſband was gone to Exerciſe at the next Church; I do not know the Church's Name, and there we went and looked upon the Soldiers, but did not ſee him; we came back to his Houſe again, and the Gentlewoman gave us a Tankard of Beer or Ale. And after that we went back, and we had a mind to make Sport with a Country-Fellow we had with us, and went into *Whetſtone*'s-*Park*, from thence we went to the *Helmet* in *Drury-Lane*.

Mr. *Recorder*. You went to *Whetſtone*'s-*Park*, and what did you ſpend there?

W. Richmond. Six-pence, and he paid it.

Mr. *Recorder*. Whither did you go from thence?

W. Richmond. Into *Drury-Lane*.

Mr. *Recorder*. How long did you ſtay in *Drury-Lane?*

W. Richmond. It was not long, Sir, about an Hour.

Mr. *Recorder*. Where after that?

W. Richmond. From thence to the *Peacock*, and ſtaid till eight or nine.

Mr. *Recorder*. Who did you meet withal between your going from the *Helmet* in *Drury-Lane* to the *Peacock?*

W. Richmond. We met with one *Powel*, and another, and one *Elizabeth Edwards*.

Mr. *Recorder*. What did you drink there?

W. Richmond. We did drink both Ale and Brandy.

Mr. *Recorder*. Well ſaid: How long did you ſtay there?

W. Richmond. We ſtaid there a pretty while, an Hour or more, or two Hours.

Mr. *Recorder*. What time of Night was it that you went from thence?

W. Richmond. About eight or nine.

Mr. *Recorder*. And then you went to your Lodgings?

W. Richmond. Yes.

Mr. *Recorder*. Did you drink at the *King's-Arms?*

W. Richmond. No, we drank not all together.

Mr. *Recorder*. And there you ſtaid till twelve or one o'Clock?

W. Richmond. Yes.

Mr. *Recorder*. But can you remember, as near as you can gueſs, what time was it you ſaw this Maid making of the Bed?

W. Richmond. I cannot ſay poſitively, but I judge it was about twelve o'Clock.

Mr. *Thompſon*. As to that Circumſtance of his coming home at twelve at Night, deſire Mr. *Arnold* to give an Account of his Examination, what time of Night he came to his Lodging.

Mr. *Holt*. Do you believe that is *John Giles*'s Hand?

Mr. *Recorder*. That is a Copy.

Mr. *Recorder*. He did confeſs it before a Juſtice of the Peace, that he was at his Lodging at ten o'Clock: This I heard him ſay, and I believe he won't deny it; and I heard him own this Examination, my Man will prove it.

Giles. Deny it? Yes, I will deny it, there was no ſuch word ſaid: I did ſay, Mr. *Arnold*, I went to Bed then.

Mr. *Att. Gen*. The Jury muſt take Notice of this; that *Sir* Creſwel upon his Examination he ſays, he came home by nine; Levinz. which is before the Thing was done: But by Proof he did not come in till Twelve, which was after the Thing was done.

Mr. *Holt*. Whe will give you now, Gentlemen, an Account of this Man's Principles.

Mr. *Recorder*. This is the Buſineſs: *Richmond* ſays, they came together to their Lodging before Night, but he left him at the Kitchen Fire, and went into another Room to drink with ſome Company; and this Mr. *Richmond* ſays, his Bed was not made till Twelve o'Clock, and that he himſelf went to Bed about one of the Clock, and that he heard the Priſoner at the Bar, while he was pulling off his Breeches, call to him, and therefore he took Notice of that as a Circumſtance, that he does particularly remember he did not go to Bed till that Time; and he ſays he did not ſtir from that Place after nine o'Clock.

Mr. *Thompſon*. There is a Contradiction in that.

Mr. *Recorder*. There is no Contradiction: The other Witneſs ſays, that he came along with him at Nine o'Clock.

Mr. *Thompſon*. I will tell you where this is a Contradiction.

Mr. *Att. Gen*. He ſays he came to the Houſe at nine o'Clock, but he came not to Bed till after one.

Mr. *Recorder*. The Evidence does not go ſo far: *Richmond* ſays they came to the *King's-Arms*, and left him in the Kitchen at nine o'Clock, and he went into his Chamber and ſtaid up till one, and all that time he did not come to Bed.

Mr. *Thompſon*. So far it lies upon him to give an Account where he was between nine and twelve.

Bridges.

Mr. *Holt*. Heark you, Sir, have you had any Diſcourſe with *Giles* concerning the Plot, and concerning the Lords in the *Tower?* And what did he ſay to you?

Mr. *Bridges.* I had ſome Diſcourſe with him concerning the Papiſts; he that ſaid that it was the beſt Religion, and thoſe that were not of that Religion ſhould be damn'd: I alledg'd againſt him, and told him the contrary: I thought not. Can it be ſuch a Religion, ſaid I, that will act ſuch Things againſt the King and the Government? Says he, If any ſays there is ſuch a Plot againſt the King or the Government, he is a Rogue and a Thief.

Mr. *Holt.* What did he ſay of the Lords in the *Tower?*

Bridges. Nothing more.

Giles. How along ago was this?

Mr. *Recorder.* When was this?

Bridges. This was, my Lord, about a Twelve-month ago.

Mr. *Thompſon.* Did he ſpeak any thing to you further concerning the Plot?

Bridges. Not further.

Giles. My Lord, I beſeech you I may ſpeak to this Man. Do you hear, Sir, Were not theſe the Words that I ſaid when you charged me to be a Papiſt, that I knew of no Popiſh Plot, and they that ſaid I was a Papiſt, or knew any thing of the Plot, were Rogues or Whores, or worſe?

Bridges. You ſaid thus, that the Papiſts were the beſt Religion, and that thoſe that were not of that Religion were damn'd.

Giles. Have not you been a Papiſt, Sir?

Bridges. I am not now.

Giles. Will you ſay that I am a Papiſt?

Bridges. I ſay you defended it ſo much, I thought you were. Said I, I wonder, it being ſuch a good Religion, that they would offer to act ſuch a thing againſt the King and Government. Said he, He that ſays this Plot is acted by the Papiſts, is a Rogue and a Thief.

Giles. How long ago is this?

Bridges. A Twelve-month ago; you remember it well enough; you remember when you ſent for me to the *George.*

Walter Moor.

Mr. *Holt.* What Diſcourſe have you had with him concerning the Plot?

Mr. *Thompſon.* What has he ſaid about it?

Moor. He ſaid, if the Lords in the *Tower* were executed, there would be a greater War than ever was in *England,* and ſwore that if theſe Lords were put to Death, it would coſt more Blood than ever was ſpilt. And I aſked him again, Why they ſhould not be put to Death, if they ſhould deſerve it? For if a poor Man had done ſuch a Fault, he would be hanged out of the Way preſently. He ſaid again, they did not deſerve it, for there was no Plot at all.

Giles. Pray, Sir, Who was with you when you ſay I ſaid theſe Words?

Moor. I was at *George Taylor*'s Houſe.

Giles. Did not you ſay that *George Taylor* diſcourſed this with you?

Mr. *Thompſon.* Is this the Man that ſpake it, upon your Oath?

Moor. Yes, this was the Man.

Giles. What did *Taylor* ſay to you? Do you think, my Lord, I would ſay ſuch a Thing to ſuch a Man as this is?

Mr. *Recorder.* Do you hear, Mr. *Giles,* for that Matter is not the Queſtion; the Man has ſworn it; except the Jury know of their own Knowledge that the Man is perjured, he is not ſo as to me.

Moor. It is the firſt time that I ever took an Oath.

Mr. *Reynold.*

Mr. *Holt.* Mr. *Reynold,* What have you heard *Giles* ſay concerning Mr. *Arnold?*

Reynold. Sir, I was in Company with *John Giles* and another, and we had Diſcourſe concerning one *Arnold,* and *John Giles* ſaid———

Mr. *Recorder.* What was that?

Reynold. I being in Company with him, we fell in Diſcourſe about Juſtice *Arnold,* how he was wounded.

Mr. *Recorder.* Where was it?

Reynold. In *Monmouthſhire,* at *Langoone,* the ſecond Day of *May: John Giles* anſwered us, that he could not ſee but he wounded himſelf.

Mr. *Recorder.* What Day did you ſay?

Reynold. The ſecond Day of *May.*

Mr. *Recorder.* He did diſcourſe the 5th Day of *May* at *Uſke,* I would fain know when he came through *Glouceſter.*

Mr. *Thompſon.* What did he ſay about Mr. *Arnold?*

Reynold. He thought that he wounded himſelf. Says his Wife, How could he wound himſelf in his Arms? Said he, It was himſelf, or ſome of his Friends.

Mr. *Recorder.* Or ſome of his Relations.

Reynold. Some of his Friends.

Mr. *Hobbs.*

Mr. *Thompſon.* Mr. *Hobbs,* Pray tell how you found Mr. *Arnold* when he was wounded.

Mr. *Hobbs.* I found Mr. *Arnold* bleeding.

Mr. *Thompſon.* Tell what Wounds they were.

Mr. *Hobbs.* Two in his Arm, two others upon the Face, another upon the Throat, which bled very much; another two upon the Breaſt, and one in the Belly.

Mr. *Thompſon.* What Depth might that be?

Mr. *Hobbs.* Two Inches and a Half long.

Mr. *Thompſon.* Where elſe?

Mr. *Hobbs.* There was another upon his Breaſt.

Mr. *Thompſon.* What Depth?

Mr. *Hobbs.* They were not very deep, but there was one upon the Belly ſix Inches and an Half; there were two through his Arm, and a Wound and ſeveral Bruiſes in his Head.

Mr. *Thompſon.* This is likely to be a fine Contrivance, that he ſhould do it himſelf, as likely as that Sir *Edmundbury Godfrey* put his own Sword through his own Body after his Neck was broke. *A great Shout given.*

Lord *Mayor.* Do you believe a Man could wound himſelf ſo?

Mr. *Hobbs.* No, Sir.

Mr. *Recorder.* I believe a Man could do it, but I believe a Man would not do it himſelf.

Fifteen or Sixteen Witneſſes more for the King, that were attending in the Court were not examin'd, the Court being in ſome haſte, and the King's Council not preſſing to have them examin'd, there being ſo full Evidence: Nor was there one word replied to the Priſoner's Witneſſes, they being all either frivolous or contradictory.

Mr. *Darnal.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council for *Giles,* the Priſoner at the Bar, and I muſt needs ſay there has been a ſtrong Evidence given againſt him; and if I were ſure he was concern'd in this barbarous Attempt upon Mr. *Arnold,* I would not open my Mouth in this Cauſe: But if my Brief be true, I make no Queſtion but to ſatisfy your Lordſhip and the Jury, nay and Mr. *Arnold* himſelf, that he had no Hand in this bloody Action.

And firſt, my Lord, in Anſwer to the Evidence that hath been given, there have been ſworn among others, Mr. *Richmond,* Mr. *Phillips,* and one *Powel.* Firſt, as to *Phillips*'s Evidence, or what paſſed in Diſcourſe at the *Crown* Tavern in *Covent-Garden;* we have a Witneſs here who was preſent at the ſame Time, that will give you an Account of the whole Diſcourſe, and that there were no ſuch Words ſaid by *Giles* in relation to Mr. *Arnold,* as *Damn him, he had Armour on;* and as to the Evidence given by *Watkins,* of what paſſed at *Uſke,* about Mr. *Herbert Jones*'s and the Priſoner's making ſuch Speed through *Glouceſter,* we have Witneſſes here, my Lord, that will ſatisfy your Lordſhip and the Jury, that when they came to *Glouceſter,* though it was at the time of the General Quarter Seſſions, yet they ſtaid there four or five Hours, at a Publick-Houſe, without the leaſt Sign of their Apprehenſion of any Purſuit; which ſhews the Improbability of any ſuch Diſcourſe at *Uſke:* and, my Lord, as to the Evidence of *Powel* of what was ſaid in *Darcy*'s the Cutler's Shop at *Uſke;* we have, my Lord, a Witneſs here that was preſent at that time, who will give your Lordſhip and the Jury an Account, that the Words ſaid then by the Priſoner did much differ from what Mr. *Powel* ſwears; beſides the Improbability that any Man ſhould be ſo weak to publiſh himſelf guilty of ſuch a Crime as this in this manner; after his Majeſty's Proclamation out, with the Promiſe of ſo great a Reward to any Man that would make a Diſcovery of this horrid Action: So far, my Lord, we ſhall anſwer the Evidence that hath been given; but to ſatisfy your Lordſhip and the Jury, that it was impoſſible the Priſoner at the Bar could be concern'd in this foul Action, we ſhall prove to your Lordſhip, that upon the 15th of *April,* upon the Evening of which Day this bloody Attempt was made upon Mr. *Arnold,* the Priſoner at the Bar came firſt to Town; and we ſhall prove that he came to Town but at one a Clock that Day. We ſhall prove further, if my Brief be true, by five or ſix ſubſtantial Witneſſes, againſt whom there can be no Exception, how and where he employ'd himſelf all that Day, from the Minute that he came to Town: And that when he return'd to his Inn, about nine o'Clock at Night, the Maid of the Inn lock'd his Chamber-Door, after he was a-bed, and kept the Key of the Chamber all Night. And, my Lord, if all this be clearly prov'd, I make no doubt but your Lordſhip and the Jury, and all Perſons here, will be ſatisfied that the Priſoner at the Bar is not guilty of this Indictment. My Lord, we will firſt begin with Mr. *Philpot.*

Mr. *Philpot.*

Mr. *Darnal.* Mr. *Philpot,* Pray do you acquaint my Lord, and the Jury, what Diſcourſe paſs'd between you and *Giles* at the *Crown* Tavern in *Covent-Garden.*

Mr. *Philpot.* We drank one Bottle of Claret, Mr. *Phillips* came in when the Bottle was almoſt ended. But by and by ſome Friends came in, and they aſked him what News, Sir? Said he, I hear of no News but a cruel Aſſaſſination upon Mr. *Arnold,* but for my part I am ſorry for it: But, ſaid he, if any Thing ſhould be upon Mr. *Arnold,* it is a very ſtrange Thing.

Mr. *Darnal.* Were you there all the time, Sir?

Mr. *Philpot.* Yes, Sir, all the time.

Mr. *Darnal.* And you heard no other Diſcourſe?

Mr. *Philpot.* No, he did not ſay damn him nor ſink him, for I hate ſuch Company.

Mr. *Holt.* Mr. *John Philpot,* Where do you live?

Mr. *Philpot.* In *Long-Lane.*

Mr. *Holt.* What Sign do you live at?

Mr. *Philpot.* At the *Crown.*

Mr. *Holt.* What Trade are you?

Mr. *Philpot.* A Saleſman.

Mr. *Darnal.* Now we will go on to the Diſcourſe at *Uſke,* about their paſſing with ſuch Speed through *Glouceſter.*

Mr. *Recorder.* Mr. *Darnal,* they do not pretend you were in great Fear, but they ſay you ſaid ſo. It is not the Queſtion, Whether you did ſtay long at *Glouceſter,* or no? But the Queſtion is, Whether you told this Man ſo? Becauſe the Man aſked you, Why you would leave the Hair at the Farrier's, in order to a Fiſhing-line? Truly I was in great Haſte, for fear I ſhould be taken up about the Buſineſs of Mr. *Arnold.*

Mr. *Darnal.* It is very true, and therefore we bring this Evidence to ſhew the Improbability that we ſhould ſay any ſuch Thing, when it was falſe, and eſpecially when it was to accuſe our ſelves of a Crime.

Herbert Jones, *Mayor of* Monmouth.

Mr. *Darnal.* Mr. *Jones,* Pray give an Account to the Jury of your paſſing through *Glouceſter,* and how long you ſtaid there.

Mr. *Jones.* My Lord, I came with the Priſoner.

Mr. *Recorder.* What Day did you come through *Glouceſter?*

Mr. *Jones.* I cannot poſitively tell you the Day: We went out of Town upon *Friday,* we came to *Glouceſter* either *Wedneſday* or *Friday,* and there we went to the *Old Bear* in *Glouceſter,* and there ſtaid an Hour before we went to Dinner; it was a publick time, the Quarterly Seſſions, and ſeveral People came to us to hear the News; we told them, and were as ſorry for it as any Perſons could be, and did confeſs it a very ill Thing. We went from the *Old Bear* after we had dined to the *New Bear,* and drank ſeveral Pints of Cyder. I believe, by the Oath I have taken, we were ſeveral Hours in the Town.

Mr. *Milbourn.* Do you know Mr. *Arnold* is acquainted with Mr. *Giles?*

Mr. *Jones.* I do believe Mr. *Arnold* has great reaſon to be acquainted with *Giles.*

Mr. *Thompſon.* Yes, now he has.

Mr. *Milbourn.* Was he chief Conſtable?

Mr. *Jones.* Yes, he was; and certainly Mr. *Arnold* in Reaſon would take Notice of the chief Conſtable.

Mr. *Milbourn.* Mr. *Herbert Jones,* I am informed that you know this Gentleman goes to Church and receives the Sacrament. Give an Account what Religion he is of.

Mr. *Jones*. Always a Proteſtant; I ſaw him at Church within this half Year.

Giles. I can ſhew a Certificate of my going to Church ſince I came to Town.

Mr. *Recorder*. There are many People that can go to Church to ſerve their Turn.

Giles. And, my Lord, I have taken the Oaths of Allegiance and Supremacy.

Mr. *Thompſon*. An excellent Proteſtant to diſcourſe ſo of the Plot, I muſt needs ſay that.

John Jones, *the Cutler's Apprentice.*

Mr. *Recorder*. How old are you?

Jones. Between fifteen and ſixteen.

Mr. *Recorder*. Hark you, do you know the Danger of forſwearing yourſelf?

Jones. Yes, Sir.

Mr. *Recorder*. What is it?

Jones. I am in Danger of everlaſting Fire.

Mr. *Recorder*. Very well.

Mr. *Darnal*. My Lord, this is the Apprentice to the Cutler, in whoſe Shop *Powel* ſays we had ſuch Diſcourſe: *Jones*, pray tell my Lord and the Jury, Whether you were by when one *Walter Powel* came into your Maſter's Shop, when he and *Giles* were talking about *Giles*'s Sword?

Jones. Sir, *John Giles* came in the Morning and brought a Sword, my Maſter was not within; and he told me, Give this Sword to your Maſter to be mended; ſo I took the Sword and laid it up till my Maſter came in: When he came in, I told my Maſter of it; and when he came again, this *Walter Powel* was in the Shop: Said *Giles* to my Maſter, *Did you mend my Sword?* ſays he: Says my Maſter, *Mr.* Giles, *How came your Sword broke? Have you been fighting with the Devil? No*, ſays he, *for I never met with* Arnold.

People. Hiſs 'm, hiſs.

Mr. *Recorder*. It does not become the Decency and Gravity of a Court of Juſtice, to be humming and hiſſing when Facts are trying of this great Concernment..

Mr. *Milburn*. It was the common Diſcourſe there that Mr. *Arnold* had been aſſaulted.

Mr. *Recorder*. You have been in a great Combat; have you been fighting with the Devil? What did he ſay to that?

Jones. He never met with *Arnold*; my Maſter aſked him, *Mr.* Giles, *Have you been in ſome Battle or other? Have you been fighting with the Devil? No, Sir, for I never met with* Arnold.

Mr. *Recorder*. You did not hear his Wife bid him hold his Tongue?

Jones. No, Sir.

Mr. *Thompſon*. Did he tell you how he did break his Sword?

Jones. No, Sir.

Giles. My Lord, here is Mr. *Philpot* can tell, that I was ſitting down in a Chair, and broke off a Piece of the Guard.

Mr. *Thompſon*. You will do well to prove it, Sir.

Mr. *Milburn*. Was there any Diſcourſe in the Country about Mr. *Arnold*?

Mr. *Recorder*. Did they not talk any Thing about killing the Devil?

Jones. No, Sir.

Mr. *Darnal*. If your Lordſhip pleaſes, we will call Witneſſes to give an Account when we came to Town, and where we were all that Day; and we will call the Maid that locked the Chamber-Door after we were in Bed, on the ſame Night when this Fact was committed.

John Howel.

Mr. *Darnal*. *John Howel*, Pray tell my Lord and the Jury when *Giles* came to Town?

Howel. If it pleaſe you, my Lord, I came to Town, and *John Giles* together.

Mr. *Recorder*. What time of Day was it?

Howel. It was twelve o'Clock.

Mr. *Recorder*. Who is thy Maſter?

Howel. *William Richmond.*

Mr. *Darnal*. What time of Night was it, Friend, when you heard him call to your Maſter, and bid him Good-night?

Howel. About eleven or twelve o'Clock.

Mr. *Milburn*. You ſay about nine you were at your Lodging with him? Did your Party company with him?

Howel. Yes, Sir, we did.

Mr. *Thompſon*. Where did you go at that Time?

Howel. We went into the Chamber, and drank two Pints of Brandy.

Mr. *Thompſon*. What time of Night was that?

Mr. *Recorder*. After two Pints of Brandy, I wonder how he can remember any thing.

Ann Beron.

Mr. *Milburn*. Tell what time of the Night *Giles* came in; where you were in his Company; what time of Night it was?

Mr. *Recorder*. Speak as loud as thou would'ſt do if thou wer't at Home: When was this?

Ann. The *Thurſday* after *Eaſter*.

Mr. *Recorder*. The *Thurſday* in *Eaſter*-Week, or the *Thurſday* in the next Week?

Ann. The *Thurſday* in *Eaſter*-Week; we were never out of Company; when he came home to his Lodging I believe it was near ten o'Clock.

Mr. *Recorder*. Where was your Lodging, at the *King's-Arms?*

Ann. At the *King's Arms.*

Mr. *Recorder*. Good Woman, Did you go with him to *Whetſtone's-Park?*

Ann. No, not I.

Mr. *Recorder*. Were you with him at the *Artillery-Ground?*

Ann. No, not I.

Mr. *Recorder*. Were you with him in *Drury-Lane?*

Ann. No, not I.

Mr. *Recorder*. He did not go out of your Company at all?

Ann. Yes, about ten o'Clock.

Mr. *Recorder*. Woman, you muſt be miſtaken; he came to Town at twelve or one, and might be in thy Company: But it is plain he went to a Broker's in *Long-lane*, and ſo to the *Artillery-Ground* at *Cripplegate*, for I gueſs it might be ſo; then they went to *Whetſtone*'s-*Park*, and ſpent Sixpence, and after that they went into *Drury-Lane*.

Priſ. My Lord, ſhe don't ſay ſhe was with us all the while; but we came to an Houſe where ſhe was, and ſeveral other People our Neighbours.

Mr. *Recorder*. She ſays you did go out ſome time; Now ſee whether I miſtake you.

Ann. Yes, you do miſtake me.

Mr. *Recorder*. He went out; did he?

Ann. Yes, he went out after he came into the City, he and ſome others; and then they came back to me again in two or three Hours.

Mr. *Recorder*. Then you were two or three Hours at Dinner. Now I aſk you, after they came back, was you with him all the while?

Ann. Yes, that I was.

Mr. *Recorder*. Where was it?

Ann. At the *Peacock*.

Mr. *Recorder*. That is the Place in *Drury-Lane*.

Ann. No, indeed, it is in *Covent-Garden*.

Mr. *Darnal*. When did he go to bed? Do you know that, upon your Oath?

Ann. We were in the Inn between nine and ten o'Clock, nearer ten than nine, and I ſaw him ſitting taking a Pipe of Tobacco.

Mr. *Darnal*. What time was that?

Ann. A little after Ten, I believe.

Mr. *Thompſon*. He ſat there till he was called away to do his Buſineſs.

Elizabeth Crook.

Mr. *Darnal*. *Elizabeth Crook*, Pray do you tell my Lord and the Jury about what time *Giles* went to Bed?

Crook. Indeed, Sir, he went to Bed between Ten and Eleven.

Mr. *Darnal*. How long was it that he came to his Lodging before that? Can you ſay how long he was in the Houſe before he went to Bed?

Crook. I aſked him if I ſhould take away his Candle; he ſaid he would put his Candle out, but I might lock him in and take the Key, but I did not do it.

Mr. *Thompſon*. Did he go to Bed as ſoon as he came in?

Crook. No, I think he did not.

Mr. *Recorder*. You made the Bed, did not you?

Crook. I did.

Mr. *Recorder*. Upon your Oath, what Time of Night was it?

Crook. I think it was nearer Eleven than Ten.

Mr. *Recorder*. Did you make the Bed after he went into it? What Time did you make the Bed, upon your Oath?

Crook. I made the Bed about Ten o'Clock.

Mr. *Recorder*. I aſk you, Do you remember *Richmond* came in to you, and aſked you any Thing about making the Bed? Do you remember he was in the Chamber?

Crook. In whoſe Chamber?

Mr. *Recorder*. Did *Richmond* come in when you were making the Bed?

Crook. He was not there, as I knew of.

Richmond. Was not I in the Chamber when you made the Bed?

Crook. No, I don't remember you.

Richmond. My Lord, when this Maid went to make the Bed, I went into the Room after her, and had ſome Diſcourſe with her; we leaned together upon the Window, and I told her I was in love with her; I told her, if ſhe liked of it, I would marry her the next Morning; I did it to make merry, for indeed I am a married Man.

Mr. *Recorder*. What Time of Night was it?

Richmond. About Twelve o'Clock.

Mr. *Recorder*. If you forget your other Sweethearts, can you remember this? Do you remember now he was there?

Crook. I remember he was there.

Priſ. Mr. *Arnold*, pray do not laugh at my Witneſſes, and make May-games at them; it is not the Part of a Gentleman.

Richmond. And ſhe told me that he would lie by himſelf, though the Houſe was very full.

Mr. *Recorder*. Do you remember any ſuch Diſcourſe?

Crook. I do remember that Mr. *Richmond* did come in.

King's-Council. What Time of Night was it that he was making Love to you?

Crook. I think about Ten o'Clock.

King's Council. Time paſſed merrily away with you, then.

Richmond. It was Twelve o'Clock.

Crook. Why do you ſay ſo? Our Houſe was all quiet preſently after Eleven.

Richmond. Why will you ſay ſo? Were not we ſinging and roaring together?

Mr. *Recorder*. Come, don't be angry, you were not angry when you were making Love together.

Richmond. I am not angry indeed, Sir.

Edward James.

Mr. *Milburn*. Tell my Lord what Time of Night *Giles* came into his Lodging, and where it was?

James. It was in *Eaſter*-Week he came in, and ſo were drinking at the *King's-Arms* in St. *Martin's-Lane*, and from Dinner, and from Nine o'Clock.

Mr. *Recorder*. How! You did not dine there, you dined at the *Peacock*.

James. Yes, we dined there, but from Nine o'Clock we were there till Twelve.

Mr. *Recorder*. How do you know?

James. I was there with him.

Mr. *Recorder*. After Twelve o'Clock you ſay you left him?

James. Yes.

Mr. *Recorder*. Where did you leave him?

James. In the Kitchen.

Mr. *Recorder*. Are you ſure?

James. Yes, my Lord, I am ſure of it.

Mr. *Recorder*. I aſk you, becauſe I have an unhappy Memory: You are ſure it was Twelve o'Clock when you ſaw him in the Kitchen, and here is a Maid ſaw him go to Bed at Eleven.

Mr. *Recorder*. Have you any more? You know the Matter that was the Occaſion of the Diſpute t'other Day: I would not by any Means, that in a Cauſe of this publick Concern, there ſhould be any Pretence for any to ſay they were ſurprized; therefore call as many Witneſſes as you pleaſe.

Robin Gibbon.

Mr. *Milburn*. What can you ſay, when Mr. *Giles* came into his Lodging?

Gibbon. It was about Ten o'Clock. I gave his Horſe about half a Peck of Oats.

Mr. *Milburn*. Where?

Gibbon. At the *King's-Arms* in St. *Martin's-Lane*.

Mr. *Milburn*. Do you know how long he ſtaid before he went to Bed?

Gibbon. No, Sir, I cannot tell.

Mr. *Thompſon*. He ſpeaks honeſtly, this Man.

Mr. *Recorder.* Have you any more?

Giles. There is another, a Tranſlator, my Council knows his Name.

John Chadwick.

Mr. *Recorder.* What is your Name, Sir?

Chadwick. *John Chadwick.*

Mr. *Recorder.* Go on.

Chadwick. I ſay, this *John Giles* was at my Houſe between eight and nine o'Clock.

Mr. *Recorder.* Where is your Houſe?

Chadwick. My Houſe is———

Mr. *Recorder.* Can you ſay any more to it?

Mr. *Chadwick.* No.

Elizabeth Crook.

Mr. *Recorder.* What have you to ſay?

Crook. Sir, I went with Mr. *Giles* Home, and it was between nine and ten o'Clock, and I ſaw him in his Lodging, and I ſaw him in the Morning.

Mr. *Recorder.* Are you ſure he went to Bed when you made it?

Crook. It was between ten and eleven o'Clock.

Mr. *Thompſon.* You ſee how they contradict one another.

Mr. *Recorder.* Is your Name *James?*

James. Yes, Sir.

Mr. *Recorder.* You ſay, you are certain you left him in the Kitchen at twelve?

James. Yes, Sir.

Mr. *Recorder.* But here is one that ſays he went to Bed by eleven.

James. O Lord, no, Sir.

Mr. *Holt.* Theſe are your own Witneſſes, Mr. *Giles.*

Mr. *Thompſon.* You ſee how they contradict one another.

Peter Powel.

Powel. My Lord, I met ſome of my Country-men about an Hour before Night.

Mr. *Thompſon.* What Day?

Powel. About *Thurſday*, Sir.

Mr. *Thompſon.* What Week was it in?

Powel. I believe in *Eaſter* Week, and I heard them ſay that Mr. *Arnold* was come to Town, and Mr. *Herbert* and he was to have an Hearing the next Day.

Mr. *Recorder.* How long was you in his Company?

Powel. I had been in my Friend's Company about an Hour before he came, and we ſtaid till near nine or thereabouts, and then we parted, and I never ſaw him afterwards till laſt *Monday* was ſeven-night.

Roger How.

Mr. *Recorder.* What ſay you?

How. Mr. *Giles* was in my Company, and ſtaid till about nine o'Clock, or thereabouts, and then we went away, and I ſaw him no more for that Night.

Mr. *Recorder.* Have you any more?

Giles. No.

Then Sir George Jefferies *the Recorder gave Directions to the Jury to this Effect:*

Gentlemen of the Jury, the Evidence has been very long, and I know you have taken particular Care to write down and take Notice of all the Circumſtances that have been offered to you in this Caſe: According to the beſt of my Memory, I ſhall refreſh yours with ſuch of them as I apprehend to be moſt material in this Cauſe; and if any Thing happen to be omitted, others will ſupply it.

In the firſt Place I am to take Notice, and I think I am bound to do it in Diſcharge of my own Conſcience, and of my Duty to the Court, that certainly if the Priſoner at the Bar be guilty of the Offence of which he now ſtands indicted, the Puniſhment that we can inflict upon him, cannot be proportionable to the Offence: For the Offence is too great for any Puniſhment that the Law can inflict, for Men are not preſumed to be guilty of ſuch Actions as this; and therefore the Law has not proportioned Puniſhments to them, becauſe it preſumes no Man to be guilty of ſo baſe and barbarous an Action as this; and becauſe it never could be preſumed that any Man would be guilty of ſuch Offences, therefore the Law has not provided Puniſhment proportionable to them. But this is not your Queſtion, the Queſtion before you is, Whether this Man be guilty or not guilty? That there was a Popiſh Plot, no Man ſure doubts at this Time of Day. Certainly there can be none here under ſo ſtrange an Infatuation, as in the leaſt to doubt but that there was a Plot, eſpecially when ſo many Perſons, upon full and clear Evidence and Trials, have been convicted as Inſtruments in that bloody Tragedy. But you are not to make Uſe of theſe Things by way of Evidence againſt the Priſoner at the Bar: But only in the general to premiſe ſome Things by way of Introduction to their particular Evidence; and I muſt plainly tell you (for it is fit it ſhould be mentioned), that if any Villainy can come near that horrid Murder of Sir *Edmundbury Godfrey*, this does; and I am ſorry with all my Heart, that within the Government of the City of *London*, or ſo near it, there ſhould be ſuch a barbarous Attempt as this made and concealed ſo long. It would not be ſtrange to hear of ſuch Villainies committed in other Popiſh Countries: But for the Honour and Credit of that Religion which I hope we ſhall maintain with our Lives, that is, the Proteſtant Religion, I ſay in a Proteſtant Country, where the Proteſtant Religion is profeſſed, I never heard of ſuch a barbarous Act committed before this one; becauſe our Principles of our Religion will not allow us to commit ſuch Villainies by any Diſpenſation whatſoever. Juſtice and Truth, and Righteouſneſs, are the Things that our Religion teaches us. God Almighty, and our bleſſed Saviour Jeſus Chriſt, by whom alone all Mankind muſt be ſaved, have commanded the contrary.

Their Religion may diſpenſe with ſuch villainous Actions; but this I can ſay in Vindication of ours, ours cannot do it; nay, it would be no Religion if it could.

In the next Place, Gentlemen, all Circumſtances of Time and Place, of Men and Things, ſhould be taken Notice of; for dark Caſes muſt be made appear by Circumſtances: For as I hinted before, no body calls Witneſſes when they do ſuch Facts and Works of Darkneſs, the Works of the Devil, that is the Father of all ſuch Works. I do not mean the Devil, Mr. *Arnold*, but I mean they are the Works of the Devil: *Beelzebub* himſelf, the Prince of Devils, can be only an Inſtrument and an Agent in Affairs of this Nature.

Another Thing that is fit to be taken Notice of by you, is this, that by Way of Circumſtance, whatever has been ſaid one Way or another, relating to the Plot, relating to the Buſineſs of Sir *Edmundbury Godfrey*, is not to be taken Notice of as Evidence againſt the Priſoner. You ſhall have a faithful Account of what has been ſaid by every Witneſs, both for and againſt him; for Right is to be done. Our Law comes even to a Proverb, *We muſt give the Devil his Due*; we muſt give every body Right. You know that this Buſineſs was deferred, that the Priſoner at the Bar might be left without all Manner of Excuſe; for if innocent, all Mankind would be glad to have him cleared; if guilty, every honeſt Man would have him convicted. Now this being premiſed, the Evidences againſt the Priſoner are ſeveral, and I will, as far as I can, give you an Account of them. And

Firſt of all, It is not doubted but Mr. *Arnold* has behaved himſelf like an honeſt Man, and as every honeſt Man ought to do for the Intereſt of his Religion; for there is no Man can do too much, if he does it legally, for the Preſervation of his Religion; of that Religion which he is bound to rely upon for the Salvation of his immortal Soul. Now, ſays Mr. *Arnold*, in the firſt Place he gives an honeſt Account of his being one Night, one *Thurſday* Night in *Eaſter* Week, at the *Devil-Tavern*, about nine or ten o'Clock, with ſome Friends, and he went out between ten and eleven o'Clock, and his own Servant not being there, he did intend to call ſome other Servants by; but as it happened, he went away without them, and he perceived two Men in Campaign-Cloaks follow him into *Bell-Yard.* He does take it upon his Oath, that about the Middle of the Lane, there happened to be a Candle coming out, and one of theſe two, that he did ſo obſerve to dog him, having a Campaign-Cloak upon him, and likewiſe a Coat lined with red, he did obſerve came before him; and he doth take it upon his Oath, that he does believe the Priſoner at the Bar to be that very Man that ſo came before him; he does ſay that he had a perfect Sight of him, and he does ſay, that the Reaſon why he ſhould believe him to be the Man, is, that he does remember his Face, and knew his Voice. He tells you likewiſe that there were Perſons caſt a Cloak over his Head, ran him into *Jackanapes-Lane*, fell upon him, bruiſed his Head, and wounded him in ſeveral Places; particularly he mentions, that there was at the ſame Time ſaid by one of them, *Pray for the Soul of Captain* Evans; and at the ſame Time, which is a wonderful Circumſtance, *Damn the Dog, he has got Armour on, cut his Throat.* He ſays that one Man held him up by the Chin, having ſeveral Paſſes made at him, and he ſays he had ſomething or other to preſerve him; but notwithſtanding that, he was run into the Side; there were three Men, he does tell you, and that one overtook him in *Bell-Yard*, and he continues to ſwear it was the Priſoner at the Bar, according to the beſt of his Underſtanding and Conſcience; he ſays it was he, and he diſcovered him by the Sight of a Candle. Beſides this, which is a material Circumſtance, ſome other Perſons being brought to Mr. *Arnold* about it, Mr. *Arnold* did not tax them, but did poſitively tax that Perſon to be one of the Perſons. But he tells you he ſuffered by Paſſion, as I cannot blame any Man for being in a Paſſion at ſuch a Time. But his Witneſſes determine the Thing, that that is the Man, and he did poſitively ſay it, his Memory being better ſettled than he could at firſt pretend to; but however, he gives that for another Evidence, that he was not deceived in the Perſon. This is the Subſtance, as I remember, I would not do any Injury to the Priſoner, by repeating any thing that has not been ſaid; nor would I do any Injury to the Evidence for the King, in omitting any Thing that occurs to me. The next is one *Philips*, and he tells you that the next Day, being *Friday*, about ſix or ſeven o'Clock at Night, he happened to be in Company with him at an Houſe in *Covent-Garden*, and having ſome Diſcourſe concerning *Arnold*, and concerning that bloody, baſe, and foul Attempt that was made upon him, and was ſo far from having the Bowels of an *Engliſhman*, or any Thing of Chriſtianity in him, that he does ſay he broke out into this extravagant Expreſſion, *Damn him, rot him, he had Armour on: Damn him, rot him, he had Armour on:* I ſpeak it twice over, becauſe Mr. *Arnold* tells you that the Perſons during the Fact was committing, ſaid, *Damme, cut his Throat, he has Armour on.* The next Perſon comes and tell you, at a certain Place in *Monmouthſhire*, upon the 5th of *May* following, that he went with one of the *Richmonds* to this *Giles*, and had ſome Diſcourſe: Says he, *How chance you have not been as good as your Word, about providing me Horſe-hair to make Fiſhing Lines, and you promiſed to leave it at the Farrier's in* Glouceſter? How chance it was not ſo? He immediately adds, *We were in ſuch extraordinary Haſte, becauſe we thought we were purſued about the Buſineſs of* Arnold. And that he gives as the Reaſon why he did not ſtay at *Glouceſter.* If in Caſe it had not been ſo, why ſhould he come and tell him he could not ſtay about the Buſineſs of the Hair, becauſe he was like to be purſued about the Buſineſs of *Arnold?* The next Thing, Gentlemen, is concerning one *Powel*; *Powel*, he tells you, that he being at one *Darcy*'s Houſe, a Roman Catholick, that is a Sword Cutler, that lives, I think, likewiſe at *Uſke:* And it ſeems the Priſoner at the Bar came to him to have his Sword mended. By the Way, I ſhould have told you that the Priſoner at the Bar, before the Fact was done, did enquire at a Place where he might have a good Rapier: That was before the Fact was done. The Witneſs ſpake of it laſt, which was the Occaſion that I did not give it you in order. He aſked where he might have a good Rapier?

But now to come to *Darcy: Darcy* having been very familiar with him, enquir'd, Wherefore, having had his Sword ſo lately, he ſhould have it to mend already? *Have you*, ſaid he, *been fighting with the Devil?* Immediately upon that he ſwears the Priſoner returned, *No, but with damned* Arnold. And upon that his Wife plucked him by the Coat, and bid him hold his Tongue. I think that is the Subſtance of what he ſwears. He ſays there were by at that Time the Priſoner at the Bar, the Apprentice to this *Darcy*, and a Woman that is the Priſoner's Wife.

William Richmond, he comes and gives you a further Account, that he being in his Company, he tells you, they went to ſome Place in the City to enquire after their Friends, and afterwards went to the *Artillery* to ſee the Exerciſe, then to *Long-Lane*, from thence to *Whetſtone's-Park*, and afterwards to *Drury-Lane*; and that about nine o'Clock at Night they came to their Inn, and he left *Giles* taking a Pipe of Tobacco in the Kitchen, and went up into his Chamber with ſome other People, drinking and making merry; and he does poſitively ſay, that between eleven and twelve o'Clock at Night, he ſaw the Servant Maid come up into the Room, and did ſee ſhe was making the Bed; that he ſeem'd to be a little ſurprized that any body ſhould make a Bed at that time of Night, which occaſioned him to go in to her, and aſk her the Queſtion. The Anſwer that he had was very material, that ſhe ſaid, *There is a Gentleman below that I muſt make this Bed for, he does not deſire to have any body lie with him.* That was the Anſwer the Maid gave. There was, he ſays, ſome little Talk of Love between him and the Maid, and that he poſitively ſays was near upon twelve o'Clock. He ſays that after this, he went into his own Chamber, and continued in his own Chamber till nigh One; and about One being pulling off his Breeches, the Priſoner at the Bar came and knocked at his Chamber-door, and ſpake to him, and that was near One o'clock at Night. But it is plain, during that Time, the Priſoner was not in his Chamber, if you believe him; nor indeed is there any Account given of the Priſoner from Nine o'Clock till near One, till he knocked at his Door, as he was pulling off his Breeches and going to Bed. As to the Anſwers that are given by the Witneſſes of the other Side, I ſhall give you them when I deſcend to give the Teſtimonies of the other Side.

To give you yet this further Teſtimony, ſay they, We do not only give you this Teſtimony that he is guilty of this Fact, but we do give you an Account of him, that he is very likely to do ſuch a Thing; for he is an ill Man in himſelf. As on the other Side, no Man can give a better Teſtimony to himſelf in Matters that are dark and obſcure, than the Teſtimony of his Converſation, that he is upright in his Converſation, and therefore cannot be thought guilty of ſo baſe an Action: So they think they give a good Evidence againſt him, and that he is an ill Man in himſelf; and therefore becauſe he is an ill Man, he may be guilty of ſuch a Thing. And to prove that, they call up theſe Witneſſes.

Firſt of all, one *Bridges* comes and gives you an Account, that diſcourſing with him concerning the Papiſts, he damn'd the Plot, and ſaid that all were Raſcals that were not Papiſts; and if in caſe that the Lords that were in the *Tower* ſhould happen to ſuffer, it would be a bloody Day, and it would make a bloodier Work in *England* than ever was known: Which ſhews he is a bloody ill Man. The Priſoner aſk'd him, If he were not a Papiſt? It's likely he was a Papiſt before, or he would not have truſted him ſo. And this is one Circumſtance to prove that he is an ill Man, that he hath given out ſuch and ſuch Expreſſions.

There is another, one *Reynolds*, who comes and gives you an Account of his having ſome Diſcourſe with him afterwards about this Buſineſs of Mr. *Arnold*, that the Priſoner talked ſlightly of it, and ſaid that he might do it himſelf.

This, Gentlemen, I take in general to be the Suſtance of what has been offer'd for the King. If there be any thing elſe that does not occur to my Memory, if it doth to yours, you will do well to conſider of it.

Say the Council for the Defendant, and that every Man of the Long Robe ought to ſay, that if the Perſon, which is the Priſoner at the Bar, were guilty of ſuch a barbarous thing as this, no Man would offer to open his Mouth. And therefore they offer Evidence for their Client as they are inſtructed to offer to you, and you are to try whether their Client be guilty.

Say they, You firſt call one *Philips* to give an Account; and as to what *Philips* ſays about the Buſineſs in *Covent-Garden*, about *Damn him, and rot him*, they bring one that was there all the Time, and ſays he, *I was by all the Time, and I heard no ſuch Words.* So far was he from making any particular Reflections upon Mr. *Arnold*, that he cried it was a very horrible, a very barbarous Thing. Nay, ſays he, to give Credit to this Teſtimony of his, I never uſe to keep company with them that uſe ſuch Words, as *Damn him, and rot him*, as he ſays.

The next Witneſs is Mr. *Herbert Jones*; he comes and tells you, I went with him from *London*, I went with him to *Glouceſter*, I ſtaid at an Inn call'd the *Old-Bear*, and ſtaid and dined with him there. I went after that to the *New-Bear*, we went thither and drank Cyder together; and this was very publick: For ſeveral Perſons that liv'd in the Town, came to us and enquired after the Buſineſs of *Arnold*; and if in caſe we had been under any ſuch Jealouſy as that was, we would not have ſtaid ſo long, as, ſays he, we did. Say they on the other ſide, We do not ſay that you did not ſtay in *Glouceſter*; but, ſay they, by way of Objection againſt the Priſoner at the Bar, we ſay that you yourſelf, on the fifth of *May*, ſaid, in anſwer to the Perſon that came to aſk you, Why you had not brought the Hair, that he might go a Fiſhing? You ſaid, We durſt not ſtay for fear of Purſuit upon the Account of Mr. *Arnold*. This you yourſelf ſaid, and by ſaying ſo, you have contracted that Guilt in point of Circumſtance, which is objected by us againſt you. This is the Anſwer given to that that Mr. *Jones* ſays.

The next Perſon that comes to give you an Account is one *John Jones*, who is the Apprentice: Says he, you bring a Witneſs againſt me that I ſaid ſuch a thing at *Uſke*, at *Darcy*'s the Sword-Cutler's, and you ſay the Apprentice was by: And he gives you this Evidence: Says he, I was by at ſuch a Time as the Man ſpeaks of, and being by at that Time, I do very well remember, that there was a Diſcourſe concerning ſome great Conflict that Mr. *Giles* had been in, and that *Giles*'s Wife was by, and ſo was the other Perſon that gave the Evidence, that ſuch a Diſcourſe there was of fighting with the Devil; but now he inverts the Saying of the t'other Man, and ſays that he ſhould ſay, *He never met with* Arnold *the Devil.* The one anſwers, when the thing was aſked him, Whether he had been fighting with the Devil? *No, not with the Devil, but with* Arnold; the other ſwears, *He did not meet with the Devil* Arnold. He tells you likewiſe, his Wife did not pull him by the Clothes, and bid him hold his Tongue.

The next Witneſs is *Powel*; and he gives you an Account that he came with him to Town: He gives you an Account how he ſtaid with him, and came along with him till Nine o'Clock at Night; for he does not pretend to give you an Account after Nine.

Then comes *Crook*: And *Crook*, that is the Maid Servant, ſhe ſays, I cannot poſitively tell you when he came in, but will poſitively ſay, that I made his Bed about ten, and before eleven I aſked him about his Candle; he bid me lock the Door, and he would put out the Candle himſelf, and ſhe went away and left the Candle. And that is very material; for the Time this Fact was committed was between ten and eleven; this is what the Maid ſays: Now there is this Anſwer to what ſhe ſwears. She firſt of all forgot that ever *Richmond*, that ſpeaks concerning the Breeches and other Circumſtances, that ever he was there at all; but you hear he has refreſhed her Memory with a Love Story, that he was in the Room, and ſhe does agree in theſe very Circumſtances he ſpeaks of; ſo that that gives Credit to the Teſtimony of *Richmond*, and puts a Diſparagement upon her Teſtimony, ſince ſhe could be ſo exceeding forgetful, as not to remember ſuch a Circumſtance.

The next is an old Woman: And ſhe ſwears point blank ſhe was with him moſt part of the Day; and that ſhe was with him at Dinner, and was with him till Nine of the Clock at Night, and then went to Bed. And though ſhe ſeemed to differ and blunder in ſome part of her Teſtimony, becauſe ſhe knew nothing of his going into *Long-Lane*, and other Places; however, ſhe gives an Account about the time of Nine o'Clock, that ſhe left him in the Kitchen, and then ſhe went to bed.

The next Witneſs is *James*: And *James* doth poſitively ſwear, that he was drinking with him in the Kitchen till paſt Twelve o'Clock at Night; but that cannot be true, if the Wench that made the Bed ſwear true; for ſhe ſwears ſhe made the Bed before Ten, and he went to Bed before Eleven; ſo that he could not be a Bed before Eleven, if he ſwears true; and he could not be in the Kitchen at twelve o'Clock, if ſhe ſwears true.

Gentlemen, *Richmond*'s Man he gives you no farther an Account than what runs ſquare to his Maſter's Teſtimony; that he left him at nine o'Clock at Night, and he heard him call at his Maſter's Chamber about Twelve, and ſo they punctually agree. But he gives no manner of Account where he was between Nine and Twelve, between which Hours this Fact was done.

Next, Gentlemen, there have been ſome more Witneſſes called for the Priſoner at the Bar, who gave you an Account where he was before ſuch time as he came to his Lodging. Now it is not denied on either Side, but that he might be till within Night at that Houſe they ſpeak of; but the Account that is deſired to be given of this Matter, is to know where he was between nine o'Clock and twelve, when this Fact was committed.

Theſe, Gentlemen, according as it occurs to me, are the ſubſtantial parts of Evidence, both on the one ſide and the other. The Matter therefore reſolves itſelf within this narrow Compaſs: If upon what you have heard from Mr. *Arnold*, attended with the reſt of the Circumſtances that you have heard ſworn by the Witneſſes, you do believe the Priſoner at the Bar is guilty; for he might be at his Lodging at nine o'Clock, and he might be at his Lodging at Twelve or One, and he might do this Fact: For it is certain it was not a ſudden Matter, for it was a thing done preparedly; and therefore you muſt not expect that Men that are guilty of ſuch barbarous Deſigns as this, will lay their Deſigns open. To be ſure, whoever it was did this Fact upon Mr. *Arnald*, they would do it ſo as to make themſelves appear as innocent as could be. It is not a matter to be relied on, that becauſe this Man was innocent in St. *Martin*'s-*Lane*, therefore he did not do this Thing in *Bell-Yard.*

There is another Circumſtance againſt the Priſoner at the Bar; that he ſhould imagine, notwithſtanding all this, that Mr. *Arnold* had wounded himſelf: But when he found that that was not very probable, that a Man could wound himſelf ſo, by reaſon of ſeveral Places that he received his Wounds in; he would have it, that though he did not do it himſelf, yet ſome of his Friends might. Indeed if he be guilty, ſome of his Relations might do it, but certainly he was no Friend that did it. It is againſt Nature for any Man to believe that any Perſon ſhould put himſelf to ſo much Trouble; if he had a Mind to diſpatch himſelf, he might have done it with much more eaſe, and not have put himſelf to that trouble; for Men, when they have a mind to do the Buſineſs, they do not uſe to take ſuch a deal of Pains to ſtab themſelves here and there.

Thus, Gentlemen, the Evidence being very long, and the Circumſtances very many, Things may occur to you that do not at preſent to me. Yet I muſt tell you again, in a matter of publick Example, the Proof ought to be very great, to convict a Man of ſuch an Offence; but you muſt not expect it ſhould be ſo clear, as in a matter of Right between Man and Man, and of Things that are done in the Face of the Sun. It was done in the Dark: The Devil that ſet 'em a-work, does fill them with Cunning enough to keep this Attempt as concealed as may be: And therefore Circumſtances of this Nature muſt be wonderfully conſidered; an Account of which Mr. *Arnold* himſelf gives you, and he does believe in his Conſcience the Priſoner at the Bar to be the Man.

The Jury withdrew, and having debated together about half an Hour, returned, and brought the Priſoner in Guilty. *Which done, the Court adjourned till the* Saturday *following, the* 17*th of* July: *At which time the Court being ſat,* John Giles *was brought to the Bar; to whom the Right Worſhipful Sir* George Jefferies *delivered himſelf to this Effect:*

Mr. *Recorder.* You the Priſoner at the Bar, you have been indicted for a very vile Offence; an Offence in its Nature that deſerves a greater Puniſhment than the Law can inflict upon any ſuch Offences. There is a Jury has convicted you of this Crime, againſt whom, had you had any Objection, you might have made your Challenge. And now you ſtand convicted here, it is only the Duty of the Court to pronounce that Judgment againſt you, which they think may be reaſonable to inflict upon ſuch an Offender. For I muſt needs ſay, it was one of the baſeſt and moſt barbarous Actions that Mankind could poſſibly be guilty of: An Action of ſo much Filth and Baſeneſs, that the Law could not foreſee any Man could be guilty of, and therefore hath not made Proviſion for a Puniſhment proportionable to it. But inaſmuch as we underſtand by Mr. *Arnold* you have a Charge of Children, therefore the Court takes ſome Conſideration: Not that they think to extend any Mercy to you for your own Sake, but a Regard they think they are bound to have for thoſe that have not offended. But we ought to have a care to let the World know, we do not intend only a Puniſhment to the Offender, but by that to terrify all other People from being guilty of ſuch extraordinary Villanies. And becauſe they will have Regard to your Poſterity, therefore they do not think fit to put ſo great a Fine upon you as this Fact does deſerve. But on the other Side, they have thought fit you ſhould be made an Example of, and that you ſhould ſuffer as great a Corporal Puniſhment as the Law will allow. And therefore in the Name of the Court I do pronounce this to be your Sentence:

> *That you be put in the Pillory towards* Lincoln's-Inn-Fields, *as near the Place where this barbarous Fact was committed as may be: And there you are to ſtand from the Hour of twelve till one, one Day, at Noon-day. And on another Day, from the Hour of twelve till one, over-againſt* Gray's-Inn *in* Holbourn. *And another Day, between the ſame Hours, juſt by the* May-Pole *in the* Strand. *Theſe three ſeveral Days you are to ſtand in the Pillory, and to have a Paper put upon your Hat, whereby it ſhall be ſignified, the Offence of which you ſtand convicted. And next, to deter all others from committing the like, the Court does think fit likewiſe to award, That you ſhould pay to the King the Sum of five hundred Pounds; and that you be committed in Execution, till ſuch Time as you pay that Money. And becauſe it is both to be a Puniſhment to you, and a Terror to all other ſuch Villains, you are to find Sureties for your good Behaviour during Life.*

Sentence being pronounced, and the Priſoner removed from the Bar, *Richard Cavenaugh* was brought to the Bar, and prayed to be diſcharged: But was by Mr. *Arnold* charged with threatning one *Philip Staneright*, one of the King's Witneſſes: For which Reaſon, and for that alſo a new Evidence was come in againſt the ſaid *Cavenaugh*, with ſome farther Charge relating to Mr. *Arnold*'s Buſineſs, the Court thought fit, for want of Bail, to continue him a Priſoner.

Then Mr. *Herbert* appeared, and prayed to be diſcharged from his Recognizance to appear at the *Old-Bailey*: But being accuſed by a Woman for calling her Whore, Jade, and very ill Names, and holding up his Staff at her, and threatning to beat her for being a Witneſs againſt his Friend *Giles*; as alſo for taking away her Horſe as ſhe was going to the Mill; and the Reaſon was, becauſe ſhe was to be a Witneſs in *London* againſt *Giles*. But ſhe being a married Woman, and none appearing that would be bound to proſecute him for it, he was not bound over to anſwer it, till another Complaint came in againſt him, which was immediately made by Mr. *Ballard*, and another Gentleman; who charged Mr. *Herbert*, that in *Whitſun* Week laſt, upon a Diſcourſe for chuſing Knights of the Shire for *Monmouth*, and the ſaying of one in the Company, that it was thought Mr. *Arnold* would ſtand for it; Mr. *Herbert* ſhould make Anſwer, I will circumciſe the other Side of his Cheek firſt; or, he muſt have the other Side of his Cheek circumciſed firſt. Upon which the Court ordered he ſhould not be diſcharged, but remain bound upon the former Recognizance to appear there next Seſſions. And the Recorder gave him ſeveral ſharp Reprehenſions for his malicious and unmanly Words and Proceedings: This being the ſecond of the King's Witneſſes, and a Woman that he had barbarouſly treated; ſtill paſſionately giving the Reaſon, that they were Witneſſes againſt his Friend *John Giles*, as it was proved on Oath before the Court by ſeveral Witneſſes.

Then Sir *Thomas Allen* acquainted the Court, that a Gentleman had informed him the Day before, that Mr. *Herbert* told him, that Mr. *Arnold* wounded himſelf and cut his own Throat; which the Court looked upon as an high Effect of a malicious Ingratitude; Mr. *Arnold* having beſought his Majeſty, when Mr. *Herbert* was in *Newgate* to have his Releaſe. Mr. *Arnold* replied, that Mr. *Herbert* had been more ungrateful to his Majeſty, who had graciouſly pardoned him greater Offences, and lately; for he had ſpoken worſe of his Majeſty's Perſon and Government, than he had done of him, as it had been proved before his Majeſty, and of which he believed his Majeſty was well ſatisfied. The Court told Mr. *Herbert*, he was a Shame to all *Engliſhmen*; and bound him by Recognizance to appear and anſwer this Offence at the *King*'s-*Bench* Bar the firſt Day of the next Term.

C. *The Trial of* THOMAS THWING *and* MARY PRESSICKS, *at* York Aſſizes *for* High-Treaſon, July 24. 1680, 32 Car. II.

Cl. of Aſſiz. THomas Thwing, late of *Heworth*, in the County of *York*, Clerk, and *Mary Preſſicks*, Wife of *Thomas Preſſicks*, late of the Pariſh of *Barwick* in *Elmett*, Gent. ſtand indicted; for that they, as falſe Traitors againſt the moſt illuſtrious and moſt excellent Prince, King *Charles* the Second, that now is, their Natural Lord; God before their Eyes not having, nor their due Allegiance weighing, but by the Inſtigation of the Devil being ſeduced and moved, the cordial Love, and true and natural Obedience, which true and faithful Subjects of our ſaid Sovereign Lord the King towards his ſaid Majeſty ought to bear, altogether withdrawing; and imagining, and with all their Strengths intending the Peace and common Tranquility of his Kingdom of *England* to diſturb, and his ſaid Majeſty that now is to Death and final Deſtruction to bring and put, and the true Worſhip of God in this Kingdom of *England* eſtabliſhed and uſed, to alter to the Superſtition of the Church of *Rome*, and War againſt his ſaid Majeſty in this Kingdom of *England* to move and raiſe, and the Government of this Kingdom of *England* to ſubvert; the 30th Day of *May*, in the 31ſt Year of his Majeſty's Reign that now is, at the Pariſh of *Barwick* in *Elmett* aforeſaid, in the County aforeſaid, with divers other falſe Traitors to the Jurors unknown, did traiterouſly compaſs, imagine and intend, and every of them did compaſs, imagine and intend the Death and final Deſtruction of his ſaid Majeſty, and the ancient Government of this Realm of *England* to change, alter, and utterly ſubvert, and his ſaid Majeſty of the Crown and Rule of this Kingdom to depoſe and wholly to deprive, and the true Proteſtant Religion to extirpate: And to effect and accompliſh their ſaid wicked Treaſons, and traiterous Imaginations and Purpoſes aforeſaid, the ſaid *Thomas Thwing* and *Mary Preſſicks*, and other falſe Traitors to the Jurors unknown, the ſaid 30th Day of *May*, in the 31ſt Year aboveſaid, with Force and Arms at the Pariſh of *Barwick* in *Elmett* aforeſaid, adviſedly, deviliſhly, maliciouſly and traiterouſly did aſſemble and gather themſelves together, and then and there did deviliſhly, adviſedly, maliciouſly, ſubtilly, and traiterouſly conſult and agree, and every of them did then and there traiterouſly conſult and agree to bring to Death and final Deſtruction our ſaid Sovereign Lord the King, and to depoſe and deprive him of his Crown and Rule aforeſaid, and the Religion of the Church of *Rome* into this Kingdom to introduce and eſtabliſh: And the ſooner to fulfill and effect the ſaid wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid, the ſaid *Thomas Thwing* and *Mary Preſſicks*, and other falſe Traitors to the Jurors unknown, did then and there pay and expend, and every of them did then and there pay and expend divers Sums of Money of divers other Traitors to the Jurors unknown, to carry on the Treaſons aforeſaid; and then and there the ſaid *Thomas Thwing* and *Mary Preſſicks* did ſubſcribe, and either of them did ſubſcribe a certain Note in writing for the Payment of divers Sums of Money for making a Contribution for compleating their traiterous Purpoſes aforeſaid, againſt the Duty of their Allegiance, and againſt the King's Peace, his Crown and Dignity, and alſo againſt the Statute in that Caſe made and provided.

To this Indictment having pleaded Not Guilty, and put themſelves upon their Country for Trial,

> *Upon the 29th of* July, *Sir* Thomas Daniel, *High Sheriff of the County, having returned many Gentlemen for Jurors; the Trial proceeded thus: After the Jury called,* Thomas Thwing *and* Mary Preſſicks *being brought to the Bar,*

Cl. of Aſſize. Thomas Thwing, hold up thy Hand. *Mary Preſſicks*, hold up thy Hand. [*Which being done.*]

Cl. of Aſſize. This underſtand ye, that theſe Gentlemen that are now to be ſworn, are returned by the Sheriff of this County, to paſs between our Sovereign Lord the King and you for your Lives: therefore if you will challenge any of them, you are to challenge them as they come to be ſworn, and before they be ſworn.

Cl. of Aſſize. Sir *David Fowles*, Bart.

Thwing. I challenge him.

And ſo as they were called challenged theſe twenty-five Gentlemen following, viz.

John Eaſtoft, Eſq;
William Bethel, Eſq;
Townes Drifeild, Eſq;
Will. Oſbaldeſton, Eſq;
Marm. Trueman, Gent.
Robert Bell, Gent.
Thomas Fletcher, Gent.
Thomas Wood, Gent.
Thomas Faireſide, Gent.
Roger Fretwel, Gent.
Simon Warrener, Gent.
Edward Carvil, Gent.
John Coates, Gent.
Hugh Savil, Gent.
Nivian Collins, Gent.
Thomas Green, Gent.
Nathaniel Elliotſon, Gent.
Nathan. Harriſon, Gent.
John Tomlinſon, Gent.
Thomas Riccaby, Gent.
John Ullithorne, Gent.
Thomas Hincks, Gent.
William Maſtin, Gent.
George Ellis, Gent.
Thomas Whaley, Gent.

> *In the calling of the Jury, after ſeveral Challenges made, and ſome of the Jury ſworn,* Thwing *ſpoke thus:*

Thwing. My Lord, I ſhall willingly ſtand to the other Jury.

Mr. Juſt. *Dolben.* What Jury?

Thwing. My Lady *Tempeſt*'s Jury.

Mr. Juſt. *Dolben.* Oh, your Servant; you either are very fooliſh, or take me to be ſo.

The Jury being Sworn.

Cl. of Aſſize. Cryer, count theſe.

Sir *George Cook*, Bar.
Thomas Worſley, Eſq;
William Caley, Eſq;
Roger Lee, Gent.
John Dixon, Gent.
George Wray, Gent.
Jur'
Hen. Pinckney, Gent.
John. Blackſton, Gent.
Will. Hardcaſtle, Gent.
Nicholas Stone, Gent.
Geo. Weſtorby, Gent.
Charles Tucker, Gent.

Cryer. Twelve good Men and true, ſtand together and hear your Evidence.

Cl. of Aſſize. Thomas Thwing, hold up thy Hand, [*which he did*] *Mary Preſſicks*, hold up thy Hand [*which ſhe did*]. Gentlemen, you of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge: You ſhall underſtand that they ſtand indicted by the Names of *Thomas Thwing*, &c. and *Mary Preſſicks*, &c. *Prout in the Indictment.* Upon this Indictment they have been arraigned, and thereunto pleaded Not Guilty; and for their Trial have put themſelves upon the Country, which Country you are, *&c.*

> *Then Proclamation was made for Evidence, and the Indictment being opened, and the Treaſons therein aggravated by the King's Council; Mr. Baron* Atkyns *came into the Court to aſſiſt in the Trial.*

The Witneſſes were called; Robert Bolron *was firſt ſworn.*

Bolron. My Lord, in the Year 1674, I came to live with Sir *Thomas Gaſcoigne*, and was Steward of his Coal-pits; and in 1675 I turned Papiſt; and about *January*, 1676, Mr. *Thwing*, Father *Ruſhton*, and ſeveral others came to my Houſe at *Shippon*, and did there examine me how I ſtood affected to the *Roman* Catholick Religion, and whether I was reſolved to venture my Life and Eſtate in it, if there were any Occaſion; to which I agreed, and was reſolved to obey my Ghoſtly Father in all Things.

Mr. Juſtice Dolben *taking Notice of a Gentleman near the Priſoners, demanded*, What is that Gentleman ? We are all beſet ; he was one of the Jury Yeſterday. *He being removed*, Bolron *proceeded.*

Bolron. Father *Ruſhton* my Confeſſor gave me the Oath of Secrecy ; and in the Year 1677, Sir *Thomas Gaſcoigne*, Sir *Miles Stapleton*, Mr. *Thwing* the Priſoner, and ſeveral other Perſons, met at *Barmbow-Hall*, Sir *Thomas Gaſcoigne*'s Houſe ; and there they agreed, That in hopes the Plot of killing the King would take Effect, they would erect a Nunnery at *Dolebank* ; but the real Intention was to have it at *Heworth*, within a Mile of *York*, after the King was killed ; and to avoid Suſpicion, my Lady *Tempeſt* told them ſhe would let them have *Broughton* for the preſent.

It was there agreed, that the King ſhould be killed † : And Mr. *Thwing* ſaid, that if they miſſed this Opportunity, they ſhould never have the like again, and the effecting of it would be very beneficial to the Church of *Rome.*

Mr. Bar. *Atkyns.* Repeat it in the ſame Words.

Bolron. He ſaid, if we miſs this Opportunity of killing the King, we ſhall never have the like again ; and Mr. *Thwing* was to be the Confeſſor of the Nunnery for the preſent.

Mr. Bar. *Atkyns.* Where were theſe Words ſpoken ?

Mr. *Bolron.* In the old Dining-Room.

Mr. Juſt. *Dolben.* Who were preſent ?

Mr. *Bolron.* Sir *Miles Stapleton*, Sir *Thomas Gaſcoigne*, my Lady *Tempeſt*, Mr. *Thwing*, Mr. *Ruſhton*, and ſome others.

Mr. Juſt. *Dolben.* Was it agreed that the King ſhould be killed ?

Mr. *Bolron.* It was, my Lord.

Mr. Bar. *Atkyns.* Conſider ſeriouſly, you ſpeak in the Preſence of God, and of a great Aſſembly ; and that a Perſon's Life is at Stake : Tell it again, what were the Words ?

Mr. *Bolron.* It was agreed that the King ſhould be killed, and that it was for the Good of the Catholick Religion ; and I paid 10*l.* to Mr. *Ruſhton* in Mr. *Thwing*'s Preſence, towards killing the King, and ſaw a Liſt in Mr. *Ruſhton*'s and Mr. *Thwing*'s Hands, of the Names of ſeveral that engaged for promoting the *Roman Catholick* Religion ; which was to be by killing the King.

Mr. Bar. *Atkyns.* Was it a Liſt of thoſe that were to kill the King ?

Mr. *Bolron.* The Liſt I ſaw was of Money raiſed to kill the King.

Mr. Bar. *Atkyns.* What was the Title of that Liſt ?

Mr. *Bolron.* A Liſt of the Names of the Actors and Contributors, engaged in the Deſign of promoting the *Roman Catholick* Religion, and alſo of eſtabliſhing a Nunnery ; which was raiſing Money for the killing of the King. And beſides the 10*l.* I paid towards it, I paid 5*l.* to have my Soul prayed for. *Thwing* told me afterwards at my Houſe, that in *Yorkſhire*, *Lancaſhire*, and *Derbyſhire*, 30,000*l.* was raiſed for the killing of the King ; and that the Liſt was ſent beyond Sea.

Mr. Juſt. *Dolben.* What can you ſay againſt the Woman ?

Mr. *Bolron.* Mrs. *Preſſicks* told me, That in 1678, preſently after the Plot was diſcovered, ſhe being in *London*, did hear a Woman cry after her, *Stop the Papiſt* ; *ſtop the Plotter* ; but ſhe got away, and afterwards durſt not appear publickly in *London.* I had Diſcourſe with her at my Houſe about the Plot ; and ſhe told me, that Father *Harcourt* was her Confeſſor, and firſt engaged her in it ; and that *Pickering* told her, that he was to have killed the King, and ſhe ſaid ſhe was ſorry he did not do it ; and that *Oates* and *Bedloe* were two Rogues, and the Plot had not been diſcovered but for them, who were the Cauſe of ſo much Miſchief. And ſhe further told me, that the Gun wherewith he was to have killed the King, was found with *Pickering*, and ſhe did believe that was the Cauſe of his loſing his Life : And ſhe ſaid, The King was an Aſs, and not fit to govern ; that what Money the Parliament gave him he ſpent upon Whores and Concubines.

Mr. Juſt. *Dolben.* Well, is this all you have againſt her ?

Mr. *Bolron.* Yes, my Lord.

Mr. Juſt. *Dolben.* He hath done ; you may croſs-examine him, if you will.

Thwing. Who was at your Houſe when I was there ?

Mr. *Bolron.* Father *Ruſhton.*

Thwing. How often was I there ?

Mr. *Bolron.* Several Times, I know not how often.

Thwing. When was it you accuſed me firſt of the Plot ?

Mr. *Bolron.* When I went to the Council I accuſed him.

Thwing. He did not accuſe me of the Plot in ſeveral Months.

Sir *Tho. Stringer.* Come, Mr. *Mowbray*, tell your Knowledge.

Mr. Mowbray *was ſworn.*

Mr. *Mowbray.* My Lord, what I have to ſay is only againſt Mr. *Thwing.* At an Aſſembly of divers Prieſts at *Barmbow-Hall*, amongſt the reſt, there were Father *Ruſhton* and Mr. *Thwing* ; and there they determined to kill the King.

Mr. Bar. *Atkyns.* When was this ?

Mr. *Mowbray.* This was near *Michaelmas* 1676, and they declared it was not only lawful, but meritorious to do it : They alſo declared, That *London* and *York* were to be fired ; and that Force was to be made uſe of againſt the King, and all other Hereticks that ſhould oppoſe the Advancement of their Religion : And Mr. *Thwing* and *Ruſhton* declared, the King was an Heretick, and excommunicated by the Pope, and hadn't kept his Promiſe with the Jeſuits to bring in their Religion, and therefore deſerved to be killed, and it was not only lawful but meritorious ſo to do.

Mr. *Belwood, of Council for the King.* Was there not a Liſt ?

Mr. *Mowbray.* Yes, a Liſt of thoſe engaged in the Deſign of killing the King, and of promoting the Catholick Religion : And it was declared the King ſhould be killed, becauſe he hadn't kept his Promiſe made to the Jeſuits when he was beyond Sea.

Mr. Juſt. *Dolben.* Did the Priſoner declare it ?

Mr. *Mowbray.* Mr. *Thwing* declared it, and *Ruſhton* and he managed it.

Thwing. Who was there ?

Mr. *Mowbray.* It was at Father *Ruſhton*'s Chamber that I ſaw you ; and there was another *Thwing* there, and alſo *Addiſon* a Prieſt.

Thwing. I went once or twice a Year to Sir *Thomas Gaſcoigne*'s, and thought it my Duty to wait on him ; and that I might without Offence do it, he being my Uncle.

Mr. Juſt. *Dolben.* No, the Offence is Plotting.

Sir *Thomas Stringer.* Mr. *Thwing*, do you know *Ruſhton* ?

Thwing. Yes ; but I had no great Acquaintance with him.

Sir *Tho. Stringer.* Mr. *Mowbray*, how came you to be intruſted in ſo great a Buſineſs ?

Mr. *Mowbray.* I aſſiſted Father *Ruſhton* at the Altar at Maſs ; and ſo came into great Favour with him, and was permitted to be in his Chamber when the Prieſts were in private with him.

Sir *Tho. Stringer.* Mr. *Mowbray*, did you take an Oath of Secrecy ?

Mr. *Mowbray.* Yes, I took it from Father *Ruſhton.*

Thwing. How long ſince did you change your Religion ?

Mr. *Mowbray.* Preſently after the Plot broke out.

Thwing. Who were you examined before firſt of all ?

Mr. *Mowbray.* Before Mr. *Lowther*, and Mr. *Tindal.*

Mr. Juſt. *Dolben.* Did you at the firſt accuſe him ?

Mr. *Mowbray.* I only charged Sir *Thomas Gaſcoigne*, Eſq ; *Gaſcoigne*, my Lady *Tempeſt*, Sir *Miles Stapleton*, and Father *Ruſhton* in my firſt ; and in my ſecond Depoſition I accuſed Mr. *Thwing*, and that was before Juſtice *Warcup.*

Mr. Bar. *Atkyns.* Did *Thwing* abſcond at the firſt ?

Mr. *Mowbray.* He was apprehended at the ſame Time Sir *Thomas Gaſcoigne* was apprehended, and at his Houſe.

Mr. Juſt. *Dolben.* Well, what ſay you to *Mary Preſſicks* ?

Mr. *Mowbray.* My Lord, I have nothing to ſay againſt her.

Mr. Juſt. *Dolben.* Mr. *Thwing*, you have heard the Evidence, what do you ſay for yourſelf ?

Thwing. I ſhall produce Witneſſes I was never with him at *Barmbow* : Firſt, I ſhall ſhew he never mentioned me when he firſt mentioned the Plot ; and he never ſaid any Thing againſt me, when he accuſed Sir *Thomas Gaſcoigne* before Mr. *Lowther* and Mr. *Tindal.*

But Mr. Bonithen, *of Counſel for the King, offering other Witneſſes for the King againſt Mrs.* Preſſicks, *they were called*, viz. *Mrs.* Bolron *ſen.* Mrs. *Bolron jun.* *and* John Hutchinſon.

Mrs. Bolron *ſen. ſworn.*

Mr. Juſt. *Dolben.* What do you know of *Preſſicks*, the Priſoner at the Bar ?

Mrs. *Bolron ſen.* My Lord, ſhe ſaid ſhe knew of the Plot, and that *Pickering* was to have killed the King.

Mr. *Bonithen.* Do you mean ſhoot the King ?

Mrs. *Bolron ſen.* Yes, I do.

Mr. Juſt. *Dolben.* Where did ſhe tell you this ?

Mrs. *Bolron ſen.* At *Shippon*, my Lord.

Mr. Juſt. *Dolben.* At his Houſe ? [*pointing to Mr.* Bolron.

Mrs. *Bolron ſen.* Yes, and ſhe ſaid that ſhe was very ſorry that *Pickering* did not do it, and that he had done it if it had not been for *Oates*, and *Bedloe.*

Mr. Juſt. *Dolben.* Was this the very ſame Time that Mr. *Bolron* ſpeaks of ?

Mrs. *Bolron ſen.* Yes, my Lord ; and ſhe ſaid there would never be Quiet in *England* until the *Roman Catholicks* had got the upper Hand, and there was not a Proteſtant left in *England* : And ſhe ſaid, The King ſpent his Money amongſt his Concubines, and his other Women, ſo that he was not worthy to be King, and ſhe hoped an Army of Catholics would be raiſed to ſet up Popery.

Mr. Juſt. *Dolben.* That is, indeed, the Principle of the Papiſts, and according to it ; within forty Years paſt they murdered 20,0000 innocent Proteſtants in *Ireland.* Did ſhe ſay it often ?

Mrs. *Bolron ſen.* Yes, ſeveral Times, more than once or twice.

Mrs. Bolron *jun. was then ſworn and examined.*

Mrs. *Bolron jun.* I heard her ſay, There was a Conſpiracy carrying on about altering the Government, and eſtabliſhing the *Roman Catholick* Religion.

Mr. Juſt. *Dolben.* Where heard you this ?

Mrs. *Bolron jun.* In my Huſband's Houſe.

Mr. Bar. *Atkyns.* And what were her Hopes in the Conſpiracy ?

Mrs. *Bolron jun.* My Lord, I cannot tell.

Mrs. *Preſſicks.* I aſk Mr. *Bolron* when we had this Diſcourſe ?

Mr. *Bolron.* At ſeveral Times ; about *Candlemas* 1678, and at *Eaſter* and *Whitſuntide*, and ſeveral Times after the Plot was diſcovered, we diſcourſed it ſeveral Times at the Porch at my Houſe.

Mr. Juſt. *Dolben.* Who was preſent ?

Mr. *Bolron.* My Grandmother.

Mr. Juſt. *Dolben.* Where was it, old Woman, that you heard theſe Words ?

Mrs. *Bolron ſen.* At *Shippon*, in the Hall-porch, my Lord.

Mrs. *Preſſicks.* Had we any Diſcourſe about Sir *Thomas* ?

Mrs. *Bolron ſen.* None.

John Hutchinſon *was then ſworn.*

Mr. Juſt. *Dolben.* Do you know any Thing concerning Mrs. *Preſſicks* ?

Hutchinſon. May it pleaſe you, my Lord, I came to Mr. *Bolron*'s Houſe, and Mrs. *Preſſicks* aſked me what News in our Country, and what became of the Papiſts ? I told her ſome had given Bond, and ſome were gone to Priſon : Then ſhe ſaid, We ſhall never be at Peace until we're all of the *Roman Catholick* Religion ; for the King is an Heretick, and ſpends more Money upon his Whores than upon his Queen, and we ſhall never be at Quiet until the Duke of *York* is King.

Mr. Juſt. *Dolben.* What ſay you to this ? You have ſeen him ?

Mrs. *Preſſicks.* I never ſaw him but twice there.

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† *Note, That upon Sir* Thomas Gaſcoigne*'s Trial it appeared in his Almanack, that he had made this Memorial there with his own Hand* (viz.) *The 15th of* Apr. 1676, *Memorand. acquaint Mr.* T. Thwing *with the whole Deſign.*

Mr. Juſt. *Dolben.* Where was ſhe when ſhe ſaid this ?

Hutchinſon. She firſt talked with me in the Kitchen, and at the Hall-door, as ſhe was juſt going into the Parlour: ſhe told me, That we ſhould never be at quiet until the Duke of *York* was made King.

Mr. Juſt. *Dolben.* Mr. *Bolron*, when came ſhe to your Houſe ?

Mr. *Bolron.* She came to our Houſe about *Chriſtmas*, and ſtaid about ſix Months there.

Mr. Juſt. *Dolben.* Six Months in your Houſe ! Then you are well enough acquainted with her ?

Mr. *Bolron.* Yes, my Lord.

Mr. Juſt. *Dolben.* Did you charge Mr. *Thwing* before the Juſtice ?

Mr. *Bolron.* My Lord, I gave Juſtice *Tindal* only a ſhort Note, that Sir *Tho. Gaſcoigne* promiſed me 1000*l.* to kill the King: But what I had to ſay againſt *Thwing*, I gave to the King and Council.

Thwing. My Lord, this is Malice to Sir *Tho. Gaſcoigne*'s Family, to which I am related, it is out of Revenge.

Mr. Juſt. *Dolben.* It was a Family-Quarrel, then ?

Thwing. Yes, my Lord, this I can prove by ſeveral Witneſſes.

Mr. Juſt. *Dolben.* Call your Witneſſes then.

Thwing. Nathaniel Wilſon.

Mr. Juſt. *Dolben.* Mr. *Balington*, why don't you appear? We know well enough that you are Solicitor in the Cauſe; call your Witneſſes.

Then Nathaniel Wilſon *was examined.*

Mr. Juſt. *Dolben.* Come, what is it you have to ſay ?

Wilſon. I went to *Bolron* to look on a Cow that he had gifted for his Couſin *Bargues*, and deſired to have the Cow away, but he would not let me have her without paying for her Gift; ſo I tender'd him his Money, and we went to talk in the Houſe, and *Bolron* ſent for a Groat's-worth of Ale, and aſked me if I could tell any thing of Father *Ruſhton*, and I told him I could not; and he bid me keep his Secrets, and he would give me more than I could addle (*that is*, earn) in ſeven Years: And he ſaid, unleſs he could ſhed the Blood of ſome of them, he ſhould get nothing.

Mr. Juſt. *Dolben.* When was this ?

Wilſon. This was about next *Michaelmas* a twelve-month.

Mr. Juſt. *Dolben.* This is quite other than you told yeſterday.

[Wilſon *was a Witneſs the Day before for the Lady* Tempeſt.]

Wilſon. I had not Time.

Thwing. I deſire to know, Whether *Bolron* named me to Mr. *Lowther* as a Plotter.

Then Mr. Lowther *was called.*

Mr. *Lowther.* I do not remember that Mr. *Bolron* named Mr. *Thwing* to me when he was before me.

Mr. Juſt. *Dolben.* When did he come to make the Diſcovery to you ? Give an Account of it.

Mr. *Lowther.* I think it was the 24th or 25th of *June* 1679, that he came to me; and he told me he had ſome Secrets to impart to me: And he began to tell me a Story of the Jeſuits and Prieſts, what they deſign'd againſt the Government, becauſe the King did not keep his Word with them when he was beyond Sea: And then I called for my Man and a Bible to take his Examination, and ſaid, Pray, Friend, be very careful what you do, for here your own Concern is at ſtake, as well as the Lives and Fortunes of the Gentlemen you ſpeak againſt; and upon that he began to be very fearful and timorous, and looked pale: Whereupon I aſked him, What that Fear was for ? It is, ſaid he, becauſe I have concealed it ſo long; and if that were upon you, it may be you would be as fearful as I am. Then I was going to take his Information, and he ſaid, I have done it before to Mr. *Tindal.* Why came you to me, then ? ſaid I. He ſaid, Mr. *Tindal* deſired it: Well, ſaid I, Mr. *Tindal* and I are to meet to-morrow, and we will do it jointly.

Mr. Juſt. *Dolben.* Did he ſay he told you all he knew ?

Mr. *Lowther.* He did not name *Thwing*, but ſaid he would recollect more, and would go to *London* and give it in to the King and Council: And then I ſaid, Why may not we take it here as well as trouble them at *London?*

Mr. Juſt. *Dolben.* It may be, he thought it better to do it there.

Mrs. *Preſſicks.* He did not accuſe me before Mr. *Lowther.*

Mr. *Bolron.* Yes, my Lord, I did, and had a Warrant to take her.

Mr. *Lowther.* She was taken the ſame Day Sir *Tho. Gaſcoigne* was taken.

Mr. Juſt. *Dolben.* We will be juſt between you.

Then the Priſoners called Obadiah Moor.

Mr. Juſt. *Dolben.* Come, tell your Knowledge in this Buſineſs.

Moor. I ſay, that Mr. *Bolron* ſaid, That Sir *Tho. Gaſcoigne* was not concerned in the Plot, nor none of his Family; and that he believed there was no Plot.

Mr. Juſt. *Dolben.* When was this ?

Moor. This was about *Candlemas* was twelve months.

Mr. Juſt. *Dolben.* He was then a Papiſt: But did he not tell you otherwiſe afterwards ?

Moor. In *Auguſt* after he told me he had but equivocated with me in what he ſaid before, and that there was a real Plot; and if he had ſworn a thouſand Lies, he could have been forgiven them.

Then Stephen Thompſon *was called and examined.*

Thompſon. Mr. *Bolron* was Servant to Sir *Tho. Gaſcoigne*, and being in his Debt, Sir *Thomas* did arreſt him, and he agreed with Sir *Thomas* to give him 60*l.* and got me to be bound with him: And when the Plot came out, I thought *Bolron* being his Servant, might know whether Sir *Thomas* had any hand in it; and if ſo, that we were in no danger of being ſued; and I enquired of *Bolron*, and he ſaid, *Sir* Thomas *was as ſinleſs of it as the Child that was unborn.* And on *Holy Thurſday* I went to him, and got him out on the backſide to Sir *Thomas*'s, and all along he told me, if he ſued him he would do him a greater Miſchief: And I pleaded earneſtly with Sir *Thomas* not to ſue the Bond, and he ſaid he would have his Money, but would ſtay a Fortnight; and I prevailed with him to give three Weeks time, that *Bolron* might go to ſell his Houſe at *Newcaſtle*, and in that Time he went to *London* and accuſed him of Treaſon: And as to Mrs. *Preſſicks*, I aſk'd his Grandmother what ſhe could ſay againſt her, and ſhe ſaid, Alas, alas, I can ſay nothing to it, but *Bolron* ſaid ſhe muſt ſay ſo and ſo.

Mr. Juſt. *Dolben.* What mean you, Friend, by *ſo* and *ſo?*

Thompſon. It was about Sir *Edmundbury Godfrey*, and that the King was an Whoremaſter, and ſuch Things.

Then Zachary Thorpe *was called and examined.*

Thorpe. I met with Mr. *Bolron* in *Long-Acre* before the laſt Aſſizes, and aſked him concerning Sir *Tho. Gaſcoigne* my Countryman, and he ſaid he was cleared, but, God damn the Jury, they were Rogues. Then he aſked me if I had read *Harris*'s Intelligence of that Day, and I told him Yes; and he then aſked me if I had ſeen his Wife's Name in it ? He then told me, that he was going down to the Aſſizes at *York* againſt my Lady *Tempeſt*, and ſaid, God damn me, I will ruin 'em; if one thing will not do it, another ſhall.

Mr. Juſt. *Dolben.* What are you ? God damn me comes very nimbly out of your Mouth.

Thorpe. I live at the *White-Hart* in *Charterhouſe-Lane*, with the Gentleman of the Houſe; I married his Daughter.

Mr. Juſt. *Dolben.* And draw Pots of Ale, that's your Trade ? How comes *Bolron* to talk thus to you ? Is he ſo mad a Fellow to talk thus to every one ? This is not likely that he ſhould thus accuſe himſelf to you: Your Father-in-law is a poor Ale-houſekeeper ?

Mr. Bar. *Atkyns.* Are not you a Papiſt ?

Thorpe. No, my Lord, a Proteſtant of the Church of *England.*

Mr. Juſt. *Dolben.* Have you never been in *Newgate?* Your Lane is full of ſuch People, and your Houſe ſuſpected.

Thorpe. No, my Lord.

Mr. Juſt. *Dolben.* Come, have you done ?

Thorpe. Bolron came to my Lodgings at the *Plough* on *Holbourn-Hill* before the laſt Aſſizes, and told me, if I would ſwear that *Peter Shipton* knew no harm by *Bolron*, he would do any thing for me.

Mr. Juſt. *Dolben.* This is a Fable, for *Bolron* bound *Shipton* over at the Seſſions before the laſt Aſſizes.

Bolron. Yes, my Lord, it was for ſcandalous Words againſt his Majeſty.

Thorpe. He aſked me what *Shipton* was. I anſwered, he is an honeſt Man for aught that I know: I have taken his own Bond, ſaid *Bolron*, but I will have him from Court to Court, I will teach him to meddle with me.

Mr. Juſt. *Dolben.* How came he to ſpeak to thee ?

Thorpe. I know not why, but it was his Diſcourſe to me.

Mr. Bar. *Atkyns.* What Acquaintance was there between you ?

Thorpe. I have ſeen him ſeveral times in *Yorkſhire.*

Mr. Juſt. *Dolben.* You live in *Charterhouſe-Lane*, How came you together in *Long-Acre?*

Thorpe. I met him accidentally in the Street.

Mr. Juſt. *Dolben.* It is a wonderful thing, that he ſhould meet one in the Street with whom he had very ſmall Acquaintance, and diſcover ſuch things to him, as he did to you.

Then William Hardwick *was examined.*

Hardwick. I was to carry Mrs. *Preſſicks* before Juſtice *Lowther*, and *Bolron*'s Wife ſaid ſhe was ſorry for it, for ſhe believed her to be an honeſt Woman, and had been a good Neighbour amongſt them.

Mr. Bar. *Atkyns.* Who was ſorry ?

Hardwick. Mrs. *Bolron.*

Mr. Bar. *Atkyns.* What did *Bolron* himſelf ſay ?

Hardwick. He ſaid nothing to me, he was in another Room with his Grandmother.

Mr. Juſtice Dolben *taking Notice of* Thwing's *ſpeaking to Mr.* Hobart, *demanded what he ſaid.*

Hobart. My Lord, he aſk'd me, whether *Bolron* did not ſay that Sir *Tho. Gaſcoigne* offer'd him 1000*l.* I only ſay that he ſwore at Sir *Thomas Gaſcoigne*'s Trial.

Mr. Juſt. *Dolben.* How doth it appear what he ſwore there ?

Bolron. I acquainted Mr. *Lowther* and Mr. *Tindal* with it.

Mary Walker *was called.*

Mr. Juſt. *Dolben. Mary Walker*, what do you ſay ?

Mary Walker. Robert Bolron came after Mr. *Thwing* was taken Priſoner, to my Miſtreſs's.

Mr. Juſt. *Dolben.* Who is your Miſtreſs ?

Mary Walker. Mrs. *Laſſell*; and he aſk'd me if I knew Mr. *Thwing* to be a Prieſt, and I told him, No, my Lord; he told me that if I would ſwear that he was a Prieſt, he would give me 10*l.* for he would be reveng'd of him for Sir *Thomas Gaſcoigne*'s Cauſe; for he was near of kin to him, and he proffer'd me 10*l.* again.

Bolron. Where were you, you were not here yeſterday ?

Mary Walker. I was in the Court yeſterday.

Mr. Juſt. *Dolben.* Where ſpoke he this ?

Mary Walker. At Mrs. *Laſſell*'s.

Sir *Tho. Stringer.* My Lord, he was then ſearching for Prieſts at that Houſe, and it is improbable that he ſhould endeavour at that Time to ſuborn *Thwing*'s Siſter's Servant.

Mr. Bar. *Atkyns.* Is Mrs. *Laſſell* of kin to Mr. *Thwing?*

Walker. Yes, my Lord.

Mr. Juſt. *Dolben.* Who can believe he would come to *Thwing*'s Siſter's Houſe, to ſuborn her Servant to be a Witneſs againſt Mr. *Thwing?*

Walker. Yes, my Lord, I have Witneſs of it, both a Man and a Woman.

Mr. Juſt. *Dolben.* Where are they ?

Walker. In Town.

Mr. Juſt. *Dolben.* That makes it more improbable that he would offer you 10*l.* in the Preſence of two Witneſſes to ſwear that Mr. *Thwing* was a Prieſt.

Sir *Tho. Stringer.* Let us aſk her a Queſtion: Whether are you a Papiſt or no ?

Walker. Yes, I am a Catholick.

Sir *Thomas Stringer*. Since it muſt be probable, that he would aſk you ſuch a Thing, and knew you to be a Papiſt; is *Thwing* a Prieſt or no?

Walker. No, marry, is he not.

Sir *Thomas Stringer*. Have you not heard him ſay Maſs?

Walker. No, if I were to die.

Mr. Juſt. *Dolben*. Indeed you are an excellent Witneſs.

Mr. Legget, *one of the King's Meſſengers, produced as a Witneſs by the Priſoners, was next examined.*

Mr. *Legget*. In *Auguſt* laſt, Mr. *Bolron* told me, he would call his Grandmother in, and examine her before me; and he then aſked her, if ſhe did not ſay, that ſhe knew ſuch and ſuch Things? And ſhe ſaid ſhe could not tell, but if ſhe did, 'twas true.

Mr. Bar. *Atkyns*. What was it he aſked her?

Legget. About *Harcourt*, and I know not what; I took little Notice of it, it ſeemed to be a Thing ſo idle, that I went away: And meeting me afterwards, ſaid, You thought my Grandmother knew nothing, but at the Bar, when Sir *Thomas Gaſcoigne* was tried, they ſaid they never heard one ſwear a Thing more plainly.

Mr. Juſt. *Dolben*. *Legget*, did not you deſire Money Yeſterday of the Clerk of the Aſſizes as a Witneſs for the King?

Legget. Yes, my Lord.

Mr. Juſt. *Dolben*. Did you ſo? You are a fine Fellow.

Then one William Bacchus *was examined.*

Bacchus. All that I can ſay, is, That I ſerved a Warrant upon Mrs. *Bolron* to go before Squire *Lowther*; and *Bolron*'s Wife and Grandmother ſaid, they could ſay nothing againſt Sir *Thomas Gaſcoigne*, nor any of the Family.

Mr. Juſt. *Dolben*. Well, they ſay nothing againſt them now, but what did ſhe ſay againſt Mrs. *Preſſicks*?

Bacchus. She ſaid that *Mary Preſſicks* ſhould ſay that the King was an Whoremaſter, and maintained his Whores better than he did the Queen.

Cuthbert Hamſworth was then called.

Hamſworth *being produced as a Witneſs for Sir* Thomas Gaſcoigne, *owned that he had been a Papiſt.*

Hamſworth. My Lord, *Robert Bolron* did ſwear Revenge againſt my Lady *Tempeſt*, for proſecuting a Suit againſt him.

Mr. Juſt. *Dolben*. What is that to the Matter in Hand? Do you know that he ſwore Revenge againſt *Thwing* and *Preſſicks*?

Hamſworth. No, my Lord.

Mr. Bar. *Atkyns (to the Priſoners)*. What have you more to ſay?

Thwing. My Lord, he ſaith, I was at *Barmbow-Hall*, 1677, I have Witneſſes to prove otherwiſe.

Mr. Bar. *Atkyns*. Call them then.

George Twiſley, Groom to Sir *Thomas Gaſcoigne*.

Twiſley. Mr. *Thwing* was never at our Houſe above a Night or two in the Year.

Mr. Juſt. *Dolben*. Whoſe Houſe is yours?

Twiſley. Sir *Thomas Gaſcoigne*'s.

Mr. Juſt. *Dolben*. He was there but a Night or two at a Time?

Twiſley. No, and pleaſe your Lordſhip.

Mr. Juſt. *Dolben*. But was he there in 1677?

Twiſley. About a Year or two ſince, I ſaw him there.

Mr. Juſt. *Dolben*. But how often in a Twelve-month's Time?

Twiſley. Not above once or twice.

Mr. Bar. *Atkyns*. Did you never go out of your Maſter's Houſe in 1677?

Twiſley. I have, my Lord, but I was there both Night and Morning.

Mr. Bar. *Atkyns*. How do you know but he might be there in the time that you were not there?

Bolron. And pleaſe your Lordſhip, this Man was but the Groom.

Twiſley. I was the Groom, my Lord, and took the Horſes.

Mr. Juſt. *Dolben*. But were you never abſent?

Twiſley. No, my Lord, and he was not there above once or twice in the Year.

Thwing. Aſk him what Company was then there?

Twiſley. No Company at all, my Lord, when he was there.

Mr. Juſt. *Dolben*. Was not he there about *Eaſter*?

Twiſley. No, not that I know of.

Mr. Juſt. *Dolben*. What time of the Year was he there?

Twiſley. About *Michaelmas*, not *Eaſter*.

Mr. Bar. *Atkyns*. How came you to take ſuch particular Notice at what time Men come? Did you take an Account of all the Gentlemen that came to Sir *Thomas*'s Houſe, how often there, and when they came?

Twiſley. There were none that ſtayed any time when they came thither.

Mr. Bar. *Atkyns*. What Time of the Year was he there?

Twiſley. It was a Month before *Michaelmas*.

Mr. Juſt. *Dolben*. You bring Witneſſes to ſtretch Things even to Impoſſibilities.

Bolron. He was Drunk, my Lord, at *Leeds* the ſame Night the Conſult was.

Sir *Thomas Stringer*. Will you ſpeak Truth before Almighty God?

Twiſley. Yes.

Sir *Thomas Stringer*. Pray, then, are you a Papiſt?

Twiſley. No.

Sir *Thomas Stringer*. Were you never a Papiſt?

Twiſley. Yes.

Sir *Thomas Stringer*. Have you heard Maſs at Sir *Thomas Gaſcoigne*'s when you were a Papiſt?

Twiſley. No.

Sir *Thomas Stringer*. That's very ſtrange, that you lived there and never heard Maſs, and yet were a Papiſt.

Twiſley. Yes, I heard Maſs in his Houſe, but not by this Man.

Sir *Thomas Stringer*. How long have you been turned Proteſtant?

Twiſley. About two Years.

Thwing. *Thomas Areton*. Did you ever ſee me at *Barmbow-Hall*?

Areton. I have nothing for nor againſt him, I never ſaw him before in my Life.

Thwing. Mr. *Mowbray* hath declared he never knew any Thing of the Plot.

Mr. Juſt. *Dolben*. To whom did he declare it?

Thwing. There is Witneſs of it, my Lord.

Mr. Juſt. *Dolben*. Call them.

Thwing. He accuſed not me of the Plot.

Mr. Juſt. *Dolben*. He was no Proteſtant then.

Thwing. I never knew any Thing of the Plot till I came from *London*.

Mr. Juſt. *Dolben*. Well, if you have any more Witneſſes, call them.

Thwing. Mr. *Cooper*.

Joſeph Cooper. I have nothing to ſay in this Buſineſs about this Gentleman, it is concerning Sir *Thomas Gaſcoigne*.

Thwing. Yes, he declared before theſe Witneſſes he knew nothing of the Plot.

Cooper. We were coming from *Atherton* Fair, and my Father began to diſcourſe with Mr. *Mowbray*, and aſked him if he knew any thing of the Plot that Sir *Thomas* was called to *London* for; he ſaid, he knew nothing of the Plot, and he thought Sir *Thomas* was guilty of no ſuch thing; for, if he had, he ſhould have known it as ſoon as *Bolron*, and he was a Rogue and a Knave for ſaying any ſuch thing.

Mr. Juſt. *Dolben*. When was this?

Cooper. It was about this Time Twelve-month.

Mr. Juſt. *Dolben*. Were you upon the Road then?

Cooper. Yes.

Sir *Thomas Stringer*. Had *Mowbray* then made any Diſcovery of the Plot?

Cooper. Yes, that was the Reaſon we aſked him about it.

Mr. Juſt. *Dolben*. Yeſterday (upon Lady *Tempeſt*'s Trial) you ſaid, that *Mowbray* had not then made any Diſcovery.

Cooper. Yes, my Lord, I mean *Bolron*.

Mr. Juſt. *Dolben*. Really, methinks, you that are Prieſts ſhould be more dextrous; my Lady *Tempeſt* managed her Buſineſs much better, and had her Witneſſes in more readineſs.

Thwing. My Lord, I call upon the Witneſſes, and they will not come in, I cannot help it.

Edward Cooper, *Senior*, *was then called.*

Edward Cooper. I know nothing; I met Mr. *Mowbray* coming from *Atherton* Fair, and he ſaid, he thought Sir *Thomas* was not guilty of the Plot.

Thwing. Mr. *Mowbray* declared for eight or ten Months together in 77, he knew nothing of the Plot. Call Mr. *Hobart*.

Hobart. I know nothing of it.

Thwing. I am innocent, I know nothing, as I hope for Salvation.

Then Iſabel Heyward, *a Girl that lived with* Bolron *as a Servant*, *was called.*

Iſabel Heyward. My Maſter and Miſtreſs fell out about going to *London*, and ſhe ſaid, ſhe would not go, and he ſaid he would make her go; and ſhe ſaid, if he did, ſhe would ſwear that what he had ſworn againſt Mrs. *Preſſicks* was out of Malice.

Alice Dawſon *was next examined.*

Alice Dawſon. The Day after *New Year's-Day* was twelve Months, Mrs. *Bolron* ſaid, ſhe was ſorry for nothing, but that her Huſband had meddled with Mrs. *Preſſicks*.

Then Mrs. Preſſicks *called for* John Pepper.

Mr. Juſt. *Dolben*. What do you ſay to him, Miſtreſs?

Preſſicks. I aſk about my going to *Parlington* at *Whitſontide*.

Mr. Juſt. *Dolben*. No, it was at *Candlemas*, and they ſaid it was cold Weather to ſit in the Hall-Porch.

Preſſicks. It was alſo ſaid at *Whitſontide*.

John Pepper. About *Whitſon Monday* (my Lord) I went to *Barmbow*, and met there with Mr. *Preſſicks* and Mrs. *Preſſicks*; and he deſired me to tarry and carry his Wife to Mrs. *Harriſon*'s, at *Parlington*, and ſhe and I went down to *Shipton*, and carried her from *Bolron*'s on *Whitſon-Monday*, and ſtaid till *Thurſday*.

Mr. Juſt. *Dolben*. And what is all this to the Purpoſe? She was, however, as it was ſworn againſt her, at *Shipton* at *Whitſontide*.

Pepper. This is all I can ſay, my Lord.

Zachary Thorpe *was again called by* Thwing.

Thorpe. *Bolron* ſaid, he was going to ſwear againſt my Lady *Tempeſt*, and if one thing would not do, another ſhould, and would have had me to give Evidence againſt *Shipton*.

Mrs. Baynes (*Mother to Mr.* Bolron) *called.*

Mr. Bar. *Atkyns*. What do you ſay, Mrs. *Baynes*?

Mrs. *Baynes*. Indeed, my Lord, I know nothing of this, I know not *Thorpe*, *Shipton* I know, and he told me; that if he had not fallen into my Lord of *Shrewſbury*'s Service, he and *Thorpe* would have turned Highwaymen.

Mr. Babbington *called by* Preſſicks.

Mr. Juſt. *Dolben*. Can you ſay any thing for Mrs. *Preſſicks*?

Babbington. I can ſay nothing, but what I ſaid Yeſterday concerning Sir *Thomas Gaſcoigne*.

Mr. Juſt. *Dolben*. Can you ſay any thing for *Preſſicks*?

Babbington. No, my Lord, I can ſay nothing for Mrs. *Preſſicks*; yes, thus much I muſt ſay, that when I came to have the Writings ſealed by *Bolron*, his Wife refuſed to ſeal them without delivering up of the Bonds, I told her, it would be an additional Security to Sir *Thomas Gaſcoigne*; he ſaid he did believe, that Mr. *Preſſicks* and his Wife were his Enemies, and that they did inſtigate Sir *Thomas* to ſue him.

Mr. Juſt. *Dolben* (*to* Thwing). Come, what have you more to ſay?

Thwing. I have no Witneſſes to call, but I hope it will be conſidered what Kind of Witneſſes theſe are, what Lives they have led; they bring me in amongſt the reſt, we are all of a Family; I hope, my Lord, you will conſider that thoſe ill Men that will, may take away an honeſt Man's Life unjuſtly.

Mr. Juſt. *Dolben*. I hear no Body ſpeak againſt their Lives; and this I muſt tell you, till Men be convicted of ſome Crime that may diſable them, you cannot take away their Teſtimony.

Thwing. My Lord, Witneſſes ſhould be Men of Credit and Reputation.

Mr. Juſt. *Dolben*. The Jury is to conſider of that.

Look you, Gentlemen, theſe two Priſoners ſtand indicted of High-Treaſon, and it is for conſpiring the Death of the King, and other heinous Crimes; as deſigning the ſubverting the Government, and bringing in the Popiſh Religion.

Now the Witneſſes that have been produced againſt Mr. *Thwing*, are *Bolron* and *Mowbray*; and againſt *Preſſicks*, Mr. *Bolron*, Mrs *Bolron ſen.* and *jun.* and one *Hutchinſon*; and the Evidence againſt *Thwing* is one Thing, and againſt the Woman quite another; there is no Evidence againſt her but what they heard her ſay others were to do; there is no Evidence of any Action of hers, or that ſhe was preſent at any Conſultation, nor acting any thing there, but that ſhe ſaid ſo and ſo. Now Mr. *Bolron* and his Grandmother do both ſay, that ſhe ſaid *Pickering* was to have killed the King, and that ſhe was ſorry that he did not do it. That the Gun with which he ſhould have done it was found, and ſhe was afraid that was the Cauſe of his Death; and they all ſay ſhe ſaid, that it would never be well with *England*, till the Catholicks had got the upper Hand, and the Duke of *York* were King. Now I muſt tell you, that my Opinion is, that a bare ſaying of this doth not amount to High-Treaſon, unleſs you do believe from theſe words, that ſhe knew otherwiſe than by Hearſay, that *Pickering* was to have killed the King, and that ſhe was privy and conſenting to the Deſign of killing the King, then ſhe is guilty of Treaſon; but if ſhe only knew it by Hearſay, the bare Knowledge and concealing of it will make her guilty of Miſpriſion of Treaſon; but knowing of it barely by Report doth not make her guilty of High-Treaſon. My Brother will tell you his Opinion herein. Now for Mr. *Thwing*, the Evidence againſt him is very home, for they both ſwear againſt him, one to one Meeting, and the other to another, that he was preſent at their Conſultation to kill the King, ſubvert the Government, and to bring in the Popiſh Religion; that he did agree at the Meeting to the killing of the King, they do both ſwear, and this they ſay was at Sir *Thomas Gaſcoigne*'s, and that at the ſeveral Meetings there was a Liſt produced; but *Bolron* ſaith, that the Liſt when he was preſent was a Liſt of thoſe that were engaged towards the carrying on of the Nunnery; that which the other ſpeaks of, was a Liſt of thoſe that were engaged about the killing the King, about the whole Deſign which was to be effected by killing the King, this he ſwears; that *Thwing* did produce this Liſt; and *Mowbray* ſaith, that three or four Prieſts were preſent at that Time, and that *Thwing* ſaid the King was an Heretick, and excommunicated by the Pope, and that it was not only lawful but meritorious to kill him. So that admitting this Evidence be true, it is a full Evidence of High-Treaſon againſt him; here is an imagining the Death of the King, and here is an Overt-Act, here is a ſetting Hands to it; ſo that if this be true, *Thwing* is guilty of High-Treaſon. Now againſt this they have produced many Witneſſes, and none of them doth go about to prove this impoſſible, but only improbable; but one that is a Groom of Sir *Thomas Gaſcoigne*'s, who ſaith, he was but once or twice that Year there, and not at *Eaſter*, but about *Michaelmas*: Is that enough to anſwer the Teſtimony of theſe two Men, Gentlemen? For a Groom to take upon him to ſay two Years after, who was at his Maſter's Houſe, and how often, and what Time of the Year, is to me a very ſtrange Thing; unleſs it were one that never uſed to come there: But this Man, he ſaith, did uſe to come there—but that I muſt leave to you. The reſt of the Witneſſes were the ſame that were examined yeſterday. Firſt, they inſiſt concerning Mr. *Lowther*, they ſay, that when Mr. *Bolron* firſt went to Mr. *Lowther*, he ſaid nothing of Mr. *Thwing*, but it appears, he ſaid then, that afterwards he might remember more; then the Man was under a great Conſternation, and told him the great and dangerous Conſequences of having ſo long concealed it, was the occaſion of that Diſorder upon him; but he ſaid he ſhould remember more afterwards, and ſo he did: The reſt of the Witneſſes do all go to this Purpoſe, that either *Bolron* or *Mowbray* ſhould tell them at one time or other, they did know nothing of the Plot, nor againſt Sir *Thomas Gaſcoigne*; and ſome of them ſay, that it is out of Malice to Sir *Thomas*'s Family; for ſo *Thwing* would have it, he being his Nephew, that the Malice ſhould reach to Mr. *Thwing*, that they would have it; and ſomething to the ſame Purpoſe they do offer againſt Mr. *Mowbray*. Now here is one *Walker*, that ſwears, that *Bolron* aſked her if ſhe knew *Thwing* to be a Prieſt, and offer'd her 10*l.* to ſwear him a Prieſt; ſhe is a Servant of one Mrs. *Laſſell*, Mr. *Thwing*'s Siſter, he came to Mrs. *Laſſell*'s, to ſearch for Prieſts; it is ſomething ſtrange, that he ſhould offer to perſuade her to ſwear againſt *Thwing*, who was Servant to his own Siſter, and at the Time when he came to ſearch for Prieſts; the Truth of it is, the thing doth depend purely upon the Credit of Witneſſes. The King's Witneſſes are upon their Oaths; but, on the other Hand, the others are not on their Oaths; but Credit is to be given to what they ſay, if you conſider their Evidence, and do find a Clearneſs in their Teſtimony, which you muſt weigh; for certainly he that ſolemnly, in the Preſence of God, will ſay a falſe Thing, will alſo dare to ſwear it; how far their Principles will carry them I know not, I can ſee nothing but *Bolron* and *Mowbray* are good Witneſſes; I do not ſee but what they ſay is coherent, and that they ſpeak the Truth; and if you believe what they ſay to be true, then *Thwing* is guilty of High-Treaſon: But if you do not believe what they ſay is true, but out of Malice, you muſt acquit him. They do object the other Juries did not believe *Bolron* and *Mowbray*; the Caſe with the Priſoners at the Bar is not the ſame with theirs; but you are to give your Verdict according to the Evidence that you have heard, and according to your Conſciences.

Mr. Bar. *Atkyns*. Gentlemen of the Jury, I ſhall be very ſhort. The Crimes that are laid in this Indictment, and charged upon theſe Perſons, are, the deſigning to take away the King's Life, ſubverting the Government, and introducing Popery; you obſerve the Nature of the Evidence which hath been given againſt the Priſoners. And firſt, I ſhall ſpeak but one word concerning *Mary Preſſicks*: I do fully agree with what my Brother hath ſaid; you do take Notice, that the Evidence that hath been given againſt her, hath been what came out of her own Mouth; the Witneſſes are Mr. *Bolron* and his Grandmother, and likewiſe one *Hutchinſon*: Mr. *Bolron* ſaith ſhe did tell him, that *Harcourt* was her Confeſſor, and that he had engaged her in the Plot; ſhe likewiſe told him, that *Pickering* was to kill the King, that the Gun was found with him, and was the Cauſe of his Death: This is ſome Evidence of High-Treaſon, I muſt leave it to you of what Weight it is, and how far by this you will conclude her privy to the Plot; it is true, were ſhe an Actor in it, it is plain ſhe is guilty of High-Treaſon. As to what *Hutchinſon* ſaid, that ſhe told him we ſhould never be at Peace till we were all of the *Roman Catholick* Religion, and the Duke of *York* was made King, that will not amount to High-Treaſon: This I take to be the Sum of the Evidence againſt her. Then as to Mr. *Thwing*, there are two Witneſſes that have ſworn againſt him, that is Mr. *Bolron* and Mr. *Mowbray*: *Bolron* tells you, that in 1677, there came to him ſeveral Prieſts, to his Houſe at *Shipton*; and amongſt the reſt *Thwing* the Priſoner, who aſked him, how he ſtood affected to the *Roman Catholick* Religion? And he then expreſs'd his Zeal for it, and they thought him a Perſon fit to impart their Secrets to: Then he ſaith, that in 1677, there was a Meeting at *Barmbow-Hall*, which is Sir *Thomas Gaſcoigne*'s Houſe, and at that Meeting there were Sir *Thomas Gaſcoigne*, Eſq. *Gaſcoigne*, Sir *Miles Stapleton*, and amongſt the reſt this Priſoner *Thwing*; and that there was a Conſult held at that Time, and Deſign of killing the King; and that this Perſon did agree to it, and declared that if they ſhould miſs that Opportunity, they ſhould never have ſuch another; and that it was for the Good of the *Roman Catholick* Religion. The next was *Mowbray*; and he ſaith to the ſame Effect: That in 1676, *Thwing* and others declared they did deſign to kill the King, for he was a Heretick, and excommunicated, and had not kept his Word with the Jeſuits, and therefore they thought it not only lawful, but a meritorious Act: And this is what both *Bolron* and *Mowbray* do teſtify, this they ſwear poſitively againſt the Priſoner; if you believe what they have ſworn to be true, I muſt declare that it will amount to High-Treaſon. You are likewiſe to conſider the Evidence he hath produced for himſelf: The Law, 'tis true, does not allow us to give them an Oath; yet if they be Perſons of Credit and Honeſty, it is Evidence which you are to conſider of. The Priſoner hath call'd ſeveral Witneſſes: The firſt was *Nat. Wilſon*; I ſhall not repeat what he ſaith, being of no Import. *Thwing* ſaith, Mr. *Bolron* was before Mr. *Lowther* and Mr. *Tindal*, two Juſtices of Peace, who did take his Oath; and then he ſaid he did not accuſe him of the Plot at that Time, and by that would infer, that he would have ſaid what he had againſt him, as well then as now, if he had any thing whereof to accuſe him: But *Bolron* anſwers, he did declare to theſe two Gentlemen, he was not able at that time to recollect his whole Knowledge, but gave it in afterwards to the King and Council. The next are *Moor* and *Thorpe*: The Effect of their Evidence is to ſtrike at the Reputation of *Bolron*, that it was an Act of Malice and Revenge: For they ſay, that *Bolron* told them, that Sir *Thomas* was innocent, and knew nothing of the Plot. *Thorpe* ſaith, he met with *Bolron* in *Long-Acre*, and that he told him, that though Sir *Thomas* were quitted, he would ruin ſome of them. I ſay, theſe Things, if true, are ſome Evidence of a malicious Proſecution: But it ſeems ſomething improbable, that *Bolron* ſhould ſo openly make a Diſcovery of himſelf, when it appears he was not greatly acquainted with them, eſpecially with *Thorpe*. There are ſeveral other Witneſſes that ſpeak much to the ſame Purpoſe. Gentlemen, in Matters of Fact, which depend upon the Teſtimony of Witneſſes, the Credit of the Witneſſes is greatly to be conſidered; if you believe what *Bolron* and *Mowbray* have both poſitively ſworn, the Treaſon is plain; you muſt take all the Parts of your Evidence together, you muſt weigh all the Circumſtances, you muſt, as I ſaid before, conſider the Credit of the Witneſſes of the one Side and of the other, and by theſe Steps you will be the better guided in giving of your Verdict. I muſt leave it to you, and I pray God direct you therein.

The Jury having withdrawn, after ſome Conſultation together, brought in their Verdict, that Thomas Thwing *was Guilty, and* Mary Preſſicks *Not Guilty.*

Auguſt *the 2d*, 1680, Thomas Thwing *being brought to the Bar, the Clerk ſpoke thus:*

Clerk. Thomas Thwing, hold up thy Hand: Thou haſt been indicted, that thou as a falſe Traitor didſt conſpire the Death of the King, *&c.* and thereof haſt been found guilty: What canſt thou ſay wherefore Judgment of Death ſhould not be pronounced againſt thee?

Thwing. My Lord, as I am now upon my Life, I know nothing of theſe Things, in the leaſt, that theſe Men have ſworn againſt me: And on the other Side, I ſay, that before Sir *Thomas Gaſcoigne* had his Trial, theſe Men ſaid nothing againſt me; ſo I hope your Lordſhip will take it into Conſideration.

Mr. Juſt. *Dolben*. For your Innocency, the Gentlemenof the Jury are Judges of that, and they have found you guilty, ſo that it is not in my Power either to acquit or condemn you; I am only to paſs Sentence according to that Conviction. If you have any thing to ſay wherefore Judgment ſhould not be pronounced, I am ready to hear you.

Thwing. All that I can ſay is to declare my Innocency, and that theſe Men are of no Credit and Reputation. It is very hard I only ſhould be guilty, and none of the reſt, who were arraigned for the ſame Crimes.

Mr. Juſt. *Dolben*. No, it is not impoſſible; it is poſſible you may be guilty, and the reſt innocent.

Thwing. For my part, I told your Lordſhip that I was but once or twice in a Year at Sir *Thomas Gaſcoigne*'s, being my Uncle, and I do proteſt I know nothing of the Conſult theſe Men do charge me with.

Mr. Juſt. *Dolben*. You ſay one Thing, they ſwear another, and for aught I know they are honeſt Men; they are lawful Men, and not convicted in the main; for I do believe there were many great and dangerous Conſults held at Sir *Thomas Gaſcoigne*'s by ſeveral Perſons, and that there have been many horrid and treaſonable Things acted there. You have been indicted for High-Treaſon, the higheſt Treaſon that ever any Subject was guilty of, for attempting to kill the King, for reſolving ſo to do upon deliberate Advice and Conſultation; and this for no other End or Purpoſe, but that you might have your Religion ſet up, for that was your Deſign, to change this Religion here, and to ſettle *Popery* in *England*; and the better to bring that to paſs, you thought to take away the King's Life, knowing you could not otherwiſe accompliſh it. You are, I am ſatisfied, a Prieſt of the *Romiſh* Church; therefore all that I can ſay to you in reference to your future State you will not value, for you account me an Heretick as you do the King, and I am content to be ſo eſteemed in ſo good Company, therefore I ſhall wave it. As you are a Gentleman, I will give ſome Reſpect to you, and will not paſs Sentence on you among the reſt of the Priſoners that are found guilty of Felony and Murder, but will do it by your ſelf.

The Law doth command the Court, and the Court doth award, *That you be carried from hence to the Place from whence you came, that is, the Priſon, and from thence you are to be drawn to the Place of Execution: you are there to be hanged by the Neck, you are to be cut down before you are dead, and your Entrails are to be taken out of your Body, and thrown into the Fire before your Face; and your Head is to be parted from your Body, and your Body ſeparated in four Quarters, and your Head and your Quarters are to be diſpoſed according to the King's Pleaſure. And the Lord have Mercy on your Soul.*

Thwing. *Innocens ego ſum.*

A Reprieve being obtained for him, he remained Condemned in the Caſtle of York *till the 23d of* October, *when, according to the Sentence, he was drawn, hanged and quartered at* York, *having firſt proteſted his Innocence of all that was ſworn againſt him, but gloried that he was a Prieſt, and had performed the prieſtly Function about fifteen Years; and deſiring all true Catholicks, if any ſuch were there, to pray for him; and begging God to bleſs and preſerve the* King, *his* Queen, *the Duke of* York, *and all other good Chriſtians, he yielded himſelf to the Executioner*.*

CI. *The Trial of* Elizabeth Cellier *at the* Old-Bailey, *for writing and publiſhing a* Libel, September, 1680. 32 Car. II.

Cl. of Cr. MRS. *Cellier*, look to your Challenges; for the Jury that is to be ſworn is to paſs upon you.

Cellier. Am I for my Life?

Cl. of Cr. No, but look to your Challenges.

Lord Mayor. But if you Challenge, you muſt give a Reaſon for it, Mrs. *Cellier.*

Cl. of Cr. Swear *John Ainger.*

[*Which was done.*]

Cl. of Cr. Swear *Richard Boys.*

Cellier. I Challenge him.

Lord Mayor. Mrs. *Cellier*, you muſt ſhew a Cauſe for your Challenge.

Cellier. I did not know that, my Lord.

Mr. Bar. *Weſton.* You can Challenge none in this Caſe without a Cauſe.

Cellier. My Lord, I did not know that: Then I agree he ſhall be ſworn.

[*Which was done.*]

Then the reſt of the Jury, without any more Challenges, were ſworn; and they were all as follows:

John Ainger,
Richard Boys,
John Stephens,
Thomas Phelps,
Gilbert Urwin,
Edward Allanſon,
Jur'
Richard Liveing,
John Coggs,
Henry Hodgſden,
John Barnard,
Edward Low,
James Southern.

Then Proclamation was made in common Form for Information; and the Clerk charged the Jury thus:

Cl. of Cr. You Gentlemen that are ſworn, *Elizabeth Cellier* ſtands indicted by the Name of *Elizabeth Cellier*, Wife of *Peter Cellier*, of the Pariſh of St. *Clement-Danes*, in the County of *Middleſex*, Gent. For that ſhe being of the Popiſh Religion, not having the Fear of God before her Eyes, but being moved and ſeduced by the Inſtigation of the Devil, falſly and maliciouſly endeavouring and intending our Sovereign Lord King *Charles* the Second that now is, and the Government of this Kingdom of *England*, as alſo the true Proteſtant Religion, within this Kingdom of *England* by Law eſtabliſhed, to bring to Hatred and Contempt; and alſo to bring Scandal and Infamy upon divers Perſons produced as Witneſſes, that gave Evidence on the Part and Behalf of our Sovereign Lord the King, againſt her the ſaid *Elizabeth Cellier*, and other Perſons indicted of High-Treaſon; the firſt of *September*, in the Thirty Second Year of our Sovereign Lord King *Charles* the Second that now is, at the Pariſh of St. *Clement-Danes*, in the County of *Middleſex* aforeſaid, falſly, maliciouſly and ſeditiouſly did write and publiſh, and did cauſe to be writ, imprinted and publiſhed a ſcandalous Libel, entituled, *Malice Defeated: Or, a brief Relation of the Accuſation and Deliverance of* Elizabeth Cellier: *Wherein her Proceedings, both before and during her Confinement, are particularly related, and the Myſtery of the* Meal-Tub *fully diſcovered: Together with an Abſtract of her Arraignment and Trial: Written by her ſelf for the Satisfaction of all Lovers of undiſguiſed Truth.* In which ſaid Libel are contained theſe falſe, feigned, ſcandalous Words and Figures following, to wit: ‘I hope it will not ſeem ſtrange to any honeſt and loyal Perſon of what Way or Religion ſoever, that I being born and bred up under Proteſtant Parents, ſhould now openly profeſs my ſelf of another Church (meaning the Church of *Rome*); for my Education being in thoſe Times, when my own Parents and Relations, for their conſtant and faithful Affection to the King and Royal Family, were perſecuted, the King himſelf murdered, the Biſhops and Church deſtroyed, the whole loyal Party, merely for being ſo, oppreſſed and ruined; and all, as was pretended by the Authors of theſe Villainies, for their being Papiſts and Idolaters, the conſtant Character given by them to the King and his Friends to make them odious, they aſſuming to themſelves only the Name of Proteſtants, and making that the glorious Title by which they pretended Right to all Things: Theſe ſorts of proceeding, as I grew in Underſtanding, produced in me more and more Horror of the Party that committed them, and put me on enquiry into that Religion to which they pretended the greateſt Antipathy; wherein, I thank God, my innate Loyalty not only confirmed, but encouraged me. And let Calumny ſay what it will, I never heard from any Papiſts, as they call them, Prieſt nor Layman, but that they and I, and all true Catholicks owe our Lives to the Defence of our lawful King, which our preſent Sovereign *Charles* II. is, whom God long and happily preſerve ſo. Theſe ſorts of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the ſame time to me Charity and Devotion; I without any Scruple have hitherto followed, glorying to my ſelf to be in Communion with thoſe who were the humble Inſtruments of his Majeſty's happy Preſervation from the fatal Battle at *Worceſter*; and who, though poor, no Temptation could invite to betray him to thoſe who by a pretended Proteſtant Principle ſought his innocent Blood. Theſe Truths, I hope, may ſatisfy an indifferent Perſon in my firſt Change; nor can they wonder at my Continuance therein, that notwithſtanding the horrid Crimes of Treaſon and Murder laid to the Charge of ſome Perſons, conſiderable for their Quality and Fortunes in that Party: For, when I reflected who were the Witneſſes, and what unlikely Things they depoſed, and obſerved that many of the chiefeſt Sticklers for the Plot were thoſe, or the Sons of thoſe, that acted the principal Parts in the laſt Tragedy, which Hiſtory told me too had the Prologue of a pretented Popiſh Plot; I ſay, theſe Things made me doubtful of the whole; and the more I ſearched for Truth, the more I doubted that the old Enemies of the Crown were again at work for it's Deſtruction. I being fully confirmed in this, thought it my Duty through all ſorts of Hazards, to relieve the poor impriſoned Catholicks, who in great Numbers were lock'd up in Goals, ſtarving for want of Bread: And this I did ſome Months before I ever ſaw the Counteſs of *Powis*, or any of thoſe honourable Perſons that were accuſed, or receiving of one Penny of their Money directly or indirectly, till about the latter end of *January* (78.)’ And in another Part of the ſaid Libel are contained theſe falſe, feigned and ſcandalous Words and Figures following; to wit, ‘About this time I went daily to the Priſons to perform thoſe Offices of Charity I was obliged to; and on *Thurſday*, *January* the 9th (78.) I dined in *Newgate* in the Room call'd the *Caſtle*, on the Maſter's Side Debtors, and about four in the Afternoon I came down into the *Lodge* with Five Women, of which three were Proteſtants, and we all heard terrible Groans and Squeaks, which came out of the Dungeon call'd the *Condemn'd Hole.* I aſk'd *Harris* the Turnkey what doleful Cry it was; he ſaid it was a Woman in Labour. I bid him put us into the Room to her, and we would help her. But he drove us away very rudely, both out of the Lodge and from the Door. We went behind the Gate and there liſtened, and ſoon found that it was the Voice of a ſtrong Man in Torture, and heard as we thought between his Groans the winding up of ſome Engine. Theſe Cries ſtopp'd the Paſſengers under the Gate, and we ſix went to the Turner's Shop without the Gate, and ſtood there amazed with the Horror and Dread of what we heard; when one of the Officers of the Priſon came out in great Haſte, ſeeming to run from the Noiſe. One of us catch'd hold of him, ſaying, Oh! What are they doing in the Priſon? *Officer.* I dare not tell you, Miſtreſs. 'Tis a Man upon the Rack: I'll lay my Life on't. *Officer.* It is ſomething like it. *Cellier.* Who is it, *Prance*? *Officer.* Pray, Madam, do not aſk me, for I dare not tell you. But it is that I am not able to hear any longer. Pray let me go. With that he ran away towards *Holbourn* as faſt as he could. We heard theſe Groans perfectly to the end of the *Old-Bailey*. They continued till near ſeven of the Clock, and then a Perſon in the Habit of a Miniſter, of middle Stature, Grey-hair'd, accompanied with two other Men, went into the Lodge. The Priſoners were lock'd up, and the outward Door of the Lodge alſo, at which I ſet a Perſon to ſtand, and obſerve what ſhe could, and a Priſoner loaded with Irons was brought into the Lodge, and examined a long time. And the Priſoners, that came down as low as they could, heard the Perſon examined with great Vehemency ſay often, I know nothing of it, I am innocent, he forced me to bely my ſelf. What would you have me ſay? Will you murder me becauſe I will not bely my ſelf and others? Several other ſuch like Expreſſions they heard ſpoken as by one in great Agony. About four of the Clock next Morning, the Priſoners that lay in a Place above the Hole heard the ſame Cry again two Hours, and on *Saturday* Morning again; and about eight o'Clock that Morning a Perſon I employ'd to ſpy out the Truth of that Affair, did ſee the Turnkeys carrying a Bed into the Hole. She aſked who it was for; they told her it was for *Prance* who was gone mad, and had tore his Bed in Pieces. That Night the Examiners came again, and after an Hour's Conference *Prance* was led away to the *Preſs-Yard.* This, and many Things of the like Nature, made me very inquiſitive to know what paſs'd in the Priſon. Soon after this *Francis Corral* a Coachman, that had been put into *Newgate* upon Suſpicion of carrying away Sir *Edmundbury Godfrey*'s Body, and lay there thirteen Weeks and three Days in great Miſery, got out. I went to ſee him, and found him a ſad Spectacle, having the Fleſh worn away, and great Holes in both his Legs by the Weight of his Irons, and having been chained ſo long double, that he could not ſtand upright; he told me much of his hard and cruel Uſage, as

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* See State Trials, Vol. 8. p. 443.

‘ that he had been ſqueez’d and haſped into a thing like a Trough, in a Dungeon under Ground; which put him to inexpreſſible Torment, inſomuch that he ſwooned, and that a Perſon in the Habit of a Miniſter ſtood by all the while. That a Duke beat him, pull’d him by the Hair, and ſet his drawn Sword to his Breaſt three times, and ſwore he would run him through; and another great Lord laid down a heap of Gold, and told him it was Five hundred Pounds, and that he ſhould have it all, and be taken into the aforeſaid Duke’s Houſe, if he would confeſs what they would have him; and one *F.* a Vintner, that lives at the Sign of the *Half-Moon* in *Ch-ſi-* by whoſe Contrivance he was accuſed, took him aſide, and bid him name ſome Perſon, and ſay, they employed him to take up the dead Body in *Somerſet-Yard*, and gave him Money for ſo doing; that if he would do this, both *F.* and he ſhould have Money enough. He alſo told me, that he was kept from *Thurſday* till *Sunday* without Victuals or Drink, having his Hands every Night chain’d behind him, and being all this time lock’d to a Staple which was driven into the Floor, with a Chain not above a Yard long: That in this great Extremity he was forced to drink his own Water; and that the Jailor beat his Wife becauſe ſhe brought Victuals, and prayed that he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him.’ And in another Part of the ſaid Libel is contained (amongſt other Things) theſe falſe, feigned, and ſcandalous Words and Figures following, to wit, My Arraignment ‘(which in Confidence of my own Innocency, I continually preſs’d for) not but that I knew the Danger, as to this Life, of encountring the Devil in the worſt of his Inſtruments, which are Perjurors encouraged to that Degree as that profligated Wretch’ (meaning *Thomas Dangerfield* produced as a Witneſs againſt her for High-Treaſon) was, and hath been ‘ſince his being expos’d to the World in his true Colour, both at mine and another’s Trial.’ And in another part of the ſaid Libel are contained theſe falſe, feigned and ſcandalous Words and Figures following. ‘Nor have I ſince received any thing towards my Loſſes, or the leaſt Civility from any of them, whilſt *Dangerfield* (meaning the ſaid *Thomas Dangerfield*) when made a Priſoner for apparent recorded Rogueries, was viſited by, and from Perſons of conſiderable Quality, with great Sums of Gold and Silver, to encourage him in the new Villainies he had undertaken, not againſt me alone, but Perſons in whoſe Safety all good Men, as well Proteſtants as others in the three Kingdoms, are concerned.’ And in another part of the ſaid Libel called, ‘A Poſtſcript to the impartial Readers,’ are contained theſe falſe, feigned, and ſcandalous Words following, to wit, ‘And whenſoever his Majeſty pleaſes to make it as ſafe and honourable, as it is apparent it hath been gainful and meritorious to do the contrary; there will not want Witneſſes to teſtify the Truth of more than I have written, and Perſons that are above being made the Hangman’s Hounds for weekly Penſions, or any other Conſiderations whatſoever;’ to the evil and dangerous Example of all others in the like Caſe offending, and againſt the Peace of our Soverign Lord the King, his Crown and Dignity. Upon this Indictment ſhe hath been Arraigned, and thereunto hath pleaded, Not Guilty, and for her Trial hath put her ſelf upon the Country, which Country you are; ſo your Iſſue is to try whether ſhe be guilty of this Offence in Manner and Form wherein ſhe ſtands Indicted, or Not Guilty. If you find her Guilty, you are to ſay ſo; and if you find her Not Guilty, you are to ſay ſo, and no more, and hear your Evidence.

Then Robert Dormer, *Eſq*; *of* Lincoln’s-Inn, *opened the Indictment thus:*

Mr. *Dormer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: *Elizabeth Cellier*, the Gentlewoman at the Bar, the Wife of *Peter Cellier* of the Pariſh of St. *Clement-Danes* in the County of *Middleſex*, Gentleman, ſtands indicted of being the Author and Publiſher of a Libel, entituled, *Malice defeated, or a brief Relation of the Accuſation and Deliverance of* Elizabeth Cellier. You have heard the Indictment read, wherein ſome Clauſes of this Libel are recited in the Words they were written, and in Mrs. *Cellier*’s own Words, and in other Words I will not undertake to repeat them to you.

Gentlemen, this is a Libel ſo complicated and general, that within this Book are contained as many Libels of ſeveral Natures, and againſt different Perſons and Orders of Men, as there are Paragraphs; his Majeſty, the Proteſtant Religion, our Laws, Government, Magiſtrates, Counſellors of State, Courts of Judicature, the King’s Evidence, and the publick Juſtice of this Kingdom are all aſperſed and defamed, by the Virulency and Malice of this Woman’s Pen.

She hath charged upon the Principles of our Religion, the Murder of his late Majeſty, and the greateſt Impieties that ever were committed.

She accuſeth all that have done their Duties, or been active in the Diſcovery of the preſent Popiſh Plot, to be Enemies of the Crown, and to be acting over again the Tragedy of our late Civil War.

She chargeth our Laws with Cruelties, as inhuman as they are falſe, in permitting Priſoners to ſtarve under their Confinement, in admitting of Racks and Tortures to be uſed, and that for the worſt Purpoſes, thereby to extort Perjuries and falſe Evidences againſt the Innocent; to which ſhe would make Perſons of the beſt Quality of our Nobility, Magiſtracy, and Clergy, Privies and Parties.

She libels the King’s Evidences under the Characters of the Devil’s Inſtruments, and the Hangman’s Hounds; and defames his Majeſty’s Government, in ſaying, it is not ſafe to ſpeak Truth, but meritorious and gainful to do the contrary.

She will appear to you to be ſo criminal, that nothing can aggravate her Offences, unleſs the Impudence of the Delinquent, who hath ſet her Name to almoſt every Page of this ſcandalous Libel; and ſince the Indictment hath been depending, owned, publiſhed, and put a Value on her ſelf for being the Author of ſo excellent a Book.

To the Indictment ſhe hath pleaded Not Guilty; if the King’s Evidence prove the Charge, you are to find her Guilty.

Mr. Bar. *Weſton.* Gentlemen, the Charge is but this: Firſt, She is charged with the ſetting forth this Book; in the next Place, there are ſeveral Clauſes in that Book which ſhe is particularly charged with. Now that which the Evidence will prove, muſt be, firſt, that the Book was owned by her, and publiſhed by her; and then, that theſe Particulars charged in the Indictment were in the Book; and then you will receive the Directions of the Court, of what Nature the Proofs are. Go on to the Evidence, that is your Work, fall to your Proof.

Mr. *Dormer.* My Lord, we will call our Witneſſes. *William Downing*, *John Penny*, and *Robert Stevens.* [*Who appeared and were Sworn.*]

Mr. *Dormer.* *Will. Downing*, Do you tell my Lord and the Jury what you know of the Printing of this Libel (*ſhew him the Libel*), and who brought the Sheets to the Preſs.

Mr. *Downing.* My Lord, about the 22d or 23d of *Auguſt*———

Mr. Bar. *Weſton.* Begin with *Penny* firſt. Pray what ſay you to that Book?

Mr. *Penny.* My Lord, I was bid to buy a Book of that Gentlewoman, and I did ſo. I aſked for her by her Name.

Mr. Bar. *Weſton.* By what Name?

Mr. *Penny.* Mrs. *Cellier.*

Mr. Bar. *Weſton.* Is that the Gentlewoman?

Mr. *Perry.* Yes, that is the Gentlewoman. And ſhe came out to me, and aſked what my Errand was? I told her it was to have a Book: That you may have, ſaid ſhe, if you pleaſe. Madam, ſaid I, What is the Price? Two Shillings, ſaid ſhe. Cannot I have them cheaper, ſaid I? No, ſaid ſhe, I ſell them to Shopkeepers for 18 Shillings a Dozen, and I muſt not ſell them under here. With that ſhe fetched me a Book, and I gave her two Shillings, and when ſhe had done, ſhe gave me another little Paper.

Mr. Bar. *Weſton.* That is not in Iſſue, nor your Queſtion now. Did you aſk her for the Book ſhe publiſhed and ſet out?

Mr. *Penny.* Yes; and ſhe did acknowledge that was her Book.

Mr. Bar. *Weſton.* What! She did own the Book ſhe ſold to you to be hers?

Mr. *Penny.* This is the Book I have in my Hand, and I marked every Sheet of it; and ſhe told me there was another little Sheet to be added to it; and if any Gentleman pleaſed to ſend it into the Country, that might be put up in a Letter to ſend by the Poſt.

Cellier. May I aſk him a Queſtion?

Mr. Bar. *Weſton.* Tell me your Queſtion, and I’ll aſk it.

Cellier. I deſire to know if I ſaid any more, than you may have a Book, or there is a Book. And who aſked for a Book?

Mr. Bar. *Weſton.* Did ſhe ſay any more than, You may have a Book, or, This is the Book that I have publiſhed?

Mr. *Penny.* When I got the Book and paid for it, I turned about again and aſked her if it was her own? She told me it was; and more than that, if occaſion were, ſhe could have put more in it.

Mr. Bar. *Weſton.* Why, Mrs. *Cellier*, you did not deny this Book yeſterday; for you may remember when you did ſay you wanted your Witneſſes, and if you could but have time to bring them, you would prove the Truth of it: We told you you had nothing to prove on this Iſſue of Not Guilty, but that ſomebody elſe did publiſh the Book, and you did not. You owned you writ it your ſelf every Word with your own Hand.

Cellier. My Lord, if I was a fooliſh vain Woman, and did ſeem to ſpeak ſome vain Words about my ſelf which I did not underſtand the Conſequence of, I hope a Word vainly ſpoke by me ſhall not be brought againſt me to convict me of a Crime.

Mr. Bar. *Weſton.* Mrs. *Cellier*, you do not ſeem ſo negligent about your ſelf, that we may not believe what you ſay of your ſelf.

Cellier. But vain fooliſh Words ſpoke in that Nature, I hope ſhall be no Evidence againſt me.

Mr. Bar. *Weſton.* But, however, it is proved againſt you.

Cellier. Did I ſay I writ it?

Mr. *Penny.* You told me that was your Book.

Cellier. I told you? Pray, my Lord, put one Queſtion to him upon the Oath he hath taken: Did I ſay any more, than it was mine and I ſold it? not that I writ it, or was the Author of it?

Mr. Bar. *Weſton.* Mrs. *Cellier*, this is a Book that is intitled with your Name, and ſold by your ſelf. Now in any one’s Judgment, this is both an owning of the Book, and publiſhing of the Book. When you ſold it, you gave it out as your Book, and it hath in the Title Page your Name as the Author of it.

Cellier. My Lord, if I could have produced my Witneſſes, I could have made my Defence; they have been at ſeveral Places for them, they have been all about Town, and ſeveral ways, at Sir *Joſeph Sheldon*’s, and a great many other Places, and can find none of them.

Mr. Bar. *Weſton.* To what Purpoſe ſhould your Witneſſes come?

Cellier. I ſhould with them have made my Defence.

Mr. Bar. *Weſton.* If you would have ſaid to us yeſterday, that you had Witneſſes to prove that any one elſe writ the Book, we would have put off the Trial. But you ſaid you writ it every Word of it your ſelf, and ſo owned the Iſſue: But now you pretend you want Witneſſes; to what Purpoſe would you have them come?

Cellier. ’Tis not the Honour of the Bench, my Lord, to give Evidence; and I hope you won’t take that Advantage of my vain Words.

Mr. Bar. *Weſton.* ’Tis the Honour of the Bench to repeat what you ſay; when you aſk Time to put off your Trial, and the Court gives you Direction to what Purpoſe Witneſſes may be uſed, and you renounce that, and take the Fact upon your ſelf.

Cellier. But I hope that is no Evidence.

Mr. Bar. *Weſton.* It was ſpoke openly in the Court, every body heard it.

Cellier. I am ſurprized, and have no Witneſſes.

Mr. Bar. *Weſton.* ’Tis eaſy to pretend that you want Witneſſes; but to what Purpoſe would you have them?

Cellier. My Lord, I hope you will pleaſe to remember he ſwears, I only ſaid it was mine, not that I was the Author.

Mr. *Att. Gen.* If you ſold it, that is a publiſhing in Law, and is within the Indictment.

Sir Creſwel Levinz.

Cellier. But he did not ſay I writ it.

Mr. Bar. *Weſton.* Pray, Mrs. *Cellier*, don’t truſt your ſelf upon that: For he ſaid, after he had it, he aſked you, Is this your Book? You ſaid, Yes, it is my Book; and if I had been aware, I could have put a great deal more in it than I have done.

Cellier. But I did not ſay I writ it.

Mr. *Penny.* You ſaid, if it were to be writ again, you could put more in it.

Cellier. I ſaid it was my Book; and ſo it was, becauſe it was in my Poſſeſſion; but not that I writ it. This is my Fan, but it does not follow that I made it.

Mr. Bar. *Weſton*. But the Queſtion was concerning the Author of the Book.

Cellier. He did aſk me no ſuch Queſtion. Did you aſk me if I was the Authro?

Mr. *Penny*. No, I did not.

Mr. Bar. *Weſton*. But what did you aſk her?

Mr. *Penny*. I aſked her, Whether it were her Book?

Mr. Bar. *Weſton*. And did ſhe own it?

Mr. *Penny*. Yes, ſhe did.

Cellier. So it was mine in poſſeſſion.

Mr. Bar. *Weſton*. Did you mean by your Queſtion, Whether that Book was her's in Property, or ſhe were the Author and Publiſher of it?

Mr. *Penny*. I would know whether it was her's or no.

Mr. Bar. *Weſton*. But what was your Intention in aſking? Was it whether ſhe, or any other Perſon made it?

Mr. *Penny*. I don't know who made it, ſhe told me it was her's.

Mr. Bar. *Weſton*. But what was your Meaning in it?

Mr. *Penny*. My intention was, for fear ſhe ſhould have given me ſome other Book, to know whether it was writ by her or no.

Cellier. My Lord, I am not to be judged by his Meaning; but by his Queſtion and my Anſwer.

Mr. *Att. Gen*. Did ſhe tell you ſhe ſold more of them?

Mr. *Penny*. I turned about when I had the Book, and ſaid I, Can I have, if Occaſion be, any more? She ſaid ſhe had but four or five hundred left, and in a few Days ſhe ſhould have more.

Mr. *Att. Gen*. You told us, ſhe told you what ſhe ſold them for by the Dozen.

Mr. *Penny*. Yes, eighteen Shillings the Dozen to the Shopkeepers.

Mr. Bar. *Weſton*. Then ſet up *Downing*. [*Which was done.*] Pray look upon that Book and the Title of it. [*Which he did.*] Have you examined that Book?

Mr. *Downing*. Sir, I printed part of it.

Mr. Bar. *Weſton*. But have you examined that very Pamphlet?

Mr. *Downing*. Yes, I know it very well.

Mr. Bar. *Weſton*. Did you print part of it?

Mr. *Downing*. Yes, I did.

Mr. Bar. *Weſton*. Who brought it to you to be printed?

Mr. *Downing*. Mrs. *Cellier*.

Mr. Bar. *Weſton*. She her ſelf?

Mr. *Downing*. My Lord, about the 22d of *Auguſt*, a Meſſenger came to me from Mrs. *Cellier*, to tell me ſhe had ſomething to be printed; and ſhe ſent for me to her Houſe, and I went to her Houſe in *Arundel Buildings*. She told me ſhe had a Book to print, and it was her own Caſe. I told her I was a Stranger to her Concerns; if there was nothing in it that was offenſive, I would print it. She told me there was nothing but the Truth, and I might ſafely do it. She ſaid, ſhe had been publickly and wrongfully abuſed, and was reſolved to publiſh her Caſe, and would make the World ſenſible of the Wrong ſhe had ſuſtained. I was apt, upon the Plauſibleneſs of her Diſcourſe, to believe her; and ſo I agreed with her to have ten Shillings a Ream for printing, and I was to print four Ream of every Sheet. And having printed half the Book, the Meſſenger found it a-printing at my Houſe; and having thus found out the Preſs, he carried it before the Secretary Sir *Leoline Jenkins*, who granted a Warrant to bring us both before him; and having taken our Examinations, we were bound to appear before the Privy Council as ſoon as Notice ſhould be given us of it: And being diſcharged by the Council, we were bound to appear the firſt Day of next Term in the *King*'s-*Bench:* Since which Time ſhe hath printed t'other half of her Book at ſome other Place. And whereas ſhe promiſed to indemnify me from all Trouble and Charge, when I came to pay the Clerk of the Council his Fees, ſhe refuſed to pay them for me, and told me I had betray'd her; and ſo notwithſtanding her Promiſe, I was obliged to pay the Fees my ſelf at the Council.

Mr. *Dormer*. Pray, Sir, who was it corrected the Sheets?

Mr. *Downing*. Sir, they were brought to her.

Mr. *Dormer*. Did ſhe read them and correct them?

Mr. *Downing*. Yes, ſhe looked over them.

Mr. Bar. *Weſton*. Pray tell me how far it was you printed of the Book?

Mr. *Downing*. It was to *Folio* 22.

Mr. Bar. *Weſton*. All the Clauſes in the Indictment are contained in thoſe Pages.

Mr. *Clare*. All but the laſt in the Poſtſcript.

Mr. Bar. *Weſton*. Have you read it over ſince?

Mr. *Downing*. So far, my Lord, I did print.

Mr. Bar. *Weſton*. You take it upon your Oath, That to the 22d *Folio* of that *Book* that was given in Evidence, was printed by you by her Direction.

Mr. *Downing*. Yes, I do.

Mr. Bar. *Weſton*. Then ſet up *Stevens*. [*Which was done.*]

Mr. *Stevens*. May it pleaſe your Lordſhip, I ſaw this Book a Printing at Mr. *Downing*'s, and reading ſome Paſſages in it, I aſked him, Mr. *Downing*, do you know what you do? He ſaid, It is a Truth: Then I aſked him who he did it for; he ſaid he did it for Mrs. *Cellier*. I bid him have a Care that he did no more than what he could juſtify: He deſired me that I would not hurt him, and I was loth to do a poor Man wrong, but away I went to the Secretary; but I aſked him before, what was become of the Sheets? He ſaid he carried them to Mrs. *Cellier*; ſaid I, Did ſhe bring you the Copy? Said he, She ſent it ſometimes by one Meſſenger, ſometimes by another, for ſhe ſent ſeveral: And when I came to her, ſhe did tell me it was her Book, and that ſhe kept a Man to write it, and ſhe dictated it to another that ſat by her; and ſhe often owned it was her Book, and ſhe the Author of it.

Cellier. I never ſaid ſo in my Life.

Mr. *Stevens*. Mrs. *Cellier*, by the ſame Token, when you ſent for Bail you had occaſion to write a Note, and I ſaw you write it, and ſaid, I now find 'tis none of your Hand-writing, by the Difference between the Note and the Copy: Said ſhe, I know that well enough; but I keep a Man in the Houſe to write it, and I dictated to him, and he wrote. And I have ſeen there one *Grange* and one *Sing*; but *Grange* hath come to me ſeveral times about her's and other Buſineſs, and ſhe did tell me, ſhe did dictate the Book to that Man, and paid him for writing it. Says ſhe, I am up very early every Morning, and preparing and dictating Things for the Preſs. She hath put out two Sheets ſince, and this Day at one o'clock ſhe hath invited the *Mercuries* and the *Hawkers* to come and receive a New Pamphlet.

Mr. Bar. *Weſton*. Do you know her Hand-writing?

Mr. *Stevens*. I have not that Note by me.

Mr. Bar. *Weſton*. Did you ſee the Copy?

Mr. *Stevens*. Some part of it I did ſee.

Mr. Bar. *Weſton*. Was any part of it her Hand-writing?

Mr. *Stevens*. No, I believe it was none of her Hand.

Mr. Bar. *Weſton*. Was it ſeveral Hands?

Mr. *Stevens*. I ſaw but one part of the Copy, and that was all of one Hand, but not her's, I believe. She ſaid ſhe kept a Man to write it, and ſhe had ſeveral other Things to write to be printed.

Mr. Bar. *Weſton*. Did ſhe ever before affirm her ſelf to be the Author of the Book?

Mr. *Stevens*. She did (if it pleaſe you) before the Secretary, and before the Council; and ſaid ſhe would anſwer it. And I have ſeen her likewiſe ſell ſeveral of them ſeveral Days.

Mr. *Dormer*. Did ſhe deliver any of theſe Books that you know of?

Mr. *Stevens*. I have ſeen her deliver them out ſeveral times before me my ſelf, ſhe can't deny it.

Mr. Bar. *Weſton*. Compare the Book with the Indictment.

Mr. *Dormer*. Swear Mr. *Fowler*. [*Which was done.*]

Mr. Bar. *Weſton*. What is that *Fowler*?

Mr. *Dormer*. Shew him the Book, if you pleaſe. [*Which was done.*] Did you buy any of thoſe Books of Mrs. *Cellier*?

Mr. *Fowler*. I bought two of them. I went to her Houſe, and told her I had a Letter from a Friend out of *Oxfordſhire*, that deſired me to buy two of her Books.

Mr. *Dormer*. Is that the ſame in your Hand?

Mr. *Fowler*. 'Tis the ſame, as I believe. Some Friends came to my Houſe, and told me they had ſeen me notoriouſly in Print; ſo I came to her, and told her I had a Letter out of *Oxfordſhire* for a Book or two of her's. Sir, ſays ſhe, I'll fetch you one preſently; ſhe comes again with them. Madam, ſays I, I believe you have forgotten me.

Cellier. I know you not; I never ſaw you in my Life before.

Mr. *Fowler*. No, I believe not; but yet you could put me in your Book.

Mr. Bar. *Weſton*. Why, What is your Name?

Mr. *Fowler*. My Name is *Fowler*.

Mr. Bar. *Weſton*. Where do you live?

Mr. *Fowler*. At the *Half-Moon* Tavern in *Cheapſide*, when I am at Home.

Cellier. Your Name is not in the Book.

Mr. *Clare*. There is one *F*. that keeps the *Half-Moon* Tavern in *Cheapſide*.

Mr. Bar. *Weſton*. You ſwear you had two Books of her?

Mr. *Fowler*. Yes. Madam, ſays I, I ſee you are full of Buſineſs; ſo I paid her Four Shillings for them, and away I came.

Mr. *Dormer*. Then you had no Diſcourſe with her farther who was the Author, had you?

Mr. *Fowler*. No, not a Syllable farther. I had only occaſion to get a Couple of Books; for ſome Perſons of Quality had been at my Houſe, and told me my Name was in it, and were pleaſed to joke with me about it, as particularly Mr. *Henry Killigrew* came one Day to my Houſe, and called me into the Room, ſays he, you are notoriouſly in Print, and known to be Company for a great Duke, and great Lords; you ſhall drink a Glaſs of Wine now with me, and ſo tell me the Story; and thereupon I went to her Houſe to buy a couple of Books.

Mr. *Att. Gen*. You are the Man meant by the *(F.)*

Mr. *Fowler*. I keep the *Half-Moon* in *Cheapſide*.

Mr. *Att. Gen*. There is ſomething ſuppoſed in this Book to be done by you at your going to a Man in Priſon, is that true?

Mr. *Fowler*. That I ſuppoſe is cleared by an Oath from *Corral* the Coachman; but withal, I gave my Oath for it before my Lord-Mayor my ſelf.

Mr. *Att. Gen*. Pray, for the Satisfaction of People, tell us what you know of the Matter.

Mr. *Fowler*. The Subſtance of my Oath before my Lord-Mayor was this: That I never was with any great People, as they tax me, in my Life, with any great Duke or Lord: That I never did ſee any of the Things that they ſay there, that the Duke ſhould draw his Sword, and a Lord proffer 500*l*. or I whiſper to the Coachman, That he ſhould Name ſome great Perſons, and then he and I ſhould have Money enough.

Mr. Bar. *Weſton*. But I come nearer to you with a Queſtion, Mr. *Fowler*.

Mr. *Fowler*. Yes, my Lord, if you pleaſe.

Mr. Bar. *Weſton*. Was one *Corral* a Coachman apprehended for carrying away the dead Body of Sir *Edmundbury Godfrey*, at your Motion and Accuſation?

Mr. *Fowler*. As to that, I will tell you the occaſion of all our Diſcourſe, if it may not be too tedious. Upon the Death of Sir *Edmundbury Godfrey*, a Coachman was one day called to carry ſome Gentlemen that were in my Houſe; but they ſtaying a little longer than ordinary, he went away, and, as they ſay, dropp'd them; thereupon another Coachman was called, which was this *Corral* mentioned in this Libel, and he went up to the Gentlemen into the Room, and they, to engage him to ſtay, ſecured his Whip; he comes down and begs a Pipe of *Tobacco* of my Wife in the Bar: Ay, ſaid ſhe, thou lookeſt like a good honeſt Fellow, and I believe thou haſt no hand in the Plot (a caſual Word that was paſſant at that time); whereupon he begins to tell her, it was very well for him, for he had eſcaped that Danger: Four of them meeting him againſt St. *Clement's* Church-Wall, and ſwearing damn them he ſhould ſtand, and do as they would have him; and he ſaw four, and he ſaw Sir *Edmundbury Godfrey*'s Body in a Sedan, and he ſhamm'd upon them that he could not carry him, for that the Axletree of his Coach was broke. I was in a Room by the Bar, and I overheard the Fellow talk after this rate. I came out, and aſked him, ſaid I, are you ſure of this? Then he tells me the ſame Story over again; wherefore I began to aſk him, if he were Maſter for himſelf, or drove for another; the Fellow being ſenſible he had been too laviſh in his Diſcourſe, pretends to light his Pipe in haſte, and to run out to ſee whether the Seats of his Coach were not ſtolen out, and I took

a Candle

Candle with me, and went after him to take the Number of his Coach: By that time I got to the Door, he was driving away, tho' he had left his Whip with the Gentleman as Security for his Stay. I came in, ſet down the Number of his Coach in my Book, and drew up the Subſtance of their Diſcourſe that happen'd between my Wife and him; and I was ſaying to my Wife, I had a mind to ſtop this Fellow at the Gate; but it rained, and ſo I did not, only kept the Number of his Coach. The next Day Captain *Richardſon* and the *Secondary* of the *Compter* were drinking a Glaſs of Wine at my Houſe, where I told them the Story, and they blamed me that I had not ſtopped him. Whereupon Captain *Richardſon* took the Number of his Coach, and the next Day ſent his Janizaries abroad, and ſecured him, and kept him in Cuſtody for two or three Days.

Mr. Bar. *Weſton*. When was this?

Mr. *Fowler*. Two or three Days after the Murder was publickly known of: I think it was *Tueſday* Night that this Fellow told me the Story, to the beſt of my Remembrance; and the next Day I told the Captain and the *Secondary*.

Mr. Bar. *Weſton*. Was that the next *Tueſday* after the Murder, or the *Tueſday* ſeven-night?

Mr. *Fowler*. It was the *Tueſday* ſeven-night after. They blamed me very much that I did not ſtop the Fellow: I told them how the thing was, and the Captain ſent his People abroad, and took the Coachman up by what Marks I gave of him. The next Day I was ordered to wait upon the Lords at *Wallingford-Houſe*, where was the Duke of *Buckingham*, my Lord *Shafteſbury*, the Marquis of *Wincheſter*, two other Lords, and Major *Wildman* the Secretary; where they examined me upon this thing, and what I have declared to your Lordſhips, I declared then. And they brought the Fellow in face to face; and there he does confeſs the whole Matter, and made a great Whining and Clutter, that *John* Such-a-one, a Coachman, and Mrs. Such-a-one, a Strong-water Woman, told him this, and that, and t'other. The Lords ſent for two of the Perſons he named, and both of them being brought before them, the Lords were very well ſatisfied, in that one of them keeps a Victualling-Houſe, and they were both of good Reputation, they were ſatisfied it was only a Sham, and that he only named them as the firſt Perſons that came into his Mind. Getting nothing out of him, my Lord Duke of *Buckingham* told him, Sirrah, if you will confeſs, there ſhall be nothing of what the King hath promiſed but it ſhall be made good to you, you ſhall be ſure of it, and you ſhall be protected. My Lord *Shafteſbury* told him the ſame; but withal, if he would not confeſs, and tell him who ſet him on Work, then nothing ſhould be ſevere enough for him; or Words to that effect.

Mr. Bar. *Weſton*. Upon this Accuſation was he ſent to Priſon?

Mr. *Fowler*. He was re-ordered to Priſon, and there continued ſeveral Months.

Mr. Bar. *Weſton*. Where? To what Priſon?

Mr. *Fowler*. To *Newgate*.

Mr. Bar. *Weſton*. Were you ever in *Newgate*, and ſaw him?

Mr. *Fowler*. Never, not I.

Mr. Bar. *Weſton*. Did you never ſee him but at this Chamber with the Lords, and at your own Tavern?

Mr. *Fowler*. Never.

Mr. Bar. *Weſton*. And you never were in *Newgate* in your Life with him?

Mr. *Fowler*. No, not I.

Mr. Bar. *Weſton*. Were you ever in *Newgate* with him with my Lord Duke of *Buckingham*, or my Lord *Shafteſbury*, or any other Lord?

Mr. *Fowler*. No.

Mr. Bar *Weſton*. Or any other Duke whatſoever?

Mr. *Fowler*. No.

Mr. Bar. *Weſton*. Or any Lord or Nobleman whatſoever?

Mr. *Fowler*. No, except four Years ago with my Lord *Petre*.

Mr. Bar. *Weſton*. There is no Danger of him. But as to this Affair, Were you ever with any?

Mr. *Fowler*. No.

Mr. Bar. *Weſton*. Did you ſee any Sword drawn, or Money offered?

Mr. *Fowler*. There was never a Sword drawn, nor Money offered.

Mr. *Att. Gen*. Did you ever ſee 500*l*. laid down upon a Table?

Mr. *Fowler*. There was never any Sword drawn, nor Money laid down.

Mr. Bar. *Weſton*. He anſwers that very fully; for he ſays he was never in *Newgate* with any Nobleman, but once with my Lord *Petre* four Years ago; and if he was with any Nobleman, he is accuſed to be there in the Preſence of a Duke, and another great Earl; and that the Duke drew his Sword, and the other Nobleman laid down a great deal of Gold, which he ſaid did amount to 500*l*. and told him it ſhould be his, and that if he would accuſe ſome other Perſons, they would maintain him; and then he did draw the Fellow aſide and tell him, Can't you name ſomebody? Then you and I may have Money enough. This is the Accuſation of the Book: But now 'tis denied that ever he was in *Newgate* with any ſuch Perſons, which is conſequently a Denial of the whole Charge.

Cellier. I did not write that this was true, but I writ that the Fellow told me ſo.

Mr. Bar. *Weſton*. We will ſee that in the Book in the firſt Place. We have examined this thing by the by, and tho' 'tis a little out of the way, yet it may be ſatisfactory: Read the Book.

Cl. of Cr. Malice defeated, &c.

Mr. Bar. *Weſton*. Compare it with the Record, for ſhe ſhall have a fair Trial, by the Grace of God.

Then the ſeveral Clauſes recited in the Indictment were read over again by the Clerk out of the Book, and compared by the Judge with the Record.

Mr. Bar. *Weſton*. Theſe are the Clauſes in the Book that are proved exactly upon you. Now I muſt tell you, becauſe this Book doth caſt a very great Infamy upon our Religion, and on the whole Government, it ought to be taken Notice of: For in the firſt Place, to contrive to get a Man into Priſon, and by Tortures to compel him even to commit Perjury: Then to hale another Man to Priſon, and have him thus barbarouſly uſed, as to have Nobles to come to him, one with a Sword drawn, another with Money in his Hand laying it down as a Temptation, and to force him to diſcover what he was not willing to confeſs; and then to lay Accuſation upon the King that he makes it a Thing of Safety to be the Hangman's Hounds, and to be Accuſers for Penſions; and ſhall aver, that when it is as free for her to ſpeak Truth, as it is meritorious for them to do otherwiſe, ſhe will diſcover ſuch and ſuch Things; is a Slander that ought to receive a publick Rebuke: And to ſatisfy the World of the Untruth of it, I would have you prove, if *Prance* be here and the Coachman, what Uſage they received, to avert that publick Calumny that it caſt upon the Nation. For let Mrs. *Cellier* know, ſhe hath inſinuated, as tho' the Murder of the late King was a ſufficient Ground to pervert her from Proteſtantiſm, which avowed ſuch Practices: When all the World knows, that at that time there were Proteſtants that were far better Subjects, and more loyal, than ever any Papiſt was in the World, and as great Sufferers for their Oppoſition to that dreadful Villainy, nay, far more than the Papiſts can boaſt of for their Loyalty; whereas 'tis known there were Villains under-hand all the while, and thoſe that did encourage all that Roguery, and ſet that Faction on foot which brought Things to that ill Period they came to. Therefore you have ſet a fair Outſide upon a damnable Lie. And that the arranteſt rebellioufeſt Rogues that ever lived under Heaven, are great Saints in compariſon of Proteſtants, no honeſt Man will believe.

Cellier. I ſay, they called themſelves Proteſtants. I know the Proteſtants were great Sufferers for the King, and I my ſelf felt it; our Family, which were Proteſtants, were ſeveral times ſtript and plundered for their Loyalty. I grant all this.

Mr. Bar. *Weſton*. Do you? Then you are an impudent lying Woman; or you had a villainous lying Prieſt that inſtructed you to begin your Book with ſuch a baſe Inſinuation againſt the beſt of Religions. But I have no more to ſay to that, for that is ſuch a viſible notorious Falſity to the Knowledge of all *Engliſhmen*, and People of Underſtanding, that it needs no greater Conviction than the particular Knowledge of thoſe Men that lived in that time. Therefore for that Lie, let it go upon the publick Infamy that attends on your Party, who are notorious Liars, and among whom Falſhood does ſo much abound.

Call Corral *and* Prance.

Mr. *Att. Gen*. We will give that Satisfaction to the People: But the Jury are to know, that it does not at all concern the Matter in Iſſue: For when all that can be ſaid by them is declared, I muſt ſay, in point of Law, the publiſhing of a Libel, tho' it be true, yet is a Crime, and deſerves Puniſhment.

Mr. Bar. *Weſton*. I told you ſo. But, Mr. *Attorney*, we are to ſet a Fine; and to inſtruct us for the ſetting of the Fine, it will be a Satisfaction to the Court to diſprove the Things ſhe alledges, if you have the Witneſſes ready; but if you are not ready with your Proof, let it alone.

Mr. *Att. Gen*. They are ordered to be here. I only ſpeak that by the way. Swear Mr. *Prance*. [*Which was done.*]

Mr. Bar. *Weſton*. Mr. *Prance*, Pray, were you tortured in Priſon?

Mr. *Prance*. No, I never ſaw any ſuch thing there in my Life.

Mr. Bar. *Weſton*. How were you uſed?

Mr. *Prance*. Very well; I had every thing that was fitting, Captain *Richardſon* did take great care of me.

Mr. Bar. *Weſton*. The Truth is, the very Book itſelf implies a Contradiction. It ſays, there was one tortured in the Priſon, and the Roarings that they heard were like the Roarings of a ſtrong Man in Torture: And yet preſently after it ſays, that the Priſoner comes up in Irons and is examined. Now could any one having been ſo lately on the Rack, be able to walk and come to be examined? Any Man that knows what the Nature of a Rack is, knows alſo, that one that has been tortured there, would not be able to heave the Irons upon his Legs, nor be able to ſtir or walk; But that is a Thing not uſed amongſt us, it was ſome impudent lying Prieſt that durſt venture to broach ſuch a Calumny.

Cellier. I don't ſay it was, but it was reported.

Mr. *Prance*. Dr. *Lloyd* was with me many times for half an Hour together, and if any ſuch thing had been, he would have ſeen it.

Then Francis Corral *was called, but he did not appear.*

Capt. *Richardſon*. *Corral* they have got away; for I had him laſt Night, and he was ordered to be here to Day, but here is his Wife.

[*Who was ſworn.*]

Mr. Bar. *Weſton*. Good Woman, were you ever with your Huſband in Priſon?

Mrs. *Corral*. I was not ſuffered to come near him when he was of the Maſter's-ſide.

Mr. Bar. *Weſton*. But when he was out of Priſon, How did he tell you he was uſed? Did he tell you he was compelled to drink his own Piſs?

Mrs. *Corral*. *Sunday* Morning it was before I ſaw him; nay, I did not ſee him then, but I was called to bring him Victuals, or he would have ſtarved; nay, they ſay he would be dead before I brought him. So I carried him Bread and Things, and I did not ſee him then till almoſt a Fortnight after; and when I ſaw him he had great Fetters on, and I was amazed at them. They put in ſome Charcoal there to warm him, it being very cold; and, ſaid I, Lord, what have you done? You have murdered ſomebody, ſure? But they ſaid, they put on thoſe Things to keep his Legs warm.

Cellier. Were you ever beaten at any time for bringing your Huſband Victuals?

Mrs. *Corral*. No, indeed, I was never beaten, but they would not ſuffer me to ſee him on the Maſter's-ſide.

Lord-Mayor. Her Huſband hath deny'd all upon Oath before me.

Mr. Bar. *Weſton*. Was he ever hurt with Screws, or any ſuch Thing?

Cellier. Had he not Holes in his Legs?

Mrs. *Corral*. Yes, he had a great many; I did ſee Holes in his Legs.

Mr. Bar. *Weſton*. Did you?

Mrs. *Corral*. I did ſee one, and I can bring them that brought Salve to heal it.

Captain *Richardſon*. There is never an Iron in the Houſe that I keep, that weighs twelve Pound.

Mr. Bar. *Weſton*. They ſay you have Irons called Sheers, that weigh forty Pound.

Captain *Richardſon*. If there be one, I'll be hang'd for it before I go hence.

Cellier. I hope I ſhall be allow'd to make my Defence, and call my Witneſſes.

Mr. Bar. *Weſton*. Yes, to be ſure.

Cellier. Did not you hear your Huſband tell me how heavily he was fettered and uſed? That he was chained to the Floor with a Chain not above a Yard long? and was forced to drink his own Water?

Mrs. *Corral*. Madam, he is not ſenſible many Times what he does ſay.

Cellier. But did not you hear him tell me ſo?

Mrs. *Corral*. I can't remember.

Cellier. Did not you tell me, that Captain *Richardſon* drove you away, and would not let you give Victuals to your Huſband?

Mr. Bar. *Weſton*. All this is but over and above; for the great Matter that ſticks upon your Part is, the Death of Sir *Edmundbury Godfrey*, and you are pinch'd there with *Prance*'s Evidence; and ſo you would make the World believe that he was tortur'd into his Confeſſion, and was mad when he did it, that you may the better turn it off from your own Party, on ſomebody elſe, on whom I don't know.

Cellier. Pray, my Lord, hear me one Word: As to your ſaying, I do it to defend a Party, I profeſs I ſtand ſingly and alone; I have been ſo barbarouſly uſed by thoſe you call that Party, that the Proteſtants have been abundantly more kind to me than they. And I would not tell the leaſt Lye to do them any good Turn.

Mr. Bar. *Weſton*. Then you are an happy Woman indeed, that are belov'd by both Parties; you have not been ſerviceable alike to both, I am ſure, but that is no great Matter; if ſo be the Proteſtants were ſo kind, you have requited them ill by ſuch a baſe Libel.

Cellier. I ſay nothing againſt them.

Mr. Bar. *Weſton*. Can you ſay any Thing that you did not make this Pamphlet?

Cellier. My Lord, I ben't bound to accuſe myſelf, I deſire it may be prov'd.

Mr. Bar. *Weſton*. I think it is fully prov'd.

Cellier. I cannot ſay any thing without my Witneſſes, I deſire I may call them.

Mr. Bar. *Weſton*. Call whom you will.

Cellier. I deſire *George Grange* may be call'd.

[*Who was ſworn*.

Mr. Bar. *Weſton*. What can you ſay for Mrs. *Cellier?* Tell me what Queſtions you will aſk him.

Cellier. I deſire to know whether I did not ſend him to find Witneſſes? Who he went for? What Anſwers they return'd? And where they be?

Mr. Bar. *Weſton*. Well, what Witneſſes were you ſent to look for?

Grange. I went to look for one Mrs. *Sheldon*, that lives in Sir *Joſeph Sheldon*'s Houſe, and they told me ſhe was in *Eſſex*. I went to the Coach to ſend for her.

Mr. Bar. *Weſton*. Why, *Scoggin* looked for his Knife on the Houſe-top.

Mr. *Stevens*. This Man did ſee her ſell theſe Books.

Mr. Bar. *Weſton*. Who did you look for beſides?

Grange. One Mr. *Curtis*. And his Wife ſaid, ſhe had not ſeen him ſince yeſterday Morning.

Mr. Bar. *Weſton*. What were they to prove?

Grange. Truly, my Lord, I don't know.

Mr. *Dormer*. By the Oath you have taken, Do you know ſhe hath ſold any of theſe Books?

Grange. Yes, I do know that ſhe hath ſold ſome of them.

Lord-Mayor. There your own Witneſs, Mrs. *Cellier*, proves it againſt you.

Mr. Bar. *Weſton*. Who would you have elſe?

Cellier. I deſire that *Mary Smith* may be called *(Which was done, but ſhe appeared not then)*. I deſire *John Clarke* may be ſent for from the Goal.

Captain *Richardſon*. He is in Execution.

Mr. Bar. *Weſton*. For what?

Captain *Richardſon*. For Debt.

Mr. Bar. *Weſton*. 'Tis not out of the Rules of the Priſon; you may bring him hither, and 'tis no Eſcape.

Captain *Richardſon*. If your Lordſhip orders it ſo, I will bring him.

Lord Mayor. She ſhould have brought an *Habeas Corpus*, if ſhe would have had him.

Mr. *Att. Gen*. He muſt bring him through ſome Part, I ſuppoſe, that is not within the Rules, and then it will be an Eſcape.

Cellier. I pray an *Habeas Corpus* to fetch him.

Mr. Bar. *Weſton*. You might have had one before.

Cellier. This is all becauſe I had no Time to prepare for my Defence.

Mr. Bar. *Weſton*. You might have moved the Court for it; they granted you a Copy of your Indictment.

Cellier. I had it not till Nine o'Clock to Day, and my Council could not inſpect it, nor ſpeak a Word with me about it.

Lord-Mayor. At what Time ſhall we have done, if we dally after this Rate?

Mr. Bar. *Weſton*. Have you any blank *Habeas Corpus?*

Cl. of Peace. It could not be ſeal'd, and beſides, they ſhould fetch it out of the *Crown-Office*.

Cellier. I deſire to have him come, in order to the Defence of ſomething in my Book.

Mr. Bar. *Weſton*. What would he prove?

Cellier. That I have not belied the Government.

Mr. Bar. *Weſton*. In what?

Cellier. That he was ſheer'd with long Sheers, and unreaſonable Irons.

Mr. *Collins*. You cannot do yourſelf greater Wrong than by ſuch Talk as this.

Lord-Mayor. You are not indicted for your whole Book, but for ſome part of it.

Cryer. Here is Mrs. *Smith* now. [*Who was ſworn*.

Cellier. What have you heard *Corral* the Coachman ſay, about his Uſage in Priſon?

Mr. *Dormer*. I think that Queſtion is not to be admitted.

Mr. Bar. *Weſton*. What is it you would have her aſked?

Cellier. What ſhe heard the Coachman ſay, for I only ſay he told me ſo.

Mr. Dormer. I am in your Lordſhip's Judgment, I think it is not Evidence.

Mr. *Att. Gen*. She keeps the Coachman away, and now will tell you what he ſaid.

Mr. Bar. *Weſton*. That is no Evidence, for the Coachman might have been here, if you had not ſent him away.

Cellier. Let his Wife ſpeak that, becauſe ſhe can teſtify I did not ſend him away.

Captain *Richardſon*. She gave them Money before, and told them ſhe would maintain them.

Cellier. You are not an Evidence againſt me, you are not ſworn.

Captain *Richardſon*. But this that I ſay is ſworn.

Mr. Bar. *Weſton*. Call her.

Mr. *Att. Gen*. Aſk her a proper Queſtion to the Iſſue.

Cellier. I would know of her, whether I kept her Huſband away?

Mr. *Att. Gen*. It may be, you did it without her Knowledge?

Cellier. Have I ſeen her Huſband without her Knowledge?

Mr. Bar. *Weſton*. Go on with your Witneſſes.

Cellier. I deſire *Mary Johnſon* may be call'd.

Mr. Bar. *Weſton*. For what? What will ſhe prove?

Cellier. That ſhe was to ſee for Witneſſes in order to my Defence.

Mr. Bar. *Weſton*. But if they are not come, what ſignifies that?

Cellier. I have done then, my Lord; for not having Time to get my Witneſſes, I cannot make my Defence ſo fully, as elſe I ſhould have done: Only I deſire you to conſider I am a poor ignorant Woman, and have erred out of Ignorance: I thought nothing, but that I might publiſh what others had ſaid and told me; and ſo I have offended in Ignorance, if I have offended.

Mr. Bar. *Weſton*. I do verily believe there are more Wits than yours concerned in this Book; though you bear the Name, yet the Book is not the Effect of your Wit only, but you acknowledge enough. And you are to take Notice, that the King hath ſet out a Proclamation, that no Books ſhall be printed without a Licenſe.

Cellier. I never heard it. I was under cloſe Confinement when the King ſet it out.

Mr. Bar. *Weſton*. No, I deny that; for you were enlarged the firſt Day of *Trinity-Term*, and the Proclamation came out towards the End.

Mr. *Att. Gen*. She now does confeſs ſhe knows of it, becauſe ſhe ſpeaks of the Time, and that was before her Book was written.

Cellier. May not my Council ſpeak for me? I deſire you would hear him.

Mr. *Collins*. I have nothing to ſay for her.

Mr. Bar. *Weſton*. He ſays, he hath nothing to ſay for you.

Mr. *Collins*. And if you had ſaid leſs for yourſelf, it had been better.

Mr. Bar. *Weſton*. The Queſtion is but Guilty or Not Guilty? Whether you publiſhed this Libel or not? And if the Matter of the Indictment be proved, what can Council ſay, except you can diſprove the Witneſſes, that you did not the Fact?

Cellier. Well, my Lord, then I beſeech you conſider me, I am a Woman, and deal with me in Mercy, as well as Juſtice.

Mr. Bar. *Weſton*. Mrs. *Cellier*, I have not been noted to be a Perſon that uſe any great Severity towards any body, no not towards any of your Party; but when I ſee ſo much Malice as is comprized in your Book, and have reaſon to ſuſpect that this is not acted only by you, though you bear the Name of it, but ſome of your wicked Prieſts are the Authors of it, as I am ſure they are; then I think it is not ſevere, that you, who ſtand at the Stake for all, muſt bear the Blame of all. If you will tell us who it was that ſet you on Work, and aſſiſted you in this wicked Buſineſs, that will be ſomething towards the Mitigation of your Fine; but if you will take it on yourſelf, you muſt ſuffer the Conſequence.

Cellier. I beſeech you, my Lord, have ſome Compaſſion; His Majeſty acknowledged before the Council, that I had ſuffered for him; I ventured my Life through a Sea and an Army to ſerve him; I loſt my Father and my Brother both in a Day for him; and if you have no Compaſſion for me, have ſome Commiſeration for my Loyal Parents that loſt their Eſtates for him.

Mr. Bar. *Weſton*. If you have done Service for his Majeſty, and thereby deſerved any Thing of him, His Majeſty hath been ſo bountiful in the Diſpenſation of his Favour, that he would not fail to recompenſe you for it; but we are to proceed according to the Rules of Law.

Cellier. But pray have ſome Mercy in your Juſtice.

Mr. Bar. *Weſton*. Gentlemen of the Jury, This Gentlewoman the Priſoner ſtands Indicted——

Jury. We have not heard one Word that hath been ſaid.

Mr. Bar. *Weſton*. No! That is ſtrange; I will acquaint you with as much of the Evidence as falls under my Information: It had been well if you had told us this before: The Buſineſs is this, She ſtands indicted here for Writing and Publiſhing of a very ſcandalous Libel. But pray did not you hear *Penny* prove that ſhe ſold it?

Jury. We heard the three firſt Witneſſes.

Mr. *Att. Gen*. There was the Proof of the Fact.

Mr. Bar. *Weſton*. The reſt of the Evidence was but a Compariſon of the Clauſes in the Book with thoſe in the Indictment, which you are to have Direction from the Court in, that they do: She ſtands indicted for publiſhing a Libel, and the Title of the Libel is, *Malice Defeated, or, a brief Relation of the Accuſation and deliverance of* Elizabeth Cellier. Now this Libel branches it ſelf out into ſeveral Parts; the firſt whereof is a very fine Inſinuation, as though her leaving the Proteſtant Religion was, becauſe thoſe that murdered the King, and made that very great Subverſion that was made in the Government by the late Long Parliament, and the Army that ſucceeded them, were Proteſtants——

Cellier. Pray, my Lord, I ſay, called Proteſtants.

Mr. Bar. *Weſton*. By your Favour, ſhe pretends it was by thoſe that were called Proteſtants; but if they were only thoſe that were called Proteſtants, and not Proteſtants, what Reaſon had ſhe to go off from the Proteſtant Religion, to turn Papiſt, when there was ſuch a Body of loyal Proteſtants that did adhere to the loyal Party? Therefore that was as villainous an Inſinuation as could be; as though the Proteſtant Religion did nouriſh and teach ſeditious Principles, which in the Conſequence of them tended towards the Subverſion of the Government and Order, which certainly it does cheriſh in the higheſt Degree of any Religion in the World, and hath the moſt peaceable Principles in Matters of Duty, both in Subjection to our Superiors, and of a charitable Deportment of Men one towards another: And the Practice of thoſe Principles hath been ſeen amongſt Proteſtants, eſpecially amongſt the *Engliſh* Proteſtants, as much as in any Nation in the World; this may be ſaid of it to this Day, for the Reputation of the *Engliſh* Nation, that there is more Fidelity, Honeſty, and generous Truſt amongſt them, than among all the Nations of the World beſides; ſo that if a Man were to go out of *England* to any other Part of the World, he might well uſe the Words of *Demoſthenes*, upon his going out of *Athens*, at his Baniſhment; *Farewel, beloved City, I am going into a World where I ſhall not find ſuch Friends as I have had Enemies here.* Friends in other Places will be no better than our Enemies here; the Carriage of *Engliſh* Men is ſo much beyond all others, except the *Germans*, who, I muſt confeſs, are famed for their Honeſty and Integrity one to another; but if you take the *French*, the *Italian*, the *Spaniard*, or any Sort of the *Levantine* People, they live like ſo many Wolves, eſpecially in thoſe Places where the Popiſh Religion is profeſſed. Now after this Inſinuation, there is another Part of the Book recited in the Indictment, There was an horrid barbarous Murder that was committed here, and which certainly did fix the Accuſation of the Plot fuller upon them, than all the Evidence that was given beſides, the Murder of Sir *Edmundbury Godfrey*: A Magiſtrate in doing his Duty was moſt barbarouſly murdered, and by whom is evidenced by one *Prance*: It hath been the whole Labour of the Party, to caſt this Murder upon other Perſons, and take it off themſelves; for they find if that Accuſation ſticks upon them, it is a Thing of ſo heinous a Nature, that it will make the Popiſh Party odious to all Mankind. And therefore this they labour at mightily, and this Taſk ſhe hath taken on herſelf; for knowing *Prance* to be a principal Witneſs, ſhe undertakes to let the World know, that *Prance* was tortured in Priſon, to inſinuate, that the Evidence he gave againſt thoſe Perſons that were executed for this Murder, was extorted from him by ill and cruel Uſage. But you muſt firſt know, the Laws of the Land do not admit a Torture, and ſince Queen *Elizabeth*'s Time there hath been nothing of that Kind ever done. The Truth is, indeed, in the twentieth Year of her Reign, *Campion* was juſt ſtretched upon the Rack, but yet not ſo but that he could walk; but when ſhe was told it was againſt the Law of the Land to have any of her Subjects racked (tho' that was an extraordinary Caſe, a World of Seminaries being ſent over to contrive her Death, and ſhe lived in continual Danger), yet it was never done after to any one, neither in her Reign, who reigned twenty-five Years after, nor in King *James*'s Reign, who reigned twenty-two Years after; nor in King *Charles* the Firſt's Reign, who reigned twenty-four Years after; and God in Heaven knows there hath been no ſuch Thing offered in this King's Reign; for I think we may ſay, we have lived under as lawful and merciful a Government as any People whatſoever, and have had as little Blood ſhed, and ſanguinary Executions as in any Nation under Heaven. Well, but (contrary to the Law in this Caſe), ſhe does ſuppoſe extraordinary Ways were uſed to make *Prance* give this Evidence. She ſays, ſhe thought what ſhe firſt heard was the Noiſe of a Woman with Child, and that *Harris* the Turnkey did tell her it was a Woman in Labour; but when ſhe deſired to be let in to help her, he turned her away rudely; but liſtening, ſhe perceived it was the Groans of a ſtrong Man that muſt be in Torture: She aſked ſome of the Goalers what was the Matter? They told her, They durſt not tell her, but it was ſomething they could not endure; and they heard him cry, What would you have me confeſs? Would you have me belye myſelf? I know nothing of it; and ſuch Words as theſe. Whereupon we have called *Prance*, and here, upon his Oath, he tells you there was no ſuch Matter: That he was uſed very kindly, had all things fitting, and under no Compulſion; ſo that this is an high Libel againſt the Government. She ſays furthermore, there was one *Corral* a Coachman that was impriſoned by the Means of one *Fowler* for the Murder of Sir *Edmundbury Godfrey*; that there was a Nobleman, a Duke, came to him in Priſon, and drew his Sword at him, and would have him confeſs, that another Nobleman laid down a Sum of Money, and ſaid it was Five Hundred Pound, and told him, if he would confeſs, he ſhould have it; and that *Fowler* took him aſide, and bid him lay it upon ſomebody elſe, and then he and *Fowler* ſhould have Money enough. *Fowler* being examined, and upon his Oath, tells you upon what Account he did charge *Corral*; he tells you, he was never with *Corral* in the Goal in his Life, and never was with him in the Preſence of any Duke or Nobleman but once in a Room, where *Corral* was brought to be examined; and then there was the Duke of *Buckingham*, the Marquis of *Wincheſter* (who I never heard was a Man of Cruelty, or harſh Nature), my Lord *Shafteſbury*, and Major *Wildman*, who was Secretary; but there was no ſuch cruel Uſage there; and he never was in the Priſon with ſuch Noblemen; and then the Conſequence is, that the whole Story is falſe. *Corral*, it ſeems, my Lord Mayor ſays, hath been examined to this Point, and denies it all, and is kept out of the way, that he ſhould not give it in Evidence here: But if we had him here, it were no great Matter; for if there were any thing of this Nature true, they are to proceed in a legal Way againſt them that make theſe Tranſgreſſions of the Law; ſhe ought to have indicted the Perſons, for they are highly puniſhable for ſuch Extravagances as theſe are. But there is nothing done in that Kind; but inſtead of that, ſhe hath defamed them all in a Libel; and ſhe is not contented to have done that neither, for ſhe hath defamed the King highly in his Government, and ſaid, ſhe could have written more. I paſs over the Buſineſs that concerns *Dangerfield*, wherein ſhe complains, that *Dangerfield* had more Friends, and was viſited more by Perſons of Quality, when ſhe had none came to her; every one is viſited according to the Intereſt they have in the World, and the Friends they make: I have nothing to ſay to that, there is not ſo much in it; but come to that Part wherein ſhe ſcandalizes the King, which is this; ſhe ſays, *Whenever his Majeſty ſhall pleaſe to make it as ſafe and honourable to ſpeak the Truth, as it is apparent it hath been gainful and meritorious to do the contrary, their Villainy will not want Witneſſes to teſtify the Truth of more than ſhe had written.*

So that ſhe ſuppoſes, that the King, by the Countenancing of Lies, and giving Penſions to Liars, choaks the Truth, and makes it dangerous for thoſe that know the Truth, to divulge it to the World; which is a very vile Scandal upon the King and the Government. Theſe are the Matters of the Libel, and the Things in Proof have been ſworn by three Witneſſes; one proves, that he went to her to buy one of her Books, and he aſked her for one, and ſhe gave him a Book which bears that Title-page that you hear in the Indictment, ſuperſcribed with her Name, and ſhe gives it as her Book. Now ſhe would evade it thus, that ſhe gave it as her's, not as though ſhe were the Author, but as if it were her's only in Property: But can any ſuch thing be thought the Meaning of her Words? Or can there be any greater Evidence that ſhe is the Author of the Book, than her publiſhing of it with her Name to it? But the Fellow goes further, and tells you, when he had the Book, he turned about, and aſked her, if it were her Book? Yes, ſhe ſaid, it was: And, ſaid ſhe, I could have writ a great deal more, if I would; ſo that her ſaying ſhe could have writ more, implies, that ſhe writ that; and (more) is a Word of Compariſon which always ſuppoſes the poſitive Propoſition. The next is the Printer, who tells you, that he printed the firſt twenty-two Folios, within which the greateſt Part of this Charge, except only that laſt about the King, is contained. He tells you, that ſhe ſent for him, and employed him to print it as her's; agreed with him for ten Shillings a Ream for the Printing, and that he did print the firſt twenty-two Leaves at her Requeſt, and as employed by her: *Fowler* tells you, he bought two of the Books of her; and theſe are the Witneſſes of the Publication of this Book. I muſt tell you this, the Clauſes in the *Libel* are truly ſet down in the Indictment, for I did examine them one by one. Now whether or no you can doubt ſhe was the Author of the Book, when in a Manner ſhe did own it at the Publication, by ſelling it as her's, I leave to you; though I muſt tell you plainly, I leave it as that which is to me under the Notion of expreſs Evidence; but I muſt leave it to you as Judges of the Fact, and expect your Verdict in the Caſe.

Mr. *Att. Gen.* There are three Things in the Indictment; *firſt*, That ſhe writ it; *ſecondly*, That ſhe cauſed it to be printed; and *thirdly*, That ſhe cauſed it to be publiſhed. Now if you find any one of theſe, ſhe is guilty of ſo much at leaſt, though I think you have heard Evidence enough for all. She told me it was her's, and ſaid, ſhe could have put more in; and the ſelling the Book is a Publication. So that if you be not ſatisfied ſhe was the Author, yet if you are ſatisfied ſhe cauſed it to be printed; or if you are not ſatisfied in that, yet if you are ſatisfied ſhe cauſed it to be publiſhed, you are to find her guilty of ſo much.

Cellier. The Printer does not ſay I writ it.

Mr. *Att. Gen.* But he does ſay you gave it him as your's, and to you the Sheets were ſent to be corrected.

Then the Jury deſired they might have the Book with them.

Mr. *Clare.* My Lord, the Jury wants the Book that was ſworn to.

Mr. Bar. *Weſton.* They can have no Papers without Agreement, neither the Books, nor any Paper elſe.

Mr. *Att. Gen.* Not unleſs ſhe will conſent to it. Mrs. *Cellier*, Will you conſent that they ſhall have the Book out with them?

[*To which, after ſome Pauſe, ſhe anſwered, No.*

Mr. Bar. *Weſton.* Then they cannot have it by Law.

Then the Jury withdrew for a little, and returned.

Cl. of Cr. How ſay you, is *Elizabeth Cellier* Guilty of the writing, printing, and publiſhing of the Libel for which ſhe ſtands indicted, or Not Guilty?

Foreman. Guilty. (*At which there was a great Shout.*) And the Verdict was recorded.

Mr. Bar. *Weſton.* She muſt ſtand committed to receive the Judgment of the Court.

Cellier. Will you give me Leave to ſpeak a Word now?

Mr. Bar. *Weſton.* I cannot give you any Judgment, for by the Cuſtom of the City, that is to be done by the Recorder or his Deputy; and ſo, what you will ſay to the Court, you muſt ſay to them; that will be on *Monday* when the Seſſions is done.

Cellier. What I would ſay is only this, That I am a Woman, and wherein I offended, I offended out of Ignorance, and did not know it was an Offence; and if the Offence be mine, let not others ſuffer for me. Have Mercy in Judgment; and conſider my loyal Parents and Relations, and the Services they did his Majeſty; and let this Fault be wiped out by that Service and Duty I and they paid him; or at leaſt-wiſe, let the Puniſhment of this Offence be mitigated, in Conſideration that all my Life, ever ſince I had the firſt Uſe of Reaſon, I have been a loyal Subject.

Mr. Bar. *Weſton.* Theſe are Things that will be conſidered on *Monday*, but we can't take Conſideration of it now.

Cellier. I will go away then, and come again on *Monday*.

Mr. Bar. *Weſton.* No, you are to be committed till then.

And ſo the Keeper carried her back to Newgate; *from whence on* Monday *the thirteenth of* September, *ſhe was brought to the Bar to receive her Judgment, which Mr.* Recorder *gave thus:*

Mr. *Recorder* *. Mrs. *Cellier*, the Court doth think fit, for Example Sake, that a Fine of One Thouſand Pounds be put upon you; that you be committed in Execution till that Thouſand Pounds be paid: And becauſe a pecuniary Mulct is not a ſufficient Recompence to Juſtice, which you have offended, the Court doth likewiſe pronounce againſt you, That you be put on the Pillory three ſeveral Days, in three ſeveral publick Places: In the firſt place, in regard her braided Ware received its firſt Impreſſion and Vent at her own Houſe, it is thought fit that ſhe ſtand (as near her own Houſe as conveniently can be) between the Hours of Twelve and One, for an Hour's Space, at the *May-pole* in the *Strand*, on the moſt notorious Day; I think there is a Market near that Place, let it be on that Day. At another Time,

that

* Sir *George Jefferies.*

that ſhe ſtand in *Covent-Garden* on a publick Day the like Space of Time; a third Time, that ſhe ſtand at *Charing-Croſs* on the moſt publick Day, for the Space of an Hour. And in the next Place, that ſhe find Sureties for her good Behaviour during her Life; and in every Place where ſhe ſhall ſtand on the Pillory, ſome Parcels of her Books ſhall, in her own View, be burnt by the Hands of the common Hangman, and a Paper of the Cauſe to be put upon the Pillory.

Then the Court charged the Sheriff, That he take Care in every Place for a ſufficient Guard, that the Peace may be kept; and ſhe was return'd to the Goal.

CII. *The Trial of* WILLIAM *Viſcount* STAFFORD[*], *before the* Lords *at* Weſtminſter, *upon an Impeachment for* High-Treaſon, November 30, 1680, 32 Car. II.

The FIRST DAY.

WILLIAM Earl of *Powis*, *William* Viſcount *Stafford*, *Henry* Lord *Arundel* of *Wardour*, *William* Lord *Petre*, and *John* Lord *Bellaſis*, having been formerly impeached in the Houſe of Lords, of High-Treaſon, and other high Crimes and Offences, by the Houſe of Commons, in the Name of themſelves, and of all the Commons of *England:*

And the Houſe of Commons having ſent a Meſſage to the Lords, to acquaint them with the Reſolution of that Houſe, to proceed to the Trial of thoſe Lords, then in the *Tower*, and forthwith to begin with the ſaid Viſcount *Stafford*, and to deſire their Lordſhips to appoint a convenient Day for the Trial of the ſaid Viſcount *Stafford:* Their Lordſhips did thereupon appoint the 30th Day of *November* 1680, for his Trial. And a Place in *Weſtminſter-Hall* having been for that Purpoſe erected, the ſame was as followeth: *viz.* Therein were both Seats and Wool-packs, correſpondent in all Points to thoſe in the Houſe of Lords; as alſo a State placed at the upper End thereof, with a Cabinet for the King, and whom his Majeſty ſhould think fit to attend him there, on the right Hand the State; and the like on the left Hand, for the Queen and her Followers; as alſo Galleries over Head for Ambaſſadors and others.

And to the End that the Commons might be fitted with Seats upon this great Occaſion, there were erected for them on each Side, divers Benches, on ſeveral Degrees, extending to the utmoſt Walls of the Hall.

At the lower End, the Bar whereunto the Priſoners were to be brought being placed, on the right Hand thereof was a Place raiſed about five Foot, wherein the Witneſſes were to ſtand; and on the left Hand a convenient Room for thoſe particular Members of the Houſe of Commons who were to manage the Evidence.

And the Right Honourable *Heneage* Lord *Finch*, Baron of *Daventry*, Lord High Chancellor of *England*, being by his Majeſty's ſpecial Letters Patent, bearing Date the 30th of *November* 1680, conſtituted Lord High Steward for that preſent Occaſion; upon *Tueſday* the ſaid 30th of *November*, the Lord High Steward was honourably attended from his Houſe in *Queen-Street* by all the Judges of his Majeſty's Courts in *Weſtminſter-Hall*, in their Robes; as alſo by *Garter* Principal King of Arms, in his Majeſty's Coat of Arms, and the Gentleman-Uſher of the Black-Rod, unto whom his Majeſty had before delivered the White Wand, to be carried before his Lordſhip: and about nine of the Clock in the Morning ſet forward in his Coach towards *Weſtminſter*, ſitting at the hinder End thereof, *Garter* and the Gentleman who bore the Great Seal ſitting both uncovered at the other End; one of the Serjeants at Arms, with his Mace, being placed on the right Side the Coach, and the Uſher of the Black Rod, carrying the White Wand, on the left Side; the Judges and his Lordſhip's Gentlemen in ſeveral Coaches following after.

Being thus come to the Stairs-foot, aſcending to the Houſe of Peers, the Judges went up two and two together (the Juniors firſt); next the Lord High Steward's Gentlemen; after them the Serjeant at Arms with his Mace, and the Seal-Bearer; and laſtly, the Gentleman-Uſher of the Black Rod, bearing the White Wand; *Garter* Principal King of Arms going on his Right Hand.

Then his Lordſhip alone, his Train borne by one of his Gentlemen. In this Manner entering the Houſe of Peers, he found all the Lords in their ſcarlet Robes, alſo the Biſhops in their Rochets, and took his Place upon the uppermoſt Wool-Sack.

This done, and Prayers ended, his Commiſſion for Lord High Steward was read; and then the Biſhops receded, and the Lords adjourned themſelves into the new erected Court in *Weſtminſter-Hall.*

All Things being thus in readineſs, and a large Door-place broken through the upper End of *Weſtminſter-Hall*, into that Room which was heretofore *The Court of Wards:*

Their Lordſhips paſſed from their Houſe firſt into the *Painted Chamber*, then through that called *The Court of Requeſts*; thence, turning on the left Hand, into that called *The Court of Wards*; then entered at the Door, ſo broke down as aforeſaid, into *Weſtminſter-Hall*, and paſſed through a long Gallery, placed between the *King's-Bench* and *Chancery* Courts, into this new erected Court in *Weſtminſter-Hall*, and proceeded after this Manner, *viz.*

First, the Aſſiſtants to the Clerk of the Parliament.

Then the Clerk of the Crown in Chancery, and Clerk of the Parliament; after them the Maſters in Chancery two and two, and the King's Attorney-General alone.

Then the Judges of all the Courts in *Weſtminſter-Hall*, by two and two.
Next to them the Noblemen's eldeſt Sons.
After them four Serjeants at Arms, bearing their Maces.
Next the Gentleman-Uſher of the Black-Rod.
Then all the Noblemen, according to their reſpective Degrees, the Juniors firſt, *viz.* Barons, Viſcounts, Earls.
Great Officer, *viz.* Lord Chamberlain of the Houſhold.
Marquiſſes, Dukes.
Great Officers, Lord Privy Seal, Lord Preſident of the Council.
Then four more Serjeants at Arms, bearing their Maces.
After them, the Gentleman carrying the Great Seal.
Then one of his Majeſty's Gentlemen Uſhers, daily Waiters, carrying the White Wand; *Garter* Principal King of Arms, going on his right Hand.

Then the Lord High Steward alone, having his Train borne; and after him his Highneſs *Rupert* Duke of *Cumberland*, a Prince of the Blood.

This done, and the whole Houſe of Peers having taken their Places according to their Degrees, the Commons being alſo ſeated on each Side, and the Managers in the Rooms appointed for them; the Commons being all bare, the Lord High Steward, after Obeiſance made towards the State, took his Place upon the uppermoſt Wool-ſack, and thereupon receiving the White Wand from *Garter* and the Gentleman Uſher upon their Knees, delivered it to the Uſher of the Black Rod, who held it during the Time of ſitting there. Having ſo done, his Lordſhip ſaid, Cryer, make Proclamation of Silence. Then the Cryer, a Serjeant at Arms, made Proclamation thus: All Manner of Perſons are ſtraitly commanded to keep Silence upon Pain of Impriſonment. God ſave the King.

Lord High Steward. Make Proclamation for the Lieutenant of the *Tower* to bring the Priſoner to the Bar.

Cryer. O yes! O yes! O yes! Lieutenant of the *Tower of London*, bring forth thy Priſoner *William* Viſcount *Stafford*, upon Pain and Peril ſhall fall thereon. God ſave the King.

Whereupon the Lieutenant of the *Tower* brought the Priſoner to the Bar.

Uſher of the Black Rod. My Lord *Stafford* muſt kneel; which he did.

L. H. S. Riſe, my Lord.

Then he aroſe and ſtood at the Bar, and the Lord High Steward ſpake to him as followeth:

My Lord Viſcount Stafford,

THE Commons of *England* aſſembled in Parliament have impeached your Lordſhip of High-Treaſon; and you are brought this Day to the Bar to be tried upon that Impeachment: You are not tried upon the Indictment of Treaſon found by the Grand Jury, though there be that too in the Caſe; but you are proſecuted and purſued by the loud and dreadful Complaints of the Commons; and are to be tried upon the Preſentment which hath been made by the Grand Inqueſt of the whole Nation.

In this ſo great and weighty Cauſe, you are to be judged by the whole Body of the Houſe of Peers, the higheſt and the nobleſt Court in this, or perhaps in any other part of the Chriſtian World.

Here you may be ſure no falſe Weights or Meaſures ever will or can be found: Here the Balance will be exactly kept, and all the Grains of Allowance, which your Caſe will bear, will certainly be put into the Scales.

But as it is impoſſible for my Lords to condemn the Innocent, ſo it is equally impoſſible that they ſhould clear the Guilty.

If therefore you have been agitated by a reſtleſs Zeal, to promote that which you call the *Catholick Cauſe*; if this Zeal have engaged you in ſuch deep and black Deſigns as you are charged with, and this Charge ſhall be fully proved, then you muſt expect to reap what you have ſown; for every Work muſt and ought to receive the Wages that are due to it.

Hear therefore with Patience what ſhall be ſaid againſt you, for you ſhall have full Time and Scope to anſwer it; and when you come to make your Defence, you ſhall have a very fair and equal Hearing.

In the mean Time the beſt Entrance upon this Service will be to begin with the reading of the Charge.

L. H. S. My Lord, if your Lordſhip find yourſelf infirm and unable to ſtand, your Lordſhip may have a Chair to eaſe yourſelf whilſt your Charge is reading. *And a Chair was brought accordingly, and his Lordſhip ſat thereon.*

Clerk of the Parliament read the Charge.

ARTICLES *of Impeachment of High Treaſon, and other High Crimes and Offences, againſt* William *Earl of* Powis, William *Viſcount* Stafford, *and* Henry *Lord* Arundel *of* Wardour, William *Lord* Petre, *and* John *Lord* Bellaſis, *now Priſoners in the* Tower *of* London.

‘ 1. THAT for many Years now laſt paſt, there hath been contrived and carried on by Papiſts, a traiterous and execrable Conſpiracy and Plot within this Kingdom of *England*, and other Places, to alter, change, and ſubvert the ancient Government of the Laws of this Kingdom and Nation, and to ſuppreſs the true Religion therein eſtabliſhed, and to extirpate and deſtroy the Profeſſors thereof; which ſaid Plot and Conſpiracy was contrived and carried on in divers Places, and by ſeveral Ways and Means, and by a great Number of Perſons of ſeveral Qualities and Degrees who acted therein, and intended thereby to execute and accompliſh the aforeſaid wicked and traiterous Deſigns and Purpoſes.

‘ 2. That the ſaid *William* Earl of *Powis*, *William* Viſcount *Stafford*, *Henry* Lord *Arundel* of *Wardour*, *William* Lord *Petre*, and *John* Lord *Bellaſis*, together with *Philip Howard*, commonly called Cardinal of *Norfolk*; *Thomas White*, alias *Whitebread*, commonly called Provincial of the *Jeſuits* in *England*; *Richard Strange*, lately called Provincial of the *Jeſuits* in *England*; ——— *Vincent*, commonly called Provincial of the *Dominicans* in *England*; *James Corker*, commonly called Preſident of the *Benedictines*; Sir *John Warner*, alias *Clare*, Baronet; *William Harcourt*, *John Kenis*, *Nicholas Blundell*, — *Poole*, *Edward Mico*, *Thomas Bedingfield*, alias *Benefield*, *Baſil Lanworth*, *Charles Peters*, *Richard Peters*, *John Conyers*, Sir *George Wakeman*, *Thomas Fenwick*, *Dominick Kelly*, *Fitz-gerald*, *Evers*, Sir *Thomas Preſton*, *William Lovel*, Jeſuits; Lord *Baltimore*, *John Carrel*, *John Townley*, *Richard Langhorn*, *William Fogarty*, *Thomas Penny*, *Matthew Medbourn*, *Edward Coleman*, *William Ireland*, *John Grove*, *Thomas Pickering*, *John Smith*, and divers other Jeſuits, Prieſts, Friers, and other Perſons, as falſe Traitors to his Majeſty and this Kingdom, within the time aforeſaid, have traiterouſly conſulted, contrived, and acted to and for the accompliſhing of the ſaid wicked, pernicious, and traiterous Deſigns; and for that end did moſt wickedly and traiterouſly agree, conſpire, and reſolve to impriſon, depoſe, and murder his ſacred Majeſty, and to deprive him of his Royal State, Crown and Dignity; and by malicious and adviſed Speaking, Writing, and otherwiſe, declared ſuch their Purpoſes and Intentions.

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[*] Burn. *Hiſt. Own Times*, Vol. I. p. 488,——494.

‘ And alſo to ſubject this Kingdom and Nation to the Pope, and to his tyrannical Government.

‘ And to ſeize and ſhare among themſelves the Eſtates and Inheritances of his Majeſty's Proteſtant Subjects.

‘ And to erect and reſtore Abbeys, Monaſteries, and other Convents and Societies, which have been long ſince, by the Laws of this Kingdom, ſuppreſſed for their Superſtition and Idolatry; and to deliver up and reſtore to them the Lands and Poſſeſſions now veſted in his Majeſty and his Subjects by the Laws and Statutes of this Realm: And alſo to found and erect new Monaſteries and Convents, and to remove and deprive all Proteſtant Biſhops, and other Eccleſiaſtical Perſons from their Offices, Benefices, and Preferment.

‘ And by this means to deſtroy his Majeſty's Perſon, extirpate the Proteſtant Religion, overthrow the Rights, Liberties, and Properties of all his Majeſty's good Subjects, ſubvert the lawful Government of this Kingdom, and ſubject the ſame to the Tyranny of the See of *Rome*.

‘ 3. That the ſaid Conſpirators, and their Complices and Confederates, traiterouſly had and held ſeveral Meetings, Aſſemblies, and Conſultations, wherein it was contrived and deſigned among them, what Means ſhould be uſed, and what Perſons and Inſtruments ſhould be employed, to murder his Majeſty; and did then and there reſolve to effect it by poiſoning, ſhooting, ſtabbing, or ſome ſuch-like Ways and Means; and offered Rewards and Promiſes of Advantage to ſeveral Perſons to execute the ſame, and hired and employed ſeveral wicked Perſons to go to *Windſor*, and other Places where his Majeſty did reſide, to murder and deſtroy his Majeſty; which ſaid Perſons or ſome of them accepted ſuch Rewards, and undertook the perpetrating thereof, and did actually go to the ſaid Places for that End and Purpoſe.

‘ 4. That the ſaid Conſpirators, the better to compaſs their traiterous Deſigns, have conſulted to raiſe, and have procured and raiſed Men, Money, Horſes, Arms and Ammunition; and alſo have made Application to, and treated and correſponded with the Pope, his Cardinals, Nuncio's, and Agents, and with other Foreign Miniſters and Perſons, to raiſe and obtain Supplies of Men, Money, Arms, and Ammunition, therewith to make, levy, and raiſe War, Rebellion, and Tumults within this Kingdom, and to invade the ſame with foreign Forces, and to ſurprize, ſeize and deſtroy his Majeſty's Navy, Forts, Magazines, and Places of Strength within this Kingdom; whereupon the Calamities of War, Murders of innocent Subjects, Men, Women and Children, Burnings, Rapines, Devaſtations, and other dreadful Miſeries and Miſchiefs muſt inevitably have enſued, to the Ruin and Deſtruction of this Nation.

‘ 5. And the ſaid Conſpirators have procured and accepted, and delivered out certain Inſtruments, Commiſſions and Powers, made and granted by or under the Pope, or other unlawful and uſurped Authority, to raiſe and diſpoſe of Men, Monies, Arms, and other Things neceſſary for their wicked and traiterous Deſigns; and namely, a Commiſſion for the ſaid *Henry* Lord *Arundel* of *Wardour*, to be Lord-Chancellor of *England*; and another Commiſſion to the ſaid *William* Earl of *Powis*, to be Lord-Treaſurer of *England*; another Commiſſion to the ſaid *John* Lord *Bellaſis*, to be General of the Army to be raiſed; another Commiſſion to the ſaid *William* Lord *Petre*, to be Lieutenant-General of the ſaid Army; and a Power for the ſaid *William* Viſcount *Stafford*, to be Paymaſter of the Army.

‘ 6. That in order to encourage themſelves in proſecuting their ſaid wicked Plots, Conſpiracies and Treaſons, and to hide and hinder the Diſcovery of the ſame, and to ſecure themſelves from Juſtice and Puniſhment, the Conſpirators aforeſaid, their Complices and Confederates, have uſed many wicked and diabolical Practices; *viz.* They did cauſe their Prieſts to adminiſter to the ſaid Conſpirators an Oath of Secrecy, together with their Sacrament; and alſo did cauſe their ſaid Prieſts, upon Confeſſions, to give their Abſolutions, upon condition that they ſhould conceal the ſaid Conſpiracy.

‘ And when about the Month of *September* laſt, Sir *Edmundbury Godfrey*, a Juſtice of Peace, had, according to the Duty of his Oath and Office, taken ſeveral Examinations and Informations concerning the ſaid Conſpiracy and Plot; the ſaid Conſpirators, or ſome of them, by Advice, Aſſent, Counſel, and Inſtigation of the reſt, did incite and procure divers Perſons to lie in wait and purſue the ſaid Sir *Edmundbury Godfrey* divers Days, with an Intent to murder him; which at laſt was perpetrated and effected by them: (for which ſaid horrid Crimes and Offences, *Robert Green*, *Henry Berry*, and *Lawrence Hill* have ſince been attainted; and *Dominick Kelly*, and —— *Girald*, and others are fled for the ſame.) After which Murder, and before the Body was found, or the Murder known to any but the Complices therein, the ſaid Perſons falſly gave out, that he was alive and privately married; and after the Body was found, diſperſed a falſe and malicious Report that he had murdered himſelf.

‘ Which ſaid Murder was committed with Deſign to ſtifle and ſuppreſs the Evidence he had taken and had Knowledge of, and diſcourage and deter Magiſtrates and others from acting in further Diſcovery of the ſaid Conſpiracy and Plot: For which End alſo the ſaid Sir *Edmundbury Godfrey*, while he was alive, was by them, their Complices and Favourers, threatened and diſcouraged in his Proceedings about the ſame.

‘ 7. And of their further Malice, they have wickedly contrived, by many falſe Suggeſtions, to lay the Imputation and Guilt of the aforeſaid horrid and deteſtable Crime upon the Proteſtants; that ſo thereby they might eſcape the Puniſhments they have juſtly deſerved, and expoſe the Proteſtants to great Scandal, and ſubject them to Perſecution and Oppreſſion, in all Kingdoms and Countries where the *Romiſh* Religion is received and profeſſed.

‘ All which Treaſons, Crimes, and Offences above-mentioned, were contrived, committed, perpetrated, acted and done by the ſaid *William* Earl of *Powis*, *William* Viſcount *Stafford*, *William* Lord *Petre*, *Henry* Lord *Arundel* of *Wardour*, and *John* Lord *Bellaſis*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity, and againſt the Laws and Statutes of this Kingdom.

‘ Of all which Treaſons, Crimes, and Offences, the Knights, Citizens and Burgeſſes, in Parliament aſſembled, do, in the Name of themſelves, and of all the Commons of *England*, impeach the ſaid *William* Earl of *Powis*, *William* Viſcount *Stafford*, *William* Lord *Petre*, *Henry* Lord *Arundel* of *Wardour*, and *John* Lord *Bellaſis*, and every of them.

‘ And the ſaid Commons by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any Time hereafter, any other Accuſations or Impeachments againſt the ſaid *William* Earl of *Powis*, *William* Viſcount *Stafford*, *William* Lord *Petre*, *Henry* Lord *Arundel* of *Wardour*, and *John* Lord *Bellaſis*, and every of them: And alſo of replying to the Anſwers which they, and every of them, ſhall make to the Premiſes, or any of them; or to any other Accuſation or Impeachment which ſhall be by them exhibited, (as the Cauſe, according to Courſe and Proceedings of Parliament, ſhall require) do pray, that the ſaid *William* Earl of *Powis*, *William* Viſc. *Stafford*, *William* Lord *Petre*, *Henry* Lord *Arundel* of *Wardour*, and *John* Lord *Bellaſis*, and every of them, be put to anſwer all and every the Premiſes: And that ſuch Proceedings, Examinations, Trials and Judgments, may be upon them, and every of them, had and uſed, as ſhall be agreeable to Law and Juſtice, and Courſe of Parliament.’

The Humble Anſwer of William *Viſcount of* Stafford, *now Priſoner in his Majeſty's* Tower *of* London, *to the Impeachment of High-Treaſon and other High Crimes and Miſdemeanors exhibited againſt him and others, to the Right Honourable the Lords Spiritual and Temporal in Parliament, by the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, in the Name of themſelves, and of the Commons of* England.

‘ THE ſaid Viſcount, ſaving to himſelf all Advantage and Benefit of Exceptions to the Generality, Incertainty, and Inſufficiency of the ſaid Impeachment, moſt humbly beſeeching their Lordſhips thereof to take due Notice, and thereunto at all Times to have a juſt Regard: He anſwereth and ſaith, That he is Not Guilty of all, or any of the Offences charged againſt him by the ſaid Impeachment; and for his Trial humbly and willingly putteth himſelf upon his Peers; no ways doubting, but that by the Grace of God, and their Lordſhips impartial Juſtice, he ſhall make his Innocence appear. All which he moſt humbly ſubmitteth unto their Lordſhips further Conſideration.’

STAFFORD.

L. H. S. Gentlemen of the Houſe of Commons, be pleaſed to proceed.

Then Mr. Serjeant Maynard, *one of the Committee appointed to manage the Evidence, began as followeth*:

My Lords,

MAY it pleaſe your Lordſhips; by the Command of the Houſe of Commons, who have impoſed upon us this Taſk, we are here to proſecute this great Charge againſt the Priſoner, the Lord at the Bar. My Lords, there are two Parts that are in this great Charge; there is a General, which is the Subverſion of the whole Nation, the King himſelf to be murdered, the Proteſtant Religion to be ſuppreſſed, War to be introduced, and thoſe other Things that are expreſſed in the Articles. This General is charged in particular upon this Lord; and, my Lords, it was in Conſideration, how far it was fit to meddle with this General at this particular Trial: For if this Lord be guilty of ſuch Crimes, it will prove well enough that there was ſuch a Plot. But, my Lords, withal we did conſider when the firſt Diſcovery of this Plot was made, how afterwards it took cold, how Rumours were raiſed againſt it, how there were Endeavours to ſuppreſs the Belief of it; and therefore, my Lords, we do conceive that it is fit we ſhould firſt ſettle that, that there was a General Plot, a Plot of ſuch a Nature as the Articles expreſs.

Some Objections we thought there might be raiſed, becauſe it hath been ſo long in the World, ſome Years now ſince the Diſcovery of it, ſome Perſons, that is, ſome ten or eleven, proſecuted and attainted for it, and therefore that might have been Satisfaction enough that ſuch a Plot there was; beſides, that there have been publick Declarations of the Particulars of it to the World. But being now to proceed before your Lordſhips in a judicial Way, we did think fit, and we hope your Lordſhips will approve of it, to ſpend ſome Time in the Proof of the General Plot, which we hope will be to the Satisfaction of your Lordſhips and the whole World; for we do not think that *England* only looks into this Day's Trial, but the whole World one Way or other, the whole *Chriſtian* World is concerned in it. My Lords, after the Publication of theſe Things (which were not judicial), how far your Lordſhips will believe them, as Judges, we know not; we will prove it now, that their Policies and Contrivances may be laid open to the World. And firſt we offer it to your Lordſhips, becauſe we have made it Part of the Charge. And ſecondly, we ſhall do it, becauſe we think your Lordſhips are not obliged to believe Things that are in Print, till we prove them by Witneſſes judicially before you. But the main Reaſon why we do it, is, becauſe we would touch upon thoſe Endeavours that have been uſed to make this ſeem as if it were a kind of State-Plot, I know not what to call it, a Chimæra, an Imagination, and not a real Thing. This they laboured many Ways to effect, but we ſhall prove that it is a very real and a very true one.

When that *Oates* firſt made a Diſcovery, it ſeems it had not that weight that we think now it will clearly have with your Lordſhips; and had not the Murder of Sir *Edmundbury Godfrey* followed in the neck of it, the World, as it was aſleep, would have lain ſo; but that awaked us.

My Lords, it fell out in this Caſe, as it did in another: When *Catiline* the Traitor was a great way off *Rome*, and four other Lords with him, *Caſſius*, *Cethegus*, and others, five in all; it came to paſs, that, as the great Orator that was at that time ſaid, *Many were ſo ignorant that they would not think it; many were ſo unwiſe they would not believe it; ſome ſo ill that they would not favour it; and ſome ſo much worſe that they did foſter it; but all of them in not believing it, gave ſtrength to the Conſpiracy and the Treaſon.* And ſo it did here, for we look not upon ourſelves as diſcharged from the Treaſon when diſcover'd, but when prevented.

My Lords, another Reaſon to induce us into the Proof of the Main Plot is this: We do not look upon it as a particular Offence, as if one Lord was only to be queſtion'd, and appear before your Lordſhips judicially for it; he is indeed only before you at this time to receive his Trial, and your Judgment: But, my Lords, This is a Treaſon of a Faction, and of a general Party in the Nation; 'tis not this or that Lord, but a great Number: 'tis not this or that Lord that is mention'd in the Articles, but the Conſpiracy is of a great Faction. This do we think, and this makes us ſo earneſt to preſs the General before your Lordſhips, that we may give Satisfaction to your Lordſhips and the World what this Plot hath been, and how carried on every where.

My Lords, the Conſequence of that is very great: For, my Lords, if there were a general Deſign, and a general Plot, as clearly there was; ſome were to act in *Spain*, and ſome in *France*, ſome in other Places, ſome in *Ireland*, *Scotland*, and *England*, and a great Number of Jeſuits (we have a matter of Thirty in chaſe about this Buſineſs); I ſay, my Lords, if it be ſo, if one Action be in one Place, and another in another; yet if there be a common Conſent to accompliſh this Plot, then what the one does is the Act of all, and the Act of all is the Act of every one.

My Lords, the Perſons were many, and the Places and Times many they acted in, and the Deſigns which they were to accompliſh, and the Means wherewith they were to accompliſh them, were many too. Great and wicked were their Deſigns, to deſtroy our King, to take him out of the World; and why? Upon hopes of better Times to them under him that ſhould ſucceed him. Another part of the Deſign was, to deſtroy, not this or that Man that ſtood in their Way, but the whole Body of the Proteſtants here in *England*; not a Murder, but a Maſſacre and a Slaughter of all whoſoever they were that came near them, and none were to eſcape; for if any meant to flee, they would be ſure to cut them off: nay, not only to deſtroy our King, though that be the greateſt Offence that our Law can take hold of, but to deſtroy our Religion, and to deſtroy us becauſe of our Religion.

To accompliſh this, that we may open the Generals of it, Arms were to be provided, Men to be raiſed, an Army was formed in effect; and who to lead, and who to command, and who to pay. But, my Lords, not only were Arms to be had here among ourſelves, but a *French* Aid muſt be fetched in; Aſſiſtance from *France* muſt come too: Intelligences and Letters are written, and Correſpondencies had, and Aids promiſed by the Miniſters from thence.

My Lords, 'Tis a ſtrange Thing that *Engliſhmen* ſhould contrive to have an Invaſion of Strangers upon their own Country; and ſurely they are the worſt Bigots in the World that were ſo zealous to deſtroy their own Nation: and they were not wiſe ſure to think, that if the *French* did come in, they ſhould continue great Lords or great Men; and yet thus it was in general. It is very ſtrange that it ſhould enter into the Heart of any Man to deſtroy ſo many Perſons. But, my Lords, if we look upon what did encourage them, and what confirmed them in this Deſign, and what they have publiſhed to the World about their Religion, we ſhall not wonder at it; ſince they tell us 'tis lawful to kill a Heretick King, and the King of *England* is an Heretick, they ſay, and ſo declared, ſo that whoſoever would kill him did a lawful and pious piece of Service to God: nay, not only ſo, but a meritorious and glorious one too, for which they may be canoniz'd for Saints.

My Lords, We find it is no new thing: Look into all the Nations where the Pope hath any Power, or a poſſibility of hope to gain a Power, nothing hath been able to ſtand in their way, but they have broken thro' all the Bonds of Nature, and other Obligations to attain their Ends. Look into *Spain*, King *Philip* there removed his own Son, by what Means the Story tells us; he was Heir apparent, but he was a Proteſtant; and there alſo the Father puts fire to his own Daughter, becauſe ſhe was a Proteſtant; there a *Spaniard* goes from *Spain* into *Germany* to murder, and did murder his Brother for no other cauſe but becauſe he was a Proteſtant. Leave *Spain*, and go into *France*; what Maſſacres have been committed there under the Colour of a Marriage in Queen *Elizabeth*'s time! And before that, how many hundred *Albigenſes* and *Waldenſes* have been put to the Sword for Religion! Come we to our own Country, and look into *England*, what hath been done here, when Queen *Elizabeth* had a Succeſſor of another Religion, how many Attempts were there made upon her Perſon to bring that Succeſſor in! When King *James* came to the Crown, let us remember the *Gunpowder-Treaſon*, wherein all the Nation was to be deſtroy'd; King, Lords, and Commons together, and in Parliament aſſembled, were then to be a Sacrifice, a Burnt-Offering, though they might call it a Peace Offering; for theſe Gentlemen are for Sacrifices of Blood as Peace Offerings, to reconcile us to the Pope. If this be made out, we think, their Principles having produced theſe Fruits in other Ages, we may believe they would do ſo now.

What has been ſaid as Hiſtory of former Times, is not offered as Evidence of Fact to the preſent Caſe, but induces a Probability that what hath been done by ſuch Perſons may be done by them again. But, my Lords, we ſhall make it clear, and bring it home to this Lord, that he hath had his Head, his Tongue, his Hand, his Heart and his Purſe in this damnable and horrible Contrivance and Treaſon for the deſtroying of the King, the Government, our Religion and our Nation. We ſhall bring it home to him; but my part is only to open the general Conſpiracy: And indeed, my Lords, it is an heavy Burden on my aged Shoulders, conſidering that the Winter of Infirmity and Age is growing ſo faſt upon me.

My Lords, The Particulars concerning this noble Lord, becauſe the Credit of it reſts on the Teſtimony only of one Man, *viz.* Mr. *Oates*, whoſe Teſtimony being taken by Sir *Edmundbury Godfrey*, Juſtice of Peace, and kept in Writing by him, then Sir *Edmundbury Godfrey* was way-laid, and murder'd by Men of the Popiſh Religion, thereby to ſuppreſs the Examination that he had taken

This ſtartled and opened the Eyes of the World to look about us for farther Diſcovery, leſt we ſhould be led as *Oxen to the Slaughter, not knowing whither we went.*

Afterward it pleaſed God to bring ſome of their Religion and Party to make further Diſcovery: whereupon ſeveral Jeſuits, guilty of the Plot, were therefore proſecuted and brought to Judgment and Death.

After the Murder of *Godfrey*, ſeveral Fables were ſpread abroad, as if he were alive and married, as was declared to ſeveral Lords: others of the Party reported he had murder'd himſelf; but his Body being found, it was hard for the Party to invent or tell, whether he firſt ſtrangled himſelf, and then run himſelf through, or firſt run himſelf through, and then ſtrangled himſelf: That was a Dilemma to diſprove their Fables touching *Godfrey*'s Murder.

It then fell out, that Mr. *Bedlow* came as a ſecond Diſcoverer, whoſe Teſtimony concurred with *Oates*; and then there being two Witneſſes, as is neceſſary in Caſe of Treaſon, the Deſign was to take off *Bedlow*, that there ſhould remain but one, a ſingle Witneſs: In order to which, *Reading* tempts *Bedlow* with Rewards to leſſen his former Teſtimony, and qualifies that which he had depoſed poſitively was but Matter of Hearſay; for which *Reading*, the Inſtrument in that Deſign and Attempt, was indicted and convicted by Three Witneſſes, and ſuffered accordingly.

But then this Attempt upon *Bedlow* failing, the next Attempt was to take off *Oates*'s Teſtimony, by charging him with an infamous Offence: for which purpoſe one *Knox* is employ'd, who ſuborns *Lane and Oſborn*, and they ſwore it againſt *Oates*; but on Re-examination confeſs the Subornation and Falſhood of their Deſign, and *Knox* and *Lane* are therefore indicted and found guilty.

Thus when the Treaſon was diſcover'd, the Murder of an Officer of Juſtice is made the Means to hide it; and then falſe and infamous Stories ſet on Foot of that Officer to hide that Murder, and Perjury and Subornation the Means to blaſt the Diſcoverers.

Theſe wicked and ill Practices we take to be a ſecond Proof of the Plot, both in general and particular, the Records of which Convictions are here before your Lordſhips ready to be proved: For, *cui bono*, none would do ſuch wicked Practices, but to hide a greater Sin; and worſe Deſigns if poſſible will be opened, and proved by one to whom that is particularly appointed.

My Lords, We ſpeak this that the World may receive Satisfaction; we will let our Evidence be all open and publick in the Face of the Sun, and ſhew, we go not about by private Subornations, though there are Endeavours to encounter us by ſuch.

My Lords, if we make out theſe things, here is matter enough for the Satisfaction of the World, as to the general Contrivance. But, my Lords, as you ſit here as Judges of this Lord, the Priſoner at the Bar, we muſt bring it down to particular Perſons, and we ſhall do it even to him, that thoſe things which were mention'd in general were his Contrivance at leaſt-wiſe, as a Man highly, deeply guilty of conſpiring the King's Death; and in order to that, of raiſing an Army, and the other Things that have been open'd.

My Lords, I beſeech you to pardon me, if I have troubled you too long: The Particulars are many, I have had little help to prepare it from any body but my ſelf; but I ſubmit my ſelf to your Lordſhips, and hope that what is wanting in me, will be ſupply'd by others that follow: and I alſo hope you will find no defect in our Evidence at all, whatſoever may have been in the opening of it.

Then Sir Francis Winnington, *another of the Committee appointed for the Management of the Evidence, ſpoke as followeth.*

My Lords,

I SHALL begin where Mr. Serjeant *Maynard* ended, and confine myſelf to this Caſe, as it ſtands before you, and to open the particular Evidence relating to the Lord, the now Priſoner at the Bar.

My Lords, I look upon the Cauſe of this Day to be the Cauſe of the Proteſtant Religion; and I doubt not but that Plot, which has alarmed all *Chriſtendom*, will be ſo clearly made out in this Trial, that the moſt malicious of our Enemies will henceforth want Confidence to deny it.

That the Religion of the Papiſts does countenance and encourage the murdering of Princes, the maſſacring of ſuch as they miſ-call Hereticks, and the committing of all ſorts of Impiety, in order to promote their Superſtitions and Idolatries, has been mention'd by the Gentleman who ſpoke before me; and I ſhould miſpend time to ſay more of a Truth ſo well known, in ſo great and ſo learned a Preſence: I will therefore directly apply myſelf to the Buſineſs of the Day, to repreſent to your Lordſhips our Evidence of the Plot in general, and of the Guilt of this Lord at the Bar in particular.

In order to which, I ſhall crave your Lordſhips leave that I may uſe this Method.

Firſt, to ſhew what advantageous Opportunities the Papiſts had to enter into, and undertake this great and deteſtable Conſpiracy.

Secondly, to prove the Reality of the Plot in general, which I look upon as a very eaſy Undertaking.

Thirdly, to ſtate the particular Evidence againſt the Priſoner at the Bar, by which he will appear to have been one of the principal Conſpirators in this horrid Deſign to murder our Sovereign, (whom God preſerve) to extirpate the Proteſtant Religion, and to ſubvert totally the Government and fundamental Laws of this Kingdom.

My Lords, to ſhew what extraordinary Advantages the Papiſts had to enter upon this Conſpiracy, will very naturally lead us into our Proof of it; and therefore I ſhall ſpeak ſomewhat to that in the firſt place.

It is not unknown to your Lordſhips, or to any others who have in the leaſt degree enquired into Affairs, that his Majeſty has been ſo unhappy as that (unawares to him) ſome Miniſters, who have been Papiſts at the bottom, and others that have drove on their Intereſt, have crept into his Councils, and thereby gave great Opportunities to advance Popery.

'Tis moſt true, that as ſoon as theſe ill Miniſters were detected, and their ill Deſigns diſcovered, his Majeſty did diſcharge them: But to the Misfortune of the King and his People, as ill Men have been recommended to ſucceed them, and came into their Places.

In the next Place, my Lords, there did appear in ſome Men too eaſy and favourable a Diſpoſition towards the Papiſts. They were grown ſtrangely moderate towards theſe old Enemies of our Church and State. New Projects of reconciling us were ſet on Foot, and Books were written to diſtinguiſh the Church of *Rome* from the Court of *Rome*. One of thoſe Books, which was printed in the Year before the Diſcovery of the Plot, pretends, that there ought to be a Difference made between Papiſts of loyal and diſloyal Principles. This Book, as it was written more artificially than the reſt, and publiſhed in ſo critical and dangerous a Juncture, deſerves, and I doubt not in time will have, a particular Conſideration. 'Tis eaſy to believe how great Encouragement this muſt give to the *Romaniſts*, to ſee how very willing Men were to meet them, and how freely the Pen was drawn in their Favour.

Another great Encouragement, my Lords, which the Papiſts had, was, That by the means of thoſe Miniſters who were ſecretly of their Faction, whenſoever his Majeſty was pleaſed to command the Laws made againſt them in the Reign of Queen *Elizabeth* and King *James* to be put in due Execution, his good Intentions were fruſtrated, and the Severity of thoſe Laws was turned upon the Proteſtant Diſſenters. This was a Maſterpiece of *Rome*, not only to divert from themſelves the Edge of thoſe Laws which were deſigned againſt them, but to turn them upon the Proteſtants, and to make them uſeful to advance the *Romiſh* Intereſt: And when they had thus divided and diſtracted us, then was the faireſt time for them to attempt to deſtroy us utterly, and to make ſharp their Weapons in order to a Maſſacre.

But, my Lords, that which gave the Papiſts the greateſt Encouragement to enter into this deteſtable Conſpiracy, was, that they had (to the great Unhappineſs of this Kingdom, and the Proteſtant Religion) the Expectation and Hopes of a Popiſh Succeſſor. This was an Opportunity not to be loſt. They had abundant Experience of his Majeſty's Firmneſs in the Proteſtant Religion, both during his Exile, and ſince his happy Reſtoration, and how reſolutely he had kept that Promiſe which he made in his Letter from *Breda*, That neither the Unkindneſs of ſome Proteſtants, nor the Civilities of ſome Papiſts, ſhould in the leaſt Degree ſtartle him, or make him ſwerve from his Religion.

They therefore could have no Hopes of arriving at their Point, the Re-eſtabliſhment of their Church, whilſt the King lived; and it was too great a Hazard to expect his Majeſty's Death by the Courſe of Nature: And therefore, like true Papiſts, that would ſtick at no Wickedneſs to accompliſh their Deſigns, they threw off all Bonds of Loyalty and Allegiance, and reſolved to deſtroy our Sovereign, whoſe Life was the only Obſtacle in their Way. This was the laſt and moſt wicked Part of their Plot, which, though it conſiſted of very many Parts, yet this was the principal; and our Evidence againſt the Lord at the Bar will chiefly run to this Part of the Deſign.

I have only mentioned ſome of thoſe Encouragements which the World plainly ſaw the Papiſts had, before the Plot was detected: But ſince the Diſcovery, it has been abundantly proved, that it had been carrying on for many Years, and that ſo univerſally, that it is a wonderful thing it appeared no ſooner.

My Lords, I come now to our Evidence: And though it may ſeem unneceſſary to prove to your Lordſhips a general Plot of the Papiſts, who are ſo well ſatisfied of it already, and have more than once declared ſo to the World; yet becauſe it is the moſt natural Method for us, firſt to prove that there was a Conſpiracy, before we attempt to prove this Lord to have been one of the Conſpirators, we ſhall beg your Leave as to that particular. And as we ſhall be careful not to take up too much of your Time, ſo we well know your Lordſhips will allow us all the Time neceſſary to give our Evidence.

We have many Records, Things reduced to Judgment, whereby the Plot is moſt undoubtedly proved, and which are legal Evidences before your Lordſhips: The Attainders of ſeveral Jeſuits and Prieſts, the Attainder of *Langhorn* and of *Coleman*, whom I ſhould have named in the firſt Place. We have alſo the Conviction of thoſe that were proſecuted for the Murder of Sir *Edmundbury Godfrey*; and there is a Conviction, though not for the Murder, yet for cutting the Throat of Mr. *Arnold*. 'Tis true he is not dead, yet as to the Publick, I count him murdered by the Papiſts, though he be alive in the World. My Lords, we have Convictions not only of Treaſons, Murders, and cutting of Throats, but of almoſt all other Villanies whatſoever: As of Attempts to ſuborn Witneſſes, and to ſcandalize the King's Evidence; and to that we ſhall produce the Records concerning *Reading*'s Attempt upon *Bedlow*; that concerning the ſuborning of *Knox* and *Lane* to ſwear Buggery againſt Dr. *Oates*; and the Conviction of *Taſborough* and *Price* to corrupt *Dugdale*, a principal Witneſs as to this Plot.

I only mention theſe Particulars, my Lords; and certainly as you are a great Court of Record, you will take Notice of them. It would be a hard Thing, perhaps, to ſpend the time in reading all, ſince all of them are made known to the World already; but we ſhall in the Courſe of our Evidence produce them, and you may read ſuch of them as you pleaſe. All the Uſe we make of them, is for the Proof of the general Plot, which is requiſite to be done; for it will be hard to believe the Priſoner guilty of the Plot, if there was no ſuch Plot at all.

My Lords, We ſhall make appear to you things which have not yet been brought into Judgment. In the Year 76, we ſhall prove by a Witneſs that was then abroad, and diſcourſed with *Anderton*, *Champion*, *Green*, and ſeveral other Prieſts and Jeſuits, that they did acquaint him that there would be great Alteration in *England* ere long; that the King was a Heretick, and excommunicated, and might be deſtroyed; and this Doctrine they continually and induſtriouſly preached. And they further ſaid, if once the King were removed (who alone ſtood in the Way), their Religion muſt needs flouriſh; for this Reaſon, as the Witneſſes will ſpeak, that the Duke of *York* was on their Side.

My Lords, We ſhall prove, that they had in *England* Men no leſs induſtrious amongſt them, ſome whereof have been executed: *Gavan* by Name, who made it his Buſineſs to go up and down in ſeveral Counties of this Kingdom, to prove by Scripture, Councils, and Examples, That it was a lawful Undertaking to kill his Majeſty. Theſe things I name, as neceſſary in order to introduce our particular Evidence; I am unwilling to dwell longer upon this Point of the general Plot. I ſhall produce the Records, and produce our ſeveral Witneſſes, Mr. *Oates* and others, that will give you a full and plain Account of it.

My Lords, Having done with the general Plot, I come now to open the particular Evidence againſt my Lord the Priſoner at the Bar. As to him, my Lords, our Evidence ſtands not upon Conjectures, or upon mere Probability, becauſe this Lord is (as we well know) a zealous Papiſt, and hath owned himſelf ſo; but we have expreſs particular Proofs againſt his Perſon. My Lords, we have one Witneſs to produce to your Lordſhips, who will prove, that in *September* 78, there was a Conſult of ſome Prieſts and other Conſpirators, at *Tixal* in *Staffordſhire*, my Lord *Aſton*'s Houſe, for killing of the King, where my Lord *Stafford* was preſent. And by a Diſcourſe in the ſame Month, we ſhall prove what Reaſon this Lord did give, why he and their Party undertook the murdering of the King; becauſe, he ſaid, that he and many Catholick Families had no Recompence for their Loyalty; but if any thing fell, it was diſpoſed of to Rebels and Traitors. This he reſented deeply; but above all, the Obligation of his Conſcience, and of his Religion, perſuaded him to do it, and confirmed him in his Reſolution to go on in this horrid Deſign.

My Lords, We will go further, and prove, that this Lord offered 500*l.* out of his own Purſe to carry on the Plot, and particularly this Part of it, for killing the King. We ſhall produce to your Lordſhips a Witneſs to whom he made this Offer, as looking upon him to be a faithful Man, and having received ſo great a Character of him from one *Evers* a Prieſt, that he thought he might ſafely communicate the Matter to him; and the Argument he urged to perſuade the Witneſs, beſides the 500*l.* which he ſaid upon his Application to *Harcourt* and *Ireland* they ſhould pay him, was this, That others as well as he were employed in the ſame Deſign; that it was the only Way to eſtabliſh the *Romiſh* Religion in *England*; that he would lay an everlaſting Obligation upon all the Perſons of that Perſuaſion, and that he ſhould not only have his Pardon, but be canonized for it.

My Lords, This is the Subſtance of the Teſtimony of the firſt Witneſs which we ſhall produce againſt my Lord *Stafford*; and that is ſo expreſs, as I think it can hardly be anſwered.

My Lords, Our next Witneſs ſays thus (for I ſhall but open the Subſtance of what they ſay): In *June* or *July*, 1678, there were ſeveral Letters from this Lord at the Bar to the Jeſuits in *London*, in which his Lordſhip did declare his Readineſs to ſerve them in their great Deſign: And in *June* (78) the latter End of the Month, my Lord *Stafford* came to Mr. *Fenwick*'s Chamber in *Drury-Lane* (he went not then by the Name of my Lord *Stafford*, but by the Name of Mr. *Howard* of *Effingham*), and there he did receive a Commiſſion from *Fenwick* to be Paymaſter-General of the Army which was to be raiſed for the carrying on the Plot. His Lordſhip told them he was then going into the Country, but he hoped he ſhould ſoon hear from them, that they had done the Buſineſs, at leaſt that it would be done before his Lordſhip did return. To which *Fenwick* made anſwer, Your Lordſhip muſt look after the Buſineſs as well as other Perſons; and there will be need of ſome to countenance it in Town: Thereupon the Lord, the Priſoner at the Bar, ſaid, That they had been often deceived by this Prince, and been patient with him, but they would bear no longer, but were now reſolved to do the Work without Delay, for their Patience was worn out. Several other particular Circumſtances the Witneſs will acquaint your Lordſhips withal, which I ſhall not take up your time with.

My Lords, We have a third Witneſs as conſiderable and particular as any of the reſt, one that lived three Years in the Lady *Powis*'s Houſe, had his Education there, and was perſuaded by that Lady, and by one *Morgan* a Jeſuit, to become a Friar, and to that End was ſent to *Doway*; but not liking to continue at *Doway* (he will tell you the Reaſon why) he eſcaped to *France*, and at *Paris* came to his Brother, a *Benedictine* Monk there, who adviſed him to go for *England*. But whilſt he ſtaid at *Paris*, this Gentleman, by the means of his Brother and other Prieſts, grew into a great Familiarity with my Lord *Stafford*, who was then in *France*, and who at laſt came to have ſuch a great Confidence in him, that his Lordſhip could not hold, but told him, that though he had diſobliged all his Friends by going away from *Doway*, yet he had ſomething to propoſe to him, which would be a means to reconcile him to his Friends, and bring him into Preferment, and into the Friendſhip of all good Catholicks, whom he would oblige by it. The Gentleman was willing to embrace ſo happy an Opportunity, and deſired to know what it was could procure him ſo great a Good. My Lord *Stafford*, the Priſoner at the Bar, told him, It was a Thing of very great Importance; and after having required from him all poſſible Obligations of Secrecy, he told him plainly what great Benefits would accrue to himſelf, and what Advantage to the Catholick Cauſe, if he would make himſelf and the Nation happy, by undertaking to kill the King of *England*, who was an Heretick, and conſequently a Rebel to God Almighty. My Lord *Stafford* did believe the Witneſs did embrace this Propoſal warmly, and therefore directed him to prepare to go for *England*, and to go before-hand from *Paris* to *Diep*, where he would meet him, and go over with him. But it ſeems my Lord *Stafford* met with ſome Diverſion, for he did not keep his Word with him in coming; and ſo this Gentleman being diſappointed, went over without him: But fearing to be called upon to the ſame Service, he returned back again ſuddenly, and went into the *French* Army.

My Lords, We ſhall produce theſe Witneſſes againſt the Lord at the Bar; and when they have proved to your Lordſhips what I have opened, any one who was not acquainted with the *Popiſh* Party, would believe they would be at a Loſs how to acquit themſelves from this Charge. All manner of foul and indirect Practices have been uſed by them to terrify, to corrupt, and to ſcandalize our Witneſſes; all manner of Objections have been made to our Evidence. If the Witneſs does not come up to ſpeak directly to every Point, we are told, he ſays nothing at all; if he ſpeaks directly, they cry, he is not to be believed. Thus they have a ready Anſwer to every Witneſs that has been or ever ſhall be produced, either that he ſays nothing material, or that nothing that he ſays ought to have any Credit.

But we doubt not by this Trial before your Lordſhips, if we cannot ſtop their Mouths, at leaſt to convince all the World beſides of the Reality of this Plot.

It will be no wonder if their Confidence goes on ſtill to frame Cavils: They are us'd to ſcandalize the Government, and they cannot give it over. How often has his Majeſty under his Great Seal publiſhed and declared this Conſpiracy! How often has he preſs'd his Parliaments to go on to bring the Conſpirators to Puniſhment! And at the Opening of this very Parliament he ſays plainly, That he does not believe himſelf ſafe from their Deſigns. Your Lordſhips alſo have voted the unqueſtionable Truth of the Plot, and ſo have the Commons; yet theſe Men are ſo hardy as ſtill to deny the plaineſt Truth, ſo confirmed as this hath been.

Nay, my Lords, their Malice goes yet farther, for they have been ſo bold as to whiſper up and down, and induſtriouſly to ſpread Reports, before the Trial, as if this Lord at the Bar, and the reſt who are impeached, ſhould certainly be acquitted. We do hope to be able to detect the Authors of this great Scandal; and the Commons doubt not of your Lordſhips Concurrence to aſſiſt them in bringing them to their deſerved Puniſhment. This is ſure the firſt time that ever any ſort of Men preſum'd to reflect upon the Juſtice of this High and Noble Court. Your Anceſtors, my Lords, did by their Honour, Courage and Juſtice, preſerve our Anceſtors; the Advantages of which, we, who are deſcended from them, do now enjoy; and we ſhall never have occaſion to doubt in the leaſt, but that your Lordſhips will tread in their Steps. You have in your Hands a great Opportunity to make your Zeal for Truth and for the Proteſtant Religion famous to Poſterity. No Artifice or Malice can create the leaſt Jealouſy in us, that ever your Lordſhips ſhould ſhew any Partiality or Injuſtice to the Commons of *England*. To your Judgment this Cauſe is ſubmitted; and when we have your Judgment, we doubt not but we ſhall drive Popery out of this *Engliſh* World.

My Lords, We ſhall go on to the Proof of our Cauſe; and I hope this will be a happy Day to us and the whole Proteſtant Intereſt.

Then Mr. Treby, *alſo one of the Committee appointed for the Management of the Evidence, ſpoke as followeth*:

My Lords,

THESE two learned Gentlemen have fully diſcharged their Province. I ſhall proceed to call our Witneſſes to give their Teſtimony.

But before we produce them your Lordſhips will be pleaſed to take notice, that our Evidence will conſiſt of two Parts, General and Particular; the General, to ſhew the Univerſal Conſpiracy; the Particular, to ſhew what ſpecial Part this noble Lord, the Priſoner at the Bar, had in it.

And though in the firſt Part my Lord *Stafford* may not be particularly nam'd, yet that Evidence will be pertinent and proper for us to give in this Trial of my Lord *Stafford*; for we charge him not with the private Treaſon, wherein he with his immediate 'Complices only might be concerned, but it is a Treaſon of the Popiſh Faction, or at leaſt the principal and active Papiſts.

We lay it in our Articles of Impeachment, That there was an execrable Plot contriv'd and carried on by Papiſts, and that the Conſpirators acted in divers Parts, and in divers Places, beyond Sea as well as here. It was a Treaſon that did beſtride two Lands: *England* indeed was the Thing aim'd at; the Deſtruction of the Religion, Government, and Liberty of *England*, was the End; but the Means and Inſtruments were not collected here only, but part of them were to be brought in from Abroad.

This is an Enterprize too extenſive to be entirely managed by a ſingle Nobleman: And though we look upon my Lord *Stafford* as a great Malefactor, yet we cannot think him ſo great a Man, as to be able within his own Sphere to compaſs this whole Deſign.

Should we not take this Courſe of Evidence, firſt to prove the general Plot, it might be a great and juſt Objection in my Lord's Mouth to ſay, *You charge me with a Deſign of ſubverting the Kingdom, how is that poſſible to be undertaken by me, and thoſe I have had opportunity to converſe and confederate with? A mighty Part of the Catholick World had need to be engaged for ſuch a Purpoſe.*

My Lords, If this would be a material Objection from this Lord, then will it be requiſite for us to obviate and prevent this Objection, by ſhewing, firſt, that there was ſuch a grand and univerſal Deſign of Papiſts, in which this Lord was to co-operate for his diſtinct Share; though perhaps when we deſcend to our particular Evidence, it will appear, that his Part hath been great, and manag'd with Malice as great as any.

My Lords, We ſhall begin with a Witneſs, a Gentleman whoſe Education has given him the Opportunity of knowing the Inſide of their Affairs; and we preſume he will give you a ſatisfactory Account: His Name is Mr. *John Smith*.

L. H. S. What do you call him to, Gentlemen?

Mr. *Treby*. To the general Plot, my Lords.

Lord *Stafford*. May it pleaſe your Lordſhips, I know not who he is, nor his Name; I humbly beſeech your Lordſhips, that this Witneſs, whoever he be, and all the reſt that have any thing to witneſs againſt me, may look upon me face to face, according to the Words of the Statute. I humbly beſeech your Lordſhips to grant me this, which I take to be according to Law; and that each may give his Evidence alone, and that both againſt me, and for me, one may not know what the other ſays.

L. H. S. My Lord, you ſhall have all the fair Proceedings that can be.

L. *Staff.* The Law ſays, my Accuſers muſt look me face to face. I deſire to have the Words read.

L. H. S. Your Lordſhip may ſee him where he ſtands up.

Then Mr. Smith *turned, and looked upon my Lord* Stafford.

L. *Staff.* I do ſee him, but I don't know him.

L. H. S. Swear him.

Clerk. The Evidence that you ſhall give in the Trial of *William* Viſcount *Stafford*, ſhall be the Truth, the whole Truth, and nothing but the Truth; ſo help you God, and the Contents of this Book.

L. H. S. Your Lordſhip obſerves he is not brought as a particular Witneſs againſt your Lordſhip, but to prove the general Deſign of your Party.

L. *Staff.* 'Tis ſtill concerning me.

L. H. S. Look upon my Lord *Stafford* (*which he did*), and now tell your Evidence.

Mr. *Treby*. This is Mr. *Smith*, my Lords. And that which we would examine this Witneſs to, is, the general Deſign of the Plot; what Knowledge he hath had of it here or beyond Sea; the Gentleman is able to underſtand the general Queſtion.

Mr. *Smith*. My Lords, I remember very well when I went firſt into *France*, I came acquainted with Abbot *Montague*, Father *Gaſcoigne*, and ſeveral other Popiſh Prieſts and Jeſuits, who often diſcourſed with me, and told me, if I would make myſelf a Catholick, I ſhould have an Employment amongſt them there, and afterwards in *England*; for they did not doubt but the Popiſh Religion would come in very ſoon. Upon which I aſk'd his Lordſhip the Abbot one Day, what reaſon he had to believe it? He told me two Reaſons; firſt, that they did not doubt but to procure a Toleration of Religion, by which they ſhould bring it in without Noiſe; and ſecondly, that the Gentry that went abroad did obſerve the Novelty of their own Religion, and the Antiquity of theirs, and the Advantages that were to be had by it. Theſe Reaſons Abbot *Montague* gave me. There was one Father *Bennet* and others that told me, the chief Reaſon was, their Party was very ſtrong in *England*, and in a few Years they would bring it in, right or wrong. All this would nor prevail upon me to turn Papiſt, and I liv'd among them ſeveral Years. At laſt I had a Deſign to go to *Rome*; and as I went I had a Deſign to go to *Provence* (and ſo into *Italy*), where there was one Cardinal *Grimaldi* coming through the Town, and the Jeſuits having a great School there, I was curious to go to the School, and they were very deſirous I ſhould tarry for ſome time in the Town: I did, and they made much of me, and told me much to the ſame Subſtance, what Aſſurances they had of their Religion coming into *England*. At laſt they had a deſire I ſhould diſcourſe with the Cardinal; which I did; and he made much of me, and he it was that perverted me to the *Romiſh* Religion. Upon this, the Cardinal ſhewed me a Pair of Hangings that were in his Houſe, which he ſaid did belong to the Queen-Mother, and were bought in *Paris*; and he told me he was acquainted with many of the Nobility in *England*, and that he had great Aſſurance the Popiſh Religion would prevail; and he told me there was but one in the way, and though that Man was a good-natur'd Man, yet they could not ſo far prevail upon him, but that to accompliſh their Deſigns they muſt take him out of the way. But at laſt I left this Place, and went to *Rome*, where I liv'd ſome Years in the *Engliſh* Jeſuits College there; and when I had liv'd there five Years, I came to be Prefect of ſeveral Rooms there, which are the Scholars Lodgings and Places of Study. I have heard it there often diſputed in their own College, both preach'd and privately exhorted, that the King of *England* was an Heretick, and that there was no King really reigning, and whoever took him out of the way would do a meritorious Action.

L. H. S. Who was that that ſaid ſo?

Mr. *Treby*. Name the Perſons.

Mr. *Smith*. Father *Anderton*, Rector of the College, who was a very good Scholar; Father *Mumford*, and one Father *Campion*; but chiefly one Father *Southwell*, one of the chief of the Jeſuits. And I doubting of the Truth of that Opinion, they did ſhew me ſeveral of their Books there, and directed me to ſome Paſſages of *Mariana*, *Vaſquez*, and *Bellarmine*, which I have ſince publiſh'd to the World, wherein they did aſſert it as a true Doctrine, and as Chriſtian Doctrine, what the Fathers told me; and this was never condemn'd at *Rome*. Beſides, my Lords, when I was coming from *Rome*, with my Faculty and Licenſe ſign'd by Cardinal *Barberino*, who generally conducts, or cauſes to be conducted, all Papiſts to take their Leave of the Pope; and before we came away (for there were five or ſix of us together) for a whole Month theſe Fathers were exhorting of us, That we were not obliged to obey the King of *England*, and that in all private Confeſſions we were to inſtruct all Perſons that we thought were capable of any Deſign, that they ſhould uſe all their Endeavours for promoting the Popiſh Religion. I, coming into *England*, made my Application to Dr. *Perrot*, who belonged to the *Portugal* Ambaſſador, and was Chief of the Popiſh Clergy in *England*. I was kept there ſome Months to ſay Maſs in his Chapel; and afterwards I was ſent into the *North*, where there were abundance of Jeſuits and Friers, to one Mr. *Jeniſon*'s Houſe; where knowing the Principles of theſe People, I made it my Buſineſs to rout theſe Jeſuits away, eſpecially out of Mr. *Jeniſon*'s Houſe, who had a Kinſman of his own that was a Jeſuit, and us'd to ſerve him in his Houſe, and great Complaint was made againſt me: And there was one Mr. *Smith*, otherwiſe *Serjeant*, in the *North*, who gave me Intimation of it, and to whom I wrote to ſatisfy him and the Clergy of the Grounds and Reaſons why I routed them away; which, if he be in *England* now, he can juſtify. Upon this, I received a ſmart Letter, as a kind of Reprimand for my doing ſo; and he told me, that tho' they did agree with me in Doctrine, yet they would endeavour what they could to bring in the Popiſh Religion, and tax'd me ſharply for appearing againſt it. I told him how the Jeſuits perverted the Duke of *York*; and that by that means they would be the chief Men in *England*, though there were none of their Order till Queen *Elizabeth*'s Time. Beſides, my Lords, in *Rome* I ſaw *Coleman*'s Letters, and read them once a Month, as I believe; wherein he gave us Intelligence of ſeveral Paſſages that happened in Court; how the Duke, and the Queen, and the chief of the Nobility were of their ſide; how they carried Matters ſeveral times; the Ways my Lord *Clifford* did uſe, and Sir *William Godolphin*, to effect the Work; and that they did not queſtion but they ſhould get my Lord-Treaſurer *Danby* on their Side too. This was in *Coleman*'s Letters; and he had ſo much Allowance for his Intelligence. Theſe Letters of his I read ſeveral times in the College. My Lords, afterwards, when I came from *Rome*, I ſaw Abbot *Montague* again, and he ſaid he was very glad to ſee me, and that I was a Prieſt. Well, but, ſaid I, what am I the better? Where is the Employment you promis'd me when I ſhould come into *England*? He told me I ſhould have it very ſoon, and he was glad that I had not made myſelf a Jeſuit; and he recommended me to Dr. *Goffe*, Confeſſor to the Queen-Mother, who ſaid he would do any thing in the World for me, and he did not doubt but he ſhould get a Preferment for me; which Dr. *Goffe* is now living. Truly when I came into *England*, I found all the Popiſh Clergy of *England*, that I diſcourſed with, of the ſame Opinion, that they did not doubt but the *Romiſh* Religion would ſoon come in. And beſides, in the *North* there was gathering of Money, in which I was order'd to be one of the chief Men; but I was againſt it. I told them I would do nothing in it; I thought it was illegal to ſend any Money beyond Sea: They told me it was Charity, only to repair the College at *Doway*. I told them it was ſtrange that there ſhould be ſo much Money raiſed only to repair one College, which would ſerve three or four Colleges; and I perſuaded Mr. *Jeniſon*, and all other Perſons I had to do with, not to meddle with it. As to this raiſing of the Money, I conceive it may be inferr'd, it was for ſome other private Buſineſs, and I believe was for the carrying on the Deſign. As for the Gentleman at the Bar, my Lord *Stafford*, I know nothing of my own particular Knowledge, but only this; There was one *Thomas Smith*, Sir *Edward Smith*'s Brother, that lived at a Place not far off the Place where I lived, who was one that contributed in paying the Money that was then collecting: He was the Man that writ a Letter up to my Lord *Stafford*, to complain of two or three Juſtices of the Peace that were active againſt Popery; upon which there was one that was turn'd out, that I think is now of the Honourable Houſe of Commons——

Mr. *Treby*. Name him.

Mr. *Smith*. Sir *Henry Calverly*. The other was not turn'd out. So I aſk'd *Smith*, when I was lately in the Country, about it; for I heard a Rumour, that there was a Letter of this Mr. *Smith*'s found in my Lord *Stafford*'s Chamber, and I was told it by a Parliament-Man, one Colonel *Tempeſt*. So, ſaid I to him, now you will be concerned in the Plot. No, ſaid he, I care not for that Letter, it will ſignify nothing; for my Lord won't keep by him any thing of any Moment. I aſked him what he knew about my Lord. He told me he writ another Letter to my Lord, to know whether he would make a Conveyance of his Eſtate away, and whether he apprehended they were in Danger: And he told me his Lordſhip's Anſwer was, That ſeveral did ſo, but he would not; for he expected ſome ſudden Change or Alteration. I aſked him what Change or Alteration he underſtood by it. Sir, ſaid he, what can be underſtood by it, but an Alteration of the Government and Religion? I am ſure, ſaid he, my Lord is ſo wiſe a Man, that he would not write ſo without ſome Ground. This is all I can ſay to the Gentleman at the Bar; and this is true, by the Oath I have taken.

Mr. *Treby*. My Lords, I obſerve Mr. *Smith* in the beginning of his Teſtimony (ſpeaking of the Diſcourſe he had at *Rome*) ſaid, they told him there was one in the way; I preſume 'tis not uneaſy to conjecture who was that one.

L. H. S. It was ſurely the King.

Mr. *Treby*. But we would rather have it explained by himſelf.

Mr. *Smith*. Father *Anderton* and Father *Southwell* did ſay that the King was a good Man, but he was not for their turn, and he was the only Man that ſtood in the way.

Mr. *Treby*. Did they name the King?

Mr. *Smith*. Yes, it was the common Diſcourſe all over the Country.

Mr. *Treby*. My Lords, I deſire Mr. *Smith* in the next place may give an account of the Methods they were to uſe to accompliſh this Deſign, the firing of the City, and the reſt.

Mr. *Smith*. As to the burning of *London*, I heard nothing beyond Seas at all but this; it was diſcourſed that the Papiſts did it, and the like, but they denied it, and they ſaid it came accidentally in a Baker's Houſe: But this I have often heard them ſay, that it was no great Matter if it had been all burnt.

L. H. S. Will you aſk him any more Queſtions yet?

Mr. *Treby*. No, we have done with him.

L. H. S. Have you concluded your Evidence, Sir?

Mr. *Smith*. Yes.

L. H. S. My Lord *Stafford*, will your Lordſhip aſk him any Queſtions?

L. Stafford. I deſire to know how long ago it was, my Lord, ſince he was made a Prieſt.

Sir *F. Win*. My Lords, with your Lordſhips Leave, no Man is bound to anſwer a Queſtion whereby he ſhall accuſe himſelf; therefore under favour the Queſtion is ſomewhat harſh, and we demand your Judgment in it.

L. H. S. What is the Queſtion your Lordſhip would have aſked him?

L. Staff. I will not aſk it, ſince 'tis an Offence; but did not he ſay he ſaid Maſs? Pray how long ago was that?

L. H. S. I will aſk him a Queſtion. Are not you a Proteſtant?

Mr. *Smith*. Yes, my Lord.

L. H. S. How long have you been ſo?

Mr. *Smith*. I have been a Proteſtant near upon two Years.

L. H. S. How long ago before were you perverted?

Mr. *Smith*. Some ſix or ſeven Years.

L. H. S. That is nine Years. That was, I ſuppoſe, about 71.

Mr. *Smith*. I was always bred a Proteſtant, and was ſo abroad till I went towards *Rome*.

L. H. S. It is not criminal to have been a Prieſt, if he have conform'd.

L. Staff. I have no more to ſay to him.

L. H. S. Have you any more Queſtions to aſk him?

L. Staff. No; I never ſaw him before; he may be as honeſt a Gentleman for aught I know as any one here.

Mr. *Treby*. Then, if your Lordſhips have no more Queſtions to aſk him, he may withdraw. My Lords, the next Witneſs we produce is to the General ſtill, and that is Mr. *Stephen Dugdale*.

L. Staff. Is he only to ſpeak to the General, or to me?

Mr. *Treby*. To the General; we ſhall tell your Lordſhip when we come to the Particular.

Sir *F. Win*. My Lords, with your Lordſhips Favour, we have opened our Caſe, Firſt, that we would go on with the General; while we are upon that Head, we will only call thoſe that ſpeak to the General, but it may happen that one Witneſs may ſpeak to both; but we ſhall divide his Teſtimony when we come to obſerve upon it.

Mr. *Treby*. My Lords, I take Leave to acquaint your Lordſhips, that Mr. *Dugdale* hath but a low Voice, and your Lordſhips will not hear him without a Command of Silence: which was done by Proclamation, and Mr. *Dugdale* ſworn.

Mr. *Treby*. Mr. *Dugdale*, take Notice, we call you now only to the general part of the Plot, what Diſcourſes you have heard from Prieſts in general concerning any part of the Plot: And you are not to give your particular Evidence againſt this noble Lord, my Lord *Stafford*, till we call you thereunto.

L. H. S. What ſay you, Sir?

Mr. *Dugdale*. About fifteen or ſixteen Years I have been acquainted, that there was a Deſign carrying on for the bringing in the Romiſh Religion. I have at ſeveral times, by the means of my ghoſtly Father, that was Mr. *Evers*, been acquainted that there were ſeveral Lords and ſeveral Prieſts in ſeveral Places in *England* that were to carry it on; that is, they were to have Money and Arms ready for thoſe that wanted, againſt the Death of the King. I have ſeen ſeveral Letters which have come from *Paris*, *Rome*, and St. *Omers*, all relating to this, to encourage Mr. *Evers*, and that he ſhould go on to encourage the reſt that were engaged. For that purpoſe I read ſome of 'em, and intercepted them, becauſe they were all directed to me. Mr. *Evers* hath ſent me upon Meſſages, ſometimes by Letters, and ſometimes by Word of Mouth, and all tended for the introducing of their Religion, and that all ſhould be ready with Money and Arms againſt the King's Death: For I did hear nothing till of late about the killing of the King. In particular, there came one Letter to *Evers* from my Lord *Stafford*, to ſhew that things went on well beyond Sea, and hoped they did ſo here. I ſaw another time ſome Letters which were alſo tranſmitted to my Hands by a Meſſenger that came from *Boſcobel*, which did come from *Paris*, and ſo to St. *Omers*, from whence they came to *Harcourt*, and *Harcourt* had delivered the Letters to have the Opinion of ſome Lords; all which contained Advice which they had received from *Paris*, which they counted extraordinary good. The Purport of theſe Letters were to ſhew there was no way could be more likely to do their Work, than if any ſudden Death ſhould happen to the King, then to throw it upon the *Preſbyterians*, who had killed the old King, and were likelieſt to be thought to have done this; and ſo they might eaſily get the Proteſtants, thoſe of the Church of *England*, to join with the Papiſts againſt the Preſbyterians, who would by that become odious, and ſo ſhould weaken the Party, the more eaſily to accompliſh their Deſign. I have of late ſeveral times been in Company with Prieſts and other Gentlemen in the Country, when they have had Conſultations both for the introducing their own Religion, and taking away the King's Life, which they did always intend to be about *November*, *December*, or *January* 78. It was late in the Year; but all that Year (78) this was their Conſultation. I have been ſent to the Jeſuits, ſome of them, particularly to Mr. *Vavaſor* and Mr. *Gavan*, for ſome Monies, for there was a general Collection, and there was the Sum of five hundred Pounds at one time, which I received, and gave to Mr. *Evers*, and he returned it to *London*, for the carrying on this Deſign, and for diſcharging an Account of Arms and Things received from beyond Sea. And it was agreed that my Lord *Aſton*, Sir *James Symmons*, and others, ſhould go in *October* 1678, to diſpoſe of the Arms which they had ſo received, ſome here, and ſome beyond Sea, to the Value, I heard ſay, of 10000 *l.* Moreover, I did hear that they were to have Men raiſed there, as well as here. So I have heard from Mr. *Evers*, and Mr. *Gavan* and others, and I have been alſo by when it hath been diſcourſed that the King of *France* was acquainted with all theſe Deſigns, and that he would furniſh us with Men, and ſhould not be wanting with all other Aid and Aſſiſtance, if there ſhould be any Alteration, if the King ſhould die or be taken away, or to that Pupoſe. I have been ſeveral times put upon to make Foot-Races, to draw People together, that they might the better have Diſcourſes together without Suſpicion. I was likewiſe put in truſt by the Jeſuits all the while the Plot was carrying on, and particularly, for two Years, all the Letters relating to the Plot came to my Hand, ſome of which I opened, and ſome I kept in my own Hands; and particularly I had one that came to my Hands, which was about the Death of Sir *Edmundbury Godfrey*; for when I carried it to Mr. *Evers*, he ſaid, There was one of our Enemies taken out of the way: and it was contained in the Letter, *This Night Sir* Edmundbury Godfrey *is diſpatch'd*; which by the Date of it was the 12th of *October* 1678. I told him that that would prove a Diſcouragement to us, and would be the Ruin of all the Deſign: he ſaid, Not ſo, it would rather prove otherwiſe; for he was one that was active in puniſhing lewd and debauched Perſons, and it would rather be put upon them than us, as done out of Revenge.

Mr. *Treby*. Pray, Sir, ſpeak the particular time when that Letter came into *Staffordſhire*.

Mr. *Dugd.* The 14th of *October* 1678, which was *Monday*.

Mr. *Treby*. The Date of it pray tell us.

Mr. *Dugd.* The 12th of *October* 1678.

Mr. *Treby*. The very Night that it was done.

Mr. *Dugd.* Likewiſe when I did hear there was like to be an Alteration in the Government, and having ſuch fair Promiſes, I was encouraged to it, and was very willing to contribute to the Deſign; and I did then make over an Eſtate which I had of four hundred Pound Value for that Purpoſe, and for the praying for my Soul. And when my Lord *Aſton* and I ſhould come to account, as there was Money over and above due to me, I did likewiſe promiſe, becauſe I ſaw Money would be wanting, I would give them a hundred Pound more. There were ſeveral other Gentlemen, as Mr. *Hevingham*, Sir *James Symons*, my Lord *Aſton*, Mr. *Draycott*, Mr. *Howard*, and Mr. *Gerard*, who did to my Knowledge contribute towards the carrying on of this Charge, for defraying of Money and raiſing Arms, and paying for them. And I have ſeen Letters from beyond Sea, that have been to Mr. *Evers*, that all things have been ready as to the Arms, and there only wanted Orders how they ſhould be diſpoſed of; and I have been ſeveral times brought to the Oath of Secreſy for fear I ſhould diſcloſe it; and particularly that time that I went away from my Lord *Aſton*'s, which was on a *Monday* Morning, Mr. *Evers* gave it me, about the 18th or 19th of *November* 1678. And I did then promiſe by all the Promiſes I could make, and upon the Sacrament, in his Chamber, that I would not diſcloſe it; but having others to adviſe me in it, ſuch as could better do it, that told me ſuch Oaths were better broken than kept: and thereupon I came to diſcover the thing, which I have done to the beſt of my Knowledge. I am very loth to charge my Memory in particular, about Times, or how many were in Company, but thoſe that I am ſure of; but there hath been in Company at the Conſultation ſeveral times, Mr. *Hevingham*, Sir *James Symons*, Mr. *Vavaſor*, Mr. *Petre*, Mr. *Howard*, and my Lord *Aſton* himſelf; when there hath been a Speech about the Deſign, for the introducing of Religion, and for taking Order about Money to buy Arms, and particularly when my Lord *Stafford* was by about the Death of the King, and that was about *September* 1678.

Mr. *Treby*. Mr. *Dugdale*, you ſpeak of levying Arms, and of the Oath of Secreſy that was given you; were there not other ſpiritual Weapons uſed? Was there not an Indulgence, or ſuch a Thing?

Mr. *Dugd.* There was an Indulgence about 78, or thereabout, which came through *Ireland*'s Hands, tranſmitted from beyond Sea, and ſo to Mr. *Evers*, and Mr. *Gavan* was put on to publiſh it, which he did one Time at *Boſcobel.* And it was likewiſe at all private Chapels, That whoſoever was active for the introducing the *Romiſh* Religion, or killing the King, ſhould have a free Pardon of all his Sins.

Mr. *Foley.* Pray declare what Arguments have been uſed by your Prieſts, to induce you to this Deſign?

L. H. S. Raiſe your Voice, that we may hear what you aſk.

Mr. *Foley.* We would know what Arguments have been uſed to perſuade to this Deſign?

Mr. *Dugd.* They have told me in their Meetings, the King was an excommunicated Heretick, and he was out of the Pale of the Church, therefore it was lawful to kill him, and it was no more than the killing of a Dog.

Sir *John Trevor.* My Lords, I deſire to aſk him one Queſtion farther, what he hath heard about a Maſſacre that was intended?

L. H. S. Have you heard of any Maſſacre that was to be?

Mr. *Dugd.* I have heard that about the Time the King ſhould be killed, ſeveral ſhould be provided with Arms, and ſuch Inſtruments, and riſe all of a ſudden at an Hour's Warning, and ſo come in upon the Proteſtants, and cut their Throats; that was one Propoſal: And if any did eſcape, there ſhould be an Army to cut them off in their Flight.

Mr. *Treby.* My Lords, I deſire to aſk him one Queſtion further, Whether he ever knew or heard of Mr. *Oates* and *Bedloe* till the Plot was detected?

Mr. *Dugd.* I have heard of them from Prieſts, as Meſſengers entruſted by them, but no otherwiſe.

L. H. S. When did you hear that?

Mr. *Dugd.* I have formerly declared it.

Mr. *Treby.* Ay, when?

L. H. S. Before the Diſcovery, or after?

Mr. *Dugd.* Before the Diſcovery.

Mr. *Treby.* My Lord, the Reaſon of the Queſtion, and the Uſe we make of it is this; we charge the Papiſts with the Conſpiracy of a Plot, and they charge our Witneſſes with a Conſpiracy to accuſe: Now it appears, that Mr. *Dugdale* had not any Knowledge of the other Witneſſes, and only had heard of them as Perſons concerned; ſo it could not poſſibly be a joint Contrivance amongſt them.

Sir *John Trevor.* My Lords, I deſire to aſk this Queſtion, Whether Mr. *Dugdale* hath ſeen any Letters from *Whitebread* to *Evers*, and what Inſtructions were in thoſe Letters to *Evers* about the Perſons to be concerned, and what kind of Creatures he was to employ in this great Deſign of theirs?

Mr. *Dugd.* I ſaw a Letter from *Whitebread*, to give Mr. *Evers* a Caution who he did employ or truſt in the Deſign; for he told him there had been good Care taken therein hitherto; and it were no Matter whether they were Gentlemen of Quality or not, ſo they were ſtout and truſty, or to that Purpoſe.

L. H. S. What ſhould they be truſty for?

Mr. *Dugd.* For the killing the King.

L. H. S. Was that ſaid plainly in the Letter?

Mr. *Dugd.* To the beſt of my Remembrance, in thoſe very Words.

L. H. S. Was there no Cypher or Character?

Mr. *Dugd.* There was no Cypher or Character that I know of, nothing but two Letters for his Name.

Mr. *Treby.* My Lords, I deſire Mr. *Dugdale* may give an Account of thoſe Papers he ſpeaks of; what became of them, and tell us the Reaſon why they were not produced?

Mr. *Dugd.* My Lords, when I was by the Inſtruction of Mr. *Evers* to take my Flight, I conveyed all my Papers, that either belonged to him or myſelf, for the carrying on of the Plot, and carried them to an Houſe not far remote from my Lord *Aſton*'s, and by the Help of two Maids—

Mr. *Treby.* Name them.

Mr. *Dugd.* *Elizabeth Eld*, and *Anne Eld.* And they two did prepare a Fire in their Chamber for that Purpoſe, and they aſſiſted me to burn them: I was in a great Conſternation, and great Fear, in regard I muſt fly and abſcond myſelf, and indeed I did it with Tears in my Eyes. And whilſt we were burning of the Papers, one of them ſpied a little Paper-Book, by Chance, and ſhe aſked me, whether that ſhould be burnt; I told her, No; burn not that, for there is no Treaſon in it. With that one of them aſked me, Is there any Treaſon in the reſt? And I put them off, to the beſt of my Knowledge, and would not give them a direct Anſwer.

Sir *John Trevor.* Why did you conſent to burn them?

Mr. *Dugd.* Becauſe I knew they would diſcover me, and others that were concerned in the Plot.

Sir *Fr. Winnington.* Your Lordſhip will be pleaſed to obſerve, the burning of the Letters was before he diſcovered the Plot, or any Thing.

Mr. *Sacheverell.* My Lords, We deſire he may be aſked one Queſtion; he told your Lordſhips of the Letter that came into *Staffordſhire* about the Death of Sir *Edmundbury Godfrey*, but he hath not told you the Reaſon why he was to be taken away. We deſire he will let your Lordſhips know what Reaſons they gave for it.

Mr. *Dugd.* My Lords, I was deſirous to know how Things went, being concerned as well as Mr. *Evers*; and I aſked what the Reaſon was they took away his Life? Mr. *Evers* told me, that there was a Meſſage ſent to Mr. *Coleman*, to deſire him that he would not reveal what he knew concerning the Plot, or any Thing of that Nature.

Mr. *Sacheverell.* From whom was that Meſſage ſent?

Mr. *Dugd.* From the Duke of *York.* And *Coleman* did ſend Word back again, What was it the nearer? for he had been ſo fooliſh as to reveal all to Sir *Edmundbury Godfrey*, who had promiſed to keep it all as a Secret. But upon the Examination of *Oates*, before Sir *Edmundbury Godfrey*, as a Juſtice of Peace, he was afraid he would come in an Evidence againſt him; and had ſhewn himſelf a little too eager, which made *Coleman* afraid he would witneſs againſt him. And the Duke of *York* did ſend Word back again, That if he would take care not to reveal, but conceal it, he ſhould not come in againſt him, or to that Purpoſe: And the next News we heard was the Letter that he was diſpatched.

Mr. *Foley.* I deſire he may give an Account what Aſſiſtance the Pope gave for the carrying on of this Deſign?

Mr. *Dugd.* I heard the Pope had out of his Revenue promiſed ſeveral Sums of Money for the carrying on this Plot; and particularly that he would aſſiſt the poor diſtreſſed *Iriſh* with both Men and Money; and there ſhould not be any Thing wanting on his Part.

L. H. S. Have you done with him, Gentlemen?

Mr. *Treby.* Yes, I think we have done with him as to the general.

L. *Staff.* I deſire to aſk him, then, what Sums of Money did the Pope contribute to it?

L. H. S. What Sums of Money did the Pope contribute to this Deſign?

Mr. *Dugd.* I have heard of ſeveral Sums in general that he was to contribute for the carrying on of the Plot.

L. H. S. Did you hear of any Sum certain?

Mr. *Dugd.* I do not know, but I think I heard ſometimes of ten thouſand Pound, or ſome ſuch Sum. I have been told by a Servant that formerly belonged to my Lord *Stafford*, That the Pope's daily Income was twenty-four thouſand Pounds a Day; and that if he would do as he had promiſed, he was able to do very much.

L. H. S. They told you ſo, you do not know it otherwiſe.

Mr. *Treby.* We have done then with him: We call Mr. *Prance* next. [*Who was ſworn.*]

Mr. *Treby.* My Lords, I deſire Mr. *Prance* would give us an Account of what Diſcourſe he had with one Mr. *Singleton* a Prieſt, and when.

Mr. *Prance.* I went to one Mr. *Singleton* a Prieſt, at one *Hall*'s, in the Year 78; and he told me, That he did not fear but in a little Time to be a Prieſt in a Pariſh-Church; and that he would make no more to ſtab forty Parliament Men, than to eat his Dinner, which he was at, at that very Time.

L. H. S. Where was that?

Mr. *Prance.* At one *Hall*'s, a Cook in *Ivy-Lane.*

L. H. S. Will you aſk him any Queſtions, my Lord?

L. *Staff.* No, my Lord.

Mr. *Treby.* Then call Dr. *Oates.* [*Who was ſworn.*]

L. H. S. Do you examine Mr. *Oates* upon the general Plot, or the particular?

Mr. *Treby.* Only to the general now; and we deſire him to take Notice he is ſo to ſpeak, and to confine himſelf to that at preſent.

Dr. *Oates.* My Lords, in the Year 76, I was admitted into the Service of the Duke of *Norfolk*, as Chaplain in his Houſe, and there I came acquainted with one *Bing*, that was a Prieſt in the Houſe. And being acquainted with him, there came one *Kemiſh* very often to viſit him, and one *Singleton*, who told me, that I ſhould find that the Proteſtant Religion was upon it's laſt Legs, and that it would become me, and all Men of my Coat (for then I profeſſed myſelf a Miniſter of the Church of *England*), to haſten betimes Home to the Church of *Rome.* My Lords, having had ſtrong Suſpicions for ſome Years before, of the great and apparent Growth of Popery; to ſatisfy my Curioſity, I pretended ſome Doubts in my Mind. My Lords, after ſome Time had paſſed over, and I had had ſome Converſation with theſe Men, I found they were not Men for my turn, becauſe being regular Men, they were not Men that had any great Degree of Learning. Afterwards, my Lords, I met with one *Hutchinſon*; I found him a ſaint-like Man, or one that was religious for Religion ſake; and him I found not for my turn neither: For, my Lords, my Deſign was to deal with their Caſuiſts; that is, thoſe of the Society. After that I had obtained the Favour from him, to have ſome Conference with one of the Society, I found they were the Men for my turn, becauſe I found they were the cunning politick Men, and the Men that could ſatisfy me. After that I had had ſome Diſcourſe with them, I pretended to be convinced by their Arguments. And, my Lords, after that I had thus acknowledged my Conviction, I deſired to be reconciled; and accordingly on *Aſh-Wedneſday*, $16\frac{76}{77}$, I was reconciled. And ſoon after my Reconciliation, *Strange*, who was then Provincial of the Society, did tell me much after this way: Mr. *Oates*, you are now reconciled to the Church of *Rome*, and you muſt lay down your Miniſtry, for your Ordination is invalid, and you muſt look upon your ſelf as no more than a Layman: Pray, ſays he, now, what Courſe do you think to take? I told him, I did deſire to be one of their Society, and to be admitted a Novice into their Order. He ſaid, it was a very honeſt Requeſt, and a very honeſt Deſire; and he ſaid, he would take ſome Time to conſider of it, and he would take till the *Saturday* following. *Saturday* following I was ſent for by one *Fenwick*: I lodged then in *Barbican*, and *Fenwick* came to me, and told me, the Fathers were met at *Wild-houſe*, and would ſpeak with me: And he alſo told me they had granted my Requeſt, and I ſhould be admitted. After I was admitted, they told me, I had ſome Years upon me, and I could not undergo thoſe Burdens they put upon younger Men; but what did I think of travelling, and going beyond Sea to do their Buſineſs? I did agree to it, and in *April* 77, I went aboard one *Luke Roch*, Maſter of the *Bilboa-Merchant*, bound for *Bilboa*, having their Letters of Recommendation. After I arrived there, which was on a *Sunday* in *May* or *June*, I can't tell which, I went the *Friday* following for *Valladolid* in *Caſtile*, and I got thither the *Tueſday* following; but by the Way I opened certain Letters, wherein was made mention of a Diſturbance deſigned in *Scotland.* And the Letters did expreſs what Hopes they had to effect their Deſign in *England*, for the carrying on (as they worded it) the Catholick Cauſe, and for the Advancement of the Intereſt of the Biſhop of *Rome.* My Lords, after I had arrived at *Valladolid*, there were Letters there got before me, which were dated in *May*, wherein was expreſſed News, that the King was diſpatched, which was the Cauſe of great Joy to the Fathers there; and afterwards Letters dated in *May* too (but towards the latter End of *May*) came, that they were miſtaken, and deſired the Fathers there to ſtifle that News. My Lords, there came Letters dated in *June*, wherein they did give an Account, That they had procured one *Beddingfield* to be Confeſſor to the Duke of *York*; which *Beddingfield* by his Intereſt might prevail much with the Duke, in order to this Deſign. Letters came alſo in *June* from St. *Omers*, which gave them an account, that Father *Beddingfield* had aſſured them of the Duke's Willingneſs to comply with them for the Advancement of the Catholick Religion. My Lords, after I had ſtayed ſome Time there, and had paſſed through the Country for the Buſineſs of the Society, I found that in the Court of *Spain* ſome Miniſters of that Court had been very ready to advance Money, which Money was returned for *England*; and that the Father Provincial of the Jeſuits of *Caſtile*, by his Care and Induſtry, had advanced ten thouſand Pound, which was promiſed to be paid in *June* following, within a twelvemonth after.

My Lords, in *July* I received Letters out of *England*, wherein an Account was given there, to the Fathers in *Spain*, that they were ſending them a Miſſion of twelve Students, four whereof were to go to *Madrid*, and eight to *Valladolid:* The Conductors of theſe twelve Students were one Father *Croſſe*, that was his true Name, and one Father *Mumford*, whoſe true Name was *Armſtrong*. Theſe Miſſioners arrived in *December*, where they had a Sermon preached at their coming by this ſame *Armſtrong*, wherein the Oaths of Allegiance and Supremacy were declared to be antichriſtian, heretical, and deviliſh; in which the King's Legitimacy was vilified and abuſed; and that his Religion did entitle him to nothing but ſudden Death and Deſtruction, in that he appeared an Enemy both to God and Man. Theſe were the Contents of that Sermon, as near as I remember. My Lords, after the meeting with ſeveral Letters there, in *July*, *Auguſt*, and *September*, in the Kingdom of *Spain*, it was ordered I ſhould return for *England*; and in the Month of *November* I came for *England*, at which Time I had Letters from the Provincial of *Caſtile*, called by the Name of *Padre de Hieronimo de Corduba*, who did in his Letter aſſure the Provincial in *England* and the Fathers here, that the ten thouſand Pounds ſhould be paid (as I ſaid before) in *June* following. When I came for *England*, at *London* I was lodged at one *Grigſon*'s, that lived in *Drury-Lane*, near the Sign of the *Red-Lion*, and there I lay till I went to St. *Omers*; and by the Provincial and Conſultors of the Province I was order'd a Maintenance, and it was paid to this Man for entertaining of me. I went and brought theſe Letters to this *Strange*, and there was Father *Keins* lying ill upon *Strange*'s Bed; and *Keins* was ſaying, he was mighty ſorry for *honeſt William* (ſo they called the Ruffian that was to kill the King), that he had miſſed in his Enterprize. But, my Lords, this I think good to tell your Lordſhips, they were not ſo zealous for the Deſtruction of the King, till the King had refuſed *Coleman* the diſſolving of the Long Parliament. Then they were more intent upon it, though they had ſeveral Times attempted it ever ſince the Fire of *London*; but when *Coleman* was refuſed the Diſſolution of the Long Parliament, then were they more zealous for the Deſtruction of the King: But the Deſign for the introducing the Popiſh Religion, they have been carrying on ſome Years before the Fire, by thoſe Inſtruments, ſome of whom are yet alive. My Lords, I left *England* in *November* O. S. and *December* N. S. for when I came to St. *Omers*, it was (as near as I can remember) the 9th or 10th of *December*, according to the Stile of the Place. I carried with me a Packet of Letters from *Strange* the Provincial, and other Fathers that were of the Conſult for the Province of *England*, to the Fathers at St. *Omers*, wherein *Strange* did tell them, that they had great Hopes of their Deſign taking effect the next Year, but as yet it would not be effected: He ſaid, therefore they at *London* thought fit to ſuſpend it till they ſaw what the Parliament would do. And he did in the ſame Letter declare, That the Parliament would be about a long Bill that had been brought into the Commons Houſe ſome Seſſions before, but he did not queſtion but that the Catholick Party would evade that Bill. And, my Lords, in that Year, ſome Time after, we had a Letter from our new Provincial, whoſe true Name was *Whitebread*, and his counterfeit Name *White*. This Father writes to the Fathers at St. *Omers*, and therein he does order one *Conyers* to preach upon St. *Thomas* of *Canterbury*'s Day; and he did therein alſo tell them, that he would be as zealous for the carrying on of the Deſign as his Predeceſſor had been: And a Sermon was accordingly preached at the Sodality Church, wherein after he had commended the Saint, whoſe Day they celebrated, for his great Virtues, declaring how unworthily he was ſacrificed, he did inveigh againſt the Tyranny (as he called it) of temporal Princes, and particularly of the King of *England*; and when he came to ſpeak of the Oath of Allegiance and Supremacy, he declared, that he looked upon them as antichriſtian and deviliſh, and that it was fit to deſtroy all ſuch as would countenance them. We have done with the Year 77, and we come now to *January* 1678.

L. H. S. You ſpeak of one *Keins*, who (lying upon *Strange*'s Bed) ſaid he was ſorry *honeſt Will* had miſſed his Enterprize: You have not explain'd who that *honeſt Will* was; explain that.

Dr. *Oates*. It was *Grove*.

L. H. S. But about what did he ſay he was ſorry for him?

Dr. *Oates*. That he had miſſed his Deſign.

Mr. *Foley*. What was that miſſing of his Deſign?

Dr. *Oates*. That he had not killed the King, my Lords, in *January* 78.

L. H. S. You mean according to the foreign Stile?

Dr. *Oates*. Yes, according to the foreign Stile, my Lords; we received Letters out of *Ireland*, and there, my Lords, we found by the Contents of thoſe Letters, that they were as buſy in *Ireland* as we were in *England*. We found there that the *Talbots*, and other Perſons, were very zealous in raiſing of Forces, and were reſolved to let in the *French* King, provided that the Parliament ſhould urge the King to break with *France*. My Lords, likewiſe in *January* (as near as I can remember) *Morgan* was ſent into *Ireland* as a Viſitor, (which is ſomething a better Place than a Provincial, but only it is but temporary for the Time he viſits) and he returns in *February* or *March*, and gives us an Account how ready the *Iriſh* were to vindicate their Freedom and their Religion from the Oppreſſion of the *Engliſh*, as they called it. My Lords, in *February* ſome were employed to go into ſome Parts of *Germany*, to *Leige*, and to ſome Parts of *Flanders*, to ſee how the Affairs there ſtood, and how their Correſpondences ſtood, to ſee whether there was not an Interruption in the Correſpondences. My Lords, upon their Return, they found that the Fathers at *Ghent* were inclined to take into this Buſineſs the ſecular Clergy; but the Fathers of St. *Omers*, together with the Provincial, did refuſe the Motion, becauſe the ſecular Clergy were more cowardly, and ſought themſelves, and not the Intereſt of the Church, or to that Purpoſe. My Lords, in *March* we received Letters, that there was a very ſhrewd Attempt made upon the Perſon of the King, and that the Flint of *Pickering*'s Gun or Piſtol was looſe, and his Hand ſhaking, the King did then eſcape, for which he received a Diſcipline, and the other a ſevere Chiding.

L. H. S. You explain not the Meaning of what you ſay; that was not *honeſt Will*, for he, you ſay, was *Grove*.

Dr. *Oates*. I mean *Pickering* received the Diſcipline, and *William* was chid; for it was *Pickering*'s Flint that was looſe. My Lords, this was in *March*, and at the latter End of *March* there comes a Letter from *London*, in which there was a Summons to a Conſult here in *London*; and being ſummon'd, there went over eight or nine from St. *Omers*, *Leige*, and *Ghent*, to this Conſult, and I did attend them in their Journey.

L. H. S. When did that Summons come?

Dr. *Oates*. The latter End of *March*, or the Beginning of *April*, as I remember; they had Notice of it in *England* before, but we had Notice of it juſt when we were to come. I think it was in *April*, as near as I can remember; I cannot be certain in that, my Lord. We did come to Town in *April*, there the Conſult was held; it begun at the *White-Horſe* Tavern, where they did conſult about ſome Things of the Society, and afterwards they did adjourn into particular Societies, where they did debate and reſolve on the Death of the King, and that *Grove* ſhould have fifteen hundred Pounds for his Pains, and the other being a religious Man, ſhould have thirty thouſand Maſſes ſaid for him. My Lords, after ſtaying in Town a while we returned to St. *Omers*; and after I had ſtaid there ſome few Days, the new Provincial did begin to viſit his Province, and comes over to St. *Omers*, where after ſtaying ſome ſix Days, he goes over from thence to *Wotton*. But whilſt he ſtaid at St. *Omers*, I was ordered to go into *England* to attend the Affairs here, and for to do ſome other Services that they ſhould employ me about. My Lords, accordingly I did come over, and it was on the 23d N. S. as near as I remember, I got to *Calais*; the 24th I got to *Dover*; on the 25th I got to *Sittenburn*, but between *Dover* and *Sittenburn* we had ſome Boxes ſeized: For at *Dover* we met with *Fenwick*, who is ſince executed, who went by the Name of *Thompſon*, and carried a Box with him; and a little on this Side *Canterbury* it was ſeized by the Cuſtom-Houſe Officers, and ſeveral little Trinkets in it, which were ſeized as *French* Goods; and he did deſire the Searcher to ſtand his Friend, and he would give him ſomething for his Pains, and told him where he ſhould write to him in *London*. There was a Superſcription on the Box to one *Blundel*, but he ſhould write to him by the Name of *Thompſon*, at the *Fountain* Tavern near *Charing-Croſs*. We arrived in Town the 17th of *June*, which is the 27th N. S.; it was upon a *Monday*; and there were Letters which did follow us, wherein were Propoſals made to Sir *George Wakeman* for the poiſoning of the King, and that the ten thouſand Pounds which the *Spaniards* had promiſed in *January* before, and was accordingly paid in *London* at the Time, ſhould be propoſed to *Wakeman* to poiſon the King. I found that *Coleman* did look upon it as too little, and he thought fifteen thouſand Pounds ſhould be given to him: I found that *Langham* thought it too much, and that he ought to do ſo great a Piece of Service for nothing, and told us he was a narrow-ſpirited Man, if he would not engage in ſuch a Thing. My Lords, there was five thouſand Pounds, as the Books told me, paid; but I did not then ſee it paid, becauſe I was then ill, and not fit to ſtir Abroad. My Lords, we are now paſt *June* 78. In *July* Father *Aſhby* comes to Town, who did revive the Propoſal to Sir *George Wakeman*; but being ſick of the Gout, he haſtened down to the *Bath*; and when he came there, as ſoon as he began to be well, he was adviſed by the Fathers to ſee how the Catholicks ſtood affected in *Somerſetſhire*; for they had an Account in *March* 78, by Letters from *Berkſhire*, *Oxfordſhire*, and *Eſſex*, that the Catholicks ſtood well affected; and Sir *William Andrews* did ſecure that the People of *Eſſex* ſhould ſtand to their Points; and ſo ſeveral Men did ſecure that they would have them in Readineſs. My Lords, in *Auguſt* (I cannot remember every Particular, but refer myſelf to the Records of the Houſe), about the 26th of *Auguſt*, I find that *Fenwick* went to St. *Omers*, and there he was to attend the Provincial Home, and to give the Provincial an Account of the Propoſal accepted by Sir *George Wakeman*; but in *July* (if your Lordſhips pleaſe to give me Leave to go back again) *Strange* comes to Town, and falling in Diſcourſe about the Fire of *London*, and the Rebuilding of it, he very frankly told me how it was fired, and how many of thoſe concerned were ſeiz'd; and amongſt the reſt, told me, that the Duke of *York*'s Guard, as by his Order, did receive them, and were afterwards willing to diſcharge them; which I forgot to mention before; but upon review of my Papers, I do find that it was told me his Guard did releaſe the Priſoners that were ſuſpected about the Fire, and that all the Order they had for it, they pretended was from the Duke. But now, my Lords, we return to *Auguſt* again. Upon the 3d of *Auguſt*, I find *Ireland* did pretend to go to St. *Omers*, and a Letter came from him as directed from thence; but we find by his Trial and other Things ſince, that he went into *Staffordſhire*; and about the 12th of *Auguſt* (as I remember) he was here in Town. The latter Part of *July* I communicated with Dr. *Tongue*, and gave him ſome particular Account of Affairs; I deſired him to communicate it to ſome that might make it known to the King: The King had Notice the 13th of *Auguſt*, or the 14th, as I remember; and by the 3d of *September* I was betrayed, and was expoſed to the Vengeance of thoſe Men whoſe Contrivances I had thus diſcovered. So my Intelligence did ceaſe wholly the 8th of *September*. Then was I forced to keep private; and upon my Examination, what Information I gave before the Lords and Commons, I refer myſelf to them.

L. H. S. My Lord *Stafford*, will you aſk him any Queſtions?

L. *Staff.* No, my Lord; I am not at all concerned in his Evidence.

L. H. S. You ſay you were betrayed: Can you tell how, or which Way you were betrayed?

Dr. *Oates*. My Lord, I will give this Honourable Houſe what Light I can in it; but I deſire then to be excuſed from my Oath, for I can't ſpeak it of my own Knowledge.

Sir *J. Trevor*. Then the next Witneſs we deſire may be called, is Mr. *Bernard Dennis*.

Mr. Serj. *Maynard*. This Witneſs we call now, is to confirm what Dr. *Oates* hath ſaid, that he was at *Valladolid* and other Places in *Spain*; he will be ſhort.

L. H. S. Call you *Oates* again?

Sir *F. Win.* No, my Lord, we call *Dennis* to confirm what Dr. *Oates* hath ſaid. He hath given your Lordſhip an Account that he was in *Spain*; we now produce one that ſaw him when he was there, and ſo confirms the Evidence that was given by him.

[Then Mr. *Dennis* was ſworn.]

Mr. *Treby*. Mr. *Dennis*, Do you give their Lordſhips an Account of your diſcourſing with Dr. *Oates* in *Spain*, or any where elſe Abroad, and where.

L. H. S. Stay a little; do you know Mr. *Oates*?

Mr. *Dennis*. Yes, my Lord.

L. H. S. How long have you known him?

Mr. *Dennis*. I knew him in the Year 77.

L. H. S. Where?

Mr. *Dennis*. At *Valladolid*.

L. H. S. Did you ſee him there? Was he a Student there?

Mr. *Dennis*. Yes, my Lord.

L. H. S. Was he known by the Name of *Oates*?

Mr. *Dennis*. Yes, my Lord, he was.

Sir *Fr. Win:* My Lord, we deſire he may tell his Knowledge of Mr. *Oates*, what Converſation he had with him in *Spain*.

Mr. *Dennis.* My Lords, I was in *Spain*, in the City of *Victoria*; and leaving the City of *Victoria* in the Month of *June*, I took my courſe to *Madrid*, and paſſing through the City of *Valladolid*, going into the Convent of Dominicans, there came an *Iriſh* Man, a Prieſt of *Ireland*, out of the City to ſee me; and there he told me there was a Student of the Jeſuits, by Name Mr. *Oates*, an *Engliſhman*; and I underſtanding this, went into the College of the Jeſuits to ſee Mr. *Oates*, and there had Converſation with Mr. *Oates*; and in the Converſation I had with him there, he told me that he was a Vicar in *Kent*, and that he was Chaplain to a great Nobleman of *England*, by Name *Howard*; and that he went out of *England* by the Conſent of the Jeſuits in *England*, being converted by them to the *Roman* Catholick Faith, and that his going into *Spain* was to fit himſelf for the Society of the Jeſuits. And underſtanding my Reſolution was to go to *Madrid*, he did deſire me to carry a Letter to the Archbiſhop of *Tune*, one *James Lench* an *Iriſhman*, who liv'd at *Madrid*. And further; he lent me four Pieces of Eight to defray my Journey to *Madrid*, and deſired me to pay the Money to the Procurator of the Jeſuits at *Madrid*. And in carrying this Letter to the Archbiſhop, when I came there, I got a Dominican Friar of *Ireland*, by Name *Humphrey Delphin*, to go with me and ſee the Archbiſhop at his Lodging; and going in, I deliver'd him the Letter in the Preſence of the Dominican, and he peruſed it in my Preſence, and in the Preſence of a Prieſt that waited upon him; and finiſhing the Contents of the Letter, as I ſuppoſe, with a ſmiling Countenance he turned about, and ſaid, Sirs, the Contents of this Letter is, that Mr. *Oates* is deſirous to receive the Order of Prieſthood from me, or at my Hands; and if it be ſo, it will be much in our Way, and this Man will be a fit Man for our Purpoſe: for, ſaid he further, Dr. *Oliver Plunket*, Primate of *Ireland*, is reſolv'd this Year, or with the next Convenience, to bring in a *French* Power into *Ireland*, thereby to ſupport the *Roman* Catholicks in *England* and *Ireland*; and if it pleaſe God, I my ſelf, without any delay, will go into *Ireland* to aſſiſt in that pious Work. All this Diſcourſe between us and the Archbiſhop, and between *Oates* and me, was in *July* 77. And there I did ſpeak and converſe with Mr. *Oates*. All this I can teſtify for Truth on the behalf of Mr. *Oates*, who was then a Student in the College of *Valladolid*, and had no other Name nor Title.

Mr. *Foley.* I deſire himſelf may tell your Lordſhip what Religion he is of.

L. H. S. What Religion are you of?

Mr. *Dennis.* I am a Dominican Frier, my Lord.

L. H. S. Are you?

Mr. *Dennis.* My Lords, I am.

L. H. S. At this Time?

Mr. *Dennis.* Yes, my Lords.

Mr. Serj. *Maynard.* He hath a Pardon, my Lords.

Mr. *Treby.* This hath been controverted, my Lords, whether Mr. *Oates* ever was in *Spain*; we deſire to make it out plain to the World, for the Confirmation of his Evidence; therefore we aſk him again, Do you know the Perſon of Mr. *Oates*?

Mr. *Dennis.* Yes, I do.

Mr. *Treby.* Is this Perſon that gave Evidence laſt before you, the ſame Perſon you ſaw at *Valladolid*?

Mr. *Dennis.* Yes, it is.

Mr. *Sacheverell.* My Lords, We deſire to aſk of him, why he had the four Pieces of Eight of Mr. *Oates*?

L. H. S. Why had you that Money of *Oates*?

Mr. *Dennis.* For to defray my Journey to *Madrid*.

L. H. S. Was that all you had?

Mr. *Dennis.* Yes, my Lords.

Mr. *Sachev.* We pray he may be aſk'd how he came to be ſo needy?

Mr. *Dennis.* My Lords, I was not altogether needy; but it is very certain, religious Perſons, eſpecially of my Order, cannot carry any Money about them but what is requiſite for their Journey, and that which may be remov'd from place to place.

Sir *J. Trevor.* I deſire to aſk him, did he ſee any more Money that Dr. *Oates* had?

Mr. *Dennis.* I did ſee Dr. *Oates* in his Chamber in the College at *Valladolid*, when he delivered me the four Pieces of Eight, to draw out a Drawer of a Table in his Chamber, and out of the Drawer he pull'd a Bag of Money, which was a very conſiderable Sum of Money, and I am certain he did not want Money there then.

Mr. *Treby.* My Lords, I think we have done with him; if my Lord pleaſe to aſk him any Queſtion, he may.

L. *Staff.* But only one Queſtion, for I never ſaw the Man in my Life. I deſire he may be aſked, whether he be ſtill of the *Romiſh* Religion.

Sir *J. Trevor.* My Lords, We have not yet done with him; the Queſtion we would aſk him is this, Whether he hath heard of any Money that was gathered in *Ireland* for the Support of this Plot?

L. H. S. The Queſtion aſk'd of you, Have you heard of any Money gather'd in *Ireland* for the Support of this Plot?

Mr. *Dennis.* I have both heard and ſeen of it.

L. H. S. When, and where?

Mr. *Dennis.* My Lords, In the Year 68, I entred into the Order of the Dominicans in *Ireland*; and in the ſame Year there arrived at *Dublin* a Franciſcan Frier, Brother to the late Earl of *Carlingford*; and arriving there, he made ſeveral Collectors for the levying a competent Sum of Money out of every Convent and Religious Houſe. My Lords, the Collectors were by Name *John Reynolds*, alias *Landy*, and *John Berne*; and arriving at the County of *Sligoe*, in the Month of *May*——

L. H. S. What Year?

Mr. *Dennis.* 68. And when the Collectors came to the Convent of our Friers in *Sligoe*, all the Friers gather'd together into a Room, and theſe Collectors coming in did read their Commiſſion given them from one *James Taaffe*, as they ſaid; and I was there perſonally preſent, though a Novice; and upon reading their Commiſſions, they ſaid Forty Shillings was to be paid by the Prior, and the Friers of that Convent; and the Provincial of the Order of the Dominicans queſtion'd the Power of the ſaid *Reynolds* and *Berne*, and ſo did the Prior; and I aſk'd why the Money was levy'd? They gave anſwer, That that Levy and ſeveral other Levies was to encourage the *French* King, in whoſe Kingdom were ſeveral Biſhops of *Ireland*, Clergymen, and others, whoſe Buſineſs it was to provoke the King to bring an Army to invade *Ireland*, whenever Time ſhould ſerve.

L. H. S. Have you done with him now?

Mr. *Treby.* Yes.

L. H. S. Will your Lordſhip aſk him any Queſtions?

L. *Staff.* My Queſtion is only, Whether he profeſs himſelf of the Church of *Rome*, or a Proteſtant?

Mr. *Dennis.* I am a *Roman* Catholick ſtill, my Lord.

L. H. S. Are you?

Mr. *Dennis.* I am, my Lord.

L. *Staff.* Then I have no more to ſay.

Sir *J. Trevor.* Then we call Mr. *Jeniſon.* [*Who was ſworn.*]

Mr. *Treby.* Mr. *Jeniſon*, you have been among the Papiſts, and you have had great Confidence among them; pray declare what you know of their Deſigns for the Deſtruction of the Proteſtant Religion, or the Means of doing it, whether by the Murder of the King, or what other Means; tell your whole Knowledge.

Mr. *Jeniſon.* My Lords, in the Beginning of the Year 78, I have heard Mr. *Ireland* and Mr. *Thomas Jeniſon*, both Jeſuits, ſpeak of a Deſign they had to gain a Toleration of Conſcience for their Party in *England*: and the way then deſign'd to get it was, by procuring a great Sum of Money from their Party, and by bribing the then Parliament. I have heard them likewiſe diſcourſe of procuring the Duke of *York*'s Succeſſion; and that (they told me) was to be done, by procuring of Commiſſions to be granted out to thoſe of their Party, to be ready to riſe upon the Death of the King. I likewiſe have heard them diſcourſe of the Neceſſity and Uſefulneſs to their Party of the Alteration of the Government eſtabliſh'd, and that their Religion could never flouriſh till that was done, and this Kingdom altered according to the *French* Model. In the Month of *June* 78, I was at Mr. *Ireland*'s Chamber; and there happening a Diſcourſe, that the *Roman* Catholick Religion was like to come into *England*, Mr. *Ireland* did then ſay, there was but one who ſtood in the Way, and that it was an eaſy Thing to poiſon the King, and that Sir *George Wakeman* might eaſily and opportunely do it. I aſk'd Mr. *Ireland*, whether Sir *George Wakeman* was the King's Phyſician? His Anſwer was, No, but he was the Queen's, and ſo might have an Opportunity to do it. In the Month of *Auguſt* the ſame Year, the Day that I came from *Windſor*, I went to Mr. *Ireland*'s Chamber, and I found that he was newly come from *Staffordſhire*, and was drawing off his Boots on the Frame of a Table; he aſk'd me whence I was come? I told him from *Windſor*: He enquired of me about the Diverſions of the Court. I told him, I underſtood his Majeſty did take Delight in Hawking and Fiſhing, but chiefly in Fiſhing; and that he went accompanied only with two or three, early in the Morning. Then Mr. *Ireland* reply'd, He were eaſily taken off or remov'd. To which I anſwer'd, God forbid; being ſurpriz'd at that Time: Oh, ſaid he, I ſay not that it is lawful. Then there happen'd ſome Interruption to our Diſcourſe, about *Staffordſhire*; then we fell into a Diſcourſe of their Religion that he ſaid was ſuddenly to come into *England*; and he aſk'd me if I would be one of thoſe that would go to *Windſor* to aſſiſt to take off the King. I told him, No; then he told me he would remit the 20*l.* I ow'd him, if I would go to *Windſor* to be one of thoſe that were to take off the King. My Lords, I told him I would have no hand in any ſuch Matter, and that I would not for twenty times 20*l.* have any hand in the Death of the King. Said he, Would you do nothing for the bringing in of our Religion? I told him, I thought it would never come in by Blood: I told him further, God forgive me, if the King were taken off ſo, well and good, but I would have nothing to do with it. He left not the Diſcourſe there, but aſk'd me, if I knew any *Iriſhmen* that were ſtout and courageous. I told him, Yes, I did, and nam'd Captain *Levallian*, Mr. *Karney*, Mr. *Broghall*, and Mr. *Wilſon*, all Gentlemen of my Acquaintance about *Gray's-Inn*. When I nam'd theſe, he aſk'd me if I would go along with him to *Windſor*, to aſſiſt them in taking off the King. I told him, I did not think any Man of Eſtate would engage in ſuch a Matter; that I was Heir to an Eſtate, my Brother being a Prieſt, and that Captain *Levallian* was Heir to a very good Eſtate, and therefore I did believe he would not do ſuch a thing, unleſs the Pique which he had to the King or Religion might move him to it. My Lords, he approved of theſe Perſons, and ſaid, he knew the firſt two of them, *Levallian* and *Karney*; and he ſet down, as I remember, the other two Names in Writing. He told me he was going to the Club, to Mr. *Coleman*, and Mr. *Levallian*, and *Karney* at that Time, and then aſk'd me for the Money, the 20*l.* that I ow'd him. He told me, he wanted fourſcore Pounds, and he deſir'd me that I would return it as ſoon as I came into the Country. Now, my Lords, the ſame Day that I receiv'd this twenty Pound of *Ireland*, I went with Mr. *Thomas Jeniſon*, the Jeſuit, to *Harcourt*'s Chamber, to give the Fathers Thanks for the Loan of the Money; and there Mr. *Jeniſon* falling into Diſcourſe on that common Topick of their Religion coming into *England*, he did then uſe that Expreſſion which Dr. *Oates* hath in his Narrative, *If* C. R. *would not be* R. C. *he ſhould not be long* C. R. And he did interpret it thus in *Latin*: *Si Carolus Rex non eſſet Rex Catholicus, non foret diu Carolus Rex*. And he did add, my Lords, upon the Diſcourſe, that if the King were excommunicated or depos'd, he was not longer King, and it was no Sin, or no great Sin to take him off; and if it were diſcover'd who did it, two or three might perhaps ſuffer, but denying the Fact, the Matter ſoon would be blown over. My Lords, about two Months after the muſtering the Forces upon *Hounſlow-Heath*, Mr. *Thomas Jeniſon* did tell me he had a Matter of great Conſequence to impart to me; that there was a Deſign on Foot ſo laid, as that it could not well be diſcover'd, and that the greateſt Papiſts, the greateſt Catholicks in *England*, were in the Deſign; that the Queen and the Duke were in it, and that ſeveral Lords, by Name my Lord *Bellaſis*, my Lord *Powis*, my Lord *Arundel* of *Wardour*, and others: I believe my Lord *Stafford* was nam'd, but I cannot be poſitive in that. At that Time, my Lords, I did wiſh I had had a Commiſſion in the new rais'd Levies that were muſter'd on *Hounſlow-Heath*. He told me he would procure me a Commiſſion from the Duke of *York*, and that there was a new Army to be rais'd to bring in the Catholick Religion; but he did ſay he would tell me more Particulars after my receiving the Sacrament of Secreſy; and I did underſtand by him, that that Commiſſion was not to be ſent till the taking off the King was effected: But being I was ſurpriz'd at it, he would not tell me the whole Matter, but he deſir'd me to come and receive the Sacrament at Sir *Philip Tyrwhitt*'s in *Bloomſbury*, and then he would acquaint me with the whole Affair. My Lords, being in *Berkſhire* about the Month of *December* 78. at Madam *Hall*'s in *Shinefield* Pariſh, one Mr. *Cuffil* a Jeſuit came into our Company. It was about the Trial of *Coleman*; and Mr. *Cuffil* did then ſay, that he thought Mr. *Coleman* was infatuated, upon the Diſcovery of the Plot, to give Notice to Mr. *Harcourt*,

Harcourt, Mr. *Ireland*, and Mr. *Fenwick*, and the other Jeſuits, to burn or ſecure their Papers, and yet not to ſecure his own. My Siſter *Hall* was preſent at this Diſcourſe; and Mr. *Cuſſil* did then further ſay, that *Bellarmine* did draw a Sentence out of the Scripture, to favour the Pope's Authority of excommunicating, depriving, and depoſing temporal Princes; and the Saying was this, *Quod Papa habeat eandem poteſtatem ſuper Reges, quam Jehoiada habuit ſuper Athaliam.* And that there were other corroborating Teſtimonies among the Fathers for it.

Mr. *Treby.* My Lords, we deſire to aſk him, whether ever he heard of Mr. *Oates* being in the Plot, or being thought Truſt-worthy among them.

Mr. *Jen.* Yes, my Lords, I did.

L. H. S. When did you hear it, and of whom?

Mr. *Jen.* Of my Brother *Tho. Jeniſon* the Jeſuit.

L. H. S. When did he tell you ſo?

Mr. *Jen.* About the latter end of *July* 78, when there was a Diſcourſe of a Deſign, and that the greateſt Papiſts were in it, he ſaid, Mr. *Oates*, a Parſon newly come over to them, was in that Deſign: I anſwer'd, I did wonder that he would truſt a reconcil'd Enemy. He anſwer'd, That being once reconcil'd, they were more zealous and truſty. I ſubmitted to his Opinion, and inſtanc'd in Dr. *Godwyn* and Dr. *Bayley*, that were Proteſtants, and afterwards came over to the Church of *Rome*.

Mr. *Treby.* We have done with him, my Lord.

L. H. S. Will your Lordſhip aſk him any Queſtions, my Lord *Stafford*?

L. *Staff.* No, my Lord.

Sir *F. Win.* My Lords, I would only obſerve the time when he ſays his Brother told him of the Deſign, that it was about the time of the muſtering the Forces on *Hounſlow-heath*; and that he was then told Mr. *Oates* was in the Plot: I only obſerve it now, for the end of the Caſe in point of Time.

L. H. S. He ſaid it was in *July*.

Mr. *Jen.* It was two Months after the muſtering of the Forces, about the latter end of *July*.

L. H. S. Before the Diſcovery?

Mr. *Jen.* Yes.

L. H. S. Did you know *Oates* at that time?

Mr. *Jen.* No, my Lords, I was not acquainted with him.

Sir *J. Trevor.* Did you not ſee him then?

Mr. *Jen.* Yes, I ſaw him at *Ireland*'s Chamber.

Sir *J. Trevor.* When was that?

Mr. *Jen.* The latter end of *April*, or the beginning of *May*.

L. H. S. You ſay you did not know him in *July*; how then can you ſay you ſaw him before?

Mr. *Jen.* I did not know him; I only ſaw him come into *Ireland*'s Chamber, and whiſper for ſome time, two or three Minutes, and then they told me that that was Mr. *Oates*, a Parſon newly come over to them, a briſk jolly Man, and worthy my Acquaintance.

L. H. S. Is this the ſame Man you ſaw there?

Mr. *Jen.* My Lords, I cannot remember his Face, for he was gone out when I was told of him.

L. H. S. Why, you know Mr. *Oates* now?

Mr. *Jeniſon.* Yes, I do.

L. H. S. Do you know him to be the ſame Man that you ſaw then?

Mr. *Jeniſon.* I can't tell that.

Sir *J. Trevor.* My Lords, He ſays, Mr. *Oates* only came in for three or four Minutes, and his Back was towards him, and his Brother told him when he was gone who it was.

Mr. *Jeniſon.* I only knew his Name from my Brother.

Mr. *Treby.* And I preſume your Lordſhips will obſerve this was at the very Time of the Jeſuits Conſult.

Sir *J. Trevor.* We deſire this Gentleman may tell your Lordſhips who his Brother is, and what Profeſſion he is of.

Mr. *Jeniſon.* My Brother was a Jeſuit brought up at St. *Omers*.

L. H. S. Your Brother is dead, and died in *Newgate*?

Mr. *Jeniſon.* Yes, he did ſo.

L. H. S. Pray recollect yourſelf again: When was it that you ſaw the Man they called *Oates* at the Jeſuit's Chamber?

Mr. *Jeniſon.* My Lords, It was in the Year 78, the latter end of *April*, or the beginning of *May*. And I will tell you why I apprehend it to be that Time. My Brother being a Prieſt, liv'd with Sir *Philip Tyrwhitt* in *Lincolnſhire*; and in that Year, in *Lent*, he came to Town with my Lady and that Family, and he and I uſed to dine together at the Fiſh-Ordinary at *Pedley*'s. And about three Weeks or a Month after that Time, when he came to Town, I was at Mr. *Ireland*'s Chamber, and there was a Gentleman, whom they told me was *Oates*.

L. H. S. This you ſay was the latter end of *April*, or beginning of *May* 78; for the Time is material: Upon your Oath you ſay it?

Mr. *Jeniſon.* Yes, my Lords, I do.

L. H. S. You ſay it was at *Ireland*'s Chamber?

Mr. *Jeniſon.* Yes, my Lords.

Sir *F. Win.* My Lords, Will you give us leave to aſk him one ſhort Queſtion; becauſe ſome of the Gentlemen doubt of it, we would aſk it again: What his Brother was, whether he was a Jeſuit or no?

Mr. *Jeniſon.* I have heard him own it, my Lords.

L. H. S. Whom do you call next, Gentlemen?

Mr. *Treby.* If it pleaſe your Lordſhips, we ſhall in the next place produce our Evidences that are Matters of Record; and we deſire your Lordſhip's Advice and Direction how we are to miniſter the ſame, whether your Lordſhips will have them all read, or but a Word of them, and let them be left with your Lordſhips.

L. H. S. What Records are they?

Mr. *Treby.* They are the Records of the Attainder of *Coleman*, *Ireland*, and the other Conſpirators.

L. H. S. The Fact is ſo notorious that they were attainted and executed, that the reading of a Word will ſerve the Turn.

Sir *J. Trevor.* Then we deſire they may be produc'd here, and the Copies prov'd upon Oath; and then we ſhall leave them upon your Lordſhips Table. And, my Lords, we deſire likewiſe at the ſame time, to ſave another Trouble, there may be deliver'd in the Convictions of *Reading*, *Lane*, *Knox*, and others.

Then Mr. Clare *was ſworn, and deliver'd in the Copies of the Records.*

L. H. S. What Record is that?

Mr. *Clare.* It is the Record of the Attainder of *Coleman* for High-Treaſon.

L. H. S. Did you examine it?

Mr. *Clare.* I did examine it.

L. H. S. Is it a true Copy?

Mr. *Clare.* To the beſt of my Underſtanding, it is. Here is likewiſe a Copy of the Record of the Conviction of *Ireland*, *Pickering*, and *Grove*, for High-Treaſon.

L. H. S. Is there Judgment of Attainder entred upon Record?

Mr. *Clare.* Yes, my Lords, there is Judgment entred. Here is a Copy of the Indictment, Conviction, and Attainder of *Whitebread*, *Fenwick*, *Harcourt*, *Gavan*, and *Turner* for High-Treaſon. Here is a Copy of the Record of Attainder of *Richard Langhorn* for High-Treaſon. Here is a Copy of the Attainder of *Green*, *Berry*, and *Hill*, for the Murder of Sir *Edmundbury Godfrey*. Here is a Copy of the Conviction of Mr. *Nathaniel Reading*, for endeavouring to ſuborn Mr. *Bedloe* to retract his Evidence againſt ſome Lords in the *Tower*, and Sir *Henry Tichburn*.

L. H. S. What is the Judgment there?

Mr. *Clare.* The Judgment is entred upon it; and 'tis to pay 1000*l.* Fine, and to be put in and upon the Pillory in the *Palace-Yard*, *Weſtminſter*, for an Hour, with a Paper upon his Head, written in great Letters, *For endeavouring Subornation of Perjury.* Here is a Copy of the Record of the Conviction of *Taſbrough* and *Price*, for endeavouring to ſuborn Mr. *Dugdale*, and Judgment entred upon it. And here is a Copy of the Record of Conviction of *Knox* and *Lane*, for conſpiring to aſperſe Dr. *Oates* and Mr. *Bedloe*.

Here is the Record of the Conviction of *John Giles*, for barbarouſly attempting to aſſaſſinate *John Arnold*, Eſq. one of his Majeſty's Juſtices of the Peace; and the Judgment entred thereupon is, To ſtand three times on the Pillory, with a Paper on his Hat declaring his Offence; to pay 500*l.* to the King, to lie in Execution till the ſame be paid, and find Sureties for his good Behaviour during Life.

L. H. S. Deliver them all in. And if my Lords have occaſion to doubt of any thing, being left in the Court, they will be there ready to be us'd. (*All which were then deliver'd in.*)

Mr. *Treby.* My Lords, we humbly deſire that the Record of *Coleman* may be read, becauſe there is more of ſpecial Matter in it than any of the reſt, and your Lordſhips may diſpoſe of the others as you pleaſe.

L. H. S. Read the Record of *Coleman*.

Then the Clerk read (in *Latin*) the Record of the Attainder of *Edward Coleman*, formerly executed for High-Treaſon, by him committed in this horrid Popiſh Plot, which is in *Engliſh* as followeth.

Of the Term of St. Michael, *to the thirteenth Year of the Reign of King* Charles *the Second*, &c.

Middleſex.

AT another Time, to wit, on *Wedneſday* next after eight Days of St. *Martin* this ſame Term, before our Lord the King at *Weſtminſter*, by the Oath of twelve Jurors, honeſt and lawful Men of the County aforeſaid, ſworn and charged to enquire for our ſaid Lord the King and the Body of the County aforeſaid, it ſtands preſented, That *Edward Coleman*, late of the Pariſh of St. *Margaret*, *Weſtminſter*, in the County of *Middleſex*, Gent. as a falſe Traitor againſt the moſt illuſtrious, moſt ſerene, and moſt excellent Prince, our Lord *Charles* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* and his natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but by the Inſtigation of the Devil moved and ſeduced, the cordial Love, and the true, due and natural Obedience, which true and faithful Subjects of our ſaid Lord the King towards him our ſaid Lord the King ought and of right are bound to bear, utterly withdrawing; and deviſing, and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb, and the true Worſhip of God within this Kingdom of *England* practiſed, and by Law eſtabliſhed, to overthrow; and Sedition and Rebellion within this Realm of *England* to move, ſtir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our ſaid Lord the King towards him our ſaid Lord the King ſhould bear, and of right are bound to bear, utterly to withdraw, blot out, and extinguiſh, and our ſaid Lord the King to Death and final Deſtruction to bring and put; the 29th Day of *September*, the 27th Year of the Reign of our Lord *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* at the Pariſh of St. *Margaret*, *Weſtminſter* aforeſaid, in the County aforeſaid, falſly, maliciouſly, ſubtilly and traitorouſly propoſed, compaſſed, imagined and intended Sedition and Rebellion within this Realm of *England* to move, raiſe up and procure, and a miſerable Slaughter among the Subjects of our ſaid Lord the King to procure and cauſe; and our ſaid Lord the King from his kingly State, Title, Power and Government of this Realm of *England* utterly to deprive, depoſe, deject and diſinherit, and him our ſaid Lord the King to Death and final Deſtruction to bring and put; and the Government of the ſame Realm, and the ſincere Religion of God in this Kingdom, rightly, and by the Laws of this Realm eſtabliſhed, for his Will and Pleaſure to change and alter, and the State of this whole Kingdom in it's univerſal Parts well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid Lord the King within this Realm of *England* to levy. And to accompliſh and fulfil theſe his moſt wicked Treaſons and traitorous Imaginations and Purpoſes aforeſaid, the ſame *Edward Coleman* afterwards, to wit, the ſaid 29th Day of *September*, in the abovesaid 27th Year of the Reign of our ſaid Lord the King, at the Pariſh of St. *Margaret Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, falſly, ſubtilly and traitorouſly deviſed, compoſed, and writ two Letters to be ſent to one Monſieur *le Chaiſe*, then Servant and Confeſſor of *Lewis* the *French* King, to deſire, procure and obtain to the ſaid *Edward Coleman*, and other falſe Traitors againſt our ſaid Sovereign Lord the King, from the ſaid *French* King, his Aid, Aſſiſtance and Adherence, to alter the true Religion in this Kingdom then and ſtill eſtabliſhed, to the Superſtition of the Church of *Rome*, and to ſubvert the Government of this Kingdom of *England*: And afterwards, to wit, the ſaid 29th Day of *September*, in the aboveſaid 27th Year of the Reign of our ſaid Lord, now King of *England*, *&c.* at the aforeſaid Pariſh of St. *Margaret Weſtminſter* in the County of *Middleſex* aforeſaid, falſly and traitorouſly deviſed, compoſed and writ two other Letters to be ſent to one Monſ. *le Chaiſe*, then Servant and Confeſſor of the ſaid *French* King, to the Intent that he the ſaid Monſ. *le Chaiſe* ſhould intreat, procure and obtain to the ſaid *Edward Coleman*, and other falſe Traitors againſt our ſaid Sovereign Lord the King, from the aforeſaid *French* King, his Aid, Aſſiſtance and Adherence to alter the true Religion in this Kingdom of *England* then and ſtill eſtabliſh'd, to the Superſtition of the Church of *Rome*, and to ſubvert the Government of this Kingdom of *England:* And that the aforeſaid *Edward Coleman*, in further Proſecution of his Treaſons and traitorous Imaginations and Purpoſes aforeſaid, afterwards, to wit, the ſame 29th Day of *September*, in the abovesaid 27th Year of the Reign of our ſaid now Lord the King, the aforeſaid ſeveral Letters from the ſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aforeſaid, falſly, ſubtilly and traitorouſly did ſend into Parts beyond the Seas, there to be delivered to the ſaid Monſieur *Le Chaiſe.* And that the aforeſaid *Edward Coleman*, afterwards, to wit, the 1ſt Day of *December* in the 27th Year of the Reign of our Sovereign Lord *Charles* the Second, now King of *England*, &c. at the aforeſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aboveſaid, one Letter from the aforeſaid Monſieur *Le Chaiſe* (in anſwer to one of the ſaid Letters, ſo by him the ſaid *Edward Coleman* writ, and to the ſaid Monſieur *Le Chaiſe* to be ſent, firſt mentioned) falſly, ſubtilly and traitorouſly receiv'd; and that Letter ſo in Anſwer receiv'd, the Day and Year laſt aboveſaid, at the aboveſaid Pariſh of St. *Margaret Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, falſly, ſubtilly and traitorouſly did inſpect and read over; and that the aforeſaid *Edward Coleman*, the Letter aforeſaid ſo by him in anſwer received, in his Cuſtody and Poſſeſſion the Day and Year laſt aforeſaid, at the aforeſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aforeſaid, falſly, ſubtilly and traitorouſly detained, concealed and kept; by which ſaid Letter the ſaid Monſieur *Le Chaiſe*, the Day and Year laſt aboveſaid, at the aforeſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aforeſaid, ſignify'd and promiſed to the ſaid *Edward Coleman*, to obtain for him the ſaid *Edward Coleman* and other falſe Traitors againſt our ſaid Lord the King, from the ſaid *French* King, his Aid, Aſſiſtance and Adherence. And that the aforeſaid *Edward Coleman*, afterwards, to wit, the 10th Day of *December* in the aboveſaid 27th Year of the Reign of our ſaid Sovereign Lord *Charles* II. now King of *England*, &c. at the Pariſh of St. *Margaret Weſtminſter* aforeſaid, in the County of *Middleſex* aforeſaid, falſly, maliciouſly, ſubtilly and traitorouſly did relate and declare his traitorous Deſigns and Purpoſes aforeſaid to one Monſieur *Ruvigni* (then Envoy Extraordinary from the *French* King to our ſaid moſt ſerene King, at the Pariſh aforeſaid, in the County aforeſaid, reſiding) to move and excite him the ſaid Envoy Extraordinary with him the ſaid *Edward Coleman* in his Treaſons aforeſaid to partake: And the ſooner to fulfil and compleat thoſe his moſt wicked Treaſons and traitorous Imaginations and Purpoſes aforeſaid, he the ſaid *Edward Coleman*, afterwards, to wit, the 19th Day of *December*, in the aboveſaid 27th Year of the Reign of our ſaid Lord *Charles* the Second now King of *England*, &c. at the aforeſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aforeſaid, adviſedly, maliciouſly, ſubtilly and traitorouſly did deviſe, compoſe, and write three other Letters to be ſent to one Sir *William Throgmorton*, Kt. then a Subject of our now Lord the King, of this Kingdom of *England*, and reſiding in *France* in Parts beyond the Seas, to ſollicit him the aforeſaid Monſieur *Le Chaiſe* to procure and obtain of the ſaid *French* King his Aid, Aſſiſtance and Adherence aforeſaid. And thoſe Letters laſt mentioned, afterwards, to wit, the Day and Year laſt aboveſaid, from the aforeſaid Pariſh of St. *Margaret Weſtminſter*, in the County of *Middleſex* aforeſaid, to the ſame Sir *William Throgmorton* in *France* aforeſaid, falſly and traitorouſly did ſend, and cauſe to be delivered, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid now Lord the King, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided. Wherefore it was commanded the Sheriff of the County aforeſaid, that he ſhould not omit, *&c.* but that he ſhould take him, if, *&c.* to anſwer, *&c.* And now, to wit, on *Saturday* next after eight Days of St. *Martin*, this ſame Term, before our Lord the King at *Weſtminſter*, came the aforeſaid *Edward Coleman*, under the Cuſtody of *William Richardſon*, Gent. Keeper of the Goal of our ſaid Lord the King of *Newgate*, by virtue of the King's Writ of *Habeas Corpus ad ſubjiciend'*, *&c.* (into whoſe Cuſtody before then, for the Cauſe aforeſaid, he was committed) to the Bar here brought in his proper Perſon, who is committed to the *Marſhal*, &c. and preſently of the Premiſes to him above impoſed, being aſked, How he will thereof be acquitted? ſaith, That he is in no wiſe thereof guilty, and thereof for Good and Evil doth put himſelf upon the Country. Therefore let a Jury thereupon come before our Lord the King at *Weſtminſter* on *Wedneſday* next after fifteen Days of St. *Martin*; and who, *&c.* to recognize, *&c.* becauſe, *&c.* the ſame Day is given to the ſaid *Edward Coleman*, &c. under the Cuſtody of the ſaid Keeper of the Goal of our ſaid Lord the King, of *Newgate* aforeſaid, in the mean time committed to be ſafely kept until, *&c.* At which *Wedneſday* next after fifteen Days of St. *Martin*, before our Lord the King at *Weſtminſter*, came the aforeſaid *Edward Coleman* under Cuſtody of the aforeſaid Keeper of the King's Goal of *Newgate* aforeſaid, by virtue of a Writ of our Lord the King of *Habeas Corpus ad ſubjiciend'*, *&c.* to the Bar here brought in his proper Perſon, who is committed to the aforeſaid Keeper of the King's Goal of *Newgate* aforeſaid. And the Jurors of the Jury aforeſaid, by the Sheriff of the County aforeſaid hereunto impannell'd, being call'd, came; who being choſen, tried and ſworn to ſpeak the Truth upon the Premiſes, ſay upon their Oaths, That the aforeſaid *Edward Coleman* is guilty of the High-Treaſon aforeſaid, in the Indictment aforeſaid ſpecify'd, in manner and form as by the ſaid Indictment above againſt him is ſuppoſed; and that the aforeſaid *Edward Coleman* at the time of Perpetration of the High-Treaſon aforeſaid, or at any time afterwards, had no Goods, Chattels, Lands or Tenements, to the Knowledge of the Jurors aforeſaid. And the aforeſaid *Edward Coleman* being aſked if he hath any thing, or knows what to ſay for himſelf, why the Court here ought not to proceed to Judgment and Execution of him upon the Verdict aforeſaid, ſaith nothing, but as before he had ſaid: And hereupon inſtantly the Attorney-General of our ſaid Lord the King, according to due Form of Law, demandeth againſt him the ſaid *Edward* Judgment and Execution to be had upon the Verdict aforeſaid, for our Lord the King. Whereupon all and ſingular the Premiſes being view'd, and by the Court here underſtood, it is conſidered, That the ſaid *Edward Coleman* be led by the ſaid Keeper of the Goal of *Newgate* aforeſaid, unto *Newgate* aforeſaid, and from thence directly be drawn to the Gallows of *Tyburn*, and upon thoſe Gallows there be hanged, and be cut down alive to the Earth, and his Entrails be taken out of his Belly and be burned (he ſtill living); and that the Head of him be cut off, and the Body of him be divided into four Parts; and that thoſe Head and Quarters be put where our Lord the King will aſſign them, *&c.*

L. *Staff.* I do not hear one Word he ſays, my Lords.

L. H. S. My Lord, This does not concern your Lordſhip any further than as to the Generality of the Plot.

Sir *Will. Jones.* My Lords, We have now done with our Proofs for the firſt general Head that we open'd, which was to make it out, that there was a Plot in general. We now come to give our particular Evidence againſt this very Lord; and before we do begin, we think fit to acquaint your Lordſhips, that our Evidence will take up ſome time: If your Lordſhips will have the patience to hear it out now, we will give it; but if your Lordſhips will not ſit ſo long till we can finiſh it, it may be ſome Inconvenience to us to break off in the middle. And therefore we humbly offer it to your Lordſhips Conſideration, whether you will hear it now, or no.

L. H. S. If it cannot be all given and heard now, it were better all ſhould be given to-morrow.

Sir *Will. Jones.* If your Lordſhips pleaſe, then, we will reſerve it till to-morrow.

L. *Staff.* My Lords, I would only have your Directions, whether I ſhall anſwer this General firſt, or ſtay till all be ſaid againſt me. That which I have to ſay to this General, will be very ſhort.

L. H. S. My Lord, you are to make all your Anſwer entire, and that is beſt for you.

L. *Staff.* I am very well contented, that I may be the better prepared for it.

L. H. S. Is it your Lordſhips Pleaſure that we ſhould adjourn into the Parliament-Chamber?

Lords. Ay, Ay.

L. H. S. Then this Houſe is adjourned into the Parliament-Chamber.

And the Lords went away in the ſame Order they came.

The Commons returned to their Houſe, and Mr. Speaker reſumed the Chair, and then the Houſe adjourned to eight of the Clock the next Morning.

The Second Day,

Wedneſday, December 1, 1680.

A Meſſage was ſent from the Lords, by Sir *Timothy Baldwyn*, and Sir *Samuel Clark.*

Mr. Speaker,

The Lords have ſent us to acquaint this Houſe, That they intend to proceed to the Trial of *William* Viſcount *Stafford*, at ten of the Clock this Morning, in *Weſtminſter-Hall.*

Mr. Speaker left the Chair, and the Commons came into *Weſtminſter-Hall* in the new-erected Court.

And the Managers appointed by the Commons went into the Room prepared for them in that Court, to proceed to the particular Evidence againſt *William* Viſcount *Stafford.*

About ten of the Clock in the Morning, the Lords came into the ſaid Court in their former Order; and Proclamation being made of Silence, and for the Lieutenant of the *Tower* to bring his Priſoner to the Bar, they proceeded.

L. H. S. My Lords expect you ſhould go on with your Evidence, and proceed in the Trial of this noble Lord.

L. *Staff.* My Lords, if your Lordſhips pleaſe, I humbly deſire that my Council may be near me for the arguing of what is fit to them to ſpeak to, as to Points of Law; for Points of Fact I do not deſire it.

L. H. S. My Lord, You have an Order for your Council to attend, and they muſt and ought to attend.

Mr. Serj. *Maynard.* The Council muſt not ſuggeſt any thing to him while the Evidence is giving; they are not to be heard as to Matter of Fact.

L. H. S. It is not intended to make uſe of Council as to Matter of Fact, but they may ſtand by.

Mr. Serj. *Maynard.* My Lords, They may ſtand within hearing, but not within prompting.

L. *Staff.* I aſſure you, if I had all the Council in the World, I would not make uſe of them for any Matter of Fact.

Mr. *Treby.* My Lords, will you pleaſe to order them to ſtand at a convenient Diſtance, that they may not prompt the Priſoner?

Sir *Will. Jones.* My Lords, I hope your Lordſhips will conſider, that a Man in a capital Cauſe ought not to have Council to Matter of Fact. 'Tis true, he may adviſe with his Council; I deny it not; but for him in the Face of the Court to communicate with his Council, and by them be told what he ſhall ſay, as to Matters of Fact, is that which (with Submiſſion) is not to be allow'd. If your Lordſhips order they ſhall be within hearing, I do not oppoſe it; but then I deſire they may ſtand at that Diſtance, that there may be no Means of Intercourſe, unleſs Points in Law do riſe.

L. H. S. You were beſt make that Exception when there is Cauſe for it; in the mean time go on with your Evidence.

Sir *F. Win.* We did perceive his Council came up towards the Bar, and very near him, and therefore we thought it our Duty to ſpeak before any Inconvenience happened. This Lord being accuſed of High-Treaſon, the allowing of Council is not a Matter of Diſcretion. If Matters of Law ariſe, all our Books ſay, that Council ought to be allow'd: But we pray that there may be no Council to adviſe him in Matter of Fact, nor till your Lordſhips find ſome Queſtion of Law to ariſe upon the Evidence.

L. H. S. When there is Cauſe, take the Exception; but they do not as yet miſbehave themſelves.

Mr. *Treby.* My Lords, We preſume your Lordſhips did, from the Strength and Clearneſs of Yeſterday's Evidence, receive full Satisfaction concerning the general Plot and Conſpiracy of the Popiſh Party.

It being an Evidence apparently invincible, not out of the Mouths of two or three Witneſſes only, but of twice that Number, or more, credible Perſons.

Upon which we doubt not but your Lordſhips who hear, and Strangers and unborn Poſterity when they ſhall hear, will juſtify this Proſecution of the Commons, and will allow that this Impeachment is the proper Voice of the Nation crying out, as when the Knife is at the Throat. By the Evidence already given, I ſay, it is manifeſt that there was a general grand Deſign to deſtroy our Religion, our King, and his Proteſtant Subjects. And 'tis even impoſſible that this Deſign, ſo big, could be conducted without the Concurrence of ſuch Perſons as this noble Lord at the Bar: It could not be carried on by leſs and lower Men.

And it were a Wonder, that a Perſon ſo fervently affected and addicted (as this Lord is) to that Party, ſhould not be in at ſo general a Deſign of the Party.

But this indeed is but preſumptive Evidence, which will induce a moral Perſuaſion.

We ſhall now produce ſuch poſitive Evidence as will make a judicial Certainty; and will abundantly ſuffice to convince your Lordſhips, and convict this Lord.

The Particulars you will hear out of the Mouths of the Witneſſes, whom we ſhall call: They will teſtify what Share this Lord had in (almoſt) all the Parts and Articles in our Charge; contriving and contracting for the Murder of the King, levying Arms, *&c.* And firſt we call Mr. *Dugdale.*

L. *Staff.* My Lords, I do conceive I have good ground to except againſt this Man for a Witneſs: For my own particular, I know myſelf as clear and free as any one here; but I will not except againſt him now, but reſerve it againſt the time when I come to make my Defence, and therefore admit him to be ſworn, provided, my Lords, that he look me full in Face.

L. H. S. My Lord *Stafford,* What is your Exception againſt this Man that he may not be a Witneſs?

L. *Staff.* I do admit him to be ſworn, I ſay nothing now againſt him.

Mr. *Treby.* He is ſworn already.

L. H. S. You ſwore him to give Evidence as to the general Plot; you did not ſwear him as to the Particulars againſt my Lord *Stafford.*

Sir *John Trevor.* We are content he ſhall be ſworn again, we pray he may be ſworn.

Sir *Will. Jones.* 'Tis true, my Lords, we did divide the Evidence into two Parts, but his Oath was not divided: If your Lordſhips pleaſe, you may ſwear them all over again, if it may be any Satisfaction, but I think it was never ſeen before.

Then Mr. *Dugdale* was ſworn.

L. H. S. There is Mr. *Dugdale*; come, Sir, what ſay you?

L. *Staff.* Really he is ſo changed I do not know him.

Mr. *Dugd.* My Lord, I have Witneſſes to prove that you know me.

L. *Staff.* I beg your Lordſhips that he may look me in the Face, and give his Evidence, as the Law is.

Sir *John Trevor.* My Lords, if this noble Lord, the Priſoner at the Bar, will have this Witneſs to look him continually in the Face, the Court will not hear half his Evidence: We deſire he may addreſs himſelf, as the Law is, to your Lordſhips and the Judges.

L. Staff. I deſire the Letter of the Law, which ſays, my Accuſer ſhall come Face to Face.

Mr. *Dugd.* My Lords, I am willing to do as your Lordſhips ſhall order.

L. H. S. My Lord, you do ſee the Witneſs, that is enough for Face to Face; and you make no legal Exception againſt him, why he ſhould not be heard.

L. *Staff.* Very well, my Lord, I ſubmit.

Mr. *Dugd.* My Lords, I have for ſome Years paſt, whilſt I was a Servant with my Lord *Aſton,* been acquainted and frequently had Diſcourſes with my Lord *Stafford,* before we came to diſcourſe any thing concerning the Plot on foot. Lately, in 78, my Lord coming down into the Country, it was either in *Auguſt* or *September,* the latter end of *Auguſt,* or the beginning of *September*——

L. *Staff.* I beſeech your Lordſhips he may name the times.

L. H. S. My Lord, if your Lordſhip pleaſe, do not interrupt the Witneſſes; but wherein he is ſhort, do you aſk him the Queſtion when it comes to your turn, I will bring it to as much Certainty as I can.

Mr. *Dugd.* There was a Meeting at *Tixal,* where there were ſeveral preſent——

L. H. S. When?

Mr. *Dugd.* It was in *September,* or the latter end of *Auguſt.*

L. H. S. What Year?

Mr. *Dugd.* 78. My Lords, I had by Mr. *Evers*'s means Admittance to hear, becauſe of my Encouragement, what the Diſcourſe was at that time. It was to debate and determine upon the former Reſolutions both beyond Sea and at *London* before, both to take away the Life of the King, and to introduce their Religion, of which I was then one. My Lord *Stafford* was there preſent, and did with the reſt conſent to it. Afterwards my Lord *Stafford* being at one Mr. *Abnett*'s of *Stafford* one *Sunday* Morning in *September,* came to my Lord *Aſton*'s Houſe to Maſs: I met with my Lord *Stafford* at ſome Diſtance from the Gate, and my Lord ſpeaking to me when he alighted off from his Horſe, told me it was a very ſad thing they could not ſay their Prayers but in an hidden manner, but ere long we ſhould have our Religion eſtabliſhed; which was much to my Joy at that time. After that time my Lord *Stafford* was ſometimes at *Stafford,* and ſometimes at *Tixal,* I will not be poſitive as to a Day, but I think it was about the middle of *September.* My Lord *Stafford* ſent for me to his Lodging-Chamber, as he had ſeveral times before ſent for me; and ſaid, he had had great Commendations of me from Mr. *Evers,* that I was faithful and truſty.

L. *Stafford.* My Lords, I deſire I may have Pen, Ink, and Paper, allowed me.

L. H. S. Ay, God forbid you ſhould be denied that: Give my Lord Pen, Ink, and Paper. I hope your Lordſhip hath one to aſſiſt you that takes Notes for you; if you have not, you have loſt a great deal of time already.

L. *Staff.* There was one all Day yeſterday, my Lords; I deſire he may ſpeak his Evidence over again.

L. H. S. Let him begin his Evidence again, for my Lord had not Pen, Ink, nor Paper, which he ought to have to help his Memory.

Mr. *Dugd.* I may miſs as to the Words, but the Matter of Fact I ſhall repeat: My Lords, I have been frequently acquainted whilſt I was a Servant at my Lord *Aſton*'s with my Lord *Stafford,* coming to my Lord's Houſe in the Country, and my Lord being ſeveral times where I came to that Intimacy by Mr. *Evers*'s Means, that my Lord would frequently diſcourſe with me. About the latter end of *Auguſt,* or ſome Day in *September,* my Lord *Stafford,* my Lord *Aſton,* and ſeveral other Gentlemen, were in a Room in my Lord *Aſton*'s Houſe, and by the means of Mr. *Evers* I was admitted to hear for my Encouragement; and there I heard them in that Debate at that time fully determine a Reſolution upon all the Debates that had been beyond Sea and at *London* before, that it was the beſt way they could reſolve on to take away the Life of the King, as the ſpeedieſt Means to introduce their own Religion. After ſome time my Lord being at *Stafford* at Mr. *Abnett*'s——

L. H. S. Was my Lord *Stafford* at that Meeting where they debated to kill the King?

Mr. *Dugd.* My Lord was there.

L. H. S. Was he conſenting to that Reſolution?

Mr. *Dugd.* Yes, I heard every one give their particular full Aſſent.

(At which there was a great Hum.)

L. H. S. What is the Meaning of this? For the Honour and Dignity of publick Juſtice, let us not carry it as if we were in a Theatre.

Mr. *Dugd.* My Lords, ſome time in *September,* my Lord *Stafford* being at Mr. *Abnett*'s Houſe in *Stafford,* came once upon a *Sunday* Morning to hear Maſs: I meeting him at the outward Gate of my Lord *Aſton*'s Houſe when he alighted off his Horſe, after ſome Diſcourſe he turned to me, and told me, It was a ſad thing we could not ſay our Prayers but in an hidden Manner; but ere long, if Things took Effect, we ſhould have the *Romiſh* Religion eſtabliſhed: and I at that time did ſeem to be, and really was as glad as any Perſon could be. After ſome time, I think it was about the 20th or 21ſt of *September,* my Lord *Stafford* ſent for me into his Lodging-Room, I think it was by his Page, or him that waited upon him in his Chamber; and he told me I muſt come to my Lord; and I immediately went to his Lordſhip, he was juſt then ariſing and dreſſing; he ſent his Man out, and told me, he had had a good Account from Mr. *Evers* and other Gentlemen, that I would be faithful and true to their Intentions about the introducing their Religion. He told me, he was likewiſe concerned himſelf, and that in a very high degree; and for taking away the Life of the King, he offered me at that time for my Charges and Encouragement 500 *l.* and that I ſhould go in *October* after to *London* with him (my Lord *Stafford*), and that I ſhould be with him ſometimes at *London,* and ſometimes at an Houſe of my Lord *Aſton*'s, about twenty-five Miles from *London*; and that I ſhould be under the Care of him in *London* and Mr. *Ireland,* and in the Country of one Mr. *Parſons* that knew of the Deſign. I did then ſhew as much Reſolution to be faithful to my Lord as I could, and that I would be true to what my Lord then engaged me. I after went to Mr. *Evers,* and communicated to him what my Lord *Stafford* ſaid, and was ſomething in Admiration at my Lord's offering me ſuch a Sum of Money, for I doubted of my Lord's Ability to make good Payment. He told me, that I need not fear it, for Mr. *Harcourt* and Mr. *Ireland* had Money enough in their Hands to defray that and other Charges; and I ſhould not want Money for the carrying it on. My Lords, I remember that at another time there was a Meeting, wherein there was a Debate about my going up, and other Buſineſſes; my Lord *Stafford* was preſent, and there were ſeveral there beſides, I did not know them all then; but in the firſt place they told me, I ſhould be made equal with one Captain *Adderley* that is ſince dead, and that I ſhould have a Reward in *London.* I underſtood that the Duke of *York,* my Lord *Arundel,* and my Lord *Bellaſis,* and others, were to give it me; and ſpeaking of the Rewards to thoſe that were engaged, they ſaid, there would be Land enough from the Proteſtants to ſatisfy all that acted in the Deſign. Another time my Lord *Stafford* diſcourſing in a Dining-Room in my Lord *Aſton*'s Houſe, did expreſs his great Zeal, and the Reaſon why he was ſuch an Enemy againſt the King; he ſaid, both he and my Lord *Aſton* had been great Sufferers for the King, and for his Father, and that my Lord in particular, his Grandfather or his Father, had ſpent 30,000 *l.* in the King's Service, and had no Recompence; that he had always ſhewed himſelf loyal to the King; but whenever there came any Place of Preferment to be diſpos'd of, it was rather given to ſuch as had been Traitors and Rebels to the old King, and likewiſe to the King himſelf, than to any that had been loyal. He ſaid, this was his chief Motive, if there were not Religion in the Caſe, which was of an higher Nature, or to that Purpoſe.

L. H. S. When was this laſt Diſcourſe?

Mr. *Dugd.* In *September* 78, as near as I remember, for we had ſeveral Diſcourſes.

L. H. S. This was not the time you were at my Lord's Chamber?

Mr. *Dugd.* No, It was in my Lord *Aſton*'s Dining-Room.

L. H. S. No, nor when he ſent for you to offer you the 500 *l.*

Mr. *Dugd.* No, not at that time, it was another Time.

L. H. S. What Month and Year?

Mr. *Dugd.* *September* 78, my Lord.

Mr. *Foley.* I deſire he may give your Lordſhips an Account what Aſſurance he had of Pardon, if he did ſucceed.

Mr. *Dugd.* I was told I need not fear; and particularly my Lord *Stafford* told me, I ſhould have a free Pardon for it; for the King had been excommunicated, and was likewiſe a Traitor, and a Rebel, and an Enemy to Jeſus Chriſt.

L. H. S. But how could you be pardon'd? From whom were you to have that Pardon?

Mr. *Dugd.* I was to be pardon'd by the Pope.

L. H. S. That was for your Sins.

Mr. *Dugd.* Yes; I expected no other, if I had gone on.

Mr. *Treby.* Were you promis'd nothing elſe but a Pardon from the Pope?

Mr. *Dugd.* Yes, I was to be ſainted.

Sir *W. Jones.* Will his Lordſhip pleaſe to aſk him any Queſtions? We aſk him no more.

Mr. *Foley.* Yes, I deſire another Queſtion may be aſk'd him: That he would give an account of the Letters my Lord *Stafford* writ to *Evers* about the *Deſign.*

L. H. S. What ſay you to that Queſtion?

Mr. *Dugd.* There came a Letter to *Evers* from my Lord *Stafford*; I knew it to be my Lord's Hand: ſome might counterfeit his Hand; but as near as a Man can ſwear to the Hand of another in a Paper he did not ſee written, that was my Lord's Hand: That Things went all well beyond Sea, and ſo he did hope they did here, for the carrying on of the Deſign: It was to this Purpoſe expreſly.

Mr. *Treby.* We have done, my Lords, with him.

L. H. S. My Lord *Stafford,* will you aſk him any Queſtions?

L. *Staff.* My Lords, I have divers Queſtions to aſk him, very many; but I humbly crave your Lordſhips Directions, if I aſk him any Queſtions now, whether I may not aſk him ſome afterwards?

L. H. S. My Lord, you may aſk Queſtions of the Witneſſes as often as you pleaſe, and whenever you find it uſeful to you: God forbid there ſhould be any time to foreclofe a Man from aſking a Queſtion that may ſave his Life.

L. *Staff.* I pray he may be aſk'd how long before this time he knew of the Plot.

L. H. S. How long have you known this Plot?

Mr. *Dugd.* In general, for the introducing of the Popiſh Religion, and the Encouragement to it by the Duke of *York*'s being Succeſſor, I have known it fifteen or ſixteen Years by the means of Mr. *Evers.*

L. *Staff.* My Lords, I underſtand him, he ſays he knew the Plot fifteen or ſixteen Years ago; if I be not miſtaken, he ſays ſo.

Mr. *Dugd.* My Lords, if your Lordſhips pleaſe to give me leave to explain my ſelf further, it was not for taking away the Life of the King, but for making ready againſt the King died, with Men and Arms.

L. *Staff.* My Lords, he ſays in the latter end of *Auguſt*, or beginning of *September*, I told him ſuch and ſuch things; I deſire he may name the Day; that may be many Days, and I may prove I was not there; and I can prove for all *Auguſt*, and a good while in *September*; therefore I deſire he may name the Day.

L. H. S. My Lord *Stafford*, I come thus near on purpoſe to ſerve your Lordſhip, that you may not ſtrain your Voice too much; but I am not ſo happy as to apprehend what it is you ſay.

L. *Staff.* My Lords, I ſay, he ſpeaks of the latter end of *Auguſt*, or the beginning of *September*; which is too great a Latitude, and I conceive more than ought to be given in ſuch a Matter of Importance as this is to me; I deſire he may name the Day, for he may name Days, perhaps, that I was not there.

L. H. S. Look you, Mr. *Dugdale*; my Lord does deſire, if you can, you would be a little more particular than about the latter end of *Auguſt*, or the beginning of *September*; if you can remember the Day, tell it us.

Mr. *Dugd.* I cannot remember particular Days, it being a thing I then took no account of; only this I do remember by a remarkable Circumſtance, that one time was either the 20th or 21ſt of *September* 78.

L. H. S. That was the time of your coming into his Chamber, and his offering you five hundred Pound?

Mr. *Dugd.* It was ſo; but other Meetings I dare not charge to a Day.

L. *Staff.* How then can I make my Defence?

Mr. *Dugd.* I will ſtand to that time.

L. *Staff.* How, my Lords, can I be able to give an Account of it? I ſhall prove to your Lordſhips, that he once ſaid it was in *Auguſt*, now he ſays it was in *Auguſt* or *September.* I beſeech you that he may poſitively ſtand to the Month, if not to the Day.

Mr. *Dugd.* I ſpeak as near as I can.

L. *Staff.* But he ſays the 20th or 21ſt particularly.

Mr. *Dugd.* Thereabouts I am ſure it was.

L. *Staff.* Look you, he will be poſitive in nothing.

Mr. *Dugd.* I will ſtand to that time.

L. *Staff.* If he ſwears falſe in one Thing, I hope, upon proof of that, your Lordſhips will believe he may be falſe in all. I pray he may be aſked what Hour of the Day it was, whether it was Morning or Afternoon.

L. H. S. He is poſitive only to the 20th or 21ſt of *September*, the time when he ſays you called for him into your Chamber, and offered him five hundred Pound to kill the King: would your Lordſhip aſk him whether it were in the Forenoon or the Afternoon?

L. *Staff.* Yes, my Lord, I would.

L. H. S. Was it in the Forenoon or in the Afternoon?

Mr. *Dugd.* It was in the Forenoon; for I did formerly ſpeak of that, he was dreſſing himſelf when I came in.

L. H. S. Then that is anſwered poſitively.

L. *Staff.* My Lords, he ſays one *Sunday* Morning I came to my Lord *Aſton*'s to Maſs, I deſire you would pleaſe to aſk him, whether ever he ſaw Mr. *Evers* and me in his Life alone together?

L. H. S. Have you ſeen my Lord *Stafford* and Mr. *Evers* ever together alone?

Mr. *Dugd.* Several times I have ſeen them walking together in the Garden, and in the Walks, at my Lord *Aſton*'s; and I have been with them my ſelf when there hath been only them two beſides.

L. H. S. That is anſwered fully; will your Lordſhip aſk him any thing elſe?

L. *Staff.* He ſays he was to go to *London* in *October* with me, I ſtand not upon that till I come to make my Anſwer; but I take it, he ſays the 20th or 21ſt of *September*, when I offered him five hundred Pound, in my Chamber, to kill the King, that he went preſently to *Evers* to ſpeak with him about it.

L. H. S. As doubting the Payment of the Money, and he told him, that *Harcourt* and *Ireland* would pay it.

L. *Staff.* Was it the ſame Day? Pray aſk him, my Lords.

Mr. *Dugd.* I do not ſay it was the ſame Day, but it was the next time I could come to ſpeak with him.

L. H. S. He tells you, it was as ſoon as he could ſpeak with him.

L. *Staff.* He ſaid before, it was preſently after he went from me. I deſire your Lordſhips would take notice how he contradicts himſelf in every Circumſtance.

L. H. S. What ſay you, did you go preſently to Mr. *Evers* after my Lord *Stafford* had made the Offer, or was it the ſame Day, or the next Day?

Mr. *Dugd.* To the beſt of my remembrance, it was the ſame Day; I can't ſay poſitively.

L. *Staff.* My Lords, I have no other Queſtions with *Dugdale.*

Sir *J. Trevor.* Then, my Lords, we will call another Witneſs.

L. H. S. Have you no more to ſay to *Dugdale*, my Lord?

L. *Staff.* Not at preſent, till I come to make my Defence.

L. H. S. God forbid, but you ſhould have leave to ſay all that you can for yourſelf.

Mr. *Treby.* Then ſet up Dr. *Oates.* Do your Lordſhips require that he ſhould be ſworn again?

L. *Staff.* I deſire nothing, nor propoſe it, if he will declare upon his Oath that he took yeſterday.

L. H. S. Hark you, Dr. *Oates*, this is but a Continuation of the Proceedings yeſterday; you are upon the ſame Oath now that you were then, and what you ſay this Morning will be taken to be upon the ſame Oath.

Mr. *Treby.* Dr. *Oates*, upon the Oath you have taken yeſterday——

L. H. S. Pray ſwear him again. *(Which was done.)*

Mr. *Treby.* Dr. *Oates*, pray ſpeak your Knowledge of my Lord *Stafford*'s being engaged in the Deſign.

Dr. *Oates.* I deſire I may be left to my own Method.

L. H. S. Go on in your own Method.

Dr. *Oates.* My Lords, in the Year 67, there were divers Attempts upon the Life of the King, as the Jeſuits told me; and in the Year 74, there was an Attempt upon the account of the King's withdrawing the Indulgence in 74 and 75: in the Year 1677, whilſt I was in *Spain*, I met with ſeveral Letters ſigned *Stafford*, wherein my Lord *Stafford* did aſſure the Jeſuits in *Spain*, that were of the *Iriſh* Nation, how zealous he ſhould appear in the promoting of the Catholick Deſign. My Lords, in the Year 77, I went to *St. Omers*, and I came there in *December.* My Lords, in that Year I being order'd to look over the Papers, and put them in order, I found ſeveral Letters ſigned *Stafford*; wherein my Lord *Stafford* did intimate to the Fathers, that whereas there had been ſome Difference betwixt him and the Society for ſeveral Years, the Buſineſs was reconciled by one Signior *Con*, who came over into *England* in the Year 76, to reconcile the great Difference that was betwixt the Jeſuits and the Secular Clergy, and between the Benedictine Monks and the Jeſuits. My Lords, my Lord *Stafford*, upon the perſuaſion of this Signior *Con*, as he does intimate in his Letter, does aſſure the Jeſuits of his Fidelity and his Zeal. My Lords, in the Year 78, I found Letters from my Lord *Stafford*, wherein he does blame Mr. *Coleman*'s Openneſs, and his being too publick in the great Affair, and that Mr. *Coleman* was pleaſed to communicate ſeveral great Secrets to Men, of whoſe Fidelity his Lordſhip was not ſecure. My Lords, in 1678, in the Month of *June*, my Lord *Stafford*, the Priſoner at the Bar, came to Mr. *Fenwick*, and there received a Commiſſion from him to pay an Army that was to be raiſed for the promoting of the Catholick Intereſt; and he did aſſure Mr. *Fenwick* that he was going down into *Staffordſhire*, and there he did not queſtion but he ſhould have a good Account how the Catholicks ſtood affected; and he did not queſtion but to give a good account how affairs ſtood in *Staffordſhire*, *Shropſhire*, and *Lancaſhire:* and this Commiſſion to my Lord *Stafford* was, as near as I can remember, to be Pay-Maſter-General of the Army. My Lords, among other Diſcourſes with my Lord at the Bar, he was diſcourſing about my Lord Duke of *Norfolk*, and my Lord *Arundel* his Son; and after ſeveral other Paſſages, he *(Fenwick)* was aſking of him how my Lord *Arundel* came to have a Jeſuit in his Houſe. My Lord *Stafford* did ſay, that my Lord of *Peterborough*, his Father-in-Law, was inſtrumental in it, on purpoſe to oblige the Duke of *York*; for my Lord *Arundel*, as I have been told, kept Father *Symonds* in his Houſe, who to my knowledge was a Jeſuit. But, my Lords, he came to Mr. *Fenwick*'s (my Lord *Stafford* did) by the Name of Mr. *Howard* of *Effingham.*

L. H. S. Were you at *Fenwick*'s when my Lord *Stafford* came to his Chamber?

Dr. *Oates.* Yes, my Lords.

L. H. S. Look upon my Lord *Stafford*, is that the ſame Perſon?

Dr. *Oates.* It is the ſame Gentleman that came there by the Name of *Howard* of *Effingham.*

L. H. S. And he took the Commiſſion?

Dr. *Oates.* Yes, he did ſo.

L. H. S. And he promiſed to effect it?

Dr. *Oates.* Yes, and he ſaid that he was then going down into the Country, and he did not doubt but at his return *Grove* ſhould do the Buſineſs.

L. H. S. Who ſaid ſo, *Fenwick?*

Dr. *Oates.* No, my Lord *Stafford.* And ſays *Fenwick* to my Lord *Stafford* again, Sir, 'tis fit that ſome ſhould be here preſent, leſt you fail of your Expectation; or to that purpoſe. 'Tis two Years ſince, and I cannot remember the Words, but my Lord *Stafford* did ſay, he was of neceſſity to go into the Country at that time. And there he did write a Letter to *St. Omers*, in which he did excuſe himſelf about a young Man that was to be ſent to the Jeſuits College, whom he had taken care of another way. And he deſired their excuſe, but he would be as faithful to them as any body, for all that. And the ſame Hand that wrote that Letter, by all the comparing I could make in my Thoughts, wrote all the other Letters that I ſaw at *St. Omers*, and in *Spain.* My Lords, I ſaw my Lord *Stafford* at Dr. *Perrott*'s, I think verily it was in *June* or *July* 78; it was before the riſing of the Parliament that ſat that Summer, and my Lord *Stafford* was diſcourſing of a Son he was to ſend over to *Liſbon*, and he went over by the Name of Sir *John Stafford.* And after this Diſcourſe was over, they fell into a Diſcourſe of the Affairs in hand, and my Lord was mighty glad there was ſo good a Correſpondence and Concord, tho', my Lords, it was not very great; for the Jeſuits had an irreconcileable Quarrel with the reſt of the Clergy: But my Lord did hope that their fair Correſpondence might tend highly to the advancing the Catholick Cauſe. But, my Lords, I have one thing more to ſpeak as to the Diſcourſe at *Fenwick*'s Chamber; ſpeaking of the King, he ſaid, he hath deceived us a great while, and we can bear no longer.

L. H. S. Who ſaid ſo?

Dr. *Oates.* My Lord *Stafford*, the Gentleman at the Bar.

L. H. S. When was that? At Dr. *Perrott*'s?

Dr. *Oates.* No, I ſpeak of a Paſſage at *Fenwick*'s which I had forgot. My Lords, this is all I can remember at preſent.

Mr. *Foley.* My Lords, I deſire he may give an account what Letters my Lord *Stafford* ſent to *Fenwick* and *Ireland* to pay Money.

Dr. *Oates.* There was ſome Money returned, but it was no great Sum, and it was about private Buſineſs; Mr. *Morgan* was to receive it: I chanced to have the Money in my own keeping; Mr. *Fenwick* gave it me to pay to Mr. *Morgan*, and the Letter in which the Sum was mentioned did give them an account (for it was out of *Staffordſhire*), that he found things ſtand in a very good ſtate there. But I being not within, Mr. *Morgan* called on Mr. *Fenwick* for the Money, which I returned to him when he had paid it.

L. *Staff.* My Lords, I do, in the firſt place, deſire to know where Mr. *Fenwick* lived.

L. H. S. Where did Mr. *Fenwick* live when you ſaw my Lord at his Chamber, and the Commiſſion delivered?

Dr. *Oates.* His Lordſhip, I ſuppoſe, knows very well where he lived; he lived in *Drury-Lane.*

L. *Staff.* I will ſubmit to any Thing, if ever I ſaw the Man, or heard of him till the Diſcovery of the Plot.

Dr. *Oates.* He came to him by the Name of *Thompſon.*

L. H. S. Your Lordſhip does not obſerve; your Lordſhip ſays that you never knew any *Fenwick*, but your Lordſhip knew one *Thompſon*, and that *Thompſon* was *Fenwick.*

L. *Staff.* I did know one *Thompſon*, but that *Thompſon* I knew was an *Engliſh* Merchant in *Bruſſels*, and not a Jeſuit.

Dr. *Oates.* I can't ſay what my Lord knows, that he knew *Fenwick* to be a Jeſuit, but he knew one *Thompſon*, that was *Fenwick* the Jeſuit.

L. *Staff.* I never heard of the Name till this Plot.

Dr. *Oates.* But, if your Lordſhip pleaſe, I will give you a Reaſon why I believe he knew him to be a Jeſuit, becauſe the Society was very often in their Mouths in their Diſcourſes; which gives me a Ground to believe he knew him to be what he was: But, my Lord, he took his Commiſſion from him.

L. *Staff.* I deſire he may be aſked———

L. H. S. Good my Lord, raiſe your Voice, for I am come half way to hear you.

L. *Staff.* Pray, my Lords, give me leave to aſk him, whether Dr. *Oates* hath not ſaid ſeveral times ſince I was firſt impriſon'd, that he never ſaw me in his Life. I think I was impriſoned the 21ſt of *October* 78.

Dr. *Oates.* My Lords, I never ſaid any ſuch thing.

L. *Staff.* I will willingly die, if ever I ſaw this Doctor in my Life.

Dr. *Oates.* I excuſe my Lord for that, for I was in another Habit, and I went by another Name; and your Lordſhips do remember I came in another Habit to make the firſt Diſcovery.

L. *Staff.* My Lord, I never ſaw his Face, nor know him, nor *Fenwick*, or *Thompſon*, otherwiſe than one *Thompſon*, a Merchant at *Bruſſels.*

Dr. *Oates.* But, my Lords, I have one thing more to ſay of my Lord *Stafford*; my Lord *Stafford* went into *France*, I can't ſay the Year, but I believe it is within the Term of ſix or ſeven, but he went over to *France*; and it did appear by Letters from him, that Signior *Con* was made choice of to heal the Difference between the Regulars and the Seculars; and Signior *Con* did come over in the Year 76, and there did make a kind of a Peace among them, which laſted whilſt *Con* ſtayed here, and *Con* did bring over Meſſages, to which my Lord *Stafford* (if he tells any Truth in his own Letter) did return Anſwers.

L. *Staff.* For the preſent, all I ſay to it is this, I never writ any one Letter this 25 Years, nor had any Correſpondence with any Jeſuit.

L. H. S. I beſeech you, my Lord, make me capable of ſerving your Lordſhip, by letting me hear what you ſay.

L. *Staff.* My Lord, I have a great Cold, and can ſpeak no louder; I deſire to aſk this Witneſs no more Queſtions at preſent, but I ſay, I never writ any Letters to any Prieſt this 25 Years.

Mr. *Foley.* Then, my Lords, if my Lord hath done, we will call another Witneſs, and that is Mr. *Edward Turbervile.* (*Who was ſworn.*)

L. H. S. Look upon the Priſoner. Do you know my Lord *Stafford?*

Mr. *Tur.* Yes, my Lord.

L. H. S. Raiſe your Voice, and ſpeak deliberately.

Mr. *Treby.* Give an account of your Knowledge, and uſe your own Method.

Mr. *Tur.* My Lords, in the Year 1675 I was perſuaded by my Lady *Powis*, and one *Morgan* that was Confeſſor to the Family, to go to *Doway*, in order to take upon me the Frier's Habit. When I came there, inſtead of Religion, I found nothing but Hypocriſy and Villainy among them, and quickly grew weary of ſtaying there, and with much difficulty I eſcaped thence to go for *England:* When I came into *England*, I did think that my Friends would look unkindly upon me, becauſe I refuſed to live in that Way that they propoſed to me to live in. I uſed all the Means I could to have them reconcil'd, and made Application to them, that ſince I could not bear with the Life they would have had me lived in, they would contrive ſome Way for me, being a younger Brother, that I might live in the World; but they were ſo averſe and inveterate againſt me, that they told me, inſtead of doing any thing for me, they would do me all the Miſchief and Prejudice they could; and having lived all my Time among them, I thought the World would receive a Character of me from them who were my Relations, as they would pleaſe to repreſent it. So having no hopes in *England*, I took a Reſolution to go into *France*, where I had a Brother that was a *Benedictine* Monk: And I hoped that he being in good Repute amongſt them, might be able to do me ſome Service there. When I came to *Paris*, my Brother uſed all the Endeavours imaginable to get me to be of that Order; but I having ſo ill a Conceit and Opinion of the Order that I was in before, and thinking all the reſt were the ſame, I was unwilling at all to enter into it. And after I ſtaid there a while, I reſolved to come over into *England.* My Brother uſed all the means he could for my Accommodation, and recommended me to this noble Lord, the Priſoner at the Bar, who lodged then at a Corner-Houſe in a Street which, as I remember, bears the Name of *La Rue de Beaufort*, where I was ſeveral times with him, in order to come over with him in the Yacht for *England.* After I had been there for a Fortnight with this Lord, he underſtanding my Condition, by my Brother, and by the other Fathers of that Convent, and imagining I was a fit Inſtrument to be employ'd on ſuch an Occaſion, propos'd to me a Way, whereby, as he ſaid, I might not only retrieve my Reputation with my Relations, but alſo make my ſelf a very happy Man: And after having exacted from me all the Obligations of Secrecy which I could give him, he at length told me in direct Terms, it was to take away the Life of the King of *England*, who was an Heretick, and conſequently a Rebel againſt God Almighty. I looked upon it as an extraordinary Attempt, and deſired time to conſider of it before I would undertake it. And I gave him this Anſwer, I would give him my Reſolution at *Diep*, where we were to go on board for *England.* And when I came to take my leave of this noble Lord at the Bar, he was ſitting upon the Bench, and he was troubled with the Gout in his Foot at that time. And he told me he had ſome Buſineſs to go to *Verſailles*, and that he ſhould not be in ſix or ſeven Days at *Diep*, where I was to wait for him. After a while, I received a Letter at *Diep* from his Lordſhip, wherein he writ me word, that he had altered his Reſolution, and would go by the way of *Calais*, and that I ſhould haſten to wait on his Lordſhip at *London.* I have one thing more to obſerve to your Lordſhips: When I got paſſage from *Diep*, in a Fiſher-boat for *England*, I never came near my Lord *Stafford*, becauſe being not willing to undertake his Propoſal, I thought my ſelf not ſafe, even from my own Relations; and therefore I made my Applications to the Duke of *Monmouth*, and his Grace was pleaſed by Letter to recommend me into the *French* Service, and by that means I avoided his Lordſhip's further Importunity.

L. H. S. You ſay, my Lord did propoſe to you the killing of the King; did he plainly make the Propoſal in direct Terms to kill the King?

Mr. *Tur.* Yes, he did, my Lord.

L. H. S. What did he offer you to do it?

Mr. *Tur.* Nothing, for I would not accept of it. I told him it was a Matter of great Concernment, and I ought to conſider of it; and I took time to think of it, and would give him my Anſwer at *Diep*, which he came not to; and ſo there was an end of it.

L. H. S. What Engagements of Secrecy had you given my Lord, before he open'd himſelf ſo plainly to you?

Mr. *Tur.* I gave my Lord my Word and my Promiſe, that I would not diſcover it to any Perſon directly or indirectly; my Lord had nothing of an Oath from me.

L. H. S. Will you aſk him any more Queſtions, Gentlemen?

Sir *Will. Jones.* No, my Lords.

L. H. S. Will your Lordſhip aſk him any Queſtions, my Lord *Stafford?*

L. *Staff.* My Lord, I never ſaw the Man before in my Life. I will aſk him one Queſtion, ſince he hath been pleaſed to ſwear againſt me.

Mr. *Tur.* My Lords, I had no Reaſon but the Truth to do it; for I never received any Injury from his Lordſhip in my Life.

L. *Staff.* It ſeems I had ill Luck to chuſe this Man for an Attempt to kill the King, who was ſuch a Coward he ran away from his Colours, and was to have been ſhot to death.

Mr. *Tur.* Aſk the Duke of *Monmouth* what Character he received of me.

L. *Staff.* He ſays, in the Year 75 he went from *London* to *Doway*, and ſtaid ſome time there, and then came back to *England*; I beſeech your Lordſhips to aſk him what time he went back to *Paris.*

L. H. S. What time was it you went back to *Paris?*

Mr. *Tur.* Truly, my Lord, I cannot be punctual to a Fortnight, but I believe it was the Beginning of *June.*

L. H. S. What Year?

Mr. *Tur.* 75.

L. *Staff.* My Lords, I would know who recommended him to me to go over with me into *England?*

L. H. S. Who recommended you to my Lord *Stafford* to go into *England?*

Mr. *Tur.* My Lords, it was Father *Sherborn*, who was then Prior of the *Benedictine* Monks in *Paris*, and father *Nelſon*, Sub-Prior of thoſe Monks, and my Brother, who is a Monk in the ſame Convent.

L. H. S. He ſays, that there were three Perſons that recommended him to your Lordſhip.

L. *Staff.* I never ſaw them in my Life.

Mr. *Tur.* Your Lordſhip, that ſays I was a Coward, and run away from my Colours, will ſay any thing.

L. *Staff.* I not only ſay it, but will prove it by two Witneſſes.

Mr. *Tur.* Do it if you can.

L. *Staff.* He ſays, in the beginning of *June* 75 he went into *France.* I deſire to know of him, when was it he ſpoke to me?

Mr. *Tur.* In *November* 75.

L. *Staff.* He ſays in *November.*

Mr. *Tur.* Yes, my Lord, about the Beginning of *November.*

L. *Staff.* I beſeech your Lordſhip, where was it he ſpoke to me?

L. H. S. Turbervile, where was it you ſpoke to my Lord?

Mr. *Tur.* In *Paris.*

L. *Staff.* Whereabouts in *Paris?*

Mr. *Tur.* It was the Corner-Houſe of the Street, which Street faces *Luxenburgh*-Houſe; the Prince of *Conde* lodges on the right hand in that Street, I take it to be ſo, and you lodged at the Corner-Houſe; I think the Name of the Street was *La Rue de Beaufort.*

L. *Staff.* Which if the Prince of *Conde* did——I will ſay no more.

Mr. *Tur.* I cannot be upon my Oath in ſuch Caſes, but I think he does, I take it ſo.

L. *Staff.* He ſays he was with me a Fortnight, what does he mean?

Mr. *Tur.* I came to my Lord ſeveral times in the Space of a Fortnight.

L. *Staff.* I deſire to know who brought him to me?

Mr. *Tur.* Father *Sherborn*, Father *Nelſon*, and my Brother Father *Anthony Turbervile*; and ſometimes I came alone.

L. H. S. He ſays, thoſe three Fathers recommended him to your Lordſhip, and he came himſelf ſeveral times.

Mr. *Tur.* Yes, my Lords, it is true.

L. *Staff.* I beſeech your Lordſhips, did he come directly to my Chamber, or where?

Mr. *Tur.* Sometimes to my Lord's Chamber, and at other times I met him in a lower Room.

L. *Staff.* It concerns me much, my Lords; and tho' they be fooliſh Queſtions, yet I hope your Lordſhips will pardon me if I aſk them. Where was this Diſcourſe about killing the King?

L. H. S. Was this Diſcourſe in the Chamber, or in the lower Room?

Mr. *Tur.* In the lower Room.

L. *Staff.* He ſays, I think, that he hath been in my Chamber.

L. H. S. Have you been in my Lord's Chamber as well as in the lower Room?

Mr. *Tur.* Yes, my Lords, I have.

L. *Staff.* What kind of Room is it?

Mr. *Tur.* I can't remember that.

L. *Staff.* No, I dare ſwear you can't.

Mr. *Tur.* I cannot tell the Particulars; what Stools and Chairs were in the Room.

L. *Staff.* My Lords, I have no more to ſay to him at preſent.

L. H. S. Mr. *Turbervile*, how long have you been in *England?*

Mr. *Tur.* I cannot anſwer punctually; I have been in *England* near four Years.

L. H. S. How came it to paſs that you never diſcovered this ſooner?

Mr. *Tur.* I had no Faith to believe that I ſhould be ſafe if I did it, but my Brains might be knocked out; and that kept me off from doing that Service which I might be better able to do, if I did defer it.

L. H. S. How come you to diſcover it now?

Mr. *Tur.* The King's Proclamation, and ſome Friends that have perſuaded me that I may do it with Safety, who will give your Lordſhips an account of it.

L. Staff. I deſire he may attend when I make my Defence.

Mr. *Tur.* Yes, I ſhall: But I am ſorry his Lordſhip hath ſo ill a Memory as to what paſſed between us. I ſhall be very unwilling to do his Lordſhip or any Body elſe any Injury, but I muſt tell the Truth.

Sir *Will. Jones.* My Lords, we ſhall call no more Witneſſes, unleſs my Lord, the Priſoner, give us an Occaſion. If he ſhall make any Objections to any of our Witneſſes, I hope we ſhall have Liberty to call Witneſſes to ſupport them; but we give over at preſent, and expect his Lordſhip's Anſwer.

L. Staff. May it pleaſe your Lordſhips, I beſeech your Lordſhips, before I ſay any thing, that I may know if they have any more Witneſſes to examine.

L. H. S. They ſay they will call no more Evidence, unleſs your Lordſhip's Anſwer do give them Occaſion to fortify their Witneſſes you except againſt.

L. Staff. My Lords, It is now about two Years that I have had the Misfortune to be accuſed of this deteſtable Treaſon. I have been ſeveral times in theſe two Years a cloſe Priſoner, that my Wife and Children were deny'd to come near me; and hardly a Servant permitted to aſk how I did, but at the Door of my Priſon. My Lords, this was a great and an heavy Affliction to me; and, my Lords, it was ſo great an Affliction to me, that truly I did not know how to bear it. 'Tis true, I had that Comfort, that I did hope I ſhould ſoon come to my Trial, and before your Lordſhips make my Innocency appear. In order to which, I did all I could, having heard this Hall was provided for it; and I did expect in a very few Days to clear myſelf before your Lordſhips and all the World. When I had ſettled my Mind, and did not foreſee any greater Affliction that could befal me, I had on the ſudden, by ſome of my Friends, a ſad Meſſage ſent me, That the Houſe of Commons had impeached me of High Treaſon. My Lords, I looked upon the Houſe of Commons then (as I do now) as the great Repreſentative Body of the Commons of *England*; and I confeſs, my Lords, to be accuſed by them was a Load, eſpecially being added to what lay before upon me, more eſpecially to my weak Body and weaker Mind, that I was ſo afflicted with it, and have ſo continued, that I am ſcarce yet able to bear up under it: for I look upon the Houſe of Commons as the great and worthy Patriots of this Kingdom; I ever held them ſo, and I hold them ſo ſtill. My Lords, theſe Things being ſuch great Afflictions to me, and ſome other Accidents, which I ſhall not trouble your Lordſhips with the telling you of, have ſo much diſorder'd my Senſe and Reaſon (which before was little), that I ſcarce know how to clear myſelf to your Lordſhips, as I ought to do; or which way to go about the doing of it; therefore I do with all Humility beg your Lordſhips' Pardon if I ſay any Thing that may give an Offence, or urge that which may not be to the Purpoſe. All which I deſire you would be pleaſed to attribute to the true Cauſe, my want of Underſtanding, not of Innocency, or a Deſire to make it appear.

My Lords, theſe Gentlemen the Managers of the Houſe of Commons, who are great and able Men, ſome I am ſure, if not all of them very well read, and have Underſtanding in the Law, have ſet forth to your Lordſhips Treaſon in an horrid Shape; but I confeſs, my Lords, if they had made it never ſo much worſe, it cannot be ſo horrid as I have often fancied it myſelf: For, my Lords, I do, and did ever hold Treaſon to be the greateſt Sin in the World, and I cannot uſe Words enough to expreſs it; and therefore I hope you will give me leave to clear myſelf of it, and I ſhall give you one Notion of it, which I heard at your Lordſhips Bar ſome Years ago, where you were pleaſed to hear ſeveral People of ſeveral Perſuaſions give you ſome Reaſon why Liberty of Conſcience ſhould be allowed them. And I remember one of them, an Anabaptiſt, I think, did tell you, That they held Treaſon to be the Sin of Witchcraft, and ſo do I. And next to Treaſon, I hold Murder to be the worſt Sin. But the Murder of the King I look'd upon to be ſo above all others, that it is not to be expreſs'd by Words.

My Lords, I have heard very much of a thing that was nam'd by theſe Gentlemen of the Houſe of Commons, and that very properly too, to wit, of the Gunpowder Treaſon. My Lords, I was not born then, but ſome Years after I heard very much Diſcourſe of it, and very various Reports; and I made a particular Enquiry, perhaps more than any one Perſon did elſe, both of my Father who was alive then, and my Uncle, and others; and I am ſatisfied, and do clearly believe, by the Evidence I have received, that that Thing called the Gunpowder-Treaſon, was a wicked and horrid Deſign (among the reſt) of ſome of the Jeſuits: and I think the Malice of the Jeſuits, or the Wit of Man, cannot offer an Excuſe for it, it was ſo execrable a thing. Beſides, my Lords, I was acquainted with one of them that was concerned in it, who had his Pardon, and lived many Years after: I diſcourſed with him about it, and he confeſſed it, and ſaid, he was ſorry for it then; and I here declare to your Lordſhips, that I never heard any one of the Church of *Rome* ſpeak a good word of it: it was ſo horrid a thing, that it cannot be expreſſed or excuſed. And God Almighty ſhewed his Judgments upon them for their Wickedneſs; for hardly any of the Perſons, or their Poſterity, are left, that were concerned in it, and even a very great Family too, that had collaterally ſomething to do in it, is in the Male Line extinct totally; and I do think God Almighty always ſhews his Judgments upon ſuch vile Actions. I have been told, all thoſe Perſons that were engaged in this wicked Act, were all heartily ſorry for it, and repented of it before they died, without which I am ſure there is no Salvation. And therefore I think it was not the Intereſt of Religion, but a private Intereſt put them upon it.

My Lords, as to the Doctrine of King-killing, and abſolving Perſons from their Allegiance, I cannot ſay the Church of *Rome* does not hold it; I never heard it did hold it; it may be it does, it may be not: I ſay not one Thing or other: But, my Lords, there was an *Engliſh* College of Prieſts at *Rheims*, that tranſlated the Bible, and printed it with Authority, according to their Tranſlation; and in their Annotations upon the 14th Chapter to the *Romans*, they do declare their Diſlike and Deteſtation of that Opinion. They ſay, all Subjects ought to obey their Kings, as the primitive Chriſtians did the Heathen Princes of the Empire; and the learned Doctors of the College at *Sorbonne*, did upon an Occaſion adminiſtred to them about that Opinion, declare the Miſtakes that were in it, and own'd it to be a damnable Principle. My Lords, I have an authentical Copy of that Decree of the *Sorbonniſts*, whether it be here or no, I can't tell——Yes, here it is, which does declare that a damnable Poſition; and there is lately come out a Book, written by a Prieſt of the Church of *Rome*, tried for his Life for being in the Plot, but acquitted of that, in which he ſays, That that Opinion of killing Kings is damnable and heretical, and declar'd ſo by the Council of *Trent*.

My Lords, this gives me Occaſion to believe that the Church of *Rome* holds it not. I do not ſay that it does not; but ſome particular Perſons do abhor it, which are great in that Church, and which weighs far with me: but that which furthermoſt of all confirms me in my ill Opinion of it, is the Words of our Saviour, when not only he commands us to give unto *Cæſar* the Things that are *Cæſar*'s, but aſſerts our Obedience to our Governors in many other Paſſages of the Holy Scripture; and what I find there, the whole World is not able to alter my Opinion of.

I do aſſure your Lordſhips in the Preſence of Almighty God, that I do extremely admire when I hear of any thing like it; and I did read with great Horror what I found the other Day in the *Gazette*, of ſome imprudent People in *Scotland*, and of their wicked Principles and Practices.

My Lords, I do in the Preſence of Almighty God, who knows and ſees all Things, and of his Angels which are continually about us, and of your Lordſhips who are my Peers and Judges, ſolemnly profeſs and declare, that I hate and deteſt any ſuch Opinion, as I do Damnation to myſelf. And I cannot be more deſirous of Salvation to my ſelf, than I am cordial in hating this Opinion.

My Lords, I know no Perſon upon Earth, nor all the Perſons in the World put together, nor all the Power they have, can in the leaſt abſolve me of my Allegiance. And I do acknowledge the King is my Sovereign, and I ought to obey him as far as the Law of the Land obliges any Subject of his to obey him: Whether I have taken the Oath of Allegiance, I appeal to your Lordſhips to be my Witneſſes; and if I did not take it a thouſand times for my Allegiance to the King, if required, I ſhould think I deſerved a thouſand Deaths, and all the Torments in the World for refuſing it.

My Lords, theſe Gentlemen here did begin their Charge (Serjeant *Maynard*, and Sir *Francis Winnington*) with telling your Lordſhips there was an horrid Deſign to murder the King, to alter the Government, and introduce the Popiſh Religion. This, they ſay, was engag'd in by the *Roman* Catholicks; that all the Church of *Rome* were the Contrivers of it; for they tell your Lordſhips, the whole Body hath been engag'd in it, and they have given you many Proofs by Witneſſes examined the firſt Day, of a general Plot: what Credit you will give to them, I leave to your Lordſhips in the end of the Caſe; but ſtill they ſaid it was the Body of the *Roman* Catholicks in *England*, or the Papiſts, or what they call them, that were the Plotters in this Deſign. But I beſeech your Lordſhips, how am I concerned in it? for I muſt ſay to your Lordſhips, they have not offer'd one Proof that I am of that Religion. So that tho' any of you ſhould have ſeen me at the Exerciſes of that Religion, or otherwiſe know it of your ſelves, yet if there be no Proof judicially before you, you are not to take notice of it. I have heard, if a Man be accuſed of a Crime, and be to be tried, and no Evidence come in; if every Man of the Jury were ſure that the Fact was done, yet they muſt go upon the Evidence produced to them, and not upon their own Knowledge. So then, no Evidence being produced before your Lordſhips, about my being a Papiſt, you are not to take me for ſuch a one. But, my Lords, if I were of that Church, and that were never ſo well prov'd too, I hope I have an Advantage in it, that I have kept myſelf from being poiſon'd with ſo wicked a Principle, or engaged with the reſt in ſo ill a Thing.

My Lords, I am here accuſed of having endeavoured to kill the King. I find by the Law, upon reading Sir *Edward Coke*, ſince my Impriſonment, That all Accuſations of Treaſon ought to be accompanied with Circumſtances antecedent, concomitant, and ſubſequent; but I conceive, my Lords, there is no Tittle of any ſuch Thing prov'd againſt me. The whole Compaſs of my Life, from my Infancy, hath been clear otherwiſe. In the beginning of the late unhappy Times, the late King, of happy and glorious Memory, did me the honour to make me a Peer; and thinking that my Preſence might rather prejudice him than ſerve him, my Wife and I ſettled at *Antwerp* when the War begun, where I might have liv'd, tho' obſcurely, yet ſafely; but I was not ſatisfied in my Conſcience to ſee my King in ſo much Diſorder, and I not endeavour to ſerve him what I could, to free him from his Troubles. And I did come into *England*, and ſerved his Majeſty faithfully and loyally, as long as he lived. And ſome of your Lordſhips here know, whether I did not wait upon the now King in his Exile, from which he was happily reſtor'd; which ſhews I had no ill Intention then.

My Lords, I hope this I have ſaid does ſhew, that my Life hath given no Countenance to this Accuſation, but clear contrary to what theſe (I hope I may call them ſo, and I doubt not to prove them ſo) perjur'd Villains ſay againſt me.

My Lords, after I had this Misfortune to be thus accuſed, about a Month or ſix Weeks after, your Lordſhips were pleaſed to ſend two Members of this honourable Body to me, (I do not ſee them at preſent here) to examine me about the Plot: (they were my Lord of *Bridgewater*, and my Lord of *Eſſex*) if they be here, I appeal to them what I did ſay. Theſe two, after they had examin'd me, told me, they did believe, and could almoſt aſſure me, that if I would confeſs my Fault, and let them know the Particulars of it, your Lordſhips would intercede with the King for my Pardon; but I then, as I ought, aſſerted my own Innocency. Not long after, the King, out of his Grace and Goodneſs to me, ſent ſix of the Council to the *Tower*, to offer me, That tho' I was never ſo guilty, yet if I would confeſs, I ſhould have my Pardon. I did then conſider with myſelf; I could not imagine what Ground there was to believe your Lordſhips could have Evidence of what there was not, to bring me in Guilty; and thereupon I was ſo far from being able to make a Diſcovery, that I could not invent any Thing that might ſave my Life, if I would.

My Lords, I was ſeven Days in the Country after I heard of the Plot; if I had known myſelf guilty, I ſhould ſurely have run away. As I came to *London*, when I was at *Litchfield*, there met me two of my Lords; they told me, and ſo did a Gentleman of the Houſe of Commons, how much there was in the Plot, which, if I had had a Hand in it, would certainly make me fly for it. I have ever heard, when a Man is accuſed or ſuſpected of a Crime, Flight is a great Sign of Guilt; and that it is often aſked of the Jury, though there be no certain poſitive Evidence of the Fact, whether a Man fled or no? As that is a Sign of Guilt, ſo remaining is a Sign of Innocency. If then after Notice I come to Town, and ſuffer myſelf to be taken; if after Impriſonment and Accuſation, I refuſe my Pardon, and yet had been guilty, I ought to die for my Folly as well as my Crime.

My Lords, 'Tis a great Offence to commit Treaſon, and a great Addition to continue obſtinate, when upon Acknowledgment a Man can ſave his Life; nay, my Lords, if I ſhould have refuſed theſe Offers, and yet known myſelf guilty, I had at the ſame time been guilty of one of the greateſt Sins in the World, as being the Cauſe of my own Death. And as I hold, next to Treaſon, Murder the greateſt Sin, ſo I hold of all Murders Self-murder to be the greateſt; nay, I do not think any Man living can pardon that Sin of Murder. And I do profeſs to your Lordſhips, in the Preſence of Almighty God, that if I could immediately, by the Death of this impudent Fellow *Dugdale*, who hath done me ſo much Wrong, make myſelf the greateſt Man in the World that is or ever was, I profeſs before God I would not. I cannot ſay my Charity is ſo great, but that I ſhould be glad to ſee him ſuffer thoſe Puniſhments the Law can inflict upon him for his Crimes; but his Death I would not have. Blood is ſo great a Crime, and I know every Man is careful of giving his Voice in the Caſe of Blood, I ſhould be very cautious myſelf; and if I were a Judge, I would rather ſave twenty Guilty, than condemn one Innocent. I bleſs God, I have not the leaſt Deſire of the Death of any Man, and would not for all the World have innocent Blood lie upon me.

I beg your Lordſhips Pardon that I have troubled you thus long: I ſhall now, as well as I can, apply myſelf to my particular Defence. I do, my Lords, before I can go on to it, deſire I may have ſuch Depoſitions as have been taken againſt me, and the Liberty to look upon your Journal-Book when I have Occaſion. I do particularly deſire the Depoſitions of *Oates*, upon which I was committed by my Lord Chief Juſtice; the two Depoſitions of *Stephen Dugdale*, taken at *Stafford* before two Juſtices of the Peace, Mr. *Lane* and Mr. *Vernon*; I deſire the Depoſitions taken before, I think it was Mr. *Warcup* and Sir *William Poultney*, or ſome other two Juſtices, which was made by *Turbervile*; and then I ſhall compare their Teſtimonies together, and I hope ſhall give you a clear Account that they are perjured Perſons. How without theſe to go on to my juſt Defence, I cannot well tell.

L. H. S. What do you ſay to it, Gentlemen? You hear what my Lord prays.

Sir *F. Win.* The Witneſſes are here, and have been heard *viva voce*: As we cannot uſe any of the Depoſitions of which he ſpeaks, ſo no more can they be uſed by him.

L. H. S. If I underſtand my Lord aright, this is the Thing he deſires: Says he, You have brought Witneſſes againſt me *viva voce*; they have been examined here, and they have been examined elſewhere, and their Depoſitions are upon Record: I deſire to confront what they have ſaid here, with what they have ſaid contrary in other Places.

Mr. Serj. *Mayn.* If there be any Thing expreſſed by my Lord, wherein they have contradicted themſelves, and produce that Depoſition, he may do that; but to deſire to have all the Depoſitions that have been made by our Witneſſes, is a ſtrange Requeſt. When there is Occaſion to uſe them upon any particular Point, he may produce them if he can.

L. H. S. Can you object why my Lord ſhould not have Copies of any Thing that is upon the Journal and Depoſitions that are ſworn before a Magiſtrate, which may be of Uſe to him?

Sir *W. Jones.* My Lords, We do not object againſt it; but, my Lords, I think it is out of Time to deſire it. What was ſworn, and is entered in your Lordſhips Journal, was ſworn above two Years ſince. My Lord, or any Man elſe, might repair to them; they are Matters of Record, and for aught we know were never denied to any, eſpecially if they deſired it in the Houſe; but after two Years Time, and after three Weeks Time given to prepare for this Trial, when my Lord could not but know what Witneſſes would be examined before your Lordſhips; for him to come now and deſire ſuch and ſuch Depoſitions may be produced, which if by Law he might be allowed to do, he might have done before, is to no other Purpoſe, under Favour, but to gain Time, and cauſe our Evidence to be forgotten; and therefore we moſt humbly pray it may not be admitted: My Lords, I think it is an unuſual Thing. My Lords, the Judges are near your Lordſhips, I ſuppoſe they will inform your Lordſhips. If a Man be tried at the Aſſizes, for him to deſire a Copy of the Informations remaining in Court, by which he may except againſt the Witneſſes, is what the Court does not uſe to grant. But if your Lordſhips Proceedings vary from the common Proceedings of other Courts, then I reſort to what I ſaid before, Whether your Lordſhips will think this a proper Time, when he might have had it in the Parliament that was firſt diſſolved, and then in the Parliament that was laſt diſſolved. Now to deſire thoſe Copies at this Time, is to put off the Cauſe for that which perhaps he cannot be furniſhed with in a Day or two.

Sir *F. Win.* I would add but one Word, if your Lordſhip pleaſe to give me Leave. My Lords, You have the learned Judges near you, who will inform you, whether ever, when a Man was accuſed of a capital Offence, and the Evidence againſt him had been fully heard by the Court and by himſelf, he was admitted to require from the Proſecutors the Copies of Examinations formerly taken before other Perſons. Does my Lord intend to have time to peruſe thoſe Examinations, and to have the Copies of them, that he may conſult in private with his Council to find out Exceptions, and with his Witneſſes to make them good? My Lords, I muſt ſay, that in my ſhort Experience (and I have attended a conſiderable Time upon the greateſt Court for Trial of Offenders), I never heard ſuch a Thing aſked by a Priſoner, either at the Bar of the *King*'s-*Bench*, or at the Aſſizes. I ſpeak with all the Tenderneſs imaginable, becauſe we are in a Matter of Blood, and God forbid but the Lord at the Bar ſhould have true and equal Juſtice done him! But if I take my Lord right, this ſeems but an Artifice to delay the Trial, of which it is our Duty to be very cautious. Indeed I have ſeen the Judges, upon Trial of a Criminal, call for the Depoſitions or Informations from the Clerk, or the Juſtice of the Peace who took them, and cauſed them to be read; but for a Priſoner to call for Examinations at the Bar from the Proſecutors, *&* *ex debita Juſtitia*, to demand them, is a Thing, which, as it never has been, ſo I think will not be admitted at this Time, eſpecially when we are now almoſt at the End of the Cauſe. And with all Modeſty and Submiſſion to your Lordſhips, I look upon it as a very ſtrange and unreaſonable Demand.

L. H. S. My Lord *Stafford*, What is the Reaſon your Lordſhip had not all this while Copies of the Journal, which is that you now aſk?

L. *Staff.* I ſhall not undertake that I am able to give your Lordſhips a Reaſon for it, becauſe I think, wherein I have been miſtaken as to Point of Time, your Lordſhips will not tie me up to that. But this Gentleman that ſpoke laſt is not acquainted with me, and does not know me; for I have no Deſire to go back, or to put off this Trial: But if it cannot be done to Day, I am as guilty To-morrow as I am To-day; and I deſire no more than what he ſays hath been done in the like Caſes. I do deſire, my Lord, the Informations and Depoſitions of *Dugdale*, *Oates* and *Turbervile* may be produced and read, and I will make Obſervations upon them in my Defence. I deſire thoſe Affidavits may be brought.

L. H. S. Affidavits taken when and where?

L. *Staff.* Of Dr. *Oates*, that was read in your Lordſhips Houſe; I heard it.

L. H. S. Let us underſtand your Lordſhip's Demands, that when my Lords are withdrawn, I may know what Queſtions to put to them, and acquaint them with your Deſires: The one is the Journal of the Lords Houſe, which is always before their Lordſhips, and you might have had Copies long ſince. The next Thing you aſk is an Affidavit of *Dugdale*; if this Affidavit is entered into the Journal, that ſupplies your Demands; if it be not entered there, where ſhall we find it?

L. *Staff.* I do not know.

L. H. S. Does your Lordſhip think all this Matter muſt ſtay till we can find a looſe Affidavit, that we know not where 'tis filed?

L. *Staff.* I know it was before the Council, and I believe my Accuſers have it; I deſire the Gentlemen of the Houſe of Commons may produce it.

Sir *J. Trevor.* I have ſeen none, nor have none.

L. *Staff.* The one was taken the 24th of *December* this Time two Year, and the other the 29th.

L. H. S. My Lord, Will your Lordſhip give me Leave to tell you, you ought to be provided with ſome particular Exception, and not to make your Demand in general. If your Lordſhip will ſay, *Dugdale* did ſwear ſuch and ſuch Things, which are contrary to what he now affirms, we know what to make of it; but to hunt after an Affidavit that we know not where to find, to pick up ſomething out of it, that I do not underſtand.

L. *Staff.* I appeal to my Lord *Eſſex*, and my Lord *Bridgewater*, whether they did not examine me the firſt Time upon one or two Affidavits of *Dugdale.*

L. H. S. Suppoſe it be not to be found, my Lord?

L. *Staff.* Then I muſt have Patience, and ſubmit,

L. H. S. Can you tell wherein he ſwore quite blank contrary to what he ſwears now?

L. *Staff.* My Lord, I conceive it was never denied before; but your Lordſhips may do what you pleaſe.

L. H. S. Well, my Lord, let us go on to the next. The Affidavits of *Dugdale*, if they be entered on the Journal, may be ready; if not, then I ſhall acquaint their Lordſhips, and they will direct what is fit in the Caſe.

L. *Staff.* Then there is the Affidavit of *Oates* before my Lord Chief Juſtice, upon which I was committed; the next Day, which was *Friday*, it was read in your Lordſhips Houſe.

L. H. S. I believe that it is entered upon the Journal, and ſo will be ready to be uſed.

L. *Staff.* I do hope to make it evidently appear thereby, that he is forſworn. I deſire two Affidavits more, that were taken before the Juſtices of the Peace of *Middleſex*, who examined Mr. *Turbervile* twice.

L. H. S. What Juſtices of the Peace?

L. *Staff.* Mr. *Warcup*, Sir *William Poultney*, and Sir *Thomas Stringer*. I deſire I may not be miſunderſtood; I do not deſire to have them to inſtruct my Council, or adviſe with them upon them, but I cannot make my Defence without them.

L. H. S. Thoſe are voluntary extrajudicial Affidavits, that no body is bound to keep.

L. *Staff.* They were ſpoken of in the Votes of the Houſe of Commons.

L. H. S. What ſay you, Gentlemen, to it?

Sir *F. Win.* My Lords, becauſe my Lord at the Bar is pleaſed to inſinuate, as if we knew where thoſe Affidavits are which he ſeems to deſire, and becauſe your Lordſhip was pleaſed to ſay, that the Commons in Parliament are the Grand-Jury of the Kingdom, I deſire to ſay one Thing, That certainly it will not be required from us to produce and publiſh the ſeveral Facts and Circumſtances that induced us to impeach him, if it ſhall be demanded by the Priſoner at the Bar.

L. H. S. I wiſh you would anſwer the Queſtion, and not argue upon it, whether thoſe Affidavits of *Turbervile* may not be produced; for 'tis my Lord's Exception againſt your Witneſs, that he ſwears ſeveral Ways; and by thoſe Affidavits of *Turbervile*, he intends to diſprove him in what he hath ſaid To-day.

Sir *F. Win.* My Lords, The Houſe of Commons never adminiſter an Oath; and therefore it is not to be ſaid to us, but my Lord *Stafford* muſt go to the particular Offices where they are to be found.

L. H. S. I do not aſk you where my Lord ſhould find them, but whether if they can be found, you can object any Thing why they ſhould not be produced and read?

Mr. Serj. *Mayn.* When they are produced, we will give Anſwer.

L. *Staff.* My Lords, I am informed this is the Subſtance of the Affidavit, That *Turbervile* did ſwear before two Juſtices of the Peace, whether they be of the Houſe of Commons, or no, I can't tell, That he ſpake with me at *Doway*, and in *Paris*, in the Years 73 and 76, and now he ſays 72 and 75, I am informed, my Lords: And I appeal to the Houſe of Commons, they are all Perſons of Honour and Worth, (if my Information be miſtaken, I beg their Pardon and yours for't) whether he did not mend it after he had ſworn it.

L. H. S. Are theſe all you do demand?

L. *Staff.* Yes, my Lords. Whether this was true or no, I don't know; it is what I have been told; I appeal to the Houſe of Commons, (who are all worthy Perſons, I do not believe I have an Enemy among them,) they know whether I ſpeak true or no.

L. H. S. When will your Lordſhip be ready to make your Defence?

L. *Staff.* As ſoon as ever I have them, I will not ſtay a Minute, a Moment, an Inſtant; I deſire not to ſhew my Council, nor any one, for my Trial is a thing that I have long deſired; therefore I would not be miſtaken, as if I would put off the Cauſe. I am innocent, and ſhall be ſo while I live, and hope I ſhall make it appear ſo. I beg, if this be a Matter of Law, whether I may have them or not, that my Council be heard to it.

L. H. S. This is a Matter of Fact.

L. *Staff.* I inſiſt upon it as things without which I cannot make my Defence: I am innocent, and I ſuppoſe not one of the Houſe of Commons, nor one of your Lordſhips, will debar me of that by which I may make my Innocency appear.

L. H. S. You cannot know my Lords Pleaſure till they are withdrawn.

Sir *W. Jones.* Before your Lordſhips withdraw, I hope you will pleaſe to hear us a few Words, which we think may be for the Service of this Court. My Lords, what Evidence is before your Lordſhips, 'tis in your Lordſhips Pleaſure what of that you ſhall pleaſe to communicate to my Lord *Stafford*; but for this Evidence he ſpeaks of, as remaining in our Hands, and which he takes upon himſelf to appeal to us for, admits of another Conſideration. My Lords, if we were conſcious of any thing in theſe Affidavits that were for my Lord's Advantage, and knew where they were, we would readily produce them; but for my ſelf, I muſt anſwer, and I think my Companions will ſay ſo too, that we do not know where theſe Affidavits are, nor of any Variation in thoſe Affidavits from what is now ſworn; but whatever they were, they were taken for the Information of the Houſe of Commons, who are the Proſecutors in this Cauſe, and who are no Judges. Now, if my Lord will bring any Witneſs that will ſay this Witneſs of ours did before a Juſtice of Peace depoſe ſo and ſo, and ſays the contrary now, there might be then juſt Reaſons to look after theſe Affidavits, and to have them produced; but upon a bare Imagination that there is a Variance, where in truth there is none, and the Truth may otherwiſe be known; to deſire that theſe Affidavits that never were before you ſhould be produc'd, whether ſuch a Suggeſtion is to be admitted, I humbly ſubmit to your Lordſhips Conſideration.

L. *Staff.* My Lords, if theſe Gentlemen that are the Managers for the Houſe of Commons will aver to your Lordſhips, that there is no Variation in them, I will ſubmit to them, and be quiet; if they will ſay it was not debated in the Houſe, whether he ſhould amend or no.

L. H. S. Look you, he puts it upon you ſo far, Gentlemen, that if you will take it upon you to aver that there is no Variation between thoſe Affidavits upon which you grounded your Impeachment, and the Evidence you have given upon the Trial of your Impeachment, he will not give you the trouble.

L. *Staff.* I beſeech you, let me ſay one Word: My Lords, I have been thus long a Priſoner; I was as far from being proceeded againſt now, as any of the reſt of the Lords in the *Tower*, till *Turbervile* came in with his Diſcovery; and I believe I am now called the ſooner (which I am glad of, and I give the Gentlemen thanks for it) upon the Affidavit of *Turbervile*; I deſire that Affidavit. And though it be true, the Houſe of Commons give no Oath, yet they appointed two Members of the Houſe, that were Juſtices of the Peace of *Middleſex*, to take it upon Oath, and he deſired the next Day to amend it; and I put my ſelf upon them, whether this be not true.

L. H. S. What ſay you, Sir, to it?

Sir *W. Jones.* My Lord, I cannot anſwer, becauſe I don't hear.

L. *Staff.* My Lords, I ſay this, I do obſerve that Mr. *Turbervile* (whoſe Face I never ſaw in my Life that I know of, till to-day, nor never ſpoke a Word to him, and I ſhall prove that no Servant that ever I had ſee him) did depoſe (for the purpoſe) to-day, that he was in the Years 73 and 76 in ſuch and ſuch Places, and that he did ſpeak with me at *Doway* and *Paris*; and to-morrow recollecting his Notes, he found he was miſtaken in his Affidavit that he had made before, and deſired to mend it, and brought it to the Years 72 and 75: There was ſome Debate in the Houſe about it, whether they ſhould permit him to mend it: I appeal to all the Gentlemen, whether it were not ſo.

L. H. S. Your Labour is to have two Affidavits; that you do preſume will do your Buſineſs in order to the finding out a Variety of Time of his being at *Doway* or at *Paris:* That which does preſs your Lordſhip we know in *Turbervile*'s Evidence is, That at *Paris*, in the Room below your Lodging, you encourag'd him to kill the King, and you were to have met him at *Diep* to know his mind, but you came not, and he went away; if you have it in the Affidavit quite contrary to this, you ſay ſomewhat.

L. *Staff.* My Lords, I beſeech you, it preſſes me and every Man in *England*, not to be run down by a Fellow that forſwears himſelf: For him to ſwear one Thing to-day, and another Thing to-morrow, is Perjury.

L. H. S. What ſay you to it, Gentlemen?

Sir *W. Jones.* What was done in the Houſe of Commons, it does not become any of us that are Members to diſcloſe: But I have heard, and will admit it, that in the Depoſitions the Witneſs made before a Juſtice of Peace, there was a Year put down, which he going home, and upon ſight of Letters and Papers finding it to be miſtaken, he comes the next Day, and deſires to alter it: If this be for my Lord's Service, we ſhall grant it.

L. H. S. What ſay you, my Lord, now?

L. *Staff.* I do ſay, my Lord, I am informed by what I have heard curſorily, (for I have not ſeen one of the Houſe of Commons before the Day of my Trial) that though in his ſecond Depoſition he named the Years 72 and 75, yet I can prove him perjured as to what he hath ſworn here to-day.

L. H. S. Since 'tis inſiſted upon, Gentlemen, that there is a Variety in the laſt Depoſition from what he ſwore at firſt, what can you ſay why he ſhould not have the Avail of his Exception?

Sir *Will. Jones.* My Lords, whether your Lordſhips will think fit to conſider by what Ways and Means the Houſe of Commons inform'd themſelves in order to Impeachments, I ſubmit to you; and for thoſe things that ſtill remain in the Hands of the Commons, I ſuppoſe you will be pleaſed to conſider how you can ſend for them to inform you. We would not be miſtaken in the Matter; let not any one that hears us think that we are conſcious there is the leaſt Variation; nay, we are confident, if the thing were produced, it would turn to my Lord's Prejudice; but what is done in this Caſe may be a Precedent for the future, and therefore we cannot, without reſorting to the Houſe, conſent to deliver any thing the Houſe took for their Information. Therefore if your Lordſhips ſtand upon it, and incline to have it done, we muſt reſort to the Houſe to aſk their Leave, whether we ſhall do it or no.

L. H. S. I cannot tell what my Lords will incline to do; but I deſire, when you are gone back, you will conſider how far it will make the Matter eaſy to my Lord.

Sir *Will. Jones.* My Lords, we can give no Anſwer to that till we have attended our Houſe.

Mr. Serj. *Mayn.* I deſire your Lordſhips to conſider what a Piece of Cunning he hath put upon both Houſes, to paſs by his vilifying our Witneſſes, which I may ſay was not comely. But if he makes any Queſtion, it muſt be put to the Houſes upon Suppoſition to be a Queſtion, and ſo he would bring things only to this Iſſue to put off the Cauſe for To-day. He ought to put that which might probably be ſomething of a Queſtion. Let him inſtance in Particulars, and make out his Evidence, not feign things to put off the Cauſe; for aught I ſee 'tis to no other End, and 'tis a Jeſuitical Trick, I think.

L. *Staff.* I feign nothing; I have been told this that I ſpeak here, and I deſire it may be proved.

L. H. S. If you are bound up ſo that you cannot conſent, I can't help it.

Mr. Serj. *Maynard.* Let him put the Fact, my Lords, and not ſuppoſe and imagine Things, and then raiſe Queſtions.

L. H. S. It is uſual in theſe Caſes for the Gentlemen of the Houſe of Commons to ſtay till the Lords are withdrawn, and expect their Lordſhips Reſolution; perhaps they may ſo order it that you need not go back.

Sir *Will. Jones.* I deſire before your Lordſhips withdraw, that it may be taken Notice of by your Lordſhips, that for the Matter of the Variation of the Year, we do admit it. My Lord is not pleas'd to mention any other particular Matter of the Affidavit, but only ſays in general, that it is contrary to what he ſays To-day: If my Lord would tell us wherein, perhaps we ſhould admit it, or anſwer it, or take it into further Conſideration: But to make ſo general an Allegation, and give your Lordſhips no particular Account, we ſubmit whether ſuch a Suggeſtion ought to be regarded.

L. H. S. Is there any further Variation, beſides the Variation of the Year?

L. *Staff.* I cannot ſay there is, my Lord, I do not know it; but I do really believe in my Conſcience there is, from what I have heard; but however, I inſiſt upon it, and demand your Judgment.

Sir *Fr. Win.* My Lords, I humbly deſire one Word as to the Objection that hath been made, that he hath prayed your Lordſhips to grant him the ſight of ſuch and ſuch Papers. The Nature of this Cauſe, my Lords, we know is ſuch, that there was never the like Number of Papers known, as to the general Plot; and my Lord that is the Priſoner at the Bar, may as well demand to-morrow ſuch a particular Paper, and the next Day another, that he hath heard of in the general Plot; and where will the End of this be? So that if the thing be granted upon the Variation of the Time that it was immediately rectified, and he cannot produce any Grounds that may ſatisfy your Lordſhips why he ſhould have that Paper, you may as well ſuffer him to demand any other Paper after, and ſo never end the Cauſe.

L. H. S. Your Lordſhip hath been told, and you ſhall find it, that you ſhall have as fair and equal an Hearing as is poſſible, and nothing ſhall be denied you that is juſt and reaſonable to ſave your Life, or make your Defence. But pray, my Lord, for ſo much as is upon the Journal, which you may reſort unto, you may eaſily know what Anſwer my Lords will give to that; but for this other Thing, if it be only the Variety you alledge of the Time and the Year, and you do deſire it to look for other Exceptions, and you pray the Help of the Lords to ſee ſuch a Paper, that you may make Enquiry after other Varieties, do you think they are to help you to find out Exceptions to the Witneſſes?

L. *Staff.* I do not deſire their Lordſhips to help me to find out Exceptions; but I have told your Lordſhips of one Exception to the Affidavit, which theſe Gentlemen acknowledge to be true; and the other Affidavit is, that he ſwears I ſpoke to him at *Doway* in the Year 72 or 73, which I can diſprove; and then I ſay, he ſwearing ſeveral Things falſe, he is no credible Witneſs.

L. H. S. 'Tis admitted to your Lordſhip that he did miſtake the Time.

L. *Staff.* It is admitted that he ſaid he ſpoke to me at *Doway*.

L. H. S. How very eaſy a Matter were it to expedite this Proceſs, by allowing the Priſoner his Demand in this Particular!

Sir *Will. Jones.* I never ſaw it, and a great many of the Managers ſay they never ſaw it.

L. *Staff.* Theſe Gentlemen ſay, I did it to put off the Cauſe. I am far from it; for tho' I am in a Condition very unfit to manage my Defence, faint and weak with ſpeaking ſo long, and hardly able to ſpeak any more, yet I deſire to finiſh this Night; and if I ſee it now, it will be enough, I ſhall not deſire to have a Copy to adviſe with my Council or any body elſe.

L. H. S. Pray, Gentlemen of the Houſe of Commons, will you obſerve, My Lord, as weary as he is, would make an end of the Matter preſently, if you would but ſend for the Affidavit.

Mr. *Foley.* My Lords, it is not in our hands here; if the Houſe of Commons will order it, it may be done; we cannot order it our ſelves.

Mr. *Powle.* My Lords, this is a Paper that does properly belong to the Houſe; and I do think, that none of us here that are Managers for this Trial, will undertake it ſhall be deliver'd, without reſorting to the Houſe for their Opinion: For tho' I do verily believe, and am fully perſuaded, that what this noble Lord at the Bar does object, will not appear to be ſo; for I think there is not any thing of my Lord *Stafford*'s ſpeaking with this Witneſs at *Doway* mentioned therein; yet how far the Precedents of this may reach in other Caſes, I think is worthy the Conſideration of the Houſe. And we cannot preſume to offer any thing in it to your Lordſhips, until you be pleaſed to give us leave to go and reſort thither.

Then the Lords withdrew, and after an Hour and an Half's Space returned, and Proclamation was made for Silence.

L. H. S. My Lord Viſcount *Stafford*, my Lords have conſidered of the Demands you made, and my Lords upon the Debate of the Reaſons of your Demands, are come to this Reſolution: Your Lordſhip did demand in the firſt Place, that you might have a Sight of the Journal, and have the Papers lodged in the Houſe of Peers; my Lords take Notice that this Demand which your Lordſhip now makes, is a Demand that was granted you long ago, about two Years ſince; you have an Order entred upon the Books, that your Lordſhip ſhould have Copies of every Thing in that Houſe; and if your Lordſhip have not taken out Copies, and if any Thing is miſſing to your Lordſhip that is yet there extant, 'tis your Lordſhip's Fault. However, my Lords will command their Journals to be brought hither, that your Lordſhip may make that uſe of them that may be of moſt Profit to you. For the other Demand touching the Affidavit ſuppoſed to be taken from *Turbervile* by the Juſtices of the Peace, that my Lords, upon Conſideration had, do find that there is no Obligation at all upon them as a Court, to concern themſelves in that Matter. And therefore my Lords have made no order in that Point, but your Lordſhip muſt come provided as well as you can, and the Court can do no more to help you in it. For the reſt, my Lords did take Notice that your Lordſhip ſaid before they were withdrawn, that you found yourſelf very faint and weary, and that you were much ſpent in Diſcourſe, and tired with what already you have done. My Lords are extremely willing to give your Lordſhip all the Favour and Accommodation poſſible, for the recollecting yourſelf; therefore my Lords will not now put you upon it, to go on to make your Defence, but will give you Time till To-morrow.

L. *Staff.* I humbly give your Lordſhips Thanks for your Kindneſs and Favour to me; but here I profeſs, and call Almighty God to witneſs, rather than I would have it thought I am willing to put it off, I would have ſunk down dead at the Bar. But, my Lords, there was another Demand that I made: Your Lordſhips ſay, I ſhall have Copies of all the Journals, and that you cannot help me to the Affidavit of *Turbervile.* I ſubmit to it without ſaying one Word more: But I deſire that I may have brought hither To-morrow the Journals, and other Papers in the Lords Houſe; but I deſire alſo the two Affidavits of *Dugdale*, taken the one on the 24th, the other the 29th of *December* following, which Depoſitions were taken before Mr. *Lane* and Mr. *Vernon*, in *Stafford* Town, when *Dugdale* was in Priſon.

L. H. S. Look you, my Lord, this is all under the ſame Rule: What Evidence ſoever there is before the Court of Peers, that you ſhall have; whatſoever Evidence is not in that Court, you ought to come provided of: The Court is not to ſtay, nor to help you to Evidence.

L. *Staff.* My Lord, I beg your Pardon, *Dugdale* made an Affidavit then, and ſays the clean contrary now; I deſire nothing but Juſtice, and I am ſure I ſhall have all Juſtice from your Lordſhips.

L. H. S. Produce it; alledge what you will for yourſelf, it ſhall be heard.

L. *Staff.* How then ſhall I be able to make my Defence if I have not thoſe Papers, which I humbly conceive by the Law ought to be brought? Theſe Gentlemen of the Houſe of Commons ſay, that I could not have *Turbervile*'s Affidavit, becauſe it was in the Houſe, and they could not give it without Conſent of the Houſe; but this was examined before a Juſtice of Peace, and returned to the Council: Sure I ſhall have that. I was examined by my Lord of *Eſſex*, and my Lord of *Bridgewater*, upon that Affidavit twice, I think, therefore that is material and neceſſary; and I know your Lordſhips would not have me come to defend myſelf without Weapons.

L. H. S. My Lord *Stafford*, I do beſeech your Lordſhip to be a little better informed in your own Buſineſs. You have Leave to make Uſe of the Journal, and all Papers that are entered there; the Clerks ſay, *Dugdale*'s Oath is entered there.

L. *Staff.* Is the 24th of *December* there?

Clerk. It is there.

L. H. S. Pray, my Lord, do not put the Court upon Interrogatories, but come provided as well as you can.

L. *Staff.* If it be entred on the Journal-Book, I deſire not the Original, I am very well ſatisfied.

L. H. S. Will you be ready to go on To-morrow, my Lord?

L. *Staff.* I will with all my Heart.

L. H. S. 'Tis too late, Gentlemen, to go on To-night; we muſt adjourn till To-morrow.

L. *Staff.* My Lords, I had ſo much to write laſt Night, that I had very little Sleep; I deſire I may not come till ten.

L. H. S. My Lord, I am not able to hear you; I take as much Pains to come near you as I can.

L. *Staff.* I had a great deal to write laſt Night, I ſay, and I want ſome Sleep; I deſire I may not come till ten.

L. H. S. Will you be ready by ten o'Clock To-morrow.

L. *Staff.* I will be ready by ten.

L. H. S. I will move my Lords when they are withdrawn, to adjourn till ten To-morrow. But, my Lord *Stafford*, I do not know how your Lordſhip is provided, or how you look after your own Buſineſs. If you have not had Copies of the Journal all this while, 'tis you are in the Fault. A great deal of it is in Print, you may ſend your Sollicitor to the Clerk of the Parliament, and take Copies of what you have need of. I give you Notice of it, that if you come unprovided, you may know it is your own Fault.

L. *Staff.* I do acknowledge I have Copies of the Journal-Book, I think of all; but I do not find any Thing of *Dugdale*'s ſecond Depoſition there.

L. H. S. Here is that of the 24th of *December*, that you aſk after; ſend your Sollicitor, and then you ſhall have a Copy out of the Journal of it.

L. *Staff.* I aſſure your Lordſhip I will be ready To-morrow, if I can get thoſe Copies.

L. H. S. My Lords will give you as much Eaſe, and all the Accommodations that are fit.

L. *Staff.* Then To-morrow I will be ready by ten o'Clock if your Lordſhips pleaſe; only I would deſire your Lordſhips to take Notice, that theſe Gentlemen of the Houſe of Commons do acknowledge that *Turbervile* ſwore one Day to one Year, and the next Day to another.

L. H. S. My Lord *Stafford*, you ſay you can be ready To-morrow at ten o'Clock; are you ſure you can be ready then?

L. *Staff.* I ſay, my Lords, this, I ſhall not be ſo ready as I ſhall be next Day; but I aſſure your Lordſhips, I will rather ſink down in the Place where I am, if you think fit, than put off the Trial.

L. H. S. Look you, Gentlemen of the Houſe of Commons, in a Caſe of this Conſequence, and of this vital Importance to a Man as this is, where is the Inconvenience if there ſhould be a Day's Reſpite, and the Court ſhould adjourn till *Friday*, if my Lords be moved in it? I make no Direction, but what Inconvenience will be in it? Will it not be every Way as well?

Sir *Will. Jones.* My Lords, your Lordſhips do not expect from us to give our Conſent to put off the Trial.

L. H. S. I aſk only, what Inconvenience it is?

Sir *Will. Jones.* Your Lordſhips are the Judges, and will do as you find it reaſonable; but this I ſay, it is very unuſual, and ſcarce to be precedented, that when the Proſecutors have given an Evidence, the Priſoner ſhould have Time, a further conſiderable Time, to give his Anſwer to it. The Priſoner knows before-hand the general Scope and Drift of the Evidence; therefore for him to have Time till To-morrow, is a Favour; but to have more than that, even a whole Day to intervene, is very unuſual.

L. H. S. If that be all, and the Matter depend upon what is uſual, I do venture with my Lords leave to inform you, that my Lord of *Strafford* had two Days Time after the Proſecution, to give his Anſwer to what was ſaid againſt him.

Sir *Will. Jones.* That was an Evidence of twenty-eight Articles, this but upon two Heads; and that was after a long Examination of many Days.

L. *Staff.* My Lords, I had prepared myſelf for my Trial as well as I could, and written down a few Things that I intended to ſay; and I profeſs before God, as I am a Man, and as I am a Chriſtian, of all I intended to ſay: I have in a Manner made uſe of very few Words; but as to what I had to ſay upon Evidence, I was forced to lay all aſide, becauſe I wanted theſe Papers. I have not eaten To-day, and being forced to lay aſide all that I had written, I ſhall need a whole Day to write; however, I ſubmit myſelf to your Lordſhips in that Matter.

L. H. S. My Lord, if it will be equal to your Lordſhip, and your Lordſhip will be as ready To-morrow as another Day, this Court will be more ready.

L. *Staff.* I aſſure your Lordſhips, if your Lordſhips do give me another Day, I will not debate with my Council any one Thing upon the Papers I have aſked.

L. H. S. Pray, my Lord, will you be pleaſed to make your Demand to my Lords, who are your Judges, by what Time you will be content to be foreclоſed.

L. *Staff.* My Lords, if you will give me till *Friday*, I ſhall be ready to give my Evidence, and I will bring Witneſſes ſufficient, I hope, to prove my Innocency.

Sir *Will. Jones.* My Lords, we do not preſume at all to offer our Conſent to what Time the Court ſhall be adjourned—

L. H. S. No, we do not aſk your Conſent.

Sir *Will. Jones.* And I hope your Lordſhips will not aſk the Priſoner's Conſent, nor do it by his Direction.

L. H. S. De morte hominis non eſt cunctatio longa.

Sir *Will. Jones.* But we muſt deſire your Lordſhips, as we are entruſted by the Houſe of Commons to manage this Trial, to take Notice, that as we do not expect your Lordſhips ſhould take the Meaſures from our Deſires, much leſs do we expect you ſhould do it at the only Inſtance of the Priſoner. 'Tis a great Advantage to this Lord to chuſe his own Time, when he will pleaſe to anſwer our Evidence. We do know very well, that in this Caſe there have been Attempts to ſuborn Witneſſes, and that we ſhall prove in due Time, and Attempts to deſtroy Witneſſes too; ſo that there hath been too much Time loſt already, and I think To-morrow is a very convenient Time for him to make his Anſwer. And I muſt obſerve to your Lordſhips, that the Priſoner hath gained his End of not making his Anſwer this Day, by raiſing an Objection, which in my Thoughts carried no great Weight in it; though when it was made, your Lordſhips were pleaſed to adjourn upon it: But ſeeing he hath got his Point of deferring the making Anſwer till To-morrow, there can be no Reaſon he ſhould gain a further Day, ſince the Depoſitions may be ready by To-morrow as well as by the next Day. And therefore we deſire your Lordſhips will be pleaſed to go on in the Trial To-morrow.

L. H. S. You ſhall know their Lordſhips Pleaſure when they are withdrawn. Is it your Lordſhips Pleaſure that we ſhould adjourn?

Lords. Ay, ay.

L. H. S. This Houſe is adjourned into the Parliament-Chamber.

So the Lords withdrew in their Order, and the Commons went back to their Houſe, and Mr. Speaker reſumed the Chair.

A Meſſage was ſent from the Lords by Sir *Timothy Baldwyn*, and Sir *Samuel Clark.*

Mr. Speaker, *The Lords have ſent us to acquaint this Houſe, that they have ordered the Priſoner* William *Viſcount* Stafford *to be brought to the Bar in* Weſtminſter-Hall *To-morrow Morning at Ten of the Clock.*

And then the Commons adjourned to eight of the Clock next Morning.

The THIRD DAY.

Thurſday, December 2, 1680.

AT the Hour of ten in the Morning, the Lords adjourned into *Weſtminſter-Hall*, and returned in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Commons were ſeated as before. The Court being ſat, Proclamation for Silence was made, and the Lieutenant of the *Tower* commanded to bring his Priſoner to the Bar; which being done, the Lord High Steward ſpake to him as followeth:

L. H. S. My Lord *Stafford*, this is the Time appointed to hear what your Lordſhip hath to ſay in your Defence, and to call your Witneſſes.

Sir *W. Jones.* My Lords, Yeſterday my Lord Viſcount *Stafford* was pleaſed to make mention of an Affidavit of Mr. *Turbervile* taken before two Juſtices of the Peace, wherein he was pleaſed to ſay there was ſome Amendment made; and ſo indeed we did then acknowledge there was. But he had a Deſire to ſee it, notwithſtanding our Acknowledgement, becauſe he was informed that that which *Turbervile* ſwore then, differed from what *Turbervile* ſwore Yeſterday. My Lords, at that Time we had not the Affidavit; nor was it proper for us to produce it, for indeed it remained in the Juſtice of Peace's Hands that took it: But now that his Lordſhip may have full Satisfaction, and not only his Lordſhip, but alſo all that are preſent at this Trial, I do inform his Lordſhip, that the Affidavit is in the Hands of a Member of the Houſe of Commons, Sir *Will. Poultney* by Name; and if his Lordſhip pleaſe, he may have it produced, and make what Uſe he can of it.

L. H. S. It is extreme honourably and worthily done of the Houſe of Commons; and my Lord hath no Manner of Exception left him.

L. *Staff.* My Lords, if I ſhall have Occaſion to uſe it, I ſhall call for it; but I would firſt ſay ſomething to your Lordſhips: My Lords, I firſt give your Lordſhips Thanks for granting me the Liberty to come ſo late To-day; I have had a little Sleep upon it. Your Lordſhips heard Yeſterday, when you had Dr. *Oates* at the Bar, the firſt Thing that he ſaid, as I remember, was, to deſire you would be pleaſed to leave him to his own Method: I beg of your Lordſhips the ſame Favour, that I may begin with the one or the other Witneſſes, or with Matter of Law, as I pleaſe.

L. H. S. God forbid but you ſhould take your own Method in your Defence.

L. *Staff.* In order to which, I deſire firſt Mr. *Turbervile* may come to the Bar.

L. H. S. Do you call *Turbervile*, my Lord?

L. *Staff.* Yes, my Lord, I do.

L. H. S. He is there, what ſay you to him?

L. *Staff.* My Lords, I will aſk him but one Queſtion, and I hope I ſhall have Occaſion to aſk him no more: When was the laſt time that he ſpoke with me?

L. H. S. Mr. *Turbervile*, I think I hear right, I do not know: My Lord *Stafford* aſks, when was the laſt time you ſpoke with his Lordſhip?

Mr. *Tur.* It was in *November*, 1675.

L. *Staff.* I have very much to ſay againſt his Evidence; but I hope your Lordſhips will not think him any Evidence at all againſt me, or any body elſe. But I deſire your Judgment, whether I be not within the Compaſs of the Time limited by the Statute.

Mr. Serj. *Mayn.* Expreſs yourſelf, my Lord, for we do not underſtand you.

L. *Staff.* I cannot ſay more than I do: The Time which the Statute limits, is ſix Months, but this is five Years; I deſire the Statute may be read.

L. H. S. What Statute, my Lord?

L. *Staff.* The Statute of the 13th of this King.

L. H. S. If your Lordſhip pleaſes you ſhall have it read: But your Lordſhip does not obſerve, you are proſecuted and impeached of High-Treaſon upon the Statute of the 25th of *Edward* III. not upon the Statute of the 13th of this King, made for the Safety of the King's Perſon, which limits the Proſecution of ſome Offences to be within ſix Months; but the Proſecution for Treaſon may be at any time.

L. *Staff.* Does your Lordſhip ſay it may be at any time?

L. H. S. Yes, my Lord.

L. *Staff.* This truly does very much ſurprize me, though I am wholly ignorant in Matters of Law. My Lords, I have ever heard that no Man can be proſecuted by that Statute, but within ſo many Days, in one Part of it in thirty Days, in another ſix Months; and I deſire your Lordſhips that the Statute may be read.

L. H. S. If your Lordſhip pleaſe the Statute ſhall be read; if your Lordſhip deſires the Clauſe of the Statute of the 13th of this King, which limits the Proſecution to be within ſix Months, that ſhall be read. But I conceive your Lordſhip is not accuſed upon that Statute.

L. *Staff.* I beſeech your Lordſhips I may know whether I am proſecuted upon the Statute of the 13th of this King, or upon what other Statute.

L. H. S. What ſay the worthy Gentlemen of the Houſe of Commons: Is my Lord proſecuted upon the Statute of the 13th of this King?

Mr. Serj. *Mayn.* Not at all, my Lord; he is not proſecuted upon that Statute, but upon the Common Law, and the 25th of *Edward* III. which was only declarative of the Common Law.

L. *Staff.* This is a Point of Law.

Sir *W. Jones.* What is the Point of Law?

L. *Staff.* Whether I can be proſecuted after ſo many Days.

L. H. S. The Law is very clear. If you were proſecuted upon the 13th of this King for any leſs Offence than Treaſon, you could not be proſecuted after ſix Months; but if you be proſecuted for Treaſon either upon the 25th of *Edward* III. or the 13th of *Car.* II. there is no time limited, and God forbid there ſhould.

L. *Staff.* I beſeech your Lordſhips Judgment, whether there be not a Statute, I think 'tis in the Reign of *Edward* VI. that ſets the time, after which no Man ſhall be proſecuted for any thing of Treaſon. I deſire a Quarter of an Hour's time to look into the Statute.

L. H. S. What ſay you, Gentlemen?

L. *Staff.* Pray, my Lord, let me read the Statute of *Edward* VI.

Mr. Serj. *Mayn.* We know not of any ſuch Statute.

L. *Staff.* I will not ſay there is, but I will ſay I cannot read if there be not.

L. H. S. Pray, Gentlemen of the Houſe of Commons, my Lord does ſuppoſe he has ſome Kind of Objection in Law to make, which he cannot make out of himſelf; will it be amiſs to let his Council make and propoſe the Queſtion for him?

Sir *W. Jones.* My Lords, we rather would have my Lord propoſe the Objection; for your Lordſhips know, till a Matter of Law is propoſed, he cannot be admitted to have Council. If he deſires time to recollect himſelf about the Objection, we can't oppoſe it. But we deſire that he may propoſe the Objection; and after, if it be any Doubt in Matter of Law, your Lordſhips will aſſign him Council to be heard to ſpeak to it.

Sir *F. Win.* This would be a Way for a Priſoner to have the Advantage of Council, when they ought not to be allowed it; for 'tis but to ſay, he hath ſome Doubt which he cannot propoſe himſelf, and ſo let in his Council to make Objections for him. If any Queſtion of Law do ariſe, and that Queſtion is ſtated, you will allow the Priſoner Council to argue it: But at this Rate he may make the like Pretences in every Part of his Defence, and ſo obtain that Council ſhall manage his whole Defence for him.

L. H. S. I ſuppoſe my Lord does intend an Objection as to the Time of the Proſecution, but he does not know how to make it. He ſuppoſes, he is proſecuted after the ſix Months, which he thinks is the Time limited for the Proſecution. But I pray, my Lord *Stafford*, will your Lordſhip take time to recollect yourſelf, and make an Objection fit for Council to be heard upon, and you ſhall have it.

L. *Staff.* I beſeech you I may have the Statute-Book with me, for I have none myſelf, my Lord.

Sir *W. Jones.* With all our Hearts, we do not oppoſe it.

Then my Lord withdrew into the Room provided for him, and within a Quarter of an Hour returned.

L. H. S. Say, my Lord.

L. *Staff.* My Lords, I do confeſs I have been very much miſtaken ever ſince I was firſt committed to the *Tower*: For I did conceive that they would have proceeded, as I thought I was impeached, upon the Statute of the 13th of this King. I humbly deſire your Lordſhips Judgment, whether I ought or no to be proſecuted upon that Statute?

L. H. S. The Gentlemen have told you already: They proſecuted you upon the Statute of 25 *Ed.* III. and upon the Common Law.

L. *Staff.* And they lay aſide that Statute.

L. H. S. What Statute?

L. *Staff.* the 13th of this King.

L. H. S. What ſay you, Gentlemen, once more?

Sir *F. Win.* My Lords, we have declared already to his Lordſhip; and if my Lord had looked well upon the Articles of Impeachment, he could not have put that Queſtion, but would have found himſelf impeached for Treaſon at the Common Law, declared by the 25th of *Edward* III.

L. *Staff.* So then they lay that aſide of the 13th of this King?

Mr. Serj. *Mayn.* We do not mention any Statute, but we mention the Crime; and that Crime is againſt the Common Law, declared by the Statute, to wit, the attempting the King's Death, and the Subverſion of the Government.

L. *Staff.* My Lords, there is no Doubt but the attempting the King's Death is a great and heinous Crime; but, my Lords, I do not find that in the Impeachment there is any Overt-Act at all. And whether I ſhall anſwer to a Treaſon not proved by any Overt-Act ſworn by two Witneſſes, I ſubmit to your Lordſhips. But, my Lord, becauſe your Lordſhips and the Houſe of Commons may not think that I propoſe theſe Things out of a Deſire of Delay; if your Lordſhips pleaſe it may be ſaved to me, with all other Points of Law; I will go on to my Proofs.

L. H. S. Yes, all theſe Things ſhall be ſaved to you; pray let us hear your Evidence.

L. *Staff.* Since your Lordſhips have granted me that, be pleaſed to give me Leave to go to my Evidence; and I begin with *Stephen Dugdale.*

L. H. S. Set up *Dugdale.*

L. *Staff.* Will your Lordſhips pleaſe I may have Pen, Ink, and Paper?

L. H. S. By all Means, my Lord. [*Which was given him.*]

L. *Staff.* May it pleaſe your Lordſhips, *Stephen Dugdale* ſaid, if I underſtand him right (and I aſk him again), that he knew ſomething of the Plot fifteen or ſixteen Years ago?

L. H. S. What ſay you, Mr. *Dugdale*, you hear the Queſtion? Did not you ſay you knew of the Plot fifteen or ſixteen Years ago?

Mr. *Dugd.* I did ſay it, and did explain my Meaning in it. I did ſay there was among us ſuch a Preparation to be made againſt the King died, of Arms and Money, that neither ſhould be wanting.

L. *Staff.* I beſeech your Lordſhip to aſk what Proportion of Arms was to be provided.

L. H. S. What Proportion of Arms was to be provided?

Mr. *Dugd.* I never heard it nominated how many abſolutely. I have heard of ſome Numbers. I heard of late of 30,000 that were to be raiſed beyond Sea: What the whole Number in *England* was, I have forgot; but I think I have heard Mr. *Gavan*, and ſome of the Prieſts ſay, That if there was Occaſion they ſhould have at leaſt 200,000 to aſſiſt them, that was of Men; and I ſuppoſe they had Arms as well as Men.

L. *Staff.* My Lords, if this were true which he ſays Mr. *Gavan* ſaid, that they were 200,000, I deſire to know what Men he meant, what Religion they muſt be of.

L. H. S. What Religion were they of that were to come in and help?

Mr. *Dugd.* He did not name them at that time; but I underſtood them, and ſo I apprehend the Company would, that they were *Roman* Catholicks.

L. *Staff.* 'Tis a ſtrange thing that there ſhould be 200,000 Catholicks raiſed, when there are not 20,000 in *England* that can bear Arms.

L. H. S. Good my Lord, they might come from beyond Sea, and ſo they might be ſo many *Roman* Catholicks, tho' there were not ſo many in *England.*

Mr. Serj. *Mayn.* And he ſays not they were *Roman* Catholicks, but he heard ſo.

Mr. *Treby.* There might be ſo many *Roman* Catholicks, and ſuch as ſhould be with them.

L. *Staff.* Did he hear fifteen or ſixteen Years ago that I was to be among them?

L. H. S. Anſwer that Queſtion: Did you hear then that my Lord *Stafford* was to be one among them?

Mr. *Dugd.* I cannot remember that I did, my Lord.

L. *Staff.* Then, my Lords, I make this Uſe of it: He tells you of a Plot ſixteen Years ago, that 200,000 Men in Arms were ready againſt the King's Death——

Mr. *Dugd.* I did not ſay ſo, my Lords; I deſire I may be underſtood aright——

L. *Staff.* You ſay you heard ſo.

Mr. *Dugd.* I ſpeak as to the Number of Men, what I heard of late at the Conſults and Meetings within theſe two Years.

L. *Staff.* But I ſpeak of ſixteen Years ago, what Number of Men was there to be raiſed?

Mr. *Dugd.* My Lords, it was a general Word that was amongſt us, That we muſt be provided againſt that Time, againſt the Death of the King, but no Number at all.

L. *Staff.* This, my Lords, under Favour, I conceive does not concern me. He tells you there was ſuch a Thing; it might be ſo, or it might not be ſo; I am not concerned in it, then 'tis out of Doors as to what concerns me, I conceive; if the Gentlemen conceive otherwiſe, they will ſay ſo. Then, my Lords, the next thing is, How long ago it is ſince I firſt ſpake to him about this Plot? And I beſeech your Lordſhip he may mention Time and Place.

L. H. S. You hear the Queſtion, Mr. *Dugdale.*

Mr. *Dugd.* The firſt Time, to my beſt Remembrance——

L. *Staff.* I beſeech you, my Lords, let us have no Remembrance, but let him ſwear poſitively.

L. H. S. There is no mortal Man can ſwear otherwiſe than according to his Remembrance.

L. *Staff.* When a Man's Life and Honour, and all he hath is at ſtake, and indeed in conſequence, every Man in *England* is concerned, if they ſwear not poſitively, but ſtill ſay, As I remember; who can make a Defence?

L. H. S. Mr. *Dugdale*, Go on, and ſay, as near as you can, and be as particular as you can upon your Oath.

Mr. *Dugd.* That which I can poſitively affirm, is, It was about *Auguſt* or *September*, 78.

L. *Staff.* He ſaid Yeſterday it was in the latter end of *Auguſt*, or the Beginning of *September*, which are two Months. I beſeech you what does he mean by the latter end of *Auguſt?* How long before the End of *Auguſt?*

L. H. S. How long was it before the laſt Day in *Auguſt?*

Mr. *Dugd.* My Lords, I will not be poſitive; but it was either in one Month or the other: I did not keep a Diary, or elſe I would give your Lordſhips Satisfaction.

L. *Staff.* I beſeech your Lordſhips he may poſitively ſay, whether in *Auguſt*, or not in *Auguſt*; or whether in *September*, or not in *September*.

Mr. *Dugd.* I dare not venture to ſwear that, I dare not do it.

L. *Staff.* Then ſaving my Exceptions to the Incertainty of that afterwards, I would aſk him, what Day was it in *September* that I ſpoke to him.

Mr. *Dugd.* I remember one was either the 20th or 21ſt of *September*, 78.

L. *Staff.* My Lords, He ſays the 20th or 21ſt; does he ſay that was the firſt time he ſpoke with me?

Sir *J. Trevor.* No, no.

L. *Staff.* I beſeech you, my Lords, they may not anſwer the Queſtions, but the Witneſſes; they cry, no, no.

L. H. S. My Lord, You ſhall certainly have an Anſwer to all the Queſtions you will aſk.

L. *Staff.* But when I aſk, they anſwer for them; I would know whether that is the Courſe or no?

L. H. S. Do not diſquiet yourſelf for any thing that is ſaid about you; you ſhall have a fair Hearing.

L. *Staff.* But, my Lords, I cannot but be diſquieted when I hear theſe learned Gentlemen make Anſwers to my Queſtions for the Witneſſes.

L. H. S. Mr. *Dugdale*, was the 20th or the 21ſt of *September*, you ſpeak of, the firſt time that you ſpoke to my Lord *Stafford?*

Mr. *Dugd.* No, my Lords, it was not.

L. *Staff.* Pray, my Lords, what Day was it then I ſpoke firſt to him?

L. H. S. What was the Day you firſt ſpoke to my Lord?

Mr. *Dugd.* Truly, my Lords, I cannot remember ſo well as to tell you.

L. H. S. Do you remember when my Lord came to *Tixall?*

Mr. *Dugd.* I remember one *Sunday* in particular; but I cannot tell what Day of the Month it was.

L. H. S. Do you remember my Lord *Stafford* at *Tixall*, in Company with my Lord *Aſton* and Father *Evers?*

Mr. *Dugd.* Yes, I do.

L. H. S. Do you remember that any Diſcourſe paſſed betwen them?

Mr. *Dugd.* Yes, I do.

L. H. S. Was that before or after the 21ſt of *September?*

Mr. *Dugd.* Both before and after.

L. *Staff.* My Lords, He ſays there was a Conſult at *Tixall*, where ſuch and ſuch were preſent, and the King's Death determined; I aſk when was that?

Mr. *Dugd.* That was in *September*, I cannot ſay poſitively the Day; but in *September*, or the latter end of *Auguſt*.

L. *Staff.* My Lords, I muſt acquieſce and ſubmit to your Lordſhips to do what you pleaſe; but if he does not name Times nor Places, how can I make my Defence? I deſire he may ſay poſitively within five Days of the one or of the other; and, my Lords, I will put it upon that, if he ſay five Days before the end of *Auguſt*, or five Days in the beginning of *September*, which one would think is ſpace enough, that is ten Days time.

L. H. S. My Lords, do obſerve how far Mr. *Dugdale* goes, and that he is no further poſitive than he does expreſs himſelf.

L. *Staff.* I beſeech your Lordſhips, I preſs this, becauſe it concerns me very much, that he may be poſitive within five Days or under.

L. H. S. Can you remember whether it were within five Days of the one or of the other?

Mr. *Dugd.* Truly, my Lords, I cannot be poſitive; if I had not made a particular Remark upon that of the 20th or the 21ſt, I could not have remembred that; for I did not then intend to reveal the Plot, or elſe I could have given you Satisfaction in that.

L. H. S. My Lord, Your Lordſhip hath an Anſwer to it; he cannot ſpeak more poſitively to it than he does.

L. *Staff.* I beſeech you, then, how is it poſſible I can make my Defence?

Mr. *Dugd.* My Lords, I kept no Journal; if I had, I would be more poſitive.

L. *Staff.* He ſays it was the latter end of *Auguſt*, or the beginning of *September*; I deſire he will ſay, whether it was the laſt Week in *Auguſt*, or the firſt Week in *September?*

L. H. S. He anſwers he cannot tell; your Lordſhip muſt make what Advantage you can of that Anſwer.

L. *Staff.* I can make no Advantage of it, unleſs he does ſpeak poſitively to the time. My Lords, I beſeech you I may know what is the End of *Auguſt* and the Beginning of *September?*

L. H. S. My Lord, I hear you not.

L. *Staff.* If a Man ſays the Beginning of *June* I was at ſuch a Place, how many Days is the Beginning, and how many Days the End of a Month? How much time will your Lordſhips underſtand the Meaning of that to be? I am concerned extremely in the point of Time; for it is that which the whole Buſineſs depends upon, I mean as to this Man.

L. H. S. My Lord, go on with your Evidence; I know not how to give you an Anſwer, what Judgment my Lords will make of it, or how much they will underſtand by it, till they are withdrawn: They obſerve how much your Lordſhip inſiſts upon it, and will hear what the worthy Gentlemen of the Houſe of Commons will anſwer to it.

L. *Staff.* My Lords, my whole Buſineſs with this Fellow is concerned in a poſitive Anſwer to this Queſtion; I give him, I think, reaſonable time to confine himſelf to.

L. H. S. What ſay you to the 20th or 21ſt of *September*, my Lord?

L. *Staff.* My Lords, I ſhall give a clear Anſwer to that anon; but I am extremely concerned in this, to know whether it was in *Auguſt* or *September*.

L. H. S. My Lord, if your Lordſhip be concerned never ſo much at that, the Witneſs can ſwear no more than he can ſwear. He ſays about the latter end of *Auguſt* or the beginning of *September*; will your Lordſhip ſtand ſtill for that?

L. *Staff.* Well then, I will go on as well as I can: As for the matter of the 20th or 21ſt of *September*, I beſeech your Lordſhips I may aſk *Dugdale* one Queſtion, whether at the Trial of Sir *George Wakeman* or the five Jeſuits, he did not ſay the Conſult was in *Auguſt*; if he deny it, I ſhall prove it.

L. H. S. Mr. *Dugdale*, My Lord aſks, whether at the Trial of *Wakeman*, or the five Jeſuits, you did not ſay it was in *Auguſt?*

Mr. *Dugd.* My Lords, I did name there was a Conſult at *Boſcobel* in *Auguſt*, but I do not remember that I did name my Lord *Stafford* in any Conſult in *Auguſt* poſitively; but, as I ſay now, the latter end of *Auguſt*, or the beginning of *September*. But I did name that there was a Conſult at *Boſcobel* in *Auguſt* 78.

L. *Staff.* My Lords, He did ſay I was at the Conſult in *Auguſt*.

Mr. *Dugd.* I did not ſay My Lord *Stafford* was there, I don't charge him in it; and if any ſuch thing was printed, I have wrong done me.

L. *Staff.* Then he ſays he had nothing to do with me till the latter en of *Auguſt*, or the beginning of *September*. My Lords, I beſeech your Lordſhips to aſk him, whether in Sir *George Wakeman*'s Trial he did not ſay, he was to receive Orders from me in *June* or *July*, when I came into the Country.

L. H. S. Did not you ſay at Sir *George Wakeman*'s Trial, that you were to receive Orders from my Lord *Stafford* in *June* or *July*, when he came into the Country?

Mr. *Dugd.* My Lord, I ſubmit to your Lordſhip, and the reſt of my Lords here, whether when that Queſtion was aſk'd by my Lord *Stafford*, I did not ſay, That the firſt time I entered into Correſpondency with the Conſulters, they told me, my Lord was to come down then, and I ſhould receive Orders from him. I had heard of my Lord *Stafford* before, but not to enter into any Conſults with him, till he came down the latter end of that Summer.

L. *Staff.* I beſeech your Lordſhips pardon me; I deſire him to anſwer poſitively, whether at the Trial of Sir *George Wakeman*, he did not ſay he was to receive Orders from me in *June* or *July*, when I came into the Country.

L. H. S. Did you ſay ſo at Sir *George Wakeman*'s Trial?

Mr. *Dugd.* I believe I did ſay ſo; for I had it from others, and not my Lord *Stafford* himſelf.

L. *Staff.* My Lords, In *June* or *July* I was not in the Country.

L. H. S. He ſays you were to come down, not that you did come down.

L. *Staff.* If you will let him do thus, there is no Man ſafe: I ſhall begin the Tragedy, and Millions will follow. He ſwore at the Trial of Sir *George Wakeman*, or that of thoſe other Perſons, That there was a Conſult at my Lord *Aſton*'s at *Tixall*, where I was one, in *Auguſt*.

Mr. *Dugd.* My Lords, I did not ſwear ſo; but in *Auguſt* or *September*, or one of them, as now I ſwear.

L. *Staff.* I ſhall prove it by the Book, and Witneſſes that were there.

Mr. *Dugd.* Then they did me wrong by printing it; for I never ſaid of your Lordſhip otherwiſe than I do now.

L. *Staff.* I deſire my Witneſſes may be call'd to prove it, for I conceive it is very material. My Lords, does he deny it?

Mr. *Dugd.* I do ſay there was a Conſult at *Tixall* in *Auguſt*; but I did not charge your Lordſhip poſitively to be there then, nor with any more than I do now.

L. *Staff.* I think you did, and I have Witneſſes to prove it. And 'tis impoſſible for any Man living to defend himſelf, if Perſons ſhall ſwear as they ſuppoſe, think, or remember. I tell your Lordſhips I was not there all the Month of *Auguſt*.

L. H. S. Does your Lordſhip intend to call any Witneſſes?

L. *Staff.* My Lords, I thought I had more Witneſſes than I have. But I have two here, if your Lordſhips will hear them, that he did ſwear I was at *Tixall* in *Auguſt*.

L. H. S. Who are they?

L. *Staff.* My Daughter *Wincheſter* for one, and a Lady that is my Kinſwoman for another.

L. H. S. Let them ſtand up, they are not to be ſworn. You don't except againſt them, Gentlemen?

Sir *W. Jones.* No, let him prove what he can.

L. Marchioneſs of *Wincheſter*. He did ſwear that he was to receive his Orders from——

L. H. S. Madam, your Ladyſhip is not upon your Oath; but you are under all the Obligations of Truth and Honour in the World.

L. March. *Winch.* My Lords, by the Grace of God, I will not ſpeak an untrue Word.

Sir *Will. Jones.* We deſire to know this Lady's Name.

L. *Staff.* It is my Daughter *Wincheſter*.

L. March. *Winch.* This *Stephen Dugdale* did ſay at the Trial of Sir *George Wakeman*, That he was to receive Orders from my Lord in *June* or *July*, when he was to come down; and that my Lord was at a Conſult at *Tixall* in *Auguſt*.

L. H. S. Did he ſay poſitively in *Auguſt*, or in *Auguſt* and *September*.

L. March. *Winch.* No, he did not name *September*.

Mr. *Dugd.* My Lords, I might ſay my Lord was to come down then; but not that ever I ſaid he was there, but as now.

L. H. S. But ſhe ſays you did not name *September*.

L. *Staff.* Here is another Lady.

Sir *Will. Jones.* Who is ſhe, my Lord?

L. *Staff.* Mrs. *Howard*, Daughter to Sir *George Blount*, and married to Mr. *Howard*, a Kinſman of mine; ſhe is now a Widow.

Mrs. *Howard.* My Lords, at the Trial of Sir *George Wakeman*, *Dugdale* was aſked to be poſitive in the Month my Lord *Stafford* came down; and he ſaid, he came down in *June* or *July*; but he ſaid the Conſult was in *Auguſt*, wherein my Lord *Stafford* was.

L. H. S. That Lady likewiſe ſays the ſame, That you would not be poſitive as to *June* or *July*; but as to *Auguſt*, you were poſitive that my Lord was there.

Mr. *Dugd.* No, my Lords, I only ſaid, In *Auguſt* there was a Conſult; and in *June* or *July* my Lord was to come down.

Mrs. *Howard.* I do aſſure you we came to that Trial on purpoſe to obſerve every Word he ſaid about my Lord *Stafford*, and we have kept it in our Memories ever ſince.

L. H. S. What do you ſay, Mr. *Dugdale*, to it?

Mr. *Dugd.* I ſuppoſe there was a great many more at that Trial than thoſe two worthy Ladies; and I ſuppoſe ſome of them may remember I ſaid no more than I do now. I ſaid then, my Lord was to come down at that time, and ſo I ſaid ſeveral times, but not poſitively, that he was there till the End of *Auguſt*, or the Beginning of *September*.

L. *Staff.* My Lords, I do poſitively aver, here are two Witneſſes that ſay, he ſwore I was there at the Conſult in *Auguſt*. Now it concerns me to prove that I was not there in *Auguſt*, ſince he ſaid abſolutely I was there in *Auguſt*; and I aſſure you I can prove I was not there all the whole Month. In the Beginning of *Auguſt* I come from *London*, from my own Houſe; on *Tueſday* or *Wedneſday* the 6th of *Auguſt*, I went to my Lord *Bellaſis*'s, and that Night I went to *George Porter*'s; the next Night I went onwards towards *Bath*; when I was there I went over and ſtaid with my Noble Lord the Marquis of *Worceſter*; there I ſtaid two or three Days, and I went thence to another Place hard by there; and then I came back again to *Bath*, and went back again afterwards to my Lord's Houſe; and the firſt or ſecond of *September*, I went from my Lord's Houſe to *London*. Then if this be acknowledged I need ſay no more; if not, I'll prove it by ſufficient Witneſſes: So then I was not there the whole Month of *Auguſt*; and the Beginning of *September* he ſays he ſpoke with me. I was not there till the 12th of *September*. Now I beſeech your Lordſhips, how that could poſſibly be the beginning of *September*. I ſubmit to you, Whether then he be a Witneſs fit to be heard, that ſhall ſwear poſitively what hath no Colour of Truth in it, I alſo leave to you. And if they object I was not where I ſay I was in *Auguſt*, I will prove it. And for the 20th and 21ſt of *September*, I do own ſomething of that, and I ſhall prove to your Lordſhip what it was.

L. H. S. Call what Witneſſes you pleaſe, my Lord.

L. *Staff.* My Daughter proves when I went out of Town.

L. March. *Winch.* My Lords, it was on a *Tueſday* my Father went to my Lord *Bellaſis*'s, he dined there, and then went on to *George Porter*'s.

L. *Staff.* That I was at *Bath* I ſhall call Witneſſes.

L. H. S. My Lord, you ſhould prove when you firſt came to *Tixall*, my Lord *Aſton*'s.

L. *Staff.* Will that ſatisfy your Lordſhip?

L. H. S. Me! 'Tis not me you are to ſatisfy, but my Lords, and the Gentlemen of the Houſe of Commons.

L. *Staff.* Then I do own to your Lordſhips, I came the firſt time the 12th of *September* to *Tixall*.

L. H. S. That was the firſt Day you were there?

L. *Staff.* That Year, my Lord, it was.

Sir *Will. Jones.* Prove it.

L. *Staff.* Does he deny that, my Lords?

L. H. S. Do you deny that my Lord came firſt to *Tixall* the 12th of *September*, or do you know he was there before?

Mr. *Dugd.* My Lords, I have poſitively ſpoke to no Day, but only to the 21ſt or 20th of *September*.

L. *Staff.* Where is my Lord Marquis of *Worceſter*'s Servant?

L. H. S. My Lord *Stafford*, it will be beſt for your Lordſhip to produce all the Witneſſes you have, and not to leave any thing undone that you can prove.

L. *Staff.* But I beſeech your Lordſhips I may aſk one Queſtion: If I ſhall name any of the Houſe of Peers as my Witneſſes, does that exempt them from being Judges?

L. H. S. No, my Lord. If your Lordſhip have any Witneſſes among any of my Lords here, they may very well teſtify for you, and yet remain ſtill in the Capacities of your Judges; for my Lord of *Strafford* had a great many Witneſſes that were Peers.

Sir *J. Trevor.* We do not oppoſe it, my Lords.

L. H. S. My Lord, Call your Witneſſes.

L. *Staff.* There is no Place appointed for them, and therefore I could not have them ready here; I have ſent for them; I have a Throng of them.

L. H. S. They will open the Way, and we will ſtay for them.

L. *Staff.* My Lords, I deſire, that as Yeſterday, when the Witneſſes were ſworn againſt me, mine did not hear what they ſaid, ſo I deſire when my Witneſſes come, theirs may not be preſent.

L. H. S. My Lord, with your Lordſhip's Pardon, it was not well done that your Witneſſes were not there; but if Witneſſes be to confront one another, ſhall they not hear what one another ſay?

L. *Staff.* My Lords, I am ſo clear in every thing, I will diſpute no little Matters.

Then my Lord's Witneſs ſtood up.

L. H. S. What is this Man's Name you call now, my Lord?

L. *Staff.* Indeed, my Lord, I don't know.

Witneſs. My Name is *Bonny*, My Lords.

L. H. S. Does your Lordſhip call this Man?

L. *Staff.* Yes, my Lords.

L. H. S. You are not upon your Oath, but you are to look that a ſtrict Account will be taken of what you ſay.

Mr. *Foley.* My Lords, we deſire to know where this Witneſs lives?

Bonny. I live in *Exeter-Street*, by *Exeter-Exchange*.

L. *Staff.* I declare it I know him not, but I am told he can witneſs for me.

L. H. S. Your Chriſtian Name?

Bonny. *Thomas.*

L. H. S. What Profeſſion are you of?

Bonny. I live as Clerk of the Kitchen to my Lord Marquis of *Worceſter*.

Mr. *Foley.* What Religion are you of?

Bonny. A Proteſtant, one of the Church of *England*.

L. *Staff.* My Lords, I humbly move your Lordſhips, when I aſked Mr. *Smith* the firſt Day, where he was made a Prieſt? The Gentleman ſaid, he was not bound to anſwer any thing againſt himſelf that might make him criminal. I deſire that the Queſtion may not be put to my Witneſſes what Religion they are of?

L. H. S. The Gentlemen will not offer to aſk any Queſtion that may make a Man accuſe himſelf; but my Lord, a Papiſt or not a Papiſt is not ſo penal as a Prieſt or no Prieſt.

Mr. *Foley.* To acknowledge a Man's ſelf a Papiſt, is not to make him a Criminal.

L. H. S. What does your Lordſhip call this Witneſs for?

L. *Staff.* To prove when I was at my Lord Marquis of *Worceſter*'s?

L. H. S. What ſay you? when was my Lord *Stafford* at my Lord Marquis of *Worceſter*'s?

Bonny. In *Auguſt* 78.

L. H. S. Do you remember it perfectly?

Bonny. Very well.

L. H. S. What Day of *Auguſt*?

Bonny. The 17th of *Auguſt*, which my Lord Marquis keeps as his Wedding-Day every Year, and the Gentlemen of the Country are invited thither. My Lord *Stafford* was then at *Bath*, and my Lord Marquis was pleaſed to ſend his Coach for him, to be preſent there that Day; there he ſtaid that Day and the next Day, and then return'd on *Monday*. And in the ſame Month, the 31ſt of *Auguſt*, my Lord came again from *Bath* to *Badminton*, my Lord Marquis of *Worceſter*'s, and upon the *Monday* after returned for *London*.

L. H. S. That was the Beginning of *September*?

Bonny. Yes, the 2d he went to *London*.

L. H. S. Will you aſk him, Gentlemen, any Queſtions?

Managers. No, my Lords.

L. H. S. Call another Witneſs then.

(Who ſtood up).

L. H. S. What is this Man's Name?

Witneſs. *Thomas.*

L. H. S. *Thomas* what?

Witneſs. *Thomas White.*

L. H. S. Where do you live?

White. I live with my Lord Marquis of *Worceſter* at *Badminton*.

L. H. S. What do you ſay?

White. My Lords——

Lord Marquis of *Worceſter*. My Lord Steward, I have only this to ſay, my Lord *Stafford* deſired that his Witneſſes might not be aſked what Religion they were of; but I deſire all my Servants may be aſked, for I keep none but Proteſtants.

L. H. S. What Religion are you of?

White. A Proteſtant.

L. *Staff.* My Lords, I did not require it for them, I know my Lord keeps none but Proteſtants; but I aſked it for others of my Witneſſes, that may come, and be ſtartled at it.

L. H. S. What ſay you, when was my Lord *Stafford* at my Lord Marquis of *Worceſter*'s Houſe?

White. The 17th of *Auguſt* 78; I fetched him from *Bath*, being my Lord's Wedding-Day.

L. H. S. You fetched him?

White. Yes, my Lords.

L. H. S. What Place do you ſerve my Lord Marquis in?

White. As Coachman.

L. H. S. Was he there afterwards?

White. Yes, he was, but I can't remember the Day; only this being a remarkable Day, I can remember it.

L. H. S. Did you carry my Lord from thence towards *London*?

White. Yes, I did.

L. H. S. When was that?

White. The ſecond of *September*, to the beſt of my Remembrance.

L. H. S. Gentlemen will you aſk him any Queſtions.

Managers. No.

L. *Staff.* I think this is ſo clear, I ſhall not need to trouble your Lordſhips further with more Witneſſes.

L. H. S. Call whom you pleaſe, my Lord, and as many as you think fit, they ſhall be heard.

L. *Staff.* One more then, my Lords.

(Who ſtood up).

L. H. S. What is your Name?

Witneſs. *Richard Bevan.*

L. H. S. Who do you live with?

Bevan. I am Groom to my Lord Marquis of *Worceſter*.

L. H. S. What Religion are you of?

Bevan. A Proteſtant.

L. H. S. Do you remember when my Lord *Stafford* was at the Marquis of *Worceſter*'s Houſe?

Bevan. Yes, I do.

L. H. S. What time was it?

Bevan. The 17th of *Auguſt*.

L. H. S. Do you remember any other Day?

Bevan No, my Lord; but he was there that Day.

L. H. S. Will you aſk him any Queſtions?

Managers. No, my Lords.

L. *Staff.* My Lords, if your Lordſhips pleaſe, I deſire my Lord Marquis of *Worceſter* may tell your Lordſhips whether his Men have ſaid true or no?

L. Marq. of *Worceſt.* My Lords, I do remember, that my Lord *Stafford* was pleaſed to do me the honour to come upon my Wedding-Day from the *Bath*, and dine with me, as moſt Perſons of Quality that are of my Acquaintance, and happen to be at the *Bath* at that time, are pleaſed to do; and as moſt of the Gentlemen of the Country, within ſuch a Diſtance, do alſo. (And that Day is the 17th of *Auguſt*). I think he was there once or twice after, from the *Bath*, but I cannot tell preciſely the Days; but that particular Day I remember, becauſe it was my Wedding-Day.

L. H. S. Can your Lordſhip remember when my Lord *Stafford* went to *London*?

L. Marq. of *Worceſt.* Truly I cannot tell that, my Lords.

L. H. S. Did you not after that lend my Lord your Coach?

L. Marq. of *Worceſt.* Yes, I did, to carry him as far as *Sandy-lane*, on the Road to *London*; but the particular Day I remember not: But one of the Perſons examined (who was then my Clerk of the Kitchen) muſt needs know, becauſe he books every Day who is in the Houſe, and therefore I believe what he has ſaid is true.

L. *Staff.* *Stephen Dugdale*, I deſire, may come again. I conceive I have made it plain to your Lordſhips, that *Stephen Dugdale* did ſwear, That in *Auguſt* there was a Conſult at my Lord *Aſton*'s where I was; and I conceive it is alſo clear that in *Auguſt* I was not there; and then if it were the Beginning of *September*, that could not be neither; for I came not down to *Tixall* till the 12th. I beſeech you to aſk him when I offer'd him the five hundred Pounds to kill the King, I think he ſays it was the 20th or 21ſt.

L. H. S. What was the time my Lord offered you the five hundred Pounds?

Mr. *Dugd.* It was about that time, the 20th or 21ſt of *September*, to my Remembrance.

L. *Staff.* He ſaid poſitively before, it was one of thoſe two Days; I beſeech your Lordſhip to aſk him where it was.

L. H. S. Where was that Offer made?

Mr. *Dugd.* In my Lord's Lodging-Chamber at *Tixall.*

L. *Staff.* Then one Queſtion more, I deſire your Lordſhip to aſk him, what Day the Race was at *Etching*-Hill between Sir *John Crew*'s Man and *Lazingby?*

Mr. *Dugd.* If it pleaſe your Lordſhip, I do conceive it was about that Time.

L. *Staff.* I pray he may anſwer poſitively, for, if you pleaſe, I will tell you how it was. It is very true, the 20th of *September* this Fellow was in my Chamber, and I ſhall trouble your Lordſhips with ſome little Diſcourſe about it, and my Reaſons why: Firſt, I beſeech your Lordſhips to permit me to let you know, that this Fellow did ſerve my Lord *Aſton* in the Quality of a Bailiff. And I never thought him to be an honeſt Man, he was a mean Servant, and when the other Servants waited but till the ſecond Courſe came in, he ſtaid till the Coachman and the Groom went to Dinner, and eat with them. I profeſs before God it is true as that the Sun ſhines, I have often and often, I cannot tell how many Times, when I have been very dry at my Lord's Table, and ſeen him by me, not called for Drink; I did deteſt him as ſo mean a Knave, that I often refuſed to take drink at his Hands: And now for me to offer this Fellow five hundred Pounds—

L. H. S. I think your Lordſhip ſays he was Bailiff to my Lord *Aſton?*

L. *Staff.* But I knew him to be an arrant Knave, and a great Gameſter at Races, and ſuch Things.

L. H. S. My Lord, would you have offered five hundred Pounds to an honeſt Man to kill the King?

Mr. Serj. *Mayn.* You ſaid you never ſaw him.

L. *Staff.* I ſaid I had ſeen him, but now I did not know him by his Perriwig.

L. H. S. Did you not know him, my Lord?

L. *Staff.* No, my Lords, I profeſs I did not.

L. H. S. Why, your Lordſhip was agoing to ſhew that the Race at *Etching*-Hill was upon the 20th of *September*; and your Lordſhip confeſſes, that he did ſpeak with you on the 20th of *September* in your Chamber; and *Dugdale* ſays, this Day was the very Offer made him of five hundred Pounds to kill the King. What do you ſay, *Dugdale*, were you at the Race?

Mr. *Dugd.* Yes, I was with my Lord at the Race.

L. H. S. Did my Lord ſpeak with you before he went, or after?

Mr. *Dugd.* Before.

L. H. S. That Morning in his Chamber?

Mr. *Dugd.* Yes, it was that very Morning, before he went to the Race.

L. *Staff.* I do own, my Lord, thus far; he was in my Chamber that Morning; but, my Lord, I can prove what I ſay to you: My Lords, the 20th of *September* in the Morning, I was in my Bed, and there comes a Servant of mine that hath ſerved me twelve or fourteen Years, and he comes in to me, and ſays, Yonder is *Stephen Dugdale*, very deſirous to go to this Race. It ſeems he ſays he went along with me to this Race.

Mr. *Dugd.* I ſay I went either before or after, or when you went to the Race, for I was with you at the Race.

L. H. S. Whether he went with you or no, is not the Point, but whether he was in your Chamber at that time.

L. *Staff.* 'Tis the Point; for he ſaid juſt now, he went with me, as I apprehended him. But I tell your Lordſhips, my Servant came and told me, *Stephen Dugdale* deſires that you would aſk my Lord *Aſton* Leave that he may go before to the Race; my Lord is angry with him already for his meddling in Races, and he dare not aſk himſelf. My Lords, I was a little concerned in the Race, for I had betted ſome Money; and I thought with myſelf, ſhould I aſk my Lord *Aſton* Leave for him to go, my Lord will not deny me, but perhaps will take it ill to be aſked, ſo I was not over-willing to do it. But I bid my Servant call him in, and when he came, I aſked him ſome fooliſh Queſtions about the Race, as who he thought would win, and the like; but I told him, I would get Leave of my Lord for him. My Lords, I did go to my Lord *Aſton*, and told him, my Lord, I am ſending my Servant before to the Place of the Race, but I am afraid he does not well know the Way, ſhall *Stephen Dugdale* go along with him? My Lord gave him Leave to go. But, my Lords, I dreſſed me, and did not ſpeak one Tittle more to this *Dugdale*, but he went before, and I was hardly or but juſt dreſt when he was gone.

L. H. S. I pray, my Lord, was your Lordſhip at no Time alone with him in your Chamber?

L. *Staff.* No, never ſince I was born, never in all my Life.

L. H. S. No, my Lord?

L. *Staff.* He ſays my Servants uſed to come for him, I profeſs it is all falſe.

L. H. S. What ſay you to that, Mr. *Dugdale?*

Mr. *Dugd.* My Lords, I was in my Chamber, and buſy when my Lord ſent for me that Morning, and it was either by his Page, or one that waits on him in his Chamber; I went to my Lord, and the Page was in the Chamber, and he ordered him to go out.

L. Staff. I declare and aver to your Lordſhips he was in the Hall, or the next Room, and deſired to come in.

L. H. S. Where is the Page?

L. *Staff.* This Fellow was but a poor Boy, found at the Door, then he was a Threſher, and now a Witneſs for the King.

(*Then my Lord* Stafford'*s Man ſtood up.*)

L. H. S. What is your Name?

Witneſs. My Name is *Nicholas Furneſe.*

L. H. S. Do you remember the Day of the Race at *Etching*-Hill?

Furneſe. Yes, I do, my Lords.

L. H. S. Do you remember *Dugdale* was in your Lord's Chamber that Morning.

Furneſe. Yes, I do.

L. H. S. Do you remember whether your Lord did bid you go out or no?

Furneſe. No, he did not.

L. H. S. Were you there all the while *Dugdale* was there?

Furneſe. Yes, my Lords, I was.

L. *Staff.* Pray, my Lords, aſk him, whether I ſent for *Dugdale*, or he deſired to ſpeak to me?

L. H. S. Did my Lord ſend for *Dugdale*, or did he come to you to ſpeak to my Lord for him?

Furneſe. No, *Dugdale* ſpoke to me firſt.

L. H. S. What did he ſay to you, pray?

Furneſe. My Lords, about eight or nine of the Clock in the Morning, I came to go to my Lord's Chamber, and I came thro' my Lord *Aſton's* Hall; and coming through, I met Mr. *Dugdale* coming to me, and ſaid, he had one Favour to deſire of me. He ſaid, he would fain go to the Race; but, ſaid he, I do not know how to go, for my Lord is very angry with me, and, if I ſhould aſk him, he would be worſe, for he is diſpleaſed that I have meddled ſo far in theſe Matters already; therefore I deſire ſome Means may be uſed that I may go, and I deſire that you would ſpeak to my Lord to get Leave for me to go; for Mr. *Fox* is there, and hath a great deal of Money in his Hands, and divers People will give Money to bett, and ſo it will be a great Loſs and Prejudice to me not to go. So I did promiſe him, my Lords, and I went into my Lord's Chamber, and told him; and when I had ſpoke to my Lord, my Lord bid him come in. And when he came in, my Lord aſked him ſeveral Queſtions about the Race: My Lord aſked him what Hopes he had, for he ſaid a great deal of Money was laid by ſeveral People; he replied, he could win, but he wanted Money to bett: Says my Lord, I will bett twenty Pounds for *Staffordſhire* Sake, though I were ſure to loſe. And then after ſome Diſcourſe to that Purpoſe, my Lord told him, he would ſpeak to his Lord. After my Lord was dreſſed, he went out of his Chamber, and went to my Lord *Aſton*, to aſk him Leave for *Dugdale*; and my Lord bid me make myſelf ready to go to the Race. About nine or ten of the Clock I was ready to go, and coming down the Back-ſtairs my Lord met me: Go, ſays he, to *Etching*-Hill, and ſee what Betts there are, and take *Stephen Dugdale* with you to ſhew you the Way; for I have aſked his Lord Leave for him to go. So *Stephen Dugdale* went along with me to the Stable, and took out his Horſe; mine was not ready; but I overtook him in Half a Mile, and it was eleven of the Clock e're we were at *Ridgely.* I aſked him ſome Queſtions about one Mr. *Gerard*; and I think about twelve of the Clock we were at the Race, and I ſtaid till one with him and Mr. *Fox*, who was a Party concerned in the Race, and there were ſeveral Betts laid. I was watchful when my Lord ſhould come, leſt he ſhould want me; ſo I left them, and went to the Room where my Lord was to dine; and when I went to my Lord, I left him betting. About two of the Clock the Lords and Gentlemen all went to Dinner (that were there), and when we had half dined, betwixt two and three, *Dugdale* came in, and we aſked him how the Wagers went; he ſaid, he would bett Gold to Silver, if he had it, but he had betted away all his Money, I knew not how much. So there was a Gentleman that was Servant to my Lord *Aſton*, one *George Hobſon* by Name, he lent him two Guineas and odd Money, and I lent him ſome forty or fifty Shillings out of my own Pocket, which I told him, I would not lend, unleſs he would give it me at the Hill again, before the Race begun, becauſe I was fearful my Lord ſhould go to *Stafford* again from my Lord *Aſton*'s that Night. About four or five o'Clock I went up to the Race, and demanded my Money, and he paid it me before the Race begun, and after the Race was done I loſt him. My Lord went home, and I waited on him. This was about five or ſix, and about the Midway towards my Lord *Aſton*'s Houſe, he went into the Coach, and I got on Horſeback, and we got home about ſix or ſeven of the Clock, as I ſuppoſe. But at Night after Supper I enquired for *Dugdale*, how he took his Loſings, and how he did after it: They told me, he was gone to Bed, ſo I ſaw him no more that Night. The next Morning, my Lord bid me come betimes, for he would go to *Stafford* that Morning, where we dined, at Mr. *Abden*'s, and from thence took our Way to go to my Lord's own Houſe.

L. *Staff.* Now, my Lords, if you pleaſe to aſk this Boy, whether I bid him go and call *Dugdale* to me, and leave him there?

L. H. S. My Lord *Stafford* did bid you, Mr. *Furneſe*, go and dreſs yourſelf, and make you ready for the Race; did you not leave *Dugdale* behind you in the Chamber when you went to dreſs yourſelf?

Furneſe. No, my Lord, *Dugdale* was gone thence; and my Lord was gone too, before me, to my Lord *Aſton*'s.

L. H. S. I ſtill aſk you the Queſtion (you are upon an Obligation very great, as much as if you were upon your Oath), Whether you were in my Lord's Chamber before *Dugdale* came in, and ſtaid till after he went out?

L. *Staff.* And whether I bid him go out or no?

L. H. S. Were you there before *Dugdale* went in?

Furneſe. He went along with me in; I conducted him in.

L. H. S. Did you ſtay all the while *Dugdale* was there?

Furneſe. As near as I remember, I ſtaid there all the while.

L. *Staff.* Aſk him poſitively.

Furneſe. Yes, my Lords, I was there all the while *Dugdale* ſtaid; but I cannot ſay poſitively how long it was.

L. H. S. Mr. *Dugdale*, you are upon your Oath; he ſays he came in along with you, and you went out of the Chamber before him, and he was there all the while you were there.

Mr. *Dugd.* My Lords, I am not poſitive which of my Lord's Servants it was that came for me; but one it was. But when I came into the Chamber to my Lord, my Lord was getting up, and he charged them both to go forth, and the Room was clear, and I ſaw no Body.

L. *Staff.* My Lords, aſk my Man.

Furneſe. My Lord never bid me go forth that Day, nor any elſe in my Life, when any was in the Room.

Mr. *Dugd.* My Lords, if it pleaſe your Lordſhips, Mr. *Furneſe* was pleaſed to ſay, I would bett Gold to Silver; but in that he was miſtaken, for the Odds was quite ſix to four againſt us.

L. H. S. Well, we are not upon the Race now, or the Wagers laid there. But, Gentlemen of the Houſe of Commons, will you aſk this Man any Queſtions?

Sir *William Jones.* No, my Lords, we have none to aſk.

Sir *Thomas Lee.* We deſire to know where he lives now, what Countryman he is, and what Religion he is of.

L. H. S. Whom do you ſerve now?

Furneſe. My Lord *Stafford.*

L. H. S. Do you live with him ſtill?

Furneſe. Yes, I do, and have done this fourteen Years.

L. H. S. What Countryman are you?

Furneſe. A *Dutch*-Man.

L. H. S. Where born?

Furneſe. At *Bruſſels.*

Sir *Francis Winnington.* We would aſk him what Perſuaſion or Religion he is of?

L. H. S. You may be ſure of what Anſwer you ſhall have.

Furneſe. I am a *Roman* Catholick.

L. *Staff.* That is as good as a *Jew.*

Mr. *Treby.* The Queſtion is not intended for any Harm, not with any Purpoſe to criminate him; 'tis only in regard of his Credit in this Matter.

L. H. S. Call another Witneſs, my Lord.

L. *Staff.* Where is *George Leigh?* (*Who ſtood up*).

L. H. S. How old are you?

Leigh. I am about fifteen or ſixteen.

L. *Staff.* My Lords, I believe he is eighteen or nineteen.

Mr. *Treby.* Whoſe Servant is he?

L. *Staff.* He is my Servant; he hath ſerved me ſeven or eight Years.

L. H. S. What does your Lordſhip call him for?

L. *Staff.* To tell you whether I bid my Servants to go out when *Dugdale* came in, and whether ever he ſaw *Dugdale* and I alone.

L. H. S. George Leigh, how long have you lived with my Lord *Stafford?*

Leigh. Seven Years the 10th of *June* laſt.

L. H. S. Why then you were but nine Years old when you came to him?

Leigh. No, my Lords, I think I was not.

L. H. S. Do you remember when my Lord *Stafford* was at *Tixall?*

Leigh. I do not remember the Month very well.

L. H. S. Do you remember the time of the Race at *Etching-Hill?*

Leigh. I do not remember the Day; but I was at it.

L. H. S. Did Mr. *Dugdale* come into your Lord's Chamber that Morning?

Leigh. I do not remember he was there that very Morning.

L. *Staff.* Be pleaſed to aſk him whether ever I bid him go out of my Chamber when *Dugdale* was there.

L. H. S. Did you ever ſee *Dugdale* any other Morning in your Lord's Chamber?

Leigh. My Lords, I think not; I am not certain: He was there one Morning, and it was about a Race; but I am not certain what Race it was, whether it was two Boys ran, or two Men.

L. H. S. Did your Lord bid you go out of his Chamber?

Leigh. No, my Lords.

L. *Staff. Dugdale* ſays I often ſent him for him; pray aſk him that Queſtion.

L. H. S. My Lord, this Boy does not remember that *Dugdale* at all was at your Chamber that time of the Race at *Etching-hill*; ſo that it is not material to the Thing in queſtion.

L. *Staff.* Yes, my Lords, *Dugdale* told your Lordſhips yeſterday that I ſent this Boy often for him.

L. H. S. Did ever this Boy come for you?

Mr. *Dugdale.* Yes, he hath, I am ſure, come to my Chamber for me to go to my Lord.

L. H. S. Were you ſent for by my Lord more than once?

Mr. *Dugdale.* Yes, ſeveral times.

L. H. S. Before or after the Race?

Mr. *Dugdale.* Both before the Race, and after the Race.

L. H. S. By whom were you ſent for?

Mr. *Dugdale.* Sometimes by the Gentleman that was laſt examin'd, and ſometimes by this Boy.

L. H. S. Did you ever come from my Lord *Stafford* to bid *Dugdale* come to him?

Leigh. My Lords, I do not remember that ever I did.

L. H. S. 'Tis an hard thing to remember ſo long.

L. *Staff.* If ever he came once to me, and was alone with me, I will be content to acknowledge all this to be true. Pray aſk the other Man if ever I ſent him for him.

L. H. S. He did teſtify before, that he came with him that Day to your Lordſhip's Chamber.

L. *Staff.* That Day, my Lords: But he ſays, other Days I ſent for him.

L. H. S. Call *Furneſe* again. *(Who ſtood up) Furneſe*, did my Lord *Stafford* ever ſend you for *Dugdale*, either before or after the Race?

Furneſe. Never, my Lords, to his Chamber.

L. H. S. Did he ever in his Life ſend you to Mr. *Dugdale*, to ſpeak with him, as you remember?

Furneſe. Never, my Lords.

L. *Staff.* He was, my Lords, ſuch a Fellow, I could not endure he ſhould come near me; ſuch an impudent lying Fellow.

L. H. S. Have you any more Witneſſes, my Lord?

L. *Staff.* Yes, a great many.

L. H. S. Call them all, I pray.

L. *Staff.* My Lords, I hope you think I would not be ſo great and imprudent a Fool to employ ſuch a Fellow as this, who not long after run away from my Lord *Aſton*'s.

L. H. S. Who did?

L. *Staff. Stephen Dugdale.* And for that, if you pleaſe, I would call ſome Witneſſes.

L. H. S. Call *Furneſe* again. *(Who ſtood up)* Did you ever ſee *Dugdale* and my Lord *Stafford* together?

Furneſe. Never in my Life.

L. H. S. Why you ſaw them together that Morning you brought him to the Chamber. (*Then the Auditory laughed.*)

Furneſe. Never alone.

L. *Staff.* I did not think I was in a Cock-Pit, or a Play-houſe. But if your Lordſhips pleaſe to let me call my Witneſſes, to prove that *Dugdale* ran away from my Lord *Aſton*, I ſhall call for that *Thomas Sawyer.* (*Who ſtood up.*)

L. H. S. What is your Name?

Witneſs. Sawyer.

L. H. S. Your Chriſtian Name?

Witneſs. Thomas.

L. H. S. Who do you live withal?

Sawyer. My Lord *Aſton.*

L. H. S. Where do you live?

Sawyer. At *Tixall.*

L. H. S. Are you my Lord *Aſton*'s Servant?

Sawyer. Yes.

L. H. S. How long have you been ſo?

Sawyer. Six Years, and ever ſince *Michaelmas.*

L. H. S. What have you to ſay?

Sawyer. As to *Dugdale*'s Reputation, I have this to ſay, How that he went from my Lord *Aſton*'s for Debt, and was taken by the Watch at *Heywood.*

L. H. S. When was that?

Sawyer. The latter end of *November*, or the beginning of *December.*

L. H. S. What Year?

Sawyer. (78.)

L. H. S. Then the Family broke up?

Sawyer. And coming thither, and being taken by the Watch, he was brought by the Juſtices to *Tixall*; and after the Juſtices had been with my Lord, their Reſolution was to carry him to the Goal. So coming to *Tixall*, where *Dugdale* was at an Ale-houſe, he deſired me to go to my Lord, and deſire him that he would own him as his Servant, for he was ſo much in Debt, that he ſhould elſe be undone for ever. In the mean time Mr. *Philips* the Parſon of the Town, had been with my Lord, (for *Dugdale* had deſired him to go to him alſo) and he aſking me whither I was going; ſaid I, I am going to my Lord from *Dugdale* to deſire him to own him as his Servant. Said he, I have been with my Lord juſt now, and he ſaid, he will not own him as his Servant; it was his own Act and Deed. So Mr. *Philips* and I came back to him, and told him. So he ſat down in the Chair, and then roſe up again, and ſwore, He would be revenged of my Lord *Aſton*, if ever it lay in his Power.

L. H. S. You never heard him ſay he would be revenged of my Lord *Stafford*, did you?

Sawyer. No, of my Lord *Aſton.* Then another time, being at *Stafford*, he owed me twenty-nine Pounds, and he was under the Serjeant's hands; and then he promiſed me from time to time he would pay me, and did not keep his Word. This was three or four Days before he began to peach. He bid me come ſuch a Day, and he would pay me part of the Money; and when I came thither, he told me it was reported that he ſhould be a Peacher; and that there was a Speech, how that he ſhould have two hundred Pounds for informing that there were fourteen Prieſts in the Country: But he takes a Glaſs of Drink, and, *Thomas*, ſays he, by God, I wiſh this may be my Damnation and my Poiſon, if I know of any Plot, or any Prieſts.

L. H. S. Was not he a Papiſt then?

Sawyer. I cannot abſolutely tell that, whether he was or no.

L. H. S. Do you know one Father *Evers?*

Sawyer. My Lords, I have ſeen him.

L. H. S. Hath he never been at *Tixall?*

Sawyer. Yes, my Lords, I have ſeen him there.

L. H. S. And have not you ſeen *Dugdale* in his Company?

Sawyer. Yes, I have.

L. H. S. Did not you at *Tixall* think *Dugdale* a ſtout able Fellow?

Sawyer. No, he never was accounted to be ſo.

L. H. S. Then I aſk you, if you thought him an honeſt Man, or a rich Man?

Sawyer. No, truly, my Lords: For I'll tell you more than that: My Lord *Aſton* employ'd him to be his Bailiff, and receive his Rents, and to pay Workmen their Wages, which he received every *Saturday.* And my Lord *Aſton* did account with him, where he did ſet his Hand to receive the poor Workmens Wages according to their Bills, when they had not been paid ſome of them whole Years, and Half Years, and Quarters. And they came and cried to my Lord, that they were not paid. And thereupon *Dugdale* did ſay, that one of them had demanded more of my Lord than was his due; for he ſaid he had reckoned ſuch a Day with him, and paid him ſo much Money; which Man ſaid he was not that Day at *Tixall:* And ſo he hinder'd him of part of his Money.

L. H. S. Did you ever know that *Dugdale* did forſwear himſelf?

Sawyer. That I do not know, my Lords. I did hear he was concerned in a Race, about which there was a Trial and a Diſpute which had won. This I have heard by Report.

Sir *Fran. Win.* Speak your own Knowledge, not Reports.

L. H. S. I aſk you, do you remember the Day when my Lord *Stafford* came to *Tixall?*

Sawyer. He came on the 12th Day of the Month.

L. H. S. What, *September?*

Sawyer. Yes, the 12th of *September.*

L. H. S. Did you ever ſee *Dugdale* in the Company of my Lord *Stafford*, while he was at *Tixall?*

Sawyer. No, never in the Houſe; but at the Race, he hath come into the Parlour.

Mr. *Treby.* You had Diſcourſe with *Dugdale:* You ſay he took a Glaſs and drank, and wiſhed it might be his Poiſon. Was not Father *Evers* that time at my Lord *Aſton*'s?

Sawyer. Not that I know of, my Lords.

Mr. *Treby.* Was he not commonly there?

Sawyer. Yes.

Mr. *Treby.* If he were, Mr. *Dugdale* muſt know it; and how then could he take a Glaſs, and wiſh it were Poiſon, if he knew where any Prieſt was; ſince it was apparent he knew where that Prieſt was? 'Tis moſt improbable Mr. *Dugdale* ſhould ſay thus!

Sawyer. My Lords, this was three or four Days ere he confeſſed any thing he knew of his Knowledge.

Mr. *Treby.* What Perſuaſion of Religion are you?

Sawyer. Of the Church of *England.*

Mr. Serj. *Mayn.* Pray, my Lords, aſk him one Queſtion; he ſays *Dugdale* went away from my Lord *Aſton*'s, was not there a Speech of a Plot (at that time) that was diſcover'd?

Sawyer. Yes, that I heard.

Sir *Fr. Win.* My Lords, I would aſk him one Queſtion more: Was there no Diſcourſe of the Death of a Juſtice of the Peace that was ſaid to be killed in *London* about that time?

Sawyer. To my beſt remembrance, as I heard, there was.

Mr. *Dugd.* My Lords, if your Lordſhips pleaſe that I ſhould call Witneſſes to confront him now, or afterwards?

Sir *Will. Jones.* Not now; ſtay till your time comes.

L. Staff. Then call *Philips.* (*Who ſtood up.*)

L. H. S. What is your Name, Sir?

Witneſs. Ralph Philips.

L. H. S. What are you, a Clergyman?

Mr. *Philips.* Yes.

L. H. S. Are you beneficed?

Mr. *Philips.* Yes, my Lord.

L. H. S. Where?

Mr. *Philips.* At *Tixall*, my Lord.

L. H. S. You are a Perſon that knows the Obligation that lies upon you to give a true Teſtimony; what can you ſay of Mr. *Dugdale?*

Mr. *Philips.* My Lords, I have very little to ſay concerning *Stephen Dugdale* as to any thing of the Plot, but in reference to what he ſhould relate concerning Mr. *Sambidge* and me in the Narrative which he depoſed upon the Trial of Sir *George Wakeman:* He ſaid then he did receive a Letter concerning the Death of Sir *Edmundbury Godfrey*, which was dated the 12th of *October*, as I remember; and that he did communicate the Letter to Mr. *Sambidge* and me immediately the next *Tueſday:* whereas I will aſſure you, my Lords, I never heard neither by Letter nor Word of Mouth from him nor any other, till it was publickly known.

L. H. S. You did not live in my Lord *Aſton*'s Houſe, did you?

Mr. *Philips.* No, my Lords.

Sir *W. Jones.* We know not what he ſays, we deſire to underſtand what he means.

L. H. S. He takes notice that *Dugdale* at the Trial of Sir *George Wakeman* did depoſe touching a Letter dated the 12th of *October*, which ſhould come down to *Tixall*, intimating the Death of Sir *Edmundbury Godfrey*, and that he did communicate that with the Parſon of *Tixall* and another;

which Parſon comes now to ſay, he did communicate no ſuch Matter to him.

Sir *W. Jones.* We deſire to aſk him whether he was preſent at that Trial, and heard him ſay ſo?

Mr. *Philips.* I was not preſent at the Trial, but if the Narrative of the Trial be Truth, he did ſay ſo.

L. H. S. So then, you only come to diſprove what is printed that *Dugdale* ſhould ſay.

Mr. *Philips.* Then I leave it to your Judgments, whether what he ſaid in the Narrative of that Trial do concur with the Truth.

L. *Staff.* I deſire then to aſk him whether *Stephen Dugdale* did not run away from my Lord *Aſton*'s, and would have him go to my Lord to own him for his Servant.

L. H. S. What do you know of *Dugdale*'s running away?

Mr. *Philips.* I know nothing at all of that, my Lords.

L. *Staff.* Whether he did ſpeak to him to own him for his Servant when he was in the Juſtice's Hands?

L. H. S. Can you ſay any Thing touching the Credit of *Dugdale?*

Mr. *Philips.* I have nothing to ſay concerning *Dugdale*'s Credit.

L. H. S. Did you know him?

Mr. *Philips.* Yes, ever ſince I came to *Tixall.*

L. H. S. How long is that?

Mr. *Philips.* About fourteen Years.

L. H S. What Reputation had he in the Country? Was he looked upon as one that would perjure himſelf?

Mr. *Philips.* I never knew any thing of that.

L. H. S. Was he thought a ſtout Man?

Mr. *Philips.* He was in good Repute with ſome, and indifferent with others.

L. H. S. Will you call any more Witneſſes, my Lord?

L. *Staff.* I would only aſk him one Queſtion; whether he did go to my Lord *Aſton* from *Dugdale* to know if he would own him for his Servant?

L. H. S. What ſay you, Sir; did you?

Mr. *Philips.* Yes, my Lords, he knows very well I did; he did requeſt me to go to him. My Lord *Aſton* I was loth to go to, becauſe I had no Familiarity with him, nor Intereſt in him; but he did requeſt and urge me ſo much, that I did go by much Motives and Perſuaſion from him, and I did ſpeak to my Lord: So I told him the Meſſage I had was from Mr. *Dugdale*, who would requeſt of my Lord that he would own him for his Servant; for if he did not, he knew not what to do with himſelf: but if he did, he might be free from the Goal and from the Oaths, and eſcape the Troubles that were upon him. So my Lord replied to me, 'Tis his own Act and Deed, and I have nothing to do with him, and let the Juſtices do what they will with him; which were Sir *Walter Bagott*, and Mr. *Kinnerſley*.

Mr. *Foley.* We deſire to know whether he heard any Diſcourſe about a Plot at that Time or no?

Mr. *Philips.* Truly, my Lords, I heard a Talk of a Plot, but not at that Time.

Mr. *Foley.* My Lords, I deſire to know if he took Mr. *Dugdale* for a Perſon that might be in the Plot, if there was any ſuch Thing?

Mr. *Philips.* I cannot tell how to anſwer that, 'tis a hard Queſtion; I am not ſo intimately acquainted with Perſons whoſe Secrets are not repoſed in me.

L. *Staff.* The next Witneſs I deſire may be (with the leave of the Gentlemen of the Houſe of Commons) Sir *Walter Bagott*; I did deſire him to be here.

Sir *W. Jones.* There he is, we do not oppoſe it.

L. H. S. Is it your Lordſhips Pleaſure that Sir *Walter Bagott* be heard in his Place?

Lords. Yes.

Sir *Walter Bagott.*

L. H. S. What would you aſk Sir *Walter*, my Lord?

L. *Staff.* My Lords, I deſire to aſk Sir *Walter Bagott*, whether he did not apprehend *Dugdale*, and upon what Account it was?

L. H. S. Sir *Walter Bagott*, My Lord deſires to know of you, whether you did apprehend *Dugdale*, and upon what Account?

Sir *Walter Bagott.* My Lords, Mr. *Dugdale* was taken at an unſeaſonable Time of Night, and brought to me the next Morning by the Watch, as the other Witneſſes have told your Lordſhips. And I took him away to *Stafford*, where there were ſeveral other Juſtices of the Peace; there were offered him the Oaths of Allegiance and Supremacy, which he took. After the taking of theſe Oaths, we told him, that he was a likely Man to know ſomething of the Plot, and it was a very proper Time for him to diſcover it to us that were Juſtices; he at that Time did deny the Knowledge of it; that is all I can ſay.

L. *Staff.* I deſire Sir *Walter Bagott* may be aſked, whether he did not go to my Lord *Aſton*, to ſee whether he would own *Dugdale* for his Servant?

L. H S. Did you aſk my Lord *Aſton* to own him for his Servant?

Sir *W. Bagott.* Yes, I did: For my Lord's Houſe being in the Way to *Stafford*, whither I was going, I called upon him to know if Mr. *Dugdale* were his Servant: He told me he was no Servant of his, and he would not receive him; upon which I and another Juſtice of the Peace that was with me, took him to *Stafford.* The Occaſion of our Meeting there, was to ſummon in the Militia, upon an Alarm of the Papiſts being riſen in *Derbyſhire.*

L. *Staff.* I make this Uſe of it, my Lords, that my Lord *Aſton* would not receive him: And if my Lord *Aſton* had known he had been in the Plot, and could have diſcover'd him, he would not have diſobliged him.

L. H. S. Nay, he ſays more than that, which you don't hear; he ſays, when they examined him, they gave him the Oaths of Allegiance and Supremacy, and then told him he would do well to diſcover his Knowledge of the Plot, and then he did not know any Thing he knew; nay, he denied it.

Mr. *Foley.* Did he deny the knowing of it?

Sir *W. Bagott.* Yes, he did then.

Sir *F. Win.* He was not reſolved to diſcover at that Time.

Mr. Serj. *Mayn.* We deſire Sir *Walter Bagott* may be aſked whether he examined him upon his Oath, or no?

Sir *Walter Bagott.* No, I did not.

Mr. Serj. *Mayn.* But had they then juſt given him the Oaths of Allegiance and Supremacy?

Sir *Wal. Bagott.* Yes, my Lords, we gave him thoſe Oaths, and thoſe only.

L. *Staff.* Then Mr. *Kinnerſley*, if you pleaſe. (*Who ſtood up.*) Be pleaſed to aſk this worthy Gentleman what he knows about *Dugdale*'s going from my Lord *Aſton.*

L. H. S. Firſt let us know this Gentleman.

L. *Staff.* His Name is *Kinnerſley.*

Mr. *Kin.* What Queſtions would your Lordſhip aſk me?

L. *Staff.* What you know about *Dugdale*'s going from my Lord *Aſton.*

L. H. S. Mr. *Kinnerſley*, we muſt know your Chriſtian Name.

Mr. *Kin.* *Thomas.*

L. H. S. Do you know Mr. *Dugdale?*

Mr. *Kin.* My Lords, I was not acquainted with Mr. *Dugdale*, till Sir *Brian Broughton*, Sir *Walter Bagott*, and I and others gave him the Oaths of Allegiance and Supremacy, the latter End of *November*, or the Beginning of *December*; I did not take Notice exactly of the Time.

L. H. S. What Year?

Mr. *Kin.* 78.

L. H. S. Well, Sir, go on.

Mr. *Kin.* When he had taken the Oaths of Allegiance and Supremacy, I aſked him if he knew any Treaſon or Conſpiracy againſt the King, telling him it was a ſeaſonable Time to declare it. He told me he knew of none. This is all I know, and all the Diſcourſe that I remember we had with Mr. *Dugdale.*

Mr. Serj. *Mayn.* Pray why did you aſk him that Queſtion?

Mr. *Kin.* The Plot was then newly broken out.

Mr. Serj. *Mayn.* Why did you aſk him ſo particularly?

Mr. *Treby.* Why did you think Mr. *Dugdale* concerned in it?

Mr. *Kin.* Becauſe we heard he was a Papiſt, and my Lord *Aſton's* Servant.

L. *Staff.* Then I deſire Sir *Thomas Whitgrave* may be examined. (*Who ſtood up.*)

L. H. S. What ſay you to Sir *Thomas Whitgrave*, my Lord?

L. *Staff.* Will your Lordſhips pleaſe to aſk Sir *Tho. Whitgrave* whether he did not examine *Dugdale* about the Plot, and what he ſaid at that Time.

Sir *Tho. Whitgrave.* My Lords, I came to *Stafford* the latter End of *November*, or the Beginning of *December*, I am not certain which; but I think it was this Time two Years. The Deputy-Lieutenants met about the Militia of the County. They told me that Mr. *Dugdale* was in Town, and was under an Arreſt: The Occaſion of his coming to Town, was his Refuſal of the Oaths of Allegiance and Supremacy, which he hath ſince taken. I propoſed to them the ſending for him, for I thought this was a fit Opportunity to get ſomething of him about the Plot. They ſeemed to approve of what I ſaid; but withal, I told them it was not good to ſend for him till the Evening late, that the People of the Town might not take Notice of his coming. At Night we did ſend for him, and the Gentlemen deſired that I would examine him at the End of the Table: So I called him up, and told him, I was ſorry he was fallen into that Misfortune to be arreſted, and that Mr. Mayor had not dealt well with him or us to take that Advantage of him; that now he had taken the Oaths, I looked upon him as one of us, and would do him any Kindneſs I could. He ſaid, Truly, for his Part, he was born a Proteſtant, and of Proteſtant Parents; and it was his Misfortune to fall into the Houſes of Papiſts, but he never liked their Religion. I then told him, Sir, you may do yourſelf a Kindneſs, ſerve God, and oblige your King and Country: I am very confident you know of this horrid Plot; pray do not ſtifle your Conſcience with any Oath of Secrecy, but let it come out. Many, I told him, ſtrained their Conſciences to ſerve their Intereſts; but you may clear your Conſcience, and at the ſame Time promote your true Intereſt. He replied, As he hoped to be ſaved, he knew nothing of it. And this is as much as I know of the Matter.

L. H. S. Do you aſk him any Queſtions, Gentlemen?

Manag. No, my Lord.

L. *Staff.* My Lords, I ſhall humbly move your Lordſhips now, that you will pleaſe to take Notice, this Fellow, *Dugdale*, hath endeavoured to perſuade People to ſwear againſt me falſly, and offered them Money for it. In order to the Proof of which, I deſire your Lordſhips would call *John Morral*, *Samuel Holt*, and *William Robinſon.*

(*Then* Robinſon *ſtood up*)

L. *Staff.* This Man I never ſaw before in my Life.

L. H. S. What is your Name?

Witneſs. Robinſon.

L. H. S. What is your Chriſtian Name?

Robinſon. William.

L. H. S. Where do you live?

Robinſ. In *Worceſterſhire* now.

L. H. S. With whom?

Robinſ. With myſelf now.

L. H. S. Do you know *Dugdale?*

Sir *F. Win.* We deſire he may give you an Account what Profeſſion he is of.

Robinſ. An Upholſterer

Sir *F. Win.* How long hath he lived in *Worceſterſhire*, and in what Place there?

Robinſ. I have lived half a Year in *Worceſterſhire*, half a Mile beyond *Worceſter.*

Sir *F. Win.* And whether he follows that Trade or Profeſſion, now, or no?

Robinſ. No, I do not follow it now.

Sir *F. Win.* What do you live upon, and how?

Robinſ. I live of myſelf now.

L. H. S. How is that?

Robinſ. Of my own Money.

Mr. *Hampden.* We deſire to know whether this Man was a Servant to my Lady *Gerard*, or no.

Robinſ. Never.

Mr. *Hampd.* Or to my Lord *Gerard* of *Gerard*'s *Bromley?*

Robinſ. Never, not a hired Servant, my Lords.

Mr. *Foley.* Were you a Volunteer Servant, or what were you?

Mr. *Treby.* Did you work at any Time there for my Lord or Lady *Gerard?*

Robinſ. No.

L. H. S. How came you to live there?

Robinſ. I went over from a Cocking out of *Cheſhire.*

L. H. S. How long were you there!

Robinſ. Three Weeks or a Month.

L. H. S. What was your Employment there?

Robinſ. Nothing at all: I followed no Employment.

Mr. *Treby.* What Kind of Servant were you then?

L. H. S. Come, do you know *Dugdale?*

Robinſ. Yes.

L. H. S. How long have you known him?

Robinſ. I have known him about five Years.

L. H. S. What ſay you to him?

Robinſ. I ſay, I met Mr. *Dugdale* about Midſummer was twelve-month, in *London*, about *Charing-Croſs*, and he carried me to the *Harp* and *Ball*, and gave me Beer and Mum, and ſuch as the Houſe did afford, and treated me; and aſked me what made me ſo dejected and caſt down. I told him

I was not well; I was poorer than I uſed to be. He told me again, I ſhould not want any Money that he had; and if I would pleaſe to be ruled by him, and do what he would have me, he would furniſh me with Money. And he took his Handkerchief out of his Pocket, and bid me, if I wanted, take Money there. I took none; but told him, I would not meddle nor make with any thing that Night. Then he told me he could furniſh me with Money, and put me in a Way to get Money, if I would come in as an Evidence againſt my Lord *Stafford.*

L. *Staff.* Be pleaſed to aſk him, for I never ſaw the Man before, nor heard of him till laſt Week, what he ſhould ſay againſt me, and whether he knew me, or not.

L. H. S. Did he tell you what you ſhould ſay againſt my Lord *Stafford?*

Robin. Nothing at all, my Lords.

L. *Staff.* Did he ſay any thing or nothing? Or, did he aſk whether he knew me or not?

L. H. S. Did you tell him you knew my Lord *Stafford?*

Robin. No, if it pleaſe you, I told him I did not know him.

L. H. S. And after you ſaid you did not know him, he offered you Money to ſwear againſt him, did he?

Robin. Yes, my Lords, he did ſo, to come in as an Evidence againſt him.

L. *Staff.* Will your Lordſhips pleaſe to aſk how much Money there was in the Handkerchief?

L. H. S. How much Money was in the Handkerchief?

Robin. I believe there might be eight, or nine, or ten Pounds.

L. H. S. Did he offer you all the Money, or bid you take ſome?

Robin. He bid me take ſome.

L. H. S. Did he make any Agreement with you for what you ſhould take?

Robin. No, not at all, my Lords.

Mr. *Foley.* Did he ſee *Dugdale* any more, or was there an end of it then?

Robin. No, I ſaw him no more.

L. H. S. Will you aſk him any more Queſtions?

Sir *W. Jones.* We ſhall have occaſion to ſpeak of him (we deſire him not to go away) when our time comes.

(*Then another Witneſs ſtood up.*)

L. H. S. What is your Name?

Witneſs. John Morrall.

L. H. S. What are you?

Morrall. A Barber.

L. H. S. Where do you live?

Morral. At *Ridgeley.*

L. H. S. Where is that?

Morrall. In *Staffordſhire*, within ſix Miles of *Stafford.*

L. H. S. What do you aſk him?

L. *Staff.* Whether *Dugdale* did not perſuade him to ſwear againſt ſome of the Lords in the *Tower?*

L. H. S. Do you know *Dugdale?*

Morral. Yes, my Lords, I have known him twelve or thirteen Years.

L. H. S. What can you ſay againſt him?

Mor. My Lords, this Mr. *Dugdale*, the 6th of *Auguſt* laſt was Twelvemonth, ſent for me to the *White Horſe* in *Ridgeley*; and there, when I came to him, he told me I knew as much of the Plot as he. I told him I was innocent of the Thing. He ſwore God damn him, that I knew as much as he. Then I told him, if he knew no more than I did, he knew no more than my Lord Mayor's great Horſe did. Then he took me aſide: Come, ſays he, you are a poor Man, and live poorly, I can put you in a way whereby you may live gallantly; I will give you 50*l.* in hand, if ſo be you will do ſo and ſo, and 50*l.* more when the thing is done.

L. H. S. What do you mean by ſo and ſo?

Mor. To ſwear againſt Mr. *Howard*, Sir *James Symons*, and ſeveral other Gentlemen of the Country.

L. H. S. Did he offer you any Money to ſwear againſt my Lord *Stafford?*

Mor. No, I did not hear him mention any thing of him.

L. H. S. But he offer'd you Money to ſwear againſt *Symons* and *Howard?*

Mor. Yes, my Lord; and *Herbert Aſton*, my Lord *Aſton*'s Kinſman.

L. H. S. What were you to ſwear?

Mor. That they were at ſuch a Meeting at Mr. *Herbert Aſton*'s, upon the Conſpiracy of the Plot.

L. H. S. Will you aſk him any thing?

Man. No, ſet him by.

(*Then another Witneſs ſtood up.*)

L. H. S. What is your Name?

Witneſs. Samuel Holt.

L. H. S. What Profeſſion are you of?

L. *Staff.* Pray, my Lords, aſk him whether *Dugdale* would perſuade him to ſwear that which he knew not.

L. H. S. What Profeſſion are you of?

Holt. A Proteſtant of the Church of *England.*

L. H. S. What Trade?

Holt. A Blackſmith.

L. H. S. Where do you live?

Holt. At *Tixall.*

L. H. S. Are you my Lord *Aſton*'s Servant?

Holt. No, my Lords.

L. H. S. What ſay you?

Holt. My Lords, He ſent a Man and a Horſe for me to *Stafford*, to the *Star*———

L. H. S. Who did?

Holt. Mr. *Dugdale* did. And there I waited upon him a good while. At length he came and told me he muſt ſpeak with me privately; ſo he told me, if I would ſwear that *Walter Moor* carried *Evers* away, he would give me 40*l.* And he bid me not be afraid to ſwear, for fear of my Lord *Aſton*; for he would hire me an Horſe, and get me to *London*, and place me, that where I got one Shilling I ſhould get five.

L. H. S. Did you know *Evers?*

Holt. Yes, my Lords, I have ſeen him.

L. H. S. Do you know when he went away from *Tixall?*

Holt. No, my Lords.

L. H. S. What elſe can you ſay?

Holt. Nothing elſe.

L. H. S. Will you ask him any Queſtions, Gentlemen?

Man. No.

L. *Staff.* The next Thing I go upon is, that *Stephen Dugdale*, at the Trial of the five Jeſuits, ſwore, That he acquainted *Sambidge* with the Letter about the Death of Sir *Edmundbury Godfrey*, the *Monday* or *Tueſday* after, which Mr. *Sambidge* denies. And in order to that, I call Mr. *Sambidge*; but if your Lordſhips pleaſe, I ſhall firſt prove that he ſwore it then. Where is Mr. *Lydcott?* (*Who ſtood up.*) I deſire to aſk him whether *Dugdale* did ſwear at the Trial of the five Jeſuits, that he acquainted Mr. *Sambidge* with the Letter about the Death of Sir *Edmundbury Godfrey.*

L. H. S. You, Fellow!

Witneſs. My Lord.

L. H. S. What is your Name?

Witneſs. John Lydcott.

L. H. S. How do you live?

Lydcott. I am a Fellow of *King's College* in *Cambridge.*

L. H. S. What do you come to ſay?

Lyd. I don't know, my Lords, what my Lord will ask me.

Sir *W. Jones.* My Lords, before you enter into the Examination of this Man, we deſire to aſk him a Queſtion or two.

Mr. Serj. *Mayn.* Whoſe Servant are you, or were you lately?

Lyd. I am a Fellow of *King's College.*

Mr. Serj. *Mayn.* But whom did you ſerve lately? Were you never Secretary to a Lord?

Lyd. Yes, I was.

Mr. Serj. *Mayn.* To what Lord?

Lyd. To my Lord *Caſtlemaine*, Sir.

L. H. S. What Religion are you of?

Lyd. Of the Church of *England*, and always was; nay, I can't ſay always, for I was bred up a Preſbyterian; my Father was a Colonel under *Monck.*

L. *Staff.* Mr. *Lydcott*, I aſk whether you did not hear Mr. *Dugdale* ſwear at the Trial of the five Jeſuits.

Mr. Serj. *Mayn.* I deſire one Favour, my Lords; my Lord *Stafford* aſks Queſtions to lead the Witneſſes; pray let him ask his Queſtions more generally.

L. H. S. You ſay you are a Proteſtant?

Lyd. Yes, my Lords.

L. H. S. When did you laſt receive the Sacrament?

Lyd. When I was laſt at *Cambridge*——No, not ſo; for it is not above a Year ago that I was there.

L. H. S. When did you receive the Sacrament?

Lyd. I do not exactly remember, my Lords.

L. H. S. My Lord, I would be glad to know what is the Queſtion your Lordſhip calls him for, that your Lordſhip may not ask the Queſtion, but by me.

L. *Staff.* My Lords, I deſire to know (for my part I know not what his Anſwer will be) whether he did hear, at the Trial of the five Jeſuits, *Dugdale* ſwear he had communicated the News of Sir *Edmundbury Godfrey*'s Death, which was on the *Saturday*, and on the *Tueſday* after to any People, and to whom.

L. H. S. Were you at the Trial of the five Jeſuits?

Lyd. Yes, I was.

L. H. S. Did you hear *Dugdale* ſwear there, and give his Teſtimony?

Lyd. Yes, I did.

L. H. S. Do you remember what *Dugdale* ſwore then?

Lyd. Very well.

L. H. S. What was it?

Lyd. My Lords, Mr. *Dugdale* ſpoke of a Letter that came down to my Lord *Aſton*'s on the *Monday*, and he imparted it on the *Tueſday* after, at an Alehouſe, to one Mr. *Sambidge*, and Mr. *Philips:* This was alſo at Sir *George Wakeman*'s Trial, which I took notice of more particularly, becauſe I had occaſion to take ſome Notes there.

L. H. S. What uſe do you make of this, my Lord?

L. *Staff.* If that be allow'd to be ſo, then I will call no more Witneſſes; otherwiſe I have more.

L. H. S. Call them all.

L. *Staff.* Then call Mr. *Charles Gifford.*

Mr. Serj. *Mayn.* Pray, my Lords, give me leave to ask this young Scholar one Queſtion before he goes. By whoſe Commendation or Means did you come into that College?

Lyd. By Election from *Eaton.*

Mr. Serj. *Mayn.* Who promoted you?

Lyd. One Mr. *Doyley*, now Senior Fellow of *King's-College*; it was his Election.

Sir *F. Win.* My Lords, I would ask him one Queſtion. He ſays he went to take Notes; by whoſe Direction did he go to take Notes at Sir *George Wakeman*'s Trial?

Lyd. It was for my own Curioſity.

L. H. S. Friend, 'tis all one as if you were upon your Oath, and as penal to you: By whoſe Direction did you go?

Lyd. It was partly my own Curioſity, and partly to ſee what Evidence was againſt my Lord; for my Lord *Caſtlemaine* thought himſelf concerned as well as others, and therefore deſired me to go.

Sir *F. Win.* Now it is out.

Sir *W. Jones.* It was done like a Secretary.

L. H. S. Had you ever that Curioſity before?

Lyd. Yes, I'll aſſure your Lordſhips, I had a great Curioſity to hear it.

L. H. S. Were you at any other Trial?

Lyd. Yes, at the five Jeſuits Trial, and *Langhorn*'s.

(*Then another Witneſs ſtood up.*)

L. H. S. What is your Name?

Witneſs. Charles Gifford.

L. *Staff.* Ask him whether he did not hear at the Trial of the five Jeſuits, or Sir *George Wakeman*, *Dugdale* ſay, that he did communicate that Letter to ſome People, I name not who, the *Tueſday* after?

L. H. S. Were you at the Trial of the five Jeſuits?

Gifford. Yes, my Lords.

L. H. S. Did you take Notes?

Giff. Yes, my Lords, I was ſummoned there as an Evidence; I had occaſion of being there, both at the five Jeſuits Trial, and *Wakeman*'s, and *Langhorn*'s.

L. H. S. You took Notes, you ſay?

Giff. Yes, I did.

L. H. S. What do you remember that Mr. *Dugdale* did then ſwear?

Giff. I remember at the five Jeſuits Trial, he did ſwear he received a Letter ſent to *Evers*, which he intercepted, and it ſpoke of the Death of a Juſtice of Peace; and he returned anſwer to *Evers* again, he would be hang'd if it did not ſpoil the Buſineſs. And he ſaid farther, he could not hold, but went to an Alehouſe, and there he did impart it. But then he did ſay there was one that could teſtify and make out what he ſaid: Upon which he call'd Mr. *Chetwyn*, who depos'd much to the ſame purpoſe. And then at Sir *George Wakeman*'s Trial he did poſitively declare, that he ſpoke of it at an Alehouſe to a Miniſter, Parſon *Philips*, and my Lord *Aſton*'s Kinſman.

L. H. S.

L. H. S. What is his Name?

Giff. Mr. *Sambidge.*

L. *Staff.* Well, my Lords, I have no more to ſay to him: But I conceive by this 'tis plain, that *Dugdale* did then ſay, he had communicated it to Mr. *Philips* and Mr. *Sambidge.* I ſhall call Mr. *Sambidge* to give you an Account. [*Mr.* Sambidge *ſtood up.*]

L. *Staff.* Be pleaſed to aſk him whether he did hear Mr. *Dugdale* ſay on the *Tueſday*, that Sir *Edmundbury Godfrey* was murdered the *Saturday* before.

L. H. S. You hear the Queſtion, anſwer it.

Mr. *Samb.* Who muſt I ſpeak to?

L. *Staff.* He is very deaf, and very old, my Lords.

[*Then the Black-Rod was ſent to be near him, to put the Queſtion to him.*]

Black-Rod. What would you have him aſked, my Lord?

L. *Staff.* Whether Mr. *Dugdale* did tell him on the *Tueſday*, that Sir *Edmundbury Godfrey* was murdered the *Saturday* before?

Black-Rod. Did Mr. *Dugdale* tell you of the *Tueſday*, that Sir *Edmundbury Godfrey* was murdered the *Saturday* before?

Mr. *Samb.* No, my Lords, he never told me any ſuch Thing, I take it upon my Salvation. I never heard it till *Friday* or *Saturday* he was found at *Bury-Hill.*

L. *Staff.* Aſk him if he were with *Dugdale* at the Alehouſe the *Tueſday* before.

Mr. *Samb.* *Dugdale* never ſpoke any ſuch Thing to me.

L. H. S. Were not you with him at the Alehouſe?

Mr. *Samb.* No.

L. H. S. Not on *Monday?*

Mr. *Samb.* No.

L. H. S. Nor on *Tueſday?*

Mr. *Samb.* No.

L. H. S. Nor *Wedneſday?*

Mr. *Samb.* Not as I know of.

Sir *W. Jones.* We ſhall prove he was.

L. *Staff.* Pray aſk him what Reputation *Dugdale* hath in the Country.

Mr. *Samb.* Oh, the wickedeſt Man that ever lived upon the Face of the Earth! I know great Part of it myſelf; and a hundred and a hundred of People will ſay as much.

L. H. S. What Religion are you of?

Mr. *Samb.* I was never a Papiſt in my Life, nor ever a Fanatick.

L. H. S. What do you know of *Dugdale* in particular, that is ill?

Mr. *Samb.* Yes, my Lords, I'll tell you; he was a very abuſive Man, eſpecially to the Clergy, and moſt eſpecially to Mr. *Philips*, with whom I boarded. My Lord *Aſton*, that is dead, came and told me of it. Said I, You are miſinformed, for this *Dugdale* is a Knave and a Rogue, and all the Country rings of him for his Wickedneſs. Upon which, he cites me into *Litchfield* Court for defaming him; and he entertains all the Proctors, that I could not get one to put in my Anſwer: But before the Day came, he diſcharged the Court, and never appeared; for we had that againſt him that he durſt not appear.

L. H. S. What Particulars do you know?

Mr. *Samb.* He ſaid the Clergy of *England* was a lewd Clergy, and a Pack of Rogues.

L. H. S. Gentlemen of the Houſe of Commons, will you aſk him any Queſtions?

Manag. No.

L. H. S. Hath my Lord no more to ſay to him?

L. *Staff.* No, my Lords.

L. H. S. My Lord *Stafford*, go on: Hath your Lordſhip done with *Dugdale*, or have you any more Witneſſes?

L. *Staff.* No, my Lords; I have a great deal more to ſay to him.

L. H. S. Go on then.

L. *Staff.* My Lords, I conceive by this, 'tis proved to your Lordſhips, that *Dugdale* did at that Trial declare, he had acquainted Mr. *Sambidge* and Mr. *Philips* with the Letter about the Death of Sir *Edmundbury Godfrey*, the *Tueſday* after he was murdered. And I conceive I have proved to your Lordſhips, by their denying it, that he did not tell them ſo; and ſo he is forſworn in that. I ſhould now have humbly deſired your Lordſhips, that you will pleaſe to call *William Day*; but upon aſking the Queſtion, I find he is not yet come to Town, and ſo I ſhall not trouble your Lordſhips with him: I deſire that *Thomas Sawyer* may be called again. (*Who ſtood up.*)

L. *Staff.* Pray be pleaſed to aſk him, whether he did not hear *Dugdale* wiſh he might be damned if he knew any Thing of the Plot.

L. H. S. He ſaid that before.

L. *Staff.* Then I beg your Lordſhips Pardon, I ſhall not call him again.

L. H. S. Go on, my Lord.

L. *Staff.* My Lords, there are a great many other Witneſſes which I could call; but it is to no Purpoſe, and ſo I ſhall call no more as to *Dugdale.* I conceive upon the whole Matter, his Reputation and Credit are gone; for he is forſworn before the Juſtices of Peace, in that he ſaid there was no Plot, and wiſhed he might be damned if he knew of any Plot. I conceive it is alſo proved, that upon the twentieth of *September*, when he ſays, I did communicate with him about the King's Death, he was only then with me upon his own Deſire, and my Servants were by: There was nothing diſcourſed of but about the Foot-Race. And likewiſe, as to what he ſwore in *Auguſt*, that I was at ſuch a Meeting at *Tixall*, he is forſworn, for I was not there; and ſo I hope that Witneſs is laid aſide; no Creature will give any Credit to him, neither your Lordſhips nor the Houſe of Commons.

L. H. S. Have you done with Mr. *Dugdale?*

L. *Staff.* Yes, my Lords.

L. H. S. Whom will you proceed againſt next?

L. *Staff.* Dr. *Oates.*

L. H. S. Call Dr. *Oates.*

L. *Staff.* Only give me leave to ſay one Thing, my Lords, that you were pleaſed to ſay, I ſhould have Copies of the two Depoſitions of the twenty-fourth and twenty-ninth of *December:* And I had one to enquire, but cannot find that of the twenty-ninth. (*Then Dr.* Oates *ſtood up.*)

L. H. S. What ſay you to Dr. *Oates*, my Lord?

L. *Staff.* This Dr. *Oates*, if your Lordſhips pleaſe, I deſire may be aſked, when was the firſt Time he ever ſaw me in his Life.

L. H. S. When was the firſt Time, Dr. *Oates*, you ſaw my Lord *Stafford?*

Dr. *Oates.* My Lords, the firſt Time I ſaw this Gentleman at the Bar, was, as near as I remember, at Mr. *Fenwick*'s.

L. H. S. That was in *Drury-Lane?*

Dr. *Oates.* Yes, my Lords.

L. H. S. When was that?

Dr. *Oates.* That was, as near as I remember, in *June.*

L. H. S. Was it that Time the Commiſſion you ſpoke of was delivered?

Dr. *Oates.* Yes, my Lords.

L. H. S. Did you ſee that Commiſſion?

Dr. *Oates.* Yes, my Lords.

L. H. S. Did you read it?

Dr. *Oates.* Yes, my Lords.

L. H. S. From whom was it?

Dr. *Oates.* I cannot be poſitive as to that; but, as near as I remember, it was ſigned as the reſt was ſigned.

L. H. S. How was that?

Dr. *Oates.* *Johannes Paulus Oliva.*

L. H. S You read it?

Dr. *Oates.* Yes, I did, my Lords.

L. H. S. It was a Commiſſion to be Paymaſter of the Army, was it not?

Dr. *Oates.* Yes, it was.

L. H. S. And it was delivered to my Lord?

Dr. *Oates.* Yes, it was.

L. H. S. By the Name of Mr. *Howard* of *Effingham?*

Dr. *Oates.* Yes, my Lords.

L. H S. What ſays your Lordſhip to this?

L. *Staff.* What is it poſſible for me to ſay againſt this? I declare to your Lordſhips, in the Preſence of God, I never ſaw the Man in my Life. I never went by any Name, ſince I had the Honour of being a Peer, but by the Name of *Stafford.* I never heard of Mr. *Fenwick* the Jeſuit, nor by the Name of *Thompſon*, till this Plot was diſcovered and he taken. This you may believe, or not, if you pleaſe; but this is as true as I am alive. My Lords, I deſire I may have out of the Journals the Depoſition on which I was committed.

L. H. S. Turn to the Journal.

L. *Staff.* It was read, as I remember, *Friday* 25 *Octob.* 78.

Then the Clerk turned to the Journal, and read.

Die Veneris 25 *die Octobris* 1678.

Clerk. THE Lord Viſcount *Stafford* acquainted the Houſe, That he was informed that there was a Warrant iſſued out from the Lord Chief Juſtice of *England* to apprehend him, which he thought fit to acquaint their Lordſhips with, and ſubmitted himſelf to their Lordſhips Judgment.

The Lord Chief Juſtice being preſent, was commanded to give the Houſe an Account of the Buſineſs; who ſaid, That laſt Night, about nine of the Clock, he received a Letter from the Speaker of the Houſe of Commons, dated from the Speaker's Chair, to come to the Houſe of Commons about Buſineſs of great Concernment. Accordingly he attended the Houſe of Commons, where the Speaker told him, That the Houſe of Commons had received Accuſations of High Treaſon againſt five Lords, and ſome Gentlemen, and deſired him to iſſue out his Warrants for their Apprehenſion. The Perſons were, the Earl of *Powis*, Viſcount *Stafford*, the Lord *Arundel* of *Wardour*, the Lord *Petres*, and the Lord *Bellaſis.* And upon this he iſſued out his Warrants for their Apprehenſion, having taken the Examination of *Titus Oates* upon Oath. That the Earl of *Powis* and the Lord *Arundel* were brought to him this Morning in Cuſtody; and he adviſed them to render themſelves to the *Gatehouſe*, where now they are.

Upon this the Examination of *Oates* was read, whereby it did appear, that the Lord Viſcount *Stafford* was charged to be in a Conſpiracy of Treaſon againſt the King.

The Lord Viſcount *Stafford* denied the Fact, and after this withdrew. And after a while the Houſe was informed that his Lordſhip would render himſelf to the Lord Chief Juſtice.

L. H. S. This is all that is in the Journal.

L. *Staff.* Then, my Lords, if your Lordſhips pleaſe to remember, all of you that were there, that I was accuſed by Dr. *Oates*, whoſe Depoſitions I deſire to ſee, taken before my Lord Chief Juſtice, that he had ſeen Letters of mine written to *Fenwick*, *Harcourt*, and ſome others, three or four Jeſuits, in which I was conſenting to the Plot; that I had ſent my Son to *Liſbon*, yet I would be as kind to the Jeſuits as before, though there was ſome Difference between us. Theſe Affidavits I deſire to ſee, which, as I take it, were read before your Lordſhips that Day.

L. H. S. The Affidavit was taken by my Lord Chief Juſtice in the Houſe of Commons, where he did attend them upon their Summons: I know not if the Original were read in the Houſe of Lords, or the Copy; but it ſeems it is not entred into the Lords Journal: But your Lordſhip had an Order to take Copies of all things you would have demanded; and if you would not, I cannot tell what to ſay to it.

L. *Staff.* Truly I could not take a Copy, becauſe I did not know where it was. I deſire my Lord Chief Juſtice may be aſked where it is; that is all I deſire, and I will then go on.

L. H. S. I think Dr. *Oates* does ſay at this Time that he had ſeen Letters of your Lordſhip's, offering your Correſpondence and Aſſiſtance.

L. *Staff.* If Dr. *Oates* will own he ſaid no more than is in that Affidavit, I am content.

L. H. S. Have you any Copy of your own Examination, Dr. *Oates?*

Dr. *Oates.* Yes, my Lords, I think I have it here.

L. H. S. Marry, that is very well; produce it then. Do you oppoſe it, Gentlemen?

Manag. No, we agree; we deſire the Truth may come out.

Then Dr. Oates *looking among his Papers, drew out one, and offered it to the Court.*

L. H. S. Is that a true Copy of your firſt Examination?

Dr. *Oates.* My Lords, I will not ſwear it, but it was given me for a true Copy.

L. H. S. By whom was it given you?

Dr. *Oates.* I can't remember now, 'tis two Years ago.

Sir *W. Jones.* Unleſs we know whence it comes, or what Authority it hath, we cannot conſent it ſhould be read.

L. H. S. Had you it from my Lord Chief Juſtice, or any Servant of his?

Dr. *Oates.* I cannot tell whether Sir *Charles Harbord* gave it me, or no.

Sir *F. Win.* My Lords, Sir *Charles Harbord* might be of the Committee of Examinations; but the Examination for which my Lord aſked, was not in the Committee nor before the Houſe: My Lord Chief Juſtice retired out of the Houſe, & *virtute Officii* took it. Now it was very fair in Mr. *Oates* to produce it; but yet in Point of Evidence, if he will not ſwear it to be a true Copy, or give an Account

L. H. S. My Lord *Stafford*, 'tis you that want this Paper, you deſire to have the Benefit of the Examination that was taken of Mr. *Oates*, and therefore you muſt produce a Copy of it.

L. *Staff.* My Lords, I could never get it.

L. H. S. 'Tis not entred in our Journal, nor is it to be trac'd; we know not where it is: You have had Time enough to look after it. You are now offered by *Oates* himſelf a Copy that was given him for a true Copy, though he cannot ſwear by whom. Are you content that ſhall be read, if the Gentlemen will admit it?

L. *Staff.* By what I gueſs of Dr. *Oates*, (I know him not) he would not give in a Copy of an Examination unleſs it were true; if it be true, I know not what ſhould hinder the reading of it: But as far as concerns me, I deſire it may be read.

L. H. S. You do conſent, and will you, Gentlemen, permit it?

Mr. Serj. *Mayn.* We do not know whence it comes; we cannot admit it, unleſs *Oates* ſays 'tis true.

Sir *Will. Jones.* My Lords, it hath been long in the Doctor's Poſſeſſion, he hath read it over, he can't ſay 'tis a true Copy; but I deſire to aſk him whether all in that Writing be true, and whether he did ſwear what is in that Writing.

L. H. S. If your Lordſhips pleaſe thus, and you Gentlemen of the Houſe of Commons, the beſt Way to have an Anſwer to this Queſtion is, that it may be read *de bene eſſe*.

Sir *F. Win.* Pray, my Lords, let him read it over to himſelf privately, and then let us know whether he can ſwear the ſame things that are in that Paper. *(Which Dr.* Oates *began to do.)*

Dr. *Oates.* Your Lordſhips aſk only as to my Lord *Stafford*?

L. H. S. My Lord deſires no more; but pray read it over all, and give your Anſwer to all; for that Queſtion, may be, will be aſk'd in other Caſes, and it is fit you ſhould be provided for it. *(Which he did.)*

L. H. S. What ſay you, Doctor?

Dr. *Oates.* My Lords, I do verily believe I did ſwear the Contents of that Paper.

L. *Staff.* My Lords, I do not oppoſe the reading of that Paper; but I have here a Copy of ſomething in the Journal, and do not ſtand upon my Memory; but I think upon the viewing of it now, there is ſomething in the Copies of the Journal.

Clerks. We cannot find it.

L. *Staff.* Then read this Paper.

L. H. S. Will you have this Copy of the Examination read, or not?

L. *Staff.* Yes, my Lords.

Clerk. *The Examination of* Titus Oates *Clerk, taken before us*——

L. H. S. When was that?

Clerk. The 24th of *October*, 1678.

L. H. S. That was read the 25th, the next Day, in the Houſe of Lords.

The Examination of Titus Oates *Clerk, taken by us this 24th of* October, 1678.

THIS Examinant ſaith, That in the Month of *May* laſt, this Examinant ſaw a Patent under the Seal of the Father-General of the Society of *Jeſus* at *Rome*, called *Johannes Paulus Oliva*, at the Chamber of Mr. *Langhorn*, wherein it was expreſs'd, That by virtue of a *Breve* from the Pope, he did conſtitute the Lord *Arundel* of *Wardour* Lord High Chancellor of *England*, which Patent was ſent to the Lord *Arundel* of *Wardour* by a Meſſenger, who was the Son of Mr. *Langhorn*. And this Examinant ſaith, That he ſaw a Letter ſubſcribed by the Lord *Arundel* of *Wardour*, as he believes, wherein the Lord *Arundel* did acknowledge the Receipt of the ſaid Patent, and accepted of the ſame, and promiſed to anſwer the Expectation of the Society.

This Examinant ſaith, That in *June* laſt he ſaw the like Patent, wherein the Lord *Powis* was conſtituted Lord Treaſurer of *England*, which Patent was carried by one *Parſons*, Secretary to the Lord *Powis*, from one *Sanders*'s Houſe in *Wild-ſtreet*, to be delivered to the Lord *Powis*; and at the Delivery of the Patent 300 *l.* was paid by *Parſons* to *Fenwick* and *Ireland*, to carry on the Deſign of the Jeſuits, which was to raiſe a Rebellion in the three Kingdoms, and to deſtroy the King.

In the Month of *July* this Examinant ſaw a Letter ſubſcrib'd *Powis*, and directed to *Fenwick*, wherein his Lordſhip did acknowledge the Receipt of the ſaid Patent, and did accept of the ſame, and ſaid he had three hundred Men and Horſe ready for the Deſign, and that his Lordſhip would venture his Life and Fortune in the Affair.

In the Month of *Auguſt* laſt this Examinant ſaw a Letter directed to Mr. *Langhorn* by the Outſide, but within to the Society of the Jeſuits, wherein Sir *William Godolphin* acknowledg'd he had receiv'd the like Patent to be Lord Privy-Seal, and had accepted thereof; and in *July* 1677, this Examinant ſaw the ſame in the Hands of the Archbiſhop of *Tuam*, at *Madrid* in *Spain*.

This Examinant ſaith, That in *July* laſt Mr. *Coleman* acknowledged and confeſſed to *Fenwick*, in this Examinant's Preſence, that he had receiv'd the like Patent to be Secretary of State, and that it was a good Exchange.

This Examinant ſaith, That in *May*, *June*, *July*, and *Auguſt* laſt, this Examinant ſaw ſeveral Letters ſign'd *Stafford*, whereby it appear'd that the Lord *Stafford* was in this Conſpiracy againſt his Majeſty, and that he had returned ſeveral Sums of Money to the Jeſuits to carry on the Deſign; the Letters were directed to *Fenwick* and *Ireland*; and in *Auguſt* laſt this Examinant ſaw another Letter, directed to the ſame Perſons, ſign'd *Stafford*, wherein my Lord writ, that although he had ſent his Son to *Liſbon*, yet he would be never the worſe Friend to the Jeſuits; and this Examinant conceiveth the Reaſon of that Letter was, becauſe there was then a Difference between the *Engliſh* College at *Liſbon* and the Jeſuits. In *July* laſt this Examinant ſaw in the Hands of *Fenwick*, a Commiſſion directed to the Lord *Bellaſis*, from the Perſon aforeſaid, to be Lord General of the Army to be raiſed in *England* againſt his Majeſty; and in *July* this Examinant ſaw a Letter from my Lord, directed to *Fenwick*, wherein his Lordſhip acknowledged the Receipt of the Commiſſion, and thanked the Society for the ſame, and that he accepted the ſame, and would do what in him lay to anſwer their Expectations.

In *May* laſt this Examinant ſaw a Patent in the Hands of Mr. *Langhorn*, to make my Lord *Petres* Lieutenant-General of the Army; and in *June* laſt this Examinant did hear my Lord *Petres*, in the Preſence of Mr. *Langworth* his Confeſſor, acknowledge the Receipt of the ſame, and that he accepted thereof, and his Confeſſor wiſh'd him much Joy thereof.

L. *Staff.* My Lords, If this be own'd for Truth that he ſwore, then I proceed upon the Evidence of that.

L. H. S. Without allowing it to be a true Copy, Dr. *Oates* at the Bar does ſwear what is ſaid there is true.

L. *Staff.* Then he ſays there, he ſaw Letters ſign'd by me to *Fenwick* and others: I do humbly deſire to know whether that be Evidence or no, that a Man ſays he ſaw Letters, and does not ſay he knew them to be my Hand, nor what the Letters were in particular; nothing that he did prove of it. I muſt appeal to your Lordſhips, to all my Lords, to my Lord High-Steward, and the reſt that were of the Council at that Time, Whether Dr. *Oates* did not poſitively name ſome, and left me out at the Council-Table? And whether Dr. *Oates* did not ſay there was no Lord concerned in the Plot, and whether ſome of my Lords did not ſay ſo, and told ſome other Lords of it, from whom I had it? And in order to this, I deſire Sir *Philip Lloyd* may be examin'd; and if he did not know of my being in it, then he hath ſince forſworn himſelf.

L. H. S. My Lord, I know not where you are, nor what you are about: Are you objecting againſt *Oates* upon any Evidence out of the Journal?

L. *Staff.* My Lords, I go upon this that hath been read.

L. H. S. Pray, my Lord, produce your Witneſſes that did hear him ſay any Thing, and take your Advantage of it.

L. *Staff.* I call Sir *Philip Lloyd.*

L. H. S. Where is Sir *Philip Lloyd*?

L. *Staff.* My Lords, I do not know; I think he is here, I hope he will come.

Then he appeared amongſt the Members of the Houſe of Commons, and was called to the Bar amongſt the other Witneſſes, and ſtood up.

L. H. S. What does your Lordſhip aſk Sir *Philip Lloyd*?

L. *Staff.* Whether he was not by when Dr. *Oates* was aſk'd, if there were any Lords concerned in the Plot, and he ſaid, No; and whether he did not tell me ſo a Day or two before I was committed, in the Prince's Lodgings?

L. H. S. What ſay you, Sir *Philip Lloyd*, did you ever hear Dr. *Oates* deny upon his Oath, that ever he heard of any Lords that were concern'd in the Plot?

Sir *Phil. Lloyd.* My Lords, truly I cannot remember any ſuch thing: If my Lord put me in mind of any particular Circumſtance or Time, I may recollect it: I muſt confeſs I think I have heard ſuch a thing rumour'd; but I am ſo unfortunate I cannot remember any thing poſitively of it.

L. *Staff.* He did tell me ſo, I am ſure.

Sir *Philip Lloyd.* Truly, my Lords, I would be glad to remember any thing to juſtify the Truth; but I cannot remember this.

L. *Staff.* But whether it were ſo or no, your Lordſhips that were of the Council can tell.

L. H. S. My Lord, I do not know. Your Lordſhip cannot be refuſed, if you preſs it, to aſk any of the Lords of the Council, if they remember any ſuch thing that did paſs there; but if I were there or in the Council, I deal plainly with your Lordſhip, I cannot ſay that there was any ſuch thing ſaid.

L. *Staff.* If there be any here that were there beſides, I deſire they may be aſk'd.

L. H. S. If your Lordſhip will call upon any other of my Lords that were there, they will tell you.

L. *Staff.* I don't know who were there, I can't call them.

L. H. S. You may aſk any of the Lords of the Council, who were there that time Dr. *Oates* was examined.

L. Marq. of *Worceſter*. My Lords, I was not at the Council then; but I heard it, not there indeed, but as a general Report abroad.

L. *Staff.* I deſire my Lord Privy-Seal may tell what he knows of it.

Lord Privy-Seal. What is it your Lordſhip would know of me?

L. *Staff.* Whether *Oates* did not ſay he had no more to accuſe?

Lord Privy-Seal. Where, my Lord?

L. *Staff.* At the Council-Table.

Lord Privy-Seal. 'Tis a very hard thing for me to charge my Memory with all the Queſtions at an Examination; we uſe to refer to the Examinations themſelves: I have ſeen ſome Examinations, I wiſh all were ſo, wherein the Queſtions are put down as well as the Anſwer; and I cannot charge my Memory that he ſaid he had no more to accuſe.

L. *Staff.* I deſire, then, all the Lords of the Council that are here to ſay, whether or no he was not aſk'd this Queſtion particularly by my Lord Chancellor, (and I deſire particularly his Lordſhip would ſay whether he can't remember it) Whether he had any thing to ſay againſt ſome Lords? And he anſwer'd, They were to know of it, but God for bid he ſhould accuſe them.

L. H. S. When ſhould that be?

L. *Staff.* My Lords, I can't ſay the Day, for I was not in Town. But I deſire to aſk, whether you did not aſk him upon the firſt Diſcovery of the Plot, whether he had any thing to ſay againſt ſome Lords?

L. H. S. Do you deſire to know whether I aſked him this Queſtion, If he had any thing to ſay againſt ſome Lords?

L. *Staff.* I do not ſay poſitively your Lordſhip, but whether that Queſtion was not aſk'd him?

L. H. S. Certainly I ſhould never aſk any ſuch Queſtion of any Man alive. I might aſk in general of any Lord, but not of ſome.

L. *Staff.* Some or other Lords it was.

L. H. S. I don't remember it; and 'tis impoſſible for any Man living to remember what Queſtions he did aſk two or three Years ago upon an Examination.

L. *Staff.* I deſire I may have leave to aſk the Earl of *Berkley* a Queſtion.

L. H. S. What is it you would aſk him?

L. *Staff.* My Lords, I humbly aſk his Lordſhip, whether he did not hear Dr. *Oates* ſay, after he had accuſed ſome Perſons before the Council, that he had no more to accuſe?

Earl of *Berkley.* My Lords, I had the Honour to be of the Privy-Council about the Time of the Diſcovery of the Plot; but I do not remember that I heard Dr. *Oates* ſay any ſuch thing there.

L. *Staff.* Or in the Houſe of Lords; for I may miſtake. And therefore I deſire my Lord of *Berkley* would declare what he heard Dr. *Oates* ſay before the Houſe of Lords.

Earl of *Berkley.* Yes, my Lords; in the Lords Houſe I will tell your Lordſhips what I remember. My Lord Chancellor, to the beſt of my remembrance, did aſk Dr. *Oates*, at the Bar of the Houſe, this Queſtion——My Lords deſire to know, if you can accuſe any other Perſon or Perſons, of what Quality ſoever, and you are encouraged by their Lordſhips to accuſe them: His Anſwer was——My Lords, I have no more to accuſe in relation to *England*, but in relation to *Ireland* I have.

L. H. S. That was after he had accuſed your Lordſhip, my Lord *Stafford*.

Sir *W. Jones*. We pray, my Lords, we may have the Favour to aſk that very Honourable Lord, at what time Dr. *Oates* ſaid this, for the Satisfaction of thoſe that are preſent.

Earl of *Berkley*. My Lords, It was after Dr. *Oates* had accuſed my Lord *Stafford*, but before he had accuſed the Queen.

L. *Staff.* I beſeech you, my Lords, to mark it, (and I am very glad of it) he ſaid he had no more to accuſe in relation to *England*, and yet after that he accuſed the Queen.

L. H. S. My Lord, Then the beſt Account of it will be on the Journal; the Queſtion and Anſwer is entred there.

Die Jovis 31 *die Octobr.* 1678.

Poſt Meridiem.

Titus Oates being at the Bar, is directed to proceed in giving an Account of the Commiſſions given to ſeveral Lords and other Perſons for Offices Civil and Military.

Upon which he proceeded in a particular Narrative thereof, with ſome Circumſtances tending to make out the Truth thereof, and then was commanded to withdraw, but ſtay without.

Then upon Conſideration had hereof, the Lord Chancellor, by Directions of the Houſe, cauſed him to be called in again, and told him, that the Lords expect not his entering into particular Circumſtances, but if there be particular Perſons concerned, of what Quality ſoever they be, the Houſe expected he ſhould name them: but he named none but thoſe he had mentioned in his Narrative, nor could name no other Perſon.

L. *Staff.* Then, my Lords, he ſaid, he knew no Perſons more than he had diſcovered; and after, did he not accuſe the Queen, and ſeveral others? If he ſaid true, then he knew no body more; if not, he is forſworn.

Sir *W. Jones*. Pray prove he did accuſe the Queen.

L. *Staff.* He did ſo in the Council, and he is clearly perjured in that, and ſo not to be believed. And I ſay beſides, after that Dr. *Oates* had conſulted with himſelf, and poſſibly with ſome others, what his Narrative ſhould be, and what he ſhould accuſe Perſons of, and did only accuſe me of ſeeing ſome Letters ſigned *Stafford*, and now he comes to give Evidence, he knows more of my having a Commiſſion. After this rate, it may be he may know a great deal more To-morrow, when he hath invented it: And 'tis a great Sign he did not know of any more, if he did know of that; for I never had any Correſpondence with the Jeſuits, nor any Buſineſs tranſacted with them theſe twenty-four or twenty-five Years. Indeed at *Ghent* the *Engliſh* Jeſuits were deſired to do a little Thing for me, and they refuſed it me; it was to ſend over a Man that was to be a Witneſs in a Suit I had beyond Sea: And I never writ one Letter to a Jeſuit ſince, nor he to me, that I know of, nor never had to do with them, that I know of. I never heard of *Fenwick*'s Name, nor *Harcourt*'s, till I heard of the Plot: nor of *Johnſon* nor *Thompſon*, Jeſuits: And if any can prove it, I will acknowledge myſelf guilty of all that is ſaid againſt me. And for that Dr. *Oates* at firſt ſaid, he only ſaw Letters of mine, and after comes and accuſes me of a Commiſſion, I appeal to your Lordſhips if there can be any Truth or Belief in him. I cannot ſay more than what I have ſaid already, and I do challenge Dr. *Oates*, at the Day of Judgment, to ſay, if ever he ſaw me in his Life till I was committed; or if I did ever go by any Name but that of *Stafford*, I will be content to die immediately. If I had gone by the Name of *Howard*, I need not be aſhamed of it: for 'tis a Name good enough to be owned. I know there is a worthy Gentleman that bears the Name of *Howard* of *Effingham*, but I never did. If your Lordſhips pleaſe to let me aſk Mr. *Dugdale* one Queſtion.

L. H. S. Call *Dugdale* again. (*Who appeared.*) What ſay you to him, my Lord?

L. *Staff.* I deſire to aſk *Dugdale*, whether he did not, in his Depoſitions before Mr. *Lane* and Mr. *Vernon*, ſwear, that the 20th of *October* I offered him 500*l.* to kill the King?

Mr. *Dugd.* No, *September*.

L. *Staff.* Ay, *September*.

Mr. *Dugd.* Yes, I think I did make that Depoſition before Captain *Lane*. I am certain I did, that my Lord *Stafford* the 20th or 21ſt of *September* offered me 500*l.*

L. *Staff.* Then did he not ſay preſently upon this, he went to Mr. *Evers*'s Chamber?

L. H. S. He ſays ſo now.

Mr. *Dugd.* My Lords, I am not certain it was the ſame Day; it was as ſoon as I could have Opportunity, it was preſently after.

L. *Staff.* Did he not ſay he told *Evers* what I ſaid to him, and he did not underſtand the Meaning of it?

Mr. *Dugd.* I did ſay ſo to Mr. *Evers*: I did aſk Mr. *Evers* what my Lord *Stafford*'s Meaning was, whether his Intention was true or no, to do as he ſaid, and whether my Lord was in that Condition, as to be able to perform his Promiſe, for I feared Payment of the Money; and he told me, *Harcourt* and the reſt of the Jeſuits would furniſh it.

L. H. S. So he ſaid Yeſterday.

L. *Staff.* Then aſk him if he did not ſay, the Beginning of *September* I met him at *Tixall*, and I ſpake to him about ſuch a Buſineſs.

Mr. *Dugd.* My Lords, I did ſay, to the beſt of my Remembrance, it was about that Time, the latter End of *Auguſt*, or the Beginning of *September*, I would not be poſitive, nor could not, to five Days.

L. *Staff.* No, I think not to 5000. Then I aſked him this Queſtion, whether he did not preſently upon that, when I told him about the Deſign, go to Mr. *Evers*, and aſked what it meant?

L. H. S. He ſaid ſo but now, he went to *Evers* and aſked what you meant.

L. *Staff.* I beſeech you I may be underſtood, whether he did not ſay in the Beginning of *September*, which was before the 20th or 21ſt in the Journal?

L. H. S. Is it in the Journal?

L. *Staff.* Yes.

L. H. S. Why, then, read it.

Die Sabbati 28 *Decembris* 1678.

The Earl of *Eſſex* acquainted the Houſe, that he had received an Information out of the Country of very great Concernment, which was read as followeth.

Staffordſh.

December 24, 1678.

The Information of Stephen Dugdale, *Gent. late Servant to the Lord* Aſton *of* Tixall, *concerning the Plot againſt our Sovereign Lord the King, as followeth:*

1. THIS Informant ſaith, that preſently after one *Howard*, Almoner to the Queen, went beyond the Seas, he was told by *George Hobſon*, (Servant to the ſaid Lord *Aſton*) that there was a Deſign then intended for the Reformation of the Government to the *Romiſh* Religion.

2. He informeth, That in the Beginning of *September*, 1678, he met in *Tixall*, nigh the Lord's Gates, the Lord *Stafford*, who ſaid to this Informant, it was ſad that they were troubled, for that they could not ſay their Prayers but in a hid Manner, but ſuddenly there would be a Reformation to the *Romiſh* Religion; and if there was but a good Succeſs, they ſhould enjoy their Religion. And upon the 20th Day of *September* laſt, the ſaid Lord *Stafford* told this Informant that there was a Deſign in Hand, and if this Informant would undertake the Deſign, he ſhould have a good Reward, and make himſelf famous.

3. Upon the aforeſaid Day, immediately after, this Informant went into the Chamber of Mr. *Francis Urie*, alias *Evers* (a Jeſuit), in *Tixall-Hall*, and aſked him what the Lord *Stafford* meant by thoſe Words; and after he had made him to ſwear Secrecy upon his Knees, he told him he might be a Perſon employed in the Work, and have a good Reward that would make him famous: And then he told him he muſt be inſtrumental with others in taking away the King's Life; and that it ſhould be done by Shooting or otherwiſe. And that this Informant need not to fear, for the Pope had excommunicated the King, and that all that were excommunicated by him were Hereticks, and they might kill them, and be canonized for Saints in ſo doing.

4. The Informant ſaith, that the ſaid *Evers* and *Hobſon* both ſaid, that the Deſign was as well to kill the Duke of *Monmouth* as the King.

5. That *George North* (Nephew to *Pickering*, and Servant to the Lord *Aſton*,) lately told this Informant, that they had taken his Uncle, (meaning *Pickering*) and put him into *Newgate*; and thought the King deſerved ſuch an execrable Death as was intended him, becauſe of his Whoring and Debauchery.

6. That Mr. *Evers* ſaid, Mr. *Bennyfield* had a Pacquet of Letters delivered to him from the *Poſthouſe*, which he feared the Lord-Treaſurer had Notice of, and therefore he delivered them to the Duke of *York*, and the Duke delivered them to the King, and that the King gave them to the Treaſurer, after he had read them; but that the King did not believe them, and therefore it was happy, or elſe the Plot had been diſcovered.

7. That he had received many Pacquets of Letters for *Evers*, ſome of which this Informant broke up, and found them to be and tend to the Eſtabliſhment of the *Romiſh* Religion, &c.

8. That he had received ſeveral Sums of Money himſelf, and knew of divers others that were employed to put forth Money, which was and is for the Jeſuits Uſe.

Stephen Dugdale.

Taken upon Oath the 24th *Day of*
December 1678. *before us,*

Tho. Lane,
J. Vernon.

L. *Staff.* My Lords, I find by this here, that preſently after one *Howard*, Almoner to the Queen, went over, *George Hobſon*, Servant to my Lord *Aſton*, told *Dugdale* there was a Deſign to reform the Government, &c. I beſeech your Lordſhips I may aſk him, how long after he went over this Diſcourſe was.

Mr. *Dugd.* I do not ſay I knew *George Hobſon* before he came to be a Servant to my Lord *Aſton*, which was in the Year 78, but that this was only a Diſcourſe to me, that the Plot had been ſo long carrying on.

L. *Staff.* He ſays upon his Oath, preſently after the Almoner went over, he told him ſo. Now the Almoner went over three Years before that, when the Proclamation came out to baniſh the Queen's Servants for being Papiſts.

Mr. *Dugd.* I heard it there; I never knew *George Hobſon* before he came to be a Servant to my Lord *Aſton*, but I did not tell it as a Diſcourſe at that Time, or that it was more than what I had from him, that there was ſuch a Deſign ſo long before.

L. *Staff.* He ſays, preſently after the Almoner went over, in his Oath; which was, I think, in the Year 72 or 73, or rather in the Year 75, about the End of the Year 74, as I remember. And he ſays preſently, three Years after; is that preſently? E'en now the End of *Auguſt* was the Beginning of *September*, and how long that was we can't tell, and now three Years is preſently after.

Sir *W. Jones*. He is telling of another's Diſcourſe with him.

L. H. S. My Lord, you muſt obſerve that *Dugdale* ſays, that he did hear it from *Hobſon* after he came to my Lord *Aſton*'s Service.

L. *Staff.* But he ſays, preſently after the Almoner went over; and 'tis impoſſible; for he did not ſay it till three Years after, and ſo there is no Truth in him.

Mr. *Dugd.* My Lords, it was, that *Hobſon* told me, that preſently after the Almoner *Howard* went over, there was ſuch a Deſign carrying on.

L. H. S. You diſtinguiſh not, and therefore don't comprehend. 'Tis one Thing if *Dugdale* had ſaid, that preſently after there was ſuch a Deſign, *Hobſon* told him ſo.

L. *Staff.* I beſeech you, it is ſaid, that preſently after the Almoner went over, *Hobſon* told him ſo.

L. H. S. But it is not that preſently after he heard the Diſcourſe; but *George Hobſon* told him, that preſently after the Almoner went over, there was ſuch a Deſign.

L. *Staff.* 'Tis ſaid he was told preſently after.

(*Then the Information was read again.*)

L. H. S. Do you know when *Howard* the Almoner went over?

Mr. *Dugd.* No, my Lords; but by Report I heard when he went: But I do not make that Part of my Oath, for I cannot abſolutely remember it.

L. H. S. My Lord, You muſt not make a Strain to make a *Miſtake*.

L. *Staff.* God's Life! is three Years a Strain?

Mr. *Dugd.* I never did mean ſo, nor never did intend ſo, for I never knew him till he came to my Lord *Aſton*'s; but he told me then this Diſcourſe.

L. H. S. My Lord, this is only a Queſtion of Grammar, how it can be conſtrued.

L. *Staff.* My Lords, I beg your Pardon; 'tis to my little Reaſon a Queſtion of Senſe, and it is plain to to me it can have no other Senſe; but I ſubmit it to your Lordſhips, whether this be not the true Conſtruction.

L. H. S. Go on, my Lord, with your Evidence, Notice will be taken of your Objection; you ſhall ſee what they ſay to it; if they do not give it an Anſwer, it will have it's Weight.

Sir. *Will Jones.* We will give that an Anſwer in due time.

L. *Staff.* Then next he ſays, I talk'd with him at my Lord *Aſton*'s the beginning of *September*, where he met with me at *Tixall* at the Gate, and I ſaid, it was ſad we could not ſay our Prayers, but in private. Truly, my Lords, I cannot ſay I did not ſay this to him; but if I did ſay it, I do not remember it, or that I ever thought ſo much; for I was ſo much of a contrary Opinion, that I thought thoſe of that Religion ſaid their Prayers too openly, and have chid them for it. And why ſhould I ſpeak it to him, whom I did not know what Religion or what Profeſſion he might be of? And preſently after I ſpoke of theſe things, he ſays, he went to know what the Deſign was, and then Mr. *Evers* told him of the Plot, and yet yeſterday he ſaid he knew it ſixteen Years ago. How can all this be true? And beſides, it ſeems I could have no great Power with him to perſuade him, for it ſeems he miſtruſted my Ability to pay; and he had reaſon, for I ſhould hardly have parted with 500 *l.* in the Condition I was then in, to any one; but I have no more to ſay to him now. There is a third Witneſs, one *Turbervile*, I deſire to aſk him a Queſtion.

L. H. S. Call *Turbervile.* (*Who ſtood up.*)

L. *Staff.* I deſire to know what time he came to ſerve my Lady *Molineux* (for it is in the beginning of the Information in the Houſe of Commons, that he came in the Year 73), and how long he ſtaid with her.

L. H. S. My Lord *Stafford*, if your Lordſhip pleaſe, there was an Offer made to you, that thoſe Affidavits ſhould be produced, if you deſired to ſee them.

L. *Staff.* I think I ſhall have no occaſion as yet; it may be I may by and by: But I deſire to aſk him this Queſtion firſt, Whether he did ſay he came in the Year 73 into my Lady *Mary Molineux*'s Service, and ſtaid with her about three Years?

L. H. S. Did he ſwear in the Year 73 he came?

L. *Staff.* 'Tis ſo in his Narrative in Print.

L. H. S. Do you own that Narrative in Print for true?

Mr. *Tur.* No, my Lords.

L. H. S. How can you challenge him, then, with a Narrative he does not own?

L. *Staff.* Then what can a Man do, if he muſt not go according to what is printed?

Mr. *Tur.* There is a Miſtake in the Printing of it, there is a Miſtake of 73 for 72.

L. *Staff.* I now deſire that Affidavit may be produced.

L. H. S. Pray let him have the Benefit that was offer'd him of the Affidavit.

Mr. *Tur.* Beſides, I declared I could not be poſitive to a Year; I own any thing elſe in it.

L. *Staff.* Then, my Lords, if I ſhall have Fellows that will not ſwear to Months nor to Years, I beg of your Lordſhips to know whether theſe be legal Witneſſes.

Manag. The Affidavit is in the Cuſtody of Sir *W. Poulteney*, a Member of our Houſe.

Sir. *Will. Poulteney.* My Lords, I have the Affidavit; if you pleaſe, I ſhall give you an Account what I did upon it, and Sir *Thomas Stringer*, another Juſtice of Peace. My Lords, after that Mr. *Turbervile* had given his Evidence to the Houſe of Commons *viva voce*, he tender'd to them this Information that I have in my Hand. The Houſe of Commons, after it had been read, thought it might be convenient to have it ſworn to before two Juſtices of Peace. Whereupon Sir *Thomas Stringer* and my ſelf withdrew into the Speaker's Chamber. Mr. *Turbervile* came to us, we read over the Information to him again, and after we had read it over it was ſign'd, and he ſwore it. In this Information, when we then took it, he declared there, That he came to my Lord *Powis* in the Year 1673, and came into *England* 1676. After we had ſworn him, we carried this Information into the Houſe again. The next Morning, my Lords, he came to me (I being one of the Juſtices that had ſworn him) and told me, that ſearching among his Papers the laſt Night for a Letter, which he ſaid he had received from my Lord *Stafford*, ſent to *Diep*; tho' he could not find the Letter he look'd for, yet he found that the preciſe time that he went to live with my Lord *Powis* was 1672, and the preciſe time of his coming into *England* was 1675. And he deſired me to acquaint the Houſe of Commons with it, that this Circumſtance of Time might be alter'd. Whereupon, my Lords, I did acquaint the Houſe of Commons with it, how he was miſtaken in that Point of a Circumſtance of Time; and that he came of his own accord, and deſir'd me to move the Houſe in it. I moved the Houſe, and they did direct we ſhould withdraw again, and take his Information again, and that he ſhould amend it. He amended it, and made the 73, 72; and the 76, 75; and then afterwards we ſwore him to it again *de novo:* And this is the Matter of Fact concerning the Affidavit.

L. H. S. Sir *William Poulteney*, did Mr. *Turbervile* correct the Miſtake himſelf firſt, or was it found alter'd by others?

Sir *Will. Poulteney.* My Lords, he came to me, for I did not know any thing of it, that he was miſtaken; but he came to me the next Morning as ſoon as ever I came to the Houſe, before indeed I enter'd into the Houſe, and told me of the Miſtake; and told me the Reaſons how he came to recollect himſelf, and find out the Miſtake.

L. H. S. Mr. *Turbervile*, I would aſk you the Queſtion, how came you to be inform'd that you had miſtaken yourſelf?

Mr. *Tur.* My Lords, I'll tell you: I was ſearching for a Letter I receiv'd from my Lord *Stafford*, and miſſing that, I found my Diſcharge I had from the *French* Army, wherein I ſaw a Miſtake as to the Time, and that I have to produce.

L. H. S. I aſk you again by the Oath you have taken, did you correct it of your ſelf, or by Information from any other?

Mr. *Tur.* By the Oath I have taken, I did correct it of my ſelf, and no body mov'd it to me.

Mr. Serj. *May.* It was but a Circumſtance of Time.

Sir *F. Win.* And corrected by himſelf the very next Morning, my Lords.

L. *Staff.* He does acknowledge he did forſwear himſelf once, and did make himſelf an honeſt Man the next Day, when he was a perjur'd Villain the Day before. And now he tells your Lordſhips, that he was ſearching for a Letter that I ſent to him, but he cannot find it.

Mr. *Tur.* No, my Lords, I thought I had it, but I cannot find it.

L. *Staff.* No, I'll ſwear thou canſt not. But then he does ſay that he had a Diſcharge from the *French* Army.

Mr. *Tur.* Yes, 'tis here, my Lord.

L. H. S. Is that the Paper of your Diſcharge?

Mr. *Tur.* Yes, it is. 'Tis worn out a little, and torn, but the Seal is preſerv'd: I did not know that ever I ſhould have occaſion to make uſe of it; but my Lord challenging me for a Coward, and a Deſerter of my Colours—

L. *Staff.* I believe ſo ſtill, for I have heard ſo.

L. H. S. Your Honour is not in queſtion, Mr. *Turbervile.*

Mr. *Tur.* The Title is a little torn; and if your Lordſhips pleaſe, I will read it: (which he did, being in *French*, and is render'd in *Engliſh* in theſe Words:

THIS certifieth all to whom it ſhall appertain, that I have given an abſolute Diſcharge to the Sieur *Turbervile*, a Cavalier of my Company, after having ſerv'd the Space of ſix Months with all Honour and Fidelity. Therefore I deſire thoſe that are to be deſired, to treat him civilly, and let him paſs and repaſs, and without doing him any Injury, or giving him any Hindrance; but on the contrary, to afford him all Aid and Aſſiſtance where it ſhall be neceſſary, promiſing the like upon all Occaſions that ſhall require it. In Confirmation of which, I have for him ſign'd this preſent Diſcharge, and thereto put the Seal of my Arms, to ſerve him in caſe he ſhall need it. Made at the Camp before *Aire* this 4th of *Auguſt*, 1676.

Sheldon.

L. H. S. What is the Date of that Diſcharge, *Turbervile?*

Mr. *Tur.* 'Tis in *Auguſt* 76.

L. *Staff.* May I ſee it, my Lords?

L. H. S. Yes. Deliver it to my Lord. (*Which was done, and he look'd upon it.*)

L. *Staff.* The thing looks like Truth, but there is no Proof of it.

Mr. *Tur.* The Seal is a little broke, but the Name remains perfect.

L. *Staff.* He ſays there is a Diſmiſſion from the Army in 76; how will that rectify his Miſtake about 73? I underſtand not that.

Then the Court called for the Paper; and it was looked upon by the Duke of Monmouth, *and ſome other Lords.*

L. H. S. My Lord, this Paper hath been look'd upon; the Hand is well known by thoſe that ſhould know it.

L. *Staff.* I do not ſay the contrary.

L. H. S. Whereabouts are you now, my Lord, then?

L. *Staff.* I am extremely faint and weary, that I am ſure of. This Gentleman told you yeſterday, that he ſpoke with me ſeveral times in *France*, and that he was converſant with me for a Fortnight together; that he viſited me, and I propos'd the killing of the King to him; and that he refus'd to give me an Anſwer then, but told me he would give it me at *Diep:* This he ſaid yeſterday, as I remember. And afterwards, when he was gone down, he came up again, and deſired to put your Lordſhips in mind of a particular Circumſtance which he ſaid he did remember, That when he came to me, I had the Gout, and was in a lower Room of the Houſe, in ſuch a Street, which fac'd *Luxemburgh* Houſe, all which I ſtand not upon; and that the Prince of *Conde* lived in the ſame Street, on the Left-hand he ſaid firſt, and after on the Right-hand, and after he knew not where, and that I did lodge in the ſame Street.

Mr. *Tur.* I did ſay, I believ'd the Prince of *Conde* lived there, but I was not poſitive.

L. *Staff.* No; but firſt he ſwears a Thing, and then only believes it. Be pleaſed to call my Servants, to know if ever I had my Foot ill of the Gout in my Life.

Mr. *Tur.* Your Lordſhip told me it was the Gout.

L. *Staff.* If ever I put my Foot on a Stool, or was lame there, I will own all that he ſays. But when a Man ſwears his Evidence, and goes down from the Place, and then invents, and comes up again to tell new Stories, who ſhall believe ſuch a Man?

Mr. *Tur.* I never went from the Bar.

L. *Staff.* I do ſay, you went down, and had given all your Evidence, and came up again, and told this Circumſtance. I have not been lame, not one Moment, theſe forty Years; and yet this Fellow, this impudent Fellow, to ſay, that I was lame, and put my Foot upon a Stool! He does not, my Lords, ſwear poſitively in any thing but this, and this I can eaſily diſprove him in.

L. H. S. What ſay you to this Particular, *Turbervile?* Had my Lord *Stafford* never the Gout while he was in *France?*

Mr. *Tur.* He told me it was the Gout, my Lords: He had a great Lameneſs, he could not go from one Place to another. Here are ſeveral People to give Teſtimony that my Lord was lame within leſs Time than he ſays.

Mr. *Foley.* Hold, hold, *Turbervile*, you muſt not give that Evidence now.

L. *Staff.* Call *Nicholas Furneſe* again.

L. H. S. What do you call him for?

L. *Staff.* Aſk whether ever he ſaw Mr. *Turbervile* with me in *France?*

L. H. S. Were you with my Lord *Stafford* all the while he was in *France?*

Furneſe. Yes, my Lords.

L. H. S. Did you never ſee *Turbervile* there?

Furn. No.

L. H. S. Pray, did you never ſee Father *Anthony Turbervile* there?

Furn. No, my Lords, I never heard of his Name.

L. *Staff.* Was I ever one moment lame while I was in *France?*

Furn. Not that I remember.

L. H. S. How long was my Lord there?

Furn. About three Months.

L. H. S. What time of the Year?

Furn. At *Paris* in *October* and *November*, in *December* at *Rohan*, in *January* we came over into *England*.

L. *Staff.* Aſk him if ever I put my Foot upon a Cuſhion or upon a Stool for Lameneſs.

L. H. S. Mr. *Turbervile*, did you ever ſee *Furneſe* when you were in *France?*

Mr. *Tur.* This Man, my Lords?

L. H. S. Yes.

Mr. *Tur.* No, not that I remember.

L. H. S. In what Quality did you ſerve my Lord in *France*, *Furneſe?*

Fur. My Lords, I waited on him in his Chamber.

L. H. S. Do you remember any other Servant of my Lord's that you did ſee there?

Mr. *Tur.* Truly, my Lords, I don't remember, I might forget him.

L. *Staff.* So I believe thou doſt me too.

Mr. *Tur* Your Lordſhip that could call me Coward, may ſay any Thing.

L. *Staff.* You ſhall be as valiant as *Hector*, if you will. Pray call my other Boy. (*Who ſtood up.*)

L. H. S. You little Boy, Were you all the while with my Lord that he was in *France?*

Leigh. Yes, my Lords.

L. H. S. Did you ever ſee *Turbervile* there?

Leigh. No, my Lords, not that I know of.

L. H. S. Had my Lord the Gout in *France?*

Leigh. No; nor never had ſince I have been with him.

L. H. S. That is ſix Years.

Leigh. Seven Years almoſt, my Lords.

L. H. S. Are you ſure of that?

Leigh. I am ſure of it.

L. *Staff.* Now, my Lords, Mr. *Turbervile* ſays, I writ him a Letter to *Diep*, which Letter he can't find; I beſeech you, what were the Contents of the Letter?

L. H. S. What were the Contents of the Letter my Lord ſent you?

Mr. *Tur.* The Contents of the Letter were, That I ſhould not ſtay at *Diep* in Expectation of him, for he had appointed a Yacht to come to *Calais*; but I ſhould make what haſte I could to *London*, and there I ſhould meet with him.

L. *Staff.* I deſire to aſk, whether I ſent him Word that Count *Gramont* came over with me.

Mr. *Tur.* Yes, my Lords, to the beſt of my Remembrance.

L. *Staff.* I ſhall now bring Witneſſes that I did not come by *Calais*, but by *Diep*, and Count *Gramont* came not with me.

L. H. S. Mr. *Turbervile*, which Way came you, from *Diep*, or from *Calais?*

Mr. *Tur.* From *Diep*, my Lords.

L. *Staff.* And I came from *Diep* too.

L. H. S. My Lord came that Way too, he ſays.

Mr. *Tur.* I know not of that, he ſent me Word otherwiſe.

L. *Staff.* I ſhall now prove what I ſay. Pray call Mr. *Wyborne.*

(*Who ſtood up.*)

L. H. S. What do you aſk him, my Lord?

L. *Staff.* Whether he did not ſee me at *Diep*, and embark from thence for *England?*

Mr. *Wyborne.* My Lords, I will give you an Account as well as I can. In the Year 75, in *December*, I had Occaſion to go over into *France* upon my own Concerns; and enquiring where there was a Conveniency to go over, I heard that a Yacht was ſending to *Diep* for my Lord *Stafford*, and Mr. *Henry Sidney*, his Majeſty's Envoy Extraordinary now in *Holland:* I took that Occaſion, and we weighed Anchor on *Friday* the 24th of *December*; and it being foul Weather, and we being toſſed long upon the Sea, we did not come to an Anchor before *Diep* till the *Sunday* was Se'nnight at two o'clock in the Afternoon, which was *January* the 2d. Then I came with the Captain immediately on Shore, to enquire for my Lord and Mr. *Sidney*; I enquired for my Lord, and they told me he was at *Rohan*, expecting to hear of the Arrival of the Yacht: Upon which the Captain deſired me to write a Letter to my Lord, and I did ſo; upon Sight of which Letter, he came to *Diep* on *Tueſday* in the Afternoon, which was, as I take it, the 4th of *January*, and we were at the *Baſtile* there then together when he came that Evening. And the next Day I went on my own Occaſions to *Paris*, and my Lord and Mr. *Sidney* did come over together in the Yacht.

L. *Staff.* If you pleaſe, I will call my two Servants again to this Matter.

L. H. S. Call them, my Lord. (*Then* Furneſe *and* Leigh *ſtood up.*)

L. H. S. Which Way came my Lord *Stafford* out of *France* into *England*, by *Diep* or *Calais?*

Furn. By *Diep.*

L. H. S. What ſay you, Boy? Which Way came my Lord?

Leigh. By *Diep*, my Lords.

L. H. S. You came with him?

Leigh. Yes, we did.

L. H. S. My Lord, the Queſtion is not, whether you came by *Calais* or no, but whether you writ a Letter to him to *Diep*, that you would go by *Calais.*

L. *Staff.* He ſwore Yeſterday that I did come by *Calais.*

L. H. S. Do you ſay my Lord came by *Calais?*

Mr. *Tur.* My Lords, I had a Letter from his Lordſhip, which he wrote to me, that he would come by *Calais.*

L. *Staff.* He did not name the Letter Yeſterday, nor is it in the Information.

L. H. S. Read the Affidavit.

The Information of Edward Turbervile, *of* Skeer, *in the County of* Glamorgan, *Gent.*

WHO ſaith, That being a younger Brother, about the Year 1672, he became Gentleman-Uſher to the Lady *Mary Molineux*, Daughter to the Earl of *Powis*, and by that Means lived in the Houſe of the ſaid Earl above three Years; and by ſerving and aſſiſting at Maſs there, grew intimate with *William Morgan*, Confeſſor to the ſaid Earl and his Family, who was a Jeſuit, and Rector over all the Jeſuits in *North Wales*, *Shropſhire*, and *Staffordſhire.* And he during the three Years Time often heard the ſaid *Morgan* tell the ſaid Earl and his Lady, That the Kingdom was in a high Fever, and that nothing but Blood-letting could reſtore it to Health, and then the Catholick Religion would flouriſh. Whereunto the ſaid Earl many Times replied, It was not yet Time, but he doubted not but ſuch Means ſhould be uſed in due Time; or Words to that Effect. And he heard the Lady *Powis* tell the ſaid *Morgan* and others, publickly and privately, That when Religion ſhould be reſtored in *England*, which ſhe doubted not but would be in a very ſhort Time, ſhe would perſuade her Huſband to give 300*l. per Annum*, for a Foundation to maintain a Nunnery. And this Informant was perſuaded by the Lady *Powis*, and the ſaid *Morgan*, to become a Frier; the ſaid Lady encouraging this Informant thereunto, by ſaying, That if he would follow his Studies, and make himſelf capable, ſhe queſtioned not but he might ſhortly be made a Biſhop by her Intereſt in *England*; becauſe upon Reſtoration of the Catholick Religion, there would want People fit to make Biſhops, and to do the Buſineſs of the Church. And thereupon ſhe gave this Informant ten Pounds to carry him to *Doway*, where this Informant entred the Monaſtery, and continued about three Weeks, and with much Difficulty made his Eſcape thence, and returned for *England*; for which the ſaid Earl and his Lady, and all the reſt that encouraged him to go to the Monaſtery, became his utter Enemies, threatning to take away his Life, and to get his Brother to diſinherit him: Which laſt is compaſſed againſt him. And Father *Cudworth*, who was then Guardian of the Friers at *Doway*, ſome Days before his Eſcape thence, told this Informant, That if he ſhould not perſevere with them, he ſhould loſe his Life and Friends: And further added, That this King ſhould not laſt long, and that his Succeſſor ſhould be wholly for their Purpoſe. And Father *Croſs*, Provincial of the Friers, told this Informant, That had he been at *Doway* when this Informant made his Eſcape thence, he ſhould never have come to *England.* And this Informant finding himſelf friendleſs, and in Danger in *England*, went to *Paris*, where one of his Brothers is a Benedictine Monk, who perſuaded this Informant to return for *England*; and in order thereunto, about the latter End of *November* 1675, he was introduced into the Acquaintance of the Lord *Stafford* that he might go for *England* with his Lordſhip, and three Weeks he attended his Lordſhip, and had great Acceſs and Freedom with his Lordſhip, who gave him great Aſſurances of his Favour and Intereſt to reſtore him to his Relations Eſteem again: And ſaid, That he had a Piece of Service to propoſe to this Informant, that would not only retrieve his Reputation with his own Relations, but alſo oblige both them and their Party to make him happy as long as he lived. And this Informant being deſirous to embrace ſo happy an Opportunity, was very inquiſitive after the Means; but the ſaid Lord *Stafford* being ſomewhat difficult to repoſe ſo great a Truſt as he was to communicate to him, exacted all the Obligations and Promiſes of Secrecy, which this Informant gave his Lordſhip in the moſt ſolemn Manner he could invent. Then his Lordſhip laboured to make this Informant ſenſible of all the Advantages that ſhould accrue to this Informant, and the Catholick Cauſe; and then told this Informant in direct Terms, That he might make himſelf and the Nation happy, by taking away the Life of the King of *England*, who was an Heretick, and conſequently a Rebel againſt God Almighty. Of which this Informant deſired his Lordſhip to give him Time to conſider, and told his Lordſhip that he would give him his Anſwer at *Diep*, where his Lordſhip intended to ſhip for *England*, and to take this Informant with him; but this Informant going before to *Diep*, the Lord *Stafford* went with Count *Gramont* by *Calais*, and ſent this Informant Orders to go for *England*, and to attend his Lordſhip at *London:* But this Informant did not attend his Lordſhip at *London*, but went into the *French* Service, and ſo avoided the Lord *Stafford*'s further Importunities in that Affair. And this Informant further ſaith, That one *Remige*, a *Frenchwoman*, and vehement Papiſt, who married this Informant's Brother, lived with the Lady *Powis* all the Time this Informant reſided there and ſome Years ſince, and was the great Confident of the ſaid Lady; and the ſaid *Remige* was for the moſt Part taken with her Ladyſhip into *Morgan*'s Chamber, when the Conſults were held there, where he hath often ſeen Father *Gavan*, Father *Towers*, Father *Evans*, Father *Sylliard*, *Roberts*, *White*, *Owens*, *Barry*, and the Earl of *Caſtlemaine*, and other Prieſts and Jeſuits, meet and ſhut themſelves up in the ſaid *Morgan*'s Chamber, ſometimes for an Hour, ſometimes for two Hours, more or leſs; and at the breaking up of the ſaid Conſults, have broke out into an Extaſy of Joy, ſaying, They hoped ere long the Catholick Religion would be eſtabliſhed in *England*, and that they did not doubt to bring about their Deſign, notwithſtanding they had met with one great Diſappointment, which was the Peace ſtruck up with *Holland*; ſaying, That if the Army at *Black-Heath* had been ſent into *Holland* to aſſiſt the *French* King, when he was with his Army near *Amſterdam*, *Holland* had certainly been conquered, and then the *French* King would have been able to aſſiſt us with an Army to eſtabliſh Religion in *England.* Which Expreſſions, with many others, importing their Confidence to ſet up the *Romiſh* Religion, they frequently communicated to this Informant. And the ſaid *Morgan* went ſeveral Times into *Ireland*, to *London*, and ſeveral other Parts of *England*, as this Informant hath juſt Cauſe to believe, to give and take Meaſures for carrying on the Deſign: And the ſaid *Remige* and her Huſband having firſt clandeſtinely ſold their Eſtate, and fled into *France* about *May* or *June* laſt, for fear of Diſcovery; this Informant by many Circumſtances being aſſured that the ſaid Mrs. *Remige* was privy to all or moſt of the Tranſactions of the Plot. And he ſaith, That about *May* laſt was two Years, he was preſent at Maſs with the Lord *Powis* in *Vere-ſtreet*, when the Earl of *Caſtlemaine* did ſay Maſs in his Prieſtly Habit, after the Rites and Ceremonies of the Church of *Rome.*

Edward Turbervile.

Sworn the 9th Day of November, 1680, *before*

Thomas Stringer.
William Poulteney.
Edmund Warcupp.

L. H. S. My Lord, this Affidavit is to the Purpoſe to which you call for it; this does ſay, that your Lordſhip did go by the Way of *Calais*, it does abſolutely ſo.

L. *Staff.* Now, whether he be forſworn or no, your Lordſhips may judge by theſe three Witneſſes.

Mr. *Tur.* My Lords, That which I grounded my Belief of his going to *Calais* upon, and ſo conſequently that Affidavit, was the Letter which I received from my Lord; which I have looked for, but cannot find.

L. H. S. This Affidavit does not ſay you went from *Calais* to *England*, but you went with Count *Gramont* to *Calais.*

L. *Staff.* I conceive, my Lords, this Affidavit and his Narrative are Word for Word the ſame, only that Amendment of 72 for 73, upon which I obſerved before he was forſworn once. I cannot tell what to ſay, if this Man can be believed. And Count *Gramont* came by *Diep* too. But beſides, my Lords, in this Affidavit he does not ſay he believed ſo by the Letter, though now he ſpeaks of one.

L. H. S. My Lord *Stafford*, Was Count *Gramont* in your Lordſhip's Company when you came to *Diep?*

L. *Staff.* No, my Lords, he was in *England* before me a Month; but, my Lords, I cannot deny but I had one recommended to come over with me, that pretended himſelf to be a *French* Count, but the Man was as arrant a Raſcal as this that ſwears againſt me; and that was one that called himſelf Count *de Brienne*, whom all the World knows to be a Cheat.

L. H. S. Call your other Witneſſes, my Lord.

L. Staff. Where is *John Minhead?* (*Who ſtood up*).

L. H. S. Who do you belong to?

Minhead. My Lord *Powis.*

L. *Staff.* My Lords, Mr. *Turbervile*, he ſays, by the Perſuaſion of my Lady *Powis* went to *Doway*, and he ſtaid in the Monaſtery three Weeks, and not liking that Life, he came away (this may be true, I ſay nothing to it): but that which I take Exception at, is this; he ſays, for this the Earl of *Powis* and his Lady, when he came back from *Doway*, were very angry with him, and ſo were all his Relations, and he ſtood in Fear of his Life from them. Surely when Mr. *Turbervile* knew he was in ſuch Danger, he would not have come near them: pray aſk this Gentleman, whether he was at my Lord *Powis*'s, and how he was entertained.

L. H. S. Do you know *Turbervile?*

Minh. Yes, my Lords.

L. H. S. Have you ſeen him at my Lord *Powis*'s?

Minh. Yes, my Lords.

L. H. S. How was he received there?

Minh. Very well, my Lords.

L. H. S. When was that?

Minh. In the Year 75.

L. H. S. Was that before or after he came back to *England?*

Minh. It was after he came from *Doway.*

L. H. S. What Countryman are you?

Minh. A *Frenchman.*

L. H. S. What Religion are you of?

Minh. A *Roman* Catholick.

L. *Staff.* Pray aſk him whether he lay in my Lord's Houſe?

Minh. Yes, my Lords, he lay with me in my Lodgings.

L. *Staff.* And yet he ſays he was afraid of his Life.

L. H. S. Did my Lord know he lay there?

Minh. Yes, he muſt needs, becauſe he came through the Room to go to Bed.

L. *Staff.* May it pleaſe your Lordſhips, he ſays he was threatned that he ſhould have his Brother diſinherit him, and which afterwards was compaſſed. Now I ſhall ſhew that this is impoſſible, for he had no Inheritance to loſe, nor was to have none; for his Brother, who is elder than he (this Man being by a ſecond Venter), hath Children, as I ſhall make appear by another of his Brothers, who is here. And this not being ſettled upon him, who was by the ſecond Venter, could not come to him; but, for want of Iſſue of that Brother, muſt go to the Uncle. So he ſwears he was diſinherited of an Eſtate, when he was to have no Eſtate, nor could have. Call Mr. *John Turbervile:* (*Who appeared*). My Lords, I deſire you to aſk him, whether he knew that upon his coming back to *England* he was ill uſed?

Mr. *J. Tur.* I never knew any Unkindneſs from my elder Brother to him.

L. H. S. Are you his Brother.?

Mr. *J. Tur.* Yes, my Lord, by the Father, not by the Mother.

L. H. S. Well, what can you ſay?

Mr. *J. Tur.* I never heard any thing when he returned from *Doway*, that he was ill received by my Lord *Powis*; but in a few Days after my Brother and Siſter came to Town, we went to *Bloomſbury*, and there we met together: And my Brother complaining that he was unfortunate, in that he had undertaken what he could not perform in going beyond Sea, and now wanted a Livelihood; my eldeſt Brother told him, he had done as far as his Ability, he could do no more, it was his own Choice, and he had no more to ſay.

L. *Staff.* Had he any Money from his Relations?

Mr. *J. Tur.* He made Interceſſion by Friends to my Siſter, and ſhe told me, that ſhe gave him 7*l.* to bear his Charges to *Paris*, with that Proviſo, that he would never trouble them more.

L. H. S. But they were not angry with him?

Mr. *J. Tur.* Here he is, he cannot ſay they ever gave him an angry Word in their Days; I'm ſure I never did.

L. H. S. Did you forbid him the Houſe?

Mr. *J. Tur.* No.

Mr. *Ed. Tur.* Theſe are People that take not the Oaths of Allegiance and Supremacy, and therefore are not fit to be Witneſſes.

L. *Staff.* Now your Lordſhips ſee what a Villain he is.

Mr. Serj. *Mayn.* You muſt give good Words, my Lord, for none but good Words are given you.

L. *Staff.* I muſt call them Villains, or myſelf Traitor.

L. H. S. You ſay they gave him 7*l.* upon Condition they ſhould never ſee him more.

Mr. *J. Tur.* I did not ſay, my Siſter ſaid upon Condition ſhe would give him 7*l.* he would never trouble us more: It was his Declaration.

L. *Staff.* One Thing I would aſk Mr. *Turbervile* more, and that is about this Man's being diſinherited: Whether he could, or whether he was Heir to an Eſtate or not?

L. H. S. What ſay you to it?

Mr. *J. Tur.* By all the Information of our Relations, the Eſtate was made by my Grandfather to my Father for Life, and after my Father's Life, to my Mother; and after my Mother's Life, to my eldeſt Brother, and the Heirs Male of his Body; and for want of ſuch, afterwards to me, and the Heirs Male of my Body; and in caſe I had none, then to my Father's Brother, and his Heirs Male; and if he had no Heirs Male, then after that to the right Heirs of the Grandfather. This was before my time.

L. H. S. Well, then, that Remainder to the right Heirs might come to him; and ſo there was ſome Eſtate for him to loſe, and that Remainder might be docked by the Tenant in Tail. I would aſk, Was there any Recovery ſuffered to bar that Entail?

Mr. *J. Tur.* Yes, I think there was one upon my Brother's Marriage.

L. H. S. Mr. *Turbervile*, were you told you ſhould be diſinherited?

Mr. *E. Tur.* Yes, my Lords.

L. H. S. Who told you ſo?

Mr. *E. Tur.* My eldeſt Brother.

L. H. S. What did he tell you?

Mr. *E. Tur.* He told me it ſhould not come to me.

L H. S. How ſhould it come to you?

Mr. *E. Tur.* I am not ſo good a Lawyer as to tell that, whether it could or no; but I thought by Succeſſion.

L. *Staff.* Then he ſays he came to ſerve my Lady *Mollineux* in 72; it may be it is ſo as he ſays, I don't know it of my own Knowledge; but I pray he may anſwer, whether it was in 71, or 72.

Mr. *E. Tur.* In *January* or *February*, 71.

Mr. *Treby.* That is in the Beginning of the Year 72, according to the Almanack.

L. *Staff.* My Lords, for the preſent I do not remember any thing more——Oh, yes, my Lords, he ſays he was at ſuch a Time at my Lord *Powis*'s, when my Lord *Caſtlemain* was at *Powis*-Caſtle, which muſt be either in the Year 72, 73, or 74. Now I deſire you would aſk Mr. *Lydcot*, whether my Lord *Caſtlemain* was there, or could be there in any of thoſe Years. (*Then* Lydcot *ſtood up*)

L. H. S. What do you aſk him, my Lord?

L. *Staff.* I deſire to aſk him, whether in the Year 72, 73, or 74, which are the Years *Turbervile* ſays he was at my Lord *Powis*'s at *Powis*-Caſtle, whether my Lord *Caſtlemain* was at *Powis*-Caſtle, or could be there at that time.

L. H. S. Was my Lord *Caſtlemain* there in any of thoſe Years?

Lydcot. My Lords, I can prove he was not, as much as I am capable of proving a negative. I was with him in the Years 72, 73, and 74.

L. H. S. Where?

Lydcot. He was in *England* in 73; I was with him all the while, and I am ſure ſince I knew him he was never in *Wales*, and I was never abſent from him ſince I knew him (which is nine Years), not four Months in all: I have travelled with him, and been abroad with him.

L. H. S. *Turbervile*, when do you ſay my Lord *Caſtlemain* was at *Powis*-Caſtle?

Mr. *Tur.* I think it was in the Year 73.

L. H. S. By what Token do you remember him there?

Mr. *Tur.* He was arguing with my Lord *Powis* about Religion, and ſeveral times he did ſo: I believe it was in the Year 73.

L. H. S. What ſay you to that?

Lyd. I can aſſure your Lordſhips he was not there then; I was always with him that Year: He had many times a Deſign to go there, but he could not but put it off; and the laſt Time he was there, I can prove it was fifteen Years ago.

L. H. S. I deſire to know of you this, Friend; can you take it upon you to affirm upon the Faith of a Chriſtian, that you were never from my Lord *Caſtlemain* all the Year 73?

Lyd. I can give an Account to half a Week where he was; and when I was abſent from him, it was beyond Sea, and all that while I kept Correſpondence with him every Poſt, and received Letters from him conſtantly once a Week, dated from *Liege*; this was in the time of my Abſence.

L. H. S. Were you at *Liege* when my Lord was in *England*, or were you with him all the time he was in *England?*

Lyd. My Lords, I was with him all the time he was in *England*, and was never abſent from him all that Compaſs of Time, but when he ſent me into *England* from *Leige.*

L. H. S. Then he was at *Liege* himſelf?

Lyd. Yes, my Lords.

L. H. S. Was that in the Year 73?

Lyd. Yes, my Lords, I was then in *England.* But, my Lords, I can give you a whole Account, for my Lord and I never made any Journies, but I put them down.

L. H. S. You ſay you can give a particular Account of the whole Year 73, even to the Compaſs of four Days in that Year at moſt.

Lyd. No, my Lords, I do not ſay ſo; but I ſay I can give an Account of the whole time I have been with him within four Months.

L. H. S. Were any of theſe four Months within the Year 73?

Lyd. No: I was with him all the Year 73.

L. H. S. Will you take it upon you to ſay, That every Day in 73 you were with my Lord?

Lyd. Every Day, my Lords.

L. H. S. Every Week?

Lyd. Yes, I do not think but that I was. My Lord did me the Honour to make me as it were his Companion.

Mr. Serj. *Mayn.* No, you do yourſelf the Honour to make yourſelf his Companion; he made you his Servant.

L. H. S. Come, where are your Notes you pretend to ſpeak by? your Diary, or your Journal? Let us hear a whole Account of the Year 73; for you come to teſtify as if you could give an Account of every Day.

Lyd. I did not think any Queſtion of this Nature would come on the Stage; there is my Lord's Steward can give a very good Account of this by his Account-Books, which are all ready to be produced: He can tell where my Lord was, by laying out ſuch and ſuch Monies. And 'tis an hard thing to give a Teſtimony after ſo many Years, of a Thing that we thought not would ever be a Queſtion.

L. H. S. Let us ſee your Notes.

Lyd. My Lords, I will read it to your Lordſhips.

L. H. S. When was this written?

Lyd. I took this out of another Book.

L. H. S. When?

Lyd. Lately, ſince Mr. *Turbervile*'s Narrative came out.

Sir *Will. Jones.* Oh, I deſire that may be obſerved.

L. *Staff.* If your Lordſhips pleaſe, I deſire that he may bring his Books, *Oh, Oh!* will not condemn me, but Law and Juſtice: I am not to be run down with *Oh, Oh!* or what ſuch impudent Villains as theſe ſay.

L. H. S. Read what you have there.

Lyd. From *Liege* we ſet forth to *Paris*, *January* 1, 72, where we ſtaid three Weeks, and arrived thence at *London*, *January* 24; there we ſtaid till *May* 73, and from thence we went to *Liege* again in *June*, and from *Liege* we ſet forth to *London* in *Auguſt*, and returned *October* the 3d, 73.

L. H. S. Were you all the while between *Auguſt* and *October* in *London?*

Lyd. I am morally certain, that I did not go from my Lord all that time.

L. H. S. Where were you after *October?*

Lyd. Which *October*, if your Lordſhip pleaſe?

L. H. S. *October*, 73.

Lyd. At *Liege*; for we returned to *Liege* at *October* the 3d, and then after this my Lord ſent me into *England.* I left him at *Liege*, and from thence I ſet out for *England*; and in *January* I returned to *Liege*, which was the greateſt Part of time that I was ever abſent from him.

L. H. S. And was he at *Liege*, are you ſure, all that time from *October* to *January?*

Lyd. Yes, except he flew: For I ſent Letters by the foreign Poſt, and received Letters by the foreign Poſt every Week. And his Account-Books will ſpeak it.

Sir *W. Jones.* My Lords, we deſire to aſk him one Queſtion, (ſince he can give ſo exact an Account) whether my Lord *Caſtlemain* was in *England*, 72; and how much of that Year?

Lyd. Yes.

Sir *Will. Jones.* How many Months of the Year 72 was he in *England?*

Lyd. I read it before. We arrived from *Liege* to *London*, *January* 24th, 72, and ſtaid at *London* till *May*, 73.

L. H. S. But where was my Lord all the Year 72?

Lyd. Pray, my Lords, do you mean New-Stile or Old-Stile?

L. H. S. When I ſpeak of his being at *London*, I mean the Stile of the Country.

Sir *W. Jones.* Then, under favour, he ſpeaks of the latter Part of the Year: I deſire to know, whether my Lord, for all the former Part of the Year was in *England?*

L. H. S. Where was my Lord in *December* 72, and in *November* before that, and in all the Year up backwards?

Lyd. My Lords, I have told you the whole Year.

L. H. S. But where was my Lord from *January* 71, to *January* 72?

Lyd. In 71, *June* the 19th, New-Stile, we came to *London*, and returned in *September* to *Liege*; from *Liege* we ſet forth to *Paris*, *January* 1, 72; and arrived at *London*, *January* 24.

L. H. S. He runs paſt the Time.

Sir *W. Jones.* My Lords, we aſk him a plain Queſtion, but he does not anſwer it; he ſlips over the Time that we deſire your Lordſhips to aſk him about.

L. *Staff.* I beſeech your Lordſhips that it may be made plain, that there may nothing be ſaid afterwards that it was not plain.

Lyd. Sir, do you propoſe any thing to me, and I will anſwer it.

Sir *W. Jones.* Anſwer not us, anſwer my Lords.

Lyd. I deſire any body may peruſe my Notes, if they pleaſe.

L. H. S. Pray, Sir, anſwer the Queſtion, which in very ſhort Terms is this, Where my Lord *Caſtlemain* was all the whole Year 72?

Lyd. Well, my Lords, I will; I can but read it over again. From *Liege* we ſet forth to *Paris*, *January* 1, 72.

L. H. S. Are not you a rare Fellow now!

Lyd. My Lords, I underſtand it according to the Stile of that Country when I am there, and of this Place when I am here.

L. H. S. Anſwer me according to our Stile.

Lyd. This that I have written here, in the Book out of which I took it, hath been written ever ſince that Time; and I did not think I ſhould e'er be called to account about it.

L. H. S. Begin *January* the 1ſt, 71.

Lyd. We went from *Liege* to *Paris*, where we ſtaid about a Week, or ſuch a time, and we arrived at *London January* the 24th, that is the Old-Stile, and ſtaid at *London* till *May* the 8th, 73.

L. H. S. That is impoſſible, for you 'ſcape a Year and an half together.

Lyd. My Lord was here in *England* in *January*.

L. H. S. You begin very gravely with *January*, *Stilo veteri*, that you came from *Liege*; and ſo *January* the 24th, *Stilo veteri*, you came to *London*.

Lyd. When I ſpeak of any Stile, I underſtand it according to the Stile of the Country.

L. H. S. But in your Account, what is become of all the time from *January*, 71, to *January*, 72; ſay and ſwear, if you can, where my Lord was all that time.

Lyd. He muſt be in *London*.

L. H. S. Can you take it upon your Oath, that my Lord was in *London* from *January* 71, *Stilo veteri*, to *May* 73, *Stilo veteri?*

Lyd. I cannot know how to count better than I have done.

. *Staf.* Mr. *Turbervile* ſays, my Lord *Caſtlemain* was in 73 at *Powis*-Caſtle; I beſeech your Lordſhips this Man may be aſked, and that without any Interruption, where my Lord was that Year.

Sir *Will. Jones.* With your Lordſhips Favour I muſt deſire your Lordſhips to aſk Mr. *Turbervile* whether he did ſay poſitively the Year 73; for if my Ears and my Notes do not fail me, he ſaid, as he remembered; and that is the Reaſon why we aſk about the Year 72.

Mr. *Tur.* My Lords, I do not ſay poſitively, nor cannot, which Year it was.

Lyd. My Lords, I do ſtand upon it, that he was in *London January*, 72, and went away *May* 73.

L. H. S. What becomes of the mean time, between *January*, 71, and *May* 73?

Lyd. My Lords, I explain myſelf as well as I can.

L. H. S. My Lord *Stafford*, will you call any more Witneſſes?

L. *Staff.* Yes, my Lord.

L. H. S. Call them then.

Earl of *Shafteſbury.* My Lord High Steward, I deſire my Lord *Stafford* may be aſked how many Witneſſes my Lord hath more, for it now grows late.

L. H. S. My Lord, I deſire to know how many Witneſſes you have more?

L. *Staff.* Three or four; I can't tell well how many.

Lords. Adjourn, adjourn.

L. H. S. Is it your Lordſhips Pleaſure that we do adjourn?

Lords. Ay, ay.

L. H. S. Then this Houſe is adjourned into the Parliament-Chamber.

Then the Lords returned in their former Order to their Houſe, and the Commons went back to their Houſe.

Mr. Speaker reſumed the Chair, and a Meſſage from the Lords was ſent by Sir *Timothy Baldwin* and Sir *Samuel Clarke*.

Mr. Speaker,

The Lords have ſent us to acquaint this Houſe, that they have ordered the Priſoner, *William* Viſcount *Stafford*, to be brought again to his Trial at the Bar in *Weſtminſter-Hall*, to-morrow morning at Ten of the Clock.

The FOURTH DAY.

Friday, December 3, 1680.

ABOUT the Hour of Ten in the Morning the Lords adjourned into *Weſtminſter-Hall*, and returned in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Commons were ſeated as before mentioned.

The Court being ſat, Proclamation for Silence was made, and the Lieutenant of the Tower *commanded to bring his Priſoner to the Bar; which being done, the Lord-High-Steward ſpake to the Priſoner as followeth:*

L. H. S. My Lord *Stafford*, your Lordſhip's Defence took up Yeſterday. All the Day was employ'd in hearing your Lordſhip's Witneſſes to impeach the Credit of the Teſtimony that hath been given againſt you. Your Lordſhip hath excepted againſt *Dugdale*, becauſe you were not at *Tixall*, as he ſays you were, neither the latter end of *Auguſt*, nor the beginning of *September*, till the Twelfth; and when you were there, you never ſent for him to your Chamber, but your Man, upon his own deſire, brought him: And when he came there, the Buſineſs was, to deſire you to get leave that he might go to the Race; and there was no opportunity of private Diſcourſe, becauſe your Men were in the Room all the while: That *Dugdale* hath often ſaid he knew nothing of the Plot; that he ſwore falſly, when he ſaid he told of the Letter about the Death of Sir *Edmundbury Godfrey* before it was known he was killed, and when he ſaid that *Hobſon* told him preſently after the Almoner went over, which was three Years before *Hobſon* came to my Lord *Aſton*'s Service. Your Lordſhip hath likewiſe objected, that he hath corrupted Perſons to ſwear falſly againſt you and others, as *Robinſon* the Upholſterer againſt your Lordſhip, *Morrall* the Barber againſt Sir *James Symonds*, and *Holt* the Blackſmith to ſwear that one *Moor* carried away *Evers*. Your Lordſhip hath endeavoured to diſcredit *Oates*, by his ſaying he knew nothing of any other Perſons that were concerned in the Plot, and after accuſing the Queen. Your Lordſhip hath impeach'd the Credit of *Turbervile*, by proving that you came home by *Diep*, and not by *Calais*, as he ſays you did; that you had never the Gout while you were in *France*, nor, as your Page ſays, for theſe ſeven Years; that my Lord *Caſtlemain* was not at my Lord *Powis*'s in the Year 73, and there you left off. This I take is the Sum of what your Lordſhip ſays; if I do you any wrong, your Lordſhip will put me in mind of it.

L. Staff. I thank your Lordſhip, you have done it with great Equity and Truth.

L. H. S. Then go on.

L. *Staff.* The next Witneſs that I call is one *John Porter*. (*Who ſtood up.*)

L. H. S. What is your Name?

Witneſs. John Porter.

L. H. S. What Profeſſion are you of?

Porter. A Butler.

L. H. S. To whom?

Porter. To my Lord *Powis*.

L. *Staff.* My Lords, I deſire your Lordſhips would aſk him what Mr. *Turbervile* ſaid about the Plot.

L. H. S. I will aſk him all the Queſtions your Lordſhip deſires I ſhould aſk him.

Mr. *Foley.* We deſire to know what Religion he is of.

L. *Staff.* I deſire your Lordſhip would aſk him that Queſtion, and not the Managers.

L. H. S. They will tell me their Queſtions, my Lord, and I will aſk them.

L. Staff. They aſk him, my Lords, and not you.

L. *H. S.* What Religion are you of?

Porter. A Church-of-England Man, my Lords.

Mr. Serj. *Mayn.* The Popiſh Church of *England*, I believe.

L. *Staff.* Pray, my Lords, let not this be; when my Witneſs ſays he is of the Church of *England*, they cry he is of the Popiſh Church of *England*.

Mr. Serj. *Mayn.* Pray, good my Lord, we are ſilent when you aſk him proper Queſtions, and make no Remarks; we do not ſpeak it to the Court; we may ſay what we will among ourſelves, I hope.

L. *Staff.* I may aſk impertinent Queſtions, becauſe I do not underſtand ſo well as theſe Gentlemen. But I pray they may not deal thus with me.

L. H. S. My Lord, you ſhall aſk what Queſtions you pleaſe.

L. *Staff.* Pray aſk him what Mr. *Turbervile* ſaid to him about the Knowledge of the Plot.

L. H. S. What did *Turbervile* ſay to you about his knowing of the Plot?

Porter. About a Year ſince, when I ſerv'd my Lord *Powis* as Butler there, he was us'd to come and ſee me; it was not at my Lord's Houſe, but he ſent for me to a Victualling Houſe——

L. H. S. That was laſt Year?

Porter. Yes.

L. H. S. What time of the Year?

Porter. It was about twelve Months ago, I cannot ſay poſitively the time.

L. H. S. Was it in Winter or Summer?

Porter. He hath been both, I can't be poſitive which; I believe he hath been there forty times.

L. H. S. In the Year 80, or 79?

Porter. In the Year 79.

L. H. S. What did he ſay?

Porter. He came there and aſked me how my Lord *Powis* did; and ſaid, he was extremely troubled that he was in that Affliction, for he did verily believe, that neither he nor the reſt of the Lords were in the Plot; and the Witneſſes that ſwore againſt him, he believed were perjur'd, and could not believe any thing of it.

L. H. S. Have you any more to ſay?

Porter. Yes, my Lords: I told him, If there were ſuch a thing as a Plot, he having been beyond Sea, muſt certainly know of it. He told me, As he hop'd for Salvation, he knew nothing of it, neither directly, nor indirectly, againſt the King's Sacred Perſon, nor the Subverſion of the Government. And he further ſaid, Altho' I am a little low at preſent, and my Friends will not look upon me, yet I hope God Almighty will never leave me ſo much, as to let me ſwear againſt innocent Perſons, and forſwear and damn myſelf.

L. H. S. Where was this ſaid to you?

Porter. At the *Ship* Alehouſe in *Lincolns-Inn-Fields* one time, another time at the *King*'s-*Head* Tavern in the *Strand*, and another time at the *Golden-Ball* in the *Strand*.

L. H. S. Was any body by, beſides yourſelf?

Porter. Not at that time; but there is a Gentleman in Court, that can teſtify that he ſaid ſuch things at other times.

L. H. S. What ſay you to this, *Turbervile?*

Mr. *Tur.* I ſay 'tis all falſe: But if your Lordſhips pleaſe, I'll tell you what I ſaid once, I did conceive my Lord *Powis* was the leaſt concerned of any, I thought; and I hop'd it would prove ſo. I can take all the Oaths in the World, I ſaid no more.

L. H. S. What elſe do you know?

Porter. Only ſuch things as theſe he hath often ſaid.

Earl of *Shafteſbury*. Pray, my Lords, aſk him how came *Turbervile* to talk of Witneſſes about the Plot?

L. H. S. Upon what occaſion came *Turbervile* to talk of theſe Matters?

Porter. It was only voluntary of himſelf; it was ſpeaking of my Lord *Powis*, and the reſt of the Lords in the *Tower*.

Earl of *Shafteſb.* My Lords, I mean of his own being a Witneſs.

L. H. S. How came *Turbervile* to ſay, he hop'd God Almighty would never forſake him ſo far, as to let him ſwear againſt innocent Perſons? He was never call'd to be a Witneſs.

Porter. But, my Lord, ſome of his Friends did ſay they were fearful of him, in regard he was reduc'd to Poverty; his Friends were fearful.

L. H. S. Who were fearful?

Porter. His Brother and Siſter, Mr. *Turbervile* and his Wife.

L. H. S. Did he take notice to you that they were afraid he would come in?

Porter. Yes, Mr. *Turbervile* did tell me himſelf, that they heard he would come in.

L. H. S. Have you ſaid all that you have to ſay?

Porter. My Lords, that is all I have to ſay.

L. H. S. Then call another, my Lord.

L. *Staff*. Where is Mr. *Yalden?*

(Who ſtood up.)

L. H. S. What is your Name?

Witneſs. *Yalden*.

L. H. S. Your Chriſtian Name?

Yalden. *John*.

L. H. S. What is your Profeſſion?

Yalden. A Barriſter at Law.

L. H. S. How long have you been called to the Bar?

Yalden. I was called to the Bar laſt *Trinity-Term* was Twelve Months.

L. H. S. What Houſe are you of?

Yalden. *Grays-Inn*.

L. H. S. Are you a Practiſer?

Yalden. Yes, my Lords.

L. H. S. What Religion are you of?

Yalden. Of the Church of *England*.

L. H. S. Well, what can you ſay?

Yalden. I am ſummon'd to appear by Order of this Houſe; and I deſire to know of my Lord what he is pleaſed to examine me about.

L. *Staff*. What Mr. *Turbervile* hath ſaid in his hearing about the Plot?

L. H. S. What Diſcourſe hath paſs'd between you and *Turbervile* about the Plot?

Yalden. My Lords, in *February* or *March* laſt I was walking in *Grays-Inn* Walks with Mr. *Turbervile*, and Mr. *Powell* and he din'd with me a Day or two after; and there Mr. *Turbervile* and I were talking of the Diſtractions of the Times, how Trade was ruined, how the whole Kingdom was out of Order; and he a little touch'd at ſome things, cry'd out, *God damn me, now there is no Trade good, but that of a Diſcoverer*; *but the Devil take the Duke of* York, Monmouth, *Plot, and all, for I know nothing of it*.

L. H. S. That is odd, that he ſhould ſay it was a good Trade to be a Diſcoverer, and at the ſame time ſay, he knew nothing of the Plot.

Yalden. This I underſtood to be his Meaning; he curs'd himſelf and them, becauſe he knew nothing of the Plot to diſcover; for he would have got Money by it, (as I underſtood) as well as others.

Mr. *Tur*. My Lords, Mr. *Yalden* did declare Yeſterday, he was ſummon'd in by my Lord *Stafford* the laſt Night, and that he had nothing to ſay but what was by Hear-ſay.

Yalden. My Lord, I do declare here what I ſay is true. And Yeſterday Mr. *Powell* gave me a Caution to take heed what I did, and ſwore by God, it would elſe be the worſe for me.

L. H. S. Who did?

Yalden. Mr. *Powell*.

L. H. S. Who is that?

Yalden. Mr. *Turbervile*'s Friend. And I ſaid, I do not appear here as a voluntary Evidence, but by an Order of the Houſe of Lords. I do not know what weight my Evidence may have; for I can ſay nothing but what I heard him ſay, and ſo perhaps it will be taken but for an Hear-ſay.

Mr. *Tur*. You ſaid you knew nothing but by Hearſay.

L. H. S. Will you aſk him any Queſtions, Gentlemen?

Manag. No, my Lords.

L. *Staff*. My Lords, I ſhall not trouble your Lordſhips with any more Witneſſes as to theſe Points; I have here a Copy of the Warrant for the Yacht to go to *Diep:* And if there be any Queſtion whether I did come over from *Diep* at *Chriſtmas* 75, if you pleaſe the Book may be ſearched.

L. H. S. My Lord, it is all loſt, for I hear not one Word.

L. *Staff*. I ſay, my Lords, If it be fit to trouble your Lordſhips with it, I can prove that I did come over in the Yacht from *Diep* at *Chriſtmas* 75; here is the Copy of the Warrant for it to go for me. And whether you will have it proved that I did come over thence, I ſubmit to you.

L. H. S. I ſuppoſe that is fully proved, that you did come by *Diep*.

Manag. We do not deny it.

L. H. S. You do not ſtand upon it, Gentlemen, do you?

Manag. No, no, my Lords.

L. H. S. 'Tis admitted to you, my Lord.

L. *Staff*. My Lords, when I went from your Lordſhips Bar laſt Night, I had no thoughts of examining any Witneſſes, but what I had already done: But, my Lords, ſince I was here, there hath ſomething happened, about which I deſire Dr. *Oates* may be called again (I ſhall give you my reaſon why I move it afterward) upon ſomething I heard Yeſternight.

L. H. S. Call Dr. *Oates* again. *(Who appeared and ſtood up.)*

L. H. S. My Lord, What does your Lordſhip call him for?

L. *Staff*. He did ſay, that he being a Miniſter of the Church of *England*, did ſeemingly go over to the Church of *Rome*, or ſome ſuch Words; I deſire he may anſwer that firſt.

L. H. S. What ſay you?

Dr. *Oates*. Yes, I did ſay I did but ſeemingly go over.

L. *Staff*. I deſire to know, whether he was really a Papiſt, or did but pretend.

Dr. *Oates*. I did only pretend; I was not really one, I declare it.

L. H. S. What do you make of that?

L. *Staff*. I deſire to know how long Dr. *Oates* was in *Spain*.

Dr. *Oates*. My Lords, I came into *Spain* in *May*, and I came home again in *November*.

L. H. S. That is ſix Months.

L. *Staff*. He is called Dr. *Oates:* I beſeech your Lordſhips to aſk him, whether he were a Doctor made at the Univerſities here or abroad.

Dr. *Oates*. My Lords, if your Lordſhips pleaſe, any Matter that is before your Lordſhips, I will anſwer to it; but I hope your Lordſhips will not call me to account for all the Actions of my Life; whatever Evidence is before your Lordſhips I will juſtify.

L. H. S. The Doctor hath never taken it upon his Oath, that he was a Doctor, and why do you aſk it?

L. *Staff*. He is call'd a Doctor, and I would know whether he did never declare upon his Oath, that he took the Degree at *Salamanca?*

Dr. *Oates*. My Lords, I am not aſhamed of any thing I have ſaid or done; I own what is enter'd as my Oath before your Lordſhips, and am ready to anſwer it; but I am not bound to ſay what does not at all concern this Buſineſs.

L. *Staff*. I ſay, my Lords, 'tis entered upon your Lordſhips Books, that he did ſwear at the Council, he was at *Madrid* with Don *John* of *Auſtria*; I would know of him whether he did ſo.

Dr. *Oates*. My Lords, I would have my Lord to propoſe the Queſtion to the Court of Peers.

L. H. S. Have you ſworn any thing of Don *John* of *Auſtria?*

Dr. *Oates*. My Lords, I refer my ſelf to the Council-Book.

L. *Staff*. I beſeech your Lordſhips, I may have that Book.

L. H. S. I believe it is in the Narrative; turn to the Journal, you have that mention'd there.

[*To which the Clerk turned, but it could not be found.*]

L. H. S. If you will not acknowledge it, we muſt ſtay till the Book be brought.

Dr. *Oates*. My Lords, if your Lordſhips pleaſe, I will repeat, as well as I can, what was ſaid at the Council Table; but I had rather the Council-Book were fetch'd, becauſe I am upon my Oath: But, my Lords, I always thought the Council Book is no Record upon any Man.

L. *Staff*. I deſire it may be produc'd, or he own that he ſaid ſo.

L. H. S. What you ſaid at the Council-Table, you ſaid upon your Oath, and 'tis lawful to lay it before you.

Dr. *Oates*. But if your Lordſhips pleaſe, as to what was ſaid at the Council-Table, if my Lord will bring any one *viva voce* to ſwear what was ſaid by me there, that will make ſomething.

L. H. S. That may be material, as he ſays, that your Lordſhip ſhould bring ſomebody to ſwear he ſaid ſo, for the Clerks may miſtake him.

L. *Staff*. If your Lordſhip pleaſe that the Book may be ſent for, I will make it out.

Sir *Will. Jones*. It could not be read if it were here.

L. H. S. If the Clerks will ſwear what is in the Books, it may.

Sir *W. Jones*. But whether the Clerks will take that upon them or no, may be a Queſtion.

L. H. S. Go on in the mean time.

L. *Staff*. I cannot conclude with him without it.

L. H. S. Where is the Council-Book? For the Clerks inform me 'tis not in their Cuſtody; but the Gentlemen of the Houſe of Commons have been attended with the Book, and other Papers relating to it.

L. *Staff*. In the mean time, give me leave to ſay ſomething, tho' perhaps it may be nothing to the purpoſe: Mr. *Yalden* was juſt now going down, and *Turbervile* threatened to lay him by the Heels.

L. H. S. If he did ſo, 'tis a Miſdemeanor, and he muſt be puniſh'd for it. Call *Yalden* and *Turbervile*.

L. H. S. Mr. *Turbervile*, have you dar'd or threatned *Yalden* the Witneſs, to lay him by the Heels?

Mr. *Tur*. I did not ſpeak any ſuch Words to him; Mr. *Dugdale* was juſt by me all the while.

L. *Staff*. I tell you but what he ſaid, and what I can prove by Witneſs; pray call *Yalden*.

Mr. *Tur*. This Gentleman, Captain *Scudamore*, ſtood by me too.

L. H. S. But I aſk you upon this Miſdemeanor, whether you threatned *Yalden* to lay him by the Heels?

Mr. *Tur*. My Lords, I ſtood by Mr. *Dugdale* till he was gone down.

L. H. S. How could he lay him by the Heels? By what Authority could he do it?

Mr. *Tur*. I did not ſpeak ſuch a Word, upon my Oath.

L. *Staff*. Aſk *Yalden*; I am told he did.

L. *H. S.* I am afraid you are miſinform'd, my Lord; for he could not do it, 'ts not in his Power.

L. *Staff*. He threatned he would goal him; but if you won't examine it, I ſubmit to you.

Dr. *Oates*. My Lords, *Yalden*, it ſeems, calls us a Pack of Rogues, that give Evidence for the King; and here are Witneſſes of it.

(Yalden *ſtood up.)*

L. H. S. Yalden, were you threatned by *Turbervile?*

Yalden. Yes, I will tell you how I was threatned, my Lords: Mr. *Turbervile* pulls me by the Arm, when I had given my Evidence, and aſked me if I knew him, and bid me take care.

L. H. S. Do you call that Threatning?

Yalden. My Lords, I did not make this Complaint, nor did I deſire it ſhould be made; but ſpeaking this in the Room, ſomebody carried it to my Lord.

Mr. *Tur*. My Lords, now he hath done, let me ſpeak, I pray: Mr. *Yalden* did ſay in the hearing of Captain *Scudamore*, who is here, he had got a great many Clients here; but you, ſays he, have got nothing but a Pack of Rogues.

Yalden. That is a Miſtake.

L. H. S. This is fine Work. But, Gentlemen, will you call Captain *Scudamore* now, or will you ſtay till afterwards?

Sir *F. Win*. My Lords, Mr. *Turbervile* deſires it may be now, and we do alſo deſire it upon this Occaſion; Captain *Scudamore* is a Man of Quality, and will give you a true Account. We did not think to have interpos'd in my Lord *Stafford*'s Evidence; but he having impeach'd our Witneſſes of a Miſdemeanor, we conceive it fitteſt to clear it at this time.

(Then Captain Scudamore *was ſworn.)*

L. H. S. Mr. *Scudamore*, what are you call'd for? Can you ſay any thing that happen'd between *Turbervile* and *Yalden?*

Capt. *Scudamore*. The Gentleman that is here, that ſaid he was one of *Grays-Inn*, I don't know his Name——

L. H. S. 'Tis *Yalden*.

Captain *Scudamore.* I heard a Gentleman aſk him if he came there to get Clients, and he ſaid, I know nothing among you but Roguery.

L. *Staff.* Whereabouts did this Gentleman ſtand?

Capt. *Scudamore.* In the Paſſage.

Mr. *Tur.* Here are five or ſix more that heard him ſay ſo.

Yalden. That which I ſaid, was this, That I might come hither for Practice, but I did not come hither for Roguery.

L. H. S. My Lord *Stafford*, until ſuch time as the Council-Book comes, which may be ſent for, will your Lordſhip proceed to ſomething elſe?

L. *Wharton.* My Lord Steward, I humbly conceive, that it was reſolved in the Lords Houſe, the Day before yeſterday, that no Book ſhould be ſent for out of the Court; and it was done upon the Judgment of all the Judges of *England.*

Yalden. My Lords, they will not permit me to go down.

L. H. S. There is a ſtrange Quarrel between your Witneſſes, and an Affectation of complaining one of another: Let Mr. *Yalden* go down.

Sir *Will. Jones.* My Lords, I would only acquaint your Lordſhips, that the Council-Book, that my Lord does make mention of, was in the hands of our Clerk, we did not know of it when it was firſt diſcourſed of; but now underſtanding that here it is, we deſire it may be delivered in to any body that hath occaſion for it.

L. H. S. Hand it in. *(Which was done).*

L. H. S. What Day does your Lordſhip ſpeak of?

L. *Staff.* The 28th, 29th, or 30th of *September.*

Clerk. Then this is not the Book, for this is for *January.*

L. *Staff.* My Lords, Is it your Lordſhips pleaſure I may have Pen, Ink, and Paper allowed me?

L. H. S. Yes, yes; give my Lord Pen, Ink, and Paper.

(Which they did).

[*Then the Lord High Steward looked upon the Council-Book.*]

L. H. S. My Lord *Stafford*, in this Council-Book, as far as we can inform our ſelves by the Table of it, there is nothing at all of it; it muſt be the Council-Book in *September.*

Sir *W. Jones.* We have no other Book but that.

L. H. S. Why did not your Lordſhip ſend all this while to the Council-Table for any thing that was material, but give the Court the Trouble to be interrupted upon your Enquiries?

L. *Staff.* My Lords, you may do what you pleaſe, I did not know any ſuch thing would have needed to be urged, I have Proof enough without the Book: The uſe I ſhould have made of it, is this, I do appeal to ſome of your Lordſhips (you that were of the Council) I do appeal to which of you that were by, whether Dr. *Oates* did not ſay at the Council-Table, he had been at *Madrid*, he went from *Valladolid* to *Madrid*, and there did preach ſomething at the Jeſuits College at *Madrid* (what it was I cannot tell) when Don *John* of *Auſtria* was by.

L. H. S. If any of my Lords of the Council do remember it, they may teſtify.

L. *Privy-Seal.* My Lords, I ſhall tell your Lordſhips as much as I remember of it: Dr. *Oates* was examined about his Journey into *Spain*, and (amongſt the reſt) ſome Queſtion happened to be aſked, whether he had ſeen Don *John* of *Auſtria*; he ſaid he had ſeen one that was called ſo; that he knew him not, but he was pointed to one that they ſaid was Don *John* of *Auſtria:* that I heard.

L. *Staff.* My Lord, I thank you.

L. H. S. You hear what is ſaid, Dr. *Oates.*

Dr. *Oates.* My Lords, ſuppoſe I did ſay ſo, I think there is no Crime in it.

L. H. S. 'Tis not objected againſt you as a Crime, but as a Miſtake in your Oath, there was no ſuch Man there.

L. *Privy-Seal.* My Lords, I would not be miſunderſtood in the Evidence I give; I did not ſay that *Oates* ſaid he knew him, but that he knew him not, and only was told ſuch a Man was he.

Dr. *Oates.* It was made apparent that I did not know him, becauſe I miſtook his Perſon.

L. *Staff.* I do ſtand upon it, That upon his Oath (and I have reaſon to believe he did ſo, becauſe I am ſo informed) he ſaid it was Don *John* of *Auſtria.*

L. *Privy-Seal.* No, my Lord, Dr. *Oates* ſaid, he was a tall lean Man, and it ſeems he was a little fat Man.

L. *Staff.* If any Man would ſhew him a Man to counterfeit Don *John* of *Auſtria*, he would not ſhew him a lean Man for a fat.

L. H. S. Go on, my Lord.

L. *Staff.* I ſhall now put your Lordſhips in mind that he ſwore, but my Memory is bad, and my Eyes much worſe, that he ſaw me receive a Commiſſion, and it ſeems he ſaw what it was too: Now it is ſtrange, that amongſt ſo many Commiſſions that were given, none ſhould be extant; I deſire him to ſhew the Commiſſion he ſaw me receive.

L. H. S. Would your Lordſhip have him ſhew the Commiſſion which he ſaw you receive?

L. *Staff.* I do not believe he can ſhew my Commiſſion; for I am ſure there was none: I deſire him to ſhew any one of my Letters he talks of. He ſays, he came over, feigning to be a Papiſt, when he was not, and that they ſhewed him preſently all my Letters; and now he is come to diſcover the Plot, I aſk him, did he keep any one of my Letters?

L. H. S. Have you any of my Lord's Letters by you?

Dr. *Oates.* My Lords, I could not keep any Letters ſent to the Fathers; I had a Sight of them, but none of them to my particular uſe.

L. *Staff.* Does he know my Hand? Did he ever ſee it in his Life?

Dr. *Oates.* Yes, I do know his Hand, I believe I have a Letter of my Lord's by me, but not about me, 'tis of no Concern: I am ſure I have one of my Lord *Arundel*'s.

L. *Staff.* But he ſays he hath a Letter of mine; let him ſhew one of my Letters.

Dr. *Oates.* He writes a mix'd Hand, I think 'tis but an indifferent one.

L. *Staff.* So many Commiſſions, and ſo many Letters as are ſpoken of, and not one to be found or produced!

L. H. S. Can you ſend for the Letter?

Dr. *Oates.* My Lords, I am not certain of that.

L. H. S. Where did you ſee my Lord write?

Dr. *Oates.* At *Fenwick*'s, my Lords, when I carry'd the Letter to the Poſt.

L. *Staff.* How often hath he ſeen me at *Fenwick*'s?

Dr. *Oates.* My Lords, not above twice, if twice.

L. *Staff.* My Lords, I cannot ſay I did not ſee him there; but I can ſay I don't know the Place, nor that ever I was there.

Dr. *Oates.* My Lords, will his Lordſhip ſay I never ſaw him Dr. *Perrot*'s?

L. *Staff.* Who?

Dr. *Oates.* My Lord *Stafford.*

L. *Staff.* Where did he live?

Dr. *Oates.* In *Duke-Sreet*, going into *Lincoln's-Inn-Fields:* He is the Arch-Prieſt of the Seculars, that is, the Principal of the Secular Clergy; and he hath the Care of the *Engliſh* College for the ſending of Scholars to the College. Mr. *Fiſher*, my Lord *Stafford*, and Dr. *Perrot* were diſcourſing together about ſending his Son thither, and Mr. *Fiſher* would have one ſent with him, that was Dr. *Perrot*'s Man.

L. *Staff.* I do profeſs before God, I was never at Dr. *Perrot*'s in my whole Life!

L. H. S. Did not you ſend your Son abroad?

L. *Staff.* No, my Lords, not I.

L. H. S. Had he a Servant at Dr. *Perrot*'s to attend him?

Dr. *Oates.* No, my Lords, not that I know of, I cannot ſay he had not.

L. *Staff.* I tell you poſitively, as I am a Chriſtian, my Lords, I did not ſend my Son to *Liſbon*, he went againſt my Will. I told him I had an Averſion to it, but ſaid, I will not lay my Commands on you not to go; but he would go, I could not help it: I told him, Do you mean to go into the College? He would not tell me.

L. H. S. Pray, my Lord, does not your Lordſhip know Dr. *Perrot?*

L. *Staff.* Yes, my Lords, I do.

L. H. S. Were you never with him at his Houſe in *Duke-ſtreet?*

L. *Staff.* No, my Lords, never in my Life; nor ſaw that *Fiſher* he ſpeaks of, ever in my Life.

Dr. *Oates.* My Lord, 'tis againſt the Rules of that Houſe, that any be admitted of that Houſe (if their Parents be Catholicks) without Conſent of their Parents.

L. *Staff.* If he be admitted there, I know it not.

Dr. *Oates.* He lives there.

L. *Staff.* But I proteſt before God, my Lords, I aſked him that Queſtion, Will you go to the College? No, ſays he, I will go to lie at the Biſhop's Houſe: But as for Dr. *Perrot*, I never was at his Lodgings in my Life, and I never knew where he lay; he hath been with me ſometimes, but I knew not that he was a Doctor. But, my Lords, I deſire I may not be run down by theſe Fellows, who do not ſpeak a Word true, not one tittle. My Lords, I have Witneſſes in whoſe Houſe *Fenwick* lay. Call them, and aſk them if ever they knew me there in their Lives.

L. H. S. What kind of Man was he?

Dr. *Oates.* My Lords, he is an ancient Man, he wears his own Hair.

L. H. S. Is he a tall Man or a low Man?

Dr. *Oates.* A luſty Man.

L. *Staff.* Truly, my Lords, I never was at his Houſe ſince I was born.

Dr. *Oates.* My Lords, I'll tell your Lordſhips a Circumſtance; That Summer Don *Franciſco de Melos*, the Ambaſſador here, was ſick, and I think he died of the Sickneſs, Dr. *Perrot* was his Father Confeſſor; I was waiting for Dr. *Perrot* ſome time, for he promiſed to meet me at his Lodgings, and this Gentleman, the Priſoner at the Bar, did come in there.

L. *Staff.* Where?

Dr. *Oates.* Into Dr. *Perrot*'s Lodging. Dr. *Perrot* had a Kinſman there that waited on him; and when my Lord came in, he was in haſte to ſpeak with Dr. *Perrot*, and he offered me Half a Crown to fetch Dr. *Perrot* to him, and I made him this Reply, I was no Porter.

L. *Staff.* If ever I ſaw this Man in my Life ſince I was born, or heard of his Name till the Plot, then I will confeſs myſelf guilty of all. Indeed, when firſt I heard of the Plot (they ſaid) there was one Mr. *Oates* diſcovered it, but I did not know any ſuch Man.

Dr. *Oates.* I went by another Name, and went in another Habit; and my Lord *Stafford*, tho' his Memory be bad, yet it can't be ſo bad, but that he muſt remember ſomething of me.

L. *Staff.* I don't remember you, I never ſaw your Face in my Life.

L. H. S. You would have given him half a Crown to have fetch'd Dr. *Perrot.*

L. *Staff.* It ſeems then at that time, I took him for a poor Fellow, that I ſhould offer him a Shilling or two.

Dr. *Oates.* It is like I was, but I refuſed your Half-Crown, and told you I was no Porter.

L. *Staff.* My Lords, I ſhall give you Evidence that he was a poor Fellow, ſince he gives me occaſion to prove it; nay, that he was ſo poor, that he was brought down to accept of 6*d.* I will prove it by the Party that gave it, now he puts me upon it. But, my Lords, this Dr. *Oates* ſays he ſaw ſome of my Letters, I deſire to know what was in them; did he take any Notes? What was in them?

L. H. S. Did you, when you had a ſight of theſe Letters at St. *Omers*, take any Notes out of them?

Dr. *Oates.* What Notes I did take, if I did take any, I have not now in being; but I do not remember that I did take any. Beſides, my Lords, we could keep no Papers by us, but what we communicated to our Superiors, and therefore it was ſtill their Care to look after their Papers themſelves; and in that Circumſtance of Time, if they had known I had taken Notes out of their Papers, it would have been prejudicial to me, and endanger'd my Life.

L. *Staff.* My Lords, I do infer this one thing further, upon what this Dr. *Oates* tells you; He did ſeemingly profeſs himſelf of the Catholick Religion, and I do ſtand upon it, that hereupon he is no competent Witneſs in that which he offers againſt me: For he being of the Church of *England*, (for I think he profeſſes himſelf ſo, and wears that Habit) I ſay, any Man, let him be who he will in the World, Church of *England* Man or other, that ſhall pretend himſelf to be a Papiſt, for what end ſoever it be that he ſo pretends, and diſſembles with God Almighty, which he muſt do to a great Height in receiving the Sacrament, which is by your Lordſhips and the Houſe of Commons declared to be groſs Idolatry, is not eaſily to be eſteemed a Witneſs. I appeal to your Lordſhips, to the Houſe of Commons, and every body, whether ſuch a Fellow, that will abhor his Religion, let him do it for any ends in the World, be a Man to be credited; and eſpecially engaging in ſuch a way, to ſuch an Height, in that which his Conſcience tells him is idolatrous, is not a perjured Fellow, and no competent Witneſs? No Chriſtian, but a Devil, and a Witneſs for the Devil. And I appeal to the whole Chriſtian World, if a Proteſtant of the Church of *England* ſhould come to be a Servant to a Catholick, and pretend himſelf a Papiſt, and were not ſo, whether he were fit to be countenanced: As it did once happen to me at *Bruſſels*, before the King came in, one that was a Proteſtant came to be my Footman, and he profeſſed himſelf afterwards to be a Catholick; and when I found he was not ſo, I told him what a Villain he was, and he ought to be puniſhed ſeverely. I deteſt ſuch diſſembling with God; and I think by the Laws of God and Man, and the Holy Scriptures, ſuch a perjured Man is no Witneſs. I am ſorry I have troubled your Lordſhips ſo long; but now if you pleaſe to give me leave, my Lords, I will give you my Reaſons why I called him now: When I did remember how he had diſſembled with God Almighty, as I ſaid before, I did conſider with myſelf, Sure this Dr. *Oates* muſt have been, ever ſince he hath returned, of a very ſevere, ſtrict, and ſober Life; for a Man that hath ſo diſſembled with God, ought to ſhew himſelf of an exemplary, peaceful, pious, civil Life, to teſtify the Truth and Reality of his Repentance. But laſt Night when I came Home, and was ſitting by the Fireſide, extremely weary, my Daughter here comes in, and aſks me if I had heard what had paſſed between Dr. *Oates* and the Lieutenant; how he called the Lieutenant Raſcal and Gaoler: Sure then, ſaid I to myſelf, this is not the quiet, civil, ſober Man, that ſuch a one that hath lived as he hath done, ought to be. And this is the Reaſon I ſpeak of it, that he ſhould call him vile Names, Gaoler and Raſcal; it did not become a Man of his Coat to do it: Whether it was ſo or no, I do not know; but Mr. Lieutenant, I ſuppoſe, will ſatisfy your Lordſhip.

L. H. S. What did *Oates* ſay to you, Mr. Lieutenant?

Mr. *Lieut.* My Lords, I was deſiring Mr. *Oates* that he would keep the People down, becauſe there was a great Crowd; and ſeeing a great many People come in, he told me they were Witneſſes that were to come in: Said I, I believe half of theſe are not Witneſſes; and the Door opening ſo often, I could keep this Place in no order; ſo I deſired they would ſtand away that were not Witneſſes: Why, ſays he, you are but a Goaler. Then I told him, if it were not for his Coat, and I were out of this Place, I would break his Head. Then he called me Raſcal.

L. *Staff.* My Lord Steward, I deſire to know whether this be a Witneſs fit to be believed againſt any Man.

L. H. S. Mr. *Oates*, this does not become you; 'tis very ill Manners in you.

Dr. *Oates.* My Lords, the Lieutenant of the *Tower* hath the Law; and I refer myſelf to the Law, if I have done him any Wrong.

Mr. Serj. *Mayn.* It did not become Mr. Lieutenant of the *Tower* to tell him he would break his Head.

Mr. *Lieut.* Why? If any Man out of the Court, or in any other Habit, ſhould tell me I was a Goaler, I think I ſhould not deſerve to be the King's Lieutenant, if I did not break his Head.

Mr. Serj. *Mayn.* Pray tell the Court ſo. But yet, under Favour, you ought not to threaten him for a Word to break his Head.

L. Staff. My Lords, I do ſay this to your Lordſhips, a Man that hath diſſembled with God Almighty in ſo high a Nature, as he acknowledges himſelf to have done, ought to be a Man of a very ſevere Life afterwards, and not ſo paſſionate and cholerick, as it ſeems this Fellow is.

L. H. S. Will your Lordſhip proceed?

L. *Staff.* For this Man truly I ſhall ſay no more; I think I have ſaid enough to make him appear a Perſon not fit to be believed. I would only aſk *Stephen Dugdale* a Queſtion, if you pleaſe; 'tis but a little, I won't hold you long. I only aſk, and if he deny it I'll prove it, whether he was not a Priſoner at *Stafford* for Debt, when he made the firſt Affidavit?

L. H. S. Were you a Priſoner for Debt at *Stafford*, when you made your firſt Affidavit?

Mr. *Dugd.* In the Serjeant's Hands I was, my Lords.

L. *Staff.* For a very great Debt, my Lords, ſome hundreds of Pounds, and he was a Fellow not worth a Groat. And, my Lords, Dr. *Oates* ſays I offered him Half-a-Crown, and he refuſed it: I call *Ellen Rigby* to prove he was ſo poor he begg'd for Six-pence.

Dr. *Oates.* I will ſave my Lord the Trouble of proving any ſuch Thing. My Lord *Stafford* ſays I was a poor Man, and had not Six-pence in my Pocket: I can make it appear to the Houſe of Lords, that ſome Time ſince I came in upon this Diſcovery, I have not had Two-pence in my Pocket, and ſometimes I have not had Six-pence; but a Man's Poverty is no Objection againſt his Honeſty.

L. *Staff.* Where is *Ellen Rigby*, to prove whether ſhe did not give him Six-pence? But then, my Lords, pray aſk him, whether he did not ſwear at a former Trial, he had ſpent ſix or ſeven hundred Pounds more than he got?

L. H. S. Did you ſay at a former Trial, you were five or ſix hundred Pound out of Purſe?

Dr. *Oates.* My Lords, I will ſatisfy this Houſe what I ſaid: What Folks write after me, I am not to juſtify. But, my Lords, I had a Friend of mine preſented me with 100 *l.* I name not his Name, but if that be queſtioned, he is a Peer of this Houſe, and will juſtify it: I had 100 *l.* for my Narrative; I had 100 *l.* for taking ſome Jeſuits, which is 300 *l.* I had for ſome other Copies that I printed, a Matter of 50 or 60 *l.* And now I can make it appear, that as to thoſe Sums which I received in groſs, I have ſpent them all, and more, in this Service: for I have none of the Money now by me.

L. *Staff.* He makes out but 350 *l.* and he ſwore he was out 700 *l.* but he does not ſwear one true Tittle, nor is any whit to be believed.

Dr. *Oates.* If you expect I ſhould prove it, I can prove it now.

Managers. Be quiet, Dr. *Oates*, we will do you Right anon.

L. *Staff.* My Lords, I do not know for the preſent that I have any Thing elſe to trouble your Lordſhips with. I remember theſe Gentlemen, when I aſked them if they had any more Evidence to give in, ſaid, No, unleſs I ſhould give them ſome Occaſion: And now I deſire your Lordſhips, if they bring any new Evidence, that I may have Time to anſwer to it.

L. H. S. God forbid but you ſhould have Liberty to anſwer any Objection.

Sir *Will. Jones.* My Lords, before we go about to ſum up our Evidence, we ſhall have Occaſion to call ſome Witneſſes, and that will be to fortify what our Witneſſes have ſaid, to diſcover what kind of Witneſſes have been made Uſe of againſt them, and to falſify what my Lord's Witneſſes have ſaid in ſome Particulars. Theſe will be the three Heads for which we deſire to call Witneſſes. And becauſe, my Lords, we will not trouble you with making one entire Narration of what they can ſay, or to what Purpoſe we call them before they come, deſire the Favour that we may acquaint your Lordſhips with it, ſtill as we call them; for that we think will be the Way more clearly to be underſtood. My Lords, we ſhall begin to make good by other Witneſſes, ſome Things ſaid by Mr. *Dugdale* (for he was our firſt Witneſs, and therefore in order of Time we will begin with him.) My Lords, the Priſoner at the Bar was pleaſed to object——

L. *Staff.* My Lords, I would not interrupt him; but I would aſk whether there are more than two Heads that he proceeds upon to fortify their own Evidence, and to falſify mine.

Sir *Will. Jones.* My Lords, I think we may comprehend all under thoſe two Heads. But, my Lords, you obſerve, one great Matter my Lord did inſiſt upon Yeſterday, was this, That he, it is true, hath ſeen Mr. *Dugdale* at my Lord *Aſton*'s; (though by the Way I muſt ſay this, my Lord at the firſt did not ſeem to know him)———

L. *Staff.* I did not know him in his Perriwig.

L. H. S. Do not interrupt them, my Lord, for they muſt have the ſame Liberty that you had, to go on without Interruption.

Sir *Will. Jones.* We muſt have the ſame Freedom my Lord had. I will do his Lordſhip that Right, he did afterwards recollect himſelf and ſay, his Perriwig had made that Alteration in him, that he did not know him. But my Lord was alſo pleaſed to ſay Yeſterday, That though he did not know him, yet he looked upon him as ſo mean and inconſiderable a Fellow, that he did purpoſely avoid all Diſcourſe with him; and that ſome times when he was a-dry at my Lord *Aſton*'s, he would not ſpeak to him to help him, nor to call one to help him to drink. My Lord was pleaſed Yeſterday alſo to deny that ever he had any Converſe with him, but only that one Time, when indeed Mr. *Dugdale* did deſire to make Uſe of my Lord, that by his Interpoſition he might have leave to go to the Foot-Race. My Lords, your Lordſhips very well perceive we are now going about to prove a Matter moſtly ariſing within my Lord *Aſton*'s Family; and what Witneſſes we ſhall have from thence, your Lordſhips may eaſily imagine will not be very favourable to us: And if we have not many to this Point, your Lordſhips will take into Conſideration, that thoſe who can give the fulleſt Proof here, muſt be thoſe of the Family, and the Religion of the Family. But, my Lords, we will call one or two that I believe will give you Satisfaction that my Lord, the Priſoner, was no ſuch Stranger to Mr. *Dugdale*; that they have been ſeen together, and alone together: And that is the firſt Thing we deſire to call Witneſſes to. Call Mr. *Anſell* and *William Hanſon*.

Mr. Hanſon *was ſworn.*

L. H. S. Where do you live? Whoſe Servant are you?

Mr. *Hanſon.* At *Wilnal* in *Staffordſhire.*

L. H. S. What do you aſk him?

Sir *Will. Jones.* I deſire, if you be ſatisfied where he lives, that he will tell you, whether he hath been at my Lord *Aſton*'s, and ſeen my Lord *Stafford* there?

L. H. S. Have you ſeen my Lord *Stafford* at my Lord *Aſton*'s?

Mr. *Hanſ.* Yes, my Lords.

L. H. S. When?

Mr. *Hanſ.* A little above two Years ago.

L. *Staff.* Be pleaſed he may name the Time poſitively.

Sir *Will. Jones.* My Lord *Stafford* is not ſo well verſed in Proſecutions of this Nature, as to know that he is not to interrupt us while we are examining our Witneſſes.

L. H. S. My Lord, your Lordſhip received no Interruption, nor muſt give none.

Sir *Will. Jones.* My Lords, we deſire this Witneſs may be aſked, whether or no he hath ſeen Mr. *Dugdale* and my Lord *Stafford* at any Time together?

L. H. S. What ſay you?

Mr. *Hanſ.* Yes, my Lords.

L. H. S. When, and where?

Mr. *Hanſ.* I cannot juſtly tell the Time.

L. H. S. Can you tell the Place?

Mr. *Hanſ.* Yes, at my Lord *Aſton*'s.

L. H. S. Whereabouts?

Mr. *Hanſ.* In my Lord *Aſton*'s Parlour.

L. H. S. And were they alone?

Mr. *Hanſ.* Mr. *Dugdale* fetched me to my Lord *Stafford.*

L. H. S. And was no body in the Parlour when *Dugdale* fetched you to my Lord?

Mr. *Hanſ.* No, my Lords, I think there was not.

L. *Staff.* He thinks there was not.

Mr. *Hanſ.* There was not, to my beſt Remembrance.

Sir *Will. Jones.* My Lords, will you be pleaſed to aſk him the Occaſion why *Dugdale* fetched him to him?

Mr. *Hanſ.* My Lord had a Mind to have a Boy.

L. H. S. What was the Occaſion that *Dugdale* did come to fetch you to my Lord *Stafford* in the Parlour?

Mr. *Hanſ.* To bring the Boy, my Lords, Young *Hawkins.* Mr. *Dugdale* fetched me and the Boy to him; it was a Boy that my Lord would have to live with him.

Sir *Will. Jones.* Can you tell what Time of the Year it was? Whether Winter or Summer, as near as you can?

L. H. S. Ay, what Time of the Year was it?

Mr. *Hanſ.* Indeed, my Lords, I cannot tell.

Sir *Will. Jones.* I deſire to aſk him, whether when he went away he left them together?

L. H. S. Did you leave them together?

Mr. *Hanſ.* To my beſt Remembrance, my Lords, I did. The Boy and I went away together, and we left them at my Lord *Aſton*'s Parlour Door.

Sir *Will. Jones.* Call *James Anſell.*

L. H. S. Nay, if you have done with him, my Lord *Stafford* may aſk him any Queſtions.

L. *Staff.* My Lords, I ſhall tell you how this Thing is: There was a Report that this *Hawkins* was a very good Running Footboy; and this was ſpoken of at my Lord *Aſton*'s at Dinner or Supper, I don't know which, nay ſeveral Times about that Time: It was when my Lord of *Danby* was Treaſurer, and his Son, my Lord *Dunblain*, was much for Foot-Matches, and I had a Mind to have a Footboy to make a Match with him; and I believe *Dugdale* at Dinner or Supper did ſay that he was a good running Lad, and I might deſire to ſee him, and *Dugdale* did bring him to me I believe into my Lord *Aſton*'s Parlour; but there was at leaſt ſix or ſeven in the Room beſides.

L. H. S. My Lord *Stafford*, was this at that Time when your Lordſhip was at *Tixall* the 12th of *September*?

L. *Staff.* Pray, my Lords, I deſire to aſk him that Queſtion; I would know what Year it was.

L. H. S. He ſays it was above two Years ago.

L. *Staff.* I profeſs I believe it was one or two Years before I was taxed with this Plot. I did never think I ſhould be queſtioned about this, or I could eaſily have brought Witneſſes, that were by at that time. It is true, he did come to me; but pray what time of Day was it?

Mr. *Hanſ.* In the Morning, I think it was.

L. *Staff.* I profeſs to God, it was after Supper; as I hope to be ſaved, it was as we were going to Bed, to the beſt of my Remembrance.

Sir *Will. Jones.* Did you come into the Parlour after Supper?

Mr. *Hanſ.* I am not ſure what time it was.

Sir *W. Jones.* If his Lordſhip pleaſe to aſk him any more Queſtions; if not, we will call another. *James Anſell.* (*Who was ſworn.*)

L. H. S. What is your Name?

Witneſs. James Anſell.

L. H. S. Where do you live?

Mr. *Anſell.* At *Heywood* in *Staffordſhire.*

L. H. S. Did you live with my Lord *Aſton?*

Mr. *Anſ.* I have been at my Lord's Houſe at *Tixall.*

L. H. S. But you are not of the Family?

Mr. *Anſ.* No.

L. H. S. How far is *Heywood* from *Tixall?*

Mr. *Anſ.* A Mile.

L. H. S. Have you ſeen my Lord *Stafford* at *Tixall?*

Mr. *Anſ.* I have ſeen a Man they called my Lord *Stafford.* I did not know him, but as they told me.

L. H. S. Did you ever ſee *Dugdale* in the Company of a Man they called my Lord *Stafford?*

Mr. *Anſ.* Two Years ago I was at *Tixall*, and there I ſaw one, that they ſaid was my Lord *Stafford*, walking with Mr. *Dugdale*, whom I did know.

L. H. S. Where was it?

Mr. *Anſ.* In the Court at *Tixall*, walking together.

L. H. S. Were they alone? Was there no body elſe in Company?

Mr. *Anſ.* None that I ſaw; there might be more Company, but I ſaw no more.

Sir *Will. Jones.* Pray, my Lords, aſk how long ago this was.

Mr. *Anſ.* About a Summer was two Years.

Sir *Will. Jones.* If his Lordſhip will aſk him any Queſtions now we have done, he may; otherwiſe we will call another.

L. *Staff.* My Lords, I have recollected myſelf as well as I can in ſo ſhort a Time, and all I can ſay, is, Some of my Servants were by, I ſuppoſe; and I do aſſure your Lordſhips, the other Buſineſs was above three Years ago: So the Fellow does not know what he does ſay.

L. H. S. Will you aſk him any Queſtions?

L. *Staff.* Pray aſk him how long he ſaw me in the Court with *Dugdale.*

L. H. S. How long was it?

Mr. *Anſ.* I cannot tell: I did but walk through the Court. I came to ſpeak with Mr. *Dugdale*, and he was with my Lord.

L. *Staff.* Did he hear us diſcourſe, any Word we ſaid?

Mr. *Anſ.* No, I did not.

Sir *W. Jones.* My Lords, if you pleaſe, before *Anſell* go away, we would aſk him a Queſtion to another Point; and that is, For what Reaſon *Dugdale* was ſecured, whether he went away for Debt or no?

L. H. S. Do you know wherefore *Dugdale* was ſecured, or why he went from my Lord *Aſton*'s?

Mr. *Anſ.* I can't tell why he went away; whether for fear of the Plot, or no, I can't tell.

Sir *Will. Jones.* What Diſcourſe was between you and *Dugdale* about it?

Mr. *Anſ.* Where? There was a Diſcourſe at *Stafford*, when he was there.

Sir *Will. Jones.* But before he went away?

Mr. *Anſ.* I came to my Lord *Aſton*'s one Day, and told Mr. *Dugdale* I heard ſay he was concerned in the Plot; for I told him I was amongſt ſome People, and they ſay you are concerned in the Plot. And this was about a Fortnight after the News was hot in our Country.

L. H. S. What ſaid he?

Mr. *Anſ.* He laugh'd at it, and ſaid, God blaſt him if he knew any thing of it.

L. *Staff.* So he denied it then?

Sir *Will. Jones.* Pray, Sir, at that time did he ſay he knew any thing about my Lord *Aſton*, and why my Lord *Aſton* did uſe him ill?

[*Then my Lord* Stafford *objected Mr.* Dugdale *was too near the Witneſs, and deſired he might go down; and it was ordered accordingly.*]

Sir *Fran. Win.* My Lords, we would aſk this Man what he does know of *Dugdale*'s concealing himſelf after he had heard of the Diſcourſe about the Plot.

Mr. *Anſ.* I know not that, my Lords; he was fearful of coming in Company; what his Diſcourſe was, I do not know.

Sir *W. Jones.* My Lords, now, if it pleaſe your Lordſhips, we will go to another Particular. Your Lordſhips will pleaſe to remember, that yeſterday there were two Witneſſes called by my Lord *Stafford*, that is, *Sambidge* and *Philips*. *Sambidge* was the old Gentleman that was deaf, and a little paſſionate too, becauſe he was once ſummoned to *Litchfield* Court: Mr. *Philips* was the Miniſter of *Tixall:* And both theſe did teſtify, That whereas Mr. *Dugdale* had ſworn at a former Trial, that he did give notice before them of the Death of Sir *Edmundbury Godfrey* upon *Monday*, which (as I take it) was the 14th of *October*, there was no ſuch notice given in their Preſence. Mr. *Dugdale* did affirm they were by, and that he gave notice before them and others. This was made uſe of by my Lord to invalidate the Teſtimony of Mr. *Dugdale*, that he ſhould go and affirm at a former Trial, that he did give notice of the Death of Sir *Edmundbury Godfrey* within two Days after he was killed, before any one knew of it; and *Dugdale* muſt needs know it from the Jeſuits; and both of theſe Gentlemen being now in Court, do deny that they heard of it at that time. My Lords, we ſhall prove to you here, that he did give notice of it at that time, and that they were both preſent: For Mr. *Sambidge*, it is not ſo ſtrange he ſhould not obſerve it; he was very deaf, and he could hardly hear yeſterday; and as he was deaf, ſo he was very paſſionate. As for Mr. *Philips*, I cannot ſay that as to him, but perhaps he cannot at that Diſtance of Time remember; but we will prove by undeniable Witneſſes, the notice was given that *Monday*, and that theſe Perſons were by when it was given.

Sir *Fran. Win.* This Witneſs we uſe to another Purpoſe beſides this; but we will aſk him only to this now.

L. *Staff.* I deſire the Witneſſes may ſtand by themſelves.

L. H. S. Let them take care that there be but one Witneſs at a time, and that no body approach them while they are giving their Teſtimony.

Sir *Will. Jones.* We did not make the like Deſire as to my Lord's Witneſſes.

L. *Staff.* In troth, you might with all my Heart, if you would.

Sir *Will. Jones.* It may be ſo; but we did not fear them ſo much. Swear *William Goldſmith.*

(*Which was done.*)

Sir *Will. Jones.* I would begin with *James Anſell.*

(*Who appear'd, and ſtood up again.*)

Sir *F. Win.* If your Lordſhips pleaſe, we would aſk him what he knows of a Diſcourſe about the Juſtice of Peace's Death; to tell the Time, and what it was that was ſaid? We only aſk general Queſtions.

L. H. S. What Diſcourſe did you hear of the Murder of a Juſtice of Peace, and when?

Mr. *Anſ.* My Lords, I heard it at *Tixall.*

L. H. S. When did you hear it firſt?

Mr. *Anſ.* The 14th of *October.*

L. H. S. Who did you hear it from?

Mr. *Anſ.* From Mr. *Dugdale.*

L. H. S. The Letter was dated the 12th. Where did you hear of it?

Mr. *Anſ.* It was at one *Eld*'s Houſe, an Ale-houſe in *Tixall.*

L. H. S. Where?

Mr. *Anſ.* At an Alehouſe hard by my Lord's.

L. H. S. Who was by?

Mr. *Anſ.* When that was ſpoken, there was I, and *William Hanſon*, and Mr. *Sambidge*, and Mr. *Philips.*

L. H. S. Did *Dugdale* ſpeak with them at that time?

Mr. *Anſ.* Yes, he was with them at that time, but he ſpoke with me at the Parlour; for he ſent for me into the Parlour.

L. H. S. Then at the ſame time he ſpake it to you, and they were in the Houſe?

Mr. *Anſ.* Yes, he came from them to me into the Parlour, and went to them again.

Sir *Will. Jones.* My Lords, I hear him ſpeak to the Day of the Month; if you pleaſe to aſk him if he can tell what Day of the Week it was?

Mr. *Anſ.* It was on a *Monday.*

L. H. S. That is right, the Letter was dated on *Saturday* the 12th of *October.*

Sir *F. Win.* I would aſk him, whether afterwards he came into the Room where Mr. *Philips* the Parſon was?

Mr. *Anſ.* Yes.

Sir *F. Win.* Was there any Diſcourſe after you came in, about the Death of a Juſtice of Peace?

Mr. *Anſ.* I cannot tell that.

L. H. S. Will you pleaſe to aſk him any thing, my Lord?

L. *Staff.* Indeed, my Lords, he ſays nothing concerning me; therefore I ſay only this, I deſire to know, if he can tell, what time of Day it was?

Mr. *Anſ.* It was the Forenoon.

Sir *Will. Jones.* Then call *William Hanſon* again.

(*Who appear'd.*)

Sir *F. Win.* We call him to the ſame Queſtion. Do you declare to my Lords what you know of Mr. *Dugdale*'s acquainting you with the Death of a Juſtice of Peace, and when it was.

Mr. *Hanſ.* I heard Mr. *Dugdale* ſay at old *Eld*'s Houſe at *Tixall*, There was a Juſtice of Peace murder'd that lived at *Weſtminſter.*

L. H. S. When did he tell you ſo?

Mr. *Hanſ.* The Day that I went to run the Race, the 14th of *October.*

Sir *Fr. Win.* Can you remember what Day of the Week it was?

Mr. *Hanſ.* It was on *Monday.*

L. H. S. Was it the Forenoon or Afternoon?

Mr. *Hanſ.* The Forenoon.

L. H. S. What Company was in the Houſe when he told you of it?

Mr. *Hanſ.* Old Mr. *Sambidge*, and Mr. *Philips* the Parſon of *Tixall.*

L. H. S. Were they in the Houſe at that time?

Mr. *Hanſ.* Yes.

L. H. S. Were they by when the Diſcourſe was?

Mr. *Hanſ.* Mr. *Sambidge* was going to drink a Bottle of Ale, as he ſaid, at my Lord's Bowling-Green; and for a while he ſits down, and preſently Mr. *Philips* comes in and ſits down, and Mr. *Dugdale* came out of the Parlour into the Room where we were come: Said I, What News? Said he, They ſay there is a Juſtice of Peace murder'd at *Weſtminſter.*

Sir *F. Win.* Was *Philips* in the Room?

Mr. *Hanſ.* Yes, he hath forgot it, but he was there.

L. H. S. Did *Philips* hear it?

Mr. *Hanſ.* He might have heard it if he would.

L. H. S. Had you any Diſcourſe with *Philips* about this ſince?

Mr. *Hanſ.* No, my Lords.

Sir *F. Win.* He is poſitive both as to the Day of the Month, and as to the Week, and that both of them were preſent.

Sir *Will. Jones.* My Lords, we ſhall prove to you now, that the Poſt which comes out of *London* on *Saturday*, comes to this Place on *Monday* Morning; and thoſe which come out of *Tueſday*, come there on *Thurſday* Morning; and the Poſt which goes out of *London* on *Thurſday*, comes to this Place on *Saturday* Morning.

L. *Staff.* He ſays the Poſt comes ſuch and ſuch Days, I own it, and in the Morning too.

Sir *Will. Jones.* Then I go on, my Lords, to another Point, which will be a farther Confirmation of the Matter. For, my Lords, we will prove to you, and that by Men of Quality, that the Noiſe of the Murder was in that Country, the *Wedneſday* and *Thurſday* following the Murder. Your Lordſhips pleaſe to obſerve, Sir *Edmundbury Godfrey* was killed the twelfth of *October*; he was found the *Thurſday* following, which was (as I take it) the 16th or 17th of *October*. We will prove now, that the Noiſe and Knowledge of the Murder was in the Country about *Tixall*, before he was found here near *London*. Now we only bring this as a Confirmation of this Matter, that it was revealed at the Alehouſe, and ſo it went about the Country. And for this we call *Edward Birch*, Eſq; and *John Turton*, Eſq;

Sir *F. Win.* Before we examine them, I would ſtate the Time. Sir *Edmundbury Godfrey* was miſſing on *Saturday*, which was the 12th of *October*; his Murder was not diſcover'd till *Thurſday*. We call theſe Perſons to a double Purpoſe; the one to fortify what our Witneſſes have ſaid, and the other to ſhew, that this Man was diſpatched by theſe Men's Confederates, becauſe they knew it ſo ſoon; which could not have been, but that they were in the Conſpiracy themſelves.

L. *Staff.* I deſire only that he may ſay whether he means me among the reſt?

Sir *F. Win.* My Lord, I will do you no wrong, I ſpeak of thoſe at *Tixall.*

(*Then Mr.* Birch *was ſworn.*)

L. H. S. When did you hear of the Death of Sir *Edmundbury Godfrey*, Mr. *Birch?*

Mr. *Birch.* My Lords, I did not hear any Thing of the Death of Sir *Edmundbury Godfrey*, till the *Saturday* Poſt; but, I preſume, that which theſe Gentlemen call me for, is this: I did hear before *Thurſday*, I think *Tueſday* was the firſt Day, that there was a Juſtice of Peace of *Middleſex* killed, and it was thought the Papiſts murdered him; and this on *Tueſday* and *Wedneſday* was all over the Country, that is, *Tueſday* after his Death. For I'll tell your Lordſhips how I came to take Notice of it; for hearing ſuch a Report in the Country, I did not ſo much as take Notice of it; but being at the *King's-Bench* Bar, at the Trial of *Green*, *Berry*, and *Hill*, for the Murder of Sir *Edmundbury Godfrey*, I found upon the Evidence, that the Body was not found till the *Thurſday* after he was killed; that made me recollect myſelf as to what I had heard in the Country: And as I ſtood at the Bar, I told ſeveral Gentlemen that I did perfectly remember, before *Thurſday* it was diſcourſed of in the Country by ſeveral Gentlemen where I lived.

Sir *Will. Jones.* Call *John Turton*, Eſq;

Sir *F. Win.* Some of my Lords here, I perceive, deſire he ſhould be aſked a more particular Queſtion.

L. H. S. I deſire to aſk him this: You heard of it, you ſay, on *Tueſday*, that a Juſtice of Peace of *Middleſex* was killed; I deſire to know who you heard it from?

Mr. *Birch.* Truly, my Lords, I can't tell: For I'll tell your Lordſhips, I have ſome certain Days that I conſtantly appoint to be at Home in, when People come about Buſineſs to me. Among theſe People, ſeveral came that aſked me what News I had from *London.* I told them, I had received a Letter or two by the Poſt, and I ſhewed them thoſe Letters, there was little or nothing in them. Thereupon they aſked me, if I did not hear of a Juſtice of *Middleſex* that was killed? No, ſaid I: How come you to hear it? Says one, I come through *Cank*, (which is within half a Mile of mine own Houſe, and as I came through, there came a Perſon from *Heywood*, that ſaid, 'tis all the News about *Tixall* and *Heywood*, and that Part of the Country. And this was ſaid to me in my own Houſe.

Sir *F. Win.* How far is *Heywood* from *Tixall?*

Mr. *Birch.* About a Mile.

Sir *F. Win.* Now, my Lords, I would aſk Mr. *Turton* to the ſame Buſineſs.

(*Mr.* Turton *was ſworn.*)

L. H. S. Mr. *Turton*, pray hear: When did you firſt hear in *Staffordſhire* of the Death of a Juſtice of Peace of *Middleſex?*

Mr. *Turton.* My Lords, There are two Races in that Country, at a Place near *Lichfield*, and they are about the Middle of *October*; the one that Year was the 15th, the other the 18th. The one the *Tueſday*, and the other the *Friday.* I was at both of them: And one of the Days, which I cannot be poſitive in, there was one Mr. *Whitehall*, a Juſtice of Peace in *Staffordſhire*, called me from the Company, and deſired to ſpeak with me by myſelf. Said he, Do you hear any News? No, ſaid I. Do you hear nothing, ſaid he, of a Juſtice of Peace that is murdered? (I then had not heard of Sir *Edmundbury Godfrey*'s being miſſing) No. Says he, Don't you hear he is murdered? Do you know him? Yes, ſaid I: How do you hear it? Says he, 'tis a Report about us. But I did not then believe it: But the next Poſt-day, which was *Monday*, I did hear it. It was either *Tueſday* or *Friday.* one of thoſe Days.

Sir *W. Jones.* If it were either one or t'other, 'tis as ſtrange, and the Evidence as ſtrong; for his Body was not found till *Thurſday.*

Sir *F. Win.* And will your Lordſhips pleaſe to obſerve, that by that Time the Report had got the Name of *Godfrey* too, when at the ſame Time we in *London* did not know what was become of him.

Mr. *Turton.* He aſked me if I knew Sir *Edmundbury Godfrey:* Said he, I hear he was an active Juſtice of the Peace againſt the Papiſts; and he made this Inference, We had need have a Care what we do, for we ſhall be all ſacrificed.

Sir *W. Jones.* My Lords, Will your Lordſhips be pleaſed to obſerve, that Yeſterday there were ſome Witneſſes called to diſparage Mr. *Dugdale*; and the firſt Man, as I can remember, was a very ſubſtantial Gentleman, called Mr. *Robinſon:* I think he was not able to give an Account of his Employment, but he was a Gentleman that lived upon his Money; I remember thoſe were his Words. My Lords, we ſhall call (without telling you what they will ſay) ſome Witneſſes to prove the Condition of this Gentleman, what Reputation he is of, and what is his Converſation. And we firſt call my Lady *Gerard.*

L. *Staff.* My Lords, pray give me leave to ſay one Word——But 'tis no great Matter, 'tis not worth the ſpeaking.

L. H. S. What can you ſay, my Lord?

L. *Staff.* It was only a Thought of my own, not worth troubling your Lordſhips with.

(*Then the Lady* Gerard *appeared, and was ſworn.*)

L. H. S. Does your Ladyſhip know one *William Robinſon?*

Lady *Gerard.* No, my Lords.

Sir *Will. Jones.* He hath ſeveral Names, we deſire he may be called.

L. H. S. Call *Robinſon* the Upholſterer.

(*He was called, but appeared not.*)

Sir *Will. Jones.* I perceive we miſtake one Lady for another. We deſire Mr. *Booth*, a Member of the Houſe of Commons, may be ſworn.

(*Which was done in his Place*)

L. H. S. My Lord *Stafford*, ſend for *Robinſon* your Witneſs.

L. *Staff.* I believe he is here; but if he be not, one that belongs to me I have ſent to ſee for him: Whether he be a good or bad Witneſs, I do not know perſonally.

Sir *W. Jones.* Mr. *Booth* knows him very well, he ſaw him Yeſterday, and ſo we may venture to aſk him the Queſtion.

L. H. S. Did you ſee *Robinſon* the Witneſs yeſterday?

Mr. *Booth.* Yes, my Lords, I did.

L. H. S. Do you know him?

Mr. *Booth.* My Lords, I do know him very well, though I have not ſeen him often: For indeed, my Lords, he behaved himſelf ſo the firſt Time that I ſaw him, that I believe I ſhall never forget him. My Lords, I am better acquainted with his Character than his Perſon, though I know the Man very well; and truly the firſt Time that ever I was in his Company, he gave me no Encouragement ever to deſire it again; for, if you pleaſe, I'll tell you how I came to know him. He told your Lordſhips that he came into *Cheſhire* at a Cocking; it was at that Time that I ſaw him: For upon the *Sunday* after the Cocking, I was invited to a Neighbour's, about two Miles from Home. We were ſet down to Dinner, and we had not ſat long, but this Man comes into the Room where we were; there was an empty Place at the lower End of the Table, and he ſits him down, and began a Diſcourſe to ridicule the Lord's Day, in ſuch a Manner as I never heard the like. And the reſt of his Diſcourſe was full of a great deal of Contempt of God Almighty, and all that was ſacred. All his Diſcourſe at Dinner was very profane. It was not in mine own Houſe; and becauſe it was not taken Notice of by the Maſter of the Houſe, and he coming under the Protection of a young Gentleman, I did not what elſe I ſhould; for I ſhould have made him hold his Tongue, or have uſed it to better Purpoſe: The whole of his Diſcourſe was ſo atheiſtical and profane, that I never heard the like in my Life. When Dinner was done, he uſed a great many Incitements to draw the Company into Play, by aſking what would they ſay, if they ſhould ſee ſuch and ſuch Things to be done? And at length he pulls out a great many Dice out of his Pocket, and behaves himſelf in that Manner, as People do that would draw in others to play; and they that had better Skill in it than I, ſaid that they were all falſe. When I ſaw this, I deſired him to leave our Room, or to forbear; for, ſaid I, if this be the Entertainment of the Day, I muſt leave the Company: Then they commanded him to deſiſt. This is all that I do know of my own Knowledge: But I ſhall acquaint you what I believe; for I have heard it from very conſiderable Perſons, whom I dare credit: For the Man run much in my Mind, becauſe I never ſaw ſo ill a Man in my Life. Coming Home, I was ſpeaking to ſome of my Family; ſays I, Yonder I met with the ſtrangeſt Fellow that I ever ſaw in my Days, he is fitter to be hanged than any Thing elſe. Oh, Sir, ſaid they, there is ſuch a Fellow hath cheated I know not how many at the Town where the Cocking was. The next Day, I think it was, or ſhortly after, I had Occaſion to go to that Town; and many People came and complained to me of his Cheats, to a very great Degree. They aſked me, what they ſhould do? Said I, You have nothing to do but indict him for a Cheat. Why, ſaid they, will you take no Courſe with him? Said I, What Courſe can I take? I am turned out of the Commiſſion of the Peace, elſe I know enough to bind him to his good Behaviour. After this, I had Occaſion to go into *Lancaſhire*, and there I found he was better known than truſted. There were very loud Complaints againſt him, and ſome would have given twenty Pound to meet with him. I heard afterwards he went into *Staffordſhire*, and he changed his Name wherever he went; but he ſoon diſcovered himſelf, and all thereabouts he goes for a notorious Cheat. This is all I can ſay of him.

L. *Staff.* My Lords, Be pleaſed to give me leave to ſay one Word. I aſſure you, if I had thought this Man had been ſuch a Fellow as now he proves, I would not have brought him before you. I never knew what he was in my Life, nor heard of his Name till *Saturday* laſt.

L. H. S. It may be ſo, my Lord: But your Lordſhip muſt take Notice, this is the Man that gave the moſt important Evidence, that *Dugdale* ſhould corrupt him to ſwear againſt you for Money.

L. *Staff.* Give me leave to obſerve upon that, my Lords, That if *Dugdale* knew him to be a cheating Fellow, he might think him the liker to take Money to forſwear himſelf.

Sir *W. Jones.* My Lords, We ſhall not reply now, but obſerve anon, how this cheating Fellow comes to ſwear for my Lord at this Time. But we deſire an Honourable Peer of this Houſe may give ſome Account of him, and that is the noble Lord the Earl of *Macclesfield*; I think he may be known to your Lordſhips.

(*Then the Earl of* Macclesfield *ſtood up.*)

L. H. S. Pardon me, my good Lord, my Lord muſt be ſworn.

Earl of *Macc.* Before I am ſworn, I would know of your Lordſhips, whether I ſhould be ſworn or no? for your Lordſhip ſhall not make me be ſworn, unleſs my Lords ſay I ſhould.

L. H. S. I ſhould not offer it, if there were any Colour of doubt in it.

(*Then my Lord was ſworn.*)

Earl of *Macc.* My Lords, I have nothing to ſay againſt this Man, but what he ſaid to me, and before a Juſtice of Peace too; for I did take this Man when he had run away from my Lord *Gerard.* He had cheated many of his Servants. I catched him on the Way running to play his Tricks ſomewhere elſe, and I intercepted him; but tho' I was a Juſtice of Peace there, yet becauſe it was in a Manner my own Caſe, I would not commit him, till I had carried him before another Juſtice of Peace. So the Man comes up to me; ſays he, My Lord, have you a Mind to have your Son-in-law bubbled? I have been only teaching him how to avoid being cheated; I acknowledge myſelf to be a Cheat, and I would teach him to avoid them. I am going now into *Staffordſhire*, and that was all I intended to his Lordſhip: I am a Rogue I confeſs. And upon this a Juſtice of Peace comes in, and while they were examining of him, we bid ſome that were by to ſearch him, and they found in his Pocket falſe Dice; and truly the Juſtice nor I did not know whether they were true or falſe. Says he, You don't know what to do with theſe, but I do. This is all I can ſay; but in all the three Counties of *Staffordſhire*, *Cheſhire*, and *Lancaſhire*, there are ſeveral Men that I ſee here, that know his Life better than I do; for 'tis his common Practice. And I believe, my Lords, the Judges muſt know him; for it was his common Practice at all Aſſizes and great Meetings to play theſe Pranks.

Sir *W. Jones.* My Lords, We will not trouble your Lordſhips any further as to *Robinſon*; if he were here, perhaps my Lady would know him; but having two ſuch Witneſſes, I think we need not trouble ourſelves nor you any more about him.

L. H. S. Have you done with my Lady *Gerard?*

Sir *W. Jones.* Yes, and we beg her Pardon for this Trouble. My Lords, your Lordſhips will be pleaſed to remember, there was one *Holt* was produced as a Witneſs by my Lord *Stafford*; and your Lordſhip, when you look on your Notes, will remember, he teſtified to this Purpoſe: That *Dugdale* ſent an Horſe for him to *Stafford* Town; which Horſe brought him to the *Star* Inn, and there *Dugdale* did offer him forty Pounds to ſwear, That one Mr. *Moor* carried away *Evers* the Jeſuit. My Lord, we will call ſome Witneſſes to this Mr. *Holt*; you will find him to be ſomething a-kin to Mr. *Robinſon*, and, as we ſuppoſe, of nothing a better Reputation than he.

The Witneſſes will give you an account of his Pranks. Call *Sampſon Rawlins*, and *Lander*. (Rawlins *ſtood up, and was ſworn.*)

L. H. S. What is your Name?

Witneſs. Sampſon Rawlins.

L. H. S. What do you aſk him?

Sir *W. Jones.* We deſire to aſk him if he knows *Samuel Holt* the Blackſmith?

L. H. S. Do you know *Holt?*

Rawlins. Yes.

Sir *F. Win.* Acquaint my Lords what Reputation he is of, where he lives, and what he is.

Rawl. He is counted to be a very lewd, looſe Fellow.

L. H. S. Why ſo?

Sir *W. Jones.* What hath he done?

Rawl. He is counted a drunken, lewd Fellow.

Sir *W. Jones.* Is he of an ill Reputation in the Country where he lives?

Rawl. Yes, he is ſo.

L. H. S. For what?

Rawl. 'Tis ſaid in the Town he keeps another Man's Wife.

Sir *W. Jones.* Is there any other Fault he hath?

Rawl. He ſaid there were none but Rogues would take Mr. *Dugdale*'s Part; whereas I never knew any harm by Mr. *Dugdale*, and I have known him this fourteen or fifteen Years: I dealt with him, I was a Taylor to the Family, and he ever paid me very honeſtly and well.

Sir *W. Jones.* Have you heard of Mr. *Holt* any other ill thing beſides what you ſpeak of?

Rawl. He broke open my Lord *Aſton*'s Wine-Cellar, and ſtole ſeveral Bottles of Wine; wherefore my Lord *Aſton* bid Mr. *Dugdale* ſend him to the Goal: but he curry'd favour with Mr. *Dugdale*, and ſo kept in with him, that he afterwards begged for him of my Lord to forgive him; and now he comes to evidence againſt Mr. *Dugdale*, that was his ſure ſtedfaſt Friend, and ſaved him from the Goal.

L. *Staff.* I would aſk this Witneſs a Queſtion——

Rawl. And becauſe I took Mr. *Dugdale*'s Part, ſaying, he was an honeſt Man (and he was ſo to me, and all others, as far as ever I heard) he met me, and would have murder'd me.

L. H. S. When was this?

Rawl. Since laſt Term, when I was up here. And likewiſe *Sawyer* took a Pot, and would have dong'd my Brains out.

Sir *F. Win.* My Lords, I think this Man was ſummoned as a Witneſs, to attend at my Lord *Aſton*'s Trial. What Occaſion brought you to *London* at that time?

Rawl. I was ſubpœna'd up. And when I came home to my Wife and Children, they groſly abuſed me, and ſaid I was a Rogue, becauſe I came up upon his Majeſty's Service.

L. *Staff.* Pray, my Lords, aſk him whether *Holt* was my Lord *Aſton*'s Servant or no.

L. H. S. Was *Holt* a Servant to my Lord *Aſton?*

Rawl. He was a Smith hard by his Gate, and he worked to the Family.

L. H. S. Were you ſubpœna'd up to the Trial of my Lord *Aſton?*

Rawl. Yes.

L. H. S. And it was for coming to that Trial he offered to murder you?

Rawl. Yes, I have ſeveral Witneſſes of it. And by the Blow that *Thomas Sawyer* gave me, for a good while I could not lay my Head on the Pillow.

Sir *W. Jones.* Call *Thomas Lander.* (*But he did not appear, being gone away ſick.*)

Sir *W. Jones.* Becauſe we would not loſe your Lordſhips time, ſeeing the Man we call for is gone away ſick, we will call a Witneſs as to another of my Lord's Witneſſes, *John Morral.* Call *Thomas Thorne.*

(*Who was ſworn.*)

Sir *F. Win.* My Lords, if that other Man come by-and-by, we hope your Lordſhips will give us leave to aſk him a Queſtion to the Point which we are now gone over. But my Lord *Stafford* did produce one *John Morral*, a Barber that lived at *Ridgely*, who ſaid, that Money was offer'd him to ſwear againſt Sir *James Symons*, and Mr. *Howard*, and others. We call this Witneſs to give your Lordſhips an account what this *Morral* is, and how he hath behaved himſelf in this Buſineſs.

Sir *W. Jones.* What do you ſay about *John Morral?* Do you know him?

Thorne. Yes.

L. H. S. What do you know of him?

Thorne. I know he is a Man that uſed to come often to my Lord *Aſton*'s to *Tixall*; to trim him, he is a poor Fellow that walks up and down the Country, and hath little or nothing to live on.

L. H. S. Is he poor and needy?

Thorne. Yes, he hath been ſued for Money, and I have been contributory to keep him out of Priſon.

Sir *W. Jones.* I aſk you in general, is he of a good or bad Reputation?

Thorne. Indifferent.

Sir *W. Jones.* 'Tis modeſtly ſaid. My Lords, your Lordſhips have heard what kind of Witneſſes have been brought againſt us: For two of them, you have had particular Matters; for a third, our Witneſs ſpeaks modeſtly, that he is a Man of indifferent Reputation. But now, my Lords, we muſt prove what Endeavours have been uſed to get other Witneſſes againſt our Witneſſes; and for that, I deſire to call one *Simon Wright*, to tell your Lordſhips what hath been offered him to ſwear againſt *Dugdale*, and by whom. (Wright *ſtood up and was ſworn.*)

Mr. *Foley.* My Lords, we deſire this Witneſs would give your Lordſhips ſome account what Endeavours have been uſed by Offers of Money, or otherwiſe, to make him ſwear againſt *Dugdale*, and by whom.

L. H. S. Hath any body endeavoured to perſuade you to ſwear againſt *Dugdale?*

Wright. Yes, my Lords.

L. H. S. Tell your whole Story, who it was, and what was offer'd you?

Wright. The firſt time I was employed was preſently after the Murder of Sir *Edmundbury Godfrey*; and it was by one Mr. *Pleſſington*, that was in cuſtody about that matter: And he ſent me one *Sunday* Morning to the Marquis of *Wincheſter*'s, to deſire him to conſider what a Charge he lay at; and my Lord did ſend him Word, he could not expect to be diſcharged ſo ſoon. The *Tueſday* after he was diſcharged; and afterwards coming unto me, I told him I was glad he had ſo good Friends to get out ſo ſoon. He told me, were I in the ſame condition, I ſhould have as good, or better. Whereupon Mr. *Pleſſington* and I were as good Friends as any about the Town. I was his Barber, and Barber to Mr. *Dugdale*, and we were all great Cronies. And *Pleſſington* told me, if I could find a way to take off his Evidence, or deſtroy him, I ſhould have ſeven hundred Pounds. I went to enquire out where I might have a Security for the Money, and Mr. *Reeves*, an Apothecary in *Chancery-Lane*, did proffer me his Note, and ſo did Mr. *Dewy* the Scrivener: but I did not, nor had the Money. And ſeveral times, particularly at the Trial of Mrs. *Price* and Mr. *Taſborough*, they would have had me ſworn quite blank, That he would have hired me to have ſworn againſt them. And afterwards they would have had me own I was forſworn, and they would get me a Pardon.

L. H. S. What had you ſworn?

Wright. What I heard Mrs. *Price* ſay at the *Horſe-ſhoe*, in *Chancery-Lane*, as to the blaſting of *Dugdale*, as may be ſeen in the Trial.

L. H. S. Who offered you that ſeven hundred Pounds?

Wright. My Lord *Belloſis*'s Steward.

L. H. S. What is his Name?

Wright. Pleſſington.

Sir *Fr. Win.* My Lords, I think he ſays he was to ſwear againſt Mr. *Dugdale*; I deſire he would explain himſelf more particularly, and tell who it was that offered the Money to ſwear againſt *Dugdale.*

Wright. Mr. *Pleſſington*, my Lords. And ſince the Trial of Mrs. *Price*, they did perſuade me to write a Paper for the blaſting the Reputation of *Dugdale*, and to ſhake his Credit by it. And that they carried to Mr. *Drayton* and Sir *James Symons*, and they being ſatisfy'd, would have me write again to thoſe Gentlemen, and they framed a Letter for me to write. And thereupon Mr. *Longmore* (I know the Gentleman if I ſee him again) told me that Sir *James Symons* was better able to perform, than *Dugdale* was to promiſe; and if I would ſtand by it, I ſhould be a happy Man.

L. H. S. What had you ſaid in that Paper?

Wright. I had ſaid according as they directed me, That Mr. *Dugdale* would have given me Money to ſwear againſt Sir *James Symons* and Mr. *Gerard.*

L. H. S. Did you ſwear that?

Wright. No, I did not, but I was to have done it.

L. H. S. How came it to paſs you did not agree with them?

Wright. My Lords, I have had four Pounds in hand, and that I had by reaſon Poverty came upon me. And my Lord *Bellaſis*'s Steward came and lay with me, and ſpent twenty Shillings upon me; but finding that I was not abſolutely true to them, nor like to go through, they diſtruſted me: and I borrowed an Horſe of Capt. *Chetwin*, and got down into the Country, where I have been ſince *July* laſt, till I was fetch'd up by a Meſſenger to come and give Evidence for the King. And there I received a Letter from my Lord *Aſton*'s Agent, That if I would call at *Stafford*, and come up with my Lord's Witneſſes, they would bear my Charges up to *London.* I have the Letter in my Pocket.

L. *Staff.* If it pleaſe you, he may ſhew the Letter. (*Which he did.*)

Clerk. This for Simon Wright, *a Barber, at* *Deliver with Care.*
Subſcribed, *Your loving Friend* Abnett.

Simon Wright,

I Have juſt now received a Letter from the Lord Stafford, *wherein my Lord mentioned* Wright *to be one of his Witneſſes, and deſired me forthwith to give* Wright *notice, that, if poſſible, he ſhould be at* London *on the* Saturday *Night next, his Trial being to be on the* Tueſday *after; therefore if he pleaſed to come to him, he ſhould give him Money to bear his Charges up, and he ſhould come up with my Lord's Witneſſes.* Abnett.

(This is the Subſtance of the Letter as it was taken.)

Sir *W. Jones.* I preſume your Lordſhips will be pleaſed to take notice, he was intended a Witneſs for my Lord; and it was ſuppoſed then that he was able to ſay ſomething, but he was not produced by my Lord yeſterday.

L. *Staff.* Pray, my Lords, give me leave, as to this Witneſs; I deſire, if you pleaſe, I may have time to prove ſomething againſt this Man till to-morrow: I have enough againſt him.

Mr. Serj. *Mayn.* You will find another Witneſs, I ſuppoſe, by that time.

L. *Staff.* No, I will not find him, I have him already; I have enough againſt this Fellow.

L. H. S. You ſhall have time to ſay what you will, my Lord.

Mr. Serj. *Mayn.* I would my Lord would name his Witneſs.

L. *Staff.* I will name him to you, ſince you aſk it, 'tis *Dodd*; he knows what I mean well enough.

Wright. I don't know him, my Lord, I aſſure you.

Sir *Will. Jones.* My Lords, we will go on now to another Matter. My Lord *Stafford* was pleaſed to object, that Mr. *Dugdale* did talk much of Letters and Proceedings, but was able to ſhew none of them. My Lords, we will give an Account how that comes about: Mr. *Dugdale*, as in part hath been proved already, was apprehenſive of being accuſed for the Plot; nay, I think we ſhall prove he was afraid he had been in the Proclamation againſt thoſe Traitors and Jeſuits that were fled. We ſhall prove, that Mr. *Dugdale*, to ſecure himſelf, and his then Friends (for he was not then come over to make any Diſcovery) did burn a great many Letters and Papers that did relate to thoſe Proceedings, and did not leave any thing remaining; hoping thereby to prevent a Diſcovery. We will call Witneſſes that were by when it was done, and I think that will be ſome Anſwer to this Objection. Call *Elizabeth Eld*, and *Anne Eld.* (Elizabeth Eld *ſworn.*)

Sir *F. Win.* My Lords, if your Lordſhips pleaſe, we would aſk her this general Queſtion; What ſhe knows of Mr. *Dugdale*'s burning a great many Letters and Papers, at what Place, and about what time?

Elizabeth Eld. I cannot poſſibly ſay to the time; I burnt ſome Writings for him when he went away, he deſired me to burn them, he did not tell me what Writings they were. He ſaid, the Times were troubleſome, and if he ſhould be ſick upon the Road where he was going, he would not have all his Papers ſeen; but he deſired me to burn them. And I took and burnt them all but one Book; and my Siſter aſked if that Book ſhould be burnt: he ſaid, No, there was nothing of Treaſon in it. I aſked him if there were any thing of Treaſon in the others; and he ſaid, Do you think there was?

Sir *Will. Jones.* How long was this before he went away?

Eliz. Eld. That Morning when he went away.

Sir *Will. Jones.* How many Papers were there?

Eliz. Eld. I cannot ſay how many.

Sir *Will. Jones.* I do not aſk you the Number, but the Quantity, was there a Buſhel?

E. Eld. I cannot ſay; they were rolled up, and put in his Pockets and his Breeches.

L. H. S. Were they Parchments or Papers?

E. Eld. They were Papers.

L. H. S. Were they Letters?

E. Eld. I did not ſee what they were, but they were wrapt up together; they might be the Accounts of the Houſe, for what I know.

Sir *F. Win.* But ſhe ſays, as I take it, that Mr. *Dugdale* ſaid there was Treaſon in them.

E. Eld. No, he ſaid, Did I think there was? He ſaid it was no Matter for burning that little Book, there was no Treaſon in that; and when I aſked him if there was any in the others, he ſaid, Do you think there was?

L. H. S. Was it one or two Bundles?

E. Eld. There were ſeveral bundles, they were not tied up, but taken in Handfuls and thrown into the Fire.

Mr. *Foley.* If my Lord *Stafford* will aſk her no Queſtion, we will call up another.

E. Eld. My Lords, I did ſee Mr. *Dugdale* take a Glaſs of Cyder, and I heard him ſay, and wiſh it might be his Damnation, and he might ſink in the Place where he ſtood, if he knew any Thing of the Plot.

Sir *Will. Jones.* I pray what Religion are you of? I don't aſk you to diſparage you.

E. Eld. A *Roman* Catholick.

L. H. S. When was it that he ſaid that?

E. Eld. When he was in *Staffordſhire.*

(Anne Eld *was then ſworn.*)

Mr. *Foley.* Tell my Lords what you know of any Papers that were burnt by Mr. *Dugdale*, or by his Direction, and at what Time.

A. Eld. Mr. *Dugdale* came to my Father's Houſe over Night, and the next Morning (before he went away) he brought a great many Papers he had in his Breeches, and in his Pockets, bundled together, and he deſired us to burn them in the Flame of a Candle.

L. H. S. Why did he deſire you to burn them?

Anne Eld. He ſaid, the Times were troubleſome, and being to travel, he was to go to divers Places, and if he were taken, People would think him a Plotter, having all thoſe Papers about him.

L. H. S. Did he burn the Book at that Time?

A. Eld. No.

L. H. S. Why not?

A. Eld. I found that Book, and aſked him, if that ſhould be burnt; he ſaid, No, lay that by, it might do good ſeven Years hence, there is no Treaſon in it. Says my Siſter to him, Is there any Treaſon in the reſt? Says he, Do you think there is? That was all.

Sir *Will. Jones.* Not to trouble you longer, my Lords, upon this, your Lordſhips will be pleaſed to remember, Yeſterday my Lord *Stafford* was pleaſed to offer by Way of Evidence, as if Mr. *Dugdale* was a Man of an ill Reputation in theſe Particulars, That he had defrauded my Lord *Aſton*, that he was a mean Man, run in Arrear to my Lord; and that being in Neceſſity, he became a fit Inſtrument to give falſe Evidence. We ſhall ſhew, That Mr. *Dugdale* was a Man of Eſtate; that both before, and ſince he came away from my Lord *Aſton*, he hath made it his Buſineſs to deſire my Lord to come to Account; that he hath preſſed him, and that he does believe, and hath Reaſon ſo to believe, that there is Money coming from my Lord *Aſton* to him, and that a conſiderable Sum. Now, my Lords, if we ſhall make it appear, that he hath made it his Buſineſs to come to Account with my Lord, I hope it will not be ſuppoſed that he is afraid of it, or ſo needy, or ſo mean. For this we call *Michael Noble* and *Stephen Colledge.* (Michael Noble *ſworn.*)

Sir *John Trevor.* What do you know of Mr. *Dugdale*, and my Lord *Aſton*?

Mr. *Noble.* My Lords, I can ſay little or nothing as to Mr. *Dugdale*, for that I have never been acquainted with him, but ſince the Plot, and he came to be an Evidence; but Mr. *Dugdale* deſired me to aſſiſt him as much as I could, to make up his Accounts with my Lord *Aſton.* And we were twice at the *Tower*, one Time we ſpoke with my Lord with great Difficulty; another Time we could not ſee him. There were three Books of Account, two my Lord would let us ſee, but the third, wherein all the Diſcharges were, as Mr. *Dugdale* ſaid, he would never let us ſee, that is all I can ſay. (*Then* Stephen Colledge *was ſworn.*)

L. H. S. What is your Name?

Witneſs. Stephen Colledge.

Sir *Will. Jones.* Declare to my Lords what you know concerning Mr. *Dugdale*'s preſſing my Lord *Aſton* to account with him.

Mr. *Colledge.* In *January* laſt I went along with Mr. *Dugdale*, at his Requeſt, to the *Tower*, with one Mr. *Noble* a Barriſter of the *Temple*, and one Mr. *Boſon* of *Lion's-Inn*, in order to the making up Accounts between Mr. *Dugdale* and my Lord *Aſton*; for he told me he was going thither for that End. When we came thither, we met with one Captain *Hawley*, who belongs to the Lieutenant of the *Tower*, and we deſired him to go to my Lord *Aſton*, and tell him Mr. *Dugdale* was there, in order to make up his Accounts with him. He went, and brings an Anſwer back again, that my Lord was not at Leiſure to ſpeak with Mr. *Dugdale* then, nor none of us from him. And Mr. *Hawley* ſaid he was then going up with the Lords to Nine-pins. Mr. *Dugdale* ſaid, he was very ill uſed, for he had been ſeveral Times there before, and he could not be admitted to ſpeak with him. He hath a little Book, ſays he, (meaning my Lord) wherein there is an Account made up under his own Hand, of almoſt two or three hundred Pounds; which Sum I cannot ſay, but one of them I am certain of, which he hath denied ſeveral Times that he had it, (but I can prove that he hath it:) If he will be pleaſed to produce that Book, we need not be a Quarter of an Hour in making up the Account. He did ſpeak of ſome other Sums he had to place to Account, but ſo much was made up already. But Captain *Hawley* ſaying he would not ſpeak with him, nor any of us from him, I did take the Liberty to ſay to Captain *Hawley*, that it was hard his Lordſhip, and his Party ſhould abuſe Mr. *Dugdale* at that rate, to make him his Debtor; for now I underſtand by what Mr. *Dugdale* ſaid, my Lord was his Debtor: And ſaid I, if I can perſuade Mr. *Dugdale*, he ſhall publiſh his Caſe, for the Proteſtant Intereſt ſuffered by it, that he ſhould be made a Debtor to my Lord when he was not ſo. And I believe Captain *Hawley* told my Lord *Aſton* what I did ſay; for when he came back again from my Lord *Aſton*, he ſaid, my Lord did acknowledge he had that Book, and it was ready to be produced, but he would ſtay till a Counſellor of his came out of the Country, and till he had ſpoke with the Lieutenant; for he would not ſpeak with Mr. *Dugdale* unleſs the Lieutenant were by, and in three or four Days Time he would ſend for him: But I never heard that he ſent for him ever ſince. If it pleaſe your Lordſhips, I have one Thing more that I remember: There was a young Man that belonged to my Lord *Aſton*'s Family, that heard Mr. *Dugdale* was at Captain *Hawley*'s Chamber, and came to ſee him, and paid a very great reſpect to him, and would ſtand bare to him, though Mr. *Dugdale* deſired him to put on his Hat ſeveral Times. Some of us aſked him, whether Mr. *Dugdale* was thought to be ſuch a Knave, when he lived with his Lord, as they would have made him ſince. No, ſaid he, Mr. *Dugdale* was as honeſt a Gentleman as ever lived in our Family. I remember my Lord *Aſton*'s Man ſaid this to us then.

L. Staff. My Lords, will you be pleaſed to give me leave; if I ſpeak impertinently, I am under your Correction; I conceive I ſhall have ſomething to anſwer to this, but I would firſt know whether I may deſire of your Lordſhips, that I may have my Lord *Aſton* here to give an Account of this Matter.

Sir *Will. Jones.* If he were here he could not be heard, being a Perſon accuſed for the ſame Offence.

L. H. S. My Lord, he ſtands indicted for the ſame Treaſon, and cannot be a Witneſs.

L. Staff. I beg your Pardon, my Lords.

(Nicholas Boſon *was ſworn.*)

L. H. S. What is your Name?

Witneſs. Nicholas Boſon.

Sir *Will. Jones.* Declare to my Lords what you know concerning Mr. *Dugdale*'s preſſing my Lord *Aſton* to come to an Account.

Mr. *Boſon.* In *January* laſt, I met with Mr. *Dugdale*, and one Mr. *Noble*, and one Mr. *Colledge.* And Mr. *Dugdale* deſired us to go down with him to the *Tower.* He ſaid he had an Order of the Council to paſs his Accounts with my Lord *Aſton*; and when we came there, we enquired for Captain *Hawley*, and deſired him that he would acquaint my Lord *Aſton*, that he was there to account with him. Captain *Hawley* went up to my Lord *Aſton*, and brought Word back again, my Lord was not at leiſure, or would not ſpeak with him, or to that Effect; whereupon Mr. *Dugdale* ſaid, it was very hard that he ſhould be aſperſed to owe my Lord Money, and he would not come to Account with him. For my Lord *Aſton* had a Book or Books in his Cuſtody which he would ſtand by, and they would determine the Buſineſs between them; that my Lord *Aſton* was almoſt two hundred Pounds in his Debt. And pray, ſays he, Captain *Hawley*, do me the Favour to go to my Lord *Aſton* again, and deſire him that he will be pleaſed to produce that Book or Books. If I owe my Lord any Money, I am ready to pay him. And if he owe me any, I hope his Lordſhip will do the like by me; as I am ſure he does two hundred Pounds. Captain *Hawley* went away, and brought this Anſwer, that his Lordſhip would ſend for him in ſome ſhort Time, as ſoon as a Counſellor did come out of the Country, whom he had entruſted with the Books; and that was one *Birch*, as near as I remember.

Sir *Will. Jones.* We have done with this Witneſs. And becauſe we deſire to conclude as to Mr. *Dugdale*, we ſhall call ſome Perſons of Quality as to his Reputation, my Lord having gone about to make him a Man of no Reputation.

Mr. *Boſon.* I can ſpeak too about the Boy that came in.

Sir *Will. Jones.* There is no Need of that now: We ſhall trouble you no further, Sir. Your Lordſhips will be pleaſed to obſerve, That Mr. *Philips*, the Miniſter, that was one of my Lord *Stafford*'s Witneſſes, did ſay, Mr. *Dugdale* was a Man of whom many ſpoke well, and ſome indifferently, and perhaps that is the Caſe of moſt good Men; for ſcarce any are ſo good that all ſpeak well of them: But that many ſhould ſpeak well, and ſome indifferently of him, may be the Lot of a very good Man. We ſhall call ſome Witneſſes, and begin with Mr. *Whitby* a Juſtice of the Peace, that will tell you he hath known Mr. *Dugdale* long, and what Reputation he is of. (Thomas Whitby, *Eſq*; *ſworn.*)

Sir *John Trevor.* My Lords, We deſire your Lordſhips would be pleaſed to aſk him what Reputation and Credit Mr. *Dugdale* was in, in my Lord *Aſton*'s Service.

Mr. *Whitby.* My Lords, I have known Mr. *Dugdale* to be a Servant to my Lord *Aſton* this nine or ten years; he was Steward to him, and there was no other Perſon between my Lord and him; he received my Lord's Rents and Debts for him, exchanged his Lands for him in forty Places; I exchanged ſome Land with my Lord myſelf, and he was the Man that did it. He was very hard for my Lord's Advantage, and did what he could for my Lord's Profit.

Sir *John Trevor.* What do you know more as to his Dealing?

Mr. *Whitby.* He was a Perſon that was next to my Lord, and did rule and govern the reſt of the Family. All the Servants were under him.

Sir *John Trevor.* Was he looked upon to be an honeſt Man in his Dealings?

Mr. *Whitby.* As to what I had to deal with him, he was an honeſt Man, I never heard to the contrary. I have heard ſome Tradeſmen complain that he hath put them off without Money, would not pay them what my Lord owed them.

L. Staff. I deſire that Mr. *Whitby* may be here when I ſhall have Occaſion to ſay ſomething to him.

Sir *Will. Jones.* That will be, I hope, by and by, for we have almoſt done. Call Mr. *William Southall.*

(*Who was ſworn.*)

L. H. S. What is your Name?

Witneſs. William Southall.

Mr. *Foley.* Give my Lords an Account how long you have known *Dugdale*, and what you know of him.

Mr. *Southall.* My Lords, I have known Mr. *Stephen Dugdale* about eight Years.

Mr. *Foley.* How hath he behaved himſelf? What Reputation hath he born?

Mr. *Southall.* Truly he hath always had a good Repute, not only with my Lord's Tenants, but alſo with the Workmen, and thoſe People that had Dependance on the Family; and truly I never heard any ill Report of him, but only what is ſpoken of now of late.

Sir *Francis Winnington.* Were you very well acquainted with him?

Mr. *Southall.* Yes, but never had any Buſineſs with him. Several Diſcourſes I have had with him about the Popiſh Religion.

Sir *John Trevor.* My Lords, I only obſerve this, This Gentleman is Coroner of the County, and hath a general Knowledge of the County, and muſt know moſt Men there.

Sir *F. Win.* You are Coroner of the County of *Stafford*, Sir, I think?

Mr. *Southall* Yes, I am one of them.

Mr. *Foley.* What was he in my Lord's Houſe.

Mr. *Southall.* Bailiff, and a Kind of Governor, providing Meat, and paying Workmen; moſt of the Things of the Family went through his Hands.

Sir *Francis Winnington.* My Lords, This Gentleman is a Coroner of the County, and can ſpeak materially to other Particulars beſides this of *Dugdale*'s Reputation; for he was a Perſon who was preſent when he made his firſt Diſcovery of this Plot, and was very inſtrumental in prevailing with him to do it. He will give your Lordſhips an Account of the whole Buſineſs, and I would rather he himſelf ſhould relate all the Progreſs of it, than take upon me to recite any of the Paſſages.

Mr. *Southall.* There was, the latter End of *November* (78.) a Report that Mr. *Dugdale* was gone away from my Lord *Aſton*'s ſuddenly and ſtrangely; and it was the common Report in the Country that he was in the Plot, and was fled for it. In the Beginning of *December* I went through a Town called *Great Heywood*, a Mile and a Half from *Tixall*, where my Lord *Aſton* and Mr. *Dugdale* dwelt. I called at Mr. *Thomas Whitby*'s Houſe, the Gentleman that was up here lately, and he was telling me, *Dugdale* was come again, and apprehended by the Watch at *Heywood* upon Suſpicion. He told me further, he would make no Confeſſion of the Plot, though he had been under Examination before Sir *Walter Bagott*, Mr. *Kinnerſley*, and I think he ſaid Sir *Thomas Whitgrave*. But he told me divers Paſſages by which we both ſuſpected he might be concerned and know of the Plot. We thought ſo from the various Reports and Rumours we had heard in the Country, and from thoſe great Grounds of Suſpicion that were given us. As I returned from *Heywood*, I reſolved I would ſpeak with *Dugdale* the firſt Opportunity, for I had a ſtrong Perſuaſion I could prevail with him to make a Diſcovery of the Plot: But before I did ſpeak with him, there was one *Goldſmith* my Kinſman, had ſome Difference fallen out between him and Mr. *Anſell*, and Mr. *Dugdale*, touching a Deed, the deciding of which they had referred to Mr. *Dugdale*. And he deſired me to go to Mr. *Dugdale* to *Stafford* with him; I was very glad of the Opportunity. *Anſell* was to bring one *Hanſon*, Mr. *Goldſmith* was to bring me, and Mr. *Dugdale* was to bring one Mr. *Gerard*, that was concerned in the Pre-mortgage, that we might all have Diſcourſe together. I promiſed to meet them at the Time appointed; and accordingly the 23d of *December*, two Days before *Chriſtmas-Day*, I came to the Place in *Stafford*, where *Dugdale* was, about ten o'Clock in the Morning, where they met according to their Promiſe. We had not been in the Houſe longer than a Quarter of an Hour, but the King's Buſineſs, which I thought was a Buſineſs of greater Weight than any particular Buſineſs, did ſtick much upon me; and I reſolved before I ſpoke to the particular Buſineſs about which we all met, I would firſt ſpeak to Mr. *Dugdale* to put that in Execution which I had reſolved. After a ſhort Space of Time, I deſired Mr. *Dugdale* that I might ſpeak with him in a Chamber privately between him and me; he told me, if I would go into the next Chamber to his, he would come to me. Accordingly I went, and ſtaid a ſhort Space of Time, and Mr. *Dugdale* came to me. I deſired him to make the Door to, which he did, and I began thus with him. Mr. *Dugdale*, ſaid I, for ſome Years laſt paſt, ſince I came to be acquainted with you, I have always had a good Eſteem of you, and you a good Report in the Country where you live; and now there is an Opportunity put into your Hands to ſerve his Majeſty and his Proteſtant Subjects, if (as an honeſt Man ought) you will diſcharge your Duty. Mr. *Dugdale* replied, Sir, what do you mean? Why ſaid I, I mean this in a few Words, Here is a Plot diſcovered in *London*, and if it be in *London*, I conceive it hath been in Part acted at *Tixall*; and if there, of Neceſſity, you having ſuch a Government and Rule over that Houſe, it is impoſſible but you muſt know it. He looked upon me very earneſtly, and gave me a Smile, but anſwered me not. I replied to him again thus; ſaid I, There is a natural Allegiance which every Subject owes to his Sovereign; and by that it is required, that if any Subjects know of any Plot or any Conſpiracy againſt his Perſon and Government, they ought in Conſcience to diſcover it; therefore Mr. *Dugdale*, ſaid I, diſcharge a good Conſcience, and tell what you know, for it is commonly ſuſpected you are concerned in the Plot. He anſwered, I have taken the Oaths of Allegiance and Supremacy. When and where? ſaid I. Before his Majeſty's Juſtices of the Peace at *Stafford*, ſaid he. Then, ſaid I, there is not only that natural Allegiance which every Subject owes to his Prince, but the Oath of Almighty God lies upon your Conſcience; therefore diſcharge a good Conſcience, and tell your Knowledge. He ſtood pauſing a little while, and by and by, ſaid he, If I ſhould make any Diſcovery, how ſhould I be ſecured of my Life? You need not queſtion that, ſaid I, nor his Majeſty's Gracious Pardon, which he hath promiſed in his Proclamation. Have you ſeen the Proclamation? Yes, ſaid he. Said I, you have but a ſhort Time, a Day or two to diſcover in, for this is the 23d, and as I do conceive, you ought to diſcover before the 25th. He ſtood pauſing a while about the Time; ſaid I, You need not queſtion his Majeſty's gracious Promiſe, and to encourage you thereto, there is not only an Aſſurance of Pardon, but a Promiſe of Reward of two hundred Pounds. Said he, if I do diſcover any Thing of my Knowledge, I matter not, nor deſire (I don't know which it was) his Majeſty's Money, ſo I may be ſecured of my Life. Upon this, my Lords, ſaid I, Sir, you need not queſtion his Majeſty's Gracious Promiſe, my Life for yours if you have not his Pardon; but I will take ſpecial Care about it, for I will ſend up a Letter to *London*, directed to ſome of the Lords, (which I accordingly did) and I will alſo ſpeak to Captain *Lane*, who is a worthy Gentlemen, to interpoſe in it too. Then, ſaid he, I will make a Diſcovery of the Plot. Then, my Lords, he told me firſt ſome particular Paſſages relating to this Lord at the Bar, and alſo concerning Mr. *Evers* and Mr. *Petres*, now in Cuſtody, and ſome other Particulars: I wiſhed him that he would ſpeak no more at that Time. And when I parted with him, forthwith I conſulted with myſelf what I ought to do in Point of Law: I knew, I muſt diſcover, that a further Diſcovery might be made of what had paſſed between us. Then I went to Mr. *Freke*, who was either Mayor or Juſtice of Peace in *Stafford*, and told him he muſt come with me to Serjeant *Parry*'s. He aſked me what to do. I told him, when he came, he ſhould know; he accordingly came, and took ſhort Notes of a further Diſcovery, and Mr. *Freke* he certified it up to Mr. *Chetwyn*, who was then at *London*. Upon the Day following, the 24th, I roſe and went to one Mr. *Vernon*, one of his Majeſty's Juſtices of the Peace, and told him what had happened, and he ſent for Captain *Lane*, another of his Majeſty's Juſtices of the Peace, and they took an Examination of him. I have done, my Lords, with reference to his Diſcovery, and the Time.

L. H. S. Do you remember what he mentioned of my Lord *Stafford*? What he ſaid of him?

Mr *Southall.* Truly, my Lords, I can only tell what he ſaid at the firſt Examination: He told me, the firſt Time my Lord *Stafford* ſpoke with him was at *Tixall-Hall*, nigh to the *Gatehouſe*, betwixt the Gate and the Hall. My Lord was going into the Hall, and my Lord *Stafford* told him it was a very hard Thing, or to that Purpoſe, that they could not ſay their Prayers but in private, and after told him the ſame Day or Night t'one, that they had ſome Work to do, and he might or muſt be inſtrumental in it. This was the Effect of what he told me paſſed the firſt Time. Another Time I think he told me he was to have five hundred Pounds to kill the King.

L. H. S. When did he tell you ſo?

Mr. *Southall.* Not till Captain *Lane* examined him, which was the ſecond Time he was examined; which was about the 26th.

L. H. S. Did he ſwear that before *Vernon* and *Lane*?

Mr. *Southall.* Yes, he did, I could give your Lordſhips a Breviate of what he ſwore then.

L. *Staff.* I deſire he may give that Breviate.

Mr. *Southall.* I took ſome Notes of what he ſwore then.

L. H. S. Have you them by you, or about you?

Mr. *Southall.* Yes, my Lords, I have.

L. H. S. Produce them.

Mr. *Southall.* I took this upon ſome Paper I had in my Pocket, and is the Subſtance of what he ſwore.

(*Which he delivered to the Clerk.*)

Clerk. *December* the 24th 1678, Mr. *Dugdale* informeth, That in *September* laſt, he met in *Tixall* the Lord *Stafford*, nigh to the Gates, who ſaid, That it was ſad they were troubled they could not ſay their Prayers, but in a hid Manner; but ſuddenly there would be a Reformation to the *Romiſh* Religion, and if there be a good Succeſs we ſhall enjoy our Freedom. And that upon the 20th Day of *September* 1678, the ſaid Lord *Stafford* told this Informant, That there was a Deſign in Hand, and if he would undertake in it, he ſhould have a good Reward, *&c.* and make himſelf famous. The ſame Day this Informant went up into Mr. *Francis Evers*'s Chamber, to know what my Lord *Stafford* meant by his Words; and he firſt made him ſwear Secrecy upon his Knees, and then told him, That he might be a Perſon employed, and have a good Reward, and make himſelf famous, if he would ſtand inſtrumental with others in taking away the King's Life, by Shooting, or otherwiſe; and need not fear, for that the Pope had excommunicated the King, and that all that were excommunicated by him were Hereticks, and they might kill them, and be canonized for Saints in ſo doing. And that the Deſign was to kill the Duke of *Monmouth* as well as the King.

December the 29th 1678, this Informant ſaith, That ſince the 20th Day of *September* laſt, the ſaid Lord *Stafford* did promiſe him five hundred Pounds as to the carrying on of the Plot, and that Mr. *Evers* ſhould give him Inſtructions about the ſame. And that the Lord *Stafford* told him, he did not doubt of his Fidelity, for Mr. *Evers* had given him a good Character to be truſty. And that the Lord *Stafford* told this Informant, That there was a Deſign to take away the Life of the King, and the Life of the Duke of *Monmouth*, and that ſeveral others were to be employed in the Deſign beſides this Informant. And that this had been thoroughly conſidered of to be the fitteſt way for the eſtabliſhing of the *Romiſh* Religion. And that at the ſaid Time, the ſaid Lord *Stafford* laid his Hand upon his Head, and prayed God to keep him in his good Mind, and to be faithful to what he had entruſted him in, *&c.*

And this Informant further ſaith, That he doubting of the Lord *Stafford*'s Payment, the ſaid Mr. *Evers* promiſed him the making good of my Lord *Stafford*'s Promiſe, *&c.*

And further ſaith, that he ſaw a Letter directed from my Lord *Stafford* to Mr. *Evers*, and he read the ſame, and knows it to be my Lord *Stafford*'s Writing; and that therein was written, that Things went on well beyond the Seas, for the carrying on the Deſign, and ſo he hoped it did do here in *England*, &c.

Sir *Will. Jones.* My Lords, we will examine no further as to Mr. *Dugdale*, but will conclude with this Witneſs, and I think he ſpeaks fully to him. The next Witneſs we called was Dr. *Oates*, and your Lordſhips have been pleaſed to obſerve, That what Exceptions have been made againſt him, have not been ſo much by Witneſſes produced, as by oppoſing one Part of his Teſtimony to another, what he ſwore at one Time to what he ſwore at another: To which we ſhall give an Anſwer when we come to ſum up our Evidence; for there will be no Need of Witneſſes to what is objected againſt Mr. *Oates*, but only of Obſervations. But as to the third Witneſs *Turbervile*, we have ſomething to anſwer of Witneſs, and ſomething by Way of making Obſervation. We will firſt call our Witneſſes.

[*Then Mr.* Southall *deſired his Paper again, which the Court told him he ſhould have a Copy of from the Clerk.*]

Sir *Will. Jones.* And our firſt Witneſs is to this Purpoſe: It was objected againſt Mr. *Turbervile*——

L. H. S. Have you done with *Dugdale*? You have forgot to give an Anſwer to the Objection about the Point of Time when *Hobſon* told him of the Deſign.

Sir *Will. Jones.* My Lords, that will be when we come to make our Obſervations; we ſhall not anſwer that by Witneſſes; when we come to ſum up our Evidence, I doubt not but we ſhall give a ſufficient Anſwer to that Objection. But to go on with what is to be anſwered by Teſtimony, your Lordſhips will be pleaſed to remember, that *Turbervile* did inform your Lordſhips, That he had ſome Converſe with my Lord *Stafford* at *Paris*, being introduced by ſome of the Fathers. My Lords, we ſhall call a Gentleman that happened to be there at that Time, that will tell you, though he did not know my Lord *Stafford*, yet he knew that *Turbervile* did converſe much with an *Engliſh* Lord in that Place where my Lord does acknowledge his Lodging to be. He will give you ſome further Account how *Turbervile* went to *Diep* in Expectation of my Lord, and how he had a Meſſage from the Lord, though he did not know my Lord *Stafford.* He will give you a further Account how Mr. *Turbervile* was earneſt with him to go to *Calais*, and then told him, he might go over with my Lord at that Time. The Uſe we make of theſe Particulars we will forbear to mention till we ſum up our Evidence. We deſire to examine Mr. *Thomas Mort.* *(Who was ſworn.)*

Sir. *Will. Jones.* We deſire to aſk Mr. *Mort,* whether he knew Mr. *Turbervile* at *Paris*, and at what Time.

L. H. S. What ſay you, Sir?

Mr. *Mort.* Yes, my Lords, I knew him, it is now five Years paſt ſince we were in *Paris.* He and I had been intimately acquainted before, we lived in the ſame Family. I was ſeveral Times in Company with him, and many Times in his Brother's Company, which was a Monk, and I heard him ſay his Brother had an Intention he ſhould be of the ſame Order. And ſome Time after that he altered his Reſolution, and deſigned for *England*, and I had ſuch a Deſign too to go from *Paris*, where I was an Apprentice. And being acquainted with him, I reſolved to go over with him, and he told me, his Brother the Monk had introduced him into the Favour of a Lord; as I take it, it was my Lord *Stafford*, as well as I can remember. And that there was a Veſſel to come to *Diep*, a Yacht, and we ſhould go thither to go over with my Lord. And Mr. *Turbervile* told me, we muſt make as much Haſte as might be, for it were better to be there a Day or two too ſoon, than too late. We went to *Diep*, and when we came there, the Veſſel was not come. And when we had been there a Fortnight, or thereabouts, we were put to a great Deal of Inconveniency, by Reaſon of our long Stay there: And, I think, if I miſtake not, I or ſome of the Company ſaid, Curſed is he that relies or depends on a broken Staff; alluding, as I believe, to my Lord *Stafford*'s Name. Mr. *Turbervile* told me, if we did go to *Calais*, we might go over with my Lord; but how or by what Means he underſtood the Veſſel would be there, and my Lord go that way, I know not. But we did not go thither, we had another Opportunity; there was a ſmall Veſſel, whether a Fiſh-Boat or a Coal-Veſſel I cannot tell, a very little one it was, but we took the Opportunity, and came over in it.

Sir *Will. Jones.* My Lords, We ſhall make uſe of it in due Time; we only call him now to prove his Converſe with a Lord at *Paris.*

L. H. S. Did you ever ſee *Turbervile* at a Lord's Houſe in *Paris?*

Mr. *Mort.* No, my Lords, not that I can remember; but I think, as near as I remember, I will not be poſitive, I walked about *Luxemburgh-Houſe* while he went, as he ſaid, to the Place where the Lord lodged; I was thereabouts till he came.

L. *Staff.* In what Street was it?

Mr. *Mort.* Indeed I cannot tell.

Sir *W Jones.* This Man is very cautious.

L. H. S. Can you tell the Lord's Name?

Mr. *Mort.* I do not remember his Title, but I think it was my Lord *Stafford.*

Sir *Will. Jones.* Pray who were you Servant to? Who were you bred under?

Mr. *Mort.* My Lord *Powis.* I ſerved as a Page to him, when Mr. *Turbervile* was Gentleman-Uſher to the young Lady, one of his Daughters, ſince married to my Lord *Mollineux.*

Sir *W. Jones.* Will my Lord pleaſe to aſk kim any Queſtions? If not, we will go on.

L. *Staff.* No, not at preſent.

Sir *Will. Jones.* Well then, my Lords, we deſire to call one Mr. *Powell*, a Gentleman of *Grays-Inn*, to tell you when he firſt heard Mr. *Turbervile* ſpeak of this Evidence he hath now given.

(Mr. Powell *was ſworn.)*

Sir *W. Jones.* Pray will you give an Account what Diſcourſe you had with Mr. *Turbervile* about the Plot, and when.

Mr. *Powell.* About this Time Twelvemonth we diſcourſed about it, and he told me, that he had much to ſay in relation to the Plot; but truly he did not name any Particulars to me at that Time.

Sir *Will. Jones.* Where was this, we deſire to aſk him.

Mr. *Powell.* It was at the *King's-Head* Tavern in *Holborn.*

Sir *Will. Jones.* Are you ſure it was a Year ago?

Mr. *Powell.* It was about this Time Twelvemonth.

Sir *Will. Jones.* What was the Reaſon he did not think fit then to reveal it? Did he tell the Reaſon?

Mr. *Powell.* I think he gave me a Reaſon, That he was ſomething cautious, becauſe he feared he might diſoblige his Brother at that Time.

Sir *Will. Jones.* Did he give you any further Reaſon?

Mr. *Powell.* I think he ſaid he was afraid he ſhould not have Encouragement enough, for he ſaid ſome of the Witneſſes had been diſcouraged, and he was afraid he ſhould be ſo too.

Sir *Will. Jones.* Now we ſhall call a few Witneſſes to Mr. *Turbervile*'s Reputation, which have known him a good while. Mr. *Hobby.*

L. H. S. Was this Time that Mr. *Powell* ſpeaks of, that he did diſcourſe with him, before or after that of *Yalden?*

Sir *Will. Jones.* My Lords, We do not know of any Diſcourſe with *Yalden*; nay, we believe none ſuch was. The Witneſs ſpeaks of a Year ſince.

L. H. S. What Time does *Yalden* ſpeak of?

Sir *W. Jones.* *February* or *March* laſt, and this was a Year ago.

L. H. S. This was then before that certainly.

Sir *Will. Jones.* We deſire that Mr. *Arnold*, a Member of the Houſe of Commons may be ſworn.

(Which was done in his Place.)

Sir *W. Jones.* Do you know Mr. *Turbervile?*

Mr. *Arnold.* My Lords, I do know him very well, and I have known him theſe two Years: He came recommended to me from his Grace my Lord Duke of *Buckingham.* My Lords, preſently after the breaking out of the Plot, he was ſent down into our Country by the Lords of your Lordſhips Houſe that were of the Committee, and a particular Recommendation from the Duke of *Buckingham* to me, to give him Direction and Aſſiſtance to find out a Prieſt, one *Charles Prichard*, and I think alſo if I miſtake not, one *Morgan*, my Lord *Powis*'s Prieſt. I ſpoke with him before he went, I ſent Letters down with him, I ſpoke with him afterwards: He hath been in my Family ſome Time; he hath behaved himſelf very well there, and in ſeveral other ſober Families nearly related to me. I have not heard a better Character of any Man from all Sorts of People, than of him, in my Life.

Sir *Will. Jones.* Did he tell you any Thing of the Plot, Sir?

Mr. *Arnold.* My Lords, I did ſeveral Times find by him, that he knew much; having converſed both in *France* and here with Jeſuits and Prieſts. I preſſed him oftentimes to diſcover his Knowledge, and to come in to the Council; but he gave me ſuch Anſwers why he did not, that I could not anſwer.

Sir *W. Jones.* What were they, Sir? Pray tell us.

Mr. *Arnold.* That the Witneſſes that were come in, were in Danger of their Lives; that they were diſcouraged, that they were diſcountenanced; and as long as the Duke of *York* had that Power in the Council that he had, and my Lady *Powis*'s Brother had that Power over theſe Countries where he lived, (which his Lordſhip is often pleaſed to call his Province) he durſt not do it for his Life.

(Then Mr. Hobby *was ſworn.)*

Sir *Will. Jones.* Do you know Mr. *Turbervile*, and how long have you known him?

Mr. *Hobby.* My Lords, I have known Mr. *Turbervile* near four Years.

L. H. S. What Account can you give of him?

Mr. *Hobby.* My Lords, my firſt Acquaintance with him, was at my Brother's Houſe in *Glamorganſhire.* When I came there, my Brother ſhewed him me, and told me he was a very worthy Man, but his Friends had caſt him off, becauſe he would not take Orders in the *Romiſh* Church. He lived at my Brother's above a Year; and when he came thence, my Brother writ a Letter of Recommendation to my Father to receive him there, and do him all the Kindneſs he could. He came to my Father's, and ſtaid there near Half a Year, or thereabouts, I cannot tell to a Month or ſo. Since I have known him often in this Town, and been in his Company; and I never knew, nor heard, but that he behaved himſelf like a worthy honeſt Gentleman: But as to any Thing of the Plot, I know nothing.

Sir *W. Jones.* We aſk you not to that: Where is Mr. *Matthews?*

(Then Mr. Matthews, *a Divine, was ſworn.)*

Sir *Will. Jones.* Mr. *Matthews*, pray tell my Lords, whether you know Mr. *Turbervile*, and how long you have known him?

Mr. *Matthews.* Yes, my Lords, I have known Mr. *Edward Turbervile* for about four Years laſt paſt.

L. H. S. Go on, what do you know of him?

Mr. *Matthews.* My Lords, he lived ſome Time in my Neighbourhood; I never knew him guilty of any ill Action at all, but a Perſon of a very fair Reputation: He acknowledged himſelf a *Roman* Catholick, and was pleaſed to give me the Liberty to talk to him. I found him inclinable to hearken to me, and to thoſe Reaſons I offered to him; and I found he had a Mind to quit that Religion, being convinced by the Arguments I gave him; and at ſeveral Times he hath ſince told me, thoſe were ſome of the great Motives of his coming over from the *Romiſh* to the *Proteſtant* Communion.

L. H. S. What were the Motives?

Mr. *Matthews.* One was the Hazard I told him of, in his living in the *Roman* Communion, as to Salvation; another was the Excellency of the Doctrines of our Church, it's Principles and Practices.

L. H. S. Did he acknowledge to you, he knew any Thing of the Plot?

Mr. *Matthews.* No, not a Syllable of it.

Sir *Will. Jones.* We don't call him to that Purpoſe.

(Then another Witneſs was ſworn.)

L. H. S. What is your Name?

Witneſs. William Seys.

Sir *Will. Jones.* Pray will you acquaint my Lords, what you know of Mr. *Turbervile.*

Mr. *Seys.* I have been acquainted with him theſe two or three Years, and I never knew him guilty of any ill Action in my Life. I never heard of any Body that could aſperſe him; but he hath behaved himſelf like a very honeſt civil Gentleman.

Sir *Will. Jones.* Where were you acquainted with him?

Mr. *Seys.* Here in *London.*

(Then Capt. Scudamore *ſtood up again.)*

Sir *W. Jones.* He was ſworn before, we deſire he may ſpeak to Mr. *Turbervile*'s Reputation.

Capt. *Scudamore.* My Lords, I have known Mr. *Turbervile* for theſe three Quarters of a Year, I have been acquainted with him in *London*; he hath been much at my Houſe, and all that while I ſaw nothing in him, but that he is a very honeſt Gentleman.

Sir *Will. Jones.* My Lords, I think we have but one Matter more, which we ſhould have mentioned before, but that our Witneſs was not come: But I hope we ſhall have the Favour of ſome honourable Lords that do know the Thing; and I think there are many more that can prove it. My Lord *Stafford*, who is very ancient, it may be, may not remember Matters exactly; I blame him not; Oblivion is the great Infirmity of old Age. He was pleaſed to ſay Yeſterday, he had ſo good Health, that he had not been lame, I think he ſaid for theſe Forty Years; but at laſt his Page ſaid, for the laſt Seven Years: And I ſhall confine our Proof to that Time. My Lords, I think there are ſome honourable Lords here, that have ſeen this Noble Lord, that ſays he was not lame in ſo many Years, very near about the Time that he was confined and impriſoned, go lame and come lame to the Houſe, and eaſe himſelf by holding up his Leg ſometimes. My Lords, I do not ſay, the Circumſtance is very material, but only to ſhew my Lord may forget himſelf, which I ſhall impute to his old Age.

L. *Staff.* I will acknowledge it, if your Lordſhips pleaſe; I did ſay I had not been lame with the Gout ſo long, no more I have not. I was troubled with the *Sciatica* many Years, but 'tis above Eight or Nine Years ſince that; and I took ſo much *Opium*, that that, and my going to the *Bath*, cured me. I have often come lame to the Houſe, out of Wearineſs and old Age; but if ever I put my Foot upon a Stool for the Gout, or was ever ſo lame as to put my Foot upon a Cuſhion to eaſe it, I will admit what he ſpeaks to: I'll acknowledge thus much to ſave Time.

Sir *Will. Jones.* Seeing my Lord is pleaſed to go off from it, I'll call no Witneſſes to it.

L. *Staff.* I go off from nothing, I was lame three or four Years when the King came in: I went to the *Bath*, and afterwards into *Germany*; and what with *Opium*, and the *Bath*, I was cured, and have not been lame theſe eight or nine Years. I have not had the Gout in my Foot for theſe many Years, and I never was ſo lame to put my Foot on a Stool, to my Remembrance.

Sir *Will. Jones.* I do not think we ſhall need to trouble your Lordſhips more with this Matter; that my Lord was lame ſome Time, he is pleaſed to confeſs. One Witneſs ſays, That he put his Foot upon a Cuſhion; my Lord doth not acknowledge that.

L. *Staff.* I was never lame at *Paris.*

Sir *Will. Jones.* That a Man that is lame does ſometimes eaſe his Foot, is no hard Conſequence, I think.

L. *Stoff.* I deny I was lame then; I walked about the Streets of *Paris*, I deſire I may not be miſunderſtood.

Sir *Will. Jones.* I muſt then deſire, under his Lordſhip's Favour, if he will not acknowledge it to be within ſeven Years, that we may prove it, and falſify his Witneſs, the Page.

L. *Staff.* I have gone with a Stick to the Houſe, I acknowledge it, and been lame with Wearineſs.

Sir *Fran. Winnington.* The Objection went to the Credit of our Witneſs, and therefore we deſire to anſwer it: My Lord was not lame, as he ſays, for ſo many Years; but if we prove that within leſs Time my Lord hath been lame, it will take off that Objection from our Witneſs. And we deſire a noble Lord or two of this Houſe may teſtify what they know. And firſt the Earl of *Stamford*; *(who was ſworn.)*

Earl of *Stamford.* My Lords, I think I have not had the Honour to ſit in this Houſe much above ſeven Years, but long ſince that Time I have ſeen my Lord *Stafford* come lame into the Houſe of Peers, and that is all I can ſay.

L. *Staff.* I have come lame with a Stick to the Houſe, I ſay.

Sir *Fran. Winnington.* My Lords, we deſire that noble Lord, my Lord *Lovelace*, may be ſworn; *(which was done.)*

Lord *Lovelace.* My Lords, the Account that I can give your Lordſhips, is this; I cannot aſcertain any Time, but I am ſure, and I do declare it upon my Honour, and the Oath I have taken, that I have ſeen my Lord *Stafford* lame in the Houſe of Lords within leſs than theſe ſeven Years.

L. *Staff.* If he goes Home to the *Tower*, he may ſee me lame, but never put my Foot upon a Stool.

Sir *Will. Jones.* My Lords, your Lordſhips will be pleaſed to remember, we did call a Witneſs, one *Thomas Launder*, and the Account we had of him was, he was gone ſick from the Bar, he was very ſick indeed; but being juſt now brought, we deſire he may be heard, though it be out of Time: We call him to the Reputation of *Holt.*

(*Thomas Launder* was ſworn.)

Sir *John Trevor.* Do you declare to my Lords, whether you know *Samuel Holt?*

Launder. Yes, my Lords, I do.

L. H. S. What do you know of him?

Launder. He is a Smith, my Lord.

L. H. S. What Reputation is he of?

Launder. Indifferent, my Lord.

Sir *Will. Jones.* What do you mean by that, good or bad? ſpeak plainly.

Launder. A drunken Sot, a Man that will drink, and rant, and tear the Ground, and ſing two or three Days or a Week together, and loſe his Time.

Sir *F. Win.* I would aſk this Man, whether he was ſummoned as a Witneſs upon any Trial in Relation to the Plot?

L. H. S. Were you ever ſummoned as a Witneſs about the Plot?

Launder. My Lords, I was ſummoned concerning my Lord *Aſton*'s Trial, and I came up with my Lord *Aſton*'s People as an Evidence.

Sir *W. Jones.* Had you any Offer of Money, and what Sum?

Launder. Yes, my Lords.

Sir *F. Win.* Acquaint my Lords with it.

L. H. S. Who offered it you? and when? and for what?

Sir *Will. Jones.* For what was that Money offered you?

Launder. The Money was not abſolutely offered me, but I was to have an Horſe to ride on, and Money in my Pocket, if I could take off *James Anſell*, *Dugdale*'s Evidence.

L. H. S. Who came and offered it to you?

Launder. I was ſent for by Mr. *Fox* to *Tixall-Hall*, and there was my old Lord's Brother for one, and Mr. *Thomas Aſton*, that is, this young Lord's Brother, and Mr. *Francis Aſton*, who is my Lord's eldeſt Son, were in a Room together, and this *Thomas Sawyer* that was here, and more were in the Room when they promiſed all theſe Things.

L. H. S. If you would do what?

Launder. If I would take my Oath, that this *James Anſell* was a perjured Rogue.

L. H. S. Did all they make you this Promiſe?

Launder. Yes, my Lords.

Mr. *Foley.* It was a Conſult together about taking off the Evidence.

Sir *Will. Jones.* My Lords, we have done with our Witneſſes; if my Lord *Stafford* pleaſe to conclude, we are ready to do ſo too.

L. *Staff.* What ſhould I conclude? about thoſe Witneſſes you have now brought in?

Sir *Will. Jones.* Your Lordſhip may pleaſe to conclude your Evidence, we are ready to conclude on our Part.

L. *Staff.* Theſe new Witneſſes, muſt I ſay what I can ſay againſt them preſently? I cannot do it, I know very few of them.

L. H. S. Have you any Witneſſes here, my Lord?

L. *Staff.* I cannot poſſibly have any; for I did not know, nor gueſs theſe People would be brought againſt me: They are Perſons I know nothing of. *Anſell* I have ſeen four or five Times, I may have ſeen the Reſt, but I do not know them to be able to give an Account of them.

L. H. S. If you have any Witneſſes here to ſupport the Credit of your own Witneſſes that have been impeached, you may call them.

L. *Staff.* I have none, my Lords.

L. H. S. Will your Lordſhip recapitulate the material Parts of your Defence, that the Proceſs may be cloſed?

L. *Staff.* I am very unready for it, my Lords. Let me aſk Mr. *Whitby* a Queſtion, if I muſt have no more Time.

(*Mr.* Whitby *ſtood up.*)

L. H. S. There he is; what would your Lordſhip have with him?

L. *Staff.* I do not know the Gentleman.

Mr. *Whitby.* Nor I your Lordſhip.

L. *Staff.* I aſk him upon the Oath he hath taken, I know he will ſpeak Truth, Whether he did not ſome Years ago tell my Lord *Aſton* that is dead, this Lord's Father, That *Dugdale* was a Knave, and perſuaded him to turn him away, (I ſay not it is true, but I have heard ſo) and deſired him to tell his Son ſo, that he might quit himſelf of him?

L. H. S. What ſay you, Mr. *Whitby?*

Mr. *Whitby.* My Lords, about three or four Years ago my Lord *Aſton* that is dead (I believe it may be two Years laſt *April*) ſent for me to dine with him; and when I came thither, he told me, ſays he, Mr. *Whitby*, I have ſent to you to acquaint you with a Thing, but I do not believe it before I tell it you. What is it? ſaid I. Said he, *Stephen Dugdale* hath acquainted me, that you have employed Perſons upon the Water to deſtroy my Water; ſaid I, my Lord, I never endeavoured it. He ſaid, he did believe me. Then I told my Lord; ſaid I, Mr. *Dugdale* is a Diſhonour to the Family, upon this Account, becauſe many Times People come for Money, and he will not let them have it, but puts them off, and makes them complain. Says my Lord, my Son is now at *Standall*, but I will tell him as ſoon as he comes Home; and if you will bring the Perſons that have waited ſo long for their Money, and made ſo many Journies, you ſhall hear what he will ſay to it. Within a while my Lord *Aſton* that now is, came down, and I went thither to ſee what became of it. And I went to the Bowling-Green where my Lord and his Son were; but my old Lord ſaid nothing to me of it, nor his Son neither. Within a few Days my old Lord *Aſton*'s Gentleman came down to my Houſe, (one Mr. *Aſhley*) ſaid I, I wonder whether my Lord *Aſton* hath acquainted his Son with what I told him. Says he, he hath, but it ſignifies nothing; for he will hear nothing againſt Mr. *Dugdale.* This I ſpeak upon my Oath, 'tis true.

L. H. S. Your Lordſhip ſees what this Gentleman's Opinion was of *Dugdale* then, he would hear nothing againſt him. Will your Lordſhip conclude?

L. *Staff.* My Lords, I am mighty unready, and know not which way to turn myſelf, upon thoſe new Things they have brought; for I knew nothing of it, nor expected any ſuch Thing. But will you be pleaſed that I may call *Simon Wright* again? (*Who ſtood up.*)

L. H. S. What would your Lordſhip have with him?

L. *Staff.* I have nothing to ſay to him, but to deſire him to ſee this Letter, whether it be of his own Writing or no.

L. H. S. Look upon that Paper, ſhew it him: *(Which was done.)*

L. H. S. Is it your Hand?

Wright. This is my Hand. 'Tis Part of that I was hired to do. There is another of a great deal more Conſequence than that.

L. H. S. Deliver it in, and read it.

Sir, June the 14th, 1680.

Clerk. *I Can, I bleſs God, with a ſafe Conſcience declare upon my Oath that Mr.* Dudgale *hath been unkind to me in taking his Opportunity of my Poverty, by Reaſon of a private Meeting of us two by his Appointment, he did that Time proffer if I would ſwear againſt you, and Mr.* Gerard, *he would protect me as one of the King's Evidence, and I ſhould not want Money; and in the Hall at* Weſtminſter *he ſaid, if I did diſcover it that Day at Mrs.* Price*'s Trial, he would ſet me in the Pillory. This I have owned to his Face, and ſhall not go back from this and more, neither for Fear nor Favour. So I reſt as you ſhall find by your Servant,*

Sim. Wright.

L. H. S. Is this your Hand.

Wright. Yes, my Lords; this I was adviſed Word for Word to write.

L. H. S. Who penn'd this for you? Did you pen it yourſelf?

Wright. No, my Lords, they penn'd it, and a great while I would not ſet my Hand to it; but *Jermin Drayton* ſaid I need not fear, I was not to ſwear againſt the King.

L. H. S. Who is that?

Wright. He is Butler to Mr. *Heveningham.*

L. *Staff.* See what you have under his Hand, I have no more to ſay to him.

Wright. But by their Perſuaſion at laſt I did write it, and a great Deal more than that.

Sir *Will. Jones.* I deſire to aſk Mr. *Wright* whether they would have had him ſwore this?

L. H. S. Were you deſired to ſwear this?

Wright. No, my Lords, they never put me to ſwear it; for they told me I was not to ſwear againſt the King: But if I would be ſo kind to make an Affidavit before a Juſtice of Peace, I might then go where I would into the Country, and I ſhould have Money to bear my Charges.

Sir *Will. Jones.* Who would have had you ſwear it before a Juſtice of Peace?

Wright. *Jermin Drayton*, and Mr. *Longmore*; where he is I can't tell, but he told me that Sir *James Symons* was better able to perform than *Dugdale* was to promiſe.

Mr. Serj. *Maynard.* The ſame Thing that was done by *Redding*, he was convicted for it, and ſtood in the Pillory.

Sir *Will. Jones.* We deſire to know, whether he was ever with Sir *James Symons* himſelf, and what he offered?

Wright. I was once with him at the *King's-Bench*; I dined there: After I had written the Paper that was read, he gave me 20*s.* and ſaid, he hoped I would not go off from what I had ſaid; and he hoped I was ſenſible his Gratuity would not be wanting, and was ſorry he had not Occaſion to uſe me.

Sir *Will. Jones.* My Lords, we have done with him; I only obſerve, that my Lord *Stafford* was pleaſed to produce this Paper; he was Maſter of it, and had it in his keeping.

Sir *Fran. Win.* *Wright* ſays, there is another Paper of more Conſequence; I wiſh his Lordſhip would produce that alſo.

L. *Staff.* I did not know of this till juſt now it was delivered into my Hands. Did you ſee Mr. *Longmore* before this Letter was writ?

Wright. Both before and after, to the beſt of my Remembrance, and at the Time when Sir *James*'s Trial ſhould have been, at the Sign of the *Crown* in *King-ſtreet* in *Bloomsbury.*

L. H. S. My Lord, will you conclude?

L. *Staff.* My Lords, I deſire your Lordſhips Pardon; I do not know how really to go about it To-night. I will obey your Commands, though I fall down at the Bar. I proteſt before God, I was all Night ſo ill of the Cramp, that I had no Repoſe. If you will have me go on, I will, if you will give me but a little Time to recollect myſelf.

L. H. S.

L. H. S. God forbid, when your Lordſhip is to ſpeak upon ſo great a Concern, and a matter of that Importance as this is to you, you ſhould be put at the end of the Day, and in the midſt of all your Thoughts, to ſum up your Evidence. I do believe, if you do deſire time till to-morrow, my Lords will give it you: And if you would have me move my Lords in it, I will.

L. *Staff.* One word, I beſeech your Lordſhips—

Sir *W. Jones.* We do not oppoſe it.

L. *Staff.* My Lords, I deſire one thing; I am very ignorant in this Matter, and do not underſtand it; I would deſire your Lordſhips Directions to know in what Method I muſt proceed.

L. H. S. Your Lordſhip is to proceed thus, if you pleaſe: Your Lordſhip is to recollect and recapitulate all the Proofs you have made; and you are to enforce them as well as you can, and make ſuch Obſervations upon them as are for your own Advantage; and this your Lordſhip muſt do for the Fact. If there remain a Doubt in Law which you may have occcaſion to move, Council may be demanded; and if it be conſiderable and worthy of Debate, you may have Council heard to ſpeak to it. But the Proceſs is cloſed, no more Witneſſes are to be heard: There remains only Obſervations upon the Fact or Law to be made.

L. *Staff.* Are no more Witneſſes to be heard?

L. H. S. No, I think not: 'tis agreed on both ſides all is done: But my Lord, I would not have your Lordſhip to underſtand me ſo, that if ſo be you have yet any material Evidence, that you think it does concern you to produce, and you have it ready to-morrow, before you ſum up the Evidence; I believe then, if you move my Lords, they will let it be heard: Otherwiſe I think here is an end of Witneſſes.

L. *Staff.* I deſire the Paper I gave in, may be returned me.

L. H. S. But in order to this, my Lord, if your Lordſhip does think you ſhall uſe or produce any other Witneſſes, it would be of Importance that you would name them now.

L. *Staff.* Truly, my Lords, I will go hunt for none; and I think I ſhall have none: only one thing I muſt beg your Pardon in; which is the only thing I muſt have witneſſes to, to anſwer what they have ſaid, that my Lord *Aſton* would not come to Accompt. My Witneſſes are very near me. Mr. Lieutenant, ſome in the *Tower*, and one Mr. *Birch.*

L. H. S. My Lord *Stafford*, bring thoſe to-morrow that you name to-night.

L. *Staff.* If you pleaſe that I may have that paper, *Wright*'s Letter.

E. of *Shafteſb.* My Lord Steward, I deſire that Letter may be kept.

L. *Staff.* It is a Paper that was given me, and I would return it: if you won't allow me it, I can't help it.

L. H. S. 'Tis deſired it may remain where it is: But your Lordſhip may have a Copy if you pleaſe atteſted by the Clerk. Is it your Lordſhips pleaſure to adjourn?

Lords. Ay, Ay.

L. H. S. This Houſe is adjourned into the Parliament-Chamber.

Then the Lords withdrew in their Order, and the Committee of Commons returned to their Houſe, where Mr. Speaker reſumed the Chair.

A Meſſage was ſent from the Lords by Sir *Timothy Baldwin* and Sir *Samuel Clark.*

Mr. Speaker.

The Lords have ſent us to acquaint this Houſe, That they have Ordered William *Viſcount* Stafford *to be brought again to his Trial at the Bar in* Weſtminſter-Hall, *to-morrow Morning at Ten of the Clock.*

The Commons adjourned to Eight of the Clock the next Morning.

The FIFTH DAY.

Saturday, December 4. 1680.

ABOUT the Hour of Ten in the Morning, the Lords adjourned into *Weſtminſter-Hall*, going thither in their former Order into the the Court there erected; and Mr. Speaker having left the Chair, the Commons were ſeated as before.

The Court being ſat, Proclamation for ſilence was made, and the Lieutenant of the *Tower* commanded to bring his Priſoner to the Bar; which being done, the Lord High Steward began as followeth.

L. H. S. What ſays your Lordſhip, my Lord *Stafford?* My Lords are prepared to hear what your Lordſhip can ſay in the ſumming up of your Defence.

L. *Staff.* My Lords, I muſt needs ſay to your Lordſhps, That you have given me Favour and Time all that I could demand. But I am a very unfortunate Man in many Things, unfortunate in being brought hither upon this Account; and truly, my Lords, I am very unfortunate, that I had not yeſterday, before I went away, the Names of ſome very material Witneſſes, and ſome that I did not know of, till within this half quarter of an Hour: I humbly offer this to your Lordſhips Conſideration as the State of my Caſe. 'Tis true, my Lords, I acknowledge I was bound up yeſterday to Mr. Lieutenant, and ſome others that I named; but I humbly tell your Lordſhips this, That I am informed of ſome material Witneſſes more this Morning.

L. H. S. Are the Witneſſes you ſpeak of, any of the Witneſſes you named laſt Night?

L. *Staff.* No, my Lords; 'tis one of my Lords, a Peer of this Houſe.

L. H. S. How many more have you?

L. *Staff.* Five or ſix.

L. H. S. To what Point?

L. *Staff.* To diſcredit the Witneſſes that have been brought againſt me; both ſome of thoſe that have diſcredited mine, and ſome that have ſworn againſt me particularly.

L. H. S. There is no end of this Way of Proceeding.

L. *Staff.* My Lords, I profeſs to your Lordſhips, in the preſence of God, I do it not for delay, nor did I know of them then.

L. H. S. What ſay you to it, Gentlemen?

Sir *W. Jones*, My Lords, I am afraid this Proceeding at this rate will never have an end. If his Lordſhip have any Witneſſes to any material part of his Defence, though he hath bound himſelf up, I ſhould not be againſt hearing of them. But if his new Witneſſes are only to the Reputation of our Witneſſes, then perhaps we muſt have ſome other Witneſſes brought to diſcredit his; and we not knowing who theſe new Witneſſes of his would be, may need perhaps another Day to bring Teſtimony againſt them, ſo that I know not when the Matter can have an End. Your Lordſhips know, there is a Rule in the Civil Law, *In teſtem, teſtes, & in hos, ſed non datur ultra:* And I hope beyond that you will not go. Truly, for my own part, I did not expect any other Witneſſes, but thoſe he was pleaſed to name laſt Night, in relation to the Matters of Accompt; if he pleaſe to call them, we ſhall hear them: But for any other, conſidering it would prolong the Trial to another Day, and this cauſe hath had four Days already for Hearing, we hope they ſhall not be admitted.

L. Staff. My Lords, I profeſs to your Lordſhips, if I were alone concerned in it, I ſhould not have moved it; but when I conſider my Wife and Family are concerned, I hold myſelf bound by the Duty I owe to God and them, to propoſe this to your Lordſhips: I am preſſed to it by my Wife juſt now, ſince the Houſe came in. I proteſt before God, for my ſelf, I can look Death in the Face without being afraid; but when I conſider in what Condition I ſhall leave my Wife and Family, it moves me.

(Then he wept.)

I am not concerned at it for my own part, for I know I am innocent, but, I cannot forbear Tears when I conſider them; 'tis not for myſelf, I take God Almighty to witneſs, that I weep; I could be content to ſpeak a few Words to your Lordſhips, and ſubmit to your Judgment, and take my Death, if you decree me to it, and not defer it till *Monday.* But I cannot forbear ſhewing my Grief when I conſider my Wife and Children.

L. H. S. Pray, Gentlemen, conſider, Whether it be not a ſaving of Time, to let my Lord examine his Witneſſes; elſe my Lords muſt withdraw to conſider of his Deſire. 'Tis true, in the Practice of *Chancery* we do examine to the Credit of Witneſſes, and to their Credit, but no further; but what my Lords will do in this Caſe, I know not till they are withdrawn.

Sir *Will. Jones.* My Lords, we have that Opinion of our own Proofs, and are ſo deſirous of an End of theſe Proceedings, that rather than we will give your Lordſhip's the trouble to withdraw, if my Lord will pleaſe now to tell us the Number and Names of his Witneſſes, we ſhall not oppoſe their being heard.

Sir *F. Win.* If your Lordſhips pleaſe, one Word further: We know well of what Concern this is to my Lord, and no body deſires to have him crampt in his Evidence. The Objection did lie fair on our ſide, it looking like a deſigned Delay; and yet we are willing to comply, with this Reſervation, that if there ſhould be any ſuch Witneſſes produced now, as may require an Anſwer, that we may not be forecloſed of adviſing with one another about it.

L. H. S. No, by no means. My Lord *Stafford*, your Deſire is conſented to upon theſe Terms, That your Lordſhip will now name the Perſons and Number of the Witneſſes you will call.

Mr. *Hampden.* And the Points to which you will call them.

L. *Staff.* I humbly thank your Lordſhips for the Favour, but it is an Impoſſibility for me to do it; If your Lordſhips will give me a quarter of an Hour's Time, I will name them; I cannot name ſome of them; one is my Lord *Ferrers*, another is one Dr. *Taylor*, Dr. *Watſon*, Dr. *Elliot*, and one *William Dale.*

L. H. S. Now to what Points will your Lordſhip call theſe Witneſſes?

L. *Staff.* My Lord *Ferrers* is to ſpeak his Knowledge of *Southall* the Coroner, and that is as to *Dugdale*; my Lord knows that Perſon. Dr. *Watſon*, and they are to invalidate the Teſtimony of Dr. *Oates*: And there is another Man's Name, I forget what it is.

Sir *W. Jones.* To what Point is he to be a Witneſs?

L. *Staff.* 'Tis to Dr. *Oates*, and the Evidence againſt me.

Mr. Serj. *Mayn.* So there will be Pretences made every Moment of ſome new Witneſs to put off this Cauſe.

L. *Staff.* Under your Lordſhip's Favour, I ſcorn to make any Delay. If you think this may not be material, or not fit to be done, I will quit it.

L. H. S. Go on, my Lord.

L. *Staff.* Will your Lordſhips be pleaſed to begin with my Lord *Ferrers?* *(Who ſtood up in his Place.)*

L. H. S. My Lord *Ferrers*, your Lordſhip is called upon by my Lord *Stafford*, and you being a Witneſs for the Priſoner, and againſt the King, your Lordſhip is not to be ſworn.

Lord *Ferrers.* My Lords, what I have to ſay concerning that Perſon my Lord named, *Southall*, is only upon Hearſay, and upon the Reputation he hath in the Country; for I have no Acquaintance with him, nor do know him at all: But the Reputation that hath been given me of him in the Country, is, That he hath been a very active Man in the late Times againſt the King, and is counted to be a very pernicious Man againſt the Government.

L. *Staff.* Call Dr. *Taylor.*

Servant. I know not where he is, he can't be found at preſent.

L. *Staff.* Then call *William Dale* in the mean time. My Lords, This ſame *Southall* I never heard of; the other Man that drew up the Affidavit, that is *Feake*, I know; he was named by *Southall* to join with him in the Examination; I can't tell what he was, I can prove that he is an Attorney, that he was Mayor of *Stafford*, and proclaimed the King Traitor.

L. H. S. Who was that?

L. *Staff.* One that drew up the Affidavit of *Dugdale*, *Feake* mentioned by *Southall.*

L. H. S. Who is your next Witneſs, my Lord?

L. *Staff.* One *William Dale.* *(Who being called, appeared.)*

L. H. S. What is your Name?

Witneſs. *William Dale.*

L. H. S. What do you ſay?

L. *Staff.* About *Dugdale*, my Lords, what he knows about his offering him any Money.

Sir *Will. Jones.* We deſire to know where he lives.

Dale. *Dugdale* never offered me any Money.

L. H. S. Where do you live?

Dale. At *Oweſeley-Bridge.*

L. *Staff.* Pray aſk him whether *Dugdale* perſuaded him to ſwear againſt my Lord *Aſton* ſomething he knew not.

L. H. S. Did *Dugdale* ever hire you to ſwear againſt my Lord *Aſton?*

Dale. No, he never hired me.

L. H. S. Do you know that he ever hired any body elſe to ſwear falſe?

Dale. I do not, my Lords.

L. *Staff.* My Lords, I moſt humbly thank your Lordſhips for your favour in giving me the Liberty of examining theſe other Witneſſes; I ſhall trouble you no further, nor give no more Evidence; only one Witneſs, my Lords, I ſhall trouble you no further, and that is Mr. Lieutenant of the *Tower*, to this Point, whether my Lord *Aſton* did refuſe to come to account with *Dugdale*.

L. H. S. Come, Mr. Lieutenant, do you know any thing about Accompts between my Lord *Aſton* and Mr. *Dugdale?*

Mr. *Lieutenant.* My Lords, laſt Summer was Twelve-month *Dugdale* came to the *Tower*, but my Lord *Aſton* would not ſpeak with him, unleſs I were by; ſo they brought him to my Lodging, and he ſhewed me the Books of Accompts: I told them I did not underſtand Accompts, but if they would have me be by, I would get ſomebody to be preſent that did, and have them adjuſted. Mr. *Dugdale* ſaid he would come another time, but from that time to this I never heard of him.

L. *Staff.* My Lords, I ſhall not trouble you with any more Witneſſes. My Lords, I have now done my Evidence. I ſhall, as well as my weak Memory and old Age will give me leave, ſum it up, ſomething (as well as I can) of the Evidence given againſt me, and for me. Truly, my Lords, I am able to do it very imperfectly for want of Underſtanding, and truly for want of Sleep; but I do not doubt, but that according to the Law, as I am informed it is, ſince I can have no Counſel in Matter of Fact, or to adviſe me in any thing of that nature, yet I am alſo informed by the Law, your Lordſhips who are my Judges, are my Counſel. And I do not doubt but your Lordſhips, when you take it into Conſideration, will ſupply any Defects which I ſhall commit, which I believe will be many. I ſhall ſpend your Lordſhip's time as little as I can; tho' theſe Gentlemen of the Houſe of Commons believe I deſire to protract it, yet I profeſs before God I do not. And I declare before them all, and your Lordſhips, I am ſo ſatisfied of my own Innocency, that I would never beg a moment's time of delay; and I know your Lordſhips will take care of the Life of the meaneſt Subject: And tho' I have had the honour to ſit among your Lordſhips as a Peer, yet I aſk not for your Favour, but with your Juſtice too: I ſhall therefore ſum up my Defence as well as I can. For the firſt Witneſs, *Dugdale*, he ſwore I was at a Conſult at *Tixall* in the end of *Auguſt* or the beginning of *September*; I have ſufficiently proved that in all *Auguſt* I was not there, nor till the 12th of *September*. I have proved that his firſt Oath was, I was there in *Auguſt*, and a Man that will ſwear falſe in one thing is not to be credited in any. I have made it appear to your Lordſhips, that upon the 20th of *September* when he ſays he was in my Chamber, and I ſent the Page to call him, that that is falſe; it was only he deſired he might come to me to get leave that he might go to the Race, my Lord *Aſton* being angry with him for it. This I conceive is proved ſufficiently by two Witneſſes, my Man and my Boy, and this I think I have proved as poſitively as can be done. My Lords, 'tis true, 'tis objected againſt me, That I had ſaid *Dugdale* was never ſeen alone with me in my Life, 'tis true; and 'tis true *Anſell* ſwears he brought a Footman to me, but he ſwears it was in the Morning, when it was at Supper, and does not ſay that he was alone with me. My Lords, *Dugdale* ſwore that he told Mr. *Philips* and Mr. *Sambidge* of the Death of Sir *Edmundbury Godfrey* on the *Monday*, ſome ſwore he ſaid it was on the *Tueſday*, but they deny that ever he told it them; and ſo he is forſworn in that. And, my Lords, whether he be a Man of any great Credit, I think I have proved enough to your Lordſhips. 'Tis proved by two Witneſſes, *Holt* and *Morral*, that he offered them Money to ſwear, as likewiſe he did to another, one *Robinſon*; whom I do believe, by the Information that was given of him, to be a wicked ill Man, and not to be credited; but being ſo, my Lords, he was the fitter for *Dugdale*'s turn. And yet he had ſo much Conſcience, tho' he was a poor and needy Fellow, he would not ſwear a Man's Life away for Money. The other two are without Exception, the one they ſay is an idle Fellow, and t'other a Man but of an indifferent Reputation; how far that will move with your Lordſhips, I ſubmit it to you. I ſuppoſe it is alſo clear by my Witneſſes, that *Dugdale* is a Man of no Reputation, having forſworn himſelf in ſeveral Particulars; and I ſubmit the Credit of all he ſays to your Lordſhips upon that.

The next Witneſs, my Lords, is Mr. *Oates*, whether he be a Doctor or no, I know it not, he would not own it here; he, my Lords, ſwears that he ſaw a Commiſſion delivered to me to be Pay-maſter of an Army to be raiſed, God knows when, I never heard when, or where, I ſuppoſe it was in the Clouds, for I never knew where elſe. Mr. *Oates* all along before ſwore only that he believed I was in the Plot, now he ſwears I was in it, at Mr. *Fenwick*'s Chamber, a Man I never ſaw in my Life, nor heard of till this Diſcovery. And that he ſaw Letters ſubſcribed by my Name; but that, my Lords, I conceive is no Evidence at all, for he never ſaw me write, nor does know my Hand, nor does he pretend to know me then: And when he had told your Lordſhips he had a Letter of mine, he pretended to look for it, and then ſaid he had loſt it, that is, never had it. But beſides, my Lords, his Evidence now does not agree with his former: For I do appeal to your Lordſhips that were in the Houſe then, that he ſwore the firſt time, He only ſaw my Name to Letters; afterwards he ſwore (that is, ſome days after he had ended all his Evidence, and knew no more than he had put down then, afterwards he remembers what he knew not before and ſwears) a Commiſſion he ſaw delivered to me: So his Memory encreaſes as he hath time to invent, and perhaps by another time it might be much more. But, my Lords, I think that one particular, his ſwearing before your Lordſhip's, as 'tis entered in your Journal, that he had no more to ſay againſt any body, and afterwards naming the Queen, and now to me to have a Commiſſion, I conceive, is perfect Perjury. My Lords, Mr. *Oates* told your Lordſhips, That he had never been a Papiſt in his Heart, but ever feigned it; truly, my Lords, I cannot poſſibly give over that Point, That a Man that feigns himſelf to be a Papiſt, or any thing that in the Opinion of Proteſtants is ſo wicked a thing as that, is fit to be believed, if he ſhall not heartily repent himſelf, and own it to God and Man as an ill thing to diſſemble ſo. But yeſterday he with a ſmiling Countenance, and as it were with a Deriſion, owns that which muſt be a very great offence to God Almighty, to pretend to be of an Idolatrous Church. I appeal to your Lordſhips whether he be a fit Witneſs, I conceive he cannot be thought a Chriſtian, nor to believe in God. I know many wicked and infamous Perſons have done many wicked things, and yet have been Witneſſes; but never did any wicked Man own a wicked thing, that he might have concealed, with boaſting of it, that ever was credited in any thing: For if he had ſaid I do acknowledge I did diſſemble with God and my own Conſcience, but I aſk God Forgiveneſs, it was for a good End, and a good Intention, it hath been ſomething, (tho' that could not have atoned for ſo ill a thing) but ſhewing no Repentance, but rather an impudent affronting of God Almighty, I think he is not a fit Witneſs, I appeal to your Lordſhips and the whole Chriſtian World if he be. I cannot believe your Lordſhips will condemn me for an Opinion which I will go to my death with, and it ſtands upon me ſo to do.

The laſt Witneſs, my Lords, is *Turbervile*, and he ſays, In the Year (75) he often diſcourſed alone with me for a Fortnight together at *Paris*. My Servants he owns he never ſaw them, and how he could come for a Fortnight together, and not ſee my Servants, I refer it to your Lordſhip's Conſideration whether it be poſſible. For I'll tell your Lordſhips, when I had been a few days at *Paris*, my Landlord came one day to me and ſaid, You do not do well to ſuffer any body to come to you without your Man be by; for there came Yeſterday a *Frenchman* to ſpeak with you, and I do not know him, and he went up ſtrait to your Chamber without any body with him; 'tis a dangerous thing, ſaid he, for I know that *Frenchmen* and People have come up, and been alone with Perſons, and put a Piſtol to them and made them deliver their Money for fear of their Lives; therefore, pray, ſaid he, do it no more. From that time, which was a few days after I came to *Paris*, the latter end of *October* or the beginning of *November*, no Chriſtian Soul was permitted to come to me without my Servants; how then could he come to me for a Fortnight together, and none of my Servants ſee him? My Lords, this Gentleman very civilly the next day after he had made an Affidavit againſt me, would needs mend it; and Sir *William Poulteny* did acknowledge that he made an Affidavit one day, that he came to my Lord *Powis*'s in the Year (73) and the next day amended it to (72). Now I humbly conceive, my Lords, a Man that ſwears one thing to-day, which he forſwears to-morrow, is not to be believed: And the truth of it is, as his Brothers prove to your Lordſhips, he came to my Lord *Powis*'s in the Year (71) and ſo he forſwears himſelf in every thing, and is in no wiſe to be believed. He ſwears to your Lordſhips I writ a Letter to him to acquaint him that I would go by *Calais*, and not by *Diep*; But I have proved I went by *Diep*, and I aſſure your Lordſhips I have not been at *Calais*, I think, theſe twelve or fourteen Years. I conceive theſe things are very manifeſt and clear Proofs againſt him that he hath not ſwore one true word. He ſwears that my Lord *Powis*, my Lady *Powis*, and his Friends, perſuaded him to go to *Doway* to be a Frier, but not liking it, he came over again, and was in danger of his Life by them; but the Evidence is ſufficiently ſtrong in proof that he afterwards was at my Lord *Powis*'s and was well received, that he lay in the Houſe, and was not in the leaſt injured by them. And for his other Relations, his Brother proves he was not ill uſed by them. They gave him ſeven Pound to be gone, and trouble them no more. He ſays, I ſaid he was a Coward; and I'll tell you why I ſaid ſo, becauſe a Captain, that is now out of *England*, told his Siſter ſo, who told me ſo; but that is not very material. My Lords, there is one Witneſs more, *John Porter*, that ſwears to your Lordſhips this one Thing, That this *Turbervile* ſwore to him at ſuch an Ale-houſe, he knew nothing of the Plot. And then, my Lords, there is Mr. *Yalden*, and he is a Gentleman of Reputation, he ſaid in his Company, there was no Trade good but that of a Diſcoverer; God damn the Duke of *York*, *Monmouth*, Plot and all, for I know nothing of it. Truly, My Lords, whether he got Money by it or no, is known ſince he hath been a Diſcoverer, telling what he knew not ſo many Months ago; and therefore I ſubmit it to your Lordſhips what he is.

My Lords, theſe People that ſwear againſt me, there is not one of them a Perſon of any Quality or Condition; and whether they have not rather ſworn for Money than the Truth, by Things that are known, and need no Proof, I ſhall obſerve when I come to it to argue that Point in Law, Whether a Man that ſwears for Gain is a credible Witneſs, or no?

My Lords, I have, as well as I can, ſummed up that little Evidence that was given againſt me: I cannot do it better in ſo ſhort a Time; for indeed I had but a very ſhort Time laſt Night, and I have not ſlept; I had the Cramp ſo much in Extremity, that my next Neighbour heard me roaring out. My Lords, I ſubmit my ſelf to your Lordſhips, and doubt not but that the Matters charged upon me will appear to your Lordſhips ſufficiently anſwer'd. And I beſeech your Lordſhips well to conſider that one Thing againſt Dr. *Oates*, his diſſembling with God Almighty, and his impudent owning of it. This I do inſiſt upon; and I proteſt before God Almighty, If I were a Judge, I would not hang a Dog upon ſuch Evidence. My Lords, I have many Points in Law to offer to your Lordſhips, and when you pleaſe I ſhould do it, I'll name them to you.

L. H. S. Name them, my Lord; if you have any Doubts in Law, propound them.

Lord Lovelace. My Lords, I would not interrupt my Lord, but I think indeed it is no Interruption, ſince his Lordſhip broke off, and was going on to another Point. But I think I ſee one of the impudenteſt Things that ever was done in a Court of Juſtice; whilſt we are trying a Perſon here for a Popiſh Plot, I do ſee a profeſſed Papiſt ſtanding in the Body of your Houſe, and that is Sir *Barnard Gaſcoigne.*

(Who thereupon went out of the Court.)

L. Staff. My Lords, I do conceive I have cleared myſelf to your Lordſhips of what I am accuſed of. My Lords, the Courſe of my whole Life hath been otherwiſe; I defy any Creature in the World to ſay, that I ever uſed one diſobedient or diſloyal Word of the King, or did any ſuch Act. I waited on the King that now is, in the unhappy War that is paſſed, when I was in a low Condition enough as to Fortune, and my Wife and Family were thereby reduced to great Straits, for my Wife and Children lived ſome five or ſix Years upon ſome Plate and Jewels that we had; whereas if I would have come, and been at *London*, and joined with that Party, I could have ſaved my Eſtate, and lived quietly as others did. But my Conſcience told me, I ought to wait upon the King, and offer him my perſonal Service, when I could do him no other. I have ſhewn how the Witneſſes have forſworn themſelves; I ſhall now, if your Lordſhips pleaſe, deſire your Opinion in ſome Points of Law. And though perhaps I may name to your Lordſhips many Things that are impertinent, or not to the Purpoſe, I beg your Lordſhips Pardon, 'tis out of the Weakneſs of my Underſtanding; and I hope you will not think ill, neither your Lordſhips nor the Houſe of Commons, if I ſhould, thro' Ignorance, move Things impertinent. The firſt Point of Law is this:

Firſt, I conceive there is no Example or Precedent for it, that Proceedings Criminal ever did continue from Parliament to Parliament, and this is continued to three.

L. H. S. Speak out, my Lord, and go on.

L. Staff. *Secondly*, my Lords, I do not queſtion the Power of the Houſe of Commons in the leaſt; but, my Lords, I know they impeach when they find Grounds for it without Diſpute: But I queſtion whether any Man, by the known Laws of this Kingdom, in Capital Caſes, can be proceeded on, but by Indictment firſt found by the Grand Jury, and not by Impeachment by any Perſon, or other Body of Men.

L. H. S. Say on, my Lord.

L. Staff. *Thirdly*, my Lords, I conceive there are many Defects in the Indictment or the Impeachment, (Indictment there is none.) There is no Overt-Act alledged in the Indictment or Impeachment, I know not well what it is called. And, my Lords, by the Act of Parliament in 1 *H.* IV. *c.* 10. nothing from thenceforth is to be Treaſon, but according to the Statute of 25 *Edw.* III. which includes an Overt-Act.

Fourthly, My Lords, I deſire that I may prove that by Law they are not competent Witneſſes, for they ſwear for Money. But, my Lords, I forgot one Thing to ſay to your Lordſhips as to the Evidence, that theſe Gentlemen did endeavour to prove (I do not ſpeak whether they did or not) a general Plot of the Papiſts; whether they did or not, I am not concerned in it, for I ſay they have not proved me a Papiſt, which I ſubmit to your Lordſhips: and though any Man may know me ſo in his private Knowledge, yet they having not given any Proof of it, 'tis not to affect me.

Fifthly, There is one Point of Law more, That no Man can be condemned for Treaſon, as I conceive, by one Witneſs; and there are not two Witneſs to any one Point. Theſe are the Points of Law; I humbly beg your Lordſhips Pardon for the Trouble, and deſire your Opinion in them.

Sir Will. Jones. My Lords, before we make Anſwer to what my Lord hath ſaid, I do humbly deſire, That for the Objection which he hath made againſt Mr. *Southall*, proved by a noble Lord of this Houſe (tho' I muſt obſerve it was not of his own Knowledge, but by Hearſay, and that Matter of Hearſay contrary to the Act of Oblivion) to the End there may be no Doubt remain of Mr. *Southall*'s Credit, that a noble Lord of this Houſe, and a Gentleman of the Houſe of Commons (who both know Mr. *Southall*) may be heard to his Reputation.

Sir F. Win. My Lord *Ferrers* knew him not himſelf, but my Lord *Brock* and Mr. *Gower* will give a better Account of him.

(Then the Lord Brook *was ſworn.)*

Lord *Brook.* My Lords, what I have to ſay concerning this Mr. *Southall* is, That he hath been often employ'd both by my Brother and my Mother; and they have ſo good an Opinion of him, that they employ him ſtill; and therefore we take him for an honeſt Man, and an able Man, or he would not be ſo much truſted and employed: And I take him to be a very good Churchman; for if he was not, I would not employ him.

L. H. S. An honeſt Man, an able, and a good Churchman, your Lordſhip ſays?

Lord *Brook.* He receives the Sacrament four Times a Year.

Sir Will Jones. Then ſwear Mr. *William Leveſon Gower*, a Member of the Houſe of Commons; *(which was done in his Place.)*

Mr. L. Gower. My Lords, I have been near ſeven Years of *Stafford-ſhire*, but did not know Mr. *Southall* till this Popiſh Plot was diſcovered. After that I came acquainted with him (being a Juſtice of the Peace in that County) in Court, where I found him to be the moſt zealous Proſecutor of the Papiſts in that Country, no Man like him. I likewiſe found ſeveral Popiſh Prieſts had by his Means been apprehended and impriſoned, and one of them ſince convicted, who by the way ſtill remains unexecuted in *Stafford* Gaol. What Opinion ſome may have heard or had of him formerly, I cannot tell; but this I know, that he hath more than once come to deſire my Aſſiſtance, that he might proſecute the Papiſts the moſt effectual Way upon the Statutes made for that Purpoſe, and that he did complain to me that he had not met with good Uſage elſewhere.

My Lords, I take Opinion to be grounded upon Principles; and I do obſerve that thoſe of this Country who do believe this Popiſh Plot, and know Mr. *Southall*, and are principled for the Preſervation of the King, the Proteſtant Religion, and the Government, do at this Time ſpeak well of him, and thoſe who are not ſo principled ſpeak otherwiſe.

My Lords, I was ſurpriſed when I heard my Name mention'd upon this Occaſion: I have told your Lordſhips all the Matter of Fact that upon the Sudden occurs to me, (with my own Opinion, which I offer with all Submiſſion;) and had I had Notice, I might poſſibly have recollected more, which I would freely have declared to your Lordſhips, but this is all that I can now ſay.

L. Staff. My Lords, if your Lordſhips pleaſe, I would ſay one Word, if you will give me Leave; I am very ignorant, and beg your Lordſhips Pardon for troubling of you: I humbly deſire to know, Whether after the Points of Law are argued, I may ſpeak ſomething, not concerning the Evidence of the Plot, but concerning myſelf.

Sir Will. Jones. My Lords, we ſhall not oppoſe the ſaying any thing he can for himſelf; but we muſt conclude, and have the laſt Word.

L. H. S. My Lord, the Gentlemen that are for the Houſe of Commons muſt conclude. My Lords will give you all the Favour they can, but they muſt have the laſt Word.

L. Staff. I do not oppoſe it.

L. H. S. Therefore you will do well to ſay all you have to ſay together. For the Points of Law, my Lords, will give no Judgment till the Commons have anſwered them, and they I ſuppoſe will firſt ſum up the whole Proofs; then you may ſay what you have to ſay, for they muſt make an End. Gentlemen, will you ſpeak firſt to the Law?

Sir Will. Jones. No, my Lords, firſt to the Fact.

L. H. S. Go on then.

Then Sir William Jones, *one of the Committee appointed to manage the Evidence, began to ſum up the ſame as followeth.*

May it pleaſe your Lordſhips,

We have now done our Evidence as to Matter of Fact; and that which I have in Charge at this Time, is to remind your Lordſhips of our Proofs; to anſwer the Objections that have been made againſt them; and to make ſome Obſervations upon the Whole.

My Lords, The Members of the Houſe of Commons that were appointed for the Service of the Management of this Trial, thoſe of them I mean who began the firſt Day, made a Diviſion of our Evidence into two Parts; the one that which concerned the Plot in general, and the other what related to this Lord in particular.

My Lords, as to the Plot in general, we did call ſix Witneſſes; I know ſome of your Lordſhips have taken Notes, and you have their Names: They were *Smith*, *Dugdale*, *Prance*, *Oates*, *Dennis*, and *Jeniſon*.

My Lords, becauſe I will ſave as much of your Time as I can, I will not take upon me to repeat what each Witneſs ſaid as to the Plot in general; but when I come to the Evidence which immediately concerns my Lord, I muſt beg your Favour that I may be more particular. I will ſay thus much for the Proofs of the Plot in general, that there was by thoſe Witneſſes ſo much fully proved, that made it moſt apparent that there was a general Deſign amongſt the *Roman* Catholicks to introduce their falſe Religion into this Kingdom, that the Jeſuits had ſeveral Meetings to that End, that they endeavoured to do it by ſeveral Ways, by raiſing of Arms, by collecting of Monies, and by deſigning againſt the King's Life; nay, they had ſo far advanced their Deſigns, and were in ſo much Readineſs, as they thought it Time to appoint Officers not only for their Army, but for the Civil Government, as if the Work were already accompliſhed.

Your Lordſhips were told by one of the Witneſſes of a Lord Chancellor, and of a Lord Treaſurer, (Lords now in the *Tower* yet to be tried;) and you were told alſo of Officers for the Military Part, a General, a Lieutenant-General, and this Lord at the Bar to be Pay-maſter of the Army.

I ſhall, my Lords, deſire to take Notice to your Lordſhips, that this Deſign, though it was to be finally acted by other Hands, yet it was firſt contrived, and afterwards carried on by the Prieſts and Jeſuits. You will find them preparing for it, by making Sermons to juſtify that Doctrine (which I confeſs this noble Lord denies) of the Lawfulneſs of killing Kings. You will find the Prieſts and Jeſuits, in their Diſcourſes as well as Sermons, urging and encouraging their Diſciples and Votaries, to go on with their Deſign of killing our King, and giving that common Reaſon for it, That he was a Heretick, and it were meritorious to take him out of the Way.

My Lords, I take Notice of theſe Particulars in the general Plot, becauſe it may give great Light to, and add much to the Confirmation of the particular Evidence. And, my Lords, (I think) I may take leave to ſay, That the Plot in general hath been now ſufficiently proved. And if we conſider what hath been proved at former Trials (upon which many of the Offenders and Traitors have been executed) what hath been publiſhed in Print; and above all *Coleman*'s Letters, written with his own Hand, and for that Reaſon impoſſible to be falſified; we may juſtly conclude, that there is not a Man in *England*, of any Underſtanding, but muſt be fully convinced of the Truth of the Plot in general. I ſhall ſpare to mention the Reſolutions and Declarations of two Parliaments, and of both Houſes in thoſe two Parliaments, without (as I remember) one diſſenting Voice, expreſſing their full Satisfaction of the Reality of the Plot: So that I think now none remain that do pretend not to believe it, but two Sorts of Perſons; the one, thoſe that were Conſpirators in it; and the other, thoſe that wiſh'd it had ſucceeded, and deſire it may ſo ſtill.

But, my Lords, I will be the ſhorter on this Part; for perhaps it will be objected, You have offered a fair Proof of a general Plot, here are Records, Votes of both Houſes, Papers and Evidences printed, and Witneſſes *viva voce* to prove it; but what is all this to my Lord *Stafford?* My Lords, it goes a great Way to him; I do not ſay to be a convincing Evidence, but to make the particular Evidence againſt him highly credible.

Your Lordſhips cannot imagine, that there are ſuch a Store of Lords and great Men amongſt that Party (though there be too many) that they ſhould have great Choice for great Offices. Your Lordſhips hear how the other great Offices were diſpoſed of, and truly I think the Merit of this Lord amongſt that Party might very well entitle him to an Office as great as this of Treaſurer of War, or Pay-maſter to the Army. But what is the Evidence of the general Plot (may ſome ſtill ſay) to my Lord *Stafford?* What do you mention the raiſing an Army? What do you mention the collecting of Money? What do you mention the providing of Arms for? Yes, my Lords, they are very uſeful, for they give a fair Introduction to prove againſt this Lord, that he was to have this Office. If it be proved by other Witneſſes than thoſe who ſware directly againſt this Lord, That there were Arms provided, that there was an Army to be raiſed, and the Reſt; it proves at leaſt, that there was Occaſion for ſuch an Officer as the particular Witneſs proves my Lord to be.

My Lords, for the other Matter that relates to the Conſultations of the Prieſts and Jeſuits, and their Sermons and Diſcourſes, I deſire your Lordſhips to obſerve that alſo; which if you do, your Lordſhips will eaſily perceive what a great Influence even that Matter hath upon the particular Evidence, and how credible it renders the Teſtimony of the particular Witneſſes. Your Lordſhips will find, when my Lord was at *Tixall* (as *Dugdale* gives you an Account) there was *Evers* the Jeſuit, and other Prieſts ſtill at my Lord's Elbow, and egging him on to this Buſineſs. Your Lordſhips will find where *Oates* ſpeaks of him, it is at *Fenwick*'s Chamber, who was a Jeſuit, giving him ghoſtly Council. Your Lordſhips will find, That at *Paris*, where Mr. *Turbervile* ſpeaks of him, there were Father *Sherborne*, Father *Nelſon*, and Father *Anthony Turbervile.* Still the Prieſts are about my Lord; and when my Lord is among them, or but newly come from them, then he utters the Treaſon of killing the King. And doubtleſs this traiterous Purpoſe of his did ariſe from their Councils: So that tho' our Witneſſes ſpeak of my Lord's Diſcourſes at ſeveral Times about killing the king, yet they make them flow from one and the ſame Fountain, the Inſtigation of the Prieſts and Jeſuits.

But now, my Lords, to come to the particular Evidence, I think I may ſay, if ever Evidence was convincing, this is ſo. We have brought three Witneſſes which ſpeak each of them that which is ſufficient to prove my Lord guilty; and they ſpeak of Overt-Acts too, as I ſhall obſerve anon.

His Lordſhip was pleaſed at the beginning of our Evidence to deſire that the Witneſſes might look him in the Face; and for that he cited two Statutes, I ſuppoſe he intended the Statutes of 1 & 5 of *Edw.* VI. which Statutes, or at leaſt one of them, do ſay, That there ſhall be in Caſe of High-Treaſon, two Witneſſes to accuſe, and thoſe two Witneſſes brought face to face at the Time of Trial: And my Lord hath had the Benefit of thoſe Laws; he hath had two, nay three Witneſſes to prove him guilty, brought face to face before your Lordſhips; and if theſe three, or any two of them deſerve to be credited, my Lord in this Caſe is guilty of High-Treaſon. My Lords, I muſt beg the Favour of looking upon my Paper of Notes; for the truth is, the Witneſſes are ſo many, and the Proceeding hath held ſo long, that it is impoſſible for my weak Memory to retain all that was ſaid.

My Lords, the firſt Witneſs we began withal was *Dugdale*; and I know your Lordſhips did take notice what he ſwore: but it will be my Duty to remind your Lordſhips, that he tells you, That he had heard of a general Deſign of making Preparations to be ready againſt the King's Death, and this for ſeveral Years paſt. But as to the Matter of haſtening the Death of the King, that was but a late Council. He tells you, I think, that about the latter end of *Auguſt*, or the beginning of *September* 1678, *Evers* and and other Jeſuits were at *Tixall*, that there was a Conſult then about the King's Death; and that (by the means of *Evers*, who was a very great Man among them, but ſince fled, and is mentioned in the Impeachment) he was admitted to that Conſult, and heard particularly what every Man ſaid; and he does take upon him to ſay, That at that time the Matter of taking away the King's Life was propounded, and that my Lord, the Priſoner at the Bar, did conſent to it.

My Lords, he tells you further, That upon a *Sunday*-Morning my Lord came from *Stafford* to *Tixall* to Maſs: my Lord was pleaſed to obſerve, that we do not prove him a Papiſt; but we prove my Lord came to Maſs, and that, I think, is one good Proof of his being a Papiſt. Beſides *Dugdale* ſwears my Lord did then complain, That they had not the free Exerciſe of their Religion; that they could not ſay their Prayers openly: What were they? Not the Prayers of *Proteſtants*, not thoſe contained in the Liturgy of our Church. He could not complain of any Reſtraint as to them; but complain he did, that they had not the Free Exerciſe of their Religion; but he did hope, if Things ſucceeded well, in a ſhort time it would be otherwiſe. This is particularly ſworn by *Dugdale*.

My Lords, his Lordſhip was very much unſatisfied, that *Dugdale* was not particular in point of time; he did talk of ſome Matters to be in *Auguſt* or *September*, but could not fix to any Day. But your Lordſhips will remember, that as to one Particular, and which mainly concerns his Lordſhip to anſwer, he comes to a Day, or within a Day; for he ſwears poſitively, That upon the 20th or 21ſt of *September* he was ſent for to my Lord's Chamber, the Servants were put out; that there my Lord did propoſe to him, in expreſs Terms, the matter of killing of the King: He would have him be an Actor in it, and he offered him a Reward of 500*l.* to perform it. For this, which is the moſt material part of his particular Evidence againſt my Lord, he is certain 'twas either on the 20th or 21ſt of *September*; and he tells your Lordſhips how he comes to remember the time, by a good Token, by the Foot Race that was then to be run; and I do not perceive that my Lord does deny, but rather acknowledge that *Dugdale* was in his Chamber at that time. 'Tis true he does deny ſome other Circumſtances which I ſhall anſwer anon. And here I do think *Dugdale* undertakes to ſwear to that which will amount to an Overt-Act, and a damnable one too, that is the offering 500*l.* to kill the King.

But *Dugdale* (it ſeems) was not willing to depend upon the Promiſes of my Lord for ſo much Money, his Lordſhip had not that Credit with him; he repairs to *Evers*, and deſires to be ſatisfied from him, whether he might rely upon my Lord for ſo much Money? *Evers* told him he might be ſure to have the Money; and that there was enough in *Harcourt's* and other Mens Hands for the carrying on that bleſſed Deſign; and that he ſhould have it thence. I might, my Lords, remember to your Lordſhips, how *Dugdale* does particularly ſwear concerning another Diſcourſe he had afterwards with my Lord; That my Lord complained of the great Loſſes that had been ſuſtained by him and his Friends for the King; how, in particular, my Lord *Aſton's* Father had loſt 30000*l.* and what Reſentments my Lord had of it. He ſaid, That Places of Profit were rather beſtowed upon thoſe that deſerted the King, and were Rebels and Traitors, than on thoſe that did him faithful Service: And what does he conclude from thence? he is very angry with the King, and does ſay, that next to the Cauſe of Religion (which was the ſtrongeſt Motive with him to take away the King's Life) the King's Ingratitude to his loyal Subjects, was that which did moſt offend him.

I ſhall not trouble your Lordſhips with other particular Matters which were to ſerve as Encouragements to the Deſign; as that there was to be a Pardon from the Pope; That my Lord did write a Letter to *Evers*, which was ſhewn to *Dugdale*, wherein he ſays, That things did ſucceed very well abroad, and he hoped they would do ſo at home. I ſhall only obſerve, that *Dugdale's* Evidence, as to my Lord's damnable Deſign of killing the King, is poſitive and full. And if this be to be believed (as I hope we ſhall ſhew there is no Reaſon but it ſhould be) then here ſurely is one ſufficient Witneſs to prove my Lord guilty of the higheſt Treaſon.

My Lords, the next Witneſs we call for againſt my Lord, was Dr. *Oates*; and I think Dr. *Oates* is not only poſitive, but he is poſitive in that which moſt certainly will amount to an Overt-Act; nay, I think to more Overt-Acts than one. The Doctor tells your Lordſhips, That having been at *St. Omers* and in *Spain*, he ſaw ſeveral Letters that were ſubſcribed *Stafford*; he did not then know my Lord's Hand, but he ſaw the Letters, and he tells you the Effect of thoſe Letters. And I remember in one of them there is this Expreſſion, That my Lord (the Priſoner at the Bar) does give Aſſurance to the Fathers, that he is very zealous and ready to do them Service.

Dr. *Oates* tells you, my Lords, That afterwards coming into *England*, my Lord *Stafford* did write a Letter, I think it was to his Son; but ſure I am, the Doctor ſaid, he had the Carriage of it to the Poſt-houſe; That he ſaw my Lord write it; he read the Superſcription, and he ſwears, that the Hand which writ that Letter, was the Hand which ſubſcribed to all the former. And ſo then joining the one to the other, it amounts to as good an Evidence as if he had known my Lord's Hand from the Beginning.

But that which comes home to my Lord, is that which Dr. *Oates* ſaw, and that which Dr. *Oates* heard: And they are theſe Particulars which I now mention.

Firſt, he ſaw a Commiſſion directed to my Lord to be Pay-maſter of the Army, he ſaw it delivered to my Lord's own Hand, and my Lord accepted it. Dr. *Oates* read the Commiſſion, and he tells you by whom it was ſigned, *Joannes Paulus Oliva*, a Perſon ſubſtituted by the Pope to iſſue out Commiſſions. He tells you the Contents of it, and of this he ſwears he was an ocular Witneſs.

He tells you of another Matter he heard my Lord ſay, as conſiderable as the other, That when my Lord had received the Commiſſion, my Lord declared, that he was to go down into *Staffordſhire* and *Lancaſhire*, where he was to put Things in Readineſs. What were thoſe Things? He had now a Commiſſion, by Virtue of which, in *Lancaſhire* and the other Places, he was to prepare and gather Monies for that Army which he was to pay. So much Dr. *Oates* doth ſwear he heard from my Lord's own Mouth.

But there is one thing further, which I had almoſt forgot. He doth ſwear, that my Lord was privy to, and approved of, the Matter of killing the King: for he doth ſwear he did hear my Lord ſay at that time, *He hoped before he returned, honeſt* William (who was *Grove* that was executed for this Attempt) *would have done the Buſineſs*. And what that Buſineſs was, every Man who hath heard of *Grove*'s Treaſon, muſt needs underſtand.

There is but one thing more that I remember of Dr. *Oates's* Teſtimony. Your Lordſhips that have a better Advantage to write than we, who are crowded together, may have taken Notes of more; but this one thing I do obſerve: Dr. *Oates* doth expreſly ſwear, That my Lord bore a very ill mind towards his Majeſty; for my Lord did, in his hearing, complain, *That the King had deceived them a great while, and that they would bear with him no longer, he ſhould deceive them no more.*

My Lords, our third Witneſs was Mr. *Turbervile*, who doth give you an Account, That he being firſt ſent to *Doway*, and intended to be entred there in one of the Societies, (he was ſent by my Lord *Powis* and my Lady *Powis*, and ſome of his Relations of that Religion, for that Purpoſe) he did not like the Company, he was not pleaſed with the Exerciſes of that Religion, and that with much Difficulty he eſcaped thence and came for *England*. But finding he was not well looked upon here, nor well received by his Relations, he went over to *France*: That being at *Paris*, he came into the Company of the three Fathers I named before, Father *Sherborne*, Father *Nelſon*, and Father *Turbervile*; the laſt whereof, he tells you, was his own Brother: That by the Means of theſe Prieſts he was brought acquainted with my Lord *Stafford*; and doubtleſs they were able to make him intimately acquainted with my Lord. And it did prove ſo, for he tells you, after ſome Time, that in a lower Room of my Lord's Lodging, my Lord propoſed to him the Buſineſs of killing the King. That he did not at all like it, was very unwilling to undertake it, but my Lord bid him conſider of it, and that he ſhould give him his Anſwer at *Diep*, having enjoined him Secrecy; but my Lord after ſent him word he would go by *Calais*: and the Witneſs afterwards went into *England*, and from thence into the *French* Army. And this is the Subſtance of what *Turbervile* depoſeth.

And, my Lords, I think it will not be doubted by any Man that will conſider theſe three Mens Teſtimonies, but that here are two Witneſſes, if not more, to prove my Lord guilty of Treaſon.

But my Lord has been pleaſed againſt them to make ſeveral Objections; ſome have been by Witneſſes which he hath produced to encounter the Proofs that we have offered; and ſome of them have been by Obſervations that he hath made upon what hath been ſaid by our Witneſſes and his. I will keep to Order as much as I can, and not confound the Order and Method of his Defence.

The Witneſſes he firſt brought were againſt *Dugdale*, and of them his Lordſhip was pleaſed to begin with his Daughter, the Lady Marchioneſs of *Wincheſter*, and his Niece Mrs. *Howard*. Your Lordſhips, I preſume, are pleaſed to obſerve what they were called to. They did teſtify, that being at *Wakeman*'s Trial, they did hear *Dugdale* ſwear (ſays my Lady Marchioneſs of *Wincheſter*) that my Lord *Stafford* was to come down into *Staffordſhire* in *June* or *July*, and Mr. *Dugdale* was then to receive Orders from my Lord; and he ſwore (as ſhe was pleaſed to ſay) that there was a Conſult in *Auguſt* at *Tixall*, and my Lord *Stafford* was there preſent. Mrs. *Howard* (for I put them together) was pleaſed to ſay that ſhe was preſent at that Trial, and there *Dugdale* ſwore that my Lord *Stafford* did come down in *June* or *July*, and that my Lord was at the Conſult in *Auguſt*.

My Lords, I will not make Objections neither to the Religion of theſe Ladies, nor to their Relation to my Lord, though thoſe be Matters that are to be conſidered. But that which I ſhall obſerve to your Lordſhips, is this, That they do not agree one with another: For my Lady *Wincheſter* ſays *Dugdale* did ſwear that my Lord was to come down in *June* or *July*, and Mrs. *Howard* ſays, that he ſwore he did come down then. Now there is a great Difference betwixt ſwearing an Intention that a Man was to come down, and ſwearing the very Act that he did come down at that Time. By which your Lordſhips may obſerve, how hard a Matter it is for Witneſſes that are preſent at a Trial (eſpecially at a Trial which did not directly, though it might in conſequence concern another Perſon of their Relation) to take Notice exactly of Things.

And truly, my Lords, theſe Ladies being of that Religion, might have ſo much Concern upon them for Sir *George Wakeman* the Popiſh Phyſician, and in him for other their Friends of that Party, that they might not have ſo much Liberty of Thought, as to obſerve exactly all Circumſtances ſworn to by the Witneſſes; and therefore it is no great Matter if they are miſtaken in them. But I believe if any one do conſult the Print (though it be no Evidence, nor offered as ſuch) he will find no ſuch Thing was at that Time ſworn; for it is not ſo printed, and thoſe that took Notes did not underſtand it ſo.

My Lords, the next Witneſs my Lord is pleaſed to bring, is his Servant *Furneſe*; and what is it that he teſtifieth? He ſaith, that he was with my Lord the whole time that *Dugdale* was in my Lord's Chamber; and he doth not remember that ever *Dugdale* was there but once, and he doth not remember that ever my Lord bid him go out of the Room.

My Lords, It is a very hard Matter for a Man to come thus in the Negative, to remember how often *Dugdale* was there, eſpecially there being no more Occaſion to take Notice of it then, than here appears to be, and that after ſo long a Time. And it is a very hard Matter for a Servant to gain Credit, by ſaying his Maſter never bid him go out of the Room in his Life. Theſe things may be done or ſaid, and yet eſcape the Memory of a Servant of more Age, and of leſs Inclination to favour his Maſter, than this Perſon appears to be of and to have. Therefore I think there will be but a very ſmall Matter made of what he ſaid, no Force at all in it; and I believe your Lordſhips will give very little Regard to it; but rather believe thoſe Witneſſes that ſwear poſitively, that they have ſeen him with my Lord, and ſpeak to a Familiarity at that time between them.

This young Man, *Furneſe*, was my Lord's Servant, and of his Religion; and it is conſiderable, whether we have not reaſon to be afraid that more than ordinary Practice has been uſed to prepare Evidence on my Lord's Behalf, which I ſhall have Occaſion to ſpeak to when I come to the other Witneſſes.

His next Witneſs, my Lords, was his Boy, *George Leigh*, who is 15 Years of Age now, and was eight Years old when he came to my Lord ſeven Years ago. And he atteſts the ſame thing, and to the ſame Purpoſe with the other. And I think I may leave him with the ſame Anſwer, for we are nothing more concerned with him than we were with the other. Only one thing I would obſerve, to ſhew that his Memory was imperfect; he doth not remember that *Dugdale* was with my Lord at all that Day, which my Lord himſelf doth acknowledge he was, and the other Witneſs agrees; ſo that there cannot be any great Weight laid upon what he ſaith.

My Lord's next Witneſs was *Thomas Sawyer*, and he is one of my Lord *Aſton*'s Servants, that I deſire to obſerve of him firſt. And what does he ſay? He ſaith, That *Dugdale* went away for Debt. The contrary to which was apparently proved; for we, by our Witneſſes, made it manifeſt, that *Dugdale* went away for the Matter of the Plot; the Fear and Dread he was in upon that Score, and the Circumſtance of his being apprehended by the Watch at Night in his Flight, and how he was put to take the Oaths, do manifeſtly prove this. But he ſays another thing, which I deſire may have no Weight with your Lordſhips, That *Dugdale* ſhould threaten, that becauſe my Lord *Aſton* would not own him for his Servant, he would be revenged of him. Truly, if my Lord *Aſton* were here to be tried, it would have ſome Weight. But to think, if it were true, that he had ſo ſworn, that therefore he would be ſo wicked as to do Miſchief to another Man, that he would be revenged of every Man of that Religion, or of every Man that came to my Lord *Aſton*'s Houſe; that cannot be imagined. So I cannot ſee what great Streſs, my Lords, the Priſoner can lay upon it, as to the preſent Trial, which concerns my Lord *Stafford*.

But, my Lords, I deſire to obſerve, that he ſays further, That when *Dugdale* went away there was a Diſcourſe of a Plot (this he helps out *Dugdale* in): And that there was a Diſcourſe of the killing of a Juſtice of Peace. So that certainly it does ſhew, that *Dugdale* was apprehenſive of the Plot. And as to that which he is pleaſed to ſay, That *Dugdale* ſhould deny his Knowledge of the Plot, and take Drink, and with Execrations forſwear it; it will be no Manner of Objection at all. For I ſhall have Occaſion to ſhew hereafter, that *Dugdale* at that time was very far from revealing the Plot he had been ſo long engaged in; he was in Apprehenſion of the Danger of his own Life, and *Southall* tells you how and when he revealed it, and by what Inducements he was prevailed upon to do it.

The next Witneſs my Lord called, was *Philips*, the Miniſter of *Tixall*; and truly all that I can accuſe him of, is want of Memory, and that is no Fault in a Man, that perhaps is very ſtudious and careful in his Employment, as I hope he is. He tells you, That whereas *Dugdale* ſwore at a former Trial, that he acquainted Mr. *Philips* with the Death of a Juſtice of Peace of *Weſtminſter* on the *Monday*, that he did not acquaint him with it; that is, he does not remember it, for no Man that ſwears a Negative, can ſwear more. But whether Mr. *Philips*'s Evidence be of any Conſequence to us, we ſubmit to your Lordſhips Conſideration; when we oppoſe to his want of Memory, two Witneſſes that ſwear he was by when this News was told: And we are told likewiſe, as a Confirmation of that, by two Gentlemen of Quality, that the Report of ſuch a Thing was ſpread abroad all over that Country, before it was poſſible for it to come by the way of ordinary Intelligence. Whether, therefore, what Mr. *Philips* teſtifies, proceeds from any other Cauſe than want of Memory in Mr. *Philips*, I muſt leave to your Lordſhips Conſideration.

But this I would obſerve to your Lordſhips, that when Mr. *Philips* was aſked by my Lord, whether or no *Dugdale* were a Perſon likely to perjure himſelf, he could not ſay ſo? Nay, being aſked of what Reputation he was of? he ſaid, by ſome he was very well ſpoken of, by ſome but indifferently; but I do not remember that he ſaid he was ill ſpoken of by any. So I think Mr. *Philips* has rather advanced than prejudiced Mr. *Dugdale*'s Reputation and Credit.

My Lords, I think I may lightly paſs over the three Juſtices of Peace that were brought to give an Account of *Dugdale*'s Behaviour before them, and not mention them diſtinctly, becauſe they ſwear all to the ſame Purpoſe, That Mr. *Dugdale* was apprehended upon Suſpicion of the Plot, that he took the Oaths, that he was invited and urged by them to make a Diſcovery of the Plot, which he then denied to have any Knowledge of: For all this will be anſwered, when we come to remind your Lordſhips of Mr. *Southall*'s Teſtimony.

His Lordſhip was pleaſed, in the next Place, to offer to prove *Dugdale* an ill Man, by endeavouring to ſuborn Witneſſes: And in the firſt Place he called *Robinſon*, who teſtified a very unlikely thing, that Mr. *Dugdale* ſhould call him in the Street, and bring him to an Houſe, and offer him Money to ſwear againſt my Lord *Stafford*; which Money he had in an Handkerchief, but did not tell him what Particulars he ſhould ſwear to: Nay, and this after he had told him he could ſwear nothing. And it does not appear, that *Dugdale* had any Manner of Knowledge of him, or that this Gentleman, *Robinſon*, had any Knowledge of my Lord *Stafford*: So that it was a very raſh and preſumptuous Thing, that *Dugdale* ſhould attempt a Man that he knew not; and a very imprudent Thing, that he ſhould ſuborn a Witneſs to ſwear againſt a Man that the Witneſs to be ſuborned did not know. But I ſhall ſay no more of him, becauſe I think upon the Account that has been given of him by a noble Earl of this Houſe, and an honourable Member of the Houſe of Commons, if he had ſaid things in themſelves probable, he is not in the leaſt to be believed.

My Lord's next Witneſs upon the ſame Head of Subornation, was one *Murral*, a poor Barber; and what ſays he? He teſtifies that Mr. *Dugdale* did offer him 50*l.* to ſwear againſt Sir *James Symons* and ſome others. My Lords, Whether this be probable or no, we muſt leave to your Lordſhips. We have called Witneſſes that prove him a Man of no Reputation, one that runs up and down the Country, a Kind of Vagabond, and I think (upon the Endeavours that have been proved to have been uſed as to others), it is no very hard Matter to bring a Man of his Condition to ſay as much as he hath done.

The next Witneſs is *Samuel Holt*, the Blackſmith; and he tells ſuch a Story, that if it were true, would be ſome Diſparagement to *Dugdale*: And what is that? He ſays, That *Dugdale* ſent a Man and Horſe for him, to bring him to the Star in *Stafford*; and there offered him 40*l.* to ſwear that one *Moore* carried away *Evers*. My Lords, How this Story comes in, I cannot imagine; why Mr. *Dugdale* ſhould bear any Ill-will to *Moore*, or what ſhould induce him to intice this Man to ſwear againſt *Moore*, or what elſe was in it, it doth not appear. But no Matter what it was for; we prove againſt this Man, by two Witneſſes, *Rawlins* and *Lander*; by the firſt, that he is a Man of ill Reputation, very zealous to ſupport the Plot, and cry down Mr. *Dugdale*, ſaying, that he was a Rogue, and all they were Rogues that took Part with him. And by the other Witneſs *Lander*, that *Holt* did make an Aſſault upon him, and would have killed him for being ready to appear againſt my Lord *Aſton* at his intended Trial: So that he is a Man that has more Zeal than Honeſty: Zeal in no good Matter, namely, to hinder the Truth from coming out againſt my Lord *Aſton*; and therefore we have little Reaſon to wonder, nay, all the Reaſon in the World to believe, that he ſays that which is untrue about Mr. *Dugdale*.

My Lords, There was another Witneſs, Mr. *Lydcott*, that ſaid, he was a Fellow of *King*'s-*College* in *Cambridge*. He has offered no Proofs that he was ſo; and truly it is very improbable he ſhould be ſo: For I hope Fellowſhips in the Univerſity, eſpecially in one of the chief Colleges (as this is) are beſtowed upon more deſerving, and leſs ſuſpicious Perſons than he appears to be: A Man that owns himſelf the continual Companion and Secretary of one ſo famous in the Popiſh Party as my Lord *Caſtlemain* is: A Man that pretends he was never out of his Company; and a Man that owns, that two Years ſince, he was taking of Notes at a Trial for this Plot, not only for his own Curioſity, but for the Service of his Lord, who was concerned in the Accuſation: That this Man ſhould be a Fellow of *King*'s-*College*, ſeems ſtrange, and till it be better proved, will hardly be believed, nor will he deſerve any Credit. It is true, he doth acknowledge himſelf a Proteſtant, and to be of the Church of *England*, and educated, as he ſays, a Preſbyterian; but when he was aſked, When he received the Sacrament laſt? I do not remember that he gave your Lordſhips any Anſwer.

This Witneſs ſays, That he was at the Trial of the five Jeſuits; and there *Dugdale* did ſwear, that he gave Notice to Mr. *Philips* and Mr. *Sambidge* of Sir *Edmundbury Godfrey*'s Death: And this they would make to be a great Fault in *Dugdale*, becauſe neither *Philips* nor *Sambidge* remember it. Now whether *Dugdale* ſwore true in that or no, does not depend upon *Dugdale*'s own Credit alone; but you have heard other Witneſſes have made it appear, that he did ſwear true: So that we need not ſay any thing more to this Witneſs, nor to *Gifford*, who teſtifies to the ſame Purpoſe; becauſe that Point, as to the Report of the Death of the Juſtice of Peace, is by other Witneſſes clearly proved.

And as to Mr. *Sambidge*, I do not wonder much, that he ſhould ſay he did not hear it, becauſe he could hardly hear what was ſaid to him by the Court, or any of the Officers ſet near him on Purpoſe. But my Lords, I deſire your Lordſhips to take Notice, that he was a very angry Witneſs; he ſaid, he had formerly had a Controverſy with *Dugdale*, that *Dugdale* had cited him into *Lichfield*-Court, and had there a Suit againſt him for a Defamation; and he ſaid that againſt *Dugdale*, which, unleſs better proved, muſt needs make *Sambidge* much ſuſpected: He ſaid, that *Dugdale* was the wickedeſt Man on Earth; but what Proof he offered of that, or whether he did inſtance in any one Particular, I leave to your Lordſhips Memories.

My Lords, There is another Proof relating to Mr. *Dugdale*, not out of the Mouth of a Witneſs, but out of a Paper, which I deſire to give an Anſwer to. It was an Objection the Priſoner at the Bar was pleaſed to make to *Dugdale*'s Information, taken the 24th of *December*, 1678, before the Juſtices in the Country, wherein he had ſaid to this Purpoſe; Preſently after one *Howard*, Almoner to the Queen, went over, he was told by *George Hobſon*, that there was a Deſign, &c. This, ſaith my Lord, is moſt impoſſible to be true: For you ſay, that immediately after the Almoner was gone away, *Hobſon* told you this, whereas *Hobſon* went away with the Almoner; and he came not to live with my Lord *Aſton* till many Years afterwards.

This my Lord is pleaſed to offer as a Falſification of *Dugdale*'s Teſtimony; but, my Lords, I do deſire to obſerve, that this is an Information taken before two Juſtices of Peace in the Country; and if you look upon it, you will ſee it was written by a Country Clerk, and not very ſkilfully done. 'Tis rather ſhort Notes of an Examination, than a compleat Examination. And your Lordſhips will pleaſe likewiſe to obſerve, that there is not really an Expreſſion that is clear one way or the other, but capable of two Senſes; that is to ſay, either it may import *Hobſon* told him there was a Deſign ever ſince the Almoner *Howard* went away; or it may import, *Hobſon* told him preſently after the Almoner went away, there was a Deſign. Read but the Words with a different Comma, and it makes the Senſe one way or t'other. Now it is plain, *Dugdale* could not intend that *Hobſon* told him ſo as ſoon as the Almoner went away, becauſe *Hobſon* went away with the Almoner. And it was better to his Purpoſe, that *Hobſon* ſhould tell him ſo after his Return than before, for that ſhews the Deſign had been long a carrying on.

Therefore it being a doubtful Expreſſion, that may refer either to the Time he told it him, or to the Matter he told him of; and being taken in the latter Senſe, the Objection faileth; I think this Matter can have no Weight at all in it to falſify a poſitive Teſtimony.

My Lords, The next Witneſs we did call, and which was objected againſt by my Lord, was Dr. *Oates*; and truly I muſt obſerve, that his Lordſhip was not pleaſed to call any one Witneſs materially to falſify Dr. *Oates*'s Teſtimony; and I muſt likewiſe obſerve, that Dr. *Oates* is, in the Material Part of his Evidence, ſupported by other Evidence.

When Dr. *Oates* gave Evidence at former Trials, it was the common Diſcourſe of the Men of that Religion, that Dr. *Oates* had never been in *Spain*, nor had ever any Credit with the Prieſts or Jeſuits, but was a mean contemptible Perſon, and that all he ſaid was improbable. But now your Lordſhips have heard that Dr. *Oates*, even by the Teſtimony of *Dennis* a Popiſh Prieſt, (that is ſo to this Day) was in *Spain*, was, according to what he ſaith, brought up in the College of the Jeſuits; that he was in ſuch Eſteem there, that the Archbiſhop of *Tuam* commended him very much in the Preſence of *Dennis*, and ſpoke of what Expectation there was of him. So that *Dennis* the Prieſt doth ſupport Dr. *Oates* in ſome Parts of his Evidence. I do not ſpeak of that Part of it which concerns this particular Lord, but of his Teſtimony touching the general Plot.

There is another Thing wherein Dr. *Oates* is ſupported by another Witneſs, and that is the Eſteem and Intimacy he had with the Jeſuits. For Mr. *Jeniſon* ſwears, that Dr. *Oates* was a Man in Eſteem among them, that he was at *Ireland*'s Chamber, and had diſcourſe with *Ireland*, and did appear to be frequently employed by them. And I take theſe two Witneſſes to be a great Support to Dr. *Oates*, as to the general Matters which he evidenceth of the Plot.

What now doth my Lord object againſt Dr. *Oates*? He called no Witneſſes againſt him, but only an Honourable Earl of this Houſe, I think I may name him, the Earl of *Berkeley*: And that which his Lordſhip was pleaſed to teſtify againſt him, was;

Obj. That being examined at the Houſe of Lords after he had given a long Evidence againſt many Perſons, he was aſked this Queſtion, Whether there were any more Perſons of Quality he could ſpeak againſt, or could accuſe? and he ſaid no.

Anſw. Firſt, your Lordſhips will be pleaſed to obſerve, that this was after he had accuſed my Lord *Stafford*; my Lord was ſecured in the *Tower* long before that, upon Dr. *Oates*'s Teſtimony, and ſo he could not exclude this Lord. But that which it is brought for (I ſuppoſe) is to make him a Perſon of no Credit; for after he had ſaid this, he proceeded to an Accuſation of the Queen. My Lords, I humbly conceive this may receive a very fair Anſwer. For,

Firſt, my Lords, I appeal to your Lordſhips Memories (for, I think, the Matter was before you all, or at leaſtwiſe before ſome of your Lordſhips), that the Accuſation which Dr. *Oates* made of the Queen was not poſitive, nor of his own certain Knowledge; but Words which he heard ſpoken in a Room in which he was not himſelf, but coming in afterwards, he ſaw the Queen was there. So it was not poſitive, but circumſtantial Proof, and queſtionable whether what he teſtified would amount to the Proof of one Witneſs.

And I muſt obſerve in the ſecond Place, it might not be ſo clear to Dr. *Oates*, whether the Queen were a Perſon capable of an Accuſation, ſo as to be proceeded criminally againſt; the King and the Queen are to ſome Purpoſes but one Perſon in Law. 'Tis true, ſome Queens have been tried for Treaſon; but whether Dr. *Oates* underſtood that ſhe might be brought to a Trial, may be a Queſtion.

But that which I rely upon as an Anſwer, and which I deſire may be conſidered, is, that Dr. *Oates* had given an Account of a great many Perſons, and a great many Things he had ſworn againſt ſeveral Perſons, ſome of which were executed, ſome to be tried; and his Narrative againſt them, and of the whole Plot, conſiſted of a great Number of Particulars. Here is a Queſtion comes to the Doctor on a ſudden, *Have you any more to ſay, or can you ſpeak againſt any other?* 'Tis poſſible a Man that had ſaid ſo much, and of ſo many, might not upon an Inſtant recollect whether he had ſaid all, or againſt all that he could ſay: Nay, 'tis eaſily to be imagined he could not on a ſudden comprehend all he had ſaid or could ſay. Therefore that the Anſwer of a Man to ſuch a Queſtion, put ſuddenly to him, having ſo much in his Mind, and having ſaid ſo much, ſhould be taken ſo very ſtrictly, and to hold him as perjured, becauſe he did not at that inſtant Time remember this Particular of the Queen, I think is a ſevere Conſtruction.

His Lordſhip is pleaſed further to object againſt Dr. *Oates*, that he is of no Credit: Why? Becauſe he went to be of the *Romiſh* Religion, and ſo was of that Religion which is Idolatry: I ſuppoſe his Lordſhip will not call that Religion Idolatry another Time, and in another Place: But it ſerves his Lordſhip upon this particular Occaſion, to call it ſo. But ſuppoſe Dr. *Oates* did, out of Levity, or for want of being well grounded in his own, turn to another Religion, he is not the firſt Man that hath done ſo: There have been Men of great Fame in our Church, and of great Learning too, that have changed their Religion more than once. I think he that knew that famous Man Mr. *Chillingworth*, could not but know he was firſt a Proteſtant, and afterwards a Papiſt, and afterwards a Proteſtant again: So that unleſs my Lord could accuſe the Doctor of ſome great Crime or Immorality, it will be hard, that the Matter of changing his Religion ſhould hurt his Teſtimony. I am ſure, it was happy for us he did change; without that, we had not had the firſt Knowledge of the Plot, nor of many particulars which he could not come to know but by Occaſion of that Change.

My Lord was pleaſed to object, that the Doctor was a Man ſubject to Paſſion; and he brought in the Lieutenant of the *Tower* to ſpeak of ſome hot Words that paſſed between them. My Lords, I will allow the Doctor to be a Man of Paſſion; nay, if my Lord pleaſe, a Man that is not of the deepeſt Reach: But your Lordſhips will obſerve, that paſſionate Men are not often malicious; and that a Man who is not of a deep Judgment, could never have contrived and invented a Narrative, conſiſting of ſo many Particulars, and they ſo coherent, if they were falſe. And if his Narrative be not true, he muſt be endued with more Subtilty and wicked Policy, than upon Trial we can find in him. So that what my Lord hath objected as to his Infirmities, is no Diminution to the Truth of what he ſays, but rather a Confirmation of it.

My Lords, The laſt Witneſs whom my Lord endeavoured to impeach is Mr. *Turbervile*; and againſt him my Lord thinks he hath a great Advantage: But, my Lords, by that Time I have reminded your Lordſhips of what hath been already ſaid, and what was before proved in anſwer to my Lord's Objections againſt him, Mr. *Turbervile* will ſtand as clear in this Court, as any of the former Witneſſes.

Your Lordſhips will be pleaſed to take Notice, That Mr. *Turbervile* was at the Beginning, when he came to the Houſe of Commons, a little uncertain as to Matter of Time: For when he had made in his Affidavit, the Times to be (73) and (76), he craved leave to alter it to (72) and (75). Surely, my Lords, this will be far from being any Imputation to Mr. *Turbervile*; becauſe, firſt he gives the Reaſon, how he came afterwards to underſtand the Time better, by viewing his Papers and Letters; he likewiſe gives you an Account, and ſo did Sir *William Poulteney*, when he did this, the next Morning, before any Man in the World had queſtioned him upon it. So that it ſhews the Man's Care and Conſcience both, when he is ſo careful, even in Matters of the ſmalleſt Moment, to ſet things right.

There is no Man that knows the Practice of the Court of *Chancery*, but knows, that for a Man to mend his Anſwer after it is ſworn in a Point of Time, or other Circumſtance, is no Diſparagement to him: Nay, to do it, before the other Party did except or take Notice of it, is no Objection, but rather a Reputation to him: And your Lordſhips will be pleaſed to take Notice, that one of the Times rectified, is of 7 or 8 Years, the other of 4 Years ſtanding. And I do not think the worſe of a Witneſs that is not poſitive in a Time, when that Time is ſo far elapſed.

The next Matter is, That this Man was never with my Lord: How was that proved, for 'tis a Negative? Why, my Lord is pleaſed to call his own Servants, *Furneſe*, and the Boy *Leigh*; and what ſay they? They never ſaw any ſuch Man. My Lords, I deſire your Lordſhips to obſerve, That Mr. *Turbervile* was introduced by greater Confidents than either of theſe Servants. Mr. *Turbervile* came in the Company of the Prieſts, and you hear the Boy deny that he knew *Anthony Turbervile*, but not that he knew Father *Turbervile*; nor doth my Lord himſelf deny it, nor doth either Maſter or Man deny my Lord's Correſpondency with the other two Fathers. And it might be very eaſy for Mr. *Turbervile* to come in the Company of the Prieſts, and the Boy not take particular Notice of him. And 'tis as little an Objection what my Lord ſays, that *Turbervile* himſelf ſaid he did not know the Boy: How many are there that come to the Houſes of another, and unleſs they lodge there, or dine there often, do not remember the Servants of the Houſe? And 'tis no greater an Objection to ſay, the Servants did not know him: The Prieſts they knew him; they were his Guides; they were the likelieſt to gain him Admittance, not only into my Lord's Houſe, but into my Lord's Heart.

My Lords, your Lordſhips will be pleaſed likewiſe to obſerve, They have alſo gone about in very little Matters to diſprove Mr. *Turbervile*; as that whereas he ſays, he was not well uſed by my Lord *Powis* and his Lady, when he returned from *Doway*, that he was very well uſed: And as one Witneſs (I think *Minehead*) ſays, he was permitted to lie in a Room near my Lord's Chamber. My Lords, Mr. *Turbervile* does not pretend to ſay, that my Lord *Powis* ſhut him out of Doors; but what Reproaches or unkind Words might paſs between them in private, *Minehead* might not hear: So that to ſay, that he lay in my Lord's Houſe, is no Anſwer to this Matter. And for the other Witneſs (his Brother) that ſpeaks of his Kindred's being kind to him, that, under Favour, does not at all diſprove him; for, what was the Kindneſs? His Brother and Siſter were ſo kind as to give him 7*l.* never to ſee him more; a great Matter, when a younger Brother lies upon a Family, that the trouble of his Stay there is redeemed at the Price of 7*l.* This was a very great Kindneſs, a Kindneſs indeed that one would ſcarce deny to a Stranger, if in Poverty. I mention the leaſt Matters I can remember, becauſe I would have nothing ſtick with your Lordſhips.

Then Secretary *Lydcott* (the Fellow of *King's-College*) was called again; but indeed, my Lords, he was ſo out in his Arithmetick, ſo miſtaken in the Year, and uſed the New Stile (the *Romiſh*) ſo much more than ours, that it makes me ſuſpect he is not ſo great a Proteſtant as he pretends to be. He promiſed us his Book, which he was not then prepared to produce; but becauſe we do not hear of him, nor of his Book ſince, we ſay no more of him.

My Lords, *John Porter*, my Lord *Powis*'s Butler, comes next, and what does he tell your Lordſhips? Why, that Mr. *Turbervile* came not to *Powis* Houſe, (it ſeems he did not appear there) but that he came to a Victualling Houſe hard by; and he telling *Turbervile* he muſt know ſomething of the Plot, he denied that he knew any Thing. To the ſame Purpoſe, or rather to leſs, and more improbably, does *Yalden* (the Gentleman of *Gray*'s-*Inn*, as he calls himſelf) teſtify, who ſays, that walking in *Gray*'s-*Inn* Walks, he had a Diſcourſe with *Turbervile*; and that he then ſwore, there was no Trade good now but that of a Diſcoverer; and damned himſelf becauſe he could make no Diſcovery. Truly, my Lords, this looks in itſelf to be ſomething prepared for the Purpoſe: It is not probable, that a Man that ſhould uſe thoſe horrid Oaths, and ſhould have ſuch a Mind to be a Diſcoverer, ſhould diſable himſelf ever to be ſo by ſwearing he knew nothing.

But I will not only anſwer that Matter, with ſaying 'tis improbable; but I ſhall deſire your Lordſhips to remember, that Mr. *Powel*, a Gentleman of the ſame Houſe, and of good Reputation, does ſwear, that *Turbervile* did acquaint him, that he could diſcover a conſiderable Matter; and this was above a Year ſince. And Mr. *Arnold*, a Member of the Houſe of Commons, does confirm it, that he did ſeveral Times acquaint him, that he could make an important Diſcovery; and gave him ſeveral Reaſons why he thought not fit to do it at that Time, becauſe of the Dangers which might ariſe from ſome great Men; and therefore till he had a more convenient Opportunity, he would not diſcover. But as ſoon as the Parliament ſat, very early he did begin to diſcover: So that I ſhall oppoſe the Teſtimony of Mr. *Powel* and Mr. *Arnold*, to the Teſtimony of my Lord *Powis*'s Butler and Mr. *Yalden*; the latter of whom ſpeaks ſo improbably, and of a Diſcourſe half a Year ago; whereas Mr. *Powel* ſpeaks of what Mr. *Turbervile* ſaid above a Year ſince, and Mr. *Arnold* of a longer Time.

My Lords, It hath been ſometimes objected, that Mr. *Turbervile* was a Stranger to my Lord; and it was too great a truſt to commit to a Stranger, too great a Secret for a Stranger to be acquainted with: My Lord's Deſign of the King's Death was too great a Matter to lodge with one, with whom my Lord had no more Acquaintance than he had with *Turbervile*.

Your Lordſhips will be pleaſed to obſerve who they were that did introduce him, and who probably gave the beſt Character of him; they were the three Prieſts: And I do not wonder when theſe Prieſts had brought my Lord up to ſuch a Purpoſe, that they ſhould prevail with his Lordſhip to give Credit to, and deal with a Man that was not very unlike in his Circumſtances to attempt ſuch a Buſineſs: For your Lordſhips will obſerve, he was a Man that was very ſtout; for againſt my Lord's Reflection upon him as to Cowardice in deſerting the Army, Mr. *Turbervile* hath produced the Certificate of his Diſmiſſion, which gives him a very good Character. Beſides, he was a Man indigent; and therefore I think there could not be a fitter Man choſen for the Purpoſe, if he had been ſo void of all Grace as to undertake it; and that Prieſts having gotten a Man ſo qualified, as they thought him, were not likely to let ſlip ſuch an Opportunity.

But, my Lords, to come to that which is the Sum of the Buſineſs, and which my Lord lays more Weight on than all the reſt; and that is the Affidavit which Mr. *Turbervile* ſwore before the Juſtices of the Peace (which was, in Effect, what he informed the Houſe of Commons), and in that Affidavit, beſides his Alteration of Times (which I have ſpoken to already) it is objected, that he does ſay that which is manifeſtly untrue: For he ſays my Lord came by the Way of *Calais*, with Count *Gramont*; neither of which my Lord did do.

My Lords, I will not mention the Maſter of the Yacht, nor the Witneſſes from the Admiralty, which make out, that my Lord came from *Diep*, and not from *Calais*. Nor do I deny that my Lord came by himſelf, and not with Count *Gramont*; and therefore 'tis moſt certainly true, that what *Turbervile* ſwore, as to thoſe two Particulars, was not true. Yet if your Lordſhips pleaſe to obſerve the Circumſtances, tho' what he ſwore herein was not true, it will appear a very innocent Miſtake.

For in *Turbervile*'s Affidavit he tells your Lordſhips, That he came away without my Lord to *Diep*, and came from *Diep* to *England* before my Lord *Stafford* left *Paris*. Mr. *Turbervile* tells you afterwards my Lord came from *Calais* with Count *Gramont*: Mr. *Turbervile* could not poſſibly be thought to ſpeak this of his own Knowledge, becauſe he does in the ſame Affidavit tell you too, that he came away before my Lord, and had not his Paſſage with him. So that, my Lords, I deſire you would obſerve, it could be no Deſign of his to affirm this of his own Knowledge: For if it were, he took a very ill Courſe to diſcloſe in the ſame Affidavit that he was abſent, and ſo could not ſpeak of his own Knowledge. And, my Lords, ſuppoſe a Man did ſwear ſuch a Man and he were in ſuch Company, and that he came Home and left the Man there, and that afterwards the Man ſaid ſuch and ſuch Things in that Company; what ſhould I ſay of this Oath? I might well ſay the Words of his Oath were not proper, or that he was unwary in expreſſing himſelf; but I could not ſay, nor would any Man juſtly be able to ſay, he had a Deſign to make the World believe he heard him ſay ſo, becauſe he ſwears in the ſame Breath, he came away before the Words were ſpoken. If Mr. *Turbervile* had underſtood how ſtrict and nice a Man ought to be in expreſſing himſelf in an Affidavit, he would have ſaid (as he had been told) my Lord came to *Calais*; and that Count *Gramont* came with him, as he underſtood. 'Tis true, he hath not put in thoſe Words; but I beſeech you, when the Matter itſelf will bear it, nay, when 'tis moſt apparent, that Mr. *Turbervile* could have no other meaning than to relate what he was informed by others, and what he could not know himſelf; what Corruption, what Obliquity can there be in this Oath? All that can be ſaid, is, it was not cautiouſly worded; but it does certainly diſcloſe ſo much in itſelf, that every one that hears it muſt ſay, That he did not take upon himſelf to ſwear it as of his own Knowledge, becauſe he tells you he was not there; ſo that it was rather want of Knowledge how to expreſs himſelf properly, than any Corruption in his Oath, of forſwearing himſelf.

But, ſays my Lord, how ſhould he come to know this? Why Mr. *Turbervile* ſaid, he had a Letter whereby he knew my Lord would come by the Way of *Calais*: But where is that Letter? Is it neceſſary to keep, or does any Man almoſt keep Letters of no greater Concernment than this, that my Lord writ him Word how he would go by the Way of *Calais*, and this after five Years, and after he was in the Wars, and where I have heard he was taken Priſoner? To be ſure, he was much tumbled up and down from Place to Place. And under all theſe Circumſtances might not ſuch a Letter be loſt? But, my Lords, I beſeech you, are there not ſome Proofs that look much this Way, made out by another Witneſs? Does not Mr. *Mort* tell you ſomething of this Nature? Firſt, he agrees as to the Matter of an *Engliſh* Lord lying about ſuch a Street in *Paris*, he tells you he was with Mr. *Turbervile*, and that he himſelf walked about *Luxemburgh-Houſe* whilſt Mr. *Turbervile* went to ſpeak with that *Engliſh* Lord: He does ſay, he believes his Name was my Lord *Stafford*, but he is not poſitive; and the Times which he ſpeaks of do agree with what Mr. *Turbervile* depoſeth. And there is one Thing, which, though I ſhould not mention upon any other Occaſion, becauſe it was but a fooliſh Joke, yet I ſhall crave leave to ſpeak of it now. He tells you, That one Day, while they were at *Diep* in Expectation of my Lord's coming, and hearing that he went another Way, they had this Piece of minute Wit upon it, *Curſed is he that relies upon a broken Staff*: Whereby, he thinks, was meant the Name of *Stafford*. So then, I beſeech you, if *Mort* ſay true, are not here Footſteps, and a Foundation whereon to ground a Belief, that there was a Correſpondence between *Turbervile* and my Lord; and that Mr. *Turbervile* had an Information, that my Lord would come by the Way of *Calais*? And one Thing more *Mort* ſays, That *Turbervile* told him, if he would make Haſte to *Calais*, he might go over with my Lord. And here I would obſerve, how ſhould Mr. *Turbervile* come to know that my Lord went that Way? And how ſhould he tell *Mort* that he might go over with my Lord from *Calais*, unleſs he had received ſome ſuch Information? Therefore, my Lords, taking into Conſideration what is confirmed by *Mort*, and taking into Conſideration the whole Scope of the Affidavit, I cannot ſee that there can be any material Objection againſt Mr. *Turbervile* for ſaying, that my Lord came by *Calais* in the Company of Count *Gramont*.

My Lords, I have done now with the Witneſſes, and I told you, as I went along, (becauſe I would not trouble you with a double Repetition) what Evidence we have given in Contradiction to thoſe Witneſſes which my Lord hath brought in order to defame our Witneſſes.

But, my Lords, I am to acquaint you, That beſides theſe particular Anſwers, your Lordſhips have had Men of very great Credit brought to teſtify the Reputation of Mr. *Dugdale* and Mr. *Turbervile*. As to Mr. *Dugdale*, we have brought Men that have known him a great while; one hath ſworn what Opinion even my Lord *Aſton* himſelf had of him: For it ſeems he lived with ſo much Credit there, that he would not believe any Ill of him. You have heard from other Witneſſes how he did behave himſelf. It was objected ſometimes, Tradeſmen were not paid; but what then? can a Man pay without Money? I believe there are ſome Lords here, whoſe Stewards are very honeſt Men, and yet the Tradeſmen ſuch Lords deal with are not always readily paid.

He was, as you obſerve, believed to be in the Plot, and my Lord's Servants ſay he ſeemed much troubled about it; he went away upon that account, and was ſo much concerned, that he burnt his Papers, which I make uſe of for two Purpoſes, The one to ſhew that he did apprehend he was in great Danger; the other to ſhew what was the Reaſon why the Letters and Papers he ſpeaks of are not now produc'd; becauſe he look'd upon himſelf, and them who were then his Friends, to be in ſuch Danger by them, that he burnt them.

My Lords, I know your Lordſhips will take notice, that there hath been a very good Account given you, how it was that *Dugdale* came to be prevailed upon to make a Diſcovery of the Plot; it was with great Difficulty; there were indeed Perſuaſions uſed by ſome of his Friends to bring him to it. The Juſtices, as they themſelves have ſworn, endeavour'd the ſame thing, but all without Succeſs. Then the Coroner, Mr. *Southall*, (who tho' he was no great, yet ſeems to be a very underſtanding Man) takes him in Hand, and he had the good Fortune to ſucceed. I call it Good, not only for Mr. *Dugdale*, but for the Nation. I ſhall not trouble your Lordſhips with the Particulars of the Arguments Mr. *Southall* uſed to him, but 'tis plain (if you believe Mr. *Southall*, whoſe Credit is now ſupported by an honourable Lord, and by a Member of the Houſe of Commons) that *Dugdale* did at the firſt Time that he did make a Diſcovery, depoſe as much in Subſtance againſt this Lord, as now he does. And from thence I deſire to make one Obſervation, and that is this:

'Twas impoſſible it could be a Contrivance among the Witneſſes themſelves to depoſe the ſame Crimes againſt this Lord; for Dr. *Oates* never knew Mr. *Dugdale*, till *Dugdale* was brought up, which was long after Dr. *Oates*'s Accuſation of this Lord; nor could *Dugdale* know what Evidence *Oates* had given here, for *Dugdale* was a cloſe Priſoner in *Stafford* Goal before *Oates* accuſed this Lord, and long after. And yet the firſt Evidence *Dugdale* gives againſt this Lord, doth in Subſtance concur with that given by Dr. *Oates*. So that ſince there could be no Intercourſe nor Conference between them, but as much Diſtance as from the Priſon-Doors in *Stafford* to *London*, there could be no Contrivance between them, for both of them to accuſe this Lord of the ſame Matters. And this I deſire may be looked upon by your Lordſhips as a Matter of great Weight to ſupport the Credit of the whole Evidence. And *Dugdale* does ſeem to be a Perſon of an unqueſtionable Credit, and every one that hears him muſt obſerve, he does give his Evidence with great Modeſty, and all Probability of Truth.

There is another thing, my Lords, that I would pray your Lordſhips to obſerve, Theſe Witneſſes, Mr. *Dugdale* and Dr. *Oates*, do give ſuch an Evidence as is impoſſible to be given, unleſs it were true; for other Witneſſes when they are put out of the Road, and aſked Queſtions they did not expect, are commonly to ſeek, and muſt pump for an Anſwer, and then anſwer with great Difficulty and Warineſs. But theſe two Witneſſes do not only anſwer with Readineſs when you aſk them any Queſtions, but what is contained in every new Anſwer doth add a further Probability and Confirmation to what they ſaid before. And I muſt needs ſay of them, I think it were impoſſible for any Men in the World to contrive a Story of ſo many Particulars, and ſo conſiſtent in every part of it, and yet the ſame ſhould be falſe; and which is more, after ſo many Trials, not one material Circumſtance of what they ſay contradicted by any ſolid Proof.

My Lords, There may be other Particulars which I may have forgotten; I know not whether I obſerved that my Lord objected that we do not prove him a Papiſt: I hinted ſomething before about his coming to Maſs to my Lord *Aſton*'s at *Tixall*, which is one ſort of Proof of his being of the *Romiſh* Religion. Beſides his perpetual Converſation with that Pary, and his Endeavours to promote their Religion and Deſigns, all which have been fully proved: I think alſo my Lord deſerted the Houſe of Peers, for that he would not take the Teſt appointed by the late Act; your Lordſhips beſt know whether he did ſo or no. But, my Lords, let him, if he will be a Proteſtant for this time; let that be ſuppos'd: If he were a Proteſtant, and ſhould be guilty of the Offences proved upon him, he would not deſerve more Favour from your Lordſhips.

My Lord hath been likewiſe pleas'd in further Proof of his Innocency to alledge, that after the Plot was diſcovered, he had ſeven Poſts time to have eſcaped, and yet never fled. My Lords, 'Tis true he might have fled, ſo might *Coleman* too; that *Coleman* that left ſo fatal an Evidence againſt himſelf and all his Party under his own Hand, and for that had reaſon to believe himſelf very guilty: And ſo might the Jeſuits have eſcap'd too, but that they had hopes the Oath of Secrecy, and the Means they had uſed to conceal their damnable Deſigns, would have been a ſufficient Security againſt revealing it. They had that Opinion of their Prieſts, and of the Fidelity and Conſtancy of thoſe that had been ſeduc'd by them, and recommended by them, that they apprehended nothing leſs than a Diſcovery. And thoſe other Perſons that were executed, did all ſtay about the Town after the Plot was diſcovered, as well as this Lord ſtay'd in the Country.

My Lord did very much complain, that our Witneſſes were not poſitive in point of Time: I think *Dugdale* was poſitive enough as to the time of the Offer of 500*l.* but for other Matters, he would not confine himſelf to a Month: He talk'd of the latter End of one Month, and the Beginning of another, I think he is the more to be believed; for I conceive, unleſs a Witneſs hath ſome notorious Circumſtance in his Memory to ſatisfy him about the Certainty of the Time (ſuch as was that of the Foot-Race, as to the Time of the Offer of 500*l.*) it is rather a Mark of Preſumption than of Sincerity for a Witneſs to be too poſitive as to the Time. And is there ſo great a Diſtance between the latter End of one Month, and the Beginning of another, that a Witneſs need to be poſitive as to the very Day? But, ſays my Lord, You talk of the Beginning; it was the 12th of *September* ere I came thither. Does not every Man count, that till the Middle of a Month 'tis the Beginning of a Month? Sure in common Speech it is ſo. Therefore I look upon that as a Matter ſcarce worth the mentioning; I am ſure, not worth the ſerious anſwering.

But, my Lords, I muſt obſerve thus much, That what my Lord complains of as a Fault in our Witneſſes, his own Witneſſes are guilty of. For I appeal to your Lordſhips, when they came to ſpeak of Times, whether they did not talk at a Diſtance of a Month or Months, and ſometimes of Years, and were leſs certain in Point of Time than ours.

But, ſays my Lord (for I am ſtill anſwering his Objections, and you muſt take them as I find them), here is Mention made by Dr. *Oates* of Letters, of many Letters; ſhew me ſome of thoſe Letters: Shew me the Letter you carried to the Poſt-houſe. My Lords, were thoſe Letters written to Dr. *Oates?* Did they belong to him? Or is it poſſible that my Lord's Letter delivered by the Doctor to the Poſt-houſe, ſhould now be ſhewn by the Doctor, or that the Letters writ to the Superior of the Society of the Jeſuits, ſhould be produced by one that was a Novice of that Society? Does Dr. *Oates* talk of one Letter written to himſelf? You will then, I ſuppoſe, ſee no Reaſon to expect thoſe Letters ſhould be produced by him that were not written to him, and the Cuſtody whereof belonged to others.

My Lords, I muſt obſerve to you, that there have been great Endeavours uſed to invalidate our Teſtimony; we have had Witneſſes called againſt Witneſſes, and my Lord hath had that Advantage to do it, which perhaps was never given in any Caſe before, and which I hope will never be again. The Evidence hath been printed and publiſhed to the World, before it hath been given. I ſay not that it was not neceſſary in this Caſe, which was a National Cauſe, and the Cauſe of our Religion; but I do ſay, it would not be fit to be done in other Caſes; for the notifying of the Evidence is the Way to have it falſified and corrupted.

But notwithſtanding all theſe Advantages, my Lords, I appeal to your Lordſhips Memories, what conſiderable Contradiction hath been given. It is true, ſome Witneſſes to that End have been brought before your Lordſhips, but thoſe Witneſſes have been rendered incredible by more credible Perſons; and I would deſire your Lordſhips to obſerve, that tho' my Lord hath failed of proving any Subornation in our Witneſſes, yet we have proved much Subornation endeavoured by his Agents.

Your Lordſhips have the Record againſt *Reading* before you; and what Reference that hath to the Lords in the *Tower*, every one does remember, and my Lord is mentioned in that Record. And I might likewiſe mention the Buſineſs of *Cellier*, and what therein related to the Lords in the *Tower*. And I'll name but two Witneſſes more, that have been attempted upon in this Nature: There was *Wright* the Barber; all the Applications were made to him that could be; Money given, Letters writ, Inſinuations that he was not to ſwear, he was but to write, and that was eaſily done; or if he would be ſo kind to ſwear it, he ſhould never come into open Court, only go before a Juſtice of Peace: So that your Lordſhips will obſerve by what Steps and Degrees Men were endeavoured to be ſuborned. And then *Launder* tells you what was offered to him to perjure himſelf, how he was brought to *Tixall*, and what Endeavours were uſed to make him ſwear againſt our Witneſſes.

Theſe Things are plain, both by Records and particular Proofs upon Oath. But, my Lords, leſt we ſhould want Proof of all, this very Lord (I pity him for it) hath been ſo unfortunate as to bring that Paper out of his Pocket, which *Wright* ſays he had Money to frame, and was to ſwear to. It ſeems my Lord had the Command of it, it ſeems to have been prepared for ſuch a good Time as this, and the producing of this Paper is as full a Confirmation of this Point, as can in Reaſon be expected.

My Lords, I have been, I fear, too long already; and yet, I fear, I have omitted as many Particulars as I have mentioned.

My Lords, the Evidence is ſo ſtrong, that I think it admits of no Doubt; and the Offences proved againſt my Lord and the reſt of his Party are ſo foul, that they need no Aggravation. The Offences are againſt the King, againſt his ſacred Life, againſt the Proteſtant Religion, nay, againſt all Proteſtants; for it was for the Extirpation of all Proteſtants out of theſe three Nations. I mean not of every one that is now ſo, but of every one that would have continued ſo, every one amongſt us (if theſe Deſigns had been accompliſhed) muſt either have turned his Religion, or turned out of his Country, or have been burned in it.

'Tis a Deſign that appears with ſo dreadful a Countenance to your Lordſhips, to this great Aſſembly, and to the whole Nation, that it needs not any Words I can uſe to make you apprehend it. If the Matter be fully proved (as I ſee no Reaſon to doubt but that it is), I am ſure your Lordſhips will do that Juſtice to your King and Country, as to give Judgment againſt theſe Offenders, which will not only be a Security to us againſt them, but a Terror to all others againſt committing the like Offences.

L. *Staff.* I beg your Lordſhips to know, whether you will give me Leave to ſpeak a Word? And, my Lords, I ſhall not ſpeak any Thing but as to a Miſtake Sir *William Jones* hath made in two or three Things. Pray, my Lords, may I put you in Mind of them?

Sir *Will. Jones.* If there be any Miſtake, pray tell us what it is.

L. *Staff.* Firſt, my Lords, he did omit telling you that Mr. *Turbervile*'s Brother did ſay he came in 71 to my Lord *Powis*'s. Secondly, he ſays, I have proved myſelf a Papiſt, becauſe I have not taken the Teſt: My Lords, the Teſt was ſince I was in the *Tower*, and whether I will take it or not, I do not yet know, till it be offered me. The third is this, that this Letter was in my Pocket, which I produced to you: My Lords, I knew nothing what was in it, it was given into my Hand as I ſtood here at the Bar. Fourthly, he ſaid, *Hobſon* did go out of *England* with the Almoner; he did not ſo. Another Thing he ſays, that I ſaid *Oates* was an infamous Perſon, becauſe he went to a Church that I ſaid was idolatrous; I only ſaid, it was ſo adjudged by Act of Parliament. I find, my Lords, theſe Things he is miſtaken in; and that, my Lords, made me very willing to put you in Mind of them.

L. H. S. Gentlemen, I would aſk you, whether you take any Notice of the Points in Law?

Sir *Fr. Win.* After the Fact is ſtated, my Lords, we ſhall.

Then Mr. Powle, *alſo one of the Committee appointed to manage the Evidence, proceeded further in ſumming up the ſame.*

Mr. *Powle.* My Lords, The learned Perſon that ſpake laſt, hath left very little for me to ſay in the ſumming up of this Evidence: But becauſe this Noble Lord hath been pleaſed to alledge ſeveral Reaſons, from whence he would infer at leaſt a great Improbability, that he ſhould be guilty of the Treaſons whereof he ſtands accuſed, I ſhall crave your Lordſhips Patience, that I may give three or four Words in Anſwer to thoſe Particulars.

My Lords, in the firſt Place, this noble Lord was pleaſed to begin, and afterwards to continue his Defence, with making Proteſtations of his own Innocency: We very well know your Lordſhips ſit now in the Seat of Juſtice, and whatſoever Credit or Regard your Lordſhips pleaſe to give to the Proteſtations of a Peer in another Caſe, your Lordſhips will proceed here only according to your Proofs and your Evidence *(ſecundum Allegata & Probata)*, and therefore all we ſhall ſay to this, is, that we hope our Proofs are ſo clear and evident, as will leave no Room to your Lordſhips to believe this noble Lord's Proteſtations.

In the next Place, my Lord is pleaſed to alledge, and withal to lay ſome Weight upon it, the voluntary ſurrendering of himſelf to Juſtice; and he laid it down as a Rule, that as Flight is an Argument of Guilt, ſo the ſurrendering of a Man's ſelf to the Trial of the Law, is an Argument of Innocency.

My Lords, We admit the Rule generally to be true, but in ſome particular Caſes it may be otherwiſe; for a Man that is not very conficent of his own Innocency, may yet be very confident of the Strength of his Party; and whether the Conſideration of the Circumſtances of Affairs, as they then ſtood, and the Power and Prevalency of the Popiſh Party at that Time, might not reaſonably create ſuch a Confidence in this noble Lord, we muſt leave to your Lordſhips Judgment.

My Lords, We do conceive, that thoſe Perſons who contrived Sir *Edmundbury Godfrey*'s Murder, had ſo great Confidence in the Favour and Protection of ſome of their Party, that they thought themſelves able to outface Juſtice.

And we verily believe they intended it as an Example, to deter all Men from meddling ſo much as with the taking an Examination concerning this horrid Plot.

My Lords, I deſire to be underſtood aright in this: I lay nothing of the Death of Sir *Edmundbury Godfrey* to the Charge of this noble Lord; I only uſe it as an Argument of the Preſumption of the Popiſh Party at that Time.

My Lords, In the next Place, my Lord *Stafford* did obſerve from my Lord *Coke*, that in the Trials of Treaſons we ought very much to guide our Judgments by the Nature and Circumſtances of the Fact (the Concomitants and Subſequents, as he termed them) with Reference to the Perſon accuſed, whether they were likely to induce or deter him from ſuch an Attempt; and here he was pleaſed to raiſe ſome Arguments from the whole Courſe of his Life, and did deſire your Lordſhips to conſider thoſe Circumſtances therein, that might make it improbable or impoſſible that he ſhould commit a Treaſon of this Nature.

He deſired alſo your Lordſhips to remember, that he was deſcended from an honourable Family, and that his Anceſtors were very worthy and very deſerving Perſons, and ſuch as had often ventured their Lives in Defence of their Country: and here he did likewiſe mention his own Services to the laſt King, and our preſent Sovereign in the late Wars.

It is not my Part, nor will I derogate any thing from the Merits of this noble Lord, much leſs from the Honour of his Family: But in Anſwer to this, we ſhall deſire your Lordſhips to conſider, that this noble Lord (however he is pleaſed to diſown it at preſent) is notoriouſly known to be a *Roman* Catholick (as they call themſelves), and ſuch we conceive we have ſufficiently proved him to be, in the Courſe of our Evidence: And as there is nothing in the World ſo much as a miſguided Conſcience, that can engage the beſt of Men into the worſt of Actions; ſo we think the Principles of that Religion are ſuch, as are more likely to pervert Men from their Duty and Allegiance, than any other Religion or Perſuaſion whatſoever.

And if the Zeal of this noble Lord did engage him to endeavour the Eſtabliſhment of that Religion in this Kingdom, we may eaſily believe that his Reaſon did ſuggeſt to him the Means by which it muſt be effected, which could be no other but Blood and Confuſion.

My Lords, The laſt Thing I ſhall take Notice of, is, what my Lord *Stafford* was pleaſed to ſay in general, as to the Doctrine of killing and depoſing Princes, which his Lordſhip was pleaſed to call a private Opinion, and not the Doctrine of the Church of *Rome*.

But by the Way, my Lords, give me Leave to obſerve, that this noble Lord did upon this Occaſion fully own (and I much commend his Ingenuity in it) the Reality of the Gun-Powder-Treaſon, ſince we know how much that Party have endeavoured to render it incredible: And as Length of Time hath ſo fully manifeſted the Particulars of that execrable Deſign, that it hath brought ſuch as are of that Perſuaſion to confeſs the Truth of it; ſo we hope this Day's Trial will convince both the Age we live in, and all Poſterity, of the Truth and Reality of this preſent Conſpiracy. But to go on with that Point from which I did digreſs: I am not, I confeſs, much verſed in the Canons and Councils of the Church of *Rome*; but, my Lords, this I know, the moſt famous and celebrated Writers of that Church, eſpecially of the Society of the Jeſuits, have publickly avowed and maintained this Doctrine. And we know in all Times, when there hath been Occaſion to put it in Practice, it hath never failed to have been attempted; and we likewiſe know, that the Church of *Rome* and the Pope have always avowed the Acts when they have been done. From all which we may very reaſonably conclude, that it is the Doctrine of that Church ſo to do.

But my Lord is pleaſed to ſay, and I admit it for Truth, That a great many private Writers do hold the contrary; I believe it to be ſo, but I do alſo believe, that it is the Policy and Artifice of the Church of *Rome*, to leave this Point of Doctrine in ſome meaſure undetermined, that ſo they may make uſe of it as the occaſion ſerves; for if it ſucceeds, then it is owned and juſtified; if it miſcarry, then the Doctrine is but a private Opinion, and the Plot but the Practice of particular Perſons that are either deſperate or diſcontented. And I am fully of opinion, that this horrid Conſpiracy which is brought this Day in Judgment before your Lordſhips, wants nothing but Succeſs to canonize it.

My Lords, as to what concerns the Evidence, it hath been ſo fully ſtated to you, and the Objections that were raiſed to invalidate it, ſo well anſwered, that I will not trouble your Lordſhips with any Repetition of what has been ſaid already: All we have further to deſire, is, That your Lordſhips will pleaſe to take our Evidence into your Conſideration, and to do thereupon what ſhall be agreeable to Juſtice.

Mr. Serj. *Mayn.* My Lords, As to the Matter of Fact I ſhall ſay nothing but only this, (and I wiſh it may be ſpoken with Gratitude to Almighty God) that the Diſcovery of this Plot is rather the Work of God than Man. It was firſt his Act, in prevailing upon *Oates* to make the Diſcovery; and when he ſtood ſingle almoſt, what came to ſupport his credit but the Letters of *Coleman?* which were like a Tally to what *Oates* had ſaid, for what *Oates* informs is in a great part made good by his Letters. Then when *Godfrey* was murder'd, how came that Diſcovery out, but by the voluntary Confeſſion of one engaged in the whole Plot; I mean *Bedloe?* So that tho' theſe Men had engaged themſelves by wicked Oaths, yet their own Conſciences witneſſing againſt them in themſelves, they could not forbear coming in to teſtify againſt themſelves. I ſhall ſay no more, than that we ought to acknowledge the Hand of God in the Diſcovery with great Thankfulneſs; for it is he, and he alone, that out of his own Grace and Goodneſs hath done it, and thereby preſerved the Life of our Prince to us, and in Him us too.

But as to the Matter in Law:

My Lord has been pleaſed to mention firſt this, That there is no Overt-Act. I wonder that my Lord ſhould be ſo much miſtaken. When it is charged in the Articles, and proved to his Face he received a Commiſſion, is not that an Overt-Act? He is charged in the Articles of Impeachment with contriving the Death of the King, and being at ſeveral Meetings and Conſults about the King's Death, and hiring perſons to kill the King; and are theſe no Overt-Acts? Therefore, as to that, my Lord is miſtaken.

My Lords, Another Exception that is taken, is, That there is no Indictment. I conceive that an Impeachment of the Houſe of Commons is more than an Indictment. And there cannot be any doubt of that, the Impeachments of the Houſe of Commons having always been received and proceeded on by your Lordſhips.

But that which is moſt inſiſted upon, is, That this Charge that is made againſt this Lord, was preſented in another Parliament. It is true; but under favour, what is once upon Record in Parliament, may at any time afterwards be proceeded upon. It is a ſudden Objection, but I conceive it hath been done: However, in a Caſe of this nature, when the Life of the King, when our own Lives, and our Nation, and our Religion lies at ſtake, if there were not a Precedent, I hope you would make a Precedent. But under favour, Reaſon is for it, the Charge is before you, the Proof is made and we pray you will judge according as the Evidence hath been.

Sir *W. Jones.* My Lords, as to theſe Matters of Law, I think they are of ſo little difficulty, that my Lord will not deſire to have Counſel aſſigned him; I am ſure his Counſel will not deſire to ſpeak to them.

For this laſt Matter which Mr. Serjeant ſpoke of, and which was firſt named by the Priſoner, I deſire your Lordſhips to conſider what it is. Says my Lord the Priſoner, there was an Impeachment begun in the Long-Parliament, and this is now the third Parliament in which I am brought to my Trial. It is very true, there was a general Impeachment in the Long-Parliament, the particular one was in the laſt, and this Lord was pleaſed to plead in the laſt. It may be he was not ſo well adviſed then as he is now.

But, my Lords, how can this be a doubt, when your Lordſhips have reſolved, and have ſent it down to the Commons, and it is there entered in their Book, as the Law and Conſtitution of Parliaments, that not only Impeachments, but all judicial Proceedings continue from Parliament to Parliament, in the ſame ſtate that they were in at the riſing of the laſt Parliament.

This is now become the Law of your Houſe, and it is under favour, being ſo, the Law of the Kingdom; and you having thus declared it, and ſent it to the Commons, I hope the Commons had very good reaſon to proceed upon this Impeachment at this time.

The next Matter is concerning the Overt-Acts; I think there are ſuffi- Overt-Acts in Proof, and ſufficient in the Impeachment. Will any man deny that the receiving a Commiſſion to be Pay-maſter of an Army is an Overt-Act? Will any deny, that the ſending for the Witneſs, and offering him Money in order to hire him to kill the King, is an Overt-Act? And (which anſwers to all) will any Man deny that the meeting and conſulting of ſeveral Men together, about killing the King, and changing the Government, is an Overt-Act?

My Lords, theſe are all Overt-Acts; and I cannot but think it was without Advice of my Lord's Counſel that he made theſe Objections: for indeed theſe ſeveral Overt-Acts are laid in the Impeachment as fully as they are made out in Proof.

My Lords, There is another Objection that my Lord is pleaſed to make, and that is, that there is but one Witneſs to a particular Fact.

L. H. S. Ay, what ſay you to that?

Sir *W. Jones.* That, my Lords, is of little weight, with ſubmiſſion; for our Impeachments, and our Proofs run to this, That my Lord had a Deſign and Intention to deſtroy the King: This was to be done by force, and this was to be done by ſecret Aſſaſſination. Now if ſeveral Witneſſes come and prove each a diſtinct Act, under this Head of killing the King, it is ſo many Proofs or Witneſſes to the Treaſon.

For, my Lords, if a Man ſhall intend to kill the King, and ſhall buy a Knife in one County at one time, and ſend for a Man out of another County at another time, whom he ſhall hire to kill the King, and theſe diſtinct Acts proved by ſeveral Witneſſes; if they concur to the ſame general Treaſon, they are all but Parts of that, and ſo are ſo many Witneſſes to the whole. And ſo I am ſure it was reſolved in the Caſe of others of the Conſpirators in the *Old-Bailey*, and before that in the Caſe of Sir *Henry Vane* *. But,

My Lords, in this Caſe here is firſt a Proof that he accepted a Commiſſion, which I do not uſe as an Act for the levying of War only, but as a Deſign to change the Government, and deſtroy the King. Here is meeting and conſulting how to do this wicked Work, I mean to kill the King; that is another Overt-Act. Here is offering Money to one of the Witneſſes for that end; that is a third Overt-Act. And there is attempting another of them, tho' not with Money, yet with promiſes of Reward in general; that is another Overt-Act: All which are to this End, the killing of the King. And I am ſure of it, your Lordſhips cannot but receive ſatisfaction from my Lords the Judges, that it hath always been ſo held, that tho' there need two Witneſſes to prove Treaſon, yet there needs no more than one to one Act, and another to another, if the ſeveral Acts fall under the ſame Head of Treaſon.

Sir *F. Win.* My Lords, I crave your Patience but for a Word or two, and this Noble Lord will have little reaſon to ſay his Objections in point of Law are of any weight. I confeſs he had ſaid a great thing, if it were true, that the Articles of Impeachment did not alledge an Overt-Act; for then indeed they had been apparently defective: But, under his pardon, that is not a Point of Law, but a Point of Fact. Let us therefore reſort to the Articles themſelves: In the ſecond Article it is alledged, that he, with the reſt, did moſt wickedly and traitorouſly agree, conſpire and reſolve to impriſon, depoſe and murder his ſacred Majeſty, and to deprive him of his Regal State and Government. And then the ſame Article alledges farther, that they did contrive and conſult to effect the Murder of the King, by Shooting, by Poiſoning, and by Stabbing. All theſe Particulars are expreſſed; ſo that when my Lord ſaid the Articles were therein defective, all we can ſay, is, that he was miſinformed.

My Lords, There was another Exception taken, That this is the Impeachment of another Parliament. I muſt not now repeat how this Point was agreed by both Houſes at a Conference; but it was then declared, upon ſearch of Precedents in all Ages, That it was the Law of Parliaments, which is the Law of the Land, that if once an Impeachment by the Houſe of Commons were lodged in the Houſe of Lords, tho' that Parliament were diſſolved, the Impeachment remained in the ſame ſtate. It was the Cauſe of the Commons of *England*, who only change their Repreſentatives in a new Parliament.

It has been alſo objected, that this Proſecution ought to have been upon an Indictment: As if an Accuſation of the Houſe of Commons, who are the Grand Inqueſt of the Nation, were not as effectual to bring Offenders to Juſtice, as the finding of a particular Jury.

My Lords, I ſhould wonder to hear this Objection made, were not my Lord to be eaſily excuſed for his knowing the Law no better. None who know any thing in the Law, would have urged ſuch a thing; his Council, I dare ſay, did not ſuggeſt this Matter to him.

It is true, my Lords, when a Peer comes to be tried by way of Commiſſion, or in Parliament when it is not at the Proſecution of the Commons, there an Indictment is firſt found in the proper County, and brought up before the Peers by *Certiorari*, and upon that they proceed; but whether the Party be a Peer or Commoner, if he be impeached for many Crimes, ſurely no one can deny, but that by the conſtant Uſage of Parliaments the Lords have proceeded to Trial, and have given Judgment thereupon without an Indictment found: So that this Exception will be of no force at all.

As for the remaining Objection, That there are not two Witneſſes to prove any one Overt-Act, the King's Perſon would be in no manner of Safety, if that Doctrine ſhould be once allowed. Conſpiring to kill the King is the Treaſon laid in the Impeachment, and the ſeveral Overt-Acts are ſo many ſeveral Evidences of that Treaſon. Words themſelves, if they ſignify an Intention to do an Act, and expreſs ſomething to be done *in futuro*, are a ſufficient Overt-Act, and a legal Evidence of Treaſon. Then we prove by another Witneſs, not Words of Encouragement only, but Offers of Money, and they are both to the ſame kind of Treaſon, though not to the ſame Act, and at the ſame time. And if there muſt be two Witneſſes to every ſingle Act, the King of *England* is not only in a far worſe Condition than any other Prince, but than any one of his own Subjects. Treaſons may be committed every day with Impunity, and unleſs the Traitors be as great Fools as Villains, he ſhall never be ſafe from them, nor capable of puniſhing them.

I muſt ſay it, and I ſay it with Commiſeration to the Condition of this noble Lord, that his Exceptions in Law are as weak as the Anſwers he has given to our Evidence. We hope no Doubt in Law remains with you, and that we have given your Lordſhips full Satisfaction of the Reality of the Plot, and a convincing Evidence of the great ſhare which my Lord *Stafford* had in it; and we humbly pray your Lordſhips Juſtice.

L. H. S. You do not take notice of one thing that my Lord *Stafford* ſaid this Morning; that is, That the Witneſſes are not competent Witneſſes, becauſe they ſwore for Money, and that is fit to be ſpoken unto; not for the Weight of the Objection, ſo much as for the Satisfaction of the Auditory.

Sir *F. Win.* My Lords, I had taken a Note of that, but forgot to mention it. If my Lord at the Bar will ſay they have taken Money to ſwear, that is purely a Matter of Fact which he ought to prove; and that which is ſaid and not proved, ought to go for nothing: Let him prove his Caſe to be ſo, and then we will give him an Anſwer.

L. H. S. My Lord *Stafford,* If your Lordſhip can prove that they have had Money to ſwear, your Lordſhip urges that which will be material; but if it were only Money to maintain them, that ſure will amount to no Objection.

L. *Staff.* My Lords, I ſubmit it to your Lordſhips, whether Dr. *Oates* and the reſt have not had great ſums of Money, beſides their Charges 10*l.* a-week a-piece. But I deſire your Lordſhips to conſider, and I appeal to many of your Lordſhips, whether it has not been ſaid that there was a Defect in *Coleman*'s and *Langhorn*'s Trials, that they did not plead that; and if they had pleaded it, they muſt have been acquitted: I will name no body, but I appeal to your Lordſhips, whether ſome of you have not ſaid ſo. But I deſire your Lordſhips to admit me to plead by my Counſel; if not, I ſubmit it to you. I confeſs here is a Piece of Law that I never heard of before, that the Houſe of Commons, and your Lordſhips at a Conference, have adjudged it to be the Law of Parliaments, That Impeachments ſhall continue from Parliament to Parliament. If you will pleaſe to hear my Counſel for me, ſo; if not, I ſubmit.

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* Trial 58.

L. H. S. What would you, or can you prove?

L. *Staff.* My Lords, thoſe things that I have given in to your Lordſhips, I deſire my Counſel may be heard to.

L. H. S. Gentlemen, What can you object why he ſhould not have Counſel to argue his objections in Law?

Sir *W. Jones.* My Lords, I do think under favour, if a Priſoner in a Capital Cauſe do deſire Counſel, he muſt not only alledge Matter of Law to introduce that Deſire; but that which he doth alledge muſt be alſo a Matter of ſome Doubt to the Court: For if he do alledge Matter which in itſelf is not diſputable, he ſhall have no Counſel allowed him. If your Lordſhips are not ſatisfied that it is the Law of your Houſe, that Proceedings upon Impeachments do continue from Parliament to Parliament, we cannot anſwer that, it lies in your Lordſhips Breaſts; it is not what we are to argue, becauſe it is a Matter that concerns the Law and Rules of Parliaments. Is there, my Lords, any doubt of any other Point that is urg'd? Is there any doubt of this thing, whether if one Witneſs ſpeak to one Point of Fact, and another to another, upon the ſame ſort of Treaſon, but that theſe be two ſuch Witneſſes as the Law requires? I pray then, my Lords, conſider the Conſequence of that Doubt: A Man ſhall talk with twenty Perſons about a Deſign to kill the King, in one and the ſame Room, one after another, by taking them into a Corner ſingly; and if ten, or all twenty come to prove it, here is but one Witneſs to each Diſcourſe. This would be a Matter of dangerous Conſequence, but I hope will remain no manner of Doubt with you, nor is it fit to be argued.

As to the hiring of Witneſſes to ſwear, I think that can be no Point of Law till it be ſo proved in Fact. Doth his Lordſhip think, that when his Majeſty, out of his Grace and Bounty, allows a Maintenance to his Witneſſes, that that is an Objection to their Teſtimony? Doth not every Man allow his Witneſſes a Maintenance, and yet it never was thought a thing to take away their Evidence? It may be every one doth not give ſo large an Allowance as the King, becauſe his Dignity is not ſo great. But can it be an Objection to the Houſe of Commons? Have we that are the Proſecutors maintain'd them? If his Majeſty has been bountiful to his Witneſſes, what is that to this Cauſe of the Commons? If my Lord can prove any thing of Bribery in us, as he has proved for us againſt himſelf, it may be an Objection. But till that Fact be proved, I hope there is no ground for a Queſtion in Law; and if there be no Doubt in Law, I hope there will be no need of Counſel.

L. H. S. My Lord *Stafford*, What are the Points you would have Counſel to?

L. *Staff.* To all of them, my Lords.

L. H. S. Would you have Counſel to the firſt Point, to argue what the Law of Parliaments is concerning the Continuance of Impeachments from Parliament to Parliament?

L. *Staff.* My Lords, If you will declare the Law to be as theſe Gentlemen ſay, I muſt acquieſce.

L. H. S. Pardon me, my Lord, I do not declare the Law, but aſk you whether you would have Counſel to argue that Point?

L. *Staff.* My Lords, I do ſay there is no Example of it: I know there have been Impeachments, but no Examples of Impeachments continued from Parliament to Parliament.

L. H. S. Then in the next place, for I ſhall propoſe your Objections to their Lordſhips by and by, and deſire their Judgment in them, do you deſire to argue by your Counſel, that every Overt-Act ought to be proved by two Witneſſes?

L. *Staff.* I do, my Lords; I deſire my Counſel my be heard to all the Points I mentioned to your Lordſhips.

L. H. S. Have you Counſel ready to ſpeak to theſe Points now?

L. *Staff.* Yes, my Lords.

L. H. S. Are they prepared to ſpeak to them now?

L. *Staff.* They are, my Lords.

L. H. S. If they be ſo, what hurt will there be in hearing of them?

Sir *W. Jones.* My Lords, Whether you will hear an Argument from Counſel about the Law of Parliaments, I hope you will pleaſe well to conſider.

Sir *F. Win.* My Lords, We in the Houſe of Commons do never ſuffer any Counſel to tell us what is the Courſe of our Houſe, and the Law of Parliaments: If your Lordſhips think fit to allow it, 'tis in your own Power; but we who are intruſted with the Management of this Cauſe by the Houſe of Commons, have no Direction to conſent to ſuch a thing.

L. H. S. We will hear Counſel, to ſave time, upon that Point, whether in Proof of a Treaſon for killing the King, every Overt-Act ought to be proved by two Witneſſes.

Sir *W. Jones.* If your Lordſhips make a Doubt of it.

Sir *F. Win.* And if the Priſoner deſire it.

Mr. *S Mayn.* My Lords, We ſhall not oppoſe it; but I ſhall wonder if any Counſel do maintain it.

L. H. S. Are your Counſel ready to ſpeak to that Point?

L. *Staff.* Here they are, my Lords.

[*Mr.* Wallop *of the* Middle-Temple, *Mr.* Saunders *of the ſame Society, and Mr.* Hunt *of* Gray's-Inn *appeared by the Priſoner at the Bar as his Counſel.*]

Mr. *Wallop.* May it pleaſe your Lordſhips, we are here commanded by your Lordſhips to attend, that if any Matter of Law do ariſe upon a Caſe proved, agreed, and judged by your Lordſhips debatable, then in due time we are to conform ourſelves to your Lordſhips Command, and argue thoſe Points for my Lord the Priſoner at the Bar. But if your Lordſhips do think that the Points urged by my Lord are not debatable in Law, I have ſo high an Opinion of your Lordſhips Judgment, and ſuch a mean Opinion of my own Talent, that I ſhall not undertake to argue *extempore* in this great Aſſembly, in a Cauſe of ſo high a nature.

L. H. S. Look you, Sir, you are of my Lord's Counſel.

Mr. *Wallop.* I am, my Lords; and by the Order of your Lordſhips do attend here.

L. H. S. If you think it is an arguable Point, you will have the Judgment of my Lords afterwards. Will you argue it now?

Mr. *Wallop.* My Lords, I always thought, if a Point be ſtirred in any Court, and thought diſputable, it ſhould be ſtated and agreed before it be argued.

L. H. S. You are to argue for my Lord, and to know the Judgment of the Court afterwards: Would you know our Opinions before-hand?

Mr. *Wallop.* We would know what it is we are to argue, if your Lordſhips pleaſe.

L. H. S. Why, if you are provided for it, you are to maintain, that by Law every Overt-Act ought to be proved by two Witneſſes; if you are prepared, ſpeak to it, and my Lords will hear you.

Mr. *Wallop.* It is true, my Lords, there have been ſome publick Reſolutions concerning that Point, therefore I ſhall be the warier what I ſay in that: But, my Lords, it is a Matter that has been thought of great Import one way or other; but I do profeſs at this time I am not able to undertake a ſolemn Argument upon that Point.

L. *Staff.* My Lords, I am ſo far from delaying this Cauſe, that I deſire it may be argued now.

L. H. S. Then you are not ready to ſpeak to it?

Mr. *Wallop.* No, my Lords, I am not for my own part at preſent; for it is impoſſible we ſhould foreſee what would be the Point: And to apply ourſelves to ſtudy an unforeſeen Caſe before it be agreed, ſtated, and judged worthy of Argument, cannot be expected from us. I have always obſerved it in the *King's-Bench*, if the Priſoner urge any thing, and the Court think it debatable, they firſt agree and ſtate the Caſe, then aſſign Counſel, whom they do not urge to deliver an Opinion preſently, but give them time to prepare for it.

L. H. S. Mr. *Wallop*, It is not believed that this Point is moved, but by your Advice that are of my Lord's Counſel, and you ſhould be ready to maintain the Advice you give; therefore, if you are ſo, ſpeak. You have the Protection of the Court for the Counſel you give in Matter of Law, and whatever Advice you give, you ſhould maintain by the Law.

Mr. *Wallop.* Truly, my Lords, it is a Point that has, as I ſaid before, received ſome Settlement; but whether ever in this Court, or no, I cannot tell. Therefore I did diſcharge my Thoughts of providing any Argument, till your Lordſhips ſhould have determined whether you will take the Point upon the reſolution in the Courts below to be finally ſettled and determined.

Sir *W. Jones.* So then it is agreed to be ſettled in the ordinary Courts.

L. *Staff.* I deſire alſo it may be argued, whether Words are an Overt-Act?

Sir *F. Win.* It ſeems the Law is with us in caſe of a Commoner; but whether it be ſo for a Lord, is the Queſtion.

L. H. S. My Lord *Stafford*, how comes it to paſs that your Lordſhip came prepared with Objections, but not with Counſel ready to argue them?

L. *Staff.* Mr. *Wallop* has given you an Anſwer, I muſt ſtand by that.

L. H. S. Is it your Lordſhips Pleaſure that we adjourn?

Lords. Ay, Ay.

L. H. S. This Houſe is adjourned into the Parliament-Chamber.

Then the Lords returned to their Houſe in their Order, and the Committee of Commons ſtaid in their Places to attend their Reſolutions.

In an Hour's time, the Lords returned, and my Lord High Steward being ſeated upon the Wool-pack, Silence was proclaimed.

L. H. S. My Lord *Stafford*, My Lords, ſince they have been withdrawn, have conſidered of one Point, of that Point, chiefly, which your Lordſhip did move, touching the Neceſſity of two Witneſſes to every Overt-Act as Evidence of High-Treaſon, that is the Point you have deſired Counſel to ſpeak to, and that is the Point your Counſel deſired to know whether it was a doubtful or debatable Point before they would argue it; and hereupon my Lords did withdraw to conſider it. And my Lords have directed, That all the Judges that aſſiſt them, and are here in your Lordſhip's Preſence and Hearing, ſhould deliver their Opinions, whether it be doubtful and diſputable or no.

[*Then all the Judges conſulted privately together, and afterwards gave in their Opinions* ſeriatim, *beginning with the Lord Chief-Juſtice* North, *the Lord Chief-Juſtice* Scroggs *being abſent.*]

L. C. J. North. My Lords, I do here deliver my Opinion, and am clear in it, That if there be ſeveral Overt-Acts or Facts which are Evidences of the ſame Treaſon, if there be one Witneſs to prove one ſuch Overt-Act at one time, and another Witneſs to prove another Overt-Act at another time, both the Acts being Evidences of the ſame Treaſon, theſe are two ſufficient Witneſſes of that Treaſon, and will maintain an Indictment or an Impeachment of Treaſon. I never knew any doubt made of it in any Inferior Court of Juſtice, and I have known it often reſolved.

L. C. B. Montague. My Lords, where-ever Treaſon is to be proved, to every Overt-Act, two Witneſſes, as I conceive, are not required. If ſo be, there are two Witneſſes to ſeveral Overt-Acts, conducing to a Proof of the ſame Treaſon, I think they are Witneſſes in the Judgment of the Law, ſuch as the Statute requires.

Mr. Juſtice *Windham.* I am of the ſame Opinion with my Lord Chief-Juſtice *North*, and my Lord Chief-Baron, That if there be ſeveral Overt-Acts, done at ſeveral times, tending to the ſame Treaſon, theſe ſeveral Acts, being ſeverally proved by ſeveral credible Witneſſes, tho' but by one Witneſs at each time to each Act, the ſaid ſeveral Acts, being Evidences of the ſame Treaſon, theſe are ſufficient Witneſſes of that Treaſon ſo proved, and will maintain an Indictment, or, as I conceive, an Impeachment.

Mr. Juſt. *Jones.* My Lords, If ſeveral Witneſſes ſpeak to the ſame kind of Treaſon, altho' they ſpeak to ſeveral Overt-Acts, and give Evidence of ſeveral times, the one of them ſpeaking to one time, and the other to another time, yet keeping ſtill to the ſame kind of Treaſon, they are ſuch two Witneſſes as are required by the Statute of *Edward* III. and this I take to be the conſtant Opinion of the Courts below.

Mr. Juſt. *Dolben.* My Lords, I am of the ſame Opinion, and I know it hath been many times ſo reſolved: I have been preſent when Sentence hath paſſed upon Perſons by whom the ſame Caſe hath been urged, and it hath been ſo reſolved. And it hath been moved in *Weſtminſter-Hall*, and that was the conſtant Opinion of the Judges there; particularly in the Caſe of Sir *Henry Vane.* It was upon ſolemn Debate reſolved, and divers times it hath been held, That the ſame Treaſon may be proved by two Witneſſes to ſeveral Overt-Acts, though one ſpeak of Words or Actions that were ſpoken or done at one Time and in one Place, and another ſpeak of Words or Actions at another Time and in another Place; theſe are two good Witneſſes in Treaſon within the Intent of the Law; and if the Law were otherwiſe, 'twere ſcarce poſſible to convict any Man of Treaſon, and therefore I take it to be very clear.

Mr. Juſt. *Raymond.* I am of the ſame Opinion, That where ſeveral Circumſtances are brought to prove the ſame Treaſon, one Witneſs to each of the ſeveral Circumſtances is ſufficient; and this, I conceive, hath been always the Opinion of the Judges.

Mr. Baron *Atkins.* My Lords, I am of the ſame Opinion. That there muſt be two Witneſſes in the Caſe of Treaſon, is a Matter without queſtion; but there are ſeveral Overt-Acts that may contribute to the effecting of that Treaſon. If a Man deſigns to kill the King, and buys Powder at one Place at one Time, and a Piſtol at another Place at another Time, and promiſes a Reward to one to aſſiſt him to do the thing at a third Place and a third Time; theſe are ſeveral Overt-Acts: But if the Law requires that each be proved by two Witneſſes, I do not well ſee how any Man can be convicted of Treaſon. In the Caſe of Sir *Henry Vane*, and others, this very Queſtion was ſtarted, but was not thought worthy of Debate: If it ſhould be otherwiſe, it would touch the Judgments which have been given upon this Kind of Proof; and what would the Conſequence of that be, but that thoſe Perſons who were executed upon thoſe Judgments have ſuffered illegally? and therefore I am of Opinion, that it is not requiſite there ſhould be two Witneſſes to every Overt-Act.

Mr. Baron *Gregory.* My Lords, I am of the ſame Opinion, it is Treaſon to conſpire the Death of the King: Now each of the Witneſſes is a Witneſs to prove that Treaſon; the one ſays, he offered him ſuch a Reward, in ſuch a Place; that is one Witneſs to prove that he conſpired the Death of the King; and another ſays, that he offered him ſuch a Reward in another Place; that is another Witneſs that he conſpired the Death of the King. For the Party is not indicted upon one particular Overt-Act, but he is indicted for Treaſon, in conſpiring the Death of the King; and each of the Witneſſes being to prove that, though they ſpeak to ſeveral Acts, they are good Witneſſes according to the Law.

Mr. Baron *Weſton.* My Lords, I am of the ſame Opinion with my learned Brethren who have ſpoke before him.

Mr. Juſt. *Charlton.* My Lords, I am of the ſame Opinion; and I think truly it would be the eaſieſt matter for a Man to commit Treaſon, and eſcape without queſtioning, if it ſhould be otherwiſe. But this is the firſt Time that I have heard it hath been made a Queſtion, that to the ſame Treaſon there muſt be two Witneſſes to every Overt-Act. It hath been adjudged always according to the Law, that to prove Treaſon there muſt be two Witneſſes, but to an Overt-Act there needs but one.

L. H. S. My Lord *Stafford*, by the uniform Opinion of all my Lords the Judges, there is no colour to doubt the Law in that Point which you deſire to argue; ſo that as to that Point you muſt reſt ſatisfied, you are not to have Counſel to ſpeak to it: For the reſt, I have no Commiſſion yet from my Lords to ſay any thing.

L. *Staff.* Will your Lordſhips give me leave to ſay one thing to what I have heard? I would anſwer, if I might, only to one Judge; I think they call him Judge *Atkins*.

L. H. S. Your Lordſhip may ſay what you pleaſe.

L. *Staff.* My Lords, I hear a ſtrange Poſition, I never heard the like before in my Life; and 'tis what he ſaid: If I am in the wrong, I beg your Lordſhips Pardon, and his too. He told your Lordſhips the Reaſon why the Law ſhould be ſo, was, becauſe elſe a great many of thoſe Perſons that have already been executed, muſt have been acknowledged unjuſtly cut off and put to death; that is an Argument I hope will not weigh with your Lordſhips or any body; for 'tis better that a thouſand Perſons that are guilty ſhould eſcape than that one innocent Perſon ſhould die; much more then, that it ſhould not be declar'd, that ſuch a Judgment was not well given.

L. H. S. Look you, my Lord, where many Reaſons are given, 'tis eaſy to make a Reply to one of the leaſt among many; that was one Reaſon given, but the true Reaſon is this: If the Law were otherwiſe, there would be great Safety in conſpiring the Death of the King.

L. *Staff.* My Lords, I ſay nothing farther as to the reſt, but this ſtuck with me. I am ſorry to hear a Judge ſhould ſay any ſuch thing; and tho' I am in ſuch a weak and diſturbed Condition, I aſſure your Lordſhips my Blood riſes at it.

L. H. S. Is it your Lordſhips Pleaſure that we ſhould adjourn?

Lords. Ay, ay.

L. H. S. Then this Houſe is adjourn'd into the Parliament-Chamber.

[*The Lords withdrew in their Order, and the Committee of Commons went back to their Houſe.*]

Mr. *Speaker* reſum'd the Chair.

A Meſſage was ſent from the Lords by Sir *Timothy Baldwyn* and Sir *Samuel Clarke*.

Mr. *Speaker*. The Lords have ſent us to acquaint this Houſe, that they have ordered *William* Viſcount *Stafford* to be brought again to the Bar in *Weſtminſter-Hall*, on *Monday*-Morning next at Ten of the Clock.

After which, the Houſe of Commons adjourn'd to Eight of the Clock on *Monday*-Morning.

The SIXTH DAY,

Monday, *December* 6th, 1680.

ABOUT the Hour of Eleven in the Morning, the Lords being adjourned into *Weſtminſter-Hall*, going thither in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Committee of Commons were ſeated as before.

The Court being ſat, Proclamation for Silence was made, and the Lieutenant commanded to bring his Priſoner to the Bar; which being done, the Lord High-Steward began.

L. H. S. Read my Lord *Stafford*'s Petition.

To the Right Honourable the Lords in Parliament aſſembled, the Humble Petition of *William* Viſcount *Stafford*.

Humbly ſhewing unto your Lordſhips,

THAT he hath ſome things to offer unto your Lordſhips in order to clear himſelf, which he hopeth to do.

Your Petitioner doth therefore, with all Humility, moſt humbly beſeech your Lordſhips to give him leave to offer ſome things unto your Lordſhips Conſideration. And your Petitioner ſhall ever pray, &c.

STAFFORD.

L. H. S. My Lord *Stafford*, My Lords have been willing, upon your Petition, to come and hear what that is that your Lordſhip hath to offer: And they would know whether it be Matter of Fact, or Matter of Law. For your Lordſhips muſt know, that as to Witneſſes the Proceſs is cloſed.

L. *Staff.* I do not pretend any more Witneſſes, my Lords.

L. H. S. Then, my Lord, what is it that you would ſay?

L. *Staff.* My Lords, I did yeſterday receive an Order from your Lordſhips; and upon that and ſome other Things that I have to trouble your Lordſhips with, I did petition for this Favour, which I humbly thank your Lordſhips for granting. If I be impertinent, I ſhall beg your Lordſhips Pardon, and I hope you will be pleaſed to conſider my Weakneſs at all times, eſpecially in this Condition I am now in; but I hope by your Lordſhips Favour to be in a happier one quickly. For the Matters of Proof, I ſhall offer not a Tittle; but, my Lords, this Order which I receiv'd does ſay, That the Lords aſſembled in Parliament have order'd, that my Counſel ſhall not be heard touching the Continuance of Impeachments from Parliament to Parliament: But I hope, my Lords, you will pleaſe, without offence, to let me offer to your Lordſhips my own Conceptions about it; which I ſhall do as briefly as I can.

My Lords, I do not conceive by this Order, that your Lordſhips ſay it does or does not continue; you have given no Judgment, as I know of, in it; when you have, I ſhall acquieſce: But I hope your Lordſhips will reſolve that it does not. And, my Lords, my Reaſons for it are two: The firſt is, Becauſe one of the Managers for the Houſe of Commons, as I take it, Sir *W. Jones*, ſaid theſe Words, and your Lordſhips may remember them, *That if there were no ſuch Precedent, your Lordſhips would make a Precedent:* Whether you will or no, that I muſt ſubmit to your Lordſhips; but then there is none yet. The next thing is, my Lords, this, Whether an Impeachment be to be proſecuted in Parliament without an Indictment? This, my Lords, I humbly hope your Lordſhips are reſolved it ought not. For I ſee not how truly, my Lords, it can be; by the little Reading which I have had in the Law, I never found any Man proſecuted in a legal Way, but by an Indictment. I may be miſtaken, and I beg your Lordſhips Pardon for troubling you with my Miſtakes; but I never read of any that were proſecuted upon an Impeachment: So then, the legal uſual Word being Indictment, I hope your Lordſhips will not alter the Form; for I hope you will keep that great Maxim of your noble Anceſtors, *Nolumus Leges Angliæ mutare:* And whether this be a Change of the Law or no, I ſubmit it to your Lordſhips.

A third thing is this; Your Lordſhips do not think fit that my Counſel ſhall plead to that Point, whether Words do amount to an Over-Act; for hearing my Counſel to that likewiſe I do not pretend: But I hope your Lordſhips will give me leave to ſay this, I never heard that Words did amount to an Overt-Act: if your Lordſhips judge otherwiſe, I ſubmit; but till then, I hope it ſhall not conclude me.

There are ſome other Points which I did offer to your Lordſhips, and I humbly beſeech you to know, whether my Counſel ſhall be heard to them. 'Tis true, one of them, which was, whether two Witneſſes in ſeveral Places did amount to a legal Teſtimony or no, your Lordſhips did not declare one way or another. If you ſay you acquieſce in the Opinion of the Judges, I muſt ſubmit; but till Judgment is given, I beſeech your Lordſhips to give me leave to tell you my weak Thought about it. I did not hear what the Judges ſaid all of them, but as I apprehend, they were all of one Opinion: 'Tis true, one of them that ſpoke laſt, I think it was Judge *Atkins*, did ſay it did amount to a legal Teſtimony, becauſe elſe thoſe Juries that have found ſome guilty upon the ſame Sort of Evidence ſhould be perjured; but if this were not ſo, then upon the ſame Grounds, under your Lordſhips Favour, thoſe Juries that acquitted ſome upon ſuch Teſtimony were perjured: But I muſt believe it to be otherwiſe till your Lordſhips have declared it as your Opinion; for that Reaſon will not hold; for the ſame Reaſon will be for the perjuring the one, as for the perjuring the other. And the ſame Juries, for the moſt part, tried thoſe that were found guilty, and thoſe that were acquitted.

L. H. S. Is this all your Lordſhip will pleaſe to ſay?

L. *Staff.* No, my Lords, if you would give me leave, I would trouble you a little farther; if it were an offence I would not ſay a Word. My Lords, I do conceive I am not concerned in the general Plot of the Papiſts; for I am not proved to be ſo, and whatſoever I may be in myſelf, as I conceive, or wharſoever there is of Hearſay, I hope your Lordſhips will not go upon that, but upon what is proved *Secundum allegata & probata*, and that Common Fame will condemn no Man; if it do, then no Man is ſafe; but I muſt ſay, there is not one Word of Proof offer'd that I am a Papiſt.

I hope, my Lords, I have clear'd myſelf to your Lordſhips, and made my Innocency appear, by making appear the Perjury of the Witneſſes, and the Falſhood of thoſe things they ſaid againſt me. Againſt *Dugdale* I have proved it by two of his own Witneſſes; the one was *Eld*, the Woman that ſwore for him, That he took up a Glaſs of Cyder and wiſh'd that it might be his Poiſon if he knew any thing of the Plot; the other was *Whitby*, who ſays, he had given my Lord *Aſton*'s Father warning long ago what a Knave he was. So 'tis clear. For Dr. *Oates* I hope from his Contradictions againſt himſelf as well as *Dugdale*, who does contradict himſelf, at one time *Auguſt*, at another time the latter End of *Auguſt* or the beginning of *September:* And I hope your Lordſhips will give no Credit to *Oates*'s Teſtimony; for he ſaid before your ordſhips he had declared all he knew, ('tis true, I was then accuſed, but not for having a Commiſſion, as he now ſwears) and afterwards he accus'd the Queen; ſo here is *Oates* againſt *Oates*, and *Dugdale* againſt *Dugdale*: And for *Turbervile*, I have proved by his Affidavit, firſt he ſwears one thing and then another; and the Truth of it is, his Brother proved him falſe in his laſt Oath, that it was (71,) and not (72.)

My Lords, 'Tis not my Part to make any queſtion, nor do I, whether a Plot or no Plot; for I am not concerned in it: If what I ſhall ſay now be impertinent, I humbly beg your Lordſhips Pardon. My Lords, I have been by the moſt of my Friends, at leaſt every one that came to me, particularly by my Wife and Daughter that is near me, perſuaded to tell all that I knew, and I do here in the Preſence of God Almighty declare what I know to be true.

L. H. S. What ſays my Lord? Speak out.

L. *Staff.* My Lords, I do believe ſince the Reformation from the Church of *Rome* to (what it is now eſtabliſh'd) the Church of *England*, thoſe of that Religion have had ſeveral wicked and ill Deſigns and Plots: I do believe they had a Deſign in Queen *Elizabeth*'s Time, *Babbington*'s Plot, (that is a long time ago) how far it was to take away the Queen's Life I can't tell, but a Plot it was: And I do believe there was another in her Time, called Earl of *Weſtmoreland*'s Plot, wherein there was a Rebellion in the *North*, for which ſome fled and ſome were executed, that was a very ill Deſign: As for thoſe Poiſonings of her Saddle, and the like, I take them to be but Stories.

In King *James*'s Time, in the firſt Year of his Reign, there was a wicked Plot compos'd by Actors, ſome of one Religion, ſome of another; there was my Lord *Grey*, my Lord *Cobham*, my Lord *Brooke*, and other ſuch, they were condemned all of them; ſome fled, as *Markham* and *Bainham*: thoſe Lords and Sir *Walter Raleigh* were reprieved and kept long in the *Tower*. But Sir *Walter Raleigh* was afterwards upon that ſame Judgment beheaded, and the Lords died in the *Tower*.

My Lords, Next to that was the execrable Treaſon that I ſpoke of at firſt, the Gun-powder Treaſon: And I proteſt before Almighty God, I did from my Infancy deteſt and abhor thoſe Men that were engaged in it; and I do think, and always did think, the Wit of Man nor the Devil's Malice can't invent an Excuſe for it. For the Men concern'd, they all acknowledg'd it, confeſs'd it, and begg'd pardon of the King, and God, and all good Men for it; that is all I ſhall ſay to that now.

My Lords, Since his Majeſty's happy reſtoration, I do conceive, and I think I may ſafely ſay it, (for you all know it) he was gracious and good to all Diſſenters, particularly to them of the *Romiſh* Church; they had Connivance and Indulgence in their private Houſes; and I declare to your Lordſhips, I did then ſay to ſome that were too open in their Worſhip, that they did play foul in taking more Liberty upon them than was fitting for them to do, and that brought the Misfortune upon me which I will not name.

My Lords, It was not long ago that your Lordſhips at your own Bar did allow all the Diſſenters from the Church of *England* to give ſome Reaſons to your Lordſhips why thoſe Laws that were againſt them ſhould be repeal'd, as well Proteſtant Diſſenters as thoſe of the Church of *Rome*, and why they ſhould have ſome Kind of Toleration; among whom you did permit thoſe of the *Romiſh* Religion to appear too, I forget their Names. And I remember particularly one of the Sorts of them, an *Anabaptiſt* I think, did urge for a Reaſon, that which is a great Truth, That they held Rebellion to be the Sin of Witchcraft; I believe it is as bad as any Sin can be.

My Lords, That came to nothing at that time; but, my Lords, I believe that after that, all of all Religions had Meetings among themſelves to endeavour to get that Toleration which they propoſed humbly to your Lordſhips; there I will never deny, my Lords, that my Opinion was, and is, that this Kingdom can never be happy till an Act of Parliament paſs to this effect; it was my Opinion then, and I did endeavour it all I could, that the Diſſenting Proteſtants might have a Comprehenſion, and the other a Toleration: I acknowledge it to be my Intention, and I think it was no ill one; for if that be a true Copy of the Commons Votes which is in Print, there is ſome ſuch thing deſigning there as a Comprehenſion; and I was of opinion, that it were ſufficient that ſuch as were of the Church of *Rome* might by Act of Parliament ſerve God in their own Houſes, and privately in their own way, not in publick, and that for it they ſhould pay ſomething to the King out of their Eſtates, but truly not much; that they ſhould be ſeverely puniſhed if they or any of them did endeavour to perſuade any Subject to their opinion, or did come to Court, or enjoy any Office whatſoever, though it were but that of a Scavenger, but that they ſhould pay their Proportion to all chargeable Offices: That I profeſs, my Lords, was my Opinion, and I confeſs to your Lordſhips 'tis ſo ſtill. I was in ſome hopes that it would have been done in that Seſſions, becauſe I was afraid it was unlikely to be done at any time elſe. I confeſs to your Lordſhips, I was heartily and cordially againſt the Teſt, becauſe it hinder'd thoſe juſt and honeſt things that were for the Good of the Kingdom.

My Lords, there was the firſt or the ſecond Day brought into your Lordſhips Houſe, the Record of Mr. *Coleman*'s Trial; and for the Letters in it, I do, my Lords, declare to your Lordſhips, I never read one of them before, but I have often read them ſince they have been in Print; and when I read them firſt curiouſly over, my Opinion was and is, That *Coleman*'s endeavouring by Money out of *France*, and keeping off the Parliament, to get a Toleration, was that which he could not juſtify by Law; how far it was criminal, that I do not know; I am not ſo ſkilled in the Law; I think it was not juſtifiable, but he hath paid for it ſeverely ſince.

My Lords, I do declare that ever ſince I had the Honour to ſet among your Lordſhips, which is now 40 Years, (for in the Year 1640, I was by his Majeſty's Favour call'd up a Peer,) I have valued myſelf upon the Honour of ſetting with you; and I do declare, when I have ſat in this Houſe, when your Lordſhips have deſir'd the King, when it was hot Weather and unſeaſonable, to put off the ſitting of the Parliament, I was never glad of it, but ſorry when they were prorogued but for a ſhort time. This I profeſs is true, and I hope I am no Criminal in it; for I do value the Parliament's ſetting to be the only Means to keep this Kingdom quiet.

My Lords, 'Tis very true by *Coleman*'s Letters, and what I have ſeen in Print ſince, I do believe there have been ſome Conſultations for a Toleration; and if I had known as much then as I have ſince I have been in the *Tower*, I had perhaps prevented many things: For, my Lords, I hold *England* to be a great and an happy Body; but it is as other great Bodies are, it may be now, as you know before it was, over-grown or ſick; it was then, and I pray God it be not now; but I hold nothing can cure it but that old *Engliſh* Phyſician, the King, your Lordſhips, and the Commons in Parliament aſſembled. But if I had known any ſuch Deſign as *Coleman*'s Letters do hint, I would not have continued in *England*.

My Lords, For that damnable Opinion of King-killing, if I were of any Church whatſoever, and found that to be it's Principle, I would leave it. My Lords, this is as true as I can ſpeak any thing in the World; I beg your Lordſhips Pardon for troubling you with my Impertinencies, and hope you pardon it to my Weakneſs. My Lords, I do profeſs before Almighty God, and before your Lordſhips my Judges, I know no one Tittle nor Point of the Plot; and if I did, I hold myſelf bound to declare it. For the preſent I ſhall ſay little more, unleſs the Managers give me occaſion; if they will reply, and make any Objections, I deſire I may anſwer them. I know the great Diſadvantages I am under, when theſe Gentlemen, who are great Scholars and learned Men, reply upon me, who have thoſe great Helps of Memory, Parts, and Underſtanding in the Law, all which I want. And therefore I hope your Lordſhips will not conclude me upon what they or I have ſaid, but will be pleaſed to debate the Matter among yourſelves, and be as well my Counſel as my Judges.

My Lords, When I offer'd to your Lordſhips Matter of Law, I did in no wiſe admit the Matter of Fact———

L. H. S. My Lord, I cannot hear you.

L. *Staff.* My Lords, If your Lordſhips pleaſe, this Paper may be read.

L. H. S. Deliver your Paper in, my Lords cannot hear.

L. *Staff.* I cannot deny to your Lordſhips, that what happen'd to me on *Saturday*-Night, diſturb'd me very much. Every Day ſince I came hither, there hath been ſuch ſhouting and hooting by a Company of barbarous Rabble, as never was heard the like, I believe; but it was at a diſtance moſt of the time, and ſo it did not much concern me. But *Saturday*-Night it was ſo near and ſo great, that really it hath diſturbed me ever ſince; it was great to-day, but at a diſtance; if it were not thus, I ſhould not offer a Paper to be read: I ſcarce know what I do or ſay, conſidering the Circumſtances I am in.

L. H. S. Take my Lord's Paper, and read it.'

Sir *Tho. Lee.* My Lords, I deſire you will pleaſe to conſider whether this may not introduce a new Cuſtom by reading of this Paper. As to what my Lord is pleaſed to ſay, I am ſorry for the occaſion that any Diſturbance ſhould ariſe to my Lord from the Rabble, or any one elſe; I hope his Lordſhip believes we cannot help, nor do we contribute to that Diſturbance. But we deſire your Lordſhips to conſider, whether this Practice of having things written down for the Clerk to read, may not introduce a Cuſtom, which may in time grow inconvenient for future Example. I ſee no great Danger in the particular Inſtance before your Lordſhips now, but it is dangerous in ſuch Caſes to do any thing that is new in this Court.

L. H. S. All the Matter is, whether it be read by my Lord, who cannot be heard, or read by the Clerk.

Sir *Tho. Lee.* We only oppoſe it out of fear of making a Precedent, which may be of ill Conſequence.

L. H. S. Read it, my Lord, and raiſe your Voice, for it concerns you to ſpeak out.

L. *Staff.* *(Reading out of his Paper.)* My Lords, When I offer'd Matter of Law to your Lordſhips, on *Saturday* laſt, I did in nowiſe admit the Matter of Fact to be true that was alledged againſt me, and ſo I deſire to be underſtood. And I hope your Lordſhips will not lay the leſs Weight upon the Teſtimony of my Witneſſes, becauſe they are not ſworn; for the Law does not ſuffer them to be ſworn, which is no Fault of mine, nor ought not to turn to my Prejudice.

I muſt appeal to your Lordſhips Judgments in point of Fact, how far the King's Witneſſes are to be believed againſt me, conſidering the whole Matter, and my Counter-Proof.

Next I ſubmit to your Lordſhips Judgments this Point, That the Impeachment being founded upon the Common Law, and the Statute of 25th *Edw.* III. and not upon the Statute of the 13th of this King, two of the Witneſſes, *Dugdale* and *Turbervile*, do only ſwear treaſonable Words ſpoken by me, and not my Overt-Act; for they ſwear only that I promiſed them Money and Rewards to kill the King. Now I humbly pray your Lordſhips Judgment, whether bare ſpeaking of Words be an Overt-Act, and Treaſon at the Common Law, or upon that Statute; and whether there be more than ſpeaking of Words in a Conſult, or otherwiſe proved by *Dugdale* and *Turbervile*, I appeal to you. Then the other Witneſs, *Oates*, is but a ſingle Witneſs, who ſpeaks of the receiving of a Commiſſion. This is that I offer to your Lordſhips now for your Judgments, and then I deſire I may have your Opinion in other things.

L. H. S. Is this all your Lordſhip hath to ſay?

L. *Staff.* For the preſent, my Lords.

L. H. S. You muſt ſay all you have to ſay now.

L. *Staff.* Is it your Lordſhips Pleaſure to hear Counſel to nothing at all? I did likewiſe alledge to your Lordſhips th' other day, That People that ſwear for Money are not competent credible Witneſſes; how far that was proved, or I may prove by my Counſel, I ſubmit to your Lordſhips.

L. H. S. Look you, my Lord, you have ſo far receiv'd already the Pleaſure of the Houſe: You have raiſed ſeveral Queſtions of Law, Whether every Overt-Act requires two Witneſſes to prove it. You have had the Opinion of the Judges, and there is no more to be ſaid in it. As to that, Whether Impeachments continue from Parliament to Parliament; and the other thing, Whether Proceedings may be upon an Impeachment without an Indictment; theſe are Matters of the Courſe and Conſtitutions of Parliaments, my Lords will conſider of them by themſelves, and will permit no Counſel to argue them. For the other Point, That Words are no Overt-Act, that reſts for their Opinion in another Caſe, when it ſhall come, for they have now no ſuch Caſe before them.

L. *Staff.* I humbly conceive there is.

L. H. S. There is a great Difference between bare Words being an Overt-Act, and Perſuaſion by Promiſes of Money and Rewards to kill the King, which is a very great Overt-Act.

L. *Staff.* Is it poſſible to do an Act by Words? If it be ſo, I never heard it before.

L. H. S. Otherwiſe Men may promiſe Rewards to twenty ſeveral Perſons to kill the King, and then ſay 'tis all but Words.

L. *Staff.* I ſay it not, but I humbly conceive the Law ſays it.

L. H. S. What ſay you, Gentlemen of the Houſe of Commons?

L. *Staff.* My Lords, I have ſomething to ſay, which I deſire to ſpeak firſt: My Lords, I hope I have cleared to your Lordſhips that all the Witneſſes have ſworn falſely againſt me, and this I have made out by Proofs: I ſay not much to that.——(*My Lord was ſearching for his Papers.*) Truly, my Lords, I am confounded with the Noiſe and other Circumſtances: but, my Lords, I ſhall, if your Lordſhips pleaſe to give me leave, humbly repreſent my Caſe to you, how I take it to be in Matter of Fact, (as to my own Condition not any Thing,) how I am now before your Lordſhips.

I was, my Lords, committed by my Lord Chief-Juſtice's Warrant, on the 20th or 21ſt of *October*, (78.) *Friday*, 25th of *October*, I was brought to your Lordſhips Bar; I was Impeached; I do not remember the Day, my Lords, the Beginning of *December*; in one Parliament Articles exhibited againſt me; in another Parliament I was brought upon theſe Articles exhibited, and being called to your Lordſhips Bar, the Articles were read to me, and I gave in my Anſwer; that was ſometime in *May* (79,) and in the End of *May*, the 27th, (if I miſtake not, if I do, I deſire it may be rectified by your Books) I, with the other Lords, were brought to this Place in order to our Trial. We ſtaid ſome Time there, and then were remanded by your Order to the *Tower*, where I continued till *November* twelve Months after, without having heard any Thing concerning it. So that I was firſt impeached in one Parliament, Articles brought againſt me and pleaded to in a ſecond, and now brought to my Trial in a third; and what your Lordſhips will ſay upon this, I ſubmit to you; and whether theſe be Proceedings according to Law your Lordſhips will judge.

My Lords, I humbly conceive that *Magna Charta* ſays, That Juſtice ſhall be denied nor delayed to no Man; whether it hath not been delayed to me let your Lordſhips judge. If you ſay the Prorogation of the Parliament is the Cauſe of that Delay, I hope your Lordſhips will give me leave to ſay, That from the 5th of *December* to the 30th, when the firſt Parliament was prorogued, or during the Seſſion of the other Parliament, there was Time enough ſure wherein I might have been brought to my Trial; and if theſe Proceedings be lawful and juſt, there is no Man living, but may be kept off from Time to Time, till ſome Accidents happen that their Ends may be gained. I leave it to your Judgment, whether it may be only my Caſe now, or of ſome of your Lordſhips in future Ages, to be accuſed of Things that you never heard of before, and not brought to juſtify yourſelves, but kept in Priſon.

My Lords, There is a Statute, I have forgot where it is, (but ſuch a one I have read) that tho' the King by his Great Seal, or Little Seal, command that Juſtice ſhould be delayed or denied, yet, however, the Judges ſhall not obey it, but proceed. So I hope there is no Pretence of Delay on my Part, and the Benefit of that Statute ſhall not be denied me. And that Statute of the *Great Charter*, which coſt ſo many of your Anceſtors their Lives to maintain, I hope you will never go from. Now your Lordſhips noble Anceſtors, amongſt other Things, took great Care that Juſtice ſhould be denied or delayed to none; and this I deſire you to take into Conſideration.

I am in your Lordſhips Judgment either to be acquitted or condemned. I hope your Lordſhips will, and I know you will, lay your Hands upon your Hearts, conſult your Conſciences and your Honours; and then you will do what is juſt and equitable, I doubt not.

My Lords, Mr. *Oates* ſaid I came by the Name of Mr. *Howard* of *Effingham*, but that I did to my Letters ſign *Stafford*; ſurely, my Lords, if I was aſhamed to own my Perſon, I ſhould have been as much aſhamed to have owned my Name. He ſays, he ſaw me take a Commiſſion, and whether that be an Overt-Act, your Lordſhips are to determine. Upon the whole Matter, I conceive, there is nothing proved againſt me but Words, nor pretended to, but only by *Oates*. And whether you will credit a Man that ſo diſſembles with God, as I have told you, I appeal to your Lordſhips, and beg you to conſider of it.

That theſe Witneſſes have ſworn for Money, if you ſend to the Exchequer-Office, and ſee what Money they have received, you will find by the great Sums that 'tis ſo; and then I hope you will not allow them to be heard, nor credit any that ſwear for Gain. I had a Suit in *Weſtminſter-Hall*, that had like to have gone expreſly againſt me, only becauſe one of my Witneſſes was to gain 8*l.* if the Suit went for me. But pray conſider how much theſe Men have had. And for the Point, that there are not two Witneſſes, I beſeech your Lordſhip's give me leave to put you in Mind, That not many Years ago, you paſſed an Act againſt Frauds and Perjuries, wherein you were ſo careful to preſerve Men's Eſtates, that you required three Witneſſes to prove a Will of Goods or Lands above 100*l.* and will you allow but one Witneſs to take away a Man's Life for Words? Though your Lordſhips will never commit Treaſon, yet no Man can preſerve himſelf from the Misfortune that happens to me, of being falſly accuſed.

'Tis true, my Lords, the Managers have given an Anſwer to the Buſineſs of the Money, by ſaying, The King may give as liberally as he pleaſes; but to give ſo great Sums, whereby Men poor before, are now become rich, I think will be an Objection againſt their Credit.

My Lords, I have ſaid what I do think convenient, though I think much more might be ſaid by an abler Man to your Lordſhips, for the clearing of himſelf. I hope I have done it, nay, I am confident I have; and this I have done for the Memory of that Great and Bleſſed King, who firſt made me a Peer, that it may not be ſaid he did me the Honour forty Years ago to call me up to this Dignity, and I ſhould fly in the Face of his Son in ſo horrible a Manner as theſe Men would make me. I do owe it to the Honour of my Father and Mother, who, I think I may ſafely ſay, were both honourable and worthy Perſons: My Father was a learned Man, and a wiſe Man, as I may appeal to ſome of your Lordſhips who knew him well; I ſay, I owe it to their Memory, and to the Honour of the Family from whence I ſprang, which all the World knows what it is. And I ſhould be an infamous Man to diſhonour them ſo much, as to bear their Name, and commit Treaſon. My Lords, I owe it to my Wife, who hath been a very kind Wife to me as ever Man had: She is Heireſs at Law to the great Eſtate of that great and unfortunate Man *Stafford*, Duke of *Buckingham*, who was cut off in the Reign of King *Henry* the VIIIth, and all his Eſtate, if it were not for that Attainder, would have come to her.

I may be impertinent in telling your Lordſhips what it was; but I do not over ſay it, when I reckon it would have been at this Day 20,000*l.* a Year, for it was 17,000*l.* a Year in thoſe Days Penny-Rent, beſides other Emoluments. This is an extravagant Thing to ſay, but 'tis true; ſomething thereof does remain to her, which I now enjoy. I owe it to all my Children, eſpecially to my eldeſt Son, who is a young Man, and I may ſay, of far better Parts and Hopes than his Father, and whom, I hope, will ſerve his Country. I owe it to all my Friends and Relations, for I would not have it ſaid after my Death, my Wife was the Widow of a Traitor. I owe it to all theſe, but above all, I owe it to God Almighty; that when I come to be judged by Him, I may give a good Account of what he hath entruſted me with, that I may not appear as an infamous Man who knows he hath a Body, but not his own, and yet ſhould throw it and his Soul away together. And if I ſhould have committed this execrable Treaſon, I ſhould have been guilty of my own Murder: Firſt, In the committing a Crime worthy of Death; and then in not confeſſing, to ſave my Life. I hold Murder an extraordinary Crime, the worſt next to Treaſon: And I know, if I ſhould not prevent my Death by confeſſing all I knew, I ſhould have been guilty of Self-Murder, the worſt of Murders. I know your Lordſhips will lay to Heart, what an execrable Thing Murder is, and the Blood of Innocents; and I hope there is none of the Houſe of Commons, but after this Evidence will clear me. I am ſure none of them would have me puniſhed for that I am not guilty of. I do not blame theſe Gentlemen of the Houſe of Commons for proſecuting, nor the firſt for impeaching; for they had without all doubt, Reaſons great enough for it upon what Evidence they had before them, before they knew what the Witneſſes were. I know your Lordſhips will not in the leaſt Point vary from Juſtice, or the Law of the Land, and I deſire you to lay the whole Matter to your Hearts; I have not the leaſt Suſpicion of the Partiality of any Man in the Houſe; nay, I profeſs, if I had an Enemy, and he were not here, I would beg of you that he might come. I have cleared myſelf before your Lordſhips, and I hope I ſhall not be run down by the wicked Rabble; which, where it will end, God knows. It began in the late Times againſt my Lord of *Strafford*, and ſo continued till it ended in that moſt execrable Fact, one of them, that ever was done. A wicked Beginning it was, and it had a wicked End. For ſince our Saviour's Death and Murder by the *Jews*, never was ſo execrable a Murder in the World; and whoever had an Hand in it, without an extraordinary repentance, can have no Thoughts of Salvation. I never could ſerve the King, 'tis true, but in my Deſires; and I never deſerted him in Thought, Word, or Deed, to my Knowledge, in my Life; much leſs did I ever contrive or conſent to his Death. I do in the Preſence of God, Angels, your Lordſhips, and all Men, declare, I do know no more of the Plot, or any ſuch Thing, than any one here does. That thoſe of the *Romiſh* Religion had Meetings, I believe, to obtain thoſe Ends that I ſpake of before: *Coleman* went too far; how far he was criminal in it, I can't tell. Meetings, I ſay, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordſhips to do Juſtice, as I know you will, and with all ſubmiſſion I reſign myſelf up to you.

L. H. S. Have you done, my Lord?

L. *Staff.* If your Lordſhips will not allow me Counſel to argue thoſe Points, I have done.

L. H. S. What ſay you, Gentlemen of the Houſe of Commons?

Mr. Serj. *Maynard.* My Lords, Something that my Lord hath ſpoken hath been reſolved againſt him, that is, about two Witneſſes to each Overt-Act; ſome things are not to be diſputed about the Law and Courſe of Parliaments; ſome things were not to be ſaid now, becauſe he had ſaid them before. My Lords, we had concluded our Evidence, and he is pleaſed to take up the Time with repeating what was ſaid before.

For the other Matters that my Lord is pleaſed to diſcourſe of, all he ſays is but his Obligations, and how unreaſonable it were for him to do it; the Queſtion is, Whether he hath done it or no? If he hath, his Obligations are an Aggravation of his Crime, not an Excuſe. His Relations, his Family, and other Things are nothing before your Lordſhips now in Point of Judgment, nor is there any Thing new ſaid to Day, that was not ſaid before.

Sir *Will. Jones.* My Lords, I ſhould not add one Word farther, were it not that this noble Lord is pleaſed upon his Memory, or rather without, to ſay ſomething of me; and that was, That ſpeaking of the Continuance of Proceedings, I ſhould ſay, *If your Lordſhips had no Precedent, I hope you would make one.* My Lords, I do appeal to your Lordſhips Memory, whether I ſaid any Thing like it; I utterly deny it, nor was there any Occaſion for it. For there was no need of urging Precedents, when your Lordſhips, upon a Conference with the Commons, did declare it to be the Law of Proceedings in Parliament, and did then fortify it with many Arguments. I know, my Lord's Memory is not very good; I'm ſure in this he is very much miſtaken.

My Lord hath been pleaſed to complain he hath received much Diſturbance, and that the Noiſe and Shouts have been ſo great, that they have occaſioned ſome Diſtraction in him. My Lords, I am ſure his Lordſhip cannot mean us; for I appeal to your Lordſhips, and all that have heard this Trial, whether he hath received the leaſt Diſturbance or Interruption from us, or whether we have not treated him with that Reſpect that becomes his Dignity, and the Diſcretion that ought to be in the Managers of the Houſe of Commons. But I muſt needs ſay, that his Lordſhip hath receiv'd Diſtraction from thoſe Friends or Counſel of his that put thoſe many Papers into his Hand; for he hath read one after another that do contain the ſame Matter over and over again. Theſe, I confeſs, were ſufficient to diſtract him, or any other that ſhould make uſe of them. His Lordſhip hath been pleaſed to go off from the Matter of Law, to the Matter of Fact; and backward and forward, ſo that it is impoſſible to follow him: And as to the Matter of Fact, we ſhall decline to follow him; for tho' we have not given his Lordſhip any Diſturbance, yet we ſubmit to your Judgment, whether it be regular, or according to the courſe of Proceedings, when his Lordſhip hath ſumm'd up his Evidence, and we that are the Proſecutors have concluded ours, he ſhould begin that Work again; which, if it ſhould be admitted, we were to reply, and he might rejoin upon us, and ſo there would be no end of Proceedings.

And, my Lords, I hope, tho' this Lord hath had the Favour to do it, yet it ſhall not for the future be brought into Example, for it will make Trials endleſs.

My Lords, For the Matter of Law, there is nothing that deſerves an Anſwer; for tho' the Law does admit the Priſoner Counſel in Matters of Law, yet it muſt be in things doubtful; and if there be any thing of that in our Caſe, I ſubmit it to your Lordſhips. I am ſure, I have heard nothing new but what hath been over-ruled already, unleſs it be a Matter of Law which riſes upon the Matter of Fact, and that not proved, to wit, the Corruption of Witneſſes. The laſt Day, all was ſaid by his Lordſhip he could ſay, and all ſaid by us that we thought fit to ſay; and now to begin the ſame Matter again, I think ought not to be admitted. We ſhall not follow his Lordſhip in that way of Proceedings, and hope it ſhall never fall into Example.

Sir *F. Win.* My Lords, I have only one Word to ſay to your Lordſhips, and that is in relation to the Proceedings of the Commons in this Cauſe; for if the Cauſe had not been of an extraordinary Nature, we ſhould have ſtood upon it, that the Priſoner ought not, after the Proſecutors had concluded, to have taken a liberty of reading and repeating what he had ſaid over and over again. We know, my Lords, there are a Sort of Men in the World, who are willing to lay hold of any Pretences to cavil at our Proceedings; and therefore we have let my Lord take all this liberty, that ſo his Party might have no colour of Complaint. His Lordſhip was pleaſed to ſay the laſt Day, that he had not a Witneſs more to produce, nor a Reaſon to give, as I underſtood him; and therefore he muſt own that we have been very tender to him in all our Proceedings. One thing my Lord inſinuates to Day, which I cannot forbear taking notice of as if we had delayed him: which is without cauſe; we had uſed all Diligence in preparing ourſelves, and were ſoon ready when the King was pleaſed to let the Parliament ſit, and therefore it can be no Imputation on us: and truly, if my Lord conſiders the Weight of the Evidence, I fear he will think his Trial comes ſoon enough now.

L. *Staff.* My Lords, I deſire to be rightly underſtood in one thing, and 'tis only this; I did not ſay the Houſe of Commons ſhouted at me, but the Rabble.

L. H. S. Is it your Lordſhips Pleaſure to adjourn?

Lords. Ay, Ay.

L. H. S. Then this Houſe is adjourned to the Parliament-Chamber.

[*Then the Lords withdrew in their former Order, and the Committee of Commons went back to their Houſe.*]

Mr. *Speaker* reſum'd the Chair, and a Meſſage was ſent from the Lords by Sir *Timothy Baldwyn* and Sir *Samuel Clarke.*

Mr. Speaker,

The Lords have commanded us to acquaint this Houſe, that they have appointed *William* Viſcount *Stafford* to be brought to the Bar in *Weſtminſter-Hall* to-morrow Morning at Ten of the Clock, to receive Judgment.

[*The Commons adjourned to eight of the Clock the next Morning.*]

The SEVENTH DAY.

Tueſday, December the 7th, 1680.

ABout the Hour of Eleven, the Lords adjourned into *Weſtminſter-Hall*, going thither in their former Order into the Court there erected; and Mr. *Speaker* having left the Chair, the Committee of Commons were ſeated as before.

The Lords being ſat, Proclamation was made for Silence; and the Lord High-Steward being ſeated on the Woolpack, with *Garter* Principal King of Arms, the Uſher of the Black-Rod, nine Maces attending him, with all the reſt of the Solemnity, as was at firſt expreſſed, took the Votes of the Peers upon the Evidence, beginning at the Puiſne Baron, and ſo upwards, in this order; the Lord *Stafford* being (as the Law requires) abſent.

L. H. S. My Lords, I am an humble Suitor to your Lordſhips, That you will give me leave to collect your Votes as I ſit, for I am not able to ſtand. (*Which being granted, the Lord High-Steward proceeded.*)

L. H. S. My Lord *Butler* of *Weſton*, Is *William* Lord Viſcount *Stafford* Guilty of the Treaſon whereof he ſtands impeached, or Not Guilty?

Lord *Butler.* Not Guilty upon my Honour.

[*The ſame Queſtion was put to the reſt, whoſe Names and Votes follow.*]

Lord *Arundel* of *Trerice.* Not Guilty upon my Honour.
Lord *Crew.* Guilty upon my Honour.
Lord *Cornwallis.* Guilty upon my Honour.
Lord *Holles.* Not Guilty upon my Honour.
Lord *Wooton.* Not Guilty upon my Honour.
Lord *Rockingham.* Guilty upon my Honour.
Lord *Lucas.* Not Guilty upon my Honour.
Lord *Aſtley.* Guilty upon my Honour.
Lord *Ward.* Not Guilty upon my Honour.
Lord *Byron.* Not Guilty upon my Honour.
Lord *Hatton.* Not Guilty upon my Honour.
Lord *Leigh.* Guilty upon my Honour.
Lord *Herbert* of *Cherbury.* Guilty upon my Honour.
Lord *Howard* of *Eſcrick.* Guilty upon my Honour.
Lord *Maynard.* Guilty upon my Honour.
Lord *Lovelace.* Guilty upon my Honour.
Lord *Deincourt.* Not Guilty upon my Honour.
Lord *Grey* of *Werk.* Guilty upon my Honour.
Lord *Brook.* Guilty upon my Honour.
Lord *Norris.* Not Guilty upon my Honour.
Lord *Chandois.* Guilty upon my Honour.
Lord *North* and *Grey.* Guilty upon my Honour.
Lord *Pagett.* Guilty upon my Honour.
Lord *Wharton.* Guilty upon my Honour.
Lord *Eure.* Guilty upon my Honour.
Lord *Cromwell.* Guilty upon my Honour.
Lord *Windſor.* Not Guilty upon my Honour.
Lord *Conyers.* Guilty upon my Honour.
Lord *Ferrers.* Not Guilty upon my Honour.
Lord *Morley.* Not Guilty upon my Honour.
Lord *Mowbray.* Not Guilty upon my Honour.
Lord Viſc. *Newport.* Guilty upon my Honour.
Lord Viſc. *Faulconberge.* Guilty upon my Honour.
Earl of *Conway.* Guilty upon my Honour.
Earl of *Berkeley.* Not Guilty upon my Honour.
Earl of *Macclesfield.* Guilty upon my Honour.
Earl of *Hallifax.* Not Guilty upon my Honour.
Earl of *Feverſham.* Not Guilty upon my Honour.
Earl of *Suſſex.* Guilty upon my Honour.
Earl of *Guilford.* Guilty upon my Honour.
Earl of *Shafteſbury.* Guilty upon my Honour.
Earl of *Burlington.* Guilty upon my Honour.
Earl of *Aileſbury.* Not Guilty upon my Honour.
Earl of *Craven.* Not Guilty upon my Honour.
Earl of *Carliſle.* Guilty upon my Honour.
Earl of *Bath.* Not Guilty upon my Honour.
Earl of *Eſſex.* Guilty upon my Honour.
Earl of *Clarendon.* Not Guilty upon my Honour.
Earl of *St. Albans.* Not Guilty upon my Honour.
Earl of *Scarſdale.* Guilty upon my Honour.
Earl of *Sunderland.* Guilty upon my Honour.
Earl of *Thanet.* Not Guilty upon my Honour.
Earl of *Cheſterfield.* Not Guilty upon my Honour.
Earl of *Carnarvon.* Not Guilty upon my Honour.
Earl of *Winchelſea.* Guilty upon my Honour.
Earl of *Stamford.* Guilty upon my Honour.
Earl of *Peterborough.* Not Guilty upon my Honour.
Earl of *Rivers.* Guilty upon my Honour.
Earl of *Mulgrave.* Guilty upon my Honour.
Earl of *Berkſhire.* Guilty upon my Honour.
Earl of *Mancheſter.* Guilty upon my Honour.
Earl of *Weſtmoreland.* Guilty upon my Honour.
Earl of *Clare.* Guilty upon my Honour.
Earl of *Briſtol.* Guilty upon my Honour.
Earl of *Denbigh.* Not Guilty upon my Honour.
Earl of *Northampton.* Guilty upon my Honour.
Earl of *Leiceſter.* Guilty upon my Honour.
Earl of *Bridgwater.* Guilty upon my Honour.
Earl of *Saliſbury.* Guilty upon my Honour.
Earl of *Suffolk.* Guilty upon my Honour.
Earl of *Bedford.* Guilty upon my Honour.
Earl of *Huntingdon.* Guilty upon my Honour.
Earl of *Rutland.* Not Guilty upon my Honour.
Earl of *Kent.* Guilty upon my Honour.
Earl of *Oxford.* Guilty upon my Honour.
Lord *Chamberlain.* Not Guilty upon my Honour.
Marquis of *Worceſter.* Not Guilty upon my Honour.
Duke of *Newcaſtle.* Not Guilty upon my Honour.
Duke of *Monmouth.* Guilty upon my Honour.
Duke of *Albemarle.* Guilty upon my Honour.
Duke of *Buckingham.* Guilty upon my Honour.
Lord *Privy-Seal.* Guilty upon my Honour.
Lord *Preſident.* Guilty upon my Honour.
Lord *High-Steward.* Guilty upon my Honour.
Prince *Rupert*, Duke of *Cumberland.* Guilty upon my Honour.

L. H. S. My Lords, Upon telling your Votes, I find there are Thirty-one of my Lords that think the Priſoner Not Guilty, and Fifty-five that have found him Guilty. Serjeant, Make Proclamation for the Lieutenant of the *Tower* to bring his Priſoner to the Bar.

[*Which was done, and his Lordſhip came to the Bar.*]

L. H. S. My Lord *Stafford*, I have but heavy Tidings for you; your Lordſhip hath been impeached of High-Treaſon, you have pleaded Not Guilty; my Lords have heard your Defence, and have conſider'd of the Evidence, and their Lordſhips do find you Guilty of the Treaſon whereof you are impeached.

L. *Staff.* God's Holy Name be praiſed, my Lords, for it.

L. H. S. What can your Lordſhip ſay for yourſelf, why Judgment of Death ſhould not be given upon you according to the Law?

L. *Staff.* My Lords, I have but very little to ſay; I confeſs, I am ſurpriz'd at it, for I did not expect it; but God's Will be done, and your Lordſhips, I will not murmur at it: God forgive thoſe that have ſworn falſly againſt me. My Lord, I conceive I have ſomething to ſay for reſpite of Judgment: I have been at many Trials in my Life, but I never ſaw any Trial where the Party tried did not hold up his Hand, which I was never aſked to do: I thought it had been a very material Point in the Law, that by the holding up of the Hand he might be known to be the Perſon. I have read lately, ſince I had the Misfortune to be thus accuſed, Sir *Edward Coke* upon the Pleas of the Crown; and he ſays, That Miſnomer, the not giving a Man his right Name, or Addition, is likewiſe a juſt Cauſe to arreſt the Judgment. There is likewiſe another Queſtion, how far it may be valued I know not; I ſubmit it, as I do all, to your Lordſhips. Tho' I am tried upon the Act of the 25th of *Edw.* III. yet there is nothing more in that Act, than what is included in the Act of the 13th of this King; and I humbly conceive, my Lords, by that Act, and the laſt Proviſo in it, a Peer that is accuſed and found guilty of the Crimes therein mentioned, is to loſe his Seat in Parliament; thoſe are the Words; and ſince 'tis ſo put down in the Act, it is ſo to be underſtood, and that is all the Puniſhment. And I humbly demand your Lordſhips Judgment upon theſe Points, whether it be ſo or no.

L. H. S. Has your Lordſhip any more to ſay?

L. *Staff.* No, my Lords, I ſubmit to your Lordſhips, and deſire your Judgment in theſe Points.

Then the Lords adjourned into the Parliament-Chamber, and the Committee of Commons returned to their own Houſe; and their Speaker having reſumed the Chair, the whole Body of the Houſe went with their Speaker to the Bar of the Houſe of Lords, to demand Judgment of High-Treaſon againſt *William* Viſcount *Stafford*, upon the Impeachment of the Commons of *England*, in Parliament, in the Name of the Commons in Parliament, and of all the Commons of *England*.

The Commons, with their Speaker, went back to their Houſe.

Then the Lords took into Conſideration what Judgment was to be given upon *William* Viſcount *Stafford*, and it was moved that he might be beheaded. After ſome Debate, the Judges were aſked, whether if any other Judgment than the uſual Judgment for High-Treaſon were given upon him, it would attaint his Blood? The Judges were of Opinion, that the Judgment for High-Treaſon appointed by Law, is to be drawn, hanged, and quartered; and in the Courts and Proceedings below they can take no notice of any Judgment for High-Treaſon but that.

Then Sir *Creſwell Levinz*, the King's Attorney-General, deſired to be heard on his Majeſty's behalf, which the Houſe gave leave for him to be; who ſaid, he knew no other Judgment by Law for High Treaſon, but Drawing, Hanging, and Quartering; if any other Judgment were given, it would be prejudicial to his Majeſty, and be a Queſtion in the inferior Courts as to his Attainder of High-Treaſon.

Whereupon their Lordſhips ordered, That the Lord High Steward do pronounce the ordinary Judgment of Death upon the Lord Viſcount *Stafford*, as the Law hath appointed in Caſes of High-Treaſon.

And a Meſſage was ſent to the Houſe of Commons from their Lordſhips, by Sir *Timothy Baldwyn* and Sir *Samuel Clark*.

Mr. *Speaker*,

We are commanded by the Lords, to acquaint this Houſe, That their Lordſhips are going preſently into *Weſtminſter-Hall*, to give Judgment againſt *William* Viſcount *Stafford*.

[*Mr.* Speaker *left the Chair*.]

The Committee of Commons appointed for the Management of the Evidence againſt the Priſoner, with the reſt of the Commons, went into *Weſtminſter-Hall*, to the Court there erected; to be preſent when the Lords gave Judgment of High Treaſon againſt him upon the Impeachment of the Commons of *England*.

After a ſhort Time their Lordſhips were adjourned into *Weſtminſter-Hall*, coming in their former Order into the Court there erected; where being ſeated, and the Lord High Steward being on the Woolſack, attended by *Garter* Principal King of Arms, the Uſher of the Black Rod, eight of the Serjeants at Arms kneeling with their Maces, the ninth making Proclamation for Silence; which being done, the Lord High-Steward gave Judgment upon the Priſoner as followeth:

L. H. S. ‘My Lord *Stafford*,

‘THAT which your Lordſhip hath ſaid in Arreſt of Judgment hath been found by my Lords, upon due Conſideration had of it, to be of no moment at all. It is no eſſential Part of any Trial, That the Priſoner ſhould hold up his Hand at the Bar; there is no Record ever made of it when it is done; the only Uſe of it is to ſhew the Court who the Priſoner is, and when that is apparent, the Court does often proceed againſt him, though he refuſe to hold up his Hand at the Bar; therefore the Omiſſion of that Ceremony, in this Caſe, is no legal Exception, as all the Judges have declared.

‘And as to the Proviſo's in the Statute of the 13th Year of this King, their Lordſhips do find that they are in no Sort applicable to this Caſe, foraſmuch as the Proceedings againſt your Lordſhip are not grounded upon that Statute, but upon the Statute of 25 *Edw.* III. And yet if the Proceedings had been upon the latter Statute, the Proviſo's therein could have done your Lordſhip no Service at all.

‘My Part therefore which remains, is a very ſad one: For I never yet gave Sentence of Death upon any Man, and am extremely ſorry that I muſt begin with your Lordſhip.

‘Who would have thought that a Perſon of your Quality, of ſo noble an Extraction, of ſo conſiderable Eſtate and Fortune, ſo eminent a Sufferer in the late ill Times, ſo intereſted in the Preſervation of the Government, ſo much obliged to the Moderation of it, and ſo perſonally obliged to the King and his Royal Father for their particular Favours to you, ſhould ever have entered into ſo infernal a Conſpiracy as to contrive the Murder of the King, the Ruin of the State, the Subverſion of Religion, and, as much as in you lay, the Deſtruction of all the Souls and Bodies in three Chriſtian Nations?

‘And yet the Impeachment of the Houſe of Commons amounts to no leſs a Charge, and of this Charge their Lordſhips have found you Guilty.

‘That there hath been a general and deſperate Conſpiracy of the Papiſts, and that the Death of the King hath been all along one chief Part of the Conſpirators Deſign, is now apparent beyond all Poſſibility of doubting.

‘What was the meaning of all thoſe Treatiſes which were publiſhed about Two Years ſince againſt the Oath of Allegiance, in a Time when no Man dreamt of ſuch a Controverſy? What was the meaning of Father *Conyers*'s Sermon upon the ſame Subject, but only becauſe there was a Demonſtration of Zeal, as they call it, intended againſt the Perſon of the King? Which the Scruples ariſing from that Oath did ſomewhat hinder.

‘To what Purpoſe were all the Correſpondencies with foreign Nations? The Collections of Money among the Fathers Abroad and at Home? What was the meaning of their governing themſelves here by ſuch Advices as came frequently from *Paris* and St. *Omers?* And how ſhall we expound that Letter which came from *Ireland*, to aſſure the Fathers here, that all Things were in a readineſs there too, as ſoon as the Blow ſhould be given?

‘Does any Man now begin to doubt how *London* came to be burnt? Or by what Ways and Means poor Juſtice *Godfrey* fell? And is it not apparent by theſe Inſtances, that ſuch is the frantick Zeal of ſome bigotted Papiſts, that they reſolve, no Means to advance the Catholick Cauſe ſhall be left unattempted, though it be by Fire and Sword?

‘My Lord, as the Plot in general is moſt manifeſt, ſo your Lordſhip's Part in it hath been too too plain. What you did at *Paris*, and continued to do at *Tixall* in *Staffordſhire*, ſhews a ſettled Purpoſe of Mind againſt the King; and what you ſaid at *London* touching honeſt *Will*, ſhews you were acquainted with that Conſpiracy againſt the King's Life which was carrying on here too: And in all this there was a great Degree of Malice; for your Lordſhip at one time call'd the King Heretick and Traitor to God; and at another Time you reviled him for miſplacing his Bounty, and rewarding none but Traitors and Rebels.

‘And thus you ſee that which the Wiſe-Man forewarned you of, is come upon you: *Curſe not the King, no, not in thy Heart: For the Birds of the Air ſhall reveal, and that which hath Wings will declare the Matter.*

‘Three Things I ſhall preſume to recommend to your Lordſhip's Conſideration. In the firſt Place, your Lordſhip now ſees how it hath pleaſed God to leave you ſo far to yourſelf, that you are fallen into the Snare, and into the Pit, into that very Pit which you were digging for others. Conſider therefore, that God Almighty never yet left any Man, who did not firſt leave him.

‘In the next Place, Think a little better of it than hitherto you have done, what kind of Religion that is, in which the blind Guides have been able to lead you into ſo much Ruin and Deſtruction as is now like to befal you.

‘In the laſt Place, I pray your Lordſhip to conſider, That true Repentance is never too late. A devout penetential Sorrow, joined with an humble and hearty Confeſſion, is of mighty Power and Efficacy both with God and Man.

‘There have been ſome of late who have refuſed to give God the glory of his Juſtice by acknowledging the Crimes for which they were condemned; nay, who have been taught to believe, that 'tis a mortal Sin to confeſs that Crime in publick, for which they have been abſolved in private, and ſo have not dared to give God that Glory which otherwiſe they would have done.

‘God forbid your Lordſhip ſhould reſt upon Forms; God forbid your Lordſhip ſhould be found among the Number of thoſe poor miſtaken Souls, whom the firſt Thing that undeceives is Death itſelf.

‘Perhaps your Lordſhip may not much eſteem the Prayers of thoſe whom you have long been taught to miſcal Hereticks; but whether you do or no, I am to aſſure your Lordſhip, That all my Lords here, even they that have condemned you, will never ceaſe to pray for you, That the End of your Life may be Chriſtian and Pious, how tragical ſoever the Means are that muſt bring you thither.

‘And now, my Lord, this is the laſt Time that I can call you my Lord; for the next Words I am to ſpeak will attaint you *.

‘The Judgment of the Law is, and this Court doth award, That

YOU go to the Place from whence you came; from thence you muſt be drawn upon a Hurdle to the Place of Execution: When you come there, you muſt be hanged up by the Neck, but not till you are dead; for you muſt be cut down alive, your Privy-Members muſt be cut off, and your Bowels ript up before your Face, and thrown into the Fire. Then your Head muſt be ſevered from your Body, and your Body divided into four Quarters; and theſe muſt be at the Diſpoſal of the King. And God Almighty be merciful to your Soul.

Priſoner. My Lords, I humbly beſeech you give me me leave to ſpeak a few Words; I do give your Lordſhips hearty Thanks for all your Favours to me. I do here, in the Preſence of God Almighty declare, I have no Malice in my Heart to them that have condemned me; I know not who they are, nor deſire to know; I forgive them all, and beſeech your Lordſhips all to pray for me. My Lords, I have one humble Requeſt to make to your Lordſhips, and that is, my Lords, That the little ſhort Time I have to live a Priſoner, I may not be a cloſe Priſoner as I have been of late, but that Mr. Lieutenant may have an Order that my Wife and Children and Friends may come at me. I do humbly beg this Favour of your Lordſhips, which I hope you will be pleaſed to give me.

L. H. S. My Lord *Stafford*, I believe I may, with my Lords leave, tell you one Thing further, That my Lords, as they proceed with Rigor of Juſtice, ſo they proceed with all the Mercy and Compaſſion that may be; and therefore my Lords will be humble Suitors to the King, that he will remit all the Puniſhment but the taking off your Head.

Priſoner. (Weeping) My Lords, your Juſtice does not make me cry, but your Goodneſs.

Then the Lord High Steward broke his Staff, and the Lords adjourned into the Parliament Chamber, and the Commons returned to their Houſe, and the Priſoner with the Ax born before him with the Edge towards him (it being carried contrarily during his Trial) was ſent back to the *Tower*.

His Majeſty afterward ordered the Lord High-Chancellor to iſſue out under the Great Seal of *England* the following Writs for executing the ſaid late Viſcount *Stafford*; the firſt being to the Lieutenant of the *Tower*, to deliver him on the 29th of *December* 1680, between nine and eleven o'Clock in the Forenoon, at the uſual Place without the *Tower-Gate*, to the Sheriffs of *London* and *Middleſex*; and the other being for them then and there to receive him into their Cuſtody, and to lead him to the uſual Place upon *Tower-Hill*, and there to cauſe his Head to be cut off, and ſevered from his Body: Which Writs were in Form following:

CAROLUS Secundus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Locumtenenti Turris noſtræ London ſalutem: Cum Willus Vicecomes Stafford, per Communes Regni noſtri Angliæ in Parliamento aſſemblat', de alta proditione necnon diverſis aliis criminibus & offenſis per ipſum perpetrat' & commiſſis, impetit' fuit, ac ſuperinde per Dominos Temporales in præſenti Parliamento noſtro convent', triat', convict' & debita juris forma attinct' fuit, & morti adjucat' exiſtit; cujus quidem Judicii executio adhuc reſtat facienda. Cumq; prædictus Vicecomes Stafford in Turri noſtra London, ſub cuſtodia tua detent' exiſtit: Præcipimus tibi & per præſentes firmiter injungendo mandamus, quod in & ſuper viceſimum nonum diem inſtantis menſis Decembris, inter horas nonam & undecimam, ante Meridiem ejuſdem diei, ipſum Vicecomitem Stafford, uſq; locumu ſualem extra portam Turris prædictæ ducas; ac ipſum, Vicecomitibus Civitatis noſtræ London & Middleſex, adtunc & ibidem deliberes: Quibus quidem Vicecomitibus nos per aliud breve eis inde direct', percepimus prædictum Vicecomitem Stafford adtunc & ibidem recipere, ut fiat executio Judicii prædicti, modo & forma prout dictis Vicecomitibus London & Middleſex, per aliud breve noſtrum prædictum præcipimus: Et hoc nullatenus omittas, ſub periculo incumbente; aliquo Judicio, Lege, Ordinatione, ſeu mandato præantea habit', fact', ordinat', ſeu dat' in contrarium non obſtante. Teſte meipſo apud Weſtm. decimo octavo die Decembris, Anno regni noſtri triceſimo ſecundo.

BARKER.

CAROLUS Secundus Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, fidei defenſor, &c. Vic. London & Vic. Middleſex ſalutem: Cum Willus Vicecomes Stafford, per Communes regni noſtri Angliæ in Parliamento

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* *This Attainder was attempted to be reverſed in* 1 Jac. II. *and a Bill for that Purpoſe paſſed the Houſe of Lords, but was dropped in the Houſe of Commons.*

aſſemblat', de alta proditione, necnon diverſis aliis criminibus & offenſis per ipſum perpetrat' & commiſſis impetit' fuit; ac ſuperinde per Dominos Temporales in præſenti Parliamento noſtro convent', triatus, convict' & debita juris forma attinct' fuit, & morti adjudicat' exiſtit; cujus quidem Judicii executio adhuc reſtat facienda; Præcipimus vobis, & per præſentes firmiter injungendo mandamus, quod in & ſuper viceſimum nonum diem hujus inſtantis Decembris, inter horas nonam & undecimam, ante meridiem ejuſdem diei, dictum Vicecomitem Stafford, extra Portam Turris noſtræ London, vobis tunc & ibidem deliberandum, prout per aliud breve Locumtenenti Turris noſtræ London directum præcepimus, in cuſtodiam veſtram adtunc & ibidem recipiatis, & ipſum ſic in cuſtodia veſtra exiſtentem, ſtatim uſque uſualem locum ſuper le Tower-hill ducatis; ac caput ipſius Willi. Vicecomitis Stafford, adtunc & ibidem amputari, ac a corpore ſuo omnino ſeparari faciatis; aliquo Judicio, Lege, Ordinatione, ſeu Mandato præantea habit', fact', ordinat', ſeu dat' in contrarium, non obſtante: Et hoc (ſub periculo incumbente) nullatenus omittatis. Teſte meipſo apud Weſtm. decimo octavo die Decembris, Anno regni noſtri triceſimo ſecundo.

BARKER.

There were two Writs to the Sheriffs, both alike *verbatim*, one delivered in *London*, the other in *Middleſex*.

Whereupon the Sheriffs doubting whether that was a ſufficient Authority for them to execute the Priſoner by Beheading only, the Sentence of Death being otherwiſe given, petitioned the Lords in Parliament to take the Premiſes into Conſideration, and to make ſuch Order as ſhould be agreeable to Right and Juſtice, as by the following Petition appears.

To the Right Honourable the Lords Temporal in Parliament aſſembled; The Humble Petition of Slingſby Bethel, *Eſq*; *and* Henry Corniſh, *Eſq*; *Sheriffs of* London *and* Middleſex:

‘ Sheweth,

‘ THAT your Petitioners have received a Writ under the Great Seal of *England*, reciting, That Judgment had been given by your Lordſhips againſt *William* Viſcount *Stafford*, for High-Treaſon, and divers other Crimes and Offences, upon the Impeachment of the Commons in Parliament aſſembled, and commanding your Petitioners to cauſe the ſaid Viſcount *Stafford*'s Head to be ſever'd from his Body upon the 29th Day of this Inſtant *December*, notwithſtanding any Judgment, Law, Ordinance, or Command to the contrary:

‘ That your Petitioners have not as yet received any Command from your Lordſhips for executing the ſaid Judgment.

‘ May it therefore pleaſe your Lordſhips to take the Premiſes into Conſideration, and to make ſuch Order therein, as ſhall be agreeable to Right and Juſtice. And your Petitioners ſhall always pray, &c.

Upon which Petition, the Lords did declare as followeth:

Die Martis 21 *Decembris*, 1680.

‘ UPON Application from the Sheriffs of *London* and *Middleſex*, making ſome Scruples concerning the Execution of the late Lord Viſcount *Stafford*, which were found by this Houſe to be unneceſſary, this Houſe do declare, That the King's Writ ought to obeyed.

The ſaid Sheriffs likewiſe made Application to the Houſe of Commons upon the aforeſaid Matter, who made the following Reſolve:

Die Jovis 23 *Decembris*, 1680.

REſolved, &c. *That this Houſe is content that the Sheriffs of* London *and* Middlſex, *do execute* William *late Viſcount* Stafford, *by ſevering his Head from his Body only.*

Accordingly, on the *Wedneſday* following, being the 29th of *December*, between nine and Ten in the Forenoon, the two Sheriffs, with a conſiderable number of Gentlemen on Horſeback, went to the *Tower-Gate*, and there demanded *William Howard*, late Viſcount *Stafford*; when a Gentleman belonging to the Lieutenant of the *Tower*, told the Sheriffs, That the Lieutenant would wait on them preſently, and bring the Priſoner to the Bars: To which the Sheriffs anſwered, That they muſt preſerve the Privileges and Bounds of the City: An Officer replied, *Sir, We were ordered to draw up two Companies from the Gate to the Bar, and there you are to receive the Priſoner.* Sheriffs. *Gentlemen, we will preſerve the Liberties of the City: And we are come at the Gate to demand the Priſoner; whether the Lieutenant will deliver him or no, we demand him.* And accordingly, he was deliver'd to the Sheriffs between the Gates and the Bars.

Before the Priſoner came, ſeveral People were upon the Scaffold, among which were two appointed to write.

The Headſman came up with two Blocks, one old, one new, in a Bag; alſo the Ax covered with a Cloth. The new Block being taken out, was covered over with Black, and laid upon a piece of Black Bays, about two Yards and a half long, upon which the Priſoner was to ſtretch himſelf. Then the Coffin was brought up, being coloured with two Letters, *W. S.* 1680. Then the Priſoner came upon the Scaffold, and aſked for the Executioner; upon his appearing, he aſked him, If he had received Money for the Cloaths? being anſwered, No, his Man took out a Purſe of Five Pounds, which the Headſman objected againſt, and the Priſoner gave him two Guineas more. After a ſhort Pauſe, he ſtepp'd to one ſide of the Scaffold, and taking a Paper out of his Pocket, read it as his Speech, *(Which came out the very ſame Day, before two of the Clock, in Print, as his Speech)* and was as follows:

‘ BY the Permiſſion of Almighty God, I am this Day brought hither to ſuffer Death, as if I were guilty of High Treaſon. I do moſt truly, in the Preſence of the Eternal, Omnipotent, and All-knowing God, proteſt, upon my Salvation, That I am as innocent as it is poſſible for any Man to be, ſo much as in a Thought, of the Crimes laid to my Charge.

‘ I ackowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long time to prepare myſelf for Eternity. I have not made ſo good uſe of that Grace as I ought to have done, partly by my not having ſo well recollected myſelf as I might have done, and partly, becauſe not only my Friends, but my Wife and Children have for ſeveral Days been forbidden to ſee me, but in the Preſence of one of my Warders. This hath been a great Trouble and Diſtraction unto me, but I hope God of his infinite Mercy will pardon my Defects, and accept of my good Intentions.

‘ Since my long Impriſonment, I have conſider'd often, what could be the original Cauſe of my being thus accuſed, ſince I knew myſelf not culpable, ſo much as in a Thought; and I cannot believe it to be upon any other Account than my being of the Church of *Rome*. I have no reaſon to be aſham'd of my Religion, for it teacheth nothing but the right Worſhip of God, Obedience to the King, and due Subordination to the temporal Laws of the Kingdom. And I do ſubmit to all Articles of Faith believed and taught in the Catholick Church, believing them to be moſt conſonant to the Word of God. And whereas it hath ſo much and often been objected, That the Church holds that Sovereign Princes, excommunicated by the Pope, may, by their Subjects, be depoſed or murdered: As to the Murder of Princes, I have been taught as a Matter of Faith in the Catholick Church, that ſuch Doctrine is diabolical, horrid, deteſtable, and contrary to the Law of God, Nature, and Nations; and as ſuch, from my Heart I renounce and abominate it. As for the Doctrine of depoſing Princes, I know ſome Divines of the Catholick Church hold it; but as able and learned as they have writ againſt it: But it was not pretended to be the Doctrine of the Church, that is, any Point of Catholick Faith: Wherefore I do here in my Conſcience declare, that it is my true and real Judgment, that the ſame Doctrine of depoſing Kings, is contrary to the fundamental Laws of this Kingdom, injurious to Sovereign Power, and conſequently would be in me or any other of his Majeſty's Subjects, impious and damnable. I believe and profeſs, that there is one God, one Saviour, one Holy Catholick Church, of which, through the Mercy, Grace, and Goodneſs of God, I die a Member.

‘ To my great and unſpeakable Grief, I have offended God in many things, by many great Offences; but I give him moſt humble Thanks, not in any of thoſe Crimes of which I was accuſed.

‘ All the Members of either Houſe having Liberty to propoſe in the Houſe what they think fit for the Good of the Kingdom; accordingly, I propoſed what I thought fit; the Houſe is Judge of the Fitneſs or Unfitneſs of it; and I think I never ſaid any thing that was unfitting there, or contrary to the Law and Uſe of Parliament; for certainly if I had, the Lords would (as they might) have puniſhed me: So am not culpable before God or Man.

‘ It is much reported of Indulgencies, Diſpenſations, and Pardons, to murder, rebel, lie, forſwear, and commit ſuch other Crimes held and given in the Church; I do here profeſs, in the Preſence of God, I never learnt, believed, or practiſed any ſuch Thing, but the contrary; and I ſpeak this without any Equivocation or Reſervation whatſoever: And certainly, were I guilty, either myſelf, or knew of any one that were guilty, whoſoever that were ſo, of any of thoſe Crimes of which I am accuſed, I were not only the greateſt Fool imaginable, but a perfect Mad-man, and as wicked as any of thoſe that ſo falſly have accus'd me, if I ſhould not diſcover any ill Deſign I knew in any Kind, and ſo upon Diſcovery ſave my Life, I have ſo often had ſo fair Occaſions propoſed unto me, and ſo am guilty of Self-Murder, which is a moſt grievous and heinous Sin; and though I was at laſt impeached at the Lords Bar, yet I have great Grounds to believe, that I was firſt brought to Trial, on the Belief, that to ſave my Life, I would make ſome great Diſcovery; and truly ſo I would, had I known any ſuch thing of any ill Deſign, or illegal dangerous Plot, either of myſelf, or any other Perſon whatſoever, without any Exception. But had I a thouſand Lives, I would loſe them all, rather than falſly accuſe either myſelf, or any other whatſoever. And if I had known of any Treaſon, and ſhould thus deny it, as I do now upon my Salvation at this time, I ſhould have no hope of Salvation, which now I have, through the Merits of Chriſt Jeſus.

‘ I do beſeech God to bleſs his Majeſty, who is my lawful King and Sovereign, whom I was always, by all Laws human and divine, bound to obey; and I am ſure that no Power on Earth, either ſingly, or altogether, can legally allow me, or any body elſe, to lift up a Hand againſt him, or his legal Authority. I do hold, that the Conſtitution of the Government of this Kingdom is the only way to continue Peace and Quietneſs, which God long continue.

‘ Next to Treaſon, I hold Murder in Abhorrence, and have ever done and do; and I do ſincerely profeſs, that if I could at this time free mymyſelf immediately, and eſtabliſh what Religion I would, and what Government I would, and make myſelf as great as I could wiſh, and all by the Death of one of theſe Fellows, that by their Perjuries have brought me to the Place where I am, I ſo much abhor to be the Cauſe of any Man's Death, that I would not any way be the Cauſe of their Murder; how much leſs would I endeavour the Aſſaſſination of his Majeſty, whom I hold to be as gracious a King as ever this, or any other Nation had, and under whom the People may enjoy their Liberties, as much as ever any did? And if it pleaſe God to grant him Life and Happineſs, according as I have always wiſhed and pray'd for, I am morally perſuaded, that he, and all his Dominions, will be as happy and proſperous as ever People were, which I beſeech God grant.

‘ I do moſt humbly aſk Pardon of the Almighty and All-merciful God, for all the great Offences I have committed againſt his Divine Majeſty; and I know he would not have the Death and Confuſion of a Sinner, but that he may repent and live; in that Aſſurance I hope, knowing he never deſpiſeth a contrite heart; and though I have not ſo feeling a Contrition as I would, yet I have it as well as I can; and I doubt not but that God will accept of the Good-will.

‘ I do deſire that all People will forgive me any Injury that I have done them in any thing, either willfully or by Chance; and I do heartily forgive all People in this World that have injur'd me; I forgive even thoſe perjur'd Men, that ſo falſly have brought me hither by their Perjuries.

‘ I do now upon my Death and Salvation aver, That I never ſpoke one Word either to *Oates* or *Turbervile*, or, to my Knowledge, ever ſaw them until my Trial; and for *Dugdale*, I never ſpoke unto him of any thing, but about a Foot-boy, or Foot-man, or Foot-race; and never was then alone with him: All the Puniſhment that I wiſh them, is, that they may repent and acknowledge the Wrong that they have done me; then it will appear how innocent I am: God forgive them! I have a great Confidence that it will pleaſe Almighty God, and that he will, in a ſhort time, bring Truth to Light; then you, and all the World, will ſee and know what Injury they have done me.

‘I hope that I have made it appear that I have ſome Conſcience; for if I had none, certainly I would have ſaved my Life, by acknowledging myſelf guilty; which I could have done, though I know I am not in the leaſt guilty. And I having ſome Conſcience, make very ill uſe of it, for I throw myſelf into eternal Pain, by thus plainly and conſtantly denying at my Death, the Knowledge of what I am accuſed of in the leaſt.

‘I have ſaid thus much in diſcharge of my Conſcience, and do aver, upon my Salvation, what I have ſaid to be really true.

‘I ſhall ſay little of my Trial; and whether it were all according to the known Law, I am too much a Party to ſay much of it: if it were not ſo, God forgive him or them that were the Cauſe of it.

‘My Judges were all Perſons of Honour, who were all as much bound to judge rightly, as if they had been upon Oath upon what was legally proved; and not to vote but according as in their Conſciences they were ſatisfied; and if any of them did otherwiſe, upon any Account whatſoever, I beſeech God forgive them, I do heartily.

‘I ſhall end with my hearty Prayers for the Happineſs of his Majeſty, that he may enjoy all Happineſs in this World and the World to come, and govern his People according to the Laws of God; and that the People may be ſenſible what a Bleſſing God hath ſo miraculouſly given them, and obey him as they ought. I aſk Pardon with a proſtrate Heart of Almighty God, for all the great Offences that I have committed againſt his Divine Majeſty, and hope, through the Merits and Paſſion of Chriſt Jeſus, to obtain everlaſting Happineſs, into whoſe Hands I commit my Spirit, aſking Pardon of every Perſon that I have done any Wrong unto; I do freely forgive all that have any ways wronged me; I do, with all the Devotion and Repentance that I can, humbly invoke the Mercy of our Bleſſed Saviour.

‘I beſeech God not to revenge my innocent Blood upon the Nation, or on thoſe that were the Cauſe of it, with my laſt Breath. I do with my laſt Breath truly aſſert my Innocency, and hope the omnipotent, all-ſeeing, juſt God will deal with me accordingly.’

His Speech being ended, he deliver'd ſeveral Copies ſigned with his own Hand, to Mr. Sheriff *Corniſh*, and other Gentlemen about him; one whereof, wrote with his own Hand, he ſent to the King. He then deſired he might have Liberty to pray in his own Way, which being granted, he kneeled down by the Block, and taking out of his Pocket another Paper, he read a *Latin* Prayer; which done, he gave the Paper to Mr. Sheriff *Bethel*, and then ſpoke to the People about the Scaffold to this effect; *God bleſs you, Gentlemen; God preſerve his Majeſty; he is as good a Prince as ever govern'd you: Obey him as faithfully as I have done, and God bleſs you all, Gentlemen.* Then a Miniſter applied himſelf, and ſaid, *Sir, Do you diſown the Indulgences of the* Romiſh *Church?* To which he anſwer'd with great Paſſion, *Sir, What have you to do with my Religion? However, I do ſay, that the Church of* Rome *allows no Indulgences for Murder, Lying,* &c. *and whatever I have ſaid is true.*

Min. *Have you received no Abſolution?*

Anſw. *I have received none at all.*

Min. *You ſaid that you never ſaw thoſe Witneſſes?*

Anſw. *I never ſaw any of them but* Dugdale, *and that was at a time when I ſpoke to him about a Foot-Boy.*

Then turning about to his Friends, he diſtributed among them his Watch, two Rings off his Fingers, his Staff, and his Crucifix from off his Neck; and his Gentleman ſtripping him of his Coat and Peruke, put on his Head a Silk Cap; and having accommodated his Hair, Shirt and Waiſtcoat for the Execution, he laid down his Neck on the Block and ſtretched himſelf.

The Executioner being demanded by the Sheriffs, Whether he had any Sign, he anſwer'd, No. Whereupon the Priſoner roſe up, and aſked, *What they wanted:* To which it was anſwered, *What Sign will you give?*

Anſw. *No Sign at all: Take your own Time; God's Will be done.*

Whereupon the Executioner ſaid, *I hope you forgive me:* He made anſwer, *I do.* Then lying down again, the Executioner at one Blow ſevered his Head from his Body, ſave only a ſmall Part of the Skin and Wind-pipe, which was immediately cut off with a Knife. After which, the Headſman holding up the Head in his Hand, carried it about the Scaffold, ſhewing it to the People, and ſaying, *Here is the Head of a Traitor.* The Corpſe with the Head were put into a Coffin, and conveyed to the *Tower*, where they were interr'd.

The Report of the COMMITTEE *of the* Houſe *of* Commons *appointed to examine the Proceedings of the Judges, made* December 23. 1680. 32 Car. II.

THIS Committee being inform'd, That in *Trinity-Term* laſt, the Court of *King's-Bench* diſcharg'd the Grand-Jury that ſerved for the Hundred of *Oſſulſton* in the County of *Middleſex*, in a very unuſual Manner; proceeded to enquire into the ſame, and found by the Information of *Charles Umfreville*, Eſq; Foreman of the ſaid Jury; *Edward Proby*, *Henry Gerard*, and *John Smith*, Gentlemen, alſo of the ſaid Jury, That on the 21ſt of *June* laſt, the Conſtables attending the ſaid Jury were found defective in not preſenting the *Papiſts* as they ought, and thereupon were order'd by the ſaid Jury to make further Preſentments of them on the 26th following, on which Day the *Jury* met for that Purpoſe; when ſeveral Peers of this Realm, and other Perſons of Honour and Quality, brought them a Bill againſt *James* Duke of *York* for not coming to Church: But ſome Exceptions being taken to that Bill, in that it did not ſet forth the ſaid Duke to be a *Papiſt*, ſome of the Jury attended the ſaid Perſons of Quality to receive Satisfaction therein. In the mean time, and about an Hour after they had received the ſaid Bill, ſome of the Jury attended the Court of *King's-Bench* with a Petition, which they deſired the Court to preſent in their Name unto his Majeſty for the ſitting of this Parliament. Upon which the Lord Chief Juſtice *Scroggs* raiſed many Scruples, and on Pretence that they were not all in Court, (tho' twenty of the Jury had ſubſcrib'd the Petition) ſent for them, ſaying, he would diſpatch them preſently. The Jury being come, and their Names called over, they renewed their Deſire that the Court would preſent their Petition: But the Chief Juſtice aſk'd, if they had any Bills? They anſwer'd they had, but the Clerks were drawing them into Form. Upon which the Chief Juſtice ſaid, they would not make two Works of one Buſineſs; and the Petition being read, he ſaid, This was no Article of their Charge, nor was there any Act of Parliament that required the Court to deliver the Grand Jury's Petitions: That there was a Proclamation about them; and that it was not reaſonable the Court ſhould be obliged to run on their Errands; and he thought it much, that they ſhould come with a Petition to alter the King's Mind declared in the News Book. The Jury ſaid, They did it not to impoſe on the Court, but (as other Juries had done) with all Submiſſion they deſired it. But the Court refuſed, bidding the Crier return them their Petition: And Mr. Juſtice *Jones* told them, they had meddled with Matters of State, not given them in Charge, but preſented no Bills of the Matters given in Charge. They anſwered as before, They had many before them that would be ready in due time. Notwithſtanding which, the ſaid Juſtice *Jones* told them, They were diſcharged from further Service.

But *Philip Ward* (the Clerk that attended the ſaid Jury) cried out, No, no; they have many Bills before them; for which the Court underſtanding (as it ſeems to this Committee) a ſecret Reaſon, which the Clerk did not, reproved him, aſking, If he or they were to give the Rule there? The Crier then told the Court, they would not receive their Petition; the Chief Juſtice bid him let it alone: So it was left there, and the Jury returned to the Court-Houſe, and there found ſeveral Conſtables with Preſentments of *Papiſts* and other Offenders, as the Jury had directed them on the 21ſt before; but could not now receive the ſaid Preſentments, being diſcharged. Whereby much Buſineſs was obſtructed, tho' none of the ſaid Informants ever knew the ſaid Jury diſcharged before the laſt Day of the Term, which was not till four Days after. And it further appeareth to the Committee, by the Evidences of *Samuel Aſtrey*, *Jaſper Waterhouſe*, and *Philip Ward*, Clerks, that have long ſerved in the ſaid Court, That they were much ſurprized at the ſaid diſcharging of the Jury, in that it was never done in their Memory before; and the rather, becauſe the ſaid *Waterhouſe*, as Secondary, conſtantly enters on that Grand Jury's Paper, that the laſt Day of the Term is given them to return their Verdict on, as the laſt Day but one is given to the other two Grand *Juries* of that County; which Entry is as followeth:

Trinit. 32 Car. II.

Juratores habent diem ad Verediƈtum ſuum reddendum uſque diem Mercurij proxime poſt tres Septimanas ſanƈtæ Trinitatis.

Middleſex
Offulſton
Hundred.

Being the laſt Day of the Term, and ſo in all the other Terms the laſt Day is given; which makes it appear to this Committee, That they were not in truth diſcharged for not having their Preſentments ready, ſince the Court had given them a longer Day, but only to obſtruct their farther Proceedings: And it appeareth by the Evidence aforeſaid to this Committee, That the four Judges of that Court were preſent at the diſcharging of the ſaid Jury, and it did not appear that any of them did diſſent therein; upon Conſideration whereof, the Committee came to this Reſolution:

Reſolved, That it is the Opinion of this Committee, That the diſcharging of the Grand Jury of the Hundred of *Oſſulſton* in the County of *Middleſex*, by the Court of *King's-Bench* in *Trinity-Term* laſt, before the laſt Day of the Term, and before they had finiſhed their Preſentments, was illegal, arbitrary, and an high Miſdemeanor.

This Committee proceeded alſo to enquire into a Rule of the Court of *King's-Bench*, lately made againſt the publiſhing a Book, called, *The Weekly Pacquet of Advice from* Rome; or, *The Hiſtory of Popery:* And *Samuel Aſtrey*, Gent. examined thereupon, informed this Committee, That the Author of the ſaid Book, *Henry Carr*, had been informed againſt for the ſame, and had pleaded to the Information; but before it was tried, a Rule was made on a Motion, as he ſuppoſeth, againſt the ſaid Book: All the Judges of that Court (as he remembers) being preſent, and none diſſenting. The Copy of which Rule he gave in to this Committee, and is as followeth:

Dies Mercurij proxime poſt tres Septimanas ſanctæ Trinitatis. Anno 32 Car. II. *Regis.*

Ordinatum eſt quod liber intitulat. The Weekly Pacquet of Advice from *Rome*; or, The Hiſtory of Popery, *non ulterius Imprimatur vel publicetur per aliquam Perſonam quamcunq;*

Per Cur.

And this Committee admiring that Proteſtant Judges ſhould take Offence againſt a Book, whoſe chief Deſign was to expoſe the Cheats and Foppery of Popery, enquired further into it; and found by the Evidence of *Jane Curtis*, that the ſaid Book had been licenſed for ſeveral Months; that her Huſband paid for the Copy, and entered it in the Hall-Book of the Company: But for all this, ſhe could not prevail by theſe Reaſons with the Lord Chief Juſtice *Scroggs* to permit it any longer; who ſaid, 'Twas a ſcandalous Libel, and againſt the King's Proclamation, and he would ruin her if ever ſhe printed it any more: And ſoon after ſhe was ſerved with the ſaid Rule, as the Author and other Printers were; and by the Author's Evidence it appears, That he was taken and brought before the ſaid Chief Juſtice by his Warrant above a Year ſince, and upon his owning he writ Part of that Book, the Chief Juſtice called him Rogue, and other ill Names; ſaying, he would fill all the Goals in *England* with ſuch Rogues, and pile them up as Men do Faggots; and ſo committed him to Priſon, refuſing ſufficient Bail, and ſaying, He would Goal him to put him to Charges; and his Lordſhip obſerved his Word punctually therein, forcing him to his *Habeas Corpus*, and then taking the ſame Bail he refuſed before: Upon which, this Committee came to this Reſolution:

Reſolved, That it is the Opinion of the Committee, That the Rule made by the Court of *King's-Bench* in *Trinity* Term laſt, againſt printing a Book, called, *The Weekly Pacquet of Advice from* Rome, is illegal and arbitrary.

And the Committee proceeded farther; and upon Information that a very great Latitude had been taken of late by the Judges, in impoſing Fines on the Perſons found guilty before them, cauſed a Tranſcript of all the Fines impoſed by the *King's-Bench* ſince *Eaſter* Term, in the 28th of his Majeſty's Reign, to be brought before them from the ſaid Court by *Samuel Aſtrey* Gent. By Peruſal of which it appeared to this Committee, That the Quality of the Offence, and the Ability of the Perſon found guilty, have not been the Meaſures that have determined the Quantity of many of theſe Fines; which being ſo very numerous, the Committee refer themſelves to thoſe Records as to the general, inſtancing in ſome Particulars, as followeth.

Trinit. 29. Car. II. Upon *Joſeph Brown* of *London*, Gent. on an Information for publiſhing a printed Book, called, *The Long Parliament diſſolved*; in which are ſet forth theſe Words: *Nor let any Man think it ſtrange, that we account it Treaſon for you to ſit and act contrary to our Laws: For if in the firſt Parliament of* Richard *the Second*, Gomecys *and* Weſton *for lack of Courage only, were adjudged guilty of High Treaſon for ſurrendring the Places committed to their Truſt; how much more you, if you turn Renegadoes to the People that entruſted you, and as much as in you lie, ſurrender not a little pitiful Caſtle or two, but all the legal Defence the People of* England *have for their Lives, Liberties and Properties, at once! Neither let a vain Perſuaſion delude you, That no Precedent can be found, that one* Engliſh *Parliament hath hanged up another; tho' peradventure even that may be proved a Miſtake: For an unprecedented Crime calls for an unprecedented Puniſhment; and if you ſhall be ſo wicked to do the one, or rather endeavour to do (for now you are no longer a Parliament) what ground of Confidence you can have that none will be found ſo worthy to do the other, we cannot underſtand; and do faithfully promiſe, if your Unworthineſs provoke us to it, that we will uſe our honeſt and utmoſt Endeavours (whenever a new Parliament ſhall be called) to chuſe ſuch as may convince you of your Miſtake: The old and infallible Obſervation,* That Parliaments are the Pulſe of the People, *ſhall loſe it's Eſteem; or you will find, that this your Preſumption was over-fond; however, it argues but a bad Mind to ſin, becauſe it is believed it ſhall not be puniſhed.* The Judgment was, That he be fined 1000 Marks, be bound to the good Behaviour for ſeven Years, and his Name ſtruck out of the Roll of the Attorneys, without any Offence alledged in his ſaid Vocation. And the publiſhing this Libel conſiſted only in ſuperſcribing a Pacquet, with this incloſed, to the *Eaſt-Indies*. Which Fine he not being able to pay (living only upon his Practice) he lay in Priſon for three Years, till his Majeſty graciouſly pardoned him, and recommended him to be reſtored to his Place again of Attorney, by his Warrant dated the 15th of *December* 1679. Notwithſtanding which, he has not yet obtained the ſaid Reſtoration from the Court of *King's-Bench*.

Hil. 29 & 30 Car. II. Upon *John Harrington* of *London*, Gent. for ſpeaking theſe Words laid in *Latin* thus: *Quod noſtra Gubernatio de tribus ſtatibus conſiſtebat, & ſi Rebellio eveniret in regno, & non accideret contra omnes tres ſtatus, non eſt Rebellio.* A Fine of 1000 *l.* Sureties for the good Behaviour for ſeven Years, and to recant the Words in an open Court; which Fine he was in no Capacity of ever paying.

Hil. 31 & 32 Car. II. Upon *Benjamin Harris* of *London*, Stationer, on an Information for printing a Book, called, *An Appeal from the Country to the City*, ſetting forth theſe Words: *We in the Country have done our Parts, in chuſing for the Generality good Members to ſerve in Parliament; but if (as our two laſt Parliaments were) they muſt be diſſolved or prorogued whenever they come to redreſs the Grievances of the Subject, we may be pitied, not blamed, if the Plot takes Effect; and in all Probability it will. Our Parliaments are not then to be condemned, for that their not being ſuffered to ſit occaſioned it.* Judgment to pay 500 *l.* Fine, ſtand on the Pillory an Hour, and give Sureties for the good Behaviour for three Years. And the ſaid *Benjamin Harris* informed this Committee, That the Lord Chief Juſtice *Scroggs* preſſed the Court then to add to this Judgment his being publickly whipped; but Mr. Juſtice *Pemberton* holding up his Hands in Admiration at their Severity therein, Mr. Juſtice *Jones* pronounced the Judgment aforeſaid; and he remains yet in Priſon, unable to pay the ſaid Fine.

Notwithſtanding which Severity in the Caſes forementioned, this Committee has obſerved the ſaid Court has not wanted in other Caſes an extraordinary Compaſſion and Mercy, though there appeared no publick Reaſon judicially in the Trial; as in particular:

Hil. 31 & 32 Car. II. Upon *Thomas Knox* Principal, on an Indictment of Subornation and Conſpiracy againſt the Teſtimony and Life of Dr. *Oates* for Sodomy; and alſo againſt the Teſtimony of *William Bedloe*; a Fine of 200 Marks, a Year's Impriſonment, and to find Sureties for the good Behaviour for three Years.

Eod. Ter. Upon *John Lane*, for the ſame Offence, a Fine of 100 Marks, to ſtand in the Pillory for an Hour, and to be impriſoned for one Year.

Paſ. 32 Car. II. Upon *John Taſborough*, Gent. on an Indictment for Subornation of *Stephen Dugdale*, tending to overthrow the whole Diſcovery of the Plot; the ſaid *Taſborough* being affirmed to be a Perſon of good Quality, a Fine of 100 *l.*

Eod. Ter. Upon *Anne Price* for the ſame Offence, 200 *l.*

Trin. 32 Car. II. Upon *Nathaniel Thompſon* and *William Badcock*, on an Information for printing and publiſhing a weekly Libel, called *The true Domeſtick Intelligence*, or *News both from City and Country*, and known to be Popiſhly affected, a Fine of 3 *l.* 6 *s.* 8 *d.* on each of them.

Eod. Ter. Upon *Matthew Turner*, Stationer, on an Information for vending and publiſhing a Book, called *The Compendium*, wherein the Juſtice of the Nation in the late Trials of the Popiſh Conſpirators, even by ſome of theſe Judges themſelves, is highly arraigned; and all the Witneſſes for the King horribly aſperſed: And this being the common notorious Popiſh Bookſeller of the Town, Judgment to pay a Fine of 100 Marks, and is ſaid to be out of Priſon already.

Trin. 32 Car. II. Upon *Loveland*, on an Indictment for a notorious Conſpiracy and Subornation againſt the Life and Honour of the Duke of *Buckingham* for Sodomy, a Fine of 5 *l.* and to ſtand an Hour in the Pillory.

Mich. 32 Car. II. Upon *Edward Chriſtian*, Eſq; for the ſame Offence, a Fine of 100 Marks, and to ſtand an Hour in the Pillory. And upon *Arthur Obrian*, for the ſame Offence, a Fine of 20 Marks, and to ſtand an Hour in the Pillory.

Upon Conſideration whereof, this Committee came to this Reſolution:

Reſolved, That it is the Opinion of this Committee, That the Court of *King's-Bench* (in the Impoſition of Fines on Offenders of late Years) hath acted arbitrarily, illegally and partially, favouring Papiſts, and Perſons popiſhly affected, and exceſſively oppreſſing his Majeſty's Proteſtant Subjects.

And this Committee being informed, That ſeveral of his Majeſty's Subjects had been committed for Crimes bailable by Law, although they then tendered ſufficient Sureties, which were refuſed, only to put them to Vexation and Charge, proceeded to enquire into the ſame, and found that not only the forementioned *Henry Carr* had been ſo refuſed the common Right of a Subject, as is aboveſaid; but that *George Broome*, being a Conſtable laſt Year in *London*, and committing ſome of the Lord Chief Juſtice *Scroggs*'s Servants for great Diſorders, according to his Duty, he was in a few Days arreſted by a Tipſtaff, without any *London* Conſtable, and carried before the ſaid Chief Juſtice by his Warrant, to anſwer for the committing of thoſe Perſons aboveſaid; and being there, was accuſed of having ſpoken irreverently of the ſaid Chief Juſtice; and an *Affidavit* read to him to that Purpoſe, which was falſly (as the ſaid *George Broome* affirms) ſworn againſt him by two Perſons that uſe to be common Bail in that Court, and of very ill Reputation. Upon which he was committed to the *King's-Bench*, though he then tendered two able Citizens and Common-Council-Men of *London* to be his Bail: and he was forced to bring his *Habeas Corpus* to his great Charge before he came out: When the Marſhal, Mr. *Cooling*, exacted 5 *l.* of him; of which he complained to the Chief Juſtice, but had no other Anſwer, But he might take his Remedy at Law. But the ſaid Marſhal fearing he ſhould be queſtioned, reſtored him two Guineas of it.

And farther this Committee was informed by *Francis Smith*, Bookſeller, that about *Michaelmas* was Twelve-month he was brought before the ſaid Chief Juſtice by his Warrant, and charged by the Meſſenger, *Robert Stephens*, That he had ſeen ſome Parcels of a Pamphlet, called *Obſervations on Sir* George Wakeman's *Trial*, in his Shop: Upon which the Chief Juſtice told him, he would make him an Example; uſe him like a Boor in *France*, and pile him and all the Bookſellers and Printers up in Priſon like Faggots; and ſo committed him to the *King*'s-*Bench*, ſwearing and curſing at him in great Fury. And when he tendered three ſufficient Citizens of *London* for his Bail, alledging Impriſonment in his Circumſtances would be his utter Ruin; the Chief Juſtice replied, The Citizens looked like ſufficient Perſons, but he would take no Bail; and ſo he was forced to come out by *Habeas Corpus*, and was afterwards inform'd againſt for the ſame Matter, to his great Charge and Vexation. And a while after *Francis* (the Son of the ſaid *Francis Smith*) was committed by the ſaid Chief Juſtice, and Bail refuſed, for ſelling a Pamphlet called *A New-Year's Gift* for the ſaid Chief Juſtice, to a Coffee-houſe; and he declared to them he would take no Bail; for he would ruin them all.

And farther it appeared to this Committee, That the ſaid Chief Juſtice (about *October* was Twelve-month) committed in like Manner *Jane Curtis*, ſhe having a Huſband and Children, for ſelling a Book called, *A Satyr againſt Injuſtice*, which his Lordſhip called a Libel againſt him; and her Friends tendering ſufficient Bail, and deſiring him to have Mercy on her Poverty and Condition, he ſwore by the Name of God ſhe ſhould go to Priſon, and he would ſhew no more Mercy than they could expect from a Wolf that came to devour them; and ſhe might bring her *Habeas*

Corpus, and come out ſo: Which ſhe was forc'd to do; and after inform'd againſt and proſecuted to her utter Ruin, four or five Terms after.

In like manner it appeared to this Committee, That about that time alſo *Edward Berry* (Stationer of *Gray's-Inn*) was committed by the ſaid Chief Juſtice, being accus'd of ſelling the *Obſervations on Sir* George Wakeman's *Trial*; and tho' he tendered 1000*l.* Bail, yet the Chief Juſtice ſaid, he would take no Bail, he ſhould go to Priſon, and come out according to Law. And after he with much Trouble and Charge got out by *Habeas Corpus*, he was forc'd by himſelf, or his Attorney, to attend five Terms before he could be diſcharg'd, though no Information was exhibited againſt him in all that time. In Conſideration whereof, and of others of the like Nature, (too tedious here to relate) this Committee came to this Reſolution:

Reſolved,

That it is the Opinion of this Committee, That the refuſing ſufficient Bail in theſe Caſes, wherein the Perſons committed were bailable by Law, was illegal, and a high Breach of the Liberty of the Subject.

And this Committee being informed of an extraordinary kind of a Charge given at the laſt Aſſizes at *Kingſton* (in the County of *Surrey*) by Mr. *Baron Weſton*, and proceeding to examine ſeveral Perſons then and there preſent; it was made appear to this Committee, by the Teſtimony of *John Cole*, *Richard Mayo*, and *John Peirce*, Gentlemen, and others (ſome of whom put down the ſaid Baron's Words in writing immediately) that part of the ſaid Charge was to this Effect: He inveighed very much againſt *Farel*, *Luther*, *Calvin*, and *Zuinglius*, condemning them as Authors of the Reformation, which was againſt their Princes Minds; and then adding to this Purpoſe, Zuinglius *ſet up his Fanaticiſm, and* Calvin *built on that bleſſed Foundation: And to ſpeak Truth, all his Diſciples are ſeaſoned with ſuch a Sharpneſs of Spirit, that it much concerns Magiſtrates to keep a ſtrait Hand over them; and now they are reſtleſs, amuſing us with Fears, and nothing will ſerve them but a Parliament. For my Part, I know no Repreſentative of the Nation but the King; all Power centers in him: 'Tis true, he does entruſt it with his Miniſters, but he is the ſole Repreſentative; and i' faith he has Wiſdom enough to entruſt it no more in theſe Men, who have given us ſuch late Examples of their Wiſdom and Faithfulneſs.* And this Committee taking the ſaid Matter into their Conſideration, came to this Reſolution.

Reſolved,

That it is the Opinion of this Committee, that the ſaid Expreſſions in the Charge given by the ſaid *Baron Weſton* were a Scandal to the Reformation, in Derogation of the Rights and Privileges of Parliaments, and tending to raiſe Diſcord between his Majeſty and his Subjects.

And this Committee being informed by ſeveral Printers and Bookſellers, of great Trouble and Vexation given them unjuſtly by one *Robert Stephens*, (called a Meſſenger of the Preſs) the ſaid *Stephens* being examined by this Committee, by what Authority he had proceeded in that manner, produced two Warrants under the Hand and Seal of the Chief Juſtice *Scroggs*, which were *in hæc verba:*

Ang. ſſ. *WHEREAS there are divers ill diſpoſed Perſons, who do daily print and publiſh many ſeditious and treaſonable Books and Pamphlets, endeavouring thereby to diſpoſe the Minds of his Majeſty's Subjects to Sedition and Rebellion; and alſo infamous Libels reflecting upon particular Perſons, to the great Scandal of his Majeſty's Government: for ſuppreſſing whereof, his Majeſty hath lately iſſued out his Royal Proclamation. And for the more ſpeedy ſuppreſſing the ſaid ſeditious Books, Libels and Pamphlets, and to the end that the Authors and Publiſhers thereof may be brought to their Puniſhment:*

Theſe are to will and require you, and in his Majeſty's Name to charge and command you, and every of you, upon Sight hereof, to be aiding and aſſiſting unto Robert Stephens, *Meſſenger of the Preſs, in ſeizing on all ſuch Books and Pamphlets as aforeſaid, as he ſhall be informed of, in any Bookſellers or Printers Shops or Warehouſes, or elſewhere whatſoever, to the end they may be diſpoſed as to the Law ſhall appertain: Alſo if you ſhall be informed of the Authors, Printers or Publiſhers of ſuch Books or Pamphlets as are above-mentioned, you are to apprehend them, and have them before one of his Majeſty's Juſtices of the Peace, to be proceeded againſt according to Law. Dated this 29th Day of* November, 1679.

To *Robert Stephens*, Meſſenger of the Preſs, and
to all Mayors, Sheriffs, Bailiffs, Conſtables,
and all other Officers and Miniſters whom
theſe may concern.

William Scroggs.

Ang. ſſ. *WHEREAS the King's Majeſty hath lately iſſued out his Proclamation for ſuppreſſing the printing and publiſhing unlicenſed News-Books, and Pamphlets of News: notwithſtanding which, there are divers Perſons who do daily print and publiſh ſuch unlicenſed Books and Pamphlets.*

Theſe are therefore to will and require you, and in his Majeſty's Name to charge and command you, and every of you, from time to time, and at all times, ſo often as you ſhall be thereunto required, to be aiding and aſſiſting to Robert Stephens, *Meſſenger of the Preſs, in the ſeizing all ſuch Books and Pamphlets as aforeſaid, as he ſhall be informed of, in any Bookſeller's Shop, or Printer's Shop or Warehouſes, or elſewhere whatſoever, to the end they may be diſpoſed of as to Law ſhall appertain. Likewiſe, if you ſhall be informed of the Authors, Printers or Publiſhers of ſuch Books and Pamphlets, you are to apprehend them, and have them before me, or one of his Majeſty's Juſtices of the Peace, to be proceeded againſt as to Law ſhall appertain. Dated this 28th Day of* May, Anno Dom. 1680.

To all Mayors, Sheriffs, Bailiffs, Conſtables,
and all other Officers and Miniſters whom
theſe may concern.

William Scroggs.

To *Robert Stephens*, Meſſenger
of the Preſs.

Upon View whereof this Committee came to this Reſolution:

Reſolved, *That it is the Opinion of this Committee, That the ſaid Warrants are arbitrary and illegal.*

And this Committee being informed of certain ſcandalous Diſcourſes, ſaid to be uttered in publick Places by the Lord Chief Juſtice *Scroggs*, proceeded to examine Sir *Robert Atkins*, late one of the Juſtices of the *Common-Pleas*, concerning the ſame; by whom it appears, That at a Seſſions Dinner at the *Old Bailey*, (in the Mayoralty of Sir *Robert Clayton*) who was then preſent, the ſaid Chief Juſtice took occaſion to ſpeak very much againſt petitioning, condemning it as reſembling 41, as factious and tending to Rebellion, or to that Effect; to which the ſaid Sir *Robert Atkins* made no reply, ſuſpecting he waited for ſome Advantage over him: But the Chief Juſtice continuing and preſſing him with the ſaid Diſcourſe, he began to juſtify petitioning as the Right of the People, eſpecially for the ſitting of a Parliament, which the Law requires, if it be done with Modeſty and Reſpect. Upon which the Chief Juſtice fell into a great Paſſion; and there is ſome Reaſon to believe, that ſoon after he made an ill Repreſentation of what the ſaid Sir *Robert* had then ſpoke, unto his Majeſty. And this Committee was farther informed, That the ſaid Sir *Robert Atkins* being in Circuit with the ſaid Chief Juſtice at Summer Aſſizes was Twelve-month at *Monmouth*, (Mr. *Arnold*, Mr. *Price*, and Mr. *Bedloe* being then in Company) the Chief Juſtice fell ſeverely in publick upon Mr. *Bedloe*, taking off the Credit of his Evidence, and alledging he had overſhot himſelf in it, or to that Effect, very much to the Diſparagement of his Teſtimony: And the ſaid Sir *Robert* defending Mr. *Bedloe*'s Evidence and Credit, he grew extreme angry and loud, ſaying to this Effect, *That he verily believed* Langhorn *died innocently.* To which the ſaid Sir *Robert* replied, He wondered how he could think ſo, who had condemned him himſelf, and had not moved the King for a Reprieve for him. All which Matters of Diſcourſe this Committee humbly ſubmit to the Wiſdom and Conſideration of this Houſe, without taking upon them to give any Opinion therein.

And this Committee proceeded farther to enquire into ſome Paſſages that happened at *Lent-Aſſizes* laſt for the County of *Somerſet*, at the Trial of *Thomas Dare*, Gent, there, upon an Indictment for ſaying falſly and ſeditiouſly, *That the Subjects had but two Means to redreſs their Grievances, the one by Petitioning, the other by Rebellion:* And found, that though by his other Diſcourſe when he ſaid ſo, that it appeared plainly he had no rebellious Intent, in that he ſaid, *Then God forbid there ſhould be a Rebellion, he would be the firſt Man to draw his Sword againſt a Rebel*; yet he was proſecuted with great Violence: And having pleaded *Not Guilty*, he moved Mr. Juſtice *Jones* (who then ſat Judge there) that he might try it at the next Aſſizes, for that Mr. *Searle* (who was by at the ſpeaking of the Words, and a material Witneſs for his Defence) was not then to be had, and an *Affidavit* to that Purpoſe was made and receiv'd. But the ſaid Juſtice *Jones* told him, That was a Favour of the Court only, and he had not deſerved any Favour, and ſo forc'd him to try it preſently. But the Jury, appearing to be an extraordinary one, provided on purpoſe, being all of Perſons that had highly oppoſed petitioning for the ſitting of this Parliament, he was adviſed to withdraw his Plea; and the ſaid Juſtice *Jones* encouraging him ſo to do, he confeſs'd the Words, denying any evil Intention, and gave the ſaid Juſtice an Account in writing of the Truth of the whole Matter, and made a Submiſſion in Court, as he was directed by the ſaid Juſtice; who promiſed to recommend him to his Majeſty, but impoſed a Fine of 500*l.* on him, and to be bound to the good Behaviour for three Years; declaring, alſo, That he was turned out from being a Common-Councellor of the Corporation of *Taunton* in the ſaid County, on Pretence of a Clauſe in their Charter, giving ſuch a Power to a Judge of *Aſſize*. And the ſaid *Thomas Dare* remains yet in Priſon for the ſaid Fine; in which Matter of the Trial aforeſaid, this Committee deſireth to refer itſelf to the Judgment of this Houſe.

Upon this Occaſion Sir *Francis Winnington* made the following Speech.

Mr. Speaker,

IN the Front of *Magna Charta* it is ſaid, *Nulli negabimus, nulli deferemus Juſtitiam*, we will defer or deny Juſtice to no Man: To this the King is ſworn, and with this the Judges are entruſted by their Oaths. I admire what they can ſay for themſelves; if they have not read this Law, they are not fit to ſit upon the Bench; and if they have, I had almoſt ſaid, they deſerve to loſe their Heads.

Mr. Speaker, The State of this poor Nation is to be deplored, that in almoſt all Ages, the Judges, who ought to be Preſervers of the Laws, have endeavoured to deſtroy them; and that to pleaſe a Court-Faction. They have by Treachery attempted to break the Bonds aſunder of *Magna Charta*, the great Treaſury of our Peace: It was no ſooner paſſed, but a Chief * Juſtice in that Day perſuades the King he was not bound by it, becauſe he was under Age when it was paſſed. But this Sort of Inſolence the next Parliament reſented, to the Ruin of the pernicious Chief Juſtice. In the time of *Richard* the Second, an unthinking diſſolute Prince, there were Judges that did inſinuate into the King, that the Parliament were only his Creatures, and depended on his Will, and not on the fundamental Conſtitutions of the Land; which treacherous Advice proved the Ruin of the King, and for which all thoſe evil Inſtruments were brought to Juſtice. In his late Majeſty's Time, his Misfortunes were occaſioned chiefly by the Corruptions of the Long Robe; his Judges by an extrajudicial Opinion gave the King Power to raiſe Money upon an extraordinary Occaſion without Parliament, and made the King Judge of ſuch Occaſions. Charity prompts me to think they thought this a Service to the King; but the ſad Conſequences of it may convince all Mankind, that every illegal Act weakens the Royal Intereſt; and to endeavour to introduce abſolute Dominion in theſe Realms is the worſt of Treaſons, becauſe, whilſt it bears the Face of Friendſhip to the King, and deſigns to be for his Service, it never fails of the contrary Effect.

The two great Pillars of the Government are Parliaments and Juries: it is this gives us the Title of Free-born *Engliſhmen*: For my Notion of free *Engliſhmen* is this, That they are ruled by Laws of their own making, and tried by Men of the ſame Condition with themſelves. The two great and undoubted Privileges of the People have been lately invaded by the Judges that now ſit in *Weſtminſter-Hall*; they have eſpouſed Proclamation againſt Law; they have diſcountenanced and oppoſed ſeveral legal Acts, that tended to the ſitting of this honourable Houſe; they have graſped the legiſlative Power into their own Hands, as in that Inſtance of Printing; the Parliament was conſidering that Matter, but they in the Interim made their private Opinion to be Law, to ſuperſede the Judgment of this Houſe; they have diſcharged Grand Juries on purpoſe to quell their Preſentments, and ſhelter great Criminals from Juſtice; and when Juries have preſented their Opinion for the ſitting of this Parliament, they have in Diſdain thrown them at their Feet, and told them, they would be no Meſſengers to carry ſuch Petitions; and yet in a few Days after, have encouraged all that would ſpit their Venom againſt the Government; they have ſerved an ignorant and arbitrary Faction, and been the Meſſengers of Abhorrences to the King.

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* *Hubert de Bourg.*

Mr. Speaker, What we have now to do, is to load them with Shame, who bid defiance to the Law; they are guilty of Crimes againſt Nature, againſt the King, againſt their Knowledge, and againſt Poſterity. The whole Frame of Nature doth loudly and daily petition to God their Creator; and Kings, like God, may be addreſſed to in like Manner by Petition, not Command. They likewiſe knew it was lawful to petition; Ignorance can be no Plea, and their Knowledge aggravates their Crimes. The Children unborn are bound to curſe ſuch Proceedings; for 'twas not petitioning but Parliaments they abhorred. The Atheiſt pleads againſt a God, not that he diſbelieves a Deity, but would have it ſo. *Treſilian* and *Belknap* were Judges too; their Learning gave them Honour, but their Villainies made their *Exit* by a Rope. The End of my Motion therefore is, That we may addreſs warmly to our Prince againſt them; let us ſettle a Committee to enquire into their Crimes, and not fail of doing Juſtice upon them that have perverted it; let us purge the Fountain, and the Streams will iſſue pure.

The Reſolutions of the Houſe of Commons upon the ſaid Report.

I. THAT it is the Opinion of this Houſe, That the Diſcharging of the Grand Jury of the Hundred of *Oſſulſton* in the County of *Middleſex*, by the Court of *King*'s-*Bench* in *Trinity-Term* laſt, before the laſt Day of the Term, and before they had finiſhed their Preſentments, was arbitrary and illegal, deſtructive to publick Juſtice, a manifeſt Violation of the Oaths of the Judges of that Court, and a Means to ſubvert the fundamental Laws of this Kingdom, and to introduce Popery.

II. That it is the Opinion of this Houſe, That the Rule made by the Court of *King*'s-*Bench* in *Trinity-Term* laſt, againſt printing of a Book, called *The Weekly Pacquet of Advice from* Rome, is illegal and arbitrary, thereby uſurping to themſelves legiſlative Power, to the great Diſcouragement of the Proteſtants, and for the countenancing of Popery.

III. That it is the Opinion of this Houſe, That the Court of *King*'s-*Bench*, in the Impoſition of Fines on Offenders of late Years, have acted arbitrarily, illegally, and partially, favouring Papiſts and Perſons popiſhly affected, and exceſſively oppreſſing his Majeſty's Proteſtant Subjects.

IV. That it is the Opinion of this Houſe, That the refuſing ſufficient Bail in theſe Caſes, wherein the Perſons committed were bailable by Law, was illegal, and a high Breach of the Liberties of the Subject.

V. That it is the Opinion of this Houſe, That the ſaid Expreſſions in the Charge given by the ſaid Baron *Weſton*, were a Scandal to the Reformation, and tending to raiſe Diſcord between his Majeſty and his Subjects, and to the Subverſion of the ancient Conſtitution of Parliaments, and of the Government of this Kingdom.

VI. That it is the Opinion of this Houſe, That the ſaid Warrants are arbitrary and illegal.

The Reſolutions of the Commons for the Impeachment of the ſaid Judges.

Reſolved,

THAT Sir *William Scroggs*, Knight, Chief Juſtice of the Court of *King*'s-*Bench*, be impeached upon the ſaid Report, and the Reſolutions of the Houſe thereupon.

Reſolved,

That Sir *Thomas Jones*, one of the Juſtices of the ſaid Court of *King*'s-*Bench*, be impeached upon the ſaid Report, and Reſolutions of the Houſe thereupon.

Reſolved,

That Sir *Richard Weſton*, one of the Barons of the Court of *Exchequer*, be impeached upon the ſaid Report, and Reſolutions of the Houſe thereupon.

Ordered,

That the Committee appointed to prepare an Impeachment againſt Sir *Francis North*, Chief Juſtice of the Court of *Common-Pleas*, do prepare Impeachments againſt the ſaid Sir *William Scroggs*, Sir *Thomas Jones*, and Sir *Richard Weſton*, upon the ſaid Report and Reſolutions.

Ordered,

That the ſaid Report, and ſeveral Reſolutions of this Houſe thereupon, be printed; and that Mr. *Speaker* take Care in the printing thereof apart from this Day's other Votes.

Accordingly, *Jan.* 5. Articles of Impeachment were actually brought in againſt Sir *William Scroggs*; and the ſaid Articles were ingroſſed, and carried up to the Lords by Lord *Cavendiſh*: But the Parliament being ſoon after prorogued, this Affair was dropped; however, it was thought proper to remove *Scroggs* from being Chief Juſtice; which was done with all the Marks of Favour and Reſpect, being allowed a Penſion for Life. But a Parliamentary Cenſure did not hinder the Court from preferring others, who had been cenſured a little before; as may appear by theſe *Votes* of the Houſe of Commons *.

Octob. 29. 1680.

Reſolved, *That Sir* Francis Withens, *by promoting and preſenting to his Majeſty an Addreſs, expreſſing an Abhorrence to petition his Majeſty for the calling and ſitting of Parliaments, hath betrayed the undoubted Rights of the Subjects of* England.

Ordered, *That Sir* Francis Withens *be expelled this Houſe for this* High Crime; *and that he receive his Sentence at the Bar of this Houſe upon his Knees from Mr. Speaker.*

(Which he received accordingly.)

Nov. 13. 1680.

Reſolv'd, *That Sir* George Jefferies, *Recorder of* London, *by traducing and obſtructing petitioning for the ſitting of this* Parliament, *hath betrayed the Rights of the Subject.*

Ordered, *That an humble Addreſs be made to his Majeſty, to remove Sir* George Jefferies *out of all publick Offices.*

* See *Stat. Tri.* Vol. VII. p. 479.

CIII. *Proceedings in Parliament againſt* EDWARD FITZ-HARRIS, *upon an Impeachment for* High-Treaſon, March 25, *&c.* 1681. 33 Car. II.

ON the 25th of *March*, 1681, the Houſe of Commons took into Conſideration the Affair of *Fitz-Harris*; they began with reading his Examination, taken *March* 10. before Sir *Robert Clayton* and Sir *George Treby*, which was in Subſtance as follows.

THE Examinate ſaith, That he was born in *Ireland*, and was bred, and is a *Roman Catholick*; That he had a Commiſſion, and raiſed a Company of Foot in *Ireland* for the *French* King's Service, and conducted them into *France*.

That in 1672, going to take his Leave of Father *Gough*, an *Engliſh* Prieſt at *Paris*, he told him, Within this two Years, You will ſee the Catholick Religion eſtabliſhed in *England* as it is in *France*; the Examinate aſking how that could be, the King being a Proteſtant, he anſwered, If the King would not comply, there was Order taken, and Things ſo laid, that he ſhould be taken off or killed; That the Duke of *York* was a Catholick, and in his Reign there would be no Difficulty of doing it; That the Father then told him, that the Declaration of Indulgence was for the introducing the Catholick Religion; and that to the ſame End the War was made againſt *Holland*, it being a Neſt of Hereticks; and that *Madam* came over to *Dover* upon this Deſign.

That the Examinate, about *February* 1672, had a Lieutenant's Commiſſion in Captain *Sidenham*'s Company, in the Duke of *Albemarle*'s Regiment, in the *Black-Heath* Army; and that he knew many of the Officers to be *Roman Catholicks*; and that the Act paſſing to diſable *Roman Catholicks*, he and others of them were forced to quit their Commands; that the common Opinion amongſt them was, for the ſettling the *Roman Catholick* Religion in *England*; but that the Meaſures being broken, by Means of the Peace with *Holland*, and the Duke of *York* and other Catholick Officers quitting all Commands, and the King failing in his Expectations from them; the *Roman Catholicks* came to a Reſolution to deſtroy the King, as Father *Parry*, Confeſſor to the *Portugueze* Ambaſſador, told the Examinate in 1673; who put this Confidence in him, being his Confeſſor; and that the ſame Father repeated the ſame Diſcourſe to him with more Aſſurance in 1678; adding then, that the Buſineſs then was now near, and he ſhould ſoon ſee it done. That about *April* 1679, the Duke of *Modena*'s Envoy having ſworn him to Secrecy, told him, That if he would undertake the killing the King, he ſhould have 10,000*l.* which he refuſing, the Envoy ſaid, the Dutcheſs of *Mazarine* underſtands poiſoning as well as her Siſter, and a little Vial when the King comes there will do it; and that upon the King's Death, the Army in *Flanders*, and Parts adjacent to *France*, was to come into *England* to deſtroy the Proteſtant Party; and that after that, there ſhould be no Parliaments; and that the Duke of *York* was privy to all theſe Deſigns.

That about *April* 1680, *Kelly* the Prieſt, whom he had known above 12 Years, and had ſometimes confeſſed him, owned to him at *Calais*, that he was concerned in the Murder of Sir *Edmundbury Godfrey*; and that the ſame was done as *Prance* had related it.

That the Examinate had been ſix or ſeven Years acquainted with Monſieur *de Puy*, Servant to the Duke of *York*; and that he told him ſoon after the Murder of Sir *Edmundbury Godfrey*, That that Murder was conſulted at *Windſor*; and about that Time ſaid, That the Duke was very deſirous to come to the Crown, the King being uncertain, and not keeping touch with them; and that *De Puy* ſaid, there was a Neceſſity of taking off the King, and that it would be ſoon done: That the Duke of *York* poſſeſſing Part of the Examinate's Father's Eſtate in *Ireland*, the Examinate being acquainted with Father *Bedingfield*, aſked him, How he could give Abſolution to the Duke, till he had made Reſtitution? To which the Father ſaid, That every Penitent was ſuppoſed to know his own Sins, and to declare them to his Confeſſor: To which the Examinate replying with Warmth, But ſince you know it, you ought to take Notice thereof; the Father anſwered, Be not angry, for e're it be long you may be in a better Condition.

That in *March* 1680, he met Father *Patrick* at *Paris*; and talking of a Rupture that might be between *England* and *France*, the Father ſaid, That the *French* intended, in ſuch Caſe, to ſend Marſhal *Bellfonds* into

Ireland with 10000 Foot and 2000 Horſe, and Arms and Ammunition for 30000 Men to be raiſed there; and the Father promiſed the Examinate a Regiment of the Men to be ſo raiſed, and the Deſign was to reſtore that Kingdom to its former Owners in Subjection to *France*.

That Father *Patrick* deſired him to ſend him all the Libels that came out in *London*; and ſaid, that libelling the King was a thing neceſſary, in order to diſtaſte and make him jealous of his People; that the Examinate knew Mr. *Everard* at *Paris* in 1665, and hath ſince increaſed his Acquaintance with him; and that the Opinion of Father *Patrick* about libelling the King, encouraged the Examinate to concur with *Everard*, as to the Libel lately written by *Everard*.

As ſoon as the Examination was read, Sir *John Hotham* moved that it might be printed, to ſhew the World the deviliſh Conſpiracies of the Papiſts; which Motion was ſeconded by Sir *William Jones*, who ſaid, that People had been prevailed upon to believe the Plot not true, and that that Examination confirmed the Informations of *Oates* and *Bedloe*.

Sir *Francis Winnington*. The treaſonable Paper of *Fitz-Harris* was to have been ſent to many Gentlemen, and they to have been ſeized thereupon, as Traitors in a Conſpiracy againſt the King: All is at Stake, therefore let not our Courage leſſen: Let us go to the Bottom of this Buſineſs of *Fitz-Harris*; I move, he may be impeached of High-Treaſon; and it may be, he will relent and tell you all.

Sir *Robert Clayton* then ſaid, That when *Fitz-Harris* his Examination was taken at *Newgate*, he told him, that he thought he had not dealt ingenuouſly, unleſs he would tell what Counſel he had for drawing the Paper; and that he bad him be ingenuous in the whole Matter, and he would come and take his farther Examination; and that *Fitz-Harris* having promiſed this, he was removed out of their reach into the *Tower*.

Whereupon an Impeachment was ordered, and Sir *L. Jenkins* commanded to carry it to the Lords; and Col. *Birch* ſaid, that we ought all to give God Thanks for this Diſcovery of *Fitz-Harris*, next to the firſt Diſcovery of the Plot.

Upon *Saturday* the 26th of *March* 1681, the Houſe of Commons being informed that the Houſe of Lords had refuſed to proceed upon the Impeachment,

Sir *Thomas Lee* ſaid, That he ſaw by the Lords refuſing the Impeachment, no farther Uſe of Parliaments; That they would be a Court, or not a Court, to ſerve a preſent Purpoſe.

Sir *William Jones*'s Indictments were brought againſt the Lords in the *Tower*, and yet that was no Impediment to their Impeachment in the *Lords Houſe*; but here is no Indictment or Proſecution brought againſt *Fitz-Harris*. We have an Inſtance freſh in Memory; *Scroggs* a Commoner, and not indicted at Common Law, yet the Lords without ſcruple accepted his Impeachment. We find the Lords have determined a great Point; the Lords Spiritual, as well as Temporal, have voted the Refuſal of the Impeachment of *Fitz-Harris*; which we own not in this Judicature, and I hope never ſhall; and we are denied Juſtice by the Lords Spiritual, who have no Right to vote. This is a double Act of Injuſtice: Let us then vote, *That the Commons have a Right to impeach in capital Caſes*; *and that the Lords have denied us Juſtice, in refuſing the Impeachment in a Parliamentary way*. At a Conference, let us ſhow how unwarrantable the Lords Actions have been; and if the Diſſolution of the Parliament follows, it is the Fault of thoſe Men who will not hear our Reaſons.

Sir *Francis Winnington*. This Impeachment is not an ordinary Accuſation, but it relates to our Religion and Property; and how the Biſhops come to ſtifle this, let God and the World judge—If the Lords will vote that the Commons ſhall not impeach him, they may as well vote they ſhall not be Proſecutors. This is a new Plot againſt the Proteſtants, of which *Fitz-Harris* is accuſed, and we muſt not impeach him: In this, the Lords ſay, we muſt not hear it—I deſire you would come to ſome Vote: You are willing to diſcover the Plot, if you could—If our time be ſhort, (as I believe it is) pray come to ſome Reſolution to aſſert your Right—A little while ago, when the Duke was preſented for a Papiſt, the Grand Jury was diſmiſſed by the Chief Juſtice. This ſeems as if the Lords would juſtify the Judges Proceedings by their own—If no Man doubts our Right, pray vote it.

Sir *Robert Howard*. This of *Fitz-Harris* ſeems to me to be a more dangerous Breath than uſual, a Breath fit to be ſtifled; *there is ſomething in this more than ordinary*. If there be ſo ſacred a Reſpect to common Trials in inferior Courts, 'tis ſtrange that the Houſe of Commons ſhould be below a Common Jury---It ſeems the Lords value *Fitz-Harris* to keep him from us---If *Dangerfield* would ſpeak what he knew, nothing of Mercy was too big for him; but they hurry *Fitz-Harris* away to the *Tower*, when he began to confeſs in *Newgate*: Are you ſo loſt that you have no Mercy left for the Proteſtant Religion?—We hear that the *French* Ambaſſador had a hand in this Plot, which a Jury will not enquire into. I muſt confeſs, that by the Carriage of this I have enlarged my Suſpicion; for I cannot but ſuſpect unuſual Ways—Something depends upon this Man—Sure we muſt not lay down all Proſecution of the Plot, and that the Proteſtant Religion ſhall have no Mercy. *Fitz-Harris* may merit Mercy by Confeſſion; and if his Breath be ſtopped by the Lords, I am ſorry that People will ſay, If it were not for the Lords, *Fitz-Harris* might have diſcovered all the Conſpiracy, and the Proteſtant Religion might have been ſaved.

Mr. Serjeant *Maynard* then added, We all know what Arts and Crafts have been uſed to hide the Plot; it began with Murder, Perjury and Subornation: This of *Fitz-Harris* is a ſecond Part of it; the Lords deny to receive our Impeachment; in effect, they make this no Parliament, if we are the Proſecutors, and they will not hear our Accuſation. 'Tis ſtrange, when their own Lives, as well as ours, are concerned in the Plot.—When all is at Stake, we muſt not proſecute: If this be ſo, *Holland* and *Flanders* muſt ſubmit to the *French*, and they over-run all. This is a ſtrange Breach of Privilege, and tends to the Danger of the King's Perſon, and Deſtruction of the Proteſtant Religion.

Sir *Thomas Player*. This of *Fitz-Harris* is a conſiderable Confirmation of the former Plot: I call it the *Old Plot*, but 'tis ſtill new upon us. When he inclined to diſcover what he knew, he was fetched to *Whitehall*, and ſent to the *Tower*; and ſo we were deprived of all farther Hopes of Diſcovery; and now they ſtop his Mouth: I move therefore, that you will declare, *That if any Judge, Juſtice or Jury proceed upon him, and he be found guilty; that you will declare them guilty of his Murder, and Betrayers of the Rights of the* Commons *of* England. Hereupon the Houſe came to theſe Reſolves:

That it is the undoubted Right of the Commons in Parliament aſſembled, to impeach, before the Lords in Parliament, any Peer or Commoner for Treaſon, any other Crime or Miſdemeanor; and that the Refuſal of the Lords to proceed in Parliament upon ſuch Impeachment, is a Denial of Juſtice, and Violation of the Conſtitution of Parliaments.

That in the Caſe of *Edward Fitz-Harris*, who by the Commons has been impeached for High-Treaſon before the Lords with a Declaration, That in convenient time they would bring up the Articles againſt him: For the Lords to reſolve, that the ſaid *Fitz-Harris* ſhould be proceeded with according to the Courſe of the Common Law, and not by way of Impeachment in Parliament, is a Denial of Juſtice, and a Violation of the Conſtitution of Parliaments, and an Obſtruction to the farther Diſcovery of the Popiſh Plot, and of great Danger to his Majeſty's Perſon, and the Proteſtant Religion.

That for any inferior Court to proceed againſt him, or any other Perſon lying under an Impeachment in Parliament for the ſame Crimes for which he or they ſtand impeached, is an high Breach of the Privilege of Parliament.

This Matter, thus agitated in the Houſe of Commons, was countenanced by a Proteſtation of many Temporal Lords; which was to this Effect:

" That in all Ages it hath been an undoubted Right of the Commons " to impeach before the Lords any Subject for Treaſons, or any other " Crime whatſoever.

" That they could not reject ſuch Impeachments, becauſe that Suit or " Complaint can be determined no where elſe; for an Impeachment is at " the Suit of the People, but an Indictment is at the Suit of the King; " as, the King may indict at his Suit for Murder, and the Heir, or the " Wife of the Party murthered may bring an † Appeal; and the King " cannot releaſe that Appeal, nor his Indictment prevent the Proceedings " in it.

" It is an abſolute Denial of Juſtice, in regard it cannot be tried any " where elſe. The Houſe of Peers, as to Impeachments, proceed by vir" tue of their Judicial Power, and not by their Legiſlative; and as to " that, act as a *Court* of *Record*; and can deny Suitors (eſpecially the " Commons of *England*, that bring legal Complaint before them) no " more than the Judges of *Weſtminſter* can deny any Suit regularly com" menced before them.

" Our Law ſaith, in the Perſon of the King, *Nulli negabimus Juſtitiam*, " We will deny Juſtice to no ſingle Perſon; yet here, Juſtice is denied " to the whole Body of the People. This may be interpreted an " Exerciſe of arbitrary Power, and have an Influence upon the Conſtitu" tion of the *Engliſh* Government; and be an Encouragement to all " inferior Courts to exerciſe the ſame arbitrary Power, by denying the " Preſentments of Grand Juries, &c. for which, at this time, the Chief " Juſtice ſtands impeached in the Houſe of Peers.

" Theſe Proceedings may miſrepreſent the Houſe of Peers to the King " and People, eſpecially at this time; and the more, in the particular " Caſe of *Edward Fitz-Harris*, who is publickly known to be concerned " in vile and horrid Treaſons againſt his Majeſty; and a great Conſpira" tor in the Popiſh Plot to murther the King, and deſtroy and ſubvert " the Proteſtant Religion.

Monmouth,
Kent,
Huntingdon,
Bedford,
Saliſbury,
Clare,
Stamford,
Sunderland,
Eſſex,
Shafteſbury,
Macclesfield,
Mordant,
Wharton,
Paget,
Greye of *Werke*,
Herbert of *Cherbury*,
Cornwallis,
Lovelace,
Crew.

This Proteſt was no ſooner made upon *Monday* the 28th of *March* 1681, but the Parliament was inſtantly diſſolved.

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† Which was always to be preferred; and upon Notice thereof, all Proſecutions at the King's Suit were to ſtop, till the Proſecution at the Suit of the Party was determined.

Proceedings againſt EDWARD FITZ-HARRIS *in the* King's-Bench, *upon his Arraignment and Plea to an Indictment for* High-Treaſon, April 27, &c. 1681. Paſchæ. 33 Car. II.

ON *Wedneſday April* the 27th, 1681, the Grand Juries for the County of *Middleſex* were ſworn; and after the Charge delivered by Mr. Juſtice *Jones*, his Majeſty's Attorney-General deſired, That ſome of that Grand Jury which ſerved for the Hundreds of *Edmonton* and *Gore* (that for *Oſſulſton* Hundredbeing immediately adjourned for a Week) might be preſent at the ſwearing of the Witneſſes upon an Indictment for High-Treaſon, to be preferred againſt *Edward Fitz-Harris*, Priſoner in the *Tower* of *London*, which was granted; but the Grand Jury being under ſome Scruples againſt receiving of the Bill, deſired the Opinion of the Court therein; which Mr. Juſtice *Jones* alone thought not fit to give, but ordered them to attend next Day when the Court was full.

And accordingly on *Thurſday*, *April* 28, the ſaid Grand Jury came to the Bar, and Mr. *Michael Godfrey* (Brother to Sir *Edmundbury Godfrey*), who was their Foreman, addreſſed himſelf thus to the Court.

Mr. *Godfrey*. My Lord, I have an humble Requeſt to make to the Court on the Behalf of myſelf, and another on the Behalf of the Grand Jury for the County of *Middleſex*, of which I am Foreman. This Gentleman, Mr. *Ward*, I did beg of when I was ſworn, to chuſe another Man that was fitter for the Service, as being more experienced, but he would not; and I beg your Pardon, if I ſhould commit any Failure for want of Experience. But I deſire, before we proceed upon this Indictment before us, that this ſame *Fitz-Harris* may be examined about my Brother's Death, of which I ſuppoſe he may know much, becauſe in the printed Narrative he does ſpeak of one *De Puy*, who was a very active Man about that Murder; and how ill a Man ſoever he hath been, we do hope he hath ſo much Truth in him, as to tell what he knows of that horrid Murder. Therefore I pray your Lordſhip, that you would grant an *Hubeas Corpus* to fetch him before your Lordſhip to be examined upon that Point before we do proceed; that is all as to myſelf. My Lord, as to the Jury, we do all of us humbly preſent this Paper, and deſire it may be read in Court.

† *Sir* Francis Pemberton.

* *L. C. Juſtice*. † What is it? a Petition?

Cl. of Crown. It is not ſubſcribed by any Body.

Jurors. But we do all own it, my Lord.

L. C. J. What is it? Read it.

Cl. of Crown. We *Michael Godfrey*, &c. being ſworn to ſerve in the Grand Inqueſt for the Hundreds of *Edmonton* and *Gore*, in this County of *Middleſex*, &c. and being Yeſterday ſent for into the Court of *King*'s-*Bench*, by a Meſſenger from the ſaid Court, to be preſent at the ſwearing of ſeveral Witneſſes produced on the Behalf of our Sovereign Lord the King, to prove the Truth of ſome Indictments, then in the Hands of the Clerk of the Crown; and obſerving, that Sir *William Waller*, *Smith*, and others, were ſworn to give Evidence againſt *Edward Fitz-Harris*, now Priſoner in the *Tower*, who in the late Parliament at *Oxford*, was impeached by the Honourable Houſe of Commons, in the Name of themſelves, and of all the Commons of *England*; of which, we the ſaid *Michael Godfrey*, &c. are Part, and as Jurymen, be his Judges alſo.

We therefore humbly deſire the Opinion of this Honourable Court, whether it be lawful and ſafe for us, the ſaid *Godfrey*, &c. (in caſe an Indictment of the ſaid *Fitz-Harris* ſhould be brought before us) to proceed to examine any Witneſſes in Reference to the ſaid Indictment, or any way to meddle with it, or proceed upon it, notwithſtanding the ſaid Impeachment, and Votes purſuant to it by the ſaid Honourable Houſe of Commons? And this being a great Point in Law, and of ſo great Conſequence for us to undertake in a Point of Right not ſettled by Conference, and remaining yet undetermined in the High Court of Parliament.

We therefore humbly deſire the Opinion of this Court upon the whole Matter, Whether legally and ſafely we may proceed to find the Indictment of *Fitz-Harris*, or no?

Mr. *Godfrey*. My Lord, we do humbly deſire the Reſolution of the Court in this Matter, as a Thing of Weight; for we are between two Mill-ſtones, as we apprehend it, and ſhall be ground between them.

L. C. J. Look you, Gentlemen of the Jury, we do not apprehend ſo.

Sir Robert Sawyer.

Mr. *Att. Gen.* My Lord, be pleaſed to ſpare me one Word: This Indictment was tendered to this Grand Jury Yeſterday, and this Gentleman was againſt accepting the Bill, till he had your Judgment, and ſo were two more; but for all that, the Body of them carried it (all but theſe three) to hear the Evidence: Whereupon Mr. *Sollicitor* and myſelf did go on upon the Evidence, and ſpent ſome time in opening it to them, and it was all given to them; and truly the Gentlemen did ſeem to be abundantly ſatisfied what an horrid Villainy it was, and we did think they would have found the Bill: But it ſeems they have prevailed to put theſe Scruples into the others Heads.

L. C. J. Look you, Mr. *Attorney*, we will now enquire into that. Gentlemen of the Jury, you ſeem diſſatisfied in this Matter, and deſire the Opinion of the Court in it, whether you may lawfully proceed to find this Indictment or not? We did hear Yeſterday of ſome Scruples you made to my Brother *Jones* when you were ſworn, and he ſat in Court to give you the Charge, which he thought not fit then to anſwer, but left it till To-day: Truly we would have all things fairly and clearly done, that we may underſtand how we go all along in this Matter. Your Scruple is this: Here was, you ſay, an Impeachment offered againſt *Fitz-Harris* by the Commons to the Lords, and that Impeachment was of High-Treaſon, which was not received, and thereupon there was a Vote of the Houſe of Commons that he ſhould not be tried by any other inferior Court: You deſire now to know whether you may enquire concerning this Treaſon, notwithſtanding theſe things that have paſſed thus?

Mr. *Godfrey*. Yes, my Lord.

L. C. J. We are very ready and willing to ſatisfy any of the King's Subjects in any Matters in Judgment before us, that they may ſee there ſhall be nothing but fair Proceedings in all Caſes: We do tell you it is our Opinion, that notwithſtanding any thing of this Matter that you ſuggeſt in the Caſe before you, it is fit for you to enquire upon the Indictment; and you are bound to enquire by virtue of your Oaths, if an Indictment be exhibited to you: You cannot, nor ought to take any Notice of any ſuch Votes of the Houſe of Commons afterwards, if any ſuch there were, for they will not excuſe you (who are ſworn to enquire of the Matters given you in Charge), in caſe you do not your Duty; and therefore if you have Evidence enough given you to ſatisfy you that the Indictment is true, you are to find it. And likewiſe we ought to proceed according to Juſtice, in Caſes that are brought before us. Neither you nor we can take Notice of theſe things, in caſe there be any ſuch as you ſuggeſt; nor will they excuſe us before God or Man for the Breach of our Oaths, if we ſhould do the contrary. And this we declare to you, not only as our Opinions, but as the Opinion of all the Judges of *England*. For when we did hear there was a Scruple made by you the Gentlemen of the Jury, becauſe we would make the Way fair and clear, all the Judges did aſſemble to debate the Matter for your Satisfaction; not that we were diſſatisfied at all in it ourſelves, but that it might appear to you and the Kingdom, that there is nothing but Fairneſs uſed in this Caſe, as in all others; and all the Judges, *Nemine contradicente*, were all of Opinion, that you are not to take Notice of any of theſe Things; but if the Indictment be exhibited, and you have Evidence enough, you ought to find it. This we have endeavoured for your Satisfaction, to make your Way clear.

Jurors. We humbly thank your Lordſhip.

[*Then the Jury went away, and afterwards found the Bill.*]

On *Friday*, *April* 29, 1681, Sir *Tho. Stringer*, the King's Serjeant at Law, moved for an *Habeas Corpus*, to bring up the Body of *Edward Fitz-Harris*, to be examined by the Court about the Death of Sir *Edmundbury Godfrey*. The Court granted the Writ, and ſaid, he ſhould be arraign'd upon the Indictment againſt him, and then they would examine him.

Saturday, *April* 30, *Edward Fitz-Harris* was brought with a ſtrong Guard to the *King*'s-*Bench* Court.

Mr. Serj. *Stringer*. Your Lordſhip hath been pleaſed to grant an *Habeas Corpus* for *Fitz-Harris*, and he is brought up, and attends here.

L. C. J. We will ſend for Mr. *Attorney*, Brother.

Mr. Serj. *Jefferies*. I beg this of your Lordſhip, That you will be pleaſed to ſtay a little; I know not how he comes to be brought up here; Mr. *Attorney*, it ſeems, ſays, he knows nothing of it.

L. C. J. Well, well; ſend for Mr. *Attorney*, Brother, and hear what he ſays.

[*Which being done, and Mr.* Attorney *come in, the Priſoner was brought to the Bar.*]

Mr. Serj. *Stringer*. My Lord, I would humbly move he may be brought into Court to be examined before he be arraigned.

L. C. J. Why ſo?

Mr. Serj. *Stringer*. My Lord, we would have him examined concerning Sir *Edmundbury Godfrey*'s Death.

L. C. J. What matters it? That may be done after as well as before.

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand.

Mr. *Fitz-Harris*. My Lord, I have been a cloſe Priſoner theſe ten Weeks, and have not had the Liberty to ſee any one in the World: I deſire I may have Liberty to ſee my Friends, and ſpeak with them, before I do anſwer to any thing.

Mrs. *Fitz-Harris*. My Dear, plead to the Juriſdiction of the Court; here's a Plea drawn by Counſel for you.

L. C. J. You had beſt conſider well what you have to do.

Mr. *Fitz-Harris*. My Lord, I deſire this Paper may be read by the Clerks.

Mr. Juſt. *Jones*. No, no; that cannot be till you have anſwered to your Indictment.

Cl. of Cr. Pull off your Glove, and hold up your Hand.

Mr. *Fitz-Harris*. My Lord, I deſire Leave to plead to the Juriſdiction of the Court.

L. C. J. You ſhall have it.

Mr. *Fitz-Harris*. I deſire this Plea may be allowed.

Mr. Juſt. *Dolben*. Hear your Indictment firſt, and plead afterwards.

L. C. J. Look you, Mr. *Fitz-Harris*, let us thus far direct you: Your holding up of your Hand, and hearing the Indictment read, will not hinder you from any Manner of Plea which you may have to make afterwards; but you can plead nothing before.

Cl. of Cr. Pull off your Glove, and hold up your Hand *(which he did)*. And then the Clerks of the Crown read the Subſtance of his Indictment to him in *Engliſh*. And then ſpeaking to him, ſaid, How ſayeſt thou, *Edw. Fitz-Harris?* Art thou guilty of this High-Treaſon whereof thou ſtandeſt indicted, and haſt been now arraigned, or Not Guilty?

Mr. *Fitz-Harris*. My Lord, I offer this Plea to be read firſt, before I anſwer.

L. C. J. That Plea? Take his Plea: Let us ſee what it is. We take it to read it now.

Mr. Juſt. *Jones*. Not to allow it.

L. C. J. Only to ſee what it is.

Cl. of Crown reads,

ET *præd.* Edwardus Fitz-Harris *in propria perſona ſua venit & dict. quod ipſe ad Indictament. præd. modo verſus eum per Jurator. præd. in forma præd. compert. reſpondere compelli non debet, quia dicit quod ante Indictament. præd. per Jurator. præd. in forma præd. compert. ſcil. ad Parliam. Dom. Regis nunc inchoat. & tent. apud Oxon. in Com. Oxon.* 21 *Die Martii, Anno Reg. Dom. Caroli Secundi nunc Regis Angliæ, &c. Triceſimo Tertio, ipſe idem* Edwardus Fitz-Harris *per Milites, Cives, & Burgenſ. ad idem Parliament. ad tunc & ibid. convocat. & aſſemblat. de & pro præd. Prodition. Criminibus & Offenſ. unde ipſe idem* Edwardus Fitz-Harris *per Indictament. præd. modo indictat. exiſtit ſecundum Legem & Conſuetudinem Parliamenti accuſat. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parliamento per Summonition. ipſius Dom. Regis ad tunc & ibid. aſſemblat. Quodq; impetitio præd. in plenis ſuis robore & effectu adhuc remanet, ſicut per Record. inde in Cur. Parliament. præd. remanen. plenius liquet & apparet. Et idem* Edwardus Fitz-Harris *ulterius dicit, quod ſi quis in aliquo Parliamento Dom. Regis hujus Regni Angliæ de aliquibus Proditionibus, Criminibus, & Offenſis, per Milites, Cives, & Burgenſ. ad hujuſmodi Parliament. convocat. & aſſemblat. in hujuſmodi Parliament. accuſat. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parliament. per Summonit. ipſius Dom. Regis aſſemblat. tunc hujuſmodi Prodition. Crimina & Offenſa de & pro quibus hujuſmodi perſona in hujuſmodi Parliament. accuſat. & impetit. fuit in Parliament. Dom. Reg. hujus Regni Angliæ audiri, triari, & terminari debeant, & ſemper hactenus conſueverunt, & de jure debuerunt, & non alibi in aliqua Curia infer. quam in Parliament. Et hoc idem* Edwardus Fitz-Harris *parat. eſt verificare, unde non intendit quod Dominus Rex nunc velit in Cur. nunc hic de & pro Prodition. Criminibus, & Offenſ. præd. reſponderi, & petit. Judic. ſi ipſe ad Indictament. præd. per Jurator. præd. in forma præd. compert. ulterius reſpondere compelli debeat, &c. Cum hoc quod præd.* Edwardus Fitz-Harris *verificare vult, quod Proditio, Crimina, & Offenſ. præd. in Indictament. præd. per Jurator. præd. in forma præd. compert. ſpecificat. & mentionat. & pro quibus ipſe idem* Edwardus Fitz-Harris *per Indictament. ill. modo indictat. exiſtit, & Proditio, Crimina & Offenc. pro quibus ipſe præd.* Edwardus Fitz-Harris *in Parliament. præd. in forma præd. accuſat. & impetit. fuit, & exiſtit, ſunt unum & eadem Proditio, Crimina, & Offenſ. & non al. neque diverſa, quodq; impetit. præd. adhuc in plenis ſuis robore, vigore, & effectu remanet.*

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† *See an Account of this* Chief Juſtice *in* Burnet's *Hiſt. Own Times*, Vol. I. p. 501.

L. C. J. Look you, Mr. *Fitz-Harris*, as for this Pleading here, we uſe not to receive ſuch Pleading as this without a Counſel's Hand to it.

Mr. *Fitz-Harris.* I deſire your Lordſhip to aſſign me Counſel.

L. C. J. Who would you have aſſign'd Counſel?

Mr. *Fitz-Harris.* Sir *William Jones*, Sir *Francis Winnington*, Sir *George Treby*, Mr. *Williams*, Mr. *Pollexfen*, Mr. *Wallop*, and Mr. *Smith.*

L. C. J. Here are a great many you name: we will not enjoin any Counſel to ſerve you farther than they are willing themſelves. As for Sir *William Jones*, one of them you deſire, he does not practiſe now in *Weſtminſter-Hall*, and therefore we cannot aſſign you him unleſs he pleaſe.

Mr. *Fitz-Harris.* Then I deſire Sir *Francis Winnington*, Mr. *Williams*, Mr. *Pollexfen*, Mr. *Wallop.*

L. C. J. Let them be aſſign'd of Counſel for him. We do aſſign you them for Counſel. And now, look you, Sir, you had beſt conſider how you plead this Matter. You will do well to think of it, leſt it be more fatal to you than you expect; therefore we will give you time to plead the Matter you reſt upon, let it be what it will: We'll give you time to have Advice upon it, and you ſhall be brought hither again on *Tueſday* Morning by Rule. And in the mean time things ſhall ſtand as they do; Mr. *Attorney* will conſider upon the putting in of your Plea, what is fit to be done upon it.

Mr. *Fitz-Harris.* My Lord, I humbly deſire the Liberty to ſee my Wife and Friends in the mean time.

L. C. J. Mr. *Attorney*, why may not he ſee his Wife, ſo it be done in the Preſence of ſome Perſon entruſted by the Lieutenant, to ſee that nothing be done that is prejudicial to the King?

Mr. *At. Gen.* I cannot oppoſe it, my Lord.

Mr. *Fitz-Harris.* I deſire my Counſel may come to me.

L. C. J. Mr. *Fitz-Harris*, we will admit Counſel to come to you, or elſe it will do you no good to aſſign them; all we can do ſhall be done.

Mr. *At. Gen.* My Lord, with Submiſſion, I conceive you will not allow any body to come to him, to be alone with him; that would be the Way to prevent the Diſcovery of the Practices he is accuſed of: I hope, if your Lordſhip ſhew him Favour, you will do the King Juſtice.

Mr. *Fitz-Harris.* My Lord, I beg that any of thoſe that have been named may come to me.

L. C. J. Yes, theſe four. And Mr. *Attorney*, they are Gentlemen of fair Credit and Reputation in the World; we have no Suſpicion that they will do any thing unfairly: what we can reaſonably do for any Man in his Condition, we muſt do.

Mr. *At. Gen.* My Lord, I am not againſt that; but I would have all done ſafely and ſecurely for the King.

Mr. *Fitz-Harris.* My Lord, I have one thing more to beg; the Time your Lordſhips have ſet is ſo ſoon, that they cannot come to me perhaps.

L. C. J. 'Tis long enough, Mr. *Fitz-Harris.*

Mr. *Fitz-Harris.* If I cannot get them to come to me in that time, what ſhall I do?

L. C. J. You muſt do what you can; we can't enjoin them to come to you.

Mr. *At. Gen.* This Motion of his, I fear, is deſigned to put off his Trial.

L. C. J. It ſhall not, Mr. *Attorney.* It is true, 'tis a buſy time, the middle of the Term; but they will ſure find time to diſpatch this Buſineſs within the time we have allotted. On the other ſide, ſome time they muſt have to conſider of it: I do therefore tell him, it may be fatal and peremptory to him for aught I know. Indeed if we would inſiſt upon it, we might compel him to be ready preſently, but that we will not in this Caſe.

Mr. *Fitz-Harris.* Pray, my Lord, give me till *Thurſday*, if you pleaſe.

L. C. J. I know it is time enough for Counſel to draw up a Plea between this and *Tueſday.*

Mr. *Fitz-Harris.* To-morrow is *Sunday*, my Lord, and they can't come to me then; ſo I ſhall have but one Day.

L. C. J. Mr. *Fitz-Harris*, 'tis time enough; we muſt not waſte the Term; for as we would ſhew you all the Favour we can in Equity and Juſtice, ſo we muſt not deny the King Juſtice neither. And you hear Mr. *Attorney* ſay, that theſe things (if they ſhould delay the Buſineſs too long) would be prejudicial to much of the King's Buſineſs. It may be, that this dilatory Plea may ſpend ſo much time of the Term, that we cannot try it; and therefore if we do give a juſt Favour, you muſt not grow upon us.

Mr. *At. Gen.* Mr. *Fitz-Harris* knows this Plea hath been well adviſed on: There went a whole Club to the making of it.

Mr. *Fitz-Harris.* How ſhould I know? I never ſaw nor heard of it till now. I have had the ſevereſt Meaſure in the World: I have had no body ſuffered to come to me.

L. C. J. Do not complain of Severity, Mr. *Fitz-Harris.* I do not believe any ſuch thing hath been uſed towards you.

Mr. *Fitz-Harris.* Pray, my Lord, give me a little longer time.

L. C. J. Mr. *Attorney*, what if we do this? He giving you the Plea upon *Tueſday*, he may come upon *Wedneſday* Morning to put it in.

Mr. *At. Gen.* I cannot oppoſe it, if your Lordſhip think fit ſo to order it.

Mr. Juſt. *Dolben.* 'Tis fit you ſhould have it to ſee it, Mr. *Attorney*, before-hand.

Mr. Juſt. *Jones.* And have ſome reaſonable time for Conſideration what to do upon it.

L. C. J. Well, delivering of the Plea on *Tueſday* Morning to Mr. *Attorney*, we do give you till *Wedneſday* to bring it hither; and then you ſhall come by Rule again.

Mr. *Fitz-Harris.* My Lord, I hope I ſhall have the Liberty to ſee my Wife this Day.

L. C. J. Yes, at ſeaſonable Hours, when there may be ſomebody by, to ſee that nothing be done to the King's Prejudice. And your Wife muſt do this; ſhe muſt ſubmit to be ſearched, that ſhe carry nothing with her that may be prejudicial. And with theſe Cautions we will admit her to come to you.

Lieut. of Tower. Will your Lordſhip pleaſe to give us a Rule, to let his Wife and Counſel come to him?

L. C. J. We do make ſuch a Rule.

Cl. of Crown. My Lord, we will make it Part of the Rule.

Lieut. of Tower. We deſire ſuch a Rule for our Diſcharge.

L. C. J. Sir, this is our Rule, and we have declared it to this purpoſe. Then as to your Matter, Brother *Stringer*, this we will do; Let the Lieutenant of the *Tower* keep Mr. *Fitz-Harris* ſafely till we return out of the *Exchequer*, and then we will examine him.

Mr. Serj. *Stringer.* My Lord, we think it will be a ſhort Buſineſs and ſoon over, if you pleaſe to do it firſt.

Mr. *Fitz-Harris.* My Lord, I may ſee my Wife in the mean time, I hope.

L. C. J. Do you inſiſt, Brother, that we ſhould examine him preſently?

Mr. Serj. *Stringer.* My Lord, Mr. *Godfrey* deſires it.

L. C. J. Then we will preſently.

Lieut. of Tower. Muſt his Lady ſpeak with him?

L. C. J. Yes, after he is examined. Lieutenant of the *Tower*, bring Mr. *Fitz-Harris* into our little Room, where we will take a Clerk and examine him.

Mrs. *Fitz-Harris*, to her Huſband, *(the Court being juſt riſen.)* My Dear, do not confeſs any thing about the Death of Sir *Edmundbury Godfrey*, nor the Plot, for you will be betray'd: ſpeak only to little things.

[*Then the Priſoner was carried away to be examined, and after that to the* Tower.]

On *Monday*, the 2d of *May*, Sir *Francis Winnington* and the other three Gentlemen aſſigned of Counſel for Mr. *Fitz-Harris*, came to the Bar, and moved the Court for an Explanation of the Rule concerning themſelves, and the Buſineſs they were aſſign'd for.

Mr. *Williams.* My Lord, I am to move your Lordſhip in a Caſe, wherein I am, with three others of the Gentlemen that attend this Bar, aſſigned of Counſel for Mr. *Fitz-Harris*; and that which I would beg for myſelf and them, is this: There is one thing we deſire may be explained a little in the Rule. I humbly apprehend your Lordſhip gave Leave to the Counſel, whom you ſo aſſign'd to come to Mr. *Fitz-Harris*, and entruſted them with the Liberty of ſpeaking with him alone; but by the penning of the Rule, we apprehend that the ſame Reſtraint is put upon them, that is upon other Perſons, to have ſomebody by at their being with him.

L. C. J. The Lieutenant ſent to me on *Saturday* about it, and I told him it did not extend to you.

Sir *Fran. Winnington.* We think it may have a Conſtruction either way; but we deſire it may be made plain, as you meant it.

L. C. J. We tell you it is plain, and it was ſo intended.

Sir *Fran. Winn.* Therefore we taking it that your Lordſhip pronounced and meant it ſo, do deſire it may be ſo expreſſed. We are ſatisfy'd that it was your Lordſhip's Intention; we deſire the Clerk may make it in plain and intelligible Words. And there is this farther in it, my Lord——

L. C. J. We declare it now to you, it was ſo meant and intended.

Sir *Fran. Winn.* My Lord, there is this further in it: We four have met, and we deſire as much as may be to expedite this Matter as far as we can, for our own Reputation, and doing our Duty to the Perſon we are aſſigned of Counſel for. But truly, ſo ſoon as is appointed by your Lordſhip, it is impoſſible for us to prepare things ſo, as to be ready by *Wedneſday* Morning. The Plea I never ſaw, nor did I ever hear of it, till it was brought and read here; but ſince that, I have not ſeen it till this time. The Rules were brought but laſt Night to our Chambers; there is no Sollicitor in the Cauſe that may attend us. The Indictment I have not ſeen that we are to plead to, and truly I think the Courſe is to have a Copy of the Indictment.

L. C. J. We deny that, Sir *Fran. Winnington.*

Mr. *Williams.* It is impoſſible for us then to get ready in this time. I humbly move you will aſſign ſome convenient time. I know your Lordſhip will not put an Hardſhip upon us that are of Counſel, to plead ſuch a Matter ſo quickly. 'Tis a Matter of Difficulty, and there are not many Precedents in it; and therefore it will require more Care than ordinary.

Sir *Fran. Win.* My Lord, We ought to preſent things to the Court as they are in Fact, that we may not lie under any Reflection from the Court, nor any body elſe. You made a Rule on *Saturday*, that I ſhould be of Counſel for him, (which I ſubmit to) but I knew not of this till afterwards. I never ſaw the Plea, nor any Paper in this Cauſe as yet: The Rule was left at my Chamber this laſt Night; and when I ſaw it, Mr. *Williams* and we got together in the Hall this Morning: We could not do it till juſt now, and we come now to wait upon the Court, to acquaint them how the Matter ſtands. I was not in Court, when you gave your Directions about this Matter; but when I find what the Nature of the Caſe is, I ſhall be ready to do my Duty to the Court, and to him who is upon his Life. It is a mighty Cauſe, it is a Cauſe that may-be, if we do not acquit ourſelves as we ought, have Reflection upon our Poſterity, if we do not do it as well as we can. Therefore we deſire ſome reaſonable time, that we may have Copies of the Papers and things concerned in this Cauſe, as the Court ſhall direct. And we are aſſured your Lordſhip is ſo well acquainted with the uſual Method in ſuch Caſes, that you will give us all the Favour in it you can.

Mr. *Wallop.* For my part, my Lord, the Notice I had was but very lately: I was by indeed when this Perſon *Fitz-Harris* did deſire Counſel, and your Lordſhip aſſigned me amongſt the reſt; but nothing of the Order was brought to me till this Morning: ſo that I know nothing of the matter leſs or more, than what I heard upon the reading of the Paper here on *Saturday.* I do not deſire time for time-ſake, or for Delay; but we think the Nature of the thing is ſuch, as will require great Conſideration, and we deſire convenient time to prepare it for the Court.

L. C. J. Look you, Sir *Francis Winnington*, you muſt conſider here the Nature of your Caſe: This is an Indictment of High-Treaſon, and there is nothing I ſee that is ſo greatly conſiderable in the Caſe, but the Height of the Crime. 'Tis an extraordinary Crime indeed, if he be guilty of it (for I ſpeak not to prejudice your Client, but of the thing itſelf). 'Tis a Treaſon of a very high Nature: and then what have we to conſider in this Caſe? We might have taken your Client at advantage here, and it had been no Injuſtice if we had made him plead immediately as he would ſtand by it: And we are not to conſult your leiſure, but your Client's Cauſe: he hath pitch'd upon you for his Counſel; we have given him three Days time to plead as he will ſtand by it, *Saturday*, *Monday* and *Tueſday*, and he is to come with his Plea upon *Wedneſday.* We have appointed for Conveniency-ſake, that you ſhould give a Copy of the Plea to-morrow Morning to Mr. *Attorney*; but we do not tie you ſo peremptorily to that Copy, that you may not vary in Words from that Form. Give him but the Subſtance of the Plea, and we will not tie you to the particular formal Words. Peradventure Mr. *Fitz-Harris* could not have expected three Days time, in Courſe of Law, upon ſuch a Crime, to put in ſuch a Plea, when he tells us, he will plead ſpecially to the Juriſdiction of the Court. But we have done it in this Caſe, to ſhew, that all the Fairneſs that can poſſibly be uſed ſhall be uſed. On the other ſide, we muſt not ſpend all our time ſo, as to let the Term ſlip for his Neglect of waiting upon you. Therefore if he will delay to ſend to adviſe with you, he muſt ſuffer for it. Suppoſe he did not come to you till to-morrow, what can we help it?

Mrs. *Fitz-Harris.* There is no Sollicitor, my Lord, to go to the Council.

L. C. J. Well, we muſt not ſpin out the Term to pleaſe him: he muſt take more care; I believe he would by Dilatories be glad to put it off all the Term. If Mr. *Attorney* gives Conſent for more time, well and good.

Mrs. *Fitz-Harris.* I hope your Lordſhip will give Leave for a Sollicitor; without your Lordſhip's Leave none will dare to venture. And I had the Rule ſo very late—

Cl. of Crown. They had it at three of the Clock in the Afternoon, as ſoon as it could be drawn up.

Mrs. *Fitz-Harris.* That Copy was brought to the Lieutenant of the *Tower*, and he ſent it away immediately.

Cl. of Crown. Another Copy they had from me that Evening.

Mrs. *Fitz-Harris.* I never ſaw my Huſband in the *Tower* till yeſterday in the Afternoon, and I am an ignorant Perſon, and know not what to do in it without a Sollicitor. As ſoon as I could get Copies of the Rule writ out, I carry'd them to theſe Gentlemen.

Mr. *Pollexfen.* My Lord, I think it will be very hard upon us that are of Counſel, to be ſo ſtraitened in Point of Time; for my part, the Rule was left under my Door the laſt Night, and I had it not till this Morning: It will be a mighty hard matter for us to get the Plea ready, without a Sight of the Indictment. Things muſt be averr'd to be the ſame; which we cannot, unleſs we ſee what is there alledged. This Man hath been kept cloſe Priſoner, and no body ſuffer'd to come at him to inſtruct him; and we have not ſo much as Copies of any thing that we muſt make uſe of. We have no Concernment, my Lord, in this matter, but what is aſſign'd us by the Court; and we do not know by any Papers, if there be any, how we ſhould put it into Form; and that is it, my Lord, which may lie heavy upon us; if this Man's buſineſs ſhould miſcarry for want of putting it into due Form, the Blame will be upon us, who are aſſigned his Counſel. Therefore if your Lordſhip pleaſe, under theſe Conſiderations, to give us time and leave to ſee the Indictment we are to plead to, we may be the better enabled to do our Duty.

Sir *Fran. Win.* Really, my Lord, I ought to deal clearly with the Court; without a Copy of the Indictment, I know not how we ſhall be able to plead as we ſhould do.

Mr. *Williams.* My Lord, I do really move, not in favour of *Fitz-Harris*, but for my own Reputation: I cannot put my hand to a Plea of this Conſequence, without time to conſider very well of it; and unleſs in Truth, I can ſee the Indictment, and compare the Plea with it, to put it into Form fit for the Judgment of the Court. And if theſe things cannot be granted, I deſire to be excuſed.

L. C. J. Why, Gentlemen, ſee what you aſk: Where do you find any Precedent of a Man indicted for High-Treaſon, that would plead to the Juriſdiction of the Court, that had more time given him than is in this Caſe?

Sir *Fran. Win.* We do not know what his Plea will be, my Lord, till we have ſeen it and conſidered it.

L. C. J. Your Client told us all, and we know all of us very well, that it is to the Juriſdiction of the Court, and can be no otherwiſe.

Mr. Juſt. *Jones.* Any thing elſe you may give in Evidence upon Not guilty; and it would be conſidered on your Trial.

Sir *Fran. Win.* My Lord, it may happen to be not ſo properly pleadable to the Juriſdiction of the Court; we know not what it will be till we have ſeen the things neceſſary to draw it into Form. It is true conſequentially, it is the Concern of our Client; but the Ground of our Motion at this time is for ourſelves. I did apprehend by the Rule, his ſpecial Plea was to be admitted, if he tender'd one, let it be what it will: We muſt conſider many things in a Caſe of this Nature; and at laſt, whether it will be to the Juriſdiction, or what 'tis, we can't tell as yet. And till we have ſeen the Nature of the thing, and what is neceſſary to prepare it for the Court, I cannot venture to give it its proper Term. But our time is ſo ſhort, if your Lordſhip will afford us no longer, that we know not how to be ready for it. Your Lordſhip does ſpeak of Mr. *Attorney*'s being attended with the Subſtance of the Plea, not tying us to the Form in the Copy deliver'd to him. Mr. *Attorney* was here upon *Saturday*, when this matter was firſt ſtarted, and he knew the Subſtance then: We know not what it is more than by Report. It is a Plea that ſo rarely happens, that we muſt be cautious in what Form we put it. 'Tis, as your Lordſhip hath been pleaſed to ſay, an horrible Treaſon that in the Indictment is ſpecify'd. We muſt not ſpeak, nor do not mitigate the Heinouſneſs of the Crime; nor do we ſpeak it becauſe it is Term-time, and may hinder our other Buſineſs: We ſhall all of us, I am ſure, not at all conſider our own Time, or Loſs in the matter; but it being of ſo great Weight, we deſire reaſonable time to do our Duties: we name no time, nor dare do it; we ſubmit that to the Court. But, my Lord, under favour, for the Copy of the Indictment, we do conceive 'tis neceſſary that we ſhould ſee a Copy of it; and when the Court is pleaſed to admit the Party to give in a ſpecial Plea to the matter he is accuſed of, and aſſign him Counſel to plead it, I take it to be very rational and conſonant to Law, that we have a Copy of the Charge.

L. C. J. Sir *Fran. Winnington*, for you to come and ſay theſe things here, methinks is very ſtrange. I think you can ſhew us no Precedent, that ever ſo long time was given to any Man to plead to the Juriſdiction of the Court, nor that ever a Copy of the Indictment was granted in High-Treaſon; and for you, becauſe of the Greatneſs of the Treaſon, therefore to go about to make us believe, that it is more reaſonable that a Copy of the Indictment ſhould be granted in this Caſe than in another; that the Greatneſs of the Crime ſhould be meritorious, and deſerve a Favour of the Court, not granted in other Caſes, is a thing extraordinary.

Sir *F. Win.* I do not preſs it that way; I pray I may be underſtood aright, Upon what appeared the other Day, upon the Nature of the Plea, I preſent it to your Conſideration, Whether or no, when you have been pleaſed to admit a ſpecial Plea, you will not let us ſee that which we are to plead to?

L. C. J. No, it was never thought of ſurely.

Mr. Juſt. *Dolben.* No, it hath been conſtantly denied in Caſes of Felony and Treaſon; and ſo you will find the Practice to have always been. But I'll tell you what hath been done ſometimes; they have granted ſome Heads out of the Indictment, that ſhould enable the Party to fit his Plea to the Charge; and that was done in *Wittypole*'s Caſe, upon a Plea of *Auter fois acquit.* They gave him the Times, and ſome other Circumſtances, to fit his Plea to his Caſe; but never was there a Copy of the Indictment granted.

Mr. *Wallop.* My Lord *Coke*, in his Preface to the Third Report, declares, That it was the ancient Law of *England*, and ſo declared by Act of Parliament in *Edward* IIId's Time, That any Subject may, for his neceſſary Uſe, have acceſs to Records and Copies of them, be they for the King or againſt the King; and that the Practice to the contrary is an Abuſion.

L. C. J. So then, Mr. *Wallop*, you take it that we are bound when any Man is indicted of Felony or Treaſon, or any capital Crime, if he ſay he muſt have a Copy of the Record, we muſt grant him a Copy of the Indictment: if you think ſo, the Court and you are not of the ſame Opinion.

Mr. *Wallop.* I inform the Court what I have read and ſeen, and where 'tis to be found.

Mr. *Williams.* My Lord, it may be neceſſary, for aught we know, for him to plead over to the Fact laid in the Indictment, Not guilty, as ſometimes it is requiſite for the Party to do. Now if we ſhould miſtake for want of having what is neceſſary, and thereby preclude him of the Advantages he might have had if the Plea had been rightly drawn, for aught I know, it will lie upon me for ever. My Lord, I do it merely out of Caution, and for my own Reputation ſake: If any legal Advantage ſhould be loſt by my Unwarineſs, it will be a perpetual Reflection upon me; and therefore I am ſo earneſt in this Caſe. And, my Lord, I can tell you what was done in a Caſe wherein I was of Counſel; it was not a Caſe of Treaſon indeed, but it was Murder, the next Crime to it; it was the Caſe of *King* and *Thomas.* *Thomas* was indicted of Murder in one County, and found guilty of Man-ſlaughter; and afterwards was indicted for the ſame Murder in another County, and being to plead this matter, I did inſiſt upon it, that we ought to have a Copy of the Indictment. There was ſome Debate about it; but at laſt we had a Copy, and we alledg'd there, as here, it was impoſſible to plead without it; and the Cauſe was removed hither into this Court for Judgment.

Mr. Juſt. *Dolben.* The firſt Indictment you might have a Copy of, for you were to plead the whole Record.

Mr. *Williams.* Nay, we had a Copy of that to which we pleaded.

L. C. J. Mr. *Williams*, you tell us, you may peradventure have occaſion to plead over when you know 'tis High-Treaſon that you are indicted of, in framing and publiſhing a treaſonable Paper. Can't you direct your Client to plead over without a Copy? Certainly what you alledge in that, for a Copy of the Indictment, is *Non Cauſa pro Cauſa.*

Mr. Juſt. *Jones.* What Prejudice will it be to your Client to plead over?

Sir *Fran. Win.* My Lord, we only offer theſe things for ourſelves, and we hope we ſhall not be preſſed to do ſuch a thing as this, without having reaſonable time to conſider and deliberate of it, and without having what is neceſſary in order to it.

[*Then Mr.* Attorney *being ſent for, came into the Court.*]

L. C. J. Look you, Mr. *Attorney*, theſe Gentlemen that were aſſign'd of Counſel for *Fitz-Harris*, do move the Court here, and ſay, they would have longer time to draw up his Plea, for they muſt make uſe of ſeveral Copies of Papers, and they cannot ſo ſoon obtain them, nor find out thoſe Records they muſt uſe, or other things as Ingredients to this Plea, in ſo ſhort a time; and they ſay likewiſe, that they deſire a Copy of the Indictment. Now, in truth, they ought to have given you notice of this, that you might have been here likewiſe to hear what they ſay: If you do conſent to give them longer time, we ſhall be ready to do it: but without it, we ſhall not be willing to delay it.

Mr. *Att. Gen.* I think your Lordſhip and the Court gave them a very juſt and reaſonable Time, when you allowed them four Days; and theſe Gentlemen are miſtaken, if they think they are aſſigned as Counſel to all Events. They are only to draw up a Plea upon that Matter that is alledg'd by the Priſoner, and to the Juriſdiction of the Court.

Sir *Fran. Win.* No, my Lord, I beg your Lordſhip's Pardon: The Rule is to plead the ſpecial Matter without more ſaying.

Mr. *Att. Gen.* My Lord, under favour, it is as I ſay, and ſo is the Courſe of Law; for the Priſoner ought to acquaint you with the Points he deſires his Counſel to be heard to: And in this Caſe, *Fitz-Harris* did acquaint the Court before he would plead, that he had ſomething to object to the Juriſdiction of the Court; and ſo his Wife directed him when ſhe gave him the Paper. I ſuppoſe ſhe had other Advice upon it; for ſhe could not draw it up in that Form it was herſelf; and he did acquaint the Court, he had Matter to plead to the Juriſdiction of the Court, and concluded ſo in the Paper that was read. And thereupon, according to his Prayer, he had Counſel aſſign'd him theſe Gentlemen. I conſented to it, as it was juſt I ſhould but that they ſhould think, that they are to adviſe him in other Matters; than that Particular upon which they are aſſign'd, I know they know their Duty better than to offer at any ſuch thing. Now ſince then there is but one ſingle Point, the Juriſdiction of the Court and nothing elſe, for they are not to adviſe in other Matters, I think it was more than ſtrict Juſtice, nay it was a very great Favour, for all Men ought to be ready to plead ſuch Pleas immediately.

L. C. J. Yes, in ſtrictneſs, we might have required him to plead, as he would ſtand by it, preſently.

Mr. *Att. Gen.* The Law is, that he muſt have all ready, *in Poigne*, to make it appear that what he avers in his Plea is ſo; therefore you needed not to have given him any longer time: but becauſe all the World might ſee the Court and King's Counſel dealt fairly in this Matter, and did not mean to take advantage of any thing that look'd like a Surprize, I conſented to that time that your Lordſhip was pleaſed to ſet: And as for the Copy of the Indictment, I know not any Reaſon they have to deſire it; for they are not to adviſe in that, what Defence he ſhall make, but only upon this Matter he hath alledged.

L. C. J. Look you, Gentlemen, what Mr. *Attorney* tells you is ſo, and we do expect that you ſhould conform yourſelves to it: We have given you three Days time, which is ſufficient for ſuch a thing as this. And Mr. *Attorney*, we told them thus when we did direct them, That they ſhould deliver you a Copy of the Plea To-morrow Morning. We are not ſo critical with them, as that we will not receive their Plea, if it be variant in Form from that which they deliver to you. That that we intend by it is this, That they ſhould deliver to you a Plea, the ſame in Subſtance as that which they do plead here: If they would alter it in the Form, we can give them leave to do that without any Prejudice.

Mr. *Att. Gen.* We will never pinch them in Form; I think I have Matter enough.

L. C. J. I tell you truly, I do believe ſome Friends of his had Counſel to draw up this Plea for him.

Mr. *Att. Gen.* A great Cabal, no doubt of it, my Lord!

Mr. *Wallop.* My Lord, I deſire that Counſel may be aſſigned in my Place.

L. C. J. We aſſigned him thoſe that he required, excepting Sir *William Jones*; and we did not deny to put in Sir *William Jones*'s Name, becauſe we would not aſſign him, but becauſe he hath declined the Bar, and does not practiſe here.

Mr. *Williams.* We do not draw in the Name of Sir *William Jones*, or decline him: We ſubmit to your Order about ourſelves; but we deſire that Perſon that did draw this Plea may be added to us.

L. C. J. If his Wife deſire it, and will name him, it ſhall be ſo.

Mr. *Williams.* I deſire to be put out, and he put in.

L. C. J. Sir, he underſtands what he would have, ſure! and we can't diſcharge you upon any ſuch Account.

Mr. *Wallop.* Here are many Particulars and many Averments, which cannot ſo ſuddenly be ſet right as the Time allotted.

Mrs. *Fitz-Harris.* My Lord, there is not half thoſe Gentlemen aſſigned that I writ to my Huſband to aſk for: I directed him eight.

L. C. J. Who elſe would you have?

Mrs. *Fitz-Harris.* There was in the Paper Sir *William Jones*, his Majeſty's late Attorney-General, Sir *Francis Winnington*, Mr. *Williams*, late Speaker of the Houſe of Commons, Sir *George Treby*, Recorder of *London*—

Mr. *Pollexfen.* Your Lordſhip may eaſily perceive by this Gentlewoman's Carriage, how we are like to be inſtructed in this Cauſe, when no Body follows it but ſhe.

L. C. J. Do you deſire Sir *George Treby* ſhould be added?

Mrs. *Fitz-Harris.* Yes, I do.

L. C. J. Let it be ſo then.

Mrs. *Fitz-Harris.* And Sir *William Jones*; I will do what I can to get him to come.

L. C. J. We will not enjoin him; but if he pleaſes, we leave him to his Liberty.

Mr. Juſt. *Dolben.* Why, Miſtreſs, you are got into the Hands of Gentlemen that are as learned and able in their Profeſſion as you can have; you need no more.

L. C. J. Do you deſire Mr. *Smith*?

Mrs. *Fitz-Harris.* Yes, my Lord.

L. C. J. Then add him.

Mr. *Pollexfen.* We deſire that there may be Leave for a Sollicitor, one that may carry Papers in the Preſence of the Lieutenant.

L. C. J. We have Confidence in you, but not in other Perſons; therefore we muſt conſider of that: But what think you of it, Brothers? We may permit, I think, one to come from the Counſel to him with that Caution.

Judges. Yes, my Lord.

L. C. J. Let the Papers then be inſpected before by the Lieutenant of the *Tower*, and be from one of the Council; and ſo they have Liberty to do it.

Mr. *Att. Gen.* There is no Need of any Papers, my Lord——

L. C. J. Mr. *Attorney*, do not oppoſe that: Let them have Liberty to carry any Papers that any of their Counſel, theſe Gentlemen we have aſſigned, ſhall ſend to him, or any from him to them; ſo as the Lieutenant may have firſt the Sight and Peruſal of them.

Mr. *Att. Gen.* There is no great Harm in that, though I ſee not that they will need any Papers.

L. C. J. Yes, their Plea to the Juriſdiction muſt ariſe upon Fact, which may be out of ſome Papers.

Mr. *Att. Gen.* You are aſſigned, Gentlemen, but to one Point, the Juriſdiction of the Court; remember that.

Mr. *Pollexfen.* Your Lordſhip is pleaſed to ſay, That we may vary in Form from what we deliver to the *Attorney-General*; and Mr. *Attorney* is pleaſed to ſay, he will not pinch us as to Form: How ſhall we be ſecure no Advantage ſhall be taken of the Form?

L. C. J. 'Tis only as to that Particular. You ſhall not be tied up to the Form you deliver to him. What Advantages there may be concerning the Form of the Plea you bring hither, we will ſee ſhall not be taken.

Sir *Fran. Win.* Will your Lordſhip pleaſe to afford us no longer time?

L. C. J. When you are to plead to the Juriſdiction of the Court in a Caſe of High-Treaſon, and ſuch a Treaſon as this is, what Reaſon is there that ſo much time as is granted already ſhould be given you?

Sir *Fran. Win.* Shall not we have a Copy of the Indictment neither?

L. C. J. You will offer Things that are not to be granted to you, *ad captandum populum*, that you may ſay you are hardly uſed, and mightily ſtraitned in this Caſe.

Sir *Fran. Win.* No, my Lord, we do not offer it for any ſuch End.

Mr. *Att. Gen.* Gentlemen, remember you have not Liberty to plead any Thing, but to the Juriſdiction of the Court.

Sir *Fran. Win.* We muſt ſubmit to what your Lordſhip orders in it.

[*Upon* Wedneſday *the 4th of* May, 1681, Edward Fitz-Harris *was brought from the* Tower *to the* King'*s*-Bench-Bar.]

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand *(which he did)*: Thou haſt been indicted and arraigned for High-Treaſon; how ſayeſt thou? Art thou guilty of the High-Treaſon whereof thou ſtandeſt indicted, and haſt been arraigned, or Not Guilty?

Mr. *Fitz-Harris.* I have made a Plea, my Lord, which I deſire may be received and allowed.

Mr. *Wallop.* May it pleaſe your Lordſhip, I deſire to be heard a few Words.

L. C. J. Would you not have the Plea read?

Mr. *Wallop.* I have but a few Words to ſay before it be read, if your Lordſhip pleaſe, for ourſelves, or at leaſt for myſelf. According to the beſt Inſtructions we have had, we have drawn up this Plea, and I pray it may be entered ſo. But, my Lord, I humbly conceive we have not had, or for my own Part I have not had thoſe Inſtructions that were fit to direct me in this Caſe. It is a ſpecial Plea, and of a Matter that rarely happens; and the Nature of this ſpecial Plea is, that the Matter contained in the Indictment and in the Impeachment, is one and the ſame Matter. Now I have not yet ſeen, nor could I come at a Sight, though I deſired it, of the Impeachment, nor of the Indictment: But I humbly conceive, that by the Law, as this Caſe is upon a ſpecial Plea, the Priſoner ought to have a Copy of the Indictment. And I do not ſay, that every one may demand a Copy of his Indictment to find Faults; but upon a ſpecial Plea, and particularly upon this, I humbly conceive he ought to have a Sight and a Copy of his Indictment.

L. C. J. What, would you not have your Plea received?

Mr. *Wallop.* Thus, my Lord: If we can have no farther Inſtructions, nor can by any other Means come to a Sight of theſe Things, then it is the beſt Plea we can make in ſuch a Caſe, and I avow the Plea: But if any Thing ſhould fall out amiſs to the Priſoner for want of ſuch a Sight, I pray it may not lie upon me.

L. C. J. Read the Plea.

Cl. of Crown. *Et prædictus* Edwardus Fitz-Harris *in propria perſona ſua ven. & dic. quod ipſe ad Indictament. prædict. reſpondere compelli non debet, quia dic. quod ante Indictament. præd. per Jur. præd. in forma præd. compert. ſcil. ad Parl. Dom. Reg. nunc incohat. & tent. apud Oxon. in Com. Oxon. viceſimo primo die Martii Anno Regni dict. Dom. Reg. nunc triceſimo tertio, ipſe idem* Edw. Fitz-Harris *per Milites, Cives & Burgenſes in eodem Par. aſſemblat. nomine ipſor. & omnium Com. Angliæ, ſecundum legem & conſ. Parl. de alta Proditione coram Magnat. & Procerib. hujus Regni Angl. in eodem Parl. aſſemblat. impetit. fuit; quæ quidem impetitio in plenis ſuis robore & effect. adhuc remanet & exiſtit, prout per Record. inde inter Recorda Parliamenti remanens plenius liquet & apparet. Et præd.* Edw. Fitz-Harris *ulterius dic. quod alta Proditio in Indictamento præd. per Jur. præd. in forma præd. compert. ſpecificat. & mentionat. & alta Proditio unde ipſe prædict.* Edw. Fitz-Harris *in Parl. præd. modo ut prefert. impetit. fuit & exiſtit, ſunt una & eadem alta Proditio, & non alia neque diverſa; & quod ipſe præd.* Edw. Fitz-Harris *in Indictamento præd. nominat. & præd.* Edw. Fitz-Harris *in impetitione præd. nominat. eſt una & eadem perſona, & non alia neque diverſa: & hoc parat. eſt verificare*, &c. *Unde ipſe præd.* Edw. Fitz-Harris *petit. Judicium ſi Cur. Dom. Reg. hic ſuper Indictamentum præd. verſus ipſum ulterius procedere vult*, &c.

Mr. *Williams.* My Lord, we humbly pray, being aſſigned of Counſel for this Gentleman, Mr. *Fitz-Harris*, that this Plea may be received.

L. C. J. Mr. *Attorney*, have you been attended, according to the Rule of Court. with this Plea?

Mr. *Att. Gen.* No, my Lord.

L. C. J. What is the Reaſon of that?

Mr. *Att. Gen.* Here is no more in effect, than what was offered four Days ago, when Counſel was allowed him. I ſent laſt Night late to them for a Copy of the Plea: Indeed Yeſterday at Noon they ſent me this Note, That *Fitz-Harris* intends to ſtand upon his Plea, that he ſtands impeached in the Houſe of Peers. I ſent to know of them whether they would plead this to the Juriſdiction, or in Abatement, or in Bar: They declared, they would not plead to the Juriſdiction, but now I ſee 'tis to the Juriſdiction.

L. C. J. It is ſo; and that he propoſed to plead at firſt.

Mr. *Att. Gen.* It is true, my Lord; but thus they ſent me Word.

L. C. J. And as a Plea to the Juriſdiction, ſo it concludes.

Mr. *Williams.* My Lord, we have done all that is poſſible for us to do in this Caſe. The Court directed us to attend Mr. *Attorney* with the Subſtance, and ſo we have done; but the Form, we had Liberty to do as we pleaſed in.

L. C. J. You need not go about to excuſe it, that you have not done it; we charge you with nothing.

Mr. *Williams.* I don't go about to excuſe it; we don't take it as a Charge upon us.

L. C. J. All we ſay is this: If Mr. *Attorney* had had it, peradventure he might have conſidered of a Replication by this Time, or what he would do concerning it; but if he hath not had Time, we cannot expect it from him.

Sir *Fr. Win.* My Lord, I only beg one Word as to Matter of Fact, and 'tis material as to ourſelves to urge it. We did ſend ſeveral Meſſengers to get, if it were poſſible to be obtained, a Copy of the Impeachment in Parliament. We ſent to the Houſe of Lords Clerk to get it; but they that went down, tell us the Clerk is not in Town, or elſe we had ſent Mr. *Attorney* the whole Plea at that Time.

L. C. J. I only aſk the Queſtion, to ſee whether Mr. *Attorney* hath had time to think of it.

Mr. *Att. Gen.* My Lord, I think I need not any time in this Caſe.

L. C. J. Pray go on, Sir.

Mr. *Att. Gen.* My Lord, I do pray your Judgment upon it; for 'tis a Plea that is inſufficient: Nay, 'tis no Plea to bar you of your Juriſdiction. Firſt, I obſerve that whoſoever will plead a Plea to the Juriſdiction, if he have any Record to plead, muſt have it in *poigne*, muſt produce it in the Court, or at leaſt muſt produce a Copy ſworn, that the Court may ſee there is nothing dilatory in the Caſe. And for this Matter, it will appear upon Examination to be a plain frivolous Plea; for there is no ſuch Matter depending as this Plea alledges. But I ſpeak of it as a Plea to the Juriſdiction of the Court; and ſuch an one as will plead ſuch a Plea, he muſt have the Record ready, to ſhew it to the Court, and by the Courſe of Law ought to have it ready to aſſert to the Court, that they have not Juriſdiction: So then 'tis certainly naught. That is the firſt Thing. Another Thing is this; with Submiſſion, I ſay, They have pleaded no Record at all, nor any Impeachment at all, as this Caſe is; for the Notes that I have taken, my Lord, are, They ſay he was impeached by the Commons *de alta Proditione*; but that is naught. He ought in his Plea to have ſet forth his Impeachment, and for what Crime particularly; for either an Indictment or an Impeachment *de alta Proditione*, or Felony, or any other Crime, is naught, the Law allows it not. He ought to ſet forth, and muſt not aver upon a Record, but ſet it forth *in hæc verba*, or in the Subſtance of it; and ſo ought to plead the Record entirely as it is. And for thoſe neceſſary Averments that cannot otherwiſe be made, the Law allows of them. But in this Caſe he cannot come and aver upon this Record; for he hath ſet forth the Impeachment not as it was, but only barely *de alta Proditione* in general, which the Record muſt ſhew, ſo as the Court may judge of it, and it muſt not be intended. But as they have ſet it forth, in this Caſe there is nothing of Treaſon ſpecified in the Record averred, that can intend this to be the ſame; and, My Lord, ſo are all the Precedents. Whoſoever pleads a private Act of Parliament, muſt plead it as it is, not in general that it is for the ſame Matter; for I take it then it is naught: And we are in your Judgment, that this is no Plea to the Juriſdiction upon that Point.

L. C. J. Mr. *Attorney*, Do you think it prudent to argue it this Time, or will you take a Day? Pray conſider of that a little.

Mr. *Att. Gen.* My Lord, I think delay is very dangerous and miſchievous in this Caſe.

L. C. J. We can give you as ſhort a Day as you pleaſe.

Mr. *Att. Gen.* But to ſatisfy the Court, the Clerk will be ready with the Journals, to ſhew that the Fact is not as they plead it.

L. C. J. Look you, Mr. *Attorney*, we muſt go on in a legal and formal Way, when we have a Plea put in; therefore whether you will not take Time for a Day or two to conſider of this Plea: You had the Subſtance of it, but nothing concerning the Manner of the Pleading; they would not tell you whether they would plead it in Abatement, or in Bar, or how: Therefore whether you will not take time to conſider of this Pleading for a Day or two, pray conſider with yourſelf.

[*Then the King's Counſel conſulted one with another.*]

Mr. *Att. Gen.* My Lord, not only for what I have already offered, but for many other Reaſons, we can ſee this can be no way a Plea to the Juriſdiction of this Court; for upon any Impeachment or Indictment, the King hath Election to proceed upon which he will: And if there were ten Indictments for one and the ſame Thing, if none of them are come to a Judgment the King may proceed upon which he pleaſes, as in that Caſe of *Ireland* Yeſterday; though the Party were arraigned and ready to be tried in *Ireland*, yet the King might, if he pleaſed, try him here; and the King hath ordered it ſo to be. But, my Lord, I take it, that this is not only apparently a falſe Plea, but a frivolous Plea in itſelf, being to the Juriſdiction of this Court: For there was never any thing of a Crime ſo great, but this Court of *King*'s-*Bench*, which hath a ſovereign Juriſdiction, for Commoners eſpecially, could take Cognizance of it; and I put it upon that, my Lord. Never was ſuch a Plea pleaded to your Juriſdiction; and therefore we pray your Judgment upon it.

Mr. *Sol. Gen.* My Lord, before we come to that which is the Queſtion, if there were ſuch a Plea pleaded to the Juriſdiction as they would have this to be, we humbly pray the Judgment of the Court, whether this be any ſuch Plea at all as can bear any Debate: For it will not be a Queſtion now, how far an Impeachment depending is a Bar to your Juriſdiction? But the Queſtion is, firſt, whether this be ſuch a Plea? For, my Lord, I do take it, no Man can plead any Record in another Court, any Indictment or Acquittal upon it, by pleading it in this Form as this is pleaded, by ſaying generally, that ſuch a Time in ſuch a Court, he was indicted for the ſame Offence, and was acquitted; yet thus this Plea is, and no more. But he that will plead *auter foitz acquit*, muſt plead that ſuch a time he was indicted in ſuch a Court, and ſet forth the Indictment and all the Proceedings of that Court upon that Record, and then 'tis proper for Judgment; ſuch a Plea is formal, and requires an Anſwer, and it will be proper for us to give it an Anſwer: And when ſuch a Plea is put in, we ſhall either demur to it, or give it the Anſwer that it requires of *null tiel Record*. But this does not require any particular Anſwer, becauſe it ſets forth no Record at all that we can anſwer to: for it is not ſufficient to ſay in general, that he was indicted and acquitted, or impeached, and then averr that it was for the ſame Offence; but he ought to ſhew forth the Impeachment, and ſet forth in the Plea the Record, that upon it you may paſs a certain Judgment. Therefore we hope you will ſet this aſide, as not being at all formal, or requiring any Anſwer to it.

Mr. Serj. *Mayn.* My Lord, If you pleaſe to conſider in this Caſe what is the Queſtion, and what not. At preſent 'tis not the Queſtion, whether if a Man be impeached of High-Treaſon by the Commons before the Lords, and this Impeachment ſtands unreverſed in the Court of Parliament; I ſay, 'tis not the Queſtion, whether this Court have Juriſdiction over this Man for that Offence? but the Queſtion is, Whether he hath put in ſuch a Plea before you, as will put that in Queſtion? Under favour, 'tis not ſufficient for him that will plead a particular Record, in bar or other way, and make uſe of it, that he pleaded it in general Terms, but he muſt ſet forth that Record as it is; he muſt not give you the Title only, or ſay, he was indicted for ſuch a thing generally; but he muſt ſo ſet it forth to the Court, that if Iſſue be taken, the Court may, by comparing the Record with the Plea, judge whether it be the ſame Matter or no. Now when he pleads he was impeach'd for the ſame Treaſon, he muſt ſet forth what that was, that it may appear it was for the ſame Treaſon; and if that be particularly ſet forth as it ought, upon *null tiel Record*, the Queſtion will be, Is there ſuch a Record or not? Now if he comes and ſays he was indicted or impeached, and not for what in particular; the two things that upon the Iſſue are to be compared, are not made ſo fit for your Judgment. In our Law, my Lord, if a Man will plead, he need not ſet forth a general Act of Parliament; but if he will plead a particular Act, he muſt ſet forth the Matter of it, to bring his Caſe under the Judgment of the Court; and whether this be ſo pleaded or no, we ſubmit it to you.

L. C. J. Pray let me ſpeak two or three Words to you: Do you ſpeak it againſt our receiving of the Plea?

Mr. *Att. Gen.* Yes, my Lord, we hope you will not admit ſuch a Plea.

L. C. J. That will be hard. Pray then conſider with yourſelf, whether if it be an inſufficient Plea (for we'll ſay nothing at preſent to that) and if the Plea be ſuch that no Iſſue can be taken upon it (admitting it were ſo), whether you ſhould not demur to it, before you demand our Judgment, that we may have ſomewhat upon the whole before us to judge upon? And I ſpeak it to you, Mr. *Attorney*, to this purpoſe, that you may conſider, whether you ſhall think fit to demur to this Plea, or whether you ſhall think convenient to take Iſſue upon it, or to reply to it, that it may come judicially for our Opinion; for in a regular way, if a Plea be admitted, it muſt be either demurred to, or reply'd to. Pray conſider of it in this Caſe; and we will give you time to conſider, if you pleaſe.

Mr. Serj. *Maynard.* Under favour, my Lord, if a Plea be apparently vicious when it is upon Record, we need not demur to it, nor take Iſſue; for elſe the Miſchief will be, we ſhall admit all that is well pleaded to be true.

Mr. Serj. *Jeff.* My Lord, if your Lordſhip pleaſe, I do confeſs that according to the uſual Courſe and Practice, if there be a doubt upon a Plea that is read, whereon any Point in Law may ariſe, you do put the Party to demur or take Iſſue: but according to the common courſe of this Court in common Caſes, and much more in extraordinary Caſes, and eſpecially in capital Caſes, and moſt of all in a Caſe of High-Treaſon, ſuch as this, if it do appear to the Court, and your Lordſhip, that the Plea is in it's nature a frivolous Plea, you do uſually refuſe to admit ſuch a Plea, and give Judgment upon it. Now we would acquaint your Lordſhip with our Apprehenſions in this Caſe, and we would pray you to conſider what the danger may be upon us to demur, if this Plea be frivolous, as it appears to be: For whether an Indictment in this Court, or an Indictment in another Court be for one and the ſame Offence, and ſo a bar to the Juriſdiction, we are not ſo much as admitted into the Queſtion of that, as this Plea is. Whereas according to the courſe in other Pleas, we pray you would be pleaſed to ſee the Inconvenience, if we ſhould be put to demur to it; for then we do admit by this Demurrer, that this Impeachment is for one and the ſame thing; and we humbly conceive, my Lord, that is a little dangerous. How then will it be poſſible for you ever to judge, that the Impeachment (which in Fact is otherwiſe) and the Indictment is for the ſame thing, unleſs you will put them to purſue the common Methods, how it was in the Houſe of Lords, by ſhewing forth the Record? And what can we do otherwiſe (it being apparently againſt the common Form of Pleas, and manifeſtly for Delay only) than pray the Judgment of the Court, which we hope will be to reject this Plea?

L. C. J. Brother *Jefferies*, you need not be afraid, that you ſhall be concluded by this Demurrer, that there is ſuch an Impeachment in the Lords Houſe for the ſame Offence: there will be no colour for it. And Brother *Maynard*, formerly I confeſs, when they pleaded Pleas *Ore tenus*, and took their Exceptions *Ore tenus* too, they would demand Judgment of a Plea preſently; and ſo it was in the Biſhop of *Wincheſter*'s Caſe, 3 *Edw.* III. where there was an Indictment againſt the Biſhop here in this Court, for going away from the Parliament at *Shrewſbury* without the Leave of the Lords: There *Shard* comes in, and pleads *Ore tenus* this Matter, and ſays, This is a Thing that concerns the Lords in Parliament, of which they have Cognizance only, and ſo prays the Judgment of the Court preſently, Whether they have Juriſdiction of the Cauſe or no? And he pleads it in Abatement. There they over-ruled him preſently without any more to do, becauſe their Pleadings were not as now they are; now they are grown into a formal Way, all entered upon Record, or at leaſt written in Paper: And what ſhould be the Reaſon why you ſhould not do according to the common Courſe of the Court, I leave it to you to conſider of it.

Mr. Serj. *Mayn.* It is very true, my Lord; anciently the Courſe was ſo, my Lord, and the Law was ſo too, to plead *Ore tenus*; but pleading in Paper is the ſame Thing; and the Courſe of the Court hath been, when they ſaw it in Paper to be a frivolous Plea, to give Judgment preſently: And you have the ſame Privilege upon this Account, as they had when Pleas were by Word of Mouth. If there be a Demurrer, it may hang longer than is convenient this Cauſe ſhould do.

L. C. J. Do not ſpeak of that, Brother *Maynard*; as to Delay, you ſhall take as ſhort a Day as you will.

Mr. *Att. Gen.* I have looked upon all the Precedents, and could never meet with one Demurrer where the Plea was to the Juriſdiction: But I pray your Judgment upon the firſt Matter, whether whoſoever pleads to the Juriſdiction ought not to have the Record *in poigne* to juſtify his Plea? In a Plea in Bar indeed it may come in by *Mittimus*, but in a Plea in Abatement, the Party ought always to be ready with thoſe Matters that are to out the Court of their Juriſdiction; and beſides, the Court is to maintain their own Juriſdiction, the King's Counſel have nothing to do to aſſert that, but they ought to avoid all Things that may be to the King's Prejudice, and therefore it ought to be by the Judgment of the Court in this Caſe ſet aſide. But I do think you will never find a Demurrer that was to a Plea to the Juriſdiction.

L. C. J. Pray conſider of that.

Mr. *Att. Gen.* But if it appear to be a frivolous Plea in the Form or in the Matter, you will not put us ſure to demur.

L. C. J. If you do inſiſt upon it, that you won't demur, nor do nothing, we will give Judgment; but we will take Time to conſider it, if you won't demur, nor take Iſſue, or Reply.

Sir *Fran. Withins.* Will your Lordſhip pleaſe to ſpare me one Word? As it hath been obſerved to your Lordſhip, this is a Plea to the Juriſdiction of the Court; and if they do plead a Plea of that nature, the Court always expects the Plea ſhould be ſubſtantially good, otherwiſe 'tis not to be receiv'd. Now it is not ſubſtantially good here; for it ſays, that *Fitz-Harris* was impeach'd of High-Treaſon: Now ſuch an Impeachment is naught, for no body can be impeached of High-Treaſon generally. It ought to come and ſet forth the particular Acts that make up the Treaſon; for the calling of a Thing ſo, does not make it ſo: Therefore they that would plead this Plea, muſt come and ſhew that there is an Impeachment that hath ſuch Matter in it as does amount to Treaſon; ſo that then it being a naughty Plea in the Subſtance of it, and the end of it to put this Court out of a Juriſdiction, we hope for that Reaſon you will not receive it.

Mr. *Sanders.* One Word farther, if your Lordſhip pleaſe, on the ſame Side, for the King. As for this Plea that he hath pleaded here, if it had had ſubſtantial Matter in Law whereupon to ground a Debate, we ſhould not preſs your Lordſhip not to receive it, but we muſt get off it as well as we could; but when it is manifeſtly pleaded merely for Delay, and it ſo appears to your Lordſhip upon the reading of it, and that there is nothing of Subſtance in it, then we hope you will not receive it, nor put Mr. *Attorney* to demur to it, or take Iſſue upon it. Now for the Plea the Caſe is thus: Here is an Indictment for Treaſon againſt Mr. *Fitz-Harris*, for conſpiring the Death of the King, compaſſing of it, and declaring ſuch his Intention by a venomous Libel. Now he comes and pleads to out this Court of their Juriſdiction; and what does he plead? He ſays he was formerly impeached of High-Treaſon in the Parliament, that is all he ſays concerning the Impeachment; then he does come and make an Averment, without ſhewing more, that this High-Treaſon, and that for which he was impeached, is the ſame; and takes upon himſelf to judge, whether the Court will or not, and will not ſubmit it to the Court, which certainly is not the right Way of pleading. If Mr. *Fitz-Harris* ſhould come and plead *auter foitz acquit*, That he had been tried at another Time for the ſame Offence and acquitted, he ſhould not have ſaid generally he had been formerly indicted and acquitted, and this for the ſame Thing; but he muſt have ſhewed the Record, and then averred upon the Record that it was for one and the ſame Crime. For ſuppoſe in this Caſe, which would have appeared perhaps to be ſo, if he had done as he ſhould have done, ſhewn that there was ſuch an Impeachment, whereby he was impeached of High-Treaſon, and which Impeachment did charge him with Treaſon for levying War againſt the King, and then have made a Concluſion as he does now, with an Averment, that the Impeachment and the Indictment was for one and the ſame Offence: Under favour, notwithſtanding his Averment, the Court would have adjudged them not to be the ſame; for if ſo be the Treaſon do not appear upon the Record to be the ſame, his Averment will ſignify nothing; why then his pleading now this inſufficiently for want of the Record, will be better for him than if he had pleaded it ſufficiently. Why then if he had now pleaded, that there is a Record of the former Impeachment, and ſet forth the Record, and then averred this was for the ſame, Mr *Attorney* might take Iſſue either there was no ſuch Record, or ſaid it was another Treaſon, and traverſed it that it was not for the ſame; and ſo there would either have been one Trial by the Record, or the other upon the Fact by the Country. But now as he hath made it, this Trial both upon the Record, and upon the Fact, is only triable by the Country, not by the Record. For if Mr. *Attorney* take Iſſue that there is no ſuch Record, then all the Record is, that he was impeached for High-Treaſon, and then a Record of Impeachment for any High-Treaſon would ſerve the turn; which if it be not for the ſame, it ought not: So then the Iſſue of *null tiel Record* could not be taken. Why then now, my Lord, as to the Fact: If Mr. *Attorney* take Iſſue, that it was not the ſame Treaſon, then the Record muſt be tried; that is, whether there was ſuch a Record that does contain an Impeachment for the ſame Treaſon for which he ſtands indicted; this, I ſay, muſt be tried by the Country. And if he have pleaded it ſo, that Matter of Record upon Iſſue muſt be tried by the Country, for that reaſon his Plea is naught; and if that be ſo, then the Court may be ſatisfied, and 'tis apparently pleaded only for Delay, becauſe he would not come to the principal Matter, and plead Guilty or Not Guilty, which is the Matter of Fact moſt proper for the Country. I rather hope he is not Guilty than that he is: but if he be Guilty, 'tis the moſt horrid venomous Treaſon as ever was ſpread abroad in any Age. And for that reaſon your Lordſhip will not give countenance to any Delay. And therefore we pray the Plea may be rejected, and he may anſwer over.

Mr. *Att. Gen.* He hath not pleaded *prout patet per Record.*

L. C. J. Yes, 'tis *prout patet in Rotulis Parliamenti.* He does ſay that he was impeached of High-Treaſon by the Commons before the Lords, as appears by the Records thereof amongſt the Records of Parliament.

Mr. *Att. Gen.* I did not truly remember that; but I beg your Pardon if it be ſo, for I had not a View of the Plea till now; but I am ready thus far to ſatisfy the Court, 'tis a pure falſe and frivolous Plea. And then with Submiſſion I offer it to your Conſideration, whether you will give any time, or preſently reject it.

L. C. J. We will give them no time, that is ſure. But the Queſtion is, Whether time ſhould not be taken, not in Favour of the Priſoner, but of the King and of the Court?

Mr. *Att. Gen.* I am ready to make out, if it were neceſſary, that there is nothing of all this true; 'tis all Fiction that is pleaded, and nothing in the Record to warrant it: I have a Copy of the whole Journal, and of the Tranſactions in the Houſe of Lords, the Book is cloſe by and ready to be ſhewn; but when 'tis a frivolous Plea, I hope there will be no need of that trouble.

L. C. J. But, Mr. *Attorney*, whether we can take notice of the Journal Book now, you had beſt conſider, as this Caſe ſtands.

Mr. *Att. Gen.* They ought to have it here ready, they ought to have it here *in poigne.*

Mr. Juſt. *Jones.* There have been very many good Arguments urged by you, upon which perhaps the Plea will be judged inſufficient; but the Queſtion is, Whether you are now in any ſuch Form as we can paſs Judgment upon this Plea or no? Therefore it being offer'd to you to conſider of it, what you will do in it; ſure it is reaſonable you ſhould conſider of it, and when you are agreed, then you may aſk our Judgment.

L. C. J. We cannot put you to it to give a final Anſwer to bind the King: therefore let it ſtand as it is; we will conſider of it.

Mr. *Att. Gen.* Then, my Lord, I'll demur immediately.

Mr. *Sol. Gen.* And we pray they may join in Demurrer immediately.

Mr. Serj. *Jeff.* If they do not mean it for Delay, now Mr. *Attorney* hath demurred, I ſuppoſe they will join Demurrer immediately.

[*Then the Clerk of the Crown drew up a general Demurrer, which Mr.* Attorney *ſigned, and it was read in the Court by the Clerk of the Crown.*

Mr. *Att. Gen.* We pray they may join in Demurrer.

Mr. *Williams.* My Lord, we that are aſſigned of Counſel for this Gentleman, the Priſoner at the Bar, (that your Lordſhip may be ſatisfied, and all that hear us, that we do not deſign or deſire to delay one Minute in this Cauſe) do declare, that we will join in Demurrer with them immediately.

[*Then the Clerk drew up the Joinder in Demurrer, which being ſigned by the four Gentlemen of Counſel with Mr.* Fitz-Harris, *was alſo read in Court.*]

Mr. *Att. Gen.* My Lord, I pray your Judgment; here is an Indictment for framing a treaſonable Libel——

Mr. *Williams.* My Lord, we hope we ſhall not be put——

Mr. *Att. Gen.* Pray, Sir, hear what I pray. My Lord, I deſire your Judgment, that the Plea may ſtand over-ruled for a plain fatal Error in it. This is a particular Indictment for the framing a moſt pernicious ſcandalous Libel againſt the King and the Government, for Treaſon in that particular; and I think there is no Perſon does doubt, but that this is a Matter within the Juriſdiction of this Court to try: There is no Difficulty in that. What do they do to out this Juriſdiction? They come and plead, that *Fitz-Harris* was impeached *de alta Proditione*; that's all they plead of High-Treaſon in general, to out the Court of a Juriſdiction of a particular Treaſon, for framing a malicious traiterous Libel; and this is a particular Treaſon upon the Statute of the 13th of this King. Now they have pleaded no particular Treaſon upon that Statute they were impeach'd for, nor upon the Statute of the 25th of *Edward* III. which hath a general Clauſe of a declaratory Power, and it may be he was impeach'd upon that, and we ſhall not intend it otherwiſe, that being the general Law, the other but a particular Law for this King's Life. Now in all Pleas to the Juriſdiction, they ought to be the ſtricteſt and moſt certain of any Pleas whatſoever. And as I offered before to you, ſo I do now again, they ought to be ready with the Record to juſtify their Plea: but this in ſhort I inſiſt upon, that to out a Court of its Juriſdiction for a particular Treaſon, 'tis not a good Plea, by ſaying he was impeached or indicted generally of High-Treaſon, and no Averment can poſſibly help it. For it appears by the Impeachment 'tis not for the ſame, and 'tis rather to be intended that it was not; but the Impeachment being general, that they went upon a declaratory Power, in the Statute of the 25th of *Edward* III. which reſerves to them the Power of declaring Treaſon at large, and not upon that which may be tried here in an inferior Court upon a particular Statute: I ſay, my Lord, they ought to have pleaded it certainly, which they having not done, 'tis fatal; and I pray your Judgment upon it: and I hope they are ready to make good their Plea.

Mr. *Sol. Gen.* My Lord, that which we do ſay to it, is, That this Plea is neither good in Matter nor Form; and if it had been pleaded never ſo formally, perhaps we would have demurred to it: but as now it is pleaded, it is not formal, and therefore we pray it may be over-ruled. The Exception, we take it in point of Form, we think is fatal; for there is no man that pleads an Indictment or an Impeachment in another Court, but muſt ſet forth the Indictment in the Plea, which is not done in this Caſe, and we take that to be fatal to it. For a Man that will plead *auter foitz acquit*, muſt ſet forth the Indictment, and all the Proceedings of the Court upon that Indictment; this is the conſtant pleading in all Caſes, and particularly in *Vaux*'s Caſe, the Fourth Report. Whoever will plead *auter foitz acquit*, muſt ſet forth the Record, before it will require an Anſwer to be given to it.

L. C. J. What do you ſay to it, Gentlemen, for the maintaining of your Plea?

Mr. *Williams.* This is that we ſay, my Lord: We hope your Lordſhip, and the Court, in this Caſe, will not tie us up preſently to come and argue this Matter. One thing I would mention, becauſe it hath been ſaid there never was ſuch a Precedent; I think, to this purpoſe, the Precedent of *Elliot*'s Caſe is very full in it. Mr. *Attorney* is pleaſed to ſay, he never found that any Plea to the Juriſdiction did ever require a Demurrer, but was over-ruled or allowed by the Court preſently; but that Caſe is plain to the contrary upon that very Matter. It was an Indictment brought againſt *Elliot*, for ſome Miſdemeanors committed by him in the Houſe of Commons; this being pleaded to the Juriſdiction of the Court, the Attorney-General at that time ſaid it was not to be received; that was the Matter he inſiſted on then, that it ſhould be rejected: but the Court did then, as you do now, over-rule the Attorney in it, and put him to demur.

L. C. J. We have done the ſame for you.

Mr. *Williams.* Then, my Lord, here is a Precedent that Mr. *Attorney* hath not ſeen: Now for Time, the Court in that Caſe did not tie Counſel up to argue the Plea preſently, but gave them time till the next Term. We aſk not ſo hard a thing of the Court, as ſo long a time in this Caſe, only here is a Man's Life in queſtion; 'tis indeed for Treaſon, and ſo it is of conſequence to the King; and there is alſo the Privilege of Parliament conſequently concern'd in it. What time your Lordſhip and the Court ſhall think reaſonable for us to be ready in, we leave it to your Lordſhip; we deſign not to delay at all, only we deſire a reaſonable time. Your Lordſhip did in the Caſe of *Plunket* give him time for his Trial till next Term, which is as high a Treaſon as this, I am ſure.

L. C. J. You would have People think you have ſtrange Meaſure in this Caſe, that you have not the ſame time given to you that was given to *Plunket:* Pray conſider, you object theſe things as tho' the Court were hard upon you, to tie you up in point of time. Is your Caſe like *Plunket*'s? Pray give us leave to clear our Accounts as we go along: He is brought from *Ireland* hither, is indicted for what he did in another Kingdom, and it is by Law he is ſo indicted indeed; but he being kept cloſe Priſoner, and not knowing what time he ſhould be brought to a Trial, he deſires time to ſend for his Witneſſes, who are to be brought over to clear him of the Treaſon. Could we in Juſtice deny it him, or could there be a ſhorter time than next Term, given him, when his Witneſſes are in another Kingdom, and it would be a Fortnight or three Weeks before poſſibly he could have his Witneſſes here? This I mention, becauſe you will needs make uſe of ſuch a Caſe, that is no more like yours, than any thing that is the fartheſt different from it; yet you will have the Caſe to meaſure with your Caſe.

Mr. *Williams.* My Lord, I know it is in the Diſcretion of the Court; and as your Lordſhip did what was juſt for *Plunket*, ſo you will to this Perſon: I know you will do what is right to every body. We are Counſel aſſigned by your Lordſhip, and we doubt not but your Lordſhip will be juſt to us, and give us a reaſonable time to argue it.

L. C. J. Look you by the way, Mr. *Williams*, I muſt tell you, when we aſſigned Counſel to Mr. *Fitz-Harris*, we expected that Counſel ſhould conſider the Plea, ſo as to be able to maintain it, when they come to plead it here; for that reaſon we gave him time to plead it, ſo as he would ſtand by it: What needed we elſe to have aſſigned him ſo much Counſel in ſuch a Caſe as this is, but that he ſhould be ready? And why you ſhould now hope that we will give you a longer time for Argument in ſuch a Caſe, I ſee not. Conſider, whether in Diſcretion you think longer time ought to be expected upon ſuch a Plea as this is?

Sir *F. Win.* My Lord, we will not take upon us to preſcribe, nor to mention any time in particular, we leave that to the Diſcretion and Judgment of the Court; but this, I think, we may pray, according to the Duty we owe to our Client, upon your Lordſhip's aſſigning us of Counſel. We could not foreſee till to-day, what the King's Counſel would do; whether Mr. *Attorney* would take Iſſue upon us of *null tiel Record*, or upon any of our Averments. We could not foreſee whether he would demur to us, or not. I know your Lordſhip will be as favourable to us as you can; not having thoſe Papers, or Sight of thoſe Records that were neceſſary, and would have expedited this Matter, our time was all ſpent in forming of the Plea, and we could not prepare particular Matter in Law to defend it. We are as ready as can be expected, and we have been as induſtrious to prevent any Delay, as any Perſons could be in our Condition; therefore, it may be, we have had a general Conſideration of the Plea: But now we ſee where the Doubts do lie upon it; 'tis a Matter of Law pleaded to the Juriſdiction of the Court. I do not indeed love to cite Precedents upon what is plain; but withal, I do not love to ſay things upon a ſudden are plain without Conſideration: but this I will ſay, as 'tis now upon this Demurrer joined, it is a Caſe well worth our taking care of, and yours too; I muſt ſay it with your Lordſhip's leave. Therefore, if in the Caſe of my Lord *Hollis*, which was but upon an Information, and that but for a Miſdemeanor, and tho' it was a Plea directly to the Juriſdiction of the Court, and certainly they came prepar'd; for they were all at liberty, and had reſort to all Papers and Books before the Plea pleaded, which we could not have; yet the Court was pleaſed to aſſign them time, and give them a large time, I hope we ſhall have ſome reaſonable time. I do not ſpeak it, that we ſhould have ſo long time; but I humbly beſeech your Lordſhip, that we may do our Duty to the Court, and to our Client, that we may have a little time. It is true, it is a great and a horrid Treaſon; but it is as true, here is the Life of a Man concerned in it: we affect not delay at all, but hope you will not deny us what time is reaſonable.

L. C. J. Look you, Ill tell you; you might, if you had pleaſed, have entitled yourſelves better to have had time to ſpeak to the Plea, if you had pleaded over to the Treaſon; then we could have given you time to have ſpoken to it, and not delay'd the King at all: but you have thought fit not to plead over. I muſt confeſs, I did expect you would have pleaded over, as you might have done, and I thought you would; therefore having not done it, it is in our Conſideration, whether we will give you time, and what time we will give you.

Mr. *Wallop.* It is under your Lordſhip's Favour, according to the uſual Courſe of modern Practice. I have been an unprofitable Attendant here near forty Years, and, for my part, I did never yet ſee ſo ſwift a Proceeding as this is now; it is as ſwift as Lightning. It is a very extraordinary thing; we might well conceive, that nothing more ſhould be expected from us than what is uſual, and that we ſhould not be put out of the ordinary Proceedings. Anciently indeed, as your Lordſhip did obſerve the other Day, they pleaded *Ore tenus*, and then the Proceedings were very quick: now indeed it is otherwiſe; modern, and what we may call ancient Practice too, hath made an Alteration from that Method: and we humbly pray we may not proceed, but according to the rate of modern Practice. My Lord, whereas they are pleaſed to call it a frivolous Plea, I believe it is a Plea of the greateſt

Import that ever theſe Gentlemen came here about, whatſoever they are pleaſed to ſay. But your Lordſhip knows the Life of a Man is the greateſt Favourite in Law; and that to be a moſt ancient and wiſe Rule, *De morte hominis nulla eſt cunctatio longa*. And ſince we could not reaſonably expect to be thought to come provided in this Caſe, we humbly pray, that your Lordſhip will allot us ſuch a reaſonable Time as your Lordſhip ſhall think fit.

L. C. J. Come, let me propoſe this to you, Will you plead over?

Mr. *Pollexfen.* My Lord, I will give you an Anſwer to that, We cannot do it. When we were together, we did conſider, whether if we ſhould plead over, it would not deſtroy the Plea, and we were of Opinion that it would deſtroy the Plea: We cannot plead over, but we give up the Juriſdiction. It is as indifferent and light to me, as any Body, to be forced to argue it now; but as to the Matter of it, I believe no Body can ſay they ever ſaw many Inſtances of the like Nature: Therefore, pray, my Lord, let us not go on ſo haſtily with it, for we could not foreſee, what ſince we know, how it would be with us. I did not think they would have demurred; but now 'tis come to that, we muſt make the beſt of it. We have pleaded this Plea; if you will not be pleaſed to give us Leave and Time to be prepared to argue it, you muſt take it as we are able, ſince we can't have time to make ourſelves able.

L. C. J. Certainly, Mr. *Pollexfen*, *in favorem vitæ*, it would not hurt the Plea to plead over.

Mr. *Att. Gen.* My Lord, if your Lordſhip pleaſes to favour me a Word in this Caſe; I hear ſeveral things urged, particularly inſtancing in modern Practice. If that Gentleman will ſhew that in any Caſe the King and the Court were ſo indulgent to give four Days to plead to the Juriſdiction of the Court, then he will ſhew me ſomething of modern Practice, which I know not; but if that Gentleman will remember modern Practice in a great Nobleman's Caſe, for whom he was of Counſel, it was told him, if he would debate the Point of Law, he muſt do it preſently: They never would give him time to prepare for his Argument, there was no ſuch modern Practice then. I would deſire him to give me one Inſtance, that when Gentlemen are aſſigned of Counſel to plead a Matter to the Juriſdiction, and deal ſo with the King's Counſel as they have dealt with us, not to let us ſee the Plea till now; the modern Practice hath been to give them any Time. For them to ſay, that they could not foreſee what we would be at; could they not foreſee the Points of Law? Could they not foreſee a plain Caſe? But they do not take off the great Matter, that he that doth plead to the Juriſdiction, ought to have the Record ready in his Hand; but, my Lord, we lay our Thumb upon that which is our Exception; they have pleaded no Impeachment of any Crime, that can appear to be the ſame with that for which they are indicted, that is the Point. Is there ſuch Difficulty? Did not theſe learned Gentlemen think? Could they not foreſee that we ſhould look into their Plea, that it ſhould be legal? Therefore I did, and do pray your Judgment. If they had pleaded, and ſet forth the Record truly, as it is, and as it ought to be ſet forth, in caſe they would have any Benefit by it, we would have given them another Anſwer; but if it be done purpoſely, as it is done with Artifice, I am bold to ſay, for theſe Gentlemen know how to plead a Record as it ought to be, and how this ought to be pleaded to, to out the Court of a Juriſdiction of a particular Crime. They ſay, the Life of a Man is concerned, and ſo is the Peace of the Kingdom concerned too, in the Life of as great a Traitor as ever was tried in *Weſtminſter-Hall.* For if his Treaſon had taken Effect, certainly the Kingdom had been very near embroiled in Civil Wars by this Time; therefore the whole Peace of the Kingdom depends upon his Life, and it depends upon the clearing of the whole Matter. And I challenge them again, if they can ſhew me any Inſtance of the like Nature. That of *Eliot*'s Caſe that was mentioned, it was an Information; and to Pleas upon Informations there have been Demurrers, but to Indictments found by twelve Men, we do not meet with any Demurrer any where to a Plea to the Juriſdiction. But I pray your Judgment, that he may plead in Chief; for 'tis but a *Reſpondes ouſter*, and if theſe Gentlemen deſire to take Time, I hope you will not delay the King by giving Countenance to ſuch a plain imperfect Plea; for thoſe high Matters they talk of, that will be the Conſequence, they can never come in Queſtion upon this Plea.

Mr. *Sol. Gen.* My Lord, I have but one ſhort Word to that which is now in Queſtion. Our Exceptions to the Plea we offered and opened before; the Queſtion is now, whether they ſhall have time to argue this Plea? And the Arguments they uſe for longer time, is, the Life of a Man, and they could not be prepared on a ſudden, becauſe they knew not what we would do. For the haſty Proceedings that have been in this Caſe, which they clamour of, I think they have little Reaſon to ſpeak ſo, ſince that hath been done in this Caſe that never was done in any other. He hath had three Days Time to conſider, whether he will plead to the Juriſdiction of the Court, which never was done to any, and ſo great a Favour, that he is ſcarce entitled to any farther Favour. Does any Man believe that they are not prepared? Do not Gentlemen, when they conſider of a Plea, conſider upon what Grounds they plead? And does not that let them into the whole Matter, where the weak Parts of the Plea are, and what may be objected againſt it? I am ſure that theſe Gentlemen are of that Conſideration, that no Man does believe they would put in this or any Plea, without having conſidered beforehand what to do. And then, when they have put in a Plea upon great Conſideration, no Man is to think that they are unready to maintain it. Our Exception is ſhort, and they do but talk in general Terms that they are unprepared; and they have no Reaſon to expect this Kindneſs from the Court, eſpecially ſince they uſed Mr. *Attorney* at this Rate: They gave him not the Plea, but only a Note to tell him they would do that which they ſaid four Days before, and no more. If they had done regularly, they ſhould have brought Mr. *Attorney* the Plea, and left a Copy with him, and deſired him to conſider of it. But we do not pretend we are ſurprized for all this Uſage, we ſee the Plea here, and we ſee the Faults of it, and we have demurred to it, and tell them our Exception; ſure they are better prepared than 'tis poſſible for the King to be, yet we are ready; and we hope you will grant them no longer Time.

Mr. Serj. *Jeff.* Will your Lordſhip be pleaſed to ſpare me one Word: I wonder at what Mr. *Wallop* ſeems now to urge concerning the Life of a Man that is concerned in this Caſe; 'tis true, the Life of a Man is concerned, which is a dear Thing to the Law; but certainly the Life of the Government is more dear to the Government, and all Courts of Juſtice, than the Life of any one ſingle Perſon: And I am ſure this one Perſon hath done as much as in him lies to ſtrike at the Life of the Government, in caſe this be true that is laid to his Charge. Now to make this Caſe like to *Plunket*'s the other Day, is ſtrange: I think your Lordſhip hath given an Account of that: For hath he pleaded to the Fact, Not Guilty, as *Plunket* did? We that are of the King's Counſel would in common Charity hope, that he is not guilty; but I am ſure, if he be guilty, no *Engliſhman* can think that he deſerves to live: Why then ſhould we be ſo fond of a Man's Life, that hath been guilty of ſuch a Fact as this? For Example Sake; ſurely if that be the Thing in Queſtion, we ought to have ſpeedy Juſtice executed upon a Man that deſerves no Mercy. Your Lordſhip was pleaſed to take Notice of another Circumſtance in the Caſe of *Plunket:* He was indicted, he was arraigned, and was to have had his Trial in *Ireland*, and was to fetch his Witneſſes from thence; all theſe Things were in that Caſe. He deſired Time to conſider what he ſhould plead; but your Lordſhip finding an Indictment found againſt him, according to the Rules of Juſtice, over-ruled that Matter he ſuggeſted, and made him plead Not Guilty, before ever you admitted him to debate any thing of that Fact. And then it appearing to your Lordſhip to be in another Kingdom, and that it was impoſſible, in regard of the Hazards of the Winds and Seas, to get over his Witneſſes in a little Time, your Lordſhip gave him Time; but you gave him as ſtrait a Time as could be conſiſtent with the Rules of Juſtice, and as his Caſe would bear. Now, my Lord, this being offered in a Caſe of that Expectation which the Caſe before you ſeems to have, we deſire the Diſpatch of it as much as we can. In caſe the Man be innocent, God forbid but he ſhould be acquitted; but if he be guilty, God forbid he ſhould live a Minute.

L. C. J. Surely you don't take the Caſe, Gentlemen, to be a Caſe of ſo much Difficulty, as to deſerve long Conſideration; we did expect truly, that you would have been ready to have maintained your plea.

Mr. *Williams.* My Lord, we do not deſire any long time; be pleaſed to give us a Day, or two, or three, as you pleaſe.

L. C. J. 'Tis ſaid, 'tis in a Caſe wherein the Life of a Man is concerned; 'tis true, here is the Life of a Man, of whom, till he be found guilty, we ought to have Conſideration, as we would of any other whatſoever: For we have no Reaſon to conclude him guilty till we hear him, and we are to be indifferent till we hear the Evidence; therefore, notwithſtanding the Indictment, we ought to weigh his Life as we would another Man's, till he be found guilty. We in ourſelves do not ſee there is any ſo great Matter of Neceſſity for Time to conſider of this Caſe; yet I muſt tell you, ſince they pray it, Mr. *Attorney*, we are inclinable to give them a Day or two's Time to conſider of it, and ſee what they can ſay to maintain this Plea. But then, Gentlemen, if we do ſo, you muſt take Notice we will call you to plead preſently after our Judgment upon the Plea.

Mr. *Williams.* My Lord, we have nothing to do with the Fact of this Caſe; we are only to ſpeak to the Plea.

Mr. Serj. *Mayn.* Pray how then is your Life in Queſtion upon the Deciſion of this Plea?

L. C. J. Brother, they do not ſpeak as to this Plea, that it hazards his Life, but the *ſubjecta materia*, upon the Deciſion of it, ſuppoſing Judgment be againſt the Plea. Therefore, Mr. *Attorney*, we do think fit to give him till *Friday* Morning, and that he ſhall be brought hither then again by the Lieutenant of the *Tower*; then we will hear theſe Gentlemen: And if they do not ſhew us any conſiderable Matter to maintain the Plea, they muſt expect Judgment preſently.

Mr. *Att. Gen.* That certainly will be too long a Time; pray, my Lord, they ought to have been ready now: If they will be pleaſed to be ready To-morrow Morning, I pray it may go off to no farther time.

Mr. Juſt. *Jones.* There is a Neceſſity, my Lord, I think that it ſhould be ſo; for there is a long Trial at the Bar here on *Friday.*

Mr. *Williams.* That is a very ſhort Time, indeed.

Mr. Juſt. *Jones.* You muſt be ready To-morrow Morning.

Mr. *Williams.* Unleſs, my Lord, you will give us a little more Time, you had as good give us no Time.

L. C. J. It ſeems the Buſineſs of the Court is ſuch, on *Friday* Morning you can't be heard.

Mr. Juſt. *Jones.* Either it muſt be To-morrow Morning or *Saturday*, and that is *Exchequer-Chamber* Day.

Mr. *Sol. Gen.* My Lord, I believe they are not in Haſte.

L. C. J. Mr. *Attorney*, We would give them a reaſonable Time; but yet we would do nothing that might make unneceſſary Delays in this Caſe.

Mr. *Att. Gen.* I pray, my Lord, let it be no longer than till To-morrow, and that is more than ever was given in ſuch a Caſe. I know it was deny'd in my Lord *Stafford*'s Caſe; they would not give the Counſel any Time, but would make them argue preſently.

L. C. J. As to that, Mr. *Attorney*, every Caſe ſtands upon its own Bottom.

Mr. Serj. *Jefferies.* My Lord, we have your Direction for To-morrow Morning.

Sir *Fr. Win.* No, no, my Lord, we hope not ſo.

L. C. J. Look you, Gentlemen, to accommodate you, the Court does think fit thus to do: We will be here on *Saturday* by Seven o'Clock in the Morning. On *Friday* we can do nothing, for there is a long Trial at Bar that will take up our Time; but on *Saturday* we will be here by Eight o'Clock ſitting, and expect you to be here by that Time: And we cannot afford you then long time to argue in, becauſe it is an *Exchequer-Chamber* Day.

Mr. *Att. Gen.* If Judgment be againſt the Plea, they muſt plead preſently then, that we may not loſe the Term for a Trial.

L. C. J. You muſt take Notice of that, by the Rules of the Court they muſt do it, Mr. *Attorney*. If our Judgment be againſt them, the Courſe of the Court is ſo, we can't rule it one way or other.

Mr. Serj. *Jefferies.* But then they ought not to pretend they have no Notice, their Witneſſes are out of the Way, and ſo hinder the Trial.

Mr. Juſt. *Jones.* No, No.

Mr. *Fitz-Harris.* My Lord, I deſire I may have theſe Lords come to me; my Lord of *Eſſex*, my Lord *Saliſbury*, my Lord Mayor, your Lordſhip, and Sir *Robert Clayton*, to perfect my Diſcovery. I have ſomething to diſcover to your Lordſhip and them.

L. C. J. Your Diſcovery of what, do you mean?

Mr. *Fitz-Harris.* Of the Plot, and of the Murder of Sir *Edmundbury Godfrey.*

L. C. J. We did examine you about the Murder of Sir *Edmundbury Godfrey.*

Mr. *Fitz-Harris.* Your Lordſhip went away in Haſte, before I had told all I could ſay.

L. C. J. We aſked you ten times, whether you had any more to ſay, and you ſaid, No.

Mr. *Fiz-*

Mr. *Fitz-Harris.* My Lord, I was in Confuſion and Conſternation; I ſcarce knew what your Lordſhip ſaid to me.

L. C. J. We were not in haſte; we aſked you often that Queſtion.

Mr. *Fitz-Harris.* It was haſte to me, becauſe I was not provided of the Queſtions you aſked me.

Mr. Juſt. *Dolben.* To ſome of the Queſtions we aſked you, you anſwered readily and freely; but to ſome we could not get a poſitive Anſwer by any means.

Mr. *Att. Gen.* My Lord, he told me he was not in *England* then, and that he knew no more than what he had diſcovered.

Mr. *Fitz-Harris.* Did I ſay ſo, Mr. *Attorney?*

Mr. *Att. Gen.* Yes, you are the Man.

Mr. *Fitz-Harris.* I can bring twenty Witneſſes, I did not tell you ſo; and I can bring 500 Witneſſes, that I was in Town then.

L. C. J. Lieutenant of the *Tower*, take your Priſoner, and be here before eight o'Clock on *Saturday* Morning.

Sir *Fran. Win.* My Lord, now I deſire we may have a Copy of the whole Record.

L. C. J. Not of the Indictment, but of the Plea and Demurrer you may.

Sir *Fran. Win.* But, my Lord, I hope you will let the Indictment be read upon *Saturday*, becauſe Mr. *Attorney* had fixed his Exception upon part of the Indictment, which is the Libel that he calls the particular Treaſon, and I deſire it may be in Court.

L. C. J. It ſhall be, and if you have any occaſion of Reference to it, we will look upon it; we are all upon our Oaths, and muſt take heed that no Prejudice be done to the King, as well as to ſee the Priſoner have no unfair thing put upon him.

[*Then the Priſoner was carried back to the* Tower.]

On Saturday *the 7th of* May, 1681, *Mr.* Fitz-Harris *was brought to the Bar of the Court of* King's-Bench, *about eight of the Clock in the Morning.*

Mr. *Williams.* MAY it pleaſe your Lordſhip, I am aſſigned of Council for this Perſon, Mr. *Fitz-Harris*, the Priſoner at the Bar.

Mr. *Att. Gen.* My Lord, if you pleaſe, I will only briefly acquaint them with what our Exceptions are, that they may apply themſelves to them.

L. C. J. Look you, Gentlemen, I muſt tell you all our Time is ſtrait enough for this Matter, for we are all of us to be by and by with all the Judges in the *Exchequer-Chamber*; therefore we pray this of you, we will abridge no Man's ſpeaking what is material for his Client, but we deſire you will keep to the Matter, and the Points in Queſtion between you, and ſave our Time as much as you can.

Mr. *Att. Gen.* That is the reaſon, my Lord, why I would lay my Finger upon thoſe Points that will be the Queſtions between us. Now the Exceptions I take to the Plea are theſe: This is a Plea to the Juriſdiction of the Court, and ſome of our Exceptions are to the Form, and one is to the Matter. To the Form, my Exceptions are theſe: Firſt, We ſay that the general Allegation that he was impeached *de Alta Proditione* is uncertain, and too general; it ought to have been particularly ſet out, that the Court might judge, whether it be the ſame Crime, and it is not helped by the Averment. And the next Exception I take to it, is, here is no Impeachment alledged to be upon Record: I mentioned this the laſt time, and looking more ſtrictly into it, I find it is ſo as I ſaid: For they come and make a general Allegation, that *Fitz-Harris*, ſuch a time, was impeached, *Impetitus fuit*, by the Commons before the Lords, *Quæ quidem impetitio in pleno robore exiſtit, prout per Recordum inde*, &c. Now, my Lord, there is no Impeachment mentioned before: And *quæ quidem Impetitio* is a relative Clauſe, and if there be no Impeachment mentioned before in the Plea, then there is nothing averred upon the Record, to be continued or diſcontinued; for *Impetitio* does not actively ſignify the impeaching, or paſſively the Perſon impeached, but it ſignifies the Indictment or Impeachment, that Inſtrument which contains the Accuſation, and which is to be and remain upon Record. Therefore, when they come and ſay he was impeached, and afterwards alledged, *Quæ quidem Impetitio* remains upon Record, that cannot be good. If a Plea ſhould be *Indictatus fuit*, and afterwards they ſay *quod quidem Indictamentum*, &c. it cannot be good, for the Relative there is only illuſive. Theſe are our Exceptions to the Form. For the Matter of it, it is a Plea to the Juriſdiction of the Court; and, with Submiſſion, there the Point will be, whether a Suit depending, even in a ſuperior Court, can take away the Juriſdiction of an inferior Court, who had an original Juriſdiction of the Cauſe, of the Perſon, and of the Fact, at the time of the Fact committed. What Uſe might be made of it, as a Plea in Bar, might be of another Conſideration; but whether this be enough to make it amount to ſuch a Plea, as will take away the Juriſdiction of a Court, that had an original Juriſdiction, that is the Queſtion before you. Theſe are the Exceptions I take, and do inſiſt upon: And I deſire, my Lord, the Counſel will apply themſelves to theſe Exceptions, to anſwer them; and when we have heard what they can ſay, I hope to give them an Anſwer.

Mr. *Williams.* My Lord, I am aſſigned of Counſel for the Priſoner at the Bar, *Edward Fitz-Harris*, who is indicted here for High-Treaſon, and hath pleaded a ſpecial Plea to the Juriſdiction of the Court: And I muſt crave leave to ſtate his Caſe upon the Indictment, the Plea to the Indictment, and the Demurrer to the Plea. And the Caſe, my Lord, upon the whole Record ſtands thus: He was indicted this Term, by one of the Grand Juries for this County, of High-Treaſon. As to the Indictment, it cannot be expected I ſhould ſtate the Parts of it, it being an Indictment I never ſaw. To this Indictment thus preſented, *Fitz-Harris* hath pleaded thus: That he ought not to be compelled to anſwer to this Indictment, becauſe that before the Indictment was found, at a Parliament held at *Oxford* the 21ſt of *March* laſt, he was impeached by the Knights, Citizens, and Burgeſſes of the Houſe of Commons in Parliament aſſembled, in the Name of themſelves, and of all the Commons of *England*, of High-Treaſon; and that this was before the Court of Lords in that Parliament. He ſays farther, that this Impeachment is remaining in full Force and Effect before the Lords in Parliament, *prout per Recordum inde int' Record. Parliamenti remanens plenius liquet & apparet.* Theſe are the Words of the Plea: And then he avers, that the High-Treaſon mentioned in the Indictment, and the High-Treaſon ſpecified in the Impeachment, are one and the ſame: And he further avers, that he is the ſame *Fitz-Harris* named in that Indictment, and mentioned in the Impeachment. And after the Averments, he concludes, to the Juriſdiction of the Court; whether upon all this Matter, they will proceed any farther againſt him upon this Indictment; and demands the Judgment of the Court to that Purpoſe.

Upon this Plea, Mr. *Attorney* hath demurred generally, and we that are of Counſel for the Priſoner have joined in Demurrer with him. Now in this Caſe which thus comes before you, for your Judgment upon this Plea and this Demurrer, I take theſe Things to be admitted.

Firſt, That the Priſoner ſtands impeached, by the Commons of *England* in Parliament aſſembled, of High-Treaſon. *Secondly*, That the Impeachment thus made by the Commons, in the Name of themſelves, and of all the Commons of *England*, before the Lords in Parliament, for Treaſon, is now in being. *Thirdly*, which I omitted in the opening of the Plea, that this was done *ſecund. Legem, & Conſ. Parliamenti*; and being ſo, remains *in plenis ſuis Robore & Effectu.* And more particularly this Plea does refer to the Record, for the Parts and Circumſtances of the Impeachment, *prout patet per Record. inde inter, &c.* So that it does refer the Impeachment itſelf to the Record, and tells you this is among the other Records of that Parliament: all this is admitted by the Plea. *Fourthly*, And moreover, that this Treaſon, for which he ſtands impeached before the Lords, and the Treaſon for which he ſtands indicted before this Court, are one and the ſame Treaſon, and no way diverſe; and ſo they are the ſame numerical Thing, and there is no manner of difference: And that this Perſon *Fitz-Harris*, now indicted, and the *Fitz-Harris* impeached, are one and the ſame Perſon, and no way diverſe. And withal, my Lord, it appears plainly upon the Record, that this Impeachment was depending before; the Indictment found for the Parliament was the 21ſt of *March*, and it appears by the Record this is only an Indictment of this Term. And another Thing I muſt intreat you to obſerve, my Lord, it does not appear but that this Parliament is ſtill in being, for any thing to the contrary in the Record, and as I take the Caſe, then it muſt be admitted ſo to be.

So then, I take the Plea to be in Subſtance thus, though Mr. *Attorney* was pleaſed to except to both the Subſtance and the Form; but in Subſtance the Caſe is thus: Here is a Perſon impeached in Parliament, by the Commons in Parliament, for High-Treaſon, before the Lords in Parliament, and for aught appears that Parliament ſtill in being, and this Impeachment ſtill depending; then here is an Indictment for that very Treaſon: whether your Lordſhip now will think fit in this Court to proceed upon that Indictment, is the Subſtance of the Caſe. I ſhall ſpeak to the Form by and by.

My Lord, By the way I think it will not be denied, but that the Commons in Parliament may impeach any Commoner of Treaſon before the Lords in Parliament; I take that to be admitted. And I do not find that Mr. *Attorney* denies it, or makes any doubt of that; for I think that was the Caſe of *Treſilian* and *Belknap*, who were impeached in Parliament by the Commons before the Lords: I am ſure my Lord Chief Juſtice *Vaughan* does, in his Reports in *Buſhel's* Caſe, ſay ſo; and upon that Impeachment of the Commons, one of them was executed, and the other baniſhed, in Parliament. My Lord, I cite it not merrily, but I cite it as Authority. Indeed I do not go ſo far as to cite the Parliament Roll, it was in the Time of *Richard* II. I have not ſeen the Roll of late truly, but I am ſure it is upon the Roll, and there it is to be found.

Since then Impeachments of Commoners will lie in Parliament, here then, my Lord, will be the Queſtion, Whether this Court may proceed upon an Indictment for the ſame Offence the Parliament was for? And here I ſhall diſtinguiſh upon Mr. *Attorney:* He does allow the Parliament to be a ſuperior Court; but admitting that, he ſays, though it be ſo, yet the inferior Court having original Juriſdiction of the Perſon and the Cauſe, it may proceed notwithſtanding an Indictment in the ſuperior Court; and, *ergo*, he does infer that this Court may proceed upon an Indictment, notwithſtanding an Impeachment in Parliament.

My Lord, I will compare a little the Caſe of an Indictment and an Impeachment, and ſhew how manifeſtly they differ. I do take the Caſe of an Impeachment not to be the Caſe of an Indictment, and ſo the Principle that Mr. *Attorney* hath taken is wrong, and the Ground of that Argument wrong. I cannot ſay it is like the Caſe of an Appeal, but I may ſay the Caſe of an Appeal is like the Caſe of an Impeachment. For in an Appeal of Murder, though the Indictment be capital, and the ſame that is given upon Criminals proſecuted for the King, yet it is at the Suit of the Party, as in this Caſe it is at the Suit of the Commons; and ſo it is an Intimation of, and analogical to, and bears the Reſemblance of an Impeachment in Parliament; I will not compare an Impeachment to an Appeal, but I will ſay an Appeal imitates an Impeachment. And it is as plain as can be, becauſe Appeals are proper to Courts in *Weſtminſter-Hall*, and it is at the Suit of the Party, the Proſecution and all the Proceſs is *ad inſtantiam partis*; ſo is an Impeachment at the Suit of the Commons. An Indictment is found upon the Preſentment of a Grand Jury, who are ſworn *ad inquirendum pro Domino Rege pro Corpore Com.* and it is a Miſtake in the Form, when it is ſaid *& pro Corpore Com.* for it is not for the King and the Body of the County, but for the King for the Body of the County. But now an Impeachment in Parliament is otherwiſe; it is not in the Name of the King, but in the Name of the Commons in Parliament, and of all the Commons in *England*, wherein it ſuits with an Appeal, which is at the Suit of the Party; ſo that it is like an Appeal, and not like an Indictment: An Indictment is for the King, an Impeachment for the People. And as it is in it's Nature and Conſtitution different, ſo it is in the Proſecution alſo, for that is by the Commons of *England*, they are the Proſecutors in effect; but now in all Indictments they are proſecuted always by the King's Attorney, or by ſome Perſon in the Name of the King. We are now arguing upon the Methods and Forms of Parliament, therefore I muſt crave leave to inſiſt upon thoſe Methods more particularly. The Commons they bring up the Impeachment to the Lords, the Commons they proſecute the Impeachment, they manage the Evidence upon the Trial; and when the Lords have conſidered of it, and have found the Fact, the Commons come and demand Judgment, and Judgment is given at the Prayer of the Commons, and no otherwiſe, and there are no Proceedings by the Attorneys. Indeed there have been Attempts by Attorneys to proſecute Perſons in Parliament, by exhibiting Informations in the Parliament; but what Succeſs they have had, I leave to them to conſider that are concerned, and have read the Rolls of Parliament. But it is not ſafe to alter the old Ways of Parliament, therefore I take it under Correction, that it is out of the Road of Compariſons, when they will compare an Indictment and an Impeachment together; for they do not agree, but differ extremely.

I would then offer you ſome Reaſons why this Court ought not to proceed upon this Indictment. I take it, it does not become the Juſtice of this Court to weaken the Methods of Proceedings in Parliament, as this Court will certainly do: For if you will admit this to be the Courſe that I have opened, your Proceedings will alter it. When there is an Impeachment depending in Parliament for Treaſon, if your Lordſhip will admit there may be an Indictment here afterwards in this Court, and Proceedings in this Court upon that Indictment, it is to alter the Method of Parliament-Proceedings, and to ſubject the Method of their Proceedings there to the Proceedings of this Court; and what the Miſchief of that will be, I muſt leave to your Lordſhip. As I opened it before, the Methods of both Courts are different, and their Proceedings very much vary, I think, I need not trouble your Lordſhip with that; we all know it very well in the main. Indictments in this Court are to be tried by a Jury, where a Verdict muſt be given preſently: There is but very little Time for giving the Evidence, or for making Obſervations for the Crown, or for the Publick; and in order to bring it to the Trial, there muſt be an immediate Plea of Guilty, or Not Guilty. Now if the Proceedings of Parliament were ſo ſudden, there might be a great Surprize, and great Offenders paſs unpuniſhed, becauſe the Proſecutors had not greater Time to inſpect the Records that might be of avail in the Caſe: Therefore in Parliament it is quite otherwiſe; there is Time for Deliberation and Conſideration, there are many References, and many Examinations, which are Matters of Deliberation and Conſideration, which take up a great deal of Time; but here you are ſtraitned not only in Time, but bound up to ſtrict Rules, and ſo are ſtraitned in your Methods and Forms of Proceedings, as Mr. *Attorney* would here tye us up to the Forms of little Courts: But it is not fit that the Juſtice of the Kingdom, and High Court of Parliament, ſhould be cramped by the Methods of an inferior Court, and a Jury. So you will then ſubject the Methods of Proceedings in Parliament to the Courts in *Weſtminſter-Hall*, and what the Conſequence of that will be, is worth the Conſideration.

Another Reaſon I would humbly offer, is this, my Lord: The Parliament is the Supreme Court certainly, and this Court is every way inferior to it, and it will be ſtrange that that Supreme Court ſhould be hindered by an inferior: For the higheſt Court is always ſuppoſed to be the wiſeſt; the Commons of *England* in Parliament are ſuppoſed to be a greater and a wiſer Body than a Grand Jury of any one County. The Peers, who are the Judges in that Court, are ſuppoſed to be the wiſeſt Judges, as the Commons the wiſeſt Inqueſt. Will the Law of *England* now ſuffer an Examination, Impeachment and Proſecution for Treaſon, to be taken out of the Hands of the greateſt and wiſeſt Inqueſt in *England?* And will the Law of *England* ſuffer the Judicature upon this Proſecution to be taken out of the Hands of the wiſeſt and greateſt Judicature, and put it into the Power of a ſmaller Number of Judges, or of an inferior Jury? I do think it does not ſtand, my Lord, with the Wiſdom of the Government.

Another Thing is this, my Lord, the common Argument in any extraordinary Caſe, there is no Precedent for this Way of proceeding; it is my Lord *Coke*'s Argument in his Comment upon *Littleton*, *Fol.* 108. and in the 4th Inſt. *Fol.* 17. in his Comment upon the High Court of Parliament. And he takes occaſion to ſpeak it upon the Account of that Precedent, the Caſe of the Indictment againſt the Biſhop of *Wincheſter*, and of that againſt Mr. *Plowden*; and he ſays, This was never practiſed before; therefore it ought not to be: So he infers, and puts a black Mark upon it, by ſaying it is a dangerous Attempt for inferior Courts to alter or meddle with the Law of Parliaments. For the Words I refer myſelf to the Book, I dare not venture to repeat them upon my Memory. So in this Caſe, in regard that it never was done from the Beginning of the World till now, the 33d Year of this King, I may ſay, it being without Precedent, there is no Law for it.

My Lord, there is another Miſchief that will certainly follow upon this, and that too runs upon this Compariſon of an Appeal and of an Indictment. In the Caſe of an Indictment, it is in the Power of the Prince to pardon that Indictment, to pardon the Puniſhment, and to pardon the Offence; but in caſe of an Impeachment, I take it to be otherwiſe, as it is in the Caſe of an Appeal. And, my Lord, if your Lordſhip will take this Caſe out of the Power of the Parliament, and bring it into this Court, where the Offence may be pardoned, you do by that Means ſubject that Offence, and that Method of Proceedings, which would make it, without Conſent of the Party proſecuting, not pardonable by Law, to a Pardon: And this may be of dangerous Conſequence to the Publick, that Crimes that are heinous and great in themſelves, mighty bulky Crimes, fit for the Conſideration of a Parliament, be they never ſo great, never ſo dangerous to the Government, yet ſhould, by giving this Court a Juriſdiction, and poſſeſſing it of theſe Cauſes, expoſe them to the Will of the Prince; and ſo thoſe Crimes, which are impardonable by Methods of Proceedings in Parliament, would become pardonable by Proſecution in this Court.

Now, my Lord, for my Authority, that Impeachments are not pardonable, I would only hint a little to compare it to the Caſe of an Appeal, as *Penryn* and *Corbet*'s Caſe in 3 *Croke*, *Hill.* 38 *Eliz. fol.* 464. There was an Appeal of Murder; upon which he is found guilty of Manſlaughter, and not guilty of the Murder. Then there was a Pardon pleaded of the Burning in the Hand, or of the Puniſhment: It is not plain in the Book, whether the Pardon was after the Verdict, or before (that I cannot be clear in); but however, there was a Queſtion whether the Queen could pardon the Burning in the Hand; however, it was there allowed: But there was an Exception, my Lord *Coke*, who was then Attorney-General, took, that the King could not pardon, if it had been an Appeal of Homicide; and he concurred with the Court in that Opinion. But that Appeal being for Murder, and the Verdict of Manſlaughter, they paſſed over the Queſtion, for this Reaſon that I have mentioned, That the Appeal was not for Manſlaughter, it was for Murder; and if he had been found guilty of the Murder, it was not in the Power of the King to pardon him, it being at the Suit of the Party: So the Opinion of that Book is, and of the then Attorney-General.

Thus I have ſtated the Thing, and the Conſequences of it, and it is not fit for me to dwell upon it: You will conſider of it, I am ſure.

Another Thing I would ſay, is this: If your Lordſhip ſhould meddle with this Way of Proceeding, it will invert the Law in another Thing; for it is a Principle with us, That no Man's Life is to be put twice in Danger for one and the ſame Thing. I will then put the Caſe thus: If your Lordſhip ſhould proceed upon this Indictment, and this Perſon ſhould be acquitted upon it, I am in your Lordſhip's Judgment whether that Acquittal will bind the Lords in Parliament; if that will not bind them, but they may ſtill proceed on the Impeachment, then you invade that common Right which every *Engliſhman* by the Law ought to have preſerved to him, that no Perſon ought twice to be brought in queſtion for one and the ſame Thing. And ſo, my Lord, you make a Man to run the Riſque of his Life twice, by indicting him in this Court, where, though he be acquitted, he may be called to an account again, if the Law be ſo. And if the Lords in Parliament ſhould be of Opinion, for they are the Judges of that Caſe, that the Acquittal will not be binding to them, then a Man's Life is brought in queſtion twice upon the ſame Account.

My Lord, I now come to this, the Time, how unſeaſonable a Thing it is, and how dangerous to the Government: I take it to be a critical Thing now at this Time to make ſuch Attempts as theſe are. There are Lords now that lie under Impeachments of Treaſon, the higheſt Treaſon, I think, that ever was contrived; and upon this Impeachment one Lord hath been convicted and executed. Suppoſe upon the Diſſolution of that Parliament that impeached the late Lord *Stafford*, there had been an Indictment againſt him for one and the ſame Treaſon: And by the ſame Reaſon that this Court may proceed, his Majeſty may appoint a High Steward to try by a Jury of Peers. For the Court held before the High Steward, is as much a Court as any Court in the Kingdom, except that of Parliament. I ſay, ſuppoſe the King had appointed an High Steward, and that Lord High Steward had proceeded againſt my Lord *Stafford*, I think my Lord *Stafford* had been alive at this Day. For in the Caſe of Treaſon your Lordſhip knows there muſt be two Witneſſes; and I am ſure there came in freſh Teſtimony againſt my Lord *Stafford* after the ſecond Parliament after the Impeachment. I appeal to thoſe noble Lords that are here, if it were not ſo; and had it not been for that freſh Teſtimony that came in afterwards, poſſibly my Lord *Stafford* might have been alive at this Time. And the Lords in Parliament, as I have obſerved in the Beginning, when they find an high Crime before them, when they find ſuch a general contagious Deſign to ſubvert the Government, and yet they cannot come to cut off the principal Agents in this Deſign, becauſe perhaps there may not be two Witneſſes in ſtrictneſs of Law at the firſt, it is the Wiſdom of a Parliament to deliberate and to take Time. The good Queen was uſed to ſay, Truth was the Daughter of Time, and Time would produce Truth, *Veritas filia temporis.* If then there had been any ſuch haſty Proceedings, as in this Caſe, I doubt my Lord *Stafford* had been now alive. Now then for theſe Lords that are now in the *Tower*, if your Lordſhips do go on in this Way, do you not open ſuch a Gap, as may be a Ground to deliver them by the ſame Juſtice (I ſpeak it under Correction here, and I only offer it to your Judgment, for I have not had many Hours to conſider of it; but your Lordſhip will think well of it before you give any Judgment) by the ſame Juſtice the other Lords may be tried by another Court? This I offer in point of Reaſon, that this Proceeding will be very hard, and is an imprudent Thing, if not an illegal Proceeding. My Lord, I am ſure it will have this Effect, it will ſtir up a Queſtion between the Juriſdiction of this Court and the Court of Parliament: For in all Probability, if this Perſon ſhould be acquitted, the Commons and the Lords will look into it. They are a Court that make a Survey of the Proceedings of all other Courts; and they will examine this Proceeding, or at leaſt may do. And if he be found guilty, here is the Power of the Commons in Impeaching, and the Juriſdiction of the Lords in Trial and Judgment, taken away by an inferior Court to them, and ſo ſtir a Queſtion between this Court and that higheſt of Courts, the Parliament. And what will be the Conſequence of that? The Judgment of that Queſtion will be in the Superior Court, for there is no middle Court between this Court and the Parliament to judge of it; therefore I ſubmit it to your Lordſhips.

Theſe are the Things which I offer to your Lordſhip in point of Reaſon, whereof ſome go to the Prudence of the Thing, ſome to the Reaſon, and ſome to the ill Conſequences that may happen upon it, and I think many to the Illegality of the Act. And now this being ſaid in the general, I come to the particular Exceptions made by Mr. *Attorney* as to the Form of our Plea.

He was pleaſed to ſay, that this Plea was a plain frivolous Plea, which is his Exception in general; and he gave you three Reaſons for it at firſt, and does now inſiſt upon the ſame for Subſtance.

One was this, and he inſiſted upon it at this Time, This Plea does not ſet forth any Record of an Impeachment, nor the particular Matter of it, ſo as this Court may judge of the Reaſon of it; for he compares it to the Caſe of a Plea of *auter foitz acquit.* If a Man hath been indicted and acquitted, he may plead it in another Court that hath Juriſdiction of the Cauſe, if he be again indicted for the ſame Matter: But, my Lord, firſt of all, I take this Plea to be well pleaded in Form; and, in the ſecond Place, if there be any Informality or Defect (which I do not take it that there is, but if there were any ſuch Thing), I take it it is of another Conſideration, which the Court will deliberate before they give their Judgment on.

But I ſay in the firſt Place, I take it to be a very good Plea, and that it is good according to the Pleading of *auter foitz acquit.* In pleading of a general Act of Parliament, we need not ſet forth the Act, but refer to the Record; and that will depend upon the Method of Impeachments in Parliament, which I am of Opinion, being the general Law of Parliaments, this Court ought to take Cognizance of. In the Caſe of *auter foitz acquit*, there is firſt an Indictment proceeding of the Court upon the Plea, a fair Trial, and a fair Acquittal, and a Record of all this Matter. If now this Perſon comes to be indicted again for the ſame Offence, there is a Record for him to plead that will ſhew forth the whole Matter; and if he does not plead that Record, 'tis his own Default.

But in this Caſe here is no ſuch Record to plead, and there is the Miſtake upon which Mr. Attorney has gone all along. And you muſt in this Caſe be governed by the Rule and Method of Parliament, which is this: The Commons, in the Name of themſelves, and of all the Commons of *England*, impeach ſuch a Perſon, and they bring up this Impeachment to the Lords in general, and there they have Liberty to preſent Articles in due Time, after due Conſideration, which ought not to be done haſtily. All this is no Record, ſuch as may be had in the Caſe of *auter foitz acquit:* For firſt, the Impeachment of the Commons is no Record; when 'tis brought up to the Lords, there is only an Entry into the Journal of the Lords, that ſuch a Day ſuch a Perſon came from the Houſe of Commons, and impeach'd ſuch a one. And you are not to expect the ſame ſtrict Method, and Form of Proceeding, as in other Courts, the Courts in *Weſtminſter-Hall*, or inferior Courts. Your Lordſhip in this Caſe muſt be govern'd by ſuch Proceeding as is in Parliament, and muſt take it as it is; and we have ſaid enough, and as much as can be in our Caſe. We have not indeed ſet forth an Indictment, a Plea, a *Venire facias*, *&c.* for there is no ſuch Proceeding in Parliament; but there was an Impeachment by the Commons, in the Name of themſelves and of all the Commons of *England*, before the Lords, that it is *in pleno robore & effectu*, and that it was *ſecundum legem & conſuetudinem Parliamenti*, *prout patet inde inter Recorda remanen.* *&c.* And here is enough. For when we refer you to a Record, that is as much as if we had ſet forth the Record itſelf; for we tell you there is ſuch a Record, and we point you to the Place where you may find it. So we take it, 'tis a very full Plea; and if not, 'tis as much as any Man can plead in ſuch a Caſe, though it be not pleaded particularly.

4 *Inſt.* 15.
Co. *Lit.* §. 108.
Flet. *lib.* 2. *c.* 2.

And, my Lord, that your Lordſhip is to judge in this Caſe according to the Methods of Parliament, I depend upon the Authority of my Lord *Coke*; I will repeat you ſome of his Words: Speaking of the Law of Parliaments, he ſays, and he borrow'd it out of *Fleta*, That this High Court of Parliament *propriis ſuis Legibus & Conſuetudinibus ſubſiſtit. Et iſta lex ab omnibus quærenda, à multis ignorata, & à paucis cognita.* But he tells you, and certainly he ſays true in it, Whoever will be learned in the Law of Parliaments, muſt repair to the Rolls of Parliament: And give me leave to cite his Opinion, which, I hope, may be of great Weight with this Court: It is in the Fourth Inſtitute, *fol.* 15. he ſays, For any thing mov'd or done in the Houſe of Commons, it ought to be determined, adjudged and diſcuſſed by the Courſe of Parliament, not by the Civil Law, nor yet by the Common Laws of this Realm, uſed in more inferior Courts, which was declared ſo to be *ſecundum legem & conſuetudinem Parliamenti*, concerning the Peers, and the like, *pari ratione*, for the Commons; and that ſtops this Court in our Caſe: For ſo it is ſaid in this Plea, which is the Matter you are to be governed by, that it is *ſecundum legem & conſuetudinem Parliamenti*. He tells you further, there is no Notice to be taken of any thing ſaid or done in the Houſe of Commons, but by the Report of that Houſe, and every Member thereof hath a judicial Place; he takes it out of *Henry* VII. and ſo the Book is expreſly.

4 *Inſt.* 15.

And he goes on; This is the Reaſon that Judges ought not to give any Opinion of Matters of Parliament; becauſe it is not to be decided by the Common Laws, but *ſecundum legem & conſuetudinem Parliamenti*. So he tells you, you are bound by the Methods of Parliament; and I need not preſs the thing much after his Authority; for he was learned in Parliament Matters.

But I would crave leave to mention a Caſe that was lately in this Court, and that was the Caſe of my Lord of *Shafteſbury*, who was brought by *Habeas Corpus* to this Court, and upon that *Habeas Corpus* it was thus returned, That he was committed by Order of the Lords in Parliament, there to remain during the Pleaſure of the King and of the Houſe of Lords; and this for an high Contempt committed in that Houſe. Upon this Return we inſiſted that my Lord might be bail'd, becauſe it was uncertain, the Pleaſure of the King, or the Houſe of Lords; and upon reading the Order, there is no Crime expreſs'd, but only in general for an high Contempt. I ſpeak it not for the particular Caſe's ſake, but to apply the Reaſon of it to our Caſe; the Reaſon then given by the Judges, Mr. Juſtice *Jones* will pleaſe to remember it (for it was particularly declared by him) why they could not bail my Lord, was this; he was pleaſed to ſay, We in this Court take notice of the Court of *Exchequer*, and other Courts in *Weſtminſter-Hall*; and it would be ſtrange if we ſhould not take notice of the Courſe of Parliament, and Houſe of Lords. And if you are bound ſo to do in other Caſes, you are bound to do ſo in this. And if without pleading you take notice of the Courſe of thoſe Courts, you will alſo take notice of the Law of Parliaments, and Cuſtoms of Parliaments. And (that I may make uſe of it to our purpoſe in this Caſe) we need not particularly ſay, *ſecundum legem & conſuetudinem Parliamenti in hoc*, inſtancing in this, and that, and t'other Particular: But the Court is to look into it, without my pointing to the particular Law of Parliament. So that, my Lord, here is ground enough before the Court, and I know the Court will look into it, before they give Judgment.

The ſecond Exception is this, That it is not ſaid in the Body of the Plea, that *Fitz-Harris* is impeached for this Treaſon; but it comes in only in the Averment. Now, my Lord, as to that, we muſt purſue the Impeachment as it is in the Lords Journal. 'Tis for Treaſon generally there, and 'tis ſaid to be *ſecundum legem & conſuetudinem Parliamenti*, which goes to all, and there is a Record of it among the Records of Parliament, and Mr. Attorney hath confeſſed it by the Demurrer.

And that this is the ſame Treaſon, we do aver in Fact, which alſo is confeſſed by the Demurrer; and your Lordſhip will ſee by the Records and Forms of Entries in Parliament (that I may not repeat Things over and over again) that this is the Courſe and Method of Parliaments.

Mr. Attorney hath fancied an Exception of Grammar, an Adjective for a Subſtantive; but I take it to be as well as any Man can plead in this Caſe. For what ſays the Priſoner? The Knights, Citizens and Burgeſſes in Parliament aſſembled, did impeach me; which Impeachment is ſtill in Force before the Lords. I take it to be as plain as can be. If they did impeach me, then there was an Impeachment; it can bear no other Senſe.

My Lord, another Exception, and which was thought a ſtrong one the other Day, and ſtrongly urged, is, That the King may chuſe his Court, and they compared it with the other Courts: But there is the Miſtake that runs all along in this Caſe. 'Tis no doubt, the King may chuſe his Court for his own Action and Suit; but the Impeachment is an Impeachment of the Commons, and their Suit is to be try'd no where elſe but in Parliament. And the Caſe that was the other Day cited by Mr. Attorney, for this Purpoſe, is true of the Perſon that was arraigned for Treaſon, and hath been indicted and arraigned in *Ireland*, and he may be arraigned and tried here, there is no Queſtion of it; but to ſay, therefore, that this is a Conſequence from that Rule, that therefore he will chuſe whether he will proceed in Parliament upon the Commons Impeachment, and put a Stop to the Proceeding of the Parliament, by proceeding in this Court, I take to be a great *non ſequitur*.

My Lord, I have offered theſe Reaſons, as to the Form of the Plea to maintain it. Now as to the Precedents, I would a little ſpeak what hath been done in the like Caſe, where this Court hath taken hold of Cauſes, and the Proſecution of the Court hath been ſtopp'd by Pleas to the Juriſdiction, and what hath been done upon thoſe Pleas. What Doom they have had, I will hint ſome of them to you.

There was a Caſe mentioned by your Lordſhip the other Day, the Biſhop of *Wincheſter*'s Caſe, 3 *Ed.* III. I dare not ſay I have looked upon the Parliament-Roll; but my Lord *Coke* tells us, he hath recited the Record, *de verbo in verbum:* In the 2d Inſtitute, *Fol.* 15. there are all the Proceedings. It was not an Indictment, for my Lord *Coke* contradicts that, and ſays, it was a Declaration: There the Record at large ſets forth, that the Biſhop of *Wincheſter* was attached to anſwer the King; for that whereas at a Parliament held at *Sarum*, it was ordained, *per ipſum Regem ne quis ad Dom. Parliament. ſummonitus ab eodem recederet ſine licentia Regis.* And that this Biſhop, in Contempt of the King, *receſſit*, without leave of the King. I think, 'tis rather an Action than a Criminal Proceeding: What ſays the Biſhop to this? He comes, and ſays, *Si quis deliquerit erga Dominum Regem in Parliamento aliquo, in Parliamento debet corrigi & emendari, & non alibi in minore Curia quam in Parliamento*, &c. What becomes of this Plea? 'Tis ſtrange there ſhould be ſuch an Inhibition, that no Man ſhould depart without leave of the King, and the Biſhop be puniſhed for it; we do not find any Judgment was given, nor would they venture to do it. My Lord *Coke* hath a Mark upon it; for this very Reaſon, it looked as if there was a Deſign to weaken the Parliaments, by bringing their Proceedings into *Weſtminſter-Hall*, but they would not do it; they would give no Judgment for the King; but for aught appears, the Plea ſtood.

Then there is the other Caſe of Mr. *Plowden*, and many more *in primo & ſecundo Phil. & Mar.* where a great many of them, ſome whereof were Burgeſſes, and they ſubmitted, but he did not. The Information there is this, that theſe Perſons were ſummoned to the Parliament, and departed from thence without the leave of the King and Queen, though it was prohibited by them that any ſhould depart: Moſt of them ſubmit to a Fine; and if it had reſted there, it might have turned to the Prejudice of the Commons as an Example.

But Mr. *Plowden*, he pleads as one that underſtood himſelf, and the Power of Parliaments, and their Proceedings very well, and conſiders the Time to have pleaded in: Says he, I continued in the Parliament from the Beginning to the End of the Parliament; but he relies not there; but he brings a Traverſe full of Pregnancy; and if our Plea be faulty, theirs was an hundred times as faulty, *abſque hoc*, That he, the ſaid *Edmund Plowden*, the ſaid Day and Year, during the ſaid Parliament, without Licence of the ſaid King and Queen, and the Court aforeſaid, did contemptuouſly depart, in Contempt of the ſaid King and Queen, and their Commandment and Inhibition, and to the great Detriment of the Common-Weal and State of this Kingdom, *&c.* All theſe Things he pleads, which your Lordſhip knows to be a very ill Traverſe; and yet this Caſe continued all the time of that Queen, and the Court would never give Judgment in it. This was *in primo & ſecundo*; and yet it appearing upon the Face of the Information, that it was a Caſe that concerned the Commons, the Court would not give Judgment for or againſt the Commons as long as the King and Queen lived.

There is a later Caſe, and that is *Elliot*'s Caſe, 5 *Car.* There is an Information againſt my Lord *Hollis*, Sir *John Elliot*, and many more; and there is a Plea put in to the Juriſdiction of the Court; I have a Copy of my Lord *Hollis*'s Plea, and 'tis in a manner as faulty as *Plowden*'s Plea: but the Court in that Caſe does not go upon the Inſufficiency of the Plea, but gives Judgment generally that this Court had a Juriſdiction; the Aſſault happened in Parliament, and the Words were ſpoken there; and upon the Demurrer, they gave Judgment upon the whole Matter. What became of that Judgment? We know very well it was reverſed, 19 of this King. And pray obſerve the Proceedings in the Reverſal of that Judgment. Judgment was given againſt my Lord *Hollis* and the reſt of the Gentlemen of the Houſe of Commons, though there was no Proſpect of a Parliament, yet they were obſtinate, and would not plead; for they thought the Judgment to be a very hard Judgment; and this being a Plea in Abatement, Judgment was given for want of a Plea over. It may fall out in this Caſe, that this Perſon may be obſtinate, and not plead over, if you ſhould give your Judgment againſt this Plea. In *Elliot*'s Caſe they were fined ſeverely, and they continued under this Judgment in Priſon, and in Execution for the Fine a great while; and they were delivered by what I cannot indeed juſtify in all it's Proceedings, I mean the Long Parliament; but what was done in 19 of this King, I think is good Authority, which none can ſay but was a Parliament as uſeful to the King and Kingdom as ever could be. In that Parliament the Commons examined this Judgment, I ſpeak becauſe I have it in my printed Book; 'tis in *Croke Car.* I confeſs, it is not in the firſt Impreſſion; but it is in the Second Edition, which I have, and theſe are the Expreſſions in it.

L. C. J. What Caſe is that?

Mr. *Williams.* It is in *Croke Car.* 181. 604. but the Reverſal was in 19 of this King.

L. C. J. Was the Judgment given, do you ſay, 19 of this King? Can a Caſe of that Time be reported in *Croke?*

Mr. *Williams.* I don't ſay ſo abſurd a Thing. If your Lordſhip will have Patience to hear me, I'll tell you what I ſay. My Book, which is the 2d Impreſſion of *Croke*, reflecting upon that Caſe in 5 *Caroli*, does publiſh the

Votes of the Houſe of Commons about, and the Reverſal of the Judgment, in the 19th of this King. There the Proceeding is this; Information is given to the Houſe of Commons, that there was ſuch a Caſe publiſhed, which did derogate much from the Privilege of Parliament, invading the Liberty of Speech; and the Houſe of Commons conſidering the Conſequence, ordered the Book to be ſent for and read, and taken into Conſideration and debated; and upon Debate, the Houſe came to this Reſolution, That the Judgment againſt *Elliot* and others is an illegal Judgment, and againſt the Freedom and Liberty of Speech: And this Vote they ſend up to the Lords, where it is confirmed and reſolved in Agreement with the Vote of the Commons: And by the Way, in Anſwer to a Paper that is commonly ſpread about by the Name of *The Obſervator*; I ſay, the Commons came to a Reſolution, and paſs a Vote, which is not indeed a Law; and when they have done that, they may tranſmit their Opinions to the Lords, and deſire them to concur: Then the Lords and Commons have a Conference upon it, and at the Conference the Commons Reaſons are delivered, which the Lords take up with them to their Houſe, and debate them. Then they come to a Reſolution to agree with the Commons. Afterwards, upon this Reſolution of both Houſes, they go regularly to work, by Writ of Error to reverſe the Judgment. And if it ſhould fall out in this Caſe, that your Lordſhip ſhould give Judgment againſt the Plea, and this Perſon ſhould be obſtinate, and not plead over, and thereupon your Lordſhip give Judgment of Death upon him; it may come to be a very hard Caſe, if a Writ of Error ſhould be brought in Parliament, to reverſe this Judgment; and it ſhould be reverſed when the Party is dead. Therefore it will be of great Conſequence in this particular.

My Lord, I'll mind you of one old Caſe, it was 20 *Ric.* II. A Perſon * there preſents a Petition to the Commons in Parliament; and it ſeems there was ſomething ſuggeſted in the Petition, which did amount to High-Treaſon, as there may be ſome Petition or ſome Complaint againſt a great Miniſter that may contain an Inſinuation, as it were, of High-Treaſon; he was indicted out of Parliament for High-treaſon, and was found Guilty, and by the Grace of the Prince he was pardoned: But becauſe the Commons would not lie under that Precedent of an Invaſion of their Privilege, though he was a Perſon without Doors that prepared that Petition, and no more Hurt done to him but the Proſecution, he being pardoned, the Judgment was voided.

L. C. J. Where is that Authority?

Mr. *Williams.* 20 *Ric.* II. *Ro.* Parl. 12. And you will find it in the Argument of *Selden*'s Caſe, publiſhed in *Ruſhworth*'s Collections, Appendix to Vol. I. *Fol.* 47, and 48.

And now, my Lord, I have done with the Subſtance of the Caſe, with my Reaſons for the Matter and for the Form. In this Caſe, here is the Life of a Perſon before you; here is the Right of the Commons to impeach in Parliament, before you; here is the Judicature of the Lords to determine that Impeachment, before you; here are the Method and Proceedings of Parliament before you; and how far you will lay your Hands upon this Caſe, thus circumſtantiated, we muſt ſubmit to you: But I hope you will proceed no further on the Indictment.

L. C. J. Pray, Gentlemen, let us a little direct you not to ſpend our Time about that which is not to the Purpoſe, or that is not in the Caſe: Here is nothing of the Commons Right to impeach in Parliament before us, nor of the Lords Juriſdiction, nor the Methods of Parliament in this Caſe: They are Things quite foreign to the Caſe and the Matter in hand; which is, whether this Plea, as thus pleaded, be ſufficient to protect the Priſoner from being queſtioned in this Court, for the treaſonable Matter in this Indictment before us. Therefore you ought not to ſpend Time in Things that are not before us to be conſidered, being out of the Caſe; for we have nothing to do with any Privilege of Parliament, or of either of the Houſes here at this Time.

Mr. Juſt. *Jones.* And, Gentlemen, there is nothing at all here of any Fact done in Parliament that can be inſiſted on here; nor is there any Complaint againſt Mr. *Fitz-Harris* for any thing he hath done in Parliament. All Mr. *Williams*'s Precedents run to that; but this is for a Thing done without Doors.

L. C. J. We ſpeak to you to come to the Point, which is the Duty of all Courts to keep Counſel to the Points before them. The ſole Matter before us is, whether this be a good Plea to ouſte this Court of a Juriſdiction, which otherwiſe unqueſtionably we have of this Matter?

Mr. *Williams.* It is a hard Matter for the Bar to anſwer the Bench, my Lord.

Sir *Fran. Winning.* My Lord, I ſhall purſue your Direction as well as my Underſtanding will give me leave, and ſave your Time as much as I can; but the Court having aſſigned us of Counſel, you will give us leave to uſe our Diſcretion, keeping as near as we can to the Points of the Caſe, and to the Pleading. But if upon the Reaſoning of this Caſe, other Parliament-Caſes fall in, I hope you will give me leave to cite them for maintaining our Plea. The Plea here is to the Juriſdiction, and conſiſts of two Parts. Firſt, Matter of Record, which is, that an Impeachment is depending in the Houſe of Lords (for ſo it muſt be taken upon the Pleading, as I ſhall manifeſtly prove:) The ſecond is Matter in *pais* (*viz.*) the Averment, that the Impeachment and Indictment are for one and the ſame Treaſon: and the Plea is made up of theſe two Parts, together with an Averment that the Perſon is the ſame. The King's Attorney hath been pleaſed to demur generally to us, and I am ſure that if our Plea be well and formally pleaded, all the Matter of Fact is confeſſed by the Demurrer.

Mr. Attorney did, to my Apprehenſion, make but one Objection the other Day, and he ſtill inſiſts upon it, that here is a Record too generally pleaded, and they compare it to the common Caſe of an *auter foitz acquit*, upon another Indictment; but I hope to make it evidently appear, that it is in no ſort a parallel Caſe. The Matter which I conceive is confeſſed by the Demurrer, is, that there is an Impeachment by the Commons of *England* of High-Treaſon againſt *Fitz-Harris* lodged in the Houſe of Lords, *ſecundum legem & conſuetudinem Parliamenti*: And that the Treaſon for which he was impeached, is the ſame Treaſon contained in the Indictment, to which the Priſoner hath now pleaded. Upon this Matter of Fact, ſo agreed, the general Queſtion is, Whether an Impeachment for Treaſon, by the Houſe of Commons, and ſtill depending, be a ſufficient Matter to ouſte the Court from proceeding upon an Indictment for the ſame offence. My Method will be ſhortly to ſpeak to theſe Things.

L. C. J. Pray let us give you ſome Direction; that is not the Queſtion, nor can come in Queſtion in the Caſe: You miſtake the Points of the Caſe.

Sir *Fran. Winning.* Why, my Lord?

L. C. J. The Queſtion is, Whether you have pleaded ſufficient Matter here to ouſte us of our Juriſdiction? It is to no purpoſe to put Queſtions in the Caſe, that are not in it.

Sir *Fran. Winning.* My Lord, I know the Caſe is very nice and tender on all Sides, and therefore may very well bear an Interruption; however I expreſs my ſelf, my Meaning is the ſame with your Lordſhip's. The Method that I ſhall proceed in, will be this: I will ſuppoſe the Caſe before you had been of an Impeachment, containing the ſpecial Treaſon for which he is now indicted. I will ſhew in the next Place, that as it is now pleaded, it is as available as if the Impeachment in the Houſe of Lords had mention'd the particular Treaſon. I ſhall then give ſome Reaſons why it is ſo, and mention one or two Precedents that have not yet been cited. Two of the King's Counſel did agree, that they would not make a Doubt of the Plea, if there had been a particular Impeachment; and therefore I would, by conſidering what would be the Reaſon of that Caſe, apply it particularly to the preſent Caſe. The Houſe of Lords is a ſuperior Court to this: and is agreed to be the higheſt Court of Record in the Kingdom, *Plowden* 389. *Co. Lit.* 109, 110. 9 *Co. in Præfat.* And then I am within the common Rule of Pleading, according to the Differences taken in *Sparrie*'s Caſe, 5 *Co.* 61, and 62. That a Suit firſt commenced in an Inferior Court, cannot ſtop a Suit in a Superior Court, though ſubſequent; but a Suit in a Superior Court may be pleaded, to ſtop the Proceedings of one that is Inferior. And though it may be objected here, that the Parliament is determined and diſſolved, and ſo there would be a Failure of Juſtice; yet this Objection is of no Force: For if once the Suit be well commenced in the Superior Court, it cannot after go down to the Inferior. And what is begun in one Parliament may be determined in another; ſo is the Caſe 4 *Edward* III. *n.* 16. of the Lord *Berkeley*, and thoſe that were accuſed for the Death of *Edward* II. And though it was objected there, as hath been here, that by this Means there might be a Stop of Juſtice, by the Diſſolution of the Parliament; yet the ſhort and true Anſwer is, That it is in Law to be preſumed, Parliaments will be called frequently, to conſider of the Buſineſs of the Kingdom, and redreſs Grievances, according to the ſeveral Statutes made for that Purpoſe, 4 *Ed.* III. *cap.* 14. 36 *Ed.* III. *cap.* 10. I ſhall labour this no farther; but taking it as the common Rule of Pleading, that a Record in a Superior Court may be pleaded to ſtop a Proceeding in an Inferior; I ſhall come to prove that this Record is well pleaded, and could not be otherwiſe, unleſs Mr. *Attorney* would have had us plead what is falſe, this being the Truth of the Caſe. For the Commons did impeach Mr. *Fitz-Harris* generally of Treaſon, as it is the Courſe of Parliaments for them to do; and in our very Plea we alledge, that he was impeached *ſecundum legem & conſuetudinem Parliamenti*; and ſo Mr. *Attorney* hath confeſſed by the Demurrer: And if they may prefer an Impeachment in general, according to the Law and Cuſtom of Parliament; why then ſo far it muſt be allow'd, that we have pleaded well that he was impeached of Treaſon. It is very true, my Lord, if a Man will plead generally that he was indicted of High-Treaſon, it would be ill; becauſe the Court cannot take it otherwiſe than he pleaded it; and ſuch a general Indictment would be altogether void, and therefore no Averment could make it good, or ſupply that Generality and Uncertainty.

But an Impeachment generally for Treaſon, is good and warranted by the Law and Courſe of Parliament, and ſo confeſſed by the Demurrer. And ſo your Lordſhip will take it to be, and will give Credit, that all is regular in the Proceedings of that High Court. You will preſume, even in the Eccleſiaſtical Courts (as my Lord *Coke* ſays, in the 4th Report) that all Things are rightly done, when they have a Juriſdiction; *à fortiori* you will believe the greateſt Court in the Kingdom does proceed regularly. My Lord *Coke* in the 4th Inſt. Fol. 14, and 15, does ſay, what the Law and Courſe of Parliament is, the Judges will never intermeddle with. They always leave it to the Parliament, who are the ſuperior Judges, and are to determine the Matters before them. For they take notice, that the Courſe of a Court is the Law of a Court, as it is in *Lane*'s Caſe in the 2d Report in the Caſe of the *Exchequer.* And therefore, if a general Impeachment is *ſecundum legem & conſuetudinem*, which is confeſſed by the Demurrer in this Caſe, then you muſt take it for granted, that the Parliament proceed rightly, and that ſuch a general Impeachment is ſufficient in Law. There is a famous Caſe that ſtrengthens what I ſay, 11 *Ric.* II. *di. Rot. Parl. par.* 2. the Caſe of the Lords Appellants. You will find it alſo cited in *Ruſhworth*'s Col. Part 1. in the Appendix, Fol. 51. *Treſilian* and others were appealed againſt for Treaſon, and both the Judges of the Common and of the Civil Law were by Direction of the King called to adviſe of that Matter. And they did all declare, that the Proceedings in that Caſe were neither agreeable to Common Law, nor Civil Law. But the Lords in Parliament ſaid, it did not belong to the Judges of the Common Law or Civil Law to guide them; but that they ought to proceed according to the Courſe and Law of Parliaments (which are the Words of our Plea), and that therefore no Opinion of theirs ſhould ouſte them of their Juriſdiction, or alter the Courſe and Method of their Proceedings. My Lord, this Caſe is very remarkable; but I will go a little farther: The Judges in all Ages have been ſo far from taking upon them to judge of the Laws and Cuſtoms of Parliament, that they have denied to anſwer when their Advice has been demanded, and inſiſted upon it, that they were not proper Judges of ſuch Matters, as in 31 *Hen.* VI. *Rot. Par. N.* 26. For there, among other Things, the Judges were demanded, whether the Speaker of the Houſe, during the Adjournment of Parliament, might be arreſted: They deſired to be excuſed from giving any Opinion: For, ſaid they, in this great Matter they ought not to interpoſe, it being a Matter of Parliament.

In the Great Council *primo & ſecundo Jacobi*, about the Union of both Kingdoms, the Judges refuſed to give their Opinions upon ſeveral Queſtions put to them; deſiring to be excuſed, for that ſuch Things did not belong to them, but were Matters fit for Parliament only. My Meaning is, to infer from hence, that ſince it is pleaded here to be according to the Law and Courſe of Parliaments, and Mr. Attorney hath acknowledged it, that now your Lordſhip is foreclosed from further meddling with this Caſe, it appearing upon Record to be a Matter whereof you cannot judge.

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* *Thomas Hackſey.*

But the Objection is, that admit the Impeachment ſhould be taken to be according to the Courſe of Parliament, yet it is ſo general, that the Court cannot judge upon it: I anſwer, that it is evident the Impeachment was not for nothing; it is moſt certainly to be preſumed, that ſuch a Body of Men as the Houſe of Commons would not impeach a Man for no Crime. *Fitz-Harris* avers by his Plea, that it was for the ſame Treaſon, for which the Jury have found this Bill againſt him. Now this Averment makes the Matter as clear to the Court, as if the Impeachment had mentioned the particular Treaſon.

Every Day's Experience ſhews, that Averments, which are conſiſtent with the Record, are good, and are of Neceſſity to clear the Fact to the Court; ſo that the Judges may give a Judgment upon it. If the Defendant will plead a Recovery in a formal Action, in bar to an Action of Debt, or other Action; it is not enough for him to ſet out the Record; he muſt aver alſo, that the Cauſes of the Action are the ſame, and that it is the ſame Perſon who is mentioned in one Record, and in the other Records; and this ſhews, that the moſt ſpecial and particular are of no Uſe without Averments.

My Lord, there is a Caſe that I find directly to this Purpoſe, which goes further than the Caſe I did but now put, and that is, 26 *Aſſiz. Pl.* 15. It is alſo mentioned in *Stamf. Pla. Cor.* 105, where a Man was indicted for the Murder of *J. S.* and he pleads a Record of Acquittal, where he was indicted for the Murder of *J. N.* But he avers, that *J. S.* in this Indictment, is the ſame Perſon with *J. N.* in the other Indictment; and that was adjudged a good Plea, and the Party was acquitted, though the Averment there ſeemed to be a Contradiction to the Record. This makes it clear, that if an Averment may conſiſt with the Record, the Law will allow it. In *More*'s *Rep.* 823. *Pl.* 1112. the King againſt *Howard*, it is ſaid, that if an Act of Parliament be certified into Chancery, no Averment lies to ſay this is no Act of Parliament, becauſe the Commons did not aſſent to it; but if it appears in the Body of the Act, that the Commons did not aſſent, as if it was ordained by the King and Lords, and without mentioning any Aſſent of the Commons: there it may be averr'd to be no Act; for this being a Matter conſiſtent with the Record, is averrable: And ſo it is agreed in 33 *H.* VI. Fol. 18. *Pilkinton*'s Caſe.

Now Mr. Attorney has his Election here (as it is in all ſuch Caſes) either to plead *Null. tiel. Record.* and then we muſt have produced it; and if we had fail'd, it had been againſt us, as to the whole Plea. Or if he would not deny the Record (as indeed he could not) he might have taken Iſſue upon our Averment, that it was not for one and the ſame Offence; but he has demurred, and thereby confeſſed there is ſuch a Record, and confeſſed the Averment to be true, that he was impeached for the ſame Crime, and that he is the ſame Perſon. And now it is plain to your Lordſhip, that I ſtated the Queſtion right at firſt.

My Lord, I ſhall cite you one Precedent out of *Raſt. Ent. Fol.* 384 and 385. where a Man was indicted and acquitted before certain Juſtices, and being indicted *de novo.*——

L. C. J. It is Title *Gaol-Delivery*, is it not?

Sir *F. Win.* Yes, my Lord, it is. And he pleads that he was indicted *coram aliis Juſticiariis*, for the ſame Felony, and upon this Plea the Entry is made, *Quia teſtatum eſt hic in Cur. in præfatos Juſticiarios*, that the ſaid Party was acquitted of the Felony, in Manner and Form, as he had alledged in his Plea. Therefore it is adjudged, that he ſhould be diſcharged, and go without Delay. My Lord, I do not altogether rely upon this Precedent for Law; but I find it in that Book.

Now, my Lord, I ſhall offer ſome Reaſons in general. Firſt, that when once the Commons in Parliament, in the Name of themſelves, and of all the Commons of *England*, have lodg'd an Impeachment againſt any Man, it ſeems to me againſt natural Juſtice, that ever any Commoners ſhould afterwards come to try or judge that Man for that Fact. I ſpeak this, becauſe every Man in *England* that is a Commoner, is a Party to the Accuſation; and ſo we have pleaded by ſuch an Impeachment, a Man is ſubjected to another Sort of Trial: *Magna Charta* ſays, That every Man ſhall be tried by his Peers, or by the Law of the Land. And by the Law of the Land, there are ſeveral Sorts of Trial, ſome by Juries, others not by Juries. This is one of thoſe Sorts where the Trial is by the Law of the Land, but not by his Peers: For it would be hard that any Man ſhould come to try or give Judgment upon a Perſon who hath been his Accuſer before; and in Effect hath already given his Judgment that he is guilty, by the Accuſation of him, and ſo ſtands not indifferent. By this Means the Trial by Jury is gone; and the Lords, who are the Peers of the Realm, are Judges in Point of Fact, as well as Law. Here is an enormous Offence, againſt which all the Nation cries, for ſo they do in the Impeachment. Then, ſays the Law, it is not fit that you ſhould try him, who are Parties; but the Lords are the proper Judges, they ſhall try him *per teſtes*, and the Commoners may come in as Witneſſes, but not as Judges.

My Lord, another Reaſon is this, that if an Appeal of Death, or any other Appeal were depending before the Statute of 3 *H.* VII. *cap.* 1. the King could not proceed upon an Indictment for the ſame Fact; becauſe the King, as the common Parent, does only take Care that ſuch Offenders ſhould not go away with Impunity; but the Preference was given to the Perſon more particularly concerned, and the King's Indictment muſt ſtay till the Year and Day were out, to ſee whether they will proceed in their Suits. And ſo ſays my Lord Chief Juſtice *Hales*, in his Pleas of the Crown, 2442,45. Then *à minori ad majus*, does the Law ſo regard the Intereſt of the Wife or the Heir, *&c.* in their Suit, and has it no regard to the Suit of all the Commons of *England?* For manifeſtly, an Impeachment is the Suit of the People, and not the King's Suit.

That's the 2d Reaſon; another Reaſon I ſhall urge, is that which was touched by Mr. *Williams*. Suppoſe this Man ſhould be try'd here, and be acquitted; is it to be preſum'd that he can plead this Acquittal in bar to the Impeachment before the Lords? My Lord, I believe there is no conſidering Man in *England*, that has regard either to the Juriſdiction of Parliament, or to the Nature of the Suit, will affirm, that it would be a good Plea; and that he could bar the great Court of the Kingdom from proceeding againſt him, by ſaying he was acquitted by a Jury in *Weſtminſter-Hall*, after the Suit was firſt well commenced in that Court.

My Lord, I ſay, with Reverence to the Court, that ſhould you proceed in this Trial, it may fall out, that contrary to a fundamental Rule of Law, a Man ſhall be twice put in Danger of his Life for one Offence, which by the Law he cannot be; and therefore I urge that as a Reaſon, why you cannot proceed here on this Indictment.

My Lord, I will now mention two or three Precedents, which will prove that this Impeachment is according to the Courſe and Law of Parliaments, though it may ſeem needleſs, after the King's learned Counſel have agreed to it.

My Lord, I ſhall firſt mention the Caſe of *Michael de la Poole*, *Rot. Par.* 18 or 28 *H.* VI. *n.* 18. He was a very great Man, and came to the Houſe of Lords voluntarily, and ſaid, there was a Rumour that he was guilty of horrible Things.

L. C. J. Where did you take this Caſe, out of *Cotton?* It is mentioned there; but I have ſeen a Copy of the Roll.

Sir *Fran. Win.* Yes, my Lord: Thereupon the Commons pray he may be committed upon his own Confeſſion; and that the thing being debated in the Houſe, the Lords ſaid, We know not what was meant by thoſe Words, *horrible Things*; it may import only Miſdemeanors: If it had been ſaid Treaſon, we had known how to have proceeded thereupon: And thereupon within a few Days after, the Commons came and accuſed him of Treaſon. And there it is ſaid, that the Courſe of Parliament is to find out the Truth by Circumſtances, and ſuch Degrees as the Nature of the Thing will bear, and they are not confined to the ſtrict Rules of other Courts. I will not cite any more antient Caſes, though there are many to be found of general Impeachments: For we are not diſputing what is the Right and Courſe of Impeachments, which is confeſſed, upon the pleading: But we have had ſeveral Caſes of late; the Earl of *Clarendon* was impeached generally, and the Commons took Time to bring in their Articles; and I have had the Experience in three or four Parliaments, wherein we have been pretty well buſied with Impeachments, though we have had no great Succeſs in them, that though the Commons may, if they pleaſe, carry up particular Articles at firſt; yet the Law and Courſe is, for the Lords to receive the general Impeachment, and the Commons ſay, that in due time they will bring in their Articles. So it was done in the Caſe of the five Popiſh Lords; ſome particular Member was appointed to go up, and impeach them of High Treaſon in general; and in that Caſe, though the Parliament was diſſolved before any Articles were ſent up, yet afterwards, in the next Parliament, the Articles upon the former Impeachments were ſent up, and received, and my Lord *Stafford* ſince executed, upon his Conviction upon that Impeachment: Yet Indictments were exhibited againſt them, before ever any Impeachment was ſent up by the Commons, and Preparations were made for their Trials. But from that Day to this, there hath been no Attempt to try them upon their Indictments, though there have been ſeveral Intervals of Parliament.

Our Caſe is ſtronger than that of the Lords: For in the Caſe at the Bar, the firſt Suit was in the Houſe of Lords by the Commons, whilſt in the other Caſe the firſt was the Suit of the King, by Indictment; and yet by a ſubſequent Impeachment that was ſtopped, and the Lords continue yet Priſoners in the *Tower*. Our Time hath been ſo ſhort, that we could not ſee the Copies of Orders, which we might otherwiſe have made Uſe of, for maintaining this Plea: We ſent to the Houſe of Lords, but the Officers were out of Town, and we could come at the Sight of nothing there. We have been told the Opinion of the Judges was delivered at Council concerning theſe very Lords, that the Impeachments being lodged in Parliament, no other Proſecution could be againſt them, till the Proſecution of the Commons was determined. So far the Courts below have always been from meddling with the Juriſdiction of Parliament, that even many times in Queſtions upon Acts of Parliament, they have gone up to the Parliament, to know what was meant by it. And I remember it was ſaid by the Court in that Caſe of my Lord of *Shafteſbury*, where it was agreed by all, that the Commitment was too general, for it was only for a Contempt, whereas the Crime ought particularly to appear in the Warrant; that it being in a Caſe of Commitment by the Parliament (at leaſt while that Parliament was continuing) they ought not to meddle with it, nor could they enquire into the Formality of the Warrant.

My Lord, I muſt mention one Thing touching the Caſe of my Lord *Hollis*, which was cited by Mr. *Williams*, and I have but a word to add: It is in the Appendix to the firſt Part of *Ruſhworth*'s Coll. and alſo in *Croke*, *Car. fol.* 181. It was there pleaded to the Juriſdiction of this Court, that it was a Matter done in Parliament: In our Caſe it is pleaded that an Impeachment is depending in Parliament; that was but a Proſecution for a Miſdemeanor, this is a Caſe of High-Treaſon. It fell out in that Caſe, the Court here did adjudge, that the Information did lie; but upon a Writ of Error it was agreed by the Lords unanimouſly, that the Judgment was erroneous, and that the Parties ſhould be reſtored to all which they had loſt, by reaſon of it: But if this Man ſhould loſe his Life by your Judgment, what Help would there be upon a Writ of Error? The Danger of ſuch a Thing requires great Conſideration; and it would be of fatal Conſequence, if the Lords ſhould hereafter adjudge that this Court had no Juriſdiction.

As for Mr. Attorney's Objection to day, that we have not ſet forth actually, that there was any Impeachment; I do confeſs I was a little ſtartled at it; for the Words of the Plea are, That *Edward Fitz-Harris*, by the Knights, Citizens and Burgeſſes, was impeached; which Impeachment is in Force. I do not know how in the World we could could have thought of more expreſs Words, than to ſay, he was impeached; and that that Impeachment is in full Force, as appears by the Record.

For the other Objection, the other Day (for we would mention all, how little ſoever they deſerve an Anſwer) that the King may chuſe in what Court he will ſue; it is agreed, when it is at his own Suit: But this is not ſo, but at the Commons Suit, and can be no where elſe proſecuted, than where it now depends. This is the Method and Courſe of Parliaments, we ſay; and that the Method and Courſe of Parliaments is the Law of the Land, your Lordſhip will take Notice that it is ſo.

To conclude, as this Plea now ſtands, the Demurrer confeſſing the Matter of it, it cannot be over-ruled, without deciding whether the Lords can proceed upon ſuch general Impeachments, and whether the Commons can impeach in ſuch a general Way. We ſubmit the whole to your Judgment: It is a Caſe deſerves great Conſideration, as being of great Weight and Moment; and highly concerns the Juriſdiction of the Lords, the Privileges of the Commons, and the Rights of all the People of *England.*

Mr. *Wallop.* May it pleaſe your Lordſhip, there are in this Plea three principal Parts upon which it turns, which are expreſly alledged. Firſt, That *Fitz-Harris* before the Indictment was according to the Law and Cuſtom of Parliament impeached of High-Treaſon, and this I humbly conceive is confeſſed by Mr. Attorney upon the Demurrer. The ſecond, Thing is, That this Impeachment, be it as it will, general or particular, does remain in full Force and Virtue. This is plainly alledged and demurred to, and ſo confeſſed by Mr. Attorney; for all Things well alledged and pleaded, are confeſſed by the Demurrer. The third great Point and Hinge upon which it turns, is this, That the High Treaſon, mentioned in the Indictment, and the High Treaſon for which he was impeached in the Houſe of Lords, is one and the ſame Treaſon. This we have plainly averred, and this Mr. Attorney hath likewiſe by his Demurrer plainly confeſſed, as we humbly conceive.

For the two former Points there is no Difficulty in them, and therefore I ſhall paſs them over. 'Tis this third Matter which I take to be the only Point in the Caſe; and if we have well averred it, and can by Law be let into ſuch an Averment; then I hope your Lordſhip and this Court will not pretend to go on in this Caſe. They object, and ſay, becauſe he is impeached of High-Treaſon generally, without naming any particular Treaſon, that cannot be averred to be the ſame, and a Demurrer does never confeſs the Truth of that which by Law cannot be ſaid; but if it may be ſaid, and is ſaid plainly, then the Demurrer confeſſes it.

My Lord, I humbly conceive this Matter is well averrable, and we have taken a good Averment. I grant that a repugnant and an impoſſible Averment cannot be taken, as to aver a Horſe to be a Sheep, which is apparently repugnant and impoſſible; and in that Caſe a Demurrer can never confeſs the Truth of that which appears impoſſible to be true. But, my Lord, if there be no Impoſſibility, nor Repugnancy, nor Contradiction in the Averment between the Matters that are averred to be the ſame, as there is not between that which is but generally expreſſed, and that which is more eſpecially alledged; where all may well ſtand together, and the one includes the other, and needs only ſome farther Explanation; it is not only allowable to aver it, but moſt proper, and in ſuch Caſe only neceſſary. For, *quod conſtat clarè non debet verificari*, in this Caſe it is not neceſſary that it ſhould appear to the Court upon the View of the Indictment and Impeachment, that the Matter contained in both, is the ſame; but it is ſufficient, that it be proveable upon an Iſſue to be taken. And ſo much is admitted by the Judges in *Sparry*'s Caſe *Co.* 5. *Rep.* 51. That if there be convenient Certainty which may be put in Iſſue, it is ſufficient, and conſequently not neceſſary to appear at the firſt, but upon the Event of the Iſſue afterwards to be tried. And if they intend it otherwiſe, I confeſs I underſtand them not. It is true, it muſt appear to the Court, either at the firſt opening, or upon an Iſſue ſubſequent to be found. And, my Lord, if this Matter may appear at firſt or at laſt, and the Thing is poſſible to be proved, then we are well enough. In *Corbet* and *Barne*'s Caſe, in the firſt *Croke*, Fol. 520, a Battery ſuppoſed to be in *London*, and a Battery ſuppoſed to be in *Herefordſhire*, were averred to be one and the ſame Battery, which naturally is impoſſible; yet being tranſitory, and therefore ſuppoſable to be done in any County, ſuch an Averment is allowable, though it ſeem'd contradictory, and could not appear to the Court by comparing the ſeveral Declarations to be any way the ſame. And there being a Demurrer for that Cauſe in that Caſe, the Truth of the Averment was rul'd to be confeſs'd by the Demurrer, and ſo here by the Demurrer, the Truth of the Suggeſtion, that the Treaſon in the Impeachment, and the Treaſon in the Indictment, is one and the ſame, is confeſs'd.

By taking this Averment, we offer them here a fair Iſſue, an Iſſue of Fact triable by a Jury, wherein the Attorney-General might have join'd with us, if he had pleas'd; but refuſing that, and having demurr'd, and thereby confeſſed what we have alledged, it muſt be taken to be true, as if found by a Jury. And, my Lord, that this Matter is properly averrable and triable, I think it is plain; it being a Queſtion of Fact, which is properly triable by the Country: And if they had taken Iſſue upon that, we might have gone to a Jury, where the Matter would have been eaſily prov'd. For upon Evidence given, the Jury might fairly take into Conſideration the reading of this very numerical Libel ſet forth in the Indictment, and the particular and ſpecial Debates of the Houſe of Commons thereupon. And that upon thoſe very Debates the Houſe voted that *Fitz-Harris* ſhould be impeach'd for Matters contain'd in that Libel. And that upon thoſe Votes the Impeachment was carry'd up to the Lords. This is Evidence ſufficient, that the Houſe of Commons did intend to accuſe him of the ſame Treaſon contain'd in the Indictment; which proves the Iſſue, that is, that the Treaſon contain'd in the Impeachment, is the ſame with that contain'd in the Indictment. Neither is this to put the Intention of the Mind, or ſecret Thoughts of the Heart in Iſſue, which is againſt the Rules of Law; but to put them into a Way of Proof, which well ſtands with the Rules of Law, which upon the general, or other collateral Iſſue, may well be enquir'd of by the Jury. As in an Action, *quare canem, mordacem defendens ſcienter retinuit.* Here [*Scientir*] is not directly iſſuable, but it is proveable, and muſt be prov'd upon the general Iſſue. So in the preſent Caſe, the Intention of the Commons upon the Iſſue offer'd by us, and refuſed by the Attorney-General, might, and ought, and would have been prov'd; and without Doubt, found by the Jury. Neither is this general Impeachment ſuch a notional Thing as the other ſide would pretend; but it is as if they ſhould ſay, We do charge him to have committed certain Crimes that are Treaſon. Now whether the Crimes they ſay he had committed, and for which they impeached him, are the ſame with thoſe for which he is indicted, is a good and proper Iſſue. And if it appears to the Court to be the ſame, you will certainly yourſelves take off your Hands from thoſe Proceedings. This is all I ſhall ſay as to the Averment. And if we can well get over that, I take it, all the reſt is well enough.

But again, they ſay, the Impeachment is too general, and no Man ſhall be put to anſwer to ſuch a general Accuſation.

And I ſay ſo too, neither ſhall *Fitz-Harris* be put to anſwer to it without ſpecial Articles; yet he cannot quaſh the Impeachment for this Cauſe, as he might the Indictment; which ſhews the Difference betwixt an Impeachment and an Indictment, which always contains the ſpecial Matter, and without which it might be quaſh'd and made no Record. But here by the Law of Parliament ſuch general Impeachments are held good: and Articles are uſually brought in afterwards, and after thoſe additional Articles, which cannot be in the Courſe and Way of Indictment; and therefore we muſt take the Impeachment as we find it; and ſince it ſtands againſt us as a Record, though 'tis general, we may, and muſt plead it in the ſame Generality; having no Way to make it on Record, as we have in caſe of ſuch a general Indictment.

So then this being an Impeachment according to the Courſe of Parliament; it is well lodg'd in the Houſe of Lords, where it only ought to be tried, and we muſt plead it as we may, and as we find the Caſe to be. And having averred the Crimes to be the ſame, we have done what we could, and therefore enough.

And that a general Impeachment without Articles is a Bar to any Indictment for the ſame Matter, was reſolv'd by all the Judges, as I am informed in the Caſe of the Lords in the *Tower*, who were all indicted for Treaſon, either in the King's Bench, or before Commiſſioners of *Oyer* and *Terminer.* And afterwards [5 *Dec.* 78.] generally impeached before the Lords in Parliament; and no Articles exhibited till 3 *April* 79. And yet in the mean time it was reſolv'd at the Council Table by all the Judges there attending, that after the general Impeachment before Articles, they could not be proceeded againſt upon thoſe Indictments, though the Parliament wherein they were impeached was diſſolved.

And that was a ſtronger Caſe than this of *Fitz-Harris :* for there the inferior Court was firſt poſſeſſed of the Cauſe, and yet the general Impeachment cloſed up the Hands of the Court. But in this Caſe, the ſuperior Court, the Parliament, was firſt poſſeſt of the Cauſe, which cannot be taken out of their Hands by the inferior Court.

There is a farther Difference betwixt an Impeachment in Parliament, and an Indictment; that in an Indictment which is always as particular as Articles upon an Impeachment, you cannot plead *auter foitz* arraigned; but you muſt plead either *auter foitz* convict or acquit, as appears in Sir *William Wiſhipole*'s Caſe, *Chron.* 1. 105. But in an Impeachment in Parliament, the other Side will acknowledge, that after Articles exhibited, there can be no proceedings upon an Indictment for the ſame Offence, although the Defendant in the Impeachment be neither convict, nor acquit. Otherwiſe you may bring back all the Lords in the *Tower* to the King's-Bench to be tried, which Mr. Attorney will not, I ſuppoſe, attempt.

And it is obſervable in the Caſe of Sir *William Wiſhipole*, That to avoid the Doubt that the Party there ſhould not be queſtioned, both upon the Coroner's Inqueſt, and the Indictment of Murder; it was rul'd by the Court, that the firſt ſhould be quaſh'd as inſufficient: So careful were the Judges to avoid the double Vexation, in a Caſe compared with this, of no great Import.

I ſhall ſay no more to the Caſe, but only obſerve how ſcrupulous the Judges have been to touch upon a Caſe, where they had the leaſt Suſpicion of Jealouſy that the Parliament had, or pretended to have a Juriſdiction, or were poſſeſſed of the Cauſe. I am ſure I could never get any thing by any Labours of mine in thoſe Caſes. But upon all ſuch Motions they were ſo aware of what might be the Conſequence, that they would always worſhip afar off, and would never come near the Mount, they would ever retire when they came but near the Brink of this Gulph.

Now, my Lord, if you retain this Cauſe, in Conſequence you charge yourſelves with the Blood of this Man; wherein, if you proceed regularly, and according to Law, all is well. But however, by over-ruling his Plea, you take upon you his Blood one way or other; through which you muſt wade to come at the Cauſe. And whether it be adviſeable to come at it upon theſe Terms, I leave it to your Lordſhip's Wiſdom to conſider.

Mr. *Pollexfen.* My Lord, I ſhall not make any long Argument, there hath been ſo much ſaid before me. But I would fain come to the Queſtion if I could; for I muſt confeſs, after all, I cannot ſee what the other Side make the Queſtion. Mr. Attorney was pleaſed to ſay, that both for the Matter and Form, he objected againſt our Plea. But if for the Matter it be admitted to me, that an Impeachment in Parliament for the ſame Matter will out this Court of Juriſdiction; I will ſay nothing at all of it, for I apprehend that is not then in Queſtion.

L. C. J. No, not at all.

Mr. *Pollexfen.* Then the Matter ſeems to be agreed, and only the Manner and Form of the Plea are now in queſtion. And for the Manner, they except to it in theſe Particulars. Firſt, they ſay, it is not alledged that there is any Impeachment upon Record; now I confeſs, Form is a ſubtil Matter in itſelf, and it is eaſy for any Man that reads other Men's Words and Writings, if he will, to make what Conſtruction he will of them, even *Nolumus* to be *Volumus*; but I know the Court will not do ſo. But for an Anſwer to the Objection, I think it is as ſtrongly and cloſely penned as I can tell how to pen any thing, he was impeached, *Quæ quidem Impetitio, &c.* What can that *quæ quidem* ſignify, but the Impeachment that was juſt mentioned before? But what they mean by this, to ſay, this is not the ſame Impeachment, when the Words are poſitive that it is the ſame, I muſt confeſs I cannot fathom.

My Lord, there was another Thing ſpoken the laſt Day, but they have not mentioned it now; if there be any thing ſtirred in it, I hope your Lordſhip will be pleaſed to hear us before you give your Judgment in it, That it was not ſaid to be *ſub pede ſigilli*; but I know they won't inſiſt upon it, therefore I ſay nothing to that.

But the great Queſtion now is, whether or no this be not too general, the alledging that be was impeached in Parliament, and not ſaying how or for what Crime; though there be an Averment afterwards, that it is for the ſaid Crime? Whether this be not ſo general, as that therefore this Plea ſhould be naught?

Firſt, For this of the Averment, I take it with Submiſſion, let the Crimes be never ſo particularly ſpecified in the Record that is pleaded, and in that upon which the Party is brought in Judicature, yet always there muſt be an Averment; and that Averment is ſo much the ſubſtantial Part of the Plea, that let the Matter never ſo much appear to be the ſame without an Averment, it would be naught; and it muſt come to be tried *per pais*, whether the Offence be the ſame or not: For if a Man plead one Indictment for the Murder of *J. S.* to another Indictment for the Murder of *J. S.* though they bear the ſame Name, he muſt aver they are one and the ſame Perſon. For elſe *non conſtat* to the Court; but there may be two *J. S*'s. Therefore all Averments are ſtill the Subſtance of the Plea, to bring the *Identity* of the Matter into Judgment, and are to be tried by the Country: So then the Objection to the Generality is not an Objection to the Subſtance, but rather an Objection to the Form on their Side; becauſe the Subſtance is alledged in the Plea, that it is for the ſame Treaſon: Which Subſtance, if Mr. Attorney had thought not fit to have demurred to, but taken Iſſue on, muſt have been tried *per pais*.

Having thus ſpoken to the Averment, my Lord, let me ſpeak to the general Allegation that he was impeached for Treaſon, and not ſaying particularly what the Fact was.

My Lord, if they admit the Law, that an Impeachment in Parliament does ſuſpend or take away the Juriſdiction of this Court, then they have admitted a great Part of the Fact, and then the Matter in queſtion will be, what Impeachment in Parliament it is that will take away the Juriſdiction of the Court, and there can be but two Sorts; the one at large, where the whole Offence is ſpecified; the other not at large, but only in general Words, The Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of *England*, do impeach ſuch an one of High-Treaſon. Now, my Lord, if ſo be ſuch Impeachment in Parliament be a good Impeachment, then have we, I think, the moſt plain Caſe pleaded that can be, as plain as the Fact that this is an Impeachment in Parliament; and then this Court is outed of its Juriſdiction.

They that have gone before, have ſaid, which I muſt pray your Lordſhip to remember, that the Court and we are to take notice of the Proceedings in other Courts, as other Courts are bound to take notice of the Proceedings of this; then I would ſuppoſe in other familiar Caſes, there is generally (as it is true in *Sparry*'s Caſe) the Writ or Declaration, which does in all civil Cauſes ſet forth the Particularity of the Thing in queſtion, yet in ſome Caſes we are ſure it does not do ſo; but the Courſe and Practice of ſome Courts admit general Proceedings. Now wherever that is ſo, the Party cannot mend himſelf by making their Courſe otherwiſe than it is: For he muſt not ſay it is more particular than the Courſe of the Court does make it. Therefore he hath no other Way by the Law to bring his Matter on, and help himſelf, but by an Averment that it is the ſame. I will ſuppoſe a Caſe of ſuch a Nature as this; A Man brings an Account in *London* upon *Conceſſit ſolvere*, and he does not particularize in the Court any Thing what or how his Debt did ariſe; but after he brings another Account or Delivery, a ſpecial Declaration in an Account of Debt: ſhall not I, becauſe the firſt Declaration is in general Words, aver that this is the ſame Matter that he ſued for by the *Conceſſit ſolvere*, which he now ſues for in this particular Declaration? Or, ſuppoſe a Man in this Court does bring an Account for divers Wares and Merchandizes ſold, and does not expreſs any Particulars, but that he was indebted, in general Words, for Wares ſold; and afterwards becomes and brings another Account, and ſays, it is for ſuch and ſuch Wares; ſo much for Cloth, ſo much for Wine, *&c.* though his firſt Declaration be in general, not expreſſing what the Wares were, and the laſt is particular; ſhall not I come and plead in Abatement to the ſecond Declaration, that the firſt and ſecond were for one and the ſame Thing? Suppoſe again an Indictment of Barretry be found againſt a Man, which is an Offence that is only general, and hath no Particulars alledged in the Indictment; ſhould not a Man that is the ſecond Time indicted, come and ſay, this is one and the ſame? My Lord, under favour, in all theſe and ſuch like Caſes, the Law muſt be governed by it's own Proceedings, and take notice of the Nature of the Things depending before the Court. And if ſo be, upon Conſideration of the Nature of the Thing, there is as much of Certainty ſet forth as the Caſe will admit, and is poſſible to be had, we muſt permit the Party to plead as he can, and help himſelf by the Averment.

Then, my Lord, the Queſtion is, whether an Impeachment generally in Parliament, without particularly ſetting forth for what, be a good Impeachment there or no? If they ſay it is not, then the Bottom of the Plea is naught, and all is quite gone; but if they ſay it is, then I have pleaded my Matter as it is. For I cannot ſay, that that is particular, or make that particular that is not; and I have done all that is poſſible for me to do in my Caſe. I have pleaded what is in the Record; and as it is in the Record, from which my Plea muſt not vary, and I have averred it is for the ſame Matter, and you have confeſſed it by the Demurrer.

My Lord, I would not intangle the Queſtion; but I muſt confeſs, I cannot ſee how they can extricate themſelves out of this *Dilemma*, if they do admit a general Impeachment is a good Impeachment. Then there are freſh Inſtances of this conſiderable in the Caſe, as that which hath been particularized of the Lords in the *Tower*, and of the Opinion in *February* of the Judges in their Caſe. For in the Beginning of *December* were thoſe Lords indicted; and after on the 5th of *December*, the Houſe of Commons taking it into their Conſideration, that there was a Commiſſion going out for an High-Steward, with an Intent to bring them to Trial before the Peers; they purpoſely to have the Carriage and Proſecution of this great and horrid Treaſon, and take off the Proſecution upon the Indictment, do impeach the ſame Lords, and there the Impeachment is juſt the ſame as this in our Plea of High Treaſon; but not of any particular Fact, adding, only of other Crimes and Miſdemeanors, which is as general as can be. Now, my Lord, the Judges did take ſo much Notice of it, that though the Parliament was diſſolved before the particular Articles were carried up to ſet forth the particular Offence; yet in *February* following (ſome of the Judges are here, and they will rectify me (if I be miſtaken) their Opinions being aſked about it at the Council-Board, upon the Petition of the Lords, to be either bailed or tried; they were of Opinion, that this Impeachment, though thus general, was ſo depending in Parliament, that they could not be tried. So that I think the Proceedings in Parliament are of that Nature, that if you will meddle with what they do, you will take Notice of their Method of Proceedings, as you do of other Courts.

Why then, my Lord, if this be ſo, how is it poſſible for us to do better? We have pleaded as our Fact is an Impeachment of High Treaſon, what would they have had us to do, or wherein is our Fault? What would they have had us ſaid? We were impeached of any High Treaſon, ſo and ſo particularizing, how can that be? There is no ſuch Thing. Then they would have ſaid, *Nul. Tiel. Record*; and we muſt have been condemned for failing in our Record: Then indeed we had been where they would have had us. But having done according to our Fact, if that Fact be ſuch as in Law will out this Court of Juriſdiction, I ſee not how it is poſſible we ſhould plead otherwiſe, or what Anſwer they will give to it.

My Lord, I will meddle as little as I can with what hath been ſaid, they have mentioned that it is a Caſe of an high Nature, and this Impeachment in Parliament they will look upon it as the Suit of all the People of *England*; why then, my Lord, this muſt needs be agreed to me, if this Impeachment in Parliament be in the Nature of an Appeal, ſurely an Appeal does ſuſpend the Proceedings upon an Indictment for that Fact: Which is the Caſe expreſly in my Lord *Dyer*, *Fol.* 296. *Stanley* was indicted of Murder, and convicted; after he was convicted, and before any Judgment, the Wife of the Party murdered brought her Appeal; then came they and moved for Judgment: No, ſaid the Court, here is an Appeal brought, and they could not go to Judgment till that Appeal was determined. So the *Stat.* of 3 *H.* VII. *Cap.* 1. and *Vaux*'s Caſe 4 *Report*, *Fol.* 39. An Appeal of Murder the Party convicted before Judgment, the Petitioner in the Appeal did die. Then an Indictment brought, and this Conviction pleaded in Bar of that Indictment, and adjudged to be a good Plea; but then there was a Fault found in the Appeal, upon which the Conviction on the Appeal was void in Law, and they went on upon the Indictment. This is to ſhew, that if this be of the Nature of an Appeal, then ought this Suit firſt to have it's Courſe and Determination, before your Lordſhip proceed on this Indictment.

But, my Lord, whether it be of this Nature or no, is a Matter we know were under great Controverſy; and whether your Lordſhip will interpoſe in that great Queſtion, or whether it comes in Judgment under this Queſtion, you will do well to conſider: For it is a Matter of Parliament, and determinable among themſelves, not in the Courts below, nor have ever inferior Courts taken upon them to meddle with the Actions of the ſuperior Courts, but leave them to proceed according to their Laws: And if that be done in any Caſe, there will be as much Regard had in this great Cauſe to the Court of Parliament as in others.

Beſides the Authorities cited out of my Lord *Coke* and others, I would cite one more, and that is *Cotton*'s Records, 5 *H.* IV. *Fol.* 426. the Earl of *Northumberland*'s Caſe. He comes and confeſſes himſelf to be guilty of an Offence againſt his Allegiance, the King delivered his Petition to the Juſtices, and would have them to conſider of it; no, ſaid the Parliament, it is Matter of Parliament, and the Judges have nothing to do with it: the Lords make a Proteſtation to this Purpoſe, and then they went on themſelves, and adjudged it to be no Treaſon. There is only that one Record more which has been often cited, and that is, *Rot. Parliamenti* 11 *R.* II. *Pars* 1. *N.* 6. in this Parliament the Lords Spiritual and Temporal claimed the ſame Privilege. My Lord, I only offer theſe Things, with what my Lord *Coke* ſays hath been formerly thought Prudence in the Judges to do.

So that I hope, that if the Matter be good, the Form is as good as the Matter can be put into, and therefore we hope you will allow us the Benefit of it.

Mr. *Attorney*. May it pleaſe your Lordſhip, I am of Counſel in this Caſe for the King, and notwithſtanding what hath beeen ſaid, I take it, with Submiſſion, that this Plea is a naughty Plea, as a Plea to your Juriſdiction, and there is no Matter diſcloſed therein that we can take a good Iſſue upon.

The great Subſtance of the Arguments of theſe Genlemen aſſigned of Counſel for the Priſoner, is againſt the Priſoner. For the great Matter of their Arguments was, leſt this Gentleman ſhould eſcape (which Arguments in ſeveral Inſtances they have uſed to ſupport the Plea) but the Priſoner pleads this Plea to the Purpoſe that he might eſcape. Therefore if theſe Gentlemen had taken Inſtructions from him, ſurely they would have uſed Arguments to the ſame Purpoſe that he might eſcape.

My Lord, they object we have admitted here that there is an Impeachment depending, that we have admitted it is for the ſame Matter, and that we have admitted the Parliament to be in being; but no Fact is admitted that is not well pleaded. Indeed if that be admitted that the Parliament is ſtill in being, then it goes very hard with us; and if not ſo admitted, the whole Force of Mr. *Williams*'s Argument falls to the Ground. But I ſay, my Lord, with Submiſſion, to this Matter, that the Beginning, Continuance, Prorogation, Adjournments, and Diſſolution of Parliaments, are of publick Cognizance, and the Court *ex Officio* will take Notice of them, ſo that they need not be averred. And ſo is the 41 of the Queen, the Biſhop of *Norwich*'s Caſe. A private Act of Parliament was pleaded, and the Day of the Parliament miſtaken; there was a general Demurrer, and it was reſolved that it was naught, and Judgment given againſt the Biſhop, though no Exception was taken in particular, becauſe the Days of the Beginning and Ending of Parliaments are of publick Notice; and the Judges take Notice, when a Parliament is in being, and when not. That's a ſufficient Anſwer to that Matter.

Then for thoſe many Cautions that have been given you, what a difficult Thing it is for two Juriſdictions to interfere, Mr. *Fitz-Harris* is much concerned in that Matter, who hath forfeited his Life to the Law as a moſt notorious Offender that certainly deſerves nothing but Puniſhment; yet he would fain live a little longer, and is much concerned that the Judicature of Parliament ſhould be preſerved. If it be not Law, he ſhall not be oppreſſed in it; but if it be Law, *fiat Juſtitia.* Certainly no Conſideration whatſoever ought to put Courts of Juſtice out of their ſteady Courſe; but they ought to proceed according to the Laws of the Land.

My Lord, I obſerve it is an unuſual Plea, and perhaps they had ſome Reaſon to put it ſo. It concludes, *ſi curia procedere vult*, I wonder they did not put in *aut debeat*, that is the uſual Form of ſuch Pleas; for you have no Will but the Law, and if you cannot give Judgment, you ought not to be preſſed in it; but it being according to Law that great Offenders and Malefactors ſhould be brought to condign Puniſhment, we muſt preſs it, whatſoever the Conſequences are. And if we did not take it to be the Intereſt of all the Kingdom, and of the Commons too as well as of the King, my Lord, I ſhould not preſs it; but it is all their Intereſt that ſo notorious a Malefactor that hath certainly been guilty of Treaſon in the higheſt Degree; and that for the utmoſt Advancement of the late Popiſh Plot, ſhould not eſcape, or the Truth be ſtifled, but brought into Examination in the Face of the Sun, that all Men may ſee what a villainous Thing hath been attempted to raiſe up the whole Kingdom againſt the King: But they ſay, if it be not Law, you will not proceed, it ties your Hands. But, with Submiſſion, they have not given you one Inſtance to make good what they ſay. Many Things have been, that a Plea depending in a ſuperior Court is pleadable to the Juriſdiction of an inferior Court: for, my Lord, that is it we put upon them to ſhew: If it had been pleaded in Abatement, it would have had its Weight, and been conſidered of, as in *Sparry*'s Caſe, where it was no Plea to the Juriſdiction.

Put the Caſe it had been a good Impeachment, and he had been arraigned upon it and acquitted; if he had afterwards come to be indicted in this Court, and the Priſoner will not plead this in Bar but to the Juriſdiction of the Court, it would not have been a good Plea; but he had loſt his Advantage by miſpleading. If then an Arraignment, and an Acquittal, or Conviction thereupon, is not a good Plea to the Juriſdiction; then certainly an Impeachment depending ſingly cannot be a good Plea to the Juriſdiction. This Court hath a full Juriſdiction of this Caſe, and of this Perſon, both of the Crime and of the Party, who is a Commoner; and not only to find the Indictment, but to proceed to Juſtice; and this you had at the Time of the Fact committed. For certainly, we need not put Caſes for to prove that the *King's-Bench*, eſpecially ſince the Statute for trying Treaſon beyond the Seas, hath an univerſal Juriſdiction of all Perſons and Offences. Pray then what is it that muſt out this Court of their Juriſdiction? For all the Caſes that have been, or can be put about Matters which are not originally examinable in this Court, make not to the Matter in queſtion: there, it is true, the Court may be by Plea outed of it's Juriſdiction; as at Common Law, where a Fact is done *ſuper altum mare*, and ſo pleaded, that puts it out of the Court's Juriſdiction; and that was my Lord *Hollis*'s and Sir *J. Elliot*'s Caſe, and ſo that was my Lord *Shaftesbury*'s Caſe too, the Fact was done out of their Juriſdiction, and that may be pleaded to the Juriſdiction, becauſe they had no original Juriſdiction of the Fact; but where the Crime and the Perſon were abſolutely within the Juriſdiction of the Court, and the Court may originally take Cognizance of it, as this Court had of the preſent Caſe, I would fain know what can out that Juriſdiction leſs than an Act of Parliament: I will be bold to ſay, the King by his Great-Seal cannot do it; nor can an Act of either Houſe, or both Houſes together without the King, out the Juriſdiction. To ſay, their Proceedings ought to be a Bar, that is another Caſe, the Party hath his Advantage, and may plead it in Abatement or Bar, as the Caſe requires: For if there had been an Acquittal or Conviction, the Party could not plead it to the Juriſdiction. Therefore for thoſe Caſes they put, when you come to examine the Reaſon of them, you ſee how they ſtand, *viz.* that the Court had no original Juriſdiction.

My Lord *Shaftesbury* was committed by the Lords for a Crime in that Houſe; a Contempt to that Houſe, he is brought here, and it appears to be a Commitment in Execution. My Lord, that was out of your Juriſdiction; and if you had bailed him, what would you have done? would you have bailed him to be tried here? No, you could not do it, and therefore you proceeded not in that Caſe. And ſo in the other Caſes: for there is not one of their Caſes that have been cited of the other Side, but where it was out of the Jurſdiction of the Court originally, and not at all within it. As for the Caſe of the five Lords in the *Tower*, becauſe they ſay it will have a mighty Influence upon them, and they put the Caſe, that there was in *December* an Indictment, and afterwards an Impeachment from the Commons; and they cite ſome Opinion, given at the Council-board, which I hope theſe Gentlemen will not ſay was a judicial Opinion, or any way affects this Cauſe: But for that, my Lord, I obſerve, the Lords took care that theſe Indictments ſhould be all removed into the Lord's Houſe; ſo they did foreſee that the King might have proceeded upon the Indictments, if they had not been removed thither. But our Caſe now is quite another Thing: For thoſe Lords were not fully within your Juriſdiction. You cannot try a Peer of the Realm for Treaſon; and beſides, the Lords have pleaded in full Parliament, where, by the Law of Parliament, all the Peers are to be their Judges; and ſo you cannot out them of that Right. And the Reaſon is plain, becauſe thereby you muſt do them an apparent Prejudice; they having pleaded there, all the whole Peerage are their Triers. But upon Trial before Commiſſioners, they muſt have but a ſelect Number of Peers to be their Triers. But in none of thoſe Caſes hath any Judicial Opinion been given: For the Caſe of 11 *R.* II. firſt cited by Sir *Fran. Winnington*, and then by Mr. *Pollexfen*, a Declaration in Parliament, That they proceeded according to the Law of Parliament, and not according to the Common Law, nor according to the Practice of inferior Courts; that will be nothing to our Purpoſe at all, that was in Caſe of the Lords Appellants. A Proceeding contrary to *Magna Charta*, contrary to the Statute of *Edw.* III. and the known Privilege of the Subject. But thoſe Proceedings had a Countenance in Parliament; for there was an Oath taken by all the Lords in Parliament, that they would ſtand by the Lords Appellants. And thereupon they would be controuled by none, and they would not be adviſed by the Judges, but proceed to the trying of Peers and Commoners according to their own Will and Pleaſure. And between that Time of 11 *R.* II. and 1 *H.* IV. ſee what Havock they made by thoſe illegal Proceedings; and in 1 *H.* IV. you will ſee, that theſe very Lords were ſentenced, except one or two of them who were pardoned; and then it was expreſly reſolved by Act of Parliament, that no more Appeals of that Nature, nor any Appeals whatſoever, ſhould be any more in Parliament. And if ſo, theſe Gentlemen had beſt conſider how they make an Impeachment like an Appeal: For in that Statute, it is ſaid, there ſhall be no more Appeals. And the Petition upon which this Act is founded, runs thus: They pray that no Impeachment or Appeal may be in Parliament. But when the King came to make the Grant, he grants only for Appeals, and principally to out thoſe Lords Appellants who were condemned by that very Parliament. So that it is a very pretty Matter at this Time of Day to liken an Impeachment to an Appeal.

But, my Lord, the other great Point is this. There is nothing at all certainly diſcloſed to you by this Plea; therefore there is nothing confeſſed by us, only the Fact that is well pleaded: therefore I ſhall come to conſider what is ſaid by them, as to the Form of it. They ſay, my Lord, that they have pleaded it to be *ſecundum Legem & Conſuetudinem Parliamenti*; and if that be ſufficient, let them have ſaid what they would, that would have healed all. But I ſay, my Lord, with Submiſſion, they muſt diſcloſe to you what is the Law and Cuſtom of Parliament in ſuch Caſe, or elſe you muſt take it upon you upon your own Knowledge, or you cannot give Judgment. It is very well known what this *Lex & Conſuetudo Parliamenti* is; no Perſon verſed in the Records, but knows it, that by Courſe of Parliament a Meſſage goes up with a Declaration to impeach the Party generally; and then after there are Articles or a Bill of Impeachment produced. Now till that be produced, ſure there is no Counſel of the other ſide will ſay, that ever the Party can be called to anſwer. And becauſe theſe Gentlemen do pretend to urge their Knowledge herein, I would obſerve there are three Things to be conſidered of the Parliament; the Legiſlative Part, the Matters of Privilege, and the Judicial Part proper to this Caſe. For the Legiſlative Part, and Matters of Privilege, both Houſes do proceed only *ſecundum Legem & Conſuetudinem Parliamenti*; but for the Judicial Part, does any Man queſtion, but that in all Times they have been guided and directed by the Statutes and Laws of the Land? And have been outed of a Juriſdiction in ſeveral Caſes, as by the Statute of 4 *Edw.* III. and 1 *H.* IV. And the Lords in all Writs of Error, and all Matters of Judgment, proceed *ſecundum Legem Terræ*; and ſo for Life and Death. And there is not one Law in *Weſtminſter-Hall*, as to Matters of Judgment, and another in the Court of the Lords above. But I will not trouble your Lordſhip any further to purſue theſe Things. But it is not ſufficiently diſcloſed to you, that there is any ſuch Thing as an Impeachment depending there; it is only alledged, that he was impeached, and ſo much the News-Book told us, that he was impeached: but to infer from thence that there was an Impeachment carried up and lodged for the ſame High Treaſon, is no Conſequence. And then it is alledged, *Quæ quidem Impetitio*, when no Impeachment is before ſet forth, but only that he was impeached generally. And as I obſerved before, a Perſon might go up with a Meſſage to impeach, but that cannot be ſaid to be an Impeachment to which the Party is compelled to anſwer; it muſt be an Impeachment on Record, and appearing on the Face of the Record for what Crime it is; and ſo they ought to have ſet it forth.

Now that this is too general that is alledged here, I take it the Books are very full. When a Record is pleaded in Bar or in Abatement, the Crimes ought to be ſet out to appear the ſame, and ſo, my Lord, are all the Precedents of *Coke*'s Entries 53, *Holdcroft*'s and *Burgh*'s Caſe, and *Watt*'s and *Bray*'s Caſe in 41 and 42 of Queen *Eliz.* *Coke*'s Ent. 59. *Wrott*'s and *Wigg*'s Caſe, 4 *Rep.* 45. and in *Lewes* and *Scholaſtica*'s Caſe, and *Dive*'s and *Manning*'s Caſe. The Record muſt be ſet out, that the Court may judge upon it; and the Record muſt not be tried *per pais*, but by itſelf. But for what they ſay, plead it never ſo certainly, there muſt be an Averment, it muſt be ſo it is true; but that is for another Purpoſe than they urge it. The Reaſon is, becauſe if it be for another Fact that he hath committed, he may be indicted again, though it be of the ſame Nature; but whether of the ſame Nature, or not of the ſame Nature, is the Thing muſt appear upon the Record pleaded, becauſe the Court muſt be aſcertained, that it was ſufficient for the Party to anſwer to it; for if it were inſufficient, he may be again proceeded againſt: As if an Indictment be pleaded which was inſufficient, though the Party pleads an Acquittal or Conviction upon it, it will not avail him; for the Court will proceed on the other Indictment. And ſo is the Reſolution in *Vaux*'s Caſe, and in *Wigg*'s Caſe; though there was a Judgment given of Acquittal, yet he was tried again. So that, my Lord, that is one great Reaſon why it muſt appear, that the Court may judge whether it be ſufficient for the Party to anſwer. And you have now that here before you; if this be ſuch an Impeachment as they have pleaded it, as this Perſon could not anſwer to by any Law of Parliament or other Court; then it is not ſufficient to out you of your Juriſdiction. And I do think, that by no Law they are, or can be compellable to anſwer to a general Impeachment of High-Treaſon. And to give you Authority in that, there are many might be cited, as the Caſes of my Lord *Stafford*, and the other Lords in the *Tower*, and ſo is the ancient Courſe of Parliament: With Submiſſion, I will be bold to ſay, the Impeachments are all ſo, that ever I met with. And it appears by them, that they all conclude *contra Coronam & Dignitatem Regis*, in the Form of Indictments, laying ſome Overt-Acts and the ſpecial particular Crimes for which the Perſon is impeached, as Overt-Acts for Treaſon required by the Statute of 25 *Edw.* III. And I hope they will not ſay, that without an Overt-Act laid in the Impeachment, the Impeachment can be good. If then this be ſo general that it cannot make the Crime appear to the Court, and is ſo inſufficient, that the Court cannot give Judgment, I take it you will go on upon the Indictment, which chargeth him with a particular Crime.

My Lord, Mr. *Pollexfen* does put the Caſe of Barretry where ſuch Averment is allowable; but that is a ſpecial, certain, and particular Crime, but High-Treaſon is not ſo; there are Abundance of ſpecial Sorts of High-Treaſon, there is but one Sort of Barretry, and there are no Sub-diviſions; therefore there is nothing to be averred but the ſpecial Fact that makes that Barretry.

Then there was another Authority out of the Book of Aſſizes cited by Sir *Fran. Winnington*, and greatly relied upon. A Man is indicted for the Murder of *J. S.* and afterwards for the Murder of *J. N.* the former was pleaded to the ſecond, with an Averment that it is the ſame Perſon; that is but according to the common Form of Averments, to be of Matter of Fact. For if *J. S.* was known, as well by the Name of *J. N.* as of *J. S.* the Indictment was for the Murder of the ſame Perſon, and there it is pure Fact averred. But where it is eſſential, as this Caſe is, that the particular Treaſon do appear; to ſay, that it is the ſame particular Treaſon, and to ſay, that

Matter of Fact averred ſhall enlarge a Record, I think, is impoſſible to be found any where. And of all the Caſes that I have ſeen or heard, I confeſs none of the Inſtances comes up to it: For the Caſe in *Moor*, *King*, and *Howard*, cited by Sir *Francis Winnington*, that is an Authority as expreſly againſt him, that nothing can be more: For if there be an Indictment for Felony in ſuch a particular Act, and then he is indicted again, he cannot come and plead a general Indictment of Felony, and then aver 'tis for the particular Felony, and ſo to make the Fact enlarge the Record, and put Matter of Record to be tried by a Jury.

Mr. *Wallop* was of Opinion, that upon this Averment the Jury may try the Fact. What a pretty Caſe would it be, that a Jury ſhould judge upon the whole Debates of the Houſe of Commons, whether it be the ſame Matter or no: For thoſe Debates muſt be given in Evidence, if ſuch an Iſſue be tried. I did demur with all the Care that I could, to bring nothing of that in Queſtion; but your Lordſhip knows if they have ever ſo much in particular againſt a Man, when they come to make good their Impeachment, they muſt aſcertain it to a particular Crime; and the Overt-Acts muſt be alledged in the Impeachment, or elſe there is another Way to hang a Subject than what is the King's Highway all over *England*. And admit there was an Intimation of a Purpoſe to impeach, a Meſſage ſent up, and any Judgment given thereupon, pray conſider what may be the Conſequence as to the Government; a very great Matter depends upon this: If there be any Record of that Parliament, then is the *French* Act gone: For ſo is the Reſolution in 12 *Jacobi*, where the Journal-Book was full of Proceedings; yet becauſe there was no Judgment paſſed, nor no Record of a Judgment in a Writ of Error, they adjudged it no Seſſion; but if any Judgment had been given, then it had been otherwiſe. So that the Conſequences of theſe Things are not eaſily ſeen, when Men debate upon touchy Matters.

But that which is before your Lordſhip is this Point upon the Pleading, and I conceive I have anſwered all the Precedents they have cited; therefore, my Lord, I take it, with Submiſſion, there is nothing of that Matter before you concerning an Impeachment depending before the Parliament; but whatſoever was done, 'tis ſo imperfectly pleaded, that this Court cannot take any Notice of it.

Mr. Sol. Gen. My Lord, I ſhall endeavour to be ſhort, and ſhall confine myſelf (becauſe I am tender of your Time) to the Point in Queſtion; which is, Whether this Plea be ſufficient in Point of Form? There have been many Things ſaid on the other Side, which I muſt crave Leave to take Notice of, ſo far only as to ſhew they are not in Queſtion before you. Thoſe are what relate to the Matter of the Plea; for they argue 'tis good both in Matter and Form: And from the Matter of the Plea they have taken Occaſion to debate, whether a Commoner may be impeached? Whether this Court hath Power to judge of the Privileges and Courſe of Parliament? None of which Queſtions will ariſe upon our Caſe now. Therefore I will not now debate, whether *Magna Charta*, that hath ordained that every Man ſhall be tried by his Peers, and the Statute of 4 *Edw.* III. which ſays, That the Lords ſhall not be compelled, nor ſhall have Power to give Judgment upon a Commoner, have ſufficiently ſecured the Liberty of the Subject from Impeachments. Nor is it the Queſtion before your Lordſhip, whether you ſhall judge of any Matter that is a Right or Privilege of Parliament; here is nothing before you that was done in Parliament; but this is an Indictment for High-Treaſon, committed by *Fitz-Harris* in this County. Now, my Lord, as that is not the Queſtion, neither will it be the Queſtion, Whether an Impeachment depending in the Houſe of Lords againſt a Commoner, by the Houſe of Commons, will bar this Court of Juriſdiction? For though they have entered upon it, and debated it at large, and ſeemed to obviate the Objections made to that if it had been a Queſtion; as by the ſaying that the King hath no Election, becauſe this is not the Suit of the King, but the Suit of the Subject: I will not now *ex inſtituto* argue that Point; but I will humbly offer a few Things to your Lordſhip's Conſideration, and I ſhall take my Hints from them. They ſay, the Houſe of Commons are the grand Inqueſt of the Nation, to enquire of Treaſons and other High Crimes, and they make theſe Preſentments to the Houſe of Lords. Now when ſuch a Preſentment is made, 'tis worthy Conſideration, whether it be not a Preſentment for the King; for an Impeachment does not conclude as an Appeal does, but *contra Ligeantiæ ſuæ Debitum, & Coronam & Dignitatem Domini Regis*; ſo far 'tis the King's Suit. In an Impeachment the Witneſſes for the Priſoner are not ſworn, the Priſoner hath not Council for his Life in Matter of Fact, as in Caſes of Appeal, at the Suit of the Subject he hath. The King may pardon part of the Sentence, it was done ſo in *Rich.* the IId's Time, and it was done ſo lately in my Lord *Stafford*'s Caſe; but take it for a Suppoſition that it is the Suit of the People, yet that cannot preclude the King from his Suit neither; for at Common Law before the Statute of 3 *Hen.* VII. where a Man had an Appeal for Murder, the King had not his Hands tied up, not to proceed upon the Indictment: It had been uſed ſo, I do agree, and ſo 'tis recited, that it had been uſed ſo, in the Statute of 3 *Hen.* VII. but there was no poſitive Law for it, nor could it have been pleaded in Bar or an Indictment, that the Indictment was within the Year, but the King uſed to ſtay out the Year in Favour of that Suit. But ſince the Statute, the Uſe is otherwiſe; and the Reaſon why they proceed immediately is, becauſe now an Acquittal or an Attainder upon the Indictment is no Bar to the Appeal, but the Party may go on in his Appeal. I mention this, becauſe the Conſequence which they urge as ſuch a diſmal one, will be nothing; which is, What if he ſhould be acquitted here, he could not plead *auter foitz acquit*, ſo would be twice brought in Jeopardy for the ſame Offence. For it is the ſame in all Caſes of Appeals, a Man comes in Jeopardy twice if he be indicted within the Year, and attainted or acquitted within the Year, it is no Bar to the Appeal. But this is not like the Caſe of an Appeal for Murder neither; for though it hath been uſed diſcretionally in the Court to ſtay the Suit of the King, and to prefer the Suit of the Subject, it was then becauſe the Subject had the firſt and neareſt concern, as the Son in the Death of his Father, and it did moſtly concern him to proſecute it. The King is concerned as the Fountain of Juſtice only, to bring Offenders to condign Puniſhment; but the neareſt Damage, and the firſt to be preferr'd, was that of the Party who had loſt his Relation. Now the Reaſon of that turns quite contrary here: For as in that Caſe the Subject had the neareſt Concern in the Loſs of his Father, and ſo was beſt intitled to the Suit; ſo in this Caſe that very Reaſon will have the King's Suit to be preferr'd: For there is no Treaſon but againſt the King, and in Treaſon againſt himſelf, the King has the neareſt Concern, and the Wrong is primarily and originally to himſelf. And the Subjects Damage is but a Conſequence of that, as all hurt to the King muſt needs hurt the People. So the King's Suit is to be preferr'd here, as the Subjects was in the other Caſe.

Now for the Objection that has been made, That if you try this Man, upon the ſame Reaſon you may try the Lords in the *Tower*. Their Caſe is different, as hath been already obſerved by Mr. Attorney; and that which has been done by the Lords in that Caſe, to me does rather ſeem to imply, that this Trial may be in this Caſe. For if the Lords after an Impeachment brought up againſt the five Lords in the *Tower*, and after the ſpecial Manner in the Articles which does aſcertain upon what they do proceed, have thought fit notwithſtanding to remove the Indictment by *Certiorari* into Parliament (for ſo it was in Fact) that no Proſecution might be upon them; then certainly they thought the King's Court might proceed without doing ſo.

My Lord, I will mention no more upon this Matter, but leave it to your Lordſhip's Conſideration: But as to the Form of the Plea, I do conceive, with Submiſſion, 'tis not a formal Plea.

We know here of no Form of pleading an Indictment, but what does ſet forth the Indictment particular; the Precedents are ſo, 'tis ſo in *Vaulx*'s Caſe, and all the Precedents that I have ſeen: So is the Precedent in *Raſt.* Ent. where in an Appeal the Defendant waged Battle, the Plaintiff replies he was formerly indicted, he ſets forth the Indictment particularly. All the Precedents are ſo, and the Law-Books reſolve it muſt be ſo; as *Wrott* and *Wigg*'s Caſe, where the Defendant in an Appeal of Murder by the Wife pleads, that he was indicted for Manſlaughter before the Coroner of the Verge, and Coroner of the County, for killing the Huſband at *Shepperton*, in the County of *Middleſex*, and had his Clergy with Reference to the Record, and the uſual Averments; with this farther, that he averred that *Shepperton* at the time of the Indictment and Death was within the Verge. To which the Plaintiff demurred, and Judgment for the Plaintiff. Now two Things are reſolved by this Judgment.

1. That 'tis neceſſary to ſet forth the whole Record of the Indictment, or otherwiſe they ought not to have given Judgment for the Plaintiff, by reaſon the Indictment was ſufficient, as 'twas pleaded, in that it did not ſay that *Shepperton* was within the Verge, which was neceſſary to entitle the Coroner of the Verge to a Juriſdiction, becauſe being pleaded with Reference to the Record upon *Nul tiel* Record pleaded, and the Record thereupon brought in, that Defect might have been cured.

2. That no Averment of Fact can ſupply that which ſhould appear upon Record, therefore the Averment that *Shepperton* was within the Verge, did not mend the Matter, though confeſt by the Demurrer as much as it is in this Caſe, that 'tis the ſame Treaſon.

But they ſay, there is a Difference between this Caſe and thoſe which I have put; for that 'tis the Courſe of Parliament (of which your Lordſhips muſt take Notice), to impeach general; ſo they could not have pleaded otherwiſe than they have done, unleſs they had pleaded it otherwiſe than the Caſes were: This Reaſon holds rather the other Way; for if in any Caſe ſuch a general Way of pleading with Reference to the Record were to be admitted, it were in caſe of an Indictment, becauſe the Court knows there is no Indictment but what does particularly ſet forth the Felony, which when produced, is capable of being applied: But here if the Record be brought in, 'twill no more aſcertain the Matter of the Impeachment, than the Plea does already. And whereas they ſay your Lordſhip is bound to take Notice of the Courſe of Parliament, ſo your Lordſhip will take Notice too, that 'tis not the Courſe of Parliaments to try any Man upon ſuch a general Impeachment. I never heard of any Man (I ſpeak it with Submiſſion to them that know better) that was brought to plead Not Guilty, upon a general Impeachment of High-Treaſon; that is, upon the Commons bare ſaying, We do impeach ſuch an one of High-Treaſon. I know none that ever was brought to anſwer that general Accuſation.

And now, my Lord, as the Plea is nought for not ſetting out the Record, ſo is the Averment, with Submiſſion, inſufficient too. For though he does aver, That the Treaſon in the Indictment, and the Treaſon for which he was impeached, are one and the ſame, and not divers affirmatively and negatively; yet as this Caſe is, he ought to have ſaid, That the Treaſon for which he is indicted, and the Treaſon mentioned in the Impeachment, is one and the ſame: For if he was impeached generally for High-Treaſon without Mention of Particulars, it is impoſſible to be reduced to a Certainty: So 'tis an Averment of a Fact not capable to be tried.

Firſt, Becauſe, with Submiſſion to theſe Gentlemen that have ſaid it, the Debates of the Houſe of Commons are not to be given in Evidence, and made publick to a Jury: Nay, they are not always poſſible to be reduced to a Certainty, as the Circumſtances may be; for they do not always particularly reſolve upon what Particulars they will accuſe before they go up, but a general Allegation ſerves the Turn: So that ſuch Averment is not triable *per pais*, becauſe as the Caſe may be, it may not be capable of any Certainty from the Debates of the Houſe of Commons.

Another Reaſon is, becauſe, by this Way of pleading, Proceedings may be ſtaid for Treaſon, though ſubſequent to the Impeachment, which no Man yet has pretended to ſay: For ſuppoſe now a general Impeachment lodged, and a Treaſon afterwards committed by the Party, I think no Man will ſay, that the Houſe of Commons, when they bring up their ſpecial Matters, cannot make even this ſubſequent Treaſon an Article upon that Impeachment; neither can it be ſaid that ſuch Averment as this is, upon ſuch Plea pleaded to an Indictment here below, would be repugnant, becauſe there is no time at all laid in the Impeachment as 'tis here pleaded, nor no Time when the Impeachment was brought up; ſo that it cannot appear to the Court, whether the Treaſon in the Indictment be ſubſequent or not: The Conſequence of which is, we muſt try whether the Houſe of Commons, upon this general Impeachment, did intend to proceed to try him for a Fact committed after the Impeachment carry'd up. My Lord, this would be to affirm, that a Man once impeach'd in Parliament ſhall never be tried for any Offence; it would be like that *Privilegium Clericale*, which they made uſe of to exempt themſelves from Puniſhment for all Offences.

But, my Lord, we do think upon the whole Matter, without entering upon the Debate, whether a particular Impeachment lodg'd in the Houſe of Lords does preclude the King from his Proceedings, we have a good Caſe upon this Plea; for that is not a Queſtion neceſſary to be reſolv'd, though it be not granted by the King neither. But the Queſtion is, Whether this be a formal Plea, and whether here be ſufficient Matter ſet forth upon Record to bring that other Matter into queſtion, and tie up the Hands of the Court?

Mr. Serj. *Jefferies.* My Lord, there hath been already enough ſpoken in this Caſe. I ſhall deſire only to offer one Word to that ſingle Point, *viz.* the Informality of the Plea; which I take to be the ſole Queſtion in this Caſe: For to argue, whether becauſe there was no Bill paſs'd, or Decree made in the Houſe of Lords (though the Articles had been carry'd up) the Impeachment did not fall to the Ground by the Diſſolution, I conceive altogether improper; for I think it does not affect the Queſtion: Though I deſire to take Notice that Sir *Fr. Winnington*, Mr. *Williams*, and Mr. *Wallop* were all Miſtaken: For there were no ſuch Conceſſions made by any of the King's Counſel the other Day, as they alledge; becauſe we did not think it to be the Queſtion, and therefore made no Diſcourſes about it.

But, my Lord, I deſire firſt to take Notice of a Caſe or two that hath been cited on the other Side; and then I ſhall apply myſelf to that which is the Queſtion before you at this Time. They cite the Caſe of the Lords in the *Tower* as a Judgment for them, which ſeems to be a Judgment againſt them: For by the Lords granting a *Certiorari* to remove the Judgments into Parliament, they ſeem to be of Opinion, that notwithſtanding they were impeach'd before the Lords, yet there might have been Proceedings below upon thoſe Indictments, had they not been remov'd; and there they remain to this Day. Nay further, to thoſe Impeachments they have pleaded to Iſſue, which is read for a Trial: But in the Caſe at Bar, there only is an Accuſation, without any further Proceeding thereupon.

And as to the Caſe of my Lord *Shafteſbury*, that makes ſtrongly for us as I conceive. Mr. Juſtice *Jones*'s Opinion was taken Notice of by Sir *Fran. Winnington*, that they would not meddle by any Means with Matters depending in Parliament: But I muſt remember, he then gave this Reaſon for his Opinion, becauſe the Parliament was then in being. And I muſt humbly put your Lordſhip in mind, that the whole Court did then declare, That if the Parliament had been diſſolved, they would have ſaid ſomething more to that Caſe. I do not ſay, that they would have given ſuch or ſuch a Judgment; but I attended at the Bar at that Time, and I appeal to the Memory of the Court, if the Court did not then make ſuch a Declaration.

But now to the Queſtion: Without all Peradventure, the Caſes cited by Mr. *Pollexfen* are true. If I bring a general *Indebitatus aſſumpſit* for Wares, ſold and delivered, and after bring a particular *Indebitatus aſſumpſit* for ſuch and ſuch Wares, naming the Particulars, the Party may come and plead in Bar, and aver it is for the ſame Thing; and it is a good Averment, becauſe there is ſufficient Matter ſet forth in the Record to ſupport ſuch an Averment: For the Doubt is only, whether the particular Goods mentioned in the ſecond, be not the ſame that were intended under thoſe general Words (Goods and Merchandizes) in the firſt.

But ſuppoſe there had been only an Account brought, and no Declaration put in, could then the Defendant have pleaded ſuch a Plea with ſuch an Averment, when there was not ſufficient Matter of Record ſet forth in their Pleading, whereby the Court might be able to give a Judgment, or put it into a way of Trial, whether it was for the ſame or not?

And is it not ſo in this Caſe? there being but a bare Accuſation: For I ſtill keep to the Informality of the Pleading, and I take it not to be ſuch a dangerous Caſe, as theſe Gentlemen of the other Side do pretend, for you to determine it. For I am ſure it will be better for the Court to anſwer, if ever they ſhall be required, that they have performed their Duty, and done Juſtice according to their Conſciences and their Oaths, than ever to be afraid of any Threats or Bugbears from the Bar.

For would not they, by this Manner of Pleading, put upon your Lordſhips a Difficulty to judge, without any thing contained in the Impeachment to guide your Judgment, whether the Priſoner be impeached for the ſame thing Thing for which he is indicted? May not the Treaſon intended in this Impeachment be for clipping or coining of Money? for it is gegenerally ſaid to be only for High-Treaſon. How comes this then to be help'd, ſo as to be any way iſſuable, and be tried? Shall it be by that Way which Mr. *Wallop* laid down, that if Mr. Attorney had taken Iſſue, the Jury muſt have tried the Queſtion by having the Debates of the Houſe of Commons given in Evidence? Certainly that cannot be, my Lord. If there were but one Sort of Treaſon, there might be ſome Colour for this Sort of Pleading; but there are divers Kinds of Treaſons, and how is it capable to be tried? Who can prove the Intentions of the Houſe of Commons, before they are come to a Reſolution? and therefore cannot be given in Evidence, or be regularly brought into Judgment.

Therefore we rely upon the Informality and Uncertainty of the Pleading only, and meddle not with the Queſtion, whether an Impeachment in the Houſe of Lords ſuperſedes an Indictment in the *King*'s-*Bench?* For we ſay, they have not pleaded it ſo ſubſtantially, as to enable the Court to judge upon the Queſtion: And therefore we pray your Lordſhip's Judgment, that the Plea may be over-ruled.

Sir *Fran. Withins.* My Lord, there has been ſo much of your Time already taken up by thoſe Gentlemen that have argued before me, that I ſhall be very ſhort in what I have to ſay.

The Queſtion is not at this Time, how far forth the Commons in Parliament may impeach or not impeach a Commoner, before the Lords in Parliament, or where the Lords may admit or not admit of ſuch Impeachments? That is not the Caſe here, as I humbly conceive, nor will I meddle with it: I ſhall only ſpeak to the Validity of the Plea according to Law. Now, I ſay, that this Plea of the Priſoner as thus pleaded, cannot be good to out this Court of Juriſdiction: For firſt, The Priſoner cannot be admitted to make the Averment in this Plea, that the Treaſon mentioned in the Impeachment in Parliament, and that contained in this Indictment, is the ſame; for if, as the Gentlemen that argued on the other Side, urg'd, that this Court muſt take Notice of the Proceedings and Law of Parliament, then you will take Notice that no Perſon is there tried upon a general Impeachment of Treaſon. Special Articles are always firſt exhibited: In this Caſe then either the Houſe of Commons have carried up ſpecial Articles againſt the Priſoner to the Lords in Parliament or not; if the Houſe have done it, then the Plea might have been pleaded better by ſetting forth the Articles (which is part of what they ſay on the other Side, that it could be pleaded no better,) for then it would have appeared plainly whether the Treaſon were the ſame or not. If the Articles are not carried up, ſhall it lie in the Mouth of any particular Perſon to ſay, what Articles the Commons in Parliament would have carried up? Shall any ſingle Perſon be admitted to ſay, what the Houſe would have done, before the Houſe itſelf ſays it? In Caſes of Impeachments, it lies in the Diſcretion and Judgment of the Commons upon Debate to exhibit what Articles they in their Wiſdoms ſhall think fit; and ſure it ſhall never come, that any particular Perſon ſhall limit them to this or that particular Treaſon before-hand; no ſurely.

Now ſuppoſe in ſuch a Caſe as this, after ſuch a Plea pleaded, the Commons upon Deliberation ſhould carry up Articles quite different; ſuch a Plea then would appear to be a ſtark Lie, and the pleading and allowing of it, an apparent Delay of Juſtice. So that I conceive, my Lord, the Priſoner ſhall by no Means be admitted (nor indeed can it be, to aver the Intention of the Houſe of Commons, which cannot be tried) before they have declared it themſelves; and therefore I conceive the Plea to be naught for that Reaſon.

But, my Lord, I conceive that the Priſoner's Plea is ill for another Reaſon, becauſe the Court in this Caſe, by any Thing expreſſed in this Plea, cannot diſcern nor take notice whether it be the ſame Treaſon or not.

Now the Reaſon why the Record, as this Caſe is, ought to be alledged ſpecially, is becauſe the Matter contained in it may plainly appear to the Court, and then by that Means the Court might judge whether it be the ſame Treaſon or not. Now Treaſon generally alledged in the Impeachment, is the Genus, and the particular Treaſon mentioned in the Indictment is only a Species, and the Averment in the Plea is, that the Genus and the Species is the ſame; which is abſurd, and if allowed, tends to hood-wink and blind the Court, inſtead of making the Matter plain for their Judgment.

Pleas ought to be plain and certain, becauſe the Court, upon them alledged, is to judge either of Men's Eſtates or Lives; and for that Reaſon the Matter ought to come plainly and fairly before them, that Wrong may be done to neither Party by Reaſon of the Obſcureneſs or Doubtfulneſs of the Allegation: If therefore the Hoodwink be brought inſtead of a Plea, it ought not to be allowed. And therefore for theſe Reaſons (for what I have farther to ſay, has been already ſaid by others) I conceive it ought to be over-ruled. I humbly ſubmit it to the Court.

L. C. J. You have done your Arguments, Gentlemen, on all Sides?

Counſel. Yes, my Lord.

L. C. J. Look you, Gentlemen, I'll tell you, you have taken up a great Part of our Time. We never intended, when we aſſigned four Counſel to Mr. *Fitz-Harris*, that they all ſhould make formal Arguments in one Day, it is the firſt time that ever it was done; but becauſe it is as you preſs it in a Caſe of Blood, we were willing to hear all you could ſay, that you might not afterwards ſay, but that you were fully heard on all Sides. But in Truth, I muſt tell you, you have ſtarted a great many Things that are not in the Caſe at all. We have nothing to do here, whether the Commons Houſe at this Day can impeach for Treaſon any Commoner in the Houſe of Lords; we have nothing to do with this, what the Lords Juriſdiction is, nor with this Point, whether an Impeachment in the Lords Houſe (when the Lords are poſſeſſed fully of the Impeachment) does bar the bringing any Suit, or hinder the Proceeding in an inferior Court: But here we have a Caſe that riſes upon the Pleadings; whether you have brought here before us a ſufficient Plea to take away the Juriſdiction of the Court, as you have pleaded it, that will be the ſole Point that is before us: And you have heard what Exceptions have been made to the Form, and to the Matter of your Pleading. We do aſk you again, Whether you think you are able to mend your Pleading in any thing, for the Court will not catch you, if you have any thing wherein you can amend it, either in Matter or Form? If you will let us know it, we ſhall conſider of it; but if you have not, if you abide by this Plea, then we do think it is not reaſonable, nor will be expected of us in a Matter of this Conſequence to give our Judgment concerning this Plea preſently. All the Caſes cited concerning Facts done in Parliament, and where they have endeavoured to have them examined here, are nothing to the Purpoſe at all. For plainly, we do not aſſume to ourſelves a Juriſdiction to enquire of ſuch Matters: For Words ſpoken, or Facts done in the Commons-Houſe, or in the Lords, we call none to queſtion here, nor for any Thing of that Nature, which takes off moſt of the Inſtances you have given; but our Queſtion is barely upon the Pleading before us, Whether we have a ſufficient Pleading of ſuch an Impeachment as can foreclose the Hands of the Court? And as to that, we ſhall take ſome reaſonable Time to conſider of it; we will not precipitate in ſuch a Caſe, but deliberate well upon it before we give our Judgment. Take back your Priſoner.

Mr. Att. Gen. Before he goes away, we hope you will ſet a reaſonable Time, as ſhort as you can, to have him come again, for your Judgment.

L. C. J. Mr. Attorney, we can ſend for him when we pleaſe, to come hither by Rule; you ſee this Buſineſs is come on in the buſy Part of a Term, and it is impoſſible for the Court to attend nothing but this, we will take ſome reaſonable Time.

[*Then* Fitz-Harris *was carried back to the* Tower.]

On *Tueſday*, *May* 10. Mr. Attorney moved the Court to appoint a Day for their Judgment on the Plea, and for *Fitz-Harris* to be brought up, which they appointed to be the next Morning.

And accordingly on *Wedneſday* Morning, *May* 11, he was brought from the *Tower* to *Weſtminſter-Hall.*

Mr. Att. Gen. My Lord, I pray that *Fitz-Harris* may be brought to the Bar.

L. C. J.

L. C. J. Where is the Lieutenant of the *Tower?* Bid him bring *Fitz-Harris* to the Bar, (which was done.)

Mr. Att. Gen. My Lord, I pray your Judgment on the plea.

L. C. J. Mr. *Fitz-Harris*, you have been arraigned here for High-Treaſon, and it is for endeavouring and compaſſing the King's Death, and other Treaſons, ſpecially mentioned in this Indictment; you have pleaded here to the Juriſdiction of this Court, that there was an Impeachment againſt you by the Commons of *England* in Parliament, before the Lords, for the Crime of High-Treaſon; and you do ſay, that that Impeachment is yet in Force; and you do ſay, by way of Averment, that this Treaſon whereof you are now indicted, and the Treaſon whereof you were impeached by the Commons of *England*, before the Lords, are one and the ſame Treaſon. And upon this the Attorney-General for the King hath demurred, and you have joined in Demurrer: And we have heard the Arguments of your Counſel, whom we aſſigned to argue it for you; we have heard them at large, and have conſidered of your Caſe among ourſelves; and upon full Conſideration and Deliberation concerning your Caſe, and all that hath been ſaid by your Counſel, and upon Conference that we have had with ſome other of the Judges, we are three of us of Opinion, that your Plea is not ſufficient to bar this Court of it's Juriſdiction; my Brother *Jones*, my Brother *Raymond*, and myſelf, are of Opinion that your Plea is inſufficient, my Brother *Dolben* not being reſolved, but doubting concerning it. And therefore the Court does order and award, that you ſhall anſwer over to this Treaſon.

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand.

Mr. *Fitz-Harris.* My Lord, I deſire I may have Liberty to adviſe with my Counſel before I plead.

L. C. J. Mr. *Fitz-Harris*, when you propoſed a Difficulty you had in a Matter of Law, the Court were willing to aſſign you Counſel; becauſe it is known you cannot be a fitting Perſon to adviſe yourſelf concerning the Law. But as to this, we cannot aſſign you Counſel; it is only a Matter of Fact, whether you be guilty or not guilty. Therefore in this Caſe you can't have Counſel allowed to adviſe you.

Mr. *Fitz-Harris.* My Lord, I deſire, before I plead, or do any thing of that Nature, that I may make an End of my Confeſſion before your Lordſhip, and ſome of the Privy Council.

L. C. J. Look you, Sir, for that you have trifled with us already; you pretended you had ſome Scruples of Conſcience, and that you were now become another Man, and would reveal and diſcover the whole of this Deſign and Plot, that you are ſaid to be guilty of here: But you have trifled ſeveral Times concerning it, and we can ſay nothing concerning that now; we muſt now have your Plea: If afterwards you have a Mind to confeſs and be ingenuous, you may do it; but now you muſt either plead, or not plead.

Mr. *Fitz-Harris.* My Lord, I have ſome Witneſſes a great way off, and I deſire Time to have them ready for my Defence.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand (which he did); thou haſt been indicted of High-Treaſon; upon that Indictment thou haſt been arraigned, and haſt pleaded to the Juriſdiction of this Court. To which Plea his Majeſty's Attorney-General hath demurred, and thou haſt joined therein: And upon the whole Matter, this Court, upon mature and conſiderate Deliberation, is of Opinion, that thou oughteſt to anſwer over. How ſayeſt thou, art thou Guilty of the High-Treaſon whereof thou haſt been indicted, and haſt been arraign'd, or not Guilty?

Mr. *Fitz-Harris.* Not Guilty.

Cl. of Cr. Cul. Priſt. &c. how wilt thou be tried?

Mr. *Fitz-Harris.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

L. C. J. Now if you have any thing to move, do it. We could not hear your Motion till you had pleaded; for the Method of the Court muſt be obſerv'd.

Mr. *Fitz-Harris.* I have ſome Witneſſes at a Diſtance, my Lord.

L. C. J. Where are your Witneſſes?

Mr. *Fitz-Harris.* I have one Witneſs in *Holland*, a very material one; that I am much concerned to have for my Life.

Mr. Juſt. *Jones.* What is his Name?

Mr. *Fitz-Harris.* His Name is *Steward*, my Lord.

L. C. J. Look you, Mr. *Fitz-Harris*, I'll tell you, reaſonable Time is allowed to all Men to make their Defence in; but when a Man is in *Holland*, I know not what Time you will take for that.

Mr. *Fitz-Harris.* What Time your Lordſhip thinks fit for a Man to return from thence hither.

L. C. J. Look you, Mr. Attorney, why ſhould not we allow Mr. *Fitz-Harris* Time for his Trial till next Term?

Mr. Att. Gen. I think he hath not offered any thing to entitle him to it: He doth not tell us, and I would fain know what the Witneſſes will prove.

Mr. Juſt. *Dolben.* It may be, Mr. Attorney, he will confeſs what it is that Witneſs can prove.

Mr. Att. Gen. For the whole Proof in a Caſe of Treaſon lies on our Side.

L. C. J. Commonly, and *prima facie*, it does ſo; but there may be ſome Things that the Priſoner may give in Evidence for himſelf that may be material for him to urge for his Defence.

Mr. *Fitz-Harris.* My Lord, I know not whether it be ſafe for me to tell what he can ſay.

Mr. Juſt. *Jones.* Then you reſerve it wholly in your own Judgment, whether he be a material Witneſs, or no?

Mr. *Fitz-Harris.* If my Lord Chief Juſtice pleaſes, I will acquaint him in private with it.

Mr. *Att. Gen.* I never ſaw any good Effect of theſe private Proceedings. If he have any thing to offer, he may do it publickly, in the Face of Juſtice: And therefore I deſire he may be tried this Term; for he hath had a whole Term's Notice, and Time enough to conſider what Perſons are material Witneſſes for him.

Mr. Juſt. *Jones.* Unleſs he do ſhew good Cauſe to the contrary, he muſt be tried this Term.

Mr. Att. Gen. And, my Lord, where it is in the ſame County where the Fact was committed, there is the leſs Reaſon to ſtay; Criminals in High-Treaſon, the Fact muſt be plain and evident againſt them.

L. C. J. Look you, Mr. Attorney, peradventure he hath been made to depend upon his Plea, and hath been advis'd ſo to do.

Mr. *Fitz-Harris.* Yes, my Lord, and have been cloſe Priſoner, and not allowed to ſpeak with any body.

L. C. J. If ſo, then it may be a Surprize upon him.

Mr. Fitz-Harris. My Lord, I have been allowed nothing to prepare for my Defence.

Mr. *Sol. Gen.* My Lord, he ought to be provided for his Trial this Term. I do not know, my Lord, what Witneſſes he can pretend to have; the Fact was done in *Middleſex* here, and the Proof of the Circumſtances of that Fact do ariſe here; and I do not know what Surpriſe he can complain of. As to the Witneſs he tells you of, that is in *Holland*, he doth not tell you to what Purpoſe he is a Witneſs; ſo that you may know whether it be material or not. I know very well, my Lord, in the *Old-Bailey*, when the Prieſts did urge it, that they had Witneſſes beyond the Sea in other Countries, they were not ſuffered to delay their Trial upon ſuch a Pretence. We muſt ſubmit it to your Lordſhip's Diſcretion: But we ſuppoſe it will not be a precipitous Proceeding, he having Notice of his Trial all this Term.

L. C. J. Mr. Attorney, truly, ſince he pretends he is ſurpriſed, and hath depended upon his Plea, and hath Witneſſes that require ſome Time to fetch, we think it reaſonable that he ſhould have till the next Term; and we will defer it till then. We are all of that Opinion, (eſpecially it being ſuch a little Delay) to enable him to have what Witneſſes he doth pretend to have.

Mr. Att. Gen. My Lord, I never deſired in this Caſe, nor in any other, nor ever ſhall do, that Juſtice be precipitated. I know theſe open and fair Trials proceed with ſuch equal Steps to all Parties, that we need not be haſty; and therefore, if your Lordſhip be of that Opinion, I ſubmit to it, ſo it be the firſt Week of the next Term.

L. C. J. The firſt Week it cannot be.

Mr. Att. Gen. Within the firſt ſeven Days, I mean.

L. C. J. The firſt *Thurſday* in the Term. And take Notice, Mr. *Fitz-Harris*, that is the Day appointed for your Trial.

Mr. *Fitz-Harris.* I deſire Liberty to ſee my Wife, and have a Sollicitor in the mean time.

L. C. J. I will tell you, for that, Mr. *Fitz-Harris*, the Court would never deny any thing of that nature to any one in your Condition and Circumſtances; but your Wife makes an ill uſe of the Liberty we granted her: And if ſhe do make an ill uſe of it, then the Court muſt reſtrain her, and hold their hands over her. If we were ſatisfy'd ſhe would uſe the Liberty lawfully, and not abuſe it——

Mr. *Fitz-Harris.* My Lord, I am ſure ſhe will uſe it lawfully hereafter, and make no ill uſe of it.

L. C. J. Look you, upon her good uſage of it, if ſhe will fairly demean herſelf, and not abuſe it again, we are willing to take off the laſt Rule, and ſhe ſhall have the ſame Liberty ſhe had before that Rule.

Mr. *Sol. Gen.* With this, if your Lordſhip pleaſe, we deſire there may be ſome other Judge of her Prudence beſides herſelf, and the Lieutenant of the *Tower* be by.

Mr. *Fitz-Harris.* My Lord, I deſire I may have a Sollicitor; for he was never allowed to come and ſpeak to me, though I had a Rule for him.

L. C. J. Look you, as to your Counſel now, which was the main Reaſon why you prayed a Sollicitor, we cannot allow you them any more; for now we are come to a Matter of Fact only, and we cannot by the Rules of Law allow you Counſel. Therefore what need you have of a Sollicitor, I cannot tell; his buſineſs before, was to go from you to the Council, and from them to you, which is ceaſed now. But this, Mr. Attorney, if he have a deſire to ſee Papers, and would ſend for any Papers that concern his Defence, ſo as they contain no new Treaſonable Matters and Contrivances, he ought ſure to have them; and if he have Papers at his Houſe, or any where elſe, which he deſires to make uſe of in his own Defence, being inſpected by the Lieutenant, to ſee that there be no Matter of evil contained in them, he may have one to do that for him without any Danger.

Mr. *Sol. Gen.* I do not oppoſe it, my Lord; but I deſire that all Caution may be us'd that can be; for this Sollicitor of his is a Lawyer, and writes Tracts of Law: But any thing material for his Defence I am not againſt.

L. C. J. Mr. Attorney, you need not fear any harm will be that ways: For he is not to ſpeak with him alone.

Mrs. *Fitz-Harris* I hope his Sollicitor may come to him to take Inſtructions how to ſend for his Witneſſes.

Mr. Juſt. *Jones.* You can tell how to do that, ſurely, without a Sollicitor.

L. C. J. Juſt as the laſt Rule was, let there be another Rule made: For he muſt have all juſt Advantages to enable him for his Defence.

Mr. *Fitz-Harris.* I hope I ſhall have a Rule of Court to make my Witneſſes appear.

Mr. Juſt. *Dolben.* That you may have without a Motion.

L. C. J. We will give you any thing that will enable you to make a fair Defence.

Cl. of Cr. He ſhall have *Subpoena*'s for his Witneſſes.

L. C. J. Then, Mr. *Fitz-Harris*, you muſt expect no other Notice. You muſt take notice now, that upon the firſt *Thurſday* in the next Term, you are to receive your Trial here. Take the Priſoner back.

Mr. Att. Gen. In order to his Trial, I deſire the Sheriff may bring in the Freeholders Book to the Clerk of the Crown, to ſtrike the Jury.

L. C. J. Mr. Attorney, we will conſider of that, how far can we do that, and the Courſe of the Court ſhall be obſerved. But I doubt how we can.

Mr. Att. Gen. That is the Practice in Trials at the Bar.

L. C. J. In civil cauſes, but not in Criminal, that I know of.

Mr. Att. Gen. We have reaſon to deſire it; becauſe we are afraid of ſome Practice in this Cauſe, and fear there may be ſome odd Carriage in the Return of them.

Mr. *Fitz-Harris.* May I not ſee my Wife before I go hence?

L. C. J. With all our Hearts; ſhe may go to you, and with you, Sir, if you pleaſe: We will not hinder you of her Company, ſo ſhe carry herſelf fairly.

Then the Lieutenant took back his Priſoner.

The Trial of Edward Fitz-Harris †, *at the* King's-Bench *for* High-Treaſon, June 9. 1681. Trin. 33 Car. II.

ON *Thurſday* 9 *June*, 1681, *Edward Fitz-Harris* was brought to the Bar of the Court of *King*'s-*Bench*; and the Court being ſat, proceeded thus:

Mr. *Thompſon*. My Lord, I moved you the other Day, that before Mr. *Fitz-Harris*'s Trial, he might give ſuch Evidence as he had to give againſt Sir *John Arundel* and Sir *Richard Beiling*, concerning the Death of Sir *Edmundbury Godfrey*, before he be convicted of Treaſon; and we underſtood that it was the Direction of the Court, that we might move it this Morning before Conviction, that he might declare upon Oath here in Court what he knows of that Matter againſt thoſe Gentlemen: For after he is convicted, I believe it will be too late for us to think of it. Mr. *Godfrey* hath a great Deal of Reaſon to deſire what I now move, that his Brother's Murderers may be proſecuted; and we hope, all the Favour that can be granted in ſuch a Caſe, will be granted unto us: For there hath been a Deſign of late ſet on Foot, to make it be believed, that Sir *Edmundbury Godfrey* murdered himſelf, notwithſtanding that clear Evidence that hath been already given of this Matter, and notwithſtanding that ſeveral Perſons have been convicted and attainted upon that Evidence. So that theſe Gentlemen think themſelves obliged to proſecute the Matter as far as they can, and beg of your Lordſhip, that what can be done for them may. And particularly, that he may perfect his Diſcovery againſt the two named at his laſt Examination before the Grand-Jury; and that his Examination about them may now be taken by the Court.

L. C. J. Look you, Mr. *Thompſon*, that that you moved before, had ſome Reaſon in it, that he might be examined, and give Evidence to a Grand-Jury, and we told you he ſhould; but if there be never a Grand-Jury ſworn yet, who can he give Evidence to? Would you have us take his Examination, and afterwards give it in Evidence to the Grand-Jury?

Mr. *Thomp.* My Lord, I only ſay, then 'tis our hard Hap that he is not examined before a Grand-Jury.

L. C. J. But do you think it is fit for you to move this now?

Mr. *Thomp.* My Lord, I underſtood it was permitted me by the Court the other Day, to move again; and I move by the Direction of my Client, and I ſubmit it to your Lordſhip.

L. C. J. You know it cannot be granted. Go on, and ſwear the Jury.

Fitz-Harris. My Lord, I beg that my Wife and Sollicitor may be by, to help and aſſiſt my Memory.

L. C. J. Let your Wife be by you, if ſhe pleaſe, and if you think 'tis any Advantage to you, with all our Hearts; if ſhe will, let her go down to you.

Cl of Crown. Cryer, make an O Yes: Whoever can inform, *&c.*

Mr. Att. Gen. My Lord, I know not what the Effect of this may be; if his Wife be inſtructed to inſtruct him, that ought not to be permitted, with Submiſſion: Suppoſe ſhe ſhould come to prompt him (and for certain ſhe is well documentiz'd) that your Lordſhip won't ſuffer.

Mr. Serj. *Jeff.* My Lord, ſhe comes prepared with Papers in her Hand.

Mrs. *Fitz-Harris.* I won't ſhew them without my Lord's Permiſſion.

L. C. J. If ſhe brings any Papers that are drawn by Council, prepar'd for him, without doubt 'tis not to be allowed.

Mrs. *Fitz-Harris.* No, no; 'tis only my own little Memorandums.

L. C. J. Whatſoever is written by her Huſband, for Help of his Memory in Matter of Fact, let her do it.

Fitz-Harris. My Lord, I humbly beg my Sollicitor may be by me too.

L. C. J. We allow of no Sollicitors in Caſes of High-Treaſon.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand (*which he did*): Thoſe good Men which thou ſhalt hear called, and perſonally appear, *&c.*

Fitz-Harris. My Lord, I deſire they may be diſtinctly named as they are in the Pannel, that I may know how to make my Challenges.

Mr. Sol. Gen. My Lord, I muſt humbly offer it to your Lordſhip's Conſideration, for the Precedent's Sake, Whether any Perſon can aſſiſt the Priſoner as to Matter of Fact?

L. C. J. Yes, and 'tis always done to take Notes for him to help his Memory.

Mr. Serj. *Jefferies.* But, my Lord, I would acquaint your Lordſhip what is the Thing we find in this Caſe; here is a particular Note given in to the Priſoner of the Jury, pray be ſure to challenge ſuch and ſuch, and don't challenge the reſt. God forbid but his Memory ſhould be helped in Matters of Fact, as is uſual in theſe Caſes; but no Inſtructions ought to be given him, ſure. And, my Lord, the Example will go a great Way; and therefore we are in your Lordſhip's Directions about this Matter.

Fitz-Harris. My Lord, I hope 'tis but juſt, for I have had all the Diſadvantages in the World. I have been kept cloſe Priſoner, and have not been permitted to have any one come to me, to help me in my Preparation for my Trial.

Mr. Att. Gen. My Lord, I pray your Judgment in Point of Law; I doubt not you will do the King right, as well as the Priſoner; I could not get a Copy of the Pannel, till laſt Night about four o'Clock: Here is prepared a Copy, with Croſſes and Marks who he ſhould challenge, and who not; and truly, my Lord, ſince I had the Pannel, upon looking over it, I do find the Sheriff hath returned three Anabaptiſt Preachers, and I know not how many Fanaticks: And ſince there are ſuch Practices as we find in this Caſe, we doubt there may be more; and therefore I pray ſhe may be removed.

Mrs. *Fitz-Harris.* I will not be removed.

Fitz-Harris. Is it fit or reaſonable for me, that I ſhould ſtand here without any Help?

Mr. Att. Gen In Caſe you be guilty of this, you deſerve no great Favour.

Mrs. *Fitz-Harris.* Surely the Court will never ſuffer the King's Council to take away a Man's Life at this Rate.

L. C. J. Mrs. *Fitz-Harris*, you muſt give good Words: And if you will not be modeſt and civil, I promiſe you we will remove you preſently.

Mrs. *Fitz-Harris.* If you do remove me, that is the worſt you can do to me: What ſhould I come here for, without I may help my Huſband?

L. C. J. If ſhe do bring him Inſtructions to except againſt ſuch and ſuch Jury-men, ſhe does miſbehave herſelf, and muſt be removed.

Mr. Att. Gen. This Paper that we ſpeak of is a Copy of the Pannel; and there are particular Marks, a great many.

Mr. Sol. Gen. A Woman hath a very great Privilege to protect her Huſband; but I never yet knew that ſhe had Liberty to bring him Inſtructions ready drawn.

Mrs. *Fitz-Harris.* My Lord, the Lady Marchioneſs of *Wincheſter* did aſſiſt in the Caſe of my Lord *Stafford*, and took Notes, and gave him what Papers ſhe pleaſed.

L. C. J. Sure 'tis no ſuch huge Matter to let a Man's Wife ſtand by him, if ſhe will demean herſelf handſomely and fairly.

Mr. Att. Gen. It is not if that were all; but when ſhe comes with Papers, inſtructed, and with particular Directions, that is the aſſigning him Counſel in Point of Fact.

L. C. J. Let her ſtand by her Huſband, if ſhe be quiet: But if ſhe be troubleſome, we ſhall ſoon remove her.

Fitz-Harris. 'Tis impoſſible I ſhould make my Defence without her.

Mr. Serj. *Jefferies.* I ſee it is a perfect formal Brief.

Mrs. *Fitz-Harris.* Muſt he have nothing to help himſelf?

Fitz-Harris. In ſhort, the King's Council would take my Life away, without letting me make my Defence.

Mr. Att. Gen. I deſire not to take any Papers from him, if they be ſuch as are permitted by Law.

Mr. Sol. Gen. My Lord, his Innocency muſt make his Defence, and nothing elſe.

Mr. Serj. *Jeff.* My Lord, we are in your Lordſhip's Judgment, whether you will allow theſe Papers.

L. C. J. Let us ſee the Paper.

Fitz-Harris. My Lord, I will deliver them to my Wife again.

L. C. J. Let it be ſo.

Cl. of Cr. Call Sir *William Roberts* (who did not appear): Sir *Michael Heneage.*

Sir *Michael Heneage.* My Lord, I am ſo ill, I cannot attend this Cauſe.

L. C. J. We cannot excuſe you, Sir *Michael*; if there be not enough beſides, 'tis not in our Power to excuſe you.

Sir *Michael Heneage.* I muſt ſuffer all Things rather than loſe my Health.

L. C. J. Well, ſtand by, till the reſt are called.

Cl. of Cr. Sir *William Gulſton*, *Nicholas Rainton*, *Charles Umphrevile* (they did not appear): *John Wildman.*

Mr. Att. Gen. My Lord, I deſire he may be aſked, before he be called to the Book, whether he be a Free-holder in *Middleſex?*

Major *Wildman.* I am a Proſecutor of this Perſon; for I was a Parliament-man in the laſt Parliament; and I dare not appear, my Lord, for fear of being queſtioned for Breach of the Privileges of the Commons.

Mr. Att. Gen. My Lord, I pray he may anſwer that Queſtion, whether he be a Free-holder in *Middleſex?*

Major *Wildman.* I pray to be excuſed, upon a very good Reaſon; I was one of them that voted the Impeachment againſt this Man.

Mr. Att. Gen. Are you a Free-holder of *Middleſex*, upon your Oath?

L. C. J. Look you, Major *Wildman*, you are returned upon a Pannel here, you have appeared, and your Appearance is recorded; you muſt anſwer ſuch Queſtions as are put to you; 'tis not in your Power to deny.

Major *Wildman.* I beg the Excuſe of the Court, I cannot ſerve upon this Jury.

L. C. J. If you be no Free-holder the Law will excuſe you.

Major *Wildman.* Perhaps there may be ſome Eſtates in my Name that may be Free-holds; perhaps I may be ſome Truſtee, or the like.

Mr. Att. Gen. Have you any Free-hold in your own Right in *Middleſex?*

Major *Wildman.* I don't know that I have; if it be in the Right of another, or as Truſtee, I take not that to be a Free-hold.

Cl. of Cr. Call *Thomas Johnſon.*

Mrs. *Fitz-Harris.* Let him be ſworn, there is no Exception againſt him.

L. C. J. Hold your Peace, or you go out of Court if you talk again.

Mrs. *Fitz-Harris.* I do not ſay any thing that is any harm, my Lord.

Cl. of Cr. Swear *Tho. Johnſon*: You ſhall well and truly try, *&c.*

Fitz-Harris. My Lord, I pray the Clerk may not ſkip over the Names as they are returned.

Cl. of Cr. Sir, I call every one as they are in the Pannel; and don't do me wrong.

L. C. J. It may be he does not call them as they are mentioned and ſet down in the Pannel, for all have not appeared; but calls thoſe whoſe Appearance is recorded.

Cl. of Cr. I have called them as they are here ſet down.

L. C. J. Well, let them all be called for; may be they will appear now that did not appear before.

Cl. of Cr. Maximilian Beard.

Mr. *Beard.* My Lord, I deſire to be excuſed, I am very infirm and very ancient, Threeſcore and Fifteen Years of Age, at leaſt.

L. C. J. Why did the Sheriff return you? If you be of that Age, you ſhould be put out of the Free-holders Book. But ſtay, you are here impanneled, and have appeared; if there be enough, we will excuſe you.

Mr. Juſt. *Jones.* He ought to have Witneſſes of his Age; and if he would not have appeared, he might have had a Writ of Privilege for his Diſcharge in regard of his Age.

L. C. J. Well, we will ſet by him; if there be enough beſides, we will ſpare him.

Cl. of Cr. Iſaac Honywood (he did not appear): *Lucy Knightly* (who was ſworn): *Henry Baker.*

Mr. Att. Gen. My Lord, I challenge him for the King.

Fitz-Harris. My Lord, why ſhould he challenge him? I deſire to know the Law, whether the two Foremen ſhould not try the Challenge, and not the Court or the Council.

Mr. Serj. *Maynard.* If the King challenge, he hath time to ſhew Cauſe till the Pannel be gone through; the Law will have the *minus ſuſpecti*; but if there want any thing, the King muſt ſhew good Cauſe.

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† *Burn. Hiſt. of his own Times.* Vol. I. p. 503.

Cl. of Cr. *Edward Probyn.*

Mr. Att. Gen. I challenge him for the King.

Cl. of Cr. *Edward Wilford* (was ſworn.)

Fitz-Harris. My Lord, muſt not Mr. Attorney ſhew his Cauſe now?

L. C. J. Look you, Mr. *Fitz-Harris*, either ſide may take their Exception to any Man; but the Cauſe need not be ſhewn till the Pannel is gone through, or the reſt of the Jurors challenged *.

Cl. of Cr. *John Kent* of *Stepney.*

Mr. *Kent.* My Lord, I am no Free-holder.

L. C. J. Then you cannot be ſworn here upon this Jury †.

Cl. of Cr. *John Willmore.*

Mr. Att. Gen. We challenge him for the King.

Fitz-Harris. For what Cauſe?

Mr. Serj. *Jeff.* We will ſhew you Reaſons hereafter.

Cl. of Cr. *Alexander Hoſey* (was ſworn:) *Giles Shute.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. *Shute.* No.

Mr. Att. Gen. Mr. *Whitaker* is got near him, and he tells him what he is to do, my Lord.

Fitz-Harris. Here is the Lieutenant of the *Tower* between me and him.

Mr. Serj. *Jeff.* But the Bar is no fit Place for Mr. *Whitaker*, he is not yet called to the Bar.

Cl. of Cr. *Martin James.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. *James.* Yes.

Mr. Att. Gen. Then ſwear him, (which was done.)

Cl. of Cr. *Nathanael Grantham.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. *Grantham.* No.

Cl. of Cr. *Henry Beiling.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. *Beiling.* Yes.

Fitz-Harris. Then I challenge him.

Cl. of Cr. *Benjamin Dennis.*

Mr. Att. Gen. Is he a Free-holder?

Mr. *Dennis.* No.

Mr. Att. Gen. My Lord, you ſee what Practices here are, moſt of the Jury are no Free-holders.

Cl. of Cr. *John Preſton*, (did not appear:) *John Viner* of *White Chappel.*

Mr. Att. Gen. He hath fetched them from all Corners of the Town here, yet not all of them Free-holders neither.

Cl. of Cr. Swear Mr. *Viner*, (which was done.) *William Withers*, (was ſworn:) *William Cleave*, (ſworn:) *Thomas Goffe* (ſworn:) *Abraham Greaves.*

Mr. Att. Gen. Aſk him if he is a Free-holder?

Mr. *Greaves.* No.

Cl. of Cr. *Henry Jones.*

Mr. Att. Gen. Is he a Free-holder?

Mr. *Jones.* No.

Cl. of Cr. *Ralph Farr.*

Mr. Att. Gen. Aſk him the ſame Queſtion.

Cryer. Are you a Free-holder, Sir?

Mr. *Farr.* Yes.

Cl. of Cr. Then ſwear him, (which was done.) *Samuel Freebody.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Freebody. Yes.

Mr. Att. Gen. Then ſwear him, (which was done.)

Cl. of Cr. *Gilbert Urwin* of *Covent-Garden* (did not appear.) *Edward Watts* of *Weſtminſter.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Watts. Yes.

Mr. Att. Gen. Then we challenge you for the King.

Cl. of C. *John Bradſhaw* of *Holborn* (did not appear:) *Iſaac Heath* of *Wapping* (no Free-holder:) *Edward Hutchins* of *Weſtminſter.*

Mr. Att. Gen. We challenge him for King.

Cl. of Cr. *John Lockier* of *Weſtminſter.*

Mr. Att. Gen. Are you a Free-holder?

Mr. *Lockier.* Yes.

Mr. Att. Gen. Then ſwear him.

Cl. of Cr. Count theſe. *Thomas Johnſon.*

Cryer. One, &c.

The Names of the Twelve ſworn, are theſe:

Thomas Johnſon,
Lucy Knightley,
Edward Wilford,
Alexander Hoſey,
Martin James,
John Viner,
William Withers,
William Cleave,
Thomas Goffe,
Ralph Farr,
Samuel Freebody, and
John Lockier.

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand. Gentlemen, you that are ſworn, look upon the Priſoner, and harken to your Charge.

Fitz-Harris. My Lord, I humbly beg Pen, Ink, and Paper.

L. C. J. Let him have Pen, Ink, and Paper.

Cl. of Crown. You ſhall have them preſently; (which were given him.)

HE ſtands indicted by the Name of Edward Fitz-Harris, *late of the Pariſh of St.* Martin's in the Fields, *in the County of* Middleſex, *Gent. for that he as a falſe Traitor againſt the moſt illuſtrious, and moſt excellent Prince, our Sovereign Lord* Charles *the Second, by the Grace of God King of* England, Scotland, France, *and* Ireland, *his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil; the Love, and true due and natural Obedience, which a true and faithful Subject of our ſaid Sovereign Lord the King, towards him our ſaid Sovereign Lord the King, ſhould, and of right ought to bear, wholly withdrawing; and with all his might intending the Peace and common Tranquillity within this Kingdom of* England *to diſturb, and War and Rebellion againſt our ſaid Sovereign Lord the King to ſtir up and move; and the Government of our ſaid Sovereign Lord the King, within this Kingdom of* England, *to ſubvert; and our ſaid Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of* England *to depoſe and deprive; and our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, the 22d Day of* February, *in the 33d Year of the Reign of our Sovereign Lord* Charles *the Second, now King of* England, *&c. and divers other Days and Times, as well before, as after, at the Pariſh of* St. Martin's in the Fields, *in the County of* Middleſex, *traiterouſly did compaſs, imagine, and intend the Killing, Death, and final Deſtruction of our ſaid Sovereign Lord the King, and the ancient Government of this his Kingdom to change, and alter, and wholly to ſubvert, and him our ſaid Sovereign Lord the King, that now is, from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of* England *to depoſe and deprive, and War and Rebellion againſt our ſaid Sovereign Lord the King, to ſtir up and levy within this Kingdom of* England. *And his ſaid wicked Treaſons and traiterous Compaſſings, Imaginations, and Purpoſes, aforeſaid to fulfil and perfect, he the ſaid* Edward Fitz-Harris, *as a falſe Traitor, together with one* Edmond Everard, *a Subject of our ſaid Sovereign Lord the King, did then and there traiterouſly aſſemble himſelf, meet and conſult, and the ſame his Treaſons and traiterous Compaſſings, Imaginations, and Purpoſes, then and there to the ſaid* Edmond Everard, *in the hearing of divers other Subjects of our ſaid Sovereign Lord the King, openly, maliciouſly, traiterouſly, and adviſedly ſpeaking, did publiſh and declare: And to perſuade and induce the ſaid* Edmond Everard, *to be aiding and aſſiſting in his ſaid traiterous Compaſſings, Imaginations and Purpoſes, he the ſaid* Edward Fitz-Harris, *as a falſe Traitor, maliciouſly, adviſedly, and traiterouſly to the ſaid* Edmond Everard *a great Reward then and there did offer, and promote to procure. And for the further compleating of his Treaſons aforeſaid, and to incite the Subjects of our ſaid Sovereign Lord the King, as one Man, to riſe, and open Rebellion and Inſurrection within this Kingdom of* England *to raiſe, againſt our ſaid Sovereign Lord the King, and our ſaid Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of* England *to caſt down and depoſe, he the ſaid* Edward Fitz-Harris, *as a falſe Traitor, a certain moſt wicked and traiterous Libel, the Title of which is in theſe* Engliſh *Words following,* The true *Engliſhman* ſpeaking plain *Engliſh*, *traiterouſly, maliciouſly, and adviſedly, in Writing to be made and expreſſed, did then and there cauſe, procure and publiſh; in which ſaid Libel the ſaid moſt wicked Treaſon, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, of him the ſaid* Edward Fitz-Harris, *to excite and perſuade the Subjects of our ſaid Sovereign Lord the King of this Kingdom of* England, *againſt our ſaid Sovereign Lord the King to riſe and rebel; and our ſaid Sovereign Lord the King from the Stile, Honour, and Regal Name of the Imperial Crown of this his Kingdom of* England *to deprive and depoſe, in writing are expreſſed and declared amongſt other things, as followeth:* If *James (meaning* James *Duke of* York, *the Brother of our ſaid Sovereign Lord the King)* be conſcious and guilty, Chs. (*meaning* Charles II. *now King of* England) is ſo too, believe me (*meaning himſelf the ſaid* Edward Fitz-Harris) both theſe (*meaning our ſaid Sovereign Lord the King, and the ſaid* James *Duke of* York) are Brethren in Iniquity, they (*meaning our ſaid Sovereign Lord the King and* James *Duke of* York) are in Confederacy with Pope and *French* to introduce Popery and arbitrary Government, as their Actions (*meaning the Actions of our ſaid Sovereign Lord the King, and* James *Duke of* York) demonſtrate. The Parliament's *Magna Charta* and Liberty of the Subject are as heavy Yokes they'd as willingly caſt off, for to make themſelves (*meaning our ſaid Sovereign Lord the King, and the ſaid Duke of* York) as abſolute as their Brother of *France*. And if this can be proved to be their Aim (*meaning our ſaid Sovereign Lord the King, and the aforeſaid Duke of* York) and main Endeavour, why ſhould not every true *Briton* be a Quaker thus far, and let the *Engliſh* Spirit be up and move us, (*meaning the Subjects of our ſaid Sovereign Lord the King of this Kingdom of* England) all as one Man to Self-Defence? Nay, and if need be, to open Action, and fling off thoſe intolerable Riders? (*Meaning our ſaid Sovereign Lord the King, and the ſaid Duke of* York.) *And in another Place in the ſaid moſt wicked traiterous Libel are contained, amongſt other things, theſe falſe, ſeditious, and traiterous Sentences in theſe* Engliſh *Words following.* *J.* and *C.* (*meaning the ſaid* Charles *our Sovereign Lord the King, and his ſaid Brother* James *Duke of* York) both Brethren in Iniquity, corrupt both in Root and Branch, as you (*meaning the Subjects of our ſaid Sovereign Lord the King*) have ſeen, they (*meaning our ſaid Sovereign Lord the King, and the ſaid Duke of* York) ſtudy but to enſlave you (*meaning the Subjects of our ſaid Sovereign Lord the King*) to a Romiſh and *French*-like Yoke. Is it not plain? Have you (*meaning the Subjects of our ſaid Sovereign Lord the King*) not Eyes, Senſe or Feeling? Where is that old *Engliſh* noble Spirit? Are you (*meaning the Subjects of our ſaid Sovereign Lord the King*) become *French* Aſſes, to ſuffer any Load to be laid upon you? And if you (*meaning the Subjects of our ſaid Sovereign Lord the King*) can get no Remedy from this next Parliament, as certainly you (*meaning again the Subjects of our ſaid Sovereign Lord the King*) will not; and that the K. (*meaning our ſaid Sovereign Lord the King that now is*) repents not, complies not with their Advice, then up all (*meaning the Subjects of our Sovereign Lord the King*) as one Man. O brave *Engliſhmen!* Look to your own Defence e're it be too late, rouze up your Spirits. *And in another Place in the ſaid moſt wicked and traiterous Libel are contained, amongſt other things, theſe falſe, ſeditious, and traiterous Sentences in theſe* Engliſh *Words following; to wit,* I (*meaning himſelf the ſaid* Edward Fitz-Harris) will only add, that as it is the undoubted Right of Parliaments to make a Law againſt a Popiſh Succeſſor, who would prove deſtructive to our Laws and Liberties; ſo it is their undoubted Right to dethrone any Poſſeſſor that follows evil Counſellors to the Deſtruction of our Government, (*meaning the Government of this Kingdom of* England.) *And in another Place in the ſaid traiterous Libel, are contained theſe* Engliſh *Words following:* Then let all *(meaning the Subjects of our ſaid Sovereign Lord the King that now is)* be ready; then let the City of *London* ſtand by the Parliament with offers of any Money for the maintaining of their Liberties and Religion in any extreme Way, if parliamentary Courſes be not complied with by the King; *(meaning our ſaid Sovereign Lord the King) againſt the Duty of their Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity,* &c. *and againſt the Form of the Statute in this Caſe made and provided.*

Upon this Indictment he hath been arraigned, and thereunto hath pleaded, Not Guilty; and for his Trial hath put himſelf upon God and his Country, which Country you are, &c.

Cryer, Make Proclamation. O yes, if any one will give Evidence, &c.

Mr. *Heath.* May it pleaſe you Lordſhip, and you Gentlemen of the Jury, this is an Indictment of High-Treaſon againſt *Edward Fitz-Harris*, the Priſoner at the Bar; and the Indictment ſets forth, that the the 21ſt of *February*, in the 33d Year of the King, at *St. Martin's in the Fields*, he did compaſs and imagine the Death of the King, and to raiſe War and Rebellion within this Kingdom. And the Indictment does ſet forth, that for the Accompliſhment of this, he did meet and aſſemble with one *Edmond Everard*, and ſeveral others, and did diſcover this his traiterous Purpoſe to the ſaid *Everard*, and did perſuade him to aid and aſſiſt therein; and offered him great Rewards if he would do ſo. It further ſets forth, That for the further perfecting of this treaſonable Imagination of the ſaid *Edward Fitz-Harris*, he did frame and make a treaſonable Libel, and the Title of the Libel is, *The true* Engliſhman *ſpeaking plain* Engliſh; and in that treaſonable Libel, are theſe treaſonable words contained, *If* James *be guilty* (meaning the Duke of *York*) *Charles* (meaning the King) *is ſo too*, &c. And the ſeveral words that have been read to you in this Indictment, are contained in the ſaid Libel, which I ſhall not repeat. To this Indictment he hath pleaded, Not guilty; if we prove it upon him, you are to find him Guilty.

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* Here the *Chief Juſtice* did not ſhew the ſame Favour to *Fitz-Harris*, which he afterwards ſhewed to Count *Coningſmark*, in directing him how to make the King ſhew Cauſe, by challenging all the reſt, Vol. III. p. 465.

† In Lord *Ruſſel*'s Trial *No Free-hold* was not allowed to be a good Challenge; and ſeveral, though no Free-holders, were admitted to be ſworn on the Jury. The like in Colonel *Sidney*'s Caſe.

Mr. Serj. *Maynard.* May it pleaſe your Lordſhip, truly 'tis a ſad thing to conſider how many have been found guilty of Plotting againſt the King, but none have gone ſo far as the Priſoner at the Bar: For they deſigned only his Death; but this Perſon would have carried on his Treaſon by a means to ſlander him while he was alive, and thereby to excite the People to ſuch a Rebellion as you have heard. I ſhall add no further words; the thing is not aggravatable, 'tis ſo great an Offence in itſelf; but we will call our Witneſſes, and go to our Proof.

Mr. Att. Gen. My Lord, Yeſterday you had here the Primate of *Ireland*, who was found guilty for a notable High-Treaſon in *Ireland:* You have now this Day before you one of his Emiſſaries, who is come over into *England*, and who has here committed one of the moſt execrable Treaſons that ever was brought into a Court of Juſtice; I muſt needs ſay, that it will appear to all the Auditors this Day, that here is the higheſt Improvement of the Popiſh Plot, and aggravated with ſuch Circumſtances, as ſhew they have out-done themſelves in it. Hitherto thoſe Caſes that have been brought into Judgment before you, have been the Attempts upon the Life of the King, in Inſtances of either Shooting, Stabbing, or Poiſoning: I ſay, hitherto they have gone no further than to practiſe theſe Things, and that by Popiſh Hands, they have kept the Plot amongſt themſelves; but now they have gone one ſtep further, that is, by attempting to poiſon all the Proteſtants of *England* as much as in them lies, that they ſhould by their own Hands deſtroy one another, and their lawful Prince; that is the Treaſon now before you; and I take it, with ſubmiſſion, they can go no further. For 'tis impoſſible to ariſe to a higher piece of Malice and Villainy than to ſet the People's Hearts againſt their Prince, and to ſet them together by the ears one againſt another. This we ſhall prove, in the Courſe of our Evidence, to be the Deſign of the Priſoner at the Bar. The general Deſign hath been opened to you out of the Indictment to kill and deſtroy the King, and to depoſe him from his Government; and we ſhall charge him with all thoſe ſeveral Overt-Acts, which I ſhall open to you: Firſt, Several Meetings to conſult about this Matter at *Gray*'s-*Inn* and ſeveral other places; which, my Lord, I think there is no queſtion to be made, but is an Overt-Act to make High-Treaſon. We ſhall go further, and ſhew that theſe Deſigns he had to depoſe the King, and raiſe his People againſt him, he does declare openly to Mr. *Everard*; which is another Overt-Act within the new Statute. We ſhall, my Lord, go further yet, and prove the great Rewards he hath offered to Mr. *Everard* for joining with him, and being aſſiſting to him in this Affair, part in ready Money, and part in annual Penſion. And there your Lordſhip will find where the Spring is, from whence all theſe Miſchiefs ariſe, ſome foreign Power; but the Papiſts, the Prieſts are at the Bottom of it, they are the Perſons that ſet him on, and theſe muſt draw in a great Perſon beyond Sea, who muſt reward this Gentleman for being a Partner in this Plot. And we ſhall prove ſome Money paid in Hand. But then, my Lord, that which was the Effect of this Conſult, is the framing this pernicious Libel; for ſo give me leave to call it.

My Lord, the Indictment is modeſt, but when you come to hear the Libel itſelf read, you will find it ſo; and it was not Prudence, that ſo vile a thing ſhould appear upon Record. And truly, I believe in a Proteſtant Kingdom 'tis the firſt Attempt of this Nature that ever was: For, my Lord, it is to defame the whole Royal Family, 'tis to ſtain their Blood, and to make them vile in the ſight of the whole Kingdom, and of all Poſterity. My Lord, this Libel in its Particulars chargeth that moſt excellent and innocent Perſon, our late and never to be forgotten Sovereign King *Charles* I. to be the Author of the *Iriſh* Rebellion; it charges our preſent Prince with the Exerciſe of Arbitrary Government, to be a Papiſt, to be a Perſon that deprives his Subjects of all manner of Liberty, and Property; in expreſs Terms, it charges him with this, than which nothing can be more falſe: For there is none of his Subjects, I think, but muſt ſay, that our moſt gracious Prince, for the Time he hath reigned, may vie with the beſt 20 Years of any of his Predeceſſors, for the preſerving the Liberty and Property of the People, for giving us Peace and Plenty all our Time, for the permitting and ſecuring to them the free Current of the Law, and for ſecuring their Civil and Religious Rights.

My Lord, when we have gone through the Evidence about the Contexture, and this Libel is read and produced, we ſhall prove the Deſign of it, and how it was framed, and the Eyes of the World will be opened, and you will ſee that this was no Intention, no Engine framed to trapan, or enſnare any private Perſon, or as it was ſecretly bruited abroad, to be put in ſuch Men's Pockets; but a piece of the greateſt *Machiavellian Policy* that ever was invented and prepared for a publick Preſs, as a Catholick Poiſon to infect all the King's Subjects, and excite them one againſt another.

And we ſhall prove that this Perſon, in the ſeveral Methods that I have opened, hath proceeded to accompliſh his traiterous Deſigns of dethroning the King: Nay, he hath ſaid, 'tis reſolved among them, now that nothing elſe will do it but the poiſoning the Hearts of the People with Hatred to their King, and Malice againſt one another. And when we have proved the Matter fully, through all the Parts, we muſt leave it to the Jury, who, I queſtion not, will do themſelves, and all other Proteſtants Right, as well as their Prince. We ſhall now go to our Evidence, and firſt we will call Mr. *Everard*; but, my Lord, I would only firſt obſerve to you, that this Gentleman, Mr. *Fitz-Harris*, and Mr. *Everard*, were both imployed in the *French* King's Service, and there acquainted together. Mr. *Everard* came early off, and became a Proteſtant, leaving the *French* King's Service, becauſe he found their ſeveral Plots and Deſigns upon *England*. Then comes Mr. *Fitz-Harris* to him, and becauſe he looked upon Mr. *Everard* not to be rewarded according to his Merits, invites him over, with telling him thoſe things that the Witneſs himſelf will tell you, back again to the *French* Intereſt.

Then Mr. Everard *was ſworn.*

Fitz-Harris. Look me in the Face, Mr. *Everard.*

Mr. *Everard.* I will, Sir.

Mr. Att. Gen. Will you acquaint my Lord, and the Jury, how you came firſt acquainted with the Priſoner, and then tell the ſeveral Paſſages between you.

Mr. Sol. Gen. Tell your whole Knowledge of this Matter.

Mr. *Everard.* My Lord, I came acquainted with Mr. *Fitz-Harris* beyond Seas, when we both were in the *French* King's Service, and upon Conference with him of late, eſpecially about the beginning of *February* laſt, he renewed his Acquaintance, though at ſeveral Times before we had ſeveral Diſcourſes, whereof I did not take much notice: But in thoſe Meetings in *February* laſt, and in thoſe Viſits he paid me then, we had ſeveral Diſcourſes tending to repreſent the Diſadvantages and Sufferings I ſuſtained, for adhering to the Proteſtant and *Engliſh* Intereſt; and beſides comparing in the other Balance, what Advantages I might expect if I would re-ingratiate myſelf into their Intereſt.

L. C. J. What Intereſt?

Mr. *Everard.* The *French* and the Popiſh Intereſt. And there was an Opportunity in my Hands, wherein I might be ſerviceable to myſelf and others; and he told me there were ſeveral Perſons, among whom were ſome Parliament-Men, that did adhere to the *French* Intereſt, and gave an Account to the *French* Embaſſador of every Day's Proceedings: And as I was looked upon to be the Author of a Kind of Pamphlet, that was called, *An Anſwer to the King's Declaration, concerning the Duke of* Monmouth; therefore I ſhould be fit to ſerve them, eſpecially to make ſuch another Pamphlet to reflect upon the King, and alienate him from his People, and his People from him. Whereupon I told him I would do any thing that was for my true Intereſt, but I did conceive with myſelf, that that was none of it. He appointed a Time when we ſhould meet again; but I ſent him a Note, I could not meet poſſibly that Day, which was *Monday*, as I remember the 21*ſt* of *February:* However he was impatient, and came to me, and told me he would give me Heads and Inſtructions tending to that Pamphlet I was to write, to ſcandalize the King, and raiſe a Rebellion, and alienate the Hearts of the Kingdom, and ſet the People together by the Ears. Upon this he gave me ſome Heads by word of Mouth: As ſoon as I parted from him, I met with one Mr. *Savile* of *Lincoln*'s-*Inn*, and as ſoon as I met with him, I acquainted him with what was paſſed, and told him I wiſhed rather than ten Pound I had met him ſooner, half an Hour before. Why, what is the occaſion, ſays he? Why, ſaid I, there is a Perſon that hath had ſuch and ſuch Diſcourſe with me, and one of his main Errands, amongſt others, is for me to write a ſcandalous Libel reflecting upon his Majeſty and the Government. And upon this I ſaid, Mr. *Savile*, I ſhall not confer with him any further, unleſs I have ſomebody by to witneſs what he ſays; he ſpeaks moſt commonly *French*, and ſometimes *Engliſh*, and therefore it muſt be one who underſtands both the Tongues well. So we went into the City together that Afternoon to one Mr. *Crow*'s, who is a Silkman in *Queen-ſtreet*; ſaid we, Sir, you are a moderate impartial Man, and underſtand *French*, we deſire you will be preſent to over-hear ſome Propoſals that are made to me tending to ſet our Country together by the Ears, and he comes from a Popiſh Party. Mr. *Crow* ſaid, he would be willing to undertake any thing to ſerve the Proteſtant *Engliſh* Intereſt, but he would not undertake to ſpeak *French* ſo well as to be able to underſtand all nice Paſſages, and Words that might be propoſed. And then Mr. *Savile* and I went to Mr. *Smith*, a *Durham*-Gentleman, and made him the ſame Propoſal I had made to Mr. *Crow*, deſiring him that he would come and over-hear our Diſcourſe, and I would place him in a fit Place. Mr. *Smith* aſſented to the Propoſitions, and ſaid he would. Mr. *Smith* aſked me what Day and Time we were to meet; I told him, To-morrow at ſix or ſeven o'Clock at Night at my Chamber in *Gray*'s-*Inn:* But further, he ſaid, we muſt have other Witneſſes, for one Witneſs would not be ſufficient; ſo we went to the *Exchange* Coffee-houſe, and there we met with Sir *William Waller*, to whom we made the ſame Propoſal, that ſince we muſt have ſome that underſtood *French*, and keep the thing ſecret, till it were time to have it come out, he would pleaſe to undertake it. Sir *William Waller* promiſed to come, but failed the firſt Meeting, which was to be on the *Tueſday*; then we went to another *French* Merchant, who was propoſed by Mr. *Savile*, but he was not within: So then we muſt rely upon one Witneſs for that Meeting. Mr. *Fitz-Harris*, was to meet me about two o'clock at my Chamber in *Gray*'s-*Inn*, where Mr. *Smith* and Mr. *Savile* were to meet likewiſe, and they came firſt to the Tavern juſt at the Corner of *Fuller*'s-*Rents*, which hath a Proſpect into the Court: And from thence I ſaw Mr. *Fitz-Harris* in the Court pointing to another Gentleman that was with him, up to my Chamber, and he was walking ſuſpiciouſly up and down. Then I went out of the Tavern, and came up to my Chamber, and after a little while Captain *Fitz-Harris* came up to my Room; I placed him in another Room, where my Wife was, and ſhut the Door to, whilſt I ſent word to Mr. *Smith* to come into the outer Room and ſhut himſelf into my Cloſet. There was Mr. *Smith* in the Cloſet, and there was an Hole or two for the purpoſe made through both the Planks of the Boards and Hangings, but the Hangings hung over the Hole that it might not be diſcerned by Mr. *Fitz-Harris*; and he could raiſe it, and then ſee who was in the Room, and hear their Words; for I placed my Chair towards the Cloſet, which had an Angle outwards, and now and then I did ſtand againſt the Hole, and now and then ſat, to give Mr. *Smith* Advantage, and to give Mr. *Fitz-Harris* no Suſpicion. When we were ſo placed, Mr. *Fitz-Harris* aſked me what I had done as to the thing propoſed, this Libel that I was to draw up; I ſaid, I was buſy, and had not been able to finiſh it; but here are ſome Heads of it, ſaid I, and ſhewed him half a dozen Lines drawn up together; and when I had read them, Sir, ſaid I, is this your Mind? Yes, ſaid he, but I muſt add much more than this is to it. Then Mr. *Fitz-Harris* proceeded to give me further Inſtructions; and ſo repeated what Inſtructions he had given me before, that the King and all the Royal Family muſt be traduced to be popiſhly and arbitrarily inclined from the beginning, that King *Charles* I. eſpecially had an hand in the *Iriſh* Rebellion, and that likewiſe King *Charles* II. that now is, did countenance the ſame, as did appear by his promoting thoſe very Officers that were in the *Iriſh* Rebellion, *Fitz-Gerald*, *Fitz-Patrick*, and *Mont-Garrat*, which ſhould be named in the Libel. Beſides that, the Act made at the King's coming in, forbidding any to call the King Papiſt, was merely to ſtop People's Mouths, that they ſhould not call him a Papiſt, when he ſhould incline to further Popery, and did intend by his Actions ſo to do. And beſides his adhering ſo cloſely to the Duke of *York*'s Intereſt, was to be another Argument of it, his hindering the Duke of *York* from coming to his Trial, and to be proceeded againſt by the Parliament, and hindering the Officers that were put in by the Duke of *York* from being caſt out. Another Argument was, becauſe thoſe Privy Counſellors and Juſtices of the Peace, that did adhere to the Proteſtant Intereſt, were turned out of all places of Truſt; and beſides, he ſaid, it did appear to the People conſequently, that the King was conſcious to himſelf, that he was as guilty as his Brother, and was as much a Papiſt as his Brother, and it was in the People's power as well to depoſe a preſent Popiſh Poſſeſſor, as a Popiſh Succeſſor; and that the People muſt be ſtirred up againſt him, and encouraged to blow the Trumpet, and eſpecially that the City and Common Council muſt be encouraged to ſtand by the Parliament: And ſeeing the King was ſuch, that no hopes was to be had of the Parliament at *Oxon*, they were bound to provide for themſelves, and to advance ſome hundreds or thouſands of Pounds to the Parliament to ſettle the Proteſtant Religion without the King, if Parliamentary Ways would not ſucceed. Theſe were ſome of the Inſtructions.

Mr. Att. Gen. Did he ſay any thing that Day about a Reward you ſhould have?

Mr. *Everard.* He ſpake in the general about a Reward, but he ſpoke more fully to that the Day after; he did not then come ſo much to Particulars: Then ſome part of thoſe Inſtructions I writ in my Table-Book, which is produced here, and others of them in another Scroll of Paper. He then deſired to know of me when the Scheme of this thing would be ready; ſaid I, you may come to-morrow; I will, ſays he, come about ſix or ſeven a-clock in the Evening. In the mean time I writ a Letter to Sir *William Waller* in *French*, which I ſent by a Porter, and therein I ſaid, Sir, you have miſſed a great Opportunity of rendering a great Service to the King, by not coming to ſee me when you were expected; for the Perſon, the *French* Emiſſary whom I ſpoke of to you, hath propoſed very ſcandalous ſeditious things to be written, and therefore I deſire you not to fail, as you tender the King's Intereſt, to come to my Chamber at ſix a-clock at Night. Sir *William Waller* received my Letter, and came thither accordingly; I placed Sir *William Waller* in another Room, and I placed my own Chair at a narrow Table near the place where Sir *William Waller* was, and there through the Wainſcot and Hangings we made a ſlit, whereby Sir *William Waller* might ſee into the next Room where Mr. *Fitz-Harris* and I ſat: But before I placed him there, I ſhewed Sir *William Waller* two Copies of the Inſtructions for the Libel drawn up. Said I, Sir, here are two Copies which are both the ſame, and I deſire you to counter-mark them, that you may know them again, and thereby ſee what Alteration will be made; for here are no Blots now, and by that you will find the Alteration. Sir *William Waller*, while my Back was turned, counter-marked thoſe Copies. I went into the next Room, and I had not been long there, but Mr. *Fitz-Harris* came in; I placed the Table near the Alcove, where Sir *William Waller* was, within his hearing and ſeeing. Mr. *Fitz-Harris* aſked me what I had done in the buſineſs: Sir, ſaid I, here are two Copies of it, pray, will you ſee how you like it? So he took one, and I took the other.

Mr. Serj. *Jeff.* My Lord, I muſt interrupt this Gentleman, for I ſee they continue to give the Priſoner Papers.

Fitz-Harris. 'Tis only a Paper of the Names of my Witneſſes.

L. C. J. Go on, Sir.

Mr. *Everard.* My Lord, Captain *Fitz-Harris* did read one Copy of this Pamphlet, and did amend it; he did add ſome things, and ſtruck out other things: Then ſaid I, is this, Sir, according to your liking? Yes, ſays he, but I muſt add ſomething, for it is not yet full enough; but ſays he, this muſt be fair copied out; for 'tis not fit for the *French* Embaſſador's Confeſſor to read, who ſhould preſent it to the Embaſſador. Upon this I told him it ſhould be done againſt the next Day; but in the mean time I told him, Sir, theſe are very treaſonable Things, and this a very treaſonable Project. Oh, ſaid he, the more treaſonable the better, and that will do the effect better. What is that, Sir, ſaid I? That is, ſays he, to ſet theſe People together by the ears, and keep them claſhing, and whilſt they are ſo in claſhing, and miſtruſting one another, the *French* ſhall gain *Flanders*, and then, ſaid he, we ſhall make no Bones to gain *England* too. But, Sir, ſaid I, you ſpoke of ſome Recompence for me, what ſhall I have for venturing this? Why, ſays, he, after this Libel is delivered up, and that hath gotten you their Confidence that you are truſty, then I will gain the *French* Confeſſor, who is very ſhy, and may ſo well be, becauſe one of the Confeſſors of an Embaſſador hath been already trapanned upon ſuch an occaſion. Therefore he is very wary, but he muſt have an aſſurance under your hand, which he ſhall have by this Libel; and then in a few Days you ſhall have forty Guineas, and a monthly Penſion, which ſhall be ſome thouſands of Crowns; for my Maſter the *French* King is not a Niggard as to theſe Things. The *Spaniſh* Embaſſador is ſo very niggardly and penurious a Man, that he cannot keep a Table; but ſaid he, you ſhall be well rewarded by the *French* King; and be not diſcouraged by the Danger, for I am in as great Danger as you. After ſome ſuch Inſtructions, and Encouragements, that Mr. *Fitz-Harris* gave to go on in the Work, he departed; and I cannot well call any thing to mind of more Particulars; but upon Queſtions aſked me, perhaps I may. But then at that time, or the next time, Captain *Fitz-Harris* gave me half a Sheet of Paper; for I told him I may chance to forget part of your Inſtructions, therefore pray write what is your Mind; and in that Paper he writ down, that it was in the people's power to depoſe a Popiſh Poſſeſſor, as it was to oppoſe a Popiſh Succeſſor, and certain other treaſonable Heads: The half Sheet of Paper is to be produced in the Court, under his own Hand, which he hath confeſſed, beſides other treaſonable Inſtructions, that he gave me by word of Mouth. But he at that time departed, and came the next Day to have a Copy of the treaſonable Libel writ out fair, and promiſed me to meet at the *Boarded-Houſe*, where we uſually met in *Holborn* at Mr. *Faſhion*'s; and I did there come and deliver him a Copy of this treaſonable Libel, and he ſaid I ſhould hear in a few Days from him, and ſhould have a Recompence, and this ſhould be but as an Entrance-Buſineſs; for I ſhould be brought into the Cabal, where ſeveral Proteſtants and Parliament-Men came to give an account to the Embaſſador, how things were tranſacted: But to-morrow, ſaid he, I cannot go to receive the Libel back again, for I am to go to *Knight's-bridge.*

Fitz-Harris. Where there?

Mr. *Everard.* To my Lord *Howard*'s; for, ſaid he, you have ſeen his Son often with me. My Lord *Howard* is very civil to me, he was my Father's Lawyer.

Mr. Att. Gen. Will you aſk him any Queſtions, Mr. *Fitz-Harris?*

Fitz-Harris. Did you write this Libel?

Mr. *Everard.* Yes, by your Inſtructions I did.

Fitz-Harris. Do you believe I had any traiterous Intention in it?

Mr. *Everard.* Yes.

Mr. Serj. *Jeff.* You ſaid, the more Treaſon, the better, Mr. *Fitz-Harris.*

Fitz-Harris. Were you put upon this to trapan others?

Mr. Att. Gen. 'Tis no Trapanning to aſk them to come, and hear you give him thoſe Inſtructions, ſure.

Fitz-Harris. But I aſk him this Queſtion, Mr. Attorney; Was he put upon it to trapan others?

Mr. *Everard.* Can you mention any Perſon that I was to trapan?

Fitz-Harris. Were you put upon it to trapan the Proteſtant Lords, and the Houſe of Commons?

Mr. *Everard.* No, I was not.

Fitz-Harris. Is this the ſame Libel that was read in the Houſe of Commons, upon which I was impeached?

Mr. *Everard.* Yes, I believe, Mr. *Fitz-Harrris*, it was.

Mr. Att. Gen. Mr. *Everard*, becauſe he puts you upon it, and to ſatisfy all the World, I aſk you upon your Oath, Did any Perſon whatſoever put you upon this to trapan other Perſons, or to put it into their Pockets, as 'tis reported?

Mr. *Everard.* I was put upon it by none but Mr. *Fitz-Harris*, of whom I aſked, what will be the uſe of this? Said he, we ſhall diſperſe them, we know how.

Mr. Att. Gen. Did he tell you in what manner?

Mr. *Everard.* No, he did not tell how.

Mr. Att. Gen. To whom was it to be delivered?

Mr. *Everard.* I was to deliver it to *Fitz-Harris*, who was to deliver it to the *French* Confeſſor, and it was to be drawn in the Name of the *Nonconformiſts*, and put upon them.

Mr. Serj. *Jefferies.* What Religion is Mr. *Fitz-Harris* of?

Mr. *Everard.* He was always looked upon to be a Papiſt.

Fitz-Harris. When did you ſee me at Maſs?

Mr. Att. Gen. Hath he not owned himſelf ſo?

Mr. *Everard.* He hath owned himſelf at ſeveral times to be a Papiſt.

Mr. Sol. Gen. What did he ſay to you about your being a Proteſtant, and what cauſe you had to turn to the Popiſh Religion?

Mr. *Everard.* He ſaid, I was under great diſadvantages, and had much loſs by leaving them, I had better have adhered to their Intereſt ſtill. He had this Diſcourſe with me at ſeveral Meetings, and gave me ſeveral Viſits, ſome at my Chamber, ſome at *Gray's-Inn* Walks, ſometimes at the houſe with black poſts in   where we talked of ſeveral things.

Mrs. *Fitz-Harris.* I am ſorry he kept ſuch a Rogue as you are Company.

L. C. J. Officers, take her away, if ſhe can't hold her Tongue, and give better Language.

Fitz-Harris. She will ſpeak no more, my Lord.

L. C. J. Stand ſtill then, and be quiet.

Mr. Att. Gen. What was your Diſcourſe at the Ale-Houſe.

Mr. *Everard.* To give Inſtructions to ſet the People together by the ears; and one moſt effectual Means was by ſcandalizing and libelling the Government, and eſpecially the King.

Mr. *Jones.* Did any body elſe aſſiſt you in drawing the Libel?

Mr. *Everard.* There is at the latter end of the Libel a Paragraph that was taken out of another Book; there was a ſcandalous Libel that was brought by the Woman that carries Paper-Books about, and out of that, to make ſhort Work, and out of *The Character of a Popiſh Succeſſor*, in which he ſaid were many things material, he would have ſome of the Expreſſions of this Libel taken: So I copied ſome of the Queries out of that Paper, which was ſaid to be a Letter intercepted to *Roger L'Eſtrange*, and that Day that I was under Examination before Mr. Secretary *Jenkins*, that Libel lay before him upon his Table. He aſked me if I had ſeen that, I told him yes, for I had copied in that Paper that was the Libel, thoſe Queries; and then, ſaid he, here is a Warrant to be given out againſt *Curtis* for it.

Mr. Serj. *Jefferies.* After ſuch time that you had carried him the Copy that Sir *William* had marked, and he amended it, did you ſhew it Sir *William Waller* preſently?

Mr. *Everard.* Yes, immediately; and I aſked him, Sir, ſays I, is there any Alteration? Yes, ſaid he, I ſee Alterations, and ſhew'd them one. Do you know the Difference of Hands, ſaid I? Yes, ſaid he, I do, and ſuppoſe will give you an Account of it.

Mr. *Johnſon.* My Lord, I humbly beg Mr. *Everard* may be aſked, who thoſe Parliament-men were that were to concur with the *French* Embaſſador in this Deſign?

L. C. J. Did he name any Parliament-men?

Mr. *Everard.* No, he did not, he ſaid, I ſhould know them hereafter.

L. C. J. Then he did not name any?

Mr. *Everard.* No, he did not.

Mr. Att. Gen. Then ſwear Mr. *Smith.* (*Which was done.*) Pray, Sir, will you look about, and give an Account what you know.

Mr. *Smith.* Will you have an Account how it came firſt to my knowledge?

Mr. Att. Gen. Yes, the whole, from the bottom to the top, from the beginning to the end.

Mr. *Smith.* I remember, about the 22d or the 21ſt of *Feb.* either one or the other, Mr. *Everard* and one Mr. *Savile* came to my Chambers, and told me the ſame Deſign that Mr. *Everard* hath repeated before, and that there was an *Iriſh* Gent. an Officer of the *French* King's Army, that was to manage the thing; he was one that could ſpeak *French* very well, and they deſired me to be concerned in it, becauſe I underſtood *French.* Upon this I told him, I would willingly undertake ſuch a Buſineſs, if I thought there were any convenient place in the Room where I might hear, and ſee, undiſcovered. After he had told me, as he has before told your Lordſhips, that it was to make a Difference between the King and his People, and to miſrepreſent the King, as I ſhall inform you by and by. I went to his Chamber after we had ſpoke to Mr. *Crow*, who would not undertake to ſpeak *French* ſo well as to be capable of underſtancing all; but at laſt we met Sir *William Waller*, who undertook the Matter. I walked immediately after Dinner to the Chamber, and ſaw the Conveniences, and the next Night we expected Sir *W. Waller*; but he not coming that Night, I went into the Cloſet myſelf till *Fitz-Harris* came according to the Appointment. When *Fitz-Harris* came, there were two Chairs ſet, one Chair next the Cloſet where I ſtood; and another oppoſite againſt me; that oppoſite againſt me, was that where Mr. *Fitz-Harris* ſat, and Mr. *Everard* was next cloſe to me, and I looked out through the Hole, and I heard there were ſome little Diſcourſes about the Buſineſs in hand. At laſt Mr. *Everard* ſtands up, and goes to the Side-board, and brings a piece of Paper, about half a Sheet, as I think, with him; and he read it, which was a ſeditious kind of Paper, which I ſhall tell you of by and by: And he aſked him in *French*, whether this were agreeable or no; to which the Gent. anſwered, it was well, but ſomething muſt be added to it. Upon this, Mr. *Everard* took out his Note-book, and read ſome things therein, and then Mr. *Everard* deſired him to inſtance what Heads he would have more than were there. To which *Fitz-Harris* replied, that he would have him to repreſent the King as a Papiſt, which might be demonſtrated by ſeveral Reaſons: Firſt, his adhering to the Duke of *York*, and peremptorily reſolving to eſpouſe that Intereſt. The ſecond Reaſon was, the preferring ſuch as were the Duke's Creatures, both at Sea and Land, and keeping in Office thoſe that were preferred by the Duke, known Papiſts; and this was alſo another Reaſon to prove that Head of the Inſtructions, that the King after his Reſtoration procured an Act to be made, that it ſhould be Treaſon for any to call him Papiſt; and this was only that he might the better, and with more eaſe, introduce Popery into *England*. He charged likewiſe King *Charles* I. to be a Promoter of the *Iriſh* Rebellion, and that *Charles* II. furthered and approved it; that is another Inſtance. That the Parliament at *Oxford* was only a Sham to delude the People, and that ſuch a King was not to be truſted with ſuch a People, neither as to their Lives, Liberties, or Religion; but that the People muſt provide for themſelves in time, and blow the Trumpet boldly. Another Inſtance was, as it was the undoubted Right of the People to make laws againſt, and to oppoſe a Popiſh Succeſſor, ſo they might depoſe a Popiſh Poſſeſſor. To this Effect was the Subſtance of what was ſaid.

Mr. Att. Gen. Did he name a Reward that Mr. *Everard* was to have?

Mr. *Smith.* There was a Reward mentioned, but I don't remember any Particulars.

Mr. Att. Gen. Did he tell who ſet him on work?

Mr. *Smith.* He ſaid, if they did but ſet *England* together by the Ears, the *French* would get *Flanders*, and at length prevail here, and Mr. *Everard* ſhould get an Intereſt in the Common-Council, and make it his Buſineſs that they ſhould make a kind of an Addreſs to the Parliament, and promiſe to ſtand by them with their Lives and Fortunes in oppoſing Popery, and Arbitrary Government, and if Parliament-ways failed, to aſſiſt in another way; and if the King hindred the Duke of *York* to come to a legal Trial, that then they ſhould take other Courſes.

Mr. Att. Gen. What did he deſire from Mr. *Everard*, when he ſeemed to boggle at his Inſtructions?

Mr. *Smith.* Mr. *Everard* ſaid, he would do theſe things, yet he was in great Danger; why, ſays Mr. *Fitz-Harris*, ſo am I, and a great many more. What other Conference was between them, I know not, for I never ſaw them together after.

Mr. Serj. *Jefferies.* Look you, Sir, is this the ſame Perſon?

Mr. *Smith.* Yes, I did know him to be the ſame Perſon that Night he was taken.

L. C. J. You could ſee him where you were?

Mr. *Smith.* My Lord, I ſaw him clear enough, there were three Candles lighted, and I was as near to him as I am to your Lordſhip.

L. C. J. You were not in the Room?

Mr. *Smith.* I was in a little Cloſet cloſe by.

Mr. Att. Gen. You know nothing of the Paper of Inſtructions?

Mr. *Smith.* I remember he told me of ſuch an one, but I was not there the ſecond Night.

Sir *Fran. Withins.* Mr. *Everard* ſaid they were Treaſonable things, what then ſaid *Fitz-Harris*?

Mr. *Smith.* He ſaid, the more Treaſon was in them, the better.

Mr. Serj. *Jefferies.* And the Particulars were to ſet the People together by the Ears, and to bring in the *French* King.

Mr. *Smith.* It is all one in Terms.

Mr. Serj. *Jefferies.* How was it?

Mr. *Smith.* That the King and the People ſhould be ſet at variance, then the *French* King would fall upon *Flanders* and *Holland*, and afterwards would take *England* in his way, and make no bones of it.

Mr. Serj. *Jefferies.* Will you aſk him any Queſtions, Mr. *Fitz-Harris*?

Fitz-Harris. Do you believe that I did it with a treaſonable Intention?

Mr. *Smith.* Sir, I am not to judge of that, I am not of your Jury, nor to anſwer any ſuch thing.

Fitz-Harris. What do you think, Sir, pray?

Mr. *Smith.* You could have no good Deſign to bring about by any ſuch Matter (I think) as this Paper is.

Fitz-Harris. Is this the ſame Paper that was read in the Houſe of Commons?

Mr. *Smith.* Sir, I was not of the Houſe of Commons, I don't know what was read there.

Mr. *Johnſon.* Mr. *Everard* did ſeem to hint at a Deſign amongſt ſome Proteſtant Lords, and Parliament-Men, and others, Diſſenters from the Church of *England*; I deſire to know whether Mr. *Smith* heard thoſe Words?

L. C. J. That was not the firſt Night.

Mr. *Smith.* I did not hear it.

L. C. J. Look you, Mr. *Johnſon*, Mr. *Smith* was not preſent at the ſecond Meeting, then Sir *Will. Waller* was there, it was only the firſt Night Mr. *Smith* was there, and he ſpeaks to that. Therefore as to the Alteration of the Copy, and ſome other things, he tells you that was done the ſecond Night, and then was the Diſcourſe concerning the *French* Confeſſor, and thoſe other things which you mention.

Mr. Att. Gen. I believe the Jury miſapprehend Mr. *Everard* in that too.

L. C. J. It was only what *Fitz-Harris* told him.

Mr. Att. Gen. But I ſee the thing ſticks with the Jury; therefore, I would fain aſk Mr. *Everard* this Queſtion, Did you declare any ſuch thing, or was it Mr. *Fitz-Harris* that told you?

Mr. *Everard.* Mr. *Fitz-Harris* told me, that ſeveral Parliament-men were joined with the *French* Embaſſador to give him an account of things, but he told me beſides, that it muſt be drawn up as it were in the Name of the *Non-Conformiſts*, to father it upon them; yet when there was one word in it, Thou, as if it were in the *Quakers* Name; no, ſays he, it muſt not be ſo, but it muſt be under the Name of all the *Non-Conformiſts*, that it may be common to all the diſcontented Party.

L. C. J. So you muſt take the Senſe of this right, Gent. It is not, Mr. *Everard* tells you, ſome Parliament-Men and Lords were engaged in this buſineſs, but Mr. *Fitz-Harris*'s Deſign was to engage *Everard*, and he urged what he could to encourage him to it. So that the Arguments he uſed were, that ſome Lords and Parliament-Men were engaged in this, to encourage him to go on.

Mr. *Johnſon.* 'Tis true, my Lord, ſo that here does appear there was ſome other Intereſt than the *French* Intereſt in this matter, if what Mr. *Fitz-Harris* ſaid was true.

Mr. Att. Gen. *Fitz-Harris* ſaid ſo, to engage him.

L. C. J. Look you, Mr. *Johnſon*, we do all verily believe and hope, there was no ſuch thing as that any Lord, or any of the Commons of *England* were ſo engaged; it was his Intereſt, as Mr. *Fitz-Harris* took it, to mention it ſo, to engage this Gentleman.

Mr. *Everard.* I did not ſay Lords.

L. C. J. What did you ſay then?

Mr. *Everard.* Parliament-Men in general.

Mr. Att. Gen. Then ſwear Sir *William Waller*, (which was done.)

Sir *Fran. Withins.* Pray, Sir *William*, will you give an account of what you know of this matter.

Sir *Will. Waller.* My Lord, the laſt time I was here in this Court, being ſummoned to give in my Evidence, I did make ſome difficulty of it, upon the account that this Perſon was impeached by the Commons of *England* in Parliament; but Mr. Juſtice *Jones* having declared the Law required me in ſuch a Caſe to give in my Evidence, I am now ready to give it in, and ſhall do it as briefly as I can.

L. C. J. Well, Sir, pray go on.

Sir *Will. Waller.* My Lord, upon the 22d or 23d of *Feb.* laſt, Mr. *Everard* met me in the City, and told me, he had a buſineſs of very great concernment to diſcover to me; whereupon, my Lord, we went into a place where we might conveniently diſcourſe together; and he told me, in ſhort, that Mr. *Edw. Fitz-Harris*, that unfortunate Gentleman at the Bar, had been with him ſeveral times, and endeavoured to engage him in a Buſineſs, which would in effect turn all into Confuſion in *England*, and render the King very odious in the ſight of his Subjects. Many things he did there tell me, and earneſtly preſſed me to join in this Deſign, to endeavour the Diſcovery of it. I was indeed at the firſt ſhy of meddling with it, being no way in the Commiſſion of the Peace, and ſo not liable to engage in a Buſineſs of that Nature; but I was afraid to diſcourage Mr. *Smith*, who voluntarily and ingenuouſly offered himſelf for the Service of his King and Country: But I did not go that Afternoon, being willing to hear whether the Buſineſs went on, and was likely to come to any thing. The next Morning Mr. *Everard* writ to me this Letter *(plucking out a Paper.)*

Mr. Juſt. *Dolben.* Read it, Sir.

Sir *Will. Waller.* My Lord, in effect it was for to let me know, Mr. *Smith* hath been with him the Night before, and that according as they had laid their buſineſs, Mr. *Fitz-Harris* did indeed come, and had ſome Diſcourſe in the hearing of Mr. *Smith* ſeveral things beyond what they had acquainted me with, things of the higheſt nature imaginable; and therefore he earneſtly preſſed me, as I tendred the Welfare of my King and Country, that I would not fail to come that Afternoon to be an Ear-witneſs of the treaſonable Practices that were in hand. I looked upon myſelf then obliged to go, and did, according to the Directions he gave me, go about three of the Clock in the Afternoon to a Tavern at the lower end of *Fuller's-Rents* near *Gray's-Inn*, and there we were to diſcourſe further of the Buſineſs. I had not been there long, but I looked out of a back Window, and ſpied Mr. *Fitz-Harris* with another Gent. in a brown-coloured Suit, walking juſt before *Gray's-Inn* Door. I don't know the name of the Court, but there I ſaw them walking, but in their going, he frequently looked up at Mr. *Everard*'s Chamber, and pointed at it. When he was gone, I told him, it may be Mr. *Fitz-Harris* may come ſooner than the Hour appointed, therefore I think it will not be amiſs to go without further delay to your Chamber, and ſee what Conveniency there may be to lie ſecret, where I may be both an Eye and an Ear-witneſs. I went to his Chamber, and when I came into the Room, there was a little Cloſet, which I thought not ſo convenient for me, and I rather choſe to look about if I could find another place more convenient. In ſhort, in the next Room I found by my Cane there was a Door, and Hangings over it. I turned up the Hangings there, and in the Door there was a Crevice, which I opened a little with my Knife, and ripped a Hole in the Hangings which looked into the Room where the Gent. was to be. And before Mr. *Fitz-Harris* came, Mr. *Everard* had given me a large Account, much after the ſame manner that he hath given in his Teſtimony here, and he ſhewed me two Papers. I took the two Papers, and gave them a private Mark, that I might know them again; and withal we placed a Table and a Chair ready againſt Mr. *Fitz-Harris*'s coming in, and agreed that he ſhould be placed ſo, as that through the Hole I might have a full Sight of him: But leſt by an Accident he ſhould be removed from thence, I deſired Mr. *Everard* to aſk him three Queſtions. The 1ſt was, Whether he had not married a Daughter of one Captain *Finch*, whoſe Father was killed in his Majeſty's Service? The 2d was, Whether, as he read over the Paper, it was drawn up according to his Inſtructions? And the 3d was, Who was the Perſon that ſhould recompence Mr. *Everard* for running ſo great an Hazard? According to theſe Inſtructions, the Table being placed, and every thing in Order, about ſeven o'clock, or between ſix and ſeven, Mr. *Fitz-Harris* came in, and being ſat down, he began to aſk ſome Queſtions; amongſt others——

[*Then ſome Complaint was made by the King's Council, of Papers given to Mr.* Fitz-Harris.]

Fitz-Harris. Pray, My Lord, I beg that Paper may be given to my Wife again.

Mr. Att. Gen. I pray it may be given to the Court.

Mr. Serj. *Maynard.* I pray it may be read.

Mr. Sol. Gen. 'Tis not the Duty of a Sollicitor to bring Papers, he was only appointed by the Court to run of Errands; he is not to adviſe or furniſh with Matter of Defence.

Mr. Serj. *Jefferies.* My Lord, this is an Offence committed in the Face of the Court, therefore we pray the Perſon that hath done it may be committed.

Mr. Juſt. *Dolben.* It is nothing but the Reſolutions of the Houſe of Commons; give it him again.

L. C. J. If Mr. *Whitaker* lies there to trouble the Court, we ſhall find another Place for him.

Mr. Sol. Gen. My Lord, Mr. *Whitaker* hath done his Duty now, and what Service your Lordſhip appointed him; ſo I think he may be ſent away, for here is no more Buſineſs for him.

Sir *Will. Waller.* Mr. *Fitz-Harris* came in, I think it was between ſix or ſeven o'Clock, and coming there, he ſat himſelf down in the Chair prepared for him; and Mr. *Everard*, according to the Inſtructions I had given him, did aſk him ſeveral Queſtions; but Mr. *Fitz-Harris* did aſk him firſt, Whether he had finiſhed the Paper according to ſome Inſtructions he had given him? Mr. *Everard* produced two Papers, the one was the Copy of the other, as I counted. Mr. *Fitz-Harris* had one given into his Hand, and the other Mr. *Everard* had. Mr. *Everard*, after he had read a little in it, did aſk, whether this was drawn up according to the Inſtructions Mr. *Fitz-Harris* had given? He anſwered, It was exactly according to the Inſtructions he had given him. After he had read a little further, ſays Mr. *Everard* to him, This is a Buſineſs of a very dangerous Conſequence, what Reward ſhall I have for running ſo great a Hazard? He told him again thus: Sir, ſays he, I think I run an equal Hazard with you; for you have a Paper under my Hand, which will render me liable to Danger. And then he went on and read further; and if Mr. Attorney will pleaſe to let me ſee the Paper, there is one particular Clauſe in it that I took ſpecial Notice of.

Mr. Att. Gen. Would you have the Libel, or the Paper, Sir *William*?

Sir *Will. Waller.* The Libel, Sir; (which was given him.) There was one Paſſage in it which I remember, and it was this (ſpeaking of the King's preferring Perſons that were engaged in the late *Iriſh* Rebellion) the Paper was firſt (prefers) but ſays Mr. *Fitz-Harris*, in *French*, it muſt be (has promoted:) Several Paſſages of this Nature I heard him alter, and I ſaw him alter with his Pen. For after ſuch Time as Mr. *Fitz-Harris* was gone out of the Room, I went immediately into the Room where Mr. *Everard* was, and took Notice of the Paper, and the Ink upon the Paper was hardly dry.

Mr. Att. Gen. Look upon that, that is the original, and the other the Counter-part.

Sir *Will. Waller.* Here is the Mark (then pointing to the Bottom of the Paper.) Theſe two Papers I marked both together, and this is the Paper, Sir, was mended. I do remember it more particularly, for this Paper I had in my own Cuſtody, and ſigned it afterwards.

L. C. J. Well, go on.

Sir *Will. Waller.* He was aſking him, Pray, Sir, ſaid he, what Reward ſhall I have? Why, ſays Mr. *Fitz-Harris*, you ſhall be very well paid, you ſhall not need to fear, you ſhall have all Manner of Encouragement. This Buſineſs will bring a conſiderable Advantage to you, and you ſhall be otherwiſe preferred than what you were in the *French* King's Service. Says he, You cannot but know how you have been ſlighted and neglected, notwithſtanding the Service you have done; and the *French* Ambaſſador is the Perſon that is to recompence you for your Pains; and he ſpoke of forty, but truly I did not hear whether it were Guineas, or what it was, that he ſhould have for preſent Payment; and I heard him ſpeak ſomething of a Penſion, he named three Thouſand Crowns, but whether annually, or how, I cannot tell. Pray, Sir, ſaid he, what ſhall I do in this Caſe, for I do not know, I am but in a low Condition, and have Occaſion for Money? Why, ſays he, the *French* Embaſſador will ſupply you, and you ſhall certainly, as ſoon as the Paper is perfected, have your Reward; and, ſays he, there are a great many more that we have employed in Buſineſſes of this Nature, to create Miſunderſtanding between the King and his People, by which Means the *French* will eaſily over-run *Flanders* and the *Low-Countries*, and then *England* will become an eaſy Morſel. And this is the Subſtance of what I remember.

Fitz-Harris. Do you believe I had any ſuch Deſign as Treaſon in it?

Sir *Will. Waller.* I cannot ſay any Thing to that, I only ſpeak to Matter of Fact.

Mr. Att. Gen. Did he declare he had many more employed in the Service?

Sir *Will. Waller.* Yes, he did ſay ſo. And ſaid he, there are two Parliament-Men that frequent my Lord *Shafteſbury*'s, who my Lord does not ſuſpect, that do come and ſound him, and then go and acquaint the *French* Embaſſador with all they can diſcover.

Fitz-Harris. Is this the ſame Paper, by the Oath you have taken, for which I was impeached by the Commons in Parliament?

Sir *Will. Waller.* Yes, 'tis a Copy of the ſame Paper, and that Paper I did read in the Houſe.

Mr. Att. Gen. 'Tis the original.

Mr. *Johnſon.* My Lord, I deſire to aſk Sir *W. Waller* one Queſtion: Sir, you have heard the Indictment read, then pray tell us, whether this very Libel be expreſſed in the Indictment according to what was delivered in the Houſe of Commons?

Mr. Att. Gen. You ſhall hear that by and by yourſelves: For you ſhall hear the Paper read to you with the Indictment.

Sir *Will. Waller.* This is a Copy of that Paper.

Mr. *Johnſon.* (Foreman of the Jury.) Does Mr. *Fitz-Harris* ſtand impeached by the Houſe of Commons upon the ſame Treaſons mentioned in the Indictment?

Sir *Will. Waller.* Yes, Sir.

Mr. Att. Gen. Upon the ſame Treaſons?

Sir *Will. Waller.* Upon this treaſonable Paper he does. For as ſoon as ever I had communicated this Paper to the Houſe, and I had made my Report of the treaſonable Tranſactions of Mr. *Fitz-Harris*, the Houſe immediately proceeded to the Impeachment.

Mr. Sol. Gen. Does the Impeachment mention that Paper; or what particular Treaſon he was impeached upon?

Sir *Will. Waller.* I know nothing of that. But upon this Paper that Impeachment was grounded, that is all I can ſay.

Mr. Sol. Gen. That this Libel was ſpoken of in the Houſe of Commons, is true; but it does not appear upon the Impeachment, that he was impeached for that Libel.

L. C. J. Have you any more Witneſſes?

Mr. Att. Gen. Yes, we have to other Matters. But we deſire to let them alone till the Libel be read.

Mr. *Johnſon.* My Lord, we beg we may have the Compariſon of the Libel with the Indictment.

Fitz-Harris. I would aſk Sir *William Waller* one Queſtion more upon his Oath, whether he had any Deſign of trepanning me, or any Body elſe in this Thing?

Mr. Sol. Gen. Had you any Deſign to trepan the Priſoner, or any Body?

Sir *Will. Waller.* No, Mr. *Fitz-Harris*, indeed not I.

Fitz-Harris. I looked upon you always as a Perſon that was my Enemy.

Mr. Att. Gen. What, becauſe you were a Papiſt?

Fitz-Harris. No, it was upon another Account, I appeal to Mr. Juſt. *Dolben.*

Mr. Juſt. *Dolben.* What do you appeal to me for?

Mr. Serj. *Jefferies.* Have you known Mr. *Fitz-Harris* before, Sir *William*?

Sir *Will. Waller.* Yes, many Years.

Mr. Serj. *Jefferies.* What Religion was he reputed to be of?

Sir *Will. Waller.* A Roman Catholick.

Fitz-Harris. I am not bound to continue ſo always.

Mr. *Jones.* Shew your Converſion.

Mr. Att. Gen. Pray let the Libel be read.

[*Then the Paper was produced.*]

Mr. Att. Gen. Sir *W. Waller*, and Mr. *Everard*, is that the Paper?

Mr. *Everard.* This is the Paper.

Mr. Att. Gen. Is it interlined with his own Hand?

Mr. *Everard.* Yes, for there are the Words (*have promoted*) that I ſaid before, he altered.

L. C. J. Gentlemen, pray mark this now, you will hear the Clauſes contained in the Indictment read, and you ſhall hear this Paper read, and then yourſelves ſhall be Judges, whether it does contain them, yea, or no.

Mr. *Johnſon.* We deſire to ſee it at the Bar.

Mr. Att. Gen. Here is a Copy of theſe Clauſes, you may examine it by that.

Mr. Serj. *Maynard.* 'Tis not the whole Libel, but only ſome Clauſes of it he is indicted for.

L. C. J. Yes, Brother: But what they deſire is only to ſee whether ſo much as is contained in the Indictment, is alſo in the Libel.

Mr. Att. Gen. Pray ſwear Mr. *Aſtry*, then; (*which was done.*)

L. C. J. Look you, Gentlemen, this is one that is intruſted with the Affairs of the Crown; he is now ſworn, and I aſk him this Queſtion for your Satisfaction: Mr. *Aſtrey*, are the *Engliſh* Sentences that are in the Indictment alſo comprized in the Libel?

Mr. *Aſtrey.* My Lord, I did examine this Indictment with the Libel at Mr. Attorney General's Chamber as well as I could, and they are *in terminis* the ſame; the Words in the Indictment, and the Words in the Libel.

Mr. *Johnſon.* My Lord, if all be not in the Indictment that is in the Libel, then perhaps there may be ſome Connection with what is antecedent, ſomething to explain thoſe Clauſes the Indictment mentions, ſo that they may bear another Conſtruction. Therefore we would have all read.

Mr. Serj. *Maynard.* It muſt be all read to them.

L. C. J. Yes, Brother, it ſhall be wholly read them, though it need not be expreſſed *de verbo in verbum* in the Indictment; yet for their Satisfaction it ſhall be wholly read to them.

Mr. Sol. Gen. Theſe Gentlemen are very cautious, I perceive.

L. C. J. Look you, Gentlemen, if you will attend the Court, we will give you what Satisfaction we can; pray, Mr. Sollicitor, give them Leave to ſpeak to the Court: What you deſire, Gentlemen, is reaſonable enough, that you may hear the Libel, to ſee whether theſe are not Clauſes taken out of a Paper, which may have another Import in the Paper than they have when they are taken out; that is your Meaning.

Mr. *Johnſon.* Yes, my Lord.

L. C. J. To that Intent you ſhall hear the Libel read diſtinctly; you ſhall have the very Clauſes of the Indictment by you, that you may look upon them.

Mr. Att. Gen. The other Part of the Libel will do it.

L. C. J. Pray, Mr. Attorney, don't direct me, they ſhall have the Indictment whilſt Mr. *Aſtrey* reads the Libel, that they may ſee the Import of the Words. You do not apprehend it aright: Mr. *Johnſon* does not deſire to ſee, whether Mr. *Aſtrey* read right, but whether thoſe Clauſes in the Indictment are of the ſame Import in the Indictment, that they are of in the Libel; therefore they muſt have a Copy of the Indictment whilſt Mr. *Aſtrey* reads the Libel: And Mr. *Aſtrey*, pray mark thoſe Clauſes, when you come to them, for you will find they are diſperſed up and down the Libel.

Mr. *Aſtrey.* I do not ſwear to that very Paper; but I believe you will find they are rightly taken out of the Libel in the Indictment.

Mr. Att. Gen. This is the Copy of the Indictment-Clauſes.

Cl. of Cr. reads. *Friend, I thank thee for the* Character of the Popiſh Succeſſor———

[*Then one of the Jury, having the Copy in his Hand, and not finding it exact, deſired a true Copy.*]

Sir *Will. Waller.* Here is a true Copy of it, which I took myſelf, and read in the Houſe.

[*Then the Libel was read through,* which was as follows:]

The true Engliſhman *ſpeaking plain* Engliſh, *in a Letter from a Friend to a Friend.*

‘ I Thank you for the Character of a Popiſh Succeſſor which you ſent
‘ me, wherein our juſt Fears, and the Grounds of them, are juſtly ſet
‘ out. But I am in greater Fear of the preſent Poſſeſſor; why do we fright-
‘ en ourſelves about the Evil that is to come, not looking to that which
‘ is at Hand? We would cut off the budding Weeds, and let the poiſon-
‘ ous Root lie ſtill; we would ſtop the Channel of our Evils, and let the
‘ Fountain ſtill run: My meaning is this; can *Pylades* know and act all

‘ theſe bloody Conſpiracies, and not impart them to his dear *Oreſtes?* If *James* be conſcious and guilty, *Charles* is ſo too: Believe me, theſe two Brethren in Iniquity, they are in Confederacy with Pope and *French*, to introduce Popery and arbitrary Government, as all their Actions demonſtrate. The Parliament, *Magna Charta*, and Liberty of the Subjects, are as heavy Yokes which they would caſt off to be as to be as abſolute as their Brother of *France*; and if this can be proved to be their only Aim and Endeavour, why ſhould not every true *Briton* be a Quaker thus far? Let the *Engliſh* riſe, and move as one Man to Self-Defence, to open Action, and fling off their intolerable Riders. Blow the Trumpet, ſtand on your Guard, and withſtand them as Bears and Tygers. And ſince there can be no truſt given to this goodly Couple of Popiſh Brethren, nor no Relief expected from a Parliament; truſt to your Swords in Defence of your Lives, Laws, Religion, and Properties, like the ſtout Earl of old, who told a King, that if he could not be defended by *Magna Charta*, he would be relieved by *Longa Spada*.

‘ Yet to convince the World, that this *Scottiſh* Race is corrupt, Root and Branch, and Popiſh from the very beginning, be pleaſed to conſider theſe Reaſons following:

‘ The Grand-Father of theſe Men, *James* the *Scot*, was of no Religion at the bottom, but entred by a Pretence of a ſham Plot of the Papiſts againſt his Life, whilſt really he collogued with the Popiſh Party under-hand; his Mother, his Kindred and Companions were *French*, and Papiſts; when come into *England*, he wrote to the Pope with great Submiſſion, yet afterwards thinking it for his Purpoſe to cajole the Parliament, and write againſt the Pope and Cardinals, he ſends a *Scot*'s Bird to blind the Eyes of the *Vatican* Keeper with Money, and to ſteal his Letters from off the *Roman* File, and then he crows as boldly as an unſuſpected Harlot for the Proteſtant Religion and Intereſt.

‘ That Man's Son, *Charles* the Firſt, held a ſecret Correſpondency with the Pope, calling him his dear and holy Father, as is to be ſeen in his Letters recorded in *Ruſhworth*'s Collections: Were not his Wife and Courtiers Papiſts? Did he not countenance and promote the Rebellion in *Ireland?* As the *Iriſh* Grandees and his very Commiſſions teſtify and declare, was there not a Popiſh Plot, and an univerſal Conſpiracy of the Papiſts diſcovered to him and his Confeſſor *Laud*, and did they not piouſly ſtifle it, leſt they ſhould have diſcovered the Nakedneſs of their Mother Church? Whilſt that goodly Proteſtant Prince pretended to relieve the poor beſieged Proteſtants at *Rochel* by his confident *Buckingham*, did he not hold Correſpondency with the *French* Cardinal how to betray them for a Sum of Money? (which his Obſtinacy with his Parliament made him ſtand in need of.) But they who ſo ill approved themſelves to be Heads of the Proteſtant Church, *Charles* and *Laud*, did they not loſe their own Heads by a manifeſt Judgment of God? And was not the falſe Heart of their Emiſſary *Buckingham*, found out by an Aſſaſſin's Knife?

‘ But to come nearer to our Purpoſe, theſe two goodly Imps of our Days are ſtark Naught, arrived at the Height of Wickedneſs, and of profeſſed Arbitrarineſs and Popery.

‘ As for *James* he was a Papiſt whilſt he had a Regiment in the *French*, and afterwards in the *Spaniſh* Service beyond Seas. And as for *Charles*, he was reported, e're he came into *England*, to have been reconciled to the Church of *Rome* in one of the *French* King's Country-Houſes; and ſince they came in, how have they wheedled and played faſt and looſe in their Profeſſion of Religion, as Occaſion and their Affairs required? Have they not all along maintained ſecret Correſpondency with *France* and *Rome?* As *Coleman*'s Letters may ſufficiently inſtruct ſuch who have not ſeen more ſecret Memoirs.

‘ But let us come to examine their Actions, which are a better Proof of their Hearts: Were not the Duke's Servants and Confidents all Papiſts? Witneſs his *Talbots*, *Patricks*, and other *Iriſh* Teagues. Were not the Duke and ſuch of his Creatures as were known Papiſts, promoted to all publick Offices of Truſt, both at Sea and Land? Witneſs *Bellaſis*, now a Traitor in the *Tower*. Did not *James*, by *Coleman*, *Throgmorton*, and others, hold open Correſpondency with the Pope and Cardinals? And could *Charles* be ignorant of all this? Nay, he liked all ſo well, that he hardly employed any about him but Papiſts, as *Clifford*, whom he made Treaſurer; or employed any abroad but Perſons of the ſame Stamp. Witneſs *Godolphin*, whom he ſent Ambaſſador into *Spain*, as he did others elſewhere; what more obvious than that, though the Duke's Treachery againſt the Kingdom and Proteſtant Religion be fully made out, and the People and Parliament ſeek to bring him to a legal Trial, yet *Charles* obſtructs Juſtice, and will not ſuffer it? How can this be, but that he is joined in Will and in Deed in all the Duke's Villainies, and that he is afraid to be diſcovered and found out to be a Papiſt, and a Betrayer of his People and the Proteſtant Religion? If he was heartily concerned for our Religion, would he not oppoſe a Popiſh Succeſſor, who would infallibly overthrow it? Can there be any Thing more evident, than that he continues the Duke's Adherents, and thoſe who were advanced by him in all Offices of Truſt? And hath he not turned out of his Council the moſt zealous Proteſtants, ſuch as *Shafteſbury*, *Eſſex*, and others, and introduced in their Rooms other mere Tools, or thoſe that are popiſhly and arbitrarily affected? Hath he not modelled all the Sheriffs and Juſtices throughout *England*, in Subſerviency to a popiſh Deſign? Was not Sir *William Waller*, and Dr. *Chamberlain*, and divers others turned out of the Commiſſion in and about *London*, merely for being zealous Proſecutors of Prieſts and Papiſts? Doth not *Charles* all he can to hinder the further Detection of the popiſh Plot? And doth he not to his utmoſt diſcountenance the Diſcoverers of it, and ſuffer them to want Bread? And doth he not in the mean Time plentifully encourage and reward *Fitzgerald* and all the ſham Plotters? Whereas *Dangerfield* had 8*l.* a Week whilſt a Forger of Plots againſt the Proteſtants, he is caſt off with Scorn, and in Danger of his Life, ſince he laid open the Popiſh Engineers. Is not *Charles* ſo much in Love with his Popiſh *Iriſh* Rebels, (therein treading in his Father's Steps) that he promotes *Mongarret*, *Carlingford*, *Fitz-Patrick*, and others who were the Heads of the Rebellion, to Honours and Preferment; though *Charles* took the Covenant and a Coronation Oath to preſerve the Proteſtant Religion, yet hath he not palpably broken them? He made large Promiſes and Proteſtations at *Breda* for the allowing a perpetual Liberty of Conſcience to Non-conforming Proteſtants, but he ſoon forgot them all: To what end was the Act, which was made ſoon after his Reſtoration, prohibiting any to call him Papiſt, or to ſay he was popiſhly inclined, and render ſuch as ſhould offend, guilty of a Premunire; but to ſtop the People's Mouths whenever he ſhould act any Thing in Favour of Popery, as he was then reſolved to do?

‘ Is it not manifeſt therefore that *Scotch* Oaths, *Breda* Promiſes, Proteſtant Profeſſion, Liberty of Conſcience, War with *France*, ſaving of *Flanders*, is all in Jeſt to delude Proteſtant Subjects? Is it not apparent that breaking of Leagues, *Dutch* War, *Smyrna* Fleet, *French* Meaſures to favour their Conqueſts, Loſs of Ships, War in *Chriſtendom*, Blood of Proteſtants, reprieving of Popiſh Traitors, is all in Earneſt, and done in favour of Popery? And are not his fair Speeches, his true Proteſtant Love to Parliaments, juſt Rights, and *Engliſh* Liberties, his pretended Ignorance of the Plot, and his hanging of Traitors to ſerve a Turn but in mere Jeſt? Are not his great Debaucheries, his whoring Courtiers, popiſh Councils, cheating Rogues, helliſh Plottings, his ſaving of Traitors, his *French* Penſioners, his Neſts of Whores, and Swarms of Baſtards, his Macks, his Cut-throats, his horrid Murderers, his Burning of *London* and the Provoſt's Houſe too, his ſham Plotting, his ſuborned Villians, his popiſh Officers by Sea and Land, his Strugglings for a popiſh Succeſſor, his Agreements with *France*, his frequent Diſſolutions of Parliaments, his buying of Voices, his falſe Returns, all of them Deſigns to ruin us in good earneſt, and in favour of arbitrary Government? And is it not in order to this bleſſed End that you ſee none countenanced by *Charles* and *James*, but Church Papiſts, betraying Biſhops, tantivy Abhorrers, barking Touzers, popiſh Scribblers to deceive the People, and fix the Popiſh Succeſſor's illegal Title? Are not Jeſuits Counſels, *French* Aſſiſtance to conquer *Ireland*, ſubdue *Scotland*, win *Flanders*, beat the *Dutch*, get their Shipping, be Maſters of the Seas? And are not facing a Rebellion, the letting the Plot go on, the endeavouring to retrieve the Popiſh Cauſe by getting a Popiſh Penſionary, abhorring Parliaments, who ſhall betray their Country, enſlave Poſterity, and deſtroy themſelves at laſt, Means only to ſave a popiſh traiterous Succeſſor, and a preſent popiſh Poſſeſſor? *James* and *Charles* are Brethren in Iniquity, corrupt both in Root and Branch, and who ſtudy to enſlave *England* to a *French* and *Romiſh* Yoke, is not all this plain? Have you not Eyes, Senſe, or Feeling? Where is the old *Engliſh* noble Spirit? Are you become *French* Aſſes, to ſuffer any Load to be laid upon you? And therefore if you can get no Remedy from this next Parliament, (as certainly you will not) and if *Charles* doth not repent and comply with it, then up all as one Man. O brave *Engliſhmen*, look to your own Defence e're it be too late; rouze up your Spirits, remember your Predeceſſors, remember how that the aſſerting of their Liberties, juſtified both by Succeſs and Law, the War of the Barons againſt wicked Counſellors who miſled the King. And will you now let that go which coſt them ſo dear? How many oppreſſing Kings have been depoſed in this Nation, as appears in Records referred unto in that worthy Patriot's Hiſtory of the Succeſſion; were not *Richard* II. and *Henry* VI. both laid aſide, not to mention others, and was there ever ſuch a King as this of ours? Was not King *John* depoſed for going about to embrace the *Mahometan* Religion, and for entring into a League with the King of *Morocco* to that Purpoſe? Though *Mahometiſm* and the King of *Morocco* were no ſuch Enemies to our Rights and Liberties, as Popery and the *French* are. Is it not Time then that all ſhould be ready? Let the City of *London* ſtand by the Parliament, for the maintaining of their Liberties and Religion in an extreme Way, if parliamentary Ways be not conſented unto by the King, let the Counties be ready to enter into an Aſſociation, as the County of *York* did in *Henry* the Sixth's Time.’

L. C. J. Gentlemen, now you have heard it read, and you may obſerve there is nothing in this Paper can extenuate or mitigate the Clauſes, but abundance to make them more horrid and exceedingly aggravated.

Mr. Att. Gen. Then call Mr. *Saville*, who was the Perſon Mr. *Everard* did meet with, and acquaint with this Buſineſs (but he did not appear.) Then call Sir *Philip Lloyd* and Mr. *Bridgman*. My Lord, the next Piece of Evidence we ſhall give, is this; Sir *William Waller* and Mr. *Everard* do both ſay, that he gave part of his Inſtructions under his own hand; we ſhall produce the Paper, and prove he acknowledged it to be his own Hand.

[*Then the Paper was produced.*]

Mr. Att. Gen. Who writ that, Sir?

Mr. *Everard.* Mr. *Fitz-Harris.*

Mr. Att. Gen. Are thoſe the Inſtructions he gave you to frame this Libel?

Mr. *Everard.* Theſe are part of the Inſtructions, my Lord; the other part I took in my Table-Book before Mr. *Smith*.

Mr. Att. Gen. We will prove it by other Witneſſes, Sir *Philip Lloyd*, and Mr. *Bridgman*.

Mr. Bridgman *ſworn.*

Mr. Att. Gen. Did the Priſoner acknowledge that to be all his own Hand-writing?

Mr. *Bridgman.* Yes, my Lord, Mr. *Fitz-Harris* did acknowledge it to be all writ with his own Hand.

Sir Philip Lloyd *ſworn.*

Sir *Fran. Withins.* Look upon that Paper, Sir, (which he did.) Did Mr. *Fitz-Harris* acknowledge it was his Hand-writing?

Sir *Philip Lloyd.* Yes he did; and that I might bear teſtimony of it the beter, I writ with my own Hand on the back of it, that he did ſo.

Mr. Att. Gen. Read it.

Cl. of Cr. reads, *After this ſham Meeting of the Parliament at* Oxon, *which nobody expects any Good of, it will be neceſſary*, &c.

Mr. Sol. Gen. Theſe Words are likewiſe in the Indictment.

L. C. J. When was that given to you, Mr. *Everard?* for—Mr. *Fitz-Harris* it ſeems owned it before the Lords in the Council, but Mr. *Everard* ſwears of the Delivery of it; what time was it?

Mr. *Everard.* It was either *Monday* or *Tueſday*.

L. C. J. In *February*, was it not?

Mr. *Everard.* Yes, and I aſked Captain *Fitz-Harris*, according to Sir *Will. Waller*'s Queries, whether he had given Inſtructions according to what he would have contained in the thing? Yes, ſaid he; but have you not enough under my own Hand to do it by?

Mr. Serj. *Maynard.* My Lord, we have done our Evidence, we will leave it now to hear what the Priſoner will ſay for his Defence.

L. C. J. Mr. *Fitz-Harris,* if you have any thing to ſay for your Defence, this is your time to do it.

Fitz-Harris. Yes, my Lord, Dr. *Oates,* I deſire, may be called.

Mr. Att. Gen. If you have any Witneſſes, name them.

Mrs. *Fitz-Harris.* Yes, yes, Dr. *Oates?* and aſk him what he heard Mr. *Everard* ſay.

L. C. J. What ſay you to Dr. *Oates?* here he is.

Fitz-Harris. Pray, Doctor, what have you heard Mr. *Everard* ſay about this Libel ſince I was taken?

Dr. *Oates.* My Lord, after this Buſineſs was talked of abroad, having heard that Sir *William Waller* and *Everard* had made the Diſcovery, I did diſcourſe Mr. *Everard* about the Buſineſs, and about the Libel. He told me he wrote the Libel, and when I would not believe it, the Man was a little angry that I would not believe it: And then I told him he was a Man very unfortunate in ſpeaking; for he ſpoke but badly. He ſaid, though he was unfortunate in his Tongue, yet he was as fortunate in his Pen, and that he took a great deal out of the intercepted Letter to *Roger L'Eſtrange:* and I thenaſked him what the Deſign of it was, he told me, it was to be printed, and to be ſent about by the Penny-Poſt to the proteſting Lords, and the leading Men in the Houſe of Commons, and they were to be taken up as ſoon as they had it, and to be ſearched, and to have it found about them. I then aſked him if there were any other Perſons concerned in it, beſides thoſe publickly talked of; he told me the Court had a hand in it, and the King had given *Fitz-Harris* Money already, and would give him more if it had ſucceſs. This he told me at *Oxford,* and before he went thither, and after.

Fitz-Harris. Mr. Sheriff *Corniſh,* I do beg you ſay what his Majeſty told you, when you came to him from me, when I was in *Newgate.*

Mr. Sheriff. I do not know what you call me for, Mr. *Fitz-Harris.*

Fitz-Harris. I deſire you to acquaint the Court what the King ſaid to you when you came to him from *Newgate* from me.

Mr. Sheriff. My Lord, I ſhall deſire your Lordſhip's Opinion in this Matter, whether it be ſeemly or decent for a Subject to declare what Diſcourſe his Prince is pleaſed to have with him?

L. C. J. Look you, Sir, if you give any Evidence, give it. We are not to direct any Witneſs whether they ſhall give their Evidence, or not.

Mr. Att. Gen. Mr. Sheriff, you ought to do it openly, if you give any; therefore pray let us hear you.

Mr. Sheriff. My Lord, I cannot remember what was ſaid relating to this particular Matter. There was a great deal his Majeſty was pleaſed to diſcourſe with me concerning things of ſeveral kinds and natures; my Memory may fail me; but if Mr. *Fitz-Harris* pleaſe to aſk as to any particular Matter.

Fitz-Harris. What the King ſaid when you came from *Newgate* to him, to acquaint him that I would make a Diſcovery: Did he ſay I was employ'd by him, and received any Money, and what for?

Mr. Sheriff. My Lord, I do remember ſomething of that kind. When I was giving his Majeſty an account that I found the Priſoner at the Bar in a Diſpoſition to make a Diſcovery, his Majeſty was pleaſed to tell me, he had often had him before him and his Secretaries upon Examination, and could make nothing at all of what he did ſay or diſcover to them; and his Majeſty was pleaſed likewiſe to ſay, that he had for near three months before acquainted him, that he was in Purſuit of a Plot, a Matter that related much to his Majeſty's Perſon and Government: And the King did ſay, in as much as he made great Proteſtations of his Zeal for his Service, he did countenance and give him ſome Money. I know nothing more.

Mr. Att. Gen. Did the King ever declare that he ſaw *Fitz-Harris* in his Life, or that he ever was in his Preſence?

Mr. Sheriff. Yes.

Mr. Att. Gen. Ay, but before his appearing at the Council-Table, did the King ever ſay he ſaw him, or before he was arreſted for this Fact?

Mr. Sheriff. Yes, his Majeſty was pleaſed to ſay about three Months before, he came to him, and pretended he would diſcover a great Plot to him.

L. C. J. Have you any other Queſtions to aſk Mr Sheriff?

Fitz-Harris. No. Where is Colonel *Manſel?*

Dr. *Oates.* My Lord, I deſire that if the Priſoner have any more Queſtions to aſk me, he may do it; becauſe the Croud is great, and I would go out.

Fitz-Harris. Sir, I have many more Queſtions to aſk you, I deſire you would pleaſe to ſtay.

L. C. J. You muſt ſtay if he have any more Queſtions to aſk you. Here is Col. *Manſel,* what ſay you to him?

Fitz-Harris. Colonel, what did you hear Sir *William Waller* ſay, after this Diſcovery was made?

Col. *Manſel.* That which I heard Sir *William Waller* ſay, was this: I had occaſion to ſpeak with Sir *James Hayes,* and enquiring for him, I found he was at the *Dog-Tavern;* ſo I went up, and found in the Company Sir *William Waller,* and another Gentleman, one Mr. *Hunt,* and ſome more. After the reſt of the Company were gone, and only Sir *James Hayes,* Mr. *Hunt,* myſelf, and Sir *William Waller* left, Sir *William* was giving an Account of this Buſineſs, and ſaid the King, when I had acquainted him with it, told me I had done him the greateſt piece of Service that ever I had done him in my Life, and gave me a great many Thanks; but I was no ſooner gone from thence, but two worthy Gentlemen gave me an account, that the King ſaid, I had broken all his Meaſures, and he would have me taken off one way or another.

Fitz-Harris. Did he ſay any thing, that it was a Deſign to put the Libel upon the Proteſtant Lords and the Houſe of Commons?

Col. *Manſel.* There was that ſaid.

L. C. J. What was ſaid? Don't come with your imperfect Diſcourſes here; but if you give Evidence, tell what was ſaid.

Col. *Manſel.* Sir *William Waller* ſaid, that the Deſign was againſt the Proteſtant Lords, and the Proteſtant Party.

Mr. Serj. *Maynard.* I do not doubt that it was againſt the Proteſtant Party.

Mr. Att. Gen. Recollect yourſelf: Was it againſt the Proteſtant Lords, or the Proteſtant Party.

Col. *Manſel.* He ſaid, the Proteſtant Party.

Mr. Att. Gen. So ſay we.

Fitz-Harris. Did he not ſay it was another ſham Plot, Sir, againſt the Fanaticks, and the Houſe of Commons? Where is Mr. *Hunt?*

[*Mr.* Hunt *appeared.*]

Mr. *Hunt.* What would you have with me, Mr. *Fitz-Harris?* I never had any Converſation with you in my Life.

Fitz-Harris. No, Sir; but what have you heard Sir *William Waller* ſay concerning my Buſineſs?

Mr. *Hunt.* My Lord, I would rather I had loſt my Hearing for that Time, than have heard it to repeat it. Sir *William Waller* did tell me, at the *Dog-Tavern,* where was Sir *James Hayes,* and Colonel *Manſel* by, after he had read over the Libel to us, there was a great deal of Company more; but he only gave us the Curioſity to ſee what the Libel was: And when he had read it, he did till us, that the King gave him particular Thanks for that good ſervice he had done him in detecting *Fitz-Harris;* but he ſaid he was told by two Gentlemen that had heard the King ſpeak it, who were of undoubted Credit, that the King was in an extreme Paſſion, beſtowed many hard Names on him, and ſaid, he would give any thing in the World to take him out of the World; that he was an inſufferable Vexation to him, and that he had broken all his Meaſures. And he ſaid the ſame things again, in the Preſence of Sir *Philip Harcourt,* and my Lord *Radnor*'s Son Mr. *Roberts,* at Capt *Hall*'s Chamber, in *Pembroke*-College in *Oxon.*

Mr. Att. Gen. What did he ſay about the Priſoner?

Mr. *Hunt.* This was about the Libel of *Fitz-Harris,* that the King gave him particular Thanks about that Buſineſs: And afterwards the King did expreſs great Paſſion, in ſome ſhort Time after he was gone: And he did ſay he was informed by two Witneſſes, that heard the King ſay it, he knew not what to do with him, he broke all his Meaſures.

Fitz-Harris. Did he not ſay, this was a Deſign againſt the Proteſtants?

Mr. *Hunt.* He did ſay it was a Deſign to contrive theſe Papers into the Hands of People, to make them Evidences of Rebellion; and that was his Apprehenſion of the Thing. And he ſaid further (for I am a Witneſs here, and muſt ſpeak all my Knowledge) that he had another Plot which he had traced near to a full Diſcovery, a more horrid Plot than this or *Dangerfield*'s; for he ſaid, this was the Counterpart of *Dangerfield*'s Plot. I hope he will not deny it, if he be aſked, here he is, and upon his Oath; I am not, and I deſire not to take Credit unſworn, but am willing to give my Teſtimony on Oath.

Fitz-Harris. Where is Dr. *Cary?*

Mr. Sh. *Corniſh* Dr. *Cary* is not well, my Lord, and can't come.

Fitz-Harris. Then Mr. Sheriff *Bethell.*

Dr. *Oates.* My Lord, I pray I may be diſcharged.

L. C. J. Doctor, we have nothing to ſay to you, but the Priſoner hath more Queſtions to aſk you. 'Tis not we that detain you, but you ſtay upon the Priſoner's account.

Fitz-Harris. Mr. Sheriff *Bethell,* I deſire to know what you can ſay concerning Mr. *Everard.*

Mr. Sh. *Bethell.* My Lord, I know nothing of Mr. *Everard* as to his Buſineſs, ſave that he told me, he writ the Libel himſelf. And I confeſs, my Lord, further, that before ever he knew my Face, or before ever he heard me ſpeak a Word in his Days, he put in an Information of Treaſon againſt me, at the Inſtigation of one that is known to be my mortal Enemy: And it was ſo groundleſs, that though it was three Years ago given in, yet I never heard a Word of it till Friday laſt, I can bring Witneſſes of this, Perſons that ſent the Notice of it to me.

Fitz-Harris. Pray call Mrs. *Wall,* (*who came down from her Seat.*)

Fitz-Harris. Mrs. *Wall,* pray will you tell the Court, have not I conveyed ſome Libels and treaſonable Papers to the King by your Means, and received Money upon that Account?

Mrs. *Wall.* Not as I know of.

Fitz-Harris. Did not you receive ſome of them from me to give to the King?

Mrs. *Wall.* No indeed not I.

Fitz-Harris. Is the Footman here that was by, when you paid me the Money?

Mrs. *Wall.* Yes, and the Porter too, though you have not ſubpœna'd them.

Fitz-Harris. How long ago is that?

Mrs. *Wall.* Two Years ago.

Fitz-Harris. Was it not about *Chriſtmas* laſt was Twelve-month I gave you the Libel about the King and your Lady; and the King thanked me extremely, and I had 250*l.* given me? Come Mrs. *Wall,* don't think to trick me out of my Life in the Caſe, for I will not be tricked ſo. Pray tell the Court: Can you deny that I had the 250*l?* ſpeak, Mrs. *Wall,* had I 250*l.?*

Mrs. *Wall.* That was not the Queſtion you aſked me at firſt.

Fitz-Harris. But ſpeak, had I it?

Mrs. *Wall.* There was 250*l.* I think it was 200 or 150, or 250*l.*

Fitz-Harris. What Uſe was it for? and upon what account?

Mrs. *Wall.* You do know it was not for any Libel.

Fitz-Harris. If you have any mind, tell it.

Mrs. *Wall.* There it is: (*Delivering in a Paper to be read.*)

Cl. of Cr. The humble Petition of *Edward Fitz-Harris.*-----

Mrs. *Wall.* I really took him for as honeſt a Man as ever I knew in my Life; and had it been in my Power to have done him a Kindneſs, I ſhould not have failed to have done it.

Mr. *Att. Gen.* Was he your Countryman, Madam?

Mrs. *Wall.* Yes, he is, and my Relation too. I knew him to be the Son of a very ſuffering, loyal Family; and while his Mother was in Town, he came often to our Houſe; and when ſhe went away, he left viſiting the Houſe a great while. And you, Mr. *Fitz-Harris,* did once tell me, you could bring in People to the King's Intereſt, that were very conſiderable. So I ſpoke to the Secretary of State about you, that there was one that had been with me, and told me, that he could bring in thoſe to the King and Duke's Intereſt that were very conſiderable. The Secretary of State deſired of me to know who they were; and then he named to me one *Thomas Merrey,* and another Perſon, who I deſire to be excuſed from naming. The other Party he did name was thought conſiderable, both for Quality and Underſtanding; and the Secretary deſired me to get him in, if I could.

Mr. Att. Gen. Pray, Madam, who was it?

Mrs. *Wall.* I deſire Mr. *Fitz-Harris* may tell you.

Fitz-Harris. No, Mrs. *Wall,* pray do you tell it, ſince you have ſpoke of it.

Mrs. *Wall.* I ſay nothing but what I will take my Oath of.

Fitz-Harris. Then you will never ſwear that which is true. Pray, Mrs. *Wall,* ſpeak, who was it?

Mrs. *Wall.* I deſire I may not name him; but he may.

Mr. Att. Gen. He will not.

Mrs. *Wall.* Truly I do not think it convenient for me to name ſuch Perſons as thoſe are, upon ſuch accounts.

Fitz-Harris. Pray, Mrs. *Wall*, name the Perſon that I would have brought into the King's Service.

Mrs. *Wall.* If the Court commands me, I will; otherwiſe I will not.

Fitz-Harris. Did you ever, upon any ſuch account as this, receive any Money for me? Speak the Truth.

Mrs. *Wall.* God forbid your Blood ſhould lie at my Door; I aſſure you, I ſhould be ſorry for it. He told me, theſe Perſons were conſiderable for the King's Intereſt, and could do him extraordinary good Service. So, as I ſaid, I ſpoke to the Secretary of State; and he would know who they were. And when he was told who they were, as for one of them, *Thomas Merrey*, he was not thought worth the looking after, for he was thought an inconſiderable Raſcal; but as for the other Gentleman, he was thought a Man of Worth, and a Perſon, that, if he would, could really ſerve the King. Upon this, when you firſt came, I was never at reſt for you; and therefore, after a while, before you came again, I gave the Porter Order to tell you, I was not at home; and I deſire the Porter may be aſked the Queſtion. But when I next ſaw the Secretary, I deſired that he would give them a poſitive Anſwer, one way or the other; and the next time I ſaw you, this was your Buſineſs, and I told the Secretary of State of it. You gave me this Paper, and deſired me to ſolicit for your Quit-Rent in *Ireland*, for you were in great Miſery, and had been a great Sufferer. So I ſpoke to the Dutcheſs of *Portſmouth*, and ſhe ſpoke to the Secretary of State; that if this Man be ſo conſiderable a Sufferer, 'tis convenient to give him ſomething for his Encouragement: And if you will give him ſomething, ſaid I, give it him quickly. I was four, if not ſix Months, a-getting this Money.

Fitz-Harris. But will you ſay it was upon that account? When was that Money paid?

Mrs. *Wall.* I never thought I ſhould be brought in for a Witneſs; or that you would have abuſed me thus for my Kindneſs.

Fitz-Harris. When were thoſe Papers given you that you produced?

Mrs. *Wall.* I wiſh I may never ſee the Face of God, if I know any more than what I gave Evidence; there are the Papers, they will tell you the Time.

Fitz-Harris. Did I give them you?

Mrs. *Wall.* You or your Wife did; and I ſuppoſe your Wife's Condition was yours.

Fitz-Harris. Was not the Money received before thoſe Papers ever were given you?

Mrs. *Wall.* Nay, Mr. *Fitz-Harris*, I will tell you more; ſend to Mr. *Henry Guy*, and let him tell you when he paid it you.

Fitz-Harris. Call the Porter, and the Footman if he be here.

L. C. J. If you would aſk any more Queſtions of Mrs. *Wall*, do.

Fitz-Harris. Did not I come to you the *Wedneſday* before I was taken, and told you, I deſired to ſpeak with the King, and that I had a Libel to preſent to him?

Mrs. *Wall.* No, ſo far from that, that it was the *Thurſday* before you were taken, you came about nine o'Clock at Night to our Lodgings, and ſent up to my Chamber; and I ſent word that Mr. *Cowling* was there, for I did not care to ſee you: But you ſent word up, you had ſomething of Conſequence to tell me. So I came down, and you deſired me to bring you to the Speech of the King, which was a thing you did never deſire before: And you ſaid thus, if you did but ſee the King, you believed you could ſay ſomething to him that might do him Service.

Fitz-Harris. Did not I ſay, here is the Libel that I come to deliver to the King now?

Mrs. *Wall.* No, as I have a Soul to be ſaved.

Fitz-Harris. Mrs. *Wall*, I did, and this was what you ſaid at the ſame time: That ſince my Lord *Sunderland* was gone, you could have no ſecret Service. I did deſire to ſpeak with the King privately, thoſe were the Words; and you told me, you could not ſo eaſily do Buſineſs with the King, ſince my Lord *Sunderland*'s time.

L. C. J. We muſt not let you hold a Dialogue between yourſelves, you muſt ſpeak that the Court may hear.

Mr. Att. Gen. Was not he a Roman Catholick?

Mrs. *Wall.* Yes, we looked upon him ſo, and upon that account we ſaid it was dangerous for him to go near the King.

Mr. Att. Gen. Did not you know that ever he was admitted to the King?

Mrs. *Wall.* Never; but he hath been talking with me in a Room as the King paſſed by.

Mr. Att. Gen. Did the King ever take any Notice of him, ſpeak to him?

Mrs. *Wall.* The King never took Notice of him, nor ſpoke with him by my means, nor gave him Money, other than what I ſpeak of, nor the Dutcheſs of *Portſmouth*.

L. C. J. Look you, Mrs. *Wall*, I think you do ſay, that there was ſome Money paid to Mr. *Fitz Harris*; pray ſpeak plain, upon what account was it paid?

Mrs. *Wall.* My Lord, it was for the bringing in of my Lord *Howard* of *Eſcrick*, who is there; ſince you preſs me to it, I muſt tell; I think my Lord will not deny it

Ld. *Howard.* I will never deny the Truth.

Fitz-Harris. Where was my Lord *Howard* of *Eſcrick?*

Mrs. *Wall.* He was not ſo much for the King's Intereſt, or that which they call the King's Intereſt.

Fitz-Harris. How long is this ſince?

Mrs. *Wall.* Two years ago ſince he came firſt to me; but whether it be a Year and a half ſince my Lord met with the King, I cannot tell.

Fitz-Harris. When my Lord was admitted in to the King, I did wait on him to that purpoſe, to bring in my Lord *Howard*.

Mrs. *Wall.* I deſire that my Lord *Howard* may be aſked, whether he don't remember, when the King was coming, Mr. *Fitz-Harris* was put out of the Room firſt.

Fitz-Harris. You ſay, I never ſhewed any Libel to the King.

Mrs. *Wall.* I tell you what I ſaid ſince to this Gentleman that is here; I wiſh you had ſhewn the Libel unto me, that I might have been in a Capacity of ſaving your Life.

Fitz-Harris. You ſaid, that I had the 250*l.* for bringing in my Lord *Howard*.

Mrs. *Wall.* I ſay, it was upon Promiſe to bring in Perſons that would be uſeful and ſerviceable to the King.

L. C. J. She is your own Witneſs, and ſhe tells you, two Perſons you did undertake to bring in, and for that you had this Money.

Mrs. *Wall.* It was his Poverty and this together.

Mr. Serj. *Jeff.* Mrs. *Wall*, I conceive he never diſcovered this Libel unto you; but pray, did he ever diſcourſe with you about *Everard?* and what Character did he give him?

Mrs. *Wall.* Once he did, and he ſaid he was an honeſt Man; and aſked me if I would be acquainted with him? I told him No, for he had a knaviſh Reputation; He was an Informer, and I cared for no Informers.

Fitz-Harris. Mrs. *Wall*, to let the World ſee how you ſhuffle about me, When did the King ſee my Lord *Howard* firſt, when I brought him?

Mrs. *Wall.* I don't know, aſk my Lord *Howard.*

Fitz-Harris. Did not I ſpeak to the King in the outer Room? And did not you get me to make a ſtand there?

Mrs. *Wall.* Mr. *Fitz-Harris*, don't make me tell that Thing.

Fitz-Harris. Pray ſpeak the Truth, Mrs. *Wall.*

Mrs. *Wall.* I defy you and all Mankind, to ſay I do otherwiſe. You did deſire me to tell the Duke, that you would firſt bring my Lord to him, and then to the King; and I ſpoke to the Duke, and he ſaid, you were a Raſcal, and he would not meddle with you: This you know.

Fitz-Harris. Did not my Lady *Portſmouth* tell me, the Duke was angry, &c.

Mrs. *Wall.* Mr. *Fitz-Harris*, when you came to me upon ſuch an Errand, was it reaſonable that I ſhould bring you, upon every Trifle, to the Speech of the King, and I ſhould not bring you then? 'Tis without Senſe and Reaſon.

L. C. J. You muſt not aſk Queſtions, but anſwer. And Mr. *Fitz-Harris*, do you deſign to detect Mrs. *Wall* of Falſhood? She is your own Witneſs, you conſider not you can get nothing by that.

Fitz-Harris. My Lord, when you ſee the Papers produced, you will find it is upon another Account.

Mrs. *Wall* Is this your Hand, Mr. *Fitz-Harris? (Shewing him a Paper.)*

Fitz-Harris. But is not this upon the Account of a Penſion granted in *Ireland?* Pray let the Gentlemen of the Jury ſee, this is of another different Nature; I appeal to my Lord *Howard* of *Eſcrick*, whether he did not ſpeak to my Lady about it.

Ld. *Howard.* I did ſo.

Mrs. *Wall.* My Lord did ſecond my Lady, to get you ſome Charity.

Fitz-Harris. So that the Money received here was plainly upon another Account.

L. C. J. Look you, if you will have any Papers read, they ſhall be read. But the Gentlemen of the Jury muſt not ſee any Papers but what are read.

Then the Petition of Mrs. Fitz-Harris, *and the King's Letter to the Duke of* Ormonde, *was read, about a Penſion in* Ireland.

Fitz-Harris. My Lord, if you pleaſe, I have ſomething further to ſay to Mrs. *Wall.* But I deſire to aſk Mr. *Cowling* a Queſtion, and that is, Sir, What Mrs. *Wall* ſaid to you about my Buſineſs?

Mr. *Cowling.* My Lord, I think, the Day after this Man was examined in the Council, I came to Mrs. *Wall*, and ſhe told me, that the ſecond or third Night before he was taken, he came to her to bring him to the King; but ſhe ſent down Stairs, that ſhe would not let him come up. But aſked him, why he did not go to one of the Secretaries of State? No, ſaid he, I can't go thither, without being taken notice of; but I'll tell you my Buſineſs. No, ſaid ſhe, if you will write down your Buſineſs, and give it me in a Paper, I will carry it to the King; and if the King have a mind to ſpeak with you, you ſhall be ſent for. No, ſaid he, I will not do that. Then, ſaid ſhe, I muſt beg your Pardon, if I don't bring you to the King. And Mrs. *Wall* ſaid further to me, truly her Blood did chill when ſhe ſaid ſo, for ſhe was afraid he was come to do the King a Miſchief.

Mr. *Att. Gen.* This was three or four Nights before he was taken.

Fitz-Harris. Is Sir *Robert Thomas* here? *(He did not appear.)* Then I deſire my Lord *Howard* to ſtand up.

Ld. *Howard.* Have you any thing to ſay to me, Mr. *Fitz-Harris?*

Fitz-Harris. Yes, my Lord, if you pleaſe. My Lord, I deſire your Lordſhip will pleaſe to tell, what my Lady *Portſmouth* did expreſs to you concerning me, at your coming thither; and whether I did not introduce your Lordſhip; and how civil ſhe was to me upon that account; and how ſhe undertook to get the Quit-Rent for me.

Ld. *Howard.* Sir, I ſhall anſwer as particularly as I can all your Queſtions; but it will be neceſſary to introduce my Evidence with the Relation of the whole Tranſaction. You know, about *October* laſt, about the beginning of the Month; for it was, as I take it, ten Days, or a Fortnight, before the ſitting down of the Parliament; you did make Applications to me, in the Name of the King, whether with or without his Privity, I cannot ſay; but you did make ſeveral Invitations to me, of putting myſelf into the Poſſeſſion of an Honour I was altogether unworthy of, of waiting upon the King. I gave you my Reaſons why I thought myſelf unfit for that Honour, becauſe I was not in any Capacity of doing the King any Service: And I looked upon the King as a Perſon too ſacred, and whoſe Time was too precious to be trifled away upon one that had nothing to offer to him, and therefore I refuſed it. But notwithſtanding, this was reinforced by you: and when I ſtill perſiſted in the Denial of that which was an Honour I ought rather to have ſought, but only becauſe I thought myſelf uncapable of deſerving it; after ſeveral Applications, I did at laſt tell you, beſides the Impertinency of it, I did alſo apprehend it might be the Occaſion of ſome Indecency; for perhaps I might thereby put myſelf upon declaring myſelf in ſome of my Sentiments, very much differing from thoſe of his Majeſty. And for me to ſeek an Opportunity to expreſs my Contrariety to his Majeſty's Thoughts, would be both Rudeneſs and Imprudence; and therefore I did then ultimately anſwer you, I would by no means be prevailed with. Then you did lower it, and ſaid, it ſhould ſuffice, if I would wait upon the Dutcheſs of *Portſmouth.* Truly, I told you, as to that too, you did me a great Honour, and greater than I could expect for I had nothing (I was afraid) worthy her trouble; and therefore I deſired to know what it might mean. In ſhort, you did reſolve it into this, That you did find the King under great Apprehenſion, that there was ſomething deep in the Hearts of ſome, that ſtood at a Diſtance from his Majeſty, and oppoſite to his Intereſt; and that the Parliament ſtood at an irreconcilable Difference with the King. Truly, ſaid I, I am a Perſon not fit to ſpeak in the Name of a Parliament, for in a little time they will ſpeak for themſelves; but if were to I ſpeak, or ſhould preſume to ſpeak in the Name of the Parliament, or the whole Nation, I ſhould ſay, I believed the King would find his Parliament meeting him with as great Affection, Duty, and Loyalty, as any Parliament ever met any King of *England.* You ſaid, then you were confident, and you cited her Grace the Ducheſs of *Portſmouth* for it, that the King came to meet them with Inclinations to gratify them in any Thing they could deſire. Then ſaid I, to what End need I come there, for the Parliament will ſpeak its own Senſe ſpeedily? Pray do me that Kindneſs, as to go and ſatisfy the Ducheſs of *Portſmouth*, and to let her know ſhe may now have an Opportunity of declaring how willing ſhe is to be a good Inſtrument between the King and his People. Said you, I can aſſure you, that ſhe is altogether for the ſame Intereſt that you look towards; for you are very much miſtaken, if you think ſhe is a Friend to the Duke of *York.* My Lord, in ſhort, after much Intreaty, I did give myſelf that Honour, which I have no Cauſe to repent or be aſhamed of, to go to *Whitehall*, humbly to kiſs my Lady Ducheſs's Hand, and receive her Commands. But when I came there, I was ſurpriſed with a greater Honour of finding the King there, and I think it was an Opportunity, wherein my Time was not ill ſpent as to myſelf, but I am afraid this 250*l.* if it were given for the bringing me thither, his Majeſty doth not think he hath deſerved it at this Time.

Fitz-Harris. Your Lordſhip came there in *October* laſt.

Ld. *Howard.* Becauſe I will do you all the right I can, it was, as I take it, the Beginning of *October*, and about the 10th, becauſe the Parliament ſat down the 23d, and as I remember, it was a Fortnight before. This was the firſt Time that I owe you Thanks for the Honour of ſeeing the King. After that, a Matter of ten Days, I had a ſecond Opportunity, and by your Means alſo. This was the laſt Time I had the Honour to ſee the King, but in Public. After this, I muſt confeſs, when the Parliament was ended, I did then, willingly enough, invite myſelf to the Honour of waiting upon the Ducheſs, and give her Thanks, and tell her, I was ſenſible ſhe had endeavoured, as much as in her lay, to perſuade the King into a good Opinion of the Parliament, and to give them Time of Setting, and thereby to give them Opportunity of explaining their Intentions for his Service and Advantage. This was alſo the laſt Time I had the Honour of ſeeing her. At laſt, parting from her, I did make it my humble Requeſt to her, that ſhe would be pleaſed to repreſent your Condition to the King, ſince by your Means I had the Honour to be ſhewed the Way to her Grace's Lodgings.

Fitz-Harris. My Lord, did not I come to you with a Meſſage the Night before my Lord *Stafford* was condemned?

Lord *Howard.* You ſay right, and it was in my Thoughts, and yet I thought it too tender a Thing to ſpeak of; and therefore I thought it ſo, becauſe, I muſt confeſs, at that Time, (you muſt excuſe me) I did believe you did not come with that Authority you pretended to make uſe of. After the Time that unfortunate Lord had had his Trial, and the Houſe were preparing their Thoughts for the Sentence, I was indiſpoſed, and came not to the Houſe that Day, which provoked the Houſe ſo much, that they were near committing me to the *Tower*; but truly, I was ſo ill in Body, and had ſo little a Mind to have my Vote mixed with his Blood, that perhaps I ſhould have run the Hazard of going to the *Tower* about it, if that had been all. But the Night before you came to me, and told me as a great Secret, That you did bring it as the Deſire of the King, and as that which he would take as a great Inſtance of my Reſignation to his Will and Pleaſure, and that for which I might promiſe myſelf all the greateſt Kindneſſes poſſible for a Prince to ſhew to his Subjects, if I would go next Day and give my Vote for my Lord *Stafford.* Sir, ſaid I, I have all the Obligations of Nature and Blood to diſpoſe me, as much as can be, to favour my Lord *Stafford*, as far as can conſiſt with the Integrity and Sincerity of a Judge: But though I was wavering in my own Thoughts the Day before, now by the Grace of God I will go, though I be carried on Men's Backs to the Houſe; now I ſee there is ſo great an Account put upon it, for I ſee 'tis the Concerns, not only of my Lord *Stafford*, but the Proteſtant Cauſe; and then, ſaid I, if all the Relations I have were melted down into my Lord *Stafford*, if I had but Breath enough to pronounce his Doom, he ſhall die.

Mr. *Att. Gen.* My Lord ſays, he did not think you came from the King, when you came with that Meſſage.

Lord *Howard.* Sir, can I do any more Service? I ſhall be willing to do it if I can. I cannot deny, but I had by your Means, the Honour of waiting upon the King and the Ducheſs; but I had ſo little Reaſon to value my own Worth, that I cannot imagine how it ſhould turn to the King's Service.

Dr. *Oates.* My Lord, I deſire to have Liberty of going away, the Crowd is ſo great I cannot ſtand, and the Priſoner hath nothing to ſay to me.

Mr. *Att. Gen.* My Lord, that may be Part of the Popiſh Plot, to keep Dr. *Oates* here, to kill him in the Crowd.

Fitz-Horris. Have you not ſomething more to ſay, Doctor? Truly I forget, my Memory is ſo diſtracted.

Dr. *Oates.* I know not, if you have any Queſtions to aſk me, I will ſpeak Truth. *(But he had none, ſo the Doctor went away.)*

Mrs. *Fitz-Harris.* Call Mr. *Fanſhaw*; *(who did not appear.)*

Fitz-Harris. My Lady Ducheſs of *Portſmouth.*

Mrs. *Wall.* She is not come, becauſe the Court is very full; but if the Court will ſend for her, ſhe will come preſently.

Fitz-Harris. My Lord, I beg that my Lady Ducheſs of *Portſmouth* may be ſent for.

Mrs. *Wall.* She gave me a Commiſſion to ſay, if the Court would have her to come, ſhe would ſo do.

L. C. J. We cannot ſend for her, if ſhe pleaſe to come, ſo; we have no Occaſion to ſend for her.

Mrs. *Wall.* I preſume he can aſk her no Queſtions but what I can anſwer.

L. C. J. We will not prejudice the Priſoner in his Queſtions, nor ſend for her, unleſs ſhe will come.

Fitz-Harris. Will you ſend one of your Footmen, Mrs. *Wall?* I am a Priſoner, and have no Body to ſend. In the mean Time, where is the Porter?

Mrs. *Wall.* Here he is.

Fitz-Harris. How long is it ſince you paid the Money to me, from my Lady *Portſmouth?*

Porter. I cannot tell indeed, 'tis ſo long ſince.

Fitz-Harris. Let him have his Oath.

L. C. J. No, that he can't have.

Fitz-Harris. Was it not *Chriſtmas* laſt was Twelve-month?

Porter. I can't indeed tell what Time it was.

Fitz-Harris. You dare not ſpeak the Truth.

Mr. Juſt. *Dolben.* You diſparage your own Witneſſes.

Mr. Serj. *Jefferies.* He hath no Witneſſes can ſay any thing for him, and therefore he muſt find fault with what they ſay.

L. C. J. Have you any other Witneſſes, Mr. *Fitz-Harris?*

Fitz-Harris. Yes, my Lord, my Lord of *Arran.*

L. C. J. What ſay you to my Lord?

Fitz-Harris. Did not my Wife ſhew you this Libel the Sunday that I was taken?

E. of *Arran.* I do not remember I ever heard it, till I heard it read in the Houſe.

Fitz-Harris. Did you not read it, my Lord?

E. of *Arran.* No, not that I remember.

Fitz-Harris. Did not I tell you, I was carrying it to the King?

E. of *Arran.* Not that I know of.

Fitz-Harris. Was it not a Diſpute, whether this was Treaſon or not?

E. of *Arran.* You did ſhew me a Libel, but whether this, or no, I cannot ſay, perhaps it was this. I took him for an honeſt Man, my Lord; I have known him five Years, and knew his Family to be a good Family; I happened to be at Dinner with him the Day he was taken. After Dinner there were ſome Papers he pulled out, and I threw them away, I told you, you would do yourſelf a Miſchief, ſome Time or other, in meddling with ſuch Papers. There we drank a Bottle or two of Wine together, and then we parted. As ſoon as I came Home, I heard this Gentleman was ſeized on, and taken, which ſurprized me much. And this is all the Account I can give of the Matter.

Fitz Harris. Then your Lordſhip did not read the Paper?

E. of *Arran.* No indeed, not I.

Fitz-Harris. Did not I tell you, I had a Promiſe of a Quit-Rent for Secret-Service?

E. of *Arran.* I do not know particularly what he told me of the Quit-Rent; but I was willing to do him all the Good I could, about a Reverſion of a Penſion that he had in the Right of his Wife; that was Part of my Buſineſs that Day, thinking he very well deſerved it. I am very ſorry to ſee that his Father's Son, as the Phraſe is in *Ireland*, ſhould be accuſed of ſuch a Crime.

Mr. *Att. Gen.* My Lord, before you go, I deſire to aſk you one Queſtion: Did you obſerve ever that he was employed by the *French* King, or the *French* Embaſſador's Confeſſor?

E. of *Arran.* No, my Lord, never, as I heard of. He uſed to ſpeak as honeſtly as any Man; I thought him of the beſt and loyaleſt Principles of any of his Religion.

Mr. Serj. *Jefferies.* What Religion did you take him to be of?

E. of *Arran.* He always owned himſelf a Papiſt, and he and I have had ſome Diſputes about it.

Fitz-Harris. Mr. Sec. *Jenkins*, I deſire to know of your Honour, what the King ſaid of me?

Mr. Sec. *Jenkins.* I remember the King did conjure him, to declare who the Author of the Libel was.

Fitz-Harris. You are a Man of Honour, Sir; Did not the King own he had employed me?

Mr. Sec. *Jenkins.* I never remember the King did own he made Uſe of him, by Mrs. *Wall*'s Means, or otherwiſe.

Fitz-Harris. My Lord *Conway*, don't you remember it?

E. of *Conway.* No, not upon my Honour. But I have heard him ſay, he did formerly employ you in ſome trifling Things.

Fitz-Harris. Did not the King declare in Council, that I had gotten Money of him?

E. of *Conway.* That was for my Lord *Howard* of *Eſcrick*'s Buſineſs.

Mr. Serj. *Jefferies.* Now your Lordſhip is here, I would aſk you; Did you ever hear the King declare when he firſt ſpoke with the King?

E. of *Conway.* The King never ſpoke with him till after he was taken; he was taken the 27th of *February*, and the King never ſpoke with him till the 28th, the Day after.

Fitz-Harris. Did not you tell me, if the King did put himſelf upon the Parliament, they would uſe him as his Father was uſed?

Mrs. *Wall.* I never told you any ſuch Thing. You promiſed me to bring in my Lord *Howard* of *Eſcrick*; but they found themſelves mightily miſtaken in what was promiſed he would do when he came in.

L. C. J. Why, Mr. *Fitz-Harris*, you caſt any Thing upon any Body, to make a Noiſe.

Fitz-Harris. Where is Mr *Peacock?*

Mrs. *Fitz-Harris.* I would know of her, what Mr. *Bulſtrode* ſaid.

L. C. J. That every Body may ſee you are fairly dealt with, you ſhall have all the Liberty that can be given. You muſt not aſk what another ſaid, but call them themſelves to ſay what they know. Here is Mr. *Bulſtrode* himſelf.

Fitz-Harris. Mr. *Bulſtrode*, then, what Meſſage did you bring from the King to my Wife?

Mr. *Bulſtrode.* No Meſſage at all; but I'll tell you what I know. Mrs. *Fitz-Harris*, ſoon after her Huſband came to be cloſe confined, delivered a Petition to the King in the Park; and the King was pleaſed to give it to me, as he frequently does. Mrs. *Fitz-Harris* came to me, to tell her what the King ſaid to it. Said I, the King hath given me no Commands at all in it, but this, Carry it to the Secretary of State, for I cannot ſay any Thing to it. For the King generally tells me what he will have done with ſuch a Petition. But ſhe was ſo very importunate, I aſked the King again; Sir, ſaid I, Mrs. *Fitz-Harris* is very importunate, what is your Majeſty's Pleaſure in it? Said the King, If ſhe have a Mind to petition the Council, ſhe may, I will neither meddle nor make with it. Afterwards I met her ſeveral Times, and ſhe ſaid, her Huſband was very ſeverely and hardly uſed, and ſhe was denied the Liberty of coming to him. Said I, I hear he is guilty of a very foul Thing, and there is no Way to help him, but by diſcovering the Author of that villainous Libel. For ſhe aſked me, what I thought of her Huſband; and ſhe told me, ſhe intended to try what ſhe could do for him. I ſaid, there was no Way to do any Good, but to make a full Diſcovery of the Author. Then ſaid ſhe, if the King would but let me ſpeak with him, I am ſure I could do him Service, and prevail with him to diſcover the Author. So I told the King of it; and the King ſaid, If ſhe will come and be examined, with all my Heart. And as ſoon as ever I heard ſhe was come to Town, I told her what the King ſaid: And ſhe told me, ſhe would willingly come; and if the King would give her Leave to ſpeak with her Huſband, ſhe did not doubt to prevail with him. That Night, about Midnight, after I was in Bed, and had been in Bed two Hours, ſhe came to my Door and knocked me up. So I roſe, and put on my Night-gown, and went down, and I heard a Voice which I thought was hers. So ſhe came out of the Coach to me, and told me, ſaid ſhe, I am come to you to beg of you, that you would be ſecret, and not to let the Court know that I was to come to have any Conference with you; for if you do, I am undone and ruined; for there are ſome Perſons, my Friends, that will not look upon me if they hear any ſuch Thing. The next Morning I went to her, and told her, the King had directed ſhe ſhould be examined in the Afternoon, and ſhe ſhould come down to be examined: Which ſhe did; and as ſoon as the Council was up, I told his Majeſty ſhe was below. So he ordered ſome to examine her; but when I told her of it, ſaid ſhe, if the King will not ſpeak alone with me, I will not ſpeak a Word, nor be examined. This is the Truth of it, I aſſure you, my Lord, upon my Salvation.

Fitz-Harris. Where is Mr. *Peacock?*

Mrs. *Fitz-Harris.* What did Mr. *Bulſtrode* ſay to me?

L. C. J. Look you, Mrs. *Fitz-Harris*, and you Gentlewoman, you muſt not be heard to talk of Diſcourſes among yourſelves, and to examine what Diſcourſe paſſed between Perſon and Perſon, up and down; that is not to be permitted in a Court; the Witneſs is here, aſk him himſelf. What hath been ſaid to her, will be no Evidence.

Mrs. *Fitz-Harris.* What Offer did you make me?

Mr. *Bulſtrode.* None; I told you this would be the Way to ruin your Huſband.

Fitz-Harris. My Lord, I beg of you, may not I aſk what he did ſay?

L. C. J. No, 'tis no Evidence.

Fitz-Harris. Then call Mr. *Henry Killigrew.* *(But he not appearing, the Priſoner would have aſked what he had been heard to ſay, but it was not permitted.)*

Mrs. *Wall.* Here is the Footman *Richard Perrot.*

Fitz-Harris. How long ago is it ſince you brought the Money to me from my Lady *Portſmouth?*

Perrot. I never brought any.

Fitz-Harris. Was it not he brought the Money?

Mrs. *Wall.* Aſk him.

Fitz-Harris. Was my Lord *Howard* ever at your Houſe before *October* laſt?

Perrot. I do not know.

L. C. J. What Uſe do you make of that?

Fitz-Harris. Pray, my Lord, when did you go to my Lady Ducheſs's? Was it before *October* laſt?

Lord *Howard.* I think not, I take it as near as I can, it was juſt before the Seſſion of Parliament.

Fitz-Harris. It was ten Days before the Seſſion.

Then my Lady Ducheſs of Portſmouth *appeared, and a Chair was ſet for her.*

Fitz-Harris. I am ſorry to ſee your Grace come here upon any ſuch Account; but I hope your Grace will excuſe me, 'tis for my Life. I deſire to know of your Grace, Whether I was not employed to bring ſeveral Papers to the King, and among the Reſt, the Impeachment againſt your Grace: And thereupon your Grace was pleaſed to tell me, That it was a great Piece of Service to bring thoſe Sort of Papers; and if I could find out Men ſerviceable for that Purpoſe, I ſhould do the King good Service. I told your Grace, I knew one Mr. *Everard*, who knew all the Intrigues, and all the Clubs in the City, and could tell all the Deſigns of my Lord of *Shafteſbury*, and all that Party. And your Grace did encourage me to go on, and I did, by your Grace's Direction, and by your Means I came to ſpeak with the King about it.

Lady Ducheſs. When muſt I ſpeak?

Sir *George Jefferies.* Now, Madam; and will your Grace now be pleaſed to ſtand up?

Lady Ducheſs. I have nothing at all to ſay to Mr. *Fitz-Harris*, nor was concerned in any Sort of Buſineſs with him. All I have to ſay, is, he deſired me to give a Petition to the King to get his Eſtate in *Ireland*; and I did three or four Times ſpeak to the King about it. But I have not any Thing elſe to ſay to him; I never ſpoke to him about any Thing elſe.

Fitz-Harris. Does not your Grace remember what Directions I received about my Lord *Howard?*

Lady Ducheſs. I know nothing of that, I ſent you not to my Lord *Howard.*

L. C. J. If you will aſk any Queſtions of my Lady, do; but do not make any long Diſcourſes.

Fitz-Harris. My Lord, my Lady may forget. Madam, does not your Grace remember you undertook, upon the Account of thoſe Papers I conveyed, that you would procure me my Quit-Rent?

Lady Ducheſs. I never had any Papers.

Fitz-Harris. Not that Paper of the Impeachment againſt your Grace?

Lady Ducheſs. No.

Fitz-Harris. Upon what Account then had I the Money I received?

Lady Ducheſs. For Charity.

Fitz-Harris. I am ſorry your Grace is ſo much under Mrs. *Wall*'s Influence.

Lady Ducheſs. I come not here to wrangle with you, Mr. *Fitz-Harris*, I am come here to ſay what I know, and will not ſay one Bit more.

Fitz-Harris. Have I had any Money of your Grace ſince you knew my Lord *Howard?*

Lady Ducheſs. You never had, but that for Charity.

Fitz-Harris. When did your Grace aſk it for me?

Lady Ducheſs. I do not remember the Time. Mr. *Fitz-Harris*, if I had any Thing in the World to do you Good, I would do it; but I have it not, and ſo cannot ſee that I am any Ways more uſeful here. *(Then her Grace went away.)*

L. C. J. Mr. *Fitz-Harris*, have you any more Witneſſes that you would have called?

Fitz-Harris. No, my Lord.

Mr. Serj. *Maynard.* Will you apply them you have called?

L. C. J. Well, have you any Thing further to ſay?

Fitz-Harris. Yes, my Lord, I have ſomething further to offer for myſelf: I will tell you what I know, ſince my Witneſſes will not do me Juſtice. Gentlemen of the Jury, you are my Judges in Point of Law as well as Fact, and my Blood will be required at your Hands, if you do not do me Right. My Lord, I cannot forbear complaining to the Court of the hard Uſage I received in Priſon, contrary to the Statute of the 31ſt of his Majeſty's Reign; greater Oppreſſion hath been done to me than to any before. My Lord *Stafford*, Sir *Thomas Gaſcoign*, and others, had all the Liberty they could deſire, to enable them to make their Defence againſt their Trial; which I have had denied me. But my Defence conſiſts of two Heads, and I ſhall rely upon the Conſciences of the Jury for the Iſſue. Though my Lady *Portſmouth*, and Mrs. *Wall*, and the Reſt, are pleaſed to ſay, that I was not employed, nor received Money for ſecret Services; yet 'tis very well known I did ſo. As to Mr. *Everard*, when I met with him, though now he hath made a *French* Story, yet if he would tell the Truth, he knows that it was otherwiſe. He told me he was well acquainted with my Lord of *Shafteſbury* and my Lord *Howard*, and in ſeveral Clubs of the City he knew all their Intrigues; and that Speech that went by the Name of my Lord *Shafteſbury*'s, my Lord gave it him before it was printed, and he had ſeveral other Things of that Kind. So then I told him, it was a Buſineſs of the greateſt Conſequence that could be, if he would continue thoſe Diſcoveries. And whereas he ſays, I would betray the People to the *French* Intereſt, it is very well known I was always an Enemy to the *French* Intereſt; but I humoured him in his Diſcourſe, and diſcourſed him to reduce the Paper that he accuſes me of under ſome Heads; and that Paper I no ſooner had, but I came to *Whitehall* with it: And though he ſaid, he was to have forty Guineas, and ſo ſaid Sir *William Waller* too, yet it was only forty Shillings that he deſired, for his Poverty, I would lend him. And as to what he talks of three thouſand Crowns Penſion, it is a very unlikely Buſineſs. When I came to *Whitehall*, I was adviſed to go to my Lord *Clarendon*, or Mr. *Hyde*. Accordingly I did ſhew it to a Gentleman who was to give it to my Lord *Clarendon*, but before he could get to him, I was taken. Now, my Lord, I hope what I did was with a Deſign to ſerve the King, in diſcovering what was deſigned againſt him, according as I was employed, though both the Secretaries are ſo unkind as not to declare it: When I know I am in the Right, I am not aſhamed to ſpeak it, though my Life be loſed upon it; and I refer it to the Gentlemen of the Jury. I was taken before I could come to the Speech of my Lord *Clarendon.* Next, I hope, Gentlemen of the Jury, you will conſider theſe are great Perſons that I have to do with; and where great State-matters are at the Bottom, it is hard to make them tell any Thing but what is for their Advantage: And ſo I am left in a ſad Condition. But, my Lord, in the next Place, I think 'tis impoſſible for any Jury to find me guilty, without prejudging of thoſe Laws which are not to be judged by any Jury or inferior Court: For if they judge me and bring me in guilty, 'tis Murder in them; and let the Bench tell them what they will, 'tis of that dangerous Conſequence, that it overthrows the Government. My Lord, here is the Impeachment of the Houſe of Commons, and here is a Copy of the Votes of the Commons thereupon; and though they be not Laws, yet they are ſuch Declarations of the Parliament, as that afterwards no other Court ought to meddle with that Matter; and the inferior Courts do not uſe to meddle with Parliament-matters: And ſo, Gentlemen, you will lay at your own Doors what would lie at theirs, if you meddle not. For though the Court have over-ruled my Plea, yet the Matter is plain before you now who are my Judges, and my Blood will lie at your Doors, and you muſt anſwer it if you do me not Juſtice. And there is no inſufficiency of a Plea as to Matter of Law will excuſe you in Point of Fact; and you are obliged, as you will anſwer the contrary to God and your Conſciences, to do me Right. And I hope your Lordſhip and the Jury will take particular Notice of this. I have been a cloſe Priſoner, and had no Manner of Help, nothing at all allowed me to refreſh my Memory; which if I had had Means to do as I ought, I could ſay a great deal more. But this I inſiſt upon, if the Gentlemen of the Jury do bring me in guilty and convict me, they do ſhed my Blood, and overthrow the Law and Courſe of Parliaments. Whereas, if they bring me in not guilty, my Impeachment ſtands good ſtill, and I am liable to anſwer that Impeachment before the Parliament: And I hope you will conſider the Perſons I have had to deal with; and that it cannot be made ſo plain, as in Matters wherein we deal with common Perſons. I ſubmit to what you ſhall think fit.

L. C. J. You have done, Mr. *Fitz-Harris?*

Fitz-Harris. My Lord, I have done; only I would examine one Gentleman, if he were here, but he does not appear. But here's a Copy of the Impeachment and Votes of the Houſe of Commons, I deſire I may deliver them to the Jury.

L. C. J. No, no; that can't be.

Fitz-Harris. Sir *William Waller* does declare upon Oath, that for this very Thing I was impeached by the Houſe of Commons, and that I deſire them to take Notice of.

Mr. Serj. *Jefferies.* Therefore you are not guilty: Is that the Conſequence?

Mr. Sol. Gen. May it pleaſe your Lordſhips, and you Gentlemen of the Jury, you have heard our Evidence, and what the Priſoner hath ſaid. The Crime, for which he is accuſed, that is High-Treaſon, and 'tis Treaſon in conſpiring the Death of the King, in endeavouring to raiſe a Rebellion here; and that in order to deſtroy the King and the Liberty of all the People, to bring them under the Slavery of the King of *France.* This is the Treaſon that he was indicted for; and the Proof of this Treaſon is very full: It is proved to you by three poſitive Witneſſes, and all Men of Credit, of whom you cannot have the leaſt Suſpicion. They prove to you, that Mr. *Fitz-Harris* is the Man guilty of this Treaſon; he was the Contriver of it, he was the Mover of it firſt to Mr. *Everard*, and he gave him thoſe Inſtructions to purſue thoſe Purpoſes of raiſing a Rebellion here, in order to deſtroy the King, by contriving a ſeditious Pamphlet to ſet the People together by the Ears; and he came to him in order to perfect this Libel. This is proved by *Everard*, who upon the firſt Motion of it to him, did acquaint Mr. *Smith* immediately, and Sir *William Waller*, that ſuch a Deſign was on Foot, and deſired them to come and be Witneſſes of it. They both came, and heard the Communication between the Priſoner and Mr. *Everard.* to contrive ſuch a Libel as hath been opened to you, and they ſwear it poſitively. Now what Defence does the Priſoner make to it? Truly I cannot ſay, whether it hath more of Folly or Impudence in it; for 'tis a Defence of a ſtrange Nature; for it is inconſiſtent with itſelf, and ſhews what a Make he is of: And the latter Part is a purſuing the ſame Treaſon he ſtands indicted for, which is the rendering the King odious to his People, by thoſe Inſinuations, that he did this by the King's Order. The firſt Part of his Defence is, I am not guilty, for Mr. *Everard* is the Man that did contrive it, and he is the Author, and it moves from him. Now pray conſider the Parts of your Evidence, and ſee if there be any poſſibility for you to be induced to believe any thing like it. 'Tis proved by Mr. *Everard* poſitively, that he came to him firſt; and when you conſider this Objection that is made by Mr. *Fitz-Harris*, and conſider on the other Side who were the Witneſſes, and who is the Man that makes the Objection, you will then ſee no Cauſe in the World for you to give any Credit to it. The Priſoner ſays he was trepaned into it: For that, pray conſider he is an *Iriſh* Papiſt, one that hath all along made it his Buſineſs to defame the Proceedings about the Popiſh Plot, to ridicule it, to deny that there was ever any ſuch a Thing, and to laugh at the Juſtice that was executed upon the Popiſh Offenders who died for the Plot. The Witneſſes that prove it againſt him have been zealous Proſecutors of the Plot, Men that have diſcovered many of thoſe who were guilty of it, and brought them to Juſtice; Men that have been material Evidences upon the Diſcovery. Mr. *Smith* is a Man that ſpoke materially in the Trial of my Lord *Stafford*, and for which Service, I believe, the Papiſts, and Mr. *Fitz-Harris* himſelf, owe him little Thanks. As for Sir *William Waller*, all Men know how buſy and active he hath been to bring in Men that were guilty of the Plot, and he hath ſuffered for it. Now if you can believe that Mr. *Smith* and Sir *William Waller* ſhould be guilty of a Trepan that was to be put upon *Fitz-Harris*, a Man of that Perſuaſion you hear of, (and you muſt believe that, or you cannot believe the Defence the Priſoner makes) I leave it to you. Mr. *Everard* could do nothing alone; why then Sir *William Waller* muſt be guilty of this Contrivance, and of ſetting *Fitz-Harris* on Work and *Everard* too. But this is ſo unlikely a Story, that if there were any to aſſert any ſuch a Thing, you could not poſſibly give any Credit to it. But when you conſider what hath been proved, and what hath been ſhewed you under the Hand of *Fitz-Harris* himſelf, then there is no Room I am ſure to doubt. They do poſitively ſwear, both *Smith* and Sir *William Waller*, they heard him own that he had given Inſtructions to *Everard*. They prove to you that he mended this Libel in ſeveral Places, they not coming up to the Inſtructions he had before given. They prove Part of the Libel written with his own Hand, and that is Treaſon enough: For that is certainly Treaſon, that 'tis the undoubted Right of People to dethrone the King. I never heard of that Doctrine any where but among the Papiſts, and 'tis a Papiſt that preaches that Doctrine to you now. As this is an Evidence in a Matter beyond any Contradiction in the World, his own Hand-writing of Part, and his owning the giving the Inſtructions; ſo there is no Room in the World for you to believe that ever he was drawn into this by *Everard*; or that he was the Man that was the original Contriver of it, and trepanned him into it. But it appears plainly upon the Proof, that it moved originally from *Fitz-Harris*; that it was the Malice of his Heart that promoted it; and that the Contrivance was how to raiſe a Rebellion here. For when he had read Part of the Libel, and *Everard* told him that it was Treaſon, why ſaid he, I meant it ſo; and the more Treaſon, the better; the more odious you make the King to be, the more likely 'tis to raiſe the People into a Rebellion; and the ſooner you raiſe the People into a Rebellion, the more like you are to accompliſh the Deſign of bringing the People into Slavery to the *French* King, and ſo at once to deſtroy all Liberty and Property, and all that is ſacred. Nobody can believe but Mr. *Fitz-Harris* is guilty of this Libel and Contrivance to dethrone the King, and raiſe a Rebellion here, as the Witneſſes have ſworn. Now as you cannot poſſibly doubt but this moves from Mr. *Fitz-Harris*, ſo then conſider the Inconſiſtency of the ſecond Part of his Defence, and the Impudency of it too. For as before he pretended he was drawn into it by Mr. *Everard*, ſo now he would make you believe he did not do it out of a traiterous Deſign, for that he was employed about theſe Affairs; and this comes under the Title of ſecret Service: And he would fain have it that you ſhould believe the King ſhould hire him to raiſe a Rebellion againſt himſelf, to defame himſelf, and to incenſe the Minds of the People againſt him. And this muſt be the Service that he is put upon; he had no traiterous Intent in himſelf, but he was to trepan all the Lords that ſtood zealouſly up for the Proteſtant Religion and Property, and that by Direction from whom? From the King, whom *Fitz-Harris* would have all People to believe to be a Papiſt; and he would have People believe that he is an innocent Man, that he was only employed upon ſuch a ſpecial Piece of Service; that the King ſhould be at great Pains to employ Mr. *Fitz-Harris* to deſtroy himſelf and the whole Nation, and to ſtain his whole Family: And upon what Reaſons would he have you to believe it? As firſt, you obſerved how inconſiſtent it is with the former Part of his Defence, that he was trepann'd into it; now he did not do it from Mr. *Everard*, nor with a treaſonable Intention. But certainly this is a Treaſon that nothing can be ſaid to palliate or excuſe, and I am ſure he hath ſaid nothing will do it. Yet all the Defence he hath made has tended that Way. For though he hath not arrived to the Confidence to ſay ſuch a Thing is, yet he hath inſinuated, by the Method of his Proceedings, that he would fain have ſuch a Thing believed; and that the Man had no traiterous Deſign in it. Now what Evidence hath he produced for it? He hath produced to you Evidence that he hath had Money from the King, and hath been ſometimes at the Ducheſs of *Portſmouth*'s. That he had Money from the King is true, but it little became him to mention it; for it was Charity to relieve a Man in Neceſſity, that was ready to ſtarve, and was forced to go all the Ways to Work he could to raiſe Compaſſion; he urged the Sufferings of his Wife's Father; you heard the Petition read as a Ground for Supply; and he hath ſo far prevailed upon the King's Charity (which he hath abuſed) as to have a Sum of Money given him, and he hath had the Benefit of it: But he hath made a very ill Return for it; for the Thanks he hath given to the King for this his Charity, is to fly in the Face of him, his Family, and the Government. He hath endeavoured to raiſe a Rebellion; and when he is brought to his Trial, he continues to defame the King, which is an Aggravation of his Treaſon, if poſſible. And now having no Proof in the World for theſe malicious Inſinations; and all the Witneſſes that he hath called to make out what he would fain have believed, and dares not mention, (not proving any ſuch Thing) you will have little Reaſon, Gentlemen, to believe any Thing that comes from him, eſpecially if you conſider the Nature of the Libel itſelf, it is impoſſible this Man ſhould ever be ſet on Work to contrive ſuch a Thing as this, to defame the King and all his Family, to raiſe a Rebellion, to overthrow all Religion, Liberty, and the King himſelf; it is impoſſible to be believed. But I fear I preſs too much upon you, as if I did ſuſpect there could be Men in this Kingdom ſo bad as to believe ſuch a malicious Inſinuation. Gentlemen, I leave it to you; you hear what our Evidence is, three Witneſſes that poſitively ſwear this Treaſon againſt the Priſoner. Now as you have this poſitive Evidence on the one Side, ſo you have no Colour of Evidence on the contrary; and 'tis impoſſible for you to find him not guilty. It is to deny the Light of the Day; and 'tis a Thing of that Conſequence, that all Ages, when they hear of it, will ſay, that there is no Juſtice to be had, if an *Engliſh* Jury do not find a Verdict according to their Evidence: For what Security hath a Man for his Life and Eſtate, if twelve ſubſtantial Men of a Jury ſhall dare to go againſt plain and full Evidence? 'Tis all the Security an *Engliſhman* has for all he enjoys, that he is to paſs through the Hands of twelve honeſt Men of his own Country. And if it be poſſible for a Jury to go againſt Evidence ſo plain as this is, I ſay, no Man is ſafe in his Life or Eſtate.

Mr. Serj. *Jefferies*. Gentlemen, I deſire to take Notice of what Mr. *Fitz-Harris* was pleaſed to conclude withal. He ſays, his Blood is to be required at your Hands, and therefore he would fain by that Means inſinuate you out of your Conſciences. But I think, if you conſider the Circumſtances that have been given, and all the Evidence, it will be impoſſible for Men that have any Reſpect to their Credit and their Conſciences, to acquit this Gentleman. In the firſt Place, it is known, and it hath been given in Proof to induce the Probability of the Matter evidenced againſt the Priſoner at the Bar, that he is a known Roman Catholick; they are all Proteſtants, and good Proteſtants, and you are all Proteſtants too. And then the Caſe goes thus far further: You that are Proteſtants muſt take it upon your Oaths, that theſe Gentlemen have ſworn falſe, and convict them of wilful Perjury; and if you do convict them, it muſt be upon the bare Allegation of a Papiſt: And I hope never to live to ſee the Day that Men that are of good Credit, and Proteſtants, ſhall by an Allegation (though never ſo confidently affirmed at the Bar) be preſumed to be guilty of Perjury. So that I ſay, my Lord, beſides the Baſeneſs and Venom of this impudent Libel, which certainly no honeſt Man in the World will give the leaſt Countenance to, here is Evidence enough from himſelf. And you cannot believe it proceeds from any Direction from the Crown, (as this Man would inſinuate) and therefore he hath given us the greateſt Evidence by his libelling at the Bar. And he hath not only libelled the Crown, but he hath called up ſome Witneſſes on purpoſe to libel the Reſt of his own. And then I hope you will take Notice how he did inſinuate with Mr. *Everard* at the Beginning: When you were in the *French* King's Service, ſaid he, and have been neglected ever ſince you left it; if you will come and join with me, without peradventure you may get Encouragement fitter than that poor and mean Way that you are reduced to by embracing the Proteſtant Intereſt. He gives him a Method likewiſe to walk by: He thought him the Perſon that had writ ſome Pamphlet before, and therefore was fit for his Purpoſe, and ought to be encouraged. And he does tell you the Words not only againſt the preſent Government, but that which every good Proteſtant muſt needs abhor and tremble at; he bids him take Care to libel the whole Family. He tells him withal, you muſt be ſure to ſay, that the late King, of bleſſed Memory, was concerned even in the *Iriſh* Rebellion; and that this King hath promoted thoſe Perſons that his Father had countenanced for that Action; and he tells him the Names of thoſe Perſons that were ſo promoted. After this is done, what does Mr. *Everard* do? he goes and makes a Diſcovery; he tells the Circumſtances and the Perſons, to whom and when: And the Perſons he made that Diſcovery to, do in every Circumſtance agree with Time, Place, and all. The firſt Night this Appointment was, I hope you will remember, that when Mr. *Everard* had ſo placed that Gentleman, againſt whom there is not the leaſt Word ſaid or imagined to find fault with him, he takes Notice of the Inſtructions; owns that he had given him Inſtructions; and takes particular Notice of one Paſſage, that when Mr. *Everard* ſaid, But there may be Danger in them, is not this Treaſon? the Priſoner made Anſwer, the more Treaſon the better. Ay, but then this is dangerous, how ſhall I venture upon ſuch Matters? Why have you not my Hand in it? I am as guilty as you, and in as much Danger. What then was the Reward? there was to be at preſent forty Guineas, and an annual Penſion. But to whom was Mr. *Fitz-Harris* to diſcover this? not to the King, but to the *French* Embaſſador, and the Confeſſor was to be the Man that was to give the Reward. *Flanders* was firſt to be ſubdued, and the Parts beyond the Seas, and then *England* would be but a Morſel for them, they could take that in the Way. All this was done, which is plainly ſworn by a Witneſs that had a Place made on Purpoſe for him to over-hear all that paſſed. And, my Lord, for the next Witneſs there is Sir *William Waller*; there is this, beſides what is ſworn, agreeing in Circumſtance: He tells you both, to their very Money, that it was forty ſomewhat, but he cannot ſay Guineas; and he tells you ſomething of the Penſion, a great many thouſand Crowns: And he tells you particularly of that Circumſtance of the *French* Confeſſor, and the *French* Embaſſador. Beſides all this, does not Sir *William Waller* tell you this very Thing, That he eſpy'd him with a Pen and Ink, that he gave a Note of the Libel itſelf, and he heard him give the Directions? and when he came into the Room, he ſaw the Ink freſh upon the Paper; and when he heard him give Directions for the Alteration of particular Words, he ſaid, You have not worded it according to my Mind in ſuch and ſuch particular Places. But, my Lord, there is this Venom in it further to be taken Notice of, that he gave his Inſtructions to draw it ſo, as that it might beſt take Effect, according to his Intention: For when Mr. *Everard* thought it might do well to make it with *thou* and *thee*, as though it ſhould be the Deſign of the Quakers, he ſaid, No, by no Means; but put it in changing the Phraſe, as if it was the Deſign of all the Proteſtant Diſſenters, and ſo by that Means would draw the *Odium* upon them, and bring them in Danger as well as others. And this is confirmed too by Sir *William Waller*; ſo that in every Circumſtance he hath ſhewed the Venom of his Deſign. But in the laſt Place, which ſurely the Gentlemen of the Jury will not forget what Sir *William*

Waller ſaid, that *Fitz-Harris* did ſay, I have taken Care already to diſperſe abundance of Libels amongſt our Party. And when *Everard* told him of a Libel that was ſome While before, he ſaid he had ſeen that a great While ago, and there might be ſomewhat in it to the Purpoſe. And for the Anſwer that hath been given to it, my Lord, I think it does not bear any Sort of Relation to the Charge that is upon him; for whatſoever Diſcourſe, or whatſoever he hath urged, is not much to his Purpoſe. He hath brought here a Nobleman; but after all, I would put him in Mind of one Thing that Nobleman ſaid, He did believe he came to him in the Name of one that ſent him not: And ſo will every Body ſay that hath heard the Evidence; for all his Witneſſes do poſitively deny that they ever knew of any ſuch Matters as he ſpeaks of. And now, my Lord, I could be very glad if this Gentleman (inſtead of ſaying as he hath ſaid) would have come as ſoon as he had this Libel from *Everard*, and diſcovered it immediately to ſome Body himſelf before he had carried it on, as *Everard* did before the Thing was perfected. And ſo, Gentlemen, we do think upon this Evidence, we have left you without all Manner of Excuſe: It being impoſſible, upon ſuch a Proof as this is, and conſidering the Nature and Venom of the Libel itſelf, the baſe, venomous, malicious Inſtigations he made Uſe of to effect it, and the Ends for which it was done, to bring in the *French* to ſet us together by the Ears, to render the King odious to his People; and the Perſon 'tis acted by, a known *Iriſh* Papiſt; I cannot doubt of the Iſſue. And I do hope when I ſee ſo many honeſt Gentlemen and Proteſtants at the Bar, they will be loth to forfeit their own Souls to eternal Damnation, to ſave a Man that is guilty of ſuch a Treaſon as this.

L. C. J. Have you done, Gentlemen?

Sir *George Jefferies*. Yes.

L. C. J. Then look you, Gentlemen of the Jury, here is Mr. *Fitz-Harris* indicted for Treaſon againſt the King, and 'tis for endeavouring to take away his Life, to make him odious to his Subjects, to incite them to a Rebellion, and to raiſe Arms here in this Kingdom againſt our King, our Sovereign. And by the Indictment it is ſaid, that he hath declared theſe Endeavours and theſe Intentions, by cauſing a ſcandalous and evil Pamphlet or Libel to be written, with an Intent to be diſperſed through the Kingdom. The Words of the Libel you have heard particularly read; ſome of them are taken out and mentioned in this Indictment. Mr. *Fitz-Harris* hath been arragined, and hath pleaded Not Guilty; and you are to try the ſingle Matter before you, whether Mr. *Fitz-Harris* be guilty of this Treaſon. That this is Treaſon, and contains a treaſonable Matter, Gentlemen, is ſo plain, as no Body living can doubt it: But it is a Treaſon of as high a Nature as peradventure ever was in the Kingdom of *England*, and tends as much to that which would be the Deſtruction both of the King and Kingdom. The King's Life, all our Lives, all we have that is dear to us, or of any Advantage or Avail in the World, are concerned in this: For what does it tend to? It tends to a popular Inſurrection, to raiſe the People up in Arms, that like a Deluge would overrun and ſweep away all. It is to undo the Government and all Order in the Kingdom, and to deſtroy the Life and Being of all that is good amongſt us. A more virulent and villainous Book certainly was never written; nor any Thing that tended more to Sedition, or to incite the People to a Rebellion: Such a Book as peradventure no well governed Kingdom ever heard of the like. It tends to defame the King and all his Anceſtors, and to blaſt all that ſhall come after him, to raiſe us into a Tumult. And what is all this to do? To ſettle the Roman Catholick Religion amongſt us. And this is ſuch a Piece of the Art of the Jeſuits, which peradventure hath out-gone all they have done before. It ſeems to be their Hand directly, and we are all concerned as *Engliſhmen* to take Care of ſuch Villainies. This is the Nature of the Treaſon that is compriſed in this Book. Whether Mr. *Fitz-Harris* was the Author, or Director, or Contriver of this Book, is the Queſtion before you: (For plainly, without any Suppoſe, the Book contains in it as high Treaſon as ever was.) And as to that, Gentlemen, you muſt conſider that this appears evidently to be a Deſign of the Roman Catholic Party; 'tis a jeſuitical Deſign. For this is that they aim at, to confound all Things, that they may fiſh in troubled Waters. And you ſee they have found out an apt Inſtrument, an *Iriſh* Papiſt, one that hath been all along continually concerned with them, and intermeddled in ſeveral of theſe Plots and Papers. Gentlemen, the Evidence that is given here againſt him is by three Perſons, and there is great Evidence from the Matter that is produced, beſides thoſe Perſons. There is Mr. *Everard* does declare to you the Whole of this, and Mr. *Fitz-Harris*'s Application to him to write this Book. He tells you the Intention of it, and he gives you the very Grounds upon which this was to be written; that is, to raiſe Sedition, that was the firſt Inſtruction; to raiſe a Sedition in the Kingdom, and this was to buſy us at Home, that the *French* King might get *Flanders* and the *Low Countries*, while we are confounded at Home: And then the Catholicks have their Game to play, and carry all before them. Look you, Gentlemen, Mr. *Everard* is ſo cautious, that he walks, not alone in the Caſe, but with a great Deal of Prudence declares it to others, that they may be Witneſſes in the Caſe for him. Mr. *Smith* does agree in all Things for the firſt Night that Mr. *Everard* hath declared, how that he heard the Directions owned as given by Mr. *Fitz-Harris*, for the writing this Book, and he heard the Deſign of it, he heard there was a Reward promiſed to him for the doing of it, and he tells you ſome of the Inſtructions. The next Night Sir *William Waller* was preſent; and he tells you all the Inſtructions of that Night, and that *Fitz-Harris* owned them, that he gave thoſe Inſtructions in the private Conſult. But that that is not to be anſwered, Gentlemen, is his own Inſtructions in Writing; what can be ſaid to that? If you were doubtful of the Credit of theſe Gentlemen, yet Mr. *Fitz-Harris*'s own Inſtructions in Writing under his Hand, are an Evidence beyond all Controul in the World that he gave thoſe Directions; and theſe are Treaſon, that is plain. And therefore it does ſeem to be as ſtrong an Evidence againſt Mr. *Fitz-Harris* of this Treaſon, as peradventure ever was given againſt a Traitor. There is not any one Witneſs that ſtands ſingle, but there are two to each Night; and his own Inſtructions written by himſelf do not ſtand upon the Evidence of a ſingle Witneſs, for he owned it in the Preſence of three Witneſſes: So then a ſtronger Evidence cannot be given that he was the Author and Director of this Book.

Then, Gentlemen, you muſt conſider what he ſays for himſelf in Excuſe of this horrid Treaſon that theſe Witneſſes ſeem ſo fully to fix upon him. The firſt Witneſs he brings is Dr. *Oates*; and he does tell you, that having ſome Diſcourſe with *Everard*, *Everard* ſhould ſay, this was a Deſign of the Court, and was to be put into ſome Lords, and I think, into ſome Parliament-Men's Pockets; and then they were to be apprehended. I think this is Dr. *Oates*'s Teſtimony. Mr. *Everard* is here upon his Oath, and he teſtifies no ſuch Thing in the World: 'Tis eaſy for one to come and ſay, I heard a Man ſay ſo; perhaps he ſaid it by Way of Conjecture; but that is no Anſwer to direct Proof. Mr. Sheriff *Corniſh* is the next Witneſs, and he ſays, he had ſome Diſcourſe with the King, and the King ſhould ſay, he thought Mr. *Fitz-Harris* had been an honeſt Man, and had given him ſome Money.

Mr. Sh. *Corniſh*. No, my Lord, the King ſaid, he took him to be an ill Man.

L. C. J. Then it ſeems I was miſtaken; his Majeſty did not tell him he took *Fitz-Harris* to be an honeſt Man, but an ill Man. But that he had formerly ſome Money of the King, upon Pretence of doing him ſome Service; now that brings it out what the King's Meaning was: For it ſeems there had been begged ſome Money for him, and the King, at my Lady *Portſmouth*'s Deſire, by way of Charity, gave him ſome little Matter of Money; he boaſting and telling the King he could do him ſome Service. You ſee what Manner of Service it is he would have done for him and the Kingdom. Then as to the Reſt of his Evidence, there is Mrs. *Wall*, and my Lady Ducheſs of *Portſmouth*; and he hath examined them concerning the Money he hath received, and they both declare upon what Ground that Money was given: It was given, they tell you, for a Gratuity from the King to him; and upon his boaſting, ſays Mrs. *Wall*, that he could do the King Service, and bring over Perſons to his Intereſt. I think there is no other Witneſs very material: For as for Mr. *Bulſtrode*'s Evidence, it ſignifies nothing at all; it is not material for him or againſt him in the Caſe: A Diſcourſe about delivering a Petition to the King from his Wife. Now, Gentlemen, you muſt conſider what ill Uſe this Gentleman deſigns to make of the King's Charity and Favour to him; he gave him ſome Money to relieve his Wants, and now would he interpret this, and inſinuate this to be given for ill Purpoſes, for to make him trepan his Subjects: Which is another Piece of Virulency that theſe Papiſts always exerciſe againſt the King; they always make an ill Uſe of his beſt Actions, and an ill Interpretation of them. For, Gentlemen, can it be believed, that the King would ever deſign ſuch a Thing as this is, to blacken his Family for ever, to ſtir up all his Subjects againſt him, to endanger his Crown and Kingdom, and all that he has in the World? And all this to what Purpoſe? No colourable Deſign can be made of it. This is ſuch a Thing, to excuſe ſuch a Villainy, as never was heard of, by wreſting the King's Charity and Generoſity to ſuch ill Purpoſes; but that ſome Men have the Confidence to do any Thing. I muſt leave it to you. Here are three witneſs his own Hand to theſe Inſtructions, and his making a Declaration that it was not treaſonable enough, nor virulent enough. All theſe Things are ſtrong Evidences in the Caſe. And if you believe theſe Witneſſes and his own Hand-writing, 'tis a plain Caſe, you muſt find him Guilty.

Fitz-Harris. May I have Liberty to ſpeak one Word?

L. C. J. Gentlemen, I had forgot one Thing. For fear it make an Impreſſion in you, becauſe I ſee he hath inculcated it often and often, and that is, the Impeachment that was by the Commons Houſe of Treaſon againſt Mr. *Fitz-Harris* in the Lord's Houſe: I muſt tell you, Gentlemen, that is not before you at all; the Matter of that was by way of Abatement pleaded to the Juriſdiction of this Court, and that is now over. You muſt have no Conſideration, nor can have any Conſideration of that now. Your Queſtion is not whether we have Authority to try this Cauſe; but you are impannell'd and ſworn to one Point, and that is, whether *Fitz-Harris* be guilty of this Treaſon or not. Whether the Court have Authority to do it, is another Queſtion proper for our Determination, and we have determined it; but there is nothing of that lies before you in this Caſe. Therefore you muſt not be miſled with any Thing that he talks ſo fondly of concerning the Impeachment, or concerning his Blood lying at your Doors, that ſurely will ſignify nothing to Men of Underſtanding at all.

Mr. *Johnſon*. My Lord, 'tis our Unhappineſs to come before you under theſe Circumſtances. We have underſtood there is a Vote of the Commons of *England* in Parliament, that ſays this Man ſhall not be tried in an inferior Court; now we take ourſelves to be the Judges of this Man in Part under your Lordſhip's Directions.

Mr. Serj. *Maynard*. You are not Judges of it, you are only to try the Fact.

Mr. *Johnſon*. I only offer my Senſe, and if the other Gentlemen think otherwiſe, they will ſpeak it. I think the Office of a Juror is ſuch, that it is within his Power to acquit or condemn, according to the Evidence, as it lies within his own Conſcience. Now if we ſhould acquit this Man (we have no Aſſurance we ſhall acquit him, only ſuppoſe it) then there is nothing againſt him but what lies in a Parliamentary Way, and we ſhall forejudge their Cauſe. Therefore, I ſay, I do not know how far by Law we are compellable to give a Verdict in this Caſe upon him.

L. C. J. Look you, Gentlemen, we would conſult your Satisfaction as much as we can in all Things; and 'tis reaſonable that if you have any Doubts you ſhould propoſe them to us, and to that Purpoſe we are to give you Satisfaction, and will in all Things. I muſt tell you, as to the Juriſdiction of the Court, that is not at all before you: and as to the Vote of the Houſe of Commons, alledged by him, if any ſuch there be, that cannot alter the Laws of the Land, nor juſtify any of us in departing from our Duties, no more than if a Letter or Mandate ſhould be gained from the Prince or Chief Magiſtrate of this Kingdom, to any of us in Derogation of Juſtice (as it's poſſible by Surpriſe to be) we are to take Notice of the one, no more than the other. We are upon our Oaths to do Juſtice according to the Law of the Land: You likewiſe are upon your Oaths, and ſworn to do Juſtice in your Sphere; and your Oath is, that you ſhall enquire truly whether he be guilty or not; and if he be guilty in your Judgments, you can no more ſpare him, than you can condemn an innocent Perſon. It never was pretended by any Man, nor will it be aſſerted by any Man that underſtands himſelf or the Conſtitution of the Government of this Kingdom, that a Vote of the Houſe of Commons can change the Law of the Land. It cannot excuſe us, if we deny to try a Man that is brought before us; nor will it excuſe you, being under an Oath, juſtly to try him. If you ſhould (becauſe the Commons Houſe have voted that he ſhall not be tried) declare that Man innocent, who in your own Judgment you believe to be not innocent; you nor we are not to conſider what will be the Conſequence of this, if this Man be acquitted or condemned; that is not before us. You and we too are tied preciſely to the Laws of the Land, and by that Law muſt this Man be judged. As to our Parts, we muſt do it as to the Law, and you as to the Fact. But I'll tell you further, Gentlemen, this Doubt was moved to us by the Grand Jury, before the Bill was found; we had an Intimation that they would move ſuch a Doubt to us as ſeems to be your Doubt now. Therefore for their Satisfaction, and the taking away any Scruple that might be in the Caſe, all the Judges of *England* did meet together, and ſeriouſly debate the Matter and Subſtance of all this; and it was not our Opinion of this Court only, but the Opinion of all the Judges of *England*, That we had a Juriſdiction to try this Man. This we have told you, becauſe we would ſatisfy all Men to go on fairly in the Things that are before them. Therefore, that being put out of the Caſe, you muſt conſider of your Verdict, and give it in upon this Trial.

Mr. *Johnſon*. We do not doubt, my Lord, but your Opinion in this Caſe will indemnify us from any future Charge by the Commons of *England*. But it lies before us to conſider what we are bound to do in the Caſe.

Mr. Juſt. *Jones*. Gentlemen, I ſuppoſe you do not doubt but we are all of the ſame Opinion. It is no marvel indeed to hear a Man that ſtands in *Fitz-Harris*'s place, to object any Thing that many caſt a Miſt before your Eyes. And yet it cannot but be wondered at too, that when three Proteſtant Witneſſes have ſworn preciſely, he ſhould have the Confidence to urge any Thing of this Nature. He who appears by the Indictment itſelf, and the Proofs made upon the Indictment, to have endeavoured to deſtroy all the Laws of *England*, all *Magna Charta*, all our Liberty and our Religion, and to inſlave us to the King of *France*: For that appears plainly the Deſign, if you have any Credit to the Witneſſes that are produced: He that would have pulled down all that is ſacred amongſt us, is ſo zealous for the Authority of the Houſe of Commons. We have all of us a great Reverence for the Houſe of Commons, and for their Opinions; but as my Lord hath told you, ſo I tell you my Opinion, That a Vote of the Houſe of Commons does not in the leaſt ſort alter the Law: For indeed if it did, it were to give a Legiſlative Power to the Commons, which does only belong to the King, the Houſe of Lords, and the Commons together. And, Gentlemen, though Mr. *Fitz-Harris* ſays, if he be acquitted here by you, yet he ſhould remain to be queſtioned again in Parliament; there is no Man in the World can doubt, if he were acquitted here, and were queſtioned in Parliament, but he would ſay, he hath been upon his legal Trial by his Peers, and that he hath been acquitted by his Peers upon ſolemn Evidence. But, Gentlemen, you are to conſider what is your Buſineſs: Your Office is to be Jurors, not to be Judges; you are not to take upon you any ſuch Authority. Your Commiſſion is your Oath, and by that Oath you are ſworn to inquire whether the Priſoner be guilty, as he is indicted, or not: If you, as *Engliſhmen*, can ſay, he is not guilty, let it lie upon your Conſciences, and the Danger of the King's Blood and Life be upon you.

Mr. Juſt. *Dolben*. Gentlemen, I deſire to ſpeak one Word to you, to let you know, I am of the ſame Opinion with my Lord, and with my Brother; and I cannot but wonder at you for making this Scruple: For if there were any Thing in what you have ſaid, it concerns us that are Judges, and not you at all; for 'tis a Matter of Juriſdiction: And whether we have a Juriſdiction or not, we muſt ſatisfy ourſelves that we have a Commiſſion to do it; it concerns not you. Do you but conſider the Oath you have taken, That you will well and truly try, and true Deliverance make betwixt our Sovereign Lord the King, and the Priſoner at the Bar, according to your Evidence: And you have ſworn a true Verdict to give upon it, and do you now ſcruple whether you ſhould give any Verdict or no, when but even now you have ſworn you will give a Verdict? If any ſuch Thing as this had been in your Heads (for it might be then in your Heads, as well as now) why did not you ſpeak of it before you took your Oath? You now lie under the Obligation of an Oath to give a Verdict according to your Evidence, and would you acquit him againſt ſuch an Evidence as hath been given? For, beſides what Sir *William Waller*, *Smith*, and *Everard* have depoſed, the very Note ſworn by Sir *Philip Lloyd* and Mr. *Bridgman*, to be owned by *Fitz-Harris* as his Hand, contains Treaſon enough in it, if there were no more: Therefore there muſt be ſomething more in it, than for the Sake of ſuch an unreaſonable Scruple.

Mr. Juſt. *Raymond*. I am of the ſame Opinion, truly.

Mr. *Johnſon*. My Lord, I took the Liberty to ſpeak it now; I could not ſpeak it before: For I was not then to enquire what I was to be ſworn to, nor could I know what would be the Matter that would come before us, till we were ſworn. Therefore I humbly beg your Pardon, that I made the Motion.

L. C. J. We are not at all troubled at any Thing you have ſaid; do not miſtake us, we do not take it ill from you, that you acquaint us with your Scruples: We are ready to give all Satisfaction we can, to any that are concerned before us; therefore we are no way troubled that you made any ſuch Scruple, but have given you a fair Anſwer to it.

Mr. *Johnſon*. My Lord, I deſire a Note of the Names of the Jury.

L. C. J. Give it him, Mr. *Aſtrey*, or elſe the Crowd is ſo great he may not know them.

[*Then the Jury withdrew for half an Hour, and at their Return being called over aud appearing, the Clerk took the Verdict.*]

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand: *(Which he did.)* Look upon the Priſoner; how ſay you, is he Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty, *&c.*

L. C. J. I think you have found a very good Verdict, and upon very full and ſtrong Evidence.

Mr. Sol. Gen. Will your Lordſhip pleaſe to give Judgment?

L. C. J. We will take Time for that.

Mr. Sol. Gen. Will you give a Rule to have him brought up to-morrow?

L. C. J. Move us another Day for it.

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife, and ſome Friends now to come to me.

L. C. J. Any Friend I think may come to you: But, Mr. *Fitz-Harris*, you muſt be modeſt in the uſing that Liberty we give you. You have heretofore abuſed your Liberty: I do not love to exaſperate Things to one in your Circumſtances, but you muſt be prudent and careful, knowing your own Condition, that you do nothing prejudicial to the King or Kingdom.

Upon Wedneſday June 15, 1681, Edward Fitz-Harris *was brought to the Bar of the Court of* King's Bench, *to receive his Sentence.*

Mr. Att. Gen. My Lord, I humbly pray your Judgment againſt Mr. *Fitz-Harris*, who is convicted of High-Treaſon.

Silence proclaimed during Judgment.

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand. Thou haſt been indicted and arraigned of High-Treaſon, and haſt thereunto pleaded, Not Guilty, and for thy Trial put thyſelf upon God and thy Country, and thy Country have found thee Guilty: What can'ſt thou ſay for thyſelf, why Judgment of Death ſhould not be given againſt thee, and Execution awarded according to Law?

Fitz-Harris. My Lord, I think it will be prejudicial to the King's Service, that Sentence ſhould paſs before I have made an End of the Evidence I have given in againſt my Lord *Howard*.

L. C. J. Mr. *Fitz-Harris*, we can take no Notice of any Thing of that Nature. When you are aſked, what you can ſay why Judgment ſhould not paſs againſt you, it is, what legal Matter you have, what Matter in Law, to excuſe yourſelf from that Judgment? For this is nothing, the ſaying you are to give Evidence; we know nothing of that, it will not delay Judgment a Minute. And for what you ſay, it will be prejudicial to the King's Service, it is the King that prays Judgment againſt you by his Attorney.

Fitz-Harris. I beg the King's Mercy for Tranſportation, my Lord.

L. C. J. We can do nothing in that.

Fitz-Harris. Nor to give me Time before my Execution? I can ſay no more, my Lord.

L. C. J. Look you, Mr. *Fitz-Harris*, you have been here indicted for a very great and heinous Treaſon, a Treaſon that is in Truth of the firſt Magnitude; for it is a Treaſon that tends to the rooting up the whole Government of this Kingdom, and the deſtroying of us all; plainly, both of the King and of all his Subjects. It does not only deſtroy the Peace and Quiet, but it tends in Truth to the utter Deſtruction of the whole Kingdom, and to bring us into a Confuſion and Diſorder, never to be avoided or retrieved, if your Deſigns ſhould have taken effect. You have been here arraigned, and put yourſelf upon the Country, and they have found you guilty of this Treaſon: It is a Thing you ſhould well conſider; for certainly, you have contracted to yourſelf a mighty Guilt in ſuch a Thing as this is. You have endeavoured the Deſtruction of the King, and in ſuch a Way, as muſt have in Truth deſtroyed all his good Subjects together with him. Your Deſign hath been to excite the People to a Rebellion, and a popular Inſurrection, that would have ſwept away all like a Deluge, if it had taken Effect. In Truth, it is a Treaſon againſt all Mankind, the ſtirring up of the People is; it is of evil Example to all Mankind, the ſtirring up of the People againſt their natural Lord, to whom we owe all Allegiance and Obedience. But your Deſign in this Way was by ſetting the People of *England* together by the Ears, to bring in the Roman Catholick Religion upon ſuch as ſhould be left. It ſeems you are an *Iriſh* Papiſt, and ſucked in very ill Principles where you have lived; and you have here endeavoured to do as much Miſchief in this Kingdom, by that treaſonable Book, as lies in any one Man's Power perhaps to do. It is a Mercy and a Happineſs, that it hath pleaſed God in his Providence to deliver us out of your Hands; for this was your Deſign, if you could have brought it about: But it hath pleaſed God now to bring you to Juſtice for it, and the Judgment of the Law muſt paſs upon you. Now that Judgment is this: *You muſt return to the* Tower, *from whence you came, and from thence you muſt be drawn through the Streets of the City of* London *to* Tyburn; *there you ſhall be hang'd by the Neck, but cut down before you are dead; your Bowels ſhall be taken out and burnt before your Face, your Head cut off, and your Body divided into four Quarters, to be diſpoſed as ſhall pleaſe the King; and I pray God to have Mercy upon your Soul, to give you a Sight of your Sin, and Repentance for it.*

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife to come to me, and any Friend.

L. C. J. You have that Liberty already.

Fitz-Harris. No, not without the Preſence of a Warder.

L. C. J. We will not reſtrain them as to that, let them come to you.

Officer. There is no Rule of Court for it, my Lord.

L. C. J. We will not reſtrain any thing of your Wife's coming, there is no Rule to reſtrain her; but let him have that Liberty that other Priſoners in his Condition uſually have had in the *Tower*, his Wife to come to him, or any other Friend or Proteſtant Miniſter whatſoever.

Officer. Pray let it be put into the Rule of Court, my Lord.

L. C. J. We make no Rule, there does not need any. Look you, Mr. *Fitz-Harris*, we lay no Reſtraint upon your Wife, or any other Friend; but if your Wife be in another Condition, that ſhe can't come to you, we can't meddle with that.

Mr. Juſt. *Jones*. We are not to deliver her out of Priſon.

L. C. J. No, we make no Rule, but take off the Hands of the Court from reſtraining any one to come to you.

Then the Priſoner was taken away, and in Purſuance of this Sentence, the laſt Day of the ſaid *Trinity*-Term, being the 22d of *June*, 1681, a Writ iſſued out of the Court of *King's-Bench* directed to the Lieutenant of the *Tower* of *London*, reciting the Judgment, and commanding him to deliver the Priſoner to the Sheriff of *Middleſex*, upon Friday the firſt Day of *July* next following to be executed according to the Sentence. Which Writ followeth in theſe Words.

CAROLUS *Secundus Dei gratia* Angl. Scot. Franc. & Hibern. *Rex, fidei defenſor, &c. Loc. tenen. Turris noſtræ* London. *ſalutem. Cum nos in Cur. noſtra coram nobis conſideraverimus quod* Edwardus Fitz-Harris *nuper de Parochia* S. Martini in Campis *in Com.* Midd. *Gen. pro quibuſdam altis proditionibus unde ipſe coram nobis indictat. eſt, & ſuperinde per quandam Juratam Patriæ inde inter nos & præfat.* Edwardum *capt. convict. & attinct* *exiſtit, ac Turr. noſtra* London. *per medium Civitatis noſtræ* London. *præd. uſq; ad Furcas de* Tyborne *trahatur, & ſuper Furcas illus ibidem ſuſpendatur, & vivens ad terram proſternatur, ac Interiora ſua extra ventrem ſuum capiuntur, ipſoque vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur, & quod Caput & Quarter. ill. ponantur ubi nos ea aſſignare voluerimus: Ideo tibi præcipimus firmit. injungend. quod die Veneris primo dei* Julii *prox. futur. apud* Tower-Hill *cum Vic.* Midd. *convenias, & præd.* Edwardum Fitz-Harris *eidem Vic.* Midd. *deliberari facias, ut idem Vic. executionem de eo in forma præd. fieri faciat, prout inde nobis reſpondere volueris. Teſte* Franciſco Pemberton *apud* Weſtm. xxij° *die* Junij, *Anno Regni noſtri* xxxiij°.

Per. Cur. ASTRY.

And another Writ at the ſame time was iſſued out of the ſame Court, directed to the Sheriff of *Middleſex*, to receive the Priſoner from the Lieutenant of the *Tower* at the Time appointed, and to execute him according to the Sentence. Which Writ was in theſe words.

CAROLUS *Secundus Dei gratia* Angl. Scot. Franc. & Hibern. *Rex, fidei Defenſor, &c. Vic.* Midd. *ſalutem. Cum nos in Cur. noſtra coram nobis conſideraverimus quod* Edwardus Fitz Harris *nuper de Parochia* S. Martini in Campis *in Com.* Midd. *Gen. pro quibuſdam altis proditionibus unde ipſe coram nobis indictat. eſt, & ſuperinde per quandam Jur. Patriæ inde inter nos & præfat.* Edwardum *capt. convict. & attinct. exiſtit, de Turr. noſtra* London. *per medium Civitatis noſtra* London, *præd. uſq; ad Furcas de* Tyborne *trahatur, et ſuper Furcas illas ibidem ſuſpendatur, & vivens ad terram proſternatur ac Interiora ſua extraventrem ſuum capiantur, ipſoq; vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur & Quarter. ill ponantur ubi nos ea aſſignare voluerimus: Ideo tibi præcipimus firmiter injungen. quod cum Loc. tenen. Turr. noſtræ* London. *pred. dei Veneris primo dei* Julii *prox. futur. apud* Tower-Hill *convenias, & ipſum* Edwardum Fitz-Harris *de præfat. Loc. tenen. recipias, & Executionem de eo in forma præd. facias prout decet. Teſte* Franciſco Pemberton *apud* Weſtm. xxij° *dei* Junii *Anno Regni noſtri* xxxiij°.

Per. Cur. ASTRY.

Upon the Day appointed, *viz. July* 1. *Edward Fitz-Harris* was, near the *Tower*-Gate, on *Tower-Hill*, delivered into the Cuſtody of the Sheriffs of *London* and *Middleſex*, *viz. Slingsby Bethel* and *Henry Corniſh*, Eſquires; who upon the Place ſigned a Diſcharge for him to the Lieutenant of the *Tower*. Then he was put on a Sledge, and thence conveyed through the City of *London* to *Newgate*, where he overtook *Oliver Plunket*, who was juſt before on another Sledge, paſſing to the ſame place of Execution.

Where being come (ſoon after *Plunket's* private Prayers, &c.) *Fitz-Harris* aſked Capt. *Richardſon*, Whether the Sheriffs had a Warrant for the Diſpoſal of his Body? Capt. *Richardſon* anſwered, Yes. Then he deſired Dr. *Hawkins's* Aſſiſtance, which the Sheriffs readily granted, and called for him to go to him on the Sledge; which the Doctor did, and on his Knees embraced him, and continued a private Diſcourſe with him for ſome Time.

Sheriff *Bethel* aſked Mr *Fitz-Harris*, What have you to ſay?

Mr. *Fitz Harris* anſwered, the Doctor of the *Tower* would anſwer for him, he having left his Mind with him.

Mr. Sheriff *Bethel*. You will do well to diſcharge your Conſcience.

Fitz-Harris. I have left it all with the Doctor in Writing under my hand, who will communicate it with Witneſs, to the World.

Doctor *Martin*, of *Woodſtreet*, being at the ſame Time in the Preſence of the Sheriffs, deſired Mr. *Fitz-Harris* to declare, whether he died a Proteſtant or a Papiſt. He anſwered, Having left his Mind fully with Dr. *Hawkins*, he hoped it might be ſatiſfactory. The Doctor replied, it would be more ſatisfactory to declare himſelf there, and that it was no Shame to die a Proteſtant. To which Mr. *Fitz-Harris* replied as before.

Then Mr. *Fitz-Harris* ſaid, Good People, this infamous kind of Death is much more irkſome to me than Death itſelf: Such Judgments as theſe my Sins againſt God may juſtly bring upon me, and I do moſt humbly ſubmit unto it. But as to the Crimes which I now die for, I take God to witneſs, I was no further concerned in the Libel, than to diſcover to the King what Practices of that kind were againſt him, being employed to that end; tho' thoſe that employed me, refuſed to do me Juſtice at my Trial. And I call God to witneſs, I never had a Farthing of Money of the King in my Life, but on the Account of the like Service. And as to the Witneſſes that have ſworn againſt me, I do here ſolemnly declare now at my Death, that I have not ſeen the *French* Ambaſſador ſince the beginning of the breaking out of the Plot, neither have I had any Acquaintance with him. And as to his confeſſor, I never ſpoke with him in my Life; neither had I any Dealing, either directly, or indirectly, in my life with them, though Sir *William Waller* and the reſt ſwore moſt falſly to the contrary. And how like is it that the *French* Ambaſſador would give three thouſand Crowns for writing that Libel, I leave the World to judge. What I may further declare, I have left with Dr. *Hawkins*. I forgive all the World, and do hope that God will forgive me. I beg the Prayers of all good People for a happy Paſſage into the other World.

Mr. *Fitz-Harris* deſired to know of the Sheriffs, whether his Body might not be at the Diſpoſal of his wife, without quartering. Upon which the Sheriff read him the Warrant.

Soon after which he was executed.

*The Paper * referred to was as follows.*

I *Edward Fitz-Harris*, having been indicted of High-Treaſon, for endeavouring to dethrone the KING, was thereupon found Guilty, and Sentence of Death paſſed on me. I the aforeſaid *Edward Fitz-Harris* do voluntarily and freely, without any Hopes to ſave my Life, but a dying Man, and to diſcharge my Conſcience towards God, and for the better Satisfacton of the World, make this Declaration following, in the Preſence of God, and unto Doctor *Francis Hawkins*, Chaplain of the *Tower* of *London*.

I do profeſs and declare my Religion in the general to be that which hath been truly and antiently delivered in the firſt four general Councils; and in particular, my Belief is that true Faith of a Chriſtian, briefly contained in thoſe three Creeds, commonly called *The Apoſtles Creed*, St. *Athanaſius*'s, and *The Nicene Creeds*: And I die a Member, and in the Communion of Chriſt's Holy Catholick Church, hoping for Mercy, through the alone Merits of the Paſſion of our Lord and Saviour *Jeſus Chriſt*.

I do alſo confeſs and declare, as to the Crimes which I die for, I was no further concerned in the Libel, than as employed to give the King Notice of what Libels or other Accuſations, there were againſt him; and to this Intent, and no other, I endeavoured to get this Libel: Which at length I did from Mr. *Everard*, all written under his own Hand, and carried it to Mrs. Wall, by whoſe Means I conveyed all Matters of this, or the like Nature, to the King. I told her I had a Buſineſs of great Conſequence to acquaint the King with: But ſhe anſwered me, That my Lord *Sunderland* being out, there would be no Money had for ſecret Service, and adviſed me to go to the Lord *Clarendon* or *Hyde*: But before I could do this, I was taken. As for that Part of the Libel which I left with *Everard*, as a Pledge, to aſſure him I would not betray him, I received it of the Lord *Howard*: and the Money I received from the King, was for bringing a Libel called, *The King unveiled, and the Lady* Portſmouth's *Articles*. I call God to witneſs, I never had a Farthing Charity from the King.

I do further confeſs and declare, that the Lord *Howard* told me of a Deſign to ſieze upon the King's Perſon, and to carry him into the City, and there detain him till he had condeſcended to their Deſires. *Heyns* and myſelf were privy to this Deſign, and had ſeveral Meetings with the Lord *Howard*; and as an Encouragement, the Lord *Howard* aſſured us of breaking the Settlement of *Ireland*, taking off the additional Revenue of the Biſhops, Forty-nine Men, and Grantees, whoſe Eſtates were to be ſhared amongſt the Party.

I do confeſs and declare, That while I was in *Newgate*, the Sheriffs, *Bethel* and *Corniſh*, came to me, with a Token from the Lord *Howard*, which I knew to be true, and brought Heads with them from *Everard*, wherein he accuſed me of being a Court-Emiſſary, or Yorkiſt, put on by the King to put the Libel into Proteſtant Houſes to trepan them. But I declare upon my Death I had no ſuch intent, nor do know any ſuch thing. The Sheriffs likewiſe told me, I was to be tried within three or four Days, that the People would proſecute me, and the Parliament would impeach me, and that nothing would ſave my Life but diſcovering the Popiſh Plot; and then the Sheriffs aforeſaid gave me great Encouragement from my Lord *Howard*, that if I would declare that I believed ſo much of the Plot asa mounted to the introducing the *R. C.* or if I could find out any that could criminate the Queen, *R. H.* or make ſo much as a plauſable Story to confirm the Plot, that the Parliament would reſtore me to my Father's Eſtate, with the Profits thereof, ſince his Majeſty's Reſtoration. I finding myſelf in the Condition I was, in *Newgate*, fettered, moneyleſs and friendleſs, my Wife ready to lie-in, without any Subſiſtence, my Children in a miſerable Condition, and muſt needs be in a worſe by my Death, and I could ſee no other Refuge for Life, but complying with them; ſo not with ambitious Intent, but to ſave my Life, I did comply. The Sheriffs brought Inſtructions, which they ſaid came from the Lords and Commons who met that Day in order to addreſs the King in my Behalf (if I ſhould confirm the Inſtructions) and they made uſe of my Lord *Shafteſbury*'s Name, and others, what Advantage I might have thereby. At the firſt I made a formal Story concerning the Plot, which was not prejudicial to any body, but moſt relating to general Heads known publickly; upon which Mr. *Corniſh* told me theſe were things cried about the Streets two Years ago: I replied, I could ſay no more. Mr. *Sheriff* ſaid, He was ſorry for me with all his Heart, but thought I could ſay more if I would, and preſſed me hard to ſpeak to ſeveral Heads; unto which, unleſs I ſpoke, he ſaid, there was no Hope of Life; the Heads I was to ſpeak to, is what the examination taken by Sir *Robert Clayton*, and Sir *George Treby* contains, and a great deal more that I did not ſay then, relating to the Queen, *R. H.* Earl of *Danby*, declaring *French* Penſioners, Lord *Hallifax*, *Hyde*, *Clarendon*, *Feverſham*, *Seymer*, and others; the burning the Fleet, Forts and Governments in Popiſh Hands, Meal-Tub Plot, Prentices Plot, the Contrivance of the Libel on the Lady *Portſmouth*, being a *French* Deſign to deſtroy Proteſtants. Theſe and many other Heads were brought to me by the Sheriffs.

I do further confeſs and declare, that Sir *Robert Clayton*, and Sir *George Terby*, coming to me to examine me, Sir *Robert Clayton* aſked me what I could ſay concerning *Godfrey*'s Murder? I anſwered ſomething. He replied, It may be I was in a Confuſion; recollect your ſelf. And what I ſaid concerning Father *Patrick*, was forced out of me, and what I ſaid concerning him is not true. Sir *George Treby* was with me three Hours, or thereabouts, and preſſed me to ſay ſomething concerning *Godfrey*'s Death: And ſaid, Unleſs I could ſpeak to that Murder, I could ſay nothing; whereupon I ſaid ſomething I had from others. He aſked me if I could ſay no more? I replied, is not this enough to ſave my Life? Am not I Rogue enough? The Recorder hereupon ſwore, 'Zounds, what where you ever but a Rogue? Then the Recorder entered upon the Heads of the Examination; which being done, he told me, All this would not ſave my Life, unleſs I would ſpeak to the Libel, which was a Court-Trick; and it was not for nothing that I have been ſo often ſeen at the Lady *Portſmouth*'s. The Lord *Shafteſbury* ſaid, You know more of theſe Matters than any Man. Sir *George* would have me ſpeak to the Conſult; that the Duke was at it, the Lords *Bellaſis*, *Arundel*, and *Powis*, were at it; you have ſeen them go to it at St. *James*'s, without doubt they were there; do you but ſay it, we have thoſe that will ſwear it.

I do further declare and confeſs, that what I ſaid againſt the Queen and the Duke, I was put upon, in the Matter of Sir *Edmundbury Godfrey*'s Murder; and do further declare, That what I ſwore againſt the Earl of *Danby*; the threatning Words that were uttered, I did (to the beſt of my Remembrance) hear, but whom they concerned I could not well know, by what my Lord himſelf ſaid. And what *de Puis* told me concerning my Lord of *Danby*, I do believe was ſpoken out of ill Will; and what I ſaid againſt him was to ſtave off my Trial till a Parliament; and they were the more deſirous to accuſe the Lord *Danby* of *Godfrey*'s Murder, becauſe the Crime of Murder is not inſerted in his Pardon. I am ſorry for what I have ſaid againſt the Queen, his Royal Highneſs, and the Earl of *Danby*; I deſire God to forgive me the Wrong I did them, and do heartily beg their Pardon.

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* This Paper contains many notorious Falſities, which were impoſſible to be true; and carries along with it groſs Marks of Artifice and Contrivance practiſed on him, while he was entirely under the Management of Dr. *Hawkins*, Miniſter of the *Tower*, who ſoon after was made Dean of *Chichester*. *Fitz-Harris*'s Wife was not then admitted to him; but he wrote ſeveral Letters to her, one the very Morning on which he ſuffered, informing her, how he was practiſed on with Hopes of Life, if he would accuſe the Earl of *Shafteſbury* and Lord *Howard* of the Libel: He declared, that they were innocent, and that what he had depoſed againſt the Papiſts was true; he charged her by no means to be prevailed on to ſwear falſly againſt any. Theſe Letters had ſuch a Tendency to deſtroy the Credit of *Hawkins*'s Paper, that the Court got her to deliver them, upon the Promiſe of a Penſion.

I do further declare and proteſt, That this Confeſſion and Declaration of mine I own ſincerely, as a dying Man, and not to ſave my Life; and I call God and his Angels to witneſs the Truth of it; and I renounce Mercy at the Hands of God Almighty, if this be not true.

And I do further declare and proteſt, as a dying Man, unto *James Walmeſly*, *Edward Pattel*, and *Mary Walmeſly*, That I have made this Confeſſion and Declaration unto Dr. *Hawkins* freely, and of my own voluntary Accord, without any Manner of Promiſe made, or Hopes given me by him from the King of ſaving my Life by this Confeſſion, I having given him to underſtand beforehand they were Matters of Conſequence, and ſuch as chiefly concerned the Good of the King and Kingdom.

I give the Doctor my hearty Thanks for all his Prayers, Counſel, and charitable Offices he hath done me, and I pray God to bleſs him for ever for it. I forgive all the World, and deſire all the World to forgive me; and the Lord have Mercy on my Soul.

Edward Fitz-Harris.

CIII. *The Trial of Dr.* OLIVER PLUNKET[*], *Titular Primate of* Ireland, *at the* King's-Bench *for* High-Treaſon, June 8, 1681, Trin. 33. Car. II.

THE third of *May*, 1681, in *Eaſter*, 33 *Car. Secund. Reg.* Dr. *Oliver Plunket* was arraigned at the *King's-Bench* Bar for High-Treaſon, for endeavouring and compaſſing the King's Death, and to levy War in *Ireland*, and to alter the true Religion there, and to introduce a foreign Power: And at his Arraignment, before his Plea he urged for himſelf, that he was indicted of the ſame High-Treaſon in *Ireland* and arraigned, and at the Day for his Trial, the Witneſſes againſt him did not appear; and therefore he deſired to know if he could be tried here for the ſame Fact. The Court told him, that by a Statute made in this Kingdom, he might be tried in the Court of *King's-Bench*, or by Commiſſion of *Oyer* and *Terminer* in any Part of *England*, for Facts ariſing in *Ireland*; and that this Arraignment there (he being never tried upon it) was not ſufficient to exempt him from being tried here; becauſe till a Trial be paſſed, and there be a Conviction or Acquittal thereupon, an Arraignment, barely, is no Plea: For in ſuch Caſes the Party is put twice in Danger of his Life, which only is the Thing the Law in ſuch Caſes looks after to prevent. He then deſired Time for his Witneſſes, which they told him he could not do till after Plea pleaded; whereupon he pleaded Not Guilty, and put himſelf upon the Country for his Trial. And after ſome Conſideration, had about Time to be allowed him to bring his Witneſſes from *Ireland*, the Court appointed the Day for his Trial, to be the firſt *Wedneſday* in next Term, which was full five Weeks Time.

And accordingly on *Wedneſday* the 8th of *June*, in *Trinity*-Term, he was brought to his Trial; and Proclamation, as in ſuch Caſes is uſual, being made, it proceeded thus:

Cl. of Cr. Oliver Plunket, hold up thy Hand, thoſe good Men which thou ſhalt hear called, and perſonally appear, are to paſs between, *&c.*

Plunket. May it pleaſe your Lordſhip, I have been kept cloſe Priſoner for a long Time, a Year and an Half in Priſon: When I came from *Ireland* hither, I was told by Perſons of good Repute, and a Counſellor at Law, that I could not be tried here; and the Reaſons they gave me were, that firſt the Statute of *Henry* VIII. and all other Statutes made here, were not received in *Ireland*, unleſs they were an expreſs mention made of *Ireland* in them: So that none were received there but ſuch as were before *Poyning*'s Act. So I came with that Perſuaſion that I could not be tried here, till at my Arraignment your Lordſhips told me it was not ſo, and that I muſt be tried here, though there was no expreſs mention made of *Ireland*. Now, my Lord, upon that, whereas my Witneſſes were in *Ireland*, and I knew nothing of it, and the Records upon which I very much rely were in *Ireland*, your Lordſhip was pleaſed to give me Time from the 4th of the laſt Month to this Day; and in the mean Time, as your Lordſhip had the Affidavit here Yeſterday, and as Captain *Richardſon* can teſtify, I have not diſpatched only one, but two to *Ireland*, into the Counties of *Armagh*, *Dublin*, &c. and where there were Records very material to my Defence; but the Clerk of the Crown would not give me any Copy of any Record at all, unleſs he had ſome expreſs Order from your Lordſhip. So that whether it were that they were miſtaken, or wilfully refuſed, I could not get the Records, which were very material for me. For in ſome of thoſe Records, ſome of thoſe that accuſe me were convicted of high Crimes, and others were out-lawed and impriſoned, and broke Priſon; and there were other Records alſo of Excommunication againſt ſome of them, and I could not get the Records, unleſs your Lordſhip would inſtruct me in ſome Way or other, how I can get over them that are moſt material for my Defence. The Servants that I ſent hence, and took Shipping for *Ireland*, were two Days at Sea, and caſt back again, and from thence were forced to go to *Holy-Head*, and from *Holy-Head* in going to *Dublin* they were thirteen or fourteen Days, the Winds were ſo contrary; and then my Servant went about to go into the County of *Armagh* and *Derry*, that were a hundred Miles from *Dublin* and *Meath*, and other Places: So that in ſo ſhort a Time, my Lord, it was morally impoſſible for them to have brought the Witneſſes over; and thoſe that were ready to have come, would not ſtir at all, unleſs they had a Paſs from hence, becauſe ſome of them were Roman Catholicks, and they had heard that here ſome were taken Priſoners that were Roman Catholicks, and that none ought to come without a Paſs; and they being Witneſſes againſt the King, they might be clapped up here, and brought into very ill Condition; ſo they ſent one over, that made Affidavit.

[†] *L. C. J.* It was the Affidavit was read here Yeſterday.

Plunket. So that, my Lord, I conceive your Lordſhip will think I did it not out of any Intent to put off my Trial; for Captain *Richardſon* is here, who knows that I writ by the Poſt, and deſired them to come with the Pacquet-Boat, and they writ over to the Captain after they were landed; ſo that I depended upon the Wind and the Weather for my Witneſſes, and wanted your Lordſhip's Order for the Records to be brought over, and that their Examination might be brought into Court, and their own original Examination here might be compared with it. So I humbly beg your Lordſhip's Favour, the Caſe is rare, and ſcarcely happens in five hundred Years, that one ſhould be in my Circumſtances. I am come here where no Jury knows me, nor the Quality of my Adverſaries: If I had been in *Ireland*, I would have put myſelf upon my Trial To-morrow, without any Witneſſes, before any Proteſtant Jury that knew them and me. And when the Orders went over, that I ſhould be tried in *Ireland*, and that no Roman Catholick ſhould be upon the Jury, and ſo it was in both the Grand and other Jury; yet then when I came to my Trial, after I was arraigned, not one appeared. This is manifeſt upon the Record, and can be proved.

L. C. J. There was no Proſecution of you there.

Plunket. But, my Lord, here is no Jury that knows me, or the Quality of my Adverſaries; for they are not a Jury of the Neighbourhood that know them, and therefore my Caſe is not the ſame with other Caſes. Though I cannot harbour, nor do not, nor will not, nor ought not, the leaſt Conceit of hard Meaſure and Injuſtice; yet if I have not full Time to bring my Records and Witneſſes all together, I cannot make my Defence. Some were there then, ſome afar off, ſo that it was a Miracle that in ſix or ſeven Counties they could do ſo much as they did: But they got in ſeven or eight of them, yet there were five or ſix wanting. Therefore I beſeech your Lordſhip, that I may have Time to bring my Records and Witneſſes, and then I will defy all that is upon the Earth, and under the Earth, to ſay any Thing againſt me.

L. C. J. Look you, Mr. *Plunket*, 'tis in vain for you to talk and make this Diſcourſe here now; you muſt know that by the Laws of this Kingdom, when a Man is indicted and arraigned of Treaſon and Felony, 'tis not uſual to give ſuch Time; 'tis rare that any Man hath had ſuch Time as you have had, five Weeks Time to provide your Witneſſes: If your Witneſſes are ſo cautious, and are ſuch Perſons that they dare not, or will not venture for fear of being apprehended, or will not come into *England* without ſuch and ſuch Cautions, we cannot tell how to help it; we can't furniſh you with Witneſſes, you muſt look to get your Witneſſes yourſelf: If we ſhould ſtay till your Witneſſes will come, perhaps they will never come here, and ſo you will eſcape out of the Hands of Juſtice. Do not be diſcouraged in this, the Jury are Strangers to you peradventure, but they are honeſt Gentlemen, and you ſhall have no other upon your Jury; and you may be confident, that if there be not ſome Fact proved againſt you, that may amount to Treaſon, you ſhall be diſcharged; there are Perſons that underſtand ſo much, and we will direct them ſo much. You ſhall have as fair a Trial as if you were in *Ireland*; but for us to ſtay for your Witneſſes, or ſend you back to *Ireland*, we cannot do it: Therefore you muſt ſubmit to your Trial. We heard your Affidavit Yeſterday, and we did then tell the Gentleman that moved it, as much as we tell you. You are here to be tried, look to the Jury as they are called, and except againſt them if you will.

Plunket. My Lord, I deſire only to have the Favour of ſome Time, ſome Time this Term.

L. C. J. We can't do it. *Cl. of Cr.* Swear Sir *John Roberts*.

Plunket. I humbly preſent this to your Lordſhip, I am then in imminent Danger of my Life, if I cannot get ten Days to have my Witneſſes over: I deſire I may have but to the one and twentieth of this Month, and then if they do not come, you may go on.

L. C. J. We cannot do it, you have had five Weeks Time already.

Plunket. I deſire but a few Days.

Clerk. Sir *John Roberts*, take the Book, look upon the Priſoner: You ſhall well and truly try, *&c.*

Plunket. My Lord, I deſire to know, whether they have been of the Juries of *Langhorn*, or the five Jeſuits, or any that were condemned?

L. C. J. What if they have? That is no Exception.

Then the Jury was ſworn, whoſe Names follow.

Sir *John Roberts*,
Thomas Harriot,
Henry Aſhhurſt,
Ralph Bucknall,
Richard Gowre,
Richard Pagett,
Thomas Earſby,
John Hayne,
Thomas Hodgkins,
James Partherich,
Samuel Baker,
William Hardy.

Cl. of Cr. Oliver Plunket, hold up your Hand. You of the Jury look upon the Priſoner, and hearken to his Charge.

" HE ſtands indicted by the Name of *Oliver Plunket*, late of *Weſtmin-*
" *ſter*, in the County of *Middleſex*, Doctor in Divinity, for that
" he is a falſe Traitor againſt the moſt illuſtrious and moſt excellent Prince
" our Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scot-*
" *land*, *France*, and *Ireland* King, and his natural Lord, the Fear of God
" in his Heart not having, nor weighing the Duty of his Allegiance,
" but being moved and ſeduced by the Inſtigation of the Devil, the cor-
" dial Love, and true and due natural Obedience, which true and faith-
" ful Subjects of our ſaid Sovereign Lord the King, towards him our
" ſaid Sovereign Lord the King do and of right ought to bear, utterly
" withdrawing, and contriving, and with all his Might intending the

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[*] Burn. Hiſt. of his own Time, Vol. I. p. 502.

[†] *Sir* Francis Pemberton.

“ Peace and common Tranquillity within the Kingdom of *Ireland*, as alſo of this Kingdom of *England*, to diſturb, and War and Rebellion againſt our ſaid Sovereign Lord the King in the Kingdom of *Ireland*, then being the Dominion of our ſaid Sovereign Lord the King, in Parts beyond the Seas, to ſtir up and move, and the Government of our ſaid Sovereign Lord the King there to ſubvert; and our ſaid Sovereign Lord the King from his Regal Power and Government there to depoſe and deprive; and our ſaid Sovereign Lord the King, that now is, to Death and final Deſtruction to bring and put; and the true Worſhip of God within the ſaid Kingdom of *Ireland*, by Law eſtabliſhed and uſed, to alter to the Superſtition of the *Romiſh* Church: The firſt Day of *December*, in the Year of the Reign of our Sovereign Lord *Charles* the Second now King of *England*, &c. the two and thirtieth, and divers other Days and Times, as well before as after, at *Dublin* in the Kingdom of *Ireland*, in Parts beyond the Seas, with divers other falſe Traitors unknown, traiterouſly did compaſs, imagine and intend the Killing, Death, and final Deſtruction of our ſaid Sovereign Lord the King, and the ancient Government of his ſaid Kingdom of *Ireland* aforeſaid to change, alter, and wholly to ſubvert; and him our ſaid Sovereign Lord the King, that now is, from the Crown and Government of his Kingdom of *Ireland* aforeſaid to depoſe and deprive, and the true Proteſtant Religion to extirpate, and War and Rebellion againſt the ſaid Sovereign Lord the King there to move and levy. And to fulfil and accompliſh his ſaid moſt wicked Treaſons, and traiterous Compaſſings, Imaginations, and Purpoſes aforeſaid, he the ſaid *Oliver Plunket*, the ſaid firſt Day of *December*, in the aboveſaid two and thirtieth Year of the Reign of our ſaid Sovereign Lord the King, that now is, with Force and Arms, *&c.* at *Dublin*, in the Kingdom of *Ireland*, then being the Dominion of our ſaid Sovereign Lord the King in Parts beyond the Seas, maliciouſly, deviliſhly, and traiterouſly did aſſemble and gather together himſelf, with divers other Traitors unknown, and then and there deviliſhly, adviſedly, maliciouſly, ſubtilly, and traiterouſly did conſult and agree our ſaid Sovereign Lord the King, that now is, to Death and final Deſtruction to bring, and from his Crown and Government aforeſaid to depoſe and deprive, and the Religion of the *Romiſh* Church into the Kingdom of *Ireland* aforeſaid, to introduce and eſtabliſh. And the ſooner to fulfil and perfect his ſaid moſt wicked Treaſons, and traiterous Imaginations and Purpoſes, he the ſaid *Oliver Plunket*, with divers other falſe Traitors unknown, then and there adviſedly, maliciouſly, and traiterouſly, did further conſult and agree to contribute, pay, and expend divers great Sums of Money to divers Subjects of our ſaid Sovereign Lord the King, and other Perſons unknown, to procure them the ſaid Perſons unknown, our ſaid Sovereign Lord the King, that now is, traiterouſly to kill, and the *Romiſh* Religion into the ſaid Kingdom of *Ireland*, to introduce and eſtabliſh. And that he the ſaid *Oliver Plunket*, and other Traitors unknown, afterwards, to wit, the ſaid firſt Day of *December*, in the two and thirtieth Year of the Reign of our ſaid Sovereign Lord the King aboveſaid, at *Dublin* aforeſaid, in the Kingdom of *Ireland* aforeſaid, within the Dominion of our ſaid Sovereign Lord the King, with Force and Arms, *&c.* unlawfully, maliciouſly, deviliſhly, and traiterouſly did receive, collect, pay, and expend divers great Sums of Money to divers Perſons unknown, to perſuade and induce divers other Perſons alſo unknown, the ſaid falſe Traitors in their ſaid Treaſons to help and maintain, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King, that now is, his Crown and Dignity, and againſt the Form of the Statutes in that Caſe made and provided.” To this Indictment he hath pleaded, Not Guilty.

Mr. *Heath.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment of High-Treaſon againſt Dr. *Oliver Plunket*, the Priſoner at the Bar; and it ſets forth, That the two and thirtieth Year of the King, at *Dublin* in the Kingdom of *Ireland*, he did compaſs and imagine the Death of the King, and to deprive the King of his Kingdom of *Ireland*, and to raiſe War to extirpate the Proteſtant Religion in the Kingdom of *Ireland*, and to eſtabliſh the *Romiſh* Religion there. And it ſets forth further; that for the Accompliſhment of theſe Treaſons, the Defendant, with ſeveral others, did meet together at ſeveral Places at *Dublin* in the Kingdom of *Ireland*, and elſewhere, and at theſe ſeveral Meetings did conſult and agree to put the King to Death, to raiſe War, to extirpate the Proteſtant Religion, and ſet up the *Romiſh* Religion. And the Indictment further ſets forth, that to accompliſh theſe Treaſons, the Defendant did raiſe great Sums of Money in the Kingdom of *Ireland*, and did get ſeveral Perſons to contribute ſeveral Sums for theſe Treaſons, and that the Defendant with others did diſburſe ſeveral Sums of Money to ſeveral Perſons, to perſuade them and entice them to be aiding and aſſiſting in theſe Treaſons, and to recompence them for them. To this Indictment the Defendant hath pleaded, Not Guilty. If we prove theſe Things, you are to find him Guilty.

Mr. Serj. *Maynard.* My Lord, we will quickly come to the Evidence: But in ſhort, you have heard his Charge is as high as can be againſt the King, and againſt the Nation, and againſt all that is good. The Deſign and Endeavour of this Gentleman was the Death of the King, and the Deſtruction of the Proteſtant Religion in *Ireland*, and the raiſing of War: And to accompliſh this, we charge him, that there was a Confederacy made, Aſſemblies and Conſultations had to theſe Ends, and raiſing Money to accompliſh it. Gentlemen, Dr. *Plunket* was made, as we ſhall prove to you, as they there call him, Primate of *Ireland*; and he got that Dignity from the Pope upon this very Deſign. He did by Virtue of that Power, which he thought he had gotten, make out Warrants, Significations, I know not what they call them, to know how many Men in *Ireland* could bear Arms from ſixteen to forty; he raiſes Taxes upon the People and the Clergy there. But, my Lord, the Particulars will beſt fall from the Witneſſes that we ſhall call and prove it by, and we need not make any Aggravation; for ſuch a Thing as this cannot be more aggravated than 'tis.

Mr. *Att. Gen.* (Sir *Robert Sawyer.*) May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Character this Gentleman bears, as Primate under a foreign and uſurped Juriſdiction, will be a great Inducement to you to give Credit to that Evidence we ſhall produce before you. We ſhall prove that this very Preferment was conferred upon him upon a Contract, that he ſhould raiſe ſixty thouſand Men in *Ireland*, for the Pope's Service, to ſettle Popery there, and to ſubvert the Government. The Evidence that we ſhall give you, will prove how it leads to deſtroy the King; and I take it according to the Reſolutions that have been, to raiſe War in the Kingdom, and to introduce a foreign Power, will be certainly Evidence of an Attempt and Machination to deſtroy the King. As ſoon as he was in Poſſeſſion of his Primacy, he goes about his Work. There are two great Neceſſaries to be provided, Men and Money: For Men, having this great ſpiritual Juriſdiction, whereby, indeed, all that are under it are become Slaves, he iſſues out his Warrants to all the Clergy of *Ireland*, to give an Account, and make Return from the ſeveral Pariſhes, and all the Men in them above fourteen, and under ſixty. And Returns were accordingly made by them, that he might accordingly take a Meaſure what Men to pick out for the Service. The next Thing was Money, my Lord; and your Lordſhip takes Notice, that when the Mind is enſlaved, the Purſe, nay all the Body bows to it. He iſſues out his Warrants to his Clergy to make a Collection of Money; in all Parts great Sums were levied, and when they were levied, we ſhall give you an Account by our Proofs, that ſeveral Sums were iſſued out, and ſent into *France* to further the Buſineſs. There was alſo Proviſion made of great Ammunition and Arms; and we ſhall prove in particular, ſeveral delivered out by this Gentleman's Order, to carry on this Thing; and to go through Stitch with this Buſineſs, he takes a View of all the ſeveral Ports and Places in *Ireland*, where it would be convenient to land; for they were to have from *France* an auxiliary Force, and upon his View he pitched upon *Carlingford* as the Place. We ſhall prove the ſeveral Correſpondencies between *Rome* and him, and *France* and him, and ſeveral Meſſengers employed, and Monies iſſued out from Time to Time for their Maintenance. This will be the Courſe of our Evidence; and we ſhall begin firſt with ſome that do not ſpeak ſo particularly to this Doctor, but prove there was a general Deſign in all Parts of the Kingdom of *Ireland*, to bring in the King of *France*, and extirpate the Proteſtant Religion. And then we ſhall call the particular Perſons to the particular Facts againſt him. Firſt, we call *Florence Wyer*, *(Who was ſworn.)*

Mr. *Soll. Gen.* Are you ſworn, Sir?

Wyer. Yes, Sir.

Mr. *Soll. Gen.* Pray give the Court and the Jury an Account of what you know of any Plot in *Ireland*, to introduce the *Romiſh* Religion, or to bring in the *French* King.

Wyer. Yes, I know there was a Plot, both before *Plunket*'s Time, and in his Time; for it was working in the Years 65 and 66, but it was brought to full Maturity in the Year 1667. For then Col. *Miles Rely* and Col. *Bourne* were ſent to *Ireland* from the King of *France*, with a Commiſſion to muſter as many Men as he could, promiſing to ſend an Army of 40,000 Men with a Commiſſion, upon St. *Lewis*'s Day in *Auguſt* next following to land at *Callingford*, to deſtroy all the true Subjects, to deſtroy the Religion as it was eſtabliſhed there, and to ſet up the *French* King's Authority and the *Roman* Catholick Religion. And one *Edmund Angle*, that was a Juſtice of Peace, and Clerk of the Crown, ſent for all the Rebels abroad in the *North* to come up into the County of *Longford*, and they marched into the Head-Town of the County, and fired the Town; the Inhabitants fled into the Caſtle: Then they came up to the Gaol, thinking to break it open, and by ſetting the Priſoners free, to join them with them; but then *Angle* was ſhot, received a deadly Wound, and dropt off of his Horſe, and they fled. So then when they were without the Town, one *Charles Mac-Canal* alighted, and took away all the Papers out of his Pocket; which if they had been found, would have diſcovered all. This occaſioned Col. *Bourne* to be ſuſpected; and being ſo ſuſpected, he was taken Priſoner, and turned to *Newgate* in *Dublin.* Then Col. *Rely* fled away again to *France*, and the Plot lay under a Cloud during the Life of Primate *Raley* the Priſoner's Predeceſſor. This Primate *Raley* died beyond Sea. Then many of the Popiſh Religion would have had the Primacy conferred upon one *Duffy*; but the Priſoner at the Bar put in for it; which might have been oppoſed, if the Priſoner had not engaged and promiſed that he would ſo manage Affairs, that before the preſent Government were aware, he would ſurpriſe the Kingdom; provided the Pope and King of *France* would ſend a competent Army to join with theirs for the effecting of it. So the firſt Year of his coming over I was in the Friery at *Armagh*; I was an Acquaintance of the Friers, and they invited me; and one *Quine* told the Priſoner, that they thought *Duffy* would have been Primate. Said he, 'tis better as it is; for *Duffy* hath not the Wit to do thoſe Things that I have undertaken to do; meaning that he did undertake to ſupplant the Proteſtant Religion, to bring in Popery, and put the Kingdom under Subjection to the King of *France*.

Mr. *Sol. Gen.* How do you know that?

Wyer. Thoſe were the Words, and the Meaning I knew before, becauſe I had heard it talked of.

L. C. J. Who was the firſt of theſe Primates you ſpeak of?

Wyer. *Edmund Raley*; he ſet this Buſineſs on Foot firſt.

L. C. J. About what?

Wyer. About calling the Rebels together out of the *North* when they came to *Longford*.

L. C. J. What Year was that?

Wyer. It was in the Year 67.

L. C. J. When died he?

Wyer. He died a little While afterwards.

L. C. J. Then *Duffy* would have it conferred upon him?

Wyer. Yes, after *Raley*'s Deceaſe he would have had it conferred upon him; and there was a Contention between him and the Priſoner, who did engage he would bring Things to that full Maturity, that before the preſent Government were aware he would do the Work.

L. C. J. How do you know this?

Wyer. I know this, becauſe I had an Account of it from certain School-Fellows that were with me in *Ireland*, then ſtudying in *Rome*; they wrote this to me, deſiring me I would take a good Heart with the Reſt of my Countrymen, and aſſuredly in a ſhort Time the Kingdom would be relieved, and the *Iriſh* reſtored to their former Patrimonies.

L. C. J. This you ſpeak of their Information. What do you know of your own Knowledge?

Wyer. All that I know is, he coming into the Friery of *Armagh*——

L. C. J. About what Time?

Wyer. It is either 10 or 11 Years ago, and there was a Faſt there, and I was invited by the Friers, being their Acquaintance; one *Quine*, one of the Friers, told him——

L. C. J.

L. C. J. Told whom?

Wyer. The Priſoner that he did expect *Duffy* ſhould have been Primate; but the Priſoner made anſwer, 'tis better as it is; for *Duffy* had not the Wit to manage the things that I have undertaken for the general Good of our Religion,

L. C. J. Now tell me this: What Things were thoſe he had undertaken? Did he explain himſelf?

Wyer. No farther than thoſe Words: But I did conceive this was his Meaning; becauſe I knew partly of it myſelf, knowing of the former Plot.

L. C. J. I aſk you only what Words came from him; and you ſay they were, that *Duffy* had not the Wit to manage what he had undertaken for the general Good of their Religion.

Wyer. Yes, and then again in his Aſſembly, kept by him, he charged his Inferiors to collect ſuch ſeveral Sums of Money as he thought fit, according to the ſeveral Pariſhes and Dignities, to aſſiſt and ſupply the *French* Forces when they came over.

L. C. J. How know you that?

Wyer. I have ſeen the Money collected; and I have ſeen his Warrant, *ſub pœna ſuſpenſionis*, to bring it in, to redeem their Religion from the Power of the *Engliſh* Government. Again, there were thoſe Rebels that went to *Longford*———

L. C. J. What Time were thoſe Collections?

Wyer. From Time to Time ſince he came into *Ireland.*

L. C. J. About what Time?

Wyer. Nine Years, eight Years, ſeven Years ago, and the laſt Year of all.

L. C. J. Then it was ſeveral Times, you ſay?

Wyer. Yes, and he procured the *Mackdonels* a Piece of Money out of the *Exchequer*, pretending to do good Service to his Majeſty; but he ſent them for *France*, meaning they ſhould improve themſelves, and bring themſelves into favour with the King of *France*, and come over with the *French* King to ſurpriſe *Ireland.* This one of the Rebels told me. So I have ſeen the Priſoner's Letter directed to the grand Tory *Flemming*, deſiring that they ſhould go to *France*, and he would ſee them, in ſpite of all their Enemies in *Ireland*, ſafe aſhore: And *Flemming* ſhould return again a Colonel to his own Glory, and the Good of his Country.

Mr. Att. Gen. Do you know his Hand?

Wyer. Yes, I do, as well as my own. I have ſeen Capt. *O-Neal*, Son of General *O-Neal*, coming every Year into *Ireland*, and carrying three Regiments to the *French* King into *France*; and he uſed to come over to *Ireland* every Year to get a Recruit; and he did get my Brother to go with him, and ſo much importuned me, that I could hardly withſtand him; but I did not yield to his Deſire. He told me, it was to improve me for my Good, to improve myſelf in military Diſcipline; and then I ſhould return for *Ireland* a Captain under the *French* King, to ſurpriſe the Kingdom and ſettle the Popiſh Religion; and then I ſhould be reſtored to my Eſtate.

L. C. J. Who told you this?

Wyer. Captain *O-Neal.* And in the mean while, ſays he, I hear Dr. *Plunket* is the only Man intruſted in *Ireland* to make theſe Preparations, and get Things ready againſt the *French* King's coming, who is to land at *Carlingford.*

Mr. Att. Gen. How often were you in the Doctor's Company?

Wyer. Not very often.

Plunket. I never ſaw him with my Eyes before in all my Life.

Wyer. I have ſeen him in the Priory the firſt Year that he came over to *Ireland*; and you know the Meetings held at *George Blyke*'s Houſe in the *Fives*, and I have ſeen him in his own Houſe.

Mr. Juſt. *Dolben.* How come you to know the Priſoner's Hand?

Wyer. Becauſe I was well acquainted with his Hand, ſeeing his Hand among the Prieſts.

Mr. Juſt. *Dolben.* Did you ever ſee him write?

Wyer. Yes, in the Priory, and in his own Houſe.

Mr. Juſt. *Dolben.* How often?——*Wyer.* Not often.

Mr. Juſt. *Dolben.* How often?

Wyer. Ten or a Dozen Times. I ſhould know his Hand from all the Writing in *London*, if it were among never ſo many. Let me but ſee it, I will know it.

L. C. J. Have you ever heard him own himſelf Primate?

Wyer. Yes, my Lord, he writes himſelf *Oliverus Armacanus*, *Primas & Metropolitanus totius Hiberniæ*, that is his Stile.

L. C. J. Who did he ſay made him Primate?—*Wyer.* The Pope, my Lord.

L. C. J. Have you heard him ſay ſo?

Wyer. Yes, I heard him diſcourſe of it in the Priory.

Mr. Att. Gen. He was a public Officer, and they might well know his Hand.

L. C. J. I believe any Body that hath ſeen us write but a little, would ſoon know our Hands.

Wyer. His Hand is as well known over *Ireland*, as mine is among my Acquaintance.

L. C. J. Well go on.

Wyer. During the Time of his Impriſonment, I have ſeen his Commands to ſome of his inferior Dignitaries, commanding them, *ſub pœna ſuſpenſionis*, to bring in the Monies aſſeſſed for bringing in the *French* Army; and that there was no better Time than the Time of his Impriſonment to bring it in.

L. C. J. Who were they, you ſay, that were commanded *ſub pœna ſuſpenſionis?*

Wyer. Since his taking, I have ſeen in the Time of his Impriſonment his Commands to his inferior Dignitaries, not to be forgetful of the Monies that were aſſeſſed towards the ſupplying the *French* Army; and that there was no better Time to bring in the *French*, than when he was in Priſon.

L. C. J. How long ago was that?

Wyer. The firſt of *February* (79). The ſecond and laſt of it was in *July* and *November* laſt.

L. C. J. And this was to bring in the Money?

Wyer. Yes, to ſupply the *French* Army. And that there was no better Time than during his Impriſonment, and they ſhould not be ſo much ſuſpected.

L. C. J. And theſe Mandates you have ſeen under his Hand?

Wyer. Yes, I have, my Lord.

Mr. Att. Gen. What do you know of his ſummoning or iſſuing out theſe Warrants for Liſts of Men?

Wyer. I have not ſeen any of the Warrants; but the Prieſts have told me they were commanded by his Warrants to let him know how many there were in all their Pariſhes from ſixteen to ſixty.

Mr. Att. Gen. You ſay you never ſaw the Mandates?

Wyer. No, I did not.

Mr. Serj. *Jeff.* What do you know about the Priſoner's viewing the Ports?

Wyer. I have ſeen him going about from Port to Port, to *Derry*, to *Carricfergus*, *Caſily-Down*, and *Carlingford*, and all about.

Mr. Serj. *Jeff.* When he went to take a View of thoſe Ports, can you tell to what Purpoſe he did it?

Wyer. Yes, I heard it among the Church, that he went on Purpoſe to view the Sea-Ports, to know the Strength of all the Garriſons, and to ſee which was the moſt convenient Way to bring in the *French* Army.

Mr. Serj. *Jeff.* Did you ever ſpeak with the Priſoner at the Bar about his going?————*Wyer.* No.

Mr. Serj. *Jeff.* What Place did he pitch on as moſt convenient?

Wyer. *Carlingford.*

Mr. Att. Gen. Were you in the Priſoner's Company when he viewed the Ports?————*Wyer.* I have ſeen him go to and fro; I did not go all the Circuit round with him.

Plunket. Did you ever ſee me at *Carlingford?*————*Wyer.* No.

Plunket. Did you ever ſee me at any other of the Ports?

Wyer. I have ſeen you at *Hamilton*'s coming back from *Derry.* Do you not remember that you lodged at at Sir *Geo.*

Plunket. I never lodged there in my Life.

Sir *Fra. Withens.* Have you any Thing more to ſay concerning the Plot in general?————*Wyer.* No, in general I have not.

Mr. Serj. *Jeff.* He hath not only given an Account of the general, but fixed it upon the Priſoner.

Mr. Att. Gen. Dr. *Plunket*, will you aſk him any Queſtions?

Plunket. You ſay you remember you ſaw me at my firſt coming as Primate ten Years ago, and that you were at the Priory when I was there?

Wyer. Yes.

Plunket. You were inviſible to me.

L. C. J. If you will aſk any Queſtion, do; but do not make theſe Kind of Obſervations.

Plunket. Tell me this, Why did you not acquaint ſome Juſtice of the Peace then with what you knew, that which you had heard ſeven Years ago?

Wyer. When I firſt knew it, I was as willing to have it concealed as they.

L. C. J. What is your Queſtion, Dr. *Plunket?* Pray tell it us.

Plunket. He ſays, my Lord, that ten Years ago I had ſuch a Deſign in Hand, and he knew the Money was collected for theſe very Ends, and he knew of the Deſign from that ſame Captain *O-Neal*, whom I employed and ſent abroad; and that I had a Deſign to bring in the *French* at *Carlingford*, and went about to all the Ports in *Ireland*, and pitched upon that as the moſt convenient; and yet it is ſo inconvenient for the bringing in a foreign Force, that any one that knows any thing of the Maps of the World, will eaſily conclude it otherwiſe. But, I ſay, my Lord, why did not he tell ſome Juſtice of Peace that I was upon ſuch a Deſign, but let me live in *Ireland* ten Years after, and never ſpeak of it till now?

L. C. J. What ſay you to the Queſtion?

Plunket. When he ſaw me all the Time, and to the Time of my taking Priſoner, and never ſaid one Word; for I was a Priſoner ſix Months, only for my Religion, not one Word of Treaſon ſpoken of againſt me for ſo many Years; why did not he acquaint ſome Juſtice of the Peace with it before?

L. C. J. What Religion were you of then?

Wyer. I was a *Roman* Catholick.

Plunket. And are you not ſo now?————*Wyer.* Yes, I am ſo.

Mr. Juſt. *Dolben.* Therefore it will be no Wonder that you did not diſcover it.

Mr. Serj *Jeff.* But I aſk you, Why did not you diſcover it all this Time?

Wyer. Becauſe I was a Papiſt myſelf: The firſt that did diſcover it, he and I did conſult about it, I had charged him ſo to do, and I ſet him on work; but he was ill paid for having diſcovered: You got him to be trepanned, that he hath gone in Danger of his Life for it.

Plunket. Who is the Man?————*Wyer.* *Moyer.*

Sir *Fra. Withens.* Call *Henry O-Neal*, (*who was ſworn.*) What know you of any Deſign in *Ireland* to introduce the Popiſh Religion?

O-Neal. In *Auguſt* (78.) Biſhop *Tyrrel* came with 40 odd Horſemen to Vicar-General *Brady*'s Houſe, and alighted at the Door; and he gave them there an Oath, which they took willingly and freely from Hand to Hand, to forward the Popiſh Plot againſt the Proteſtant Religion, to make an End of them all in one Hour from End to End in *Ireland*; and, ſaid he, I will come within two Days with an *Order* from the Lord *Oliver Plunket*; and you need not be afraid, for the Lord *Oliver Plunket* and I have ſent ſome Gold and Money into *France* to get Men and bring them from *France* over Sea: And do not fear, this will go on in one Hour through all *Ireland* from End to End. In *September* (78.) a little While after, the ſame Meeting was in a Place which they call *Virginia*, in the County of *Connaught*, where they took a Prieſt, he is here, and he was with me, and deſired me to come up to *Dublin* and diſcover this; and there I did diſcover it to Sir *John Davis*; which is all that I can ſay. For this *Plunket*, I never ſaw him in my Life.

Mr. *Jones.* You were a Papiſt then?————*O-Neal.* Yes, I was.

Mr. *Jones.* Are you a *Roman* Catholick ſtill?——*O-Neal.* Yes, I am.

Mr. *Jones.* And were you acquainted with all theſe Orders?

O-Neal. Yes.

L. C. J. How came you to know of this Oath?

O-Neal. I was in the Houſe with them; I was one concerned to take my Oath with them, and I durſt not but take the Oath.

L. C. J. Had you the Oath of Secrecy given you?

O-Neal. Yes, and ſo this Prieſt commanded me to go along to *Dublin* and diſcover it.

Mr. Serj. *Jeff.* What is his Name?————*O-Neal.* *John Mac Legh.*

Sir *Fra. Withens.* Do you know any other Tranſactions about the Plot?

O-Neal. No, I will not ſwear for all the World more than I know.

Sir *Fra. Withens.*——Then call *Neile O-Neal*, (*who was ſworn.*) What do you know of any Deſign carrying on in *Ireland* againſt the Government and the Proteſtant Religion ?

N. O-Neal. I will tell you all I know: I was at Vicar *Brady*'s Houſe the 21ſt of *Auguſt.*

L. C. J. What Year ?

N. O-Neal. (78.) And Biſhop *Tyrrel* came with 40 Horſe-Men to the Houſe, and went into the Houſe, and diſcourſed a little while; and they took their Oaths, every one round, to keep ſecret the Plot to deſtroy the Proteſtant Religion and the Proteſtants, that they might have their Eſtates again. And he ſaid they did not need to fear: For, ſaid he, you have a very good Man to aſſiſt you, and that is the Lord *Oliver Plunket*, and you need not fear but it will go through all *Ireland.*

Mr. Att. Gen. Will you aſk him any Queſtions ?

Plunket. Why did you not diſcover it before ?

Mr. Serj. *Jefferies.* Were you a *Roman* Catholick at that Time ?

N. O-Neal. Yes, and am ſo ſtill.

Mr. *Paget*, *Jury-Man.* I deſire he may be aſked how he came to be there.

L. C. J. You ſay, I think, this was at Vicar General *Brady*'s; how came you to be there ?

N. O-Neal. I was there ſeveral Times before that; for my Nurſe or my Forſter-Mother (I don't know which you may underſtand beſt) was Houſe-keeper to him.

L. C. J. Were you required to take the Oath ?

N. O-Neal. No, my Lord, I was acquainted in the Houſe, I had been there two or three Weeks before.

Plunket. Why did not you tell it to ſome Juſtice of the Peace ?

L. C. J. He was a Papiſt, and ſo he is now.

N. O-Neal. There were many there that were wiſer than I, that did not diſcover it.

L. C. J. How old are you ?

N. O-Neal. I believe about two and twenty Years old.

L. C. J. And this was but in (78.)

Mr. Att. Gen. Swear *Owen Murfey*, (*which was done.*) Come, what ſay you ?

O. Murfey. Mr. *Edmund Murfey* diſcovered the Plot; he went to one Lieutenant *Baker* and did diſcover the Plot to him, that there was a Deſign to bring in the *French.*

L. C. J. Speak out aloud, I can't hear you.

O. Murfey. All I know is from Mr. *Edmund Murfey*——

L. C. J. What do you know of any, of your own Knowledge ?

O. Murfey. Mr. Lieutenant *Baker* told me, that he did hear of the *French*——

L. C. J. Speak what you know yourſelf.

O. Murfey. If it pleaſe your Lordſhip, this is more: I ſaw that Evidence that *Edmund Murfey* did produce in *Ireland*, when he was ſent to the Gaol there; but without Trial or any Thing.

Mr. Att. Gen. Then ſwear *Hugh Duffy*; (*which was done.*) Speak aloud, and tell my Lord what you know of this Plot and the Priſoner: You know the Priſoner, don't you ?

Duffy. I know him! yes, I know him well enough.

L. C. J. What ſay you more of him ?

Duffy. My Lord, I ſay I have ſeen this Dr. *Oliver Plunket* raiſing ſeveral Sums of Money to carry on this Plot; ſometimes 10*s. per Ann.* ſometimes 20.

Mr. Sol. Gen. Of whom ?

Duffy. Of all the Prieſts in *Ireland*; of every Prieſt according to his Penſion and Pariſh.

L. C. J. In all *Ireland?*——*Duffy.* Yes.

L. C. J. And towards the Proceedings of the Plot ?

Duffy. It was to give to his Agent which was at *Rome*, and for the carrying on the Buſineſs.

Mr. Att. Gen. How came you to know this ?

Duffy. I was Servant to Dr. *Duffy*, who was infinitely belov'd by this Man. He was Father Confeſſor to the Queen of *Spain.* There was nothing that happened between them, but I was by all the Time.

L. C. J. Were you Chaplain to him ?——*Duffy.* Yes.

L. C. J. You are a Papiſt then ?——*Duffy.* Yes.

Mr. Att. Gen. This Man is a Friar, my Lord.

L. C. J. Were you in the Company with them ?——*Duffy.* Yes, I was.

L. C. J. What did paſs there ?

Duffy. About the Plot; how they could confirm the Plot: And this Man *Plunket* ſaid, he could prevail with the King of *France*, and the other with the King of *Spain.*

Mr. Att. Gen. Pray acquaint my Lord particularly when this was, and in what Place, and what they ſaid ?

Duffy. It was in 73, 74, and 75, at his own Houſe; and at he kept three or four Jeſuits there, and a matter of a hundred Prieſts.

Mr. Att. Gen. What paſſed in the Company ?

L. C. J. Who elſe was there ?

Duffy. The Diſcourſe, my Lord, was always about the Plot, how they could contrive the Matter between them; and ſo they did conclude afterwards to raiſe ſo much Money upon ſeveral Prieſts, all the Prieſts in *Ireland*, ſometimes 20*s.* ſometimes 40.

L. C. J. A-piece, do you mean ?——*Duffy.* Yes.

Mr. Att. Gen. What Diſcourſe had they about the *French* at any Time ?

Duffy. Yes, a hundred times; he talked ſeveral Times, that he did not queſtion but he ſhould prevail with the King of *France* not to invade *Spain:* And I have ſeen his Letter to Cardinal *Bouillon*, to expoſtulate with him about the King of *France*, why he ſhould wage War with the King of *Spain*, who was a Catholick, but rather ſhould come and redeem *Ireland* out of its heretical Juriſdiction.

Mr. Att. Gen. Did you ſee the Letter ?——*Duffy.* Yes.

Mr. Att. Gen. Why, do you know his Hand ?

Duffy. Yes, I know it as well as I know my own; I know it if there were a thouſand Papers together.

Mr. Att. Gen. And what was the Import of it, pray ?

Duffy. That Cardinal *Bouillon* ſhould prevail with the King of *France* not to invade *Spain*; and the Contents of the reſt of the Letter were, That he did admire he ſhould not rather wage War with the King of *England*, who hath been an Apoſtate, and help their poor Country that was daily tormented with heretical Juriſdiction.

Mr. Att. Gen. How came you to be in *France?* Were you employed ?

Duffy. I went to *France* to live there in a Convent.

Plunket. Did Cardinal *Bouillon* ſhew you my Letter ?—*Duffy.* Yes.

Plunket. What Year ?—*Duffy.* 77.

Mr. Att. Gen. Pray, Sir, you were ſpeaking of raiſing of Money——

Duffy. Yes.

Mr. Att. Gen. Did you ſee any Precept about it ?

Duffy. Yes, I have ſeen ſeveral Precepts: I was Curate to one Father *Murfey*; and while that Man was with Dr. *Oliver Plunket*, and other Jeſuits, I did officiate in his Place, and he ſent his Letters to me to raiſe 40*s.* and 20*s.* a time, ſeveral times.

L. C. J. You yourſelf ?—*Duffy.* Yes.

Mr. Att. Gen. What for ?

Duffy. It was to ſend to Dr. who was at *Rome.*

Mr. Att. Gen. Did you ſend any Money that you know of?

Duffy. Yes.

Mr. Att. Gen. Tell what Time you gave the Money yourſelf?

Duffy. In 73, 74, 75.

Mr. Att. Gen. Where ?—*Duffy.* At his own Dwelling Place at

Mr. Juſt. *Jones.* Of what Quality was the Priſoner amongſt you ?

Duffy. He was Primate of all *Ireland.*

Mr. Juſt. *Jones.* Under whom ?—*Duffy.* Under whom? under the Pope.

Mr. Juſt. *Jones.* How do you know he was ſo ?

Duffy. We had it in his Writings.

L. C. J. Did he ſtile himſelf ſo in his Letters ?

Duffy. Yes, if he writ but to the leaſt Man in the Country, he would write, *Oliverus Armicanus*, *Primas totius Hiberniæ.*

L. C. J. And ſo you always underſtood him ?—*Duffy.* Yes.

Mr. Att. Gen. Were you preſent at any of the general Conſultations or Meetings ?—*Duff.* Yes, I was.

Mr. Att. Gen. What Number might meet at that Time ?

Duffy. Five hundred Men and Women.

Mr. Att. Gen. Where was this ?—*Duffy.* At *Clouds.*

Mr. Att. Gen. What was the Occaſion and Deſign of that Meeting ?

Duffy. Confirmation from the Biſhop.

Mr. Att. Gen. And what was done there beſides ?

Duffy. The ſecond Thing was, that the Gentlemen of the three Counties ſhould conclude together about this Matter.

L. C. J. About what ?

Duffy. About joining the *French* and *Spaniſh* together.

Mr. Juſtice *Dolben.* Where was that Meeting ?

Duffy. In the County of *Monaghan.*

Mr. Juſt. *Dolben.* Was the Priſoner there ?

Duffy. Yes, he was the chief Man.

L. C. J. When was this ?—*Duffy.* In 71, to the beſt of my Knowledge.

Mr. Juſt. *Dolben.* Were you there yourſelf ?—*Duffy.* Yes.

Mr. Att. Gen. What was the Tranſaction of that Day, beſides the Sacrament of Confirmation ?

Duffy. It was agreed that the Gentry of *Armagh*, *Monaghan*, and *Connaught*, ſhould join together; and then they went into a private Council to get a Liſt of all the Officers that were in the laſt Rebellion, and thoſe that loſt their Eſtates.

Mr. Att. Gen. How do you know that? Did you go into the Conſult?

Duffy. Yes, I was in the ſame Conſult myſelf, and was as willing to proceed in the Matter as any one in the World.

L. C. J. Where was this ?

Duffy. Within two Miles of *Clouds*, at one Father Houſe.

L. C. J. Was that at the Time when there were ſo many Perſons met? Pray ſpeak again what was done there beſides Confirmation ?

Duffy. Why they were withdrawn aſide into a Garden, ſome ſtood up, and ſome ſat down: And *Oliver Plunket* ſtood in the middle of them all as a Prelate, and every one kneeled down before him and kiſſed his Hand.

Mr. Att. Gen. What was then ſaid ?

Duffy. Then they did conſult and gave ſpecial Order to ſome of them to get a Liſt of all the Officers in the late Rebellion, and that loſt their Eſtates, and that they ſhould be more forward than others to proceed in that wicked Deſign.

L. C. J. What was that Deſign ?

Duffy. To deſtroy all the Proteſtants together.

Mr. Att. Gen, Was it to mingle the *Iriſh*, and *Spaniſh*, and *French* Army together ?———*Duffy.* Yes, it was.

Mr. Att. Gen. Did you hear the Priſoner ſpeak about it ?—*Duffy.* Yes, and he made a Speech before them concerning our own Faith and Religion.

Mr. Att. Gen. Was there any mention of Money at that Time ?

Duffy. It was, that every Man of them that could diſpoſe of Money ſhould provide ſome for thoſe Gentlemen that would ſoon come into *Ireland.*

Mr. Serj. *Mayn.* Who were thoſe Gentlemen ?

Duffy. The *French* Army and the *Spaniſh* Army together.

Mr. Att. Gen. Were you at any other Meeting ?———*Duffy.* No.

Mr. Att. Gen. After he was taken, do you know of any Order he ſent out to gather Money ?———*Duffy.* Yes, at the Aſſizes of *Dalkeith*, I think it is *June* two Years ago he was apprehended———

Mr. Att. Gen. Indeed he was firſt apprehended as a very buſy Papiſt.

Duffy. I have ſeen two or three ſeveral Orders to raiſe Money, for the ſame Purpoſe; and that it was the only Time to bring the Matter to an end when he lay in Gaol himſelf.

Mr. Att Gen. Was that the effect of the Letter ?

Duffy. Yes; and that the *French* and *Spaniſh* Kings ſhould take the Advantage that now was offered whilſt he was in Priſon.

Mr. Juſt. *Jones.* You ſay ſome Money was ſent to Dr. *Cray?*

Duffy. Yes.

Mr. Juſt. *Jones.* To what End ?—*Duffy.* To comply with this Deſign.

Mr. Juſt. *Jones.* Where was that Dr. *Cray?*

Duffy. He was at *Rome*, he was made a Biſhop there.

Mr. Att. Gen. Who employed him there ?

Duffy. This Man employed him always.

L. C. J. What was his Name ?

Duffy. *Cray*.

Mr. Juſt. *Jones*. You ſay ſome of the Prieſts paid 20, ſome 40?

Duffy. Yes.

Mr. Juſt. *Jones*. Did the Lay-Gentry agree to pay nothing?

Duffy. I don't know for the Gentry.

L. C. J. But I think you paid ſomething yourſelf?

Duffy. Yes, I paid for two or three Years myſelf.

L. C. J. And that was for the Deſign?

Duffy. Yes, for the *French* and *Spaniſh* Army, and all the Purpoſes together.

Mr. Att. Gen. What do you know of any Precept to be given in of all Sorts of Perſons of ſuch an Age?

Duffy. I gave a Liſt of the Age of every Perſon from 16 to 60.

Mr. Att. Gen. By whoſe Order?——*Duffy*. By his Order.

Mr. Serj. *Jeff.* To whom did you give it?---*Duffy*. To Dr. *Plunket*.

Mr. Serj. *Jeff.* That is, to the Priſoner?

Duffy. Yes, out of my own Precinct.

Mr. Att. Gen. Had you any Order from him?

Duffy. Yes, it was directed to the Pariſh-Prieſt; and I, being Curate in his Place, received the Order.

Sir *Fra. Withens*. To what Purpoſe was it?

Duffy. To know what Men in *Ireland* were able to bear Arms.

Mr. Juſt. *Jones*. What was the Number contained in your Liſt?

Duffy. 250.

Mr. Juſt. *Jones*. What, in one Pariſh?——*Duffy*. Yes.

Mr. Serj. *Jeff.* What was the Pariſh's Name?——*Duffy*. *Cogban*.

Mr. Att. Gen. Do you know any thing of his going to view the Ports?

Duffy. I accompanied him to *Carlingford*.

Mr. Att. Gen. Did you?——*Duffy*. Yes, in Perſon I did.

Mr. Serj. *Jeff.* What did he ſay?

Duffy. He went round about the Place where ſome of the Cuſtom-ſhips come in; there was a great Caſtle there near the Sea, and he went to view the Place, and could not get a Boat: And there was a great Talk of *Carlingford* to be one of the beſt Havens in *Ireland*; there was no great Garriſon at the Place, and any Ship might come to the Gates of the Town, and ſurprize it, being a little Town.

Mr. Att. Gen. What did he conclude upon that?

Duffy. That he might get the *French* Army to land ſafely there.

Mr. Att. Gen. What do you know of delivering any Ammunition and Arms?

Juff. He did ſend ſome of this Money to get Ammunition into *Ireland*.

Plunket. You ſay you were *Murfey*'s Curate: Can you ſhew me ſuch Inſtitution as you ſay came to you to raiſe Money?

Duffy. I could have brought them, but thought it needleſs.

Plunket. Can you name any other Perſon I received Money from?

Duffy. I have ſeen your Paper of the County of *Monaghan*.

Plunket. Have you ſeen any of them pay any Money?

Duffy. Yes, I have ſeen twenty of them pay Money.

Mr. Juſt. *Dolben*. Why, you are acquainted with this Man, are you not Mr. *Plunket*?

Plunket. My Lord, I believe I have ſeen him.

Mr. Juſt. *Dolben*. Don't you know he was Chaplain to Biſhop *Duffy*?

Plunket. No, I never was in his Company.

Mr. Serj. *Jeff.* Pray tell him what Time of the Year it was that you were at *Carlingford*?

Duffy. It was at the End of the Year 77, and the Beginning of the Year 78.

Mr. Att. Gen. Pray, if you can recollect, was you once, or twice, or twenty Times in his Company?

Duffy. As I am a Chriſtian, I have been an hundred Times in his Company. And when you were creating Prieſts, you would always ſend for me to be preſent; and I wonder how the Man ſhould forget himſelf.

Plunket. I do not ſay I have not ſeen him, or that I am a Stranger to the Man; but in the Company of Biſhop *Duffy* I never ſaw him, nor I never ſent him Orders to pay any Money; and if he did pay any Money, he might ſhew the Order.

Mr. Serj. *Jeff.* If he did pay any Money, you did ill to take it.

Mr. Att. Gen. Pray let him have fair Play to aſk any Queſtions.

Mr. Sol. Gen. Tell how you came to remember that you ſaw him at Sir *Nich. Plunket*'s.

Duffy. Dr. *Duffy* did ſend me to Sir *Nicholas Plunket*'s, and I met Dr. *Plunket* as I was coming out of the City. I had been half a Year at the *Spaniſh* Ambaſſador's, and he ſent me for *Ireland* again, and then I lived at the Convent in *Dublin*; and then, when I knew that he would come to Town, I went to *Ring's-End*, where the Ships came in, to meet him.

Plunket. You ſay you were with him at my Houſe.——*Duffy*. Yes.

Plunket. If you were, you were inviſible: But I aſk you, Why did not you tell this to ſome Juſtice of the Peace?

Mr. Juſt. *Dolben*. Good Mr. *Plunket*, he tells you, he was as willing to forward it then as you.

L. C. J. How came you now to change your Mind?

Duffy. I went into *France* in 77, and I was not there a Year altogether; but when I have ſeen how the poor People there are brought into ſuch Slavery by the *French* King, I thought of it, and had rather the Devil ſhould reign over us, than the *Frenchman*.

Mr. Juſt. *Dolben*. He gives you a very good rational Account why.

Duffy. I have been at Sir *Nicholas Plunket*'s, and Dr. *Patrick Plunket*'s, where there fell ſome Variance about ſomething this Man had done to Father *Duffy*. Says Biſhop *Duffy*, I might have had you drawn and quartered, if I were as ill a Man as you; and I might have been Primate of *Ireland*, if I would have undertaken thoſe Things that you undertook. Upon that, ſays Sir *Nicholas Plunket*, What is that? Why, it was ſaid, it was to raiſe 60000 Men in *Ireland* at any Time whenever the *French* or the *Spaniſh* King ſhould wage War with *England*, *Scotland*, or *Ireland*. And this Man did confeſs before my Face to Father *Duffy*, that it was not only to exalt himſelf, but all the *Romiſh* Clergy, and all the Gentry that had loſt their Eſtates.

Plunket. Mr. *Duffy*, one Word with you: Is not this out of Malice to me, for correcting ſome of the Clergy?

Duffy. You had nothing to do with me, for I was a Friar.

Mr. *Att. Gen.* Swear *Edmund Murfey* (*which was done*.) Tell your whole Knowledge of Dr. *Plunket* and the *Iriſh* Plot.

Murfey. May it pleaſe you, my Lord, I was one of the firſt Diſcoverers of this Plot; but of nine Witneſſes, I have but one in Town.

L. C. J. Well, tell your own Knowledge.

Murfey. Now I beg your Lordſhip, as to Dr. *Plunket*, that you will reſpite it till next Term; I could bring ten Witneſſes.

Mr. Att. Gen. Do you ſpeak your own Evidence?

Murfey. I refer it to the King and Council, what Evidence I have given.

L. C. J. Do not trouble yourſelf, be directed a little: You are here now to ſpeak what you know concerning any Treaſons, or any other Matters againſt the King, done by Dr. *Plunket*; ſpeak your own Knowledge, for as to other Witneſſes we do not call you.

Murfey. If I be called in queſtion for this Evidence——

Mr. Att. Gen. Come, Sir, you have been at the *Spaniſh* Ambaſſador's lately, anſwer my Queſtion; have you ever been with *Plunket* in *Ireland*?

Murfey. Yes, Sir.

Mr. Att. Gen. Have you ever heard him own himſelf Primate of *Ireland*?

Murfey. Yes, Titular Primate.

Mr. Att. Gen. Under whom did he claim that Authority? Under the King, or under the Pope?

Murfey. I think he could not be under the King at all.

Mr. Att. Gen. Under whom then?

Murfey. It muſt be either the King or the Pope.

L. C. J. Anſwer me directly, did he claim to be Titular Primate under the Pope?——*Murfey*. I ſuppoſe he did.

L. C. J. Was he reputed generally ſo to be?---*Murfey*. Yes, my Lord.

Mr. Att. Gen. Mr. *Murf y*, remember what you ſwore before the Grand Jury: pray recollect yourſelf whether that be true, and tell all.

L. C. J. You are upon your Oath, you muſt ſpeak the Truth, and the whole Truth; you muſt not mince or conceal any Thing.

Mr. Serj. *Jeff.* Were you ſworn before the Grand Jury?

Murfey. I was ſworn before the King and Parliament.

Mr. Serj. *Jeff.* Did you give in any Evidence to the Grand Jury?

Murfey. Yes, I did.

Mr. Serj. *Jeff.* Was that you ſwore before the Grand Jury true, upon your Oath?——*Murfey*. I can't ſay but it was.

Mr. Serj. *Jeff.* Repeat it; tell my Lord and the Jury what it was, and tell the Truth.---*Murfey*. I have forgot it.

Mr. Att. Gen. Why then, I would aſk you a little; you remember, I was by, and 'tis no laughing Matter, Mr. *Murfey*, you will find it ſo. What do you know of any Orders iſſued out by Mr. *Plunket* to raiſe Money from the Prieſts?

Murfey. I know there were Orders, and I took the Orders myſelf in my Hand.

Mr. Att. Gen. From whom had you thoſe Orders?

Murfey. From another, and not from him.

Mr. Att. Gen. Under whoſe Hand were thoſe Orders?

Murfey. They were from the Primate.

Mr. Att. Gen. Did you ſee any Order under *Plunket*'s Hand for raiſing of Money?

Murfey. No, but under the Vicar-General's, by his Authority, as I ſuppoſe.

Mr. Att. Gen. Upon your Oath, did you not ſwear before the Grand Jury, that you ſaw the Orders under his Hand?

Murfey. No, I did not, or I was miſtaken, for it was only by his Direction.

Mr. Att. Gen. Pray had you any Converſe with *Oliver Plunket* about the raiſing of Money?

Murfey. *Oliver Plunket* about the raiſing of Money?

Mr. Att. Gen. Yes, that is a plain Queſtion.

Murfey. It was about other Matters I converſed with him.

Mr. Att. Gen. But did you converſe with him about Money?

Murfey. No, not about the Money.

Mr. Att. Gen. Upon your Oath, did you converſe with him about bringing in the *French*?

Mr. Serj. *Jeff.* Declare the Truth, come.

L. C. J. Come, don't trifle; what Diſcourſe have you had with the Priſoner about raiſing of Money, or bringing in the *French*? Either of them, Sir?

Murfey. I know this, if the Duke of *York* and Duke of *Ormond* had proceeded according to their Intentions, it was a general Expectation at the ſame Time, that all the *French* and *Iriſh* would come and fall upon the *Engliſh* Nation, as I underſtood.

L. C. J. Pray anſwer the Queſtion directly: You muſt not come and think to trifle with the Court, you muſt ſpeak the Truth, you are ſworn to it; you muſt not come to quibble and run about to this, and that, and t'other, but anſwer directly, have you had any Diſcourſe with the Priſoner about Orders for raiſing of Money in *Ireland*?

Murfey. Yes, I have ſeen Orders from his Vicar-General for the raiſing of Money.

L. C. J. Hath he owned them to be by his Direction?

Murfey. Not before me, but others he has.

Mr. Att. Gen. Have you ſeen any Money paid to him?

Murfey. To whom?

Mr. Att. Gen. To *Plunket*.

Murfey. To the Vicar-General I have.

L. C. J. But to *Plunket*?---*Murfey*. None to *Plunket*.

L. C. J. Have you had any Diſcourſe with him at any Time about the raiſing of Money, which the Vicar-General gave Order for?

Murfey. I have had Diſcourſe with the Vicar-General.

L. C. J. Sir, don't trifle; have you had any with him?

Murfey. With him?

L. C. J. Yes, with him.

Murfey. Yes, I have had ſome Diſcourſe with him.

L. C. J. Tell me what Diſcourſe this was?

Murfey. I think it was about this; If the D. of *York* and the D. of

Monmouth fell out together, that he had ſome Men to raiſe about the Matter, and if the D. of *Monmouth* would raiſe the Proteſtant Religion——

Mr. Att. Gen. You ſee he hath been in *Spaniſh* Hands.

L. C. J. Were you a Proteſtant, Sir?—*Murfey.* No, I am a Prieſt.

Mr. Serj. *Jeff.* He is to ſeek yet.

Murfey. I am indifferent whether I be a Proteſtant or Prieſt.

Mr. Att. Gen. My Lord, he is a Prieſt in Orders, and ſo hath acknowledged himſelf.

Murfey. Yes, I am a Prieſt, but it makes me forget myſelf to ſee ſo many Evidences to come in, that never knew *Plunket*.

L. C J. Sir, you refuſe to anſwer thoſe Queſtions that we put to you here.

Murfey. What I ſaid before the Parliament, I anſwer punctually.

L. C. J. You are aſked Queſtions here, and produced as a Witneſs, will you anſwer directly, or not?——*Murfey.* Yes, I will.

L. C. J Then let me hear what Diſcourſe you had with the Primate *Plunket* concerning any Money raiſed by him or his Vicar-General.

Murfey. May it pleaſe your Lordſhip, firſt of all, I did not impeach Primate *Plunket*, but the Officers and Juſtices of the Peace.

Mr. Juſt. *Jones* Had you any Diſcourſe with him, yea or no?

Murfey. That he ſhould find ſo many Catholicks in *Ireland*, if the D. of *York* and the D. of *Monmouth* fell out.

Mr. Juſt. *Jones.* Why, it plainly appears what you drove at at firſt, to put off this Trial if you could.

L. C. J. The Papiſts in *England* have been at Work with you.

Mr. Serj. *Jeff.* I perceived this Gentleman was very buſy, looking upon his Hat, I deſire he may be ſearched, if he have no Paper about him.

Mr. Att. Gen. Mr. Sollicitor and myſelf heard the Evidence he gave to the Grand Jury.

Then he went out of the Court, and would ſcarce be perſuaded to come back again.

Mr. Att. Gen. We both heard him, and he gave the fulleſt Evidence, much fuller to all Inſtances and Particulars of this *High-Treaſon*, much fuller than *Duffy*, to the Grand Jury. Afterwards, about three Weeks ago, the Trial coming on, he ran away and lay hid; I took a great Deal of Pains to find him out, and ſent Meſſengers about; at laſt I heard he was got to the *Spaniſh* Ambaſſador's, I ſent, and they ſpied him in the Chapel; but the *Spaniſh* Ambaſſador's Servants fell upon the Meſſengers and beat them, the Ambaſſador was firſt ſent to about it, and his Excellency promiſed that he ſhould be brought, and when he was found, he told me but the laſt Night, that all he had ſworn before the Grand Jury was true, and he was ready to make it out again.

L. C. J. And now he ſays, he knows not what he ſaid then; pray take Notice of that.

Murfey. I told the Grand Jury this, that my Lord *Plunket* had a Deſign to get 60 or 70,000 Men in *Ireland*, if the D. of *York* and the D. of *Monmouth* ſhould fall out.

Mr. Att. Gen. Did you tell a Word of that to the Grand Jury?

Murfey. Yes, Sir, or I was miſtaken.

Mr. Att. Gen. Not one Word of that did he then ſay.

L. J. C. Do you own this Man, Dr. *Plunket*, to be of your Religion?

Mr. Serj. *Jeff.* Do you know this Seeker?

Plunket. He ſays himſelf he is indifferent to be a Proteſtant or a Papiſt.

Mr. Serj. *Jeff.* I will only try you by one Queſtion more, for you are ſought out, and it may be you may be found: Do you know how many Men he was to raiſe in *Ireland?* remember what you ſaid to the Grand Jury.——*Murfey.* 70000 Men.

L. C. J. What were they to do?

Murfey. For eſtabliſhing if Occaſion ſhould be——

Mr. Serj. *Jeff.* Eſtabliſhing, eſtabliſhing what?

Murfey. Of the Romiſh Religion.

Mr. Serj. *Jeff.* Well, ſo far we have got 70000 Men to eſtabliſh the Romiſh Religion: What, was *Plunket* to do this?

Murfey. As far as I underſtood.

Mr. Juſt. *Jones.* And you underſtood it by himſelf?

Murfey. I received Letters from the Vicar-General to get ſo much Money collected, and as ſoon as I got the Letters to my Hands, I ſent them to a Privy Councillor.

L. C. J. Do you not know that he was engaged to aſſiſt the *French* Army?—*Murfey.* I do not know that by him, but by others.

Mr. Juſt. *Dolben.* Did you ever diſcourſe with him about it?

Murfey. I did diſcourſe with him about ſeveral Matters.

Mr. Juſt. *Dolben.* About the *French* Army?—*Murfey.* Yes.

L. C. J. Do you know that he did endeavour to bring them into *Ireland?*—*Murfey.* I had a Correſpondence in *France* at the ſame Time---

L. C. J. With whom?—*Murfey.* With one *Mac Carty*.

L. C. J. And do you know that he had Correſpondence in *France?*

Murfey. Yes, I know that.

Mr. Juſt. *Dolb.* With whom had *Plunket* Coreſpondence in *France?*

Murfey. He had Correſpondence with Dr. *Cray* and others in *France*, as I underſtood by others.

Mr. Juſt. *Dolb.* Was the End of that Correſpondence to bring Men from *France* into *Ireland?*—*Murfey.* Yes, ſo far as I underſtand.

Mr. Juſt. *Dolb.* You underſtood the Letters when you read them, did you not?

Murfey. I know not how theſe People come to ſwear this Buſineſs, whether they had not Malice againſt him---

Mr. Att. Gen. Well, Sir, pray give you your Evidence, we will take Care of the Reſt.

Mr. Juſt. *Dolb.* I reckon this Man hath given the beſt Evidence that can be.

L. C. J. Yes, it is Evidence that the Catholicks have been tampering with him.

Mr. Serj. *Jeff.* I deſire he may be committed, my Lord, becauſe he hath fenced from the Beginning (*Which was done accordingly.*)

Mr. Att. Gen. Swear *John Mac Legh.* (*Which was done.*)

Sir *Fra. Withens.* Tell my Lord and the Jury what you know of any Plot in *Ireland* to bring in the *French*.

Mac Legh. I was a Pariſh Prieſt in *Ireland*, in the County of *Monaghan*, and Dr. *Oliver Plunket* received ſeveral Sums of Money in *Ireland*, and eſpecially in the Dioceſe where I am. I raiſed ſome of it, and paid him 40*s.* at one Time, and 30*s.* another Time, in the Year (74) I paid him 40*s.* in the Year (75) I paid him 50*s.* and it was about *July*, and it was for the better Advancement of the *French* coming in.

Mr. *Jones.* Did he tell you that the Money was to be employed that way?

Mac Legh. Yes, that the Money was to be kept for Ams and Ammunition for the Roman Catholicks in *Ireland.*

L. C. J. Before you paid it, did you receive any Order from him?

Mac Legh. Yes, I received an Order *ſub pœna ſuſpenſionis*, and there was a publick Order throughout *Ireland*, or we would not pay it; nay, ſeveral would not pay it, and they were to be ſuſpended.

Plunket. Can you ſhew any of the Orders under my Hand?

Mac Legh. Yes, I can ſhew them, but only they are afar off, I did not expect to have them aſked for.

Plunket. Have you no Superiors of your own?

Mac Legh. Yes, but you being Lord Primate, you could ſuſpend Biſhops and inferior Clergy together.

Plunket. When was this?—*Mac Legh.* In the Years (74) and (75.)

Plunket. What is the Reaſon you kept it ſo ſecret all this while?

Mac Legh. In the Year (77) I did diſcover it to one Mr. *O-Neal*, whom I ſent to *Dublin* to diſcover this Plot. I was in *France* myſelf, my Lord.

Plunket. How many Years is it ſince you returned from *France?*

Mac Legh. In *May* in the Year (78.)

Plunket. Why did you not ſpeak all this while till now?

Mac Legh. I did ſend one Mr. *Henry O-Neal* to *Dublin*, for I durſt not go, leſt I ſhould have been ſuſpended and excommunicated.

Mr. Att. Gen. This is the Prieſt that *Henry O-Neal* ſpeaks of.

L. C. J. Is not this a very good Reaſon? If he had come to *Dublin* to diſcover, you would have ſuſpended him.

Plunket. But, my Lord, then he might have ſhewn my Suſpenſion, and brought me into a Præmunire.

Mr. Serj. *Jeff.* If you pleaſe, Dr. let us who are for the King have done with him firſt. I would aſk you anotheher Queſtion, Sir, were you at one Vicar *Brady*'s Houſe?—*Mac Legh.* Yes, I was.

Mr. Att. Gen. Tell what was done there.

Mac Legh. There was Biſhop *Tyrrel* came there with 40 Horſemen well mounted and armed, he came into the Houſe about 10 in the Morning, and ſtaid till about 11 at Night, I was very much among them, and was as willing to be of the Plot as themſelves.

Mr. Att. Gen. Tell what was done there.

Mac Legh. There Biſhop *Tyrrel* ſaid, that he had Orders from Dr. *Oliver Plunket*, and others, to partake of the Plot to bring in the *French* and ſubvert the Government in *Ireland*, and deſtroy the Proteſtant Religion and the Proteſtants.

Mr. Att. Gen. Was there an Oath given?

Mac Legh. Yes, they were all put to their Oaths, which they did take willingly to keep it private during their Lives Time, and the Reaſon was they were to have their Eſtates during their Lives Time.

Mr. Serj. *Jeff.* Now tell us when this was?

Mr. Att. Gen. My Lord, *Henry O-Neal*, and *Phelim O-Neal* ſpeak to the ſame Purpoſe.

Mr. Serj. *Jeff.* Do you remember whether *Henry O-Neal* was there? Did he take the Oath of Secrecy?-----*Mac Legh.* Yes.

Mr. Att. Gen. What do you know of any Letters from *Plunket?*

Mac Legh. In *France* I landed at *Breſt*, and going through *Brittany*, I met with Biſhop *Tyrrel* and Dr. *Cray*, who was my Lord *Oliver Plunket*'s Agent, and Duke *John* of *Great Brittany* came into them; for he heard of theſe two Biſhops being newly come out of *Rome*, ſent for them, and I being a Prieſt of *Tyrrel*'s Dioceſe, I went along with them, and they were well accepted, and he ſhewed Dr. *Oliver Plunket*'s Conditions with the King of *France*, which was this; to get *Dublin* and *London-Derry*, and all the Sea-Ports into their own Hands, to levy War and deſtroy the Proteſtant Religion, and that they ſhould have him to protect them during his Life-time.

L. C. J. Did you ſee thoſe Conditions?

Mac Legh. A Copy of them I did, the Governor of *Brittany* did ſhew them to the Biſhop.

Mr. Serj. *Jeff.* What Language were thoſe Conditions in?

Mac Legh. They were were in Latin, Sir.

Mr. Serj. *Jeff.* Was *Edmund Murfey* put out of the Dioceſe?

Mac Legh. Not as I know of.

L. C. J. What do you know of his being Primate? Upon what Conditions was he made Primate?

Mac Legh. He was made Primate by the Election of the King of *France.* And upon his Election, he made thoſe Conditions with the King of *France*, to raiſe Men to join with the *French*, to deſtroy the Proteſtant Religion.

Mr. Juſt. *Jones.* You know that Man, Dr. *Plunket?*

Plunket. Yes, my Lord.

Mr. Att. Gen. Will you aſk him any Queſtions?

Plunket. None, but what I aſked the others.

Mr. Juſt. *Dolben.* Then if that is all, he hath given you a good Anſwer to that already, he was as forward then as the Reſt.

Mr. Att. Gen. Then ſwear *John Moyer.* (*Which was done.*)

Mr. Juſt. *Jones.* What do you know concerning any Plot in *Ireland*, and Dr. *Plunket*'s being in it?

Moyer. I knew him firſt, my Lord, to be made Primate of *Ireland*, ingaging that he ſhould propagate the *Romiſh* Faith in *Ireland*, and to reſtore it to the Catholick Government; and I know the Time by Relation, that I came to *Rome* within two Months after his being made Primate of *Ireland*, upon the ſame Conditions that have been related to you; and I was brought into the Convent of St. *Francis* in *Rome*, by one Father and this Father was very intimate with Cardinal *Spinola*, and when he uſed to go abroad, he uſed to carry me along with him as a Companion, and there I found ſeveral of the *Romiſh* Cardinals ſay, That the Kingdom of *Ireland* ſhould come under the Catholic Government by the Way and Means of the Lord Primate *Plunket*.

Mr. Att. Gen. What do you know of your ſelf?

Moyer. As I was coming then from *Rome*, I happened to come into a Convent of the Order of St. *Francis*, and there came out of *Ireland* a young Gentleman of the Family of the *O-Neals*, who hath been my Lord Primate's Page.

Plunket. I never had a Page.

Moyer. You termed him ſo, my Lord, in *Ireland*, and as I came, this young Man had a Packet of Letters with him, as though they were Commendations to enter him into the College *de propaganda fide*, directed to the Secretary of that College. And thinking them to be Letters of Recommendation, an old Father, called one *Thomas Crawley*, and I, thought it not prejudicial to open the Seal; and the Contents were theſe, I tranſlated them five Years ago, and here are the Contents following, if you pleaſe, they may be read, I will do my beſt to read them in *Engliſh*, the Original were in *Latin*, and ſome Phraſes in *Italian*. And when I was ſurpriſed by Mr. *Murfey* the laſt Year, and taken ſuddenly, all my Papers were taken away before I could return back again, by the Soldiers and the Tories. I only kept a Copy of this Letter I had in *Engliſh* as near as I could, and if I did not diminiſh any thing by the Tranſlation, upon the Oath I have taken, I have not put any thing in it, but what the Contents of the Letter were.

L. C. J. Was that Letter under his own Hand?

Moyer. My Lord cannot deny that.

Plunket. Do you know my own Hand-writing?

Moyer. Does your Lordſhip deny that I know your Hand?

Plunket. Pray Sir, will you anſwer it?

Moyer. Yes, I do very well.

Plunket. When did you leave *Ireland?*

Moyer. I will tell you that, my Lord, 'tis ſome 14 or 15 Years ago.

Mr. Serj. *Jeff.* You were giving an Account of the Letter, read it.

Moyer. Here is the Contents, *Illuſtriſſime Domine*; It was directed to *Seignior* who is now Secretary of the College *de propaganda fide*.

(So then he read his Paper.)

Mr. Sol. Gen. You ſay, you tranſlated that out of a Letter under the Priſoner's own Hand?

Moyer. Yes, I tranſlated it immediately, and to prove it, I have Statutes which his Lordſhip made in the general National Council, which are under your own Hand, my Lord.

Mr. Sol. Gen. When did you make this Tranſlation?

Moyer. Five Years ago.

Mr. Sol. Gen. Where did you make it?

Moyer. I made it out of the Original in *Ireland.*

Mr. Sol. Gen. Where is the Original?

Moyer. When I was taken by Mr. *Murfey* and Mr. *Hetherington* the laſt Year, the Soldiers and Tories came and took them away, with other Papers I had of the ſame Buſineſs.

L. C. J. Was the Paper you tranſlated from, of his Hand-writing?

Moyer. No, my Lord, the Paper I took this out of, was a Copy of the Original.

L. C. J. Was the Original of his Hand-writing?

Moyer. Yes, it was.

L. C. J. When did you take it?

Moyer. In *Caprennica*, where I met with my Lord's Page.

L. C. J. What made you take a Copy of it?

Moyer. It was in *Latin* and *Italian*, and I tranſlated it afterwards.

L. C. J. And the *Engliſh* Father, you ſay, made bold to open it?

Moyer. Yes, becauſe he thought 'twas a Letter of Recommendations; but the Original of the Statutes made at *Clouds*, I did take the Original, and gave a Copy to the Page.

L. C. J. Have you the Original here?

Moyer. Yes, my Lord, under his own Hand.

Plunket. That's another thing.

L. C. J. But we would know that other thing.

Mr. Serj. *Jefferies.* My Lord, I deſire that he would produce it, 'tis his own Hand-writing; ſee whether his Grace can deny it.

Moyer. The ſigning of it is his own Hand-writing, I got the Writing along with the Letter, and thinking to have a Copy of the one, as well as of the other; it was the Statutes I got, and I never knew I had them till I was in *Madrid* in *Spain*.

Then the Paper was ſhewn to the Priſoner.

Plunket. My Lord, 'tis my Hand.

Moyer. Indeed, my Lord, it is your own Hand.

Mr. Serj. *Jefferies.* He owns it.

Moyer. And there is an Order in thoſe Statutes, wherein *Ireland* was bound to ſend ſo much Money to *Rome*, upon ſuch a Deſign.

Then the Witneſs read the Title in Latin.

Mr. Juſt. *Dolben.* Look out that Clauſe for the raiſing of the Money.

Moyer. My Lord, 'tis that I look for. *Cum tot. Clero in Hibernia neceſſarium ſit.*

Mr. Juſt. *Dolben.* That is but *negotia* generally.

Mr. Serj. *Maynard.* That was to ſolicit their Affairs.

Mr. Att. Gen. 'Tis 500*l.* in the whole.

Plunket. Is it 500*l.?*

Moyer. 'Tis in Figures a 5 and two (00.)

Plunket. My Lord, this is counterfeit, 'tis put in by other Ink.

Mr. Juſt. *Dolben.* Like enough ſo.

L. C. J. Nothing more ordinary, you leave a Blank for the Sum, and then, may be, you put it in with other Ink.

Mr. Juſt *Dolben.* How much do you ſay was the Money, Dr. *Plunket?*

Plunket. My Lord, every Agent that is kept at *Rome* hath a Maintenance, as all Countries have their Agents at *Rome*.

Mr. Juſt. *Dolben.* How much was it?

Plunket. It was 50*l.* a Year.

L. C. J. Look you, Mr. *Plunket*, conſider with yourſelf, 50 or 500 in this Caſe is not 5 Farthings Difference, but the Money was to be raiſed by your Order.

Plunket. Ay, but whether it was not raiſed to this Effect. There is never a Nation where the *Roman* Catholick Religion is profeſſed, but hath an Agent for their Spiritual Affairs at *Rome*, and this was for the Spiritual Affairs of the Clergy of *Ireland*.

Mr. Serj. *Jefferies.* And the Letter was for Spiritual Affairs too, was it not?

Plunket. I deſire nothing, that is a Truth, every Nation hath an Agent, and that Agent muſt be maintained; and the Reaſon is this, becauſe we have many Colleges beyond Sea, and ſo there is no Country of *Roma* Catholicks but hath an Agent in *Rome*.

L. C. J. You had better reſerve yourſelf till by-and-by, to anſwer that and the Letter together; for this is but a ſmall Part of the Evidence.

Mr. Att. Gen. About this Letter you were ſpeaking of, pray, will you tell what fell out about it?

Moyer. I will tell you how it fell out afterwards. Then I came along into *Marſeilles* in *France*, and there were two Captains that had as much Notice as I had in that Letter, for they were diſcourſing, that they would advance themſelves in the *French* King's Service, and hoped, that by the King of *France*'s Help to have the *Roman* Catholick Faith ſet up in their own Country; why, that Diſcourſe paſſed off, for I was mightily afraid of any ſuch thing, becauſe I was of another Opinion; for perhaps I might think the *Roman* Catholick Faith would flouriſh as well as ever it did, and hoped ſo as well as any body elſe, but not by the Sword. As I came to *Madrid*, there came one *Hugh O Donnell*, Son to *O Donnell*, with Letters of Recommendation, and thoſe Letters were to intitle the young Man Earl of *Tyrone*; and likewiſe that his Majeſty, the King of *Spain*, ſhould help him for *Ireland*, according to the Form of the Letters he had. And then as I came for *Ireland*, ſpeedily after there came Letters of Recommendation to me, that I ſhould preſent myſelf to my Lord Primate, to hear Confeſſions, and be heard Preach. I came to his Lordſhip at his own Houſe the 9*th* of *December* (74,) and there he kept me ſeveral Hours, and approved me; and the Copy of the Approbation I have to ſhew. And after a long Diſpute we went aſide, and went to look Father *Patrick*, and there he ſhewed me ſuch and ſuch things. And after a long Diſcourſe I told my Lord Primate, I ſaw your Lordſhip's Letter, which you ſent by young *O-Neal*, in ſuch a Place, and he ſhewed me the Contents of it, and ſaid, Ay, my Lord, 'tis a good Intention and Deſign, if it can be done without Bloodſhed: Then my Lord muſed a little, and he ſaid, Well Father *Francis* (which is my Name in Religion, my Chriſtian Name was *John*) pray will you keep it Secret? Well, my Lord, ſaid I, you need not fear; for ſaid he, whatever I have done herein was not for my own good, but for the publick good of the Catholicks. Well, ſaid I, 'tis well. Then he does commend me into the Pariſh of where this Mr. *Murfey* here was to put in a Bull, that I had from my Lord Primate, which Bull was brought here laſt Year; and there he proffered me high Promotions, if I would further ſuch Things, and ſolicit ſuch Gentlemen as I knew would be private in ſuch a Buſineſs, ſuch as were old Commanders among my Friends and Relations. Shortly after this I ſaw *Plunket* and Biſhop *Tyrrel*, and Captain *Con O-Neal*, practiſing to bring Soldiers ready for *Ireland*, as ſoon as they could get Opportunity. This Captain *Con O-Neal* coming to the Place where we kept our Priory, and he and his Brothers were Sons to General *O-Neal*. And there Captain *Con* comes in the Night-time and lodges with us, and diſcourſed with his Brother and I, becauſe I was his Companion beyond Sea, about theſe matters, That he expected my Lord Primate and Biſhop *Tyrrel*'s coming thither that Night, to make ſome Propoſals about the Church and other Affairs. After 10 o'Clock, or thereabouts, my Lord Primate and Biſhop *Tyrrel* came, with others in their Company, and there they and Father *O-Neal* did conſult amongſt themſelves, that they ſhould ſend Captain *Con* to *France* and to *Barcelona* with ſuch and ſuch Inſtruments; and ſending thoſe Inſtruments away, Captain *Con* departs the Country, and goes for *France* ſoon after; and ſpeedily my Lord Primate undertook, that he and Biſhop *Tyrrel* ſhould view *Munſter* and *Ulſter*, and other Parts of *Ireland*, to ſee how Affairs ſtood. Soon after my Lord Primate calls a General Provincial Council, and ſends out his Orders to levy ſuch and ſuch Taxes and Subſidies, and Warrants, to all the Pariſh Prieſts, that they ſhould give them new Liſts, to know whether the Numbers they had ſent to *Rome* before, would comply with that Liſt. And then *O-Neal* went to view the Forts of *Charlemont* and *Dun-Gannon*, whilſt thoſe Lords did collect the Money: The Orders I have ſeen with my own proper Eyes, and his own Man confeſſed before the Council in *Ireland*, that my Lord gave them under his Hand.

Mr. Serj. *Jeff.* What Year was this?

Moyer. It was in (76) to the beſt of my Remembrance.

L. C. J. Look you, Sir, was this at a Provincial Meeting?

Moyer. Yes, my Lord, a general national Council, to ſend over Inſtruments, to tell them, that they were ready to aſſiſt any foreign Army that ſhould help on the Deſign.

L. C. J. And to raiſe Money?

Moyer. Yes, my Lord.

Mr. Juſt. *Dolben.* Have you paid him any Money?

Moyer. I was exempted myſelf, but I have ſeen others.

Mr. Juſt. *Dolben.* How many?

Moyer. I believe 30.

Mr. Juſt. *Dolben.* It was not a ſecret Thing then, but openly done by them.

Moyer. Yes, I ſaw them when they came with Orders, there were four Prieſts, and they had a great Cloak-bag going with Orders up and down.

Mr. Serj. *Jeff.* Why were you exempted?

Moyer. Becauſe I am a regular Prieſt.

Sir *Fra. Withens.* You ſay you ſaw the Orders for raiſing Money, how do you know for what it was to be employed?

Moyer. It was there ſpecified down.

Plunket. Can you ſhew any of the Orders?

Moyer. I could not take them, they did not concern me.

Sir *Fra. Withens.* How was it ſpecified?

Moyer. To levy ſo much Money *per* Prieſt. I cannot remember the particular Sum; but that every Prieſt ſhould give ſo much towards an Agent in *Rome* to ſolicit their Buſineſs, and forward it.

L. C. J. What Year was it?

Moyer. (76).

L. C. J. Was any of the Money ſpecified for raiſing an Army, or bringing in the *French?*

Moyer. It was both for the Agent and to ſummon a national Council, to get Things ready prepared to entertain and accept the *French* Army when it ſhould come. I am not ſo good in expreſſing myſelf in *Engliſh*.

L. C. J. Your Senſe is good, 'tis no matter for your Expreſſion.

Mr. *Jones.* What more do you know?

Moyer. I know that he had the ſame Council, and that they did agree upon the Buſineſs, and this I know by one *Patrick Bourne*, and I being willing that this wicked Action ſhould be hindered, ſent to the next Juſtice to diſcharge myſelf of it, which Juſtice was as favourable to the Buſineſs as my Lord himſelf was.

L. C. J. Will you aſk him any Queſtions, Mr. *Plunket?*

Plunket. I deſire to know when he left *Ireland.*

Moyer. I cannot tell how to number the Years, but I think it was in 62 or 63, to the beſt of my Remembrance it was 16 or 17 Years ago.

Plunket. When did you return?

Moyer. I came back in 74, you know it, my Lord.

Plunket. Very well, when did you ſee the Letter with the young Man in *Caprennica?*

Moyer. In (72.)

Plunket. How then did you know my Hand, which you had never ſeen?

Moyer. I have ſeen it ſeveral times to ſeveral Inſtruments to Seignior   and I have ſeen ſeveral other Letters of your Hand.

Plunket. How did you know my Hand?

Moyer. I cannot poſitively ſay I then knew your Hand, but according to Relation, I heard it from thoſe Cardinals I converſed with at *Rome.*

L. C. J. But now you are acquainted with his Hand, is it the ſame Hand which you have ſeen up and down in Writings with his Name to?

Moyer. Yes, my Lord, it is the very ſame Hand.

Mr. Serj. *Jeff.* I aſk you, Sir, when you came back again and told him you had ſeen ſuch a Letter under his Hand with *O-Neal*, did he own it to you?

Moyer. Yes, he did own it, and that he did not do it for his own benefit, but for the publick.

Mr. Serj. *Jeff.* Did he deſire you to be ſecret?

Moyer. Yes, he did, and to be diſcreet, and he would ſee me highly promoted. And, my Lord, you ſent Propoſals to me, to give me 100 *l.* that I ſhould not proſecute you, according as they told me, and they gave me one Guinea in Hand for it.

L. C. J. Some of it came to the Hands of *Murfey*, I believe.

Plunket. My Lord, I cannot ſay any thing to this, my Hands are tied, becauſe my Witneſſes are not here. My Lord, if I had my Witneſſes and Records, I did not care for all theſe Witneſſes.

L. C. J. But you know, you had Time to bring them.

Plunket. My Lord, I deſire to know whether this be his Hand (ſhewing the Paper to Mr. *Moyer.*)

Moyer. Yes, I believe it is.

Plunket. I deſire it may be read.

Moyer. Yes, I am very well ſatified it ſhould.

Cl. of Cr. reads. For my Reverend Father *Anthony*   Guardian of *Armagh*, Your Letter and Citation——'Tis dated in *July* (78.)

Plunket. He can beſt read it himſelf.

Cl. of Cr. Read it right (the Paper being delivered him.)

Moyer. My Lord, I pity him with all my Heart, that a Man of my own Function ſhould be brought into Queſtion for ſuch things as theſe are, (he reads) Very Reverend Father Guardian, 'tis dated 1 *July* (78) Your Paternity's paternal Letter and Citation homeward, I did inſtantly peruſe. As for my Lord *Oliver Plunket*, I wrote a Letter to him the Day before I ſaw your Reverence laſt, that he might cauſe my Fame, which is as dear to me as my Life, to be recalled, or I ſhould cauſe his Name to be fixed at every publick Place, which by the Almighty I will do, Nature and all Reaſon compelling me to do it.

Plunket. My Lord, I ſay this, he ſays he came to my Houſe when he came over, and I imparted this Secret to him, yet you ſee I had denounced him throughout my whole Dioceſs, and he here calls me by all thoſe Names of *Elymas*, *Simon Magus*, and *Barjeſus*, and 'tis impoſſible, if I had communicated ſuch a Secret to him, that I would deal ſo with him.

Mr. Juſt. *Dolben.* He does not ſay, you imparted this Secret to him; but he ſays, when he told you of the Letter, you anſwered him, but you ſeemed ſurpriſed and amuſed firſt.

L. C. J. You ſeemed to flatter him then, and told him you hoped to ſee him the beſt of his Order, highly promoted.

Mr. Juſt. *Dolben.* How came you to fall out, *Moyer?*

Moyer. When firſt they had this Meeting at *Brantry*, ſeeing a Cloud a-coming, and dreading a War, and the Conſequences of it, I went and applied my ſelf to Sir   *Hamilton*, one of his Majeſty's Privy Councillors in *Ireland*, and I gave in all my Informations the 7th *December* (76.)

Mr. Juſt. *Dolben.* And thereupon he denounced you excommunicate?

Moyer. Yes, and afterwards, when he ſaw I was in Communication and familiar with theſe Privy Councillors, then he was certain I had diſcovered the Matter, and then he got a great many Devices to get the Letters out of my Hand.

Plunket. You ſhall ſee under his own Hand all the Stratagem of this, if I had my Witneſſes here, you ſhould then ſee under his own Hand, upon what Account he fell out with me. Pray, my Lord, aſk him if this other Letter be his Hand.

Moyer. I believe it is my own Hand.

L. C. J. Read it.

Moyer. (Reads) Very Reverend Father Guardian (then ſpeaking) My Lord, you know that I was loth to diſcover myſelf, being among People knowing of the Plot.

L. C. J. Well, read it over.

Moyer. (Reads) The 23d of *April*, (78) I was ſomewhat comforted by your Letter. But now I hope your Reverence hath conſidered what Wrong I have ſuſtained, by my envious Adverſaries Calumnies, only for ſtanding, as I have a Soul to ſave, for your Rights and Privileges, as alſo for endeavouring to hinder my native Country's Ruin and Deſtruction.

Mr. Juſt. *Dolben.* Read that again (which he did.)

Plunket. Obſerve, that I was his Adverſary, for ſtanding for the Rights and Privileges of the Friers.

Mr. Juſt. *Dolben.* As alſo for endeavouring to hinder his Country's Ruin and Deſtruction.

L. C. J. The one and the other were the Reaſon of your falling out.

Moyer. (Reads on)

Moyer. My Lord, I was, I confeſs, a begging Frier, and ſtood up for the Privileges of the Friers.

Plunket. Did you write any Proceſs to *Rome* againſt me?

Moyer. No, I never did.

Plunket. My Lord, does not he ſay I was in Diſgrace at *Rome?*

Moyer. No, nothing of that.

L. C. J. I don't hear it, but what if he did? what is that to the Purpoſe?

Plunket. To ſhew his Contradictions; now he ſays, I was great in *Rome*, and but then in his Letter he ſays, I was in Diſgrace at *Rome.* Now he ſays, all that he had againſt me, was for his Friers, and to hinder the Deſtruction of his Country, becauſe I hindred the Friers to beg there, is the Deſtruction of the Country, as he was doing there. Upon that he fell out with me, and upon that his own Superiors ſent this Order.

L. C. J. We can't meddle with your Superiors Orders, they are nothing before us.

Mr. Serj. *Jeff.* My Lord, I think, for the preſent we have done our Evidence.

Plunket. My Lord, to ſhew what was part of the falling out, I would aſk him if he was indicted for any Crime, and found Guilty by a Jury?

Moyer. That was for diſcovering, for I diſcovered it before.

Plunket. My Lord, he confeſſes he was Convict for giving Powder and Shot to the Rebels.

Mr. Juſt. *Dolben.* No, he does not ſay ſo; produce the Record, if you have any ſuch thing.

Moyer. To ſatisfy the Court.

Mr. Serj. *Jeff.* Look you, Dr. *Plunket*, if you will aſk him any Queſtions, that by Law he is bound to anſwer, do it in God's Name, we will not interpoſe; but if you aſk him any Queſtions that may tend to accuſe himſelf, we muſt tell you, he is not bound to anſwer them.

Plunket. He hath been convicted and found guilty, he will confeſs it himſelf.

L. C. J. He is not bound to anſwer ſuch a Queſtion.

Moyer. It was a Tory ſwore againſt me, that you did abſolve.

Mr. Juſt. *Dolben.* Don't tell us a Story of your Tories.

L. C. J. Look you, Mr. *Plunket*, don't miſſpend your own Time; for the more you trifle in theſe things, the leſs Time you will have for your Defence. I deſire you now to conſider, and well huſband your Time for your Defence; what have you to ſay for your ſelf?

Plunket. My Lord, I tell you, I have no Way to defend myſelf, in that I was denied Time to bring over my Records and my Witneſſes which are 10 or 12. And if I had them here, I would ſtand in Defiance of all the World to accuſe me; but I have not ſufficient Time to bring over my Records and my Witneſſes, and I am brought here out of my Native Country; were I in *Ireland*, there both I and they ſhould be known: But when I was to be tried, they would not appear; and it is all falſe, and only Malice. Theſe Men uſed to call me *Oliverus Cromwellus* out of Spite.

Mr. Serj. *Maynard.* You are very like him, a deſtroyer of the Government.

Mr. Serj. *Jeff.* Were not you acquainted with him?

Plunket. This is all I can ſay, If I had my Witneſſes here, I ſhould make my Defence.

L. C. J. Here are ſome Things, that if you can give an Anſwer to, you will do well to do it; for they ſtick cloſe to you. They do teſtify againſt you here, that you did undertake to raiſe a body of Men in *Ireland*, 70000 Men they ſpeak of, out of your own Nation, and all theſe were to join with the *French*, for the introducing the Religion of the *Romiſh* Church into *Ireland*, and ſettling that again there. And that you, in order to this, did take a Survey of all thoſe Roman-Catholicks that were able to bear Arms, from 16 to 60; and there is plentiful Evidence, that you did go a Circuit there to peruſe all Towns, and ſee which might be moſt convenient for the taking in and entertaining the *French*, and landing their Forces; and *Charlemont*, you did deſign that for one ſtrong Place to be taken, and *Dun Gannon* for another, and that you did deſign the *French* Army to land at *Carlingford*, and all that was with you, tells the Reaſon you gave, why that ſhould be the Place, that they might come up with a burdened Ship to the very Gates of the Town; that you did, in order to the entertaining theſe foreign Forces, raiſe Money; that you did ſend out your Orders *ſub pœna ſuſpenſionis* to all that were of the Roman Clergy, and that this Money was received, ſeveral of them teſtified that they paid it to you, and this Man hath ſeen great Numbers of Perſons pay Money to you upon theſe Accounts. All theſe are Treaſon: What ſay you to them? It does import you to conſider what Anſwer you can give.

Plunket. My Lord, firſt as to the firſt Point, I anſwer, that I never received a Farthing of Money out of my own Diſtrict, and but for my own Livelihood, and that I can prove by thoſe that have received it for me, that I never received over threeſcore Pound a Year in my Life, unleſs ſome Gentleman would now and then give me 10 *s.* for my Relief. For, my Lord, this is the way in *Ireland*, every Prieſt hath ſo many Families allotted to him, and every Roman Catholick Family gives 2 *s.* a Year *(as they that profeſs that way, know)* and the Prieſts give me who am Superior over them, in my own Diſtrict, ſome 20 *s.* ſome 30 *s.* and I never got ſo much in my Life as to maintain a Servant, and this was atteſted before the council in *Ireland.*

Mr. Juſt. *Dolben.* Ay, but the Witneſſes ſay, out of your own Diſtrict you ſent into another Biſhop's Dioceſs to collect Money.

Plunket. My Lord, I ſay, I could never get ſo much as to keep a Servant, and till now I never got a Farthing out of my own Dioceſs, unleſs I have been called to an Arbitration or ſome ſuch thing, it may be for my Journey and Expences 40 or 50 Miles they would give me ſomething for my Maintenance. If you ſhould find any thing elſe, I will be content to ſuffer; and if my Evidence were brought from *Ireland*, there is nothing but what would be made clear, both under their own Hands and by Records, and that is all well known, and was atteſted in his Preſence before the Council in *Ireland*; which threeſcore Pounds was a very ſmall thing to maintain me, and I never had above one Servant, and the Houſe I lived in was a little thatch'd Houſe, wherein was only a little Room for a Library, which was not ſeven Foot high, where once this Fellow came to affront me, becauſe I hindered him from begging, and that's for the Money. For the Men, I defy any one that ever ſee me make a Liſt of Men in my Life, or can produce any Liſt made by my Order. I was never in my Life at *Kingſale*, at *Corke*, at *Dun Gannon*, at *Limerick*, &c. or thoſe Parts of *Munſter* which were the chief Ports where the *French* ſhould come in, and not in *Carlingford*, which is the narrow Seas in *Ulſter*, which any one that knows the World will judge to be a very improper Place for the *French* to land in. 'Tis all one as to ſay that the *French* ſhould come in at a poor Place, where they could get nothing, it being at the narrow Seas, and they never ſaw me there in their Lives.

L. C. J. Yes, one does ſay, he was with you.

Plunket. Well, one does ſay he ſaw me there, but if I had my Witneſſes here, I could prove he was a Frier, and declared an Apoſtate by his own Provincial, as this Gentleman is; and becauſe I hindered them to beg in my Diſtricts, therefore they have this Malice againſt me, that is all. Well, my Lord, that is for that, I was never in my Life in *Connaught*; and they cannot ſay, I took any Liſt in *Ulſter*, nor was 12 Miles in *Munſter* in my Life. But thus, my Lord, ſometimes there would be, as our way is, ſo many Families aſſigned to every Prieſt, (*and this is the plain Truth*,) this Prieſt perhaps complains to me of the Inequality, my Companion near me hath 150, and I have but threeſcore, which I muſt rectify; though I never knew but one of theſe Complaints. And if I had my Witneſſes from *Ireland* and the Records, I would defy all theſe Witneſſes together. For my ſending to *Rome*, I never had an Agent in *Rome* for theſe ſeven Years paſt, becauſe I was not able to maintain him, and indeed it was a great Shame to us; becauſe there is never a Community of Friers, that hath a College beyond Sea, but hath ſome Agent at *Rome*.

L. C. J. 'Tis a Shame to have one there, not to want one.

Mr. Juſt. *Dolben.* Well, if you have Witneſſes, I cannot tell what to ſay.

Plunket. If I had gotten but to the latter end of the Term, I had defied them all together. And your Lordſhip ſhould have ſeen under their own Hands what they were.

L. C. J. You forget this all this while, your own Letter; wherein this Matter is, that you had ſearched the Towns and conſidered it.

Mr. Att. Gen. He does deny there was ſuch a Letter, he does not own there was ſuch a Letter.

Plunket. I, my Lord, I never did write ſuch a Letter. And that young Man that he ſpeaks of, I could prove, if I had my Witneſſes, that he never was in my Service or Company in *Ireland*, nor writ any Letters by him.

L. C. J. Did you never ſend any Letter by one *O-Neal?*

Plunket. No, my Lord, but he went over a begging.

Moyer. This young Man's Brother-in-Law will teſtify, that he was your Lordſhip's Page.

Plunket. I have 3 Witneſſes that he came there begging, naked, and was ſick three Months, and went over a begging, and was at *Rome* as a Stragler.

Moyer. Call *Hanlet*, (who came in.)

Sir *Fra. Withens.* Did you know *Neil O-Neal?*

Hanlet. Yes.

Sir *Fra. Withens.* Whoſe Servant was he?

Hanlet. My Lord *Plunket* ſent him to *Rome*; he was ſent there with his Letters, and I ſaw the young Man and his Letters.

Mr. *Jones.* Did he come a begging there?

Hanlet. No.

Plunket. Where did you ſee him?

Hanlet. At *Mants.*

Plunket. Where is that?

Hanlet. In *France.*

Plunket. And you ſaw him with my Letters?

Hanlet. Yes.

Plunket. And this Man ſays, the Letters were opened at *Caprennica*, becauſe he thought they were Letters of Recommendation.

Hanlet. Why, he went that way afterwards, and they were not opened when I ſaw them.

Mr. Serj. *Jefferies.* Did you know he was the Doctor's Servant?

Hanlet. Yes, he was.

Plunket. Did you ſee him in my Service?

Hanlet. I ſaw him in *Mants.*

Mr. J. *Dolben.* How do you know he was the Biſhop's Servant?

Hanlet. Becauſe he ſhewed me his Letter.

L. C. J. Was he owned for his Servant, and was he taken for his Servant?

Hanlet. Yes.

Plunket. Did he go on Foot, or on Horſe-back?

Hanlet. He went on Foot.

Plunket. He was in a poor Condition in a Place not above four Miles from *Rome*, that I can prove.

L. C. J. Did he beg as he went?

Hanlet. No.

L. C. J. Mr. *Plunket*, if there is any Queſtion you will aſk of the Witneſſes; or if there be any Evidence you would give yourſelf, this is your Time for the doing of it; if not, we muſt leave your Caſe to the Jury, who have heard the Evidence all along.

Plunket. Only this, my Lord, your Lordſhip ſees how I am dealt with. Firſt and foremoſt, I have not Time to bring my Witneſſes, or my Records, which if I had, I would not weigh one Farthing to leave my Cauſe with any Jury in the World. Beſides all this, I am brought out of my own native Country, where theſe Men lived, and I lived, and where my Witneſſes and Records are, which would ſhew what theſe People are. I ſent by the Poſt, and did all that I could, and what can I ſay when I have not my Witneſſes againſt theſe People, that may ſwear any Thing in the World? You cannot but obſerve the Improbability of the Thing in itſelf, and unto what a Condition I am brought. My Lord, my Life is in imminent Danger, becauſe I am brought out of my own Country, where theſe People would not be believed againſt me.

Mr. Sol. Gen. My Lord, I think this Matter lies in a narrow Compaſs, the Evidence hath been long; I would only repeat the ſhort Heads of that which hath been given at large. He is indicted for a Conſpiracy to kill the King, the Overt-Act is an Endeavour to introduce a foreign Power into *Ireland*, to raiſe an Army, and levy War there; and the Proof of it hath been very full. The Proof in general, that there was a Plot to introduce the *French*, is plain by all the Witneſſes; and the Proof in particular upon this Perſon at the Bar, hath been as plain as any Thing can be. They prove to your Lordſhip in general, that there was an Expectation that the *French* ſhould come in, that there was an Invitation of *Florence Wyer* the firſt Witneſs, to go over into *France*, and ſpeedily he ſhould have a Command, upon his return, in *Ireland*; that there were Preparations; for this appears by the Oath of Secrecy given to ſeveral Men. Forty Men that came along with Biſhop *Tyrrel* to keep it private during their Lives. And there was a farther Proof of that general Conſpiracy by *Duffy*, that when there was a general meeting of ſo many thouſand People for Confirmation, there was by the Gentlemen of that Meeting a ſecret Conſultation how to carry on the Deſign, and how to look out the old Officers in the late Rebellion, and to ſee what Poſture they were in as to the Management of this Deſign; and this comes now particularly to the Priſoner, who was by at this Conſultation, ſo the Witneſſes do tell you. But that that comes nearer to him, is, that he did iſſue out Orders for the raiſing of Money, and that he did raiſe Money purſuant to thoſe Orders, and did receive Money for that very Purpoſe: This is proved by three Witneſſes, *Duffy* and *Mac Legh*, who paid the Money, and by *Moyer* the laſt Witneſs, who ſaw him receive it from ſeveral Perſons. This is poſitive upon him; nay, they ſay farther, that there was a Liſt made of the ſeveral Men, in the ſeveral Pariſhes, that were able to bear Arms upon occaſion, from ſixteen to ſixty, and there was a Liſt of a matter of threeſcore thouſand Men that were ready upon any Occaſion to riſe for the Purpoſe, and this Liſt was delivered over into the Hands of the Priſoner at the Bar. There is one Witneſs, *Duffy*, that ſays farther, that he ſaw a Letter under his Hand in *France* to the Cardinal *Bouillon*, to invite the *French* King into *Ireland*; and he did wonder that he ſhould ſpend his Time and Blood in Wars againſt *Spain*, which was a *Roman* Catholick, and not come into *Ireland* to extirpate the Hereticks. And this Letter is confirmed by another Letter, which was ſeen by *Moyer*, a Copy of which is produced, which he tranſlated from the Original in *Latin*, and the Letter was ſent to *Rome* by *Neil O-Neal*, whom the Priſoner ſays he had no Concern for, but to give him ſome Recommendations.

Plunket. I gave him no Recommendations.

L. C. J. No, he ſays he did not give him any, nor ſent any Letter by him.

Mr. Sol. Gen. Then he urged, that he went along begging by the Way; but 'tis proved he was ſent by him, and ſent with Letters, and that by his Brother-in-Law, who met him at *Mants.* And 'tis proved by *Moyer*, who ſaw the Letter opened, taking it to be but a common Letter of Recommendation, he read the Letter and took a Copy of it, and tranſlated that Copy, which Tranſlation is enough to verify all the Matter which the Witneſſes have ſworn; for 'tis agreeing to what he ſaid of Cardinal *Bouillon* in his other Letter, that it was more proper for the Catholick Princes to agree together and extirpate Hereſy, than to vary amongſt themſelves; that now was the Time; for there were threeſcore thouſand Men ready to riſe upon ſuch an Invaſion. This is the Subſtance of the Letter, and this proves fully the Conſpiracy this Man was engaged in, his receiving of Money, his liſting Men, and his Invitation of foreign Princes. And this is fully proved.

Mr. Serj. *Maynard.* And ſo his viewing the Ports too.

Mr. Sol. Gen. It was likewiſe agreed that *Carlingford* ſhould be the Port, and 'tis like enough to be the Port, for 'tis a very large Port, that Ships of the greateſt Burden may come up to the Town, and the Town itſelf but a weak Town. This is the Subſtance of the Evidence, and this is Proof enough, we think, to convict any Man of this Fact.

Mr. Serj. *Jeff.* My Lord, I ſhall trouble you but with one Word that hath been omitted. I think 'tis a Cauſe of great Example, and that Thing which the Priſoner ſeems to make his Excuſe, hath been anſwered by a Favour and Indulgence from the Court in a very extraordinary Manner. For, in as much as this Gentleman would make it a very hard Caſe, that he is brought out of his own Country, and hath not his Witneſſes; it is very well known that by a particular Favour of the Court, which is not uſual in theſe Caſes, he had between five and ſix Weeks time for Preparation for his Trial: So that truly as to what does appear, I think all the Witneſſes that have been examined, are Witneſſes to be credited, except you Gentlemen, of yourſelves, can convict upon your own Knowledge theſe Perſons of any Miſdemeanor, which I think you cannot, much leſs of Perjury. But beſides, the Witneſſes we have produced, all which ſpeak to the Plot in general, and four of them fix it upon the Perſon at the Bar; they ſpeak particularly, and every one agrees in Circumſtances, and that other that ſpoke mincingly, I put it upon; it is the greateſt Evidence that can be. For that Perſon that could come before a Grand-Jury, and there be the main Witneſs, but when he comes here, muſt be ſcrued and pumped to diſcover the ſeventy thouſand Men. And I ſuppoſe you did obſerve how difficult it was to know of him, whether this Perſon was Primate of *Ireland*, or whether it were from the Authority of the King or the Pope; a very probable thing, that he ſhould be ſuch a one as the King deſigned to be Primate and Superintendent of *Ireland.* Further, my Lord, I deſire to take notice of too, that *Wyer*, the firſt Witneſs, fixes four particular Things upon the Priſoner at the Bar, which have not yet been taken notice of. Firſt, he fixes a Diſcourſe with another Perſon that was Competitor with him for this very Office, Biſhop *Duffy*, and he gives the Reaſon why he was admitted into the Office rather than the other, becauſe he was a Man of greater Ability to carry on the Deſign; and though he does not give you an account of the Deſign, yet the reſt of the Evidence do, and make it to be the Deſign then carrying on. Another Thing is, he tells you of the ſending one into *France*, that was to come back again in order to this Deſign, I think his Name was *Mac Donnel.* and then the great Tory *Flemming* and he were to come back again Colonels in the Army that was to be raiſed. The next Perſon that fixes it upon him, is Mr. *Han O-Neal*, and he gives the plaineſt Circumſtances, That at a Time in *Auguſt* when Biſhop *Tyrrel* came to the Houſe of one *Brady* with ſo many Men well equipped with ſuch and ſuch Arms, and took the Oath of Secrecy; he himſelf, but not only he, but the other Prieſt *Mac Legh*, was preſent at the ſame Time, and took the ſaid Oath, and he does tell you that that very Prieſt was ſent to *Dublin* to diſcover it that very Time, and ſo he hath fixed the Perſon, and Time, and the Buſineſs they came about. Then *Mac Legh* comes and tells you the ſame Thing in every Circumſtance; ay, but ſays the Priſoner at the Bar, and would make it to be a great Objection, How chance that they have concealed this all the while, and not diſcovered it to ſome Juſtice of the Peace? Why, ſays one, I was under your Juriſdiction in that Place, that is the very Reaſon he gives wherefore he durſt not; and, ſays another, I was concerned and as earneſt as the Priſoner or any Body elſe, but going into *France*, I obſerved the Slavery that all the Subjects were under, under the Tyranny of that King, and apprehending that the ſame King was to come into *Ireland* by the Means of theſe Gentlemen, I was concerned at it, and had rather the Devil ſhould reign over us than ſuch an one, and therefore I will diſcover it. And he ſaid very well, I think, that he had rather have the Devil to reign; for it ſeems to be him, or one in his Shape that reigns after that Manner. And there are two Perſons that ſwear to the very Year that they were obliged to raiſe the Money, and ſwear poſitively, they ſaw his Orders, *Sub pœna ſuſpenſionis*, I do not know whether they meant hanged or ſuſpended from their Office. But it ſeems it was ſo terrible, that it made them pay twenty Shillings a-piece for three Years ſucceſſively. And there is another Gentleman that tells you, that out of a ſmall Living, wherein he was concerned only as Curate to a third Perſon, it had been paid two or three Times, and another, though he was exempt himſelf from the Payment, yet ſo great a Confident was he of the Priſoner's at the Bar, that he was preſent when he ſaw thirty or forty pay this Tax, and whereas the Priſoner at the Bar would make it thought a ſtrange Thing, that he ſhould raiſe ſo much Money, who had but an Houſe ſeven Foot high, it ſeems there is above that thatched Houſe a Chappel.

Plunket. There is no Chappel.

Sir *Geo. Jeff.* But now, my Lord, that which ſubſtantially proves what theſe Witneſſes ſay, is the Letter that is ſent to *Rome* to the Secretary of the College *de propaganda Fide*, which is the laſt Letter that the laſt Gentleman ſpeaks of, wherein he does particularly take notice, that he had taken care to raiſe ſuch Monies, and view all the Ports and Places of Strength. And my Lord, that which is a very great Circumſtance to back the Evidence of the firſt Letter to the *French* Cardinal *Bouillon*, which was taken notice of by the firſt Witneſs, and there is ſuch a Paſſage in this too, that the Catholick Princes ſhould not ſpill one another's Blood, when they might better employ it here in *Ireland* for the Propagation of the Faith; this laſt Letter takes particular Notice of this very Inſtance too, that inſtead of drawing their Swords againſt one another, they had better come to promote the Catholick Faith in *Ireland*. Theſe four Witneſſes are punctual and preciſe in every particular Circumſtance of the Caſe, and againſt them there is nothing but the common Objection; If I had ſuch Records, and Witneſſes here, I could make my Defence, that is, if he had thoſe Things that he has not, he might appear to be another Man than he is; but I am ſure, as it appears upon the Evidence that hath been given by all the Witneſſes, there is a plain Proof, and a full Proof of every Treaſon laid to his Charge.

Plunket. My Lord, I deſire theſe Witneſſes may be called [*giving in a Paper.*]

Cryer. David Fitz-Gerard, *Euſtace Commines*, and *Paul Gormar.*

L. C. J. Who gave him this Paper? He had it not before.

Stranger. I was told that theſe were good Evidences for Dr. *Plunket*, and I gave him the Names.

L. C. J. Where are they?

Stranger. They are hard by.

Mr. Att. Gen. Where is *Euſtace Commines?* For he was one that gave in Evidence againſt the Priſoner.

Then *Paul Gormar* appeared.

L. C. J. What would you aſk him?

Plunket. I deſire to know of him, whether Mr. *Moyer* did allure and intice him to ſwear againſt me?

Gormar. Indeed my Lord he never did.

L. C. J. Will you aſk him any more?

Gormar. But this, my Lord, Mr. *Moyer* and I were in Diſcourſe, and he ſaid if there was Law to be had in *Ireland*, he would ſhew Mr. *Plunket* his Share in it.

L. C. J. Well, what of that?

Gormar. My Lord, I did come out of *Ireland* to reveal what Plots the *Iriſh* had againſt the King, and as for this Mr. *Plunket*, as I have a Soul to ſave, I never heard of any Miſdemeanor of him.

Mr. J. *Dolben*. How came you here to Day?

Gorman. I was ſummoned.

Mr. Juſt. *Dolben*. By whom? Was it the Attorney General or *Plunket* that ſummoned you?

Gormar. Here is the Summons.

Mr. Serj. *Jefferies*. It is a common *Subpœna*.

Plunket. I never ſent for him.

Gormar. It was not againſt you, they knew I had nothing againſt you, I thought you did more good in *Ireland* than hurt; ſo I declare it.

L. C. J. Have you any more Witneſſes? If *Fitz-Gerard* or *Commines* will come, we will hear them.

Plunket. My Lord, I have not any more Witneſſes.

L. C. J. Look you, Gentlemen of the Jury, This Gentleman here, Mr. *Plunket*, is indicted of High-Treaſon, and 'tis for conſpiring the King's Death, and endeavouring to bring the *French* Army into *Ireland* for to invade that Kingdom, and to plant the *Romiſh* Religion in that Kingdom. You have had evidence againſt him that hath been fully examined. And theſe Things do ſeem to be very plain by the Witneſſes, That he himſelf hath taken a Commiſſion, or a Grant, or what you will pleaſe to call it, from the Pope to be Primate of *Ireland*, that he hath taken upon him to make Laws as the Provincial, and that he bath undertaken and endeavoured to ſettle the Popiſh Religion in that Kingdom, and in order to that, he hath invited the Aid of the *French* Army, and that he hath for the better landing of them, looked out what Places were moſt convenient for them; That he hath ſet a Tax upon the Clergy within his Province for the facilitating of all this, and for the making Preparations for the Entertainment of this Army. This the Witneſſes teſtify againſt him, and that there were ſome Towns, as *Dungannon* and another Town, that were to be betrayed to the *French*. Now you muſt conſider concerning theſe Witneſſes: If you believe the Evidence that hath been given, and which hath been repeated by the King's Council, and if you believe that he did deſign to bring in a *French* Army, to eſtabliſh the *Romiſh* Religion there again, and that he took upon him to raiſe Money for that Purpoſe, ſurveyed the Ports, and made ſuch Proviſions, as the Witneſſes ſpeak of and was in that Conſpiracy; you muſt find him Guilty. I leave it to you, it is a pretty ſtrong Evidence, he does not ſay any thing to it, but that his Witneſſes are not come over.

Plunket. I can ſay nothing to it, but give my own Proteſtation, that there is not one Word of this ſaid againſt me is true, but all plain Romance, I never had any Communication with any *French* Miniſter, Cardinal, nor other.

Then the Jury withdrew for a Quarter of an Hour, and being returned, gave this Verdict.

Cl. of Cr. Oliver Plunket, hold up thy Hand. How ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Plunket. Deo gratia, God be thanked.

Then the Verdict was recorded, and the Court roſe. And the Keeper went away with his Priſoner.

On *Wedneſday*, 15 *Junii*, 1681, *Oliver Plunket* was brought to the Bar to receive his Judgment.

Mr. Att. Gen. My Lord, I pray your Judgment againſt the Priſoner *Oliver Plunket.*

Cl. of Cr. Oliver Plunket, hold up thy Hand; Thou haſt been indicted of High-Treaſon, thou haſt been thereupon arraigned, thou haſt thereunto pleaded Not Guilty, and for thy Trial haſt put thyſelf upon God and the Country, which Country hath found thee Guilty; what haſt thou to ſay for thyſelf, why Judgment of Death ſhould not paſs upon thee, and Execution be thereupon awarded according to the Law.

Plunket. My Lord, may it pleaſe your Lordſhip, I have ſomething to ſay, which if your Lordſhip will conſider ſeriouſly, may occaſion the Court's Commiſeration and Mercy. I have, my Lord, for this Fact been arraigned in *Ireland*, and brought to my Trial there. At the Day of my Trial all the Witneſſes voluntarily abſented themſelves, ſeeing I had Records and Witneſſes to convince them evidently, and ſhew what Men they were, and the prepenſed Malice that they did bear to me, and ſo finding that I could clear myſelf evidently, they abſented themſelves, on the Day of my Trial no Chriſtian appeared, but hither over they came, and procured that I ſhould be brought hither, where I could not have a Jury that knew the Qualities of my Adverſaries, or who knew me, or the Circumſtances of the Places, Times, and Perſons; the Juries here, as I ſay, were altogether Strangers to theſe Affairs, and ſo, my Lord, they could not know many Things that conduce to a fair Trial, and it was morally impoſſible they ſhould know it. I have been accuſed principally and chiefly for ſurveying the Ports, for fixing upon *Carlingford* for the landing of the *French*, for the having of ſeventy thouſand Men ready to join with the *French*, for collecting Money for the Agents in this Matter, for aſſiſting of the *French* and this great *Utopian* Army. A Jury in *Ireland* conſiſting of Men that lived in that Country, or any Man in the World that hath but ſeen *Ireland* in a Map, would eaſily ſee there was no Probability that that ſhould be a Place fit for the *French* to land in, though he never was in *Ireland*, yet by the Map, he would ſee they muſt come between the narrow Seas, all along to *Ulſter*, and the Rocks, and ſuch Places would make it very dangerous; and by their own Confeſſion it was a poor Town, and of no Strength, a very ſmall Garriſon, which had not been ſo, if it had been a Place of any Conſideration. And where I had Influence only upon one Province, as is well known, though I had the Title of Primate of all *Ireland*, as the Archbiſhop of *Canterbury* hath of all *England*; yet the Archbiſhop of *York* did not permit him to meddle with his Province; and 'tis well known by the Gentry there, and thoſe that are accuſtomed to the Place, That in all the Province of *Ulſter*, take Men, Women, and Children of the *Roman* Catholicks, they could not make up ſeventy Thouſand. This, a Jury there, my Lord, had known very well, and therefore the Laws of *England*, which are very favourable to the Priſoner, have provided that there ſhould be a Jury of the Place where the Fact was Committed, as Sir *Thomas Gaſcoigne*, as I have heard, had a *Yorkſhire* Jury, though he was tried at *London*. And then after my coming here, I was kept cloſe Priſoner for ſix Months, not any Chriſtian was permitted to come to me, nor did I know any Thing, how Things ſtood in the World. I was brought here the third of *May*, to be arraigned, and I did petition your Lordſhip to have ſome Time for my Trial, and I would have it put off till *Michaelmas*, but your Lordſhips did not think fit to grant ſo long, but only till the eighth of this Month, when my Witneſſes who were ready at the Sea-ſide, would not come over without Paſſes, and I could not get over the Records without an Order from hence; which Records would have ſhewn that ſome of the Witneſſes were Indicted and found Guilty of high Crimes, ſome were impriſoned for Robberies, and ſome of the Witneſſes were infamous People; ſo I petitioned the eighth of this Month, that I might have Time but for twelve Days more: but your Lordſhip thought, when the Motion was made, that it was only to put off my Trial, and now my Witneſſes are come to *Coventry* Yeſterday Morning, and they will be here in a few Days, and ſo for want of Time to defend myſelf in, I was expoſed to my Adverſaries, who were ſome of my own Clergy, whom for their debauched Lives I have corrected, as is well known there. I will not deny myſelf, but that as long as there was any Toleration and Connivance, I did execute the Function of a Biſhop, and that by the ſecond of *Elizabeth* is only a Premunire, and no Treaſon. So that, my Lord, I was expoſed defenceleſs to my Enemies, whereas now my Witneſſes are come on, that could make all appear. I did beg for twelve Days Time, whereby you might have ſeen as plain as the Sun, what thoſe Witneſſes are, that began the Story, and ſay theſe Things againſt me. And, my Lord, for thoſe Depoſitions of the ſeventy thouſand Men, and the Monies that are collected of the Clergy in *Ireland*, they cannot be true; for they are a poor Clergy that have no Revenue nor Land; They live as the Preſbyterians do here, there is not a Prieſt in all *Ireland*, that hath certainly or uncertainly above threeſcorce Pounds a Year, and that I ſhould collect of them forty Shillings a-piece, for the raiſing of an Army, or for the landing of the *French* at *Carlingford*; if it had been brought before a Jury in *Ireland*, it would have been thought a meer Romance. If they had accuſed me of a *Premunire* for the exerciſe of my Epiſcopal Function, perhaps they had ſaid ſomething that might have been believed; but my Lord, as I am a dying Man, and hope for Salvation by my Lord and Saviour, I am not guilty of one Point of Treaſon they have ſwore againſt me, no more than the Child that was born but Yeſterday. I have an Atteſtation under my Lord of *Eſſex*'s Hand concerning my good Behaviour in *Ireland*, and not only from him, but from my Lord *Berkley*, who was alſo Governor there, which the King's Attorney ſaw; but here I was brought, here I was tried, and not having Time to bring my Witneſſes, I could not prove my Innocency, as otherwiſe

I might. So that if there be any Caſe in the World that deſerves Compaſſion, ſurely my Caſe does: And 'tis ſuch a rare Caſe, as I believe you will not find two of them in Print, that one arraigned in *Ireland*, ſhould be tried here afterwards for the ſame Fact. My Lord, if there be any Thing in the World that deſerves Pity, this does; for I can ſay, as I hope for Mercy, I was never Guilty of any one Point they have ſwore againſt me, and if my Petition for Time had been granted, I could have ſhewn how all was prepenſe Malice againſt me, and have produced all Circumſtances that could make out the Innocency of a Perſon. But not having had Time enough, and being tried, I am at your Mercy.

L. C. J. Well, you have nothing further to ſay in Bar of Judgment, you have ſaid all you can?

Plunket. I have nothing further to ſay, but what I have ſaid.

Then Proclamation was made for Silence, while Judgment was paſſing upon the Priſoner.

L. C. J. Look, you, Mr. *Plunket*, you have been here indicted of a very great and heinous Crime, the greateſt and moſt heinous of all Crimes, and that is, High-Treaſon; and truly your's is Treaſon of the higheſt Nature, 'tis a Treaſon in truth againſt God and your King, and the Country where you lived. You have done as much as you could to diſhonour God in this Caſe; for the Bottom of your Treaſon was, your ſetting up your falſe Religion, than which there is not any Thing more diſpleaſing to God, or more pernicious to Mankind in the World. A Religion that is ten times worſe than all the Heatheniſh Superſtitions; the moſt diſhonourable and derogatory to God and his Glory, of all Religions or pretended Religions whatſoever, for it undertakes to diſpenſe with God's Laws, and to pardon the Breach of them. So that certainly a greater Crime there cannot be committed againſt God, than for a Man to endeavour the Propagation of that Religion; but you to effect this, have deſigned the Death of our lawful Prince and King: And then your deſign of Blood in the Kingdom where you lived, to ſet all together by the Ears, to deſtroy poor innocent People, to proſtitute their Lives and Liberties, and all that is dear to them, to the Tyranny of *Rome* and *France*; and that by introducing a *French* Army. What greater Evil can be deſigned by any Man? I mention theſe Things becauſe they have all been fully proved againſt you; and that you may take Notice, and repent of them, and make your Peace with God, by a particular Application for Mercy for all theſe Faults; for it ſeems to me, that againſt God, your Prince, and Fellow Subjects, you have behaved yourſelf very ill, deſigning very great Evil to all theſe; and now it hath pleaſed God to bring you to Judgment.

I muſt tell you, peradventure, what you urge for yourſelf might introduce Pity, if it were to be believed; that is, that you are innocent, and had Witneſſes to prove it; but we cannot ſuppoſe any Man innocent, that hath had a legal and fair Trial, and a Trial with as much Candor to you, as your Caſe could bear, or as perhaps any Man in ſuch a Caſe ever had. You had Time upon your Requeſt to ſend for your Witneſſes, to help you in your Defence, and to have proved your Innocence, if you could have done it; Time long enough to your own Content, you yourſelf thought it ſo, at the Time it was given. To give a Priſoner under your Circumſtances, five or ſix Weeks Time to ſend for Witneſſes, is not uſual; we could have put you upon a preſent Defence, and hurried you out of the World by a ſudden Trial, if we had had any Deſign againſt you; but we go on in a fair Way, and with legal Proceedings, and with as much Reſpect to you, as in ſuch a Caſe could be uſed, for we gave you all the fair Hearing and Liberty that you deſired to have.

Look you, as to what you urge, that your Trial was in this Kingdom, whereas your Offence was in another, that is a Thing that does not become you by any Means to object; for you have had a Trial here by honeſt Perſons, and that according to the Laws which obtain in this Kingdom, and that too of *Ireland*, which is by a Statute not made on Purpoſe to bring you into a Snare, but an ancient Statute, and not without Precedents of its having been put in Execution before your Time: For your own Country will afford you ſeveral Precedents in this Caſe, as *O Rurke*, and ſeveral others that have been arraigned and condemned for Treaſon done there. So that you have no Reaſon to except againſt the Legality of your Trial. You ſay, now you have Witneſſes that could prove all this Matter; why that lies in the Mouth of any Man that is condemned to ſay; but pray conſider with yourſelf, what regard ought to be given to this. We cannot help it, if your Witneſſes don't come; you may remember they wanted not Time nor Opportunity to come over; but you told us they would not come unleſs they had a Paſſport.

Plunket. My Lord, they got a Paſs to come over afterwards, and ſo in eight Days they came hither.

L. C. J. You might have provided yourſelf, if they wanted ſuch a Thing. In the firſt Place, no Body is bound to give it them, much leſs could you expect it for them without aſking.

Plunket. I could not get the Copies of the Records neither by any Means, unleſs I had an Order from the Council, and they would not give that Order, unleſs your Lordſhip appointed it.

L. C. J. We cannot tell that, you ſhould have petitioned in Time.

Plunket. How could any one foreſee, unleſs he was God Almighty, that they would deny it, or that he could not get out a Copy of a Record, paying for it, without a Petition. All the Friends I had, told me, upon Motion there it might be had; but here I have it under the Lieutenant's and Council's Hands, that they would give no Copy of Records without Order from hence, which before I could know it, it was impoſſible for me to have them ready againſt my Trial.

L. C. J. Look you, Sir, I do ſpeak this to you, to ſhew you that thoſe Objections, which you ſeem to make againſt your Trial, have no weight at all; but in this Caſe it is not the Jury that are ſo material as the Witneſſes themſelves. I appeal to all that heard your Trial, if they could ſo much as doubt but that you were guilty of what you were charged with. For conſider, here were Perſons that were of your own Religion, the moſt of them Prieſts, I think almoſt all of them in Orders.

Plunket. There were two Friers, and a Prieſt whom I have endeavoured to correct this ſeven Years, and they were Renegadoes from our Religion, and declared Apoſtates.

L. C. J. Look you, Sir, they gave an Evidence very home to your Matter; you had Liberty to examine them, and they gave you a rational Account of any Thing you aſked. Let me but put you in Mind of one Thing. You made Exceptions to one's Evidence, (and indeed that was very much of your Exception to all) why he did not reveal this in all that Time: Truly he told you he was of your Mind, till he went into *France*, and ſaw what Slavery and Miſchief you endeavoured to introduce upon his and your own Countrymen, and this his Spirit roſe againſt, to ſee what a Condition *Ireland* was like to be brought into. And pray, did he not give you a full Anſwer to that Queſtion?

Plunket. I had ſufficient Witneſſes to prove he was an Apoſtate, and was chaſtiſed by me, and therefore had prepenſed Malice againſt me.

L. C. J. Therefore I have ſpoken this to the Satisfaction, I hope, of yourſelf, and all that hear it. I do now wiſh you to conſider, you are near your end. It ſeems you have lived in a falſe Religion hitherto; it is not too late at any Time to repent, I wiſh you may have the Grace to do ſo: In the mean Time there is no room for us here to grant you any Kind of Mercy, though I'll tell you, we are inclined to pity all Malefactors: Whoever have done evil, we are inclined to pity them, and wiſh heartily that they may repent, as we do that you may, of what you have done. But all we can do now, is to ſay what the Law ſays, and that is to paſs Judgment upon you.

Plunket. May it pleaſe your Lordſhip to give me leave to ſpeak one Word. If I were a Man that had no Care of my Conſcience in this Matter, and did not think of God Almighty, or Conſcience, or Heaven, or Hell, I might have ſaved my Life; for I was offered it by divers People here, ſo I would but confeſs my own Guilt, and accuſe others. But, my Lord, I had rather die ten thouſand Deaths, than wrongfully accuſe any Body. And the Time will come when your Lordſhip will ſee what theſe Witneſſes are, that have come in againſt me. I do aſſure your Lordſhip, if I were a Man that had not good Principles, I might eaſily have ſaved my Life; but I had rather die ten thouſand Deaths, than wrongfully to take away one Farthing of any Man's Goods, one Day of his Liberty, or one Minute of his Life.

L. C. J. I am ſorry to ſee you perſiſt in the Principles of that Religion.

Plunket. They are thoſe Principles, that even God Almighty cannot diſpenſe withal.

L. C. J. Well, however, the Judgment which we give you is that which the Law ſays, and ſpeaks. *And therefore you muſt go from hence to the Place from whence you came, that is, to* Newgate, *and from thence you ſhall be drawn through the City of* London *to* Tyburn; *there you ſhall be hanged by the Neck, but cut down before you are Dead, your Bowels ſhall be taken out and burnt before your Face, your Head ſhall be cut off, and your Body be divided into four Quarters, to be diſpoſed of as his Majeſty pleaſes. And I pray God to have Mercy upon your Soul.*

Plunket. My Lord, I hope I may have this Favour, of leave for a Servant, and ſome few Friends that I have, to come at me.

L. C. J. I think you may have Liberty for any Servant to come to you, I know nothing to the contrary.

Plunket. And ſome few Friends that I have in Town.

L. C. J. But I would adviſe you to have ſome Miniſter to come to you, ſome Proteſtant Miniſter.

Plunket. My Lord, if you pleaſe, there are ſome in Priſon, that never were indicted or accuſed of any Crime, and they will do my Buſineſs very well; for they will do it according to the Rites of our own Church, which is the ancient Uſage, they cannot do better, and I would not alter it now.

L. C. J. Mr. *Richardſon*, you may let his Servant come to him, and any Friend in your Preſence, to ſee there be no Evil done, nor any Contrivances that may hereafter have an Influence upon Affairs.

Mr. Juſt. *Jones.* Be you preſent, or ſomebody.

Plunket. My Servant, I hope may come, without his being preſent.

L. C. J. Yes, yes, his Servant may be with him alone. Well, Sir, we wiſh better to you than you do to yourſelf.

Plunket. God Almighty bleſs your Lordſhip. And now, my Lord, as I am a dead Man to this World, and as I hope for Mercy in the other World, I was never guilty of any of the Treaſons laid to my Charge, as you will hear in Time; and my Character you may receive from my Lord Chancellor of *Ireland*, my Lord *Berkley*, my Lord *Eſſex*, and the Duke of *Ormonde*.

Then the Keeper took away his Priſoner, and upon Friday *the firſt of* July, *he was executed according to the Sentence.*

At the Place of Execution he ſpake as follows.

I HAVE ſome few Days paſt abided my Trial at the *King's-Bench*, and now very ſoon I muſt hold up my Hand at the King of King's-Bench, and appear before a Judge that cannot be deceived by falſe Witneſſes, or corrupted Allegations; *for he knoweth the Secrets of Hearts*; neither can he deceive any, or give an unjuſt Sentence, or miſled by reſpect of Perſons; *He being all Goodneſs, and a moſt juſt Judge, will infallibly decree an eternal Reward for all good Works, and condign Puniſhment for the ſmalleſt Tranſgreſſion againſt his Commandments.* Which being a moſt certain and undoubted Truth, it would be a wicked Act, and contrary to my perpetual Welfare, that I ſhould now, by declaring any Thing contrary to Truth, commit a deteſtable Sin, for which, within a very ſhort Time, I muſt receive Sentence of everlaſting Damnation; after which there is no Reprieve or Hope of Pardon. I will therefore confeſs the Truth, without any Equivocation, and make uſe of the Words according to their accuſtomed Signification; aſſuring you moreover, that I am of that certain Perſuaſion, that no Power, not only upon Earth, but alſo in Heaven, can diſpenſe with me, or give me Leave to make a falſe Proteſtation: And I proteſt upon the Word of a dying Man, and as I hope for Salvation at the Hands of the ſupreme Judge, that I will declare the naked Truth with all Candour and Sincerity: And that my Affairs may be the better known to all the World.

'Tis to be obſerved, that I have been accuſed in *Ireland* of Treaſon and *Præmunire*, and that there I was arraigned and brought to my Trial;

but the Proſecutors (Men of flagitious and infamous Lives), perceiving that I had Records and Witneſſes who would evidently convince them, and clearly ſhew my Innocency and their Wickedneſs, they voluntarily abſented themſelves, and came to this City, to procure that I ſhould be brought hither to my Trial (where the Crimes objected were not committed) where the Jury did not know me, or the Qualities of my Accuſers, and were not informed of ſeveral other Circumſtances conducing to a fair Trial. Here, after ſix Months cloſe Impriſonment (or thereabouts) I was brought to the Bar the third of *May*, and arraigned for a Crime, for which I was before arraigned in *Ireland:* A ſtrange Reſolution, a rare Fact, of which you will hardly find a Precedent theſe five Hundred Years paſt: But whereas my Witneſſes and Records were in *Ireland*, the Lord Chief Juſtice gave me five Weeks Time to get them brought hither: But by Reaſon of the Uncertainty of the Seas, of Wind and Weather, and of the Difficulty of getting Copies of Records, and bringing many Witneſſes from ſeveral Counties in *Ireland*, and for many other Impediments (of which *Affidavit* was made) I could not at the End of the five Weeks get the Records and Witneſſes brought hither; I therefore begged for twelve Days more, that I might be in a Readineſs for my Trial, which my Lord Chief Juſtice denied; and ſo I was brought to my Trial, and expoſed, as it were, with my Hands tied, to thoſe mercileſs Perjurors, who did aim at my Life, by accuſing me of theſe following Points:

Firſt, That I have ſent Letters by one *Niel O-Neal* (who was my Page) to Monſieur *Baldeſchi*, the Pope's Secretary; to the Biſhop of *Aix*, and to *Principe Colonna*, that they might ſolicit foreign Powers to invade *Ireland*; and alſo to have ſent Letters to Cardinal *Bouillon* to the ſame Effect.

Secondly, To have employed Captain *Con O-Neal* to the *French* King for Succour.

Thirdly, To have levied and exacted Monies from the Clergy of *Ireland*, to bring in the *French*, and to maintain ſeventy thouſand Men.

Fourthly, To have had in Readineſs ſeventy thouſand Men, and Liſts made of them, and to have given Directions to one Frier *Duffy* to make a Liſt of 250 Men in the Pariſh of *Foghart*, in the County of *Lowth*.

Fifthly, To have ſurveyed all the Forts and Harbours in *Ireland*, and to have fixed upon *Carlingford* as a fit Harbour for the *French*'s landing.

Sixthly, To have had ſeveral Councils and Meetings, where there was Money allotted for introducing the *French*.

Finally, That a Meeting in the County of *Monaghan*, ſome 10 or 12 Years paſt, where there were 300 Gentlemen of three ſeveral Counties, to wit, *Monaghan*, *Cavan*, and *Armagh*; whom I did exhort to take Arms to recover their Eſtates.

To the *firſt* I anſwer, That *Niel O-Neal* was never my Servant or Page, and that I never ſent Letter or Letters by him to Monſieur *Baldeſchi*, or the Biſhop of *Aix*, or to *Principe Colonna*. And I ſay, that the *Engliſh* Tranſlation of that pretended Letter produced by the Frier *Macmoyer*, is a mere Invention of his; and never penned by me, or its original, either in *Engliſh*, *Latin*, *Italian*, or any other Language. I affirm, moreover, that I never wrote Letter or Letters to Cardinal *Bouillon*, or any of the *French* King's Miniſters; neither did any who was in that Court either ſpeak to me, or write to me, directly or indirectly, of any Plot or Conſpiracy againſt my King or Country. Farther, I vow, that I never ſent Agent or Agents to *Rome*, or to any other Court, about any Civil or Temporal Affairs: And 'tis well known (for it is a Precept publickly printed) that Clergymen (living in Countries where the Government is not of *Roman* Catholicks), are commanded by *Rome*, not to write to *Rome*, concerning any civil or temporal Affairs. And I do aver, that I never received Letter or Letters from the Pope, or from any other of his Miniſters, making the leaſt Mention of any ſuch Matters: So that the Friers *Macmoyer* and *Duffy* ſwore moſt falſely, as to ſuch Letter or Letters, Agent or Agents.

To the *Second* I ſay, That I never employed Capt. *Con O-Neal* to the *French* King, or to any of his Miniſters; and that I never wrote to him, or received Letters from him; and that I never ſaw him but once, nor ever ſpoke to him, to the beſt of my Remembrance, ten Words: And as for his being in *Charlemont* or *Dungannon*, I never ſaw him in thoſe Towns, or knew of his being in thoſe Places; ſo that as to *Con O-Neal*, Frier *Macmoyer*'s Depoſitions are moſt falſe.

To the *Third* I ſay, that I never levied any Money for a Plot or Conſpiracy, for bringing in *Spaniards* or *French*, neither did I ever receive any upon that Account, from Prieſts or Friers, as Prieſt *Mac-Clave*, and Frier *Duffy*, moſt untruly aſſerted. I aſſure you, that I never received from any Clergyman in *Ireland*, but what was due to me by ancient Cuſtom for my Maintenance; and what my Predeceſſors theſe hundred Years paſt were wont to receive; nay, I received leſs than many of them. And if all what the Catholick Clergy of *Ireland* get in the Year were put in one Purſe, it would ſignify little or nothing to introduce the *French*, or to raiſe an Army of ſeventy thouſand Men, which I had inliſted, and ready, as Frier *Macmoyer* moſt falſely depoſed; neither is it leſs untrue what Frier *Duffy* atteſted, *viz.* That I directed him to make a Liſt of 250 Men in the Pariſh of *Foghart*, in the County of *Lowth*.

To the *Fifth* I anſwer, That I never ſurveyed all the Forts or Harbours of *Ireland*, and that I was never at *Cork*, *Kingſale*, *Brantry*, *Youghal*, *Dungarvan*, or *Knockfergus*; and theſe 36 Years paſt I was not at *Limerick*, *Dungannon*, or *Wexford*. As for *Carlingford*, I never was in it but once, and ſtaid not in it above half an Hour; neither did I conſider the Fort or Haven; neither had I it in my Thoughts or Imagination to fix upon it, or upon any other Fort or Haven, for landing of *French* or *Spaniards*; and whilſt I was at *Carlingford* (by mere Chance paſſing that Way), Frier *Duffy* was not in my Company, as he moſt falſely ſwore.

To the *Sixth* I ſay, That I was never at any Meeting or Council, where there was Mention made of allotting or collecting of Monies for a Plot or Conſpiracy; and 'tis well known, that the Catholick Clergy of *Ireland*, who have neither Lands nor Revenues, and hardly are able to keep decent Clothes upon their Backs, and Life and Soul together, can raiſe no conſiderable Sum; nay, cannot ſpare as much as would maintain half a Regiment.

To the *Seventh* I anſwer, That I was never at any Meeting of three hundred Gentlemen in the County of *Monaghan*, or any Gentlemen of the three Counties of *Monaghan*, *Armagh*, and *Cavan*, nor of one County, nor of one Barony; and that I never exhorted a Gentleman, or Gentlemen, either there, or in any other Part of *Ireland*, to take Arms for the recovering their Eſtates; and 'tis well known, that there are not even in all the Province of *Ulſter* three hundred *Iriſh Roman* Catholicks, who had Eſtates, or loſt Eſtates by the late Rebellion; and, as it is well known, all my Thoughts and Endeavours were for the Quiet of my Country, and eſpecially of that Province.

Now to be brief, As I hope for Salvation, I never ſent Letter or Letters, Agent or Agents, to Pope, King, Prince, or *Prelate*, concerning any Plot or Conſpiracy againſt my King or Country: I never raiſed Sum or Sums of Money, great or ſmall, to maintain Soldier or Soldiers, all the Days of my Life; I never knew or heard (neither did it come to my Thoughts or Imagination) that the *French* were to land at *Carlingford*; and I believe there is none who ſaw *Ireland* even in a Map, but will think it a mere Romance; I never knew of any Plotters or Conſpirators in *Ireland*, but ſuch as were notorious and proclaimed (commonly called *Tories)* whom I did endeavour to ſuppreſs. And as I hope for Salvation, I always have been, and am entirely innocent of the Treaſons laid to my Charge, and of any other whatſoever.

And though I be not guilty of the Crimes of which I am accuſed, yet I believe none came ever to this Place who is in ſuch a Condition as I am; for if I ſhould even acknowledge (which in Conſcience I cannot do, becauſe I ſhould bely myſelf) the chief Crimes laid to my Charge, no wiſe Man that knows *Ireland* would believe me. If I ſhould confeſs, that I was able to raiſe ſeventy Thouſand Men in the Diſtricts of which I had Care, to wit, in *Ulſter*; nay, even in all *Ireland*, and to have levied and exacted Monies from the *Roman* Clergy for their Maintenance, and to have prepared *Carlingford* for the *French*'s landing, all would but laugh at me, it being well known, that all the Revenues of *Ireland*, both Spiritual and Temporal, poſſeſſed by his Majeſty's Subjects, are ſcarce able to raiſe and maintain an Army of ſeventy Thouſand Men. If I will deny all thoſe Crimes (as I did, and do), yet it may be that ſome, who are not acquainted with the Affairs of *Ireland*, will not believe that my Denial is grounded upon Truth, though I aſſert it with my laſt Breath. I dare venture further, and affirm, That if theſe Points of ſeventy Thouſand Men, *&c.* had been ſworn before any Proteſtant Jury in *Ireland*, and had been even acknowledged by me at the Bar, they would not believe me, no more than if it had been depoſed and confeſſed by me, that I had flown in the Air from *Dublin* to *Holy-Head*.

You ſee, therefore, what a Condition I am in, and you have heard what Proteſtation I have made of Innocency, and I hope you will believe the Words of a dying Man; and that you may be the more induced to give me Credit, I aſſure you, That a great Peer ſent me Notice that he would ſave my Life, if I would accuſe others: But I anſwered, That I never knew of any Conſpirators in *Ireland*, but ſuch (as I ſaid before) as were publickly known Outlaws; and that, to ſave my Life, I would not falſely accuſe any, nor prejudice my own Soul. *Quid prodeſt homini*, &c. To take away any Man's Life or Goods wrongfully, ill becometh any Chriſtian, eſpecially a Man of my Calling, being a Clergyman of the Catholick Church, and alſo an unworthy Prelate, which I do openly confeſs. Neither will I deny to have exerciſed in *Ireland* the Functions of a Catholick Prelate, as long as there was any Connivance or Toleration; and by preaching, and teaching, and Statutes, to have endeavoured to bring the Clergy (of which I had a Care) to a due Comportment, according to their Calling; and though thereby I did but my Duty, yet ſome, who would not amend, had a Prejudice for me, and eſpecially my Accuſers, to whom I did endeavour to do good; I mean the Clergymen; (as for the four Lay-men, who appeared againſt me, *viz. Florence*, *Macmoyer*, the two *Neals*, and *Hanlon*, I was never acquainted with them), but you ſee how I am requited, and how by falſe Oaths they brought me to this untimely Death; which wicked Act being a Defect of Perſons, ought not to reflect upon the Order of *St. Francis*, or upon the *Roman* Catholick Clergy; it being well known, that there was a *Judas* among the Twelve Apoſtles, and a wicked Man, called *Nicholas*, among the ſeven Deacons; and even, as one of the ſaid Deacons, to wit, holy *Stephen*, did pray for thoſe who ſtoned him to Death; ſo do I, for thoſe who with Perjuries ſpill my innocent Blood, ſaying, as *St. Stephen* did, *O Lord*, *lay not this Sin to them.* I do heartily forgive them, and alſo the Judges, who (by denying me ſufficient Time to bring my Records and Witneſſes from *Ireland)* did expoſe my Life to evident Danger. I do alſo forgive all thoſe who had a Hand in bringing me from *Ireland* to be tried here, where it was morally impoſſible for me to have a fair Trial. I do finally forgive all who did concur, directly or indirectly, to take away my Life, and I aſk Forgiveneſs of all thoſe whom I ever offended by Thought, Word, or Deed.

I beſeech the All-powerful, that his Divine Majeſty grant our King, Queen, and the Duke of *York*, and all the Royal Family, Health, long Life, and all Proſperity in this World, and in the next everlaſting Felicity.

Now that I have ſhewed ſufficiently (as I think) how innocent I am of any Plot or Conſpiracy, I would I were able, with the like Truth, to clear myſelf of high Crimes committed againſt the Divine Majeſty's Commandments (often tranſgreſſed by me), for which I am ſorry with all my Heart; and if I ſhould, or could live a Thouſand Years, I have a firm Reſolution, and a ſtrong Purpoſe, by your Grace (O my God) never to offend you; and I beſeech your Divine Majeſty, by the Merits of Chriſt, and by the Interceſſion of his bleſſed Mother, and all the holy Angels and Saints, to forgive me my Sins, and to grant my Soul eternal Reſt. *Miſerere mei Deus*, &c. *Parce animæ*, &c. *In manus tuas*, &c.

POSTSCRIPT.

To the final Satisfaction of all Perſons, that have the Charity to believe the Words of a dying Man, I again declare before God, as I hope for Salvation, what is contained in this Paper is the plain and naked Truth, without any Equivocation, mental Reſervation, or ſecret Evaſion whatſoever; taking the Words in their uſual Senſe and Meaning, as Proteſtants do, when they Diſcourſe with all Candour and Sincerity. To all which I have here ſubſcribed my Hand.

Oliver Plunket.

CIV. *The*

CV. *The Trial of Sir* Miles Stapleton, *Bart. at* York *Aſſizes for High-Treaſon*, June 18, 1681; 33 Car. II.

SIR *Miles Stapleton*, Baronet, was indicted at the Seſſions of *Oyer* and *Terminer* at the Weſt Riding of the County of *York*, and the Indictment was removed by a Writ of *Certiorari* to the King's Bench, where Sir *Miles Stapleton* having been arraigned, and pleaded to the ſame Not Guilty, was ſent down to be tried in the County of *York*. The Indictment was as followeth.

'Sir *Miles Stapleton*, late of *Carleton* in the County of *York*, Baronet, 'ſtands indicted, for that he, as a falſe Traitor againſt our illuſtrious and 'excellent Prince, King *Charles* the ſecond, his natural Lord, not having God before his Eyes, nor weighing the Duty of his Allegiance, but 'by the Inſtigation of the Devil being moved and ſeduced, the cordial 'Love, and true, due, and natural Obedience, which true and faithful 'Subjects of our Lord the King ſhould bear to him, and of right are 'bound to bear, wholly withdrawing, deviſing, and with all his Power 'intending to diſturb the Peace and common Tranquillity of this Realm, 'and to bring and put our ſaid Lord the King to Death and final Deſtruction, and the true Worſhip of God in this Kingdom by Law eſtabliſhed 'and uſed, to alter to the Superſtition of the Church of *Rome*, and to 'move and ſtir up War againſt our ſaid Lord the King in this Realm, 'and to ſubvert the Government of this Kingdom, the 30th Day of '*May*, in the thirty-firſt Year of our ſaid Lord the King's Reign, at the 'Pariſh of *Barwick* in *Elmett* in the ſaid County of *York*, in the Weſt-'Riding of the ſame County, with divers other falſe Traitors unknown, 'did traiterouſly compaſs, imagine and intend, the Death and final Deſtruction of our ſaid Lord the King, and to change and alter, and 'wholly toſubvert the anci ct Government of this Realm, and to depoſe 'and wholly to deprive the King of the Crown and Government of the 'ſaid Kingdom, and to root out the true Proteſtant Religion: And to 'fulfil and accompliſh the ſame moſt wicked Treaſons, and traiterous 'Imaginations and Purpoſes, the ſaid Sir *Miles Stapleton*, and other falſe 'Traitors unknown, on the ſaid 30th of *May*, in the thirty firſt Year 'aforeſaid, with Force and Arms at the Pariſh of *Barwick* aforeſaid, adviſedly, deviliſhly, maliciouſly and traiterouſly, did aſſemble, unite and 'gather themſelves together, and then did deviliſhly, adviſedly, maliciouſly, craftily and traiterouſly, conſult and agree, to bring our ſaid 'Lord the King to Death and final Deſtruction, and to depoſe and deprive 'him of the Crown and Government, and introduce and eſtabliſh the 'Religion of the *Romiſh* Church in this Realm; and the ſooner to fulfil 'and accompliſh the ſaid moſt wicked Treaſons and traiterous Imaginations and Purpoſes, the ſaid Sir *Miles Stapleton*, and other unknown 'Traitors, then and there adviſedly, maliciouſly and traiterouſly, did further conſult and agree to contribute, pay and expend divers large Sums 'of Money, to divers of the King's Subjects, and other Perſons unknown, 'to procure thoſe Perſons traiterouſly to kill our ſaid Lord the King, and 'to introduce the *Romiſh* Religion into this Realm, againſt the Duty of 'his Allegiance, againſt the Peace of our ſaid Lord the King, his Crown 'and Dignity, and againſt the Form of the Statute in ſuch Caſe made 'and provided.'

Clerk of Aſſize. Hold up thy Hand, Sir *Miles*, thou haſt heard the Treaſons and other Miſdemeanors whereof thou ſtandeſt indicted: Art thou Guilty thereof, or not Guilty?

Sir *Miles.* Not Guilty.

Clerk of Aſſize. How wilt thou be tried?

Sir *Miles.* By God and my Country.

Cl. of Aſſize. *Culpiet*, God ſend thee a good Deliverance.

Clerk of Aſſize. Sir *Miles*, this underſtand you, that theſe Gentlemen that are now to be ſworn, are returned by the Sheriff of this County, to paſs between our Sovereign Lord the King and you for your Life; therefore if you will challenge any of them, you are to challenge them as they come to be ſworn, and before they be ſworn.

The Jury being called, Mr. Juſtice *Dolben* took Notice to Sir *Miles*, that there were but few appeared, and therefore told him, he would do well not to challenge too many of them. Sir *Miles* thereupon ſaid, he ſhould not challenge many; and enquired whether thoſe that ſerved on the Lady *Tempeſt*'s, Mr. *Thwing*'s and Mr. *Ingleby*'s Juries did now appear; and the Judge anſwered him, that if they did, Care ſhould be taken that they ſhould not be ſworn.

Then the Jury being called to the Book, Sir *Miles* challenged theſe, *viz.*

Sir *David Fowles.* Bar.
John Eſtoft, Eſq;
William Bethel, Eſq;
William Caley, Eſq;
Towers Driffeild, Eſq;
Marm. Trueman, Eſq;
John Wright, Eſq;
John Green, Eſq;
Robert Bell, Gent.
John Dixon, Gent.
Thomas Wood, Gent.
Robert Turner, Gent.
John Beckwith, Gent.
Simon Warrener, Gent;
Gervaſe Hatfieild, Gent.
John Coats, Gent.

And only two of the Jury returned, *viz.* *Tho. Fletcher*, *Rob. Gudgeon*, were ſworn.

Mr. Juſt. *Dolben.* Sir *Miles*, I ſee you muſt ſtay till the next Aſſizes, for you challenge ſo many, here will not be a Jury gotten.

Sir *Miles.* If your Lordſhip pleaſe, I ſhall be content, and do deſire the Jury may be called that ſerved the firſt Day; nay, all the three Juries, if you pleaſe.

Mr. Juſt. *Dolben.* That is, you would chuſe all of one Way, and leave the others; where is the Indifferency of the Trial then; but come call them, I cannot deny it.

The three Juries called, and five challenged, *viz.*

Tho. Worſeley, Eſq
Samuel Tennant, Gent.
Robert Buſhel, Gent.
Roger Stretwel, Gent.
Roger Lee, Eſq;

And theſe Sworn, *viz.*

Sir *Tho. Pennyman*, Bar.
Thomas Rokely, Eſq;
William Stone,
Thomas Conyers,
Chriſtopher Tankard, Eſq; who was excepted againſt by Sir *Thomas Stringer*: as one that diſparaged the Evidence of the Plot, and called his Dogs by the Names of *Oates* and *Bedloe*; which the Judges allowed to be a good Exception; but there being no Witneſs in the Court to prove it, he was ſworn.

Mr. Juſt. *Dolben.* Sir *Miles*, you muſt ſtay till the next Aſſizes we have not a full Jury.

Sir *Miles.* Here are Gentlemen in the Court, your Lordſhip may take whom you pleaſe.

Mr. Juſt. *Dolben.* I cannot do it without the King's Council move for a *Tales*, which as this Caſe ſtands they will not do.

And ſo he was remanded to Priſon, and *Remanet pro defectu Juratorum* until the 18th Day of *July* 1681.

And at the Aſſizes then holden for the County of *York*, before Mr. Juſt. *Dolben*, and Mr. Baron *Gregory*, was proceeded againſt as followeth.

Clerk of Aſſize, Sir *Miles Stapleton*, hold up thy Hand; thou ſtandeſt indicted by the Name of *Miles Stapleton*, late of *Carleton* in the County of *York*, Bar. *&c. prout* in the Indictment.

After not Guilty pleaded to the Indictment, and other Formalities of the Court, as before, theſe Gentlemen following were called.

Sir *Thomas Maleverer*, Kt. Challenged by the King's Council.

Sir *Roger Beckwith*, Kt. Challenged by the King's Council.

Sir *Miles.* Are any challenged?

Mr. Juſt. *Dolben.* Yes, there are two challenged for the King.

Sir *Miles.* I hope they muſt ſhew cauſe why they challenge them.

Mr Juſt. *Dolben.* Yes, they ſhall, but they are not bound to ſhew Cauſe before the Pannel be gone through, and then, if you deſire it, they will ſhew Cauſe; but I ſuppoſe Sir *Thomas Maleverer* married a Kinſwoman of your's, and if ſo, 'tis a good Exception.

Sir *Miles.* I deſire it may be proved.

Richard Audbrough, Eſq; Challenged by the King.

John Dodſworth, Eſq; Challenged by the King.

Iſaac Fairfax, Eſq; *Chriſtopher Bradſhaw*, Eſq; Challenged by Sir *Miles*.

Theſe following were called and ſworn, *viz.*

Sir *Barrington Boucher*, Kt.
Sir *John Jennings*, Kt.
Richard Hutton, Eſq;
Wellbrough Norton, Eſq;
Tobias Hodſon, Eſq;
John Beverley, Eſq;
Anthony Frankland, Eſq;
John Addams Eſq;
Francis Battery, Eſq;
Francis Fuldgam, Eſq;
Humphrey Brook, Eſq;
Thomas Lee, Eſq;

Cryer. Twelve good Men and true, ſtand together and hear your Evidence.

Clerk of Aſſize. Sir *Miles Stapleton*, hold up your Hand (which he did). Gentlemen, you of the Jury that are Sworn, look upon the Priſoner, and hearken to his Charge; you ſhall underſtand that he ſtands indicted by the Name of Sir *Miles*, &c. *prout* in the Indictment; upon this Indictment he hath been arraigned, and thereupon pleaded Not Guilty, and for his Trial hath put himſelf upon his Country, which Country you are, *&c.*

Then Proclamation was made for Evidence, and Sir *Thomas Stringer*, one of the King's Council aggravated the Indictment as followeth.

Sir *Miles Stapleton.* I deſire, my Lord, the King's Evidence may be put apart, not to hear what each other ſwears.

Mr. Juſt. *Dolb.* No, no, Sir *Miles*, that muſt not be, would you have the ſame for your Witneſſes?

Sir *Thomas Stringer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; Sir *Miles*, the Priſoner at the Bar, ſtands here indicted of the greateſt and blackeſt Treaſons that can be invented by the worſt of Men; he ſtands here indicted for endeavouring to depoſe the King from his Crown and Dignity; and imagining and compaſſing the Death of the King, to alter the eſtabliſhed Government, and root out the true Proteſtant Religion, and to eſtabliſh the *Romiſh* Religion among us. Gentlemen, to compaſs theſe wicked Deſigns we ſhall prove there hath been ſeveral Conſults where the Priſoner at the Bar hath been, and where he hath contributed Money to carry on theſe wicked Deſigns: And Gentlemen, I muſt acquaint you, there hath been a horrid Plot againſt the King and Government, and I need not do it, for it hath been made notoriouſly known; not only Parliaments have declared it ſo, but there have been Noblemen, Gentlemen, and Prieſts, nay, ſome Men have been found guilty for carrying on the horrid Deſign, and have received their Deſerts. This Plot, Gentlemen, is no new Plot, not a Plot of a Day, nor of an Age; but a Plot that hath been carried on for an hundred Years. My Lord, ſince we were delivered by God's Mercy from the Popiſh Religion by the Reformation; ever ſince that Time, the Pope, the Jeſuits, the Prieſts and thoſe of the Popiſh Perſuaſion, have, my Lord, been from Time to Time, and ever ſince, endeavouring to carry on this wicked Deſign, and had deſtroyed us long ſince, if we had not been by God Almighty, from Time to Time, delivered from their Power. And you, Gentlemen, of the Jury, I muſt tell you, this Plot was carried on in Queen *Elizabeth*'s Time; and as they did in this Plot carry on their Deſigns, with the King of *Spain* at *Valadolid* in *Spain*. The King of *Spain*, he join'd with the Popiſh Party here; but it pleaſed the Lord to take the Queen to his Mercy, before the Plot was effected. And I muſt tell you, the ſame Men of the ſame Quality that carried it on then, have now endeavoured to carry it on in theſe Days. My Lords, the King of *Spain*, though he was a Papiſt, yet it was ſo horrid a Thing, that he left them to carry on their wicked Deſign, and God Almighty did preſerve the Queen. My Lords, they reſted not here; but in King *James* his Time they deſigned to have deſtroyed both King and Parliament at one Blow, and thereby the whole Nation in it's Repreſentatives, and this they managed by *Guy Vaux* and others. And all King *Charles* his Time the ſame Plot was on Foot, and pray how far did they bring it? they brought it to the Death of that Gracious King, and the ſad Effects of a Civil War; and they have brought it in theſe Days to raiſe Officers, Generals, Major-Generals, and other Officers, and proceeded ſo far that actual Commiſſion was delivered for deſtroying our King, and if this had not been by God's Mercy prevented, what would have been the evil Effects thereof, e're this Day? And, Gentlemen, I muſt tell you, that which is now before you is the greateſt, and moſt wicked Deſign that ever was before Men; and though you be of the Relations and Kindred, yet I know if you have but Conſcience and Right in you, you will give a Verdict according to the Juſtneſs of the thing, and the Evidence you ſhall have.

Sir *John Ottwith.* We call Mr. *Smith* firſt, who will give you an Account of the Plot in general.

Mr. John Smith *called and ſworn.*

Mr. Juſt. *Dolben.* Mr. *Smith*, pray tell the Court what you know of the Plot.

Mr. *Smith.* I muſt ſpeak of it then what I have done beyond Sea, my Lord.

My Lords, I remember when I had been firſt beyond Sea, I became acquainted with one *Abbot Montagu* and Mr. *Thomas Car*, at *Paris*, and they told me then, if I came to the *Romiſh* Religion what Preferment I ſhould have here in *England*; they told me what Friends they made in *England*, they named ſeveral Perſons about the Court, and ſeveral Gentry in *England* which I did not then know to be Papiſts. I ſtaid ſome time among them in *Paris*, and all this while I did not pervert to the *Romiſh* Religion; though they told me how many Jeſuits they had ſent over into *England*. After I left *France*, I was for going for *Rome*, where I met with Father *Anderton*, Rector of the *Engliſh* College, and Father *Southwel*, and Father *Campion*, who introduded me into the Acquaintance of Cardinal *Grimaldi*, which is an *Italian* Name, but he is Archbiſhop of that Place; I happening there, they carried me to ſpeak to the Cardinal, and he told me what Likelihood there was for introducing the *Romiſh* Religion into *England*, and he told me, he woud prefer me very well there, if I would turn to their Religion; and gave me Letters to ſeveral Friends in *Italy*: At laſt I was perverted to the *Romiſh* Religion, by virtue of this Cardinal; and this Gentleman at laſt aſked me if I had a mind to ſtudy, I told him Yes, ſo I came into an *Italian* College, and became acquainted with the all ſecular Prieſts, both *Engliſh*, *Scotch*, and *French*; who told me what Intereſt they had made in *England*, during the coming in of Cardinal *Norfolk*, and ſaid, there was but one Man in the Way, meaning the King, and ſaid they ſhould ſoon remove him.

Mr. Juſt. *Dolben*. Did they mean the King?

Mr. *Smith*. Yes, my Lord, they ſaid there was but one Man in the Way, and that they would ſoon make an end of him, and that they had Men ready in *England* for it. After this, my Lord, I left this *Italian* College, and came to the *Engliſh* College (for I had a Mind to come there) and I made Friends with the Jeſuits: After I came to the *Engliſh* College, my Lord, I was informed of one Father *Anderton* Rector of that College, and Father *Mondford*, who told me, that by Means of this Cardinal *Norfolk* they did not doubt but to take the King out of the way; and that they would give me all Privileges that could be for a young Man in that Time. When I was coming away, my Lord, from *Rome*, and had my Letters Emiſſaries, by Cardinal *Perorin* (He ſent for me when I was coming away, and as is uſually done to all Scholars, and they kiſs the Pope's Toe, and he gives them his Bleſſing and particular Indulgence; which I had when I came into *England*) ſaid he to to me, there is one Man in the Way who hath made us fair Promiſes, but will perform nothing, therefore we muſt take him out of the way, and that I might be inſtrumental in the Deſign; with this, my Lord, I took leave of the College, and we came five into *England* as Prieſts, and I made my Application to the Arch-Prieſt, which was in *London*, one *Purrat*, and I was employ'd a long Time by him in *England*; but Proclamations coming forth for the apprehending Popiſh Prieſts, I was conſtantly after at the *Portugal* Embaſſador's Chappel, where this *Purrat* had a Chamber, wherein I diſcourſed with ſeveral of the Clergy in *England*, who ſaid they doubted not but Popery would ſoon be ſettled in *England*. I came after that to live at one Mr. *Jenniſon*'s Houſe, where the Clergy had ſeveral Meetings, and we were all of Opinion that Courſe would be taken with the King, unleſs he brought in Popery. And this, my Lords, is all I can ſay in general.

Mr. Juſt. *Dolben*. Do you know of any Conſpiracy in *Yorkſhire*?

Mr. *Smith*. My Lord, I am coming to that. When I came to Mr. *Jenniſon*'s Houſe, there was one Mr. *Thwing*, a Prieſt, who has ſuffer'd as a Conſpirator, he was well acquainted in the Houſe before I came there, and did very much to perſuade me that I would intreat Mr *Jenniſon* to ſend his Daugters to a Place called *Dolebank*, where a Nunnery was to be erected, and I knew ſeveral that were there. This Mr. *Thwing* came to me oftentimes, and ſeveral Prieſts in this City, and they all preſſed me to it, but I was againſt it, knowing what their Deſign was.

Mr. Juſt. *Dolben*. But do you know any thing againſt the Priſoner?

Mr. *Smith*. All that I can ſay to the Gentleman at the Bar, is this: I never ſaw him before to my Knowledge; but Mr. *Thwing*, when we were at Mr. *Jenniſon*'s, and diſcourſing of the Plot, aſked me how they gave Money in the *Biſhoprick*, I told him ſome gave more, ſome leſs.

Mr. Juſt. *Dolben*. What were thoſe Collections for?

Mr. *Smith*. My Lord, it went among ourſelves under the Notion of killing the King, and rooting out the Proteſtant Religion; but we gave it out that it was repairing a College at *Doway*, which, if granted, had been penal by Law. Then I aſked him, How doth the Collections go among you in *Yorkſhire*? Some, ſaith he, give freely; but, ſaith he, my Uncle and his Friends are engaged another way; for, ſaith he, they are going to make a Founder for *Dolebank*; ſeveral perſons he named, among which he named this Gentleman.

Mr. Juſt. *Dolben*. What ſaid he of Sir *Miles*?

Mr. *Smith*. He ſaid Sir *Miles* was very zealous for promoting the *Roman* Catholick Religion, and had contributed largely for the introducing of it into *England*.

Mr. Bar. *Gregory*. You ſay that amongſt yourſelves you gave it out, that the Money that was raiſed was for the Killing of the King, and rooting out the Proteſtant Religion; pray, by what Way and Means was it to be done, was that ever diſcourſed among any of you; was it for raiſing of an Army? or what was it for?

Mr. *Smith*. Wherever I was, my Lord, it was reſolved, that that was the moſt effectual Means for the introducing of Popery.

Mr. Robert Bolron *called and ſworn.*

Sir *Thomas Stringer*. Mr. *Bolron*, acquaint my Lords and the Jury, what you know of Sir *Miles Stapleton*.

Mr. *Bolr*. May it pleaſe your Lordſhip, I came to live with Sir *Thomas Gaſcoigne* in 1674, as Steward of his Coal-works; and was then a Proteſtant, but was perſuaded by Mr. *Ruſhton*, Sir *Thomas*, and others, to turn *Roman* Catholick; when I had turned *Roman* Catholick, about 1676, they came and aſked me, what I would do for the *Romiſh* Religion, if it ſhould come to it; I told them, I would venture my Life in that Cauſe, and then I went to *Barmbow-Hall*, where I took the Oath of Secrecy; after that I went to *Barmbow-Hall*, where Sir *Miles Stapleton* was at a Conſult in 1677.

Mr. Juſt. *Dolben*. At what Time in 77?

Mr. *Bolr*. It was about *Whitſuntide*, my Lord.

Mr. Juſt. *Dolben*. That was the *Whitſuntide* after you had taken the Oath of Secrecy?

Mr. *Bolr*. Yes, my Lord.

Mr. Juſt. *Dolben*. Who was there?

Mr. *Bolr*. Sir *Miles Stapleton*, Sir *Tho. Gaſcoigne*, Mr. *Gaſcoigne* his Son, my Lady *Tempeſt*, Lawyer *Ingleby*, Mr. *Thwing*, Father *Ruſhton*, and ſeveral others.

Mr. Bar. *Gregory*. What was there done at that Conſult?

Mr. *Bolr*. My Lord, the Conſult was about killing the King, and eſtabliſhing a Nunnery at *Dolebank*, near *Ripley*; Sir *Tho. Gaſcoigne* gave 90*l*. *per Annum*, and 300*l*. for killing the King; and I remember very well, *Pickering* was mentioned about killing the King; and they aſked Sir *Miles Stapleton* what he would give? and he ſaid, 200*l*. for killing the King.

Mr. Juſt. *Dolben*. Are you ſure that in the Preſence of Sir *Miles Stapleton* it was reſolved the King ſhould be killed?

Mr. *Bolr*. Yes, my Lord, it was reſolved both by him and all others, that the King ſhould be killed; and, my Lord, I heard them further ſay, if the Duke of *York* did not pleaſe, that they would ſerve him as they would ſerve his Brother.

Mr. Bar. *Greg*. Who ſaid theſe latter Words?

Mr. *Bol. Sherby* of *Stone-houſe* ſaid theſe latter Words, and Mr. *Shereburn* ſaid———

Mr. Juſt. *Dolben*. No matter what Mr. *Shereburn* ſaid. What ſaid Sir *Miles*?

Mr. *Bolr*. The Gentlemen ſaid, that Sir *Miles* ſhould be a Privy Councillor, and that they would procure the Duke's Conſent to it.

Mr. Juſt. *Dolben*. Is that all?

Mr. *Bolr*. My Lord, I was further at a Conſult in 78, about the thirteenth or fourteenth of *June*.

Mr. Bar. *Greg*. What Time was that?

Mr. *Bolr*. The thirteenth Day of *June* 78, and there it was agreed upon the taking of *Hull*, the letting in of the *French* there, as the fitteſt Place for the *French* to land at.

Mr. Juſt. *Dolben*. Where was this?

Mr. *Bolr*. At *Barmbow*; and likewiſe they did diſcourſe, that my Lord *Bellaſis* had cauſed the Block-houſes to be almoſt ruined, that the *French* might more eaſily come in; and we had all Pardons for our Sins.

Mr. *Lawrence Mowbray* called and ſworn.

Sir *Tho. Stringer*. Mr. *Mowbray*, tell my Lords and the Jury what you know againſt Sir *Miles Stapleton*, the Priſoner at the Bar.

Mr. *Mowbray*. My Lords, you have heard what Mr. *Smith* and Mr. *Bolron* ſay to the Plot in general; what I ſay ſhall be very brief, in relation to Sir *Miles Stapleton*, and no further. Sir *Miles Stapleton* being preſent with Sir *Tho. Gaſcoigne*, my Lady *Tempeſt*, Eſquire *Gaſcoigne*, and ſeveral others, they held ſeveral Diſcourſes concerning a Deſign of killing the King, ſubverting the Government, and bringing in Popery, and accordingly they would fire *London*.

Mr. Bar. *Greg*. When was this?

Mr. *Mowbray*. This was in 76, where Father *Ruſhton* gave him an Oath of Secrecy, and he promiſed to be true to the Deſign, and would venture his Life and Eſtate for the promoting ſo good a Cauſe.

Mr. Juſt. *Dolben*. Did you hear Sir *Miles Stapleton* ſay he would adventure his Life and Eſtate for killing of the King?

Mr. *Mowbray*. Yes, my Lord.

Mr. Juſt. *Dolben*. And was it reſolved at that Conſult?

Mr. *Mowbray*. Yes, my Lord.

Mr. Juſt. *Dolben*, And he conſented to it?

Mr. *Mowbray*. Yes, my Lord, and took the Oath of Secrecy from Father *Ruſhton*.

Mr. Juſt. *Dolben*. This is not the Time that Mr. *Bolron* ſpeaks of.

Mr. *Mowbray*. No, my Lord, he ſpeaks of 76 and 78, this was in 78.

Mr. *Bolr*. I have ſeen in 75 a colluſive Conveyance of Sir *Miles Stapleton*'s Eſtate to Sir *John Daney*.

Mr. Juſt *Dolben*. Where did you ſee it?

Mr. *Bolr*. I did ſee it at Sir *Thomas Yarbrough*'s, and he aſking me when Sir *Miles Stapleton* was at Sir *Tho. Gaſcoigne*'s; may it pleaſe you, ſaid I, I can tell you ſomething where you are concerned with Sir *Miles Stapleton*; as ſoon as he heard that he bluſhed, and away he went, and would hear no further.

Sir *Tho. Stringer*. What ſay you, Mr. *Mowbray*, of an Indulgence you had?

Mr. *Mowbray*. Yes, my Lord, I had an Indulgence.

Mr. Juſt. *Dolben*. Was it for the Time to come, or the Time paſt?

Mr. *Mowbray*. It was for the Time paſt; for I was to enter into the Roſary.

Sir *Tho. Stringer*. Did you ever attend *Ruſhton* at the Altar?

Mr. *Mowbray*. Yes, I did.

Mr. Juſt. *Dolben*. Mr. *Bolron*, you ſay, you ſaw a colluſive Conveyance made by Sir *Miles Stapleton* to Sir *John Daney*; pray, what was the Forfeiture of it?

Mr. *Bolr*. It was——

Mr. Juſt. *Dolben*. Was it Sir *Tho. Yarbrough*, or Sir *John Daney*, you told of it?

Mr. *Bolr*. I told it to Sir *John Daney*.

Mr. *Mowbray*. I drew a Copy of that very Conveyance.

Sir *Tho. Stringer*. Truly, my Lord, we want Mrs. *Bolron*, one of the moſt material Evidences againſt Sir *Miles*, being ſick at *London*.

Mr. *Baynes* called and ſworn.

Sir *Tho. Stringer*. Come, Mr. *Baynes*, declare to the Court what you know againſt Sir *Miles*.

Mr. *Baynes*. I know nothing againſt Mr. *Miles*, only I have ſeen him at *Barmbow-Hall* in 77.

Sir *Tho. String*. Pray tell us this, whether you obſerved, in the Year 76, Sir *Miles Stapleton* come to ſeveral Meetings with Sir *Tho. Gaſcoigne*, and my Lady *Tempeſt*, and others?

Mr. *Baynes*. Yes, my Lord, I have.

Mr. Juſt. *Dolben*. But do you know what Diſcourſe they had?

Mr. *Baynes*. No, my Lord; but I remember we were once diſcourſing about ſome Nuns beyond Sea, and they were called Galloping Nuns.

Mr. Juſt. *Dolben*. They were Gallopers, indeed.

Mr. Juſt. *Dolben*. Sir *Miles*, you have heard what hath been proved againſt you—

Sir *Miles*. My Lord, there is nothing of Truth in it at all; I hope to make it appear to your Lordſhip. I call God to witneſs I am as innocent of what they ſay, as any Child unborn.

Mr. Juſt. *Dolben*. That is an eaſy Thing to ſay.

Sir *Miles.* I hope to make it appear to your Lordſhip. Will your Lordſhip pleaſe to give me leave to aſk the Witneſſes ſome Queſtions?

Mr. Juſt. *Dolb.* That you may have Allowance in.

Sir *Miles.* Then I deſire to aſk *Bolron* this Queſtion; Did you accuſe me in your Information to Juſtice *Lowder?*

Mr. *Bol.* No, my Lord, I did not.

Sir *Miles.* Did I, or any other, deſire you to keep any Secret for me?

Mr. *Bol.* Yes, my Lord, I have been deſired.

Mr. Juſtice *Dolben.* But did Sir *Miles* ever deſire you?

Mr. *Bol.* No, my Lord, he did not, but *Ruſhton* did, when I was introduced by the Prieſts to the Conſult.

Sir *Miles.* Did you and *Mowbray* know that each other was concerned in the Plot?

Mr. *Bol.* Yes, we did.

Sir *Miles.* Name the Perſons that were preſent at the Conſult.

Mr. *Bol.* There was Sir *Tho. Gaſcoigne*, my Lady *Tempeſt*, Eſquire *Gaſcoigne*, Mr. *Ingleby*, Mr. *Thwing*, Mr. *Ruſhton*, Mr. *Addiſon*, Mr. *Metcalf*, and ſeveral others.

Sir *Miles.* How long did the Conſult laſt?

Mr. *Bol.* Some ſix or ſeven Hours.

Sir *Miles.* What Servants were there?

Mr. *Bol.* I took no notice of the Servants.

Sir *Miles.* What Room was it in?

Mr. *Bol.* In the old Dining-Room.

Sir *Miles.* How long did it laſt?

Mr. Juſt. *Dolb.* Six or ſeven Hours he tells you.

Sir *Miles.* Was there any other at Sir *Thomas Gaſcoigne*'s?

Mr. *Bol.* None elſe that I can remember.

Sir *Miles.* Upon what Occaſion did he mention *Mowbray* in his Information to the Council?

Mr. Juſt. *Dolb.* There hath no Information to the Council been mentioned here.

Sir *Miles.* Pray what was the Occaſion you were turned out of Sir *Thomas Gaſcoigne*'s Service?

Mr. *Bol.* My Lord, I know not; they ſay it was about a Trunk: Sir *Thomas Gaſcoigne* ſent him to *York*, and he was to come again. I know there was a Deſign to take away *Mowbray*'s Life; but I never told him ſo much; and my Lady accuſed him for a Ring; I never durſt tell him this, but this was the Thing contrived againſt him to take away his Life; I can make it appear where he bought the Ring.

Mr. Juſt. *Dolb.* What tell'ſt thou us of a Ring? Can'ſt thou not as well tell us it was for that he left Sir *Thomas Gaſcoigne*'s Service?

Sir. *Miles.* When did you firſt become a Proteſtant?

Mr. *Mowb.* When I made my firſt Information.

Bar. *Greg.* When was that?

Mr. *Mowb.* That was in 79, and a little before that I kept Correſpondence with Father *Addiſon.*

Sir *Miles.* I deſire to know whether he ſaw a Liſt of Names?

Mr. *Mowb.* Yes, I did.

Sir *Miles.* Whoſe Names were there;

Mr. *Mowb.* There was your Name for one, and Sir *Thomas Gaſcoigne*'s.

Sir *Miles.* What was it for?

Mr. *Mowb.* It was a Liſt of thoſe that were Actors and Contributors for killing the King.

Mr. Juſt. *Dolb.* You are ſure Sir *Miles Stapleton*'s Name was in the Liſt?

Mr. *Mowb.* Yes, my Lord, I am.

Mr. Juſt. *Dolb.* Was it Parchment or Paper?

Mr. *Mowb.* No, my Lord, it was Paper.

Mr. Juſt. *Dolb.* Were you to aſſiſt in killing the King?

Mr. *Mowb.* My Lord, I was to be an Actor in killing the King.

Sir *Miles.* Whether did I, or any other deſire you to keep any Secret for me?

Mr. *Mowb.* Yes, Father *Ruſhton* did.

Sir *Miles.* Did I ever do it?

Mr. *Mowb.* No, Sir *Miles*, you never did.

Sir *Miles.* Did any Body elſe deſire you?

Mr. Juſt. *Dolb.* Father *Ruſhton*, he tells you, did.

Sir *Miles.* Was the diſcourſe ſo loud that Sir *Thomas Gaſcoigne* could hear it?

Mr. *Mowb.* Sir *Thomas* could hear well enough when he would.

Sir *Miles.* Was it in 79 that you diſcovered the Plot?

Mr. *Bol.* Yes; I went to *London*, and there diſcovered the Plot in ——79, I think it was.

Sir *Miles.* You ſaid, I was not concerned, you only accuſed Sir *Thomas Gaſcoigne* and ſome others in your Information; but did not name me.

Mr. Juſt. *Dolb.* Did he ſo? You may prove that upon him.

Sir *Miles.* It was ſo in his Information, my Lord.

Mr. Juſt. *Dolb.* Well, then let it be ſo. Call your Witneſſes.

Mr. Lowder *called and examined.*

Sir *Miles.* I deſire Mr. *Lowder* to acquaint your Lordſhips and the Jury, what was in the Information Mr. *Bolron* gave in, whether he accuſed me or no.

Mr. *Lowder.* All I know of it is, that in *January* 79, on *Sunday* Evenning, as I think, about the 24th Day of the Month, *Robert Bolron* came to me, and told me he had ſomething of Secrecy to impart to me, and I aſked him if he would go into the Houſe with me; he told me it was Matter of High-Treaſon; I aſked who was concerned, he anſwered, Sir *Thomas Gaſcoigne*, and ſeveral others: Then I ordered my Clerk to bring a Bible, and Pen and Ink to take his Information. I deſired him to be very cautious, telling him, that ſeveral Lives were at Stake: At that he began to be fearful and changed Colour: I aſked him for what Cauſe that Fear was; he ſaid, if that were upon my Conſcience, that was upon his, for concealing it ſo long, I ſhould be as fearful as he. I bid him ſeriouſly conſider what he had to ſay; he then ſaid, he had delivered his Information to Mr. *Tindal.* Well then, ſaid I, why is it you come to me? Said I, Mr. *Tindal* is to be at my Houſe the 25th Day, and I ſhall diſcourſe it with him, and we ſhall take it together. Mr. *Tindal* did come, and *Bolron* came and delivered in his Information.

Mr. Juſt. *Dolb.* You did not give him his Oath at that Time?

Mr. *Lowder.* No, my Lord; for it ſeems he had not then delivered in his Information, but only a Writing of his to Mr. *Tindal.*

Bar. *Greg.* You took no Examination then?

Mr. *Lowder.* No, my Lord, not at that Time; but afterwards he came and he gave in his Information to us, and I think we were about two Hours about it; and then he did not charge any Perſon but *Ruſhton* and Sir *Thomas Gaſcoigne*; but ſaid, he had more to recollect: Well, ſaid I, if you recollect any more, you may come again.

Bar. *Gregory.* Pray who did he name?

Mr. *Lowder.* He named Father *Ruſhton* and Sir *Thomas Gaſcoigne*; he named my Lady *Tempeſt*, but ſpoke that as from another. And when he came again, he ſaid he would trouble us with no more, but would go to the King and Council to deliver in the reſt.

Mr. Juſt. *Dolb.* He ſaid then he ſhould recollect more.

Mr. *Lowder.* Yes, my Lord, he did, and when he came again, he ſaid he would not trouble us with it, but would inform the Council of it: When we ſaw him ſo poſitive, he had a Letter of Recommendation from Mr. *Tindal* to the Council; and he loſt that Letter at *Ware*; but he went on, and delivered his Information to the Council.

Mr. Juſt. *Dolb.* Do you know it?

Mr. *Lowder.* Yes, my Lord.

Mr. Juſt. *Dolb.* You cannot know it, were you there then?

Mr. *Lowder.* No, my Lord, but I do know it.

Mr. Juſt. *Dolb.* How do you know it?

Mr. *Lowder.* I have a Copy of the Order under ſeveral of the Council's Hands.

Mr. Juſt. *Dolb.* That is not Evidence, you are not to ſpeak what another Man knows. But that is not the Matter; it ſeems he went to give in his Information to the Council, for indeed he could not otherwiſe have been ſafe.

Mr. *Lowder.* After this, he goes up to *London* again, and comes down and brings me another Order of Council to examine Mr. *Mowbray* and one *Hickeringil*; and I aſked him if he knew any thing about Sir *Miles Stapleton*'s being concerned in the Plot, and he ſaid no, he believed he was very clear.

Mr. Juſt. *Dolb.* You ſay that *Bolron* brought you another Order of Council to examine *Mowbray.*

Mr. *Lowder.* Yes, my Lord.

Mr. Juſt. *Dolb.* Did *Bolron* bring you in Writing what *Mowbray* could ſay?

Mr. *Lowder.* My Lord, I know not whether it was by Writing, or by Word of Mouth.

Mr. Juſt. *Dolb.* What was it he told you *Mowbray* could ſay?

Mr. *Lowder.* He told me, he could ſay he ſaw Sir *Miles Stapleton* at *Barmbow* when the Conſult was; but, ſaid he, there will others come againſt Sir *Miles.*

Mr. Juſt. *Dolb.* Pray let us aſk *Bolron* that: Did you ſay to Mr. *Lowder*, you knew nothing againſt Sir *Miles Stapleton*, but there were others would do it?

Mr. *Bol.* No, my Lord, not that I remember.

Mr. *Lowder.* *Bolron* himſelf had never ſaid any thing againſt Sir *Miles.*

Bar. *Greg.* Did you aſk *Bolron* if he knew whether Sir *Miles* was concerned in the Plot, or no?

Mr. *Lowder.* Yes, my Lord, I did, and he anſwered, he knew nothing againſt him.

Mr. Juſt. *Dolb.* He was not then upon his Oath?

Mr. *Lowder.* No, not then; but after this he delivered his Information, and did ſwear, to the Effect that *Mowbray* did ſwear, that Sir *Miles* was at *Barmbow*, and that they all did conſpire the killing of the King, and introducing the *Romiſh* Religion; and he ſaid, my Lady *Tempeſt* came to him, when he was in the Paſſage, and ſaid to him, Mr. *Mowbray*, it is fitter for you to be treating of Sir *Miles Stapleton*'s Servants in the Larder: And he aſked me whether he had beſt go and apprehend Sir *Miles* or Mr. *Ingleby* firſt?

Mr. Juſt. *Dolb.* This was your Diſcourſe with *Bolron.*

Mr. *Lowder.* Yes, my Lord.

Mr. *Bol.* May it pleaſe your Lordſhip, I did not know then that Mr. *Mowbray* was at all concerned in the Plot.

Mr. Juſt. *Dolb.* He tells you, how you told him what *Mowbray* would ſay before he came to him, and what he would ſay againſt Sir *Miles Stapleton.*

Mr. *Bol.* No, my Lord, I never ſaid any ſuch thing.

Mr. Juſt. *Dolb.* You ſay, you did not know what *Mowbray* would ſay, Mr. *Lowder* ſaith otherwiſe.

Mr. *Bol.* My Lord, I did not know what it was before he brought it himſelf, and he brought it in Writing.

Bar. *Greg.* Mr. *Lowder*, did he tell you the Particulars, or only ſaid he was to depoſe things againſt Sir *Miles Stapleton?*

Mr. *Lowder.* My Lord, he told me he could ſwear Sir *Miles* was at the Conſult at *Barmbow*, and did there conſpire the Death of the King, and introducing the *Romiſh* Religion.

Mr. Juſt. *Dolb.* How long was this, Mr. *Lowder*, you had that Diſcourſe with *Bolron* before *Mowbray* came to give in his Information?

Mr. *Lowder.* It was, my Lord, two or three Days before, and I ordered him to come again, when Mr. *Tindal* was to be at my Houſe.

Mr. Juſt. *Dolb.* Were you ever with Mr. *Lowder*, and knew when he and Mr. *Tindal* ordered him to come to him?

Mr. *Bol.* I went to Mr. *Mowbray*, and we came to Eſquire *Lowder*'s, and there Mr. *Tindal* was; but I knew nothing of what he had to ſay; my Lord, Mr. *Mowbray* was there at that Time he doth affirm.

Mr. Juſt. *Dolb.* *Mowbray*, before you came to Mr. *Lowder*'s, had you acquainted *Bolron* with what you had to ſay?

Mr. *Mowb.* I might acquaint him I had ſomething to ſay, but did not tell him the Particulars.

Mr. Juſt. *Dolb.* Did you tell him you had any thing againſt Sir *Miles Stapleton?*

Mr. *Mowb.* 'Tis poſſible, my Lord, I might; but I am not poſitive in that.

Bar. *Greg.* Did he tell you, Mr. *Lowder*, what Mr. *Mowbray* could ſwear againſt Sir *Miles*, and was it not the Day which he tells here of?

Mr. *Lowder.* No, my Lord, it was not.

Bar. *Greg.* It was not the ſame Day?

Mr. *Lowder.* No, my Lord, I ſhall be poſitive in it, if I be brought to my Oath.

Mr. Juſt. *Dolb.* Come, another Witneſs, Sir *Miles.*

Sir Thomas Yarbrough *called and examined.*

Sir *Miles.* I deſire Sir *Thomas* to ſpeak what he heard *Bolron* declare what he knew of the Plot after Sir *Tho. Gaſcoigne* was taken.

Sir *Tho. Yarbrough.* The 10th of *Auguſt* 79, Mr. *Bolron* came to my Houſe about 10 or 11 o'Clock at Night, and knocked at my Door; I thought him very unſeaſonable; but my Servants looking out at the Window, aſked who was there; he ſaid a Friend that would ſpeak with Sir *Thomas*: My Servant came and told me, and I ordered my Servant to go down and bring him into my Chamber; in the Interim I put on a Morning-Gown: As ſoon as he came in, he told me he had an Order of Council to ſearch all ſuſpicious Places for Popiſh Prieſts, and I have great Cauſe to believe that there is one *Ruſhton* a Prieſt now at Sir *Miles Stapleton*'s. What would you have me to do, ſaid I, would you have me go with you myſelf? He ſaid no, but a Servant. Said I, Mr. *Bolron* will you ſhew me the Order; and finding his Name in the Warrant, I aſk him, Was that the Perſon that inform'd againſt Sir *Thomas Gaſcoigne?* His Anſwer was this, that if I pleaſed he would ſhew me the Article againſt Sir *Thomas Gaſcoigne*; when I obſerved the Article, I aſked him, if he knew any Thing of Sir *Miles Stapleton*'s being concerned in the Plot: No, I proteſt, ſaith he, I know nothing of Sir *Miles Stapleton*'s being concerned in it, for he is a very honeſt Gentleman: Only this I muſt ſay, that I know he hath made a colluſive Conveyance of his Eſtate, and I believe moſt of the *Roman* Catholicks in *England* have done it for the ſecuring of their Eſtates.

Mr. Juſt. *Dolben.* What do you ſay to this, *Bolron?*

Mr. *Bol.* My Lord, when I delivered in my Information to the Council I did accuſe Sir *Miles Stapleton.*

Mr. Juſt. *Dolben.* Did you ſay this to Sir *Thomas?*

Mr. *Bol.* No, I did not, if it was not in the Information I gave to the Council, believe not one Word that I have ſaid.

Mr. Juſt. *Dolben.* 'Tis poſſible it might be in the ſecond Information to the Council that you accuſed Sir *Miles*: Was Sir *Miles Stapleton*'s Name in the Paper you gave to him?

Mr. *Bol.* Yes, my Lord.

Mr. Juſt. *Dolben.* This was the 10th Day of *Auguſt* 79. Had you then informed the Council of any Thing before that Time againſt Sir *Miles Stapleton*'s being at *Barmbow*-Hall at the Conſult?

Mr. *Bol.* May it pleaſe your Lordſhip, I was called out when I was before the King and Council, and there was ſomething I did not deliver in.

Mr. Juſt. *Dolben.* Then you did not do it at that Time?

Mr. *Bol.* No, my Lord, I did not.

Mr. Juſt. *Dolben.* I aſk you again, before the 10th of *Auguſt* 79, had you informed the Council of any Thing againſt Sir *Miles?*

Mr. *Bol.* No, my Lord, I had not.

Mr. Juſt. *Dolben.* Then it could not be in the Information that you ſhewed him.

Mr. *Bol.* No, my Lord, it was at the ſecond Time.

Bar. *Greg.* Was it before you had this diſcourſe with Sir *Thomas Yarbrough?*

Mr. *Bol.* No, my Lord, it was not before that: I ſhall not ſpeak one Word of a Lie.

Sir *Miles.* Every Word you ſpeak is a Lie.

Mr. *Bol.* It is no Lie, before this honourable Court.

Mr. Juſt. *Dolb.* Were theſe Informations incloſed in the Letter from the Council?

Mr. *Lowd.* Yes, my Lord, your Lordſhip may ſee the Letter mentions it, (holding the Letter forth in his Hand with the Informations) which Mr. Juſtice *Dolben* took and ſilently read them over, after which he made his Report thereof to the Court.

Mr. Juſt. *Dolb.* Mr. *Lowder*, I have read all theſe Things over, and there is nothing of any Conſult in them: How ſhould then the Accuſation of Sir *Miles* be mentioned in them?

Bar. *Greg.* I do believe, Sir *Thomas*, you miſtake Times.

Sir *Tho. Yarb.* No, my Lord, I do not.

Mr. Juſt. *Dolb.* In the bringing of this Order of Council to you, did you aſk Mr. *Bolron* if he knew any Thing againſt Sir *Miles Stapleton?*

Sir *Tho. Yarb.* Yes, my Lord, I did, and he ſaid he believed he was innocent.

Sir *Tho. String.* Pray, Sir *Thomas*, why did you aſk him that about Sir *Miles?*

Sir *Tho. Yarb.* Becauſe I knew Sir *Miles* was related to Sir *Thomas Gaſcoigne*, and was often there.

Sir *Tho. String.* It ſeemed, Sir *Thomas*, you feared it.

The Lady *Yarbrough* called and examined.

Sir *Miles.* Madam, pray acquaint the Court what you heard *Bolron* ſay when he diſcourſed your Huſband.

Lady *Yarb.* All I can ſay is, that I was in Bed then, and heard him ſay all theſe Things, and I heard the Order read, and there was mention of ſeveral at the Conſult, among whom there was no mention of Sir *Miles Stapleton.*

Mr. Juſt. *Dolb.* Does your Ladyſhip very well remember that Sir *Thomas Yarbrough* aſked him if Sir *Miles* was concerned, and he ſaid, not that he knew of?

Lady. *Yarb.* Yes, my Lord, and he ſaid more than that; for when he returned from taking Prieſts in the Afternoon, there was a great deal of Company in the Houſe, and when he came, he brought one of the Sons along with him, and they came into the Hall, there Mr. *Bolron* was with him, and among the reſt there was one Mr. *Anby*, who being a little merry, he takes him by the Arm, and comes and brings him to us as we were ſitting in the Porch, and ſaid, Heark you, Mr. *Bolron*, I hear you are a Diſcoverer of the Plot? Yes, I am, ſaid he: Then I pray you, who are they that are concerned? But he would not tell him. So ſaid he, is Sir *Miles Stapleton* in it? He anſwered, he had nothing to ſay againſt Sir *Miles*, but he was an honeſt Gentleman for ought he knew, excepting that he had made a colluſive Conveyance of his Eſtate.

Mr. *Normanton* called and examined.

Mr. *Norm.* In *June* 79, came *Rob. Bolron* to me, and ſaid, that Sir *Tho. Gaſcoigne* would give 1000 *l.* for killing the King, and the Lady *Tempeſt* would have hanged him for breaking a Trunk, but now he would be even with her; and that Sir *Miles Stapleton* kept Prieſts in his Houſe, but he would apprehend them preſently, for he might have twenty Pound a-piece for taking of them.

Bar. *Greg.* You ſay *Bolron* told you this?

Mr. *Norm.* Yes, my Lord, he told me this in my own Houſe; and I told him he might go to Eſquire *Tindal*, and I lent him eighteen Pence, and borrowed him a Horſe in the Town.

Rich. Pears, Sir *Miles*'s Man, call'd and examin'd.

Rich. Pears. My Lord, *Bolron* came to *Carleton.*

Mr. Juſt. *Dolben.* *Carleton*, what is that?

Rich. Pears. To my Maſter's Houſe.

Mr. Juſt. *Dolben.* Who is thy Maſter?

Pears. Sir *Miles Stapleton.*

Mr. Juſtice *Dolb.* What then?

Pears. I go in to an Ale-houſe where *Bolron* was, he aſked me how I did, I thanked him.

Mr. Juſtice *Dolben.* Did you know him?

Pears. Yes, my Lord, and he called for a Pot of Ale, and wiſhed me to drink with him, and he aſked me if they did not blame him for accuſing my Maſter Sir *Miles?* And I ſaid I did not hear him named; he ſaid it was not him, but he might not tell who it was.

Mr. Juſt. *Dolben.* When was this?

Pears. Three or four Days after my Maſter was taken into Cuſtody; and he ſaid he would have gone to have ſeen Sir *Miles*; but I think (ſays he) he does not know me: And he aſked me, if Mr. *Legget* would be at our Houſe, and he deſired me to give him a Letter; and I ſaid I ſhould not ſee him; then he ſaid I might burn it, and I did burn it, my Lord.

Sir *Tho. String.* How came you acquainted with *Bolron?*

Pears. At the Coal-Pits, my Lord.

Sir *Tho. String.* Did you never ſee him at Sir *Thomas Gaſcoigne*'s?

Pears. No, my Lord.

Stephen Thomſon called and examined.

Mr. Juſt. *Dolb.* Have a care you ſpeak nothing but Truth, though you are not ſworn, yet we can puniſh you, and God Almighty will puniſh you if you ſpeak falſe.

Steph. Thompſon. An't like your Honour, *Robert Bolron* was Servant to Sir *Thomas Gaſcoigne*, as Steward of his Coal-Pits; Sir *Thomas* put him out of his Coal-Pits, and there was a great deal of Money due, and he knew not how to get it, and therefore he would take threeſcore Pounds for it, becauſe he knew not how to get it, and he would take thirty-two Pounds at one Time, and twenty-eight at another, and came to me to be bound with him, which I was unwilling to; ſaith he, here is thirty-eight Pounds good Debt, and I ſhall take care to get the other, and if Sir *Thomas* be not kind, I ſhall do him an ill Turn.

Mr. Juſt. *Dolb.* What is this to Sir *Miles Stapleton?*

Thomp. He did ſwear, this Plot being diſcovered, they thought he knew ſomething of Sir *Tho. Gaſcoigne*, and he ſaid before the Plot broke out, there was never a Catholick in *Yorkſhire* was concerned in it; if there were any, it was above.

Bar. *Greg.* This was before his Information, I'll lay a Wager.

Mr. Juſt. *Dolben.* How could he do him an ill Turn?

Thomp. My Lord, this is the ill Turn, Mr. *Legget* ſaid he did it not for Need: O *Rob. Bolron*, ſaid I, do you thus requite Sir *Tho. Gaſcoigne's* Kindneſſes?

Bar. *Greg.* Did he ſpeak any Thing to you concerning Sir *Miles?*

Sir *Miles.* I conceive when they reflect upon Sir *Thomas*, they reflect upon me.

Mr. J. *Dolb.* No, not ſo, you might be guilty, and Sir *Thomas* innocent, or you might be innocent and Sir *Thomas* guilty.

Sir *Miles.* My Lord, I think that as there was a Conſult at Sir *Tho. Gaſcoigne's*, certainly if any one was guilty, we were all guilty.

Bar. *Greg.* There are ſome that conceive, and I think not without Grounds, that there are no conſiderable Catholicks in *England*, but they are concerned in the Plot.

Mr. J. *Dolb.* There was one *Dixon* came at Sir *Tho. Gaſcoigne*'s Trial, and ſaid he heard *Bolron* and *Mowbray* down a pair of Stairs, ſpeaking of Revenge againſt Sir *Tho. Gaſcoigne* and my Lady *Tempeſt*, and thinking theſe Witneſſes might now be produced, we called at *Leeds* to view the Stairs, and I am ſure neither my Brother nor I could ſee any Probability in it.

Bar. *Greg.* For Satisfaction we made two go up into the Chamber and ſtand where the Witneſſes were, and they ſpoke as loud as People do uſually when they diſcourſe, and I am ſure I could neither perceive what they ſaid, nor ſee them, unleſs I went three or four Steps up.

Mr. J. *Dolb.* This is but occaſioned by your jeſting upon the Matter.

Nathaniel Wilſon called.

Mr. Juſt. *Dolben.* Sir *Miles*, I would put you in mind of one Thing; produce thoſe two Witneſſes that were produced at Sir *Tho. Gaſcoigne*'s Trial.

Sir *Miles.* I have none of theſe Witneſſes.

Mr. J. *Dolben.* Certainly theſe Witneſſes would be as material as any you can have to do it.

Sir *Miles.* I have them not here, my Lord.

Mr. J. *Dolb.* Nay, that is becauſe you dare not; the King's Council will prove that what they ſpoke they were hired to, and had Money from Sir *Tho. Gaſcoigne*, which they confeſſed.

Sir *Miles.* My Lord, they made Affidavit of it.

Mr. Juſt. *Dolb.* Though they did, yet they confeſſed they were hired to it.

The Lady *Vavaſour* called and examined.

Sir *Miles.* My Lord, I call my Lady *Vavaſour* to tell, whether Sir *Walter* was there at the Conſult they tell us of at *Barmbow.*

Mr. J. *Dolb.* That will be hard for her to do; but call her in. (Who was called:) But ſpeaking ſo low ſhe could not be heard by the Court, and ſtanding beſide Mr. Juſtice *Dolben*, he repeated her Words to the Court. My Lady, ſaith this Gentleman, ſhe believes her Huſband was not there in any Part of the Year, becauſe he was infirm at *York*. Now, Gentlemen, I would only know, whether that be concluſive Evidence when it is only poſſible.

Mr. *Legget* called and examined.

Sir *Miles.* Mr. *Legget*, pray, what Money would Mr. *Bolron* have given you when I was taken?

Legget. Mr. *Bolron* deſired me to lend his Wife ſome Money to go to Market with, and I did: The ſame Day between *Tadcaſter* and *York*, Mr. *Bolron* aſked me what Allowance Dr. *Oates* had; I told him, I heard he had five hundred Pounds a Year: and he anſwered, I deſerve as much; for I have done as much good as he: As I was going for *York*, I met with Mr. *Mowbray*, and it raining, I put in at *Tadcaſter*; when the Rain was over, we ſet forward for *York*; ſaid Mr. *Mowbray*, Mr. *Bolron* hath ſent for me; ſo I went to Mr. *Bolron* to the *George*, and he ſent for Mr. *Mowbray*, and he pulls out his Information, and after he had read it, he aſked him if he knew any thing of that, and he ſaid, he did not know of it.

Mr. Juſt. *Dolb.* Well, what is this to the Purpoſe? Did you hear him ſay any thing againſt Sir *Miles*?

Legget. I have heard Mr. *Bolron* ſay, that he had nothing to ſay againſt Sir *Miles Stapleton*, but only he had made over his Eſtate to Sir *John Daney*.

Mr. Juſt. *Dolben.* How came he to name Sir *Miles* to you?

Mr. *Leg.* He voluntarily told me of it, when we went to *Allerton* to apprehend ſome Prieſts; and when I returned I told him, I took but one of theſe Perſons, old Mr. *Metcalf*; and he ſaid, he cared not if I had but taken one *Addy*.

Mr. Juſt. *Dolb.* You muſt not talk of this Faſhion.

Sir *Miles.* It ſhews but what a kind of a Man he is.

Mr. Juſt. *Dolb.* So may we examine to the end of the Chapter. Do you ſay *Bolron* read over his Information to *Mowbray*, and he ſaid he knew nothing of it as to Sir *Miles Stapleton*?

Leg. No, my Lord, but of Sir *Tho. Gaſcoigne*; he aſked him nothing, my Lord, but againſt Sir *Tho. Gaſcoigne*; after they went out and had been together, Mr. *Bolron* told me, Sir *Miles Stapleton* was it to be taken into Cuſtody; and he ſaid, you may as well have it as another, but I'll go half Snips with you: At laſt he told me, if I have an hundred Pounds of Sir *Miles*, you ſhall have twenty of it.

Mr. Juſt. *Dolb.* Had you any Warrant at that Time to take Sir *Miles*?

Leg. No, my Lord.

Bol. I know nothing of any ſuch thing.

Mrs. *Eliz. Holmes* called and examined.

Mrs. *Holmes.* An't pleaſe you, my Lord, at Sir *Tho. Gaſcoigne*'s Trial, Mr. *Bolron* and his Wife they were at our Houſe at Dinner; after Dinner, they aſked me, if I would go to Sir *Thomas*'s Trial. I anſwered, yes; ſo Mrs. *Mowbray* came and called her Huſband out of Door, and I aſked her about Sir *Thomas Gaſcoigne*, and ſhe ſaid——

Mr. Juſt. *Dolb.* Tell us what ſhe ſaid.

Holmes. She ſaid, they were hard People; but ſhe thought they were innocent to the Plot, and ſhe had nothing to ſay againſt them, as God ſhall judge her Soul. Then another Time, my Lord, after *Bolron* came from *York*, he met me. How now, Siſter, I underſtand you are to be a Witneſs againſt me at *York*, but if you'll be kind to me, I'll be kind to you, and ſpeak as favourably as I can; and he ſaid, if he had known he ſhould have been no better rewarded, he would never have been a Witneſs; the Devil ſhould have been a Witneſs as ſoon as he.

Mr. Juſt. *Dolb.* Againſt whom?

Holmes. Againſt Sir *Thomas Gaſcoigne* and Sir *Miles*, my Lord, and he bid me be careful what I ſwore; for if we did ſwear falſe, he would have us at the Pillory, and unleſs I would unſay what I had ſaid in my Lady's Trial, he would puniſh me ſufficiently.

Mr. Juſt. *Dolb.* Who ſaid this, know you?

Holmes. Mr. *Bolron*, my Lord.

Bar. *Greg.* Where do you live?

Holmes. I live, my Lord, in *Baldwin*'s Garden.

Sir *Tho. Stringer.* Did you ever tell any that if they would come and ſwear againſt the Evidence againſt Sir *Miles Stapleton*, they ſhould be ſufficiently rewarded?

Holmes. No, never in my Life.

Sir *Miles.* When did you ſee me laſt, *Bolron*?

Bol. I have ſeen you in 78 ſeveral times.

Mr. Juſt. *Dolb.* He hath ſeen you in Priſon.

Bol. My Lord, I have ſeen him at *Barmbow*-Hall in 78.

Sir *Thomas Stringer.* Yow know Sir *Miles Stapleton*?

Mr. *Bol.* Yes, very well; and I have ſeveral times talked with him.

Sir *Miles.* I deſire to know whether he hath ſeen Sir *Tho. Gaſcoigne* and me diſcourſe about any thing?

Mr. *Bol.* No, not ſince the Plot broke out.

Sir *Miles.* He ſwore in Sir *Tho. Gaſcoigne*'s Trial, he heard me and Sir *Thomas* diſcourſe about *Oates* and *Bedloe*.

Mr. Juſt. *Dolb.* Well, how material will that be?

Sir *Miles.* I ſhall prove that he ſwore falſe; for Sir *Thomas* and I were never together ſince the Plot broke forth.

Mr. Juſt. *Dolb.* That is hard to do.

Mr. Bar. *Greg.* You have an excellent Witneſs that can ſwear that.

Sir *Miles.* In all Probability I can do it.

Mr. Juſt. *Dolb.* But that muſt not go before a poſitive. Well, have you done?

Sir *Miles.* There is another Witneſs or two, if it be not too tedious.

Mr. Juſt. *Dolb.* No, we will ſtay here all Day, if you pleaſe.

Edward Cooper called and examined.

Cooper. My Lord, all that I can ſay is, we having been at *Autherton*-Fair, we met with Mr. *Mowbray*; knowing him, and being acquainted with him, pray ſaid I, whether is there any thing of a Truth in this that *Bolron* ſwears againſt Sir *Thomas Gaſcoigne*, or no? No, ſaith he, he might as well have ſworn it againſt you, or an other Perſon; for I have been in the Houſe as long as he, and I never knew any ſuch thing.

Mr. Juſt. *Dolb.* This was before *Mowbray* had diſcovered any thing; for *Mowbray* was then a Papiſt, and had taken the Oath of Secrecy: Beſides, 'tis not much what *Mowbray* ſaid, he was going on a high-way: If it had been before a Juſtice of Peace, or if he had been upon his Oath, then it had been more material.

Madam *Shereburn* called and examined.

Sir *Miles.* Madam *Shereburn*, pray declare what *Bolron* ſaid at your Houſe.

Madam *Shereburn.* Mr. *Bolron* and *Mowbray* came to our Houſe under the Pretence of ſearching for Prieſts, and *Bolron* took ſeveral Parcels of Silver away with him.

Judge *Dolb.* Away, away, if you have any thing againſt him on the behalf of this Gentleman, Madam, ſpeak it; but you would prove him a Thief, and ſay, he went to ſeek for Prieſts, and he ſtole Money from them.

Mowbray. We went to ſeek for Prieſts, and we took ſome Chalices and other Popiſh Trinkets away.

Mr. Juſt. *Dolb.* Do not ſpend your's and our Time in ſaying that *Bolron* and *Mowbray* were knaviſh Boys; we, it may be, are guilty of Extravagances in that particular.

Mr. Bar. *Greg.* They themſelves confeſs they have been very bad; they took the Oath of Secrecy, and it is as ill as ever was ſpoke or writ in ſo few Words.

Mr. Juſt. *Dolben.* I know they have been very bad Men. Well, have you any more Witneſſes?

Sir *Miles.* I can produce my Neighbours and thoſe of the Church of *England*, that can ſay no otherwiſe than that I have been of good Behaviour.

Sir *Tho. Stringer.* It is generally concluded by all, that Sir *Miles* hath been a very good Man until he fell into this great Action.

Mr. Juſt. *Dolb.* Brother, have you any thing more to ſay? if not, I'll proceed.

Sir *Tho. Stringer.* Only I deſire that *Dixon* and *Wilſon* may be called in to ſwear that they were hired at Sir *Thomas Gaſcoigne*'s trial.

Mr. Juſt. *Dolb.* Call them, then.

Dixon called and ſworn.

Sir *Tho. Stringer.* Pray tell my Lord and the Jury what Witneſſes were hired, and whether you were hired to teſtify for Sir *Thomas Gaſcoigne* or no?

Dixon. My Lord, in *November* 79, *John Baily* ſent *John Wilkinſon* for me, and when I came there, *Batley* was there; and they deſired me to go and there called me into the Garden, and aſked me, if I would be a Witneſs for Sir *Thomas Gaſcoigne*, and would give me forty Shillings.

Wilſon called and ſworn.

Sir *Tho. Stringer.* Were you offered any thing by Mr. *Babbington*, to be a Witneſs for Sir *Miles*?

Wilſon. I was, my Lord.

Sir *Tho. Stringer.* Pray, tell my Lord what you were offered, and what he would have you to ſay.

Dixon. *Batley* would have him to be a Witneſs.

Mr. Juſt. *Dolb.* Well, but what was he to ſay?

Dixon. He was to ſay, he never ſee *Bolron* nor *Mowbray* at his Houſe. Saith *Batley*, I ſaw them at the Door. Thou never didſt ſee them in my Houſe. Yes, ſaith he, I ſee them once, and my Lord, the third Time before they departed he might ſay, that in 79 he came in and found them there. This he preſſed on me, telling me, it was but telling a lie, for no Oath was required in this Caſe.

Mr. Bar. *Greg.* Did Mr. *Babbington* offer you Money? What would he have you to teſtify for it?

Mr. Juſt. *Dolb.* What Money would he have given you?

Wilſon. He would have given me 10 *l.* and *Hickering* proffered me 10 *l.*

Mr. Juſt. *Dolb.* Is *Babbington* a Sollicitor for Sir *Miles*?

Bol. Yes, my Lord, here he is.

Dixon. *Batley* did preſs me to ſay again, that he never did ſee Mr. *Bolron* and *Mowbray* in his Houſe, and he made a Contrivance of that.

Chriſtopher Langley and *Richard Cocker* called and ſworn.

Sir *Tho. Stringer.* Pray tell my Lords and the Jury what you have been proffered, and by whom, to give Evidence for Sir *Miles*.

Chr. Langley. My Lord, an't pleaſe you, I kept a publick Houſe; ſo *William Batley* and *John Roſs* came and called for a quart of Ale, and this *Richard Cocker* was with us, and he ſaid, if you'll go and be a Witneſs for Sir *Miles* in thoſe Things we ſhall direct you, you ſhall have a couple of Oxen and half a ſcore of Sheep.

Sir *Tho. Stringer.* Who proffer'd you this?

Langley. *Will. Batley* and *John Groſs*.

Cocker. Well, it is the ſame, my Lord, I went with him into his Houſe, and he proffer'd him a couple of Oxen, and half a ſcore of Sheep, if he would be a Witneſs for Sir *Miles*.

Mr. *Bayns* called and ſworn.

Sir *Tho. Stringer.* Speak whether Mrs. *Holmes* would have had you to have recanted any thing againſt Sir *Miles*.

Mr. *Bayns.* She proffer'd me ſince I came into the Kingdom of *England* threeſcore Pound a Year to have holden my Tongue, if I had any thing to ſay againſt Sir *Miles*: I told her not whether I had any thing or no, and ſhe proffer'd me 60 *l* *per Annum.* Mrs. *Hewit* ſaid, ſhe would give me more if I would ſay nothing againſt Sir *Miles*.

Mr. Juſt. *Dolb.* Did they make an Aſſurance?

Bayns. I aſked them, do you know another Gentleman's Purſe? They ſaid, they knew it very well, that he would give it.

Sir *Miles.* Pray let Mrs. *Holmes* be called again.

Mr. Juſt. *Dolb.* Well, ſhe denies it. What is that *Hewit*?

Bayns. He married another of my Daughters, my Lord.

Mr. Juſt. *Dolb.* She only appeared zealous for Sir *Tho. Gaſcoigne*, and ſhe would be the ſame for Sir *Miles Stapleton.* Have you any thing more, Sir *Miles*?

Sir *Miles.* No, my Lord; only Mrs. *Holmes* denies.

Mr. Juſt. *Dolb.* She does ſo.

Sir *Miles.* I have not ſo much to ſay againſt Mr. *Bayns*.

Mr. Juſt. *Dolb.* I do not hear he ſaith much againſt you.

Mr. Bar. *Greg.* He had got his Money pretty eaſily if he ſaid nothing more againſt you; he had ſcarce earned his Money.

Sir *Miles.* I deſire the Jury may conſider what Credit was given to their Evidence formerly in the former Trials; for I ſpeak ſeriouſly, I never ſpoke any ſuch thing, nor was ever at any Conſult about any ſuch thing; I believe there is none that knows me will believe it.

Mr. Juſt. *Dolb.* Is that all?

Sir *Miles.* The Evidence is very improper; I never thought ill againſt the King in my life; what Reaſon was there for it?

Mr. Juſt. *Dolben.* No Reaſon at all that either you or any Papiſt ſhould do it, but only through the mad fiery Zeal of the Jeſuits; for ever ſince the Reformation you have enjoyed your Eſtates and Religion without any Moleſtation; but you could not endure we ſhould quietly enjoy our's. But if you have any Matter on Record againſt them, we will hear it. It may be you will ſay he is an idle Fellow and the like; there will be no end of ſuch Reflections.

Bar. *Greg.* You ſee what is produced on your Behalf, Sir *Miles*, though not by your Direction, yet on your Behalf, and they ſaid it was but telling a Lie.

Sir *Miles.* No, my Lord, not I; I never gave any ſuch Directions.

Mr. J. *Dolben.* Gentlemen of the Jury, Sir *Miles Stapleton* ſtands indicted for a very foul Treaſon, for endeavouring to ſubvert the Government, change the Religion, and to bring in Superſtition and Idolatry; which he could never do, without compaſſing the Death of the King, he being the only Obſtacle in the way. This is his Charge. The Proof of this depends upon *Bolron* and *Mowbray*: Mr. *Smith*, the firſt Witneſs, he only relates he hath been in *Rome* and *France*, and among all the Prieſts he converſed with there was ſuch a Deſign on Foot; but againſt Sir *Miles* he knows nothing, but Things told him by Mr. *Thwing*, which I muſt tell you is no Evidence againſt Sir *Miles Stapleton*. *Bolron* and *Mowbray* do poſitively ſwear the Thing as plain as any Thing can be; they both ſwear they were preſent at ſeveral Conſults, where it was reſolved the King ſhould be killed, and that Sir *Miles* did agree to it, and did agree to contribute 200 *l.* to carry on this Deſign. Captain *Bayns*, being examined, he ſaith, he did really ſee Sir *Miles* at *Barmbow*-Hall at that Time, but he doth not know whether it was about that or no.

Againſt this, Sir *Miles* ſaith it cannot be; but this is an Invention of *Bolron* and *Mowbray*; and to prove this, he produceth ſeveral Witneſſes, that *Bolron* ſhould deny, and that he ſhould ſometimes ſay that Sir *Tho. Gaſcoigne* knew nothing of it; ſometimes that Sir *Miles* knew nothing of it: I muſt tell you at this Time, that they were then diſcourſed withal, they at that Time were Papiſts themſelves, and lay under the Oath of Secrecy. But now here are three Witneſſes, Sir *Tho. Yarbrough*, my Lady *Yarbrough*, and Mr. *Lowder*; and they do ſpeak as much as any of the other doth concerning *Bolron* and *Mowbray*, and they ſpeak it when it was a Time pertinent; for what they ſpoke to a Juſtice of Peace at that Time ſeems ſomewhat probable: You heard what Mr. *Lowder* ſaith, they came to him to accuſe them the 25th Day of *January* 79, and he put them off for that Time, and he gives you Reaſons why he did it; and then he brings an Order of Council to examine *Mowbray*, and he tells him what *Mowbray* would ſwear, and he tells him he would ſwear againſt Sir *Miles Stapleton*, that he was at the Conſult at *Barmbow*-Hall; you have heard him often deliver this, and becauſe it was ſomewhat material we deſired him to ſpeak it again and again: *Bolron* denies it, he never told what *Mowbray* could ſwear; ſo that depends upon the Credit of the Witneſſes.

Sir *Thomas Yarbrough* tells us that *Bolron* came to him, and knocked him up out of Bed, for his Warrant to ſearch for *Ruſhton* a Prieſt, who he ſaid was at Sir *Miles*'s, and thereupon he aſked him if he could tell any Thing of Sir *Miles Stapleton*, and he ſaid no, with many Aſſeverations; now if that Information were the ſame that was ſent to Mr. *Lowder*, then 'tis of no ſuch Weight, and it hath been preſuppoſed by the King's Counſel, that Sir *Thomas* might forget himſelf, neither was there any Thing in theſe Papers relating to Sir *Miles*.

And my Lady *Yarbrough* being in Bed in the ſame Chamber, ſhe ſaith ſhe heard the Papers read, and her huſband aſked him of Sir *Miles Stapleton*, but he denied that he was concerned in the Plot: And ſhe ſaith further, in the Afternoon, a Gentleman brought him into the Porch where they were ſitting, and the Gentleman aſked him who were Plotters, but he would not tell him; then he aſked him if Sir *Miles Stapleton* was concerned, and he poſitively denied it. Theſe Things hang not well together, I know not how to make any Obſervations upon it; he denies that he ſaid ſo, they ſay he did. The reſt of the Witneſſes are not very much material; only, as I told you before, what Talk they would have talked before they changed their Religion: There is nothing proved againſt them, but they are good Witneſſes in the Law; there is no Records, nor Perjuries, nor any Thing elſe that takes off their Evidence, they have ſworn it ſeveral Times, and ſtand to it. Now you have heard and taken Notice what Objections have been made againſt it.

Mr. Baron *Greg.* My Brother has opened it ſo fully, I ſhall trouble you with very little, only to let you ſee that my Obſervations were the ſame, and that I concur in the Evidence with my Brother; for there is full Evidence againſt the Priſoner at the Bar. The Matter they ſwear is Treaſon of the higheſt Nature imaginable: There are but two that ſwear poſitively, but they ſwear of ſeveral Conſults, and of the Particulars that were agreed on by Sir *Miles Stapleton* for the carrying it on; and there is no material Witneſſes againſt them. For the latter Witneſſes of their denying of it, it muſt be before they were of the Proteſtant Religion; when they were concerned as much to conceal it, as any Perſons that were guilty of it: Beſides, in a Diſcourſe a Man is not bound to tell a Neighbour all Things that he doth know, he cannot be ſafe to tell it to a private Perſon at that Time. It is very true, as my Brother hath told you, they were reſolved when they diſcovered it they would have Security for themſelves: I ſuppoſe they needed not have feared Sir *Miles* flying from being apprehended; but if Sir *Miles* was at large they might have feared it. But when they came to be examined upon their Oaths before Mr. *Lowder* and Mr. *Tindal*, there could not be any Thing to excuſe them; It is true, to my Apprehenſion, there was no probable Reaſons why theſe two Gentlemen ſhould aſk them if Sir *Miles* were concerned in the Plot; for in the Information they ſaw his Name was not mentioned; thus they were as much afraid as Sir *Miles* was, it may be; it was their care of him, knowing what Religion he was of, and knowing him to be related to Sir *T. Gaſcoigne.* Now it doth depend upon the Credit of what they have ſworn; they deny what is charged upon them by theſe Gentlemen; by Sir *Thomas Yarbrough* and by my Lady; and 'tis true, Mr. *Lowder* was as a Magiſtrate too, and Sir *Thomas* was as a Magiſtrate too; it is true, he was not upon the Examination of them upon Oath at that Time, therefore that was not as before a Magiſtrate; but Mr. *Lowder*, they came to him as a Magiſtrate; therefore it muſt be for you to conſider whether or no there might be a Forgetfulneſs of them in their ſpeaking, or a miſunderſtanding of them; there is nothing elſe that I know can tend to the reconciling of it: For if there were a Miſtake by the one, or a Forgetfulneſs in the other, then it might alter the underſtanding; but if they heard well and remembered true, then it will be, as I have ſaid before, more difficult to be reconciled. But, Gentlemen, upon the whole Matter, it will depend upon the Conſtruction and Reputation of what they ſwear, and theſe Gentlemen ſpeak, which you are to conſider.

Having ſworn a Bailiff, *the Jury withdrew for about half an Hour's Conſultation together, and then returned into Court, and gave in their Verdict* NOT GUILTY.

CVI. *The Trial of* George Busby, *at* Derby *Aſſizes, for High-Treaſon, being a* Romiſh *Prieſt*, July 25, 1681, 33 Car. II.'

THE Court being ſat, and the uſual Formalities preceding Buſineſs over, the Pannel of the Grand Jury was called over, and nineteen of them ſworn. The Names of which Gentlemen of the Grand Jury, which found the Bill of Indictment, *&c.* againſt *George Buſby*, were as follow.

1. Sir *Henry Every* of *Egginton*, Baronet.
2. Sir *Robert Coke* of *Langford*, Baronet.
3. Sir *William Boothby* of *Aſhborn*, Kt. and Bar.
4. Sir *Robert Clark* of *Chilcote*, Knight.
5. *William Fitz-Herbert* of *Tiſſington*, Eſq;
6. *Henry Cavendiſh* of *Dovebridge*, Eſq;
7. *William Mundy* of *Darley*, Eſq;
8. *John Lowe* of *Denby*, Eſq:
9. *William Berrisford* of *Bentley*, Eſq;
10. *John Allen* of *Greſely*, Eſq;
11. *William Hopkinſon* of *Bonſall*, Eſq;
12. *William Lee*, Gent.
13. *Lionel Parſhaw* of *Dionfield*, Gent.
14. *Joſeph Harpur* of *Yeavely*, Gent.
15. *John Stuffin* of *Hopton*, Gent.
16. *Matthew Smith* of *Denby*, Gent.
17. *John Whigly* of *Cromford*, Gent.
18. *Paul Jenkinſon*, Gent.
19. *George Birds* of *Stanton*, Gent.

The Indictment being brought into Court, *Billa vera.*

Clerk of the Aſſizes. Goaler, ſet *George Buſby* to the Bar. (Which was done.)

Clerk of the Arraignments. *George Buſby*, hold up thy Hand. (Which he delayed to do.)

Clerk again. *George Buſby*, hold up thy Hand.

Which he did not do, but inſtead thereof, preſented a Petition to the Court to this Effect, That he was committed to the Goal in *March* laſt, for being a Popiſh Prieſt, and that great Induſtry had been uſed to procure Witneſſes to ſwear againſt him, and that having obtained his *Habeas Corpus* to be removed to *London*, the Under-Sheriff falling ſick, and being ſince Dead, the *Habeas Corpus* was not executed; he prays he may be removed to the *King's-Bench*, that he may have Time to make his Defence, he depending upon his *Habeas Corpus*, his moſt material Evidence to clear him, and to prove his being an Alien, being then in *London*, &c.

Baron *Street.* Mr. *Buſby*, notwithſtanding I muſt proceed to try you, the Grand Jury having found the Bill *Billa vera*; you ſay you are an Alien; if that be ſo, then you are without this Law of the 27th of *Eliz.*

Buſby. I had not my *Habeas Corpus*, and ſo am deprived of my Witneſſes to prove that I am an Alien born.

Baron *Street.* If they prove you not a Native, then the Indictment falls.

Then the Clerk of Arraignments proceeded to arraign the Priſoner.

Clerk. *George Buſby*, hold up thy Hand, (which he did.) ‘ Thou
‘ ſtandeſt indicted by the Name of *George Buſby*, late of *Weſt-Hallam* in
‘ the County of *Derby*, Clerk, for that thou, being a Subject of our
‘ Sovereign Lord the King that now is, and being likewiſe born within
‘ this Kingdom of *England*, was made and ordained a Prieſt by the
‘ Authority derived and pretended from the See of *Rome*, after the Feaſt
‘ of the Nativity of St. *John Baptiſt*, in the firſt Year of the Reign of
‘ our Lady *Elizabeth*, late Queen of *England*, *&c.* and before the 16th
‘ Day of *March*, in the 33d Year of the Reign of our Sovereign Lord
‘ *Charles* the ſecond, of *England*, *Scotland*, *France* and *Ireland* King, De-
‘ fender of the Faith, *&c.* the Laws and Statutes of this Kingdom of *Eng-*
‘ *land* little weighing, nor the Puniſhments in the ſame contained not at
‘ all regarding; with Force and Arms, *&c.* at the Pariſh of *Weſt-Hallam*
‘ aforeſaid, in the County of *Derby* aforeſaid, being within this King-
‘ dom of *England*, voluntarily, freely and treaſonably, the 16th Day of
‘ *March*, in the 33d Year of the Reign aforeſaid, hath been and remain-
‘ ed, contrary to the Form of the Statute in that Caſe made and provided;

‘ and againſt the Peace of our Sovereign Lord the King, his Crown and ‘ Dignity, *&c.*’

Baron *Street.* How ſayeſt thou, *George Buſby*, art thou guilty of this Felony and Treaſon whereof thou ſtandeſt indicted, or Not Guilty?

Buſby. This Indictment, my Lord, is not full; it recites not the particular Caſe in the Statute of Queen *Elizabeth*, *viz.* that I took Orders beyond Sea, and another Point, that I am a Native of the King's Dominions.

Baron *Street.* You may be made a Prieſt in *England* by the Authority of the Biſhop of *Rome*, as well as at *Rome.*

Buſby. How can I be made a Prieſt in *England* by the Authority of the Biſhop of *Rome*, where there is no ſuch Authority?

Baron *Street.* You muſt plead to your Indictment as it ſtands.

Buſby. Then, my Lord, I humbly beg I may be allowed Council.

Baron *Street.* If any Point in Law ariſe, you ſhall be allowed Council.

Buſby. The Time and Place is not ſpecified in the Indictment.

Baron *Street.* If that be ſo, 'tis material. But upon View of the Indictment, 'twas found right.

Clerk of Arraignments. George Buſby, hold up thy Hand; art thou Guilty of this Indictment, or Not Guilty?

Buſby. (then holding up his Hand) ſaid, Not Guilty.

Clerk of Arraign. Culprit, How wilt thou be tried?

Buſby. By God and my Country.

Clerk. God ſend thee a good Deliverance.

Baron *Street.* Now we will ſee if your Objections be of any Weight; you hear the Indictment read, which was *ut antè*, being a Subject of the King's, born within this Realm; you may be made a Prieſt by the Authority of *Rome*, in *England*, *Ireland*, or *Germany*, or any where elſe, and that will make you a Prieſt within this Law.

Buſby. I am no Native, I was born beyond the Sea.

Baron *Street.* Your being a Native, is Matter of Fact, and muſt be proved.

Buſby. My Lord, I move I may have right of challenging the Jury.

Baron *Street.* Sure we muſt have the Jury before us firſt, before you can challenge any of them.

So the Jury being called, *Buſby* challenged peremptorily near the Number allowed by the Law, *viz.*

John Burrows, Gent.
Henry Goodyer, Gent.
John Hawkſworth, Gt.
Thomas Cockayn, Gent.
Cornelius Dale, Gent.
Thomas Wetton, Gent.
Thomas Wingfield, Gt.
William Kirkland, Gt.
John Agan, Gent.
Henry Wild, Gent.
Thomas Coxon.
James Dawſon.
John Roſe.
William Salt.
John Hurd.
John Stone.
Robert Rowland.
Robert Cooper.
Edward Ridge.
William Alſop.
James Cooper.
John Wallat.
Gregory Seele.

The King's Council did except againſt two Perſons only, *viz. Robert Doxey*, *Chriſtopher Holmes.*

Bar. *Street.* Have a Care, Mr. *Buſby*, at your Peril, if you challenge peremptorily above the Number of 35.

The Names of the Petty-Jury ſworn.

1. *Samuel Ward*, Gent.
2. *Tho. Wilſon*, Gent.
3. *John Steer.*
4. *John Ratcliff.*
5. *Ed. Wolmeſly*, Gent.
6. *William Horn*, Gent.
7. *George Tricket*, Gent.
8. *Jeremiah Ward.*
9. *John Roper.*
10. *John Creſwel*, Gent.
11. *Edmund Woodhead.*
12. *Anthony Bowne.*

Then Mr. *Bridges*, Council for the King, opened the Indictment.

Mr. *Bridges.* May it pleaſe your Lordſhip, and the Gentlemen of the Jury, the Priſoner at the Bar, *George Buſby*, ſtands indicted for High-Treaſon, as it is alledged in the Indictment, that he being born within the King's Dominions, and made a Prieſt, and having received Orders by pretended Authority from the See of *Rome*, did the 16th Day of *March* laſt come into the Realm of *England*, as 'tis laid in the Indictment, to *Weſt-Hallam*, in the County of *Derby*, and there he did abide, contrary to the Form of the Statute; and this is laid to be traiterouſly done. To this he hath pleaded Not Guilty; and we are to prove it upon him, by the King's Evidence, whom we are now to call.

Mr. *Coombes.* Gentlemen of the Jury, you have heard the Indictment read and opened, you will preſently have it fully proved, and highly aggravated by our Evidence; for, Gentlemen, we ſhall prove that the Priſoner at the Bar is not only a Popiſh Prieſt, but a Jeſuit, and this by his own Confeſſion; and that his Name was inſerted in Sir *William Waller*'s Warrant, when he came down into this Country to ſearch for Jeſuits: That he has held a ſecret and dangerous Correſpondence with *Harcourt*, *Ireland*, and other Popiſh Traitors: That he has been their Procurator, and diſburſed and received great Sums of Money for them.

Gentlemen, the Priſoner hath been a Perſon highly ſuſpected, as well as dangerous to the Government, for ſome Years; for treaſonable Matters of another Nature than he ſtands indicted of, have been depoſed againſt him upon Oath at the Council Board, and thereupon a ſtrict Warrant to apprehend him was directed to Mr. *Gilbert* (a worthy Gentleman and Juſtice of Peace of this County.) Mr. *Gilbert*, Gentlemen, will preſently tell you the Manner of his taking him in an obſcure Place in the Roof of one Mr. *Powtrel*'s Houſe at *Weſt-Hallam*, in this County. But here I muſt beg Leave to digreſs; for I cannot but take Notice of the malicious Temper and baſe Practices of this Sort of Men; for though Mr. *Gilbert* acted by Virtue of a Warrant from the Lords of the Council, and has ſince received an Approbation from his Majeſty of what he did, under the Hand of a Secretary of State, yet could not thoſe People forbear to raiſe falſe and ſcandalous Reports of, and make falſe Accuſations againſt him, upon this very Account: But what is it they will not do to diſcourage Proteſtant Magiſtrates from doing their Duty againſt them? I I confeſs, nothing is to be wondered at ſince the barbarous Murder of Sir *Edmundbury Godfrey.* But to proceed, Gentlemen, we ſhall alſo prove to you, that the Priſoner is ſo little a Friend even to the Civil Government of this Nation, that he would not ſuffer his Nephew, Mr. *Powtrel*, to take ſo much as the Oath of Allegiance, which is ſcrupled only by the Jeſuits; for I think their ſecular Prieſts will generally take it. Gentlemen, the Things I have already opened, are Matters of high Aggravation, and come in by Way of Indictment. But that which in this Caſe we rely upon is this, that the Priſoner has baptized, married, confeſſed, and abſolved, in the Popiſh Way, that he has given the Sacrament, and ſaid Maſs very frequently in his Popiſh Veſtments; and for Proof of this we have a Cloud of Witneſſes.

Gentlemen, you hear the Priſoner is indicted upon a Statute made in the 27th *Eliz.* which makes it Treaſon for any Subject born to take Orders from the See of *Rome*, and afterwards to remain in *England*; which Law I conceive was not only made for the Security of the Government, but alſo in Favour of the Lay Papiſts themſelves; for though ſeveral Statutes were made to keep them within the Bounds of their Allegiance, and to ſecure the Government from their villainous Deſigns; yet it was experimentally found true, that no Dangers or Penalties whatſoever could deter or hinder them from plotting againſt the State, in order to bring us back again to the Slavery of *Rome*; whilſt thoſe juggling Managers of their Conſciences were ſuffered to come amongſt us; and therefore I may well call this Statute, upon which the Priſoner ſtands indicted, an Act of Charity to the common Papiſts; for it was made to prevent the Dangers they would otherwiſe run themſelves into, as well as the Nation. 'Tis true, indeed, Gentlemen, that the lively Execution of this Law has (by the Clemency of our Princes, and good Nature of the Government) been many times ſuſpended, and might yet have continued in the Shade, had not the Popiſh Prieſts and Jeſuits rouſed up this ſleeping Lion againſt themſelves, by a damnable and helliſh Plot againſt his Majeſty's Life, the true Religion and well eſtabliſhed Government of this Nation; the Reality of which has been confirmed to us, not only by the unanſwerable Evidence of *Coleman*'s Papers, and other loyal Proofs, but alſo by frequent Proclamations, and the uniform Votes and Reſolutions of ſeveral Parliaments. I may therefore very well borrow the Words of a great Man upon the like Occaſion, and ſay, That at this time of the Day 'tis much better to be rid of one Prieſt than many Felons: and therefore, Gentlemen, if our Evidence ſhall make good the Indictment, I hope you will do your King, your Country, and yourſelves the Right to find the Priſoner Guilty.

Mr. *Coombes.* We ſhall call our Evidence.

Call Mr. *Gilbert.* (who was ſworn.)

Pray tell my Lord and the Jury, what you can ſay concerning the Priſoner at the Bar.

Mr. *Gilbert.* My Lord, I dwell within two Miles of Mr. *Powtrel*'s Houſe at *Weſt-Hallam*, the Place where the Priſoner was taken, and have heard that he hath been a Prieſt in that Family ſix or ſeven Years, though I did never know him perſonally, nor, to the beſt of my Knowledge, ever ſaw him till I apprehended him, which was the ſixteenth of *March* laſt, the very Day on which the Judges went out of *Derby* the laſt Lent-Aſſizes; the firſt Enquiry I made after him, was occaſioned by a Letter and a Meſſenger from Sir *Simon Degg*, about *November* 1678, at which time I ſent a Warrant to the Conſtable at *Weſt-Hallam*, to ſearch for the ſaid *George Buſby*, but he could not then be found; at that Time it was reported, that he was a Jeſuit, and concerned in the Plot; which I had Reaſon to believe, becauſe when Mr. *Gray* came to ſearch Mr. *Powtrel*'s Houſe for ſome Jeſuits the *January* following, by Order from the Lords of the Council (in which Service he commanded me to attend him), we perceived Mrs. *Powtrel* (who is *Buſby*'s Niece) to be much troubled, and in a great Paſſion, the Cauſe whereof Mr. *Powtrel* declared to be for Fear the ſaid Search was made for her Uncle *Buſby*, who, as I heard afterwards, was then in the Houſe, though at that Time he was reported to be fled.

However, the Government had a jealous Eye on this *Buſby* about two Years ago, as may appear by a Warrant from the Lords of the Council, which Warrant I have ready, and humbly pray your Lordſhip it may be read openly in Court.

Baron *Street.* Let it be read.

Clerk. “ Whereas information hath been given to his Majeſty in Council upon Oath, That *George Buſby*, late of *Weſt-Hallam*, in the County ‘ of *Derby*, is a reputed Prieſt and Jeſuit, and has had a conſiderable Part ‘ in the late Conſpiracy againſt the Life of his ſacred Majeſty, and the ‘ Peace of the Government; theſe are therefore to will and require you ‘ to repair to the Place aforeſaid, or where-ever elſe the ſaid *George Buſby* ‘ ſhall be found, and him to ſeize and apprehend, and convey to the ‘ next County-Goal, there to remain in cloſe Cuſtody, until he ſhall be ‘ delivered by the due Courſe of Law. And all Mayors, Sheriffs, Juſtices ‘ of the Peace, Conſtables, and other his Majeſty's Officers and loving ‘ Subjects are to be aſſiſting unto you in the Execution hereof, as they ‘ will anſwer the contrary; for which this ſhall be your Warrant. Dated ‘ at the Council-Chamber in *White-Hall*, the 19th Day of *March*, 1678.

Indorſed to *Henry Gilbert*, Eſq; at *Locko*, in
the County of *Derby.*

Worceſter,
Clarendon,
Alyſbury,
H. London,
Sunderland,
Eſſex,
Falconbridge.

John Nicholas.

(Then Mr. *Gilbert* proceeded.)

Mr. *Gilbert.* My Lord, I received this Order on *Saturday* the 22d Day of *March*, 1678. And on *Sunday* Afternoon I ſent to Mr. *John Bagnall* of *Derby*, who was then Under-Sheriff, requiring him to meet me early on *Monday* the 24th, at Mr. *Powtrel*'s Houſe at *Weſt-Hallam*, about ſome earneſt Buſineſs lately ſent down from the Lords of the Council, wherewith I would acquaint him at our Meeting: As ſoon as he came, I ſhewed him the Warrant; after which we ſearched very diligently in every Place we could ſee, but could not find him; though afterwards I was informed he was in the Houſe at that Time alſo.

About *Auguſt*, 1679, Mr. *Powtrel* obtained a Licence from his Majeſty to travel beyond Sea, and it was confidently reported by the Papiſts, that this Mr. *Buſby* was gone over too; inſomuch, that when Sir *William Waller* came into theſe Parts in *January* 1679, with Warrants to ſearch for Jeſuits (in one whereof I ſaw *Buſby*'s Name) and would have ſearched at *Hallam*, I diſſuaded him, and did aſſure him I believed he was gone beyond Sea, and told him how often I had ſearched for him in vain; whereupon Sir *William Waller* diverted to another Place, though I have been informed ſince, that *Buſby* was never out of *England*, ſince the Diſcovery of the Plot.

But about *Chriſtmas* laſt, and ſince, I having had Notice that *Buſby* was in *England*, and particularly at *Weſt-Hallam*, and had been ſeen laſt Corn-Harveſt to walk in Mr. *Powtrel*'s Garden with one *Anne Smalley*, a Widow, I thought it my Duty to make it my further Enquiry after him, which I did on the firſt Day of *March* laſt, and came to the Houſe to buy ſome Wood for my Coal-pits, and then brought five or ſix Perſons with me, and ſent for the Conſtable to help me to ſearch for him, which we did moſt part of the Afternoon, but could not find him, though he was ſeen to be walking in the Garden with the ſaid *Anne Smalley* when I came firſt into the Houſe, as I was afterwards informed; but when I aſked the ſaid *Anne Smalley* for him, ſhe affirmed with many Proteſtations, that he was in *Flanders*, and not in *England*, and that if I had any Buſineſs with him, I muſt go beyond Sea to him, for ſhe had not ſeen him for above two Years; though ſhe had helped to convey him out of the Garden into his hiding-hole, but a few Minutes before: However, I proceeded in my Search, and found in the Chamber where *Buſby* lodged, a Crimſon Damaſk Veſtment, wherein was packed up a Stole a Maniple of the ſame (as the *Papiſts* call them) an Altar, Stone, Surplice, and a Box of Wafers, Maſs-Books, and divers other Popiſh Things: Then I told Mrs. *Braylsford* (a Kinſwoman of Mr. *Powtrel*'s) and the ſaid *Anne Smalley*, thoſe Things did ſignify that a Prieſt belonged to the Houſe; for the Book had been lately uſed, as was apparent by the String which was put betwixt two Leaves, whereof *Feſta Februarii* was on the one Side, and *Feſta Martii* was on the other ſide; but they ſtiffly affirmed, that no Prieſt had been there of above two Years before, and jeered me when I could not find him, and ſaid, if there was a Prieſt in the Houſe, why did I not take him?

When I had done ſearching, and could not find him, I took away the Veſtment, and other Things, which I brought to the Aſſizes, a Fortnight after, and did aſk Mr. Juſtice *Charlton* (who came that Circuit) his Opinion, what I ſhould do with them; he told me they muſt be burnt, according to Law; I entreated his Favour, that I might ſend them again to the ſame Place, for two or three Days, to make the Prieſt more confident, that I might better apprehend him; he told me, he could give no ſuch Permiſſion; but inſiſted, that they ought to be deſtroyed.

When all the Buſineſs was done at the Aſſizes on the Crown-ſide (where I was obliged to attend) on *March* the 15th Day at Night, I went to the Judge again, and craved his Lordſhip's Pardon for preſuming to ſend back the Popiſh Things, contrary to his Opinion; but acquainted him that I intended to go after them to *Weſt-Hallam* that Night, and if I could not catch the Prieſt, I reſolved to bring the ſame Things again; and after I had aſked his Lordſhip ſome Queſtions, and received his Directions, I came to my own Houſe, and went about eleven of the Clock at Night (with ſome Company to aſſiſt me) to *Hallam*, and ſet two Men to watch in the Garden, and one in the Church yard (joining to another ſide of the Houſe) to ſee if they could ſpy any Light, or hear any Walking, in the Lofts or falſe Floors, when I made a Noiſe on the other Side of the Houſe. I ſent a Man before to call up the Conſtable, and when he and two or three more came, I knocked at Mrs. *Anne Smalley*'s Window, about twelve of the Clock in the Night, and ſaid aloud, *Mrs.* Smalley, *open the Doors, I am come to ſearch for a Popiſh Prieſt.* She ſtarted up, and ſaid, *Who was there?* I told her, *It was I, ſhe knew me well enough, I dwelt at* Locko. Then I ſtaid a pretty Space of Time, and called aloud to her again, and ſpoke the like Words: but by that Time, I ſuppoſe ſhe and her Bedfellow, Mrs. *Braylſford*, were gone to give the Prieſt Notice, and to help him to his hiding-hole, for no body anſwered me; then, after a pretty Space, I called to her a third time, *and required her, in the King's Name, to open the Doors, for I was come to ſearch for* Buſby, *the* Jeſuit, *who was a Traitor by Law, and if ſhe would not open the Doors, I would cauſe the Conſtable to force them open*; and when I could have no Anſwer from her, I went to *Joſeph Dudley*'s Chamber-Window, and called there, charging him in the King's Name to open the Doors, but no Anſwer at all was returned; for he alſo was gone into the Prieſt's Chamber, and found *Anne Smalley* buſy in helping *Buſby* to ſecure himſelf, as the ſaid *Joſeph Dudley* did afterwards inform me.

After I had ſtaid about a quarter of an Hour, I commanded the Conſtable, in the King's Name, to break the Doors open, which was done; and when we came into the Prieſt's Chamber, I found the Fire had been lately extinguiſhed, the Counterpain and the Blankets laid in confuſed Heaps on the Bed, and ſome part of them warm, and ſome part cold; the upper part of the Feather-bed was cold; which I wondred at, then I put my Hand underneath, and the Bed was warm; for they had turned it. I looked for the Pillow, Sheets, Cap, &c. but *Anne Smalley* (as I was afterwards informed) had taken them into the Chamber where ſhe lay. I aſked her divers Queſtions about the Perſon that had lain in that Bed that Night, and particularly, whether or no it was not *Buſby?* She told me, no body had lain in that Bed that Night; I told her, I was ſure ſome Perſon had lain there; for the Feather-Bed was warm on the under-ſide: She took many Proteſtations, that no body had lain there of divers Nights before: I replied, if ſhe would diſcover the Perſon who had lain there, it would ſave her and me much Trouble: But when all I could ſay would not prevail, I told her, I muſt ſearch, for I was confident, that *Buſby* was in the Houſe, becauſe ſhe would not declare who it was that lay there.

I began to ſearch about one of the Clock, and continued till after ten next Morning before I could find him: And though the Watchers in the Garden told me, they heard his Paces and Steps very plainly amongſt the Lofts and falſe Floors, and deſcribed on the out-ſide of the Houſe the Place where they laſt heard him, within the Space of nine or ten Foot where he was hid; yet were we almoſt ſo many Hours before we could find him.

At laſt when the Searchers were almoſt all tired, *Anne Smalley*, and others of the Family, ſcoffed at us, and aſked, *What, have you not found him yet? You ſaid there was a Prieſt in the Houſe, why do you not find him then? Why do you not take him?* I ſaid, *All in good Time? I was reſolved to find him, or ſtarve him out:* Nay, the Foot-Boy of the Houſe, ſeeing my Servant look within the Kitchen-Chimney, where there hung a Port-Mantle, ſaid, jeering to my Man, *Look if he be not in the Port-Mantle.*

After thoſe Perſons had pleaſed themſelves a good while with mocking us for our Diſappointment, I perſuaded two or three of the Searchers once again to climb upon the Lofts (which I could not do myſelf, by reaſon of a Lameneſs in my Shoulder), and look well near the Place where *Buſby*'s laſt Steps were heard. Which when they had done ſome while, and found nothing, I took my Sword and Scabbard, (being in the Room underneath) and knocked on the Plaiſter-Floors over my Head, and cauſed them to anſwer me with the like Knocking as near the ſame Place as they could, and when we had examined the Floors in this Manner, I knocked near unto a Stack of three Chimneys, but they could not anſwer within a Yard; I knocked again in two or three Places near the Chimneys; yet ſtill they could not anſwer near thoſe Places, but told me there was nothing but Tiles and Roofing; I bid them break open thoſe Tiles, which they did, and eſpied under them a wooden Door, and a little iron Hinge; I bad them break the Door; then one of the Searchers put in his Hand into a little Hole that was broken in the Door, and felt a Hat; then he told me ſome Body was in that Place, for a Man had thrown his Hand off the Hat; then I cauſed them to break open the Entrance, which when they had done, *Buſby* ſpoke to them, and deſired them to be civil; when they told me what he ſaid to them, I charged them to be civil to him, and bring him to me, which they did. Then I arreſted him in his Majeſty's Name for High-Treaſon, and after he had refreſhed himſelf a little, I told him he muſt get on his Boots, and prepare himſelf to go to *Derby*.

Soon after his Apprehenſion, (I perceiving him to be a little diſmayed), I encouraged him, and ſaid, he ſhould have all the Favour a Perſon in his Circumſtances could expect; for I told him, I underſtood he was a Gentleman of a good Family in *Buckinghamſhire* or *Oxfordſhire*, and that his Brother lived at *Coddington* in *Oxfordſhire*, which he acknowledged and thanked me for my Civility.

I was ſo well ſatisfied that we had apprehended him, after much tedious watching and ſearching, that I never thought of ſending any Man to look what was in the hiding Hole with him; but after an Hour's ſtay, or thereabouts, I took him away from *Hallam* between eleven and twelve o'Clock on the 16th of *March* laſt, and brought him to *Derby* between one and two of the Clock; where, after I had taken his Examination, I made a *Mittimus*, and committed him to *Derby*-Goal.

On *Saturday* following, I writ a Letter to *Oxford* to the Right Honourable the Earl of *Conway*, one of his Majeſty's Principal Secretaries of State, informing his Lordſhip of the apprehending and Commitment of *Buſby*, and incloſed a Copy of his Examination, to which his Lordſhip writ me a Letter in Anſwer, that he had acquainted his Majeſty with my Proceedings, who did very well approve of what I had done.

Buſby. My Lord, I am an Alien, born at *Bruſſels*.

Bar. *Street.* Was your Father of that Place? It is a very good Family.

Buſby. My Father lived at *Coddington*, my Mother was an Heireſs, and here is an *Affidavit* ready to be produced of what Children my Father had before he went beyond Sea, born at *Coddington*, out of the Regiſter of that Place; I have had no Time to bring a particular Certificate where I was born, and what other Children my Father had beyond Sea; my Father went over about the beginning of the Troubles, and I am about forty Years of Age.

After the Judge had told *Buſby* of the Act for Naturalization.

Mr. *Buſby.* I ſuppoſe (my Lord) that Act may ſtand good as to Privileges of the Subject, but not as to Penalties.

Bar. *Street.* Yes, as to all Intents and Purpoſes: Read the Act 29 *Car.* II. cap. 6.

An Act for the Naturalizing of Children of his Majeſty's *Engliſh* Subjects, born in foreign Countries during the late Troubles.

‘ WHEREAS during the late unhappy Troubles in *England*, which
‘ began in the Year of our Lord, one Thouſand ſix Hundred
‘ forty One, and continued until the Time of his Majeſty's moſt happy
‘ Reſtoration, divers of his Majeſty's *Engliſh* Subjects, as well of the
‘ Nobility as others, did either by reaſon of their Attendance upon his
‘ Majeſty, or for fear of the then uſurped Powers, reſide in Parts beyond
‘ the Seas out of his Majeſty's Dominions, and it may hereafter become
‘ difficult to make Proof of the Occaſion of ſuch their Reſidence: Now
‘ for preventing of all Diſputes and Queſtions that may ariſe, whether the
‘ Children of ſuch his Majeſty's Subjects of this Realm are Natural-born
‘ Subjects of our Sovereign Lord the King, and to expreſs a due Senſe of
‘ the Merit of all ſuch Loyal Perſons as out of their Duty and Fidelity
‘ to his Majeſty and his Father of bleſſed Memory, did forego, or were
‘ driven from their native Country;

‘ Be it declared and enacted by the King's moſt excellent Majeſty, by
‘ and with the Conſent of the Lords Spiritual and Temporal, and the
‘ Commons in this preſent Parliament aſſembled, and by the Autho-
‘ rity of the ſame, That *Charles Gerard*, and *Elizabeth Gerard*, Chil-
‘ dren of the Right Honourable *Charles* Lord *Gerard* of *Brandon*,
‘ *Trever Wheler*, and *Dorothy-Elizabeth Wheler* Children of Sir
‘ *Charles Wheler*, Baronet, *Anne Ravenſcroft* the Wife of *Edward*
‘ *Ravenſcroft* of *Bretton* in the County of *Flint*, Eſq; one of the
‘ Daughters of Sir *Richard Lloyd*, Knight, deceaſed, born at *Calais*
‘ in *France*, and all other Perſons who at any Time between the
‘ fourteenth

‘ fourteenth Day of *June* in the ſaid Year of our Lord one Thouſand ſix Hundred forty-one, and the four-and-twentieth Day of *March* in the Year of our Lord one Thouſand ſix Hundred and ſixty, were born out of his Majeſty's Dominions, and whoſe Fathers and Mothers were Natural-born Subjects of this Realm, are hereby declared and ſhall for ever be eſteemed and taken to all Intents and Purpoſes, to be and to have been the Natural-born Subjects of this Kingdom; and that the ſaid Children, and all other Perſons born as aforeſaid, and every of them, are and ſhall be adjudged, reputed, and taken to be and to have been, in every reſpect and degree, Natural-born Subjects, and free to all Intents, Purpoſes, and Conſtructions, as if they and every of them had been born in *England*.

‘ And be it further enacted and declared by the Authority aforeſaid, That the Children, and other Perſons as aforeſaid, and every of them, ſhall be, and are hereby enabled and adjudged able, to all Intents, Conſtructions, and Purpoſes whatſoever, as well to demand, as to have and enjoy any Titles of Honour, Manors, Lands, Tenements, and Hereditaments, and all other Privileges and Immunities belonging to the Liege People and natural Subjects of this Kingdom, and to make his or their Reſort or Pedigree, as Heir to his, their, or any of their Anceſtors, lineal or collateral, by Reaſon of any Deſcent, Remainder, Reverter, Right, or other Title, Conveyance, Legacy, or Bequeſt whatſoever, which hath, may, or ſhall deſcend, remain, revert, accrue, come or grow unto the ſaid Children, or Perſons born as aforeſaid, or any of them; as alſo to have and enjoy all Manors, Lands, and Tenements, or other Hereditaments, by way of Purchaſe or Gift of any Perſon or Perſons whatſoever; as alſo to proſecute, purſue, maintain, avow and juſtify all and all manner of Actions, Suits and Cauſes, and all other Things to do as lawfully, liberally, freely and fully, as if the ſaid Children, and the Perſons born as aforeſaid, and every of them had been born of *Engliſh* Parents within this Kingdom, or as any other Perſon or Perſons born within this Kingdom may lawfully in any wiſe do; any Law, Act, Statute, Proviſion, Cuſtom, or other Thing whatſoever, had, made, done, promulged, proclaimed, or provided, to the contrary thereof in any wiſe notwithſtanding; provided always, that no Perſon, other than the Perſons expreſsly named in this Act, ſhall have any Benefit thereby, except ſuch Perſon ſhall within ſeven Years next enſuing, receive the Sacrament of the Lord's Supper, and within one Month next after ſuch receiving the Sacrament, take the Oaths of Allegiance and Supremacy in ſome of his Majeſty's Courts at *Weſtminſter*, and deliver into the Court, at the ſame Time, a Certificate of ſuch his receiving the ſaid Sacrament, and then make Proof thereof by Witneſſes to be examined *viva voce* upon Oath.

‘ And be it further enacted, That no Perſon or Perſons, other than the Perſons expreſsly named in this Act, ſhall have any Benefit thereby, until he or they ſhall have received the Sacrament, and made Proof thereof by Certificate and Witneſſes, and taken the ſaid Oath in Manner aforeſaid.

‘ And for the better Manifeſtation and Proof of ſuch Qualifications as may entitle any Perſon to the Benefit of this Act, which in proceſs of Time may be very hard to be proved; Be it further enacted, That any Perſon having received the Sacrament, and made Proof thereof by Certificate and Witneſſes, and taken the ſaid Oaths within the Time aforeſaid, in any of his Majeſty's Courts, in manner aforeſaid, ſhall and may be admitted to make Proof of ſuch his Qualification in the ſaid Court by Witneſſes *viva voce* to be examined upon Oath; and if he ſhall make Proof thereof to the Satisfaction of the ſaid Court, he ſhall thereupon have a Certificate thereof under the Seal of the ſaid Court, to be likewiſe enrolled in the ſaid Court, and for ever after upon ſhewing ſuch Certificate or Enrollment thereof, every ſuch Perſon ſhall have full Benefit of this Law, as if he had been therein expreſsly named.’

Bar. *Street*. Then you are a Natural-born Sbject by the late Act of Parliament; whereby it appears that all Perſons born abroad in the late Troubles, who went out of this Kingdom by reaſon of their Sufferings for the King, are made Natural-born Subjects, as if born here.

[*Then* Joſeph Dudley *was called and ſworn.*]

Bar. *Street*. *Joſeph Dudley*, do you know the Priſoner at the Bar? Look upon him.

Joſeph Dudley. I have known him theſe ſix Years and more, to belong to Mr. *Powtrel*'s at *Weſt-Hallam* to whom I was at that Time a Servant, where he officiated as a Prieſt, and was kept to do that Office; where I have heard him ſay Maſs, preach, pray, and have ſeen ten, twenty, or thirty or more at a Time before him in the Chappel there, when he hath officiated with his Prieſtly Robes upon him; and likewiſe ſeen Children brought to be chriſtened by him, others to be catechiſed; which he frequently did, as if he had been a Pariſh-Prieſt, but with what Privacy he could: And I myſelf have taken care of the Doors at ſuch Times, which care they left to me, though I was not of their Opinion; yet upon my promiſing to be ſo, they did repoſe that Truſt and Confidence in me.

Bar. *Street*. Tell us what you know concerning Mr. *Buſby*'s being an Alien, as he pretends, which I cannot believe.

Joſeph Dudley. He tells you, that when the Civil Wars were here in *England*, his Father and Mother, with their Family, went beyond Sea, where he was born; but, my Lord, in diſcourſing with my Maſter and others of the late Wars, I have heard Mr. *Buſby* relate what happened to their Family in thoſe Times, and that their Houſe was often plundered, and his Father and Mother living at *Coddington* in *Oxfordſhire* (as he tells you) the firſt Time the Soldiers came to plunder the Houſe, he was about two Years old or more, and being frighted at the Soldiers, he hid himſelf behind the Bed in the Curtains, ſo that while they were there, none of the Houſe knew where to find him, which made them believe that the Soldiers had taken him, or made him away; but when the Soldiers were gone, his Mother and ſome of the Family lamenting for him in her Chamber, he hearing them, appeared; ſo that with great Joy they received him. My Lord, I think the Place was *Coddington*, where he tells you his Mother lived, and that it was her's, ſhe being an Heireſs. At leaſt, I am very certain I have heard him ſpeak of the Place where he was born, to be in or about *Oxfordſhire*, I think it was *Coddington*; for it is the Place where Mr. *Charles Buſby* his eldeſt Brother now liveth, and he ſaith, that from thence his Father and Mother went beyond Sea.

Buſby. When did you hear me diſcourſe any ſuch thing as you have related, and with whom; you ſpeak this by hear-ſay, do you not?

Joſ. Dudley. Several times with my Maſter and others, as I ſaid before, when they have been talking how ſome Families have been ruined by the great Oppreſſions of thoſe Times, ſome being plundered, others ſequeſtered, and forced to leave their Eſtates and Friends, which you have ſaid was your Mother's Caſe; for their great Sufferings forced them to go from their own Houſe: And, my Lord, when he was about five Years old, he did alſo ſay, that he could remember Soldiers coming again to plunder, and he being at that Time in the Garden or Orchard, he did hide himſelf in the Hedge, where he did continue till they were gone, and then he came forth when it was late in the Evening; but his Mother nor any of the Family knowing where he was, did very much fear they had loſt him; but when he came to them, they were not a little joy'd; but after this they went immediately beyond Sea, and took him with them, where his Mother continued ſeveral Years, and had ſeveral Children there, the which I have heard him ſay of himſelf, and of her being at *Bruſſels*.

Bar. *Street*. Mr. *Buſby*, the Evidence ſays, that you told a Story of your Mother's Houſe being plundered, and how you hid yourſelf in the Curtains when you was two Years old, and in the Garden-Hedge, when five Years old, for fear of the Soldiers, and that ſoon after your Mother went beyond Sea, where ſhe had ſeveral Children, which yourſelf told from your own Mouth, and he had it not from other People.

Bar. *Street*. But, Mr. *Dudley*, What can you ſay as to his being a Prieſt or Jeſuit?

Joſ. Dudley. My Lord, my Maſter and his Family, and all Papiſts that were acquainted with him, ever owned him to be a Jeſuit; and ſeveral of them have many times told me ſo: Beſides he himſelf has owned that he was of the Society of JESUS, particularly one time, when I ſhould have been his Convert; telling me, *While I was out of the True Faith, I could not be ſaved; and there was no way to be ſaved, but by believing the Catholick Church, which was the* Roman *Catholick, as Tradition makes appear; for God help me, I was a poor Heretick, and led by weak and blind Paſtors; for they had their Religion only from* Calvin *and* Luther, *and every ſilly Fellow was made now a Preacher of the Goſpel, before he underſtood it; but that he and all Jeſuits were fifteen Years labouring in their Studies and Degrees, before they came to be ordained.*

Buſby. I pray you, where and when was it I ſaid all this to you?

Joſ. Dudley. In the Gardens at *Weſt-Hallam*, where my Maſter Mr. *William Powtrel* and Mrs. *Anne Smalley*, after great Perſuaſions, ſent me to you; and told me they had ſent you before; and that I ſhould find you there, where I did. And your firſt Diſcourſe was of the Gardens, withal giving me a Deſcription of the Jeſuit's College in *Liege*, where you did (as I remember) own your receiving Orders. Beſides, I have heard my Maſter, Mrs *Smalley*, Mrs. *Winifrid Attwood*, and *George Harriſon* (who lived in the Colleges beyond Sea) own it. And yourſelf ſaid, *That Mr.* Evers, *my Lord* Aſton's *Prieſt (who had been with you at* Weſt-Hallam) *was your Maſter and Tutor*, when, as I think, you were a Scholar at St. *Omer*'s.

Buſby. How long do you ſay you have lived at *Weſt-Hallam?*

Joſ. Dudley. Betwixt ſix and ſeven Years.

Buſby. When was that I talked of the Gardens at the College of *Liege?* And whether I told you I was a Jeſuit when I ſpoke of *Liege* Gardens? What Time was it, what Year?

Joſ. Dudley. I cannot ſay the Time, but 'twas ſince I lived at *Hallam*, and 'twas when you perſuaded me to be a Catholick.

Buſby. You take a Compaſs of ſix Years, this is a mere Story. Pray, what were my Arguments?

Bar. *Street*. You were about to convert him, and then you told him this; 'tis enough you have endeavoured to make him change his Religion; but it ſeems your Arguments were not of ſo much weight as to be remembred.

Busby. I pray you, was I ever with you alone to tell you I was a Jeſuit? Let me know the Year and Time, and what induced me to ſay ſo?

Joſ. Dudley. I cannot ſatisfy you when the Diſcourſe was; but I have been alone with you in the Garden a hundred Times and more; when you did ſatisfy me that you was a Jeſuit, was the Time when you did move me to be of your Perſuaſion; the which I did ſo far condeſcend to, that ever ſince there was none of the Family more truſted than I; for, my Lord, I did give them all the Aſſurance that might be of being of your Religion; but the Times being troubleſome, and the fear of diſobliging my Friends, particularly one or two, who had the Care and Management of a Houſe of mine (which was then in Trouble) then I durſt not conſent, yet my ſeeming Inclination did ever much pleaſe them, and they did ſo far credit me that my Maſter did intend (as he told me) to take me beyond Sea with him; nor did I know the contrary, till I was upon the Road for *Dover*, and then he told me that his Uncle *Busby* was inſerted in the Paſs (by the Name of *Thomas Jackſon*) which he ſhewed me; but he having no Mind to go, ſtayed in *England*, (and for the moſt part at *Hallam*) ſo that my Maſter commanded me back, to look after his Affairs there: And for ſome Time before he was to return, he ſaid he would ſend for me over. Ever ſince he left *Hallam* Mr. *Busby* hath continued privately there, for none beſides Mr. *George Brent* and myſelf, and the Women of the Houſe, were ſuffered to know of him; nay, ſome of his Relations who have lain in the Houſe, have not known but that he was beyond Sea, though they were Papiſts, yet he would not ſuffer them, but concealed himſelf.

Buſby. I pray, will you tell me what Day, Month, or Year it was, you and I had this Diſcourſe you ſpeak of; and tell me how it came that I was ſo familiar with you?

Bar. *Street*. What need you impoſe it upon him, when he ſaith he hath lived with you ſix Years and more? He cannot remember it; but he tells you, that it was in the Garden, where he has been with you a Hundred Times and more, not thinking further of it; 'tis impoſſible to ſatisfy you the particular Time: Therefore why do you aſk him ſuch a fooliſh Queſtion?

Buſby. I deſire you will let me know how you (as you pretend) come to know I was a Jeſuit.

Joſ. Dudley. Sir, it is what you know to be Truth, and I am ſure you cannot but remember, it was in the Walk at the Head of the Orchard, where you was before me expecting my coming to you, and did then uſe all the perſuading Means that might be to confirm me in your Opinion; in which I ſeemed ſo well ſatisfied, that you told me you would leave me to conſider of it; but that I ought to forſake my Friends, and whatever elſe, to come to God Almighty, of which you did not doubt; but bid me be careful, for Delays are dangerous: And, my Lord, as to his being a Jeſuit, he did own it when my Maſter was committed to Priſon for refuſing the Oaths of Supremacy and Allegiance; (for he was then private at *Weſt-Hallam*), withal ſaying, in his Conſcience he ought not to take them, for their Church would not allow it, but on the contrary did expreſsly forbid it: Nevertheleſs Mrs. *Powtrel*, Mr. *William Powtrel*, and divers of the Family, did argue for his ſo doing, eſpecially after Mr. *Thomas Cannynge* came from St. *Thomas*, in *Staffordſhire*, and ſaid, that his Uncle *Fowler*, he, and all belonging to him, had taken the Oath of Allegiance: And that it was the Opinion, and with the Conſent of Mr. *Fitter*, their Prieſt, that they might do it; and for that Reaſon Mr. *Cannynge* came to adviſe my Maſter the like: But Mr. *Buſby* did reject the Motion, and ſaid, no ſecular Prieſt could give Leave ſo to do, and for his Part he was abſolutely againſt it, and ſo was all the Society: But if Seculars gave too much Liberty, he would not be guilty of their Fault; ſo when all would not prevail with him, then Mrs. *Powtrel* and I went to Mr. *William Brent*, at *Fox-Coat*, in *Warwickſhire*, her Grandfather, and Mr. *Buſby*'s Father-in-Law, a Counſellor, to have his Advice; and upon his writing ſeveral Letters to my Maſter, and Mr. *Buſby*, that it was proper for my Maſter ſo to do, nor could he avoid it; then in Compliance to Mr. *Brent*, he did not much oppoſe the taking of the Oath of Allegiance: And thoſe Letters, the next Night after Mr. *Gilbert* had taken Mr. *Buſby*, Mrs. *Smalley* (for Fear he ſhould find them) did burn, but ſhewed them to me as ſhe was looking over many Papers more, the moſt of which ſhe did likewiſe burn.

Mr. *Gilbert*. For your Lordſhips and the Juries further Confirmation, that the Priſoner is a Jeſuit as well as a Prieſt, and that he held a dangerous Correſpondence with ſome of his Order, which have been executed for their Treaſons in Relation to the Plot, I muſt acquaint your Lordſhip, that this *Busby* was Procurator for the Jeſuits, and that he received the Rents of their Lands, from 1673 till 1677, and that he diſburſed and returned ſeveral great Sums of Money to divers Jeſuits, as may appear by Letters, and his Account-Book, which I took, where may be ſeen what Dealings and Tranſactions he had with *Gawen*, *Harcourt*, *Turner*, *Ireland*, *Pool*, *Bennet*, *Heaton*, *Tomſon*, and others of his Tribe: He could not deny it to be his own Hand-writing.

My Lord, here is the Book.

(Which was preſented to the Judge, and peruſed by him.) Then Mr. Gilbert *proceeded.)*

My Lord, I did alſo ſearch at *Weſt-Hallam* Houſe for popiſh prieſtly Garments (being well informed that there were ſuch in the Houſe), and found divers Suits of Veſtments, and other popiſh Trinkets, which I brought away, together with thoſe I formerly ſent back from the laſt Aſſizes; all which I have ready in Court to be produced, and have alſo a Miniſter here (who has formerly been a popiſh Prieſt himſelf), to inform your Lordſhip the Names and Uſe of all the Particulars; here are alſo (my Lord) a Box of Wafers, which I ſuppoſe they uſe for the Sacrament at the Maſs; the larger Sort, I am told, are for the Prieſts Uſe, the leſſer for the People; and here are the Wafer-Irons which made them.

Mr. *Sheppey*, pray tell my Lord and the Jury the Names of all thoſe things, and how the Prieſt uſed them at Maſs.

Mr. *Sheppey* taking up the Things, ſaid, *My Lord, this is a Veſtment, uſed when the Maſs is ſaid; this is a Stole, and this is a Maniple, and this an Antipendiana:* And ſo gave an Account of the reſt of the Trinkets.

[*Then* Thomas Houis *was called and ſworn.*]

Bar. *Street*. What can you ſay, Friend, of the Priſoner? See if you know him, look upon him.

Thomas Houis. I know him well enough, he perſuaded me to be a *Roman* Catholick, when I was about to marry a Man's Daughter that was a Papiſt; whom I could not have, until I turned to their Religion. Mr. *Busby* perſuaded me, and when he had converted me, bound me to believe that Matrimony was a Sacrament; he gave me Abſolution, and made me do Penance; the Words of the Abſolution I cannot pronounce, but I have been ſeveral Times at Maſs when he ſaid it, when I had Abſolution from him; after Confeſſion I was to ſay theſe Words:

'For all which, and whatever elſe I cannot at this preſent call to
'Mind, I am heartily ſorry for, for the Love of God; and purpoſe by
'God's Grace to amend, beſeeching you, my Ghoſtly Father, to pray
'to God for me, and to give me Abſolution and Penance.'

Afterward you know you married me, and I was cited to *Lichfield*-Court for being married privately by you. My Lord, I have been preſent when Mr. *Busby* ſaid Maſs at *Weſt-Hallam*, and have heard and ſeen him ſay Maſs ſeveral Days in his prieſtly Robes: I never knew any other Prieſt but him at *Weſt-Hallam*; moſt *Sundays* and Holydays he ſaid Maſs, where were preſent moſt of the *Roman* Catholicks in thoſe Parts; I have heard him preach three Times, and no more.

Busby. Did I come to you, or you to me?

Tho. Houis. I came to you.

Busby. Then I did not perſuade you to turn Catholick, you was ſatiſfied upon the firſt Perſuaſion before you came to me, and declared you would turn Catholick.

Tho. Houis. I was perſuaded by Mr. *Shirborn* of *Stanly-Grange*, yet not fully convinced but by you.

Mr. *Gilbert*. My Lord, this *Shirborn* he ſpeaks of, was one Captain *Shirborn* a great Papiſt, who lived near me, a Letter-Carrier (as was reported) and one that ſold them Books and Trinkets.

Tho. Houis. For I was fully ſatisfied then in all Things by your Inſtructions, and hearing your Sermons; as for Maſs, I did not underſtand it; but you ſaid it was Maſs; beſides, others called it ſo.

Busby. How can you ſwear to a Thing you do not underſtand?

Tho. Houis. If I did not, you told me ſo, and I believed you, becauſe you did the Office of a Prieſt.

Bar. *Street*. It ſeems this is the Matter, you courted a Papiſt for your Wife, and *Busby* told you the Way to have her was to be a Papiſt, and you did hearken to *Busby* to perſuade you; he told you, Matrimony was a Sacrament, and before you were married, you muſt be confeſſed, and have Abſolution; and Mr. *Busby*, you put Words into his Mouth to deſire Abſolution; but gave it in ſuch Language as he underſtood not: He ſays, he has heard you ſay Maſs frequently; but preach only three times.

Busby. It is an eaſy Matter for him to ſay ſuch Things, but how does he prove it to be Abſolution or Maſs, when he ſays he underſtands not the Language?

Tho. Houis. My Lord, I have not only been preſent at that which they call their Maſs, but I have alſo received the Sacrament from Mr. *Busby* then, and have ſeen him give the Sacrament to divers other Perſons too; and beſides, my Lord, I did ſend my eldeſt Child to the Chapel at *Standly Grange*, to have it chriſtened by Mr. *Busby*: This Woman (pointing to *Sarah Clark*, who ſtood by) carried it: When we came there, Dr. *Richard Needham* (who lived there) ſaid to me, Are you the Father of this Child? I anſwered, Yes: Then, ſays Dr. *Needham*, You ought not to be preſent when your Child is chriſtened: Whereupon, my Lord, I went into a Corner of the Room, but could perceive well enough what was done, and Mr. *Busby* did chriſten my Child, and gave her the Name of *Anne*, Mr. *Peter Waldron* was Godfather, and Mrs. *Anne Smalley* Godmother.

King's Council. We ſhall now call *Elizabeth Evans*, for further Proof of Mr. *Busby*'s exerciſing his prieſtly Office: (Who was alſo ſworn.)

Bar. *Street*. Come, good Woman, what can you ſay of the Priſoner at the Bar, do you know him?

Eliz. Evans. Yes, I know the Priſoner at the Bar, it's Mr. *Busby*, my Lord, and have ſeen him in his prieſtly Habit ſay Maſs in the Chapal at Mr. *Powtrel*'s Houſe at *Weſt-Hallam*; I ſaw him chriſten *Henry Avery*'s Child of *Stauton*, I was Godmother to the Child: He has confeſſed me ſeveral Times; and I have received Abſolution from him: I have received the Sacrament from him.

Bar. *Street*. What was it he gave you, when you received the Sacrament from him?

Eliz. Evans. I know not what it was Mr. *Busby* gave me.

(Then the Wafers were called for; they were of ſeveral Sizes in the Box.)

And being ſhewed to her, ſhe ſaid, yes, my Lord, theſe are what he gave us at Maſs for the Sacrament; I remember them, they were juſt ſuch.

Busby. Wafers are things uſually put under Biſkets and Macaroons; therefore how can ſhe ſay thoſe are the Sacrament, for they are what I have ſeen given to Children to eat and play withal.

Bar. *Street*. They are Things indeed to give to Children.

King's Council. Pray call *Dorothy Saunders*.

(Who appeared, and was ſwarn.)

Bar. *Street*. Well, *Dorothy Saunders*, what ſay you?

Dor. Saunders. He has ſeveral Times abſolved me, and given me the Sacrament, and has ſaid Maſs, where the Company were ſometimes more, and ſometimes leſs; (and having a Wafer given her into her Hand) and he held up the Wafer thus (and ſhewed the Court and the Jury the Manner of his Elevation of the Hoſt.) And being aſked by the Judge, whether ſhe knew prieſtly Veſtments? (anſwered)

Dor. Saunders. Yes; I know prieſtly Veſtments when I ſee them; (which being ſhewed to her) ſhe ſaid, ſhe had ſeen *Busby* in ſome of them; but for his chriſtening of Children, I know nothing of that.

Busby. Is that the Sacrament? Thoſe Wafers in the Box is that the Sacrament?

Dor. Saunders. We took it at your Hands for the Sacrament.

Bar. *Street*. Mr. *Busby*, you are ſo impertinent in your Queſtions, you think you have weak Perſons to deal with; I hope the Jury will take Notice of it.

King's Council. Call *Sarah Clark*. *(Who appeared, and was ſworn.)*

Bar. *Street*. *Sarah Clark*, have you heard Mr. *Busby* ſay Maſs?

Sa. Clark. Yes, my Lord, that which he told us was Maſs, but I did not underſtand it, for it was in another Tongue, which they ſaid was *Latin*.

Bar. *Street*. But had he his Veſtments on, or how was it, tell us, good Woman?

Sa. Clark. Yes, my Lord, he had Veſtments on, and he did then give us the Sacrament, as he called it, which was a Wafer, and that he put into our Mouths after that he had elevated the Hoſt: And he himſelf told me it was the Sacrament.

Bar. *Street*. Well, and have you made Confeſſion to him, and has he abſolved you after you have done ſo?

Sa. Clark. I have been at Confeſſion before him upon my Knees, and when I had done, he ſpoke ſomething to me in *Latin* (as I think) which he ſaid was Abſolution, and I did take to be ſo; and I have ſometimes, my Lord, heard him preach, and that I underſtood, becauſe it was in *Engliſh*. He told me what Abſolution was, and the Maſs, and the ſame was to be read in *Engliſh*, and thoſe that could read, at thoſe Times, ſaid the ſame.

Bar. *Street*. Several Witneſſes have ſpoken cloſely, that he has exerciſed his Office in all Things as a Prieſt: Have you known him marry any Body, and chriſten Children; if you have, ſpeak?

Sa. Clark. My Lord, he did not marry me, one Mr. *Gavan* married me; but I have heard that he did marry *Thomas Houis*, and I am ſure he did chriſten *Thomas Houis* his firſt Child, for I carried it to him, and Mr. *Waldron*, and Mrs. *Anne Smalley* were Godfather and Godmother, and he did name it *Anne*; it was chriſtened at *Standly Grange*, at Dr. *Needham*'s Houſe, and ſeveral others were there at the ſame Time, and afterwards I brought it home.

Buſby. How do you know it to be Maſs and Abſolution, when you ſay you do not underſtand the Language I ſpoke in?

Sa. Clark. Though I did not underſtand what you ſaid, you told me what every thing meaned, and I did believe you, becauſe others told me ſo too; beſides, all Papiſts thought it their Duty (as you told us) to be there Holy-days and *Sundays*, to prevent a venal Sin, which if we omitted we were liable to Penance.

Mr. *Gilbert.* My Lord, we have three or four more Witneſſes, but we are loth to trouble your Lordſhip and the Court with any further Teſtimony of this Nature; hoping the Matter of the Indictment has been fully proved againſt the Priſoner; and if your Lordſhip pleaſe we will reſt here.

Bar. *Street.* I ſuppoſe the Jury will believe there has been ſufficient Evidence given to convict him; but Mr. *Buſby*, what can you ſay for yourſelf?

Buſby. Joſeph Dudley tells your Lordſhip how I ſhould tell a childiſh Story of hiding myſelf in the Curtains, when I was two Years old; pray, my Lord, conſider how I could remember what I did at two Years old; I know not how I could. I have told your Lordſhip I was born beyond Sea, I am ſure I was bred there; I hope your Lordſhip will not take notice of an Hear-ſay; my Mother went beyond Sea at the begining of the Troubles, not after, 'twas before *Edge-Hill* Fight. As to what *Houis* ſays, he himſelf does acknowledge, that he does not underſtand what Language I abſolved him in, nor the Language of the Maſs, and therefore he cannot ſwear to it; and for ought I know, as to his being married, it was in a privileged Place, and could not be cited to *Litchfield*-Court; and for what the other witneſſes ſay, their Evidence is only that they heard ſomething read in an unknown Language, uſually Women pray in an unknown Language, and thoſe publick Prayers were only Family-Duties; they ſwear not what it was, becauſe they underſtand it not.

Bar. *Street.* I believe not one in a hundred underſtands your Prayers that hear them; elſe they would not be ſo juggled by you.

Buſby. There are Veſpers and Mattins, and Even-ſong; he does not diſtinguiſh what it was that was ſaid, by reaſon it was in an unknown Language to him; it was only Family-Duty. I can produce a Witneſs to prove it, that Women do Family-Duty in an unknown Language.

Bar. *Street.* I know Women do not officiate in your Church.

Buſby. He ſwears, my Lord, to what he does not underſtand. As for *Elizabeth Evans*, ſhe ſwears concerning ſaying Maſs, and underſtands not one Service from another, and this proves not particularly my prieſtly Office.

Bar. *Street.* Mr. *Buſby*, you forget chriſtening *Avery*'s Child, and *Houis*'s Child, confeſſing and abſolving divers Perſons, the material Evidence: You only offer ſome little Diverſions.

Buſby. Dorothy Saunders knows not what ſhe ſwears, nor *Sarah Clark*; none of the Witneſſes can diſtinguiſh one Service from another; they cannot therefore ſwear what was, and what was not; giving of Bread is not the prieſtly Office, they do not ſwear poſitively to my exerciſing the prieſtly Office, other Perſons wear thoſe Garments as well as Prieſts: Thoſe Things are Monuments and Heyre-Loomes to the Family, they were taken out of Churches in former Times at the Reformation: There are now to be ſeen in the Cathedral at *York*, Church-Stuff and Veſtments, which are kept for Antiquity, and ſo were theſe.

Bar. *Street.* Mr. *Sheppy* has been a Prieſt, and he knows the Uſe of thoſe Things as well as you.

Buſby. My Lord, thoſe Things Laymen do wear as well as Prieſts, I deſire to call a Witneſs to prove it.

Bar. *Street.* You may if you will, but to what Purpoſe?

Buſby. Pray call *Robert Needham.* (*Who was called and appeared.*)

Bar. *Street.* Well, *Needham*, do you know theſe Things?

(*The Veſtments being ſhewed unto him.*)

Rob. Needham. I have had theſe Things on my ſelf, my Lord, and have ſaid my Prayers in them, and have thought my Prayers more acceptable when I had them on; and I have ſeen them uſed by others ſeveral Times.

Buſby. More wear them that are Laymen, than ſuch as are Prieſts.

Bar. *Street. Needham*, it ſeems you wore them whilſt you ſaid your Prayers, that they might be more acceptable?

Rob. Needham. Such like Veſtments are worn by Laymen in ſeveral Places.

Buſby. I deſire one Mr. *Charles Umphrevill* may be called, to ſpeak to my being an Alien born.

(*Who being called for the Priſoner, was not ſworn.*)

Char. Umphrevill. To Mr. *Buſby*'s being an Alien, I have known Mr. *Buſby* ſeveral Years, and I have heard his Mother and Brother affirm he was born at *Bruſſels*: And I have an Affidavit from the Regiſter at *Coddington* of all their Children born in *England*, and we do not find Mr. *George Buſby*'s Name in the Regiſter.

Bar. *Street.* How can you be ſure of that? You ought to have brought the Man along with you to teſtify it.

Char. Umphrevill. My Lord, the Sexton is an old Man, above ſixty Years of Age, and could not come; but he made Affidavit of it, which is here.

Bar. *Street.* That does not ſignify any Thing at all; that Affidavit cannot be allowed, for he might be born there, and yet not regiſtered; but what makes you ſay we? What makes you concern'd?

Char. Umphrevill. I ſay we, becauſe I was one of thoſe employed to get Mr. *Buſby's Habeas Corpus.*

(*Upon Mr.* Umphrevill'*s being at a ſtand,* and Buſby *directing him to tell what he had ſeen beyond Sea, the Judge taking notice thereof ſaid,*)

Bar. *Street.* What would you have him ſay, Mr. *Buſby*? Tell him.

Char. Umphrevill. I have ſeen Canons beyond Sea wear ſuch Veſtments that are not in Orders; I have ſeen Children wear them, and they, I am ſure, are not in Orders.

Buſby. I call Mr. *Mayo* to prove that I am not a natural-born Subject of the King's.

Bar. *Street.* (Come, Sir, though you are not upon your Oath, yet you muſt tell us the Truth, as faithfully as if you were.)

Edw. Mayo. I have ſearched the Regiſter at *Coddington*, and I do not find *George Buſby*'s Name, the Priſoner, regiſtered; I have ſearched all the Books, and I find no Regiſter of him.

Bar. *Street.* An hundred Children may be born in that Pariſh within theſe 20 Years, and not regiſtered; all that are baptized, are regiſtered only.

Buſby. Mr. *Mayo*, ſatisfy my Lord of the Diſappointment I had of my *Habeas Corpus*, which you got for me.

Bar. *Street.* To what Purpoſe? But Mr. *Buſby* you ſhall not ſay but I will hear him: What ſay you, *Mayo*?

Edw. Mayo. My Lord, I was employed about an *Habeas Corpus* for Mr. *Buſby* in *Eaſter* Term laſt, and did obtain one for him then, but by reaſon of ſome Slackneſs it was preſently out of date, and ſo became ineffectual. Alſo in *Trinity*-Term, I procured another *Habeas Corpus* for him, which was delivered to the Under-Sheriff of this County of *Derby*, who was then very Sick at *London*, of which Sickneſs he died there at laſt, and that *Habeas Corpus*, for that reaſon, did likewiſe fall ſhort; by which Diſappointments Mr. *Buſby* is not ſo prepared for his Trial at this Time as otherwiſe he might, if he had not really depended upon his being removed to *London* by *Habeas Corpus.*

Bar. *Street.* All this is too little to the Purpoſe; for if he expected to have had his Trial there, and was prepared for it a Term or two ago, how comes it to paſs he is not prepared now? Come, come, Mr. *Buſby*, what can you ſay more?

Buſby. I could not be born at *Coddington*, I was born beyond Sea, out of the Kingdom. My Lord, here is not one Word proved of the Subſtance of the Indictment, not a Word proved that I took Orders beyond Sea, nor here, from any Perſon that ſaw me take Orders; not a Word of that proved; nor not a Word of the Subſtance of that Statute of Queen *Elizabeth*, which I am indicted upon; only ſome few Women ſay they heard me pray in an unknown Language, which was no more than Family-Duty; and I can produce a Witneſs that Women ſay their Prayers publickly in an unknown Tongue, and all anſwer; and by theſe Circumſtances I am accuſed for being a Prieſt.

Bar. *Street.* I find, Mr. *Buſby*, you underſtand the Law. But pray you, is the Sacrament given by Women? And is Abſolution given by Women?

Buſby. If they underſtand not the Language, they underſtand not the Thing: Treaſon may be ſpoke in *French*, and I not know it to be ſo.

Bar. *Street.* Then it ſeems no Man can prove a Prieſt that does not underſtand the *Latin* Tongue.

Buſby. None of the Witneſſes has ſworn that I gave Abſolution, nor that I ſaid Maſs, but in an unknown Tongue. What they have ſaid are only Circumſtances, and do not prove the Indictment; and what they ſay I did, are Things that are performed by thoſe who are not Prieſts. I offer it again to your Lordſhip's Conſideration, that I have not been proved a born Subject of the King's. I was deprived of my *Habeas Corpus*, which was detained in the Sheriff's Hand, and ſo loſt the Benefit of it; (theſe Things are material;) and have not had Time to produce Witneſſes that I was not born in *England*, but beyond Sea: At *London* I could have got Evidence to prove that; and here has been no Proof made of that, but a Story told of me when I was a Child: I have proved that my Name cannot be found in the Regiſter at *Coddington*. For the reſt I have not had time; if I had had the Benefit of my *Habeas Corpus*, to have been tried at *London*, I had Friends there that could have proved me born beyond Sea: This *Dudley* that appears an Evidence againſt me, was a Servant of Mr. *Powtrel*'s, who was gone away upon Diſguſt; he ſent away ſeveral Loads of Goods, and now he comes to ſwear againſt me; I am verily confident that he carried away above three Horſe-load of Goods, that he carried privately out of the Garden, of Plants and ſuch Things, and ſent them all away.

Mr. *Gilbert.* My Lord, they were his Clothes, and other Things of his own, which he took with him when he went away.

Bar. *Street.* All this ſignifies nothing, if it be proved; but bring what Witneſſes you will to prove it.

Buſby. I hope your Lordſhip will conſider that I am an Alien born, and that by the Loſs of my *Habeas Corpus* I had not Time to bring my Witneſſes; and that the Prayers I ſaid were only Family-Duties: I hope that will be conſidered; and that thoſe People that have ſworn I ſaid Maſs and Abſolved, do not know what Maſs is, nor Abſolution. My Lord, here is nothing proved of the Indictment againſt me.

Bar. *Street.* You have ſaid all this ſix Times over, if you have nothing farther to ſay in your Defence, I muſt ſum up the Evidence to the Jury.

Bar. *Street.* You of the Jury, the Priſoner at the Bar, *George Buſby*, ſtands indicted of Treaſon upon the Statute of 27 *Eliz. Cap.* 2. the principal Branch whereof is this:

‘ And be it further enacted by the Authority aforeſad, That it ſhall not be lawful to or for any Jeſuit, Seminary Prieſt, or other ſuch Prieſt, Deacon, or religious or eccleſiaſtical Perſon whatſoever, being born within this Realm, or any other of her Highneſs's Dominions, and heretofore, ſince the ſaid Feaſt of the Nativity of St. *John Baptiſt*, in the firſt year of her Majeſty's Reign, made, ordained, or profeſſed, or hereafter to be made, ordained, or profeſſed, by any Authority or Juriſdiction, derived, challenged, or pretended from the See of *Rome*; by or of what Name, Title or Degree ſoever the ſame ſhall be called or known, to come into, be or remain in any Part of this Realm, or any other her Highneſs's Dominions, after the end of the ſame forty Days, other than in ſuch ſpecial Caſes, and upon ſuch ſpecial Occaſions only, and for ſuch Times only, as is expreſſed in this Act: And if he do, That then every ſuch Offence ſhall be taken and adjudged to be High-Treaſon: And every Perſon ſo offending, ſhall for his Offence be adjudged a Traitor, and ſhall ſuffer, loſe, and forfeit, as in Caſe of High Treaſon.’

This makes every Offender againſt this Statute a capital Offender, and guilty of High-Treaſon: Now whether he is within this Law, you are to conſider. Mr. *Gilbert* has told you that he is a reputed Prieſt and Jeſuit in the Neighbourhood, and that as ſuch he had an Order from his Majeſty to apprehend him. He uſed his Endeavours to take him for ſome Time, but could not apprehend him till the ſixteenth of *March* laſt, and then he found him; but in ſuch an obſcure Hole, that no Body would hide himſelf in, but ſuch an extraordinary Offender. Innocent People do not obſcure themſelves in that Manner. *Joſeph Dudley*, to prove him a Native and not an Alien, tells you, that when Soldiers, in the Time of the late Wars, came to plunder his Father's Houſe, he heard him ſay, that at two Years old he hid himſelf in the Curtains in his Mother's Chamber for fear of the Soldiers. But (ſays the Priſoner) my Memory could not ſerve me at two Years old to retain what I did then. But our Parents tell us what we did then. If a man be aſked, What Age are you of? No Man can tell but as his Parents tell him. My Father told me I was ſix years old, and from thence I remember it. His Father and Mother were not out of *England* (as appears) till about 1646, and then the War was ended; and the Priſoner confeſſed himſelf to be about forty Years of Age, which ſhews him born in *England*. He that but obſerves his Language, will find that the Tone of the *Engliſh* Language remains with him. One born in *Wales* (though he came young from thence) he will have a *Welſh* Tone as long as he lives. The Priſoner tells you, that no Man has proved his being in Orders of the Church of *Rome*, nor where, when, or by whom made a Prieſt: But if all that were to be proved, it would make the Law idle and inſignificant. If he be made a Prieſt in *England*, 'tis as much as if made at St. *Omer's* or *Rome*. He did own to *Joſeph Dudley*, that he was made a Jeſuit, and laboured to make a Convert of him in the Garden, when he was alone with him. The next was *Thomas Houis*, who courted a Woman, and muſt not have her, unleſs he turned *Roman* Catholick. *Buſby* muſt diſcourſe him, and make a Convert of him. He hears *Buſby* preach three Times, and heard him ſay Maſs ſeveral Times; and was not only married by him, but has been confeſſed and abſolved by him divers Times. But *Buſby*'s fallacious Argument has no Weight in it, that becauſe he underſtood not *Latin*, therefore he proves it not Maſs nor other Services of the Church of *Rome*. *Dorothy Saunders* ſpeaks to the ſame Purpoſe, that he confeſſed and abſolved her. And ſhe tells you, that ſhe has ſeen him elevate the Hoſt, and has ſhewed you the Manner how; and he gave her the Sacrament, which ſhe and the reſt took from him as the Sacrament: And that ſhe has ſeen him officiate in ſome of the Robes produced in Court. *Sarah Clark* ſpeaks to the ſame Purpoſe, and ſo did *Elizabeth Evans*. But *Buſby* ſays, becauſe this was done in an unknown Tongue, they cannot ſwear it; and that he is no Prieſt, becauſe they do not ſwear where, and when, he received his Orders. Whoever does exerciſe that Profeſſion, we do believe him of that Church. When a Miniſter of our Church preaches or officiates, we do not ſay, Pray let us ſee your Orders firſt; but if he officiate uſually as a Prieſt, 'tis taken for granted that he is one. He can tell where he received his Orders, but it may be cannot produce them upon all Occaſions. Muſt he therefore be no Prieſt? Upon the Whole, if you believe the Witneſſes, or any two of them, you are to find the Priſoner guilty; I believe you have had full Evidence; go together, and conſider of it.

(*The Jury went forth, and after a ſhort ſtay came back into the Court.*) And then,

Clerk. Gentlemen of the Jury, have you agreed on your Verdict?

Jury. Yes

Clerk. Who ſhall ſay for you?

Jury. The Foreman.

Clerk. *George Buſby*, hold up thy Hand: Look upon the Priſoner.

Clerk. Do you find *George Buſby* Guilty of the High-Treaſon and Felony he hath been arraigned of, or not Guilty?

Foreman. Guilty.

Clerk. And ſo you ſay all?

Jury. Yes.

Clerk. Look to him Jailor.

Bar. *Street.* Though I muſt paſs Sentence upon you of courſe, the Jury having found you guilty; yet I muſt tell you, that his Majeſty hath commanded me to reprieve you from Execution.

Then Mr. Baron Street *paſſed Sentence.*

That you the Priſoner, now at the Bar, be conveyed hence to the Place from whence you came, and that you be conveyed thence on a Hurdle to the Place of Execution; where you are to be hanged by the Neck; that you be cut down alive, that your Privy Members be cut off, your Bowels taken out and burnt in your View; that your Head be ſevered from your Body; that your Body be divided into four Quarters; which are to be diſpoſed of at the King's Pleaſure: And God of his infinite Mercy have Mercy upon your Soul.

The Petitions of STEPHEN COLLEDGE, *precedent to his Trial, with the Orders made thereon.* 33 Car. II. 1681.

To the King's moſt excellent Majeſty.

The humble Petition of STEPHEN COLLEDGE, now Priſoner in your Majeſty's *Tower* of *London*,

Moſt humbly ſheweth,

'THAT whereas your Petitioner being charged with High-Treaſon, is under ſtrait Confinement, that he hath not Liberty to ſee or ſpeak with any of his Friends or his Children, and being lately informed, that it is ordered your Petitioner ſhall come to his Trial at the City of *Oxon* about the Middle of the next Month;

'Your Petitioner therefore moſt humbly prays your ſacred Majeſty, That Leave may be given for Mr. *Aaron Smith* and Mr. *Robert Weſt* to come to him; and alſo to have the uſe of Pen, Ink, and Paper, in order only to make his legal and juſt Defence, and alſo to have the Comfort of ſeeing his two Children.'

And your Petitioner as in Duty bound ſhall ever pray, &c.

A true Copy,

Francis Gwyn.

At *Hampton-Court*, *July* 28, 1681.

'UPON reading this Day at the Board the Petition of *Stephen Colledge*, Priſoner in the *Tower*, praying that in order to the making his Defence at his Trial, which he hears is to be the Middle of the next Month, he may be permitted to ſee his two Children, to have the Liberty of Pen, Ink, and Paper, and that Mr. *Aaron Smith*, and Mr. *Robert Weſt* may come to him; his Majeſty was pleaſed to order, That the Lieutenant of the ſaid *Tower* of *London* do permit the ſaid *Stephen Colledge* to have Pen, Ink, and Paper, and to ſee his two Children, and the ſaid Mr. *Aaron Smith*, and *Mr. Robert Weſt*, and to converſe with them as often as he ſhall deſire in Preſence and Hearing of the Wardour who attends him.'

A true Copy,

Francis Gwyn.

To the King's moſt excellent Majeſty, and to the Right Honourable the Lords of his Majeſty's moſt honourable Privy Council.

The humble Petition of STEPHEN COLLEDGE, now a Priſoner in the *Tower* of *London*,

Humbly ſheweth,

'THAT your Petitioner having been a cloſe Priſoner ever ſince his firſt Commitment, is altogether ignorant of the particular Matters charged againſt him, and of the Names of the Witneſſes who are to prove the ſame; upon his Knowledge of both which, as well the Nature as the Manner of his Defence muſt depend; and becauſe upon the Conſideration of his Caſe, ſeveral Matters of Law may ariſe as well before as at the Time of his Trial, in which Council will be neceſſary to aſſiſt him, and ſeveral Matters of Fact preparatory to his Trial, with which, under his Confinement he cannot be furniſhed without the help of a Sollicitor, and he is like to be wholly uncapable of receiving any Benefit from the Privilege allowed by Law of peremptory Challenge to ſeveral Jurors, eſpecially in a Country where he is abſolutely a Stranger, unleſs he may have ſome Knowledge of them before his Trial.

'In full Aſſurance therefore of the great Juſtice and Clemency of your Majeſty and this honourable Board, which he hath lately had ſome Experience of, and doth with all Humility and Thankfulneſs acknowledge, your Petitioner doth humbly beſeech your Majeſty and this honourable Board, that he may have a Copy of the Indictment againſt him, or the particular Charges of it, that his Council and Sollicitor may have free Acceſs to, and private Conference with him; and becauſe their own private Affairs or other Accidents may call away ſome of his Council from his Aſſiſtance, that Mr. *Wallop*, Mr. *Smith*, Mr. *Thompſon*, Mr. *Darnel*, Mr. *Weſt* of the *Middle-Temple*, Mr. *Hawlles* of *Lincoln's-Inn*, Mr. *Rotherham*, Mr. *Lovell*, Mr. *Rowny* of *Gray's-Inn*, Mr. *Pollexfen*, Mr. *Ward* of the *Inner-Temple*, may be aſſigned him for Council, and *Aaron Smith* for his Sollicitor, and that he may have a Copy of the Jurors to be returned upon his Trial ſome Days before the Trial.'

And your Petitioner ſhall ever pray, &c.

A true Copy,

Francis Gwyn.

At *Hampton-Court*, *Auguſt* 11, 1681.

'IT is ordered by his Majeſty in Council, That the Friends and Relations of *Stephen Colledge*, a Priſoner in the *Tower*, ſhall have Liberty of viſiting and freely converſing with him; and the Lieutenant of the *Tower* having firſt cauſed their Names to be taken in writing, is to ſuffer ſuch Friends and Relations to have Acceſs to the ſaid *Stephen Colledge*, without any interruption from Time to Time accordingly.'

A true Copy,

Francis Gwyn.

CVII. *The Trial of* STEPHEN COLLEDGE[*], *at* Oxford, *for* High-Treaſon, Auguſt 17, 1681, 33 Car. II.

ON Wedneſday *the* 17*th of* Auguſt, 1681, *the Lord* Norreys, *Lord Chief Juſtice* North, *Mr. Juſtice* Jones, *Mr. Juſtice* Raymond, *Mr. Juſtice* Levinz, *Commiſſioners of* Oyer *and* Terminer *and Goal-Delivery, met at the Court-Houſe in the City of* Oxford ; *and after Proclamation for Silence, the Commiſſion of Goal-Delivery was read, and then the Commiſſion of* Oyer *and* Terminer. *Proclamation was made for the Sheriff to return the Precepts to him directly : The Juſtices of the Peace of the County of* Oxford *were called over* ; *and the Appearance of the Grand Jury ſummoned to attend this Commiſſion was taken.*

L. C. J. North[†]. Gentlemen, you that are returned of the Grand Inqueſt, there has been a Seſſions ſo lately that in all Probability there will be no great Matter to trouble you with at this Time. And ſo I ſhall not trouble myſelf nor you to give you any Charge, becauſe we know of no Buſineſs yet that we ſhall need you for. The Court hath recorded your Appearance. You will do well to be in the way either in the Town or here about the Court, that you may be ready if any Thing ſhould happen. 'Tis neceſſary for us to have your Attendance, but we know not of any Thing that we have in particular to trouble you with. We have an Indictment before us, let us proceed upon that.

Cl. of Crown. Goaler, have you your Priſoner ?

Goaler. We will fetch him preſently.

[*Then the Priſoner was brought to the Bar.*]

Cl. of Cr. Stephen Colledge, hold up thy Hand. (*Which he did.*)

'Thou art here indicted by the Name of *Stephen Colledge* late of *Oxford*, in the County of *Oxford*, Carpenter; for that thou as a falſe Traitor againſt the moſt illuſtrious, moſt ſerene, and moſt excellent Prince, our Sovereign Lord *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* thy ſupreme and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance ; but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due and natural Obedience which true and faithful Subjects of our ſaid Sovereign Lord the King towards him our ſaid Sovereign Lord the King, ſhould, and of right ought to bear, wholly withdrawing and machinating, and with all thy Strength intending the Peace and common Tranquillity of our ſaid ſovereign Lord the King of this Kingdom of *England* to diſturb, and Sedition and Rebellion, and War againſt our Sovereign Lord the King, within the Kingdom of *England* to move, ſtir up and procure ; and the cordial Love, and true and due Obedience which true and faithful Subjects of our ſaid Sovereign Lord the King, towards him our ſaid Sovereign Lord the King ſhould, and of right ought to bear, wholly to withdraw ; put out and extinguiſh, and him our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, the tenth Day of *March*, in the three-and-thirtieth Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* at *Oxford*, in the County of *Oxford*, falſly, maliciouſly, ſubtilly, and traiterouſly, did purpoſe, compaſs, imagine, and intend Sedition and Rebellion within this Kingdom of *England*, to move, ſtir up, and procure, and a miſerable Slaughter among the Subjects of our ſaid Sovereign Lord the King to procure and cauſe, and our ſaid Sovereign Lord the King from his Regal State, Title, Power, and Government of his Kingdom of *England*, to deprive, depoſe, caſt down and diſinherit; and him our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, and the Government of the ſaid Kingdom at thy Will and Pleaſure to change and alter, and the State of all this Kingdom of *England*, in all its Parts well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid Sovereign Lord the King, within this Kingdom of *England* to levy; and thy ſaid moſt wicked Treaſons and traiterous Imaginations and Purpoſes aforeſaid to fulfil and perfect, thou the ſaid *Stephen Colledge* the ſaid tenth Day of *March*, in the three-and-thirtieth Year of the Reign of our ſaid Sovereign Lord the King, with Force and Arms, *&c.* at *Oxford* aforeſaid, in the County of *Oxford* aforeſaid, falſly, maliciouſly, ſubtilly, adviſedly, deviliſhly and traiterouſly didſt prepare Arms, and Warlike offenſive Habiliments to wage War againſt our ſaid Sovereign Lord the King. And thyſelf, in War-like Manner, for the Purpoſes aforeſaid, then and there falſly, maliciouſly, ſubtilly, adviſedly, deviliſhly and traiterouſly didſt arm, and one *Edward Turbervile*, and other Subjects of our ſaid Sovereign Lord the King, to arm themſelves, to perfect thy traiterous Purpoſes aforeſaid, then and there adviſedly, maliciouſly and traiterouſly didſt incite and adviſe. And further, then and there falſly, maliciouſly, ſubtilly, adviſedly, deviliſhly and traiterouſly didſt ſay and declare, That it was purpoſely deſigned to ſeize the Perſon of our ſaid Sovereign Lord the King at *Oxford* aforeſaid, in the County of *Oxford* aforeſaid. And that thou the ſaid *Stephen Colledge*, in Proſecution of thy traiterous Purpoſe aforeſaid, would be one of them who ſhould ſeize our ſaid Sovereign Lord the King at *Oxford* aforeſaid, in the County aforeſaid. And that thou the ſaid *Stephen Colledge*, thy ſaid moſt wicked Treaſons and traiterous Imaginations, Compaſſings and Purpoſes aforeſaid the ſooner to fulfil and perfect, and Diſcords between our ſaid Sovereign Lord the King, and his People to move, cauſe and procure, then and diverſe Times and Days, as well before as after, in *Oxford* aforeſaid, in the County of *Oxford* aforeſaid, in the Preſence and Hearing of diverſe liege Subjects of our ſaid Sovereign Lord the King, then and there being preſent, falſly, maliciouſly, ſubtilly, adviſedly, deviliſhly and traiterouſly didſt ſay and declare, That nothing of good was to be expected from our ſaid Sovereign Lord the King, and that our ſaid Sovereign Lord the King did mind nothing but Beaſtlineſs and the Deſtruction of his People: And that our ſaid Sovereign Lord the King did endeavour to eſtabliſh arbitrary Government and Popery, againſt the Duty of thy Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statutes in this Caſe made and provided.'

How ſay'ſt thou, *Stephen Colledge*, art thou Guilty of this High-Treaſon, whereof thou ſtandeſt indicted, and haſt now been arraign'd, or Not Guilty ?

Colledge. My Lord, I do deſire, if it pleaſe your Lordſhip, to be heard a few Words.

L. C. J. Look you, Mr. *Colledge*, the Matter that hath been here read unto you is a plain Matter, and it hath been read to you in *Engliſh*, that you may underſtand it. 'Tis an Indictment of High-Treaſon ; now you muſt know, that no Plea can be received to it, but either Guilty, or Not Guilty, as to the Fact ; if you can aſſign any Matter in Law, do it.

Colledge. Will you pleaſe to ſpare me, that I may be heard a few Words. I have been kept a cloſe Priſoner in the *Tower* ever ſince I was taken : I was all along unacquainted with what was charged upon me. I knew not what was ſworn againſt me, nor the Perſons that did ſwear it againſt me, and therefore I am wholly ignorant of the Matter. I do humbly deſire, I may have a Copy of the Indictment, and a Copy of the Jury that is to paſs upon me, and that I may have Council aſſigned me, to adviſe me, whether I have not ſomething in Law pleadable in Bar of this Indictment.

L. C. J. Theſe are the things you aſk, you would have a Copy of the Indictment, you would have Council aſſigned to you, to adviſe you in matter of Law, and a Copy of the Jury.

Colledge. One Word more, my Lord, I deſire to know upon what Statute I am indicted ?

L. C. J. I will tell you for that. Is it not *contra formam Statut.* with an Abbreviation ?

Cl. of Cr. Yes.

L. C. J. That refers to all manner of Statutes that have any Relation to the Thing in the Indictment that is High-Treaſon. For it may be meant *contra formam Statut.* which are all the ſeveral Statutes that are in force concerning High-Treaſon. Now for thoſe things that you demand, you cannot have them by Law. No Man can have a Copy of the Indictment by Law ; for Council you cannot have it, unleſs matter of Law ariſes, and that muſt be propounded by you ; and then if it be a Matter debatable, the Court will aſſign you Council, but it muſt be upon a matter fit to be argued : For I muſt tell you, a Defence in Caſe of High-Treaſon ought not to be made by Artificial Cavils, but by plain Fact. If you propoſe any matter of Law, the Court will conſider of it, and aſſign you Council, if it be reaſonable. For a Copy of the Jury, that you cannot have neither, for there is no ſuch thing as yet ; there is no Iſſue joined whereupon ſuch a Jury ſhould be impannelled. When you have pleaded to Iſſue, then we muſt award the Sheriff to impannel a Jury to try that Iſſue. So as to what you ſay as to want of Preparation for your Trial, we cannot enquire what Notice you have had ; and yet if you had never ſo little Time, there is no Cauſe why you ſhould not plead, though you were but juſt now taken and brought to the Bar to anſwer it, and never heard of any thing of it before. So that I think you ought to plead preſently.

Colledge. My Lord, I am wholly ignorant of the Law, I may ruin myſelf by miſtaking the Law ; I deſire Council, not to delay my Trial, but only to adviſe me, whether there is not ſomething in Law proper for me to plead to this Indictment, and thoſe things I alledged were not at all to delay the Trial, but only that I may not be wanting to myſelf in what I may by Law have.

L. C. J. I tell you, Council cannot be aſſigned you, till the Court be poſſeſſed of ſome Matter to grant it upon.

Colledge. I had ſome Papers, my Lord, that were taken from me, which I deſire may be reſtored to me. I only plead, that I may have my Birthright, and that which the Law gives me ; if I may have Juſtice, I deſire no more. Thoſe Papers were taken from me in the Houſe over the way ſince I was brought from the Priſon ; they were Papers that concerned my Defence ; ſome Directions and Inſtructions how to manage myſelf in that Defence. If you pleaſe to let me have thoſe Papers, I will not take up much of your Time ; I deſire to have but common Juſtice, and that which is my right by Law.

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[*] Burn *Hiſt of his own Times*, Vol. I. p. 504.

[†] *See his Character*, Ibid. 665.

L: C. J. That which you demand, Juſtice, you ſhall have by the Grace of God to the beſt of our Skill, without any Partiality in the World. But you muſt truſt the publick Juſtice of the Kingdom. We are to be of Council for you, ſo far as to ſee that all Things proceed fairly on all Sides. And when Things come before us that are fit for you to have Council upon, you ſhall have Council aſſigned you; for we are tender of the Life of a Man, as well as of the Life of the King, and of the publick Juſtice of the Kingdom. But this is no Reaſon why you ſhould not now plead. For the Papers you ſpeak of, we will take an Examination of them afterwards. If they were Papers that are neceſſary for your Defence upon your Trial, in God's Name you muſt have them reſtored to you; but we know not which way you came by them, nor what they are.

Colledge. They were taken from me juſt now, under Pretence of bringing them to your Lordſhip.

L. C. J. How comes any body to give you Papers? No body can ſolicit for one that is under an Accuſation of High-Treaſon, unleſs he be aſſigned ſo to do by the Court *.

Colledge. God have Mercy upon any Man that is ſo accuſed then; for 'tis not poſſible for him to make his Defence, if he cannot be at Liberty to look after it himſelf, nor any of his Friends permitted to do it for him.

L. C. J. You can ſay, whether you are Not Guilty without any Papers.

Colledge. My Lord, I know not but there may be ſomething in Law for me to plead to this Indictment, which I ſhall loſe the Benefit of, if I plead. I humbly conceive, you are to be my Council; and as you are Judges, are to proceed according to the Law. You are upon your Oaths do me right according to the Law.

Mr Juſt. *Jones.* But till you have propoſed a Matter of Law fit for Council to argue, there is no Council to be aſſigned you.

Colledge. If I had thoſe Papers I could tell what I ſhould plead. My Lord, this is one Thing, I am a Freeman of *London*, and I am not impleadable by the Charter of *London* any where out of the Liberties of the City in Pleas of the Crown.

L. C. J. You are indicted in *Oxfordſhire* for High-Treaſon committed here. If there be not any thing of High-Treaſon proved, done in *Oxfordſhire*, you will be acquitted. But a Free-man of *London* cannot have a Privilege to commit Treaſon in *Oxfordſhire*, but muſt be tried for it there.

Colledge. Will you pleaſe to order me my Papers back that were taken from me?

Mr. Juſt. *Jones.* You ought firſt to plead. You have a right to demand Council in Matters of Law, but then it muſt be upon ſuch Matters of Law as you yourſelf propoſe to the Court, and the Court ſhall judge to be Matters of Law fit to be debated: Till then we cannot aſſign you Council.

Colledge. It was ſo in the Trial of *Lilburne*, and in the Trial of my Lord *Stafford*, there was Council aſſigned to them.

Mr. Juſt. *Jones.* Not before they pleaded to the Indictment.

Colledge. Did not your Lordſhips, ſome of you, that are Judges of the *King's-Bench* ſay, that it was the Right of the Priſoner, to have a Copy of the Pannel and of the Jury before the Trial?

Mr. Juſt. *Jones.* No ſure: Here are two of us that are of the Court, and we never heard of any ſuch thing.

Colledge. Pray, my Lord, do me Right, I am ignorant of the Law, and through my Ignorance may miſtake.

L. C. J. God forbid we ſhould not do you Right; you may expect it from us; we are upon our Oaths to do all the King's Subjects Right.

Colledge. I am ignorant in the Law, and 'tis impoſſible for me to make my Defence without the Aſſiſtance of my Papers.

L. C. J. Cannot you tell, whether you be Guilty or Not Guilty of this Treaſon?

Colledge. I can ſo; but I know not what Error I may run myſelf into, if I ſhould plead preſently, and loſe the Benefit that the Law may give me.

L. C. J. All Matters of Law are ſaved to you after you have pleaded.

Colledge. Pray, my Lord, let me have my Papers again that were taken from me.

Cl. of Cr. You muſt plead to the Court, Guilty or Not Guilty.

Colledge. Shall I not have my Papers after I have pleaded?

L. C. J. We will not capitulate with you. Move what you will then; but till you have pleaded, we can enter into no other Buſineſs.

Colledge. I know not but I might plead ſome other thing to the Indictment.

Mr. Juſt. *Jones.* Propoſe what you will, if it be a Matter in Law fit to be argued, you ſhall have Council aſſigned you.

Colledge. Pray, my Lord, let me have my Papers again. If it were not my Right to have them, or to have Council, I would not aſk it; but if it be, I would not loſe what is my Right.

L. C. J. You muſt plead firſt. I know not but he may be a Criminal that brought you thoſe Papers; for we allow no Sollicitors in Caſes of Treaſon.

Colledge. Some of thoſe Papers were received from me in the *Tower*, and were brought back to me, and taken away but to Day, I deſire they may be returned.

Cl. of Cr. Are you Guilty or Not Guilty?

Colledge. Thoſe Papers tell me I have a Plea in Law, but what it is, I cannot directly tell without my Papers.

L. C. J. You muſt mention it and propoſe it, and then we will do what is fitting for us to do in it.

Colledge. I have not that Method about me, nor can I directly tell it without my Papers; but 'tis ſomething of Law about the Indictment.

L. C. J. You are not bound up to Forms of Law. For if you propoſe the Matter never ſo looſely, yet if it be a Matter of Avail, and that which the Law is not clearly againſt you in, you ſhall have Council, and Time to draw it up in Form.

Colledge. I cannot propoſe the Matter ſo regularly as if I had my Papers.

Mr. Juſt. *Jones.* You are not bound to propoſe it in Formality of Law, my Lord tells you; only let us know what it is.

Colledge. If I have a Priviledge in Law, I hope you will give me the Benefit of it.

L. C. J. We will deny you nothing that the Law gives you; but we cannot give you Council. It is not one particlar Caſe, but the common Courſe of Juſtice is concerned. Without a Matter of Law ariſes, we cannot aſſign you Council; if we would, we cannot in Juſtice till you have propoſed the Matter which the Court thinks fit to be argued.

Colledge. My Lord *Coke* ſays, it is the Birth-right of every *Engliſhman* to have Council in Matters of Law, and *Lilburne* * had it upon ſolemn Argument in his Trial.

* *Trial* 45.

Mr. Juſt. *Jones.* What Times were thoſe? That was before the High Court of Juſtice.

Mr. Att. Gen †. If there be Matter in Law, it muſt be propoſed to the Court, and they are to judge, whether it be a Point fit to be argued, and then Council is to be aſſigned you, and not till then.

† Sir *Robert Sawyer.*

Colledge. My Lord, I know not but there may be ſomewhat in Law for me to plead to this indictment, till I have my Papers I can't tell what it is.

L. C. J. We know nothing of your Papers what they are: you muſt anſwer whether you be Guilty or Not Guilty.

Colledge. If I had my Papers, I would anſwer to it immediately; but I hope I ſhall not be murdered.

Mr. Juſt. *Jones.* Have a care of aſperſing the Court. Pray who intends to murder you?

Mr. Serj. *Jefferies.* I remember in *Lilburne*'s Trial, that he ſpeaks of, ſuch words were uſed indeed.

Colledge. My Lord, I hope I ſhall not be denied what is neceſſary for my Defence. This Deſign is not only againſt me, but againſt all the Proteſtants.

Mr. Att. Gen. How long have you been a Proteſtant, Mr. *Colledge*?

Colledge. Ever ſince I knew what Religion was, Sir; I never was any thing elſe. For God's ſake, my Lord, let me have the Juſtice of the Nation, and what by Law an *Engliſhman* ought to have.

L. C. J. You muſt plead Guilty or Not Guilty, or you muſt ſhew ſome Matter that you will plead, that is proper for us to aſſign you Council. If we ſhould record your Refuſal, you would be judged to ſtand Mute, and Sentence would paſs upon you.

Colledge. If I have a Privilege in Law as an *Engliſhman*, I will not forfeit it, if I can help it, for any thing in the World. Therefore I deſire I may have my Papers again, that I may ſee if I can plead any thing in Law; for if I have a Privilege by the Law, before I will forfeit it, you ſhall do what you pleaſe with me.

L. C. J. You'll have the Advantage of all that Matter that is in your Papers after you have pleaded, if there be any Advantage.

Colledge. Pray, my Lord, order me my Papers that were taken away from me.

L. C. J. They were not taken away by me.

Colledge. They were taken away by the Keeper, under Pretence to bring them to your Lordſhip.

L. C. J. I know not how you came by them. There came one to me laſt Night that is a common Sollicitor, one *Aaron Smith*, and deſired he might have Liberty to go and ſpeak with the Priſoner; I told him, I did not underſtand till he were aſſigned by the Court, that any could juſtify ſolliciting for a Man that is accuſed of High-Treaſon, nor could any be of Council till they were aſſigned: For a Defence againſt Treaſon ought to be by plain Matters of Proof and Fact, and not by artificial Cavils. But if you will propoſe any thing of Subſtance as a Matter in Law which the Court ſhall think fit to be argued, propoſe it, and then we will aſſign you Council.

Colledge Is it not my Right, that I ought to have a Copy of the Jury?

L. C. J. Look you for that now, you cited the Opinion of the Judges of the *King's-Bench.* My Brothers two of them that are here who are Judges in that Court, ſay, they know nothing of any ſuch Matter: But I tell you, you have Liberty by Law to challenge 35, by your Sight peremptorily without ſhewing Cauſe. They are bound to look upon you when they come to be ſworn, and if you have juſt Cauſe, you may except againſt as many more as you will. But now we that proceed upon a Commiſſion of Goal-delivery, are to proceed with Expedition; there are no particular Men deſigned for a Jury that I know of. But when you have pleaded, we ſhall award the Sheriff to impannel a Jury.

Colledge. If the Law allows me the Liberty of Challenging, it does intend it me, that I may challenge thoſe Perſons that I think will not do me Juſtice; but where they are ſtrangers unto me, if I can have no Information about any of them by my own Inquiry or my Friends, I may challenge my Friends as well as my Foes: And ſhould there be any Perſon that has a Prejudice againſt me, and I not know it, he may chance to be one.

L. C. J. I hope they will be neither Friends nor Foes, but true Men.

Colledge. I know not that, my Lord.

Mr. Juſt. *Jones.* This that you ſay as to a Copy of the Jury is unſeaſonable. There is no Jury, nor can be awarded till you have pleaded. There muſt be firſt Iſſue joined; and that cannot be but upon your Plea of Not Guilty. Therefore you muſt plead firſt, and then ſay all you will.

Cl. of Cr. Are you Guilty or Not Guilty?

Colledge. My Lord, may not I have a Pannel of the Jury?

Mr. Juſt. *Jones.* There is no ſuch thing in being.

Colledge. I know not what to ſay to it; pray, my Lord, let me have my Papers.

Cl. of Cr. You have heard the Opinion of the Court, you muſt firſt plead.

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* This was very ſtrange Treatment of the Priſoner, who had an Order of King and Council appointing him a Council and Sollicitor, which is printed before the Trial.

Colledge. I cannot plead firſt. I muſt loſe my Life, if I muſt; I neither know who accuſes me, nor what it is they accuſe me of; 'tis impoſſible I could defend myſelf if I have not my Papers.

L. C. J. We know not what Papers you mean.

Colledge. The Goaler took them from me, and one of the King's Meſſengers. Pray, my Lord, will you order them to be returned to me again? Let me but ſee whether I have any Right or no, and whether I have any Thing to plead or no: When I have peruſed my Papers, I will propoſe it as well as I can to you. Pray, my Lord let me have a fair Trial.

L. C. J. We promiſed you a fair Trial, but you muſt put yourſelf upon that Trial by your pleading.

Colledge. I cannot do that without my Papers, my Lord. Let me but have them again, and I will not delay your Time at all.

L. C. J. You can tell whether you are Guilty, or Not Guilty, can't you.

Colledge. If I have a Plea in Law againſt the Indictment, I hope you will not hinder me of that which is my Right. It is poſſible the Indictment does not lay it right, either as to the Matter of Treaſon, or as to the Place.

Mr. Juſt. *Jones.* That is upon the Iſſue of Not Guilty upon your Trial. If there be not Matter of Fact, or Words proved that are Treaſon in this Place, you will have the Advantage of it upon your Trial.

Colledge. I know not, my Lord, but that the Indictment does mention ſomething of Treaſon, and ſomething of Miſdemeanour.

Mr. Juſt. *Jones.* That which is Miſdemeanour, won't amount to a Proof of the Treaſon upon the Trial.

L. C. J. If they prove no Treaſon againſt you here, but only Miſdemeanour, I do not underſtand that the Jury can find you Guilty of that Miſdemeanour, for 'tis another Crime, and there is another ſort of Proceedings for it. In Miſdemeanour, there are no peremptory Challenges; in Miſdemeanour Council is to be allowed for the Priſoner, but not in Treaſon.

Colledge. Pray, my Lord, be pleaſed to order me my Papers again: I know not what to ſay without I have the Aſſiſtance of my Papers; when I have them, I ſhall be ready to plead preſently according as I ſhall find I may by Law. This I am ſure, I have done nothing, nor ſaid nothing of Treaſon, and I pray for nothing but Juſtice, and that which is my right. This is a moſt horrid Conſpiracy to take away my Life; and it will not ſtop here, for it is againſt all the Proteſtants in *England.*

L. C. J. Mr. *Colledge*, you do not only trifle, but run out into very great Extravagancies. Who has any Conſpiracy againſt your Life? You ſhall be allowed to give in Evidence any thing of any Conſpiracy againſt you, or Contrivance againſt you when you are upon your Trial. Now the Queſtion is, Are you Guilty, or not Guilty? I ſee no Uſe of Papers that you can have as to the Plea.

Mr. Juſt. *Jones.* You will run into Danger by ſpending of Time.

Colledge. Pray, my Lord, order me my Papers, they are in the Hands of Mr. *Murrell* the Goaler, and *Sewell* the King's Meſſenger.

L. C. J. When you have pleaded, we will take it into Conſideration.

Colledge. It may be too late then.

L. C. J. 'Tis a plain Matter before you, whether you be Guilty or no. You know what to anſwer.

Colledge. I will give a direct Anſwer, after I have my Papers again.

Mr. Juſt. *Jones.* You can give an Anſwer to that without Papers.

L. C. J. Conſult with your own Heart, and there you may receive an Anſwer to that Queſtion.

Mr. Att. Gen. Mr. *Colledge*, can any body tell whether you be guilty, or no, better than your ſelf?

Mr. Juſt. *Jones.* If you expect any Papers, they ought to be framed by yourſelf; for by Law, none can adviſe you what to plead.

Colledge. I don't expect it in Matter of Fact, but if Matter of Law ariſe.

Mr. Juſt. *Jones.* But this is a Matter of Fact, and therefore you may plead Not Guilty, as well without your Papers, as if you had them.

Colledge. But if there be any Matter of Law, that I ought to have the Advantage of.

Mr. Juſt. *Jones.* Then you ought to have no Advice, till they be aſſigned by the Court: For by the Law, neither Council nor Advice are allowable to you, till the Matter has been propoſed, and the Court think fit to aſſign you Council.

Mr. Juſt. *Levinz.* You talk of the Privilege of an Engliſhman; you have all the Privileges of an Engliſhman: You are here brought to an open Trial, according to the Law, and by that Law you muſt plead. Now if a Man be indicted for High-Treaſon, he is bound to plead either Guilty, or Not Guilty, unleſs he has a Matter in Law to excuſe him from that Plea, which muſt be propoſed to the Court, and then Council will be aſſigned; and if ſo be Matter of Law ariſes upon any Evidence that is given againſt you at the Trial, you may demur upon that Evidence, and pray Council of the Court to argue that Demurrer, and they will not deny you; but I think you muſt plead preſently.

Colledge. I ſuppoſe other Perſons that have been tried, have had Council before they have pleaded.

Mr. Juſt. *Jones.* But never before the Matter was propoſed to the Court.

L. C. J. It was ſo in the Caſe of my Lord *Stafford.* The Court made him propoſe his Matters in Law, and ſo it was in *Lilburne*'s Caſe. He did inſiſt upon a great many Matters in Law, and had the Books there himſelf.

Colledge. I am wholly ignorant of the Law, my Lord.

Mr. Serj. *Jefferies.* Your Lordſhips are the Judges of the Law in this Caſe. The Queſtion here in ſhort is, whether the Priſoner be Guilty or Not Guilty, and that being demanded of him by the Court, if he refuſes, let him take the Conſequence of it.

Colledge. What is that, pray, Sir *George?*

Mr. Att. Gen. Judgment of High-Treaſon. For if a Perſon ſtand mute, and will not plead to an Indictment of High-Treaſon, the common Judgment of preſſing to Death muſt not paſs upon him, but an Attainder of High-Treaſon.

Colledge. Well, if it be ſo, I cannot help it. I thank God, I am innocent of any Treaſon, or any ſuch thing.

L. C. J. Why don't you plead Not Guilty, then?

Colledge. I do not refuſe to plead, I am willing to plead with all my Heart, if I may have my Right.

Mr. Juſt. *Jones.* If you do not plead, you refuſe to plead.

Colledge. Pray, my Lord, let me have my Papers.

Mr. Att. Gen. Pray give the Court an Account, where had you thoſe Papers.

L. C. J. Nay, we will not enter into any Examination of that Matter now, Mr. Attorney; he can have no Uſe of Papers to ſee whether he ſhould plead Guilty, or Not Guilty.

Mr. Serj. *Jefferies.* We know nothing of thoſe Papers, we deſire that he may anſwer to the Queſtion ſhortly, whether he be Guilty or Not Guilty; if not, we pray your Lordſhip's Judgment.

Colledge. I had them not all from one Perſon, they were received from my own Hands, ſome of them in the *Tower*; and being brought back to me, they were taken from me to Day; let me have but one of them: The Paper of Inſtructions in Point of Law, that I may know what is my Right: I would not throw away my Life, if I have any thing that is my Right that can preſerve it.

L. C. J. You are to give a plain Anſwer, whether you are Guilty or Not Guilty, now for that you have no Uſe of Papers: For you can beſt tell whether you be Guilty or Not. If you can propoſe any Matter of Law that you can have to plead, do it.

Colledge. If I have any Plea, that I may plead beſides Not Guilty, I deſire I may have my Papers to conſider of it, and that I may have Council aſſigned me.

L. C. J. If you have any ſuch Plea, tell us the Matter and Subſtance of it.

Colledge. I do not know what really are Matters of Law; if I had thoſe Inſtructions that are in my Papers, I could give you a direct Anſwer preſently.

L. C. J. You ought not to have any Advice to decline your Trial: When you propoſe Matter of Law yourſelf, you may have advice upon it. But you ought not to have Advice to decline your Trial before-hand.

Cl. of Cr. Are you Guilty, or Not Guilty?

Colledge. Mr. Attorney, pray let me have a Copy of the Indictment.

Mr. Att. Gen. Apply yourſelf to the Court for it, we muſt receive our Directions from thence.

L. C. J. You have had the Opinion of the Court, you can't have it.

Mr. J. *Levinz.* You have been told nothing can be received from you, but a Plea of Guilty, or Not Guilty, and the Court have given you their Opinion, and that you cannot have a Copy of the Indictment, nor Council aſſigned you, till you offer ſomething for them to be aſſigned upon.

L. C. J. And that was it which was done in the *King*'s-*Bench* in the Caſe of *Fitz-Harris*, which I ſuppoſe you meant when you ſpeak of the Judges Opinions.

Mr. Juſt. *Jones.* Nothing was done there till he himſelf aſſigned the Matter in Law that he would plead, and then Council was aſſigned him.

Mr. Serj. *Jefferies.* Mr. *Colledge* was in the Court at that Time, and can tell what was done.

L. C. J. If you deſire the Indictment read over again diſtinctly, that you may have.

Mr. Att. Gen. Ay, with all my Heart.

Colledge. Pray let me hear it again, my Lord, if you pleaſe.

L. C. J. Read it over again to him, and read it diſtinctly.

Cl. of Cr. Thou art indicted by the Name of *Stephen Colledge*, late of *Oxon*, in the County of *Oxon*, Carpenter, as a falſe Traitor.

Colledge. I have obſerved one Thing already, my Lord, I pray I may have Pen and Ink.

L. C. J. Ay, give him Pen and Ink, let him make what Obſervations he can.

Then the Clerk read the Indictment through.

Clerk of Crown. Art thou Guilty of this High-Treaſon, or Not Guilty?

Colledge. This Indictment, if I underſtand it, ſays, there was a Plot and Conſpiracy by me and others; now I know when my Lord *Stafford* was tried, they did proceed to prove, firſt, that there was ſuch a Plot, and then that my Lord was guilty of it; firſt, that there was ſuch a Conſpiracy by the Papiſts, is it not requiſite they ſhould firſt prove ſuch a Plot and Conſpiracy there was, before they go to prove me guilty of it?

Mr. Juſt. *Jones.* What before you have pleaded?

L. C. J. When you have pleaded, the next thing is to try you, and to give the Evidence; but what Way the King's Council will take to manage your Trial, that we can't tell.

Mr. Juſt. *Jones.* But they are not to be directed by you, Mr. *Colledge.*

Colledge. It was ſo done, I ſay, in my Lord *Stafford*'s Caſe.

L. C. J. He pleaded firſt, however, you have not yet pleaded.

Cl. of. Cr. Are you Guilty or Not Guilty?

L. C. J. Do not trifle any longer, 'tis a plain Matter, and requires a very ſhort and plain Anſwer.

Colledge. Your Lordſhips are my Council, as well as my Judges, and I do deſire if I have any Right to plead any other Matter, you will be pleaſed to declare it to me, for I am ignorant in the Law.

Mr. Juſt. *Jones.* We have declared our Opinion already, that you have no Right to have any Solicitor or Council, till Matter of Law do ariſe.

Colledge. Is it your Lordſhips Opinion, that I have no Plea in Law?

Mr. Juſt. *Jones.* Have you no Plea in Law?

L. C. J. He would have our Judgment, whether there be any or no.

Mr. Juſt. *Jones.* You yourſelf know beſt; we know nothing you have to plead.

Colledge. I cannot, unleſs I have Council, and my Papers.

L. C. J. There does nothing appear to us.

Colledge. I know nothing of the Law.

L. C. J. Then plead Not Guilty, that is a ready Plea.

Mr. Juſt. *Jones.* You have had our Opinion over and over again. You have as much Council as is allowed in theſe Caſes, for every Man is beſt Judge of his own Caſe, what to plead, whether Guilty or Not Guilty: You have had as fair Play as ever any Man had.

Mr. Att. Gen. Mr. *Colledge* has ſaid, he knows of no Plea in Law he has, and therefore there is none; for *de non apparentibus & non exiſtentibus*, the Reaſon is the ſame.

L. C. J. In Matter of Fact, there is no Plea, but Not Guilty.

Coll. The Court are Judges in Matter of Law, and they are my Council.

Mr. Juſt. *Jones.* And the Court have all of them declared, they know of nothing in Law that you have to plead.

Coll. Is not Council to be allowed to one under my Circumſtances?

L. C. J. If you have any thing for Council to be aſſigned upon, you ſhall have them.

Coll. If I am ignorant of that, and cannot propoſe it, ſhall I not have the Aſſiſtance of Council?

Mr. Juſt. *Jones.* No, we have told you the Law plainly, and that which is frequent in Practice in like Caſes, and you muſt be contented with the ſame Meaſure.

Coll. My Lord, I am ignorant of the Law.

L. C. J. Then rely upon the Fact, and plead Not Guilty.

Coll. But if I have a Right to any Point in Law let me have it.

Mr. Juſt. *Jones.* You have a Right if you will propoſe any Matter of Law, but we cannot propoſe it for you.

Mr. Att. Gen. Mr. *Colledge*, no Man ought to propoſe your Plea for you; *Ignorantia juris non excuſat.*

Coll. Shall my Ignorance deſtroy me, Mr. Attorney?

Mr. Sol. Gen. You have heard the Opinion of the Court, you have a Right to propoſe any other Plea that you can yourſelf; but you have no Right to aſk Council before you have pleaded.

Mr. Serj. *Jeff.* If Mr. *Colledge* have ſuch a thing as a Solicitor, I ſhall crave leave to put that Solicitor in mind of the Caſe of one that was indicted of High-Treaſon.

Mr. Att. Gen. We ſhall talk of that by-and-by.

L. C. J. The ſame Methods are uſed in our Caſe, as are in all Caſes of the like Nature, as far as my Knowledge reacheth.

Coll. If I have a Right to the Law, I muſt not loſe it for my own Ignorance of the Law; but if you deny me both my Council and my Papers, you take away the Means of my coming to that Right, and make me uncapable of making my Defence.

L. C. J. You have been told you muſt plead before you do any thing.

Coll. This is the Perſon *(pointing to a Perſon by him)* that had the Papers. Be pleaſed to command him, that I may have them again: He ſaid, he had Orders to take them from me, and bring them to your Lordſhip.

L. C. J. I know of no Uſe you could have of any Papers, to plead Guilty or Not Guilty.

Mr. Sol. Gen. If there be in thoſe Papers Advice in Matters of Law, that you have been told you ought not to have, till the Court has aſſigned you Council to give you Advice.

Coll. Then if there be a Right in Law, and a Privilege which I ought to have, I muſt loſe it by my being ignorant of it, and have no one to adviſe me about it neither.

L. C. J. You may propoſe it, if you have any, if not, you muſt plead to the Indictment.

Mr. Serj. *Jeff.* My Lord, it has not been uſual for us, that are of the King's Council, to enter into Dialogues with Priſoners at the Bar. The firſt thing that is to be done in ſuch Caſes, is for the Priſoner to plead Guilty or Not Guilty, or to offer ſomething to the Court that may be a matter in Law fit to be debated; and this we pray may be done in this Caſe, and that the Priſoner may plead preſently, or elſe we deſire your Judgment.

Coll. Pray let me have my Papers again, my Lord.

L. C. J. You go in a Circle, and run round from one thing to another, and will receive no Anſwer. We have told you our Opinion, and we muſt tell you, though you hold long Diſcourſes, yet you will be judged loſt and mute, if you plead not a legal Plea: Therefore you muſt plead Guilty or not Guilty, or offer ſomething that may be a Plea in Law, and then you ſhall have the Aſſiſtance of Council, but you muſt have none till then.

Coll. But ſhall I not have my Papers, my Lord?

L. C. J. We know nothing of them.

Coll. Pray, my Lord, order the Man to give them to me, that took them from me.

L. C. J. We will order no ſuch thing. He may be a Criminal perhaps that did give them you at firſt; but when you have pleaded, we will hear any Motion you will make about them.

Coll. It may be I ought to plead, that Words were ſpoken in another Place than the Place laid in the Indictment.

L. C. J. You will not need to plead any ſuch thing; for if there be nothing proved of Treaſon that you ſaid or did in *Oxfordſhire*, you muſt be found Not Guilty.

Coll. Here is another thing, my Lord, I am indicted by the Name of *Colledge*, Carpenter.

L. C. J. What then?

Coll. I am not a Carpenter, but a Joiner; is that any Bar to it?

L. C. J. The Addition ſignifies nothing, I do not know any Difference betwixt a Carpenter and a Joiner in Law.

Mr. Juſt. *Jones.* They might have indicted you by the Name of Labourer, and it had been good.

Coll. Pray, my Lord, either give me my Papers or aſſign me Council, or elſe I may throw away my Life, for I am wholly ignorant of the Law.

L. C. J. When you have pleaded, we will hear any Motion you will make, and do that which is juſt upon it; but I ſee no Uſe you can have of Papers to plead Guilty or Not Guilty, which is the only Queſtion is aſked you.

Cl. of Cr. Are you Guilty or Not Guilty?

Coll. Will you promiſe me, my Lord, there ſhall no Advantage be taken againſt me, if I do plead ſo?

L. C. J. We will make no Bargains with you. Plead as you ought by Law to do.

Coll. If Matters of Law ariſe, ſhall I have Council to ſpeak to them?

Mr. Juſt. *Jones.* Yes, you ſhall, you need not doubt it. Propoſe any Matter now fit to be argued, and you ſhall have Council to it.

Coll. I am not capable of doing it. I know not when I have any Right.

Mr. Juſt. *Jones.* The Court is of Council to you.

Coll. If you are my Council, then have I any Plea in Law to make?

Mr. Juſt. *Jones.* You have heard the Indictment read, what ſay you? For you muſt propoſe the Matter.

L. C. J. We know of none but Guilty or Not Guilty; if you can tell any, do.

Coll. I pray I may have my Papers again; if there be no other Plea for me, pray let me have my Papers again.

L. C. J. You have heard the Opinion of the Court, you muſt plead.

Mr. Att. Gen. Certainly, Mr. *Colledge*, you can't be guilty of theſe things, you need not to ſcruple it, to plead Not Guilty, ſure.

Coll. My Lord, having been kept a Priſoner, as I have been, without Pen, Ink, or Paper, no Converſation with my Friends, or Knowledge of the Fact, and being ignorant of the Law, not knowing where I have a Right, nor when I have a Right, if you do force me upon this Plea, and it coſt me my Life, at your Doors lie it.

Mr. Juſt. *Jones.* You will looſe your Life if you do not plead; if you plead Not Guilty, and are not proved Guilty, you will ſave your Life by this Plea.

Coll. I am willing to plead what the Law requires of me to plead, and if I have a Right in Law, I would not loſe it.

Cl. of Cr. Are you Guilty or Not Guilty?

Coll. Why then as they have laid it in that Indictment, in Manner and Form as 'tis there laid, I am not Guilty.

Cl. of Cr. Culprit, by whom wilt thou be tried?

Coll. By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Mr. Juſt. *Jones.* Not Guilty is his Plea.

L. C. J. Now he has pleaded, Mr. Attorney; he ſpeaks of ſome Papers, if there be any Memorandums, or any Thing that muſt aſſiſt him, that is neceſſary for his Defence in his Trial in thoſe Papers, it will be hard to deny him them.

Mr. Att. Gen. If your Lordſhips pleaſe to give me Leave, I will give you an Account of them. The Meſſenger juſt now did deliver theſe Papers to be delivered to the Court.

Coll. Pray ſpeak out, Mr. Attorney, and let me hear.

Mr. Att. Gen. When he came to Priſon he had none, but Mr. *Aaron Smith*, the Meſſenger informed me, did deliver them to him.

L. C. J. Whoſe Hand-writing are the Papers in?

Coll. He received them from me in the *Tower*.

Mr. Juſt. *Jones.* You received them from him firſt.

Coll. No.

Mr. Att. Gen. What were the Papers you delivered to him in the *Tower*.

Coll. The three Pieces joined together that contains Directions how to govern myſelf; there is another to the ſame Purpoſe, which inſtructs me to demand a Copy of the Indictment, and of the Pannel of the Jury, and thoſe were Inſtructions to tell me what the Law allows me.

Mr. Att. Gen. Here is a Speech made for you that begins thus; *Before you ſpeak, ſpeak to this Purpoſe.* Pray, my Lord, I deſire that may be examined, and Mr. *Smith* may be called to give an account how he came to give the Priſoner thoſe Papers; for here are Abundance of Niceties propoſed for him to move, and there will be a ſtrange Sort of Proceedings at this rate, if Men go about to eſpouſe the Cauſe of Traitors.

Coll. I am no Traitor, Mr. Attorney.

Mr. Att. Gen. You ſtand indicted of High-Treaſon.

Coll. That is by a Grand Jury made up that Morning, as I am informed.

Mr. Att. Gen. Here is a Liſt of the Names of ſeveral Men of the County returned to be of the Jury, and particular Marks ſet upon them, who are good Men, and who bad Men, and who moderate Men.

Coll. Ought I not to have that Paper, my Lord?

Mr. Att. Gen. No, I hope not.

L. C. J. Whether they are material, or not material, if we ſhould judge them not material for his Defence, yet it would look like an hard Point upon the Priſoner; and to deliver them into an Hand that they may be carried away or ſtifled, in caſe there were a Crime in the delivering of them, that would not do well on the other Side: Therefore I would have theſe Papers put into ſome ſafe Hands, that what may be for the Priſoner's Uſe he may not want, and yet they may not be taken away, if there be Occaſion to uſe them upon another Account.

Mr. Att. Gen. But if it pleaſe your Lordſhip, I deſire you would enter into the Examination of this Matter; for I have an Account from *London* by a ſpecial Meſſenger, that there are ſeveral Perſons go up and down to procure Witneſſes againſt the King's Evidence, making it a publick Cauſe; and here, my Lord, is another Paper which is a Liſt of Men as Witneſſes picked up together againſt the King's Witneſſes.

L. C. J. He muſt have that, deliver him that preſently.

Mr. Att. Gen. But, my Lords, others have gone about and framed Witneſſes for him.

L. C. J. You muſt give him the Liſt of his Witneſſes, for I ſee not what Uſe you can make of it.

Mr. Serj. *Jeff.* This no Man will oppoſe ſure, if any Thing that is delivered to him be fit to be delivered, the Perſon that delivers it muſt come and own it; but before any Perſon delivers any Papers to the Priſoner, for him to make uſe of againſt the King's Evidence, we deſire to know what thoſe Papers mean, and who gave them.

L. C J. Look you, Brother, we will have nothing of Heat till the Trial be over, when that is over, if there be any Thing that requires our Examination, it will be proper for us to enter into the Conſideration of it. But in the mean while what hurt is there, if the Papers be put into ſome truſty Hands, that the Priſoner may make the beſt Uſe of them he can, and yet they remain ready to be produced upon Occaſion: If a Man be ſpeaking for his Life, though he ſpeak that which is not material, or nothing to the Purpoſe, there will be no harm to permit that.

Mr. Serj. *Jeff.* With Submiſſion, my Lord, that is aſſigning him Council with a Witneſs.

Mr. Att. Gen. If People are permitted to go up and down and aſk Council of Perſons, and bring it in Papers to the Priſoner, 'tis the ſame Thing as if Council came to him. Here is a buſy Solicitor, and he gets Advice from Council, and then he delivers it to the Priſoner; 'tis the firſt of that Kind certainly that ever was allowed; and if this be not to aſſign him Council, I know not what is.

L. C. J. What think you of our peruſing the Papers?

Mr. Att. Gen. With all my Heart, my Lord.

Coll. If you take away all Helps from me, you had as good condemn me without a Trial.

Mr. Att. Gen. You ought not to have Helps to plead Dilatories.

Coll. Not to help me to my right in Law?

Mr. Att. Gen. We are to go upon the Fact now: And, my Lord, I pray your Judgment about them, when you have peruſed them.

Then the Judges looked upon that Paper that was called the Speech.

L. C. J. We have read enough of this to ſuppreſs it, and to examine how this came to his Hands.

Mr. Juſt *Jones.* Where is *Aaron Smith?*

Mr. Att. Gen. My Lord, here is another that is worſe than that, charging the Juſtice of the Nation. Pray call Mr. *Aaron Smith*, and Mr. *Henry Starkey.*

Mr. *Smith appeared.*

Mr. Att. Gen. Mr. *Smith*, did you deliver theſe two Papers to the Priſoner?

Mr. *Smith.* Does any Body accuſe me that I did?

Mr. Att. Gen. You are accuſed of it.

Mr. *Smith.* I deſire Proof may be made againſt me.

Mr. Att. Gen. That will be done.

L. C. J. Look you, we will not interrupt the Trial with it. Mr. *Smith* muſt be taken into ſafe Cuſtody, only to ſecure him till we can examine it, not as charged with any Crime, but only that he may be forth-coming to be examined.

Mr. Att. Gen. You do not make a direct Anſwer, Mr. *Smith*, in the Caſe, it will be proved upon you.

Mr. *Smith.* Mr. Attorney, I know not what Anſwer to make better than I have given; our Law ſays no Man is bound to accuſe himſelf.

Mr. Att. Gen. But our Law ſays, you ſhall be examined.

Mr. *Smith.* I come to give no Informations here, Mr. Attorney; if I did I ſhould be then examined.

Mr. Att. Gen. Here are Inſtructions given to the Priſoner, they ſay you gave them.

Mr. *Smith.* I deſire to have it proved.

L. C. J. Mr. Attorney, you will take a Recognizance of Mr. *Smith*, to be forth-coming during this Seſſions.

Mr. *Smith.* I will not depart, my Lord, I aſſure you; and I hope Mr. Attorney will take my Word.

Mr. Att. Gen. Indeed I will not, Mr. *Smith*, becauſe you have broken it with me already; when I gave you leave to go to the Priſon, I did not think you would have abuſed that Kindneſs, to give him Papers.

L. C. J. Well, take His Recognizance.

Mr. *Smith.* 'Tis high Time to have a care, when our Lives and Eſtates, and all are beſet here.

L. C. J. What do you mean by that, Mr. *Smith?*

Mr. *Smith.* I ſaid it not, meaning by it the Court, for I declare I abhor that Expreſſion to be ſo interpreted, that I reflected upon the Court.

L. C. J. Why do you uſe ſuch looſe Expreſſions then, Mr. *Smith?*

Mr. *Smith.* Becauſe I have been threatened ſince I came to Town, though I have not ſpoke one Word in any publick Company ſince I came.

Mr. Juſt. *Jones.* It ſeems you will reflect here in the Face of the Court, and in the Face of the Country, upon the Government, upon the Juſtice of the Kingdom.

Mr. *Smith.* No, my Lord, I have told you what I meant by it; I neither reflected upon the Court, nor upon the Government, nor upon the Juſtice of the Kingdom.

L. C. J. You ſhould have done well to have forborn ſuch Expreſſions as thoſe were.

Coll. Shall I not have the Uſe of my Papers, my Lord: Will you not pleaſe to deliver them back to me now you have peruſed them?

Mr. Juſt. *Jones.* One of them is a Speech, and a moſt ſeditious libellous Speech, to ſpit Venom upon the Government in the Face of the Country. We cannot tell who made it, but it ſeems to be beyond your Capacity; and therefore we muſt enquire into it: But we do not think fit to let you have the uſe of that Paper.

L. C. J. For that which contains the Names of the Witneſſes, that you have again: For the other Matters, the Inſtructions in Point of Law, if they had been written in the firſt Perſon, in your own Name, that we might believe it was your writing, it would have been ſomething; but when it is written in the ſecond Perſon, you ſhould do ſo and ſo, by which it appears to be written by another Perſon, it is an ill Precedent to permit ſuch Things; that were to give you Council in an indirect Way, which the Law gives you not directly.

Coll. If I am ignorant what Queſtions to aſk of the Witneſſes, ſhall not my Friends help me, my Lord?

L. C. J. We will ſift out the Truth as well as we can, you need not fear it.

Coll. Some of thoſe Things I took out of the Books myſelf: And if you are reſolved to take away all my Helps, I cannot help it; I know not that Mr. *Smith* wrote one of thoſe Papers.

Mr. Att. Gen. But Mr. *Smith* would have given four Guineas, it ſeems, as a Bribe, to the Goaler, and he offered four more to let him have the Liberty to come to him.

Mr. Serj *Jeff.* 'Tis Time indeed for Mr. *Smith* to have a care.

Keeper. It was Mr. *Starkey* that offered me the four Guineas.

Mr. Att. Gen. Pray call Mr. *Henry Starkey.*

(But he did not appear)

Then the Court took a Recognizance of 100 l. *of Mr.* Smith *to attend the Court during the Seſſion.*

Coll. Pray, my Lord, let me have my Papers delivered to me, I cannot make my Defence elſe.

L. C. J. We are your Council in Matter of Fact, and to give you your Papers were to aſſign you Council againſt Law, they being not your own Papers, but coming from a third Hand.

Coll. Will you pleaſe to give me the Paper that has the Queſtions in it, to aſk the Witneſſes?

L. C. J. There are no Papers with any particular Queſtions to any one Witneſs, but only Inſtructions how to carry yourſelf in this Caſe.

Coll. A great deal of it is my own, my Lord.

L. C. J. Mr. Attorney, truly I think, that which does not contain Matter of *Scandal*, may be tranſcribed and given to the Priſoner.

Coll. My Lord, I deſire I may have that, that has in the Margin of it, the Caſes of *Lilburne* and *Stafford.*

Mr. Juſt. *Jones.* You ſhall not have the Inſtructions to ſcandalize the Government, all that is neceſſary for your Defence, you ſhall have.

L. C. J. If he had writ it himſelf I cannot well ſee how you could take it from him; and truly as 'tis, I had rather let him have too much than too little.

Coll. My Lord, I thought I might have had Council to have aſſiſted me, but if I may have Council neither before my Plea nor after, I that am an Ignorant may be loſt by it, but can't help it.

L. C. J. If Matter of Law ariſe, you ſhall have Council to it.

Coll. I know not but it might have admitted of an Argument, that which, if I had had my Papers, I ſhould have offered to you.

L. C. J. Mr. *Colledge*, we ſhall not go any farther now, I know not how many Witneſſes will be produced either of one Side or another, but 'tis too late to go on this Morning, and becauſe we attend here only upon this occaſion, we ſhall go on with the Trial at two o'Clock in the Afternoon.

Coll. My Lord, will you be pleaſed to order the Papers for me to peruſe in the mean Time.

L. C. J. We have ordered that you ſhall have a Tranſcript of the Paper of Inſtructions, leaving out that which is ſcandalous.

Coll. I deſire I may have a Copy of the Whole.

Mr. Juſt. *Jones.* No, we do not think fit to do that.

Coll. Pray let me know which you do except againſt.

L. C. J. Look you, Mr. Attorney, I think we may let him have a Copy of the Whole.

Mr. Att. Gen. My Lord, before you riſe, I deſire you would be pleaſed to take the Examination of Mr. *Gregory* about Mr. *Starkey.*

L. C. J. Swear him. *(Which was done.)*

Mr. Att. Gen. What do you know concerning Mr. *Starkey*, and what did he offer you?

Gregory. When they came by your Lordſhip's Permiſſion to Mr. *Colledge*, they brought ſome Papers which they delivered to him: And afterwards Mr. *Starkey* took me aſide, and told me, it was hard Uſage that the Priſoner could not have his Council permitted to come to him: Do him what Favour you can, and I ſhall not be ungrateful; ſo he clapped four Guineas in my Hand, but I immediately laid them down upon the Table, and would not take them.

Mr. Att. Gen. My Lord, I deſire you would pleaſe to ſend for Mr. *Starkey.*

L. C. J. Let him be ſent for.

Cl of Cr. You muſt go and take up Mr. *Starkey.*

Meſſenger. Muſt I keep him in Cuſtody? I don't know him.

Cl. of Cr. No, you muſt order him from the Court to attend here.

Mr. Juſt. *Jones.* Theſe Papers *Colledge* ſhall not be debarred of for his Defence, nor you Mr. Attorney from proſecuting upon them.

L. C. J. No, we will put them into ſuch Hands as ſhall take care of that.

Coll. Very few, my Lord, have appeared to do me any Kindneſs, ſome have been frightened and impriſoned, others are now in Trouble for it.

L. C. J. Well, you ſhall have the uſe of your Papers.

Coll. May I have any Friends come to ſee me in the mean Time?

L. C. J. They muſt not come to you in the Priſon, to give you Advice; but I'll tell you, ſince you move it, if my Brothers think it convenient, whilſt the Court does withdraw, any Body of your Friends may come to you, in the Preſence of your Keeper.

Mr. Juſt. *Jones.* Certainly you cannot think you can give a Privilege to any Friends of your's, to commit any Miſdemeanor to offer Bribes to any Perſon.

Coll. I know not of any ſuch Thing.

Mr. Juſt. *Jones.* We do not charge you with it, but Mr. *Starkey* did.

Coll. I have been kept a ſtrict cloſe Priſoner, and if my Friends are ſo kind to me, as to help me in order to my Defence, I hope you will not be againſt it. Pray, my Lord, let me have my Papers.

L. C. J. You ſhall have them, but they ſhall be put into ſuch Hands as the Court may have command over; they ſhall be in the Sheriff's Son's Hands, and you ſhall have the immediate uſe of them.

Coll. If there be any Thing elſe in thoſe Papers neceſſary for my Defence, I pray I may have it.

L. C. J. The Speech is not fit for you; what other Papers would you have?

Coll. Another Paper there is, that is ſomething of Law.

Mr. Juſt. *Jones.* Nothing but libellous, and what is a Scandal to the Government.

Mr. Att. Gen. You are to have nothing of Matter of Law, but what you are to propoſe yourſelf.

Coll. If you take away all my Helps, I cannot propoſe any Thing.

Mr. Serj. *Jeff.* To allow you thoſe Papers, is to allow you Council by a ſide Wind.

L. C. J. Look you, the Papers of Inſtructions ſhall be delivered to the Sheriff's Son, who ſhall let you peruſe it in this Interval, and make uſe of it in your Trial; but it muſt be in ſafe Cuſtody to be uſed upon further Occaſion, as the King's Attorney ſhall think fit.

Then the Court adjourned till two in the Afternoon.

Poſt meridiem, *At two o'Clock the Court returned, and Proclamation was made for Attendance, and for the Under-Sheriff to return his* Jury.

Coll. My Lord, ought not I to have a Copy of this Jury?

L. C. J. No. * They are to look upon you as they come to be ſworn, and then you are to challenge them.

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* Chief Juſtice *Pemberton* ſaid in Lord *Ruſſel*'s Caſe, p. 630. it was never denied in Caſe of Life, that he knew of, it was allowed to Count *Coningſmark*, Vol. III. p. 465.

Cl. of Cr. Stephen Colledge, hold up thy Hand, and hearken to the Court; thoſe good Men that you ſhall hear called, and perſonally appear, are to paſs, *&c.*

Coll. Pray Sir, let the Way be clear, that I may ſee them.

Cl. of Cr. Ay, ay.

Coll. Pray Sir, how many are there of the Jury that appear?

Mr. Att. Gen. There are enough.

Cl. of Cr. Make Proclamation for Information, (*which was done.*)

Cl. of Cr. Henry Standard, (who was ſworn,) *Richard Croke*, (who was challenged by the Priſoner,) *William Bigg*, (challenged.)

Mr. J. *Jones.* Do you challenge him Peremptorily, or with Cauſe?

L. C. J. If he do not ſhew Cauſe, it muſt be ſuppoſed it is Peremptory.

Coll. I ſuppoſe he was upon the Grand Jury.

L. C. J. That would be a Challenge with Cauſe.

Mr. *Bigg.* No, I was not.

Coll. Then I do not challenge him; I know him not. (*He was ſworn.*)

Cl. of Cr. Thomas Marſh, (challenged,) *Thomas Martin*, (did not appear,) *Gabriel Merry*, (being almoſt an hundred Years of Age, was excuſed,) *Robert Bird*, (ſworn,) *John Shorter*, (ſworn,) *William Windlow*, (ſworn,) *Edward Ayres*, (challenged,) *William Ayres*, (challenged,) and *Richard Ayres*, (challenged,) *Charles Hobbs*, (ſworn,) *Roger Brown*, (ſworn,) *Timothy Doyley*, (ſworn,) *Richard Dutton*, (challenged,) *Ralph Wallis*, (ſworn,) *John Naſh*, (challenged,) *John Benſon*, (ſworn,) *John Piercy*, (ſworn,) *William Web*, (challenged,) and *John Lawrence*, (ſworn.)

They were counted, and their Names in Order thus.

Henry Standard,
William Bigg,
Robert Bird,
John Shorter,
William Windlow,
Charles Hobbs,
Roger Browne,
Timothy Doyley,
Ralph Wallis,
John Benſon,
John Piercy,
John Lawrence.

L. C. J. Mr. Sheriff, there are a great many of the Jury that are not ſworn, they are diſcharged, let them go out of the Court, and ſo you will make room for the Witneſſes.

Cl. of Cr. Gentlemen, you of the Jury, look upon the Priſoner, and hearken to his Charge. He ſtands indicted by the Name of *Stephen Colledge*, late of *Oxford*, in the County of *Oxford*, Carpenter; for that he as a falſe Traitor, *&c. prout* in the Indictment, *Mutatis Mutandis*, and upon this Indictment he hath been arraigned, *&c.*

Mr. *North.* May it pleaſe your Lordſhip, and you Gentlemen, that are ſworn, this is an Indictment againſt *Stephen Colledge*, the Priſoner at the Bar, for an Endeavour to raiſe a Rebellion within this Kingdom, wherein he is accuſed, and the Jury find that he as a falſe Traitor, againſt the King's Majeſty, contrary to the Duty of his Allegiance, on the 10th of *March*, in the 33d Year of the King's Reign, at *Oxon* here did traiterouſly conſpire, and compaſs the Death of the King, and the Subverſion of the Government, and to raiſe a Rebellion in the Kingdom, and to ſlaughter his Majeſty's Subjects, to put the King to Death, to levy War againſt him, and to deprive him of his Royal State and Government, and to alter the Government at his own Will and Pleaſure; and to accompliſh this, he did at *Oxon* here prepare Arms for the carrying on the War, and excited one *Edward Turbervile* and others, to arm themſelves againſt the Accompliſhment of this Deſign (and did declare his Purpoſe was to ſeize the King's Perſon at *Oxon*, and that he was one of thoſe that was to do it; and to bring the ſaid *Turbervile* and other Subjects to his Purpoſe, did falſly, maliciouſly, and traiterouſly declare in their hearing, That there was no good to be expected from the King, that he minded nothing but the Deſtruction of his People, and arbitrary Government, and to introduce Popery. And this is laid to be againſt the Duty of his Allegiance, againſt the King's Peace, and againſt the Form of the Statutes in thoſe Caſes made and provided. The Priſoner, you hear, upon his Arraignment hath pleaded Not Guilty, which Iſſue you are to try, and if the Evidence for the King, which are ready to be produced, prove that which is laid to his Charge, you are to find it accordingly.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; The Priſoner at the Bar ſtands indicted of a very high Crime, no leſs than High-Treaſon, and that too of the deepeſt Dye; it is for an Endeavour to deſtroy the King, to ſubvert the Government, to raiſe a Rebellion among the King's Subjects. And, Gentlemen, theſe Inſtances that we ſhall give you, and produce our Evidence to, for the Proof of that, are theſe: He laid his Deſign to ſeize the King at *Oxon*; and he did not want his Accomplices to do it; but they were not Men, Gentlemen, that were Proteſtants, but Men that were Rebels in the late war, they were Men of ſuch a Kidney, that he aſſociated himſelf with, and theſe were the Perſons that were to aſſiſt in this Attempt, In Order to this he had prepared Arms in an extraordinary Manner, Arms of a great Value, for one of his Condition, who is by Trade a Joiner; for if a true Eſtimate were taken of the value of the Arms, I believe they were worth twice his whole Eſtate; he prepared a good Horſe, extraordinary Piſtols, a Carbine, a Coat of Mail, an Head-piece; and ſo being armed Cap-a-pee, with that Deſign he came hither to *Oxon*. And you will judge whether theſe be fit Tools for a Joiner.

Coll. I beſeech you, Sir, have you any body to prove this? If you have not, you do hurt to the Jury as well as me, to ſpeak it.

L. C. J. Be patient, Mr. *Colledge*, and let Mr. Attorney go on to open the Charge. I will tell you and the Jury too, that what he ſays further than he makes good by Proof and Witneſſes, will ſerve for nothing.

Coll. 'Tis hard the Council ſhould plead againſt me, and open Things that he cannot prove.

L. C. J. I will do you all the Right imaginable, and therefore I do tell you again, if they do not prove it, all he ſays is nothing.

Coll. But I beſeech you, my Lord, ſince there hath been ſuch extraordinary Means and Methods uſed to contrive my Death, that the Witneſſes may be examined apart, and far from the hearing of one another.

L. C. J. That we will take care of by and by.

Mr. Att. Gen. Mr. *Colledge*, this ſhews your Temper, you are inordinate in your way of expreſſing yourſelf.

Coll. Mr. Attorney; I ſhould not interrupt you, if I were not afraid this was ſpoken to prepoſſeſs the Jury.

Mr. Att. Gen. I hope to prove what I have ſaid, or every Word of it ſhall paſs for nothing.

Coll. 'Tis impoſſible for all the Men on Earth to prove it.

Mr. Att. Gen. Gentlemen, Theſe were the Particulars I was opening to you, in what manner he was armed, and how accoutred he came hither: We ſhall likewiſe ſhew you that he made it his Buſineſs to perſuade others to undertake the Deſign, and join with him, as if open War was already declared; he gave out a Sign, which was a blue Ribbon, a wrought Ribbon with Letters in it, and this was the Mark and Sign they were to know one another by. This was given out by him frequently; and that it may not ſeem an extraordinary Thing, Gentlemen, though indeed it was a wild Attempt, yet you will ceaſe to wonder when you have heard of the Exploits of *Venner*, who with a few Men raiſed ſuch a Commotion, ſoon after the King's coming in, and the ſeveral Exploits that have of late in *Scotland* been carried on by a few diſcontented Perſons. So that Men of the like Principles, as we ſhall give you an account of this Gentleman's Principles what they were, may well be thought to engage in ſuch an extraordinary Exploit. And we ſhall prove what the Encouragement was he was to have; for he boaſted of himſelf, that he ſhould be in a little Time a Colonel.

Coll. What, Sir?

Mr. Att. Gen. A Colonel, a great Preferment for a Joiner.

Coll. Yes, it was ſo.

Mr. Att. Gen. We ſhall ſhew to you that this was not a ſudden unpremeditated Thing; for we ſhall prove that he had entertained the horrideſt Malice againſt the King, that ever Subject entertained againſt his Sovereign: For we ſhall give this Evidence, and his Front will not oppoſe it, that he had made it his common Diſcourſe in Coffee-Houſes, and Publick-Houſes, (and I believe I could bring you 40 and 40 Witneſſes to it) to defame the King, and murder him in his Reputation, and was one of the Accomplices with *Fitz-Harris*, who was lately executed for that venomous Libel: We ſhall prove that he juſtified it, and maintained it to be as true as the Goſpel. We ſhall give Evidence that he carried on the ſame Deſign with that Arch-Traitor who was a Papiſt; and I believe if this Gentleman were examined thoroughly, he would be found to be one of the ſame Stamp, and acted by the ſame Principle; for I think that no Proteſtant Subject would attempt ſuch Things as we ſhall prove to you. I believe, Gentlemen, you have frequently heard, as none of us but have, that the King has been traduced as a Deſigner of arbitrary Government, and his Reputation blaſted maliciouſly and falſly, as an Introducer of Popery: Whence comes all this generally, but out of the Popiſh Quiver; who make it their Buſineſs to ſet the King's good Subjects at Variance amongſt themſelves, and againſt their Prince, by ſtiling the King a Papiſt, as this Priſoner hath done; nay, he hath been ſo impudent as to report that the King was in the Plot againſt his own Life. We ſhall prove to you, how here and at other Places he hath frequently done this; to go further, we ſhall produce to you the Evidence that he drew the King's Picture, and expoſed him in all the reproachful Characters imaginable, and that the Picture might be the better underſtood, he adds a Ballad to it: and that he may not have the Confidence to ſay this is not true, we ſhall produce to you a whole Bundle of theſe Papers, among thoſe which his Son made a Diſcovery of, when they were ſent to his Uncle to be hid, and we ſhall prove him to be the Author of them; and yet this Man ſhould have the Confidence to ſay he is a good Subject, and a good Proteſtant, when by all Ways imaginable he goes about to ruin the Government and defame the King? And Gentlemen, when we have given this Account by Witneſſes, for I would have you believe me in nothing, but according as I prove it, you will not wonder then that he ſhould ſay his Life was in Danger, (for ſo it is indeed?) And if any Man ever was Guilty of High-Treaſon, ſure he is, and being Guilty of the greateſt Treaſon, he deſerves the greateſt Puniſhment.

Coll. Pray, Gentlemen of the Jury, take Mr. Attorney General at his Word, and remember, Sir, you deſire not to be believed yourſelf, but what you prove.

Mr. Serj. *Holloway.* May it pleaſe your Lordſhip, and Gentlemen, purſuant to what Mr. Attorney hath opened, we will call our Witneſſes, and we will begin with Mr. *Dugdale*, who was a Witneſs againſt my Lord *Stafford*, at his Trial in Parliament, whoſe Credit Mr. *Colledge* did atteſt at that Trial, aſſerting him to be an honeſt good Man, and I believe his Evidence will go in a good Meaſure through all that Mr. Attorney hath opened, and when we have done with him, we hope to ſecond him with other Witneſſes of as good Credit, and that will ſay as much to the Purpoſe.

Then Mr. Dugdale *was ſworn.*

Mr. Att. Gen. Mr. *Dugdale*, look upon the Priſoner, and tell the Court whether you know him.

Mr. *Dugdale.* Yes, I do know him, Sir.

Mr. Att. Gen. Will you give us an Account of your Knowledge of him?

Coll. My Lord, I humbly deſire they may be examined a-part, and not in the hearing of one another.

Mr. Att. Gen. That, with Submiſſion, ought not to be in the King's Caſe, though we think there are none of them that will ſpeak any more than the Truth.

Coll. Here are ſeveral of them, my Lord, they are all of a Gang.

Mr. Serj. *Jefferies.* Not of your Gang, Mr. *Colledge.*

Coll. I pray they may go out, my Lord, (which was ordered accordingly.)

Mr. *Dugdale.* If your Lordſhips, pleaſe, whether or no I may deliver in theſe Papers?

Mr. Att. Gen. By and by, Time enough, when we aſk for them; ſpeak your own Knowledge.

Mr. *Dugdale.* My Lord, I have been, I think, acquainted with Mr. *Colledge* two Years or thereabouts. I have been ſeveral Times in Mr. *Colledge*'s Company, and truly ſometimes he hath been mightily bent againſt Popery; he hath at ſome Times uttered himſelf, becauſe the King did not proſecute the Papiſts according as he thought ſufficiently, that the King was a Papiſt himſelf, that he was as deep in the Plot as any Papiſt of them all, that he had an Hand in Sir *Edmundbury Godſrey*'s Death. This, Mr. *Colledge*, I appeal to yourſelf, whether you have not ſaid it: And in this Town of *Oxford* you have ſeveral times told me, that nothing was to be expected from him, he would do nothing.

Mr. Juſt. *Levinz.* Who did tell you ſo?

Mr. *Dugdale.* Mr. *Colledge* did tell me, that there was nothing to be expected from the King but the introducing of Popery and arbitrary Government; this I believe Mr. *Colledge* will acknowledge to be true.

Colledge. Where was this ſpoken?

Mr. *Dugdale.* This was ſpoken at a Coffee-Houſe called *Combe*'s Coffee-Houſe in this Town, and at the *Angel-Inn* in this Town at a Barber's Shop; that Day the King went out of Town, we were in the ſame Shop.

Colledge. Who was there beſides?

Mr. Serj. *Jeff.* Do not interrupt our Witneſſes, let us have done with him, and you ſhall have your Time to aſk him Queſtions after.

L. C. J. For your Inſtruction I will tell you, your Time is not yet come, if you chop in and interrupt the Witneſſes, you will diſturb any Man living; but your Way is this, When he hath delivered his Teſtimony, aſk him any Queſtions then; and he ſhall be bound to anſwer you, and in the mean time you ſhall have Pen, Ink and Paper, to help your Memory.

Mr. *Dugdale.* That Day the King went out of Town, preſently after he went, you and I went into the *Angel-Inn*; and we went into the Barber's Shop that is juſt within the Inn, and being charging your Piſtols there, you ſaid *Rowley* was gone, the Rogue was afraid of himſelf, he was ſhirked away, and here I appeal to your own Conſcience, whether you did not ſpeak of it.

Colledge. I know nothing of it.

Mr. Att. Gen. Don't appeal to him, 'tis nothing for that.

Mr. Sol. Gen. Who did he mean by *Rowley?*

Mr. *Dugdale.* The King.

Mr. Serj. *Holloway.* Was that his common Appellation for the King?

Mr. *Dugdale.* It was his common Word concerning the King. And at other Times ſpeaking that the King did not do thoſe Things that were fair, he hath given mighty great Words againſt him: He hath told me, that there was no Truſt to be put in him; for it was the People we muſt truſt to, and we muſt look to arm ourſelves, and that he would arm himſelf, and be here at *Oxford*; and he told me here in the Town accordingly when I came out of the Country, and he ſaid that he had ſeveral ſtout Men that would ſtand by him in it. Their Intention was, as he ſaid, for the rooting out of Popery, by which Name he always termed the Church that is now eſtabliſhed by Law, as to be of the ſame Nature the Papiſts were. This I believe Mr. *Colledge* will acknowledge.

Mr. Att. Gen. Well, go on, Sir.

Mr. *Dugdale.* And at a Time when he had Dr. *Tongue* at his Houſe, he told me, that as for Dr. *Tongue*, he had much ado with him, and he had been at a great Charge to keep him in Order, that he was forced to neglect his own Buſineſs to look after him; for if he had not done ſo, the Rogue, as he ſaid, had a mind to fling all upon the Proteſtants, that is, the Diſſenters, for he does not count the Church of *England* to be ſo; that he had much ado to keep him in Order; for he had ſaid he had drawn Papers for that Purpoſe, but thoſe Papers are ſecured, for where they are I can't tell.

Mr. Att. Gen. Who were they that were to be with him in that Deſign of his?

Mr. *Dugdale.* He told me, Captain *Clinton*, Captain *Brown*, and one Doctor *Lewes*, and he brought them into Town here, when he came with him.

Mr. Att. Gen. To what Purpoſe did he bring them?

Mr. *Dugdale.* Expecting there would be a Riſing.

Mr. Juſt. *Jones.* Did he tell you that here?

Mr. *Dugdale.* Yes, the *Friday*, I think it was, after the firſt Parliament ſat.

Mr. Juſt. *Jones.* How did he expreſs himſelf what they had to do?

Mr. *Dugdale.* They were to be here, in caſe there were any Riſing, which he expected.

Mr. Juſt. *Jones.* What Uſe did he ſay he would make of them?

Mr. *Dugdale.* For the Defence of the Proteſtant Religion, againſt the King and all his Adherents.

Mr. Juſt. *Jones.* What did he ſay he would do to the King? I would not lead you.

Mr. *Dugdale.* He did not ſay what particularly.

Mr. Juſt. *Jones.* What did he ſay, if the King did not yield to the Parliament?

Mr. *Dugdale.* If the King did not yield to the Parliament, he ſhould be forced to it.

Mr. Juſt. *Jones.* Where did you hear him ſay that?

Mr. *Dugdale.* At *Oxford.*

Mr. Serj. *Holloway.* Did you hear him declare this at *London?*

Mr. *Dugdale.* He did ſay at *London*, he expected there would be ſomething done at *Oxford*, and that he would go thither with his Horſe and Arms, and thoſe Gentlemen I named before would go with him. And he ſaid, let them begin when they would, he did not care how ſoon, his Party was the greateſt Party.

Mr. Att. Gen. What was that Captain *Brown?* Did you know him?

Mr. *Dugdale.* Yes, I knew him very well; he did much frequent Mr. *Colledge*'s Company; he was in the late Army againſt the King.

Mr. Serj. *Jeff.* Did you ſee him have any Piſtols?

Mr. *Dugdale.* Yes, I have ſeen him carry Piſtols about him.

Mr. Serj. *Jeff.* Where, in his Pocket?

Mr. *Dugdale.* I ſaw them in the Houſe.

Mr. Serj. *Jeff.* At *Oxford?*

Mr. *Dudgale.* Yes.

Mr. Serj. *Holloway.* Did you ſee them in his Hand?

Mr. *Dugdale.* I cannot tell that, he had them in the Houſe, I ſaw them three.

Mr. Serj. *Holloway.* Did you ſee him in his Silk Armour about the Parliament-Houſe, the Lobby, or any Place?

Mr. *Dugdale.* I cannot ſay that.

Mr. Att. Gen. What did you know of his delivering any Marks or Signs for Perſons to be diſtinguiſhed by?

Mr. *Dugdale.* I had as much Ribband from him as came to 40*s.* with *No Popery*, *No Slavery*, wrought in it; and he gave it me to diſtribute among my Friends in the Country, that they might be known by other Perſons that would wear the ſame.

Mr. Juſt. *Jones.* Where had you it?

Mr. *Dugdale.* At *London*, from Mr. *Colledge.*

Mr. Juſt. *Jones.* Where was it to be diſtributed?

Mr. *Dugdale.* Among thoſe that I knew to be Diſſenters in the Country.

Mr. Juſt. *Jones.* Were you to come to *Oxford*, by Agreement, with Mr. *Colledge?*

Mr. *Dugdale.* I promiſed him to come to *Oxford*, and did ſo.

Mr. Att. Gen. Well, go on. What more do you know?

Mr. *Dugdale.* At *London*, I was once at a Coffee-houſe with Mr. *Colledge*, and with ſome of the Members of the Houſe of Commons; it was a little before they met; and they were earneſtly talking of the Parliament at *Oxford*, and of ſome Diſturbance that was likely to happen here. And it was then fully agreed, and Mr. *Colledge* was by, That it would be the beſt Way, out of every Country, where the Parliament had the beſt Intereſt in the People, to leave one in every County that might manage the People. This I appeal to Mr. *Colledge*, whether it be true.

Colledge. You appeal to me, ſhall I ſpeak now, my Lord?

Mr. Juſt. *Jones.* No, you will remember it by and by.

Mr. Att. Gen. What do know of any Pictures?

Mr. Sol. Gen. Pray let him ſpeak that over again which he mentioned laſt.

Mr. *Dugdale.* Being in a Coffee-houſe with Mr. *Colledge*, there were ſome of the Members of the Houſe of Commons by; and ſpeaking of a Diſturbance that might happen here at *Oxford*, it was then agreed, That in every Quarter where the Parliament had the moſt Intereſt in the People, they ſhould not all come up, but ſome remain there to manage the People.

Mr. Att. Gen. What do you know of any Pictures or Papers, have you any about you?

Mr. *Dugdale.* Yes, I have one thing I received from Mr. *Colledge*, that is, the Letter pretended to be intercepted to *Roger L'Eſtrange.*

Mr. Att. Gen. Pray, what Account did he give you of it? Who made it?

Mr. *Dugdale.* He told me he was the Author of it himſelf, and he ſhewed me it in Manuſcript before it was printed; and he told me, he got one *Curtis*, or his Wife, to print it; but he would never truſt them again, for they cheated him of ſome of the Gain.

Mr. Att. Gen. Who was the Author, did he ſay?

Mr. *Dugdale.* He himſelf.

Mr. Att. Gen. Pray produce it, Sir.

Mr. *Dugdale.* This and others he delivered to me to diſperſe.

L. C. J. What is it, Mr. Attorney?

Mr. Att. Gen. It is a Letter, and a great Part of *Fitz-Harris*'s Libel is taken out; it ſeems *Colledge* was the Author, and this is the Original of the Libel.

L. C. J. Did he tell you, this was of his own making?

Mr. *Dugdale.* Yes.

Mr. Att. Gen. Did he diſperſe them to any Body elſe?

Mr. *Dugdale.* Yes, there was ſome given to one Mr. *Boſon*, he had ſome at the ſame Time, and Mr. *Baldwin* had ſome.

Then the Paper was read.

Cl. of Crown. Firſt Q. Whether they that talk—

Mr. Att. Gen. Pray give my Lord an Account what more Papers and Libels he delivered to you.

Mr. *Dugdale.* I received one like this, I cannot ſay it was the ſame, where all the Biſhops were changing their Hats for Cardinals Caps.

Mr. Serj. *Jeff.* Where is *Rary Shew*, for it ſeems he hath expounded the Meaning of that?

(Then it was produced.)

Mr. Serj. *Jeff.* I ſuppoſe 'tis his own cutting too.

Mr. *Dugdale.* I heard Mr. *Colledge* ſing it.

Mr. Serj. *Jeff.* Where?

Mr. *Dugdale.* In *Oxfordſhire*, and in *Oxford*-Town, at my Lord *Lovelace*'s?

M. Serj. *Jeff.* Where, at my Lord *Lovelace*'s?

Mr. *Dugdale.* At his Houſe in the Country.

Mr. Serj. *Jeff.* Who were in the Company there?

Mr. *Dugdale.* Sir *Robert Clayton*, Sir *Thomas Player*, Mr. *Rouſe*, Mr. *Colledge.*

Mr. Serj. *Jeff.* You ſay you heard him in *Oxford*, and in *Oxfordſhire*, and at my Lord *Lovelace*'s, where is that?

L. C. J. My Lord *Lovelace* is here himſelf, and hears what he ſays.

Mr. *Dugdale.* I might miſtake the County, but I heard him ſing it at *Oxford* Town, and at my Lord *Lovelace*'s Houſe again.

L. C. J. Where is that?

Mr. *Dugdale.* I cannot tell the Town.

Mr. Serj. *Jeff.* How came you there?

Mr. *Dugdale.* Sir *Thomas Player* did invite me thither.

Mr. Serj. *Jeff.* Where is it in *Oxfordſhire?*

Mr. *Dugdale.* I cannot tell, 'tis four Miles from *Henley.*

Mr. Serj. *Jeff.* Was my Lord at home?

Mr. *Dugdale.* Yes, he was.

Mr. Serj. *Jeff.* Now for the Cut, then; Did he ſhew you this Cut?

Mr. *Dugdale.* Yes, he told me he would get it printed.

Mr. Serj. *Jeff.* Was it before it was printed then that he ſung it?

Mr. *Dugdale.* Yes, it was.

Mr. Serj. *Jeff.* Who did he tell you did make it?

Mr. *Dugdale.* He told me he was the Author of this Cut, and he gave me one, and we ſang it together preſently after it was printed.

Mr. Att. Gen. How did he deſcribe it to you when he ſhewed it to you?

Mr. *Dugdale.* That which hath the Pack on the Back of it, he deſcribed to be the King; thoſe that follow him were *Topham*, *Cooper*, *Hugh*, and *Snow*, and that Company of Men there is the Houſe of Commons.

Mr. Serj. *Holloway.* What was meant by the Pack?

Mr. *Dugdale.* The Parliament and all his Retinue; and then here is the King in the Mire again, according as 'tis repreſented in the Song—

Mr. Serj. *Jeff.* Ay, he goes on well. And this here is the Biſhops which they thruſt into the Pack, when they have got him down in the Mire, and then they thruſt them all away, as it is in the Song, to hoot them away.

L. C. J. Did he make this Explication to you?

Mr. *Dugdale.* Yes.

Mr. Serj. *Jeff.* Who were the *All?*

Mr. *Dugdale.* King, and Clergymen, and all.

Mr. Serj. *Jeff.* Where was this that he explained it?

Mr. *Dugdale.* At *London.*

Mr. Serj. *Holloway.* Is there any Thing relating to *White-Hall?* What Name did he give that?

Mr. *Dugdale.* Yes, he ſaid, *Louſe-Hall* was *White-Hall*, becauſe of its Poverty.

Then the Ballad was read.

Cl. of Cr. Rary Shew. To the Tune of, *I am a Senſeleſs Thing*——

Mr. Att. Gen. This ſhews you what a Sort of Man he is.

Mr. Serj. *Jeff.* Here you ſay he explained this with the Pack at the Back to be the King?

Mr. *Dugdale.* Yes, he told me ſo.

Mr. Serj. *Jeff.* What did he mean by the two Faces?

Mr. *Dugdale.* That he was half a Proteſtant, and half a Papiſt.

Mr. Juſt. *Jones.* Did he make any Compariſon between his own Party and the King's Party?

Mr. *Dugdale.* He ſaid, they were but a Handful to them.

Mr. Juſt. *Jones.* To whom?

Mr. *Dugdale.* To his Party, that was the Diſſenters.

Mr. Att. Gen. Speak that out.

Mr. *Dugdale.* That their Party was but a Handful to their's.

Mr. Att. Gen. Their's and Their's, who did he mean?

Mr. *Dugdale.* He meant the Diſſenters; for the Church of *England* he reckoned among the Papiſts.

L. C. J. Tell us the Words he ſaid.

Mr. *Dugdale.* He ſaid, his Party was the true Church of *England*, and that which is eſtabliſhed by Law, were but Proteſtants in Maſquerade.

Mr. Juſt. *Jones.* Tell us when he made the Compariſon, what Words he did uſe, and upon what Occaſion.

Mr. *Dugdale.* When he perceived the King at *Oxford* would not yield to the Houſe of Commons, he ſaid, Let him begin as ſoon as he would, he did not care how ſoon he did begin, for their Party, meaning the King and his Party, was but an Handful to him and his Party, calling them the true Proteſtants; the others were Proteſtants in Maſquerade.

Mr. Att. Gen. What did he deſire you to do? To be aſſiſting in any Thing?

Mr. *Dugdale.* He always deſired me to be true of that Side, he hoped I was, and to get good Arms for myſelf.

Mr. Serj. *Holloway.* Did he in *Oxford* deſire this of you?

Mr. *Dugdale.* No, he did not.

Mr. Sol. Gen. For what Purpoſe did he deſire you to arm yourſelf?

Mr. *Dugdale.* He ſaid, the King had a Deſign on the People to introduce Popery and arbitrary Government, and he expected every Day when they would begin, and the ſooner the better, he would be provided for them.

Mr. Juſt. *Jones.* Was that in *Oxford?*

Mr. *Dugdale.* He ſpoke it in *Oxford*, and in the City too.

Mr. Juſt. *Jones.* Did he tell you of any that were liſted?

Mr. *Dugdale.* He ſpoke of Captain *Brown*, and Captain *Clinton*, and Don *Lewes*, and Abundance more he ſaid he had.

Mr. Juſt. *Jones.* Did he tell you he had them here?

Mr. *Dugdale.* Yes, about forty of them were there, he ſaid,

Mr. Serj. *Holloway.* Did he tell you of any that were liſted, in order to the coming down of the Parliament at *Oxford.*

Mr. *Dugdale.* Not liſted, but were intended to come down; and at *Oxford* he told me they were come down.

Mr. Juſt. *Jones.* Were you in their Company in *Oxford* here?

Mr. *Dugdale.* Yes, I was.

Mr. Juſt. *Jones.* In the Company of whom? Name them.

Mr. *Dugdale.* Of Captain *Brown*, Don *Lewes*, and ſeveral others of that Gang; I know not their Names, but I know their Faces.

Mr. Sol. Gen. Did he take Notice to you that they were come down?

Mr. *Dugdale.* Yes.

Mr. Sol. Gen. To what Purpoſe?

Mr. *Dugdale.* He expected there would be a riſing in *Oxford*, and to this Purpoſe; Mr. *Colledge* was one that debated it at *Richard*'s Coffee-houſe, and it was to be carried from thence to the *King*'s-*Head* Club, whether it were not beſt to leave a Parliament-man in every County?

Mr. Att. Gen. Where was this?

Mr. *Dugdale.* This was at *Richard*'s Coffee-houſe in *London*, againſt they met here.

Mr. Att. Gen. We could give you an Account of a Volume of theſe Things, Abundance of ſcandalous Pamphlets, both Songs, Libels, and Ballads, that were made by this Gentleman, and all ſeized in his Cuſtody.

Mr. Juſt. *Jones.* But he ſung this Libel?

Mr. Att. Gen. All theſe, Gentlemen, (ſhewing a great Bundle) were to be diſperſed over *England.*

Mr. Serj. *Jeff.* It was, it ſeems, expounded and ſung by the Priſoner at the Bar; he gave you the Ballad at *Oxford*, you ſay, Mr. *Dugdale.*

Mr. *Dugdale.* No, I heard him ſing it here.

Mr. Juſt. *Jones.* Pray, Mr. *Dugdale*, what was the Uſe was to be made of this Ballad?

Mr. Att. Gen. Come, go to the next, we call this Evidence to ſhew you the Malice of the Man.

Colledge. Pray, my Lord, let me aſk ſome Queſtions of Mr. *Dugdale.*

Mr. Serj. *Jeff.* Ay, now let the Priſoner aſk his Queſtions (to do him right) before we go to another Witneſs.

Mr. *Dugdale.* My Lord, I have a Word or two more about a Libel in Manuſcript, that very Day the Sheriffs were to be choſen, it was to be printed, and he told me the Printer durſt not print it, it was ſo dangerous.

Mr. Serj. *Jeff.* What was it, can you remember any Part of it?

Mr. *Dugdale.* No; but it was the worſt I ever heard in my Life againſt the King and Government.

L. C. J. Now aſk him what Queſtions you will.

Colledge. Pray, when was the firſt Time you gave this Evidence?

Mr. *Dugdale.* Truly, Mr. *Colledge*, I don't keep an Account of Time, I cannot give an Account of Time.

Mr. Att. Gen. As near as you can tell him.

Mr. *Dugdale.* I cannot tell whether it might be in *June*, I think it was.

Colledge. How long before I was taken?

Mr. *Dugdale.* It might be about the Time you were taken.

Colledge. Pray, who did you give it before?

Mr. *Dugdale.* I gave it to Sir *Lionel Jenkins.*

Colledge. Where did you ſwear theſe Things were done then?

Mr. *Dugdale.* What was done in the City, I ſwore to be done there.

Colledge. What City?

Mr. *Dugdale.* *London*; the ſame Words were ſaid in the City of *London*, and over again here. I have repeated, for the moſt Part, only the Words you ſaid here, but more was in the City than here.

Colledge. Did you ſwear then, that the Words you ſware now were ſpoken at *London?*

Mr. *Dugdale.* It may be we might not name *Oxford* then.

Mr. Serj. *Jeff.* He ſays well, it might not be named then.

Colledge. Then you did give in your Information, that I ſpoke theſe Words at *Oxford.*

Mr. *Dugdale.* I was not examined about what was done at *Oxford*; I believe I have heard you ſpeak the ſame Words to me at my Lord *Lovelace*'s, but I do not know what County that is in.

Colledge. I aſk you poſitively, Whether you did not ſwear that what you now ſay was ſpoken at *Oxford*, was ſpoken at *London?*

Mr. *Dugdale.* I did not name *Oxford* then.

Colledge. But did not you ſay that was done at *London*, that now you ſay was done here?

Mr. *Dugdale.* Truly, you ſaid them both at *London*, and here.

Colledge. Pray, Mr. *Dugdale*, what had you to give this your Information?

Mr. *Dugdale.* Truly, I can't ſay I have received the worth of a Groat.

Colledge. Nor was ever promiſed any Thing?

Mr. *Dugdale.* No, I never received any Thing, nor ever was promiſed, but only what the King gave me for going down into the Country for my Charges.

Mr. Att. Gen. Was that the ſame Allowance you had when you were Witneſs for the popiſh Plot?

Mr. *Dugdale.* Yes.

Mr. Serj. *Jeff.* Have you any other Allowance than what you had before, when you gave Evidence at my Lord *Stafford*'s Trial?

Mr. *Dugdale.* No, nor have got all that yet neither.

Colledge. But pray obſerve my Queſtion, Mr. *Dugdale*, and anſwer it. Did you not ſwear at *London* that I ſpoke theſe Words there, which now you ſay I ſpoke here?

L. C. J. Pray obſerve, he ſays he did not then name *Oxford*; but in the giving of his Evidence now, he tells you a Series of what paſſed between *London* and *Oxford*; and I muſt tell you further, if a Treaſon be committed, and the Evidence prove it to be in two Counties, the King may chooſe which County he will proſecute and bring his Indictment in, and give in Evidence the Facts in both Counties. But you ſhall have your Objection to it afterwards, and we will take it into Conſideration. I tell you this, that it may not ſeem to you that the Witneſſes ſpeak impertinently of what was done at *London*; but if nothing was done or ſaid at *Oxford*, then it will be taken into Conſideration, you ſhall have it ſaved afterwards. I only hint it now, that you may not think it impertinent.

Colledge. I beſeech your Lordſhip give me Leave to ſpeak one Word: When he made his Affidavit before Sir *Lionel Jenkins* there about ſeizing the King, about the Party I had, and the Arms I had provided, ought not he at the ſame time to have ſaid where I ſaid thoſe Words to him? But he did ſwear then it was in *London* that I ſaid thoſe Words to him; and coming before a Grand Jury of honeſt Gentlemen in *London*, they were ſo wiſe and honeſt as to do me Juſtice, and not find the Bill; ſo their Deſign failing there, then they changed it to *Oxford.*

L. C. J. You did not come to your Trial there; if you had ſo done, then they would have aſked him in particular what was ſaid at *Oxford*, and what at *London*, as 'tis now, being done in both Counties. But look you, if you will aſk any particular Queſtions, do, for they have other Witneſſes to produce.

Colledge. My Lord, I only aſk this Queſtion, Whether it be not rational to think, that when he ſwore before Sir *Lionel Jenkins*, he ſhould not ſwear the Words were ſpoken, and Things done?

Mr. *Dugdale.* He hath ſaid the ſame Words to me at my Lord *Lovelace*'s, as I lay in Bed with him, and this I never mentioned but now in my Evidence.

Colledge. What Words did I ſay there?

Mr. *Dugdale.* If you muſt have them repeated, they were about the King.

Colledge. What were they?

Mr. *Dugdale.* That he was a Papiſt, and deſigned arbitrary Government.

Colledge. Did I ſay ſo to you at my Lord *Lovelace*'s?

Mr. *Dugdale.* Yes, as we lay a-Bed.

Mr. Sol. Gen. Did you lie together?

Mr. Serj. *Jefferies.* Yes, yes, they were Intimates.

Coll. I had not ſix Words with you when you went to Bed, for you ſaid you were weary, and went aſleep preſently.

Mr. *Dugdale.* I ſay you ſaid this in the Morning, for we had an Hour's Diſcourſe when we were a-Bed, and all our Diſcourſe was about the Parliament and the King.

Coll. Where was it I ſaid theſe Words in *Oxford?*

Mr. *Dugdale.* At *Comb*'s Coffee-Houſe was one Place.

Coll. Was there no Body by?

Mr. *Dugdale.* No, but at the *Angel-Inn* there were ſeveral Perſons ſtanding by?

Coll. Surely then ſome of thoſe heard the Words as well as you.

Mr. *Dugdale.* It may be ſo, I am ſure many at *London* have been by, as Mr. *Starkey* by name, Mr. *Boſom*, Mr. *Baldwin*; they have rebuked you for it, and I have rebuked you too.

Coll. What Words have they and you heard, and rebuked me for?

Mr. *Dugdale.* When you have been railing againſt the King, and ſaid, That the King deſigned nothing but the introducing of Popery and arbitrary Government, and that he was a Papiſt.

Mr. Serj. *Jeff.* He loves to hear it repeated.

Coll. What Arms did you ſee of mine in this Town?

Mr. *Dugdale.* I ſaw Piſtols; you had ſome Pocket Piſtols.

Coll. None but one I borrowed of you, and that you had again; had I? (Pray ſpeak) did you ſee any more?

Mr. *Dugdale.* It may be there might not, but there were Pocket-Piſtols in the Room, and you had them in your Hand.

Coll. He ſwore but now that he ſaw me have Pocket-Piſtols, when it was but one, and that was his own.

Mr. Serj. *Jeff.* Hark you now, you talk of Piſtols, do you know, that he had any Piſtols in his Holſters at *Oxford?*

Mr. *Dugdale.* Yes, he had.

Coll. Yes, I know that, I don't deny it.

Mr. Serj. *Jeff.* I think a Chiſſel might have been more proper for a Joiner.

Coll. You ſay I was confederated with Capt. *Brown* and other Men.

Mr. *Dugdale.* You have told me that Capt. *Brown* had a good Allowance, and it was pity he had not a better Allowance; and you would ſpeak he might have a better Allowance, for he was able to do good Service when the Time came.

Coll. From whom?

Mr. *Dugdale.* Among you.

Coll. Among whom?

Mr. *Dugdale.* You know there were ſeveral Gatherings among you that I was privy to.

Coll. What do I know?

Mr. Sol. Gen. You know Money was gathered many Times.

Coll. For what Purpoſe?

Mr. *Dugdale.* You never told me Particulars; it was to diſtribute ſomewhere, I had none of it.

L. C. J. He does not ſay theſe Men were concerned with you, but you ſaid ſo.

Mr. *Dugdale.* You know, Mr. *Colledge*, there were many Gatherings of Monies.

Coll. Did I tell you there were any Gatherings for Captain *Brown?*

Mr. Serj. *Jeff.* He ſays, you told him no Particulars; if you have a Mind to aſk him any more Queſtions, do.

Coll. Pray Sir *George*, don't interrupt me I am here for my Life. Did I tell you there were any Gatherings for Captain *Brown?*

Mr. *Dugdale.* I do not ſay for him, nor whom you diſtributed it to; but you gathered Money one among another, and you have paid Money.

Coll. I have paid Money! When, and to whom?

Mr. Att. Gen. You will not deny that, you confeſſed, upon your Examination, that you gave a Guinea.

Coll. Sir, did you ſee me any more at *Oxford*, than in the Coffee-Houſe, and at that Inn, when I went out of Town, and was going home with the City-Members?

Mr. *Dugdale.* Yes.

Coll. Were you in my Company any where but in thoſe two Places?

Mr. *Dugdale.* I was with you at the *Chequer.*

Coll. Did you come a Purpoſe to ſpeak with me, or had you any Buſineſs particularly with me?

Mr. *Dugdale.* Truly, Mr. *Colledge*, I have forgot whether I had or no; I was in the Room with you there.

Coll. Where is that Room?

Mr. *Dugdale.* I can't tell all the Rooms in that Houſe.

Coll. Was it above Stairs, or below?

Mr. *Dugdale.* Both above and below, two Days I was there with you.

Coll. Was there any of this Diſcourſe you ſpeak of paſſed there between us?

Mr. *Dudgale.* I know I was with you in thoſe two Places I mentioned before; you called me aſide to drink a Glaſs of Mum, and there was none in the Room but us two at that Coffee-Houſe.

Coll. Sir, you came to Town but on *Friday*, I think it muſt be *Saturday*, *Sunday*, or *Monday*, this was; for he ſtayed no longer in *Oxford.*

Mr. *Dugdale.* Nay, I came to *Oxford* either *Wedneſday* Night, or *Thurſday* Morning; and I ſaw you and Mr. *Hunt* together the ſame Day I came.

Coll. Did I explain any Pictures to you at *London*, or owned I was the Author of them?

Mr. *Dugdale.* Yes, upon my Oath, you have explained Pictures to me, and there is one Picture that I have not ſhewed yet, which you have explained what the meaning was.

Mr. Serj. *Jeff.* 'Tis your common Trade it ſeems.

Mr. *Dugdale* You told me you got them done.

Clerk reads, *A Character of a Popiſh Succeſſor*, &c.

Mr. Serj. *Halloway.* How did he explain it to you, Mr. *Dugdale?*

Mr. Serj. *Jeff.* I would ſee what Opinion he had of the Church of *England*; there are ſome Church-men, what are they a doing?

Mr. *Dugdale.* They are a Parcel of *Tantivy-men* riding to *Rome*; and here's the Duke of *York*, half Man, half Devil, trumpeting before them.

Coll. You have got ſome body to explain theſe things to you, Mr. *Dugdale.*

Mr. *Dugdale.* You did it, upon my Oath.

Coll. Oh, fie upon you, Mr. *Dugdale*, conſider what you ſay.

Mr. Serj. *Jeff.* All this you did explain, it ſeems.

Mr. *Dugdale.* And in one Place of the other Libel the King was termed a Rogue; but they put him in by another Name.

Mr. Serj. *Jeff.* Where is it?

Mr. *Dugdale.* 'Tis in *Rary Shew*; in the Manuſcript it was, *Now, now the Rogue is down.*

Mr. Serj. *Jeff.* Let me ſee it; I took Notice of it, *Now, now the Giant is down*, here.

Coll. I aſk you, Sir, whether the Song which you ſay was ſung at my Lord *Lovelace*'s, and other Places, was the ſame with this?

Mr. *Dugdale.* For the general it is, I can't tell for every Word: You ſang it half a dozen times there, and the Muſick play'd to you.

Coll. I aſk you, whether it was the ſame with this?

Mr. *Dugdale.* I can't tell for every Word you ſang.

Coll. Was there any Body by at my explaining of theſe Pictures?

Mr. *Dugdale.* Mr. *Baldwin* was by, and reproved and corrected you, that you would be ſo open.

Coll. Was there any body at *Oxford*, when you did hear me talk of arming myſelf?

Mr. *Dugdale.* They were walking up and down in the Barber's Shop, and I know not whether they did hear or no.

Mr. Att. Gen. Was that Gentleman ſworn at my Lord *Stafford*'s Trial, Mr. *Dugdale?*

Coll. Yes, I was ſworn there, I acknowledge it.

Mr. Att. Gen. Did he ſwear any thing on your Behalf, for your Credit, Mr. *Dugdale?*

Coll. That was by hear-ſay, Mr. Attorney, at the *Tower*; I know nothing of my own Knowledge; but I did believe him another Man than I find him.

Mr. Serj. *Jeff.* No Queſtion, or elſe you would not have truſted him.

Mr. Att. Gen. Swear *Stevens.* (*Which was done.*) Do you give my Lord and the Jury an Account where you found this precious Ballad.

Stevens. The firſt Draught I found in his Bed-chamber.

Mr. Serj. *Jeff.* What of all of them? Which is it?

Stevens. The *Rary Shew*: We found the firſt Draught of it in his Houſe, when we came to ſearch his Papers, by Order of Council; and the Printer that printed the Ballad hath told me ſince, he had it from him——

Mr. Att. Gen. What ſay you yourſelf? ſpeak your own Knowledge.

Stevens. And Mr. *Atterbury* was by when we ſearched the Houſe.

Mr. Att. Gen. Well, Mr. *Atterbury* will tell his own Story.

Stevens. I have ſeen you on Horſeback, with Holſters before you, with ſome hundreds of Men after you, coming out of the *Bell-ſavage*-Inn; they ſaid, you were going to chuſe Parliament-men: I have known you three or four Years, you were joiner to our Hall.

Mr. Serj. *Jeff.* We call you to that Particular of the Papers, and you run in a Story of a Cock and a Bull, and I know not what.

L. C. J. Will you aſk him any Queſtions?

Coll. No, only this; Do you ſwear, upon your Oath, that you found the Original in my Houſe?

Stevens. Yes, Sir, you will ſee it with my Hand to it, and ſome more of them.

Mr. Att. Gen. And you found too thoſe that were printed?

Stevens. Yes, both our Names are to them that were concerned in the ſearching of them.

Mr. Serj. *Jeff.* You found the Paper in the Houſe?

Stevens. Yes.

Mr. Serj. *Jeff.* That is *Towzer*; but have you the Original of the *Rary Shew?*

(*It was looked for, but could not be found.*)

Coll. Pray, Gentlemen, obſerve, he ſwears that is an Original.

Mr. Serj. *Jeff.* No, no, he found the Paper in your Houſe.

Coll. I aſk about the Original of *Rary Shew.*

Mr. Serj. *Jeff.* He ſays, he ſaw a Paper drawn with a Pencil that was like the Original.

Atterbury. There was an Original drawn with a Pencil, upon Dutch Paper, 'tis long ſince, for we do not ſee it here now, which at the ſame Time we found upon *Colledge*'s Table in his Bed-Chamber.

Coll. Did you find an Original in my Chamber?

Atterbury. Yes, we found a Paper drawn with Black Lead.

Coll. Pray, where is it?

Atterbury. I did ſee it, it was drawn in Black Lead, it was upon Dutch Paper, and lay upon the Table in your Chamber.

Stevens. Sure I am, it was taken when we ſearched the Houſe.

Coll. I am ſure you could never find the Original of any ſuch thing in my Houſe.

Mr. Att. Gen. Then where is Mr. *Sewell?* (*Who was ſworn.*) Sir, did you ſee that Trumpery taken?

Sewell. I had a Warrant to ſeize Mr. *Spur*, and his Brother-in-Law, Mr. *Colledge.* So I went down to ſeize Mr. *Spur*, and ſearch his Houſe for ſuch Papers as I ſhould find. I could not find them in the Houſe; but I enquired of him, after I had ſearched, and could not find them, where they were; becauſe I ſaw him at Mr. *Colledge*'s when we firſt ſearched; he denied them a pretty while, but at laſt he told me, they were in the Hay-mow in the Barn. When I came there, he was bawling, and told me, his Wife, *Colledge*'s Siſter had taken them down, and carried them into a Room where I had ſearched before, but could not find them; and the Man was angry then, ſo we run after his Wife, and found her with all theſe Papers in a Bag.

Mr. Att. Gen. Are theſe the ſame Papers?

Sewell. Yes; and there were two other Cuts, the Man himſelf is about the Place ſomewhere.

Mr. Att. Gen. Swear Mr. *John Smith.*

(Which was done.)

Mr. Juſt. *Jones.* Come, Mr. *Smith*, do you know Mr. *Colledge*?

Mr. *Smith.* Yes.

Mr. Serj. *Jeff.* Give us an Account what Dealings you have had with him, where, and when; what he hath ſaid about the King; and tell us firſt, whether you be intimately acquainted?

Mr. *Smith.* We were intimately acquainted. The firſt Time I heard Mr. *Colledge* diſcourſing any Thing of this Nature, that is, concerning Treaſon, or any ſuch Thing, was once at a Coffee-houſe by *Temple-Bar*; there I met *Colledge*, and he told me he was invited to Dinner, and he likewiſe invited me to it. I aſked him, who provided the Dinner; he told me it was one Alderman *Wilcox*; I told him I was a Stranger, and did not care for going: he told me, I ſhould be very welcome there; and at laſt prevailed upon me to go: And as I was going along, I aſked him what the Alderman was; he told me, he was a Man that was as true as Steel, and a Man that would endeavour to root out Popery: Said I, That may be done eaſily, if you can but prevail with the King to paſs the Bill againſt the Duke of *York.* No, no ſaid he, you are miſtaken, for *Rowley* is as great a Papiſt as the Duke of *York* is, (*now he called the King* Rowley) and every Way as dangerous to the Proteſtant Intereſt, as is too apparent by his arbitrary Ruling. This was the Diſcourſe between the Coffee-Houſe and the Tavern where he went to dine. When we came in I aſked *Colledge* again whether the Alderman was there; he ſaid he was not there at that Time: I aſked him the ſecond Time, what Kind of Man he was; he ſaid, he was one that lived in his Country Houſe, and gave freely to ſeveral People to buy Arms and Ammunition: And I aſked him to what Purpoſe? And he ſaid, it was to bring the King to Submiſſion to his People: Adding thereto, that he wondered *Old Rowley* did not conſider how eaſily his Father's Head came to the Block, which he doubted not would be the End of *Rowley* at the laſt. After this Diſcourſe the Alderman came in; we dined, and every one went his own way about his own Buſineſs. Mr. *Colledge* then told me, if I would go with him to his own Houſe, I ſhould ſee how he was prepared with Arms and Proviſion. Soon after I met with him, and he deſired me to go along and dine with him; and I did ſo, and there he did ſhew me his Piſtols, his Blunderbuſs, and his great Sword; and he ſhewed me his Armour, Back and Breaſt; and he ſhewed me his Head-piece, which, if I am not miſtaken, was covered over with Camblet, it was a very fine Thing; and, ſaid he, theſe are the Things which will deſtroy the pitiful Guards of *Rowley*, that are kept up contrary to Law and Juſtice, to ſet up arbitrary Power and Popery.

Coll. What did I ſay, Sir, about my Armour?

Mr. *Smith.* Thus you ſaid; It was to deſtroy *Rowley*'s Guards, (thoſe were your Words) that were kept up contrary to Law and Juſtice, to ſet up arbitrary Power and Popery. After I had dined with him, I parted with him. A little before the Parliament was to meet at *Oxford*, I met him again; and we were diſcourſing of ſeveral Things, what Preparations the City were making, how they were provided with Powder and Bullets, and for his Part he would go down to *Oxford*, for he expected a little Sport there, upon the Diviſions that were like to be between the King and Parliament. Then, ſaid I to him, Why, what is the Matter there? Why, ſaid he, we expect that the King will ſeize upon ſome of the Members, and we are as ready as he: And, ſays he, for my Part, I will be there, and be one that ſhall ſeize him if he ſecure any of the Members; (and I believe he did go down;) ſays he, you know how the City is provided: I told him, no, not ſo well as he; but he told me all was very well. After he came up again, I met him another Time, and he told me, he went down in Expectation of ſome Sport; but *Old Rowley* was afraid, like his Grandfather *Jamy*, and ſo ran away like to beſhit himſelf.

Mr Serj. *Jeff.* Did he ſay, if he had not run away he would have ſeized him?

Mr. *Smith.* He ſaid nothing of that; but before, he ſaid, he would be one of them ſhould ſeize him, if he ſeized any of the Members. After this he told me, that *Fitz-gerald* and he had had a Quarrel at the Parliament-Door of the Houſe of Lords at *Oxford*; that *Fitz-gerald* had called him Rogue; and, ſaid he, *Fitz-gerald* made my Noſe bleed; but before long, I hope to ſee a great deal more Blood ſhed for the Cauſe. After this again, when there was a Diſcourſe of diſarming the City, that my Lord *Feverſham* was to come to do it, he told me, he was well provided, and if *Feverſham*, or any Man, nay, *Rowley* himſelf ſhould attempt any ſuch Thing, he would be the Death of him, before any Man ſhould ſeize upon his Arms.

Mr. Serj. *Jeff.* Did he diſcourſe any Thing to you about Arms to provide for yourſelf?

Mr. *Smith.* Yes, he did, I had an Armour from him.

Mr. Serj. *Jeff.* What did he ſay to you about it?

Mr. *Smith.* He did deſire me to get me Arms, for I did not know how ſoon I might make uſe of them. I had an Armour from him upon Trial; he ſaid it coſt him 30 or 40*s.* I had it upon Trial, but it was too big for me, ſo I gave it him back, and bought a new one.

Mr. Att. Gen. Did he tell you to what Purpoſe you ſhould arm yourſelf?

Mr. *Smith.* No, he did not name any Purpoſe; but he told me, I did not know how ſoon I might make uſe of it.

Mr. Att. Gen. What did he ſay to you about any one's ſeizing the King?

Mr. *Smith.* He told me the Parliament were agreed to ſecure the King, and that in order to it, all the Parliament-men came very well armed, and accompanied with Arms and Men; and he told me of a great Man that had Notice from all the Gentlemen of *England* how well they came armed.

Mr. Juſt. *Jones.* What did he ſay of himſelf?

Mr. *Smith.* He would be one that ſhould ſecure the King, if he ſeized any of the Members.

Mr. Juſt. *Jones.* When he had been there, what did he ſay?

Mr. *Smith.* If they had had any Work, he was ready provided for them.

Mr. Att. Gen. But pray, tell us again what he ſaid of the King's running away?

Mr. *Smith.* He ſaid, *Rowley* was afraid, like his Grandfather *Jamy*, and run away ready to beſhit himſelf.

L. C. J. If you have done with him, Mr. Attorney, let the Priſoner aſk him what Queſtions he will.

Coll. Mr. *Smith*, where was this Diſcourſe I had with you?

Mr. *Smith.* Which do you mean, the former Part, or the latter?

Coll. The firſt Diſcourſe you talk of, what I told you going to Mr. *Wilcox*'s to Dinner; and when it was?

Mr. *Smith.* You know beſt when it was, I can't exactly remember the Time; but you know 'tis true.

Coll. Where was it?

Mr. *Smith.* As we went along thither we had the firſt Part of it, and when we came thither, you and I talked till Alderman *Wilcox* came in; and you and I were alone together, and ſeveral Perſons that were there, were drawn into Cabals, two by two.

Coll. Where?

Mr. *Smith.* In the Room where we dined; and you know there was a little Room by, where ſome were drinking a Glaſs of Wine.

Coll. You ſay by two and two, the Company were drawn into Cabals.

Mr. *Smith.* I tell you, moſt of them were in Cabals, two and two together, only thoſe two Gentlemen that belonged to the Alderman went up and down, and gave Wine.

Coll. What Religion are you of?

Mr. *Smith.* Is it for this Man, to aſk me, my Lord, ſuch a Queſtion?

L. C. J. Yes, anſwer him.

Mr. *Smith.* I am a Proteſtant.

Coll. You were a Prieſt?

Mr. *Smith.* Yes, What then? and I am in Orders now.

Coll. That was from the Church of *Rome.*

Mr. *Smith.* Yes, and that is a good Ordination; I came in voluntarily to diſcover the Popiſh Plot, and was no Penſioner, nor received any Salary from the King. I have ſpent ſeveral Pounds, ſeveral ſcores of Pounds, but received no Recompence: And I was the Darling at one Time all over the City, when I did adhere to whatthey would have me to do.

Mr. Serj. *Jeff.* Did not you ſwear againſt my Lord *Stafford*?

Mr. Att. Gen. Were you not a Witneſs, Mr. *Smith*, at my Lord *Stafford*'s Trial?

Mr. *Smith.* In that Caſe I did give a general Account of the Deſign of the Papiſts; they did not then queſtion my Reputation, and I defy all the World to ſay any thing againſt it.

Coll. Pray hear me, Sir, if you pleaſe; the firſt Diſcourſe that you ſpeak of about Mr. *Wilcox*'s being a good Man for the Cauſe, and contributing Money, this was when we were at Dinner.

Mr. *Smith.* This was that Day when we went to Dinner with him, you know it very well.

Coll. Where were the other Diſcourſes I had with you?

Mr. *Smith.* Which part of them?

Coll. When I came from *Oxford*?

Mr. *Smith.* By the Ditch-ſide, by your own Houſe, I have two or three to prove it, we were an Hour or two diſcourſing together about this Buſineſs?

Coll. What Buſineſs?

L. C. J. He tells you of two Diſcourſes, one before you went to *Oxford*, and one after you came from thence.

Coll. He does ſay, that I did diſcourſe him about our coming down hither to *Oxford*, that the Parliament would ſecure the King, and that I would be one of them that ſhould ſeize him, and this was the Time when we dined with Alderman *Wilcox.*

L. C. J. Not ſo, he ſays, after that Time, and before you went to *Oxford*, he had ſuch a Diſcourſe with you.

Mr. *Smith.* Yes, my Lord, ſo it was.

Coll. And does he ſpeak of another Time, when I ſhewed him the Back, Breaſt, and Arms?

Mr. *Smith.* Yes.

Coll. But he ſaid, I diſcourſed then, that the City was provided with Arms, and that the Parliament were reſolved to bring the King to Submiſſion.

Mr. *Smith.* When I was in the Houſe with him, he then ſaid Mr. *Wilcox* gave *Money* to provide Arms: I aſked, for what? he ſaid, it was to bring the King to Submiſſion to his People; and then he added, he admired that *Rowley* did not remember how eaſily his Father's Head came to the Block; and he doubted not but that would be the End of him too.

L. C. J. He ſpake of ſeveral Times, you know.

Coll. I do not know one Word of it, nor can I diſtinguiſh the Times: But, Mr. *Smith*, the laſt Diſcourſe, you ſay about *Oxford* Buſineſs was by the Ditch-ſide.

Mr. Serj. *Jeff.* The Diſcourſe about bringing the King to Submiſſion, was in the Way as you went to Dinner.

Mr. *Smith.* The laſt Diſcourſe, when you returned from *Oxford*, was by the Ditch-ſide; but both before and after you ſpake to me at that Place about this Deſign of bringing the King to Submiſſion.

Coll. You ſaid, it was at *Wilcox*'s at Dinner.

Mr. Serj. *Jeff.* You miſtook him then.

Coll. Nay, Sir *George*, you took him not right.

Mr. Serj. *Jeff.* I have taken him right, I aſſure you, and you ſhall ſee it by and by.

Coll. He is the falſeſt Man that ever ſpoke with a Tongue.

Mr. Att. Gen. Swear *Bryan Haynes.* (*Which was done.*) Tell my Lord and the Jury whether you know this Gentleman, what Converſe you had with him, and what Diſcourſe he hath had with you. Apply yourſelf to Mr. *Colledge*'s Buſineſs only.

Haynes. I ſuppoſe he will not deny but that he knows me very well; I have been acquainted with him ever ſince *March* laſt, before the ſitting of the Parliament at *Oxford.* My Lord, there was a Warrant againſt me for High-Treaſon, and I made my Application to Mr. *Colledge*, and deſired him to go to a Perſon of Honour in *England*, and aſk his Advice, whether I might ſuperſede the Warrant by putting in Bail, and carry the *Superſedeas* in my Pocket: Mr. *Colledge* told me, he would go to this Perſon of Honour, for he would do nothing of his own Head; and he bid me come to him the next Day. My Lord, I came to Mr. *Colledge* the very next Day, and I met him at his Houſe, and I aſked him what was the Reſult, and what Advice he had from that Perſon of Quality: He bid me be of good cheer, that the Parliament would be, and ſit at *Oxford* ſoon; that I ſhould not value the King a Pin; for, ſaid he, the King is in a worſe Condition than you or I; for you ſhall ſee, ſaid he, he ſhall be called to an Accouut for all his Actions.

Mr. Serj. *Jeff.* Who ſhould?

Haynes. The King; for all the World may ſee, ſays he, that he does reſolve to bring in arbitrary Power, and Popery: And, ſaid he, unleſs he will let the Parliament ſit at *Oxford*, ſince he hath called them together, and put the People to charges in chooſing of them, and them in coming down, we will ſeize him at *Oxford*, and bring him to the Block, as we did the Logger-head his Father: The Parliament ſhall ſit at *Guild-Hall*, and adjuſt the Grievances of the Subject, and of the Nation: And you ſhall ſee, ſaid he, that no King of his Race ſhall ever riegn in *England* after him.

L. C. J. Where was this he ſaid ſo?

Haynes. At his own Houſe I met him; and he and I did walk all along from his own Houſe, over the Bridge that is againſt *Bridewell*, and ſo went all along till we came to the *Hercules Pillars*, and we had ſome diſcourſe there; we went up one Pair of Stairs and called for ſome Beef; and all this diſcourſe was in that very Place of the *Hercules Pillars*.

Mr. Serj. *Holloway.* Do you know any thing of any Arms he had, and for what?

Haynes. But, Sir, ſaid I to Mr. *Colledge*, how can this be done, 'tis a Thing impoſſible: You pretend, you ſay, to the Duke of *Monmouth*, that he is a fine Prince, and ſtands up for the Proteſtant Intereſt. Alas, ſaid he, we make an Idol of him to adumbrate our Actions, for fear we ſhould be diſcovered: Do you think the wiſe People of *England* ſhall ever make a Baſtard upon Record King of *England?* No, ſaid he, for though we praiſe his Actions, yet we cannot endure him, becauſe he is againſt his own Father. But, ſaid he, further, unleſs the King do expel from his Council the Earl of *Clarendon*, cunning *Lory Hyde*, the Earl of *Hallifax*, that great Turn-coat Rogue, that was before ſo much againſt the Papiſts, a Raſcal, we ſhall ſee him hanged, and all the Tory Counſellors, except the King do it, we will make *England* too hot for him.

Coll. Who did I ſay this to? To you?

Haynes. Yes, to me.

Coll. Pray, how could this be poſſible?

Haynes. Yes, you knew my Condition; and I intimated to you at that Time, that I was as much for Treaſon and Villainy as you: But then ſaid I to him, how can this be done? Here you have neither Officers, nor Men of Experience, nor Men of Knowledge; nor you have no Ammunition, Sea-port Towns, nor any Ships. And beſides, the King, ſaid I, hath a great Party in the Land, and the Duke of *York* likewiſe; and for all the Men of Eſtates, and the ancient Gentlemen, they will not be diſturbed, and quit their Eaſe for a Civil War. Oh, ſays he, you are miſtaken, for we have in the City 1500 Barrels of Powder, and we have 100,000 Men ready at an Hour's Warning; and we have ordered every Thing in a due Method againſt the ſitting of the Parliament at *Oxford*; and you ſhall ſee *England* the moſt glorious Nation in the World, when we have cut off that beaſtly Fellow *Rowley*; and ſpeaking of the King, he ſaid, he came of the Race of Buggerers, for his Grandfather King *James* buggered the old Duke of *Buckingham*; and he called him Captain, and ſometimes the King, and ſometimes *Rowley*.

Mr. Serj. *Jeff.* This was pure Proteſtant diſcourſe, upon my Word.

Haynes. Then he railed at Judge *Pemberton*; and, ſaid he, let him try *Fitz-Harris* if he dare; I ſhall ſee him go to *Tyburn* for it, I hope a Turncoat Rogue; he was for the Plot whilſt he was *puiſne* Judge, but now he is Chief Juſtice, he is the greateſt Rogue in the World. He is like one of the Penſioners in the Long Parliament. So one Day I went along with Mrs. *Fitz-Harris*, and Mr. *Ivy*, and he ſent a Man to me, and deſired me to come to the *Hog in Armour*; thither we came, and met him, and went to his Lodgings, and there we dined. Then they made ſome Perſons of Honour believe, that I was a Perſon ſo and ſo qualified, and was brimful of the Plot; and he would put me upon charging the King with the firing of *London*, and the Murder of Sir *Edmundbury Godfrey*; and, ſaid he, ſuch and ſuch Lords ſhall live and die by you; and beſides, ſaid he, you need not fear, *England* ſhall eſpouſe your Cauſe. But, ſaid I, the Law is like a Spider's Web; that catches the little Flies, but the great Flies run through the Net, and make their eſcape; ſo it is with theſe Lords, they put you and me on the danger of acting; and when they got off by Intereſt, a Jury of 12 Men will hang us by the Neck, and ſo I ſhould periſh, whilſt others triumphed, and only be a Martyr for the Fanaticks. So in diſcourſe we were talking of the Libel of *Fitz-Harris*; the Devil take me, ſaid he, every individual Word is as true as God is in Heaven; and, ſaid he, if you do not join with *Fitz-Harris* in his Evidence, and charge the King home, you are the baſeſt Fellow in the World, for he makes you Slaves and Beggars, and would make all the world ſo; and 'tis a Kind of Charity to charge him home, that we may be rid of ſuch a Tyrant.

Mr. Serj. *Jeff.* Mr. *Colledge*, if you will aſk him any Queſtions, you may.

Coll. Certainly, my Lord, the thing ſpeaks it; he is not to be talked withal; is it probable I ſhould talk to an *Iriſhman* that does not underſtand Senſe?

Haynes. 'Tis better to be an honeſt *Iriſhman*, than an *Engliſh* Rogue.

Mr. Serj. *Jeff.* He does it but to put you in a Heat, don't be paſſionate with him.

Haynes. No, I am not, I thank God, he hath not put me into a Heat.

Coll. Where was this diſcourſe about ſuperſeding your Warrant?

Haynes. At *London*.

Coll When?

Haynes. It was before the Parliament ſat at *Oxon*.

Coll. How long?

Haynes. I can't tell poſitively to an Hour or a Day.

Coll. What Month, as near as you can?

Haynes. It was in the Month of *March*.

Coll. Had you ever ſeen me before?

Haynes. Can you deny that?

Coll. I aſk you whether you have or no?

Haynes. Yes, I have ſeen you in the Coffee-Houſes bawling againſt the Government.

L. C. J. Were you an intimate Acquaintance of his before *March* laſt?

Haynes. No intimate Acquaintance.

Coll. Then this is the firſt Time you diſcourſed with me.

Haynes. Oh, no my Lord. One and I fell out at the *Queen's-Head* Tavern at *Temple-Bar*, and he ſet me upon the Buſineſs, and *John Macnamarra* and the others; and truly I did the Buſineſs for him: For we fell out and did Box, and our Swords were taken from us, and I went to *John Macnamarra*, and told him, yonder is ſuch a Man at ſuch a Place, now you may ſeize upon him.

Coll. What Man was that?

Haynes. One *Richard Ponre*.

Coll. He belonged to my Lord *Tyrone*, I think, there were Warrants to take him. Do you ſay I ſet you upon that?

Haynes. Yes, you were with me the Night before, and Capt. *Brown*, and they gave us a Signal, a blue Ribband, to diſtinguiſh that we were Proteſtants, from the Biſhops Men.

L. C. J. When were you to make Uſe of it?

Haynes. When the King was ſeized.

Mr. Serj. *Jeff.* Well, go on, have you any more?

Haynes. But, my Lord, further, after he came from *Oxon* I met him; and, ſaid I, Where are now all your Cracks and Brags? Now you ſee the King hath made a Fool of you; now you know not what you would have done. Says he, What would you have us to do? We have not done with him yet; for, ſaid he, no Servant, no Man living did know whether he would diſſolve the Parliament that Day. I was that very nick of Time at the Lord's Houſe, and there was a Man came in with a Gown under his Arm, and every one looked upon him to be a Taylor, and no Body did ſuſpect, no, not his intimateſt Friends, except it were *Fitz-gerald*, that he would diſſolve the Parliament that Day; but preſently he puts on his Robes, and ſends away for the Houſe of Commons; and when he had diſſolved them, before ever the Houſe could get down, he took Coach and went away, otherwiſe the Parliament had been too hard for him; for there was never a Parliament-Man but had divers armed Men to wait on him, and I had my Blunderbuſs and my Man to wait upon me. But well, ſaid he, there is a God above that will rule all.

Mr. Att. Gen. Call Mr. *Turbervile*.

Coll. Hold, Sir, I deſire to aſk him ſome Queſtions. You ſay, the firſt Time that I ſaw you, you had this diſcourſe with me?

Haynes. Do not uſe Tautologies; 'tis not the firſt Time I have been examined, I know how to ſpeak as well as you.

Coll. Anſwer my Queſtions, Sir.

Haynes. You know it was after I had made Affidavit before the Recorder of *London*, a Copy of which was carried to that Nobleman; and you came from him and returned me his Thanks, and told me it was the beſt Service I could do him. I would not trouble the Court with circumſtantial Things; and you told me I ſhould be gratified not only in my own Property, but a Reward for me and my Heirs for ever.

Mr. Att. Gen. For what?

Haynes. I made Affidavit before the Recorder of *London*.

Coll. About what?

Haynes. Concerning one *Fitz-gerald*.

Mr. Att. Gen. Is this to this Matter?

Haynes. No, nothing at all.

L. C. J. Let him aſk any Queſtions what he will.

Coll. I aſk when it was the firſt Time you were acquainted with me, ſo much as to know me well?

Haynes. As to the firſt Time of Intimacy, here is *Macnamarra* will take has corporal Oath that I was as well acquainted with him as any one in the World.

Coll. Pray anſwer me, Sir, when was the firſt Time I talked to you?

Haynes. The firſt intimate Acquaintance we had, was when you put me upon the Deſign about *Fitz-gerald*.

Coll. Pray, Sir, you go too faſt already, as you are ſtill gallopping; where was this diſcourſe about his Majeſty?

Haynes. I told you before.

Coll. Where was it?

Haynes. I went to you after the Affidavit was made, and told you there was a Warrant out after me, and deſired you to go to that Nobleman and deſire his Advice whatI might do, or whether I might ſuperſede the Warrant. You told me you could do nothing without Advice, and you would go and adviſe with that Nobleman.

Coll. My Lord, here is Mr. *Turbervile* come in, they will over-hear one another; pray let me have fair play for my Life.

(*Whereupon* Turbervile *withdrew.*)

L. C. J. Can't you anſwer him? When was the firſt Time you came acquainted with him?

Mr. Serj. *Jeff.* When was the firſt Diſcourſe you had with him?

Haynes. In *April* laſt.

Coll. You ſay it was before the ſitting of the Parliament, and that was in *March?*

Haynes. I meant in *March*.

Coll. So indeed you ſaid at firſt.

Mr. Serj. *Jeff.* He never did ſay the Day of the Month, nor the Month neither.

Mr. *Jones.* How long was it before the ſitting of the Parliament?

Haynes. Mr. *Jones*, Truly I do not remember preciſely how long it was before the ſitting of the Parliament; but I am ſure it was before.

Mr Serj. *Jeff.* I did take it that he ſaid it was before the ſitting of the Parliament, and now he ſays in the Month of *March*. Pray when he talked to you, did not he tell you of the ſitting of the Parliament, and that they would ſtand by you?

Coll. He hath ſaid it already, you need not direct him, Sir *George*, he goes faſt enough. But you ſay, Sir, the firſt Time I was ever acquainted with you, was in *March*; then Gentlemen, conſider, whether it be probable that at that Time I ſhould diſcourſe to him after this Manner.

L. C. J. No, I did tell you what he ſays; he ſaid the firſt Time he was intimately acquainted with you, was in *March*; he ſaid he had before ſeen you in Coffee-Houſes, and he is ſure it was before the ſitting of the Parliament; for he tells you the Diſcourſe you had, and by that Diſcourſe it appears, it related to a Parliament that was afterwards to ſit. And then to give you a more particular Circumſtance, he ſays, that you put him upon the making the Affidavit about *Fitz-gerald*, and ſo you came acquainted.

Haynes. Aſk Mr. Attorney. My Lord, that Day he was taken and carried to *White-hall* before the Secretary of State, he ſaid, I do not know who it ſhould be that ſhould accuſe me, I believe it is *Ivy*; as for *Haynes*, he was taken t'other Day, he was an honeſt Man.

Coll. You ſay I deſired you to make an Affidavit; Was it after that, or before I had that Diſcourſe with you?

Haynes. It was after: For I came and deſired you to go to ſuch a Perſon of Quality, and you went to him and adviſed with him; and then the next Morning ſuch Diſcourſe as I told your Lordſhip and the whole Court of, he told me.

Coll. Did I ſpeak theſe treaſonable Words after the Affidavit was made?

Haynes. You ſaid I muſt make ſuch an Affidavit concerning *Fitz-gerald.*

Coll. But was this treaſonable Diſcourſe before you made the Affidavit, or after?

Haynes. After the Affidavit made, you told me this: When I came to his Houſe, and from thence we went to the *Hercules Pillars.*

Mr. Sol. Gen. Will you aſk him any more Queſtions, Mr. *Colledge?*

Coll. Did you ever ſpeak with me in your Life before *Macnamarra* did call me out of the Coffee-houſe to go along with you, where you would diſcover a deſign againſt my Lord *Shafteſbury*'s Life?

Haynes. I told you I never had any intimate Acquaintance with you in my Life before, nor did I ever ſpeak with you before.

Coll. When was that Diſcourſe, I aſk you once again?

Haynes. After the Affidavit made.

Coll. That Night?

Haynes. Within a Week or thereabouts after the Affidavit made.

Mr. Att. Gen. Call Mr. *Edward Turbervile.* But Mr. *Haynes*, I would aſk you one Queſtion. Did he deliver you any Ribband as a Mark of Diſtinction?

Haynes. Yes, here it is. (*And it was ſhewn to the Court.*)

Then Mr. Turbervile *was ſworn.*

Mr. Serj. *Jeff.* Pray Mr. *Turbervile*, will you tell my Lord and the Jury what Diſcourſe you had with Mr. *Colledge*; and where, and when?

Mr. *Turbervile.* When the Parliament ſat in *Oxon* about the middle of the Week, I can't be poſitive in the Day, but I think it was in the middle of the Week I dined with Mr. *Colledge*, Capt. *Brown* and Don *Lewis*, Clerk of *Derby-Houſe*, at the *Chequer-Inn.* After Dinner Don *Lewis* went out about ſome Buſineſs, and Captain *Brown* went to ſleep, Mr. *Colledge* and I fell to talking of the Times, and I was obſerving, I thought the Parliament was not a long-lived Parliament. Said he, There is no good to be expected from the King; for he and all his Family are Papiſts, and have ever been ſuch, you know it, Sir.

Mr. Serj. *Jeff.* Nay don't apply to him.

Mr. *Turb.* Said I, The King will offer ſomething or other by way of Surprize to the Parliament. Said he, I would he would begin; but if he do not, we will begin with him, and ſeize him; for there are ſeveral brave Fellows about this Town, that will ſecure him till we have thoſe Terms that we expect from him.

L. C. J. Where was this?

Mr. *Turb.* At the *Chequer-Inn.*

L. C. J. What ſaid he further?

Mr. *Turb.* He ſaid he had got a Caſe of Piſtols, and a very good Sword, and a Velvet-Cap; and I can't be poſitive he had Armour on, but I believe he had.

Mr. Att. Gen. Did he tell you he came down for that Purpoſe to ſeize the King?

Mr. *Turb.* Yes, and he gave me a piece of Blue Ribband to put in my Hat. He had a great Quantity of it.

Mr. Att. Gen What was that for?

Mr. *Turb.* To be a Diſtinction if there ſhould be any Diſturbance when the Thing ſhould be done.

Coll. What Thing done?

Mr. *Turb.* I know nothing but of your telling me of it.

Coll. Where was this?

Mr. *Turb.* At the *Chequer-Inn* in *Oxon*, Mr. *Colledge.* You talk much and can't remember all you ſay.

Mr. Att. Gen. What did he diſcourſe to you about Arms and a Horſe?

Mr. *Turb.* I told him I had never an Horſe, and nothing but a Caſe of Piſtols; he bid me I ſhould not trouble my ſelf, for he would get me an Horſe.

Coll. What to do?

Mr. *Turb.* To carry on your Deſign, I know not what it was, but by your Words.

Mr. Att. Gen. Tell what he ſaid of it at the *Chequer-Inn.*

Mr. *Turb.* He ſaid, there was a Deſign to ſeize the King.

Mr. Att. Gen. Did he deſire you to be one of them?

Mr. *Turb.* He did deſire me to be ready to aſſiſt.

Mr. Juſt. *Jones.* And how much of that Ribband had he, pray?

Mr. *Turb.* A very great Quantity, 40 or 50 Yards.

Mr. Sol. Gen. Pray, Mr. *Turbervile*, will you give your Evidence over again, and let Mr. *Colledge* attend to it.

Mr. *Turb.* When the Parliament ſat at *Oxon*, about the middle of the Week, I cannot be poſitive to a Day, I believe it was either *Wedneſday* or *Thurſday*, I dined with Mr. *Colledge*, Captain *Brown* and Don *Lewis*, who was formerly Clerk of *Derby-houſe.* Don *Lewis* after Dinner went out, and Captain *Brown* lay down on the Bed, and Mr. *Colledge* and I fell a talking of the Times, and I told him, I thought this Parliament would be no long-lived Parliament. Upon which *Colledge* told me, the King and all his Family were Papiſts, and there was no good to be expected from him. Then I replied, the King would perhaps ſurprize the Parliament, or uſe ſome Stratagem to bring them to his Terms. Said Mr. *Colledge* again, I would he would begin; but if he do not, we will ſecure him till he comes to thoſe Terms we would have from him; for here are ſeveral brave Fellows, and many more are coming down that will join with it.

Mr. Att. Gen. Did he name any one?

Mr. *Turb.* No indeed, he did not; he himſelf had a Caſe of Piſtols, a Sword, and I believe he might have his Armour on.

Coll. Did I diſcourſe who were to join with me?

Mr. *Turb.* No, Mr. *Colledge*, you did not name any body to me, but Capt. *Brown* was with you.

Mr. Att. Gen. Were you examined in my Lord *Stafford*'s Trial?

Mr. *Turb.* Yes, I was.

Mr. Att. Gen. Was this Gentleman ſworn to your Reputation there?

Mr. *Turb.* No, not to mine.

Coll. Pray, how came we to talk of ſuch things? What Occaſion was there that I ſhould talk Treaſon of the King to you? Was there any body beſides us two there?

Mr. *Turb.* No, Capt. *Brown* was gone to ſleep, and *Lewis* was gone out.

Mr. Att. Gen. It was not at Dinner that you talked ſo, Mr. *Colledge*, he ſays.

Coll. Had they been at Dinner with us there?

Mr. *Turb.* Yes, and we had a Leg of boiled Mutton to Dinner.

Coll Did you ſtay after Dinner?

Mr. *Turb.* Yes, and I lay with you afterwards upon the Bed.

Coll. I thought you had ſaid Capt. *Brown* went to ſleep there.

Mr. *Turb.* Yes, but he was gone too, when we laid down together.

Coll. God forgive you, I can ſay no more, I never ſpoke one Word of any ſuch Diſcourſe in my Life.

Mr. Att. Gen. Will you aſk him any more Queſtions?

Coll. Mr. *Turbervile*, when did you give in this Information againſt me?

Mr. *Turb.* I gave it to the Grand Jury.

Coll. Not before?

Mr. *Turb.* Yes, I did.

Coll. When was it?

Mr. *Turb.* Truly I can't well tell, I believe it was a Day or two before I came to *Oxon.*

Coll. Why did you make it then, and not before?

Mr. *Turb.* I'll tell you the Occaſion. Mr. *Dugdale* told me the Grand Jury of *London* would not find the Bill: I did admire at it extremely; for I thought every one that converſed with him might be an Evidence againſt him; he was always ſo very laviſh againſt the King and the Government. So then Colonel *Warcup* came to me and took my Depoſitions, and then I came for *Oxford.*

Coll. What was the reaſon you did not diſcover this Treaſon before?

Mr. *Turb.* There was no reaſon for it, it was not neceſſary.

Coll. You were not agreed then.

Mr. *Turb.* There was no Agreement in the Caſe, there needs nothing of that, I think, but I am not obliged to give you an Account of it.

Coll. God forgive you, Mr. *Turbervile.*

Mr. *Turb.* And you too, Mr. *Colledge.*

Mr. Att. Gen. Then call Sir *William Jennings.*

Mr. Serj. *Jeff.* Mr. Attorney, if you pleaſe, till he comes, I will acquaint my Lord here is a Gentleman that hath not yet been taken notice of, one Mr. *Maſters*, that is pretty well known to Mr. *Colledge*; now he is a Man, he muſt acknowledge, of an undoubted Reputation, and I deſire he may give your Lordſhip and the Jury an account what he knows of the Priſoner; becauſe he is ſo curious for *Engliſhmen*, we have brought him an *Engliſhman* of a very good Repute.

Coll. My Lord, I am charged with Treaſon in this Indictment; here are a great many Things made uſe of that ſerve only to amuſe the Jury, I can conjecture nothing elſe they are brought for; I deſire to know whether the Pictures produced are part of the Treaſon.

L. C. J. Stay till the Evidence is given, and we will hear what you can ſay at large when you come to ſum up your Defence.

Mr. Serj. *Jeff.* Pray, my Lord, will you be pleaſed to hear this Gentleman: He will tell you what diſcourſe he hath had with the Priſoner at the Bar.

Then Mr. Maſters *was ſworn.*

Mr. *Maſters.* Mr. *Colledge* and I have been acquainted for a great many Years; and we have often diſcourſed. I have told him of his being ſo violent as he hath been ſeveral Times. But a little before the Parliament at *Oxford*, about *Chriſtmas* laſt, after the Parliament at *Weſtminſter*, at Mr. *Charlton*'s Shop the Woollen-Draper in *Paul*'s *Church-Yard*, we were diſcourſing together about the Government, and he was juſtifying of the late long Parliament's Actions in 40; and he ſaid, That Parliament was as good a Parliament as ever was choſen in the Nation. Said I, I wonder how you have the Impudence to juſtify their Proceedings that raiſed the Rebellion againſt the King, and cut off his Head. Said he, They did nothing but what they had juſt Cauſe for, and the Parliament that ſat laſt at *Weſtminſter* was of their Opinion, and ſo you would have ſeen it.

Mr. Serj. *Jeff.* What did he ſay of the Parliament ſince?

Mr. *Maſters.* He ſaid the Parliament that ſat laſt at *Weſtminſter* was of the ſame Opinion that that Parliament was.

Mr. Serj. *Jeff.* Pray afterwards what Diſcourſe had you about his Colonelſhip?

Mr. *Maſters.* We were talking at *Guild-Hall* that Day the Common-Council was, the 13th of *May* as near as I remember, ſo I came to him, How now, Colonel *Colledge*, ſaid I, what do you make this Buſtle for? You miſtook me, and ſaid, Couſin, how long have you and I been Couſins? Nay, prithee ſaid I, 'tis not yet come to that, to own Kindred between us, I only called you Colonel in Jeſt. Marry, mock not, ſaid he, I may be one in a little Time.

Mr. Serj. *Jeff.* Have you any Thing to aſk Mr. *Maſters?* You know he is your old Acquaintance, you know him well.

(*Then Sir* William Jennings *was ſworn.*)

Mr. Juſt. *Jones.* What is that you know concerning Mr. *Colledge* at *Oxford*, Sir?

Sir *W. Jennings.* My Lord, the firſt Time that I heard any Thing of Mr. *Colledge* was, there was ſome Company looking upon a Picture, for I knew him not, nor never had any Word of diſcourſe with him in my Life, any more than ſeeing him in a publick Coffee-Houſe. But there was a Picture looking on by 7, or 8, or 10 People, I believe more or leſs, and I coming and crowding in my Head among the reſt, looked upon this Picture. After the Crowd was over, Mr. *Colledge* takes a Picture out of his Pocket, and, ſaid he, I will give you one of them if you will. So he gives me a Picture; which Picture if I could ſee, I could tell what it was; it was written *Mac a Top*, and there were ſeveral Figures in it.

(*Then the Picture was ſhewed him.*)

This is one of the ſame that I had of him, and I had not had it long in my Cuſtody, but meeting with Juſtice *Warcup*, I ſhewed it him, who bid me give it him, and ſo I did. The next Thing that I did ſee Mr. *Colledge* do, was in the Coffee-Houſe, not the ſame Day, but another Time. I ſaw him bring in a Parcel of blue Ribband which was wrought, and theſe Words eight Times wrought in it, twice wrought in every Quarter of a Yard, *No Popery*, *No Slavery.* I ſaw him ſell to a Member of Parliament, as I took him to be, a Yard of that Ribband for 2*s.* and truly I was thinking he would aſk me to buy ſome too, and I ſaw that Gentleman (I took him to be a Parliament-Man) take this Ribband and tie it upon his

Sword. As to the other Thing I have to ſay of Mr. *Colledge*; that very Day the Parliament was diſſolved, he had been in a Quarrel, as he told me, with Mr. *Fitz-gerald*; and I was ſtanding in the School-Houſe Yard, and he comes directly to me without my ſpeaking to him or any thing; but he comes and tells me Mr. *Fitz-gerald* had ſpit in his Face; and, ſaid he, I ſpit in his Face again; ſo we went to Loggerheads together, I think that was the Word, or Fifty-cuffs. So, ſaid I, Mr. *Colledge*, your Noſe bleeds; he takes his Hankerchief out of his Pocket and wipes his Noſe, and ſaid, I have loſt the firſt Blood in the Cauſe, but it will not be long before more be loſt.

L. C. J. Where was this?

Sir *W. Jennings.* In the School-Houſe Yard at *Oxon.* I never diſcourſed with him afterwards till I met him at *London* in *Fleet-Street* one *Sunday* in Afternoon, and I remember Captain *Creſcett* was along with me. And when he came up to me, How now, ſaid I; honeſt Joiner? Says he, You call me honeſt Joiner, ſome call me Rogue and Raſcal, and I have been beating ſome of them; ſo that I believe they will be aware of it, So I told Captain *Creſcett*, I never met this Man but he was always in a Quarrel.

Coll. Was it on a *Sunday* that I told you I had been beating ſomebody?

Sir *W. Jennings.* You told me ſo, Capt. *Creſcett* was by.

Coll. I do remember I met you, but I did not tell you I had then been beating any one. But pray, Sir *William*, when I met you after the Parliament was diſſolved, and *Fitz-gerald* and I had quarrelled, did I ſay, That I had loſt the firſt Blood in the Cauſe, but it would not be long e'er more were loſt? Sir *William*, you are a Gentleman, as for the other Men, they don't care what they ſay, nor do I ſo much regard them; but you value your Word and Honour: Theſe were my Words, and pray will you recollect youſelf before you be poſitive in the Thing, whether I did not ſay, I have loſt the firſt Blood for the Parliament, (for it was upon my vindicating of the Commons and Dr. *Oates*, whom *Fitz-gerald* had abuſed, and upon that the Quarrel began; ſo I ſaid when you met me, and told me my Noſe bled, *I have loſt the firſt Blood for the Parliament*) *I wiſh it may be the laſt.*

Sir *Will. Jennings.* Mr. *Colledge*, if you pleaſe I will anſwer you as to that; I do aſſure you 'tis the firſt Time that ever I came upon this Occaſion in my Days, and I have declared it before, and do declare it now, I would rather have ſerved the King in three Engagements, than come in againſt you or any Man upon ſuch an Occaſion. But I declare to you upon the whole Memory of the Truth, the Words were as I ſpoke them at firſt, and no Parliament named or mentioned. And, my Lord, moreover, I will tell you, when I did tell this Story, becauſe that Mr. *Creſcett* is able to tell you whether I did not relate the Words within half an Hour, or a little Time after. Now I never had a Prejudice againſt you in my Days, nor other Concern; but having told Mr. Juſtice *Warcup* this Story, I am brought hither to teſtify it.

Coll. Sir *William*, I am very ſorry you did not obſerve and remember my Words then.

Sir *Will. Jennings.* I muſt needs ſay, I could not imagine what the Words meant when they were ſpoken, nor do I underſtand them to this Day? but ſoon after they were ſpoken, I related them to Juſtice *Warcup*, he being a Juſtice of Peace.

Mr. Serj. *Holloway.* Gentlemen, we ſhall reſt here, and conclude our Evidence for the King at preſent, to hear what the Priſoner ſays to it; only with my Lord's Leave, I ſhall explain the Words to you that are in the Indictment, and tell you what is meant by compaſſing and imagining the Death of the King. The ſeizing the Perſon of the King is in Law a compaſſing and intending his Death; and ſo it hath been adjudged in ſeveral Caſes, as in 1 *Jacobi*, my Lord *Cobham*, and my Lord *Grey*'s Caſe, and ſeveral other Caſes; and ſo you may fully apprehend what the Charge is, and may underſtand the Words in the Indictment, That if you are not ſatisfied with the general Words of compaſſing the King's Death, you may know, that the ſeizing his Perſon extends to it.

Mr. Serj. *Jeff.* My Lord, we have done with our Evidence, now let him go on with his.

L. C. J. Now, Mr. *Colledge*, you may ſay what you will for your Defence, and call your Witneſſes that you have to produce.

Coll. My Lord, I have heard the Evidence that is againſt me, and I would deſire your Lordſhip to reſolve me ſome Queſtions upon it. I think the Indictment is for treaſonable Practices, for a Conſpiracy; now I deſire your Lordſhip will be pleaſed that I may know from you and the Court, whether in all this Evidence given in Proof againſt me, a Conſpiracy is proved; or if any Thing appears beſides what they ſay I ſaid.

L. C. J. For a Conſpiracy in you, if the Witneſſes ſpeak Truth, there is a plain Proof, and of the Degrees of it: Firſt of all, by your publiſhing Libels, and Pictures to make the King odious and contemptible in the Eyes of the People, and that you ſhould be the Author of ſome of thoſe Pictures, and they were found in your Cuſtody.

Coll. I conceive that is not proved.

L. C. J. If the Witneſſes ſay true, it is proved.

Coll. They do not produce that, they do but ſay it.

L. C. J. Mr. *Dugdale* ſwears, That at *Oxford* here, you ſhewed him the Picture, you ſung the Song here, and expounded it at my Lord *Lovelace*'s, and a great many of them are found in your Cuſtody. Then that you prepared Arms, that you ſhewed *Smith* the Arms of your Houſe, and having thoſe Arms, you ſaid, you would go to *Oxford*, and if there ſhould be a Diſturbance there, you would ſecure the King. And you did come to *Oxford*, where you hear what is ſaid; for I obſerve *Stephen Dugdale* and *Edward Turbervile* ſpeak of what was done at *Oxford*. *John Smith* and *Bryan Haynes* ſpeak of what you ſaid at *London* before you went to *Oxford*, and after you came from *Oxford*. Now I ſay, if theſe Witneſſes ſpeak true, 'tis a ſtrong Evidence againſt you, both upon the Statute of the 25th of *Edw.* the IIId, and that of this King too. For my Brother *Holloway* told you true, That whereas the imagining the Death of the King is High-Treaſon, by the 25th of *Edw.* the IIId. ſo a ſeizing of the King, and endeavour to do that, is a conſtructive Intention of the Death of the King; for Kings are never Priſoners, but in order to their Death. And therefore it hath been held in all Times, that by the Statute of *Edw.* the IIId that was Treaſon; but then the Statute of this King, in the 13th Year of his Reign, is more ſtrong; for there it ſays, If any Man ſhall by any Words, or malicious ſpeaking ſhew the Imagination of his Heart, that he hath any ſuch Intention, that is Treaſon too.

Coll. My Lord, the Foundation of this Indictment is ſaid to be laid here in *Oxford*, as I ſuppoſe; pray, my Lord, here is only Mr. *Dugdale* and *Turbervile* that ſwear againſt me for what I ſhould ſay in *Oxon*, all the reſt ſpeak to Things ſaid and done at *London*. Now, my Lord, I deſire to know whether they have proved any Treaſonable Practices, Conſpiracy or Deſign in me againſt the Government, I would fain know that, whether there be Matter here to ground an Indictment upon; for the one ſays in one Place, the other in the other, which may be diſtinct Matters, and none of them ſwear Facts againſt me, but only Words.

Mr. Juſt. *Jones.* Yes, providing Arms for your ſelf, and offering others Arms.

Coll. That I ſhall make this Anſwer to, I had only a Caſe of Piſtols and a Sword, which every Footman and Horſeman had, that came from *London*, I think. But further, my Lord, I would aſk your Lordſhip, whether there ought not to be two Witneſſes diſtinct, to ſwear Words at one and the ſame Time.

Mr. Juſt. *Jones.* No, no, the Reſolution of the Judges in my Lord *Stafford*'s Caſe is quite contrary.

L. C. J. Look you, it hath been often reſolved, That if there be one Witneſs that proves one Fact which is an Evidence of Treaſon; and another proves another Fact, which is an Evidence of the ſame Treaſon, though they be but ſingle Witneſſes to ſeveral Facts, yet they are two Witneſſes to an Indictment of Treaſon, that hath been often publickly reſolved, particularly in the Caſe of my Lord *Stafford*, mentioned by my Brother. And I'll tell you my Opinion further, If there be one Witneſs that proves here what you ſaid at *Oxford*, and another that proves what was ſaid in *London*, if they be in order to the ſame Treaſon, it is ſufficient; for if you do conſpire to commit ſuch a Treaſon in *London*, and you come with ſuch an Imagination in your Heart to *Oxford* to complete this Treaſon, though your Deſign was not firſt formed here, I think 'tis enough to maintain an Indictment of Treaſon, and they are two good Witneſſes, though but one ſpeak to what was done at *Oxford*; but I muſt tell you, in your Caſe, there are two full Witneſſes, to that which was done at *Oxford*, beſides Sir *William Jennings*.

Coll. That which Sir *William Jennings* ſpeaks of I told you before what it was I ſaid, *It was the the firſt Blood that was ſhed for the Parliament.*

Mr. Juſt. *Jones.* The Parliament was diſſolved before that which Sir *William Jennings* ſpeaks of, therefore you could not ſay it was to defend the Parliament.

Coll. Mr. *Dugdale* did ſay that I ſpake ſuch and ſuch Words in the Barber's Shop in the *Angel-Inn*; there I was indeed at the Time that he does ſpeak of, and the Barber was by, I do think indeed it were convenient to have him here; but I know not where he would charge me, or what it was he would charge me with, becauſe I never ſaid any thing in my Life that was like Treaſon.

L. C. J. Mr. *Colledge*, call what Witneſs you will.

Coll. But, my Lord, pray let me aſk you one Queſtion more; You take theſe Words diſtinct from any Matter of Fact, don't you?

L. C. J. No, complicated with the Fact, which was the Overt-Act, the coming to *Oxon*, with Piſtols to make one, if there had been any Diſturbance, and to ſeize the King.

Coll. Then, my Lord, I would aſk you, Whether any Act of Treaſon done at *London*, ſhall be given in Evidence to prove the Treaſon for which I am now indicted, and which was given in Evidence before the Grand Jury, upon which the Trial was grounded.

L. C. J. Any Act of Treaſon that is of the ſame kind. And I'll tell you, That was reſolved in Sir *Henry Vane*'s Caſe; thoſe that gave you that Paper underſtand it. But I ſpeak now to your Capacity, and to ſatisfy your Queſtion. He was indicted for levying War againſt the King, he conſpired in *Weſtminſter*, the War was levied in another County; the Conſpiracy upon the Trial was proved in the County of *Middleſex*, and the War in another Place, and yet it was held ſufficient to maintain the Indictment in the County of *Middleſex*.

Coll. There was a War really levied; but God be thanked, here are only bare Words.

Mr. Juſt. *Jones.* Yes, Actions too.

Coll. What Actions, my Lord?

Mr. Juſt. *Jones.* Arming yourſelf, and coming to *Oxford*.

L. C. J. Well, I have told you my Opinion; my Brothers will ſpeak their's, if they think otherwiſe.

Mr. Juſt. *Jones.* That is not your Caſe neither, though I am of the ſame Opinion with my Lord; for here are two Witneſſes have proved plain Matter of Fact at *Oxford*; the providing Arms yourſelf, and encouraging others to take Arms——

Coll. They name no Perſons.

Mr. Juſt. *Jones.* You will have my Opinion, and yet you will give me no leave to ſpeak; I had Patience to hear you: You are told there are two Witneſſes, *Turbervile* and *Dugdale*, that prove your providing and having of Arms at *Oxon*, and perſuading others to take Arms, particularly *Turbervile*. He told you, he had no Arms, or but a Caſe of Piſtols, and he had no Horſe; but you told him you would provide him an Horſe. And then there are two other Witneſſes, *Smith* and *Bryan Haynes*; they do not tell you of any thing done at *Oxford*, but they tell you what you ſaid in their Hearing of what you had done in *Oxon*, and ſo I think, if the Witneſſes are to be believed, there is a very full Proof againſt you.

Mr. Juſt. *Raymond.* I am of the ſame Opinion truly, and I cannot find, but that there is Proof enough by two Witneſſes, *Turbervile* and *Dugdale*, of what was done at *Oxford*. They ſwear Matter of Fact, not Words only, but Actions alſo.

Coll. No Fact, but that I had Piſtols and a Sword, and that I ſhould tell Mr. *Turbervile* I would provide him an Horſe, which is ſtill but Words.

Mr. Juſt. *Jones.* But you ſhall hear anon for the full Conviction of you and all others, the Statute of the 13th of this King read to you, and you ſhall there ſee that ſuch Words are made Treaſon.

Coll. But I beſeech your Lordſhip to tell me, whether there muſt not be two Witneſſes to the ſame Words at the ſame Time.

Mr. Juſt. *Jones*. No, it was the Reſolution of all the Judges in the Caſe of my Lord *Stafford* in the Preſence of the Parliament, and the Parliament proceeded upon it.

Mr. Serj. *Jeff.* In the ſame Trial where Mr. *Colledge* was a Witneſs.

Mr. Att. Gen. All the whole Houſe of Commons prayed Judgment upon my Lord *Stafford*, purſuant to that Reſolution.

L. C. J. Come, will you call any Witneſſes?

Coll. My Lord, I do not queſtion but to prove this one of the helliſheſt Conſpiracies that ever was upon the Face of the Earth, and theſe the moſt notorious wicked Men, an abſolute Deſign to deſtroy all the Proteſtants of *England*, that have had the Courage to oppoſe the Popiſh Plot. In which no Man of my Condition hath done more than I have done. I was bred a Proteſtant, and continued ſo hitherto, and by the Grace of God I will die ſo. If that they had known of theſe Words that I ſhould ſpeak, and ſuch a Deſign that I ſhould have before the Parliament ſat at *Oxon*, and be with me in *Oxon* when the Parliament ſat, if they had been good Subjects, they ought to have had me apprehended. *Turbervile* came ſeveral times indeed, and dined with me. I did not bid him go out of Doors, nor invited him thither; he was a Man I had no Diſreſpect for; nay, he was a Man I valued, thinking he had done the Nation Service againſt the Papiſts; that this Man ſhould hear me ſpeak ſuch Words againſt his Majeſty, who was then in this Town, and know of a dangerous Deſign to attempt the ſeizing his Perſon, or that I ſhould diſcover a great Party that were ready to do it, I think there is ſcarce any Man of Reaſon, but will ſay, if this were really done and ſpoken by me, neither of them would or ought to have concealed it, but diſcover it; none of them has ever charged me with any ſuch thing, they have been in my Company ſince. I never had any Correſpondence with any of them but *Dugdale*; then pray conſider how improbable it is, that I ſhould talk of ſuch things to Papiſts, Prieſts, and *Iriſhmen*, who have broke their Faith with their own Party, that Faith which they gave under the Penalty of Damnation; Men that have been concerned in Plots and Treaſons, to murder and cut the Throats of Proteſtants, that I ſhould be ſuch a Madman to truſt theſe People, when I could receive no manner of Obligation from them, nor could give any Truſt to them, they having before broke their Faith; eſpecially conſidering I could lay no ſuch Oaths and Obligations upon them, who was a Proteſtant; then 'tis the greateſt Nonſenſe, to believe that I would ſay theſe things before Perſons whom I could never hope would conceal my Treaſons, having diſcovered their own. If they ſpeak Truth concerning the general Popiſh Plot, that could be no Obligation upon me to truſt them with another; and they cannot ſay, that they ever obliged me in any reſpect. My Lord, I thank God, I have had ſome Acquaintance in the World, and have been concerned with ſome Perſons of Honour, Noblemen, and Parliament-Men, that I know are as good Subjects as any his Majeſty has; theſe never found me a Fool, nor a Raſcal, ſo great a Knave as to have any ſuch Thoughts in my Heart, nor ſo great a Madman, or ſo fooliſh, as to go to diſcover them to Papiſts, Prieſts and *Iriſhmen*, to Men of their Condition, that were ready to ſtarve for Bread. As for *Haynes* and *Smith* that run ſo faſt through all their Evidence, the firſt time that ever I ſet my Eyes on *Haynes*, was in the Coffee-Houſe that he ſpeaks of; *Macnamarra* comes in, and deſires me to go out with him, and I ſhould hear the greateſt Diſcovery of a piece of Villainy againſt my Lord *Shafteſbury*'s Life, that ever I heard in my Life. This Captain *Brown*, who is now dead, a Man that I had known but a Month before (for I think it was in *March* laſt when this was) could teſtify for me; for I came to him, Captain ſaid I, here is a Diſcovery offered to be made to me, of a Deſign to take away my Lord *Shafteſbury*'s Life. *Macnamarra* aſks me to go to the *Hercules-Pillars*, I went along with him, and took Captain *Brown* with us. Afterwards he fell ſick in *April*, and is now dead, ſo I loſt a main Evidence in the caſe. He was the only Man that was by at the Time; God knows my Heart, I ſpeak nothing but the Truth, I took him with me; *Haynes* began to diſcover to us, that *Fitz-gerald* had employed him to fetch over *Macnamarra*, and if he would come in, and ſwear againſt my Lord of *Shafteſbury*, which was his Deſign, it would not be long e're his Head were taken off, and he ſaid, he had given in a Paper of High-Treaſon againſt my Lord of *Shafteſbury*. I aſked what it was? He told me, that my Lord ſhould tell *Fitz-gerald*, that he had a Deſign to bring this Kingdom to a Commonwealth, and to root out the Family of the *Stuarts*. This he ſaid *Fitz-gerald* had given in in a Paper, under his own Hand; and I think he ſaid, he had ſworn it, and ſent *Haynes* to fetch *Macnamarra* to ſwear againſt my Lord the ſame things too. I writ down all the Heads of the Diſcourſe, which Capt. *Brown* heard as well as I. After he had ſaid it, he deſired us to conceal it. Sir, ſaid I, You are a Stranger to me, and theſe are great and ſtrange things that you do tell us; *Macnamarra*, and *Brown*, and *Ivy*, and others were there, which (if they were honeſt Men) they would come and teſtify. I thought them honeſt Men, and that they had none of thoſe wicked Deſigns in their Hearts, that now I find they have. So, ſays, *Haynes*, *I do not know this Man*, meaning me: *Macnamarra* told him, *I was an honeſt Man, he might lay his Life in my Hands.* After he had ſpoken all this, he deſired us to conceal it: Said he, *I will not only diſcover this, but a great deal more of their Rogueries, that I know very well.* Said I to him again, *I will not conceal it, nor do you no wrong; for if this be true, my Lord* Shafteſbury *ſhall know it to Night: for where there is a Deſign to take away a Peer of the Realm, I will not conceal it; but if it be falſe, and you have ſaid more than comes to your ſhare, recant it again, and we will take no notice of it, only ſay you are a Knave for ſpeaking of it*; he ſwore, *Damn him, it was all true, that, and a great deal more, which he ſaid he knew, about ſeizing and deſtroying the Parliament at* Oxon, *about an Army in the* North *that was to be raiſed about the Time of the Sitting of the Parliament at* Oxon, *of a* French *Army that was to land in* Ireland *at the ſame Time, that the Duke of* York *was to be at the Head of them, and the Intention was to deſtroy all the Proteſtants.* Upon this, I was reſolved, if I lived, to come along with the Parliament, and if there was any ſuch Deſign, I was reſolved to live and die with them; but I had no more than common Arms, a Sword and a Caſe of Piſtols; my Cap was a Velvet-Cap, and nothing elſe. My Lord, I had the Honour to be ſent for, when the Parliament ſat laſt at *Weſtminſter*, the Seſſions in *October*, it was an honourable Occaſion, and I thank thoſe worthy Gentlemen that ſent to me, for the Honour of it; there I begun to be popular as to my Name; for from that Time they begun to call me the *Proteſtant Joiner*, becauſe the Parliament had entruſted me. My Lord *Grey* was pleaſed to ſend his Footman for me to the *Crown-Tavern* behind the *Exchange*, where there were ſeveral worthy Lords, Peers of the Realm, and one hundred of the Commons, that had dined there that Day, it was the Day before they ſat, after they had dined I came to them, and the Duke of *Monmouth* told me, They had heard a good Report of me, that I was an honeſt Man, that underſtood Building, and they did confide in me to ſearch under the Parliament-Houſe; they did not really know of any Deſign, but they would not be ſecure, there might be ſome Tricks play'd them by the Papiſts; though we are not afraid of them, ſaid the Duke, yet we think fit to employ you to ſearch under the Houſes, and there-abouts, whether you can find any ſuch Practices. So accordingly, my Lord, I did go; my Lord *Lovelace* was one of the Honourable Lords and my Lord *Herbert* that went with me, and ſome of the Gentlemen of the Houſe of Commons; and thoſe worthy Proteſtant Lords were pleaſed to thank me for my Service, and did believe I was active and zealous to find out and diſcover the Bottom of the Popiſh Plot, ſo far as it came legally in my Way to do it. My Lord, upon this Occaſion there was a great Kindneſs from them to me, and I had upon all Occaſions Teſtimonies of it; and this very Man who ſwears Treaſons againſt me (which God Almighty knows is all falſe) did ſwear in his Affidavit before Sir *George Treby* the Recorder of *London* (I did never ſee the Affidavit, indeed I was over-night at Sir *George Treby*'s, but he was not then at leiſure, but he drew it up next Day, and ſwore it) that there was a Deſign to deſtroy the Parliament at *Oxon*, and there was not only his Oath for it, but it was the general Belief, that ſome Evil was intended them. All Men had Cauſe to fear and to ſuſpect, the Papiſts did bear them no Good-Will; and making uſe of their own Obſervations, they were generally armed with a Piſtol, or a Sword, for themſelves, in caſe they ſhould be attacked by the Papiſts. In order to this, I did come down with my Lord *Howard*, my Lord of *Clare*, my Lord of *Huntingdon*, and my Lord *Pagett*, thoſe four worthy Proteſtant Lords, and it was two Days after the Parliament was ſat, that we came, and I went out of Town again with my Lord *Lovelace*, Sir *Thomas Player*, and Sir *Robert Clayton*; and I am ſure they were in ſo great a Fear that *London* ſhould be ſurprized and ſeized on by the Papiſts, but there was no mortal Man that ever heard of the King's being ſeized, or thought of it, till theſe Men come and tell me, that I had ſuch a Deſign, and came hither with that Purpoſe; but, my Lord, I declare, as God is my Judge, I would not have it thought I ſpeak it to ſave my Life, were it as certainly a Truth, as 'tis moſt wickedly a Falſhood, that I had a Deſign to ſeize the King, I know not of one Man upon the Face of the Earth, that was to ſtand by me, Parliament-man or other Perſon whatſoever; and how is it poſſible for me to attempt that, being a ſingle Perſon, with only a Sword and a Caſe of Piſtols, let any Man judge. And I do declare, I know of no Conſpiracy or Deſign againſt the King or Government, I never ſpoke one of the treaſonable Words in my Life, that is laid againſt me, nor had ever any Thoughts of any ſuch Thing. God, that is my eternal Judge, knows, that what I ſpeak is true.

L. C. J. Well, Mr. *Colledge*, will you call your Witneſſes, for I muſt tell the Jury as I did at your Requeſt concerning Mr. Attorney, that as nothing he ſaid, ſo nothing you ſay is to be believed upon your Allegation: for then no Man would ever be guilty, if his own Purgation by Words were to be believed.

Coll. My Lord, I thank God, I know my own Innocency, and hope to prove it. I have a Soul that muſt live to Eternity, either in Joy or Miſery; I act according to thoſe Principles, and I hope I have ſome Aſſurance of my own Salvation when I die, I would not call God to witneſs a Lie, to ſave a thouſand Lives. My Lord, this is a villainous Conſpiracy againſt me, and if it takes place againſt me, it may go a great way, God knows how far: This is the 17th or 18th Sham-Plot the Papiſts have made againſt the Proteſtants, to get over their own; but I hope, my Lord, God-Almighty will never ſuffer it. If they can make me a Traitor, they will try it upon others, and ſo hope to ſham off their own Treaſons; but I ſay, I hope God Almighty will never ſuffer it. My Lord, I think the firſt Witneſs that ſwore againſt me was Mr. *Dugdale*; and I muſt call my Witneſſes as I have them here; I know no Perſon of them hardly, and this that is done for my Defence was done abroad. My Lord I have been kept cloſe Priſoner in the *Tower*, and none of them ſuffered to come to me, whilſt the Popiſh Lords have had the Liberty and Privilege to talk with their Friends. Here are Witneſſes, I hope, will prove that theſe are ſuborned Men; for *Macnamarra* did tell me preſently after the Parliament broke up at *Oxon*, and whiſpered it to me in the Coffee-Houſe, ſaid he, there is a Deſign laid to make us retract our Evidence, and go over to *Fitzgerald*. Said I, I ſuppoſe they have been at that Sport a great while. Ay, ſaid he, they make large Offers. Said I, by whom? Said he, Colonel *Warcup* hath been at me, and tells me——

Mr. Juſt. *Jones*. *Macnamarra* is not produced as a Witneſs at all.

Coll. No, but he told me this, that there was ſuch a Deſign, and, ſaid he, I will get you and ſome other honeſt men; and he deſired me to be by when he had ſomething more to tell which would do his Buſineſs for him, but the next News I heard of him was, he was put into *Newgate*.

L. C. J. Call your Witneſſes, Mr. *Colledge*, and prove what you can.

Coll. Call Mr. *Hickman*.

Mr. Att. Gen. My Lord, I deſire he may obſerve the ſame Rule he deſired about our Witneſſes; that he may call but one at a time.

Coll. Yes, yes, I will call them one by one.

L. C. J. Are not your Witneſſes together? ſend to them.

Coll. My Lord, I don't know, I have not ſeen one ſince I come. This is not the firſt Time, my Lord, the Papiſts have deſigned to take away my Life, though it is the firſt Time they went about to take it away by Law.

L. C. J. I know not one Papiſt that is a Witneſs againſt you.

Coll. There is never a Man of them, except Sir *William Jennings*, but what was a Papiſt.

Mr. Att. Gen. What ſay you to Mr. *Maſters*?

Coll. Mr. *Maſters* ſays nothihg material, it was only a jocoſe Diſcourſe.

Mr. Serj. *Jeff.* It was very pleaſant Diſcourſe, upon my Word; you were as merry as when you were ſinging of the *Rary Shew*.

Mr. Juſt. *Jones.* What do you make Mirth of the blackeſt Tragedy that ever was; that horrid Rebellion, and the Murther of the late King?

Coll. I never juſtified that Parliament in any ſuch Thing that they did contrary to Law.

Mr. Juſt. *Jones.* He ſwears it.

Mr. Att. Gen. Hackman does not appear, call another.

Coll. Call *William Shewin*, (who appeared.)

L. C. J. Look you here Friend, you are not to be ſworn; but when you ſpeak in a Court of Juſtice, you muſt ſpeak as in the Preſence of God, and only ſpeak what is true.

Coll. I would not have any Body ſpeak any Thing for me, but what is Truth.

L. C. J Now aſk him what you will.

Coll. I don't know the Gentleman. But pray, Sir, will you tell what you know of theſe Witneſſes?

Mr. *Shewin.* Name any of them that I know, pray, Sir, I'll tell you.

Coll. Do you know *Bryan Haynes*?

Mr. *Shewin.* I know there is ſuch a Man, but I have nothing to ſay to him.

Coll. Do you know *Turbervile*?—Mr. *Shewin.* Yes.

Coll. Pray tell what you know of him.

Mr. *Shewin.* My Lord, I was in *Turbervile*'s Company on *Thurſday* Night laſt at the *Golden Poſts* at *Charing-Croſs*, and there I heard him ſay, that if I were at *Oxford* I ſhould hear ſtrange Things againſt *Colledge*, and he would lay ten to one that Mr. *Bethel* and Mr. *Wilmore* ſhould be hanged at *Chriſtmas*, and he would lead him by the Gold Chain along *Fleet-Street*, and down with his breeches in the middle of the Coffee-Houſe, with a Band about his Neck and a Cloak.

Mr. Serj. *Jeff.* Did he ſay all theſe Things againſt Mr. Sheriff *Bethel*? I aſſure you he is a bold Man.

Coll. What do you know of Mr. *Smith*?

Mr. *Shewin.* I know him by Sight, but I have nothing in particular to ſay concerning him. I have ſomething to ſay to *Macnamarra*, Sir, if he were here.

Coll. Do you know any Thing of this Conſpiracy in general?

Mr. Juſt. *Jones.* What of your Conſpiracy?

Mr. *Shewin.* I know they did lay who ſhould be hanged at *Candlemas*, who at *Chriſtmas*, and who at ſeveral other Times.

L. C. J. What did you hear Mr. *Turbervile* ſay?

Mr. *Shewin.* Thoſe Words I ſpake before about Sheriff *Bethel*, and about the *Amſterdam* Coffee-Houſe.

Coll. Did they ſay what Time I ſhould be hanged? For the Diſcourſe roſe about me.

Mr. *Shewin.* One told me that there was one that did deſign to be returned upon this Jury, that was reſolved to hang him right or wrong.

Mr. High-Sheriff. My Lord, I did hear there was ſuch a one, and I left him out of the Jury.

L. C. J. For Mr. Sheriff's Honour, we muſt take Notice of what he hath ſaid. He ſays he heard of a Man that ſpoke ſomething of that Nature, and therefore he left him out of the Jury.

Coll. Now 'tis poſſible theſe Witneſſes were at the ſame Sport.

Mr. *Shewin.* Was Mr. *Peacock*, Mrs. *Fitz-Harris*'s Maid's Father, or ſhe here, either of them Witneſſes againſt you?

Mr. Serj. *Jeff.* No, they were not, Sir.

Coll. They did ſwear againſt me at the finding of the Bill.

Mr. Serj. *Jeff.* We have only called theſe Witneſſes, if you can ſay any Thing againſt them, do.

Coll. Call *Henry Hickman*, (who appeared.)

Mr. Serj. *Holloway.* Where do you live, Sir?

Mr. *Hickman.* At *Holborn-Bridge*.

Mr. Att. Gen. What Trade are you?—Mr. *Hickman.* A Cabinet-maker.

L. C. J. What do you aſk him?

Coll. Do you know *Haynes*?

Hickman. Yes, very well; becauſe he uſed to come to my Houſe to a Popiſh Widow that was a Lodger in my Houſe where I live now; and this Perſon was a Priſoner at *Haynes*'s when he was a Priſoner in the *Fleet*. I always had a Suſpicion he was a Prieſt, not that I could accuſe him really of any Thing, but he ſeveral Times uſing to come to my Houſe, I thought ſo of him, and diſcourſing with my Landlady.

L. C. J. Your Tenant you mean?

Mr. *Hickman.* Yes, my Tenant. I aſked her, what this Fellow was; ſaid ſhe, he is a very dangerous Fellow, though he is a Papiſt, and I am one myſelf, yet he is a dangerous Perſon, and he does not much care what he ſwears againſt any one.

Mr. Juſt. *Jones.* This your Tenant told you, what do you know yourſelf?

Mr. *Hickman.* Another Time he came to ſpeak with my Tenant Mrs. *Scot*, who is now gone into *Ireland*; when he came to the Houſe, he aſked me, is Mrs. *Scot* within? Yes, ſaid I, Mr. *Haynes*, ſhe is above; and up he goes and there they locked the Door, and plucked out the Key; ſo I ſlipt off my Shoes, for I thought there might be more Danger from ſuch People than I could diſcover any other Way. So I went up Stairs, and ſtood at the Door, and hearkened, hearing my Landlady talk ſomething to him, he raps out a great Oath, *God damn me*, ſaid he, *I care not what I ſwear, nor who I ſwear againſt*; *for 'tis my Trade to get Money by ſwearing.* Whereupon, my Lord, I came down as faſt as I could, and a little after I ſaw him go out, and as ſoon as my Landlady came down, ſaid I, Mrs. *Scot*, I deſire you would provide yourſelf as ſoon as you can; I would be civil to you, and I would not put you to a Nonplus, becauſe your Goods by the Law will be ſeized for not departing according to the King's Proclamation. So a while ago ſince this Buſineſs of *Haynes*'s ſwearing againſt my Lord of *Shafteſbury*, I bethought myſelf of ſome other Buſineſſes I had heard: To find out the Knavery I went to the *Fleet*, where he hath a very ill Character as well amongſt the Papiſts as the Proteſtants. Whereupon I aſked one Fellow that was a Kind of a Porter, if he knew any Thing of him; ſaid he, Go to ſuch an one——

Mr. Serj. *Jeff.* We muſt not permit this for Example ſake, to tell what others ſaid.

L. C. J. Nothing is Evidence, but what you know of your own Knowledge; you muſt not tell what others ſaid.

Hickman. This I do ſay, I heard him ſay; and there are thoſe that can produce a Letter—

Mr. Serj. *Jeff.* Bring thoſe People, but you muſt ſpeak nothing, but upon your own Knowledge.

Hickman. I was at the Chamber-Door, and looked in at the Key-Hole, and he ſat down at the Window.

L. C. J. How long ago was it, pray?—*Hickman.* A Year and a half.

Mr. Att. Gen. You are an Eves-dropper I perceive.

Hickman. I did not know what Danger he might bring Men into, becauſe he was a Papiſt. I have taken an Oath to be true to the King, and I will as long as I live. For this Gentleman, I never beheld him till laſt Night, in all my Days; though he lived by me, I never ſaw him.

L. C. J. Well, call the next.

Coll. I never ſaw this Gentleman; but you ſee what *Haynes* hath declared.

Mr. Serj. *Jeff.* This Man ſays, he did ſay ſo.

Coll. And, for ought I perceive, he does accordingly. Call *Elizabeth Oliver*. (Who appeared.)

L. C. J. Mrs *Oliver*, ſtand up. What do you aſk her?

Coll. Do you know *Haynes*, pray? *Bryan Haynes*?—Mrs. *Oliver.* Yes.

Coll. Pray tell the Court what you know of him.

Mrs. *Oliver.* I know him very well.

L. C. J. What do you know of him?

Mrs. *Oliver.* He writ a Letter in my Father's Name, unknown to my Father.

L. C. J. Did you ſee him write it?—Mrs. *Oliver.* I ſaw him write it.

L. C. J. Read it. By whom is it ſubſcribed?—*Clerk.* By no body.

L. C. J. Why, how is it written in your Father's Name, when it is not ſubſcribed at all?—Mrs. *Oliver.* He writ it as from my Father.

Mr. Serj. *Jeff.* Whither did he bring it?

Mrs. *Oliver.* He ſent it into the Country.

Mr. Serj. *Jeff.* Can you write and read, Miſtreſs?

Mrs. *Oliver.* Yes.

Mr. Serj. *Jeff.* Who did he ſend it by?—Mrs. *Oliver.* The Carrier.

Mr. Serj. *Jeff.* When is it dated?—*Clerk.* In 77.

L. C. J. Read the Letter, *(Which was done.)*

Clerk reads.

L. C. J. What is all this to the Purpoſe, unleſs your Father were here to prove it was done without his Knowledge?

Mrs. *Oliver.* My Father did not write it.

L. C. J. Was your Father in the *Fleet* then?

Mrs. *Oliver.* Yes, my Lord, he was a Priſoner then.

Coll. Mrs. *Oliver*, do you know any thing more of him?

Mrs. *Oliver.* I have known him a great while; I know him to be a very ill Man.

Mr. Serj. *Jeff.* Muſt ſhe tell you all ſhe knows?

Mr. Att. Gen. Did you ever know him forſwear himſelf?

Mrs. *Oliver.* No, I don't know that.

L. C. J. Come, call another; this is nothing to the Purpoſe.

Coll. Call Mrs. *Hall. (Who appeared.)* Pray, do you know Mr. *Bryan Haynes*?—Mrs. *Hall.* Yes, if I ſee him I know him very well.

Coll. What do you know of him?

Mrs. *Hall.* He lodged at my Houſe, and came there the Day before *Fitz-Harris* was tried, and there was a great Diſcourſe about his Trial, and I was enquiring of him; and I told him, I muſt expoſe my Ignorance, I did not know what it was he was tried for: And ſaid he, if you pleaſe to ſit down, I will tell you: Madam *Portſmouth* came to him, and went upon her Knees, and begged of him, if he had any Kindneſs for his Majeſty, that he would now ſhew it at this Juncture; and ſhe told him ſhe heard he had formerly Acquaintance with one Mr. *Everard* abroad, and therefore deſired him to go now and renew it, and endeavour to get him over; and, if he could poſſibly, to get over ſome others to make a Preſbyterian Plot of it. This is true, I very well know it; as for this Gentleman, I never ſaw his Face before; but thoſe were the Words I am ſure.

L. C. J. What were the Words?

Mrs. *Hall.* That they might make a Preſbyterian Plot of it.

Coll. Did he ſay ſo?

Mrs *Hall.* He ſaid that the Ducheſs of *Portſmouth* did ſo.

L. C. J. What a Story is this?

Coll. Did not he ſay, that the Ducheſs of *Portſmouth* had employed him too?—Mrs. *Hall.* No, this was about *Fitz-Harris*.

Coll. What do you know more about *Haynes*?

Mrs. *Hall.* One Night he had been about ſome Buſineſs for me in Law with one Mr. *Woodward*, an Attorney at Law, and when he returned I was buſy in the Kitchen with my Maid about the Houſe, and he came up to me; Madam, ſaid he, this Night I had a Meſſage from the King; a Juſtice of Peace met me, one brought me Word, that the King had ſent into *Ireland* to enquire into the Loyalty of my Family, and he hath heard, that my Father was a loyal Subject, but he underſtood ſtrange Things of me; but if I would come in, he would grant me my Pardon. I told him, ſaid he, I did not value his Majeſty's Pardon a Pin, for I had done nothing that might make me ſtand in need of it; but I would do any thing that might tend to the Preſervation of his Majeſty's Perſon or Honour; but to do ſuch baſe Things as are beneath a Man, I will never do it; and he whiſpered me in the Ear (as the accuſing of ſeveral Perſons) and ſince he ſent me a Letter by his Mother-in-Law, Mrs. *Wingfield*, that I ſhould not believe it, if I heard he ſhould accuſe any body; but I might be confident he had not, nor would accuſe any body.

Coll. Was he to ſwear againſt the Proteſtants?

Mrs. *Hall.* I did not enquire any Queſtions; but he ſaid, ſuch baſe Things he would never do as the accuſing ſeveral Perſons.

Mr. Att. Gen. Pray, Miſtreſs, did you believe him when he told you he was ſo honeſt a Man?

Mrs. *Hall.* How do you mean, Sir?

Mr. Att. Gen. When he ſaid he would not do thoſe baſe things, did you believe him?

Mrs. *Hall.* I never ſaw his Face before he came there to lodge; but I ſaw him to be a Man that made but little Conſcience of what he ſaid or ſwore.—*Mr. Att. Gen.* Didyou find him a bragging Man?

Mrs. *Hall.* I had little Diſcourſe, but what he ſaid of himſelf. But there is one thing more about an Intelligence: When *Thompſon* had written ſomething in his Intelligence concerning *Bryan Haynes*, he ſaid, he would write an Anſwer to it; and accordingly he reads it to us: He ſaid, he was going that Evening to get it put into one of the Intelligences: The Words were to this Purpoſe: ‘Whereas one *Nathaniel* ‘*Thompſon* had falſely and maliciouſly accuſed one *Bryan Haynes* for ‘ſpeaking treaſonable Words; he the ſaid *Bryan Haynes* doth declare, ‘that he challenges any Man to charge him with it; but he owned he ‘had an Hand, or was employed to put the Plot upon the diſſenting Pro‘teſtants.’

L. C. J. Did he publiſh that in the Intelligence?

Mrs. *Hall.* I never read it publiſhed; but he had writ it, and read it to us ſeveral times.

Mr. Att. Gen. Do you you go to Church, Miſtreſs?

Mrs. *Hall.* I hope I do.

Sir *Geo. Jeff.* To what Church?

Coll. Call *Mary Richards*, Mrs. *Hall*'s Maid. (Who ſtood up.)

L. C. J. What will you aſk her?

Coll. Do you know this *Bryan Haynes*, pray?

Richards. Yes, he lodged there where I lived.

Coll. What do you know of him?

Richards. I know he writ that in the Intelligence my Miſtreſs ſpoke of; *Thompſon*, in his Intelligence, accuſing him of having ſpoken Treaſon, he reads what he ſaid he would put into the Intelligence, That he never ſpake one Word of Treaſon, and he writ it for his own Vindication; that whereas *Nathaniel Thompſon*, in his Intelligence of the 18th of *June*, had maliciouſly accuſed one *Bryan Haynes* of treaſonable Words; there was no ſuch thing.

L. C. J. And that was to vindicate him, that he never did ſpeak any treaſonable Words.

Richards. Yes.

L. C. J. Will you aſk her any thing elſe?

Coll. I cannot tell what ſhe ſays.

L. C. J. She ſays, he writ ſomething that was in Anſwer to *Thomſon*'s Intelligence, to vindicate himſelf that he never did ſpeak any treaſonable Words.

Coll. But did you hear him ſay any thing of theſe Words, that he was employed in a Plot againſt the Proteſtants?

Richards. I read that, in what he writ to put in the Intelligence, that he challenged any one to appear, and charge him with Treaſon; but, ſaid he, I own that I was employed, or had a Hand in putting the Plot upon the diſſenting Proteſtants; and he telling my Miſtreſs he had a Meſſage from the King, offering him his Pardon, I aſked him why he did not accept the King's Pardon? Alas! ſaid he, you do not underſtand what I was to do for it; I was to do ſuch baſe Things, ſo beneath a Man, that I will never do them: I had five hundred Pounds offered me, beſides the King's Pardon, to do ſuch baſe Things as are beneath a Man to do.

Coll. What were the baſe things he ſaid he was to do, and would not do?

Richards. I cannot tell, he did not ſay to me what they were.

Mr. Att. Gen. When was this?

Richards. It was a Week before he was taken.

Mr. Att. Gen. That is two Months ago.

Coll. It was ſince the Parliament ſat at *Oxford*: But what was that he was employed to do, did he ſay?

Rich. Why, he ſaid in his Anſwer to the Intelligence, he was one that had an Hand to put the Plot upon the diſſenting Proteſtants.

Coll. Call Mrs. *Wingfield.* (*Who appeared.*)

L. C. J. What is your Chriſtian Name?

Mrs. *Wingfield. Mary.*

L. C. J. What do you aſk her?

Coll. Do you know this *Bryan Haynes*, pray?

Mrs. *Wingfield.* Yes, very well.

Coll. What do you know of him?

Mrs. *Wingfield.* I know nothing of him, but he is an honeſt Man; he married my Daughter, and always carried himſelf like a Gentleman; he ſcorns the Thing that is unhandſome, and never did any thing that is undhandſome in his Life.

Mr. Serj. *Jeff.* Pray how came you by this Witneſs? Have you any more of them?

Coll. I never ſaw her before, but I believe ſhe hath ſaid ſomething elſe in another Place. Did you ever ſay the contrary, pray?

Mrs. *Wingfield.* Nobody can ſay ſo; and I had done the Gentleman a great deal of Wrong, if I had.

Coll. Call Mr. *Whaley.* (*Who appeared.*)

L. C. J. What is your Name, Sir?

Mr. *Whaley. John Whaley.*

Coll. Did you know *Bryan Haynes?*

Mr. Att. Gen. Where do you dwell, Sir?

Mr. *Whaley.* At the *Hermitage*, beyond the *Tower*.

Coll. I don't know you, Sir; but what do you know of him?

Mr. *Whaley.* I never ſaw you, Sir, 'till To-day; but that which I think I am called for is this, though it was upon *Sunday* that I received this ſame *Subpæna* to come down hither; but about ſix Years ago, *Bryan Haynes* was a Priſoner in the *King*'s-*Bench*, and he came down to the Cellar which I had taken of the Marſhal to ſell Drink in; and coming down to drink in one of the Rooms of the Cellar that belonged to me, he took away a Tankard, and went up with it. One of the Men followed him up; ſo I went to the Marſhal to complain, and told him of it; and the Marſhal took him from the Maſter's Side, and put him into the common Side. That is all I know of him any Way, directly or indirectly.

L. C. J. Why did you not indict him of it?

Mr. *Whaley.* I acquainted the next Juſtice of the Peace, who was the Marſhal; and he put him from the Maſter's Side, into the common Side.

L. C. J. He was no good Juſtice of the Peace in the mean time.

Coll. Call Mr. *John Lun.* (*Who appeared.*)

Do you know *Bryan Haynes*, Mr. *Lun?*

Mr. *Lun.* I have ſeen him twice; the firſt Time I ever ſaw him was, I went into the *Derby Ale-Houſe*, to enquire for one *Micklethwayte*, a Kinſman of mine, and there this *Bryan Haynes* was, in a little Room next the Ditch, near the Door that goes out there, as if he were aſleep, and he rouſed himſelf up; and, as I was walking there, Sir, ſaid he, will you take Part of a Tankard with me (that was his Expreſſion.) With that, ſaid I, I do not care if I do. And the firſt thing he began was the the King's Health, then the Queen's, then the Duke of *York*'s; then he fell very foul againſt the Grand Jury, becauſe they had not found the Bill againſt *Colledge*, who is a Gentleman that I never ſaw before in my Life but once, as I know of: And he ſaid, my Lord *Shafteſbury* was a little Toad, but he would do his Buſineſs very ſuddenly. Then he railed upon the Parliament, and ſaid they were a Company of Rogues, they would give the King no Money, but he would help him to Money enough out of the Fanaticks Eſtates. And he ſaid, they would damn their Souls to the Devil before their Catholick Cauſe ſhould ſink.

Mr. Serj. *Holl.* When was this?

Mr. *Lun.* It was three or four Days after the Bill was brought in *Ignoramus* by the Grand Jury.

Mr. Juſt. *Jones.* Was he alone?

Mr. *Lun.* Yes, he was.

Coll. Is that all you have to ſay?

Mr. *Lun.* One Thing more, my Lord. On *Monday* laſt I was at *Uxbridge*, and a Gentleman ſent his Man on Purpoſe to let me know I muſt go to *Colebrook*, and ſtay till they came thither. When I came there, I met *Bryan Haynes* at the *Crown* Kitchen-Window, and he was ſtirring a Glaſs of Brandy, and ſweetning it with Sugar; ſaid he, Sir, will you drink? Here is the King's Health to you: So I drank, and aſked him how he did. Do you know me, Sir, ſaid he? Yes, ſaid I, I drank with you once. Says he, you have a good Memory. So then a Pint of Sack was called for, and after that another, and then came down Mrs. *Peacock*; and being very fine, all in her flowered Silks, I aſked what Gentlewoman that was? Said he, it is Mrs. *Fitz-Harris.* No, ſays I, 'tis not; they ſay ſhe is gone. But, ſaid he, it is her Maid; and Sheriff *Bethel* is to marry her: As I have a Soul to ſave, I tell you nothing but what is Truth. Thereupon, ſaid I, Sheriff *Bethel* is able to maintain her, he hath a good Eſtate: But, ſaid he, it ſhall be the King's e're long.

Coll. So that here is a plain Deſign againſt all the Proteſtants.

Mr. *Lun.* So with that, my Lord, if it pleaſe your Honour, I clapped my Groat down at the Bar, and went out of the Room. Nay, ſaid he, let us have one Health more; and ſo he had his Tankard, and I had mine.

Haynes. I humbly deſire you to call for Mr. *White*, the King's Meſſenger, who was by. I never ſaw the Man before he was at *Uxbridge*; and aſking Mr. *White* who he was? ſaid he, his Name is *Lun*, he was my Priſoner two Years.

L. C. J. What ſay you to the Diſcourſe he talks of at *Fleet-Bridge?*

Haynes. My Lord, I am upon my Oath, and I never ſaw him in my Life before I ſaw him at *Uxbridge.*

Mr. *Lun.* I will take my Sacrament upon it, that what I have averred is true.

Mr. Serj. *Jeff.* I ſuppoſe you are both known, and then your Credit will be left to the Jury.

Mr. Att. Gen. There is Mr. *White*; pray ſwear him. (*Which was done.*)

L. C. J. Do you remember that *Haynes* aſked who Mr. *Lun* was?

Mr. *White.* It was at the Bar of the *Crown-Inn* at *Uxbridge*; and I being there, Mr. *Lun* came into the Yard, and I knowing Mr. *Lun*, aſked him how he did; he ſaid he was glad to ſee me, and he called for a Pint of Sack to make me drink. *Haynes* ſtood by, and he aſked who he was, and I told him; and we drank the King's Health; but for any thing of thoſe Words that were ſpoken there, Sir, I did not hear one Word of them; but he thanked me for my Civility when I ſummoned him up to the Court; and ſeeing Mr. *Haynes* by, he aſked who he was?

Mr. Serj. *Jeff.* And you take it upon your Oath, that he aſked who *Haynes* was?

Mr. *White.* Yes, I do.

Mr. Serj. *Jeff.* Pray, did you hear any Diſcourſe that Time, as if there had been a Meeting upon *Fleet-Bridge?*

Mr. *White.* Not one Word of that.

Mr. *Lun.* I will take the Sacrament upon it, what I ſay is true.

Mr. Serj. *Jeff.* We know you, Mr. *Lun*; we only aſk Queſtions about you, that the Jury may know you too, as well as we. We remember what once you ſwore about an Army.

Coll. I don't know him.

Mr. *Lun.* I don't come here to give Evidence of any Thing but the Truth; I was never upon my Knees before the Parliament for any thing.

Mr. Serj. *Jeff.* Nor I neither for much; but yet once you were, when you cried, *Scatter them, good Lord.*

Mr. *Coll.* Call Mr. *Broadgate.*

L. C. J. What is your Chriſtian Name, Sir?

Mr. *Broad. Jeremiah.*

L. C. J. What do you aſk him?

Mr. *Broadg.* My Lord, I am a Stranger to the Priſoner at the Bar; what I have to ſay is concerning Mr. *Turbervile*, whom I met one Day, and he aſked me how I did? Said he, I owe you a little Money, but I will pay you in a ſhort Time; but if you will go to drink a Glaſs of Ale. No, ſaid I, I am in Haſte, and do not care for going to drink. Said he, you ſhall go; ſo away we went, and when we were ſat, ſaid he, When did you ſee *Turbervile*, that was my Lord *Powis*'s Butler; ſaid he, he was a great Rogue to me, and when I ſtood up for the Nation's good, he vilified my Evidence, and afterwards he came to me with Dr. to beg my Pardon; but I would not forgive him for the whole World. And, ſpeaking of the King's Evidence, ſaid he, the King's Evidence are looked upon as nothing, as poor inconſiderable mean Fellows, and their Salaries are leſſened; and, ſaid he, I have had the greateſt Proffers from Court of Preferment and Rewards, if I would go from what I have ſaid, and come upon the contrary; and he repeated it, yes, upon the Faith of a Man, and from the higheſt: But, ſaid he, I have a Soul and a Body, a Body for a Time, but my Soul for Eternity, and I cannot go from it. He went over it again; I might have what I would, if I would go from what I have ſaid, and come upon the contrary.

Mr. Att. Gen. But he does not go from any thing of what he hath ſaid.

Coll. Did he ſay what he was offered, and by whom?

Mr. *Broadg.* He ſaid, he had very great Offers from the Court if he would diſown the Plot, and go upon the contrary.

L. C. J. But he does not diſown it?

Mr. Juſt. *Jones.* Nay, he had a Soul to ſave, and could not go from it.

Mr. Serj. *Jeff.* You talk of the contrary, and the contrary; What did he mean by that? What Plot ſhould he diſown?

Mr. *Broadg.* The popiſh Plot.

L. C. J. He does not diſown it, nor never did diſown it.

Coll. He would make a Preſbyterian Plot of it now, for he cannot ſay I am in the popiſh Plot. Sir, do you know any thing more of him? Or did he name me? Or that he was to ſwear againſt me, or any Proteſtant?

Mr. *Broadg.* No, only he ſaid the King's Evidence were vilified, and looked upon as poor inconſiderable Fellows; but it ſeemed, if he would go on the other Side, he might have great Preferments and Rewards.

L. C. J. You make a wrong Comment upon it, Mr. *Colledge*; it was if he would retract his Evidence, and diſown the Plot.

Coll. I leave it to your Lordſhip and the Jury, to make the Senſe of it.

Mr. *Broadg.* I ſaw Mr. *Turbervile* ſince I came hither, and he aſked, Are you come, Mr. *Broadgate*, to give Evidence againſt me? Says I, I am come to declare the Truth, and nothing but the Truth.

Mr. Serj. *Jeff.* You might have ſtaid at home for any Thing material that you do evidence.

Coll. Call Mr. *Zeal*. (*Who appeared.*)

L. C. J. What is your Chriſtian Name, Sir?

Mr. *Zeal.* *John.*

L. C. J. What would you aſk him?

Mr. Serj. *Holl.* Where do you dwell, Sir?

Mr. *Zeal.* In *London*.

Mr. Serj. *Jeff.* Whereabouts?

Mr. *Zeal.* In *Fetter-Lane*.

Mr. Serj. *Holl.* What Countryman are you, Sir?

Mr. *Zeal.* *Somerſetſhire.*

Mr. Att. Gen. Whereabouts in *Somerſetſhire* were you born?

Mr. *Zeal.* By Sir *William Portman*'s, within ſix Miles of him.

Mr. Serj. *Jeff.* What Trade, Sir?

Mr. *Zeal.* No Trade.

Mr. Serj. *Jeff.* Have you any Eſtate?

Mr. *Zeal.* My Father has. I was bred to wait upon a Perſon of Quality.

Coll. Do you know *Turbervile*, Sir?

Mr. *Zeal.* Yes, Sir, I do.

Coll. What do you know of him?

Mr. *Zeal.* Sir, I know nothing but what Mr. *Ivy* told me with his own Mouth.

L. C. J. Do you know any Thing of your own Knowledge?

Mr. Att. Gen. Has Mr. *Turbervile* told you any Thing?

Mr. *Zeal.* Not concerning Mr. *Colledge* he has not.

Coll. *Ivy* was amongſt them.

Mr. *Zeal.* Yes, my Lord, he was the firſt that ſwore this Preſbyterian Plot.

L. C. J. We know of no Preſbyterian Plot.

Coll. Can you ſay any thing of your own Knowledge concerning *Turbervile?*

Mr. *Zeal.* Nothing but what Mr. *Ivy* told me.

Mr. Serj. *Jeff.* That is not of your own Knowledge, and ſo it is nothing, for he is not produced in this Cauſe.

Coll. Pray, my Lord, give me Leave to call Mr. *Ivy*.

Mr. Serj. *Jeff.* Do, if you will. (*He ſtood up.*)

Coll. What was that you heard *Turbervile* ſay of me, or of any Preſbyterian Plot?

Ivy. I never heard him ſay any thing concerning a Preſbyterian Plot in my Life.

Coll. Did not you tell *Zeal* of ſuch a Thing?

Ivy. No, I never did.

Coll. Hark you, Mr. *Ivy*, you have ſworn againſt me, have you not?

Ivy. What I have ſworn againſt you, or any other Perſon, is true.

Coll. What have you ſworn againſt me?

Ivy. I am not bound to anſwer you.

Coll. Did not you call me out with *Macnamarra* and *Haynes*, to the *Hercules Pillars?*

L. C. J. Look you, Mr. *Colledge*, I will tell you ſomething for Law, and to ſet you right; whatſoever Witneſſes you call, you call them as Witneſſes to teſtify the Truth for you; and if you aſk them any Queſtions, you muſt take what they have ſaid as Truth: Therefore you muſt not think to aſk him any Queſtions, and afterward call another Witneſs to diſprove your own Witneſs.

Coll. I aſk him, was he the firſt Time with us, when I was called out of the Coffee-Houſe to hear *Haynes*'s Diſcovery?

L. C. J. Let him anſwer you if he will; but you muſt not afterwards go to diſprove him.

Coll. If he were ſworn againſt me, I would not aſk him any Queſtions, for he is among them.

L. C. J. Aſk him what you will.

Coll. I deſire not if he have ſworn againſt me, for truly I can't expect a good Anſwer from him; but he was by when *Haynes* made his Diſcovery.

L. C. J. Will you aſk him any Queſtions?

Coll. I aſk whether he hath given any Evidence againſt me any where?

Ivy. I am not bound to anſwer you.

L. C. J. Tell him if you have.

Ivy. Yes, my Lord, I have.

Coll. Then I think he is no good Witneſs for me, when he hath ſworn againſt me.

Ivy. I have ſworn againſt him and others. You know that you and I have had a great many Intrigues about this Buſineſs in Hand, and how we dealt with Mr. *Haynes*.

L. C. J. Look you, he does not call you for a Witneſs for him, you can teſtify nothing, and ſo you muſt be quiet.

Coll. Call Mr. *Lewes*. (*Who appeared.*)

L. C. J. What is your Chriſtian Name?

Mr. *Lewes.* *William.*

Coll. Pray, Mr. *Lewes*, what do you know about *Turbervile?*

Mr. *Lewes.* I know nothing at all I aſſure you of him that is ill.

Coll. Do you know any thing concerning any of the Evidence that hath been given here?

Mr. *Lewes.* If I knew any thing relating to you, I would declare it; but I know ſomething of Mr. *Ivy*; it has no Relation to you, as I conceive, but againſt my Lord of *Shafteſbury*.

L. C. J. You would call *Ivy* for a Witneſs, and now you call one againſt him; and that I told you, you muſt not do; but *Ivy* is not at all in this Caſe.

Coll. Do you know any thing of the reſt of them, *Haynes*, or *Smith*, or *Dugdale?*

Mr. *Lewes.* No more than what Mr. *Zeal* told me was told him.

Coll. Do you know any Thing of a Preſbyterian Plot?

Mr. *Lewes.* If the Court pleaſe to hear me, I will tell my Knowledge of that; but I know nothing that affects him in the leaſt, only that which concerns my Lord of *Shaftesbury*.

L. C. J. That is nothing to the Purpoſe, call another.

Mr. *Lewes.* There was not, to my Knowledge, a Word mentioned of your Name: I will do you all the Juſtice I can; if I knew any Thing concerning you, I would be ſure to relate it.

Coll. I cannot ſay who can, or who cannot; I am a Stranger to all of it.

L. C. J. Well, call your next Witneſs.

Coll. My Lord, there was a Petition preſented to the Common Council of *London*, wherein they ſet out, that they were tampered withal about a Plot againſt the Proteſtants.

L. C. J. A Petition, from whom?

Coll. I cannot tell from whom; from ſome of theſe Witneſſes.

L. C. J. Who preferred and ſigned it?

Coll. Mr. *Turbervile* was one. Pray call Dr. *Oates*.

L. C. J. The Priſoner calls upon you, Mr. *Oates*. What would you aſk him, Mr. *College?*

Coll. Where is the Petition to the Common Council, Doctor?

Dr. *Oates.* I have it in my Hand.

L. C. J. By whom was it preſented?

Dr. *Oates.* It was given by Mr. *Turbervile* and Mr. *Macnamarra*, to Mr. *Wilmore*.

L. C. J. Was you preſent when it was delivered?

Dr. *Oates.* Mr. *Wilmore* did deliver it to me before he was apprehended; for, being to come down as a Witneſs, he was taken up and committed to Priſon.

L. C. J. Whoſe Hands are to it?

Dr. *Oates.* I know Mr. *Turbervile*'s Hand, he will not diſown it.

Clerk reads. It is ſubſcribed *Edward Turbervile*, *John Macnamarra.*

L. C. J. Look you, Mr. *Colledge*, what Word is there in all this Petition that is a Contradiction to what they have ſaid now?

Coll. I did not hear it, my Lord.

L. C. J. They ſay, they are conſtant Witneſſes for the King againſt the Papiſts; and they have been tempted to unſay what they have ſaid: How does that contradict what they ſay now?

Coll. I ſuppoſe they ſay they have been tempted to turn the Plot upon other People, and to make a Plot upon the Proteſtants.

L. C. J. They have been tempted, they ſay, by the Papiſts, to unſay what they have ſaid; but the Jury heard it read, and will give it its due Weight. Will you aſk Mr. *Oates* any Queſtions?

Coll. What do you know of Mr. *Turbervile?*

Dr. *Oates.* As to *Turbervile*, my Lord, a little before the Witneſſes were ſworn at the *Old Baily*, I met with Mr. *Turbervile*, I was in a Coach, but ſeeing Mr. *Turbervile*, I ſtept out of the Coach, and ſpoke with him; for, hearing that he was a Witneſs, I did aſk him, whether he was a Witneſs or no againſt *Colledge?* Mr. *Turbervile* ſaid, he would break any one's Head that ſhould ſay ſo againſt him; for he neither was a Witneſs, nor could give any Evidence againſt him. So after he came from *Oxon*, I met with Mr. *Turbervile* again; and hearing he had been there, I aſked him if he had any thing againſt *Colledge?* He ſaid, Yes, he had been ſworn before the Grand Jury. Said I, did not you tell me ſo and ſo? Why, ſaid he, the Proteſtant Citizens have deſerted us; and *God damn him*, he would not ſtarve.

L. C. J. Would he ſay ſo to you?

Dr. *Oates.* Yes, my Lord, he ſaid thoſe very Words.

Mr. Serj. *Jeff.* 'Tis Mr. *Oates*'s ſaying, 'tis Mr. *Turbervile*'s Oath.

Dr. *Oates.* Several times he did repeat it; but when I aſked him what he had ſworn, he ſaid, I am not bound to ſatisfy People's Curioſities.

L. C. J. What ſay you to it, Mr. *Turbervile?*

Mr. *Turb.* My Lord, the firſt Part of the Doctor's Diſcourſe in Part is true; I met him juſt at my Lodgings, and the Doctor alighted out of his Coach, and ſpoke to me, and invited me to come to my old Friends; for he told me, they had ſome Jealouſy that I was not true to them: And he told me, if I would come to the *King*'s *Head* Club, I ſhould be received with a great deal of Kindneſs: And never afterwards did I ſpeak with the Doctor a Tittle about any Evidence.

L. C. J. He ſaid, you ſaid you would break any one's Head, that ſaid you were an Evidence againſt *Colledge*; for you were not, nor could be.

Mr. *Turb.* There was no ſuch Thing ſaid by me.

Mr. Att. Gen. Upon your Oath, did you tell him ſo?

Mr. *Turb.* Upon my Oath, I did not.

Mr. Serj. *Jeff.* Did you tell him that other Paſſage, when you ſwore you would not ſtarve?

Mr. *Turb.* No, I did not.

Dr. *Oates.* Upon the Word of a Prieſt, what I ſay is true. My Lord, I do ſay, as I am a Miniſter, I ſpeak it ſincerely, in the Preſence of God, this Gentleman did ſay theſe Words to me; which made me afraid of the Man, and I went my Ways, and never ſpake with him afterwards, nor durſt I; for I thought he that would ſwear and curſe after that Rate, was not fit to be talked with.

L. C. J. 'Tis very improbable that he ſhould ſay ſo to you.

Mr. *Turb.* I always looked upon Dr. *Oates* as a very ill Man, and never would converſe much with him.

L. C. J. Will you aſk him any thing more?

Coll. Do you know any Thing of the reſt, Doctor?

Dr. *Oates.* I know nothing of *Turbervile* further, but that he did preſent this Petition, wherein he ſays, he lay under great Temptations to go on the other Side, and accuſe ſome Proteſtants. And truly till I heard he was an Evidence at *Oxon*, after what he had ſaid to me, I did not believe it.

Mr. Att. Gen. Doctor *Oates*, Mr. *Turbervile* hath not changed Sides, you have; he is ſtill an Evidence for the King, you are againſt him.

Dr. *Oates.* Mr. Attorney, I am a Witneſs for Truth, againſt Falſehood and Subornation; and it can plainly be made to appear there is Subornation againſt the Proteſtants. And, moreover, my Lord——

L. C. J. Mr. *Oates*, you would do well to explain yourſelf.

Mr. Serj. *Jeff.* If there be any Subornation relating to Mr. *Turbervile*, or any of the other Witneſſes that have now ſworn againſt *Colledge*, make it out, Doctor.

Dr. *Oates.* There is, my Lord, and there will be made further to appear in Time to come. To my own Knowledge, as to Mr. *Smith*, Mr. *Colledge* and Mr. *Smith* had ſome provoking Words paſſed betwixt them at *Richard*'s Coffee-Houſe, and Mr. *Smith* comes out and ſwears, *God damn him, he would have* Colledge'*s Blood.* So, my Lord, when I met him, ſaid I, Mr. *Smith*, you profeſs yourſelf to be a Prieſt, and have ſtood at the Altar, and now you intend to take upon you the Miniſtry of the Church of *England*, and theſe Words do not become a Miniſter of the Goſpel: His Reply was, *God damn the Goſpel:* This is Truth, I ſpeak it in the Preſence of God and Man.

L. C. J. Can you ſay any thing of any of the other Witneſſes ?

Dr. *Oates.* As for Mr. *Dugdale,* I was engaged for him for 50*l.* for laſt Lent-Aſſizes, he wanted Money to go down to the Aſſizes, having paid ſome Debts, and paid away all his Money; and ſo I engaged for 50*l.* that he borrowed of *Richard* the Coffee-man. After he came from *Oxon,* I called upon him to haſten to get his Money of the Lords of the Treaſury, which, as near as I remember, was ordered him upon his Petition, for ſo I heard. And that Time, ſaid he, Sir, I hear there is a great Noiſe of my being an Evidence: Againſt whom, ſaid I: Againſt ſeveral Proteſtants, my Lord *Shafteſbury,* and others: Said I, I never heard any Thing of it: Says he, there is no Body hath any Cauſe to make any ſuch Report of me, for I call God to Witneſs I know nothing againſt any Proteſtant in *England.* After that I met with *Dugdale* at *Richard*'s Coffee-Houſe, and preſſing him for the Money, and he ſaying he had it not juſt then, but would pay it in a little Time: Mr. *Dugdale,* ſaid I, you have gone, I am afraid, againſt your Conſcience, I am ſure againſt what you have declared to me: Said he, it was all along of Colonel *Warcup,* for I could get no Money elſe.

Mr. Att. Gen. Mr. *Oates* is a thorough-paced Witneſs againſt all the King's Evidence.

Mr. Serj. *Jeff.* And yet Dr. *Oates* had been alone in ſome Matters, had it not been for ſome of theſe Witneſſes.

Dr. *Oates.* I had been alone perhaps, and perhaps not; but yet Mr. Serjeant, I had always a better Reputation than to need their's to ſtrengthen it.

Mr. Serj. *Jeff.* Does any Man ſpeak of your Reputation ? I know no Body does meddle with it; but you are ſo tender ?

Coll. Sir *George,* now a Man is upon his Life, I think you do not do well to affront his Witneſſes.

Mr. Serj. *Jeff.* I do not affront him; but now, my Lord, pray give us leave to call our Witneſſes. Mr. *Smith,* pray ſtand up.

L. C. J. Mr. *Smith,* do you hear what Mr. *Oates* hath ſaid ?

Mr. *Smith.* No, my Lord.

L. C. J. Then ſpeak it again, Mr. *Oates.*

Dr. *Oates.* Yes, my Lord, I will ſpeak it to his Face. He ſaid coming out of *Richard*'s Coffee-Houſe, they having had ſome provoking Words, as I underſtood when I came in, *God damn that* Colledge, *I will have his Blood:* And, my Lord, when I did reprove him, and ſaid to him, Mr. *Smith,* you have been a Prieſt, and ſtood at the Altar, and intend to be a Miniſter of the Church of *England*; theſe Words do not become a Miniſter of the Goſpel; and he replied, *God damn the Goſpel*; and he went away.

L. C. J. What ſay you to it, Mr. *Smith ?*

Mr. *Smith.* Not one Word of this is true, upon my Oath. 'Tis a wonderful Thing you ſhould ſay this of me; but I will ſufficiently prove it againſt you, that you have confounded the Goſpel, and denied the Divinity too.

Mr. Serj. *Jeff.* Mr. *Dugdale,* you heard what was ſaid againſt you ?

Dr. *Oates.* My Lord, now *Dugdale* is come, I will tell you ſomething more. There was a Report given out by Mr. *Dugdale*'s Means, that Mr. *Dugdale* was poiſoned; and in truth, my Lord, it was but the Pox. And this Sham paſſed throughout the Kingdom in our Intelligences; and this I will make appear by the Phyſician that cured him.

Mr. Serj. *Jeff.* That is but by a third Hand.

Dr. *Oates.* He did confeſs that he had an old Clap, and yet he gave out he was poiſoned; but now, my Lord, as to what I ſaid before of him, I was engaged for 50*l.* for Mr. *Dugdale*; do you own that ?

Mr. *Dugdale.* I do own it.

Dr. *Oates.* I did preſs upon you to haſten the Payment of it.

Mr. *Dugdale.* Yes, you did.

Dr. *Oates.* And did not you come to me and tell me there was a Noiſe of your being an Evidence ? It was in Time juſt before my Lord *Shafteſbury* was taken up.

Mr. *Dugdale.* I never ſpoke to you till you ſpake to me.

Dr. *Oates.* My Lord, he came and ſaid to me, there is a Noiſe of my being an Evidence; now I had not heard it then, but the Day after I did hear it; and I did juſtify Mr *Dugdale,* becauſe he had ſaid to me that he had nothing againſt any Proteſtant in *England.* So I did ſtand up in Vindication of him; but my Lord, after he had ſwore at the *Old Baily,* I met him again, and preſſed him for the Money, and urged him with it, why he had ſworn againſt *Colledge,* when he had told me ſo and ſo before; and he ſaid it was all along of Colonel *Warcup,* for he could not get his Money elſe; and Colonel *Warcup* did promiſe he ſhould have a Place at the Cuſtom-Houſe.

Mr. *Dugdale.* Upon the Oath I have taken, and as I hope for Salvation, it is not true.

Mr. Serj. *Jeff.* Here is *Dugdale*'s Oath aginſt Dr. *Oates*'s Saying.

Dr. *Oates.* Mr. Serjeant, you ſhall hear of this in another Place.

Mr. Att. Gen. 'Tis an unhappy Thing that Dr. *Oates* ſhould come in againſt theſe Men that ſupported his Evidence before.

Mr. *Dugdale.* My Lord, I ſay further, if any Doctor † will come forth, and ſay he cured me of a Clap, or any ſuch Thing, I will ſtand guilty of all that is imputed to me.

L. C. J. Mr. *Colledge,* will you call any other Witneſſes ?

Coll. My Lord, I think this is not fair Dealing with a Man for his Life; becauſe theſe Men be upon their Oaths, and deny the Things again that my Witneſſes prove; therefore what they ſwear muſt needs be taken for Truth: But if my Witneſs comes and ſays ſuch a Thing upon the Word of a Miniſter, and in the preſence of God, and which he is ready to maintain by an Oath, ſure it is not to ſtand for nothing, nor to be hooted out of Court, becauſe Mr. *Dugdale* denies it upon his Oath; I do ſuppoſe he will not acknowledge it. But, my Lord, I am the Priſoner, and cannot be heard as a Witneſs for myſelf: But God is my Witneſs; he hath ſaid a great deal more to me formerly; and he hath told me, when I have ſeen him with *Warcup,* and aſked him why he kept Company with *Warcup,* and others; ſaid he, I know they are ſuſpected Men, but I muſt keep Company with them to get my Money; what, would you have me ſtarve ? And when I lent him Money out of my Pocket, and truſted him with my Horſe, I dun'd him for Money and could not get it; ſaid I, Will you pay me the 5*l.* I lent you ? He put me off; ſaid he, I ſhall have it, for the Attorney General hath made up his Accounts, and is very kind to me. Why then, ſaid I, why have you it not ? ſaid he, he is my Friend, and I do not queſtion the getting of it; but here is new Work to be done, ſuch Work as my Conſcience will not ſerve me to do; there is more Roguery, they will never have done plotting, and counterplotting; but they will make a thouſand Plots if they can to deſtroy the real one.

L. C. J. Can you prove this now ?

Coll. No, it was ſpoken to myſelf; and nobody was by but myſelf.

L. C. J. Then you ſhould not ſpeak it. But you aſked the Queſtion whether a Man may not be believed upon his Word, as well as he that is upon his Oath. Your Witneſſes are not upon their Oaths, but they may be Witneſſes, and their Weight is to be left with the Jury; they will conſider how improbable it is, that theſe Men ſhould come, three Men to one Man, and all of them ſhould ſpeak that which would make themſelves Rogues and Villains; and that one Man of them, *Smith,* ſhould ſay ſuch vile Words, as *God damn him, he would have his Blood*; and, *God damn the Goſpel*: That *Dugdale* ſhould confeſs he was wrought upon by *Warcup* to teſtify againſt his Conſcience; and that *Turbervile* ſhould ſay to that Purpoſe, he would not ſtarve; they have ſworn the contrary, and ſo there are all theſe three Men's Oaths againſt one Man's Affirmation; but it muſt be left to the Jury.

Coll. There is his Affirmation againſt what they three ſay. He charges every one of them, and 'tis but the ſingle denial of every one of them to his Charge.

L. C. J. 'Tis impoſſible they ſhould own themſelves ſuch Villains to him.

Dr. *Oates.* They muſt be ſo, if they will do what they have undertaken. I hope my Word will be believed as ſoon as their Oaths.

Coll. It is not to be thought, but when they have ſworn ſo againſt me, they will deny any ſuch Thing when they are charged with it.

L. C. J. Have you done with your Witneſſes ? Or will you call any more ?

Coll. What is ſaid upon an honeſt Man's Word in the Face of a Court, is certainly to be believed as well as what is ſworn.

L. C. J. 'Tis a Teſtimony, that is moſt certain, and muſt be left to the Jury, they muſt weigh one againſt the other. But pray, Mr. *Colledge,* will you call your Witneſſes, for it begins to grow late ?

Coll. There is Mr. *Wilmore,* that was a material Witneſs for me, who was Fore-man of the Grand Jury, that would not find the Bill upon this Evidence. What he had to ſay I don't know, but I am informed it was very material for me.

L. C. J. It will be enough for him to clear himſelf, for he is charged with High-Treaſon, and by two Witneſſes too.

Coll. Call *Alexander Blake.*

L. C. J. What do you aſk him ?

Coll. Do you know *John Smith ?*

Mr. *Blake.* Yes, Sir.

Coll. Pray will you tell the Court what you know of *John Smith.*

Mr. *Blake.* I ſuppoſe you mean this Gentleman. Mr. *John Smith,* Gent. came to me one Morning, and told me there was one *Haynes* under Examination, and this *Haynes* had diſcovered very material Things againſt ſome great Perſons: This paſſed, and within few Days after I met Mr. *Smith* at the *Exchange Coffee-houſe,* and having ſaluted him, I deſired him to drink a Glaſs of Wine, and ſo we went to the *Sun-Tavern,* and when we were there, I aſked him, what his Senſe was of *Haynes* and his Diſcovery ? Said he, 'tis a Sham-Plot: I aſkt him, what he meant by that Sham-Plot: Said he, it is a Meal-Tub Plot. This is all that I know.

J. C. J. Would you aſk him any Thing elſe ?

Mr. *Blake.* I know nothing more.

Coll. Do you know any thing of *Turbervile* or *Dugdale ?*

Mr. *Blake.* Sir, I have no Acquaintance with him, nor deſire it: But I was acquainted with this Gentleman, Mr. *Smith,* I know him very well.

Mr. Serj. *Jeff.* You ſay well, ſtand down.

Coll. Call Mr. *Samuel Smith.*

L. C. J. What aſk you him ?

Coll. What he knows of Mr. *Smith.*

Mr. *S. Smith.* Mr. *John Smith* and I have had an Intimacy and Acquaintance ſeveral Months, and ſince Mr. *John Smith* ſwore at the *Old Baily* againſt Mr. *Colledge,* and was gone out of Town, ſeveral People have talked with me concerning him; and aſking me what I thought of him ? I told them, I believed he was an honeſt Man; however I would not believe otherwiſe till I knew a Reaſon of it. They told me, that he had ſworn againſt Mr. *Colledge,* that he was to ſeize the King at the Parliament at *Oxford,* and that there was 1500 Barrels of Powder, and it was to carry on a Preſbyterian Plot: Said I, I will never believe it, and the rather becauſe he hath ſaid to me often, there was a Popiſh Plot, but he does not believe any Preſbyterian or Proteſtant Plot; and, ſaid I, further, as to his giving any Evidence with *Iriſhmen,* I believe it leſs for that, for I have heard him often ſay, they were a Company of Rogues that had done the Proteſtant Intereſt more harm than ever they could do it good, and bid me have a care of coming into their Company, and many other ſuch Things that Mr. *Smith* here knows to be true. Then, my Lord, when Mr. *Smith* came home (for I was very impatient till he did come home, to hear every Day ſuch Things ſaid againſt him) I went to him to ſee him. Said I, Couſin *Smith,* I have had great Confronts about you ſince you went away, but I hope you can't be that ill Man you are repreſented to be, and truly I would be ſorry it ſhould be ſo: Pray, Couſin, ſaid I, I have put every Man off with this, that I would ſuſpend my belief of you, till I had ſpoken with you yourſelf; what is the Evidence you have given ? They ſay you have ſworn a Preſbyterian Plot, or a Proteſtant Plot, a Deſign of ſeizing the King at *Oxon,* and of ſo many Barrels of Gun-powder that were provided. Says my Couſin, I did ſwear no ſuch Thing, nor never a Word of any ſuch Thing as a Proteſtant Plot, or a Preſbyterian Plot, and pray do not believe it of me. No, ſaid I, I thought you could not ſwear any ſuch Thing, becauſe you have ſaid often to me, you believe there was no ſuch Thing. I do not believe it yet, ſaid he; and as to whatſoever *Colledge* ſaid, I did not believe it, for he did not believe it himſelf. And Mr. *Smith* told me after his return, that he did not know of any Proteſtant concerned in the Plot.

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† Dr. *Lower,* the moſt noted Phyſician then in *London,* proved it at the Council Board both by his Bills, and by the Apothecary, that he had been under cure in his Hands for that Diſeaſe; which was ſuch a Slur upon *Dugdale*'s Credit, that he was never uſed as a Witneſs more.

L. C. J. He does not ſay now 'tis a Proteſtant Plot.

Mr. *S. Smith.* So far from that, that he told me after his return, he did not know any Proteſtant concerned in the Plot.

L. C. J. Mr. *Smith*, thus I underſtand you: You ſay that he ſaid to you, that he had not teſtified any Thing of a Proteſtant Plot, nor did believe there was any Proteſtant Plot, for he did not believe what *Colledge* ſaid himſelf: So by that Diſcourſe there ſeems he did not deny, but he had teſtified againſt Mr. *Colledge*; but he did not believe there was any Proteſtant Plot?

Mr. *S. Smith.* No, my Lord, he did not deny but he had ſworn againſt *Colledge.*

Mr. Juſt. *Jones.* Nor that what he had ſaid againſt *Colledge* was true?

Mr. *S. Smith.* No, my Lord, but he did not believe him, and he thought *Colledge* did not believe it himſelf.

Mr. Serj. *Jeff.* It ſeems Mr. *Colledge* thinks the whole Proteſtant Intereſt concerned in him.

L. C. J. The queſtion is, Mr. *Colledge*, what you had in your Mind, not what was in the Mind of all the Proteſtants.

Mr. *S. Smith.* This, I do ſay, I would not ſpeak more or leſs than the Truth, he did not deny but he had heard *Colledge* ſpeak thoſe Words he ſwore, but he did not believe him, and I think Mr. *Smith* hath ſaid that at another time before Mr. *Gardner.*

Coll. If he knew of no Proteſtant Plot, it was very unlikely that I ſhould attempt ſuch a Thing myſelf.

Mr. *S. Smith.* My Lord, I find Mr. *Smith* hath been very paſſionate and very inveterate of late againſt other Men that he hath given me a very good Report of before; and when I was talking of this, I was ſaying, if it be true that People ſay of you, a Man goes in Danger of his Life to converſe with you. Mr. *Smith*, ſaid he, I do not care for all the Men between *Wapping* and *Charing-Croſs*, there is never a Man that will forbear my Company, but would do or ſay as much as *Colledge* hath done or ſaid.

Mr. *J. Smith.* 'Tis true, and I ſay ſo ſtill.

Coll. 'Tis a Contradiction in itſelf, that there ſhould be ſuch a Deſign, and none but myſelf to do it. God my righteous Judge knows my Innocency.

Mr. Juſt. *Jones.* You might ſay thoſe Words in Hopes they would be of your Party, and made ſo by your Libels and poiſonous Pictures.

L. C. J. Come, call another Witneſs.

Coll. Call Mr. *Tho. Gardner.* But my Lord, how likely is it that I ſhould ſay, that I would ſeize the King, when he, it ſeems, ſays, he did not believe there was one Man to ſtand by me?

L. C. J. What ſay you to this Gentleman?

Coll. I never ſaw him in my Life.

Mr. *Gardner.* Nor I you, Sir.

Coll. I know not three of all that come here.

L. C. J. Well, will you aſk him any Thing?

Coll. Pray do you know Mr. *Smith?*

Mr. *Gardner.* Yes.

Coll. What do you know of him? Can you ſay any Thing concerning this Matter that is ſworn againſt me of Treaſon?

Mr. *Gardner.* My Lord, that Day-Fortnight I think it was, Mr. *S. Smith*, the Gentleman that was juſt now up before me, ſent for me to the *Rummer* in *Queen-Street*, to drink a Glaſs of Wine, where when I came, I found him and Mr. *J. Smith*, that is here, whom they call Narrative *Smith*, talking very briſkly concerning one *Colledge*, I ſuppoſe that is the Gentleman, and the Jury that acquitted him, and he ſaid that two or three of the Jurymen were Raſcals and Villains; and, ſays he, they talk up and down the Town, as if I did intend to ſham the Popiſh Plot, and to make a Proteſtant Plot, which, ſaid he, I vow to God, and I will juſtify it before God and all the World, that I know of no Proteſtant Plot, nor is there any Proteſtant concerned in a Plot to my Knowledge, but this *Colledge*, and upon his Trial I believe he will be made appear to be more a Papiſt than a Proteſtant: But, ſays Mr. *Smith* to him, Now you are known to be a Witneſs in this Caſe, it will be a dangerous Thing for a Man to converſe with you.

Coll. Will it be now known that I am a Papiſt? No Man could ever ſay ſo in this World.

Mr. *Gardner.* Says he, I care not what all the World ſays of me, and I do not value all the Men from *Wapping* to *Charing-Croſs*, but that Man that will ſhun my Company, will ſay and do as much to the King as *Colledge* hath done. But then I was ſaying, methinks it ſeems an improbable Thing, that ſuch a Man as *Colledge* ſhould ſeize upon the King, or provide 1500 Barrels of Powder, and thoſe other Things. Upon my Word, ſaid he, with ſome Paſſion, clapping his Hand upon his Breaſt, when Mr. *Colledge* did ſay it, I did not believe a Word of it, and upon my Faith I believe *Colledge* himſelf did not believe it when he told me ſo.

Coll. Do you know any Thing more, Sir?

Mr. *Gardner.* No, indeed Mr. *Colledge.*

Coll. Call Dr. *Oates* again.

L. C. J. Well, what ſay you to him?

Coll. Pray Dr. *Oates*, Mr. *Smith* charges me that I ſhould ſpeak ſome treaſonable Words that Time that Alderman *Wilcox* gave you a Treat at the *Crown* Tavern; you were there, and pray how long ago was it?

Dr. *Oates.* My Lord, I heard Mr. *Smith* ſpeaking of it at the *Old Bailey*, and if you pleaſe to take Notice, it was thus: This Summer was Twelve-Month, or I am ſure a great while before *Chriſtmas*, the Alderman had invited me ſeveral Times to give me a Treat, and I had not Time, other Buſineſs calling me off; but finding a Time, I ſent him word I would come and ſee him. He ſaid he was a Brewer, and troubled at home with Cuſtomers, but he would give me a Dinner at the *Crown* Tavern without *Temple-Bar*, that was the Place fixed upon; there was Mr. *Smith* the Counſellor, who had been ſerviceable to me in ſeveral Inſtances, I did get him to go along with me, and Mr. *Colledge* was with us, and I heard *Smith* ſwearing at the *Old-Bailey* that Mr. *Colledge* and he had diſcourſed from the *Rainbow* Coffee-Houſe where we met, and went together.

Coll. There I was invited by Alderman *Wilcox.*

Dr. *Oates.* But, my Lord, I will tell my Story, I am not to tell Mr. *Smith*'s. *Colledge* did tell me he was invited; ſaid I, you ſhall be welcome as far as I can make you welcome. So *Colledge* and I went together from the *Rainbow* Coffee-Houſe to the *Crown* Tavern: Now indeed, *Colledge* was very pleaſant and merry, and as I think, the Diſcourſe between the *Rainbow* Coffee-Houſe and the Tavern was betwixt Mr. *Colledge* and me; for Mr. *Smith* ſtayed ſomewhat behind, or walked before, I cannot tell which: When we came to the *Crown* Tavern, we did, to divert ourſelves till Dinner came up, enter into a Philoſophical Diſcourſe with one Mr. *Savage*, who was formerly a *Romiſh* Prieſt, but this *Savage* is ſince pardoned by the King, and is a Member of the Church of *England*, and hath been Profeſſor of Divinity and Philoſophy beyond Sea. This, as I remember, was the Diſcourſe before we dined, till we went to Dinner; it was concerning the Exiſtence of God, whether that could be proved by natural Demonſtration, and whether or no the Soul was immortal. My Lord, after Dinner, *Smith* went away, I did not hear the leaſt Diſcourſe of any ſuch Thing as he ſpeaks of, and Mr. *Smith* and *Colledge* had no Diſcourſe in my hearing from the Coffee-Houſe to the Tavern; and when we were in the Tavern, we did diſcourſe about thoſe two Points. Counſellor *Smith*, my Lord, will juſtify a great deal of this, and my Brother too, who was with us. But when I heard Mr. *Smith* ſwear as he did about this Matter at the *Old Bailey*, I did really, my Lord, in my Conſcience, look upon him to be forſworn in that Particular.

Mr. Serj. *Jeff.* And he does ſwear you are out in this.

L. C. J. Will you aſk him any more Queſtions?

Dr. *Oates.* If your Lordſhip pleaſe, he ſpeaks of Mr. *Wilcox* to be a Man that contributes Money to buy Arms, Powder and Shot. I think, Sir *George Jefferies* knows Alderman *Wilcox* is a Man of another Employment.

Mr. Serj. *Jeff.* Sir *George Jefferies* does not intend to be an Evidence, I aſſure you.

L. C. J. Do you aſk him any more Queſtions?

Dr. *Oates.* I do not deſire Sir *George Jefferies* to be an Evidence for me, I had Credit in Parliaments, and Sir *George* had Diſgrace in one of them.

Mr. Serj. *Jeff.* Your Servant, Doctor, you are a witty Man, and a Philoſopher.

Coll. Call Mr. *Tho. Smith.*

L. C. J. What would you aſk of him now?

Coll. Counſellor *Smith*, here is *John Smith*, or Narrative *Smith*, which you pleaſe to call him, hath charged me with ſpeaking Treaſon at our going to Dinner at Mr. *Wilcox*'s; I remember you were there, and I think you and I, and Dr. *Oates* and his Brother, and Mr. *Goodwin Wharton* went together; I did tell Mr. *Smith* of it, but I did not ſtir a Step out of the Coffee-Houſe with him, but went away before him. How long ago is it ſince we had that Dinner?

Mr. *T. Smith.* My Lord, if your Lordſhip pleaſe, I do very well remember Mr. Alderman *Wilcox*, ſo they called him, did deſire to give Dr. *Oates* a Treat, with ſome other of his Friends at the *Crown* Tavern without *Temple-Bar*; but really, my Lord, as to the certain Time I do not remember it, but to my beſt Remembrance, my Lord, it was before *Chriſtmas* laſt, and ſome Time before *Chriſtmas* laſt. And, my Lord, I was there all the Time; Mr. *Smith* was at that Time ſomewhat a Stranger to me, ſomething I had heard of his Name, and I did ſtay there all the while; I remember Mr. *Alderman Wilcox* was to go out of Town that Day; and truly, as to any Matter of Treaſon, or treaſonable Words, or any Thing tending towards it, I am confident nothing was, or could be ſpoken, and the Room was a very ſmall Room, and our Company did fill it up, and the Table was ſo big, that there was little more than for the Servitors to go about; ſo that any Man might eaſily hear from the one end of the Room to the other. I remember there was ſome Diſcourſe betwixt Dr. *Oates* and Mr. *Savage*, who, I think, hath been a Jeſuit, and it was about ſome Points of Philoſophy and Divinity; but for Treaſon, I do not remember the leaſt of it, and I am confident *Colledge* ſaid not any Thing at that Time; and my Reaſon is this, I very well remember Mr. *Colledge* did ſet himſelf down upon one Side of the Table, and fell aſleep, and unleſs he talked Treaſon in his ſleep, there could not be any ſuch Thing ſaid, and if it had been ſaid, it would have been heard.

Mr. Att. Gen. Mr. *Smith*, did you never hear Mr. *Colledge* ſpeak an ill Word of the King?

Mr. *T. Smith.* Never in my Life. And if I were now to take the Sacrament upon it, I could ſay ſo.

Mr. Serj. *Jeff.* Yo uſed to converſe with him, Mr. *Smith*, did he never ſay any Thing like it to you?

Mr. *T. Smith.* Good Mr. Serjeant, you know I can take the Sacrament; pray, let us have no Reflections.

Mr. Serj. *Jeff.* Who did reflect upon you? I did not reflect upon you.

Mr. Juſt. *Jones.* Mr. *Smith*, did he never deliver you any of thoſe Pictures?

Mr. *T. Smith.* No, Sir, he never did.

Coll. Good Sir *George*, don't reflect upon my Evidence. It ſeems Mr. *Smith* is miſtaken in the Time; for he ſays it was at *Chriſtmas*; but Mr. *Smith* ſays it was ſome Time before.

L. C. J. Mr. *Smith* does not ſay ſo, the certain Time he cannot tell exactly; but your Witneſſes ſay it was then.

Mr. *T. Smith.* I do ſpeak as much as if I were upon my Oath; and I do know what an Oath is, I thank God, and what it is to ſpeak before a Court of Judicature; and I know, and do ſpeak Truth as much as if I were upon my Oath; and I do ſay I did not hear *Colledge*, or any one elſe that was in that Company, at that Time, ſpeak any Thing reflecting upon the King and Government, or any Thing tending towards it.

Mr. Juſt. *Jones.* Can you remember Matter ſo diſtinctly, which Dr. *Oates* ſays was a Year and Half ago?

L. C. J. No. this Summer was Twelve-month.

Mr. Juſt. *Jones.* And can you tell ſo long ago, not only your own Actions, but teſtify to all other Men's Actions too that were in the Room?

Mr. *T. Smith.* I cannot tell what Dr. *Oates*'s Memory is as to the Time; but I remember the Place, the Occaſion, and the Perſons that were there.

Mr. Juſt. *Jones.* And you take upon you to have ſuch a perfect Memory, as to the Actions of all the Perſons that were in the Room.

Mr. *T. Smith.* I do not ſpeak of all that was done, but I ſay, I remember no ſuch Thing that was ſaid, and I believe no ſuch Thing was ſaid, and I have given you my Reaſons why. But, my Lord, that which I ſay further for Mr. *Colledge*, is this; I do hear ſomething pretended, as if he provided arms to go to *Oxford*. I have known him theſe three Years, or thereabouts; and, my Lord, I do know that he did uſually ride with a Caſe of Piſtols before him. And before that Time I had occaſion to borrow his Horſe of him, at the Election for *Weſtminſter* the laſt Parliament that ſat there, and I had it then with a Caſe of Piſtols. I likewiſe borrowed it at *Michaelmas* laſt, the ſame Horſe, and the ſame Piſtols they were, I did at the ſame time ſee a Suit of Silk-Armour, which he told me he did provide againſt the Papiſts; for he ſaid, he did expect we ſhould have a Bruſh with them. Said I, do not trouble yourſelf for that, they dare not meddle; ſaid he, they will do no Harm. And as I remember, it was a Suit of Armour made of Silk to wear under a Coat.

Coll. It was Silk-Armour only for the Thruſt of a Sword. And I aſſure you, my Lord, I had but one Suit, but one Caſe of Piſtols, and but one Horſe. I had two before; but they did not then make a Traitor of me, that was all that ever I had; but if I had had ten Horſes, and never ſo many Armours, I declare it upon my Salvation, I intended it for nothing but againſt the Papiſts, if they ſhould make a Diſturbance; and whatever I did, was with that Deſign, and truly, by the Grace of God, I would not have been the laſt Man then; but I ſee, whatever I provided myſelf with for that, they have turned it all another way, that it may be believed the Proteſtants were againſt the King and the eſtabliſhed Government.

L. C. J. Thoſe Obſervations may be proper for you at laſt. Go on now with your Evidence.

Coll. My Lord, I am not a Man of that great Memory, I may forget it, and therefore I ſpeak it now whilſt I think on it.

L. C. J. Set it down in your Paper.

Coll. *Smith* ſays, I talked with him coming from *Richard*'s Coffee-Houſe till we came to the Tavern; I do declare it, I went away before him, and went away with Dr. *Oates*.

L. C. J. Aſk Mr. *Smith* that Queſtion, if you will.

Coll. Pray Sir, do you know who went together thither?

Mr. *T. Smith.* I dare not undertake to ſay that, I cannot tell whether he went from the *Rainbow*-Coffee-Houſe with us, or no.

Coll. He ſays, after we had dined, we divided ourſelves into Cabals, two and two together; I do declare, it is that which is the real Truth, I fell aſleep behind the Table; if any body was divided, it is more than I know; but, Mr. *Smith*, you can tell, becauſe he ſays I ſpoke Treaſon to him when I was in the Room, he and I in one Cabal.

Mr. *T. Smith.* My Lord, I remember nothing of that, nor do believe it; for I told you the Room was ſo little, that we could not divide ourſelves: And it is impoſſible in ſuch a little Compaſs where we was ſo many as we were, fourteen or fifteen of us; it may be one might talk to another that was next to him, but then the Company muſt hear; and whether they did ſo or no, I cannot tell, I do not remember Mr. *Smith*'s ſaying any thing to any particular Perſon; but the great Ingagement was between Dr. *Oates* and Mr. *Savage*, and about ſome Queſtions in Divinity, and that is the great Matter I took Notice of.

Coll. However, my Lord, I declare it, that was above a Twelve-month ago, and I hope your Lordſhip and the Jury do obſerve, that there was no new Arms were found but what were provided a great while ago; all that know me, know I was never without a Caſe of Piſtols and an Horſe, though I was but a Joiner, and there is no more that you ſee now. And to what *Smith* ſaid about going into Cabals, that you hear Mr. *Smith* denies.

L. C. J. Will you call any other Witneſſes?

Coll. Yes, if it pleaſe your Lordſhip. Do you know no more, Sir?

Mr. *T. Smith.* I know no other thing, if I did, I would declare it.

Coll. Call Dr. *Oates*'s Brother, Mr. *Samuel Oates.* My Lord, thus you ſee *Smith*'s Teſtimony is falſe.

L. C. J. I do not ſee this contradicts his Oath, for he ſpeaks of ſeveral Times that he did ſpeak with you; one was at *Wilcox*'s, which is this they ſpeak of.

Coll. Mr. *Smith* ſays, there was only that great Diſcourſe going on in the Room, and there was no ſuch Thing as Cabals which he ſpeaks of.

L. C. J. What do you ſay to this Witneſs?

Coll. Do you know Narrative *Smith?*——Mr. *Oates.* Yes, Sir.

Coll. What do you know of him? Were you at the Dinner which Mr. *Wilcox* gave your Brother?—Mr. *Oates.* Yes, yes, I was at that Dinner.

Coll. Were you at the Coffee-Houſe when I went along with your Brother?——Mr. *Oates.* Yes, we went with you.

Coll. Did Mr. *Smith* go with us?

Mr. *Oates.* Yes, Mr. *Smith* followed us.

Coll. Did you hear any treaſonable Diſcourſe between us?

Mr. *Oates.* Not the leaſt of a little Word.

Coll. Did we go into Cabals two and two together there?

Mr. *Oates.* There was nothing at all of Cabals, that I ſaw, from the Time of going to Dinner; for we came juſt as Dinner was going into the Room, as I remember.

Mr. Serj. *Jeff.* What do you mean by Cabals?

Mr. *Oates.* That is, as I diſcern by Mr. *Colledge*, as if there had been Cabals amongſt the Company.

Mr. Juſt. *Jones.* That is going by Couples?——Mr. *Oates.* Yes, yes.

Mr. Serj. *Jeff.* What did they talk of?

Mr. *Oates.* There was nothing at all ſpoken of.

Mr. Serj. *Jeff.* What did they ſay nothing all the while?

Mr. *Oates.* Nothing but Matter of common Diſcourſe, Matters of Eating and Drinking, and talking of Country Affairs; there were ſeveral that had Lands in the Country, and they were talking of thoſe Things.

Mr. Juſt. *Jones.* Were you there all the while?——Mr. *Oates.* Yes.

Mr. Serj. *Jeff.* Hark you, Sir, Were there no Diſputations in Divinity?

Mr. *Oates.* Not at all.

Mr. Serj. *Jeff.* Nor of Philoſophy?——Mr. *Oates.* No.

Mr. Serj. *Jeff.* Why, pray Sir, did not Dr. *Oates* and Mr. *Savage* talk very pleaſantly of two great Queſtions in Divinity, the Being of God, and the Immortality of the Soul?

Mr. *Oates.* There was not a Word of that, but only common Diſcourſe.

Mr. Serj. *Jeff.* Are you ſure there was no ſuch thing?

Mr. *Oates.* Not that I know of, in the leaſt, I ſat at Table with them.

Mr. Serj. *Jeff.* Was it ſuch a little Room that you could hear all was ſaid?

Mr. *Oates.* There was Room enough.

L. C. J. People cannot give a perfect Account of all things that have paſſed ſo long ago.

Coll. I did not hear that Diſcourſe myſelf, becauſe I was aſleep behind the Table; and perhaps Mr. *Oates* cannot remember it.

Mr. Sol. Gen. Was it before Dinner, or after Dinner that *Colledge* fell aſleep behind the Table?

Mr. *Oates.* He was not aſleep to my Remembrance all the while.

Mr. Serj. *Jeff.* Recollect yourſelf pray, was Mr. *Colledge* aſleep there?

Mr. *Oates.* I do not remember he was.

L. C. J. 'Tis impoſſible to give an Account; and therefore Witneſſes in Negatives are of little Value.

Coll. Did Mr. *Smith* and you and I go together?

Mr. *Oates.* Mr. *Smith* followed us.

L. C. J. How do you know that?

Mr. *Oates.* For you and I, and my Brother went together; you were a ſaying, when we came out of the Coffee-Houſe, in a jocoſe way, Come, Doctor, I will go along with you, and be one of your Guard. You ſpoke it in a jeſting way. So you may, if you pleaſe, ſaid my Brother. And ſo he went by my Brother's Side, and I went by Mr. *Colledge*'s Side.

Coll. Do you remember how long ago that was?

Mr. *Oates.* It was the laſt Summer; but to ſay exactly what Month I cannot.

Mr. Sol. Gen. Mr. *Oates*, anſwer me this Queſtion, pray, Sir.

Mr. *Oates.* Yes, Sir.

Mr. Sol. Gen. From what Place did you go?

Mr. *Oates.* From *Richard*'s Coffee-Houſe.

Mr. Sol. Gen. Who went along with *Colledge?*

Mr. *Oates.* He came along with my Brother and me; for he ſaid to my Brother, I will be one of your Guard.

Mr. Sol. Gen. Who went along with Mr. *Smith?*

Mr. *Oates.* I don't know, I took very little Notice of Things.

Mr. Serj. *Jeff.* 'Tis ſufficient that he can tell who went with *Colledge.*

Mr. *Oates.* I remember one Thing: Mr. *Smith* would fain have perſuaded me into ſomething that my Brother ſhould talk, but I heard nothing; ſaid I, do not examine me upon ſuch things, for I took little Notice of any thing; but this I can ſay, whereas he doth charge Mr. *Wilcox*, the Gentleman did not ſpeak five Words all the Time he was there.

Mr. Serj. *Jeff.* He does not uſe to be ſo melancholy, I aſſure you.

Mr. *Oates.* I did wonder at it myſelf, but he was not long with us; for I do not think he was there a quarter of the Time; it ſeems he had a Son ſick in the Country, and he was going thither.

Coll. Have you any thing againſt *Macnamarra?*

L. C. J. He is no Witneſs here.

Coll. Do you know any thing againſt Mr. *Dugdale?*

Mr. *Oates.* No, not I.

Coll. Then I can ſay no more to you.

L. C. J. Call another Witneſs.

Coll. Call *Bolron.*

L. C. J. What do you aſk him?

Coll. Do you know *John Smith?*——Mr. *Bolron.* Yes.

Coll. What do you ſay againſt him?

Mr. *Bolron.* May it pleaſe your Lordſhip, the laſt 25th of *July*, Mr. *Smith*, and Mr. *Mowbray*, were travelling from *York* towards *London.* We lay the 24th at and the 25th we were travelling towards *London:* Mr. *Smith* did aſk me If I did remember what Diſcourſe there was betwixt Sir *John Brooks* and I at *Ferry-bridge* when we were coming up before to *London?* I deſired him to tell me what Diſcourſe, and I would tell him if I did remember it or no. So, my Lord, he did ſay, the Diſcourſe was, that Sir *John Brooks* did ſay, there would be cutting of Throats at *Oxford*, and that the Parliament did go provided ſome with 8, ſome with 6, ſome with 4 Men, and they were to meet at *Grantham*, and go together. This Diſcourſe I did remember, That Sir *John Brooks* ſaid, they went with Horſe and Arms to ſecure them from Highway-men; and Sir *John Brooks* did then further declare, that the Diſcourſe was, there would be cutting of Throats, at *Oxford*, which made them go with Arms to defend themſelves. Mr. *Smith* did further upon the 25th, 26th, 27th and 28th of *July* (and it was our frequent Diſcourſe) tell me, that he had given his Majeſty an Account of it, which occaſioned the diſſolving of the Parliament: That Diſcourſe that was made to the King, was, That Sir *John Brooks* ſhould ſay, that there would be cutting of Throats at *Oxford*, and that the Parliament-men went provided with 4, or 5, 6, or 10, men apiece; and he did tell me, that he had given a further Account, that there was to be a Conſult at *Grantham*, wherein it was reſolved, that it was better to ſeize the King, than to let him go on. Now, this I knew nothing of, but he would have perſuaded me to have given in this Evidence againſt Sir *John Brooks*, as to this Diſcourſe. But I declare, I did never hear it, and Mr. *Smith* was the firſt Man that ever I heard it from, I never heard it before in my Life.

Coll. Would he have had you been an Evidence, and ſwore it?

Mr. *Bolron.* Yes, he ſaid, he had given an Account of it to the King, and if I did manage it rightly againſt my Lord *Shafteſbury* and *Colledge*, he would make me for ever; thoſe two Perſons were mentioned all along. But I do declare it, I did never hear him ſpeak Treaſon againſt the King in my Life. And he did further tell me, that I muſt ſay ſo and ſo; for if we did not agree, it would ſignify nothing. But, my Lord, I know nothing of the Matter, I never heard any one ſpeak of it but Mr. *Smith.* My Lord, this is true, Mr. *Mowbray* was the Man that was by when it was diſcourſed.

Mr. Juſt. *Jones.* He would have had you ſworn it, would he?

Mr. *Bolron.* I diſcovered it to my Lord-Mayor.

Mr. Att. Gen. When did you diſcover it?

Mr. *Bolron.* Soon after I came to Town.

Mr. Att. Gen. When was it?——Mr. *Bolron.* Some time laſt Week.

Mr. Att. Gen. Was it on *Sunday* laſt?

Mr. *Bolron.* It was the beginning of the Week.

Mr. Serj. *Jeff.* Thou art ſuch a Diſcoverer.

Mr. *Bolron.* My Lord, 'tis very true what I ſay. If I had known any ſuch Thing, I would have diſcovered it.

Mr. Serj. *Jeff.* Thou would'ſt have diſcovered it before that Time, of my Conſcience.

Coll. My Lord, he hath been an Evidence againſt the Papiſts as well as Mr. *Smith*; and therefore, pray, Sir *George*, don't make your Flouriſhes upon him.

Mr. Serj. *Jeff.* He was an Evidence, but had the Misfortune never to be believed.

Mr. *Att. Gen.* Do you know of any Pictures of Mr. *Colledge*'s making? Have you ſeen *Rary Shew?*——Mr. *Bolron.* Never in my Life.

Mr. Att. Gen. Did not you ſhew it in *Oxford?*

Mr. *Bolron.* No, never in my Life.

Mr. Serj. *Holl.* Did you never declare to any Gentleman of *Oxford*, that *Colledge* made this Picture?

Mr. *Bolron.* I have ſeen the Character of a Popiſh Succeſſor, but I never ſaw *Rary Shew.*

Mr. Serj. *Holl.* Here is the very Gentleman that will make Oath of it.

Mr. *Bolron.* He was ſuppoſed to make them, I did not know that he did.

Mr. Serj. *Jeff.* I do only deſire one Thing, I do not ſay that you ever had *Rary Shew*, but did you ever tell any body that *Colledge* made any of theſe Pictures?

Mr. *Bol.* I have heard of ſuch a Paper, but I did never ſee it in my Life.

Mr. Serj. *Jeff.* Do you know that Gentleman, Mr. *Bolron?*

Mr. *Bolron.* I know him not.

Mr. Serj. *Jeff.* I would ask you, whether you ever had any Diſcourſe with that Gentleman?——Mr. *Bolron.* Never in my Life.

Then the Gentleman was ſworn, being a Maſter of Arts.

Mr. Serj. *Jeff.* What is the Gentleman's Name?

Mr. Serj. *Holl.* Mr. *Charlett*, of *Trinity* College.

Mr. Serj. *Jeff.* Pray, Sir, do you know that Perſon there?

Mr. *Charlett.* My Lord, in the New Coffee-Houſe that was by the Schools, that was ſet up in the Parliament-time, there was a Gentleman that is in the Court (I think) one Mr. *Daſhwood*, and one Mr. *Box*, were there, together to drink a Diſh of Coffee, and hearing that ſome of the Evidence were there, we deſired their Company up, and that Gentleman was one; and among other diſcourſe, they were ſpeaking of ſome Pictures, and they ſhewed us the Picture of the *Tantivies.*

Mr. Serj. *Jeff.* Did this Man ſhew it you?

Mr. *Charlett.* This very Man. It was the Pictures of the *Tantivies* and the *Towzer*, and he told me they were made by *Colledge*, he was a very ingenious Man.

Mr. *Bolron.* I know nothing of it; the Character of a Popiſh Succeſſor I have ſeen, but never the other, I never ſhewed him any ſuch Thing.

Then the Pictures were ſhewn him.

Mr. *Char.* It was ſomething like this, but I cannot ſay for any of the other.

Mr. *Bolron.* The Character of a Popiſh Succeſſor, I ſay, I have ſeen, and *Colledge* himſelf hath told he made the Character of a Popiſh Succeſſor, I do not deny that I have ſeen that.

L. C. J. Would you aſk him any more Queſtions?

Mr. *Bolron.* My Lord, I have ſomething to ſay concerning Mr. *Bryan Haynes*; in *January*, *February*, and *April* laſt, ſeveral times I was in his Company, and I heard him ſay, he knew nothing of a Popiſh Plot, nor of a Preſbyterian Plot neither; but if he were to be an Evidence he did not care what he ſwore, but would ſwear and ſay any thing to get Money.

Mr. Juſt. *Jones.* Did he tell you ſo?

Mr. *Bolron.* Yes, I did hear him ſay, To Day he would be a Papiſt, to morrow a Preſbyterian, he did not Care for Religion, he would never die for Religion, he would be of that Religion that had the ſtrongeſt Party. My Lord, he told me ſo at my own Houſe in *Fleet-Street.*

Coll. He would ſay any Thing for Money; pray, my Lord, take Notice of that, for ſo I find he does.

Mr. *Bolron.* Then there is *Dennis Macnamarra*, and *John Macnamarra.*

Mr. Serj. *Jeff.* We have nothing to ſay to them.

Coll. They have been Evidences againſt me; though you do not now produce them, they are all in a String, but they are not now brought, becauſe my Witneſſes are prepared to anſwer them.

L. C. J. Will you call your next Witneſs?

Coll. Mr. *Mowbray*, pray, Sir, do you know Narrative *Smith*, as he calls himſelf?——Mr. *Mowbray.* Yes, my Lord.

Coll. What do you know of it?

Mr. *Mowbray.* I came up from *York* with him when I returned, after I was commanded down upon the King's Account to give in Evidence againſt Sir *Miles Stapleton*, he came to me the third of *Auguſt*, and called at my Houſe in *Yorkſhire*, and was very importunate for me to come up to *London* with him; for he ſaid, he had a Letter come to him which commanded his Preſence at *London* very ſuddenly, and he produced that Letter which he ſaid came from a Gentleman of the Court, or ſome Court-Dependent; ſo he read the Letter in Mr. *Bolron*'s Hearing. We ſet forward on *Sunday*, and upon our Journey to *London* he told me he had ſomething of Importance to impart to me; ſo upon the Road he began to diſcourſe of the Parliament and of the illegal Proceedings and arbitrary Power of the two laſt Parliaments; he ſaid, their Proceedings were very illegal and arbitrary, and he began to open ſome of the Votes, as that which they voted, that thoſe that ſhould lend the King Money upon the Crown-Lands, ſhould be Enemies to the King and Kingdom, and thoſe that counſelled the King to diſſolve the Parliament; and he repeated many Votes, and, ſaid he, theſe are Signs of arbitrary Power, and certainly they deſign to take off the King; ſo he proceeded further to ask me, what was the Diſcourſe of Sir *John Brooks*, when he came up before, and he did much importune me to ſay, that Sir *John Brooks* did affirm there would be cutting of Throats at *Oxford*, and that the King was to be ſeized there; I told him I could have no plauſible Pretence, becauſe I had no Acquaintance with Sir *John Brooks*, nor did I come up with him; upon which he applied himſelf to *Bolron*, and importuned him for the ſame; he aſked me who I came up with? I told him, I came up with three Members of Parliament, my Lord *Fairfax*, Sir *John Hewley*, and Mr. *Stern*; he aſked me what Diſcourſe we had upon the Road? And he aſked, whether they had any Diſcourſe that tended to juſtify their former Votes? For he ſaid, if they did think to juſtify any of theſe Votes, or if they would not allow the King Money, and ſtood upon the Bill of Excluſion, he ſaid, that was Pretence enough for any Man to ſwear that there was a Deſign againſt the King, and that the King was to be ſeized at *Oxford.*

Coll. An excellent Pretence indeed, and like the reſt.

Mr. *Mowb.* He would have tempted me to ſwear againſt my Lord of *Shaftesbury* the ſame. And he ſaid, it would be well if I did appear on *Colledge*'s Trial at *Oxon*, for it was a Thing of great Conſequence; the Popiſh Plot was thrown out of Doors, and no Man was looked upon that did ſpeak of it.

Mr. Juſt. *Jones.* Was all this in the Preſence of Mr. *Bolron?*

Mr. *Mowb.* No, my Lord. When he was diſcourſing about Sir *John Brooks*, Mr. *Bolron* rid up to us, and he applied himſelf to him, becauſe I told him I had no plauſible Pretence to ſwear againſt him, having no Acquaintance with him.

Mr. Serj. *Jeff.* Pray, Sir, let me aſk you one Queſtion, When came you from *York?*

Mr. *Mowb.* We ſet forward the third Day of *Auguſt* from *Wentbridge.*

Mr. Serj. *Jeff.* Pray, who came with you in the Company?

Mr. *Mowb.* Mr. *Bolron.*

Mr. Serj. *Jeff.* That was a *Sunday*, as I take it.—Mr. *Mowb.* Yes.

Mr. Serj. *Jeff.* Then pray, how long did you continue before you came to *London?*—Mr. *Mowb.* I think we came in on the *Thurſday* after.

Mr. Serj. *Jeff.* When was the firſt Time Mr. *Smith* came into your Company?—Mr. *Mowb.* Upon the Road on *Sunday.*

Mr. Serj. *Jeff.* Was that the firſt Time?

Mr. *Mowb.* Yes. He had been at *York*, and went farther, and afterwards came to us.

Mr. Serj. *Jeff.* When did you come from *York?*

Mr. *Mowb.* About the *Thurſday* before, if I be not miſtaken.

Mr. Serj. *Jeff.* Was it in a Week before?

Mr. *Mowb.* Yes, within a Week it was.

Mr. Serj. *Jeff.* And you and Mr. *Bolron* came together?

Mr. *Mowb.* Yes.

Mr. Serj. *Jeff.* And you left Mr. *Smith* behind?—Mr. *Mowb.* Yes.

Mr. Serj. *Jeff.* And he overtook you upon the Road?

Mr. *Mowb.* Yes, he was to go further into the North as ſoon as the Trial of Sir *Miles Stapleton* was over, and therefore he did very much importune me to ſtay in the Country till he came to go up with me.

Mr. Serj. *Jeff.* What Day was the Trial of Sir *Miles Stapleton?*

Mr. *Mowb.* On the *Monday* before.

Mr. Serj. *Jeff.* You are ſure of that, and that Mr. *Smith* went further into the North?—Mr. *Mowb.* I ſee him take Horſe.

Mr. Serj. *Jeff.* But he did not come into the Company of you and Mr. *Bolron* till the *Sunday* after that.

Mr. *Mowb.* See ye, Sir, he did deſire me to ſtay in the Country till he came, for he had a Buſineſs of great Concernment to impart to me, but it would be a Week or a Fortnight, e'er he came, but yet he came in a ſhorter Time, for he ſaid he had received a Letter that brought him up.

Mr. Serj. *Jeff.* You are ſure of this?—Mr. *Mowb.* Yes.

Mr. Serj. *Jeff.* And you did not ſee him from the *Monday* before, till that *Sunday?*—Mr. *Mowb.* No, no.

Mr. Serj. *Jeff.* Now then, I aſk you, where was that Place he met with you?—Mr. *Mowb.* At *Wentbridge.*

Mr. Serj. *Jeff.* And then you came from thence towards *London* the next Day?—Mr. *Mowb.* Yes.

Mr. Serj. *Jeff.* Now would I deſire to know of you, for I perceive he did attack you to ſay ſomething againſt Sir *John Brooks*, and finding that you could not do it, becauſe you had no Acquaintance, he applied himſelf to *Bolron.* I would know, was it between that Place and *London?*

Mr. *Mowb.* Yes, it was.

Mr. Serj. *Jeff.* And after the third of *Auguſt?*

Mr. *Mowb.* Yes, it was after he ſet out.

Mr. Serj. *Jeff.* I thought it had been the 24th of *July* that you ſet out, and continued your Journey the 25th, 26th, 27th, 28th, and 29th. Alas, we have loſt a great deal of Time between Mr. *Bolron* and Mr. *Mowbray. Bolron* ſaid, it was the 25th they lay at ſuch a Place, and you are gotten to the 3d of *Auguſt*; you are miſtaken certainly, as to Point of Time.

Mr. *Mowb.* See, Sir, I will look in my Almanack, 'tis all ſet down there

Mr. Serj. *Jeff.* Let us ſee now if your *Oxford* Journey be as well ſet down, as your Journey to *London* is.—Mr. *Mowb.* Here is my Almanack, Sir.

Mr. Juſt. *Jones.* Here, look upon his Almanack.

Mr. Serj. *Jeff.* Mr. *Jones*, I don't care for his Almanack, I had rather Mr. *Mowbray* and Mr. *Bolron* could bring their Almanacks together, and I would have them compared, to ſee whether the 3d of *Auguſt* in one be the 25th of *July* in the other. Did you diſcourſe with him upon the Road the 3d of *Auguſt*, and not before, and *Bolron*, that came up with you, diſcourſed with him the 25th of *July?*

Mr. *Mowb.* I am miſtaken, I find.

Mr. Serj. *Jeff.* Ay, that you are, one of you, moſt groſly.

Mr. *Mowb.* See, Sir, here is my Almanack, whereby I find that it is my Miſtake; but pray, ſee, Sir, here it is ſet down, the Day we came out, was the 24th, the Day we came up to *London* was the 27th,

Mr. Serj. *Jeff.* How didſt thou ſet out the 3d of *Auguſt* from that Place, and yet come to *London* the 27th of *July?*

Mr. *Mowb.* I will refer myſelf to Mr. *Smith*, as to the Time we came up, and here is my Almanack.

Mr. Serj. *Jeff.* I will believe thy Almanack to ſpeak Truth, though it have never ſo many Errors about the Changes of the Weather, ſooner than I will believe thee.

Coll. I perceive the Man is miſtaken in the Month and the Times; but pray, my Lord, will you pleaſe to ſee, for Juſtice ſake, if the Almanack be new writ.

L. C. J. Look you, here is the Matter, Mr. *Colledge*, he was aſked again and again, what Day it was, and he was poſitive to the 3d of *Auguſt.*

Coll. He was miſtaken, but his Almanack is right.

L. C. J. He ſpeaks raſhly, that is the beſt can be ſaid.

Mr. *Mowb.* It was a Miſtake of mine, Sir *George*, but my Almanack is right.

Mr. Serj. *Jeff.* Nay, Mr. *Mowbray*, don't enter into Dialogues with me, I only make a little Obſervation upon your Almanack.

Mr. *Mowb.* It was only my Miſtake.

L. C. J. You are a raſh Man to affirm ſo; if you had an Almanack, you ſhould have conſulted it, or referred to it.

Mr. Serj. *Jeff.* Nay, we have loſt a Day even by your Almanack; for your's ſays, it was the 27th you came to Town, *Bolron* the 28th.

Mr. *Mowb.* I refer myſelf to Mr. *Smith*, he can't deny but he came up with us at that Time.

Mr. Serj. *Jeff.* You were Examined at Sir *Miles Stapleton*'s Trial, was you not, Mr. *Mowbray?*——Mr. *Mowb.* I was an Evidence there.

Mr. Serj. *Jeff.* Did the Jury believe you?

Mr. *Mowb.* They did acquit Sir *Miles Stapleton.*

Coll. That is nothing to the Purpoſe, ſo was Mr. *Smith* too.

L. C. J. Would you aſk any thing further?——*Coll.* Call Mrs. *Bolron.*

L. C. J.

L. C. J. If you have any more Witneſſes, pray call them.

Mr. Juſt. *Jones.* Mr. *Mowbray*, was Mr. *Bolron*'s Wife by when this Diſcourſe was?

Mr. *Mowb.* No, ſhe was in Town, ſhe did not go down with him at all.

L. C. J. Are you Mr. *Bolron*'s Wife?——Mrs. *Bolron.* Yes.

L. C. J. Well, what do you aſk her?

Coll. Mrs. *Bolron*, pray do you know Mr. *John Smith?*

Mrs. *Bolron.* Yes, I do know him.

Coll. What can you ſay of him?

Mrs. *Bolron.* He ſent ſeveral times for my Huſband and Mr. *Mowbray* to my Houſe, ſomething he would have them be concerned in, ſome Buſineſs he had in hand.

L. C. J. When was that?

Mrs. *Bol.* Within theſe three Weeks, ſince he came up from *York*-Aſſizes.

Coll. You may ſee there was an Underſtanding between them then.

Mr. Juſt. *Jones.* Did they go accordingly?

Mrs. *Bolron.* Now and then they have gone to him, but they knew his Buſineſs, becauſe they had Diſcourſe with him, as they ſaid, upon the Road, and they would not go.

L. C. J. Would you aſk her any thing elſe? What do you know more?

Mrs. *Bolron.* Nothing, for I am not one that ſtirs much abroad.

Coll. Call Mr. *Everard.*

L. C. J. What do you aſk him?

Coll. As for Mr. *Everard*, I need not aſk him whether he knows him, for they know one another well enough. But Mr. *Everard*, that I would aſk you is this, What do you know of Mr. *Smith*, and of this Contrivance againſt me?

Mr. *Ever.* Mr. *Smith* I have been to ſee of late, and he told me, he knew of no Preſbyterian or Proteſtant Plot, and when my Lord *Howard* was tried, that is, the Bill brought againſt him, he ſaid, he wondered how my Lord *Howard* could be guilty, and that both himſelf and I were joined as Evidence, to that Jury, only to put a gloſs upon the Evidence; for, ſays he, I have nothing material to ſay.

Coll. Mr. *Everard*, do you know any thing more concerning him, what he hath ſaid at other times concerning me?

Mr. *Ever.* I have told you already, what I have heard him ſay, that he thought there was no Proteſtant or Preſbyterian Plot, and that now of late within this little while.

Coll. Pray, Sir, was there not ſome Diſcourſe betwixt Juſtice *Warcup* and you in *Lincoln's-Inn* Walks?

Mr. *Ever.* Is Juſtice *Warcup* an Evidence here?——*L. C. J.* No, no.

Coll. 'Tis but the Evidence of a Preſbyterian Plot; therefore pray, Sir, what was the Diſcourſe between Juſtice *Warcup* and you? What would he have had you done?

L. C. J. I think it is not material, there is nothing of Mr. *Warcup* in his Trial.

Mr. *Ever.* If the Court does allow of it, I will freely tell it.

Coll. My Lord, the Papiſts Deſign is to make a Proteſtant Plot to turn off their own, and they begin with me; but if I ſhould go, they would not be ſatisfied with me, they would be at others.

L. C. J. There is nothing concerning a Preſbyterian or Proteſtant Plot in the Caſe.

Coll. My Lord, if there be no Preſbyterian Proteſtant Plot, and others to join in it, how could I do it myſelf? 'tis impoſſible I ſhould have ſuch a Deſign of ſeizing the King, and improbable I ſhould ſpeak it. Now, my Lord, this Man was ſolicited to come in for an Evidence of ſuch a Plot.

Mr. *Ever.* That is true.

L. C. J. I tell you 'tis not material, Mr. *Warcup* is not concerned in your Trial.

Mr. *Ever.* Juſtice *Warcup* would have perſuaded me to have ſworn againſt ſome Lords a Preſbyterian Plot; but I deny that I know any ſuch thing of them.

Coll. The Papiſts Aim is not at me only, but at others.

Mr. Serj. *Jeff.* We have nothing to do with what you and Juſtice *Warcup* talked of. For Example's ſake, my Lord, let us have no Diſcourſes that concern third Perſons brought in here.

L. C. J. Would he have perſuaded you to ſay any thing that was not true?

Mr. *Ever.* He did not ſay poſitively thoſe Words; but this he ſaid, I knew ſeveral Lords——

Mr. Juſt. *Jones.* Now here is Mr. Juſtice *Warcup*'s Fame traduced behind his Back, in the Face of the Country, and it is nothing to this Cauſe before us.

Coll. My Lord, I deſire to know what he knows of theſe Things, and that he may ſpeak it out; 'tis a material thing for me and others: Here is a Deſign of the Papiſts to turn a Plot upon the Proteſtants; they begin with me, and if they have my Blood, who may feel the effects of it next I cannot tell.

L. C. J. Truly I think it not material to your Caſe, and indeed it is of ill Conſequence to have any Man traduced behind his back, as Mr. *Warcup* is.

Coll. My Lord, *Macnamarra* told me, that that Man would have ſeduced him to have retracted his Evidence; upon my Salvation 'tis true.

L. C. J. We meddle not with *Macnamarra* neither, he is no Evidence againſt you.

Coll. *Macnamarra* hath ſworn againſt me at the *Old-Bailey*, and at the finding the Bill; but they have laid him by upon ſome trick or other. I deſire Mr. *Everard* may tell what he knows.

Mr. *Ever.* I would not reflect upon any Perſon, nor will I anſwer it, if the Court do not think fit.

Coll. My Lord, this is foul Play, if I die myſelf for my Country's ſake, I can do it freely, and the Will of God be done; I would have the Truth out for the ſake of the Proteſtants.

Mr. *Ever.* I am very willing to tell the Truth, if the Court think fit.

L. C. J. I ſee not that he ſays Mr. *Warcup* would have had him ſwear that which was not true.

Mr. *Ever.* But this he ſaid, if the Court will allow me to ſpeak it, Juſtice *Warcup* ſaid, that certainly there was a Preſbyterian Plot, and ſuch Things; and that ſome Lords, ſome of the Proteſtant proteſting Lords muſt be guilty of it; and, ſaid he, certainly you know much of it, you know ſuch and ſuch Things, therefore you may ſafely ſwear it, ſince you know it; ſo by argument he would prove firſt there was a Plot and Combination among thoſe Lords, and then ſaid he, this you may ſafely ſwear.

Mr. Juſt. *Jones.* What is this to your Purpoſe, Mr. *Colledge?* only Mr. *Warcup*'s Name is brought upon the Stage when he is not here to vindicate himſelf.

L. C. J. Would you aſk him any thing elſe?

Coll. If he does know any thing more of any of them, I deſire he would ſpeak it.

Mr. *Ever.* Concerning Mr. *Haynes*, he told me it was neceſſity that drove him to ſpeak any thing againſt the Proteſtants, and the hard *P.* and the Gratitude he did receive from the Citizens.

L. C. J. Where did he tell you this?

Mr. *Ever.* In the Fields near *Gray's-Inn.*

L. C. J. How long ſince?

Mr. *Ever.* About three Weeks ago. I aſked him, Mr. *Haynes*, ſaid I, I would not draw you from your Teſtimony in any thing, but how can this be congruous to what you have ſaid formerly, that you knew nothing by them? The Truth is, ſaid he, I will not ſay much to excuſe myſelf, but my Wife was reduced to that Neceſſity, that ſhe begg'd at *Rouſe*'s Door, and craved ſome Salary, and Mr. *Rouſe* would not give her any; and ſaid he, mere Neceſſity drove me to it.

Then Mr. Jones *acquainted the Court, that Mr.* Warcup *was juſt come in, and deſired to vindicate himſelf. But the King's other Council waved it, ſaying, there was no weight in it.*

Coll. He found better Pay in another Place.

Mr. *Ever.* And, ſays he, 'tis Self-Preſervation in the next place; for I was brought in Guilty when I was taken up, and therefore I was obliged to do ſome things to ſave my Life.

Coll. Pray, my Lord, and Gentlemen, obſerve what this Gentleman ſays, *Haynes* takes this Courſe to deſtroy innocent Perſons for his own Preſervation.

Mr. *Ever.* Beſides, he told me there is a Judgment impending upon the Nation, ſaid he, either upon the King, or upon the People, I know not which; but theſe *Iriſhmen*'s ſwearing againſt them, is juſtly fallen upon them for their Injuſtice againſt the *Iriſh* in outing them of their Eſtates.

Coll. So he did it then by way of Revenge; for his Countrymen; I have nothing of their Eſtates, I am ſure; therefore they had no Cauſe to ſwear againſt me. But, Mr. *Everard*, have you any more to ſay concerning any of them?

Mr. *Ever.* No more concerning thoſe Perſons that have ſworn againſt you; I can ſay no more.

Coll. As to *Dugdale* or *Turbervile?*

Mr. *Ever.* No, indeed.

Coll. As to this Preſbyterian Plot, Sir?

Mr. *Ever.* If the Court does allow concerning other Perſons; but I would not intrude any thing but what the Court ſhall think fit.

Coll. I know not but they may come in againſt me; therefore pray tell what you know. Mr. *Everard*, do you know any thing more? Pray let me know what you know.

Mr. *Ever.* Nothing of any Perſon that has appeared againſt you as yet, but what I have told you.

Coll. They may do ſo, Sir.

L. C. J. And then we may properly hear him to them, and not before.

Coll. I deſire to know who they are; pray let me know their Names?

Mr. *Ever.* *Fitz-gerald.*

L. C. J. He hath been no Witneſs here.

Coll. Call *Thomas Parkhurſt.*

L. C. J. What do you aſk him now he is here?

Coll. What do you know concerning Mr. *Dugdale?*

Mr. *Park.* Sir, the latter end of the laſt *November*, when the Parliament ſat at *Weſtminſter*, ſeveral times Mr. *Dugdale* having promiſed me his further Narrative to publiſh, which he printed, I met him ſeveral times; one time I met him at *Richard's* Coffee-houſe, and it was towards the Evening before we went away; he told me and Mr *Symonds*, that he was to ſpeak with Dr. *Tongue*; and he told us, that this Dr. *Tongue* did lie at Mr. *Colledge*'s; and he having ſpoke the Day before, and ſeveral times, of the Danger he was in of his being aſſaſſinated by the Papiſts, Mr. *Symonds* and I offered to go with him, and we took a Coach; for we did not know where Mr. *Colledge* lived: He had then a Rheum in his Eyes, and was not well; ſo we accompanied him to Mr *Colledge*'s to ſpeak to Dr. *Tongue.* It was the Evening when we went; and whilſt we took a Pipe of Tobacco, in our Diſcourſe we were ſpeaking of the Times, and the Danger of the Papiſts; ſo *Colledge* took down a Steel-Hat, that hung up there, which he ſaid he had, and he ſaid he had a quilted Coat of defenſive Armour, and he ſaid he had a Blunderbuſs in his Houſe, and two Piſtols. But I little thought of any thing of this, neither did I know well what I was ſubpœna'd down for: But theſe Arms I ſaw in his Houſe, and it was only in Diſcourſe that he was provided againſt the Papiſts; ſo I put the Steel Hat upon my Head, and pulled it off again, and ſo did Mr. *Symonds.*

Coll. Did I ſay any thing, Sir, who I had thoſe Arms againſt?

Mr. *Park.* At that Time there was no Diſcourſe in the World, but of the Danger of the Papiſts; and he ſaid he was provided for them, if they did come to make any Diſturbance.

L. C. J. When was it, Sir?

Mr. *Park.* It was about the latter end of *November*, I have the Narrative that I printed, which was the 23d or 24th, and I have no Directions but that to remember the exact time. So we carried Mr. *Dugdale* home again in a Coach, and gave him a Pint of Wine at his Lodgings.

L. C. J. This does not contradict Mr. *Dugdale* at all.

Mr. *Park.* Mr. *Dugdale* does own this for a Truth.

Mr. Serj. *Jeff.* So may any body own it.

Coll. Where is Mr. *Symonds?* Pray, Sir, what do you know of *Dugdale?*

Mr. *Symonds.* What about, Sir?

Coll. I have your Name here, Sir, but I know not for what.

Mr. *Symonds.* I can ſay the ſame that Mr. *Parkhurſt* did; that I ſuppoſe is the Buſineſs. All I know of it is this; I was with Mr. *Parkhurſt* and Mr. *Dugdale* at *Richard*'s Coffee-houſe ſome time in *November*, I think it was about the printing of Mr. *Dugdale*'s further Information; and Mr. *Dugdale* was ſaying, Dr. *Tongue* had ſent for him, but ſpoke as if he was fearful of ſome Danger in going alone; ſo we proffered to go along with him, and we took a Coach at the Coffee-houſe Door, and went with him to Dr. *Tongue*, who lodged at Mr. *Colledge*'s. When we came into the Room, Mr. *Parkhurſt* and I thought fit we ſhould in Civility withdraw, which we did; and Mr. *Colledge* brought us down into another Room, where we ſat and took a Pipe of Tobacco, and talking about the common Diſcourſe of the Times, about the Papiſts, and the Danger from them, there hung up in Mr. *Colledge*'s Room ſome Arms; what they were, I dare not charge my Memory with to ſwear particularly; but I do think there was a Silk Coat of Mail, and there was a Cap of Steel, and as I take it, it was covered with Cloth, or ſome ſuch Thing, what elſe I can't well ſay; I think there was a Blunderbuſs and a Caſe of Piſtols. And all the Diſcourſe that I remember then, was only this, ſpeaking of the Papiſts, and ſome Fears as if there would be an Inſurrection amongſt them, ſaid he, Let the Papiſt Rogues begin when they will, I am ready to defend myſelf for one. This is all I know.

Coll. Pray, Sir, how long ago was this? Dr. *Tongue* died before *Chriſtmas* at my Houſe.

Mr. *Sym.* I cannot tell exactly when it was; but during the Seſſion of Parliament I am ſure it was, and, as I take it, in *November*, the latter End.

Coll. So then, pray, my Lord, ſee that theſe Arms they charged me withal, were provided before *Chriſtmas.*

L. C. J. But there is nothing that Contradicts *Dugdale*'s Teſtimony in all this.

Coll. It does ſufficiently contradict him.

L. C. J. I do not ſee that this does at all contradict what he hath ſaid; but do you obſerve what you will upon it, when you come to make your Defence.

Stranger. A Gentleman below deſires you to call Mr. *Yates.*

Coll. Pray, Sir, what do you know concerning *Dugdale?*

Mr. *Yates.* I know that Mr. *Dugdale* ſent for me to a Coffee-houſe to beſpeak a Piſtol for you, and told me, that when I had made the Piſtol, I ſhould deliver it to Mr. *Colledge*, and Mr. *Dugdale* promiſed to pay for it when I had done it. Now ſome time after I did ſome ſmall Matter for Mr. *Dugdale*, cleaned his Piſtols, or ſome ſmall Buſineſs, and Mr. *Dugdale* aſked me, if I would have a Pint of Wine, which I agreed to; and being at the Tavern, Mr. *Dugdale* aſked me, if Mr. *Colledge*'s Piſtol was done. I told him, no, it was not, as yet. So I aſked Mr. *Dugdale*, becauſe he had promiſed to give Mr. *Colledge* a Piſtol, what Obligation there was betwixt *Colledge* and him, that he ſhould give him a Piſtol? To which he anſwered, that Mr. *Colledge* had been ſerviceable to him, in lending him a Pair of Piſtols to ride withal ſometimes: So he gave him a Piſtol to ſatisfy him for the wearing of his Piſtols now and then. I thought, ſaid I, Mr. *Colldge* did impoſe upon your Good nature too much; not but that I believe Mr. *Colledge* is a very honeſt Man, and ſtands up for the Good of the King and the Government. Yes, ſaid Mr. *Dugdale*, I believe he does, and I know nothing to the contrary.

Mr. Att. Gen. When was this?

Mr. *Yates.* A little after the Parliament ſat at *Oxford*; for I never knew Mr. *Colledge* before Mr. *Dugdale* ſet me at Work for him.

Coll. Mr. *Yates*, pray, was there nothing in the Coffee-houſe about one that he aſked to go with him, when he ſaid he knew nothing againſt me?

Mr. *Yates.* I heard one ſay——

Mr. Serj. *Jeff.* You muſt ſpeak your own Knowledge, you muſt not tell a Tale of a Tub of what you heard one ſay.

Mr. *Yates.* I heard it affirmed——

Mr. Serj. *Jeff.* By whom?

Mr. *Yates.* By a Perſon in the Coffee-houſe.

Mr. Serj. *Jeff.* Who was that Perſon?

Mr. *Yates.* By one of the Servants of the Houſe.

L. C. J. This is no Evidence at all; if you know any Thing of your own Knowledge, ſpeak it.

Mr. Serj. *Jeff.* Is he here?——Mr. *Yates.* No, I think not.

Mr. Juſt. *Jones.* How long do you think muſt we ſit here to hear other People's Stories?

L. C. J. If you know any thing of your own knowledge, I ſay, ſpeak it.

Mr. Att. Gen. Pray let me aſk you that Queſtion again; When was this that he ſaid he believed he was an honeſt Man?

Mr. *Yates.* It was about three Weeks after the Parliament at *Oxford.*

Coll. Then he does me Wrong now; for if I were an honeſt Man then, it cannot be true that he ſays of me.

L. C. J. Who do you call next?

Coll. Pray, my Lord, who hath been ſworn againſt me?

L. C. J. There is *Stephen Dugdale*, *John Smith*, *Bryan Haynes*, *Edward Turbervile*, Sir *William Jennings*, and Mr. *Maſters.*

Coll. Call Mr. *Clayton*, My Lord, at his Houſe it was I lay in *Oxford*, and that *Dugdale* ſays I ſpake ſome of the treaſonable Words. Pray, Sir, do you know what Time I came to *Oxford?*

Mr. *Clayton.* I remember it very well, it was at the Time the Parliament ſat at *Oxford*, about two or three Days after it began.

Coll. Pray what Arms did I bring to your Houſe, Sir?

Mr. *Clayton.* As to the Matter of Arms, there was no other but a Sword and a Pair of Piſtols, a Pair of Piſtols in his Holſters, and his Sword by his Side.

Mr. Att. Gen. Was there no Silk Armour?

Mr. *Clayton.* I ſaw none, if it pleaſe you; ſuch a Thing might be.

Coll. My Lord, I continued at his Houſe from my coming in to my going out, and that was till after the Parliament was diſſolved; and I came after they were ſat: But hark you, Mr. *Clayton*, Mr. *Dugdale* ſays, he was with me at your Houſe, did you ever ſee him there?

Mr. *Clayton.* I remember I have ſeen *Dugdale* at my Houſe, but never in your Company.

Coll. Did you ſell any Mum?

Mr. *Clayton.* No, I never did ſell any in my Life.

Coll. Becauſe he ſays, we had Mum there.

Mr. *Clayton.* I never ſaw him there with you, nor changed a Word with him as I know of.

L. C. J. Was he never in the Company of *Colledge* at your Houſe?

Mr. *Clayton.* Not that I ſaw.

Mr. Juſt. *Jones.* You don't know all the Companies that come into your Houſe?

Coll. My Lord, I am told there are ſome that came from the Town where I was born, that know me, and have known me for 24 or 25 Years together; if you think that material for me to prove whether I am a Proteſtant or no.

L. C. J. If you will make that out, you may: But 'tis your Loyalty that is in Queſton. If you will produce any that can make it appear, that you uſed to honour the King in your Diſcourſes, or ſo, that is ſomething.

Coll. If I am a Proteſtant, then the Deſign is plain, theſe Men ſwear to make a Proteſtant Plot, and turn the Plot off the Papiſts.

Mr. Serj. *Jeff.* What Church do you frequent in *London*, to hear Divine Service?

Coll. I have received the Sacrament ſeveral times, Sir *George.*

Mr. Serj. *Jeff.* When were you laſt at the public Church?

Coll, I hope I may be a Proteſtant if I have not gone thither; but however I do uſe to go to Church.

L. C. J. Well, call whom you will.

Coll. Is *Thomas Deacon* there?

Mr. *Deacon.* Yes.

Coll. He lives, my Lord, in the Pariſh where I was born. If you pleaſe, Mr. *Deacon*, to give my Lord an Account what you know of me from my Childhood.

Mr. *Deacon.* I have known Mr. *Colledge* ever ſince he was a Youth; he was born in the Town where I live.

L. C. J. Where is that?

Mr. *Deacon.* At *Watford*, a Town in *Hertfordſhire.* There he lived till he was a Man, and married a Neighbour's Daughter of mine, and lived there while he had two Children; I never knew but that he was a very honeſt Man, frequented and kept to the Church of *England* all along, and paid every Man his own.

Mr. Att. Gen. How long is it ago ſince he left that Place?

Mr. *Deacon.* I can't directly tell how long it is, truly, but I think 'tis eighteen Years ſince you left *Watford.*

Coll. 'Tis fourteen Years ago.

Mr. Juſt. *Jones.* You ſay fourteen, and they ſay eighteen.

Mr. *Deacon.* I ſay, I can't exactly tell.

Coll. But, Mr. *Deacon*, I have been in your Country lately.

Mr. *Deacon.* He uſed to come there once or twice a Year generally to ſee his Friends. I have heard him declare himſelf againſt the Popiſh Church always very much.

L. C. J. Did you never hear him talk againſt the Government?

Mr. *Deacon.* No, never in my Life.

Mr. Serj. *Jeff.* Nor againſt the King?

Mr. *Deacon.* Nor againſt the King.

Mr. Juſt. *Jones.* Was he in your Country the laſt *Eaſter?*

Mr. *Deacon.* I think it was about *Eaſter* he was there.

Mr. Juſt. *Jones.* Was he at Church there then, and received the Sacrament?

Mr. *Deacon.* I know not whether he was there on the Lord's Day or no: He did quarter at another Town, at *Busby*, where he has a Brother-in-Law.

L. C. J. Well, call another.

Coll. Mr. *Whitaker.*

L. C. J. What is your Chriſtian Name?

Mr. *Whit. William.*

L. C. J. What do you aſk of him?

Coll. Whether he knows me and my Education?

Mr. *Whit.* Sir, I have known him this 26 Years: I knew his Parents, I know his Mother, ſhe lives now at *Watford:* I have known his Behaviour to be very civil and good; a very good Churchman he was when he lived with us; and I have enquired, and find he has the ſame Reputation in the Pariſh where he laſt lived in *Black-Friars:* He was no Jeſuit nor Papiſt, I dare aver; he hath flouted them and mocked them with their wooden Gods, and the like; for he could never endure that Perſuaſion.

L. C. J. He is not queſtioned for that, but for Treaſon.

Coll. Did you ever hear me ſpeak any thing againſt the Government?

Mr. *Whit.* I never knew any ill Behaviour of him in my Life.

Coll. But did you ever hear me ſay any thing againſt his Majeſty or the Government?

Mr. *Whit.* Never, that I know of. I knew him a Soldier for his Majeſty, in which Service he got a Fit of Sickneſs, which had like to have coſt him his Life; he lay many Months ill, to his great Charge.

Mr. Serj. *Jeff.* Where was it he was in his Majeſty's Service?

Mr. *Whit.* At *Chatham* Buſineſs.

Coll. It was under my Lord *Rocheſter.* But, my Lord, I have a Teſtimonial under the Hands of ſeventy People of *Watford*, to give an Account of my good Behaviour.

Mr. Juſt. *Jones.* He hath been gone thence theſe eighteen Years.

Mr. *Whit.* He hath come there almoſt every half Year, ſometimes three or four times in a Year, becauſe his Mother lives there now, and he came to pay his Reſpects to her. His Children lived and went to School with us.

L. C. J. Come, who do you call elſe?

Coll. Mr. *Neale.*

Mr. *Neale.* I can ſay no more than the other Men before me. I know the Man, he was bred and born at *Watford*, he lived there ſeveral Years, he married a Wife out of the Neighbourhood, frequented the publick Worſhip.

L. C. J. How long ago is this?

Mr. *Neale.* Sixteen or ſeventeen Years ago. But then he uſed to come once or twice a Year into the Country.

Coll. Did you ever hear me ſpeak any thing againſt the King or the Government?

Mr. *Neale.* No, never in my Life.

Coll. How long is it ago ſince you were in my Company laſt?

Mr. *Neale.* When you were in Town laſt, I never heard you ſay any thing that was ill.

Coll. How long ago is it ſince we were at the *White-Hart* together?

Mr. *Neale.* It was about Spring.

Coll. I ſaid right, my Lord, I was there about *Eaſter.* Pray, did you ever hear me ſpeak for the King?

Mr. *Neale.* Truly, the Diſcouſe we had I never uſed to keep in my Mind; but I never heard him ſpeak any thing againſt the King or the Government.

L. C. J. Were you much converſant with him?

Mr. *Neale.* When he came down to give his Mother a Viſit, and ſee his Neighbours, we uſed always to ſee one another.

Coll. Pray, will you call Mr. *Tanner* and Mr. *Remington.*

[*Mr.* Remington *ſtood up.*]

Mr. *Remington.* I ſay, I have known *Stephen Colledge* theſe forty Years, and I have known that he always was an honeſt Man. He was a Soldier ſome time, but he always went to Church, was no Conventicler; and uſed to viſit his Neighbours when he came down to ſee his Mother, and was always looked upon to be a very good Man.

Mr. Serj. *Jeff.* You ſay, you knew him a Soldier, pray when was that?

Mr. *Remington.* About the Time of *Harwich* Buſineſs. That is all I can ſay.

[*Then Mr.* Tanner *ſtood up.*]

L. C. J. Come, what ſay you? What do you aſk him, Mr. *Colledge?*

Mr. *Tanner.* I have known *Stephen Colledge* from a Child, Forty Years, he was born at *Watford*, his Father worked with my Father, and great intimate Acquaintance we had with him, and ſaw him very often; I never knew any Fault in him, and I never heard a bad Report of him in all the Town of *Watford.*

Mr. Serj. *Jeff.* Have you ſeen him at Church lately?

Mr. *Tanner.* No, I have not.

Mr. Att. Gen. I would fain know whether this Man hath been at Church himſelf: he looks as if he had not.

Coll. I know not whether he hath been at the Church you mean, or no; but he may be an honeſt Man and a Proteſtant for all that.

L. C. J. Call another.

Coll. Mr. *Peter Norreys.*

L. C. J. What do you aſk him, Mr. *Colledge?* here he is.

Coll. Do you know any thing concerning Mr. *Smith?*

Mr. *Norreys.* I was once in the *Hercules Pillars*, where was Sir *William Waller*, *Macnamarra*, Mr. *Ivy*, and five or ſix of us together: And Mr. *Smith* was there, and we were talking concerning the Parliament approaching at *Oxon.*

Mr. Serj. *Jeff.* Tell the Names of the reſt.

Mr. *Norreys.* Sir *William Waller*, *Macnamarra*, Mr. *Ivy*, *Lewes*, *Macanmarra*'s Brother, and I, and Mr. *Smith.*

Mr. Serj. *Jeff.* Well ſaid; we don't meddle with any of theſe, but Mr. *Smith.*

L. C. J. Was *John Smith* there?

Mr. *Norreys.* He was there.

L. C. J. Well, go on then.

Mr. *Norreys.* We were talking of the Parliament at *Oxon:* Says Sir *William Waller*, Moſt of the Parliament-men are afraid to go up to the Parliament. Truly, ſaid Mr. *Smith*, I hope they will be provided to go, if they do go. Says Sir *William Waller*, I ſhall be provided with the reſt of my Friends: And Mr. *Colledge* ſaid, I will go up with the reſt of the Parliament-men; I ſhall be provided too, ſays moſt of the Evidence: Says Sir *William Waller*, Will you go along with me, and I will provide you with an Horſe? Said he, I have a Horſe of my own, and if it pleaſe God I will have nothing elſe to do, but to go with the Parliament, and I will not neglect it. This was all the Diſcourſe of the Company for that Night.

Coll. Did you hear Mr. *Smith* ſay any thing againſt me?

Mr. *Norreys.* No, not a Word at all.

Coll. But this were a material Evidence againſt others of the Confederates, if they had been examined.

Mr. *Norreys.* My Lord, I was at the *Amſterdam*-Coffee-Houſe the twenty-third of *June* laſt, and there was Mr. *Dennis Macnamarra*; ſaid he, Will you go, and I will give you a Pot of Ale.

L. C. J. There is nothing of *Dennis Macnamarra* in Queſtion before us. If you have any thing to ſay againſt any of the Witneſſes that have been ſworn, go on with your Evidence, we muſt not hear Stories of other People.

Coll. He would ſpeak againſt ſome Men that have ſworn againſt me, but are left out, for ſome Reaſons I know not. Pray call Mr. *Thomas Norreys.*

L. C. J. What do you aſk him?

Coll. My Lord, he knew me in this Country ſome fifteen or ſixteen Years ago.

Mr. *T. Norreys.* My Lord, I have been acquainted with Mr. *Colledge* about ſixteen or eighteen Years, and he hath always carried himſelf very civilly and well, and he kept to the Church for a conſiderable Time, as duly as any Pariſhioner did.

L. C. J. How long have you known him?

Mr. *T. Norreys.* This ſixteen Years.

L. C. J. You live in this Country; don't you

Mr. *T. Norreys.* Yes, at *Aylworth*,

Coll. I was at *Aſtrop-Wells* laſt Year. I believe Mr. Juſtice *Levinz* ſaw me there.

Mr. *T. Norreys.* Yes, I was there with you.

Coll. We did diſcourſe commonly then concerning the Papiſts. Pray, Sir, did you find me inclined to the Popiſh Intereſt?

Mr. *T. Norreys.* You ſpoke very much againſt them.

Coll. Did you ever hear me ſpeak againſt the King or the Government?

Mr. *T. Norreys*, No, I never heard it; for if he were my Brother, I ſhould have diſcovered it.

L. C. J. How often have you ſeen him?

Mr. *T. Norreys.* Very often, and converſed much with him.

Coll. My Lord, as to the Papers charged upon me that they were mine, I declare I know not of them. *Dugdale* ſays, I owned them, and the Letter and ſeveral Prints; but truly, my Lord, I had done myſelf a great Injury if I had done or owned thoſe Things he hath charged me withal. I never could make a Picture, nor never did draw a Picture in my Life; and that very Perſon that he ſays I owned I got it to be printed by, hath denied it before the King and Council; for he there teſtified, that he did not know the Perſon that cauſed it to be printed.

L. C. J. How came you to have ſo many ſeized in your Houſe?

Coll. My Lord, here is *Elizabeth Hunt*, the Maid by whom they were taken in, and who can give you an Account of it. I cannot deny but that they were in my Houſe; but that I was the Author, or did take them in, is as great a Miſtake as ever was made. Call *Elizabeth Hunt.* I do not know whether *Curtis* be in Town; but this I am confident, he was examined before the King and Council, and he and his Wife denied it.

L. C. J. He ſhall be called if he be here.

Coll. I know nothing of the printing of them, nor was I the Author of them.

L. C. J. They were diſperſed by you up and down.

Coll. That they were in my Houſe, I believe, my Lord; and this Woman will tell you how, my Lord. Pray tell the Court how theſe Papers that are called the *Rary Shew* came to be in my Houſe.

El. Hunt. A Porter brought three Bundles to our Houſe, and aſked, whether my Maſter was not within. I told him, no, he was not. Said he, Theſe Paapers are to be left here; ſaid I, Who do they come from? ſaid he, 'tis all one for that, you muſt pay me, and I muſt leave them here; ſo I gave him Six-pence, and he left the Papers, but I never ſaw the Man ſince nor before. And, my Lord, I never read them what they were, but I ſaw they were ſuch Sort of Prints as thoſe.

L. J. C. How long was it before they were ſeized?

El. Hunt. A matter of ſeven or eight Weeks.

Coll. My Lord, it ſeems they were put in a Box and left in my Compting-Houſe: I never touched them, but there they ſtaid, for ought I know, till they were taken.

L. C. J. You were *Colledge*'s Servant, were you not?

El. Hunt. Yes, my Lord.

Coll. My Lord, I never knew the Printer nor the Author; but I heard a Man was in Trouble about them, upon a Bye-Law in the *Stationers* Company.

Mr. Att. Gen. How came you by that Original?

Coll. Have you it there? I know of none was produced: But if I were a Perſon concerned, it were no Treaſon, and, my Lord, I hope you will do me that Juſtice, to let the Jury know they are not Treaſon, none of theſe Papers. And I do declare I know nothing of the Original, the Printer, nor the Author.

L. C. J. You ſpend Time in making Obſervations out of Order of Time: When you have given your Evidence, then make your Obſervations.

Coll. I confeſs, I may err, as to Matter of Order, for I never was in this Capacity before. But pray, do you tell the Court how the Papers came there, and all the Tranſactions. For I was a Priſoner when they came and ſearched.

L. C. J. No, it was eight Weeks before you were taken they were left there.

Mr. Serj. *Jeff.* Did you not tell your Maſter ſoon after they were left there?

El. Hunt. No.

Mr. Serj. *Jeff.* Within what Time did you tell him?

El. Hunt. I believe it was a Week or a Fortnight.

Mr. Att. Gen. Where was your Maſter all that Time?

El. Hunt. He was in the Country.

Coll. My Lord, I did ſee them there, I muſt confeſs, I do not deny but I ſaw them there, but I knew not whence they came, nor whoſe they were. Nor did I ever intend to meddle with them, nor concern myſelf about them. What have you to ſay more?

El. Hunt. Concerning Mr. *Dugdale*, if I may ſpeak.

L. C. J. Ay, go on.

El. Hunt. I went to receive the Money of Mr. *Dugdale* that he owed my Maſter, and aſking him for it, he ſaid, he would pay me ſuch a Time To-morrow Morning, if I would come for it; but when I came, he had not the Money ready for me. Sir, ſaid I, I think it is very hard that you ſhould keep my Maſter's Money from him, and yet you go and ſwear againſt his Life too: What do you think we ſhall do at home in the Family, if you keep my Maſter's Money and he be in Priſon? Said he, There is a great deal of do about my Swearing againſt your Maſter, more than needs; but as I hope for Salvation, I do not believe Mr. *Colledge* had any more Hand in any Conſpiracy againſt his Majeſty, than the Child unborn. Here is *Dugdale*, let him deny it if he can.

Mr. *Dugdale.* As I hope for Salvation I did not ſay ſo.

El. Hunt. Upon my Salvation 'tis true what I ſay.

Stevens. This was the Maid that hid her Maſter's Papers when they were ſearched for.

Mr. Serj. *Jeff.* Be quiet; art thou got into Dialogues with the Maid now?

Coll. Mr. *Stevens*, 'tis well known what a Man you are to propagate Witneſſes. My Lord, ſhe gave me an Account of this in the *Tower*, before I came away, that *Dugdale* deſired to ſpeak with Mr. *Smith*, and told her, that nothing that he had to ſay would touch my Life.

El. Hunt. As I am alive 'tis true.

L. C. J. Mr. *Dugdale* denies it now.

El. Hunt. He is not a right Man if he denies it, for he told me it twice.

Coll. I told Mr. *Smith* of it, when he had leave to come to me: I told him what the Maid ſaid he had to ſay to her, and this was three Weeks ago; ſaid he, I will ſpeak with him with all my Heart, if he has a Mind to ſpeak with me; for he hath ſaid that he hath nothing againſt her Maſter that he can touch an Hair of his Head, nor nothing that can touch his Life, that he knew nothing of a Plot or Contrivance againſt the King; and if I could help it, I had as lieve have given a hundred Pounds I had never ſpoken what I have. This he ſaid to her.

L. C. J. You tell her what to ſay.

El. Hunt. Sir, he does not tell me; for Mr. *Dugdale* ſaid thoſe very Things to me.

Coll. This is an Account I had when I was Priſoner; I could not direct her.

L. C. J. Do you deny what they ſay to be true, Mr. *Dugdale?*

Mr. *Dugdale.* My Lord, ſhe came to me for Money; I told her I had it not ready, but would pay her: And in the Shop, before the Apprentice-Boy, ſhe deſired of me that I would write two or three Words what I would ſay againſt her Maſter; and I told Mr. *Graham* of it. So ſaid I, I cannot tell, I have not the Papers, nor what Informations I have given againſt him. So ſhe came again the next Morning, and ſhe was at me to write down what I ſaid. I wonder, ſaid I, your Maſter will ſend you! had not he as good ſend Mr. *Smith*, who is his Counſel? And this was all the Words we had.

El. Hunt. My Lord, I do ſolemnly aſſure you, he ſaid he would write down what he had ſaid againſt my Maſter, and would fain ſpeak with Mr. *Smith*; for there was more ado made about it than needs.

Mr. *Dugdale.* Mr. *Graham* can tell what it was; for I came and told him immediately.

L. C. J. Did you tell her you had nothing to ſay againſt her Maſter that would touch his Life?

Mr. *Dugdale.* I could not ſay that I had ſaid nothing againſt her Maſter; for ſhe aſked me that I would write down what I had ſaid; but I told her I knew not what was Treaſon, that muſt be referred to the Court.

Mr. Juſt *Jones.* Did he ſpeak it openly or privately to you?

El. Hunt. He did not ſpeak it loud; no Body heard him but myſelf.

Mr. *Dugdale.* It was in the Shop, and the Apprentice-boy was by.

Mr. Juſt. *Levinz.* Was this after he had been at the *Old Baily*, or before?

El. Hunt. Yes, it was after he had been at the *Old Baily*, and after he had been at *Oxon* too.

Mr. Juſt. *Levinz.* Then it was before the Court, what could be made of it?

Coll. She hath gone forty Times for the Money I lent him out of my Pocket; and I lent him that when I had little more myſelf.

El. Hunt. I did tell him, Mr. *Dugdale*, if you can't let me have my Maſter's Money, if you pleaſe to tell me what you have made Oath againſt my Maſter. Said he, I can't let thee have it now; but thou ſhalt have what I have to ſay againſt him: I will draw it up in Writing, and thou ſhalt have it To-morrow Morning. The next Morning I came to him again, and, ſaid I, I am come again; what muſt I do? ſaid he, I have no Money; ſuch an one hath not helped me to it. Sir, then ſaid I, I hope you will be as good as your Word, to let me know what you have made Oath againſt my Maſter. Said he, I was about it Yeſterday, but could not do it: But, Sweetheart, ſaid he, (and took me by the Hand) I will give you a Copy of it To-day at Ten of the Clock; and if I do not, I will tell it thee by Word of Mouth. So I came to the Houſe at ten, and ſtaid till eleven, but did not ſee him.

Mr. Juſt. *Jones.* You had a great Mind to be tampering.

El. Hunt. The firſt Time, he aſked me who was his Counſel; I told him Mr. *Smith*; then, ſaid he, I have a great Deſire to ſpeak with him. So I told my Maſter of it.

Coll. My Lord, you ſee it is but black and white, all this whole Contrivance upon me. She hath proved I knew nothing of the Papers; and indeed I did not.

L. C. J. Do you call any more Witneſſes?

Coll. There is my Brother-in-Law that received thoſe Papers. Call *George Spur* and *Sarah Goodwin*.

[*Mrs.* Goodwin *appeared.*]

Coll. Do you know any Thing of the Papers that were carried to my Brother *George Spur*'s?

Mrs. *Godwin.* Yes, I do. The *Saturday* after my Brother's Confinement, about eight of the Clock in the Morning, I having heard of it, came into the Houſe, and in a Quarter of an Hour's Time in comes a Waterman, and deſires an Handful or two of Shavings. I knowing not who he was, nor what he deſired them for, told him, he ſhould have them; ſo he went up to the working Shop to gather them, for he pretended that to be his Buſineſs.

L. C. J. Whoſe Waterman was it?

Mrs. *Goodwin.* A Waterman, I ſuppoſe, that belonged to his Majeſty, for he had a Coat marked with *R. C.*

Coll. This is after I was in Cuſtody?

Mrs. *Goodwin.* Yes, it was the *Saturday* after. So no ſooner had he the Shavings, but he goes out of the Shop, and comes in again with three of his Majeſty's Meſſengers; and they made Enquiry after Papers, and I being innocent of concealing any Papers, or any Thing, ſaid, I know of none; ſo they came to one Box that had the Tools for the Men to work with, and they demanded the Keys. I told him I knew not where the Keys were. So they went to the next, and found it open, but nothing did they find there; there was a Bed wherein formerly my Brother's Servants did lie: Said one to the other, Look well whether there be not ſomething hid in that Bed; ſaid I, I ſuppoſe there is no ſuch Thing as you enquire for: If you pleaſe, you may take off the Clothes, and gave them free Toleration to look; but for the Cheſt, I would not deliver the Keys, becauſe the Man was not there that owned it. In their ſearching, they flung down the Wainſcot, and did a great deal of Damage to his Goods. *Gentlemen*, ſaid I, *I ſuppoſe you have Order to ſearch, but none to ſpoil a Man's Goods.* When they were gone, having found none, they threatned, *God damn* them they would have them, for there they were. But I being ignorant of the Concealment of the Papers, I requeſted the Maid and my Brother's Son, whether they knew of any Papers, and they ſatisfied me they knew of ſome Prints that were brought by a Porter, to be left at my Brother's, but they knew not whence they came, nor what they were: And the ſame Anſwer gave my Brother's Son, that he did not know whoſe the Papers were. But ſince his Father's Confinement they were laid up ſure and ſafe, for they knew not what they concerned. Upon this, my Lord, my Brother-in-Law, *George Spur*, he comes into the Houſe, and if it pleaſe your Honour, I requeſted him to carry them into the Country to his Houſe, to ſecure them till we knew what they did concern, and who they did belong to. Whereupon he replied, my Lord, That he was fearful to carry any Thing out of the Houſe; ſaid I, if you will pleaſe to take them of me, I will carry them out of the Houſe for your Security, becauſe his Wife looked every Hour (being with Child) when ſhe ſhould be delivered, and he was fearful of troubling her. So I carried them out of the Houſe, and delivered them to him.

L. C. J. To whom?

Mrs. *Goodwin.* To my Brother-in-Law, Mr. *George Spur.* So at my going out, after I had delivered them to him, in my Way back again, I found a ſmall Paper-Book, and a ſmall Parcel of Writings; who dropped them, or who laid them there, I cannot tell. But taking them up unadviſedly, I put them among the Prints which I carried out, I delivered them to my Brother-in-Law. This is all I have to ſay as to the Papers.

Stevens. Three Parts of what ſhe hath ſaid is falſe.

Mr. Serj. *Jeff.* Well, hold you your Tongue.

Stevens. Mr. *Atterbury* is here, my Lord, that ſearched the Houſe.

Atterbury. Be pleaſed to give me my Oath, I will tell you what paſſed.

Mr. Att. Gen. We don't think it material, but you were ſworn before, ſtand up.

L. C. J. Tell the Manner of finding the Papers. This Woman gives us an Account of a Waterman that came in, pretending to fetch Shavings.

Atterbury. Upon my Oath it was not ſo. The Waterman was a Waterman that brought me and two more of my Fellows, and the Waterman followed us into the Yard, but came after us: And being ordered to look for Papers, I did ſearch the Houſe; for I had Intelligence that there were Papers there, but I did not find them there. But upon finding the firſt Papers, I made the more diligent Search, but could not find the reſt I moſt chiefly ſought after.

Mr. Serj. *Jeff.* Did the King's Waterman take any Shavings by himſelf?

Atterbury. We were all together, we did not move out of any one Room, but together; this Gentlewoman was in the Houſe when I came, and there was a little Child, a Girl; and this Maid was there.

Mr. Serj. *Jeff.* Did you come for Shavings there, pray, Mr. *Atterbury?*

Atterbury. No, I did not.

Mrs. *Goodwin.* The Waterman did though firſt.

Coll. Call *George Spur.* (But he did not appear.) But, Mr. *Atterbury*, before you go down, pray tell the Court, did you take any of theſe Papers at my Houſe, or at my Brother-in-Law *Spur*'s Houſe?

Sewel. My Lord, I took the Papers, and I took them at *Busby* at *Spur*'s Houſe. And this Woman carried out one Half to *Spur*, and the Maid carried out the other.

L. C. J. When did he carry them?

Mrs. *Goodwin.* The ſame Day they ſearched for them, for my Brother came in at the ſame Time.

L. C. J. How do you know *Spur* carried any away?

Mrs. *Goodwin.* He carried none out of the Houſe, I carried them out of the Houſe, and delivered them to him.

L. C. J. Then they were in your Houſe?

Mrs. *Goodwin.* They were in the Compting-Houſe.

Coll. My Lord, if they were in any other Place, I know not how they came there, for this was all done after I was a Priſoner; and *Sewel* ſays, they were removed when I was a Priſoner. Where is *George Spur?*

Mr. Serj. *Jeff.* It is admitted they were at your Houſe, and taken thence, and afterwards carried to *Spur*'s.

Coll. They carried them abroad, and handed them from one to another, and took them into the Country, I know not what they did with them: But, my Lord, I neither know the Printer, nor the Author, I declare it upon my Life.

L. C. J. Have you any more Witneſſes?

Coll. No, my Lord, I have not.

L. C. J. Will you that are of Council for the King call any more?

Mr. Att. Gen. One or two, if you pleaſe, my Lord. Call *John Shirland.* And it is to this Purpoſe; it ſeems very lately Mr. *Bolron* would have tempted him to have forſworn himſelf.

Coll. My Lord, I hope, if they bring in any Perſons of new Evidence, I may have Leave to contradict them.

L. C. J. You need not fear but you ſhall be heard to them.

Mr. Att. Gen. We ſhall prove *Bolron* to be a Suborner of Witneſſes; and that the Jury may know what he is, he and *Mowbray* have gone to give Evidence at ſeveral Trials, and the Jury would never believe * them when they were on their Oaths.

Mr. Serj. *Jeff.* I think it needs not, Time hath been ſpent enough already.

Coll. No Whiſpering, good my Lord.

Mr. *G. Jeff.* Good Mr. *Colledge*, you are not tell me my Duty here.

Mr. Juſt. *Jones.* Is it not lawful for the King's Council to confer together?

Coll. Not to whiſper, my Lord; all ought to be ſpoken out.

L. C. J. Nothing ought to be ſaid to the Jury indeed privately.

Mr. Att. Gen. But ſhall not we talk among ourſelves?

Coll. No, I hope not, of any thing that concerns my Trial.

Mr. Juſt. *Jones.* You are deceived in that.

Coll. I think 'tis Law, that all ought to be publick; I beg your Pardon, if I am in the Wrong:

Mr. Att. Gen. Swear *John Shirland.* (*Which was done.*) Pray give the Court and the Jury an Account of *Bolron*, what you know of him.

Shirland. Bolron, my Lord, laſt *Whitſun-Tueſday* would have given me ten Pounds and a Horſe to go down and ſwear againſt Sir *Miles Stapleton.* I was to ſwear I was ſuborned by his Friends, and ſeveral other Perſons which I have diſcovered upon my Oath.

L. C. J. Is this Man ſworn?

Mr. Att. Gen. Yes.

L. C. J. Now call *Bolron* to confront him.

Coll. He offered you an Horſe, as much as I offered *Turbervile* an Horſe, and I never offered him an Horſe in the *World.*

[*Then* Bolron *appeared.*]

L. C. J. Is this the Man, *Shirland?*

Mr. Att. Gen. Did he give you ten Pounds to ſwear?

Shirland. He bid me ten Pounds and an Horſe to ſwear againſt Sir *Miles Stapleton.*

Mr. Juſt. *Jones.* Did you ever ſee him, *Bolron?*

Mr. *Bolron.* Yes, my Lord, he was to have been a Witneſs againſt Sir *Miles Stapleton*, and he pretended that he was ſuborned by Sir *Miles*, or ſome of his Friends.

Coll. What are you, Sir? Mr. *Bolron*, what is Mr. *Shirland?*

Mr. *Bolron.* He is a Man that lives by his Shifts: He hath been whipt in *Bridewell.*

Coll. Do you know him, Sir? What is he?

Mr. *Bolron.* Even an idle Man.

Shirland. You, once when you ſaw me, drew your Sword on me, becauſe I would not do as you would have me.

Mr. *Bolron.* I profeſs, my Lord, 'tis not ſo.

Mr. Att. Gen. Here is Mr. *Smith*, hear what he ſays againſt Mr. *Bolron.*

Mr. *Smith.* As we were coming up along, he was ſpeaking to me of *Colledge*, and told me, he had as much to ſay againſt him as any Body, and if I would ſpeak for him, he would evidence againſt Sir *John Brooks* for a Diſcourſe at *Ferry-Bridge.*

Mr. *Bolron.* I never did hear any ſuch Thing.

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* What the *Attorney* here ſays, and the *Sollicitor*, in ſumming up the Evidence, repeated after him, is notoriouſly falſe; for at the *Summer-Aſſizes* at *York* the Year before, *Thomas Thwing* was convicted ſolely upon the Teſtimony of theſe very Men in their own Country, as was afterwards executed.

Mr. *Smith.* No Man in your own Country will believe you.

Coll. They believed you no more, it ſeems, neither.

L. C. J. Do you call any more Witneſſes, Gentlemen?

Mr. Serj. *Jeff.* No, I think we need not.

L. C. J. Look you, Mr *Colledge*, as I underſtand it, the King's Council will produce no more Witneſſes. You may make what Obſervations you will upon the Evidence to the Court, and then muſt let them make what Obſervations they will to the Court; and then we will give the Charge to the Jury.

Coll. My Lord, I have only Innocence to plead; I have no Flouriſhes to ſet off my Defence. I cannot take the Jury nor the Court with an Oratory; I am unhappy in thoſe Things. But, my Lord, I do declare, as to my own particular, in the Preſence of God Almighty, that as to whatſoever is ſworn againſt me, as to the ſeizing his Majeſty, providing Arms, or having any Deſign either at *Oxford* or *London*, or any other Place in the World, to ſeize upon the Perſon of the King, or to rebel againſt the Government eſtabliſhed; I vow to God Almighty, I never had ſuch a Thought in me: 'Tis a Truth, my Lord. My Lord, they have ſworn deſperately againſt me, and it hath appeared, I think, by very credible Perſons, that they have contradicted one another. It hath been proved that this was a Deſign; that they were tampered withal; that they complained they were in Poverty, that they wanted Maintenance; and they did confeſs they were tempted to come over to ſwear againſt Proteſtants: And now the Lord knows, they have cloſed with it, and they begin with me. I hope the Jury have taken Notice, that I have contradicted them ſufficiently in what they have ſworn; and that it is not poſſible, if I had a Grain of Senſe, for me to diſcover myſelf to be ſuch an one to *Haynes*, that was an *Iriſh* Man, and ſhould ſpeak all the Treaſon that he hath gallopped through at firſt Sight, that as ſoon as ever I ſaw him, that I ſhould ſpeak ſo to him; I hope you will conſider whether it conſiſts with common Reaſon, when there would be no Probability of making any Uſe of him in the World. My Lord, all my Witneſſes that I have brought, your Lordſhip can, and I hope will ſum them up better than I can; for I declare it, I have been ſo concerned, that I have not been able to write half of it down. But I think there is never a Man that hath ſworn againſt me, but hath been ſufficiently confuted by Perſons of Integrity and Honeſty, Men of Principles, and Men of Religion; they are ſuch, my Lord, that make Conſcience of what they ſay: They are Perſons altogether unknown to me, moſt of them, as to what they had to ſay, it was what they offered voluntarily; and I am certain they had nothing but their bare Charges, if they had that, for their Pains, in coming hither; and, my Lord, there is no Probability that they ſhould come and atteſt any Thing that is falſe, for me who am a Stranger, for nothing: No Man is a Knave for nothing, as I believe theſe Men are not. My Lord, I do declare it, I was bred a Proteſtant, and have lived ſo; I am ſo to this very Day; I have been a Lover of the Church of *England*, and of all the fundamental Points of Doctrine believed in it; I own the ſame God, the ſame Saviour, the ſame Goſpel, and the ſame Faith; I never had a Prejudice againſt any Man in the Church in my Life, but ſuch as have made it their Buſineſs to promote the Intereſt of the Papiſts, and ſuch I muſt beg Leave to ſay there are amongſt them: For there is no Society in the World without ſome bad Men; and theſe do promote the Intereſt of the Papiſts, by dividing the Proteſtants, and allowing none to be true Proteſtants but thoſe that are within the Church of *England* eſtabliſhed by Law; which is a Notion ſo wide I could never cloſe with that. I never had a Prejudice againſt any Man but a Knave in my Life. I have heard, I confeſs, ſome of the Diſſenters, and I have found very honeſt, juſt, pious, godly Men among them; Men free from Oaths and all Debauchery; Men that make a Conſcience of what they ſay: Not like ſome Perſons that ſay they are of the Church of *England*, that carry themſelves in their Lives and Actions ſo as that no credit can be gained to the Church by them. My Lord, I have been an hearty Man againſt the Papiſts; I have been an hearty Man as any Perſon of my Condition, for Parliaments, which I look upon to be my Birth-right, and under God Almighty, the Bulwark of our Liberty; and I am ſorry if any Man ſhould be an Inſtrument to create a Miſunderſtanding betwixt the King and the Parliament; For I always thought I ſerved my Country, when I ſerved the Parliament, and I ſerved my King when I ſerved my Country. I never made any Difference between them, becauſe I thought them both one. I had the Honour to be entruſted by them before, and upon that Account I came voluntarily down hither. I rid my own Horſe, I ſpent my own Money, and eat my own Bread; I was not beholding to any Man for the value of ſix Pence all the while I was here. My Lord, I have ever ſince the Plot hath been diſcovered, endeavoured with all my Heart, and all my Power, to detect and come at the very Bottom of it: I have ſpared for no Time nor Pains, what lay fairly in my way, in every Thing to encourage thoſe that diſcovered the Villainies of the Popiſh Plot againſt the Life of the King, and for the Subverſion of the Religion and Government eſtabliſhed by Law. Now certainly it is not ſtrange to the World; for I think all Chriſtendom is aware how plain the Popiſh Plot hath been proved. Theſe Men that ſwear againſt me, were they that uſed to follow me ſometimes; they would ſay, it was they that had come to ſave our Lives, and yet we let them want Bread. That Argument, my Lord, was ſo fair, that I thought it unreaſonable to ſee them ſtarve: And I have ſaid ſometimes to ſome honeſt conſiderable Men, That it was hard they ſhould have this to ſay of us, that they ſhould want Bread to eat that were the King's Evidence, to detect a Popiſh Plot wherein we ourſelves were concerned; and that when they had ſaved our Blood in our Veins, they ſhould be ſuffered to ſtarve. And one Time, I think, ſome three or four Gentlemen of the City did give me 42*s.* or 40*s.* and 18*d.* or thereabouts; which I did diſtribute amongſt them: And they never came to me in my Life, but to ſeek Relief, they knowing that I had a general Acquaintance. And ſometimes they thought it might be fit to petition the Common-Council of the City of *London* to take care of them: Sometimes they would ſpeak to me to ſpeak to particular Men, that care ſhould be taken of them. At other Times indeed it was not this Sort of Diſcourſe they had with me; but they would pretend they had ſomething to diſcover of the Popiſh Plot, and ſo they would apply to me as a Man of ſome Acquaintance. And the firſt Time I ſaw *Haynes*, was upon ſuch an Account, the beginning of *March* laſt, and it was thus: I was at *Richard*'s Coffee-Houſe at *Temple-Bar*, where *Macnamarra* did deſire me to go out, and I ſhould hear ſuch a Piece of Roguery I never did hear in my Life, againſt my Lord *Shafteſbury*. So I did go out with them, and I called Captain *Brown*, who is ſince dead, to go with me; and we went to the *Hercules-Pillars*, and *Haynes* there diſcovered what I told your Lordſhip before, a Deſign to deſtroy the Parliament at *Oxford*; an Army that was to land in the *North*, and another in *Ireland*, and the Duke of *York* was to be at the Head of them. My Lord, after I had heard all out, he did deſire us all to conceal what he had ſaid till the Parliament ſat, and then he would not only diſcover this, but much more. He at the ſame time told us, that there was a Deſign of *Fitz-gerald*'s againſt my Lord *Shafteſbury* to take away his Life, and he was employed to come to his Couſin *Macnamarra* to get him over to join in the Deſign, and he ſhould never want for Money, if he would but come over and do as they would have him. After he had diſcovered himſelf, Sir, ſaid I, You are a Stranger to me; and I never ſaw him before in my Days, if he had ſeen me I can't tell: But, Sir, ſaid I, either this is true, or this is falſe. If it be true, ſaid he, 'Tis all true, and much more. So he up and told us much of *Coleman*, and of the Reconciliation between the Duke of *Ormande* and the Duke of *York*, and how he came to be Lord Lieutenant of *Ireland*, and how *Plunket* came to be Primate, and by Means of whom, and the Letters that paſſed, and how ſo much a Year was given to *Plunket* for carrying on the Correſpondence; and he told us ſo much, that I did wonder to hear any Man talk after that rate. After I had heard what he had to ſay, I told him, Sir, ſaid I, this is either true or falſe that you have ſaid: If it be true, my Lord *Shafteſbury* ſhall know it to night; for I will not conceal ſuch a Thing concerning a Peer of the Realm: And if it were a Colour, he ſhould know of it. And I did ſend him word that Night; and, ſaid I, Sir, you ought to go, for your own Security and our's too, to ſwear it before a Magiſtrate. Said he, if I ſhould, I ſhould be diſcovered. Said I, I can't think you would be diſcovered. If you ſwore it before Sir *George Treby* or Sir *Robert Clayton*, they will not diſcover you. So he agreed he would ſwear before Sir *George Treby*; and he did go accordingly: But he being out of Town, I cannot have the Affidavit to produce it. There was a Letter ſent laſt *Saturday* Night to Sir *George* to *Briſtol*, and I hoped he might have been here to Day. This was the firſt Acquaintance I ever had with *Haynes*. The next Time I heard of him, was upon this Occaſion. *Ivy* comes to me in *Richard*'s Coffee-Houſe, and, ſaid he, Yonder is the Man that made that Diſcovery, which I told you before that *Haynes* had ſaid to me; it was about a Month or three Weeks before the Parliament was at *Oxford*. After the Parliament was diſſolved at *Oxford*, *Ivy* comes to me, and I think it was betwixt the two Terms wherein *Fitz-Harris* was arraigned and tried: I know not the Names of them; but he comes to me, and tells me he had been with my Lord *Shafteſbury*, and that there was a Friend of his that would confirm all that *Fitz-Harris* had diſcovered concerning the Murder of Sir *Edmundbury Godfrey*; and, ſays he, my Lord of *Shaftsbury* hath ſent me to you to acquaint you with it. Where is your Friend? Said I. He is without, ſaid he. So we went out of the Coffee-Houſe; and when we came out of Doors, there was this *Haynes:* We went to the *Crown* Tavern without *Temple-Bar*; it was in the Forenoon. When we came there into the Room, he examined all the Corners and Cupboards, and Places about the Room, to ſee that no Body was there. When he thought all was ſecure, he began to tell me he had been to acquaint my Lord *Shaftesbury* that there was a Friend of his that would diſcover the whole Intrigue of the Murder of Sir *Edmundbury Godfrey*, all that *Fitz-Harris* had ſaid, and much more: And he deſired me that I would intreat my Lord *Shafteſbury* to be inſtrumental to get him his Pardon before he diſcovered particularly. Then I told him, I think 'tis convenient, ſaid I, that you diſcover ſomething in Writing, and under your Hand, what you can ſay. He was not willing to do that. Can you believe, ſaid I, that my Lord of *Shaftesbury* will betray you? Says he, I will not truſt any Body; I ſhall be aſſaſſinated. Said I, if you will not give it to any Body elſe, Will you give it to Mr. *Michael Godfrey*, Sir *Edmundbury Godfrey*'s Brother? You can have no Jealouſy of him that he will ever diſcover you. Said he, if my Lord *Shaftesbury* will engage to get me a Pardon, I will tell the whole Truth. Said I, I will go to my Lord, and acquaint him: So I went to both my Lord and Mr. *Godfrey*; and Sir *Edmundbury Godfrey*'s two Brothers both met me at my Lord of *Shaftesbury*'s Houſe. This is the Thing that he tells me; he would have me get my Lord's Protection and a Pardon for Treaſon; but the real Truth is, he ſent me upon this Errand. So I came to my Lord *Shaftesbury*, and the two Mr. *Godfreys* were in the Room; and after I had told my Lord what Diſcourſe I had with him, ſays my Lord, *Colledge*, theſe *Iriſh* Men have confounded all our Buſineſs; and thou and I muſt have a care they do not put a Trick upon us: This muſt be a Trick of the Papiſts to ruin us; and if they have ſuch a Deſign, if they will not put it upon you and I, they are Fools. Upon your Lordſhip, ſaid I, they may; but I am a poor inconſiderable Fellow. Says my Lord, I'll tell you, Mr. *Godfrey*, Mr. *Colledge* hath not only been an honeſt Man, but an uſeful and an active Man for the Proteſtant Intereſt. So I told my Lord how far I had gone with him, and that I deſired it might be put in Writing. Says my Lord *Shaftesbury*, if he will put it in Writing, I will go once again; for I have been ſince I ſaw the Fellow with my Lord *Macclesfield*, and my Lord Chief Juſtice *Pemberton*, and my Lord Chancellor, and I have told them that there is ſuch a Perſon in general, but I knew not the Man; as indeed my Lord did not, for only *Ivy* was the Perſon between them that my Lord knew: And I told them, ſays my Lord, that he can confirm all that *Fitz-Harris* has ſaid concerning the Death of Sir *Edmundbury Godfrey*, and that he would prove my Lord of *Danby* was in it, if he might have his Pardon; and my Lord ſaid, They promiſed to ſpeak to his Majeſty that it might be granted. But ſome Time the latter end of the Week I heard it would not be granted; and both of theſe Men followed me to know what they ſhould do. Said I, my Lord *Shaftesbury* knows not but that it may be a Trick; and ſaid I to *Ivy*, I wonder why he ſhould conceal it all this while, being a neceſſitous Man, and 500*l.* proffered by the King in his Proclamation. Why, ſays *Ivy*, do you think there is no Truth in it? Says *Ivy*, 'tis not my Judgment, but my Lord *Shaftesbury*'s and Mr. *Godfrey*'s Judgment too. He anſwered me again, *Fitz-Harris* hath deſired he may have a Pardon granted for himſelf and a *Frenchman*; and if ſo be there were nothing in it, Do you think he would move for a Pardon? Says I, Did Mr. *Fitz-Harris* move for *Haynes*'s Pardon? How do I know that, ſays *Ivy* again: *Fitz-Harris*'s Wife told me ſo. Says I, let me ſpeak with *Fitz-Harris*'s Wife, let me hear her ſay ſo, and I will believe you. The next Day he did bring her to me to my Houſe: And this was the Time and the Occaſion that brought *Fitz-Harris*'s Wife, and *Haynes*, and *Ivy*, and Mr. *Fitz-Harris*'s Maid to my Houſe; and I never ſaw *Fitz-Harris* in my Days, till his Trial, nor had any Communication with him. But, my Lord, ſhe did talk with *Haynes*, and confirmed it to me, that her Huſband had deſired a Pardon for him: Why then, ſaid I, he would do well to diſcover what he knows to my Lord *Shaftesbury*; for I was with my Lord, and he ſays he will meddle no more, unleſs he will give it under his Hand what he has to ſay. And he did confeſs to me in my own Yard (for there we were together) that he ſaw my Lord of *Danby* come into the Chapel at *Somerſet* Houſe, when the Body of Sir *Edmundbury Godfrey* lay under the Altar.

L. C. J. Here hath been nothing of this made appear by Proof.

Coll. My Lord, I only tell you which way they introduced themſelves into my Acquaintance.

L. C. J. You may obſerve what you will upon the Evidence, as we told you; but you ramble from the Matter you are to ſpeak to. And as we told Mr. Attorney, that what he ſaid ſhould go for nothing, unleſs he made it out by Proof; ſo muſt we ſay to you, what you ſay goes for nothing, further than you have proved it. Now you have quitted the Proof quite, and not ſpoke to that, but run into other Stories. I would have you keep yourſelf to your Proofs, and make your Obſervations upon them.

Coll. 'Tis, as I humbly conceive it, to my Purpoſe, but I hope my Ignorance may excuſe me if I err. I tell you the Truth of things, thus it was.

L. C. J. Truth! Why if your's or any Man's Word in your Caſe ſhould go for Truth, no Man that ſtands at a Bar, could be convicted: For every Man will ſay he is an honeſt Man, and all the plauſible Things in the World. Make you your Obſervations upon the Proof, that is proper for you to do; and urge it as well as you can, and to the beſt Purpoſe you can: But to tell us long Stories of Paſſages between you and others that are not a whit proved, that is not uſual, nor pertinent.

Coll. I thought it had been to the Point, when this Man pretends to have a Familiarity with me, to ſhew how his Acquaintance begun.

Mr. Juſt. *Jones.* Why do you think 'tis an Anſwer to him in what he proves upon his Oath? Have you proved one Jot of it? Not that I have heard. 'Tis your Part to ſum up the Evidence on your own Side, and to anſwer that which is proved upon you, if you can. Do that, and we will hear you ſpeak to it as long as you can. But to tell Stories to amuſe the Jury with that are not proved, and to run out into rambling Diſcourſes to no Purpoſe, that is not to be allowed, nor ever was in any Court of Juſtice.

Mr. Juſt. *Raymond.* Not one of your Witneſſes have mentioned any Thing that you ſay.

Mr. Juſt. *Levinz.* I wonder, Mr. *Colledge*, you ſhould forget yourſelf ſo much: For you found Fault with Mr. Attorney at the beginning for opening the Evidence, and you were told, and the Jury were told at your Requeſt, that what he ſaid, and did not prove, paſſed for nothing. But I muſt tell you, 'tis much worſe in your Caſe: For Mr. Attorney only opened what he might prove afterwards, but your Obſervations are upon what hath been proved already; and yet you run out into Stories of what hath not been proved at all, after our Proof is paſt.

Coll. Sir, I could not prove this otherwiſe than by *Ivy*, who hath been ſworn againſt me.

Mr. Juſt. *Jones.* Would you have the Jury to believe you upon your Word?

Coll. There is no more than his Oath againſt me; and why my Oath, being un *Engliſhman* and a Proteſtant, ſhould not be taken as well as his that is an *Iriſhman*, and hath been a Papiſt, I know not.

L. C. J. You go upon that Ground that your Word is to be taken, as appears by your Defence; but I muſt tell you, all the Courſe of Juſtice were deſtroyed, and no Juſtice againſt Malefactors were to be had, if the Word of him that is accuſed ſhould paſs for Proof to acquit him.

Coll. My Lord, I have given your Lordſhip an Account of theſe Fellows Converſations; and what other Proofs to make I know not: For I knew not what they would ſwear againſt me, and I had not Witneſſes in my Pockets to confront them.

Mr. Juſt. *Levinz.* Well, the Jury have heard it over and over again, firſt upon your Requeſt, that nothing is to be taken Notice of that is not proved.

Coll. Pray, my Lord, then as to *Haynes.* My Lord, I do obſerve that there was a Witneſs for me that did prove, he owned he was one that was employed to make a Proteſtant Plot, and another that did hear him Swear, damn him, he would ſwear any thing againſt any Body for Money, for it was his Trade.

Mr. Juſt. *Levinz.* Now you are right; ſpeak as much as you will as to your Proofs.

Coll. My Lord, I think *Turbervile* and *Dugdale* ſwear as to the tenth of *March* in *Oxon*; I deſire it may be proved I was in *Oxford* the tenth of *March.*

Mr. Juſt. *Jones.* You yourſelf came down the middle of *March.*

L. C. J. I do not remember that they ſaid the tenth of *March.*

Coll. Did not the Indictment ſay ſo?

Mr. Att. Gen. It is only in the Indictment.

L. C. J. As to the Time mentioned in the Indictment, it is not material; that is the conſtant Rule in Trials upon Indictments; as if an Horſe be laid to be ſtole the tenth, if it be proved the Priſoner ſtole it another Day, it will be ſufficient, the Time is not material; the Queſtion is, whether the Indictment be true in Subſtance. Mr. *Colledge*, my Brothers will all tell you that the Law is ſo.

Mr. Juſt. *Levinz.* Though it is laid the tenth of *March*, yet if it be proved the firſt or twentieth before or after, it is all one; ſo the Thing be proved, they are not bound to a Day.

Coll. My Lord, the Punctilios of Law I know not, but it was the twenty-fourth or twenty-fifth ere I came down.

L. C. J. Well, go on, Sir.

Coll. *Dugdale* ſays I meant by the Word *Rowley*, the King.

Mr. Juſt. *Jones.* He does ſo.

Coll. How does he come to know, that by that Word I meant the King?

L. C. J. That we did aſk him, and he ſays, you uſed ſo to expound it.

Mr. Juſt. *Jones.* Why, look you, he ſaid you and he uſed to have frequent Communication concerning the King, and you did moſt frequently ſpeak of the King by the Name of *Rowley.*

Coll. But, I ſay, my Lord, I never ſpake of the King by the Name of *Rowley* in my Life.

Mr. Juſt. *Jones.* You ſay it, and he ſwears the contrary.

Coll. I don't remember that he ſays, I declare it ſo; but he ſaid, I meant it; for if I had declared it, then it had been the ſame Thing for me to have named the King downright.

Mr. Juſt. *Levinz.* Look you, Mr. *Colledge*, as to that, when any Witneſs had done his Evidence, you had Liberty to croſs-examine him.

L. C. J. Would you have him called up again to clear this?

Coll. Yes, if you pleaſe.

L. C. J. Stand up, Mr. *Dugdale.* I underſtood by your Teſtimony, when Mr. *Colledge* and you diſcourſed of the King, you ſometimes diſcourſed of him by the Name of *Rowley*, and that he explained that Name to be the King.

Mr. *Dugdale.* The firſt Time I ever heard what *Rowley* meant, was from him; for I aſked him what he meant by the Name *Rowley*; I heard it before, but I did not underſtand it.

Mr. Juſt. *Jones.* Where was it?

Mr. *Dugdale.* At *Richard*'s Coffee-Houſe.

Mr. Juſt. *Jones.* What was the Anſwer he made you?

Mr. *Dugdale.* He ſaid it was the King.

Coll. Upon what Occaſion did I explain it to you?

Mr. *Dugdale.* Upon the Account of the Pictures.

Coll. I know not which of the Pictures has the Name of *Rowley* in it.

Mr. *Dugdale.* It was then we were talking of one of the Pictures you brought in *Rowley*, and *Mac* and *Mac* was the Duke of *York*, and *Rowley* was the King.

Coll. Upon what Picture was it, that I took Occaſion to explain the Name *Rowley* to you?

Mr. *Dugdale.* I am not certain.

Coll. Remember, you have an Account to give as well as I.

Mr. *Dugdale.* You have ſo many Pictures, that I can't remember them; you have ſhewed me more than have been produced in Court.

Coll. Where had you that Picture from me that they call the *Rary Shew?*

Mr. *Dugdale.* Truly I received of them twice at *Richard*'s Coffee-Houſe.

Coll. Twice, do you ſay?

Mr. *Dugdale.* Yes, two of them at two ſeveral Times; for you having promiſed me one, you brought it according to your Word.

Coll. When was that?

Mr. *Dugdale.* I did not keep an Account of the Day of the Month; and another I do remember, at the *Green Dragon* Tavern you thruſt into my Pocket, and Mr. *Baldwin* was by at that Time. And, ſaid he, Mr. *Colledge*, you will be ſo open, that you will come to be diſcovered at laſt.

Coll. Then will I be willing to die for it, if he and I and Mr. *Baldwin* were at the *Green Dragon* Tavern together. When was it that I gave you any Pictures there? Was it ſince the Parliament at *Oxon?*

Mr. *Dugdale.* Do I charge you ſince the Parliament?

Coll. I never ſaw the *Rary Shew* before the Parliament at *Oxford.*

Mr. *Dugdale.* I do not ſay it was that; you gave me one of the others.

Coll. 'Tis ſtrange you will ſtick to nothing; When was it we were at the *Green Dragon* Tavern?

Mr. *Dugdale* We were there before the Parliament ſat at *Oxon*; it was ſince *Chriſtmas.*

Coll. What Picture was it I gave you there?

Mr. *Dugdale* It may be, I can't remember which of them it was, it was not *Rary Shew*; I ſuppoſe you gave me one of them concerning the Biſhops, where you put Biſhop *Mew* kiſſing the Pope's Toe; for it was a Biſhop with a Patch on, and that you told me was Biſhop *Mew.*

Coll. I put it, did I make it?

Mr. *Dugdale.* You ſaid you were the Author.

Mr. Juſt. *Jones.* Mr. *Colledge*, will you conſider upon what Mr. *Dugdale* was called up about, the Expoſition of the Name *Rowley?*

Coll. I did examine him, and he hath contradicted himſelf; for he hath ſaid at the *Green Dragon* Tavern I gave him a Picture of *Rary Shew.*

Mr. Juſt. *Jones.* He ſaid no ſuch Thing; he ſaid, he did not know which it was.

Coll. I am certain he meant that then when he ſpake it; for he named it before, that he had two from me at *Richard*'s Coffee-Houſe, and one I thruſt into his Pocket at the Tavern; and I ſay, I never was at the *Green Dragon* Tavern with Mr. *Dugdale* and Mr. *Baldwin*, nor in the Tavern theſe three quarters of a Year.

Mr. Juſt. *Levinz.* Mr. *Colledge*, you were in the right Way juſt now to manage your Evidence, in Oppoſition to the other Evidence; go on in that Way.

Coll. My Lord, I don't know well what was ſaid, for I could not hear half, nor write a quarter of it; but, my Lord, I hope your Lordſhip hath taken Notes of it, and will remember it for me. You are my Counſel as well as my Judges.

L. C. J. In Matter of Fact we are.

Coll. My Life and your Souls lie at Stake to do me Juſtice; therefore, I hope you will take Notice of what I have not had the Opportunity to write down. I have obſerved that every one of my Witneſſes have ſpoken materially to contradict what they have ſaid, to prove that this was done for Money, and that there hath been Confeſſions from every Man of them, that they were hired to do it; that they did it for a Livelihood; and one of them ſaid, it was a good Trade, damn him, he would do any Thing for Money: And I hope then you will conſider the Improbability, that I ſhould ſpeak to an *Iriſhman* whom I had never ſeen before in my Life; and that I ſhould at the firſt Daſh utter that Treaſon that he gives in Evidence, I think it cannot conſiſt with any Man's Underſtanding to believe me ſo mad or ſo weak.

Mr. Juſt. *Levinz.* That is as to *Haynes* only.

Coll. As to *Smith* now, I ſuppoſe, it does not come within the Reach of the Statute; for the Dinner that was made by Alderman *Wilcox*, was made before laſt *July* was Twelve-month; all the Witneſſes do ſay it was before *Chriſtmas*, and Dr. *Oates* ſays, it was in the Summer; I know it by a very good Obſervation; becauſe I went to *Aſtrop* Waters after that; and I ſaw Sir *Creſwell Levinz* at the *Wells:* Now, Sir, you were there before this Time Twelve-month. So then whatever he ſays I ſaid to him there, I cannot be charged withal by the Statute, more or leſs, if I had never a Witneſs againſt him; but I have Witneſſes that have contradicted him ſufficiently that he is forſworn in that; and if ſo, he is not to be believed in any Thing elſe; for he ſays, he and I went to the Coffee-houſe together, and we diſcourſed ſuch and ſuch Things, which is not above Half a Bow's Shot, and he made it, I ſay, a Quarter of a Mile's Diſcourſe; if I had had all the Talk, the Diſcourſe could not be ſo long, though he had ſaid never a Word: So you ſee what a Kind of Witneſs he is. And Dr. *Oates*'s Brother did ſay, That I did go along with Dr. *Oates*, and offered to be one of his Guard, and I did ſay ſo, and went along with them; but Mr. *Smith* he came after. And as to what he ſays, he is ſufficiently confuted; that is, about the going into Cabals after Dinner; for it is proved, that I fell aſleep behind the Table, and Dr. *Oates* was diſcourſing with Mr. *Savage* upon Points of Divinity; but I take no Notice of it, neither did I ſee *Smith* any more; but he went away, and ſo did the reſt of the Company. But, my Lord, when *Haynes* was taken, *Smith* came to me that Day to my Houſe at the *Ditch-ſide*, and ſends in a Man for me, his Man; I was writing in my Parlour, and drawing the Deſign for Wainſcotting *Alhallow*'s Church, a Platform for it; this Man told me, His Maſter would ſpeak with me, and *Haynes* was taken that Morning: But, as I underſtand ſince, it was by Agreement and his own Conſent, though he hath pretended otherwiſe. You hear, ſays he, *Haynes* is taken? Yes, ſays I, I do, he hath been ever ſince nine o'Clock before the Secretary upon Examination, and he was till five o'Clock at Night examining, ſaid he: I believe he confeſſes a great deal, ſaid I: Of what, ſaid he? Of ſome Deſign of the Proteſtants, ſaid I, What, againſt the Government? I do not know what they may affright him into; he is a great Rogue, if it be true all that he hath ſaid of himſelf: He ſays, he was concerned in the *Fire of London*, and knew of a Deſign to deſtroy the Proteſtants then; of a Rebellion that was to be in *Ireland*; of *Plunket*'s being made *Primate*, and a great many of thoſe Things: So that if he ſpeaks Truth, he hath been a great Rogue, and as he hath pretended alſo, he was a great Coward. So then, I believe, he may ſay any Thing to excuſe himſelf; ſays Mr. *Smith*, I wiſh you are ſafe: This was the very Night before I was taken.

Mr. Juſt. *Jones.* Have you proved any Thing of this?

Coll. My Lord, pray give me Leave to tell you what is Proof.

Mr. Juſt. *Jones.* You are not to repeat this, unleſs you prove it, Sir.

Coll. He ſpake cautiouſly to me, as if he would have intimated to me, he would have had me run away. Said he, I believe you are not ſafe, I would have you take Care of yourſelf: For you were concerned with him. Now, my Lord, if I had been a guilty Perſon, I had Time enough to get away; and to prove this, I can only ſay, this was betwixt him and I. But, my Lord, you hear, Dr. *Oates* ſays, that this very *Smith* did ſwear he would have my Blood, and that was upon this Occaſion of my vindicating *Sampſon*, whom he had ſtruck and abuſed; and I aſked, Why he did it? Said he, I value no Man's Life, if he affront me, if 'tis any Man in *England*, I value him not. My Lord, upon this Occaſion the Words roſe between us; and when he came out of Doors, and was going away, Dr. *Oates* ſaid, he ſwore he would have my Blood, and that was the Occaſion of his ſpeaking that Blaſphemy.

L. C. J. Dr. *Oates* did ſay ſo.

Mr. Juſt. *Levinz.* Well, you are right now, if you will go in that Way.

Coll. My Lord, this is for *Smith* and *Haynes*, that *Haynes* ſhould ſay it was a good Trade, and damn him he would ſwear any Thing for Money, and that *Smith* ſhould ſwear, damn him, he would have my Blood. I cannot ſum up the reſt of them, for I have not them here.

Mr. Juſt. *Jones.* There is *Turbervile*, and *Dugdale*, and *Smith*; we will help you as to the Perſons.

Mr. Juſt. *Levinz.* Pray keep to the Buſineſs, and do not run out.

Coll. Pray, my Lord, I have one Thing to ſay about *Smith*; he ſays, I ſhewed him my Arms, which I have had for any Time almoſt theſe three Years, ever ſince the Plot brake out. I have been armed ready to oppoſe the Papiſts, and I did my Duty in the City in Perſon in the Trained-Bands; but *Smith* ſays, theſe Arms were to deſtroy the King's Guards; but he does not prove that I was Confederate with any other Perſon; but inſtead of that, there were other Perſons that ſay, with his own Mouth, that he did not believe there was any Proteſtant Plot; nay, he did believe I ſaid it only in Wantonneſs. This is all; then how probable was it, that I myſelf ſhould ſeize the King, or deſtroy his Guards?

Mr. Juſt. *Jones.* You remember Captain *Brown*, Captain *Clinton*, and Don *Lewes*, Mr. *Colledge*.

Coll. Did he ſwear they were all in my Company at *Oxon?*

Mr. Juſt. *Jones.* Yes, *Dugdale* did.

Coll. My Lord, Captain *Brown* and *Lewes* were Friends to my Lord *Howard*, with whom and other Company I came down to *Oxon*, and they lay with me at the *Chequer*, and they were in my Company, becauſe they were gueſts in the Houſe, and we came along together; but he does not ſay they were either of them armed more than myſelf, nor was he ever in Company with us; how then does he know we were in a Conſpiracy?

Mr. Juſt. *Jones.* Becauſe you told him at *London* firſt that they were ſuch Perſons.

Coll. I never ſaw *Lewes* in my Days, till I ſaw him that Morning I came down from *Oxon*; and *Brown* I was not acquainted with a Fortnight before. This is a Truth; but however, they have ſworn a Plot upon me at *Oxon*, and then come and prove I declared theſe were the Men, and ſpoke ſuch and ſuch Words at *London*; I deſire your Lordſhip's Judgment in this Matter of Law, whether what be done at *London* can be ſufficient Matter of Proof in Law to maintain an Indictment againſt me at *Oxon?* And if not, they do not prove legally that I have ſpoken ſuch Words. Beſides, I conceive 'tis not a good Proof, becauſe there is but one Witneſs.

L. C. J. Yes, look you, there are two Witneſſes, *Dugdale* and *Turbervile*, as to what you ſaid at *Oxon*, and two Witneſſes as to what you ſaid at *London*, *Haynes* and *Smith*, who teſtify what you ſaid you would do at *Oxon*. Now in Caſe you came to *Oxon* with any ſuch Intention, that coming to *Oxford* is an Overt-Act, and the Witneſſes that ſpeak what you ſaid in *London*, is Evidence to maintain the Indictment here, and to prove what your Intention was.

Coll. Does that become an Overt-Act, if I go to *Oxon* upon an honeſt Occaſion, any other Occaſion, though I had ſaid thoſe Words before?

L. C. J. If you came with that Intent to join with others, and with a real Purpoſe to ſeize the King, that is the Overt-Act, and the Words before prove the Intention.

Mr. Juſt. *Jones.* He declared it himſelf by his Words.

Coll. *Smith* ſays, that about a Week after *Wilcox*'s Dinner, I diſcourſed with him at the *Ditch-Side*, that comes not within the Compaſs of the Statutes. Then there is twice of the three Times he ſpeaks of; the laſt Day, I do not remember when it was.

L. C. J. All was in *London* that *Smith* ſpeaks of you.

Coll. How comes that to be Proof here? Then nothing he ſays is to go for any Thing.

Mr. Juſt. *Jones.* Nothing will ſerve your Turn, we have declared our Opinions once already, that if the Witneſſes ſwear true, here are two Witneſſes; nay, if one were of what was done at *London*, and the other of what was done at *Oxon*, if they be to the ſame Treaſon, they are two Witneſſes in Law.

Coll. My Lord, I obſerve one Thing upon *Turbervile*'s Evidence; he ſwears there was a Diſcourſe in the Room when *Brown* was upon the Bed; but afterwards, if your Lordſhip minds it, he ſays, I diſcourſed with him as he and I lay upon the Bed, Before he ſaid, when *Brown* lay upon the Bed, and in the Room, and afterwards when we lay upon the Bed.

Mr. Juſt. *Jones.* Both the one and the other.

Coll. But he firſt ſaid one Way, and then the other.

Mr. Juſt. *Jones.* Whilſt *Brown* lay upon the Bed, and when he was gone, whilſt you both lay upon the Bed.

L. C. J. We will do you no Wrong; therefore if you will, *Turbervile* ſhall ſtand up and clear it.

Coll. My Lord, I believe thoſe that have taken the Paſſages, can prove he contradicted himſelf in that.

L. C. J. He ſaid both. But the Jury have taken Notes of the Evidence, and will take Notice of it.

Coll. As to Mr. *Maſters*, the Evidence he gives was, he ſays, that he and I ſhould diſcourſe of the Parliament in 40.

Mr. Juſt. *Jones.* And the Juſtifiableneſs of the late King's Death, that they had done nothing but what they had juſt Cauſe to do.

Coll. He ſwears that I did ſay to him, that the late Parliament did not cut off the King's Head.

Mr. Juſt. *Jones.* And you ſaid the laſt Parliament that ſat at *Weſtminſter*, was of the ſame Opinion with that in 40.

Coll. I dare appeal to Eſquire *Charleton*, in whoſe Shop the Diſcourſe was. I did not know that Mr. *Maſters* was to be an Evidence againſt me; and truly they have taken that Courſe with me, by which any Man may be deſtroyed with half this Evidence, were they of good Credit, let his Innocence be what it will. I have been uſed ſo barbarouſly in the *Tower*, kept from all Converſation, and ſo in an utter Ignorance of what was ſworn againſt me; for elſe I could eaſily have diſproved Mr. *Maſters*, if I had been in *London*, and had Liberty to provide for my Defence; but they have taken a Courſe to prevent that, and brought me hither, becauſe 'tis impoſſible I ſhould here defend myſelf.

L. C. J. You have not offered at any Witneſs to impeach Mr. *Maſters*'s Credit.

Coll. Mr. *Maſters*'s Diſcourſe he ſpeakes of was in Mr. *Charleton*'s Shop, I durſt have appealed to him about it; for I knew if he were here he would do me right. Mr. *Maſters* did ſay, the Parliament cut off the late King's Head. We held a Diſpute upon that, which I was not willing to enter into; I ſaid, they did not, and we did then diſpute whether they began the War againſt his Majeſty: I ſaid, they did not that I knew of, neither were they the Perſons, but the Papiſts that began that War, and that broke the Treaty at *Uxbridge*, and that the Papiſts carried it on to that ſad Iſſue, and put it upon the Proteſtants, that they had the *Odium* of it; but it was another Sort of Men that carried it on. I ſaid, that I did always underſtand that Parliament to be an honeſt Parliament, that minded the true Intereſt of the Nation, and much of the ſame Opinion with the Parliament that ſat laſt at *Weſtminſter*. But before I ſaid this, I ſaid they were Perſons altogether innocent of the King's Murder, and raiſing the War againſt the King; I did always underſtand that ſo the Parliament in 40 were.

L. C. J. But they were guilty of a Rebellion, and are declared ſo by Act of Parliament ſince his Majeſty came in.

Coll. My Lord, I am unacquainted with the Law, I ſpeak only my Senſe of it. And, my Lord, I did excuſe them as to the Murder of the King, and the Beginning of the War, that according to my Underſtanding they were not guilty of it; and from thence I did maintain they were an honeſt good Parliament, and much of Opinion with the Parliament that ſat laſt at *Weſtminſter*, which was for the true Intereſt of the Nation.

L. C. J. And was that the true Intereſt of the Nation to cut off the King's Head?

Coll. I did argue that with him ſome Time, and did tell him that it was the Papiſts that did all the Miſchief.

Mr. Juſt. *Jones.* But he ſays no, upon his Oath, that when he had ſaid the Parliament begun the Rebellion, and the Parliament did cut off the King's Head, you ſaid, the Parliament did nothing but what they had juſt Cauſe for, and the Parliament that ſat at *Weſtminſter* was of the ſame Mind.

L. C. J. Thoſe were his Words.

Coll. Pray let him be called again.

L. C. J. Let Mr. *Maſters* ſtand up again.

Coll. Pray, Sir, relate the whole Diſcourſe that paſſed between you and I, whether I did not argue with you it was not the Parliament cut off the King's Head, nor begun the War, but the Papiſts.

Mr. *Maſters.* No, you did not ſay any ſuch Thing. We had a great deal of Diſcourſe in the Shop, and under the Arch, and the Thing that was ſaid, Mr. *Colledge*, was this: You did ſay to me, that you did juſtify the late long Parliament of 40, and their Proceedings; and you ſaid, they were a Parliament that did nothing but what they had juſt Cauſe for. Said I, *How can you be ſo impudent to ſay ſo, when they raiſed the Rebellion againſt the King, and cut off his Head?* Said he again, *They did nothing but what they had juſt Cauſe for, and the Parliament that ſat laſt at* Weſtminſter *were of the ſame Opinion.*

Mr. Juſt. *Jones.* I did you no Wrong in repeating the Evidence, you ſee, Mr. *Colledge.*

Coll. Did I not firſt diſpute with you that they did not begin the War, nor cut off the King, but the Papiſts did it.

Mr. *Maſters.* Look you, Mr. *Colledge*, you would have had it the King began the War.

Coll. Don't you ſay ſo; for I ſaid the Papiſts began the War. Sir, ſay no more to me than what you will anſwer to God Almighty; for I always ſaid the Papiſts did all the Miſchief in the late Times; and I wonder, Sir, you would not be ſo juſt to his Majeſty, as to detect me for what I ſaid then, if you apprehended it to be as you now ſay; but I am ſure you do not, nor could not.

Mr. *Maſters.* Mr. *Colledge*, it was ſo far from that, that I was afraid it was of dangerous Conſequence, and I gave ſome Perſons of Honour an Account of it; and I was ſent to but on *Friday* laſt, to know what it was was ſaid, and I was deſired and commanded to come down hither.

Coll. Pray, Mr. *Maſters*, you are upon your Oath, do me but Juſtice, and ſpeak upon your own Conſcience; look you to it that you ſpeak the Truth.

Mr. *Maſters.* I will do you all the Right I can in the World.

Coll. Then before the Court do you declare, whether we did not diſcourſe at that Time as I ſaid, for this Diſcourſe was at Mr. *Charlton*'s Shop at the further End.

Mr. *Maſters.* No, it was at the Entrance into the Shop, Mr. *Colledge*; and did not we go into the Arch, and talk there?

Mr. Serj. *Jeff.* Mr. *Maſters*, don't trouble yourſelf, your Reputation is not upon the Level with that Gentleman's.

Coll. I deſire he may ſpeak the very Truth, and nothing but the Truth.

Mr. *Maſters.* I do, as near as I can, and do you no Wrong; you did in your Diſcourſe ſay the Parliament did not begin the War, nor cut off the King's Head.

Coll. You did ſay to me, they did cut off the King's Head; and I told you no, the Papiſts did.

Mr. *Maſters.* I think you did ſay that the Papiſts had an Hand in it; but, Sir, you have left out the moſt material Part of our Diſcourſe, which was, that you ſaid they did nothing but what they had juſt Cauſe for.

Coll. I do ſay, and it was my Senſe always, that the Parliament did not cut off the King's Head; for they were long out of Doors before that came to paſs, and a new unhappy War was begun.

L. C. J. The War was a Rebellion on the Parliament's Part, let us not mince the Matter, and ſo it was declared by Act of Parliament; and if you argued after that Rate, it ſhews your Temper, and that you are a very ill Man; for they that juſtify ſuch Things, as to the Time paſt, would lead us to the ſame Things again if they could. Therefore don't go about to palliate it, *ad faciendum Populum*; here it is nothing to the Matter, but only to ſhew your Principles, and the Jury have heard what Mr. *Maſters* ſays.

Coll. I was then a Child, and do not know all the Paſſages, but I ſpeak my Senſe.

L. C. J. You ſhould not have juſtified ſuch Things.

Mr. Juſt. *Jones.* Who appointed the High-Court of Juſtice that tried the King, and condemned him, but the Parliament?

Mr. Juſt. *Levinz.* It was the Garbage of that Parliament, I am ſure, that is the *Rump*; but they called themſelves the Parliament of *England*, and the Parliament it was that begun the War.

Coll. My Lord, I did not know, nor don't know, that it is proved yet, that the Parliament were thoſe that did cut off the King's Head. I don't know, Mr. *Maſters* is pleaſed to ſay this of me; but I thought no Evil, nor did he underſtand it ſo, I believe, at that Time, for he did not ſeem to take Advantage of my Diſcourſe. I know he talked violently and paſſionately with me, as he uſed to do; and for Mr. *Maſters* to ſay this of me now, is a great Unkindneſs; for I thought he was ſo much a Gentleman, that if I had ſpoken any Thing that had not become me, he would have taken Notice of it then.

Mr. Serj. *Jeff.* He did then, he tells you.

Coll. Had I known of it, I am ſure Mr. *Charlton* would have done me Juſtice, and ſet Things right; but this I ſay, I did firſt excuſe the Parliament from being concerned in the Murder of the King, or that they did begin the War, but the Papiſts did it: If it were otherwiſe, it was more than I underſtood: And after that I ſaid, I thought that the Parliament that ſat laſt at *Weſtminſter* did ſtand up for the People's Rights, after the ſame Manner that the Parliament in 40 did.

Mr. Juſt. *Jones.* What, juſt after the ſame Manner, in raiſing War and Rebellion againſt the King?

Coll. After I had diſcourſed it thus, my Lord, as I told you, it could not be underſtood that I thought that Parliament would cut off the King's Head: And therefore you that are my Jury, pray conſider, and take it all together, there could be no ſuch Meaning made of my Words; for I did not conceive that that Parliament were concerned in thoſe Things, but were a Parliament that ſtood up for the Rights of the People: Now, if it were ſo, then the Parliament at *Weſtminſter* were of the ſame Opinion.

L. C. J. I tell you, the Long-Parliament's levying War, is declared Rebellion by Act of Parliament.

Coll. My Lord, if there hath been an Act ſince, that ſays they were guilty of Rebellion, I declare 'tis more than ever I knew before. This is the firſt Time that ever I heard of it.

Mr. Serj. *Jeff.* You are a mighty learned Gentlamen, to talk of thoſe Points indeed.

Coll. My Lord, I deſire to know whether any Words that were ſpoken ſix Months before they gave their Depoſitions, can be a ſufficient Evidence in Law againſt me now?

L. C. J. 'Tis upon the Act of the 13th of this King you ſpeak.

Coll. Yes, my Lord, I take it upon that Statute.

L. C. J. I tell you, as to that Part of the Statute which concerns Miſdemeanors, there is a particular Clauſe for Proſecution by Order of King and Council; But as to that Part of the Statute that concerns Treaſon, it muſt be proſecuted within ſix Months, and the Indictment within three Months after.

Coll. What Statute is this Indictment grounded upon?

Mr. Juſt. *Jones.* All Statutes that concern Treaſon.

L. C. J. Upon the Statute of the 25th of *Edw.* III. which declares the Common Law, and the Statute of the 13th of this King, which when you have done, I will have read to the Jury.

Coll. Then, pray, my Lord, let me aſk you one Queſtion, Whether the Statute of 25 *Edw.* III. does not ſay, that there ſhall be two poſitive Witneſſes to Treaſon?

Mr. Juſt. *Jones.* No, but there is another that does.

Coll. I am ignorant of the Law, and therefore I aſk the Queſtion.

L. C. J. Well, I will tell you, there muſt be two Witneſſes in the Caſe, but one Witneſs to one Fact at one Time, and another Witneſs to another Fact at another Time, will be ſufficient Evidence to maintain an Indictment of Treaſon; this was told you in the Morning.

Mr. Juſt. *Jones.* And it was told you withal, That it was the Reſolution of all the Judges in the Caſe of my Lord *Stafford*, when he was tried in Parliament.

Coll. They proved Fact in that Caſe, writing of Letters, and offering Money to kill the King; but nothing of Fact is proved againſt me, but riding in the Country with Arms that I had three Years before.

L. C. J. We will read the Statute of the 13th, wherein Words are declared to be Treaſon.

Coll. I pray it may be read, if you pleaſe. *(Which was done.)*

L. C. J. Look you here, To compaſs or imagine the Impriſonment of the King, and to expreſs it by malicious and adviſed Speaking, when proved by two lawful Witneſſes, is Treaſon by this Act.

Coll. Now whether you will diſtinguiſh, that there muſt be two Witneſſes to diſtinct places or Times, or whether the Statute intends two Witneſſes to every particular Fact and Words.

L. C. J. We told you our Opinion before, That one Witneſs to one Fact, and another to another of the ſame Treaſon, was ſufficient. We are upon our Oaths in it, and ſpeak not our own Opinions, but what hath received publick Reſolution in Caſes of the like Conſequence.

Coll. What lies before theſe Gentlemen of the Jury, as done at *Oxon*, 'tis but upon a ſingle Teſtimony.

Mr. Juſt. *Levinz.* Nay, Mr. *Dugdale* and Mr. *Turbervile* both ſwear the ſame Thing, your Deſign to ſeize the King at *Oxon.* And it would be the difficulteſt Thing in the World to prove Treaſon againſt any Man, if the Law were not ſo, and a Man might commit all Sorts of Treaſons ſecurely; for to be ſure he would never ſay the ſame Things before two Witneſſes in one Time, and the King would he in no Sort ſafe; for there would never be two Witneſſes to one and the ſame Thing. But that hath been reſolved often and often, over and over again, particularly in my Lord *Stafford*'s Caſe, as you have been told.

Coll. My Lord, you ſay the King is not ſafe upon thoſe Terms, and no private Man is ſafe in the other Way.

Mr. Juſt. *Levinz.* We ſay, that the Law is ſo, and there is good Reaſon for it.

Mr. Juſt. *Jones.* We muſt not alter nor depart from the allowed received Law.

L. C. J. I ſay, the Thing hath been conſidered in other Caſes, and the Law hath been adjudged and ſettled. It was ſo reſolved in my Lord *Stafford*'s Caſe, when the Judges, by the Command of the Parliament, did deliver their Opinion upon that Point moved by him.

Coll. There is nothing of Fact proved againſt me, but a Pair of Piſtols, a Sword, and an Horſe.

L. C. J. We have told you the Law, and anſwered your Queſtion.

Coll. But as the Caſe ſtands, if that be the Law, all Society and Converſation muſt be ruined by it.

Mr. Juſt. *Jones.* Pray go on, when do you think we ſhall have done elſe?

Coll. However I do not inſiſt upon that ſo much, as that the Teſtimonies and Oaths of theſe Men are altogether invalidated, by ſubſtantial Perſons that have here teſtified againſt them. I do declare upon my Salvation (I have nothing elſe to ſay) I am wholly innocent, and the Jury are my Judges, and I beſeech them, as they will anſwer it at the great Day of Judgment, where they muſt appear as ſure as I ſtand at this Bar now, that they do me right, and go according to their own Conſciences; for if a Man ſhall be ſworn againſt by ſuch Fellows as theſe are, no Man is ſafe.

Mr. Serj. *Jeff.* The worſe, the better to be truſted by you.

Coll. I am ſure it cannot be thought by Men of common Reaſon, that I ſhould ſpeak Treaſon at that Rate that they have ſworn, and to ſuch Men, Men of their Profeſſion, *Iriſhmen*, and Papiſts, Traitors that have declared they have been in all Manner of Rogueries, Murders, Plots and Treaſons. Therefore, my Lord, I cannot do any more for myſelf, becauſe I have no Notes, and cannot recite what hath been ſaid for me or againſt me; but I do depend upon your Lordſhip, and I hope you will inform the Jury rightly, and do me Juſtice; and I do pray the Jury, that they will let their Conſcience be ſatisfied, as they are *Engliſhmen*, and as they are Chriſtians, to conſider how the Caſe lies with me, whether there has not been more Occaſion of talking of late, and whether a Slip of the Tongue may be called a premeditated, malicious, adviſed Speaking. I mean, my Diſcourſe with Mr. *Maſters*. He talked with me as hot as Fire, he was ſo violent, and I did diſcourſe him at that Rate I have told you, and that is Truth, as I have a Soul to be ſaved: I did excuſe the Parliament, that as I underſtood it, they had no Hand in the beginning of the War, or the Murder of the King. My Lord, as for the reſt that have ſworn againſt me ſo deſperately, I muſt ſay, that if the Jury did not as well conſider my Evidence as their's, yet they might well conſider, whether it conſiſts with common Senſe and Reaſon, that I ſhould ſpeak to theſe Men after this Rate, when I could lay no Obligation upon them, nor have any Confidence in them; neceſſitous Perſons, that could not aſſiſt me one Mite, Men that were beholding to me to borrow Money of me, and that eat of my Coſt, that I had always been obliging to, and not they to me. But I hope I need inſiſt upon this no further; the whole Nation is ſenſible what is doing, and what this does ſignify: They have begun with me in order to the making of a Preſbyterian Plot, which they would carry on to ſtifle the Noiſe of the Popiſh Plot; and this is not the 1ſt, the 2d, nor the 10th Time that they have been at this Game; how many Shams have they endeavoured to raiſe——

Mr. Att. Gen. Who do you mean by they?

Coll. The Papiſts.

Mr. Att. Gen. There is nothing of Popery in the Caſe; they are all Proteſtants.

Mr. Juſt. *Jones.* They are all Perſons that have lately received the Sacrament.

Coll. They were all Papiſts, and I believe are ſo ſtill; for Mr. *Dugdale* did juſtify to me the Church of *Rome* in ſeveral Things: And when I told him that they were all Knaves and Fools that were of that Religion, he told me, that many of their Prieſts were holy good Men.

Mr. Juſt. *Jones.* Have you proved that?

Coll. I can't prove it, it was betwixt him and me, my Lord.

Mr. Juſt. *Jones.* Then I hope you have done.

Coll. If I had ſworn againſt him, he had ſtood in my Place.

L. C. J. Have you done, Mr. *Colledge?*

Coll. My Lord, I only deſire the Jury to take all into their ſerious Conſideration; I expect a Storm of Thunder from the learned Council to fall upon me, who have Liberty to ſpeak, and being learned in the Law, underſtand theſe Things better than I, who muſt defend myſelf without Council. I know not whether it be the Practice in any Nation; but certainly 'tis hard Meaſure, that I being illiterate and ignorant in the Law, muſt ſtand here all Day, they being many, and taking all Advantages againſt me, and I a ſingle Perſon, and not able to uſe one Means or another either of writing or ſpeaking. But, Gentlemen, I do declare and proteſt, as I ſhall anſwer it at the Day of Judgment, that as to what theſe People have ſworn againſt me either as to Words, or as to any Manner of Treaſon againſt the King, the Government, the Laws eſtabliſhed, I take God to witneſs I am as innocent as any Perſon upon Earth. And therefore I muſt beſeech you, be not frightned nor flattered; do according to your Judgments and your Conſciences; you are to be my Judges both in Law and Fact; you are to acquit me or condemn me, and my Blood will be required at your Hands. And whatever is ſaid to you by others, you are my true Judges, you muſt give an Account of the Verdict you give; and therefore you muſt ſee that you do Juſtice, as you will anſwer it at another Bar, where you muſt all certainly appear, and the Lord Almighty direct you that you do me true Juſtice, and I aſk no more.

Mr. Sol. Gen. May it peaſe your Lordſhip, and you Gentlemen of the Jury. Here hath been a great deal of Time ſpent, and truly I think for no other Reaſon but to divert you from the Matter that is before you, and that you might forget the Evidence that hath been given. And therefore I will briefly repeat it to you, that I may refreſh your Memories about what hath been ſworn. Gentlemen, the Crime charged upon Mr. *Colledge* is High Treaſon in imagining and compaſſing the Death of the King; the Proof of that hath been by a Conſpiracy to ſeize the King here at *Oxon*, which Conſpiracy he declared he was in, by ſhewing Arms prepared for that Purpoſe, and by coming down to *Oxon* with that intent, that is the Proof of his Deſign to kill the King.

Coll. Is the Conſpiracy proved of that, Mr. Sollicitor?

L. C. J. Mr. *Colledge*, We have had a great deal of Patience with you, you have ſpent a great deal of Time, you muſt contain yourſelf now, and let them go on.

Coll. Do not let him do me wrong, my Lord.

Mr. Sol. Gen. I will do you no wrong, Mr. *Colledge.*

Coll. Sir, there is no Conſpiracy proved.

L. C. J. Look you, Mr. *Colledge*, you have taken up a great deal of Time, and we have had much Patience, becauſe we conſider your Condition, and had rather hear too much, than be hard upon you, and becauſe the Evidence was long and difficult to repeat; now we have heard you, you muſt have Patience to hear what the King's Council repeat and obſerve upon it.

Mr. Sol. Gen. As I was ſaying, the Fact that is charged upon him, is a Deſign to kill the King, the Manifeſtation of that Deſign is by preparing Arms to that Purpoſe, and by coming down to *Oxon* to ſeize the King here; and that this was his manifeſt Intent to ſeize the King, the Proof of it hath been by Witneſſes, that I think by and by you will have no Objections againſt. Theſe Witneſſes were *Dugdale*, *Turbervile*, *Smith*, and *Haynes*, theſe are the moſt material Witneſſes to the Treaſon, there are two other Witneſſes indeed, but they are to other circumſtantial Matters that I will take Notice of to you by and by, and make my Obſervations upon them in their proper Place.

Mr. *Dugdale* was the firſt that was produced, and his Evidence is very full, he proves that Mr. *Colledge* declared to him at the Coffee-Houſe here, that he was come down with an Intent to ſeize the King, that he had an Expectation ſomething would be done, that he was armed, and that he did adviſe Mr. *Dugdale* to be armed too, for he was provided for the rooting out of Popery, which he explained himſelf what he meant by it, that was the Church of *England*, and the King and all his Adherents. He came hither armed for that Purpoſe, Gentlemen, and did adviſe Mr. *Dugdale* to Arm himſelf too, that he did declare to him the King was a Papiſt, and all his Family were Papiſts, he was as deep in the Plot, and as guilty of the Murder of Sir *Edmundbury Godfrey*, as any Body elſe. This was what he declared to *Dugdale* here, and this he ſwore to you when he gave his Evidence.

The next Witneſs is Mr. *Turbervile*, and he is poſitive to the Matter that is laid in the Indictment, and ſwears to you expreſly, that he did declare it to him at the *Chequer-Inn*, that they came down here in Expectation of ſome Sport, that ſomething would be done, that they did expect the King would begin with them; but if he did not, they would begin with him, and they would ſecure him till they had brought him to Compliance. He ſhewed him his Arms, that he was ready to engage in that Deſign, and adviſed *Turbervile* to be ready too. And rather than *Turbervile* ſhould not be ready, he offered to procure him an Horſe.

Coll. Every Man had the ſame Arms that I had, and I had had them long before that Time.

Mr. Sol. Gen. But every one had them not with the ſame intent. But, Gentlemen, becauſe Mr. *Colledge* interrupts me with an Objection, I will take notice of it now by the Way. He ſays, thoſe Arms he had before, and therefore they were not provided for this Purpoſe. Gentlemen, we do not pretend to prove when this traiterous Intent firſt began, and how long this Deſign hath been hatching; but ſuch a Deſign there was, and ſuch a Deſign he manifeſted to be in himſelf when he made the Declaration to *Turbervile*, and adviſed him to arm himſelf; whether he prepared them againſt that Time or no, is not material, if he had them before; and if he had them firſt innocently, yet if he afterwards deſigned them for ſuch a Purpoſe, and ſhewed them in a readineſs for it, that is a ſufficient Evidence to prove this Treaſon.

So here are two Witneſſes, you obſerve, againſt the Priſoner of this Matter that is laid againſt him in the Indictment, an intent to kill the King, they both prove it poſitively upon him at *Oxon*. Mr. *Dugdale* ſpeaks to Matters precedent to; for he tells you, his Diſcourſe before they came down, that they would come down for that Purpoſe, that they had an Expectation ſomething would be done, and therefore he came down in an Equipage not ſuitable to his Profeſſion; for you ſee he was by Trade a Carpenter or a Joiner, but armed on Horſeback with a Caſe of Piſtols, Things that don't become ſuch Men to travel with, and he did declare to Mr. *Dugdale* for what Purpoſe he came down. The next Witneſs is Mr. *Smith*, and Mr. *Smith* is as poſitive and full to this Matter of Treaſon as any of the reſt.

Coll. There is ſcarce a Carpenter or a Joiner in *London* but hath Piſtols when he rides.

L. C. J. Mr. *Colledge*, we muſt not ſuffer this, we had ſo much Patience with you that we expect you ſhould be quiet now, and not interrupt the Council.

Coll. My Lord, let me not be overborn upon, there is ſcarce a Poulterer in *London*, but what hath Piſtols.

Mr. Sol. Gen. We had great Patience with you, Mr. *Colledge*, and did not interrnpt you, I am ſure, but let you ſay what you would. I think I do you no wrong, if I do, I am under the Correction of the Court, they will reprove me if I do that which does not become me.

Mr. Juſt. *Jones.* Did not you ramble I don't know how, and yet you were ſuffered to go on?

Mr. Sol. Gen. He tells you of a Diſcourſe as he came from the Coffee-Houſe to go to a Dinner whither he was invited by Alderman *Wilcox*; and the Diſcourſe was, that the King was as great a Papiſt as the Duke, and much more to that Purpoſe, vilifying the King. That Alderman *Wilcox* was a Man that gave Money to buy Arms to bring the King to Submiſſion. He objects againſt this, and ſays 'tis impoſſible ſuch a Diſcourſe ſhould be, and that all this ſhould be talked in ſo little a Time, as in paſſing from the Coffee-Houſe to the *Crown* Tavern without *Temple-Bar*.

Coll. Pray remember whoſe Company it was proved I went in, Mr. Sollicitor.

Mr. Sol. Gen. But, Gentlemen, when you conſider, how buſy a Man he was, and how ready at talking of Treaſon, you will not think, but that this Man might talk much more than this; but this I mention to do him right, it being one of the Arguments he uſed; and, to give an Anſwer to it, though when you conſider it, I believe you will think it not to need an Anſwer. But I would do him all the right I can, and now you have heard it, you will conſider the Weight of it.

Gentlemen, he tells you of another Diſcourſe afterwards, that does relate to his being here at *Oxon*, he tells you he had Arms in his Houſe, and was ready upon all Occaſions, and ſhewed Mr. *Smith* his Arms, and told him, theſe were the Things that were to deſtroy *Rowley*'s Guards, as he ſaid, which by the Evidence is made to appear he meant the King by that Name, his Arms he ſaid were for that Purpoſe. That he would go down to *Oxon*, and there he expected ſome Sport. I know not what Sport he thinks there is in Rebellion; you ſee what Principles he is of, that does maintain and juſtify the greateſt and horrideſt Rebellion that ever was in *England*, and ſays they did nothing but what they had good Cauſe for. He tells *Smith*, that he thought the King would ſeize upon ſome Members, and with that Expectation he came down, but yet was as ready as the King, and would be one in the ſecuring of him, if he meddled with any of the Members. This Proof Mr. *Smith* made; and that after the Parliament was diſſolved, he ſaid, that the King ran away, and was very much afraid. This is proved by *Smith* likewiſe, and this *Colledge* did declare after he came to Town. *Smith* proves further, that he did wonder the King did not conſider how eaſily his Father's Head was brought to the Block; and for Mr. *Colledge*'s Part he did declare, that he did believe this King would be ſerved ſo ſhortly. And this does confirm what his other Witneſſes have ſpoken of his Words at *Oxon*. Thus then there are three Witneſſes, though two are enough to convict a Man, if they be poſitive to the Treaſon.

Mr. *Haynes* is the fourth Witneſs, and he is as full as any of them. I do but repeat it in ſhort; you have had it ſo often canvaſſed by *Colledge*, that I believe you will eaſily remember it. He did adviſe *Haynes* that he ſhould not value the King at all, for the King ſhould be called to account for all his Actions; he ſaid he would ſeize the King, and bring him to the Block, as they did his Father, with an indecent Expreſſion of that bleſſed King, not fit to be repeated. And he ſaid, they did intend, when they had cut off him, never any more of his Race ſhould reign. This it was *Haynes* ſays, though there are other Matters. I would take Notice of one thing more, and I need not but mention it, you will remember it, and that is about the Libel of *Fitz-Harris*. *Haynes* tells you upon Diſcourſe of that Libel, he ſaid, That every Word of it was true, as ſure as God was in Heaven. Now that was a Libel made by a Papiſt, an *Iriſh* Papiſt, who had been tried, convicted, and executed for it, and the horrideſt Libel it was that ever was writ. And this is the Libel which this Gentleman, who is ſo very converſant in Libels, and Books of that ſort, avers to be as true as God is in Heaven. This is the Subſtance, Gentlemen, of that Proof which hath been made to you, we have other Circumſtances to prove, That as he came down with that Intent to ſeize the King, and as he expected, what he calls, ſome Sport, ſo he did endeavour to begin the Sport, he did quarrel in the Lobby of the Houſe of Lords with *Fitz-Gerald*, ſome Blows paſſed, and Sir *William Jennings* telling him his Noſe bled, he did declare, I have loſt the firſt Blood in the Cauſe, but it will not be long before there be more loſt. Thus, after he had come down, he endeavoured to begin a Commotion; for from little Matters great Things do ſometimes ariſe; and when all Men were poſſeſt with an Expectation, ſuch as he himſelf did declare, he and others came down with an Expectation that the Parliament ſhould be attacked; a little Matter might have begun ſuch a Commotion, which no Man knows what End it would have had.

Gentlemen, this hath been our Proof. Now the Objection made to this Proof by Mr. *Colledge*, is, That this is a *Popiſh* Deſign to raiſe a new Plot, and caſt it upon the *Proteſtants*, and that theſe Witneſſes are now to deny all the Evidence they have given of the Popiſh Plot, and throw all upon the Proteſtants. This is that he would perſuade you to believe, but which I think when you do conſider a little of it, it will be impoſſible for you in the leaſt to have ſuch a Thought. For what are the Evidence that have proved this? Who are they? Men of Credit, that have been Evidences againſt the Popiſh Plotters, and againſt Men that have ſuffered for that Plot, Men that ſtill ſtand to the Evidence they have given, and affirm it every Word to be true, and one of the very Men that he brought, ſays, that they ſtill ſtand to it; for *Turbervile*, who was one of the Witneſſes againſt my Lord *Stafford*, was tempted by ſome Perſons to deny the Evidence he had given againſt the Papiſts; but his Anſwer was, No, I can never depart from it, I have a Soul to ſave, that was true which I ſaid, I cannot deny it. If then the Witneſſes which he would have you to believe to be guilty of denying the Popiſh Plot, do confirm what they have ſaid as to that Diſcovery, that Objection is taken off, and they do ſtand ſtill to it, that every Part of it was true, and aver the ſame Thing; and yet forſooth theſe Men are going about to ſtifle this Plot.

Gentlemen, theſe are the Men the whole Nation have given Credit to, the Parliament having impeached my Lord *Stafford*, upon the Credit of them (for it was upon the Credit of *Dugdale* and *Turburvile* that they impeached him, for there was not two Witneſſes till *Turburvile* came in and made a ſecond, and upon their Credit) after ſo ſolemn a Trial, where all the Objections that could poſſibly be made was made, the Houſe of Lords thought fit to find my Lord *Stafford* Guilty, and my Lord *Stafford* ſuffered for it, and died upon the Credit of theſe Men. Theſe are the Witneſſes, Gentlemen, that this Man thinks ought to be blown off with that frivolous Objection, that they are Perſons he would have you believe, who are guilty of a Deſign to throw the Plot upon the Proteſtants. But becauſe he hath deſired to ſave himſelf in an Herd, by numbering himſelf among the Proteſtants, I muſt a little obſerve to you what a ſort of Proteſtant he is, a Man, he would have you to believe, ſo popular for his Religion, that he has obtained the Name of the Proteſtant Joiner. But when you have conſidered what his Actions are, I believe you will a little ſuſpect his Religion. If the Proteſtant Religion allow any Man to vilify the King, to arraign the Government, and to throw off all Manner of Allegiance, then this Man is a Proteſtant. But if this be to act the Part of a Papiſt, and if the Papiſts could wiſh that ſuch an Infamy might be put upon the Proteſtant Religion, that it ſhould juſtify ſuch a Rebellion as the late horrid one was, and own ſuch a Principle that it is lawful for any Subject to aſperſe and vilify the King, and this Man by thoſe many ſcurrilous Libels ſeems to do: If they could wiſh this Nation overturned, and the Government in Confuſion, and the Church of *England* deſtroyed, the beſt Bulwark now in the World againſt Popery, and the beſt only Refuge at this Day left for the poor afflicted Proteſtants abroad; then whilſt Mr. *Colledge* does thus act the art of a Papiſt, he does very ill to call himſelf a Proteſtant. Gentlemen, I cannot but obſerve one Thing to you, and it was the Evidence of Dr. *Oates*, when he did firſt diſcover the Plot, and without his Evidence you would eaſily believe the Thing. He told you, there were two Ways they had to accompliſh their Deſign, by direct murdering of the King, or if that failed, by putting all Things into Confuſion here, and raiſing Rebellion and Diſturbance amongſt us; and the Way to effect that Rebellion, it was by having Emiſſaries ſent among us, to work us into a Diſlike of the Church, and by that Means into a Rebellion againſt the State. That ſome Men were ſent abroad for that Purpoſe to preach at Conventicles, ſome whereof were catched, and ſome did ſuffer. Now without this Evidence it would not be hard to believe, that ſuch there are, and have been; for all that know the Hiſtory of our Reformation, do know that it was an early Practice among them, to raiſe Sects amongſt us, to bring Confuſion firſt into the Church, and then in the State. And we have already found the ſad Effects of it.

Now, Gentlemen, if *Colledge* has all this while under the Name of a Proteſtant acted the Part of a Papiſt, though I cannot ſay he is a Papiſt, nor that he is one of thoſe Emiſſaries, yet I may ſay, he is not that good Proteſtant he pretends to be. Gentlemen, I muſt now, to do him Right, come to repeat the Evidence that he hath given againſt our Witneſſes; for Mr. *Haynes* he hath produced ſeveral Witneſſes, one is Mr. *Hickman*, who ſays, he over-heard *Haynes* ſay to one that was his Tenant, that it was his Trade to ſwear, and he muſt get Money by it. This he over-heard him ſtanding and liſtening at a Door. You have another Man, *Lun*, that is the next Witneſs, and he ſays, that at the *Fleet-Ditch* where he ſaw him, there he declared the ſame Thing to him, that he would ſwear any Thing for Money, and damn his Soul rather than the Catholic Cauſe ſhould ſink; and now he comes to prove a Plot upon him that is a Proteſtant, and in his Perſon upon all the Proteſtants of *England*; and this Man would fain throw off the Credit of the Popiſh Plot, and turn it upon the Proteſtants. But, Gentlemen, it is ſtrange, that Mr. *Haynes* ſhould have this Diſcourſe with *Lun*, the firſt Time that ever he ſaw him; for I am ſure his own Witneſs *Lun* ſays it was the firſt Time, and that he ſhould immediately talk to him at this Rate is ſomewhat ſtrange: But for an Anſwer to it, this *Lun* we have confronted with the Evidence of *White* the Meſſenger, who ſwears, that afterwards meeting him at *Uxbridge*, *Lun* aſked him what Gentleman that was, and did not know Mr. *Haynes*, and yet he takes upon him to prove, that he had ſpoke ſuch Words to him before. I think there is never another material Witneſs againſt *Haynes*, except *Whaley*, who was an under-Officer in the *King's-Bench*; and he ſays, that *Haynes*, while he was a Priſoner there, ran away with a Silver Tankard, but he never was indicted or proſecuted for it, though he remained afterwards in the Houſe, and this was five or ſix Years ago.

Now, Gentlemen, I think the Nature of this Evidence hath not that Weight, as to take off the Credit of what this Man hath ſaid upon his Oath, eſpecially when this Man's Evidence is ſo backed with the Evidence of other Men, that I think there is no Objection at all againſt it. For the other Witneſſes, *Dugdale*, *Smith*, and *Turbervile*, are Men whoſe Credit has not been impeached, and they have confirmed in Subſtance what the Evidence of *Haynes* is; ſo that he does not ſtand alone in what he here ſwears, but 'tis confirmed with concurrent Evidence with it.

Then, Gentlemen, for the Objection againſt *Dugdale*, *Turbervile*, and *Smith*, they have produced Dr. *Oates* to you, and he muſt vilify the Credit of thoſe Men, whoſe Teſtimony as to what he gave at firſt in diſcovering the Popiſh Plot, received Credit by being ſeconded by theſe Men. And I cannot but obſerve it as a ſtrange Thing, that this Man comes now to vilify the Teſtimony of thoſe, who have given Evidence, and been credited by the whole Kingdom; that he ſhould come here upon the Word of a Prieſt to declare, that Mr. *Dugdale* was a Man of very lewd Converſation, and was a Perſon that had a foul Diſeaſe on him, when he pretended he was poiſoned. I remember, this was an Objection that hath been made by the Papiſts to him, and I believe you have heard it often out of their Months; but it is the firſt Time that ever I heard it from any one that is a Witneſs of the Popiſh Plot, and pretends to ſtand up for the Proteſtant Religion. Gentlemen, if any ſuch Thing as this could have been made out againſt him, it had been made out e're now, the Papiſts would have taken Advantage of it, and when the Wit of all that Party was bent againſt him, he could not have eſcaped the having it proved. If it had been true, yet Dr. *Oates* takes upon him now to vilify his Credit, and takes up thoſe Arguments the Papiſts have maliciouſly ſuggeſted, but yet were never able to make out. This looks as if the Doctor were again returning to St. *Omers*, that he is thus going about to diſparage the Evidence of Mr. *Dugdale*, which in great Meaſure verified the Truth of that Diſcovery, himſelf firſt made of the Popiſh Plot.

Againſt *Turbervile*, Gentlemen, I think there hath been very little at all objected that can have Weight with you. Mr. *Broadgate*, as I ſuppoſe you obſerve, has ſaid enough to confirm *Turbervile's* Credit; for he hath proved to you, that when he was tempted to renounce his Evidence againſt the Papiſts, he refuſed to do it, he had more Conſcience than to do it, he knew well enough what he had ſaid was true, and as he had a Soul to ſave, he could not go from it. This is the Evidence that he gives, and which certainly ſerves much to confirm the Truth of *Turbervile*, beſides the ſtrict Examination he hath been under, and beyond any Thing that Dr. *Oates*, I think, has been able to contradict him in.

Dr. *Oates* contradicts *Smith* about his coming from the Coffee-houſe to *Wilcox's* Dinner. He ſays, he did not come along with Mr. *Colledge*, but *Colledge* came along with Dr. *Oates*, and *Smith* followed them. But, Gentlemen, you hear what *Smith* hath declared upon his Oath, That they came both together out of the Coffee-houſe; and you hear what his Witneſs Mr. *Smith* the Counſellor ſays: He does not poſitively remember that Circumſtance, yet one would think he ſhould; for *Oates* ſays, Mr. *Smith* the Lawyer walked juſt before them, and *Colledge* followed. Mr. *Smith* that is the Witneſs for the King, he ſwears he came along with *Colledge*, but Mr. *Smith* the Lawyer being aſked that Queſtion, he does not remember that. Then another Thing is, Dr. *Oates* ſays, when they were there, *Colledge* was ſo far from diſcourſing of any treaſonable Matters, that he was very merry in the Company, and talking innocently; but Mr. *Smith* ſays, he was ſo far from being merry, or talking Treaſon, that he fell aſleep, and ſlept behind the Table. Gentlemen, theſe Objections you ſee what the Weight of them is, and how little the Evidence agree one with another; but there is nothing that does contradict Mr. *Smith* in his main Evidence. 'Tis poſſible they may not remember particular Circumſtances, whether Mr. *Colledge* and Mr. *Smith* came together; ſo they might come together for ought they know, and they may not remember any Circumſtance about their retiring, but they can't take upon them to ſwear it is not ſo, and their not remembering it does not prove it was not ſo, and the Circumſtance itſelf is ſo trivial, that there was no Neceſſity they ſhould remember it. So then no Evidence that comes from Dr. *Oates* can take off that that is given by *Smith*; though if Mr. *Smith* were out of the Caſe, and Mr. *Haynes* too, yet there is Evidence ſufficient from Mr. *Dugdale* and Mr. *Turbervile*, who are not impeached, and are both of them poſitive both to the Fact and to the Place.

There are two Witneſſes more that I muſt mention, and they are *Bolron* and *Mowbray*; they ſwear that *Smith* travelling upon the Road with them, would have ſuborned them to ſwear againſt *John Brooks*, about a Diſcourſe at ſome Place; but it happened, Gentlemen, they differ in point of Time in their Teſtimony; the one ſaid it was the 25th of *July*, the other was poſitive it was the 3d of *Auguſt*. But I think I need ſay no more to theſe Men, but only to deſire you to weigh their Credit.

Bolron and *Mowbray*, I confeſs, have been Evidence againſt ſeveral Men that have been accuſed of the Popiſh Plot, but they have been ſo unfortunate as never to gain Credit with any Jury. Mr. *Smith* hath been believed by the whole Court of Parliament: But if there were no more in the Caſe, theſe are two Men that never were yet believed, Men that have been ſworn and their own Jury have rejected the Credit of their Teſtimony: But beſides that, comparing the Teſtimonies and the Differenee that was between them, is a ſufficient Evidence to confront all that they have ſaid.

I think, Gentlemen, this is the Subſtance of what hath been offered by his Witneſſes, againſt the Witneſſes produced for the King, except that of Mr. *Everard*, who ſays ſomething againſt *Haynes*, that *Haynes* ſhould ſay, he ſwore for ſelf-preſervation. And againſt Mr. *Smith* he ſays, that he heard him ſay, he did not know of any Preſbyterian Plot. I believe that may be true, and yet it does not contradict *Smith*'s Evidence againſt *Colledge*; for Mr. *Smith* does not tell you, that he was privy to any ſuch Deſign of the Preſbyterians, that he knows of any Conſultations that they held, or the Ways and Means by which they would arrive at the Treaſon charged upon the Priſoner at the Bar; but his Evidence is, That this Man declared there was ſuch a Deſign, That there was a party would do it, and That he would be ſure to be one, and armed himſelf for that Purpoſe: But his not being privy to any Plot, or knowing the Particulars, is no Contradiction to what he ſaid.

This is that he hath produced for his Defence, and by theſe Things he hath endeavoured to take off the Credit of our Witneſſes, and he would have you believe that he is a very good Proteſtant, though he does that which no Proteſtant would do, and which is the Papiſts Work; he hath produced you Witneſſes, that he has gone to Church, but I do not ſee he hath produced any Witneſſes at all that are now converſant with him, his own Pariſhioners in *London*; but if he had brought never ſo many Witneſſes of his going to Church, and of his Conformableneſs to the Church, yet if he were guilty of theſe Practices, he muſt give me Leave to ſuſpect the Truth of his Profeſſion; and I think it a great Piece of Arrogance for him to take upon him the Title of a Proteſtant, when he hath abuſed that Title by ſuch unſuitable Practices: And, Gentlemen, if ſuch Practices as theſe are, which we have fully proved, are ſuch as all good Men muſt abhor, I cannot but reflect upon the Condition of this Man, whoſe only Hope is, that you ſhould now forget yourſelves, and become as ill as he is. But as that cannot be preſumed, ſo I ſhall not need to ſay any more to you; you are Men of that Conſideration, that can judge between Things, and the Appearances of them, and you know very well how to give the due Weight to the Evidence we have given to you, as well as the Objections made by the Priſoner; and ſo, Gentlemen, I ſhall leave it to you.

Mr. Serj. *Jefferies*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, it hath been a long Time that hath been ſpent in the Courſe of this Evidence; whether there has been any Art or Deſign in protracting the Time, on Purpoſe to obtrude upon the Patience of the Court, or that you, Gentlemen, ſhould forget the Force of the Evidence that hath been given againſt the Priſoner at the Bar, when there hath been ſo much Time taken up unneceſſarily, when there was no Occaſion, as I muſt needs ſay, there was not for ſuch a tedious Defence, I leave it to you to determine: But which was truly intimated by the Court at the Beginning of the Trial, muſt in the End of this Cauſe be repeated, and indeed go through it all, that what we of the King's Council, and what the Priſoner has affirmed, that has not been given in Proof, ſignifying nothing, and is not to be any Guide at all to you. You are upon your Oaths, and by the Oath you have taken, you are bound in Conſcience to give a Verdict according to the Evidence that has been given to you, and that is your Guide; ſo that what we opened and have not proved, is no more to be believed, than what the Priſoner has ſaid for himſelf in his own Defence; and whatſoever he ſays, if he make not good Proof of it, is no more to be regarded, than what we who are for the King have alledged, and not made out.

So then this being in the firſt Place premiſed, I ſhall take Care as near as I can to ſave the Time of the Court, and not to treſpaſs on your Patience, Gentlemen, unneceſſarily, in a Caſe whereupon as great a Concern does depend, as perhaps ever came to Trial at any Bar: For, I ſay, 'tis a Caſe wherein the Life and the Liberty of the King is concerned, and that is the great Concern of the Nation; then the Religion of the Nation is concerned; I would be underſtood aright, I mean the Proteſtant Religion eſtabliſhed by Law; for I know of no other Religion men ought to ſacrifice their Lives and Fortunes for, but the Proteſtant Religion eſtabliſhed by Law; and when theſe Things are concerned, 'tis a Caſe of great Conſequence: God forbid any Perſon, Proteſtant or other, ſhould attempt the Life of the King, and the Subverſion of our Religion, and by ſtiling themſelves by the Name of Proteſtants, ſhould excuſe themſelves from any ſuch Crimes.

For the Evidence that has been given, I ſhall not enumerate the Particulars againſt the Priſoner at the Bar, other than ſuch as have been omitted, (if I miſtake not) by Mr. Sollicitor.

In the firſt Place, there are the Things that happened at *Oxon*, for you have had it already ſufficiently told you by my Lords the Judges who are upon the Bench, and who (under Mr. *Colledge*'s Favour) are the Priſoner's Judges in Point of Law, as you are his Judges in Point of Fact. They have (I ſay) already told you what the Law is in Relation to Treaſons; that in Caſe the Treaſon be in two Counties, if the Witneſſes ſpeak to the ſelf ſame Treaſon, though to different Facts, that will be two Witneſſes to prove High-Treaſon; and that there hath been ſuch a Caſe, the Priſoner at the Bar, who ſays he is a Proteſtant (for his own Soul's Sake I wiſh he were a good one) muſt take Notice, that *Gavan*, the great Prieſt who was tried at *Newgate*, and convicted, by what Evidence? By one of them that is a Witneſs now againſt the Priſoner at the Bar, that is, *Dugdale*; his Treaſon was committed part in *London*, part in the Country, of which part *Dugdale* gave Evidence; but being both to the ſelf ſame Purpoſe, by the greater Part of the Judges, who were in the Commiſſion, and preſent at the Trial, they were reckoned a ſufficient Teſtimony to prove him guilty of High-Treaſon: And I hope we do not live to that age, that any Proteſtant whatſoever ſhould come to trip up the Heels of the Popiſh Plot; by ſaying, that any of them who ſuffered for it, did die contrary to Law, or without ſufficient Proof: For if Mr. *Dugdale* was not a Perſon fit to be believed; or if the reſt of the Judges who tried *Gavan* were out in the Law, then that Man died wrongfully; for he had as much Right to have been tried according to the Law, as any other Perſon whatſoever. Therefore, Gentlemen, as to that Matter, we muſt ſubmit it to my Lords the Judges, who are to give you an Account what the Law is in all Particulars before you; but as to the Fact whereof you are Judges, that is the great Matter we ſhall apply ourſelves to, and for that it ſtands thus.

Here is *Dugdale* that does give you an Account what his Deſign was in coming to *Oxford*; how he came to be armed as an Index (Gentlemen) of his Mind. And pray give me Leave to put you in Mind of one Thing. You have firſt a Libel produced and read to you; a pretended Letter, wherein there are Queries that have been taken Notice of, and which ſeem to back the Evidence given by Mr. *Maſters*: For there is a Vindication in thoſe Queries of the Proceeding of the Parliament of 41, which he has Confidence enough now at the Bar to juſtify too. But, Gentlemen, you were told by the Court, and you know it, that that Parliament was guilty of high Rebellion; and even in thoſe Queries he aſperſes not only the Government, but every Man that has any Concern in it; for it takes Notice not only of the King, but of all his Council. Never a Judge nor an Officer in the Nation but is traduced by it; and which is the moſt material, it was the Foundation of that Libel which has been mentioned to you, and which *Fitz-Harris* was ſo juſtly condemned and executed for; that moſt traiterous and infamous Libel in part of it has theſe Queries, and a great Paragraph of this Libel makes up Part of that Libel of *Fitz-Harris*, which our Witneſſes ſay, Mr. *Colledge* was pleaſed to affim was as true as God is in Heaven. Another Thing is this, this Gentleman, whoſe proper Buſineſs it had been to manage his Employment at *London* for a Joiner, is beſt ſeen in his proper Place, uſing his proper Tools of his Trade. I think it had been much more proper for him, and I believe you will think ſo too, than to come with Piſtols and thoſe Accoutrements about him, to be regulating of the Government; what have ſuch People to do to interfere with the Buſineſs of the Government? God be thanked, we have a wiſe Prince, and God be thanked he hath wiſe Counſellors about him, and he and they know well enough how to do their own Buſineſs, and not to need the Advice of a Joiner, though he calls himſelf *the Proteſtant Joiner*. What had he to do to engage himſelf, before his advice was required? How comes he to concern himſelf ſo much that after he had writ this Libel, wherein he is pleaſed to take notice of Tyrants, afterwards ſhould go to make a Print, I mean the *Rary Shew*? And when *Dugdale* comes to enquire of him, what do you mean by ſuch a Thing, *The Tyrant ſhall go down?* Says he, I mean by that, *the King*. And what do you mean by having them to go to *Breda?* Why, there he explains it, that he puts all the Government, the Lords and the Biſhops upon the King's Back, and being aſked what he meant to have done with them, Why, the Biſhops, and the King, and all were to go to *Breda*. Theſe are the Things that himſelf did acknowledge he was the Author of, and theſe Prints he did cauſe to be made, and he is the Perſon that gives you an Account, that it was but the Conception and Imagination of *Dugdale*, that *Rowley* meant the *King*; but *Dugdale* being called again, he tells you after ſome Time, that he was under ſome Difficulty to know the Meaning of it; and then *Colledge* tells him it was meant the King, and ſome expounded it to him. And ſo *Smith* tells you of the ſame Name of *Old Rowley* again. Gentlemen, thus I tell you what hath been omitted. The Evidence hath been long, and therefore we muſt be pardoned, if we can't exactly repeat it. This is the Evidence that was done at *Oxon*, the next is Mr. *Smith*, who ſpeaks of what was done in *London*, and he is an Evidence both as to the Word *Rowley*, as to the coming with arms, and as to the declaring to what End he came, and what he had done. Mr. *Haynes*, he tells you, both before and after the ſame, and that I muſt take Notice of to you, Mr. *Smith* does particularly ſay, he uſed thoſe Words, which I hope every honeſt Man, and every good Man, that deſires to preſerve the Government according to Law, will hear with the greateſt Deteſtation and Abhorrence; he talked of the taking away the Life of the late King of bleſſed Memory at ſuch an impudent Rate, that every true Proteſtant's Blood would curdle at the hearing of it. And this he ſaid not only to Mr. *Maſters*, but he juſtified it to Mr. *Smith* too.

In the next Place you have *Turbervile*, who gives you all the Reaſons, how he did not only tell of theſe Things himſelf, but encouraged him to prepare himſelf accordingly, and he gave him a Mark, a Ribbon with *No Popery, no Slavery*. Theſe were Marks whereby they were to be known, and they were to be one and all, as they call it, that when ſuch a Blow was ſtruck, they would be ready to fall in. There is one Thing more that I take Notice of, that is, what was ſaid by a Gentleman, Sir *William Jennings*, which is a Confirmation of all the other Evidence, that Gentleman who hath appeared to you to be a Man of Honour, even by the Confeſſion of Mr. *Colledge* himſelf, and by his own Words; for he ſaid like an honeſt Man, and like a loyal Man too, that he would rather engage himſelf in three Dangers for the Service of the King at Sea, than come in cold Blood to give Evidence againſt a Man for his Life at the Bar. And yet this Man who tells you of this himſelf, and that very Perſon whom *Colledge* himſelf calls a worthy Perſon, hath given you this Account, that when he told him his Noſe bled, he anſwered him, *It was the firſt Blood loſt in the Cauſe, but it would not be long ere there was more loſt*: An excellent Cauſe for a Man to venture his Blood in. When he was told of this, he began to put it off, and to uſe his own Words, had a great Mind to ſham off the Buſineſs, but in Truth there was no Anſwer given to it. Gentlemen, the Objection that hath been made againſt the Evidence that have not been taken Notice of, I deſire to take Notice of. I think againſt three of them there has been only Mr. *Oates*, and Mr. *Oates*, I confeſs, has ſaid, *in verbo Sacerdotis*, ſtrange Things againſt *Dugdale*, *Smith*, and *Turbervile*: I have only the Affirmation of Mr. *Oates*, and as ill Men may become good Men, ſo many good Men become ill Men; or otherwiſe I know not what would become of ſome Part of Mr. *Oates*'s Teſtimony. And in the next

Place, if theſe Men have not ſworn true, I am ſure Mr. *Oates* muſt ſtand alone in the greateſt Point, in which all the Evidence agree, that is, the Popiſh Plot.

But, Gentlemen, I muſt take Notice to you, that it is ſtrange to me, that ever you, upon your Conſciences, ſhould perjure three Men, who poſitively upon their Oaths deny any ſuch Diſcourſes as Mr. *Oates* ſpeaks of againſt them, I do put that upon your Conſciences, whether you, upon the bare Affirmation of Mr. *Oates*, in this Place, will convict three Men, upon whoſe Teſtimony the Lives of ſo many as have ſuffered, have been taken away, and, as we Proteſtants do believe, juſtly. I ſay, whether you will do it upon the bare Affirmation of Mr. *Oates*, againſt their Oaths.

In the next Place, Gentlemen, I muſt tell you, beſides the poſitive Evidence of theſe Gentlemen, there is Circumſtance of Improbability in the very Words he ſpeaks of. Will any Man tell me, that after ſuch Time as Men have given their Oaths, as *Smith* had given his that he was concerned, and ſo had *Dugdale* and *Turbervile* too, that theſe Men ſhould come and voluntarily tell Mr. *Oates* they were all forſworn, are theſe Men ſuch great Coxcombs as he would have us to believe? Is it ſo probable a Thing, that any Men of common Knowledge would do it? Do you think a Man of that Knowledge and Conſideration, as *Smith* is, an allowed Scholar, and a Man of known Learning; and Mr. *Dugdale*, who has been reckoned by all Men to be a good Evidence; Do you take theſe Men to be ſuch abſolute Novices, that they muſt ſeek an Occaſion to tell him they were bribed off, and were forſworn? If you can think this, and if a bare Affirmation againſt theſe poſitive Oaths can prevail; Gentlemen, upon your Conſciences be it.

In the next Place, 'tis a ſtrange Sort of Thing to believe Mr. *Smith* ſhould come out of a Coffee-houſe, where a Quarrel is pretended to have been between him and *Colledge*; but Mr. *Smith* does, upon his Oath, ſay, he never had any ſuch Quarrel with him, and that he ſhould fall a damning and ſinking againſt *Colledge*, and againſt the Goſpel, that there ſhould be ſuch Impudence in the World in any Man as to deſire or wiſh ſuch a Thing: Gentlemen, theſe are ſtrange Sorts of Apprehenſions, and Men muſt have very ſtrange Thoughts, that can ſtrain themſelves up to the Belief of them.

In the next Place, here it is ſaid by the Priſoner, *Good Lord! What a Condition we ſhall be in! Here is a Plot upon the Proteſtants!* I hope in God there is no Proteſtant Plot, but I alſo hope the whole Intereſt of the Proteſtant Religion is not involved in the Priſoner at the Bar, and all will be deſtroyed, if Mr. *Colledge* dies for Treaſons. Gentlemen, the Queſtion is not, whether there be a Preſbyterian or a Proteſtant Plot, we declare we know of none; but whether the Priſoner at the Bar have ſpoken ſuch Words, and done ſuch Things as are ſworn againſt him. And I would fain know what all the Diſcourſes we have had about *Iriſh* Witneſſes and Papiſts ſignify, when in all the Courſe of our Evidence, there has been but one *Iriſh*, and never a Papiſt: But here have been great Diſcourſes about *Macnamarra*, and *Denis*, and what it hath been for, but to make a Noiſe and raiſe a Duſt, I can't tell, for in this Caſe there has not been one *Iriſh* Man beſides *Haynes*, and never a Papiſt throughout the whole Evidence: So that it is eaſy, if Men think it will take with the Auditory, for a Perſon to cry our, *O Lord! We are all like to be undone, here are* Iriſh *Witneſſes brought againſt us.* And yet, after all this Stir, there is but one *Iriſh* Witneſs, and never a Papiſt. And as for him, truly, Gentlemen, I muſt take Notice, that even *Colledge* himſelf, till ſuch Time as he was taken, reckoned him an honeſt Man.

Colledge. Never in my Life.

Mr. Serj. *Jefferies.* It was ſo ſaid. But I do ſay, Gentlemen, ſuppoſe (which I do not admit) that the *Iriſh* Man he ſpeaks of be out of the Caſe; not that the Country is an Objection againſt any Man's Teſtimony, God forbid it ſhould be ſo affirmed; for Truth is not confined to Places, nor to Perſons neither, but applied to all honeſt Men, be they *Iriſh* Men or others; but I ſay, ſet Mr. *Haynes* out of the Caſe: Suppoſe there was no ſuch Man as *Haynes* in this Caſe; yet I muſt tell you, Gentlemen, you have as great a Proof as poſſibly can be.

In the next Place, I muſt take Notice to you of ſome Account that hath been given of him by himſelf: It is wonderful ſtrange, when there was that Kindneſs of Intimation given by the Court, that he ſhould do well to prove his Loyalty, as well as his Religion, but he did not produce ſome of his later Acquaintance. If this Man that makes himſelf a Proteſtant, would have it believed he is ſuch, I wiſh he would have brought ſome of theſe Men that knew him at *London*, to give you ſome Account of him, and not to ſtretch backward ſixteen Years to prove his Birth and Education; that is not the beſt Account ſure a Man can give of himſelf, to ſay, after he hath been talking at this diſloyal Rate, that he is a good Proteſtant, becauſe he was thought ſo eighteen Years ago.

Again, in the next Place, here is an Account of the Libel given by the old Woman that is his Siſter; truly ſhe would have it, and that is another Libel at the Bar, as though the Man in the red Coat, with *R. C.* upon it, had dropped this Kind of Libel in his Houſe, and ſo he, or ſome Body elſe, put a Trick upon him; and becauſe ſhe would inveigle you to ſuch an Interpretation, ſhe ſays, that they ſtaid behind till the Man in the red Coat had fetched away the Shavings, and ſo here is a new ſham Plot to be put upon the Priſoner, by dropping Papers in his Houſe; a pretty Kind of Inſinuation. But, Gentlemen, againſt the Evidence of this Woman, you have the very Perſon that was there, the Officer, who ſwears, that he and his Fellows came before the Waterman into the Houſe: But I ſuppoſe, you obſerve how that notable talking Maid and ſhe do agree; for the Maid tells you, there came a ſtrange Fellow ſeven Weeks before, delivered theſe Things into her Hands, her Maſter was abroad, and ſhe was not to enquire whence they came, or what they were, but paid him ſix Pence for bringing thoſe Things. Now 'tis very ſtrange that the Maid ſhould pay for the bringing of thoſe Things, and yet after all ſhould imagine that Somebody elſe ſhould put them there.

But now, Gentlemen, in the next Place, I muſt tell you another Thing, which I would beg you to take Notice of: Here are two Gentlemen, Mr. *Bolron* and Mr. *Mowbray*, and they have given you an Account, that they have been Evidence againſt the Papiſts; they did well in it; but it hath been their Misfortune, hitherto they have not been believed; but whether they have been believed or not before, is no Guidance to you at this Time: But that which is to guide you is, whether or not they have given you now a Teſtimony that you in your Conſciences can believe. Now, can you believe what they have ſaid? Nay, can you believe it without any Circumſtance to confirm it, againſt thoſe expreſs Objections that ariſe from themſelves, and againſt the Oath of the Perſon, when the one tells you ſo exactly of the 25th, 26th, 27th, and 28th of *July*; and the other tells you, that *Smith* took Poſt, and yet overtook them not till the *Sunday* after, which was the third of *Auguſt*; and when the Almanack is produced, it was ſo far from making out what they ſpake of to be the ſame Time, that whereas one ſaid he came to *London* the 28, the other's Almanack ſays it was the 27th? Then pray how do theſe Perſons agree, when the one ſays, that Mr. *Smith* talked with him upon the Road the 28th, and the other ſays, that they came to *London* the 27th? Theſe are Circumſtances, Gentlemen, that you muſt weigh; and you may bring the North and South together, as ſoon as their two Teſtimonies, they are ſo far aſunder. Beſides, Gentlemen, I hope you take Notice of a Perſon that was ſworn, a Perſon of ſome Quality, a Scholar in the Univerſity here, that ſays *Bolron* (though he denied it) did ſhew him one of theſe Pictures, and did diſcover they were Mr. *Colledge*'s; and *Bolron* himſelf, his own Witneſs, tells you, that he did acknowledge one of thoſe Pictures was his. It appears then how buſy he was, and concerned himſelf in what belonged not to his Profeſſion.

So that, upon the whole Matter, after this long Evidence that hath been given, I muſt wholly appeal to your Lordſhips and the Jury; as to the Law, to your Lordſhip and the Court; and as to the Fact, to the Jury: For I do not deſire any Sort of Evidence ſhould be ſtrained againſt a Priſoner at the Bar, who there is to be tried for his Life. God forbid, if he be innocent, but he ſhould be acquitted; but, on the other Side, conſider the Murder of that great King of ever bleſſed Memory is before you, and remember that baſe Reflection which the Witneſſes tell you of upon that horrid Action; and as a great Evidence, remember that ſeeming Vindication of it at the Bar, which certainly no *Engliſhman*, no Proteſtant, according to the Church of *England*, can hear without having his Blood ſtirred in him. And theſe Things are not only teſtified by *Dugdale* and *Smith*, but by Gentlemen of known Reputation and Quality; and he hath a little diſcovered himſelf by that Defence he hath made againſt their Teſtimony. But know, Gentlemen, that the King is concerned, your Religion is concerned, that Plot that is ſo much agreed to by all Proteſtants is concerned; for if *Dugdale*, *Smith*, and *Turbervile* be not to be believed, you trip up the Heels of all the Evidence and Diſcovery of that Plot. Then I will conclude to you, Gentlemen, and appeal to your Conſciences; for according to the Oath that has been given to you, you are bound in your Conſciences to go according to your Evidence, and are neither to be inveigled by us beyond our Proof, nor to be guided by your Commiſeration to the Priſoner at the Bar againſt the Proof; for as God will call you to an Account, if you do an Injury to him, ſo will the ſame God call you to Account, if you do it to your King, to your Religion, and to your own Souls.

L. C. J. Gentlemen, I ſhall detain you but a little, and ſhall be as ſhort as I can, for your Patience has been much exerciſed already: It is a Burden, and a neceſſary one, that lies upon us all, for there is nothing more neceſſary, than that ſuch Trials as theſe ſhould be intire and publick, intire for the Diſpatch of them, and publick for the Satisfaction of the World, that it may appear no Man receives his Condemnation without Evidence, and that no Man is acquitted againſt Evidence.

Gentlemen, there are theſe two Conſiderations in all Caſes of this Nature; the one is, the Force of the Evidence; the other is, the Truth of the Evidence. As to the Force of the Evidence, that is a Point of Law that belongs to the Court, and wherein the Court is to direct you; as to the Truth of the Evidence, that is a Queſtion in Fact ariſing from the Witneſſes, and muſt be left upon them, whereof you are the proper Judges.

As to the Force of the Evidence in this Caſe, it muſt be conſidered what the Charge is; it is the compaſſing the Death of the King, and conſpiring to ſeize the Perſon of the King, which is the ſame Thing in Effect; for even by the Common Law, or upon the Interpretation of the Statute of the 25th of *Edw.* III. that mentions compaſſing the Death of the King to be Treaſon, it hath always been reſolved, That whoſoever ſhall imagine to depoſe the King, or impriſon the King, are guilty of imagining the Death of the King; for they are Things that depend one upon another: And never was any King depoſed or impriſoned, but with an Intention to be put to Death; they are in Conſequences the ſame Thing.

Now, Gentlemen, in Caſes of Treaſon the Law is ſo tender of the Life of the King, that the very Imagination of the Heart is Treaſon, if there be any Thought concerning any ſuch Thing; but then it muſt be manifeſted by ſome Overt-Act, upon the Statute of the 25th *Edw.* III. but upon the Statute of the 13th of this King, made for the Preſervation of the King's Perſon, if it be manifeſted, be malicious and adviſed ſpeaking, 'tis ſufficient. This is as to the Charge, and as to the Law concerning that Charge, I muſt tell you, there muſt be two Witneſſes in the Caſe.

Now then, for the Force of the Evidence, the Queſtion will ariſe here, whether this Evidence, admitting it to be true, is ſufficient to maintain the Indictment; ſo that if there be two Witneſſes, you muſt find him guilty. Now as to this, Gentlemen, the Priſoner has before-hand called upon the Court, and had their Reſolution; and I hope you will remember what hath been ſaid, and I ſhall have Occaſion to trouble you the leſs. There have been ſix Witneſſes produced for the King; there are two of them, Sir *William Jennings* and Mr. *Maſters*, that are ſome way applicable to the Caſe, though they do not go to the Treaſon, they are only to infer the Probability of the Treaſon. This of Sir *William Jennings*, was upon the Occaſion of the bleeding of the Priſoner's Noſe, after his Quarrel with *Fitz-Gerald*, when he ſaid, *He had loſt the firſt Blood, and it would not be long ere there would be more loſt*; which ſhews there were ſome extraordinary Thoughts in his Heart, concerning ſome Diviſions, Quarrels, and

Fighting that he expected ſhould be. That which Mr. *Maſters* has ſaid beſides what he offered concerning his Principles in juſtifying the long Parliament) was this, That when he called him Colonel, *Marry mock not*, ſaid he, *I may be Colonel in Time*; that ſhews ſome extraordinary Thoughts were in his Heart.

Colledge. *Will not that bear a more favourable Interpretation, my Lord? Muſt that neceſſarily follow upon my ſaying*, I might be a Colonel in Time; *and* that more Blood would be loſt? *if I had expreſſed it ſo.*

L C. J. I ſay, you had ſome extraordinary Thoughts in your Heart.

College. *I am, ſure, fitteſt to explain my own Thoughts.*

L. C. J. You would have done well to have explained it which Way you expected to be a Colonel.

Colledge. *Is was not an Expectation, for a may be may not be; my Word was*, Mocking is catching: *I thought he had called me Couſin.*

L. C. J. Well, Gentlemen, theſe are Witneſſes, I ſay, that go not to the Treaſon, but only relate and reflect ſomewhat, to ſhew there were Thoughts in his Heart; but nobody could tell what they were, or know what he meant by them.

Colledge. *Then they are always to be taken in the beſt Senſe.*

L. C. J. For the other Witneſſes, *Stephen Dugdale*, *John Smith*, *Bryan Haynes*, and *Edward Turbervile*, they are all of them, taking what they ſay to be true, very full Witneſſes. The Priſoner hath objected as to two of them, becauſe they ſpeak to nothing that was done in *Oxfordſhire*; but *Turbervile* and *Dugdale* they ſpeak to what was ſaid in *Oxfordſhire*. Now for that I muſt tell you, if you believe any of theſe Witneſſes, as to what was ſaid in *Oxford*, and any of them as to what was ſaid in *London*, relating to the ſame Fact of Treaſon, they will be two good Witneſſes to maintain the Indictment, though the one is in the one County, and the other in another; for if a Treaſon be committed in two Counties, it is the King's Election where he will exhibit the Indictment, and the Evidence from both Counties is good Evidence; that I take for Law; and theſe four Witneſſes, with that Conſideration that they are true, as I think, are full Witneſſes to maintain this Indictment.

Why then, the next Head is concerning the Truth of this Evidence of which you are to be Judges, and you are the proper Judges whether the Witneſſes ſpeak true or no; therefore you muſt have your own Conſciences to direct you in that Caſe, and what I ſhall ſay about them, ſhall be only for your Aſſiſtance.

Gentlemen, I ſhall not take upon me to repeat the Evidence to you, it has been long; and for me to ſpeak out of Memory, I had rather you ſhould recur to your own Memories, and your own Notes; only I ſhall ſay ſomething in general to contract your Conſideration of it.

And, as I told you at firſt, you muſt mind nothing of what the King's Council ſaid, for nothing muſt have Impreſſion upon you, but what they proved; ſo you are not to conſider any thing of the Facts the Priſoner ſpeaks of, that are not proved neither; for common Juſtice is concerned in it, and no Juſtice can be done at that Rate, if the Priſoner's own Affirmations or Purgations ſhould be taken. No Man ever can be accuſed, but he will be ready to ſay he is innocent, and ſay as flouriſhing and popular Things as ever he can for himſelf. And therefore theſe Things muſt not weigh with you farther than as was ſaid, argues upon the Proofs you have had. And you are to conſider upon the Proofs what the Priſoner has produced, not what he ſays; on the other Side, for the Proofs you have heard a great many Witneſſes in general produced by him, that ſay he was bred a Proteſtant, and has been an honeſt Man, that they knew no ill by him; that will be of little Weight in a Caſe of this Conſideration; for unleſs he was a Man that had committed Treaſon to the Knowledge of all the World, there is no Man but can produce Witneſſes that know no ill of him, nor any Treaſon nor Harm in him; wherefore the Queſtion will lie upon the Credit of the Witneſſes produced for the King barely, and that will be the Conſideration you are only to have, and you are to weigh them in the Balance againſt the Witneſſes produced againſt them.

Now, Gentlemen, for theſe Witneſſes, I ſhall not repeat them to you; but only this I ſhall obſerve in general, that *Dugdale* and *Turbervile*, that are the two moſt material Witneſſes relating to what was ſpoken in *Oxfordſhire*, have the leaſt ſaid againſt them. I do not remember, I profeſs to you, I do not (but your own Notes muſt guide you) that there was any very material thing ſaid againſt them, except what is ſaid againſt them by Dr. *Oates*, and Dr. *Oates* does ſay againſt *Smith*, that he came out of the Coffee-houſe, and ſwore damn him he would have *Colledge*'s Blood; and when he reproved him, he ſaid it was not fit for a Miniſter of the Goſpel to uſe ſuch Expreſſions, he ſaid, God damn the Goſpel; if that be true, 'tis a great Reflection upon the Credit of *Smith*. He ſays as to *Dugdale*, that when he was expoſtulating with him about his Evidence, he excuſed himſelf, that he was in want of Money, and was preſſed to it, and being aſked, he did ſay, he was preſſed to ſwear againſt his Conſcience, he ſaid yes; and much of the ſame Kind he ſays as to *Turbervile*, that he ſaid he was deſerted, and would not ſtarve. Now all theſe three Witneſſes being called upon their Oaths, deny that which Dr. *Oates* teſtifies. Now if it were in an indifferent and probable Matter to have three Men condemned, and ſet aſide by the Teſtimony of one, is not equal, unleſs the Man were of mighty extraordinary Credit, and his Teſtimony of more than ordinary Weight. But then I muſt tell you, this Matter is very improbable, that after Witneſſes had ſworn a Thing, they ſhould voluntarily acknowledge themſelves to be forſworn, and that without any Provocation, they ſhould at ſeveral Times come to this one Man, and declare themſelves Rogues and Villains; but if it were probable, here are three Men's Oaths againſt one Man's Affirmation; this I ſay, as to what concerns *Dugdale* and *Turbervile*, I do not ſee any Thing material againſt them; beſides, now if you believe them, they are two Witneſſes to the full Matter of the Indictment, and two Witneſſes to what was done in *Oxfordſhire*, and that ſatisfies all the Conſiderations of the Law.

As to the Reſt of the Witneſſes, *Bryan Haynes* and *John Smith*, you have had many Witneſſes produced againſt them, I ſhall not undertake to repeat the Evidence, 'tis your Place and Duty to weigh their Teſtimony, and I ſhall leave it to your Conſideration.

Mr. Juſt. *Jones.* I ſhall add nothing to what my Lord hath ſaid, nor indeed can.

Colledge. My Lord, I wiſh you would look upon your Notes, you would then find there was much more Evidence, that you have not repeated, againſt *Turbervile* and *Dugdale*, beſides what your Lordſhip urged.

L. C. J. If there be, I refer it to the Memory of the Jury, I can remember no more.

Colledge. I deſire nothing but Juſtice, and true Juſtice.

L. C. J. I am ſure I deſign nothing elſe, you are a Stranger to me; I believe I have ſeen your Face, but I never knew you by Name till now. Look you, if the Jury be like to ſtay, they may take ſomething to refreſh themſelves at the Bar before they go.

Colledge. My Lord, I did ſee when the Bill was brought againſt my Lord *Howard*, Mr. Attorney General and Mr. Sollicitor were an Hour and Half with the Grand Jury.

Mr. Serj. *Jeff.* You muſt ſay nothing now.

Colledge. Let me have Juſtice done me, my Lord, that's all I crave, that nobody may be with the Jury.

L. C. J. Look you, Mr. *Colledge*, they might be with the Grand Jury, but as to the Petty Jury, there ſhall be a Bailiff ſworn, and neither Mr. Attorney, nor Mr. Sollicitor, nor nobody elſe ſhall come to them till they be agreed of their Verdict.

Mr. Juſt. *Jones.* If that be the Thing you aſk, you ſhall have it according to the Law.

Colledge. And any Friend of mine may be by.

L. C. J. There ſhall be an Officer ſworn to keep them.

Then the Court called for two Bottles of Sack, which the Jury divided among themſelves at the Bar, for their Refreſhment, in the Preſence of the Priſoner.

After which a Bailiff was ſworn, and the Jury withdrawing to conſider of their Verdict, the Court adjourned for Half an Hour, and when they returned, Proclamation being made for Attendance, the Court ſent to ſee whether the Jury were agreed, who immediately came into Court.

Cl. of Cr. Gentlemen, are you agreed of your Verdict?

Om. Yes.

Cl. of Cr. Who ſhall ſay for you?

Om. Foreman.

Cl. of Cr. *Stephen Colledge*, hold up thy Hand. Look upon him, you of the Jury: How ſay you, is he Guilty of the High Treaſon, whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. Look to him, Gaoler, he is found Guilty of High Treaſon; what Goods, *&c.*

At which there was a great Shout given; at which the Court being offended, one Perſon who was obſerved by the Crier to be particularly concerned in the Shout, was committed to Gaol for that Night, but the next Morning having received a publick Reproof, was diſcharged without Fees.

Then, it being about three o'Clock in the Morning, the Court adjourned to ten. At which Hour, the Court being ſat, and firſt Mr. *Aaron Smith* having entered into a Recognizance of 500*l.* to appear the firſt Day of the next Term, at the Court of *King's Bench*.

L. C. J. Where is the Priſoner, *Stephen Colledge?*

Cl. of Cr. Set up *Stephen Colledge.*

Then the Priſoner was brought to the Bar.

Cl. of Cr. Hearken to the Court, and hold up thy Hand: Thou haſt been indicted and arraigned of High Treaſon, and for thy Trial haſt put thyſelf upon thy Country, and they have found thee Guilty; what can'ſt thou ſay for thyſelf, why the Court ſhould not give Judgement on thee to die according to the Law?

Colledge. My Lord, I have nothing more to offer, but only that I am innocent of what is laid to my Charge; I think it was ſevere againſt me, now contrary to what was ſworn at *London*: They ſwear now, I was to ſeize the King at *Oxon*, in *London* they ſwore I would pluck the King out of *Whitehall*, but 'tis altered ſince, and now 'tis to ſeize the King at *Oxon*; but be it either one or t'other (for the one is as true as the other) I am wholly innocent of either, I never had ſuch a Thought in my Life, God forgive them that have ſworn againſt me; I have no more to ſay, my Lord.

L. C. J. Look you, Mr. *Colledge*, it is too late to profeſs your Innocence, you have been tried, and found Guilty; but becauſe you ſay ſo now, 'tis neceſſary for me to ſay ſomething in Vindication of the Verdict, which I think the Court were all very well ſatisfied with: There were ſufficient Proofs to warrant it, and the Jury did according to Juſtice and Right. I thought it was a Caſe, that as you made your own Defence, ſmall Proof would ſerve the Turn to make any one believe you Guilty. For as you would defend yourſelf by pretending to be a Proteſtant, I did wonder, I muſt confeſs, when you called ſo many Witneſſes to your Religion and Reputation, that none of them gave an Account that they ſaw you receive the Sacrament within theſe many Years, or any of them particularly had ſeen you at Church in many Years, or what Kind of Proteſtant you were. If we look to your Words and Actions, it is true, they did prove this, that you were mighty violent and zealous in crying out againſt Popery and the Papiſts; but if we look to your Actions, they favoured rather to promote the Papiſts Ends. For I muſt tell you, the Papiſts are beſt extirpated, and ſuppreſſed by a ſteady Proſecution of the Laws againſt them, not by violent Cryings-out, and putting the People into fervent Heats and Confuſions, for that is the Thing the Papiſts aim at; they have no Hopes any other Way to creep into the Kingdom, but by Confuſion, and after the Church is deſtroyed, that is under God the beſt Bulwark againſt them. But you that cried ſo loud againſt the Papiſts it was proved here, who you called Papiſts. You had the Boldneſs to ſay that the King was a Papiſt, the Biſhops were Papiſts, and the Church of *England* were Papiſts. If theſe be the Papiſts you cry out againſt, what a kind of Proteſtant you are, I know not, I am ſure you can be no good one. But of that thing, when you called ſo many Witneſſes to that Purpoſe, and if we look to your Politicks, what Opinion you had of the King, it was proved by your Diſcourſe, and by Witneſſes, that you could have no Exception to their Teſtimony, that you did juſtify the late horrid Rebellion, and the Conſequence of that was the Murder of the beſt King in the World, that you ſhould go to juſtify the Proceedings of that Parliament, and affirm that they did nothing but what they had juſt Cauſe to do. I ſay, he that will juſtify ſuch a thing, if there were the ſame Circumſtances, would do the ſame thing again.

Then if we look upon another Part of your Defence, as to your Arms, it was objected, you went armed to *Oxon*, and that was made the Evidence of the Overt-Act when you ſaid by Words your Intentions what you would do, that you would make one to ſeize the King; that you did go armed, you did confeſs; I expected you ſhould have ſaid, you only wore thoſe things for your own Defence upon the Road as a Gentleman travelling, or went with your Friends to accompany them out of Town, and defend them from Robbery; but you ſaid, you went to guard the Parliament. I did not underſtand what you meant by it. I do not believe the Parliament ſent for any Guard, or intended to have any Guard. I do not believe that any of them in their Hearts thought they needed a Guard; for I believe there was not a Man that had any thing that looked like that, or any thing of that Nature. For we ſaw, that when the King by the Neceſſity of his Affairs, when the two Houſes differed ſo much, was pleaſed to diſmiſs them; they all departed quietly, not a Man was ſeen to be diſturbed; there was no Appearance of any ſuch thing; and how it ſhould come into your Head, that were but a private Man, to go to guard the Parliament, I much wonder. Suppoſe all Men of your Condition ſhould have gone to have guarded the Parliament, what an Aſſembly had there been? what a Buſtle might they have made, and what confuſion might have been on a ſudden? And though you ſay you are no Man of Quality, nor likely to be able to do any thing upon the King's Guards, or the King's Perſon, yet if all of your Quality had gone upon the ſame Deſign that you did, what ill Conſequences might have been of it? We ſee what has been done by *Maſſianello*, a mean Man in another Country, what by *Wat Tyler* and *Jack Straw* in this Kingdom. I confeſs, I know not what you meant by it, but very ill things might have happened upon it.

So that theſe Things, when I look upon them, and conſider the Complexion of your Defence, it makes an eaſy Proof have Credit. But I think there was a full Proof in your Caſe; yet I ſay if there had been a great deal leſs Proof, the Jury might with Juſtice have found you Guilty. And becauſe you now declare your ſelf innocent of all you are charged with, I think myſelf bound to declare here in Vindication of the Country, and in Vindication of the Juſtice of the Court, that it was a Verdict well given, and to the Satisfaction of the Court, and I did not find my Brothers did diſlike it. This I ſay to you out of Charity, that you may incline your Mind to a Submiſſion to the Juſtice that has overtaken you, and that you may enter into Charity with all Men, and prepare yourſelf for another Life.

There is nothing now remaining, but to pronounce the Sentence which the Law provides for ſuch an Offence, which is this, and the Court does award,

> *That you* Stephen Colledge *ſhall be carried from hence to the Place from whence you came, and from thence you ſhall be drawn on an Hurdle to the Place of Execution, where you ſhall be hanged up by the Neck, and be cut down alive, your Privy Members ſhall be cut off, and your Bowels taken out and burnt before your Face, your Head ſhall be cut off from your Body, your Body be divided into four Quarters, which are to be at the King's Diſpoſe, and the Lord have Mercy upon you Soul.*

Colledge. Amen. My Lord, I would know what Time your Lordſhip is pleaſed to appoint for my Execution.

L. C. J. That will depend upon the King's Pleaſure, we do not uſe in theſe Caſes of High-Treaſon to precipitate the Execution; but we will leave ſuch Order with the Sheriff to receive the King's Pleaſure and obey it. He will not do it ſo ſudden, but that you ſhall have Notice to prepare yourſelf; but that depends upon the King's Pleaſure, for your Body is to be at his Diſpoſal.

Then the Court adjourned.

On Wedneſday 31 *of* Aug. 1681. *being the Day appointed by His Majeſty for his Execution, he was according to Sentence Executed over-againſt the Gate of the Caſtle at* Oxford.

When he was come to the Place of Execution, the High-Sheriff ſpoke to him as follows:

Mr. High-Sheriff. MR. *Colledge*, it is deſired, for the Satisfaction of the World, becauſe you have profeſſed yourſelf a Proteſtant, that you would tell what Judgment you are of.

Colledge. Dear People, dear Proteſtants, and dear Countrymen, I have been accuſed and convicted for Treaſon; the Laws adjudge me to this Death, and I come hither willingly to ſubmit to it: I pray God forgive all thoſe Perſons that had any Hand in it. I do declare to you, whatever hath been ſaid of me, I was never a Papiſt, or ever that Way inclined; they have done me Wrong; I was ever a Proteſtant, I was born a Proteſtant, I have lived ſo, and ſo by the Grace of God I will die, of the Church of *England*, according to the beſt Reformation of the Church from all Idolatry, from all Superſtition, or any thing that is contrary to the Goſpel of our bleſſed Lord and Saviour.

I do declare I was never in any Popiſh Service, Prayers, or Devotions, in my Life, ſave one Time; about ſome ſeventeen or eighteen Years ago, as near as I remember, I was, out of a Curioſity, one Afternoon at St. *James*'s Chapel, the Queen's Chapel at St. *James*'s; except that one Time, I never did hear any Popiſh Service, any thing of the Church of *Rome*, Maſs or Prayers, or any thing elſe, private or publick. I know you expect that I ſhould ſay ſomething as to what I die for: It hath been charged upon me, when I was apprehended and brought before the Council, ſome of the Council, the Secretary, and my Lord *Killingworth*, and Mr. *Seymour*, they told me there was Treaſon ſworn againſt me; truly, they ſurprized me when they ſaid ſo: For of all things in the World, I thought myſelf as free from that as any Man. I aſked them if any Man living had the Confidence to ſwear Treaſon againſt me? They ſaid ſeveral, three or four, as I remember: Then they told me, it was ſworn againſt me, That I had a Deſign to pull the King out of *White-Hall*, and to ſerve him as his Father was ſerved, or to that Purpoſe, the Logger-Head his Father, or that kind of Language: I did deny it then, and do now deny it upon my Death. I never was in any Manner of Plot in my Days, neither one way nor another; I never knew any ſuch Perſons, nor ever had ſuch Communication with any Man hitherto: I know of no Plot in the World but the Popiſh Plot, and that every Man may know as much as I: If I had ſuch a Deſign as theſe Men have ſworn againſt me, to have ſeized his Majeſty, either at *London*, or this Place at *Oxford*, I take God to Witneſs, as I am a dying Man, and upon the Terms of my Salvation, I know not any one Man upon the Face of the Earth that would have ſtood by me; and how likely it was that I ſhould do ſuch a thing myſelf, let the whole World judge.

Dugdale ſwears, that I ſpoke Treaſon to him, treaſonable Words in the Coffee-houſe, and in the Barber's Shop by the *Angel*; he could not pretend to ſee me any where elſe; but it is falſe, and a very unlikely thing that I ſhould ſpeak Treaſon to him. I muſt confeſs I was in his Company at the Coffee-houſe and that Barber's Shop, before I went out of Town: But there could be bo no Communication between us; for he was writing at one End of the Room, and eating a Piece of Bread, and I lighted a Pipe of Tobacco at the other End, and took it, till Sir *Thomas Player*, and Sir *Robert Clayton* came to me, and we went to my Lord *Lovelace*'s out of Town that Night; So when they came, we took Horſe, and went out of Town with the reſt: For my Part, I can't ſum up my Witneſſes; I was under moſt ſtrange Circumſtances as ever any Man was; I was kept Priſoner ſo cloſe in the *Tower*, that I could have no Converſation with any, though I was certain the Popiſh Lords had it every Day there, but I could have none: I could not tell the Witneſſes that were to ſwear againſt me; I could not tell what it was they ſwore againſt me, for I could have no Copy of the Indictment, nor no way poſſible to make any Preparation to make my Defence as I ought to have done, and might have done by Law.

I had no Liberty to do any thing, as I am a dying Man. And as to what *Dugdale*, *Smith*, *Turbervile*, and *Haynes*, ſwore againſt me, they did ſwear ſuch Treaſon that nothing but a Mad-man would ever have truſted any body with, and leaſt of all to Papiſts, every one of them that had been concerned with Plots and Treaſons among their own Party, and under the greateſt Ties and Obligations of Damnation; and to be ſainted if they kept it ſecret, and to be damned if they reveal it. If theſe Men will not keep Things private for their own Party, how could I truſt them? I take God to Witneſs, and do freely acknowledge, I have ſought my God with Tears ſeveral Times to inform me, if ſo be I had with any Word tranſgreſſed at any Time. I knew not of any Part of what they ſwore againſt me, till ſuch Time as I heard it ſworn againſt me at the Bar.

This is very hard, Gentlemen, but this is the Truth: and there be a great many other ſtrange Reports that I have heard ſince I have been a Priſoner; that I ſhould be a Means to convert the Counteſs of *Rocheſter*, by bringing one *Thomſon*, a Prieſt, to her. Truly, all that I was concerned in, was ſome fifteen or ſixteen Years ago. I lodg'd at Colonel *Vernon*'s, that married the Lady *Brooks*, the Family were Papiſts; the *Brooks*'s were Papiſts; and there was this *Thomſon*, and I did ſuppoſe him a Prieſt, in the Houſe, though I never ſaw him at Popiſh Service, or Worſhip, though I was there half a Year; but coming afterwards to my Lord *Rocheſter*'s about ſome Buſineſs I had to do for him, and ſeveral other Perſons of Quality; he ſent for me one Afternoon from the Parſonage in *Adderbury* to his Houſe, and his Lady and he ſtood together: He ſent to me, and aſked me, if my Horſe were at Home; ſaid he, I would have you carry this Letter to Mr. *Thomſon*, if you are at Leiſure this Afternoon: My Lord, I am at Leiſure to ſerve you; ſo I took a Letter from his Hand, and his Lady's too; as I remember (he made an Offer that way) ſealed with his own Seal, and I carried it to *Thomſon*, and delivered it to him: And he told me, that he would wait upon my Lord, for it was for ſome Lands my Lord did offer, to raiſe Money for ſome Occaſion: This is the Truth of that Scandal.

It is ſaid, that I had a Prieſt ſeveral Years in my Houſe, *viz. Sergeant*, that came over from *Holland* to diſcover. About ſome ten Years ago, that very ſame Man came to me, but was a Stranger to me, and he came to me by the Name of Doctor *Smith*, a Phyſician; and there was an Apothecary in the *Old-Bailey*, and a Linen-Draper within *Ludgate*, that came with him, they brought him thither, and took a Chamber, and he lay about half a Year, or three Quarters, at times, by the Name of Doctor *Smith*, and as a Phyſician; this is the Truth of that, and no otherwiſe. This is the Entertainment of *Sergeant*.

So the Occaſion of my coming to *Oxford* I do ſay was voluntary; the Parliament-men laſt Parliament at *Weſtminſter*, and ſeveral Lords, dined together the Day before they ſat; the laſt Seſſions of Parliament at *Weſtminſter*, they ſent for me to the *Sun*-Tavern behind the *Exchange*, and when I came, the Duke of *Monmouth*, and ſeveral Lords were together, and I believe above a hundred Parliament-men of the Commons: The Duke of

Monmouth called me to him, and told me, he had heard a good Report of me, that I was an honeſt Man, and one that may be truſted; and they did not know but their Enemies, the Papiſts, might have ſome Deſign to ſerve them as they did in King *James*'s Time by Gun-Powder, or any other Way: And the Duke, with ſeveral Lords and Commons, did deſire me to uſe my utmoſt Skill in ſearching all Places ſuſpected by them; which I did perform: And from thence I had, as I think, the popular Name of *The Proteſtant Joiner*, becauſe they had intruſted me, before any Man in *England* to do that Office.

This ſame *Haynes*, one of them that ſwore againſt me, had diſcovered to me, and ſeveral others, as to *Macnamarra* and his Brother, and this *Ivy*, who are now all of another Stamp, that the Parliament was to be deſtroyed at *Oxford*, and that there was a Deſign to murder my Lord *Shafteſbury*, by *Fitz-gerald* and his Party; and that they did endeavour to bring *Macnamarra* over to him, and ſaid, then it would be well with him; and they would not be long before they had *Shafteſbury*'s Life: And he made Depoſitions of this to Sir *George Treby*, as I heard afterwards, for I was not with him when it was ſworn. I wiſh the Commons of *England* as well as I wiſh my own Heart; and I did not underſtand, but when I ſerved the Parliament I ſerved his Majeſty too; and let them be miſerable that make the Difference between them, for my Part, I never did. I came to *Oxford* with my Lord *Howard*, whom I look upon to be a very worthy honeſt Gentleman, my Lord *Clare*, my Lord *Paget*, and my Lord *Huntington*, and this Captain *Brown*, and Don *Lewes*, were in my Company, and came along with us, as they were my Lord *Howard*'s Friends: *Brown* I have known, I believe, two or three Months; but *Lewes* I never ſaw before that Day; they ſaid they came with my Lord *Howard*. I take God to witneſs, I never had one Six-pence, or any thing elſe to carry on any Deſign; and if it were to ſave my Life now, I cannot charge any Man in the World with any Deſign againſt the Government, as God is my Witneſs, or againſt his Majeſty, or any other Perſon.

As for what Arms I had, and what Arms others had, they were for our own Defence, in caſe the Papiſts ſhould make any Attempt upon us by way of Maſſacre, or any Invaſion or Rebellion, that we ſhould be ready to defend ourſelves; God is my Witneſs, this is all I know. If this be a Plot, this was I in, but in no other; but never knew of any Numbers, or Times appointed for meeting; but we have ſaid, one to another, that the Papiſts had a deſign againſt the Proteſtants, when we did meet, as I was a Man of a general Converſation; and in caſe they ſhould riſe, we were ready; but then they ſhould begin the Attempt upon us: This was my Buſineſs, and this is the Buſineſs of every good Subject that loves the Laws of his Country and his King. For *England* can never hope to be happy under thoſe Blood-thirſty Men, whoſe Religion is Blood and Murder; which I do with all my Soul, and did, ever ſince I knew what Religion was, abhor and deteſt, *viz.* the Church of *Rome*, as pernicious and deſtructive to human Societies, and all Government.

I beſeech God that every Man of you may unite together as Proteſtants againſt this common Foe. Gentlemen, it is my Senſe, and I do in that believe, I am as certainly murdered by the Hands of the Papiſts, as Sir *Edmundbury Godfrey* himſelf was, though the Thing is not ſeen. Theſe Witneſſes certainly are mercenary Men, and I beſeech God Almighty to have Mercy upon their Souls, and forgive them; and either by his Judgments or Mercies reclaim them, that they ſhed no more innocent Blood: There is not a Man of them that I know of, that ever heard me ſay, or do, any bit of Treaſon in my Life. This is (the firſt, I may not ſay it is) but almoſt twentieth Sham-Plot that they have endeavoured to put upon the Nation, to delude the People, and put off their own damnable Plot. This is not the firſt, but I think, the ſixteenth or ſeventeenth; I pray God that my Blood may be the laſt. I pray God defend every Man's Blood, and all Proteſtants in *England*, from the Hands of theſe bloody Papiſts, by whoſe Means I die this Death; and if they ſhould go on in this Nature, I hope the good God will open every Man's Eyes to ſee it before he feels it. And, I beſeech you, if you have any Love for your King, your Country, and the Proteſtants, unite together, if you are Proteſtants. I pray God thoſe that deſerve the Name, let them be called how they will, either Diſſenters, or Church of *England* Men, that they may unite together like Men, like Chriſtians, againſt the common Foe, who will ſpare neither the one Side, nor the other, but beat you one againſt another like two Pitchers; the laſt that ſtands, they will certainly deſtroy if they can. This is my Senſe, and God is my Witneſs, I ſpeak my Conſcience. I do not know, Mr. *Sheriff*, whether there be any thing elſe I have to ſay, or no; we have a good God, and I beſeech every Man that hears me this Day, (for we live in a ſinful Age, good People, and it behoves every one of you, it cannot be long before all that look upon me in this Condition muſt lie down in the Duſt, and, God knows, muſt come into an eternal State, either for Mercy or for Judgment.) I beſeech you in the Name of God, he is a God of Mercy, and a God of Patience and Long-Suffering, that you would break off your Sins by Repentance, and ſerve a good God, who muſt be your Friend at laſt, or elſe you are loſt to Eternity.

O Lord how ungrateful Wretches are we, that have a God of ſuch infinite Mercy and Goodneſs, that affords us our Life, our Health, and a thouſand Mercies every Day; and we, like ungrateful People, not deſerving the Name of Men or Chriſtians, live riotous Lives, in Debauchery and Swearing, in Malice, and the Lord knows how many Evils? I beſeech God that I may be this Day a Means in the Hand of God, to bring ſome of their Souls over to him: I beſeech you, remember what I ſay; indeed I do not know, I have been ſo ſtrangely uſed ſince I have been a Priſoner, what to ſay, being brought from one Affliction to another, that my Body is worn out, and my Memory and Intellects have failed me much to what they were. I cannot remember what I have to ſay more, but that the Lord Jeſus Chriſt would bleſs my Country, and preſerve it from Popery, and in Mercy bleſs his Majeſty: Good God be merciful to him, make him an Inſtrument in thy Hand to defend his Proteſtant Subjects; Lord in Mercy defend him from his Enemies. Good God bleſs his People; Good Lord continue the Goſpel of Jeſus Chriſt, thy Goſpel, in it's Purity to us and our Poſterity, as long as the Sun and Moon endure. O Lord, ſave all that call upon thee; be merciful to all thy Servants, all thy People that put their Truſt in thee; good Lord deliver them from the Hands of their Enemies; good God, let their Lives, and Bodies and Souls, be all precious in thy Sight. O merciful God, put a Stop to theſe moſt wicked Conſpiracies of thy Enemies, and the Nation's Enemies, the Papiſts. Let no more Proteſtant Blood be ſhed but this of mine, I beſeech thee, O my God. O Lord look upon me, O Lord bleſs me, O good God receive me into thy bleſſed Preſence, by Jeſus Chriſt my alone Saviour and Redeemer, in whom I put my Truſt alone for Salvation: It is thee, O God, that I truſt in, thou righteous Judge of Heaven and Earth: all Popery, all Pardons, all Popes and Prieſts, all Diſpenſations I diſown, and will not go out of the World with a Lie in my Mouth. From the Sincerity of my Heart I declare again, that what I have ſaid to you is the very Sentiments of my Soul, as God ſhall have Mercy upon me, and to the beſt of my Knowledge.

I deſire the Prayers of you, good People, while I am here; and once more I beſeech you to think upon Eternity, every one of you that hear me this Day. The Lord turn your Hearts and Souls, if you have been wicked Livers; if you do live wicked Lives, the Lord in Mercy convert you, and ſhew you your Danger; for I as little thought to come to this as any Man that hears me this Day; and, I bleſs God, I have no more deſerved it from the Hands of Men, than the Child that ſucks at his Mother's Breaſt: I bleſs my God for it, and do ſay I have been a Sinner againſt my God, and he hath learnt me Grace ever ſince I have been a Priſoner. I bleſs my God for a Priſon, I bleſs my God for Afflictions, I bleſs my God that ever I was reſtrained, for I never knew myſelf till he had taken me out of the World. Therefore you that have your Liberties, and Time, and precious Opportunities, be up and be doing, for God and for your Souls, every one of you.

To his Son. Where is my dear Child?

Mr. *Sheriff.* I made one Requeſt to you, and you gave me an imperfect Anſwer: You ſaid you were of the beſt reformed Church in the World, the Church of *England* according to the beſt Reformation in the World: I deſire you, for the Satisfaction of the World, to declare what Church that is, whether Preſbyterian, or Independent, or the Church of *England*, or what?

Coll. Good Mr. Sheriff, for your Satisfaction, for twenty Years and above I was under the Preſbyterian Miniſtry, till his Majeſty's Reſtoration; then I was conformable to the Church of *England* when that was reſtored, and ſo continued till ſuch Time as I ſaw Perſecution upon the diſſenting People, and very undue Things done to their Meeting-places; then I went among them to know what kind of People thoſe were: And I do take God to witneſs, ſince that Time I have uſed their Meetings, *viz.* the Preſbyterians, others very ſeldom, and the Church of *England*. I did hear Dr. *Tillotſon* not above three Weeks before I was taken. I heard the Church of *England* as frequently as I heard the Diſſenters, and never had any Prejudice, God is my Witneſs, againſt either, but always deſired heartily that they might unite, and be Lovers and Friends, and had no Prejudice againſt any Man; and truly I am afraid that it is not for the Nation's Good that there ſhould be ſuch Heart-burning between them: That ſome of the Church of *England* will preach that the Preſbyterians are worſe than the Papiſts. God doth know that what I ſay, I ſpeak freely from my Heart, I have found many among them truly ſerving God, and ſo I have of all the reſt that have come into my Company; Men without any manner of Deſign but to ſerve God, ſerve his Majeſty, and keep their Liberties and Properties; Men that I am certain are not of vicious Lives; I found no Damners, or thoſe kind of People among them, or at leaſt few of them.

To his Son, kiſſing him ſeveral times with great Paſſion. Dear Child, farewell, the Lord have Mercy upon thee. Good People, let me have your Prayers to Almighty God to receive my Soul.

And then he prayed. And as ſoon as he had done, ſpake as followeth.

The Lord have Mercy upon my Enemies, and I beſeech you, good People, whoever you are, and the whole World that I have offended, to forgive me; whomever I have offended in Word or Deed, I aſk every Man's Pardon; and forgive the World with all my Soul, all the Injuries I have received, and I beſeech God Almighty, forgive thoſe poor Wretches who have caſt away their Souls, or at leaſt endangered them, to ruin this Body of mine: I beſeech God that they may have a Sight of their Sins, and that they may find Mercy at his Hands: Let my Blood ſpeak the Juſtice of my Cauſe.

I have done: And God have Mercy upon you all.

To Mr. *Coſhwait.* Pray, Sir, remember me to Dr. *Hall*, and Dr. *Reynall*, and thank them for all their Kindneſſes to me; I thank you, Sir, for your Kindneſſes: The Lord bleſs you all. Mr. Sheriff, God be with you: God be with you all, good People.

The Executioner deſired his Pardon, and he ſaid, I do forgive you. The Lord have Mercy on my Soul. *And ſo he was turned off, and the Sentence executed, but his Quarters were permitted to be buried.*

CVIII. *The*

CVIII. *The Trial of* Slingſby Bethel, *Eſq*; at the Bridge-Houſe *in* Southwark, *for an* Aſſault *and* Battery *on* Robert Maſon, *at the Election of Members of Parliament for the Borough of* Southwark, October 5, 1681. 33 Car. II.

The Court being ſat, the Jury were called, as follows:

JURYMEN.

Edward Collingwood, Brazier,
Francis Waker, Comb-maker,
Zebulon Newington, Chandler, *alias* Salter,
William Head, Woollen-Draper,
Humphrey Roberts,
John Allyn, Baker,
John Morgan, Grocer,
William Morrice,
Francis Ferrey,
Richard Frankling,
Thomas Wade, Butcher,
Edw. Kemp, Ale-Draper.

Being Sworn, the Indictment was read.

THE Jurors for our Sovereign Lord the King, upon their Oath do preſent, That *Slingſby Bethel*, late of the Pariſh of St. *Olave*'s, *Southwark*, within the Town and Borough aforeſaid, in the County of *Surrey*, Eſquire, on the twelfth Day of *March*, in the three and thirtieth Year of the King, with Force and Arms at the Pariſh aforeſaid, and within the Town and Borough aforeſaid, in the County aforeſaid, in and upon one *Robert Maſon*, at that Time one of the King's Watermen, in the Peace of God, and of our Lord the King, then and there ſtanding, did Aſſault and make a Battery, and the ſaid *Robert Maſon*, then and there moſt grievouſly and dangerouſly did beat, wound, and evil entreat, ſo that his Life was greatly deſpaired of, and other Enormities that then and there he offered to, and brought on the ſaid *Robert Maſon*; and that the ſame *Slingſby Bethel*, then and there, (*to wit*) the ſame twelfth Day of *March*, in the thirty third Year aforeſaid, in the Pariſh aforeſaid, in the Town and Borough aforeſaid, in the County aforeſaid, in the Preſence and Hearing of very many of the Subjects of our Sovereign Lord the King, then and there to the ſaid *Robert Maſon*, he ſpake, uttered, and with a loud Voice declared and publiſhed theſe provoking, threatning, and opprobious Words, (*to wit*) *Sirrah*, pointing at the ſaid *Robert Maſon*, *I* (meaning himſelf, *Slingsby Bethel*) *will have your Coat* (a certain Cloth Coat of a red Colour, with which the ſaid *Robert Maſon* was covered, and adorned with a certain Badge of our ſaid Lord the King upon the ſaid Coat) *plucked off your Back*, to the great Terror, Diſturbance, and Trouble of divers of our Sovereign Lord's liege People and Subjects, being then and there preſent, to the evil Example of all others offending in the like Caſe, as alſo againſt the Peace, Crown, and Dignity, of our Sovereign Lord the King, &c.

Mr. *Peaſely.* MY Lord, and you Gentlemen of the Jury, *Slingsby Bethel*, Eſq; ſtands indicted, for that he, the ſaid *Slingsby Bethel*, made an Aſſault and Battery on *Robert Maſon*: As alſo for menacing and threatning Words; ſaying to him the ſaid *Robert Maſon*, *Sirrah*, *I will have your Coat plucked off your Back*, to the great Terror and Damage of the ſaid *Robert Maſon*, &c. to which Indictment he has pleaded, Not Guilty.

Mulloy. My Lord, and you Gentlemen of the Jury, I am Council for the King, againſt *Slingsby Bethel*, Eſq; who, upon the twelfth Day of *March* laſt, in the thirty third Year of the King, did aſſault *Robert Maſon*, one of the King's Watermen, and did injuriouſly beat and ſtrike the ſaid *Robert Maſon*, did give ſeveral opprobious Words, ſaying, he would have his Coat plucked off his Back, &c. To which he pleadeth, Not Guilty.

Mr. *Holt*. My Lord, and you Gentlemen of the Jury, I am Council for the King, againſt *Slingsby Bethel*, Eſq; You underſtand the Iſſue you are to try, it hath been opened; the Queſtion is, Whether Mr. *Slingsby Bethel* be guilty of this Battery, and the Matter contained in the Indictment, and the aggravating Words therein, or no? The Occaſion was, that in *March* laſt, there was an Election for two Burgeſſes to be choſen to ſerve in Parliament for this Borough; this *Robert Maſon* was deſired to come from *Lambeth*, to ſee whether any of that Pariſh came to poll, which had no Right ſo to do. The Competitors were, Sir *Richard How*, Captain *Rich*, *Slingsby Bethel*, and *Edward Smith*, Eſqrs. Mr. *Slingsby Bethel* ſhewed, at his Entrance into the Borough, what Inclination and Temper he came with; for his Followers, and ſuch as came with him, came with their God-damme's, and ſeveral execrable Oaths againſt thoſe that voted againſt him; after the Election began, and the Poll demanded, truly, then Mr. *Bethel* acted his Part, and took Occaſion to go off from the Place where he was, and ſtrike ſeveral Perſons that were acting againſt him, particularly this *Robert Maſon*, finding him to be againſt him, took his Cane, and knocked him over the Pate, and afterwards knowing him to be the King's Waterman, ſaid he deſerved to have his Coat plucked over his Ears: Were the Affront againſt him as a ſingle Perſon, it were not of ſo bad Conſequence; but we are to take Notice of the Solemnity of the Occaſion of the Meeting: Now, conſider the Occaſion, it was for the chooſing of Parliament-Men; and had it not been for the Prudence of the Waterman, in forbearing to ſtrike again, God knows the Effects, and what an Uproar it might have occaſioned: But he prudently refrained, and took his Courſe in a legal Way, and according to Law hath preferred this Indictment againſt Mr. *Slingsby Bethel*. Now though the ſaid Mr. *Bethel* be ſo great a Man, and a Perſon of Value, lately Sheriff of the City of *London*; and he, *Robert Maſon*, appearing to be but a poor Waterman, yet I don't queſtion, he will find an *Engliſh* Jury to do him Right.

King's Council. Call Mr. *Robert Maſon*, *Arthur Adams*, *Thomas Walbroke*, *Griffin Meade*, *Tho. Smith*, *Alexander Dory*, ... *Lawrence*.

Mr. *Holt*. *Maſon*, What can you ſay on the King's and your own Behalf, concerning this Matter?

Robert Maſon. I was ſtanding upon the Steps, by the Door in the Artillery-Ground, and Mr. *Bethel* came and gave me divers Blows on the Stairs, knocked me with his Cane, and followed me down beating of me, and ſaid, *Sirrah, I will have your Coat plucked over your Ears*; and I anſwered, *So you would my Maſter's too, if you could.*

Mr. *Thompſon*. By whoſe Solicitation came you there?

Maſon. I was deſired to be there.

Thompſon. What, did he ſtrike you alſo with his Fiſt?——*Maſon*. Yes.

Thompſon. Where did he hurt you with all his Blows?

Maſon. On the Breaſt.

Thompſon. How many Blows?

Maſon. He gave me twenty Blows at leaſt, I can ſwear ſafely; but how many more, I know not.

Thompſon. Did not you, before Mr. *Bethel* came there, interrupt the People's coming to poll, and what did Mr. *Bethel* ſay?

Maſon He aſked what I did there, and bid me go down.

Juſtice *Pyrs*. Did Mr. *Bethel* ſingle you out from the reſt of the Company?

Maſon. Yes, he did.

King's Council. Call *Adams*. *Adams*, what can you ſay? Did you ſee Mr. *Bethel* ſtrike *Maſon*, and what Words did he ſay?

Adams, firſt Witneſs. There was a Tumult at the Stairs, and they called to me, being Conſtable, and when I came, Mr. *Bethel* and *Maſon* were together, and a great Company followed them; I ſaid, Sirs, pray keep the Peace; and I ſaw Mr. *Bethel* give him two or three Shugs, and ſaid, *Sirrah, I will have your Coat off your Back*; and *Maſon* anſwered, *Ay, and ſo you would my Maſter's too, if you could.*

Holt. *Adams*, Tell the Court what you think would have been the Conſequence if *Maſon* had ſtruck again.

Adams. It would have been of a ſad Conſequence.

Holt. What was Mr. *Bethel*'s Behaviour, when he entered into the Borough? Did you ſee him come into the Borough?

Adams. They came in and cry'd, No Abhorrers, No Abhorrers.

Thompſon. Did you hear Mr. *Bethel* ſay ſo?——*Adams*, No.

Thompſon. Did you hear him ſwear?——*Adams*, No.

Thompſon. Who was it that ſwore?——*Holt*. He that rid firſt.

Thompſon. *Maſon* ſaid, Mr. *Bethel* gave him twenty Blows; Did you ſee it?——*Adams*. I was not there all the while, I did not ſee it.

Third Witneſs. *Thomas Walbrooke*, What can you ſay to the Caſe in Hand?

Walbrooke. I ſtood by the Stairs when Mr. *Bethel* paſſed by; I ſaw Mr. *Bethel* thruſt him down the Stairs, and I ſaid, *Robert*, take Care what you do: Mr. *Bethel* ſaid, *Sirrah, come down*; *Maſon* ſaid, *I will come when I ſee my own Time, I do Nobody any Hurt*: Mr. *Bethel* anſwered, *I command you to come down*; and his Anſwer was, *I will when I ſee my own Time.*

Thompſon. Did you ſee any Blow given by Mr. *Bethel?*

Walbrooke. No, I ſaw none; I won't ſwear to any Blows, but I ſaw two or three Puſhes in the Breaſt; he puſhed him back.

Thompſon. And how many Blows were given, ten, twenty, or how many?

Walbrooke. I will not anſwer any Thing concerning that.

Thompſon. Upon the Oath you have taken (being, I think, you are an honeſt Man) had the Waterman this Coat on at that Time? Or had he not a Campaign Coat over it?

Walbrooke. He had that Coat, but I don't remember any other.

King's Council. Call *Griffith Meade*. Give an Account of what you can of this Matter.

Griffith Meade. I ſaw a great Number of People come to the Place, and ſaw Mr. *Bethel* give him a Puſh, and that was all.

Thompſon. What Words did you hear?

Meade. No Words.

Thompſon. How was this Man clothed? Was he clothed with this Coat, or had he a Campaign Coat over it?

Meade. I cannot tell.

Thompſon. Upon the Oath you have taken, how many Blows did you ſee given, becauſe they ſay twenty?

Meade. No Blows at all, but a little Puſh.

Call *Thomas Smith*. (He appeared.) What do you know?

Smith. As *Robert Maſon* and myſelf ſtood together, Mr. *Bethel* came round the Burying-Place, and he brought a great Multitude of Perſons with him, and bid *Maſon* come down the Steps: *Maſon* anſwered, *I will come down when I ſee my Time.* Mr. *Bethel* ſaid, *If you will not come down, I will have your Coat plucked off your Back.* Afterwards many Words paſſed, which I cannot remember, and Mr. *Bethel* puſhed him on the Breaſt.

Second Council. Mr. *Smith*, Pray give the Court an Account of the Behaviour of the Men that followed Mr. *Bethel*: Did you not ſee Mr. *Bethel* give *Robert Maſon* a Puſh, when he was in the Artillery-Ground?

Smith. I ſaw none.

Holt. What do you think the Conſequence had been, if *Maſon* had ſtruck again?

Smith. Had he given any Blows again, I do believe a hundred and a hundred had been ſlain.

Thompſon. *Smith*, pray give an Account of the Behaviour of the Men that came with Mr. *Bethel*, and what Coat *Maſon* wore, and whether he had not a Campaign Coat on it?

Smith. Sir, I know not that, but he had the ſame Coat then on his Back, which he has on now.

Thompſon. Why, what made you think, if *Maſon* had ſtruck Mr. *Bethel*, that it would have made ſuch a great Diſturbance?

Smith. Becauſe he was the King's Servant.

Call *Alexander Dory*. *Dory*, Give the Court an Account of the Matter in Queſtion. Did you ſee Mr. *Bethel* give *Maſon* any Blows?

Dory. Sir, Mr. *Bethel* gave him ſome Puſhes in the Breaſt, and ſaid, *He would have his Coat off his Back.*

Thompſon. Had he the ſame Coat on as now he hath?

Dory. I ſaw the ſame, and no other.

Mulloy. Call *Lawrence.* He appeared. *Lawrence*, give the Court and Jury an Account of what you know of the Quarrel between Mr. *Bethel* and *Robert Maſon.* Did you ſee Mr. *Bethel* give him any Blows? And give an Account of the Behaviour of Mr. *Bethel* and his Company, when they came into the Borough.

Thompſon. This Indictment is for an Aſſault and Battery; if you can give an Account of that, do; but not of the Behaviour of thoſe that came with Mr. *Bethel*; that is not the Matter at this Time.

Holt. I anſwer, Sir, it is not; but we aſk the Queſtion, to make out the Behaviour of Mr. *Bethel* and his Company, and ſhall leave it to the Jury, what Judgment to make of it.

Lawrence. I ſaw the Perſons that came with Mr. *Bethel*, hectoring and ſwearing at a ſtrange Rate, and the Perſons which rid before, cry'd Hollow, Hollow.

Thompſon. I appeal to Mr. *Holt*; What if *John an Nokes*, or *Tom a Styles*, ſwear and hector, *&c.* ſhall Mr. *Bethel* anſwer for that, in a Matter that falls out long afterwards, as this did?

Lawrence. I ſaw their Behaviour, as I have ſaid; and when Mr. *Bethel* came to *Robert Maſon*, he ſtood with his Hands behind him, Mr. *Bethel* bid him come down; he ſaid, No, he would not: Then ſaid Mr. *Bethel*, *I will pluck your Coat off your Back*; and *Maſon* anſwered, *Ay, and ſo you would my Maſter's too, if you could.*

Lord Mayor. Did Mr. *Bethel* ſwear, when he came into the Borough?

Lawrence. No.

Lord Mayor. Who did ſwear?

Lawrence. He that rid firſt.

Mr. *Thompſon.* May it pleaſe your Lordſhip, I am of Counſel for Mr. *Bethel* the Defendant, who has been, and ſtands indicted for making an Aſſault and Battery upon *Robert Maſon*; and for ſpeaking many menacing and threatning Words, as, *That he would pull his Coat over his Ears*, &c. and for giving ſeveral Blows; unto which we have pleaded, Not Guilty. They have produced ſeveral Witneſſes, and *Robert Maſon* himſelf, who is ſo thorough-ſtitch in the Caſe, that he ſwears ſo as no one can believe him; for his own Witneſſes do not; for they do not ſwear, nor pretend to ſwear like him, being not able to ſtretch at that Rate; he is deſperately miſtaken, to ſpeak the beſt of him.

For this *Maſon* ſwears Mr. *Bethel* gave him twenty Blows at leaſt, but how many more he cannot ſay: See how this will look, when we ſhall prove, by ſubſtantial and credible Men, that not one Blow was given, or puſh either. But ſuppoſe he were puſhed, yet his Evidence agree not one with another; for ſome ſwear to one Puſh, ſome to more: But Mr. *Maſon* ſwears to the full Number of twenty Blows at leaſt, and that poſitively, but how many more, he doth not remember. But ſuppoſe it were ſo, yet the Matter is not ſo much, but what may be juſtified by the Occaſion given; and what would be a good Plea in Law, in an Action, will be the ſame upon pleading Not Guilty in this Caſe.

May it pleaſe your Lordſhip, The Occaſion of Mr. *Bethel*'s coming here was this; being about the chuſing of Parliament-Men for this Borough, the Competitors were, Sir *Richard How*, Mr. *Rich*, Mr. *Bethel*, and Mr. *Smith*; there was a Houſe wherein they appointed to poll, call'd the Artillery-Houſe: When they came to take the Poll at this Place, where there is a Pair of Stairs which leads to the Door, the Manner of taking the Poll was thus; firſt to fill the Houſe, by that Door to the Stairs, and after they had voted, to put them out at the other Door; this being the Occaſion of the Battery, (however aggravated) will, to all that know it, or ſhall take the Matter into Conſideration, ſeem a very ſhameful Thing to ground an Indictment upon. But this *Maſon*, a very officious Man, who had no right to poll, (as himſelf confeſſes) and who might have ſpared the Trouble (for any Authority he had) of coming there; and it might have been better he had ſtayed at Home, by what he has ſworn. This Man and one *Sam. Sams*, a hectoring Carman, were ſet upon the Stairs; and their Buſineſs was not (as they now pretend) to take Notice who were fit to poll, but to underſtand who were for Mr. *Bethel* and Mr. *Smith*, and thoſe they did abuſe, and puſh them down the Steps; which Mr. *Bethel* being informed of, came out of the Houſe, and ſpoke civilly to them, and ſaid, *Friends, What have you to do here? If you have not a right to poll, come down from the Place:* Which *Maſon* refuſing, the Defendant took him gently by the Hand, and led him down the Steps, giving neither Blow nor Puſh; we ſhall call Witneſſes to prove this.——Now, for a Gentleman that ſtood as one of the Competitors for a Parliament-Man, at that Time, in that Place, he might do this to a Perſon that had nothing to do there: Nay, they themſelves ſay, there ought not to be any Interruption at an Election; and that the Interruption was from themſelves, and that occaſioned the mighty Battery they make ſo much of. We ſhall call our Witneſſes, and make this Matter appear to be our Caſe; and then, though *Maſon* hath ſpoken of twenty Blows, if believed, as there is but little Reaſon for it, it will be ſufficiently juſtified by the Witneſſes we ſhall produce, and the Evidence we ſhall give in this Matter.

Call Mr. *Nath. Travers* Conſtable, Mr. *Benjamin Tarrant*, Mr. *Geo. Hampton*, Mr. *Mark Clark*, Mr. *Thomas Weekes*, Mr. *Benjamin Gerrard.*

Thompſon. Let us begin with Mr. *Travers.* Mr. *Travers*, What Account can you give of the Matter?

Travers. May it pleaſe your Lordſhip, I remember it as if it were but juſt now; I was called out of the Houſe, to come to this Door, hearing the People were in a very great Diſturbance; I came to this *Robert Maſon*, and ſaid, *What do you there, to make this Diſturbance, have you a right to poll?* He anſwered, *It may be I may.* I told him, *If he would not be civil, I ſhould take a Courſe to indict him.*

Thompſon. And what was he doing?

Travers. He was throwing People from both Sides with his Elbows. In this Time, a Report being carried to Sheriff *Bethel*, of a Perſon's Leg broken, and a Man like to be killed, Sheriff *Bethel* came to the Steps, and took him juſt by the Arm, thus——[*Shewing the Manner*]——and ſaid, *Pray, Friend, what haſt thou to do here, haſt thou a right to Poll?* At firſt he ſaid, *He had*; afterwards he ſaid, *No.* Then ſaid Sheriff *Bethel*, *Pray go about your Buſineſs.* Mr. *Bethel* gave no Blow, nor did ſo much as ſhew any Paſſion, or angry Countenance; and ſaid no more: But others ſaid, *Maſon* was a rude Perſon, and that he deſerved to have his Coat plucked over his Ears.

Thompſon. Did you not hear Mr. *Bethel* ſay ſo?

Travers. No, but it was ſaid by ſome of the Company.

Thompſon. I aſk one Queſtion more—*Maſon* ſaid he had twenty Blows, what ſay you to that?

Travers. He had not one, upon the Oath that I have taken.

Thompſon. Had he this Coat on, or no?

Travers. Truly I know not, I cannot tell; but he had a Badge, whereby he diſcovered himſelf to be ſome Gentleman's Servant.

Thompſon. Was *Sams* there?

Holt. Mr. *Thompſon*, is that a fair Queſtion?

Thompſon. I did it purpoſely to try your Obſervation; you would call to what others did long before the Battery, I muſt not aſk if one was there at the Time of the Battery.

Holt. Did you not ſee Mr. *Bethel* on the Artillery-Ground, was not *Maſon* puſhed there?

Travers. I tell you, Sir, there was not one Blow given.

Holt. Then you did not ſee the Quarrel on the Ground?

Travers. I tell you, there was no Quarrel on the Ground: I ſtood on the Steps when Sheriff *Bethel* came; and the Sheriff, when he was half Way on the Steps, ſeeing the Waterman's Poſture he was in, ſaid, *Friend, have you any Thing to do to Poll; if you have not, why do you make a Diſturbance?* He anſwered, *It may be I have, and it may be not. Pray, Friend,* ſaid Sheriff *Bethel*, *if you have not, come down*, I went from thence about the Ground, and did not ſee the leaſt Blow given, or any Appearance of Paſſion.

Thompſon. Before Mr. *Bethel* came, how did this Man behave himſelf, did he not ſhout, and behave himſelf rudely?

Holt. Let him ſpeak of himſelf, let not Words be put into his Mouth.

Thompſon. Had he a red Coat on?

Travers. I cannot ſay it.

Thompſon. Mr. *Tarrant*, what can you ſay?

Tarrant. I was on the Ground when the Sheriff came, I was at ſome Diſtance; but upon the Oath I have taken, I ſaw Mr. *Bethel* and the Waterman coming together, but I ſaw no Blow, and I am ſure there was not one Blow given.

Mr. *Weekes.* give an Account of what you know.

Weekes. My Lord, I ſaw Sheriff *Bethel* when he came into the Ground, and went up the Steps; I made haſte after him, and was there all the while, and there was nothing like a Blow; but all he did was to this Purpoſe——*Pray, Friend*, (ſaid he) *if you have no right to Poll, go your Way, What have you to do here?* And I followed after him into the Artillery-Ground, and there was nothing of a Blow, or any Thing like it.

Thompſon. You were there all the while?

Weekes. Yes, I was.

Thompſon. Yet *Maſon* ſaith, there were twenty Blows given.

Weekes. Upon the Oath I have taken, there was none, nor any Thing like it.

Holt. Mr. *Weekes*, do you live in *London*, or do you live in the Borough?

Weekes. Sir, I live in *London.*

Holt. What is this Witneſs to the Purpoſe then?

Thompſon. May not a Man live in *London*, and be a good Evidence here? Notwithſtanding, call Mr. *Gerrard.*

Mr. *Gerrard*, what can you ſay?

Gerrard. I was in the Ground before Mr. *Bethel* came out of the Polling-Houſe; and I ſaw this Waterman, and *Sam. Sams*, thruſting of People down, that ſeemed to be for Mr. *Bethel* and *Smith*, crying, *How* and *Rich*,

Weekes. My Lord, my Memory failed in this Point; but, upon the Oath I have taken, what that Gentleman ſwears, it is true.

Thompſon. Pray, Sir, (as you ſeem to be a ſober Man) were any Blows ſtruck by Mr. *Bethel?*

Gerrard. I went with Sheriff *Bethel* there at that Time, and aſked the Waterman what he had to do there? I cannot well tell what Anſwer he made; but Mr. Sheriff ſaid, *If you have no right to Poll, pray go about your Buſineſs.* Upon the Oath I have taken, he did not ſtrike one Blow, no more than he doth now, ſtanding in this Court before your Lordſhip.

Lord Mayor. Was there any puſhing or thruſting by Mr. *Bethel?*

Gerrard. Upon my Oath, my Lord, not any.

Thompſon. And you ſay you were there all the while, and ſaw no Diſturbance given by Mr. *Bethel?*

Gerrard. I am ſure there was not.

Thompſon. Had he this Coat on, or no; or had he not a Campaign Coat on?

Gerrard. To the beſt of my Remembrance he had a Campaign Coat on, and I believe he had.

Thompſon. Mr. *Hatfield*, pray give an Account of what you know of the Matter.

Hatfield. There were two Men which I ſaw in red Coats, which puſhed down the People that came to poll for Mr. *Bethel*, before Mr. *Bethel* came; and had not Mr. *Bethel* come to appeaſe the Tumult, I do believe there had been much Miſchief done by them and *Sams.*

Thompſon. Upon the Oath you have taken, were any Blows given?

Hatfield. No, Sir, there were none.

Thompſon. Were there any Blows given by Mr. *Bethel?*

Hatfield. No, Sir, not one; for Mr. *Bethel* being informed of the Incivility of *Maſon* and *Sams*, Mr. *Bethel* came civilly to them, and intreated them to come down, and bid them be gone, and not make a Diſturbance.

Mulloy. Call *Lawrence* again, to ſhew that *Maſon* did not make the Diſturbance.

Lawrence. I ſaw *Robert Maſon*, and the Party with him, behave themſelves very civil; and the Diſturbance that was proceeded from the other Party.

Thompſon. This is the ſame Man we had but now, he is called to witneſs again; a pretty Way of multiplying Witneſſes: I appeal to Mr. *Maſon* himſelf, whether this be not the ſame Man you called once before?

Thompſon. My Lord, and you Gentlemen of the Jury, I think the Caſe is plain, and needs no Arguments: I ſhall only take Notice how careful theſe Men are (as they pretend) to keep the King's Peace. The Matter you ſee, in ſhort, is, Mr. *Bethel* (who ſtood for a Parliament-Man of this Place, and at the ſame Time bore an eminent Character, as Sheriff of the City of *London*) upon Information given of the Diſturbance made by this *Maſon*, and of the Unfairneſs of their Proceedings, only came civilly, and took him by the Arm, perſuading him to come away, and make no Diſturbance. And this is the Truth of the Caſe, and the mighty Battery they pretend to. Now, ſuppoſe that when People are in ſuch a Croud, and upon ſuch an Occaſion, there were ſome Puſhes (as is the utmoſt here pretended) could this be a ſufficient Matter to ground an Indictment upon? No, Gentlemen, no: This Indictment, and the Deſign of it, is to raiſe a Duſt, and (if poſſible) to caſt Reflections on Mr. *Bethel*; but 'tis more than they can do in Point of Law, by any Matter here proved, if *Maſon*'s Witneſſes do ſwear true: Yet you ſee how *Maſon* behaves himſelf, crying *How* and *Rich*, ſtriking down all that came between *Sam. Sams* and him; ſo they broke the Peace, and raiſed the Diſturbance themſelves. And in that Caſe, any Man (and why not Mr. *Bethel?*) might have taken him, and carried him before a Magiſtrate, and have juſtified it. But now, for the Credit of the Thing: You ſee that none ſwears it but *Maſon* himſelf; but even he ſwears to that Impoſſibility, ſo over-reaches the Matter, through the Exceſs of his Paſſion in Swearing, that no one can believe him; if he had ſworn modeſtly, as the reſt did, to two or three Puſhes, it might have been credited; but to twenty Blows, no one can believe it; neither doth any one of his own Witneſſes ſwear like him, or of ſo much as one Blow given: So there is not one Word *Maſon* ſaith can be credited.

Then, my Lord, admit it to be ſo, yet you ſaw Mr. *Bethel* was not the Perſon that firſt began this Diſturbance: Now, if the other Party had been indicted and tried (as indeed it had been much more fit they ſhould) we could have proved much againſt them.

And as to the Fact, and Manner of what Mr. *Bethel* did, it was no more than coming in a civil Manner, aſking whether he had a Right to poll; when he ſaid no, he took him civilly by the Arm and led him down; and this is a juſtifiable Aſſault, being the Nature of the Thing required a Neceſſity of ſomewhat of Action in it. I appeal to you of the Jury, whether here be any Cauſe for this Indictment, or Colour of Reaſon for you to find it?

Holt. Gentlemen of the Jury, you have heard the Evidence on both Sides, and the Queſtion is, Whether in your Conſciences, you can diſbelieve eight Witneſſes, that ſwear poſitively to the Battery, and believe thoſe Witneſſes that did not ſee it? If you acquit Mr. *Bethel*, you muſt neceſſarily convict eight Perſons of Perjury: But if you do not find for Mr. *Bethel*, the other Witneſſes cannot be convicted of Perjury; for how can Men ſwear (though they were there all the Time) that they did not ſee? Poſſibly they might be very honeſt Men, and preſent at the Time, and yet not ſee Mr. *Bethel* ſtrike, and ſo not ſwear to it: But our Witneſſes ſwear very true; I hope you will be guided by Senſe and Conſcience, and not by Spectators Humours, and Apprehenſions, that come here and hiſs in a Court of Juſtice. Now, eight Witneſſes ſwearing it, I do appeal to the Court, whether in Matters of this Nature, one Witneſs for the Affirmative, be not more valid than many of the Negative?

They take Notice of the Impoſſibility, and why, becauſe they ſwear (as they ſay) at an extravagant Rate, that Mr. *Bethel* give him twenty Blows.

Gentlemen, if Mr. *Bethel* will beat a Man extravagantly, it is not Extravagancy to ſwear it. Now, *Maſon*'s Evidence is confirmed by all the reſt produced, and no Contradiction: If one ſwear to ten, and another to two, and another to three, is this inconſiſtent? No, Gentlemen, it is evident thoſe Men ſwear cautiouſly and fearfully; for if otherwiſe, they could ſwear to as many as Twenty, as *Maſon* hath done. Who is the beſt Judge, he that felt the Blows, or they that ſwear there was not one given? He that felt them, I am ſure.

Gentlemen, it was in a Croud, 'tis poſſible they may not ſee all; yet their Evidence is a concurring Circumſtance.

Next I come to the Point of Law, how a Man that is a Candidate at an Election, can beat any Man that ſtands in his Way; I do not underſtand that to be Law. If any Man had beaten Mr *Bethel*, he might have beaten him again in his own Defence; but there was no ſuch Thing, Mr. *Bethel* ſaw no Diſturbance himſelf, but was informed of it, and ſo became too officious; though he was Sheriff of *London*, yet he was not an Officer there; for he was not a Conſtable there; and it was a Conſtable's Office, and he only could have ſeized him; and not a Conſtable neither, unleſs he had ſeen the King's Peace broken.

And as to what Mr. *Thompſon* ſaith, that it is impoſſible that ſuch an Election ſhould be carried on without ſome Buſtle. It's true, in a Croud, Men juſtling one another, and by Accident ſtrike another down, it's no Battery: But is it neceſſary for Mr. *Bethel* to thump a Man on the Breaſt? Is it neceſſary for Mr. *Bethel* to beat a Man with his Cane? Is it neceſſary for Mr. *Bethel* to give a Man twenty Blows? Is it neceſſary for Mr. *Bethel* to pluck a Man's Coat off his Back? Is it neceſſary to an Election? It is not neceſſary; and ſo being not neceſſary, is not by Law juſtifiable. Gentlemen, as Mr. *Thompſon* ſaith, it is a Caſe of Example; I ſay ſo too; and it is fit Perſons that will do ſuch Things, ſhould be made an Example.

Juſtice *Pyrs* afterwards ſumm'd up the Evidence, and told the Jury (as Mr. *Holt* the Counſellor for the King had before well obſerved) that they were to have Regard to the poſitive affirmative Evidence, *Maſon* having ſworn poſitively to ſeveral Blows that were ſtruck by Mr. *Bethel*, and that eight Witneſſes had ſworn in the Affirmative, and that though there were ſeven Witneſſes produced by Mr. *Bethel*, which were on the negative Part; yet they were to obſerve, that the Law did not allow of thoſe Negative Evidences. But for that ſo many had ſworn in the Affirmative, that they ſaw a Thing done, and as many ſwear that they ſaw it not; he could not tell what to ſay, but to leave it to the Jury, ſaying, that one Affirmative was better than forty Negative Oaths.

So the Jury went out, and in a very ſhort Time were pleaſed to find the Indictment, and brought Mr. *Bethel* in Guilty.

Then Mr. *Bethel*'s Council moved in Arreſt of Judgment, for that no Indictment lay for the Words, and the Court for that Reaſon ſtaid the Judgment, as to that Part of the Indictment, and gave Judgment only as to the Aſſault and Battery, and fined Mr. *Bethel* five Marks. Upon which, the Council for the King moved to have him taken into Cuſtody, until he paid the Fine; which he preſently paid, and ſo was diſcharged.

CIX. *Proceedings at the* Old-Baily, *upon the Bill of Indictment for* High-Treaſon *againſt* Anthony *Earl of* Shafteſbury *, November 24, 1681. 33 Car. II.

The GRAND JURY.

Sir *Samuel Barnardiſton*,
John Morden,
Thomas Papillon,
John Dubois,
Charles Hearle,
Edward Rudge,
Humphrey Edwin,
John Morrice,
Edmund Harriſon,
Joſeph Wright,
John Cox,
Thomas Parker,
Leonard Robinſon,
Thomas Shepherd,
John Flavell,
Michael Godfrev,
Joſeph Richardſon,
William Empſon,
Andrew Kendrick,
John Lane,
John Hall.

The OATH.

YOU ſhall diligently enquire, and true Preſentments make of all ſuch Matters, Articles, and Things, as ſhall be given you in Charge, as of all other Matters and Things as ſhall come to your own Knowledge, touching this preſent Service; the King's Council, your Fellows and your own, you ſhall keep ſecret; you ſhall preſent no Perſon for Hatred or Malice; neither ſhall you leave any one unpreſented, for Fear, Favour, or Affection, for Lucre or Gain, or any Hopes thereof; but in all Things you ſhall preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of your Knowledge.

So help you GOD.

L. C. J. Pemberton. GEntlemen of the Jury, we are all met here, in one of the moſt ſolemn Aſſemblies of this Nation; it is upon the Execution of Juſtice upon ſuch as ſhall be found Offenders, and guilty of the Breach of the King's Laws.

This Commiſſion by which we ſit, and you are ſummoned, doth in it's Nature extend to all Offences whatſoever, againſt the Laws of the Land, Treaſons, Miſpriſions of Treaſons, Felonies, and all other Crimes and Offences againſt the King and his Government, ſuch as are vulgarly called *Pleas of the Crown*; they all fall under our Cognizance and your Enquiry in a general Manner. But I muſt tell you, there is a particular Occaſion for this Commiſſion at this Time. His Majeſty having Information of ſome evil traiterous Deſigns againſt his Perſon and Government, has thought fit to direct a due Examination of them, and that the Perſons may be brought to condign Puniſhment who ſhall be found Guilty thereof. You muſt not therefore expect any general and formal Charge from me: Truly, I came hither this Morning, with an Apprehenſion that you had had your Directions given you before, by the Recorder; for it is our uſual Way, not to come until the Juries are ſworn in this Place, and their Directions given them; but ſince I find it otherwiſe, I take it to be my Duty to ſay ſomething to you, but ſhall not go about now to make any ſuch formal Charge, as in Commiſſions of this Nature is wont to be done; nor to give an Account of all Offences that fall under your Enquiry of a Grand Inqueſt, impannell'd by Virtue of ſuch a Commiſſion at large; nor muſt you expect I ſhould acquaint you with all the Crimes that you may enquire of as ſuch an Inqueſt.

I ſhall content myſelf ſo far, as on the ſudden I can recollect my Thoughts, to acquaint you with the Nature of thoſe Bills; with the Enquiry whereof, you ſhall at preſent, upon this Occaſion, be troubled, and your Duty concerning this Enquiry. I hinted to you at firſt, that they are Matters of High-Treaſon, which is a Crime of the greateſt and higheſt Nature of any Crime that can be committed againſt Man: Other Crimes, as Felonies, Riots, Treſpaſſes, and Things of that Nature, they may occaſion Diſorders and Troubles in a State or a Kingdom; but I muſt tell you, Treaſon ſtrikes at the Root and Life of all: It tends to deſtroy the very Government, both King and Subjects, and the Lives, Intereſt, and Liberties of all, and therefore has always been looked upon as a Crime of the moſt notorious Nature that can be whatſoever, and accordingly Puniſhments have been appointed for it of the higheſt and ſevereſt Extremity. There was at Common Law great Variety of Opinions concerning Treaſon, and there were many Diſputes about it, what ſhould be Treaſon, and what not; and therefore it was thought fit, by the Wiſdom of our Anceſtors, to have a Law to declare Treaſon; and by the Statute of the 25th of *Edward* III. there was a plain Declaration made of what was Treaſon, and what not: By that Law, *For any one to compaſs, imagine, or intend the Death of the King* (for I will give you no more of that Statute, nor concerning the Senſe thereof, than may be for your Purpoſe now,) I ſay, by that Law, *to compaſs, imagine, or intend the Death of the King, and to declare it by Overt-Act, or to levy War againſt the King*, were declared (amongſt other Things in

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Burnet's Hiſtory of his own Times, Vol. I. p. 508.

that Statute mentioned) *to be High Treaſon:* And this hath obtained for Law among us ever ſince; and by that ſtanding Law, nothing is to be accounted Treaſon, but what is therein particularly declared ſo; but upon many emergent Occaſions, there hath been ſeveral other Laws, as the Caſe hath required now and then, for to declare and bring other particular Crimes within the Compaſs of Treaſons: So there was a Law made in Queen *Elizabeth*'s Reign, for enacting ſeveral Crimes to be Treaſons, during her Life; which was made upon the Occaſion of the inveterate Malice of the *Roman Catholicks* againſt her and her Government; and ſo there hath been in other Kings Reigns upon other Occaſions.

Amongſt the reſt, it was thought fit, by the Parliament aſſembled here, in the 13th Year of this preſent King, to make a particular Law for the enacting and declaring ſeveral Crimes to be Treaſons, during this King's Life; they had great Grounds, and too much Occaſion for it, and ſo they expreſs it in the Preamble of that Law. The Wounds which the then late Treaſons had made, that had ſo far obtained in this Kingdom, were then ſtill bleeding, ripe, and ſcarcely cloſed; many traiterous Poſitions, and many ſeditious Principles were ſpread, and had obtained and gained footing among the People of this Kingdom; and the Parliament had Reaſon to believe that where they had been ſo maliciouſly bent againſt the King and his Family, and had taken off his Father, and maintained ſo long and dangerous a War againſt him, almoſt to the utter Deſtruction and Extirpation of him, and all his good Subjects, and of his, and all our Intereſts, Properties and Liberties, and had almoſt deſtroyed a flouriſhing Kingdom: Here they had Reaſon, I ſay, to be careful, to prevent the like Miſchiefs for the future; therefore, Gentlemen, they did think fit to make a new Law for this Purpoſe; and whereas the Law before was, that it ſhould be Treaſon, to compaſs, imagine, or intend the Death of the King, ſo as it were declared by Overt-Act; now they thought it would be dangerous to ſtay till an Overt-Act ſhould declare the Intention: For when they had ſeen ſuch malicious and evil Deſigns againſt the King and ſupreme Authority; and that they had prevailed ſo far, as to murder one King and baniſh another; and had gone a great Way in the Deſtruction of the Government of this Kingdom, abſolutely to root it quite out; they had reaſon then, as much as they could, to prevent the Deſigns before they ſhould grow full ripe, and vent themſelves in Overt-Acts; therefore, it was enacted by that Statute, made in the 13th Year of this King's Reign, "That
" if any one ſhould compaſs, imagine, or intend the Death of the King,
" or his Deſtruction, or any bodily Harm that might tend to his Death,
" or Deſtruction, or any maiming or wounding his Perſon, any Reſtraint
" of his Liberty, or any Impriſonment of him; or if any ſhould deſign
" or intend to levy any War againſt him, either within the Kingdom, or
" without; or ſhould deſign, intend, endeavour, or procure any foreign
" Prince to invade theſe his Dominions, or any other of the King's Do-
" minions, and ſhould ſignify or declare this by any Writing, or by any
" Preaching or Printing, or by any adviſed, malicious Speaking, or
" Words, this ſhall be High Treaſon."

Now this hath altered the former Law greatly, eſpecially in two Caſes: Firſt, as to levying of War; the Intention was not Treaſon before, unleſs it had taken Effect, and War had been actually levy'd: and then as to the deſigning and compaſſing the King's Death, that was not Treaſon, unleſs it was declared by an Overt-Act: and as to the impriſoning, or reſtraining of the Liberty of the King, they of themſelves alone were not High Treaſon: But now by this Law theſe are made Treaſon,---by this Law, during his Majeſty's Life; and the very deſigning of them, whether they take Effect, or not take Effect, though it be prevented (before any Overt-Act) by the timely Prudence of the King and his Officers--though it ſhould be timely prevented, that there is no Hurt done, yet the very Deſign, if it be but uttered and ſpoken, and any ways ſignified by any Diſcourſe: this (Gentleman) is made Treaſon by this Act; and this hath wrought very great Alteration in the Caſe of Treaſon now; formerly it was ſaid, and ſaid truly enough, that Words alone would not make Treaſon; but ſince this Act, Gentlemen, Words, if they import any malicious Deſign againſt the King's Life and Government, and traiterous Intention in the Party, ſuch Words are Treaſon now within this Act: And this Act was made with great Prudence, and with great Care, to take off that undue Liberty that Men had taken to themſelves; in thoſe Times of Licentiouſneſs, People had taken to themſelves an undecent and undue Liberty to vent all their ſeditious and malicious Minds one to another, without any Reſtraint at all: Therefore now, Gentlemen, you muſt conſider, that Words, if they ſignify or purport any traiterous Intention or Deſign in the Party, either againſt the King or his Government; either to reſtrain his Liberty, or impriſon him, or to do him any bodily Hurt, or any Crime of that Nature; this is Treaſon within this Act of Parliament.

Look ye, Gentlemen, now as to the Indictments that ſhall be brought before you, you are to conſider theſe Things: 1. Whether the Matter contained in them, and which you ſhall have in Evidence, be Matter of Treaſon within the former, or this Act of Parliament? And here, if you doubt of it, then you muſt adviſe with us that are commiſſionated by his Majeſty, to hear and determine theſe Crimes; and in Matters of Law we ſhall direct you: And you are to enquire if there be two Witneſſes that ſhall teſtify the Matters in Evidence to you; for without two Witneſſes, no Man is to be impeached within theſe Laws; but if there be two Witneſſes that ſhall teſtify to you Matters to make good the Indictments, then you have Ground to find the Indictments. But I muſt tell you, as to this Caſe of two Witneſſes, it is not neceſſary that they ſhould be two Witneſſes to the ſame Words, or to Words ſpoken at one Time, or in the ſame Place; that is not neceſſary: if one be a Witneſs to Words that import any traiterous Deſign and Intention, ſpoken at one Time, and in one Place; and another teſtify other ſeditious and traiterous Words ſpoken at another Time, and in another Place; theſe two are two good Witneſſes within this Statute, and ſo it hath been ſolemnly reſolved by all the Judges of *England*, upon a ſolemn Occaſion.

Look ye, Gentlemen, I muſt tell you, That that which is referred to you, is to conſider, whether, upon what Evidence you ſhall have given unto you, there be any Reaſon or Ground for the King to call theſe Perſons to an Account; if there be probable Ground, it is as much as you are to enquire into: You are not to judge the Perſons, but for the Honour of the King, and the Decency of the Matter; it is not thought fit by the Law, that Perſons ſhould be accuſed and indicted; where there is no Colour nor Ground for it; where there is no Kind of Suſpicion of a a Crime, nor Reaſon to believe that the Thing can be proved, it is not for the King's Honour to call Men to an Account in ſuch Caſes: Therefore you are to enquire, whether that that you hear be any Cauſe or Reaſon for the King to put the Party to anſwer it. You do not condemn, nor is there ſuch a ſtrict Enquiry to be made by you, as by others, that are ſworn to try the Fact, or Iſſue: A probable Cauſe, or ſome Gound, that the King hath to call theſe Perſons to anſwer for it, is enough, Gentlemen, for you to find a Bill, 'tis as much as is by Law required. Gentlemen, you muſt conſider this, That as it is a Crime for to condemn innocent Perſons, ſo it is a Crime as great to acquit the Guilty; and that God that requires one of them, requires both; ſo that you muſt be as ſtrict in the one, as you would be in the other. And let me tell you, if any of you ſhall be refractory, and will not find any Bill, where there is a probable Ground for an Accuſation, you do therein undertake to intercept Juſtice; and you thereby make yourſelves Criminals and Guilty, and the Fault will lie at your Door. You muſt conſider, Gentlemen, you are under a double Obligation here to do right; you are under the Obligation of *Engliſhmen*, as we are all Members of one great Body, of which the King is Head; and you are engaged, as *Engliſhmen*, to conſider, That Crimes of this Nature ought not to go unpuniſhed: Then you have an Oath of God upon you, you are here ſworn to do according to what the Evidence is. Now therefore, if you have two Witneſſes of Words that may Import a treaſonable Deſign or Intention in any of thoſe Parties, againſt whom you ſhall have Indictments offered to you, you are bound both by the Law of Nature, as you are Members of this Body; and by the Law of God, as you have taken an Oath upon you, for to find thoſe Bills.

Gentlemen, Compaſſion or Pity is not your Province, nor ours in this Caſe; there is no Room for that, in Enquiries of this Nature; that is reſerved to an higher and ſuperior Power, from which ours is derived: Therefore, Gentlemen, I muſt require you to conſider ſuch Evidence as ſhall be given you, and to be impartial, according to what you ſhall hear from the Witneſſes, if you have Ground, upon what Evidence you ſhall have given to you, to believe that there is any Reaſon or Cauſe for the King to call the Perſons named in ſuch Indictments, as ſhall be tendered to you, to anſwer for what is objected againſt them therein, you are to find thoſe Bills; that is all that I ſhall ſay to you; only pray God to direct you in your Enquiry, that Juſtice may take Place.

[*Then a Bill of High Treaſon was offered againſt the Earl of* Shafteſbury; *and Sir* Francis Withins *moved, That the Evidence might be heard in Court.*]

L. C. J. Gentlemen of the Jury, you hear it is deſired by the King's Council (and that we cannot deny) that the Evidence may be publickly given, that it may not be hereafter in the Mouths of any ill-minded Perſons abroad, to ſcatter any Miſtakes or Untruths up and down; or to ſlander the King's Evidence, or to ſay any thing concerning them that is not true: Therefore, we cannot deny this Motion of the King's Council, but deſire that you will take your Places, and hear the Evidence that ſhall be given you.

[The Jury then deſired a Copy of their Oath, which the Court granted, and then they withdrew. After ſome little Time they returned, and then the Clerk called them by their Names.]

Foreman. My Lord Chief Juſtice, it is the Opinion of the Jury, that they ought to examine the Witneſſes in private, and it hath been the conſtant Practice of our Anceſtors and Predeceſſors to do it; and they inſiſt upon it as their Right to examine in private, becauſe they are bound to keep the King's Secrets, which they cannot do, if it be done in Court.

L. C. J. Look ye, Gentlemen of the Jury, it may very probably be, that ſome late Uſage has brought you into this Error, that it is your Right, but it is not your Right in Truth: For I will tell you, I take the Reaſon of that Uſe for Grand Juries to examine the Witneſſes privately and out of Court, to comply with the Conveniencies of the Court; for generally upon ſuch Commiſſions as theſe are, the Buſineſs is much; and at Goal Deliveries there are a great many Perſons to be indicted and tried, and much other Work beſides, of other Natures to be done: And if at ſuch Times, we ſhould examine all Buſineſſes publickly in the Court, it would make the Buſineſs of theſe Commiſſions of a wonderful great Length and Cumbrance. Therefore the Judges, for the Conveniency of the Matter, have allowed, that Witneſſes ſhould go to the Jury, and they to examine them; not that there is any Matter of Right in it, for without Queſtion, originally all Evidences were given in Court: The Jury are Officers and Miniſters of the Court, by which they enquire, and Evidence ſure was all given in Court formerly; and the Witneſſes ſtill are always ſworn in Court, and never otherwiſe. And, Gentlemen, I muſt tell you, 'tis for your Advantage, as well as for the King's, that it may be ſure, that you comply with your Evidence, that you do nothing clandeſtinely; therefore 'tis for your Advantage that this is done, and the King likewiſe deſires it. Now I muſt tell you, that if the King requires it of us, and it is a Thing that is in it's Nature indifferent, we ought to comply with the King's Deſire to have it examined in Court; you ſhall have all the Liberty that you can have in private; what Queſtion ſoever you will have aſked, yourſelves ſhall aſk it, if you pleaſe, and we will not cramp you in Time, nor any thing of that Nature. Therefore, Gentlemen, there can be no kind of Reaſon why this Evidence ſhould not be given in Court. What you ſay concerning keeping your Counſels, that is quite of another Nature, that is, your Debates, and thoſe Things, there you ſhall be in private, for to conſider of what you hear publickly. But certainly it is he beſt Way, both for the King, and for you, that there ſhould, in a Caſe of this Nature, be an open and plain Examination of the Witneſſes, that all the World may ſee what they ſay.

Foreman. My Lord, if your Lordſhip pleaſes, I muſt beg your Lordſhip's Pardon, if I miſtake in any Thing, it is contrary to the Senſe of what the Jury apprehend. Firſt, they apprehend that the very Words of the Oath doth bind them, it ſays, *That they ſhall keep the Counſels, and their own Secrets:* Now, my Lord, there can be no Secret in publick; the very Intimation of that doth imply, that the Examination ſhould be ſecret; beſides, my Lord, I beg your Lordſhip's Pardon if we miſtake, we do not underſtand any Thing of Law.

Mr. *Papillon.* Your Lordſhip is pleaſed to ſay, that it hath been the common Uſage and Practice; ſometimes, my Lord, we have heard, that that hath been the Law of *England*, that hath been the Cuſtom of *England:* If it be the ancient Uſage and Cuſtom of *England*, that hath never been altered from Time to Time, and hath continued ſo, we deſire your Lordſhip's Opinion upon that; as we would not do any Thing that may be prejudicial to the King, ſo we would not do the leaſt that ſhould be prejudicial to the Liberties of the People; if it be the ancient Cuſtom of the Kingdom to examine in private, then there is ſomething may be very prejudicial to the King in this publick Examination; for ſometimes in examining Witneſſes in private, there come to be diſcovered ſome Perſons guilty of Treaſon, and Miſpriſion of Treaſon, that were not known, nor thought on before. Then the Jury ſends down to the Court, and gives them Intimation, and theſe Men are preſently ſecured; whereas, my Lord, in caſe they be examined in open Court publickly, then preſently there is Intimation given, and theſe Men are gone away. Another Thing that may be prejudicial to the King, is, that all the Evidences here, will be foreknown before they come to the main Trial upon Iſſue by the Petty-Jury; then if there be not a very great deal of Care, theſe Witneſſes may be confronted by raiſing up Witneſſes to prejudice them, as in ſome Caſes it has been: Then beſides, the Jury do apprehend, that in private they are more free to examine Things in particular, for the ſatisfying their own Conſciences, and that without Favour or Affection; and we hope we ſhall do our Duty.

L. C. J. Look ye, Mr. *Papillon*, it is reaſonable that we ſhould give you our Advice in this Caſe: I muſt tell you, if you had conſidered of what I had ſaid before, I thought I had obviated theſe Objections: Firſt, as to what you do ſay that you are bound to conceal your Counſels, and the King's Secrets, that is very true; as to your Counſels, that is, your Debates, you are bound to conceal them: As to the King's Secrets, ſo long as he will have them kept ſecret, you are bound to keep them ſo too; but it doth not deprive the King of the Benefit of having it publick, if he have a Deſire for it; you don't break your Oath, if the King will make it publick; you don't make it publick; 'tis the King does it. Then as to that that you do ſay, that you apprehend the common Uſage of the Kingdom to be a Law; that is true, Mr. *Papillon*, in ſome Senſe; a conſtant and uninterrupted Uſage goes for a Law among us; but I thought I had told you before, that both of ancient and later Times there have been Examinations of the Witneſſes in Court, in Caſes of this Nature; and we are not without Precedents of it every Year, every Term, continually from Time to Time, Evidence is heard in Court by the Grand Jury; it is as uſual a Thing with us, as any Thing, if it be deſired, nothing more frequent, or more common: I never heard it denied, or ſtood upon by any Grand-Jury, in my Life, till of late here; you may be inſtructed with a thouſand Precedents, for I am ſure it is a common and ordinary Caſe, upon ſuch Occaſions, if deſired, to hear the Evidence in Court.

Look ye, Gentlemen, as to that Care that you have of the King's Affairs, the King has Reaſon to take it well that you are ſo careful for them; and that you are ſo mindful of his Concerns, he hath a great deal of Reaſon to think well of you for it: And, Gentlemen, conſider this, that his Majeſty's Council have certainly conſidered of this Evidence, before they brought this to a publick Enquiry; or elſe it would be a hard Thing if they ſhould come raw, and not know what the Witneſſes can ſay; for though you are the Jury to hear the Witneſſes, yet you muſt conſider, that the King's Council have examined whether he hath Cauſe to accuſe theſe Perſons, or not; and, Gentlemen, they underſtand very well, that it will be no Prejudice to the King to have the Evidence heard openly in Court; or elſe the King would ne'er deſire it.

Foreman. My Lord, the Gentlemen of the Jury deſire that it may be recorded, that we inſiſted upon it as our Right; but if the Court over-rule, we muſt ſubmit to it.

L. C. J. Here are enough Perſons to take Notice of it; to make Records of ſuch Things, is not uſual; it is not our Buſineſs here to record every Thing, that every Man will deſire to be recorded: We can record nothing but what is in order to the Proceedings, but Notice enough is taken of it; you need not fear but that there will be Witneſſes enough.

L. C. J. North. Gentlemen, I muſt ſay ſomething to fortify what my Lord Chief Juſtice has ſaid: If any of us had been of a different Opinion, we would have ſpoken it; the ſame Thing was ſtood upon, and diſcourſed on the laſt Seſſions, and then all the Judges were of this Opinion, and in what all the Judges agree to, you ſhould acquieſce. I muſt tell you from my own Experience; where the King will, he ought to have it kept ſecret: I have not known it done publickly in the orderly Courſe of Buſineſs; but I have often known where it hath been deſired by thoſe which proſecute for the King, that Evidence hath been given openly; and I never knew it denied: If any of my Brothers think otherwiſe, I deſire they would ſpeak; but, I tell you, as to my Experience, this is the Caſe.

Mr. Sheriff *P.* I deſire the Witneſſes may be kept out of the Court, and called one by one.

L. C. J. It is a Thing certainly, that the King's Council will not be afraid of doing; but Sheriffs do not uſe to move any Thing of this Nature in Court, and therefore 'tis not your Duty, Mr. Sheriff, to meddle with it.

Sheriff *P.* It was my Duty laſt Time, my Lord, and appointed.

* *Mr. Att. Gen.* You were acquainted 'twas not your Duty laſt Time, and you appear againſt the King.

Then the Indictment was read.

London ſſ. THE *Jurors for our Sovereign Lord the King, upon their Oaths preſent, that* Anthony *Earl of* Shaftesbury, *late of the Pariſh of St.* Martin's in the Fields, *in the County of* Middleſex, *as a falſe Traitor againſt the moſt illuſtrious, and moſt excellent Prince, our Sovereign Lord* Charles II. *by the Grace of God, of* England, Scotland, France, *and* Ireland, *King, his natural Lord, the Fear of God in his Heart not having, nor weighing the Duty of his Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our ſaid Sovereign Lord the King, towards him our ſaid Sovereign Lord the King, ſhould, and of Right ought to bear, wholly withdrawing, and with all his Strength intending the Peace and common Tranquillity in this Kingdom of* England, *to diſturb, and War and Rebellion againſt our ſaid Sovereign Lord the King, to ſtir up and move, and the Government of our ſaid Sovereign Lord the King, within this Kingdom of* England, *to ſubvert, and him our ſaid Sovereign Lord the King, from the Title, Honour, and regal Name of the Imperial Crown of his Kingdom of* England *to depoſe and deprive, and him our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, the* 18*th Day of* March, *in the three and thirtieth Year of our Sovereign Lord* Charles II. *now King of* England, *and divers other Days and Times, as well before as afterwards, in the Pariſh of St.* Mary le Bow, *in the Ward of* Cheap, London *traiterouſly compaſſed, imagined, and intended the Death and final Deſtruction of our ſaid Sovereign Lord the King, and the ancient Government of his Kingdom of* England, *to change, alter, and wholly to ſubvert, and him our ſaid Sovereign Lord the King, from the Title, Honour, and kingly Name of his Imperial Crown of this Kingdom of* England *to depoſe and deprive, and War and Rebellion againſt our Sovereign Lord the King, to move and levy within this Kingdam of* England; *and his ſaid moſt wicked Treaſons, and traiterous Compaſſes, Imaginations and Purpoſes aforeſaid, to fulfil and perfect, he the ſaid* Anthony *Earl of* Shaftesbury, *as a falſe Traitor, with divers armed Men, Subjects of our ſaid Sovereign Lord the King, then being, maliciouſly, traiterouſly and adviſedly, did provide and prepare to be aiding to him the ſaid Earl of* Shaftesbury, *to fulfil and perfect his Treaſons aforeſaid. And his ſaid wicked Treaſons, traiterous Compaſſes, Imaginations and Purpoſes, the ſooner to fulfil and perfect, he the ſaid* Anthony *Earl of* Shaftesbury *as a falſe Traitor, with one* John Booth, *and other Subjects of our ſaid Lord the King, then and there traiterouſly aſſembled, met and conſulted; and the ſame wicked Treaſons, and traiterous Compaſſes, Imaginations and Purpoſes aforeſaid, then and there to the ſaid* John Booth, *and other Perſons, to the Jury unknown, in the hearing of divers Liege Subjects of our Sovereign Lord the King, then and there preſent, openly, publickly, maliciouſly, traiterouſly and adviſedly did ſay and declare, and to perſuade and induce the ſaid* John Booth *to be aiding and aſſiſting in his ſaid Treaſons, Compaſſes Imaginations, and Purpoſes, he the ſaid* Anthony *Earl of* Shaftesbury, *as a falſe Traitor, maliciouſly, adviſedly, and traiterouſly, the ſaid* 18*th Day of* March, *in the three and thirtieth Year of the Reign of our ſaid Sovereign Lord the King, at the Pariſh and Ward aforeſaid, within the City of* London aforeſaid, *falſely, adviſedly, ſubtilly, maliciouſly and traiterouſly ſaid, aſſerted and declared, that in a ſhort Time the Parliament was to ſit at* Oxford, *and that he the ſaid* Anthony *Earl of* Shaftesbury *had inſpected the Elections, and conſidered the Inclinations and Diſpoſitions of the Generality of the Members of Parliament elected; and that he the ſaid* Anthony *Earl of* Shaftesbury *was ſatisfied that the Parliament would inſiſt upon three Matters, (to wit)* The Bill of Excluſion againſt the Duke of *York*; the aboliſhing the Act of Parliament of the 35th of Queen *Elizabeth*, and the paſſing of a new Bill for uniting Proteſtant Diſſenters; *with divers other good and wholeſome Bills. To which he the ſaid* Anthony *Earl of* Shaftesbury *was certain that the King's Majeſty would refuſe to give his Royal Aſſent; and therefore he the ſaid* Anthony *Earl of* Shaftesbury *did expect that there would be a Diviſion between the King's Majeſty and the Parliament; and that many noble Lords and worthy Members of the Lower Houſe did concur in the ſame Opinion; and they were reſolved to inſiſt upon the paſſing of thoſe Bills: And if the King's Majeſty refuſed, that they (meaning him the ſaid* Anthony *Earl of* Shaftesbury, *and the ſaid noble Lords and worthy Members) and provided Strength to compel the King's Majeſty to grant thereunto: And that for his Part, he the ſaid* Anthony *Earl of* Shaftesbury *had provided ſtout Men to be commanded by Captain* Wilkinſon, *(meaning one* Henry Wilkinſon, *one of the Subjects of our ſaid now Sovereign Lord the King); of which he the ſaid* Anthony *Earl of* Shaftesbury *had agreed that the ſaid* John Booth *ſhould be one.*

And further, the Jurors aforeſaid upon their Oaths do ſay, that the aforeſaid Anthony *Earl of* Shaftesbury, *his ſaid wicked Treaſons, and traiterous Imaginations, to fulfil, perfect and bring to Effect afterwards: to wit, the ſaid eighteenth Day of* March, *in the thirty-third Year of his ſaid now Majeſty's Reign, in the Pariſh and Ward aforeſaid, within the City of* London *aforeſaid, as a falſe Traitor in the preſence and hearing of divers liege People of our ſaid Sovereign Lord the King, then and there preſent, openly and publickly, falſely, maliciouſly, adviſedly and traiterouſly ſaid, aſſerted, publiſhed, and with a loud Voice declared, that our ſaid now Lord the King was a Man of no Faith, and that there was no Truſt in him; and that our ſaid Lord the King deſerved to be depoſed, as well as* Richard *the Second, late King of* England *deſerved.*

And further, the Jurors aforeſaid upon their Oaths do ſay, that the ſaid Anthony *Earl of* Shaftesbury, *his ſaid wicked Treaſons, and traiterous Imaginations aforeſaid, to be fulfilled and perfected, and brought to effect the ſaid* 18*th Day of* March, *in the three and thirtieth year of his ſaid now Majeſty's Reign, in the Pariſh and Ward aforeſaid, in the City of* London *aforeſaid, as a falſe Traitor, in the preſence and hearing of divers liege Subjects of our ſaid Lord the King then and there preſent, openly and publickly, falſely, maliciouſly, adviſedly, and traiterouſly ſaid, aſſerted, publiſhed, and with a loud Voice declared, that he the ſaid* Anthony *Earl of* Shaftesbury, *could never deſiſt, until he had brought this Kingdom of* England *into a Commonwealth without a King, and that the ſaid* Anthony *Earl of* Shaftesbury, *and all thoſe that him the ſaid* Anthony *Earl of* Shaftesbury *would aſſiſt, (and he knew many that would aſſiſt him the ſaid* Anthony *Earl of* Shaftesbury) *would make* England *a Commonwealth as* Holland *was: and that he the ſaid* Anthony *Earl of* Shaftesbury, *and other Traitors unknown, would live as in* Holland, *and that he our ſaid Lord the King, and all his Family, ſhould be rooted out.*

And further, the Jurors aforeſaid do ſay, that the ſaid Anthony *Earl of* Shaftesbury, *his ſaid wicked Treaſons, and traiterous Imaginations aforeſaid, to*

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* Sir *Rob. Sawyer.*

be fulfilled, perfected, and brought to Effect afterwards, the ſaid 18*th Day of* March, *in the three and thirtieth Year of his ſaid now Majeſty's Reign, in the Pariſh and Ward aforeſaid, in the City of* London *aforeſaid, as a falſe Traitor, in the preſence and hearing of divers liege Subjects of our ſaid Sovereign Lord the King then and there preſent, openly, publickly, falſly, maliciouſly, adviſedly, and traiterouſly ſaid, aſſerted, publiſhed, and with a loud Voice declared, that our now Sovereign Lord the King was a Man of an unfaithful Heart, and not worthy to be truſted, and not fit to rule and govern, being falſe, unjuſt, and cruel to his People; and if he would not be governed by his People, that they (meaning him, the ſaid* Anthony *Earl of* Shafteſbury, *and other Traitors to the Jurors unknown) our ſaid Sovereign Lord the King would depoſe, againſt his Allegiance and Duty, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity,* &c. *and againſt the Form of the Statute in ſuch Caſe made and provided,* &c.

Sir *Fr. Withens.* Gentlemen of the Jury, This is an Indictment againſt the Earl of *Shaftesbury*; I ſhall not trouble you to open the Indictment, becauſe the Evidence will be ſomewhat long, I ſhall only tell you which Way we ſhall go.——

L. C. J. North. I do not know whether you deſire the Witneſſes ſhould be examined a-part, do you deſire that, Gentlemen?

L. C. J. If you do deſire it, Gentlemen, they ſhall, for Mr. Sheriff hath nothing to do with it; but if you do deſire it, you ſhall have the Witneſſes called one at a Time, and all the reſt ſhall be put out of the Court.

Jury. My Lord, it is our Deſire.

L. C. J. We did deny it to Mr. Sheriff, becauſe we are to keep Men within their Duty. Here it is not his Duty to meddle with any Thing of this Nature.

Foreman. My Lord, we deſire we may have a Liſt of their Names, and that they may be put a-part, that they may not hear what one another ſay.

Sir. *Fr. Withens.* My Lord, there is one Part I would open.

L. C. J. There is no need for it at all—You ſhall have their Names told you as they are called.

Mr. *Harriſon.* My Lord, we pray we may have a Liſt of their Names.

L. C. J. If you deſire it, you may have it: but it will be no Advantage, for you will hear them named, and you may write them down as they come in.

Mr. *Godfrey.* We deſire a Liſt; for you told us, the King's Council had examined them, and knew who they were.

L. C. J. I'll tell you, the Court is to have their Names indorſed, for they don't bring Witneſſes in *hugger-mugger*, and I ſuppoſe they are indorſed here.

L. C. J. North. It is want of Experience that makes you aſk this; you are told, they are indorſed here.

L. C. J. Look you, Sir *Samuel Barnardiſton*, you muſt have the Indictment itſelf out with you, and all their Names written upon the back of that Indictment; but that you ſhould deſire to have the Names of them in a Roll beforehand, I do not know, if there be any Reaſon that you can aſſign for it.

Foreman. One Thing more I have to ſay, That we may ſee the Warrant by which the Earl of *Shaftesbury* was committed, for there are ſome other Queſtions depend upon it.

L. C. J. That we cannot do, for the Lieutenant of the *Tower* hath that Warrant, which he keeps for his Indemnity; we cannot demand it from him upon any Terms: Any Thing that you do deſire of us, let us know; what is reaſonable, and within our Power, we will grant; and for other deſires of your's, we tell the Reaſon why we cannot grant them.

Mr. *Papillon.* My Lord, if your Lordſhip pleaſes, I will only acquaint your Lordſhip, that the Gentlemen of the Jury do ſeem to be of Opinion, that your Lordſhip gives them leave to examine the Witneſſes; and the Jury, becauſe they would not put the Court to too much Trouble, do deſire, that the Witneſſes ſhould come one after another, and make their Information, and then the Jury would withdraw, to conſider what proper Queſtions to aſk them, and come down again.

L. C. J. You ſhall do ſo, Gentlemen. Look you, we did, at the Requeſt of the laſt Jury, uſe the ſame Method; after they had heard the Witneſſes what they gave in Evidence, they came and deſired leave to aſk them ſome Queſtions, which we granted, and they were all called one by one, and they did examine them; you ſhall do ſo, Gentlemen.

Mr. Att. Gen. I was informed this Morning there were ſeveral Queſtions to be aſked of ſeveral Witneſſes to direct the Grand-Jury how to demean themſelves.

L. C. J. Mr. Attorney, the Requeſt is reaſonable enough.

Mr. *Harriſon.* We deſire they may be examined one by one.

L. C. J. North. I ſuppoſe you don't ſtand upon it for theſe Witneſſes, they are Clerks of the Council, that only prove a Paper which it ſeems was found in the Earl of *Shaftesbury*'s Houſe: If you will, they may go out, and be called in again.

Harriſon. We humbly beg it.

Mr. *Godfrey.* I was Foreman of the Jury at *Fitz-Harris*'s Trial, and it was complained he had hard Meaſure from ſome *Iriſh* Witneſſes, and that it was ſevere that they ſhould be examined in Troops: It hath troubled me ſince that I did not put them out and examine them a-part.

L. C. J. Look ye, Gentlemen, you that are Witneſſes for the King, you muſt go all out, and come in as you are called, one by one.

[*Which done,* William Blathwait, *Eſq; was produced, and a Paper delivered in.*]

Mr. *Saunders* to Mr. *Blathwait.* I pray, Sir, give an Account how you came by that Paper?

W. Blathwait. This Paper, Gentlemen, was put into my Cuſtody by Mr. *Gwyn*, Clerk of the Council, who ſeized it among others in my Lord *Shaftesbury*'s Houſe: He gave me the Key of the Room where they were kept, and it hath been altogether in my Cuſtody, except for a ſhort Time that it was delivered to Mr. Secretary *Jenkins*, by whom it was re-delivered to me. Mr. *Gywn* having ſeized Papers at my Lord *Shaftesbury*'s Houſe brought them to the Council-Office, and put them into one of the Rooms, and locked the Door, and delivered the Key to me. When I was ordered by the Committee of Examinations, I fetched up the Trunks and Papers, and brought them into the Council Chamber, and the Trunks were opened in the Preſence of ſome of the Lords of the Council, and in the Preſence of Mr. *Wilſon*, who was appointed to attend there on the behalf of my Lord *Shaftesbury*, and he was always preſent when the Papers were taken out of the Trunks and Bags: This was one Paper, and was taken out upon the 6th of *July* in the Preſence of Mr. *Wilſon*, who took particular Notice of this Paper, as may appear by his own Hand. The Trunk was ſealed, it was a great Trunk, and it was opened in the Preſence of Mr. *Samuel Wilſon* and Mr. *Starkey*, who were both appointed by my Lord of *Shaftesbury*.

L. C. J. Was this Paper found in one of thoſe Trunks or Boxes that was delivered to you by Mr. *Gwyn*?

Mr. *Blathwait.* This Paper was taken out of a Velvet-Bag which Mr. *Gwyn* had put into the great Trunk, which Trunk was ſealed and opened in the Preſence of Mr. *Wilſon* and Mr. *Starkey*.

Sir *Fr. Withens.* Did you find that Paper in the Trunk?

Mr. *Blathwait.* I took this and others out of the Velvet Bag, which was in the great Trunk.

L. C. J. Call Mr. *Gwyn* to give an Account where he found theſe Papers. Look you, Gentlemen of the Jury, you hear what his Evidence is, would you aſk him any Thing while he is here.

[*Then Mr.* Gwyn *coming in.*]

L. C. J. Where had you the Trunk you delivered to Mr. *Blathwait?*

Gywn. My Lord, on the ſecond of *July*, by a Warrant from the Secretary, I was commanded to go to my Lord *Shaftesbury*'s Houſe to ſearch his Papers, I did there meet with a great many Papers, and I took a Note how I had parted them, and into what Parcels I had put the Papers; there were ſeveral Sorts of them in a great Hair Trunk, and there was a Velvet Bag in which I put ſome Papers that were looſe in my Lord's Cloſet above Stairs. My Lord *Shaftesbury* as ſoon as I came, gave me the Keys, and told me where his Cloſets were, and ſaid he would ſeal them up with his own Seal: I ſtaid for it, but he ſent me word by a Gentleman that I might put my own Seal if I pleaſed: I did put my Seal upon the Trunk, but afterwards being ſent another Way, I delivered it to this Gentleman Mr. *Blathwait*: Whether any of the Papers were taken out afterwards I cannot tell.

L. C. J. Mr. *Gwyn,* that your Evidence may be the better underſtood, tell me; were all the Papers that were in that Velvet Bag in my Lord *Shaftesbury*'s Cloſet?

Mr. *Gwyn.* In my Lord *Shaftesbury*'s Cloſet above Stairs.

L. C. J. This you ſwear; when you delivered it to Mr. *Blathwait*, all the Papers were in that Bag; was there nothing in that Bag, but what you took in my Lord *Shaftesbury*'s Cloſet?

Mr. *Gwyn.* Nothing, my Lord.

L. C. J. Look you, Gentlemen, you do obſerve that this Paper was put into the Bag by Mr. *Gwyn*, and Mr. *Blathwait* ſwears he found it in the Bag, and delivered it to Mr. Secretary *Jenkins*; therefore if you pleaſe Mr. Secretary *Jenkins*, you ſhall be ſworn whether that Paper was delivered to you by Mr. *Blathwait*, becauſe we would clear it as we go, whether that be the Paper was delivered to Mr. *Secretary Jenkins* by Mr. *Blathwait*: I pray, Sir, was that the Paper that Mr. *Blathwait* did deliver into your Hands?

Mr. Sec. *Jenkins.* My Lord, this is the Paper, this Paper was delivered into my Hands by Mr. *Blathwait* in the Council Chamber. I cannot ſay that this Numerical Paper was taken out of the Velvet Bag; but there were a great many Papers taken out of it, and I having the Honour to be at the Examination of the Papers; this was ordered to be put (and was put) into my Hands, with nine Papers more.

L. C. J. Was it out of your Hands?

Mr. Sec. *Jenkins.* It was out of my Hands; for upon *Monday* laſt I took out the nine Papers intruſted with me, and this tenth out of my Deſk, and cauſed my Servant to mark them by Numbers. Then I ſealed up theſe Papers and ſent them to Mr. *Graham*. Mr. *Graham* brought them back again to me without any Alteration whatſoever; then I put this tenth Paper into the Hands of Mr. *Blathwait* again. All the while it was in my Hands, it was under Lock and Key, and none of my Servants ſaw it, but the Time it was numbered; and no Manner of Alteration was made in this, or any other of the nine Papers.

L. C. J. Now it appears this was the Paper taken in my Lord *Shaftesbury*'s Cloſet.

Then this Paper was read as followeth.

‘ WE the Knights, &c. finding to the Grief of our Hearts, the Po-
‘ piſh Prieſts and Jeſuits, with the Papiſts and their Adherents
‘ and Abettors have for ſeveral Years laſt paſt purſued a moſt pernicious
‘ and helliſh Plot, to root out the true Proteſtant Religion as a peſtilent
‘ Hereſy, to take away the Life of our gracious King, to ſubvert our
‘ Laws and Liberties, and to ſet up arbitrary Power and Popery.

‘ And it being notorious that they have been highly encouraged by the
‘ Countenance and Protection given and procured for them by *J. D.* of
‘ *Y.* and by their Expectations of his ſucceeding to the Crown, and that
‘ through crafty Popiſh Councils his Deſigns have ſo far prevailed, that he
‘ hath created many and great Dependents upon him by his beſtowing
‘ Offices and Preferments both in Church and State.

‘ It appearing alſo to us, that by his Influence mercenary Forces have
‘ been levied and kept on foot for his ſecret Deſigns contrary to our Laws;
‘ the Officers thereof having been named and appointed by him, to the ap-
‘ parent Hazard of his Majeſty's Perſon, our Religion and Government, if
‘ the Danger had not been timely foreſeen by ſeveral Parliaments, and
‘ part of thoſe Forces with great Difficulty, cauſed by them to be diſ-
‘ banded at the Kingdom's great Expence: And it being evident, that
‘ notwithſtanding all the continual Endeavours of the Parliament to de-
‘ liver his Majeſty from the Counſels, and out of the Power of the
‘ ſaid *D.* yet his Intereſt in the Miniſtry of State and others have been ſo
‘ prevalent, that Parliaments have been unreaſonably prorogued and diſ-
‘ ſolved when they have been in hot purſuit of the popiſh Conſpiracies,
‘ and ill Miniſters of State their Aſſiſtants.

‘ And that the ſaid *D.* in order to reduce all into his own Power hath
‘ procured the Garriſons, the Army and Ammunition, and all the Power

‘ of the Seas and Soldiery, and Lands belonging to theſe three Kingdoms to be put into the Hands of his Party and their Adherents, even in Oppoſition to the Advice and Order of the laſt Parliament.

‘ And as we conſidering with heavy Hearts how greatly the Strength, Reputation, and Treaſure of the Kingdom both at Sea and Land is waſted and conſumed, and loſt by the intricate expenſive management of theſe wicked deſtructive Deſigns; and finding the ſame Counſels after exemplary Juſtice upon ſome of the Conſpirators, to be ſtill purſued with the utmoſt deviliſh Malice, and Deſire of Revenge; whereby his Majeſty is in continual Hazard of being murdered to make way for the ſaid D.'s *Advancement* to the Crown, and the whole Kingdom in ſuch Caſe is deſtitute of all Security of their Religion, Laws, Eſtates and Liberty, ſad Experience in the Caſe, Queen *Mary* having proved the wiſeſt Laws to be of little Force to keep out Popery and Tyranny under a Popiſh Prince.

‘ We have therefore endeavoured, in a parliamentary Way, by a Bill for the Purpoſe, to bar and exclude the ſaid Duke from the Succeſſion to the Crown, and to baniſh him for ever out of theſe Kingdoms of *England* and *Ireland*. But the firſt Means of the King and Kingdom's Safety being utterly rejected, and we left almoſt in Deſpair of obtaining any real and effectual Security, and knowing ourſelves to be intruſted to adviſe and act for the Preſervation of his Majeſty and the Kingdom, and being perſuaded in our Conſciences that the Dangers aforeſaid are ſo eminent and preſſing, that there ought to be no Delay of the beſt Means that are in our Power to ſecure the Kingdom againſt them, We have thought fit to propoſe to all true Proteſtants an Union amongſt themſelves, by ſolemn and ſacred Promiſe of mutual Defence and Aſſiſtance in the Preſervation of the true Proteſtant Religion, his Majeſty's Perſon and Royal State, and our Laws, Liberties, and Properties, and we hold it our bounden Duty to join ourſelves for the ſame Intent in a Declaration of our united Affections and Reſolutions in the Form enſuing.’

I *A. B.* do in the Preſence of God ſolemnly promiſe, vow, and proteſt to maintain and defend to the utmoſt of my Power, with my Perſon and Eſtate, the true Proteſtant Religion, againſt Popery and all Popiſh Superſtition, Idolatry, or Innovation, and all thoſe who do or ſhall endeavour to ſpread or advance it within this Kingdom.

I will alſo, as far as in me lies, maintain and defend his Majeſty's Royal Perſon and Eſtate; as alſo the Power and Privilege of Parliaments, the lawful Rights and Liberties of the Subject againſt all Incroachments and Uſurpation of arbitrary Power whatſoever, and endeavour entirely to diſband all ſuch mercenary Forces as we have Reaſon to believe were raiſed to advance it, and are ſtill kept up in and about the City of *London*, to the great Amazement and Terror of all the good People of the Land.

Moreover *J. D.* of *Y.* having publickly profeſſed and owned the Popiſh Religion, and notoriouſly given Life and Birth to the damnable helliſh Plots of the Papiſts againſt his Majeſty's Perſon, the Proteſtant Religion, and the Government of this Kingdom; I will never conſent that the ſaid *J. D.* of *Y.* or any other, who is or hath been a Papiſt or any ways adhered to the Papiſts in their wicked Deſigns, be admitted to the Succeſſion of the Crown of *England*; but by all lawful Means, and by Force of Arms, if need ſo require, according to my Abilities, will oppoſe him, and endeavour to ſubdue, expel, and deſtroy him if he come into *England*, or the Dominions thereof, and ſeek by Force to ſet up his pretended Title, and all ſuch as ſhall adhere unto him, or raiſe any War, Tumult or Sedition for him, or by his Command, as publick Enemies of our Laws, Religion and Country.

‘ To this End we and every one of us whoſe Hands are here underwritten, do moſt willingly bind ourſelves and every one of us unto the other jointly and ſeverally, in the Bond of one firm and loyal Society or Aſſociation, and do promiſe and vow before God, that with our joint and particular Forces we will oppoſe and purſue unto Deſtruction all ſuch as upon any Title whatſoever ſhall oppoſe the juſt and righteous Ends of this Aſſociation, and maintain, protect, and defend all ſuch as ſhall enter into it in the juſt Performance of the true Intent and Meaning of it. And leſt this juſt and pious Work ſhould be any Ways obſtructed or hindered for want of Diſcipline and Conduct, or any evil-minded Perſons under Pretence of raiſing Forces for the Service of this Aſſociation, ſhould attempt or commit Diſorders; we will follow ſuch Orders as we ſhall from Time to Time receive from this preſent Parliament, whilſt it ſhall be ſitting, or the major Part of the Members of both Houſes ſubſcribing this Aſſociation, when it ſhall be prorogued or diſſolved; and obey ſuch Officers as ſhall by them be ſet over us in the ſeveral Counties, Cities, and Boroughs until the next Meeting of this or another Parliament; and will then ſhew the ſame Obedience and Submiſſion unto it, and thoſe who ſhall be of it.

‘ Neither will we for any Reſpect of Perſons or Cauſes, or for Fear, or Reward, ſeparate ourſelves from this Aſſociation, or fail in the Proſecution thereof during our Lives, upon Pain of being by the reſt of us proſecuted, and ſuppreſſed as perjured Perſons, and publick Enemies to God, the King, and our Native Country.

‘ To which Pains and Puniſhments we do voluntarily ſubmit ourſelves, and every one of us without benefit of any Colour or Pretence to excuſe us.’

In Witneſs of all which Premiſſes to be inviolably kept, we do to this Writing put our Hands and Seals, and ſhall be moſt ready to accept and admit any other hereafter into this Society and Aſſociation.

Sir *Fran. Withens.* This Paper is very plauſiby penned in the beginning, and goes a great way ſo, but in the laſt Clauſe but one, there they come to perfect levying War; for they do poſitively ſay, they will obey ſuch Officers as either the Parliament or the major Part of them, or after the Parliament is diſſolved, the major Part of thoſe that ſhall ſubſcribe this Paper ſhall appoint; they will obey all ſuch Officers.

Foreman. Pray, what Date is this Paper of?

Sir *Fran. Withens.* It was after the Bill for the Excluſion of the Duke of *York*, for it ſays, that way failing, they would do it by Force.

Foreman. There is no Hand to it at all?

Sir *Fran Withins.* No, none at all. One thing I had forgot, that they would join to deſtroy the mercenary Forces about *London*, which is downright levying of War againſt the King and his Guards.

Mr. *Saunders.* The Deſign of it is pretended to oppoſe Popery and arbitrary Power, and deſtroy the Papiſts; but that doth not ſeem ſo much in it's ſelf: But when you have heard the Evidence you will hear who were the Papiſts that were to be deſtroyed by this Army.

John Booth.

Jury. He has ſtood in the Face of the Court all this while.

L. C. J. When did Mr. *Booth* come down?

Jury. He was here before we went up, my Lord, and hath been here ever ſince.

L. C. J. Look ye, Gentlemen, they tell you he was carried away, and came down but now.

Mr. *Booth.* No, my Lord, I came down but now.

Mr. *Shepherd.* My Lord, we deſire a Liſt of their Names, that we might know who is here, and who is not.

Mr. *Godfrey.* This Man hath been here all this while, and all the others may be here for aught that I know.

Sir *Fran. Withens.* In the firſt Place give an Account what Diſcourſe you have had with my Lord *Shafteſbury*.

L. C. J. Speak out, that the Jury may hear you.

Mr. *Booth.* I will ſpeak as loud as I can. In the Month of *January*, about the middle of *January* laſt, I was introduced into my Lord *Shaftesbury*'s Acquaintance by one Captain *Henry Wilkinſon.* I ſay, I was introduced into my Lord *Shaftesbury*'s Acquaintance by one Captain *Henry Wilkinſon.* This Captain *Wilkinſon* is a *Yorkſhire* Gentleman, he has known me above twenty Years, and he and I have had familiar Converſation a long while; ſo waiting upon my Lord *Shaftesbury*, our firſt Buſineſs that we went about was, Captain *Wilkinſon* did pretend to receive a Commiſſion from my Lord *Shaftesbury*, and ſome others of the Lords Proprietors of the Palatinate of *Carolina* to be their Deputy Governor; and he told me the Proſpect of that Journey was like to be very hopeful, and that his Intereſt was good, and that he could procure me a Commiſſion, and ſuch a Number of Acres for Quality and Quantity as I did deſire: And he ſaid he did not deſign to go over immediately in his own Perſon, but he would ſend his eldeſt Son, and his youngeſt Son, and if he went, he would return again as Occaſion ſhould ſerve. I conſented to him in all this, and we diſcourſed it divers times together, and we went to my Lord *Shaftesbury* on purpoſe to receive Commiſſions in order to this Purpoſe. The firſt time I went there was the Earl of *Craven*, Sir *Peter Colleton*, and one *Archdell* a Quaker; I thought him a Quaker becauſe he kept his Hat on, when the reſt of the Lords ſtood bare in Civility to him. We diſcourſed the Thing about *Carolina*. After this, and before, Captain *Wilkinſon* and I had ſeveral Diſcourſes about the Juncture of Affairs in theſe Times, though I knew him to be an old Royaliſt, and one that ſerved his Majeſty and his late Father very much in the Wars; yet being under great Diſappointments of Preferments at Court, and miſſing the Reward he expected from the King, his Heart was turned another Way, and he had repented himſelf of thoſe Services he had done for the King, and was become a Man of another Opinion; and there was ſome Inducements upon me that I was inclined to the ſame Opinion: So he expreſſed himſelf to my Lord, and ſo from one Thing to another we went on in Diſcourſe, and related the ſeveral Parliaments, and the proroguing them, and the Diſappointments of the People, and the Fear of Popery and arbitrary Power: And this was not done once, nor twice, nor ten times; for I cannot enumerate them, for we kept a continual Club, and converſed together familiarly near three quarters of a Year. After this firſt Acquaintance with my Lord *Shafteſbury* at his Houſe, I did frequently go with Captain *Wilkinſon*, and between *Chriſtmas* and *March* four or five times: And I obſerved this, that when we came to my Lord *Shafteſbury*'s they were cautious in our Acceſſion: In the firſt Place it was to be known by ſome of the Servants, who he was in Company with: And in the ſecond Place the Names were ſent up, who they were that were to ſpeak with him: Sometimes we had an Alehouſe at the *Bell* in the ſame Street: (I forget the Name of the Street) we ſtaid at the Alehouſe till we had a fit Time, Captain *Wilkinſon* had Acquaintance with his Porter and his Gentleman of his Chamber: And ſo we often diſcourſed. And from the Concerns of *Carolina* we fell to Matters more public concerning the State. I remember he would uſe to inveigh ſharply againſt the Times, and look upon himſelf as not ſo valued nor ſo reſpected, nor in thoſe Places and Dignities as he expected he ſhould be, and ſeemed to be diſcontented, and he did fear that Popery would be introduced, and arbitrary Power: And when Parliament-men were to be elected, there came every Week News, bringing Particulars of ſuch Boroughs and Counties as had made particular Elections for Members for Parliament; whether Knights, Citizens, or Burgeſſes: And he would often conſider that Parliament that was to ſit at *Oxford*, what they were as to their Inclinations and Diſpoſitions: And he ſaid, they would inſiſt upon the ſame Things the other Parliaments before had done. Particularly he ſaid the Parliament would never grant the King any Aſſiſtance of Money, nor ſatisfy him in thoſe things that he deſired, unleſs he gave the People firſt Satisfaction in thoſe Things that they inſiſted on before, and he believed would inſiſt upon after; and particularly the Bill of excluding the Duke of *York* from the Crown: Another was the aboliſhing the Statute of the 35th of *Elizabeth:* And the third was giving his Royal Aſſent for the Paſſing a new Bill, whereby all Diſſenting Proteſtants, Nonconformiſts, or what you will term them, ſhould be freed from thoſe Penalties and Eccleſiaſtick Puniſhments that they are ſubject to by the preſent eſtabliſhed Law: And he ſaid, if theſe and ſome other wholeſome Laws and Bills were paſſed by the Royal Aſſent of the King, he believed that when the People had received this Security and Satisfaction, that they would be very willing to grant the King ſuch Accommodations of Money by Way of Aſſeſſment, or ſo, as his neceſſary Occaſions ſhould alſo require: But without this he believed, there would be a Breach between the King and the Parliament, and that they had ordered the Parliament ſhould meet at *Oxford*, and not at this Metropolis at *London*, where they might go on without Fear of being overawed: That this was an Intention to awe the Parliament. But he ſaid, himſelf and divers noble Lords, and Members of the Houſe of Commons had conſidered themſelves and their own Safety, and that they judged it dangerous to go to *Oxford*, where they were ſure the Guards, the Retinue of the Court, and the Aſſiſtance of the Scholars (which uſually incline to the Crown) might ſo over-awe the Parliament, that they might not ſo freely proceed in a Way for the publick Good as they intended; and therefore he and others had conſidered with themſelves, that it were fit for them to have Guards, and ſend them thither; and to this Purpoſe he had eſtabliſhed a Matter of fifty Men, Perſons of Quality, that he believed would have Men along with them; and he intruſted Captain *Henry Wilkinſon* with the Command of theſe Men, and they were to come to *Oxford* at ſuch a Time, and if there were any Breach between the King and the Parliament, or any Violence offered to any of theſe Members by the Guards, or Retinue of the Court, that then theſe Men, with others that other Lords had provided, ſhould repel his Force, by greater Force, and ſhould purge the Guards of all the Papiſts and Tories, and ſuch as were againſt the Proteſtant Religion, and the eſtabliſhed Laws of the Land; and likewiſe theſe Men ſhould be ready to aſſiſt himſelf, and thoſe other Perſons in his Confederacy, to purge from the King thoſe evil Counſellors which were about him; particularly there were named, the Earl of *Worceſter*, my Lord *Clarendon*, my Lord *Hallifax*, my Lord *Feverſham*, and Mr. *Hide*, now Lord Viſcount *Hide*: And theſe Perſons were looked upon to be dangerous, and gave the King evil Advice, and made him continue ſo very deaf to what the Parliament urged him to; and therefore they ſaid they would not only purge the Guards, and repel that Force by a greater Force, but alſo take thoſe Lords by Violence from the King, and bring the King to *London*, to the chief Metropolitan City, where thoſe Things ſhould be eſtabliſhed, which they deſigned for their Safety in theſe two Reſpects, for the preſerving the Proteſtant Religion, and likewiſe for the keeping and defending us ſafe from arbitrary Power and Government. Upon this Captain *Wilkinſon* did deſire me that I would be one of thoſe under his Command: This I did conſent to. And he requeſted me further, that I would provide for myſelf Horſe and Arms; and likewiſe Arms for my Man, and he would provide me a Horſe for my Man. I did accordingly provide Arms for myſelf, and a good Stone-Horſe for myſelf, and Arms for my Man before the Parliament did ſit at *Oxford*. I think the 23d of *March*, I do not punctually remember the Day, and when the Parliament was ſet, we enquired and heard how things went on, and found that it was as my Lord *Shafteſbury* had predicted, that the Parliament did inſiſt upon thoſe very Things that he told they would do, but never believed or imagined they would be ſo ſoon diſſolved. Upon *Thurſday* before the Parliament was diſſolved, Captain *Wilkinſon* told me, he expected that very Week to have a Summons to go up to *Oxford* with thoſe Men that were liſted with him; but then *Saturday*'s News came of the Diſſolution of the Parliament, and therefore it took no further Effect. The whole Matter, the main Deſign was this, That my Lord *Stafteſbury* ſhould have ſo many Men to attend him there for the Security of his Perſon, and likewiſe to repel the Force of the King's Guards, or any other Perſons that followed the King; and alſo to remove from him thoſe five Lords, and bring the King back to *London*, to eſtabliſh thoſe Laws that I have mentioned.

Sir *Fra. Withens*. Pray what Time did you diſcover this?

Mr. *tBooh*. About ſix Weeks ago.

Sir *Fra. Withens*. Had you any Diſcourſe with the Earl of *Shafteſbury* after Captain *Wilkinſon* ſpoke with you, or before the Sitting of the Parliament?

Mr. *Booth*. I ſaid before, that the firſt Motion of theſe fifty Men that were to be my Lord *Shafteſbury*'s Guard came from Captain *Wilkinſon*; but after this, when I went with Captain *Wilkinſon* to my Lord *Shafteſbury*, the ſame Thing was diſcourſed there. The laſt Time I was with my Lord *Shafteſbury*, was about a Week before he went to *Oxford*, about ten Days before the Parliament ſat, or a Week, and then I heard the ſame Diſcourſe from my Lord *Shafteſbury*'s own Mouth.

Sir *Fra. Withens*. Had you any other Diſcourſe with my Lord *Shafteſbury*?

Mr. *Booth*. I ſay, I made three or four Viſits between *Chriſtmas* and *March*, and we had diſcourſe every Time particularly about the King's Perſon, and if the King did refuſe theſe Motions, that then theſe Men were to be taken from him, and he repelled with a greater Force, and be brought to it by Force.

Sir *Fra. Withens*. Did you ever make any Solicitation to any to make this Diſcovery?

Mr. *Booth*. Thus far I did, and I will tell you the whole Matter in that Point; there was one *Walter Banes*, an Acquaintance of mine, and I found that he had, at *Wilkinſon*'s Requeſt, engaged himſelf in ſome Buſineſs that one *Brownrig*, an Attorney in *Yorkſhire*, had writ to him about, concerning ſome Men that were to ſwear againſt my Lord *Shafteſbury*. I aſked Mr. *Banes* what Men theſe were? He ſaid, he thought they were *Iriſhmen*. I ſaid, I don't know what Converſation in that Nature my Lord *Shafteſbury* might have with *Iriſhmen*, for I know none of them; but I am ſatisfied that he had Converſation tending to theſe Ends that you ſpeak of with ſome *Engliſhmen*, and that I know. This Mr. *Banes* did take particular Notice of, and he was very frequently upon me to tell him what the Matter was, and I gave him ſome Intimation of it. Truly 'twas very much upon my Spirit, and I could not tell whether I was able to carry it through or not, or had better to let it alone as it was in Silence: But diſcourſing ſtill more with him, and at the Reſult of that Diſcourſe we had by Degrees, I did give him ſome Intimation of it. And after that, upon ſecond Thoughts, I took a Reſolution to diſcover it: And when I did diſcover it, I do here in the Preſence of God declare, that no Mortal did know any thing of what I had to ſay, in Reference to the King; nor did I make any more Applications in the World, but took Pen, Ink, and Paper, and writ it down, and ſealed it under a Cover, and ſent it to the Council.

Sir *Fra. Withens*. Gentlemen of the Jury, would you aſk him any Queſtions?

Mr. *Papillon*. The Jury told your Lordſhip before, that after all had had been examined they would conſider what Queſtions.

L. C. J. Where would you have theſe Witneſſes that have been examined to ſtand?

Mr. *Papillon*. We leave to the Sheriffs to appoint a Place for them.

L. C. J. To keep them a-part 'tis utterly impoſſible, for we muſt have as many Rooms then as there are Witneſſes.

Jury. Let one Man keep with them.

L. C. J. Empty that Place where they were the laſt Time, and let them ſtand there.

[*Edward Turbervile*.]

Sir *Fra. Withens*. Mr. *Turbervile*, have you had any Diſcourſe with my Lord *Shafteſbury*?

Turbervile. Yes, ſeveral Times. In *February* laſt, I am not poſitive in the Time, but about the Beginning of the Month, I waited upon my Lord *Shafteſbury* about ſome Moneys. I waited upon him to have his Advice how I might come by it, and to gain my Lord *Shafteſbury*'s Letter in my Behalf to the Preſident of the Council to ſtand my Friend, and he ſaid, there was little Good to be had from the King, as long as his Guards were about him; for, were it not for his Guards, we would quickly go down to *Whitehall*, and obtain what Terms we thought fit. Said I, my Lord, I ſuppoſe his Guards can't defend him from the whole Kingdom. His Lordſhip ſaid, that the Rabble were all of that Side, eſpecially the People about *Wapping*, and *Alderſgate-Street*; and the rich Men of the City would vote for Elections; but they could not expect they ſhould ſtand by them in Caſe there ſhould be any Diſturbance, for they valued their Riches more than their Cauſe. And at *Oxford* I heard my Lord ſay again, he wondered the People of *England* ſhould ſtickle ſo much about Religion, and that if he were to chooſe a Religion, he would have one that ſhould comply with what was apt to carry on their Cauſe.

Mr. *Saunders*. Had you any other Diſcourſe with him at any other Time?

Mr. *Turbervile*. I told you all that is material that I can ſay to it.

[*John Smith*.]

Mr. *Smith*. My Lord, I only beg a Word or two from your Lordſhip, of ſome Reflections caſt upon me.

L. C. J. Go to your Evidence.

Mr. *Smith*. My Lord, this is ſomething to my Evidence.

L. C. J. You may take another Time for that.

Mr. *Smith*. My Lord, it hath been reported about in Coffee-Houſes and Taverns, that I ſhould ſwear there was a general Deſign againſt his Majeſty; and that I ſwore it before the King and Secretary of State; and that I alſo ſwore it at the Trial of Mr. *Colledge* and Mr. *Rowſe*: I take it upon my Oath I never ſwore any ſuch Thing, neither can I ſwear there was a general Deſign by the City, or the Parliament againſt the King.

L. C. J. Speak what Diſcourſe you have had with my Lord *Shafteſbury*.

Mr. *Smith*. My Lord, I ſuppoſe it is paſt all Doubt, that I have been very often with my Lord *Shafteſbury*; and I have often in his Diſcourſe obſerved, that he ſpake very irreverently and ſlightly of the King; ſometimes ſaying he was a weak Man, and ſometimes ſaying he was an inconſtant Man; a Man of no firm or ſettled Reſolution; and a Man that was eaſily led by the Noſe, as his Father was before him, by a Popiſh Queen, which was the Ruin of his Father: This was both in publick and in private. I have alſo obſerved ſometimes in his Diſcourſe, ſomething that he mentioned of the Earl of *Eſſex*; and that the King ſhould declare, that the Earl of *Shafteſbury* was not ſatisfied to be an ill Man himſelf, but got over the Earl of *Eſſex* too: This the Earl of *Shafteſbury* declared publickly in his own Houſe. Another Story was of the Rebellion of *Scotland*, that the King ſhould ſay, that the Earl of *Shafteſbury* was the chief Promoter of that Rebellion; and when this was told my Lord *Shafteſbury*, that he ſhould ſend Word back again to the King, "I am "glad (ſays he) that the King ſees not his own Danger, nor what he "runs himſelf into: And pray tell him, that, if I were to raiſe a Rebel-"lion, I could raiſe an othergueſs Rebellion than the Rebellion was in "*Scotland*." But now, as to the particular Points I am to charge him with: I remember, my Lord, that my Lord *Shafteſbury* ſent for me one Time, and that by one *Manly*; ſometimes they call him Major *Manly*, ſometimes Captain *Manly*; and this Man found me at Mr. *Bethel*'s Club in *Newgate-Street*, at the *Queen*'s-*Arms*; and there he told me my Lord *Shafteſbury* would ſpeak with me that Night. I immediately left the Club, and went to my Lord *Shaftesbury*'s; and I was introduced into the Dining-Room, where there were two Gentlemen in Diſcourſe with my Lord; and as ſoon as he ſaw me, he aſked me how I did: I told him I was very well, and came in Obedience to his Lordſhip's Command to wait upon him; for Major *Manly* told me your Lordſhip had a Mind to ſpeak with me: He ſaid he had. Soon afterward, theſe two Gentlemen went away. Upon this my Lord turns about, Mr. *Smith*, ſaid he, Mr. *Hetherington* was with me this Morning, and told me he was afraid that the *Iriſh* Witneſſes would go over to the Court Party, and retract what they had ſaid formerly. My Lord, ſays I, I know no Perſon can better and with more Eaſe hinder that than your Lordſhip, by procuring ſome ſmall Allowance for them; for they complain much of Poverty. Says he, Maſter *Hetherington* has the Charge of them, and hath a ſpecial Care of them, and I believe they don't want. My Lord, ſays I, I know nothing of that, he knows what Proviſion he hath made for them. This is the Thing, ſaid my Lord, that I would have you do; they ſtand in great Awe of you, and you muſt perſuade them from going nigh that Rogue *Fitz-Gerald*, that great Villain, that is pampered up, and maintained by the King and the Court-Party, to ſtifle the Plot in *Ireland*. My Lord, ſays I, do you think the King would be at ſuch vaſt Charges for to bring over Witneſſes, and at laſt maintain Men to ſtifle this Plot, for that is the Way to ſtifle the Plot in *England* too, as well as that? Says he, what is this frequent Diſſolutions and Prorogations of Parliament for, but to ſtifle the Plot here, and to hinder the Lords in the *Tower* to come to a Trial? This is a ſtrange Thing, my Lord, ſaid I, when he gave Dr. *Oates*, Mr. *Bedloe*, and Mr. *Dugdale* ſuch large Allowances to proſecute this Plot. Says my Lord, that is nothing, that may hold for a Year or two, he may take it off when he will, but the chief Means are put by, whereby we might find out the Depth of this Plot; and if Mr. *Dugdale* and Dr. *Oates* be knocked on the Head, then where is this Plot? then there will come an Act of Oblivion for them, and all things will be well as they were before. My Lord, ſaid I, this is very ſtrange to me. I can give you Inſtance of it, ſays he, when I was lately in the *Tower*, I told ſome I ſaw Popery coming in, and that it was hard to prevent it. I am ſorry to hear it, ſaid I, but what would you have me do with theſe *Iriſh* Witneſſes? Says he, perſuade them not to go near *Whitehall*, nor this *Fitz-gerald*. And, ſaid he, one Thing more I would have you mind, Mr. *Smith*, that if the King were not as well ſatisfied with the coming in of Popery as ever the Duke of *York* was, do you think the Duke of *York* would be ſo much concerned in the bring-in of Popery as he is? I am ſorry for it, my Lord, if it be ſo. After this I parted with my Lord *Shafteſbbury*, with full Inſtructions from him to thoſe *Iriſh* Witneſſes. I met Mr. *Hetherington* the next Morning, and I told him that I was with my Lord *Shafteſbury*: Says he, I know your Buſineſs, and would have you meet us at the *Sun* Tavern in the Afternoon. My Lord, I went according the Time appointed, and met him at the *Sun* Tavern between ſix, or ſeven, or eight of the Clock, as near as I can remember. When I came to them I began to open thoſe great and horrid Crimes that I heard Mr. *Fitz-gerald* accuſed of, that he was a Man came to diſcover a Plot, and diſowned it here, and retracted all he had ſaid. I told them what a Crime this was. In ſhort, my Lord, they promiſed never to go near the Man. I parted that Night and came to my Lodging, and the next Morning Mr. *Hetherington* and one Mr. *Bernard Dennis* came to my Lodging and told me, that this *Bernard Dennis* was ready to give in Information againſt *Fitz-gerald*, that he had tampered with him to forſwear all he had ſworn before, I went preſently with Mr. *Hetherington* and Mr. *Dennis* to my Lord Mayor, who was then Sir *Patience Ward*; after we had told the Buſineſs to Sir *Patience Ward*, Sir *Patience* aſked this *Dennis* if there were any other Perſons preſent. Yes, ſays he, there was. Says Sir *Patience*, you are upon your Oath, if you know not the Nature of an Oath, I will tell you. The Information was drawn up; the Copy of this Information I carried to my Lord *Shafteſbury* and ſhewed it him, he read it, and was very well pleaſed with it, and ſaid, Mr. *Smith*, don't you ſee the Villiany of that Man and that factious Party, and that the King runs the ſame Steps as his Father did before him, how can any Thing of this Nature be done, without the King and the Court pampered him up? My Lord, ſaid I, I think now the Thing is clear. Ay, ſays he, theſe are the very ſame Steps that his Father followed when he was led by his Popiſh Queen, and the poor Man doth not ſee his Danger. I parted from my Lord, and came and gave an Account of this very Diſcourſe to the Club in *Newgate-ſtreet*, and they were glad of it, and I told what my Lord *Shafteſbury* ſaid, that the King would never be quiet till he came to his Father's End, he followed the ſame Steps. Another Thing that I have obſerved particularly before the Parliament went to *Oxford*; I went to ſee him, and we fell into ſome Diſcourſe, and my Lord ſaid there was great Preparations made, and a great many gathered together upon the Road between *London* and *Oxford*. My Lord, ſaid I, what is the meaning of that? Any Body may ſee, ſays he, that is only to terrify the Parliament to comply with the King's Deſire, which I am ſure the Parliament never will, for we are as reſolute now as ever; and more reſolute, for we ſee clearly what the King aims at, and that is to bring in Popery: Which I told ſeveral Years ago, and when I was laſt in the *Tower*; but, ſays he, we have this Advantage of him, if he offer any Violence to us, (for we expect it) that we have the Nation for us, and we may lawfully oppoſe him, and he will meet with a very ſtrong Oppoſition; for all that come out of the Country, ſhall be well horſed and well armed, and ſo we ſhall be all; and here is the City which now has a Queſtion in Debate among them, whether they ſhall bear the Charge of their own Members or no, but they are willing to do it, and ſend ſo many Men to wait on them, and if we oppoſe the King, as we may do, for it hath been done in former Times, the whole Nation is to ſtand by us, and as I ſaid when I was in the *Tower*, I would die, before I would ever bring in Popery or any Thing of that Nature.

Jury. Repeat that again.

Smith. He ſaid, that the King, if he offered any Violence at *Oxford* to the Parliament, he would meet with a ſtrong Oppoſition, and that the Gentlemen that came out of the Country were well provided with Horſe, Arms, and Men, to oppoſe him, and that they might lawfully do it if the King offered any Violence to them whilſt they ſat, and that the Nation ſtood by them, and that they did repreſent the Nation, and that for his Part he and all his Friends would do it to the utmoſt of their Power, and, as old as he was, he would be one that would oppoſe it to his Power. My Lord, ſaid I, we can expect nothing but Confuſion from this Parliament, in this Nature, for then we ſhall be involved in another Civil War, nothing elſe can put an end to our Miſeries, or make this Nation a ſettled Nation, but a Civil War. Then my Lord, ſaid I, by this Means we ſhall make an end of Monarchy, or elſe enſlave the Nation to Popery for ever. No doubt of one, ſays he, but we are ſure of one, for the Nation is of our Side, and the City you know how they are, and where-ever they ſtrike, I am ſure the Nation will, and this I'll ſtand and die by. This is the Subſtance of what I have to ſay againſt my Lord *Shafteſbury*, and upon the Oath I have taken, I am ſure I have not added a Word. One Word more I have to ſay, 'tis reported I have been hired and ſuborned, I do admire why this City of *London*, where there are as worthy Men, and as great Lovers of the King and Government as any in the World, ſhould ſay any ſuch Thing; I was never ſuborned by them, nor never took a Farthing of their Money, nor never took a Farthing of the King in my Life.

L. C. J. Who ſuppoſes it?

Mr. *Smith*. 'Tis in Print, my Lord, 'twas in the Book that came out laſt Night; it is ſuppoſed, my Lord, for it is in print.

L. C. J. I had reaſon to expect that there was no ſuch Objection.

Brian Haines.

Mr. *Saunders*. Give your Knowledge of what Diſcourſe you have heard concerning my Lord *Shafteſbury*.

Mr. *Haines*. Sir, I have heard him vilify the King very often, and he told me about the Narrative that I made about Sir *Edmundbury Godfrey*'s Death, Mr. *Ivy* and I went to him one Day and he ſpoke to me of it, and I deſired him not to expoſe my Perſon to the King's Anger, for I was ſure he would never grant a Pardon to any Man that impeached the Earl of *Danby*. Says he, do not fear, if he doth not grant you a Pardon, he makes himſelf the Author of the Plot; and, ſays he, the Earl of *Eſſex*, my Lord *Maxfield* and I, we do all reſolve, if you put it in Writing, we will go to the King, and beg a Pardon of his Majeſty for you, and if he doth not grant it, we will raiſe the whole Kingdom againſt him; for, ſays he, he muſt not expect to live peaceably in his Throne, if he doth not grant it. For he makes himſelf Author of the Plot.

My Lord; ſaid I, he hath diſſolved ſo many Parliaments for the ſake of the Earl of *Danby*, and prorogued ſo many Parliaments, therefore he will never grant me this Pardon. Says he, do not fear, 'tis the beſt Pretence we can have in the World, and if you will but put it in Writing, and let me read it, that I may give my Opinion of it, the Work is done; and if he doth not do it, we are prepared to raiſe Arms againſt him. I was with him another Time after I made this Narrative, and he told me the two Mr. *Godfreys* were with the King at *Windſor*, and begged a Pardon of his Majeſty for me, but the King would not grant it, but if he be an honeſt Man, let him lie at my Mercy, let him come in and declare what he knows. Said I, I would not have your Lordſhip expoſe my Cauſe in theſe Days. This is the beſt Time for it in the World, ſays he, if he doth not do it, he can't expect to be long King of *England*. Pray, my Lord, ſaid I, what ſhall I do in the mean Time? I will go beyond Sea, ſaid I. No, ſays he, don't leave the Kingdom, he dares as well be hanged as meddle with you. I deſired him a ſecond Time not to expoſe me to the King's Fury, and I prayed him to help me to a little Money to go beyond Sea, for I was ſure I could not be ſafe in *England*. Says he, have a Care of yourſelf; but, ſays he, he dares as well be hanged as meddle with you. Then I was in cloſe Conference with him one Day, and I gave him ſo exact an Account of all Tranſactions from King *Charles* the Firſt's Reign, the Commencement or coming to the Crown, to this very Day, that he was mightily ſatisfied; finding by me that I was a Traveller, he was mightily pleaſed, and free with me. Pray, my Lord, what Model do you take, or intend to do? Says he, Do you not think but there are Families in *England* that have as great Pretences to the Crown as the King? Says he, there is the Duke of *Bucks*, in the Right of his Mother, ſhe was deſcended from *Edward*, one of the *Edwards*, and in her Right he claims the Barony of *Roſs*, he hath as great a Right to the Crown of *England*, as ever any *Stuart* of them all.

Jury. Speak that again.

Mr. *Haines*. I was in Conference with my Lord *Shafteſbury* one Day, and I gave him an exact Account of all Tranſactions, and I aſked what they did intend to do with the Government, if they pulled the King down. Says he, do you think there are no Families in *England*, that have as much Pretence to the Crown as any of the *Stuarts*? I know none, my Lord. Says he, there is the Duke of *Bucks*, that is deſcended of the Family of the *Plantagenets*; he named ſome of the *Edwards*, and in her Right he ſhould have the Barony of *Roſs*, and in her Right he has as good a Title to the Crown of *England* as ever any *Stuart* had.

John Macnamarra ſworn.

Sir *Fr. Withens*. Pray give an Account to the Jury of what Diſcourſe you had with my Lord *Shafteſbury*.

John Macnamarra. My Lord, I was with my Lord *Shafteſbury* a little before he went to *Oxford*, before the Parliament ſat there, and my Lord told me at that Time, that he would take Care, together with thoſe that were with him at *Oxford*, for the Witneſſes that were concerned in the Popiſh Plot.

Mr. *Harriſon*. Speak out, pray, Sir.

John Macnamarra. My Lord told me he would take Care, with thoſe that were with him, for the Witneſſes that were concerned in the Popiſh Plot; after my Lord went to *Oxford*, I writ him a Letter, giving his Lordſhip to underſtand, that whereas his Lordſhip was pleaſed to promiſe, that he would take Care of the Witneſſes, that he would be pleaſed to take Care of me, as well as the reſt of the Witneſſes; after my Lord came home from *Oxford*, I went to him, to ſee what was done. His Lordſhip was pleaſed to expreſs himſelf and ſay that the King was popiſhly affected and did adhere to Popery, and that he took the ſame Methods that his Father before him took, which brought his Father's Head to the Block, and we will alſo bring his thither; and told me alſo, that he told ſome Perſons of Quality that this would fall out five Years before; at the ſame Time my Lord told me, that there was a Collection of Money made, and that the Meeting was at the *Sun* Tavern, and that there came a *Tory* Lord in to hinder their Proceedings, but ſays he, we do remove to *Ironmonger-Lane*, and ſays he, you ſhall hear further in a Fortnight. I came to my Lord a Fortnight afterwards, and his Lordſhip was pleaſed to tell me, that there was Proviſion made for the Witneſſes, and that it was in the Hand of one Mr. *Rowſe*, that was Servant to Sir *Thomas Player*; there was one Mr. *Ivy*, and I think my Brother was by too, when his Lordſhip ſpake theſe Words: He ſaid that the King was a Faithleſs Man, that there was no Credit to be given to him, and that the Ducheſs of *Mazarine* was his Cabinet Council, who was the firſt of Womankind. This is all that I have to ſay, my Lord.

Sir *Fr. Withens*. Do you remember nothing at any other Time?

John Macnamarra. No.

Sir *Fr. Withens*. Did you hear any Thing about depoſing the King?

John Macnamarra. Yes, he did at the ſame Time ſay, the King deſerved to be depoſed as much as ever King *Richard* the Second did.

Dennis Macnamarra.

Mr. *Saunders*. Tell theſe Gentlemen whether you have had any Diſcourſe with the Earl of *Shafteſbury*.

Dennis Macnamarra. He ſaid, my Lord, that the King was a Man that ought not to be believed, and there was no Belief in him, and that he ought to be depoſed as well as King *Richard* the Second, and that the Ducheſs of *Mazarine* was one of his Cabinet Council, and that he did nothing but by her Advice.

Sir *Fra. Withens*. Begin again.

L. C. J. Raiſe your Voice a little, for the Jury don't hear you.

Dennis Macnamarra. That the King is a Man that ought not to be believed, that there was no Belief in him, and that he ought to be depoſed as well as King *Richard* the Second, and that the Ducheſs of *Mazarine* was his Cabinet Council, and that he did nothing but by her Conſent.

L. C. J. Who was with you at that Time?

Dennis Macnamarra. There was Mr. *Ivy* and my Brother at his own Houſe.

L. C. J. When was this?

Dennis Macnamarra. 'Twas at the latter end of *March* or the beginning of *April.*

Sir *Fra. Withens.* You ſay Mr. *Ivy* was by at the ſame Time?

Dennis Macnamarra. Yes.

Sir *Fra. Withens.* Call Mr. *Ivy.*

Jury. What Place was it in?

Dennis Macnamarra. In his own Houſe.

Edward Ivy ſworn.

Mr. *Ivy.* My Lord, ſoon after the Parliament was diſſolved at *Oxford*, I was at my Lord *Shaftesbury*'s Houſe, where he was ſpeaking againſt the King, and ſaid, that he was an unjuſt Man, and unfit to reign, and that he was a Papiſt in his Heart, and would introduce Popery.

Jury. Say that again.

Mr. *Ivy.* I tell you I was at my Lord *Shafteſbury*'s Houſe, where he was then ſpeaking againſt the King, ſaying, that he was altogether unjuſt, and not fit to reign, and he wondered he did not take Example by his Father before him, and did really believe that he was a Papiſt in his Heart, and intended to introduce Popery. I was ſometimes after with him, and I told him one *Haines* had told me he had ſomething to diſcover about the Death of Sir *Edmundbury Godfrey*, and ſeveral other Things, and my Lord deſired to ſee him, and I brought Mr. *Haines* to his Houſe, and he deſired him that what he had to ſay he would put in Writing, and he ſhould have a Pardon, and that if the King did deny it, as he dares not deny it, but if he does, we will riſe upon him and force him.

Sir *Fr. Withens.* Had you any other Diſcourſe at other Times?

Mr. *Ivy.* Yes, I had other Diſcourſe, but not to this Purpoſe.

Sir *Fr. Withins.* Was you frequently with him?

Mr. *Ivy.* I was frequently with him; he deſired at the Time I was with him to bid *Colledge* to come to him, and I went and came again to *Haines* with Inſtructions how to proceed, and I took his Examination of him, and carried it to my Lord, and he deſired it might be explained what he meant by the tall black Man; and, ſays he, if he does mean the King, he muſt explain himſelf, and ſpeak of the King, or of the Duke of *York*, or the reſt; and if he does, we will take care of him as long as he lives; but unleſs he does, we will do nothing for him: And I was with him with my Lord *Shafteſbury*, and my Lord *Shafteſbury* did exclaim againſt the King.

Sir *Fr. Withens.* What Words did he ſpeak?

Mr. *Ivy.* He ſaid he was altogether an unjuſt Man, and not fit to reign, and that he believed he was a Papiſt in his Heart, and deſigned to introduce Popery, and therefore they deſigned to depoſe him, and ſet up another in his ſtead.

Sir *Fr. Withens.* Do you remember any Diſcourſe of *Richard* the Second at that Time?

Mr. *Ivy.* No, Sir, I do not remember any thing of it.

Bernard Dennis ſworn.

Sir *Fra. Withens.* Pray tell the Jury what Diſcourſe you had with the Earl of *Shaftesbury* at any Time, and what it was.

B. Dennis. My Lord I came upon a Deſign to make clear the Plot in general, as far as I have travelled, as in *Ireland*, *France*, *Spain*, *Maryland*, *Virginia* and *England*, and upon that Account I was brought before a Juſtice of the Peace in *Weſtminſter*, *November* laſt, this Time Twelvemonth, and examined before Juſtice *Warcup*, a Juſtice of the Peace, and from thence to the Committee of the Houſe of Commons, of whom Colonel *Birch* (I believe he is here) was Chairman, and gave in my Evidence, and being called upon at the Trial of the Earl of *Stafford*, I was commended, as I ſuppoſe to the Earl of *Shafteſbury*, and upon the Account he ſent me word of it, by *William Hetherington*, who was then very intimate with the Earl of *Shaftesbury*, to my Knowledge; and *William Hetherington* came to me ſeveral Times, and he preciſely was my Maintainer at that Time, that is, to find me whatever I wanted, and provide me my Lodging, and carry me to ſome Place where Accommodation might be more better for me. Upon this Account one Time the Earl of *Shafteſbury* ſent to me deſiring that I would wait upon him at his own Houſe. I came to him, and there in the Gallery of his own Houſe, walking very ſlowly, he told me what I gave in of the Plot in general was very good and ſufficient, but as to the Queen and the Duke of *York*, that I ſhould ſpeak more home and poſitive againſt them; at leaſt, that I might be a Corroboration to others in what they ſwore againſt them. This was all at that preſent Time, that the Earl of *Shafteſbury* ſpake to me, and he deſired me to go home to his Lodgings. With that I went home, and within a Month, it may be, or thereabouts, he ſent for me again, by the ſame *William Hetherington*, and *William Hetherington* told me, that the Earl of *Shaftesbury* would ſpeak with me. So I came and waited upon his Lordſhip at his own Houſe, and ſays he, Mr. *Dennis*, I underſtand that you are a Clergyman. Yes, my Lord, ſaid I. And, ſays he, I would adviſe you to take a black Gown, and I will prefer you to a Benefice, till ſuch Time as this Buſineſs is over; and, ſays he, at the End of this Buſineſs I will not fail to prefer you to a better, and in the mean Time I would adviſe you to take a black Gown; and this was a little as I remember, after the Parliament was diſſolved at *Oxford*; and he ſent a Gentleman out of his own Houſe along with me, to a Doctor of Divinity living hard by *Lincoln*'s-*Inn-Fields*, Dr. *Burnet* by Name, as I remember, and the Gentleman acquainted the Doctor what I was, and about what Occaſion I came there; ſo the Doctor indeed diſcourſed with me very familiarly, and rendered Thanks to the Earl for recommending me into his converſation rather than another's. What Diſcourſe we had then was nothing to the Matter, it was about Matters of Conſcience and Religion. But Mr. *Colledge*, that was the Joiner here in Town, and executed afterwards, being familiar with me, brought me to one Mr. *Ferguſon* a Miniſter, as I ſuppoſe of the Preſbyterian Form, for he goes in their Garb as near as I can tell, and Mr. *Ferguſon* at our firſt Meeting was in *Richard*'s Coffee-Houſe, in an upper Room one Pair of Stairs, and in ſome Company; and *Colledge* going to him brought him aſide, and ſpake to him concerning me, and he came to me apart, and diſcourſed with me: From whence he brought me to a Bookſeller's Shop, and bought for me the Articles of the Church of *England*, and in all theſe Diſcourſes there was a Hand, as *Colledge* told me, of the Earl of *Shafteſbury*, who did procure him, and ſent to Dr. *Burnet* to bring me that Way. I do not deny neither, that I had an Inclination before I left *Ireland*, and when I was in *Spain*, and when I was in *France*, for to become a Proteſtant, according to the Laws and Rules of the Church of *England*. The Force of what I have to ſay is this, The Earl of *Shaftesbury* one Day after all theſe Things were paſt, and after the Parliament were diſſolved at *Oxford*, diſcourſing with me in his own Houſe, Major *Manly* being in the ſame Room then, who lives beyond *Tower-Hill*, he aſked me what was the preſent Occaſion I came to him there? And it was pretty early in the Morning, and the Earl had a Barber to trim him in his Room. I told him my Occaſion was then, that I was ſomething low in Money, that I did a little want Money at that Time, and did not know to whom to ſpeak for any Thing but his Lordſhip, and ſaid, I came to tell you ſo. Well, ſaid he, Mr. *Dennis*, I have appointed Mr. *Rowſe*, *John Rowſe*, whom you know, for to give you and maintain you in Money; go to him eſpecially once a Week, and he will give you Money, and ſaid he, Mr. *Dennis*, what is the Number of your Name in the Country, as near as you can tell, how many are you? My Lord, ſaid I, to tell you exactly what Number they be of, I cannot at preſent, but within a little time I may tell you. I believe really there may be upon the Matter three or four hundred able Men of my name, in the County where I was born. Says the Earl of *Shaftesbury*, Mr. *Dennis*, I would very willingly have you to adviſe thoſe of your Name, and thoſe of your Friends for to be in Readineſs, whenever Occaſion ſhall ſerve, and to ſtand by, if Occaſion ſhould be, for to aſſiſt the Commonwealth of *England*; for we do really intend to have *England* under a Commonwealth and no Crown; and, ſays he, we intend to live as we ſee *Holland* does; that is, to have a Commonwealth and to have no ſupreme Head, particular Man, ſays he, or King, nor owe Obedience to a Crown; and, ſays he, we will extirpate the King, and all his Family as near as we can; and Mr. *Dennis*, ſays he, I do admire that your Nation ſhould be ſuch Fools as they are, for it is very certain that King *James*, Queen *Elizabeth*, King *Charles* the Firſt, ſays he, and the King that now is, does wrong you to very Deſtruction; and, ſays he, if you had been under a Commonwealth, the Commonwealth would take more Pity of your Nation, and the Gentry of your Nation, than any of them do now, in this Time wherein the King governs, and upon this I do count the *Iriſh* Fools. This is all that I can ſay.

L. C. J. The King's Council declare they will call no more Witneſſes, for they think they have called enough already, and there are ſeveral of them that do ſwear Words that are treaſonable in themſelves, if you do deſire to aſk any of the Witneſſes any Thing, you ſhall have them all called one by one.

Foreman. My Lord, we will walk up again, and conſider what Queſtions to aſk, and come again preſently.

Mr. *Papillon.* It ſeems they will call no more Witneſſes than theſe.

L. C. J. Not againſt the Earl of *Shaftesbury*, being you are charged only with that.

Mr. *Papillon.* It is ſo my Lord, but we pray we may be ſatisfied about the Statute upon which the Indictment is grounded, and that we may hear it read before we go up, becauſe your Lordſhip ſpeaks of two different Statutes, the 25th of *Edward*, and you mention the Statute of the 13th of this King; your Lordſhip in your Diſcourſe to the Jury mentioned them both, we pray your Lordſhip to acquaint us upon what Statute it is grounded, whether upon both or one of them.

L. C. J. Look ye, Gentlemen, this is grounded upon the Statute of this King, though there is enough to find an Indictment of Treaſon upon the Statute of the 25th of *Edward* the Third. That which is Treaſon within the Statute of the 25th of *Edward* the Third, is Treaſon within this Statute, ſo this is the more copious Statute; for as I told you before, this Statute has enlarged that of *Edward* the Third in a great many Particulars; and therefore, look ye, Gentlemen, always conſider this, when one Statute contains the Matter of another, and enlarges it, the Indictment is always upon the laſt Statute, that being the more copious Statute: But you are to conſider both.

L. C. J. North. The Indictment is *Contra formam Statut'*, and it being *Contra formam Statut'*, it may be underſtood, *Statutorum* or *Statuti*, ſo that all Statutes that may be the Foundation of this Indictment you may go upon.

Jury. We deſire to know whether any of theſe Witneſſes ſtand indicted, or no?

L. C. J. Look you, Gentlemen, don't talk of this, but conſider with yourſelves, an Examination of Proofs concerning the Credibility of the Witneſſes is not properly before you at this Time; for I muſt tell you, and inform you as to that, you are not to examine properly here concerning the Credibility of the Witneſſes, that is not to be proved or controverted here before you, that is Matter upon a Trial by the Petty Jury, for there the King will be heard for to defend the Credit of his Witneſſes, if there be any Thing that can be objected againſt them; it is proper for the Priſoner to do that, you are only to ſee whether the Statute be ſatisfied, in having Matter that is treaſonable, and having it witneſſed by two Men, by two Witneſſes, who are intended *prima facie* credible, unleſs you of your own Knowledge know the contrary; for otherwiſe, you muſt conſider what a Diſadvantage this would be in all ſuch Caſes, if the Credibility of the Witneſſes ſhould be examined before the Grand Jury, where the King is not preſent, nor in a Poſſibility of defending the Credit of his Witneſſes; nor is the Priſoner or the Party indicted preſent; that is a proper Objection when he comes upon his Trial; for all Men are intended credible, till there are Objections againſt them, and till their Credits come to be examined one Side and the other.

Mr. *Papillon.* My Lord, if your Lordſhip thinks good, I will beg this; I deſire your Lordſhip's Pardon, whether your Lordſhip doth not think that we are within the Compaſs of our own Underſtanding and Conſciences to give our Judgment?

L. C. J. Your own Underſtanding and Conſciences, yes; but look ye, Gentlemen——

Mr. *Papillon.* If we are not left to conſider the Credibility of the Witneſſes, we cannot ſatisfy our Conſciences.

L. C. J. Look ye, Gentlemen, you are to go according to the Evidence of the Witneſſes; you are to conſider of the Caſe according to the things alledged and proved, unleſs you know any thing yourſelves: But if any of you know any thing of your own Knowledge, that you ought to take into Conſideration, no doubt of it.

Jury. Very well, my Lord.

L. C. J. The Grand Jury are to hear nothing, but the Evidence againſt the Priſoner; therefore for you to enter into Proofs, or expect any here, concerning the Credit of the Witneſſes, it is impoſſible for you to do Juſtice at that Rate.

The Jury withdrew, and the Court adjourned till Three o'Clock.

L. C. J. Let the Witneſſes be brought in one by one.

Foreman. We will firſt aſk a Queſtion of Mr. *Gwyn.*

Mr. *Gwyn.*

Foreman. Who put up the Papers?

Mr. *Gwyn.* I put up the Papers myſelf.

Foreman. Who went in with you?

Mr. *Gwyn.* None but my Lord's Servants, I think, were there: But I put up the Papers my ſelf.

Foreman. Pray, Sir, whoſe Hand-writing is that Paper of?

Mr. *Gwyn.* Indeed, Sir, I cannot tell.

Foreman. How did it come into my Lord *Shafteſbury*'s Cloſet?

Mr. *Gwyn.* My Lord, this is a ſtrange Queſtion. Indeed, Sir, I can't tell; all the Papers that I found in that Cloſet I put into that Bag.

L. C. J. To ſatisfy the Jury, was the Paper in the Cloſet before you came there?

Mr. *Gwyn.* My Lord, it was certainly there, for there I found it. I don't know the particular Paper, but all the Papers in that Bag were there.

L. C. J. From whom had you the Key?

Mr. *Gwyn.* From my Lord *Shafteſbury.*

Foreman. Don't you know, Sir, there was a Diſcourſe in the Parliament of an Aſſociation?

Mr. *Gwyn.* Sir, I was not of the laſt Parliament. Sir, I know nothing of it.

Foreman. You have not heard then, that there was ſuch a Thing in Parliament concerning an Aſſociation?

Mr. *Gwyn.* I have heard of an Aſſociation talk'd of.

Foreman. Mr. Secretary, I would aſk you ſome Queſtions: If you did not know of a Debate in Parliament of an Aſſociation?

Mr. Secretary. I was not preſent at the Debate; but there was a Talk in Town of an Aſſociation.

Foreman. Did not you hear of it in Parliament?

Mr. Secretary. Indeed there was an Anſwer to a Meſſage from the Houſe of Commons that had ſomething in it that did ſtrongly imply an Aſſociation; but this particular Aſſociation I do not remember to have heard propos'd.

Foreman. Don't you remember in the Houſe of Commons, Sir, it was read upon Occaſion of that Bill?

Mr. Secretary. I heard ſuch a Thing ſpoke of; but at the Reading of it I was not preſent, to the beſt of my Remembrance.

Foreman. What Date, Sir, was the Warrant for my Lord *Shaftesbury*'s Commitment?

Mr. Secretary. I refer myſelf to the Warrant, for that I don't know the Date.

L. C. J. Mr. Secretary, you muſt ſpeak about the Time that it was.

Mr. Secretary. I was the Man that had the Honour to ſign that Warrant by which the Serjeant at Arms did apprehend my Lord *Shaftesbury*, but what Day of the Month I do not remember; and therefore I refer myſelf, if you pleaſe, to the Warrant, and to the Serjeant at Arms.

Foreman. What Month was it?——*Mr. Secretary.* Sir?

Foreman. About what Month?——*Mr. Secretary.* *July.*

Foreman. The Beginning of *July?*

Mr. Secretary. Sir, I do not remember the Day preciſely; for I did not foreſee that Queſtion would be aſked me; but I refer myſelf to the Warrant, and that is beyond all Doubt.

Foreman. I ſuppoſe all theſe Witneſſes that are examined, were examined before the Committee?

Mr. Secretary. Sir, they were examined, and I was preſent at the Examination.

Foreman. All of them?

Mr. Secretary. I don't know whether all of them; but I am ſure I was at the Examination of ſeveral of them.

Foreman. How many, Sir?—*Mr. Secretary.* I can't tell truly how many.

Foreman. Call Mr. *Booth.*

Officer. He is not here, the Tipſtaff has him ſomewhere.

Foreman. Is that Witneſs a Priſoner?—*L. C. J.* *Booth* is a Priſoner.

Foreman. Then call Mr. *Turbervile.*

Mr. *Papillon.* Is Mr. *Turbervile* there?

Officer. Here is Mr. *Booth* come now.

Mr. *Godfrey.* Put *Turbervile* out again.

Foreman. Mr. *Booth*, you told me of a Diſcourſe that paſſed between the Lord *Shaftesbury* and yourſelf, we deſire to know where it was, and when?

Mr. *Booth.* It was in *Thanet-Houſe*, Sir, where he lived, about a Week or ten Days before the Parliament ſat at *Oxford.*

Foreman. The preciſe Time?—Mr. *Booth.* I cannot be more preciſe.

Foreman. Who introduced you?

Mr. *Booth.* I think one Mr. *Wilſon* led me into the Chamber.

Foreman. Who was preſent when the Diſcourſe was?

Mr. *Booth.* None but he and I, Sir.

L. C. J. If we have theſe Noiſes, we will have every one of you put out of Court.

Mr. Att. Gen. *Richardſon, Richardſon*, Pray turn them all out; they are brought in on purpoſe.

Mr. *Booth.* It was not the firſt, ſecond, nor third Time that I had waited upon the Lord of *Shaftesbury.*

Foreman. In what Room was it that my Lord ſpake thoſe Words to you?

Mr. *Booth.* It was in the Room he uſually ſits in, on the Left-Hand as we came out of the Long-Gallery; I think we paſſed through a Room before it, wainſcotted about, as I remember, and hung. I have been in that Room with him four or five Times, I am ſure.

Foreman. After this Diſcourſe with you, how long was it before you ſpake of it to any body elſe?

Mr. *Booth.* Truly I think I did not publiſh this Diſcourſe that my Lord and I had, from the Time it was, till within this ſeven or eight Weeks.

Foreman. You were never examined before then as a Witneſs?

Mr. *Booth.* No, Sir, I never was, nor no body will pretend it, I ſuppoſe.

Foreman. To whom, Sir, did you give your firſt Information?

Mr. *Booth.* Sir, I ſent my firſt Information in Writing to the Lords in the Council.

Foreman. By whoſe Hand?—Mr. *Booth.* By the Hand of *Walter Banes.*

Foreman. You had ſeveral Diſcourſes with him; had you eaſy Admiſſion, or was it with Difficulty you came into his Company?

Mr. *Booth.* I was admitted by the Influence of Captain *Wilkinſon* at firſt, and ever after went with him, and had eaſy Admittance and Familiarity with him.

Foreman. Was he with you every Time?

Mr. *Booth.* No, not every Time; he was not this Time with me.

Foreman. Did he talk to this Purpoſe every Time?

Mr. *Booth.* Something to this Purpoſe he did talk every Time, but not ſo fully; for I was firſt acquainted with this Buſineſs of *Oxford* by Captain *Wilkinſon*, and I had a great Deſire to underſtand it from my Lord's own Mouth, becauſe I would be ſatisfied in my Lord's Intereſt as well as his Conduct.

Foreman. Pray, Sir, what Education have you had?

Mr. *Booth.* I have had the Education of a Gentleman, an Academical Education.

Foreman. Were you ever in Orders?——Mr. *Booth.* Yes.

Foreman. Do you own yourſelf to be in Orders ſtill?

Mr. *Booth.* How do you mean to be in Orders? I tell you I was in Orders; but I am not now beneficed.

Foreman. Do you officiate as a Miniſter?——Mr. *Booth.* No.

Foreman. Were you ever an Attorney's Clerk?—Mr. *Booth.* Never.

Foreman. Or a Juſtice's Clerk?

Mr. *Booth.* Never, nor to no Mortal.

Foreman. Were you ever indicted for any Felony?—Mr. *Booth.* No.

L. C. J. That is a Queſtion not to be aſked by any Juryman of any Witneſs whatſoever: No Man is bound to diſcover any thing of that Nature, that is criminal, concerning himſelf.

Foreman. If it be pardoned, my Lord, he may.

L. C. J. Pardoned or not pardoned, he is not bound to accuſe himſelf, nor to fix a Scandal on himſelf.

Mr. *Booth.* No, my Lord, *Nemo tenetur ſeipſum prodere.*

L. C. J. Sir, we muſt not ſuffer ſuch Queſtions; I will tell you the Reaſon: It is proper for a Priſoner that ſtands upon his Juſtification to object it, but then the Priſoner muſt prove it: It lies upon him to prove it.

Mr. *Papillon.* Mr. *Booth*, you told us of fifty Men that were liſted under Captain *Wilkinſon*, do you know any more of them?

Mr. *Booth.* I never directly converſed with any other.

Mr. *Papillon.* Did you know any more of them?

Mr. *Booth.* No, not directly I did not, but only by Captain *Wilkinſon*'s Information.

Mr. *Papillon.* How many Stories was that Room where you talked with my Lord?

Mr. *Booth.* One Pair of Stairs, as I remember.

Mr. *Godfrey.* Was it the Right-Hand as you came in?

Mr. *Booth.* I think ſo.

Mr. *Godfrey.* Was it the Right-Hand or the Left?

Mr. *Booth.* I went into the Long Gallery firſt, and ſtaid there about a Quarter, or Half an Hour; and I remember very well I looked upon ſome Maps that were there, to divert myſelf, a while; and when I was called in, went out of the Gallery on the Left-Hand, and went through another Room before I came into my Lord's Room.

Foreman. Did you never hear my Lord ſpeak Treaſon in any Houſe but his own?

Mr. *Booth.* I never had Occaſion to hear this Diſcourſe from my Lord, but in his own Houſe: I never waited upon him in any other Houſe.

Foreman. Was you never deſired to be a Witneſs againſt my Lord *Shaftesbury?*

Mr. *Booth.* Not till I intimated ſomething of it.

Foreman. Who was that to?

Mr. *Booth.* That was to Mr. *Banes*; I told you before ſo.

Foreman. And what then?

Mr. *Booth.* When he told me of this Buſineſs with the *Yorkſhire* Attorney, *Brownrig*, I did ſay again, I did not know what my Lord had done, as to any thing of *Iriſhmen*, but I was ſure there was ſomething as to *Engliſhmen*, as to that Purpoſe.

Foreman. Did he propoſe any Reward, or any thing of that Nature?

Mr. *Booth.* Not a Farthing; for I think he had no Commiſſion to do it.

Foreman. Are you acquainted with one *Callaghan* and *Downing*, two *Iriſhmen?*—Mr. *Booth.* No.

Mr. *Godfrey.* Were you never in their Company?

Mr. *Booth.* Not that I know of.

Mr. *Godfrey.* Did you ever hear their Names?

Mr. *Booth.* I don't know that I have.

Foreman. Were you in their Company lately?

Mr. *Booth.* Not as I know of. I do not remember either their Names, or their Perſons, nor do I know them from other Men.

Foreman. Do you know one Mr. *Shelden?*—Mr. *Booth.* No.

Foreman. Do you know one Mr. *Marriot?*

Mr. *Booth.* No, Sir: I have heard of one *Marriot* that did belong to my Lord Duke of *Norfolk.*

Foreman. When were you in his Company?

Mr. *Booth.* Never that I know of.

Foreman. Has no body diſcourſed you from him?

Mr. *Booth.* No, no Body.

Foreman. Did you never hear of any Witneſſes he ſent to his Tenants?

Mr. *Booth.* I have heard from *Banes* about *Brownrig*, about *Iriſh* Witneſſes.

Mr. *Godfrey*. Did you never hear of any *Iriſh* Witneſſes ſent down by Mr. *Marriot* to the Iſle of *Ely ?*

L. C. J. We gave you all the Liberty in the World, hoping you would aſk pertinent Queſtions, but theſe are Trifles. I did not expect that any wiſe Men would have aſked theſe Queſtions. Mr. *Godfrey*, was it to the Purpoſe, whether Mr. *Marriot* ſent any *Iriſh* Witneſſes to his Tenant, or no ? What is that to this Buſineſs ?

Foreman. My Lord, I have it under the Hand of the Clerk of the Council.

Mr. *Booth.* Pray, Sir, did any inform you that I had any Correſpondence with this Man ?

L. C. J. Nay, Sir, you muſt aſk no Queſtions.

Mr. *Godfrey.* Mr. *Booth*, do you go under no other Name but *Booth ?*

Mr. *Booth.* No, nor never did in my Life.

Mr. *Booth.* My Lord, I cannot go in Safety here for the Tumult.

L. C. J. Let Officers ſecure him : Mr. Sheriff, look to him, that the Man be ſecure and ſafe ; I will require him at your Hands elſe.

Mr. Sheriff *Pilkinton.* What ſhould I do ?

L. C. J. Send your Officers to protect him, as becomes you, that he may be ſecured from the Rabble here.

Mr. *Turbervile.*

Foreman. Mr. *Turbervile*, when you had this Diſcourſe with my Lord *Shaftesbury*, who was preſent with you ?

Mr. *Turbervile.* One of his Servants ; truly I cannot tell his Name.

Foreman. No Body elſe ?

Mr. *Turbervile.* I know the Name of none of his Servants, but Mr. *Sheppard* ; I cannot remember any Body elſe.

Foreman. Did he carry you up to my Lord ?

Mr. *Turbervile.* It was he, I think, told me I might go in : I was in the Dining-Room.

Foreman. What Time was this ?——Mr. *Turbervile.* In the Morning.

Foreman. What Time was it when you had this Diſcourſe with my Lord *Shaftesbury ?*——Mr. *Turbervile.* It was in *February.*

Foreman. What Time in *February ?*

Mr. *Turbervile.* About the Beginning ; I cannot tell exactly to a Day.

Foreman. How long was this before you communicated this to any Body ?

Mr. *Turbervile.* It was about the 4th of *July.*

Foreman. Then you concealed it from *February* to *July :* Who did you communicate it to firſt of all ?

Mr. *Turbervile.* The firſt Depoſition I gave was to Mr. Secretary.

Foreman. Which Secretary ?——Mr. *Turbervile.* Secretary *Jenkins.*

Foreman. Pray, what Room was it you had this Diſcourſe in ?

Mr. *Turbervile.* Sir, it was the Room at the upper End of the Dining-Room ; I think they call it the Dining-Room ; at the upper End of the Room, and turns on the Left-Hand, where he lay.

Foreman. Did you meet with no Body about the Beginning of *July*, after my Lord's Commitment, and tell them, when you were challenged and told you were to be a Witneſs againſt him, as you were alive you knew no ſuch Thing ?

Mr. Att. Gen. My Lord, this is not to be allowed : This is private Inſtructions which the Jury are not to take.

Foreman. No, Sir, it is not private Inſtructions. Did you not ſpeak ſuch Words to *William Herbert ?*

L. C. J. Have you had any Information concerning this to Mr. *Herbert ?*

Foreman. My Lord, I have, a long Time ago. My Lord, ſuch a Perſon did tell me ſo and ſo, and ſet down the Day ; and he then ſaid he was very angry with him for it.

L. C. J. Look ye, Gentlemen, what Diſcourſe you take up at Random in every Coffee-Houſe, is that fit to be brought in when Treaſon is in Queſtion againſt the King's Life ? Are theſe Coffee-Houſe Diſcourſes, do you think, Ground enough for you to caval at Perſons, becauſe you have heard this Diſcourſe in a Coffee-Houſe ?

Foreman. My Lord, I never was in a Coffee-Houſe in my Life with Mr. *Herbert* ; but he declared this to me ſome Months ago.

L. C. J. And you think this is Ground enough for you againſt him ?

Mr. *Papillon.* My Lord, we only aſk this Queſtion, Whether he hath not contradicted this, or ſaid the contrary to any Body elſe ?

Mr. *Turbervile.* I do not remember that ever I ſpake one Word to Mr. *Herbert* in my Life ; and I can give you one Reaſon : For I was diſcarded by all People of my Lord's Intereſt at that Time ? And if I had given under my Hand that I had known nothing againſt him, I believe I might have been in their Favour as much as before.

Mr. *Papillon.* Were not you one that petitioned to the Common-Council in *London ?*———Mr. *Turbervile.* I did, Sir.

Mr. *Papillon.* And did not you declare then, that you were tempted to witneſs againſt your Conſcience ?

Mr. *Turbervile.* I believe I never read the Petition : It was drawn by the Order of Mr. *Colledge*, by a Man that lives about *Guildhall* ; by a Scrivener about *Guildhall* ; and I ſigned that Petition, but never read it, nor knew what was in it.

L. C. J. Mr. *Richardſon*, any you Officers ; watch by thoſe Men that make a Noiſe, and bring me in one to make an Example.

Mr. *Turbervile.* My Lord, I go in Danger of my Life, for the People threaten to ſtone me to Death, and I cannot go ſafe to my Lodging.

Mr. *Papillon.* What was your Deſign in ſigning that Petition ? What did you look for ?

Mr. *Turbervile.* The Deſign was, that the City ſhould take Care of us.

Mr. *Papillon.* Were you in a poor Condition ?

Mr. *Turbervile.* Truly I was not very poor, though I was not over full of Money.

Mr. *Papillon.* It is a ſtrange Thing that you ſhould petition for Relief, if you were not in Want.

Mr. *Turbervile.* We were told by ſome Members of the Houſe of Commons, that there was a Vote in the Houſe of Commons ready to paſs, that the City ſhould advance Money for the Support of the Witneſſes, and that if we would petition that they would anſwer the Deſign of the Parliament.

Mr. *Papillon.* What Members were they ?

Mr. *Turbervile.* It was a Member of the Houſe of Commons that told me ſo, I will aſſure you ; two of them.

Mr. *Papillon.* Did never any Body move you, or deſire you to be a Witneſs in this Caſe againſt my Lord *Shaftesbury ?*

Mr. *Turbervile.* No Body in my Life. When I came to ſpeak the Truth of what I knew, I did it voluntarily.

Mr. *Papillon.* You did it voluntarily ?

Mr. *Turbervile.* I did, I will aſſure you.

Mr. *Papillon.* Do you know any thing more than what you have ſaid here ?———Mr. *Turbervile.* No, not one Tittle.

Mr. *Papillon.* Mr. *Turbervile*, I deſire to be ſatisfied in one Thing, whether my Lord *Shaftesbury* was committed before or after your Information ?

Mr. *Turbervile.* Truly, Sir, I cannot tell poſitively, as to that Point ; but I believe it was before ; I cannot tell.

Mr. *Papillon.* Did you hear my Lord ſpeak theſe Words in any other Room or Place ?——Mr. *Turbervile.* No, indeed, I did not.

Mr. *Papillon.* It was about the fourth of *July*, you ſay, your Depoſitions were taken ?

Mr. *Turbervile.* About that Time ; I ſuppoſe the 4th of *July*——I hope your Lordſhip will take Care that we be not knocked on the Head.

L. C. J. That we give in Charge to Mr. Sheriff ; and ſee you do take Care of the King's Witneſſes at your Peril. It is a Reflection, not only upon the Government of the City to ſuffer theſe Diſorders, but upon the whole Kingdom ; therefore, Mr. Sheriff, look the Witneſſes come by no Hurt.

Mr. *John Smith.*

Mr. *Papillon.* Mr. *Smith*, the Jury aſk you a Queſtion, whether or no you did not uſe to go by the Name of *Barry ?*

Mr. *Smith.* Sir, what Names I have gone by is not pertinent to this Purpoſe ; I tell you I have gone by ſeveral Names, as all Popiſh Prieſts do.

Mr. *Papillon.* Did you never go by the Name of *Barry ?*

Mr. *Smith.* It may be I might ; I have gone by ſeveral Names, as all Popiſh Prieſts do.

L. C. J. Did you ever go by the Name of *Barry ?*

Mr. *Smith.* I did, my Lord ; it is uſual for Popiſh Prieſts ſo to do.

Mr. *Papillon.* What Religion are you of, Mr. *Smith ?*

Mr. *Smith.* I am a Proteſtant, Sir.

Mr. *Papillon.* How long have you been a Proteſtant ?

Mr. *Smith.* Many Years.

Mr. *Papillon.* When were you firſt converted ?

Mr. *Smith.* Firſt converted ?

Mr. *Papillon.* Ay, to the Proteſtant Religion : You ſay you have been one many Years ?

Mr. *Smith.* I have been a Proteſtant, and was perverted to the Popiſh Religion, and afterwards became a Proteſtant again.

L. C. J. Bring in one of thoſe Men that make the Noiſe. Cannot you bring in one of them ?

Mr. *Papillon.* When did you receive the Sacrament ?

Mr. *Smith.* I believe not above three Months ago, as the Rector of *Bow* Church will inform you : I have it under the Church-Wardens Hands in other Places in *London.*

Mr. *Papillon.* Have you been deſired to be a Witneſs, or did you do it voluntarily ?

Mr. *Smith.* Never deſired, I declare it ; I did it voluntarily myſelf.

Mr. *Papillon.* When did you give in your Evidence firſt ?

Mr. *Smith.* Truly I cannot exactly tell when I gave it in ; I did not keep an Account of it.

Mr. *Papillon.* What Month ?——Mr. *Smith.* I cannot tell.

Mr. *Papillon.* Was it before my Lord was committed, or after ?

Mr. *Smith.* I believe it might be a little after. Whether it was before or after, I cannot exactly tell.

Mr. *Papillon.* To whom did you give your Information ?

Mr. *Smith.* My Lord, they commanded the People to ſtone us to Death.

L. C. J. Who did ?

Mr. *Smith.* Several Perſons : And when we were at the Tavern, Dr. *Oates*'s Man came out and gave the Rabble a Bottle of Wine, and bid them knock us down.

L. C. J. Do you know what the Man's Name is ?

Dr. *Oates.* I know nothing of it, my Lord.

L. C. J. What is your Man's Name ?

Dr. *Oates.* I keep half a Dozen Men, my Lord.

L. C. J. I hope you keep no Men to affront the King's Witneſſes ?

Dr. *Oates.* No, my Lord, it is a Miſtake, I know nothing of it ; we went thither to refreſh ourſelves.

Mr. *Papillon.* Mr. *Smith*, who did you give your Information to ?

Mr. *Smith.* What Information ?

Mr. *Papillon.* The firſt Information.

Mr. *Smith.* My Lord, am I to anſwer to theſe Queſtions ?

L. C. J. Aye, anſwer them ; tell them.

Mr. *Smith.* My Lord, the Information I gave in to Secretary *Jenkins* ; but I gave Notice long before of what I intended to do to other Perſons.

Mr. *Papillon.* When did you hear theſe Words ; ſpeak to the Time exactly ?

Mr. *Smith.* Which Words do you aſk ?

Mr. *Papillon.* Thoſe you mentioned even now.

Mr. *Smith.* Sir, if you pleaſe, I know you take all in Short-Hand ; if you aſk me what Words, I will tell you ; for if I do not expreſs myſelf in the ſame Words as before, you will take Hold of me.

L. C. J. I will tell you this ; this may be an ill Queſtion, for he told you, he had diſcourſed my Lord *Shaftesbury* at a great many Times, and that at ſome Times he ſaid theſe Words, at other Times other Words, and for you to catch him upon a Queſtion, it doth not ſhew a fair Inclination.

Mr. *Papillon.* My Lord, under your Lordſhip's Favour, we only deſire to diſcover the Truth, we are not for Catches.

L. C. J. Aſk him then, which of the Words you would have him declare the Time of, and he will tell you ?

Mr. *Papillon.* Let him ſpeak his own Words, it was about the Time when *Hetherington* went thither.

Mr. *Smith.* Truly, I will anſwer that as punctually as I can ; the Month or Day I cannot well tell, but the Perſon that came from me was Major *Manly* ; and he came to *Bethel*'s Club ; what Time that was, I cannot ſay ; but if you pleaſe to inform yourſelves of thoſe Gentlemen that I name, I believe they will tell you Mr. *Bethel* was there preſent, and knew very well I went to my Lord *Shafteſbury* that Night, and returned to the Club again.

Mr. *Godfrey*. Was it in the Evening or the Morning?

Mr. *Smith*. Mr. *Godfrey*, Clubs are uſually at Night, I ſuppoſe; you know that was.

Mr. *Papillon*. Where did you ſee my Lord *Shafteſbury?*

Mr. *Smith*. It was in his Dining-Room.

Mr. *Papillon*. Did you hear theſe Words in any other Place, or at any other Time, or any treaſonable Words againſt the King?

L. C. J. Look you, Gentlemen, he told you of ſeveral other Words at ſeveral other Times.

Mr. *Papillon*. But he ſaid all at his Houſe, my Lord.

L. C. J. Ay, but at ſeveral Times.

Mr. *Smith*. I know, Mr. Attorney, what the Gentleman would be at very well.

L. C. J. Anſwer them whether you did hear him ſpeak any Words that you conceive treaſonable at any other Time?

Mr. *Smith*. I did not, indeed.

Mr. *Papillon*. In another Place?

Mr. *Smith*. I do ſay I did not.

Mr. *Papillon*. Did you petition to the Common Council?

Mr. *Smith*. No, Sir, I never did.

Mr. *Papillon*. Are you an *Engliſhman* or an *Iriſhman?*

Mr. *Smith*. That's no Matter, no more than if I were a *Frenchman* or a *Dutchman*.

L. C. J. Give them an Account whether you are an *Engliſhman* or an *Iriſhman?*

Mr. *Smith*. My Lord, I beg your Lordſhip's Pardon for that; if I were an *Iriſhman*, whether thereupon my Evidence would be prejudiced.

L. C. J. Look you, Mr. *Smith*, I do hope the Gentlemen of the Jury have more Diſcretion among them all, than to think that an *Iriſhman* is not a good Witneſs, I hope they are not ſuch Perſons.

Mr. *Smith*. My Lord, if you pleaſe; whilſt I was in the City amongſt them, I never petitioned to the City: I never had a Farthing from them, nor ever ſpake to any for it: I never had any Occaſion for it; but if I had, it is probable I have enough in *England*, and other Places, without being beholden to your Common-Council.

L. C. J. Will you aſk him any more Queſtions?----*Jury*. No, no.

Mr. *Papillon*. Is Mr. *Smith* gone? I would aſk him one Word: We would fain know what Allowance you have, or what you receive, if you have any Allowance from any Body?

Mr. *Smith*. From whom?

Mr. *Papillon*. Nay, I know not from whom: I aſk whether you have any from any Body?

L. C. J. Look ye, Gentlemen, is that a Queſtion that is pertinent? I wonder you will go to ſuch Queſtions: We allowed you to aſk Queſtions yourſelves, becauſe we look upon you as Men of Reaſon.

Mr. *Papillon*. My Lord I do not know but it may be a proper Queſtion to aſk kim, if he have any Allowance from any Man upon this Account?

L. C. J. Upon what Account?

Mr. *Papillon*. Upon this Account: If he ſays he has none, 'tis an Anſwer.

L. C. J. Do you intend your Queſtion, whether he is bribed to give Evidence? If you mean ſo ſpeak plain.

Mr. *Papillon*. We aſk if he have any Allowance?

Mr. *Smith*. You don't aſk me how the 6 or 700*l.* was made up.

L. C. J. You that are upon your Oaths ſhould have a Care what you do.

Bryan Haynes.

Mr. *Papillon*. Mr. *Haynes*, when did you give in your Information upon this Matter?

Mr. *Haynes*. Againſt the Earl of *Shafteſbury*, Sir?----Mr. *Papillon*. Ay.

Mr. *Haynes*. The Day that I was taken by the Meſſenger.

Mr. *Papillon*. That was before my Lord was committed, was it not?

Mr. *Haynes*. Yes, Sir, it was before my Lord was committed.

M. *Papillon*. Did you ever make any other Information to a Juſtice of the Peace?

Mr. *Haynes*. Not of my Lord of *Shafteſbury*.

Mr. *Papillon*. Nor touching this Matter?

Mr. *Haynes*. No, not any Information upon Oath: I may have diſcourſed with a Juſtice of the Peace.

Mr. *Papillon*. Did not you give in an Information of a Deſign againſt the Earl of *Shafteſbury?*

Mr. *Haynes*. To none but Secretary *Jenkins*.

Mr. *Papillon*. You underſtand the Queſtion; whether you did give no Information of a Deſign againſt my Lord *Shafteſbury* to ſome Juſtice of the Peace?

Mr. *Haynes*. No, no, to none but Mr. Secretary *Jenkins*.

L. C. J. You do not obſerve his Queſtion: Did you ever give to any Juſtice any Information of a Deſign againſt my Lord *Shafteſbury?*

Mr. *Haynes*, Yes, my Lord, I did, to Sir *George Treby*; I made Affidavit before him.

Mr. *Papillon*. When was that?

Mr. *Haynes* I think it was in *March* laſt.

Mr. *Papillon*. What was that Deſign againſt my Lord *Shafteſbury?*

Mr. *Haynes*. The Deſign was what Mr. *Fitz-gerald* told me; he told me he gave under his Hand to the King, that the Earl of *Shafteſbury* did reſolve to ſet the Crown upon his own Head, or otherwiſe to turn the Kingdom into a Commonwealth.

Mr. *Papillon*. *Fitz-gerald* told you this, and ſo you made Affidavit of it?

Mr. *Haynes*. Yes, before Sir *George Treby*.

Mr. *Papillon*. What Time?

Mr. *Haynes*. It was before the Parliament met at *Oxford*.

Mr. *Papillon*. So you ſay the Words were: When were the Words ſpoken that you mentioned?

Mr. *Haynes*. The Words againſt my Lord?

Mr. *Papillon*. Ay.

Mr. *Haynes*. He ſpake them to me a little before I made Affidavit: I cannot tell poſitively the Time?

Mr. *Papillon*. That was before his Commitment.

Mr. *Haynes*. Yes, yes, my Lord was committed in *June* laſt; this Affidavit was made in *March* laſt, before the Recorder of *London*.

L. C. J. North. When you aſk him about the Information of the Deſign againſt my Lord *Shafteſbury*, he ſays that was in *March* laſt; and when you aſk him about the Evidence he gives now, that was the ſame Day he was apprehended by the Meſſenger.

Mr. *Papillon*. About *June* you ſay it was, that you ſay you gave in the Information againſt my Lord *Shafteſbury?*

Mr. *Haynes*. The Information I made againſt the Lord *Shafteſbury* was in *June* laſt, the 28th, as I take it, of *June* laſt.

Mr. *Papillon*. Where was it you had this Diſcourſe?

Mr. *Haynes*. I had ſeveral Conferences with my Lord.

Mr. *Papillon*. Did he every Time ſay the ſame?

Mr. *Haynes*. The laſt Time I ſpake with him was in *Ironmonger-Lane*: For Mr. *Whitaker* told me he would ſpeak with me, and he would fain have me explain myſelf what I did mean by the tall Man I mentioned in the Narrative; and I went to the Houſe, and they told me he was there, and I ſent up a Note, and he deſired me to come up; but I ſent Word I did not care to come up, becauſe I would not be known; and ſo he ſent me Word to meet him after Dinner; and when I came, my Name is *Haynes*, my Lord, ſaid I; and I led his Lordſhip by the Hand and went in there. I had, I believe, a whole Hour's Diſcourſe with him: And pray, my Lord, ſaid I, among other Queſtions, What Religion is the King of? Truly, ſays he, Mr. *Haynes*, he hath no more Religion than an Horſe; for, ſaith he, they ſay, Sir, he was inclined to Popery when he came firſt to *England*; ſays he, he had a Tincture of Popery, and was much inclined that way; but ſince he was degenerated from all the Principles of Chriſtianity, for he is juſt like a perfect Beaſt.

Mr. *Papillon*. This, you ſay, was in *Ironmonger-Lane*.

Mr. *Haynes*. Ay, Sir, at a Paſtry-Cook's Shop.

Mr. *Papillon*. What Time was it?

Mr. *Haynes*. After Dinner in the Afternoon.

Mr. *Papillon*. In *June*, or when?

Mr. *Haynes*. I cannot tell what Time poſitively; it was about the Time of the Trial of *Fitz-Harris*.

Mr. *Papillon*. Was it the ſame Time he ſpake about the Duke of *Buckingham?*

Mr. *Haynes*. No, no.

Mr. *Papillon*. When was that?

Mr. *Haynes*. That was when I was with him at his own Houſe, and deſired him not to expoſe me.

Mr. *Papillon*. What Time?

Mr. *Haynes*. I cannot tell, Sir, for I never thought I ſhould be called to an Account for it, and I cannot keep an Almanack in my Head; and I deſired them not to expoſe me to the King's Fury, for I heard the King was diſpleaſed with me. No, ſays he, you are miſtaken, this is the beſt Opportunity we can have; and if he will not give you a Pardon, we will raiſe the whole Kingdom againſt him in Arms; and then he makes himſelf the Maſter and Author of the Plot, and conſequently he muſt expect to be ruined, unleſs he grant you a Pardon.

Mr. *Papillon*. Did you ever hear any other Words than what you have now teſtified?

Mr. *Haynes*. Yes, Sir, for I diſcourſed with him in *Ironmonger-Lane* a great while, and told him, that our only and beſt way to have our Ends of the King, was to raiſe a Rebellion in *Ireland*, and that I had Relations and Friends, and could get diſcontented Perſons enough, and his Lordſhip would do the Work here.

Mr. *Papillon*. What, did you propound a Rebellion in *Ireland?*

Mr. *Haynes*. I offered to go beyond Sea, and that now was the beſt Time to raiſe a Rebellion in *Ireland*; and he ſaid that was not the beſt way, for they had other Means to take, and ſo the Diſcourſe was waved.

Mr. *Papillon*. And is that all?

Mr. *Haynes*. That is all I remember now.

Mr. *Papillon*. Do you know of any other Place or Time?

Mr. *Haynes*. I was with him at his Houſe.

Mr. *Papillon*. Were you ever a Witneſs for my Lady *Wyndham*, or againſt her?

Mr. *Haynes*. No, Sir; but ſhe arreſted me, becauſe I ſaid I lay with her.

John Macnamarra.

Mr. *Papillon*. Mr. *Macnamarra*, when was it you had this Diſcourſe with my Lord *Shafteſbury*, what is the Time, as near as you remember?

Mr. *Mac*. In *March* and *April* laſt, Sir.

Mr. *Papillon*. Twice then, do you ſpeak of?

Mr. *Mac*. Yes, Sir.

Mr. *Papillon*. Which is that that was in *April?*

Mr. *Mac*. That was the laſt; the laſt Diſcourſe was in *April*.

Mr. *Papillon*. To what Purpoſe was that?

Mr. *Mac*. My Lord ſaid that the King deſerved to be depoſed as much as King *Richard* the Second did.

Mr. *Papillon*. In *April* you ſay?---Mr. *Mac*. In *April*.

Mr. *Papillon*. When did you give Information of this?

Mr. *Mac*. I cannot exactly tell, Sir.

Mr. *Papillon*. Repeat what you ſaid.

Mr. *Mac*. That the King deſerved to be depoſed as much as King *Richard* the Second, and that he took the Ducheſs of *Mazarine*'s Advice in every Particular, which was the worſt of Womankind.

Mr. *Papillon*. What Time in *April* was this?

Mr. *Mac*. It was in the beginning of *April*.

Mr. *Papillon*. Where?-----Mr. *Mac*. In his own Houſe.

Mr. *Papillon*. Who was preſent?

Mr. *Mac*. There was Mr. *Ivy* by.

Mr. *Papillon*. When did you make Information of this?

Mr. *Mac*. I cannot tell, it was a good while ago.

Mr. *Papillon*. Was it before his Commitment?

Mr. *Mac*. Yes, Sir, it was.

Mr. *Papillon*. To whom did you give Information?

Mr. *Mac*. To the Secretary of State, Sir.

Mr. *Papillon*. Which of them?

Mr. *Mac*. Mr. Secretary *Jenkins*, Sir.

Mr. *Papillon*. Did not you petition the Common-Council, Sir, for Relief?

Mr. *Mac*. Yes, Sir, I ſigned a Petition that was drawn up, but I did not ſee it till it was brought to me to ſign.

Mr. *Papillon.* Did you read it?

Mac. No, I never read it neither.

Mr. *Papillon.* Nor don't know what is in it?

Mr. *Mac.* No, nor don't know the Contents of it.

Mr. *Papillon.* My Lord, in that Petition they ſay, they were tempted to ſwear againſt their Conſciences, and that ſome of the Witneſſes had made Shipwreck of their Conſciences; we aſk them now, and they ſay, they do not know what was in the Petition: If we ſhould aſk them who tempted them, and who thoſe Witneſſes were, that made Shipwreck of their Conſciences; it would ſignify nothing; for ſince they do not know what was in the Petition, it is in vain to aſk them any more.

Mr. *Mac.* For my Part, my Lord, I never ſaw it till it was brought to me to be ſigned, and do not know the Contents of it: But I heard Mr. *Colledge*, that was executed at *Oxford*, was concerned in promoting the Petition, by my Lord *Shafteſbury*'s Advice.

Dennis Macnamarra.

Mr. *Papillon.* *Dennis Macnamarra*, tells us how you were introduced to my Lord *Shafteſbury* when you had this Diſcourſe?

D. Mac. By my Brother, Sir.

Mr. *Papillon.* What, he that was here laſt?

D. Mac. Yes, Sir.

Mr. *Papillon.* He introduced you?----*D. Mac.* Yes, Sir.

Mr. *Papillon*, When was it?

D. Mac. It was in *March* laſt; the latter End of *March*, or beginning of *April.*

Mr. *Papillon.* Cannot you tell which of the Months?

D. Mac. No, I cannot be poſitive in it.

Mr. *Papillon.* Who was by?

D. Mac. There was Mr. *Ivy.*

Mr. *Papillon.* No Body but Mr. *Ivy?*

D. Mac. No Body but Mr. *Ivy* and my Brother.

Mr. *Papillon.* Where was it?

D. Mac. It was in his own Dining-Room.

Mr. *Papillon.* Were none of his Servants in the Room?

D. Mac. Not that I know of.

Mr. *Papillon.* Are you ſure none of his Servants were there?

D. Mac. Not that I know of.

Mr. *Papillon.* Did you hear any Thing elſe at any other Time?

D. Mac. No.

Mr. *Papillon.* Nor in any other Place?-----*D. Mac.* No.

Mr. *Papillon.* When did you give in this Information?

D. Mac. I gave it in a good while ago; Sir, I cannot be poſitive.

Mr. *Papillon.* Was it before my Lord was committed?

D. Mac. Yes a great while.

Mr. *Papillon.* To whom did you give it?

D. Mac. I gave it to the Scretary of State.

Jury. Cannot you remember how long it was before?

D. Mac. No, I cannot at the preſent.

Mr. *Papillon.* Which of the Secretaries?

D. Mac. Secretary *Jenkins.*

Mr. *Papillon.* My Lord, I only propoſe, whether we may not aſk whether he have not a Pardon? For it would be Satisfaction to us, for ſome Reaſon.

L. C. J. North. Look you here Gentlemen, when the Priſoner makes Exceptions to the Witneſſes, then it is proper, but here are no Exceptions to the Witneſſes.

Mr. *Papillon.* My Lord, we make no Exceptions, but we muſt ſatisfy our Conſciences, my Lord, that we muſt do, and that is very much, as we find the Credibility of the Witneſſes.

L. C. J. North. Gentlemen, what do you mean that he ſhould have a Pardon for?

Mr. *Papillon.* For Crimes.

L. C. J. North. You muſt not aſk him to accuſe himſelf.

Mr. *Papillon.* If he hath a Pardon he is *in ſtatu quo:* Suppoſe, my Lord, ſome of them have been guilty of poiſoning, ſome of Felony, ſome of robbing on the Highway, we do but aſk them if they be pardoned?

L. C. J. North. A Man muſt not be impeached but where he may anſwer for it.

Mr. *Papillon.* My Lord, if you do not give us Leave, we muſt forbear then.

L. C. J. North. I do not think it proper to aſk.

Edward Ivy.

Mr. *Papillon.* The Diſcourſe that you had with my Lord *Shafteſbury*, when was it, at what Time?

Mr. *Ivy.* It was a little after the ſitting of the Parliament at *Oxford.*

Mr. *Papillon.* Was it more Times than one?

Mr. *Ivy.* Yes, Sir, ſeveral Times.

Mr. *Papillon.* All the ſame Diſcourſe?

Mr. *Ivy.* No, not the ſame Diſcourſe.

Mr. *Papillon.* The Words that you ſpoke of, when was that?

Mr. *Ivy.* That was after the ſitting of the Parliament at *Oxford.*

Mr. *Papillon.* About what Time was it?

Mr. *Ivy.* It was about the latter End of *March* or beginning of *April.*

Mr. *Papillon.* When did you make Information of this?

Mr. *Ivy.* I cannot be poſitive in that neither.

Mr. *Papillon.* Before my Lord's Commitment or after?

Mr. *Ivy.* A while before.

Mr. *Papillon.* To whom did you give it?

Mr. *Ivy.* To the Secretary of State.

Foreman. Who was preſent when my Lord *Shafteſbury* ſpake thoſe Words?

Mr. *Ivy.* Both the *Macnamarra*'s, as I remember.

Foreman. Who elſe?

Mr. *Ivy.* Truly, I do not remember any elſe privy to our Diſcourſe; neither am I certain, that both the *Macnamarra*'s were there; one of them was there I am ſure of it

Foreman. What was the Reaſon you concealed this Information ſo long? Had you no Inducement to make it at that Time? How came you to do it then and not before? What was the Reaſon? You ſay it was the latter End of *April* and *May*; my Lord was not committed for a good while after; here was two Months Time?

Mr. *Ivy.* I am not certain how long a Time it was before, but I made it as ſoon as I could.

Foreman. I aſk you whether you know any thing either of Words or treaſonable Actions, or any thing of my Lord *Shafteſbury*, ſpoken or acted at any other Time or Place?

Mr. *Ivy.* No, I have declared what I know as to the Particulars.

Bernard Dennis.

Mr. *Papillon.* Mr. *Dennis*, in the Morning you told me ſomething about the Diſcourſe you had with my Lord of *Shafteſbury*, tell me when it was?

Mr. *Dennis.* It was in *April*, four or five Days after the Parliament was diſſolved at *Oxford.*

Mr. *Papillon.* In the beginning?

Mr. *Dennis.* In *March*, after the Parliament was diſſolved at *Oxford.*

Mr. *Papillon.* It was in *March*, and where?

Mr. *Dennis.* In his own Houſe, here in this Town, four or five Days after the Parliament was diſſolved at *Oxford*, immediately after he came home, I do not think he was at home three Days before.

Mr. *Papillon.* Who was preſent with you then?

Mr. *Dennis.* There was in the Room Mr. *Sheppard*, his Gentleman.

Mr. *Papillon.* Who elſe?

Mr. *Dennis.* Some of his Servants, his Pages I ſuppoſe, but whether they did hear this or no, I cannot tell.

Mr. *Papillon.* Did my Lord whiſper it, or ſpeak out?

Mr. *Dennis.* My Lord is not a Man of an high Voice, but of mediocrite Voice.

Mr. *Papillon.* Did he whiſper it in your Ear?

Mr. *Dennis.* No, I was juſt by him.

Mr. *Papillon.* Who was in the Room beſides?

Mr. *Dennis.* No Body, only his Servants.

Mr. *Papillon.* When did you make this Information?

Mr. *Dennis.* I made it in the Month of *June.*

Mr. *Papillon.* In the Month of *June?*

Mr. *Dennis.* Yes, Sir.

Mr. *Papillon.* Before my Lord was committed, or after?

Mr. *Dennis.* Before.

Mr. *Papillon.* Who did you make it to?

Mr. *Dennis.* I made my Information to the Secretary of State.

Mr. *Papillon.* Which of them?-----Mr. *Dennis.* Secretary *Jenkins.*

Mr. *Papillon.* Why did you conceal it ſo long?

Mr. *Dennis.* Becauſe I was in the City ſo long.

Mr. *Papillon.* Did you ever go about to muſter your 400 Men you had in *Ireland*, I aſk you whether you did or no?

Mr. *Dennis.* Upon my Word I did adviſe ſome of them to be ready.

Mr. *Papillon.* And did you provide them with Arms?

Mr. *Dennis.* Not I, Sir, I was not able to do it.

Mr. *Papillon.* What Religion are you of?

Mr. *Dennis.* I am a Proteſtant.

Mr. *Papillon.* How long have you been a Proteſtant?

Mr. *Dennis.* I have been a Proteſtant ſince *February* laſt. And this I muſt confeſs, that when I was in *Spain* and *France*, my Reſolution was to be a Proteſtant.

Mr. *Godfrey.* Mr. *Dennis*, pray who was in the Room when you were there?

Mr. *Dennis.* The Earl of *Shafteſbury*, Sir.

Mr. *Godfrey.* Who elſe?——Mr. *Dennis.* Mr. *Sheppard.*

Mr. *Godfrey.* Who elſe?——Mr. *Dennis.* I cannot name them.

L. C. J. Mr. *Godfrey*, when another Man aſks a Queſtion, you ſhould conſider what is ſaid, and not aſk the ſame Queſtion over and over again.

Mr. *Papillon.* In what Place in his Houſe?

Mr. *Dennis.* In his own Chamber, in the great Chamber, I do not know whether you call it the Hall or the Parlour.

Mr. *Papillon.* Was it above Stairs?

Mr. *Dennis.* Yes, it was above Stairs, my Lord does not uſe to ſpeak with any below Stairs.

Mr. *Papillon.* Is this all that you know? Have you heard my Lord ſay any treaſonable Words in any other Place, or at any other Time?

Mr. *Dennis.* In the long Gallery in his own Houſe at another Time?

Mr. *Papillon.* Why did not you ſay ſo before?

Mr. *Dennis.* I did ſay ſo before. In the long Gallery he told me he would have a Commonwealth in *England*, and extirpate the Crown of *England* and the King of *England.*

Mr. *Papillon.* Is that all? Speak all your Knowledge.

Mr. *Dennis.* He ſaid, we ſhould all *Iriſhmen* conform ourſelves to a Commonwealth, and by that we ſhould get our Eſtates again.

Mr. *Papillon.* I aſk you if this is all you have to ſay?

L. C. J. Do you remember any more?

Mr. *Papillon.* More than you ſaid in the Morning?

Mr. *Dennis.* He ſaid he would extirpate the King, and make *England* a Commonwealth, and that we were Fools and ſilly Folks that did not comply ourſelves to their factious Party, and that we ſhould get our Eſtates, and that he would get me a black Gown and a Benefice in the mean Time; and when all Things were done, he would prefer me to a better; and not only myſelf, but all that were of my Name, and would ſtick to me.

Mr. *Papillon.* Is this all?------Mr. *Dennis.* This is all.

Mr. *Papillon.* Then you have nothing more?

Mr. *Dennis.* I never ſpake to him but in his own Houſe.

Mr. *Papillon.* All your Kindred are Papiſts, are not they?

Mr *Dennis.* No, Sir, I cannot ſay ſo, but moſt of them are.

L. C. J. North. Who can ſay that? That Queſtion no Body can anſwer.

L. C. J. Look ye, Gentlemen, now you have aſked theſe Queſtions, you had beſt go and conſider what Evidence is delivered, and weigh well all thoſe Things that have been ſaid to you; and you muſt conſider your Duty; you are to enquire here, whether it be fitting for the King to call my Lord *Shafteſbury* to queſtion upon this Account of treaſonable Words.

Mr. *Papillon.* My Lord, we deſire, before we go, that either the Law may be read, or we may have the Statute-Book up with us.

L. C. J. The Statute-Book was never denied, but you ſhall have the Law read here: Firſt the Statute of the 25th of *Edward* the Third, and then this laſt Statute.

L. C. J. North. I would ſay one Thing becauſe I obſerved that ſome of you aſked the Queſtion, whether the Parliament did not debate about an

Aſſociation? Whether it related to that Paper or no, I am not certain; I hope you will conſider that Paper well; for my Part, I muſt needs ſay for myſelf, I heard of it, but I never heard it read before, and never heard the Contents of it; but it ſeems to me to ſhew what thoſe Officers were to do, for the Ends of this Aſſociation; and one of thoſe Ends, as I remember (Gentlemen, I refer you to the Paper, and hope you will conſider it, you are Men of Underſtanding) I thought that one of thoſe Ends was to deſtroy the mercenary Forces in and about the Cities of *London* and *Weſtminſter*, and that the Government was to be by the major Part of the Members of Parliament in the Sitting of Parliament, not with the King, but the major Part of the Members of Parliament. Gentlemen, I may miſtake, for I profeſs I ſpeak only out of Memory; but it ſeems to me to be of great Conſequence, and there is great Matter to be preſumed upon it, it being found under Lock and Key in his Study: But I ſuppoſe my Lord *Shafteſbury* may give an Account of it, but there is great Preſumption upon it; it doth not import to be an Aſſociation by Act of Parliament.

Mr. Att. Gen. When the Parliament was prorogued or diſſolved, then the major Part of the Members in each County engage themſelves to follow their Command and obey their Order.

L. C. J. North. Gentlemen, I hope you will conſider your Oaths, and give all Things their due Weight.

L. C. J. Will you have the Statute Read?

Jury. We will read it above.

The Jury withdrew to conſider the Evidence, and returned the Bill Ignoramus: *Upon which the People fell a hollowing and ſhouting.*

Mr. Att. Gen. My Lord, let it be recorded this Hollowing and Hooping in a Court of Juſtice.

CX. *The Trial of the Earl of* Argyle*, *in* Scotland, *for Treaſon*, November, *&c.* 1681. 33 Car. II.

EDENBURGH.

Sederunt tertio die Novembris, 1681.

His Royal Highneſs, *&c.*

Athol Præſes,
Montroſe,
Argyle,
Winton,
Linlithgow,
Perth,
Strathmore,
Roxburgh,
Ancram,
Airley,
Balcarres,
Lorn,
Levingſton,
Biſhop of *Edenburgh*,
Elphinſton,
Roſſe,
Dalziel,
Preſident of *Seſſion*,
Treaſurer Deputy,
Regiſter,
Advocate,
Juſtice *Clerk*,
Collintoun,
Lundie.

THIS Day the Earl of *Argyle* having firſt openly declared his Senſe, as you have it hereafter ſet down in his Explication, took the *Teſt* as a Privy-Counſellor; and after he was called to, and had taken his Place, the Council's Explication having been read and debated, was put to the Vote, and paſſed, the Earl not voting thereto.

Edenburgh, *the 3d Day of* November, 1681.

The Privy-Council's Explanation of the Teſt.

FOraſmuch as ſome have entertained Jealouſies and Prejudices againſt the *Oath* and *Teſt* appointed to be taken by all Perſons in publick Truſt, Civil, Eccleſiaſtical, or Military, in this Kingdom, by the Sixth Act of his Majeſty's third Parliament; as if thereby they were to ſwear to every Propoſition, or Clauſe of the *Confeſſion of Faith* therein mentioned; or that Invaſion were made by it upon the intrinſick ſpiritual Power of the Church, or Power of the Keys, or as if the Preſent Epiſcopal Government of this National Church, by Law eſtabliſhed, were thereby expoſed to the Hazard of Alteration or Subverſion: All which are far from the Intention or Deſign of the Parliament's impoſing this Oath, and from the genuine Senſe and Meaning thereof: Therefore his Royal Highneſs, his Majeſty's High Commiſſioner, and Lords of the Privy-Council, do allow, authorize, and impower the Archbiſhops and Biſhops to adminiſter this Oath and Teſt to the Miniſters, in their reſpective Dioceſſes, in this expreſs Senſe: (1.) *That though the* Confeſſion of Faith, *ratified in Parliament* 1567, *was framed in the Infancy of Reformation, and deſerves it's due Praiſe, yet by the* Teſt *we do not ſwear to every Propoſition, or Clauſe therein contained, but only to the true Proteſtant Religion, founded on the Word of* God, *contained in that* Confeſſion *as it is oppoſed to Popery and Fanaticiſm.* (2.) *That by the* Teſt, *or any Clauſe therein contained, no Invaſion or Encroachment is made or intended upon the intrinſic ſpiritual Power of the Church, or Power of the Keys, as it was exerciſed by the Apoſtles, and the moſt pure and primitive Church in the firſt three Centuries after Chriſt, and which is ſtill reſerved entirely to the Church.* (3.) *That the* Oath *and* Teſt *is without any Prejudice to the Epiſcopal Government of this national Church, which is declared by the firſt Act of the ſecond Seſſion of his Majeſty's firſt Parliament, to be moſt agreeable to the Word of God, and moſt ſuitable to Monarchy, and which upon all Occaſions his Majeſty hath declared he will inviolably and unalterably preſerve. And appoint the Archbiſhops and Biſhops to require the Miniſters in their reſpective Dioceſſes, with their firſt Conveniency, to obey the Law in ſwearing and ſubſcribing the aforeſaid* Oath *and* Teſt *with Certification, that the Refuſers ſhall be eſteemed Perſons diſaffected to the Proteſtant Religion, and to his Majeſty's Government*; *and that the Puniſhment appointed by the foreſaid ſixth Act of his Majeſty's third Parliament, ſhall be impartially and without Delay inflicted upon them.* By me.

PET. MENZEIS.

Sederunt quarto die Novembris, 1681.

His Royal Highneſs, *&c.*

Montroſe Præſes,
Perth,
Ancram,
Levingſton,
Preſident of *Seſſion*,
Advocate,
Winton,
Strathmore,
Airley,
Biſhop of *Edenburgh*,
Treaſurer Deputy,
Lundie,
Linlithgow,
Roxburgh,
Balcarres,
Elphinſton,
Regiſter.

This Day the Earl of *Argyle* being about to take the *Teſt*, as a Commiſſioner of the Treaſury, and having upon Command produced a Paper bearing the Senſe in which he took the *Teſt*, the preceding Day, and in which he would take the ſame, as a Commiſſioner of the Treaſury; upon Conſideration thereof, it was reſolved, that he cannot ſit in Council, not having taken the *Teſt* in the Senſe and Meaning of the Act of Parliament, and therefore was removed.

The Earl of Argyle's *Explication of the* TEST *when he took it.*

I Have conſidered the Teſt, *and I am very deſirous to give Obedience as far as I can. I am confident the Parliament never intended to impoſe contradictory Oaths; therefore I think no Man can explain it but for himſelf. Accordingly I take it, as far as it is conſiſtent with itſelf, and the Proteſtant Religion. And I do declare, that I mean not to bind up myſelf in my Station, and in a lawful way, to wiſh and endeavour any Alteration I think to the Advantage of Church or State, nor repugnant to the Proteſtant Religion and my Loyalty. And this I underſtand as a Part of my Oath.*

But the Earl finding, as hath been narrated, this his Explication, though accepted and approven by his Highneſs and Council the Day before, to be this Day carped and offended at, and Advantages thereupon ſought and deſigned againſt him, did immediately draw up the following Explanation of his Explication; and for his own Vindication, did firſt communicate it to ſome privately, and thereafter intended to have offered it at his Trial for clearing of his Defences.

The Explanation of his Explication.

I Have delayed hitherto to take the Oath appointed by the Parliament to be taken, betwixt and the firſt of January *next; but now being required, near two Months ſooner, to take it, this Day peremptorily, or to refuſe,* I have conſidered the Teſt, *and have ſeen ſeveral Objections moved againſt it, eſpecially by many of the Orthodox Clergy, notwithſtanding whereof, I have endeavoured to ſatisfy myſelf with a juſt Explanation, which I here offer, that I may both ſatisfy my Conſcience and obey your Highneſs, and your Lordſhips Commands in taking the* Teſt, *though the Act of Parliament do not ſimply command the thing, but only under a Certification, which I could eaſily ſubmit if it were with your Highneſs Favour, and might be without Offence, but I love not to be ſingular*; and I am very deſirous to give Obedience *in this and every thing* as far as I can; *and that which clears me is, that* I am confident *whatever any Man may think or ſay, to the Prejudice of this Oath*; the Parliament never intended to impoſe contradictory Oaths; *and becauſe their Senſe (they being the Framers and Impoſers) is the true Senſe, and that this* Teſt *injoined is of no private Interpretation, nor are the King's Statutes to be interpreted but as they bear, and to the Intent they are made,* therefore I think no Man, *that is, no private Perſon,* can explain it *for another, to amuſe or trouble him with (it may be) miſtaken Gloſſes. But every Man, as he is to take it, ſo is to explain it* for himſelf, *and to endeavour to underſtand it, (notwithſtanding all theſe Exceptions) in the Parliaments, which is its true and genuine Senſe.* I take it therefore, *notwithſtanding any Scruple made by any,* as far as it is conſiſtent with itſelf and the Proteſtant Religion, *which is wholly in the Parliament's Senſe, and their true Meaning*; *which* [*being preſent*] *I am ſure was owned by all to be the Securing of the Proteſtant Religion, founded on the Word of God, and contained in the* Confeſſion of Faith *recorded* J. 6. p. 1. c. 4. and, *not out of Scruple, as if any thing in the* Teſt *did import the contrary, but to clear myſelf from all Cavils*; *as if thereby I were bound up further than the true Meaning of the Oath.* I do declare, *that by that part of the* Teſt, *that there lies no Obligation on me,* &c. I mean not to bind up myſelf, in my Station, and in a lawful way, *ſtill diſclaiming all unlawful Endeavours,* to wiſh, and endeavour any Alteration, I think, *according to my Conſcience,* to the Advantage of Church or State, not repugnant to the Proteſtant Religion, and my Loyalty, *and by my Loyalty, I underſtand no other thing than the Words plainly bear, to wit the Duty and Allegiance of all loyal Subjects*; and this *Explanation* I underſtand as a Part *not of the* Teſt, *or Act of Parliament, but as a qualifying Part* of my Oath *that I am to ſwear*; *and with it I am willing to take the* Teſt, *if your Royal Highneſs and your Lordſhips allow me, or otherwiſe, in Submiſſion to your Highneſs, and the Council's Pleaſure, I am content to be held as a Refuſer at preſent.*

The Council's Letter to his Majeſty, concerning their having committed the Earl of Argyle.

May it pleaſe your Sacred Majeſty,

THE laſt Parliament having made ſo many and ſo advantageous Acts, for ſecuring the Proteſtant Religion, the Imperial Crown of this Kingdom, and your Majeſty's ſacred Perſon, (whom God Almighty long preſerve) and having, for the laſt, and as the beſt Way for ſecuring all theſe, appointed a *Teſt* to be taken by all who ſhould be entruſted with the Government; which bears expreſly that the ſame ſhould be taken in the plain and genuine Senſe and Meaning of the Words; *We were very careful not to ſuffer any to take the ſaid* Oath *or* Teſt *with their own Gloſſes or Explications*;

Burnet's Hiſtory of his own Times, Vol. I. p. 519—522.

But the Earl of *Argyle* having, after ſome Delays, come to Council, to take the ſaid Oath, as a Privy Councillor, ſpoke ſome Things which were not then heard, nor adverted to, and when his Lordſhip at his next Offering to take it in Council, as one of Commiſſioners of your Majeſty's Treaſury, was commanded to take it ſimply, he refuſed to do ſo, but gave in a Paper, ſhewing the only Senſe in which he would take it; which Paper we all conſidered, *as that which had in it groſs and ſcandalous Reflections upon that excellent Act of Parliament*; *making it to contain Things contradictory and inconſiſtent, and thereby depraving your Majeſty's Laws, miſrepreſenting your Parliament, and teaching your Subjects to evacuate and diſappoint all Laws and Securities that can be enacted for the Preſervation of the Government*; ſuitable to which, his Lordſhip declares in that Paper, *That he means not to bind up himſelf from making any Alterations he ſhall think fit for the Advantage of Church or State*; and which Paper he deſires may be looked upon as a Part of his Oath, as if he were the Legiſlator, and able to add a Part to the Act of Parliament. Upon ſerious Peruſal of which Paper, we found ourſelves obliged to ſend the ſaid Earl to the Caſtle of *Edenburgh*, and to tranſmit the Paper to your Majeſty, being expreſly obliged to both theſe by your Majeſty's expreſs Laws. And we have commanded your Majeſty's Advocate to raiſe a Purſuit againſt the ſaid Earl, for being Author, and having given in the ſaid Paper: And for the further Proſecution of all relating to this Affair, we expect your Majeſty's Commands, which ſhall be moſt humbly and faithfully obeyed, by

Your Majeſty's moſt humble,
Moſt faithful, and moſt obedient
Subjects and Servants

Edenburgh, Nov. 8.
1681.

Sic Subſcribitur,

Glencairne,
Winton,
Linlithgow,
Perth,
Roxburgh,
Ancram,
Airlie.
Levingſtoun,

Jo. Edinburgen,
Roſs,
Geo. Gordoun,
Ch. Maitland,
G. Mekenzie,
Ja. Foulis,
J. Drummond.

Nov. 15, 1681.

The King's Anſwer to the Council's Letter.

C. R.

MOST dear, *&c.* having in one of your Letters directed unto us, of the 8th Inſtant, received a particular Account of the Earl of *Argyle*'s refuſing to take the *Teſt* ſimply, and of your Proceedings againſt him, upon the Occaſion of his giving in a Paper, ſhewing the only Senſe in which he will take it, which had in it groſs and ſcandalous Reflections upon that excellent late Act of our Parliament there, by which the ſaid *Teſt* was enjoined to be taken: We have now thought fit to let you know, that as we do hereby approve theſe your Proceedings, particularly your ſending the ſaid Earl to our Caſtle of *Edenburgh*; and your commanding our Advocate to raiſe a Purſuit againſt him, for being Author of, and having given in the ſaid Paper; ſo we do alſo authorize you to do all Things that may concern the further Proſecution of all relating to this Affair. Nevertheleſs, it is our Expreſs Will and Pleaſure, that before any Sentence ſhall be pronounced againſt him, at the Concluſion of the *Proceſs*, you ſend us a particular Account of what he ſhall be found guilty of, to the End that, after our being fully informed thereof, we may ſignify our further Pleaſure in this Matter. For doing whereof, *&c.*

But as notwithſtanding the Council's demanding, by their Letter, his Majeſty's Allowance for proſecuting the Earl, they, before any Return, cauſed his Majeſty's Advocate exhibit an Indictment againſt him, upon the Points of ſlandering and depraving, as hath been already remarked, ſo after having received his Majeſty's Anſwer, the Deſign grows, and they thought fit to order a new Indictment containing, beſide the former Points, the Crimes of Treaſon and Perjury, which accordingly was exhibit, and is here ſubjoined, the Difference betwixt the two Indictments being only in the Particulars above-noted.

A Copy of the Indictment againſt the Earl of Argyle.

Archibald Earl of *Argyle*,

YOU are indicted and accuſed, that albeit by the Common-Law of all well-govern'd Nations, and by the Municipal-Law and Acts of Parliament of this Kingdom; and particularly, by the 21ſt, and by the 43d Act, Par. 2. *James* I. and by the 83d Act, Par. 6. *James* V. and the 134th Act, Par. 8. *James* VI. and the 205th Act, Par. 14. *James* VI. All Leaſing-makers and Tellers of them, are puniſhable with Tinſel of Life and Goods; like as by the 107th Act, Par. 7. *James* I. it is ſtatuted, that no Man interpret the King's Statutes otherwiſe than the Statute bears, and to the Intent and Effect that they were made for, and as the Makers of them underſtood; and whoſo does in the contrary to be puniſhed at the King's Will: And by the 10th Act, Par. 10. *James* VI. it is ſtatuted, that none of his Majeſty's Subjects, preſume or take upon him publickly to declare, or privately to ſpeak or write any Purpoſe of Reproach or Slander of his Majeſty's Perſon, Eſtate, or Government, or to deprave his Laws, or Acts of Parliament, or miſconſtrue his Proceedings, whereby any Miſtaking may be moved betwixt his Highneſs, his Nobility, and loving Subjects, in Time coming, under Pain of Death; certifying them that does in the contrary, they ſhall be reputed as ſeditious and wicked Inſtruments, Enemies to his Highneſs, and to the Commonwealth of this Realm, and the ſaid Pain of Death ſhall be executed againſt them with all Rigour, to the Example of others: And by the ſecond Act, Seſ. 2. Par. 1. *Char.* II. it is ſtatuted, that whoſoever ſhall by writing, libelling, remonſtrating, expreſs, publiſh, or declare any Words or Sentences, to ſtir up the People to the Diſlike of his Majeſty's Prerogative and Supremacy, in Cauſes Eccleſiaſtick, or of the Government of the Church by Archbiſhops and Biſhops, as it is now ſettled by Law, is under the Pain of being declared incapable to exerciſe any Office civil, eccleſiaſtick, or military, within this Kingdom, in any Time coming. Like as by the fundamental Laws of this Nation, by the 130th Act, Par. 8. *James* VI. it is decared, that none of his Majeſty's Subjects preſume to impung the Dignity or Authority of the three Eſtates, or to procure Innovation or Diminution of their Power and Authority, under the Pain of Treaſon. And that it is much more Treaſon in any of his Majeſty's Subjects, to preſume to alter Laws already made, or to make new Laws, or to add any Part to any Law, by their own Authority, that being to aſſume the Legiſlative Power to themſelves, with his Majeſty's higheſt, and moſt incommunicable Prerogative. Yet true it is, that albeit his Sacred Majeſty did not only beſtow on you the ſaid *Archibald* Earl of *Argyle* thoſe vaſt Lands, Juriſdictions and Superiorities juſtly forfaulted to his Majeſty by the Crimes of your deceaſed Father; preferring your Family to thoſe who had ſerved his Majeſty againſt it, in the late Rebellion, but alſo pardoned and remitted to you the Crimes of leaſing, making and miſconſtruing his Majeſty's and his Parliament's Proceedings againſt the very Laws above-written, whereof you were found guilty, and condemned to die therefore, by the High Court of Parliament, the 25th of *Auguſt*, 1662. and raiſed you to the Title and Dignity of an Earl, and being a Member of all his Majeſty's Judicatures. Notwithſtanding of all theſe, and many other Favours, you the ſaid *Archibald* Earl of *Argyle*, being put by the Lords of his Majeſty's Privy-Council to take the *Teſt*, appointed by the Act of the laſt Parliament to be taken by all Perſons in publick Truſt, you, inſtead of taking the ſaid *Teſt*, and ſwearing the ſame in the plain genuine Senſe and Meaning of the Words, without any Equivocation, Mental Reſervation, or Evaſion whatſoever, you did declare againſt, and defame the ſaid Act; and having, to the End you might corrupt others by your pernicious Senſe, drawn the ſame in a Libel, of which Libel you diſperſed and gave abroad Copies, whereby ill Impreſſions were given of the King and Parliament's Proceedings at a Time eſpecially when his Majeſty's Subjects were expecting what Submiſſion ſhould be given to the ſaid *Teſt*; and being deſired tne next Day to take the ſame, as one of the Commiſſioners of his Majeſty's Treaſury, you did give in to the Lords of his Majeſty's Privy-Council, and owned twice, in plain Judgment before them, the ſaid defamatory Libel againſt the ſaid *Teſt* and Act of Parliament; declaring that you *had conſidered the ſaid* Teſt, *and was deſirous to give Obedience as far as you could*: whereby you clearly inſinuated, that you was not able to give full Obedience: In the ſecond Article of which Libel you declare, that you were *confident the Parliament never intended to impoſe contradictory Oaths*; thereby to abuſe the People with a Belief, that the Parliament had been ſo impious as really and actually to have impoſed contradictory Oaths; and ſo ridiculous, as to have made an Act of Parliament (which ſhould be moſt deliberate of all human Actions) quite contrary to their own Intentions: After which you ſubſumed, contrary to the Nature of all Oaths, and to the Acts of Parliament above-cited, *that every Man muſt explain it for himſelf, and take it in his own Senſe*; by which not only that excellent Law, and the Oath therein ſpecified, which is intended to be a Fence to the Government both of Church and State, but all other Oaths and Laws ſhall be rendered altogether uſeleſs to the Government. If every Man take the Oaths impoſed by Law in his own Senſe, then the Oath impoſed is to no Purpoſe; for the Legiſlator cannot be ſure that the Oath impoſed by him will bind the Takers according to the Deſign and Intent for which he appointed it; and the Legiſlative Power is taken from the Impoſers, and ſettled in the Taker of the Oath; and ſo he is allowed to be the Legiſlator, which is not only an open and violent depraving of his Majeſty's Laws and Acts of Parliament, but is likewiſe a ſettling of the Legiſlative Power on private Subjects, who are to take ſuch Oaths. In the third Article of that Paper you declare, that you *take the* Teſt *in ſo far only as it is conſiſtent with itſelf, and the Proteſtant Religion*; by which you maliciouſly intimate to the People, that the ſaid Oath is inconſiſtent with itſelf and with the Proteſtant Religion, which is not only a downright depraving of the ſaid Act of Parliament, but is likewiſe a miſconſtruing of his Majeſty's and the Parliament's Proceedings, and miſrepreſenting them to the People in the higheſt Degree, and in the tendereſt Points they can be concerned; and implying, that the King and the Parliament have done Things inconſiſtent with the Proteſtant Religion, for ſecuring of which, that *Teſt* was particularly intended. In the fourth Article you do expreſly declare, that you *mean not* by taking the ſaid *Teſt*, *to bind up yourſelf from wiſhing and endeavouring any Alteration in a lawful Way that you ſhall think fit, for advancing of Church and State*; whereby alſo it was deſigned by the ſaid Act of Parliament and Oath, that no Man ſhould make any Alteration in the Government of Church and State, as it is now eſtabliſhed; and that it is the Duty of all good Subjects, in humble and quiet Manner, to obey the preſent Government: Yet you not only declare yourſelf, but by your Example you invite others to think themſelves looſed from that Obligation; and that it is free for them to make any Alteration in either, as they ſhall think fit, concluding your whole Paper with theſe Words (*and this I underſtand as a Part of my Oath*;) which is a treaſonable Invaſion upon the Royal Legiſlative Power, as if it were lawful for you to make to yourſelf an Act of Parliament; ſince he who can make any Part of an Act may make the whole, the Power and Authority in both being the ſame. Of the which Crimes above-mentioned, you the ſaid *Archibald* Earl of *Argyle* are Actor, Art and Part; which being found by the Aſſize, you ought to be puniſhed with the Pains of Death, Forfaulture and Eſcheat of Lands and Goods, to the Terror of others to commit the like hereafter.

An Abſtract of the ſeveral Acts of Parliament upon which the Indictment againſt the Earl of Argyle *was grounded.*

Concerning Raiſers of Rumors betwixt the King and his People. *Chap.* 20. 1 *Statutes of K.* Rob. I.

IT is defended and forbidden, That no Man be a Conſpirator or Inventor of Narrations or Rumors, by the which Occaſion of Diſcord may ariſe betwixt the King and his People. And if any ſuch Man ſhall be found, and attainted thereof, incontinent he ſhall be taken and put in Priſon, and there ſhall be ſurely keeped up, ay and while the King declare his Will anent him.

Act 43. *Par.* 2. *King* James I. March 11, 1424. *Leaſing-makers forfault Life and Goods.*

ITem, It is ordained by the King and whole Parliament, That all Leaſing-makers, and Tellers of them, which may engender Diſcord betwixt the King and his People, where-ever they may be gotten, ſhall be challenged by them that Power has, and tyne Life and Goods to the King.

Act 83. *Par.* 6. James V. Dec. 10, 1530. *Of Leaſing-makers.*

ITem, Touching the Article of Leaſing-makers to the King's Grace, of his Barons, great Men and Leiges, and for Puniſhment to be put to them therefore, the King's Grace, with Advice of his three Eſtates, ratifies and approves the Acts and Statutes made thereupon before, and ordains the ſame to be put in Execution in all Points; and alſo ſtatutes and ordains, That if any manner of Perſon makes any evil Information of his Highneſs to his Barons and Leiges, that they ſhall be puniſhed in ſuch Manner, and by the ſame Puniſhment as they that make Leaſings to his Grace of his Lords, Barons, and Leiges.

Act 134. *Par.* 8. James VI. May 22, 1584. *Anent Slanderers of the King, his Progenitors, Eſtate and Realm.*

FOraſmuch as it is underſtood to our Sovereign Lord, and his three Eſtates aſſembled in this preſent Parliament, what great Harm and Inconveniency has fallen in this Realm, chiefly ſince the beginning of the civil Troubles occured in the Time of his Highneſs *minority*, through the wicked and licentious, publick and private Speeches, and untrue Calumnies of divers of his Subjects, to the Diſdain, Contempt, and Reproach of his Majeſty, his Council and Proceedings, and to the Diſhonour and Prejudice of his Highneſs, his Parents, Progenitors and Eſtate, ſtirring up his Highneſs's Subjects thereby to Miſliking, Sedition, Unquietneſs, and and to caſt off their due Obedience to his Majeſty; to their Evident Peril, Tinſel and Deſtruction: His Highneſs continuing always in Love and Clemency toward all his good Subjects, and moſt willing to ſeek the Safety and Preſervation of them all, which wilfully, needleſsly, and upon plain Malice, after his Highneſs's Mercy and Pardon oft-times afore granted, has procured themſelves, by their treaſonable Deeds, to be cut off, as corrupt Members of this Commonwealth. Therefore it is ſtatute, and ordained by our Sovereign Lord, and his three Eſtates in this preſent Parliament, that none of his Subjects, of whatſoever Function, Degree, or Quality, in Time coming, ſhall preſume, or take upon Hand, privately or publickly, in Sermons, Declamations, and familiar Conferences, to utter any falſe, ſlanderous, or untrue Speeches, to the Diſdain, Reproach and Contempt of his Majeſty, his Council and Proceedings, or to the Diſhonour, Hurt, or Prejudice of his Highneſs, his Parents and Progenitors, or to meddle in the Affairs of his Highneſs, and his Eſtate preſent, by-gone, and in time coming, under the Pains contained in the Acts of Parliament anent Makers and Tellers of Leaſings, certifying them that ſhall be tried, Contraveners thereof, or that hear ſuch ſlanderous Speeches, and Reports not the ſame with Diligence, the ſaid Pain ſhall be executed againſt them with all Rigour, in Example of others.

Act 205. *Par.* 14. *King* James VI. June 8, 1594. *anent Leaſing-makers, and Authors of Slanders.*

OUR Sovereign Lord, with Advice of his Eſtates, in this preſent Parliament, ratifies, approves, and for his Highneſs and Succeſſors, perpetually confirms the Act made by his noble Progenitors, King *James* the Firſt, of worthy Memory, againſt Leaſing-makers, the Act made by King *James* the Second, entituled, *Againſt Leaſing-makers and Tellers of them*; the Act made by King *James* the Fifth, entituled, of *Leaſing-makers*; and the Act made by his Highneſs's ſelf, with Advice of his Eſtates in Parliament, upon the 22d Day of *May*, 1584. entituled, *For the Puniſhment of the Authors of Slanders and untrue Calumnies againſt the King's Majeſty, his Council and Proceedings, to the Diſhonour and Prejudice of his Highneſs, his Parents, Progenitors, Crown and Eſtate*; as alſo the Act made in his Highneſs's Parliament holden at *Linlithgow* upon the 10th of *Dec.* 1585, entituled, *Againſt the Authors of ſlanderous Speeches or Writs*; and ſtatutes and ordains all the ſaid Acts to be publiſhed of new, and to be put in Execution in Time coming, with this Addition, that whoever hears the ſaid Leaſings, Calumnies, or ſlanderous Speeches or Writs to be made, and apprehends not the Authors thereof, if it lies in his Power, and reveals not the ſame to his Highneſs, or one of his Privy-Council, or to the Sheriff, Steward, or Bailiff of the Shire, Stewards in Regality or Royalty, or to the Provoſt, or any of the Bailiffs within Burgh, by whom the ſame may come to the Knowledge of his Highneſs, or his ſaid Privy-Council, where through the ſaid Leaſing-makers and Authors of ſlanderous Speeches may be called, tried, and puniſhed according to the ſaid Acts: The Hearer, and not Apprehender, [if it lie in his Power] and Concealer, and not Revealer of the ſaid Leaſing-makers, and Authors of the ſaid ſlanderous Speeches or Writs, ſhall incur the like Pain and Puniſhment as the principal Offender.

Act 107. *Par.* 7. *King* James I. March 1, 1427. *That none interpret the King's Statutes wrongouſly.*

ITem, The King, by Deliverance of Council, by manner of Statute, forbids, That no Man interpret his Statutes otherwiſe than the Statutes bear, and to the Intent and Effect that they were made for, and as the Maker of them underſtood; And whoſo does in the contrary, ſhall be puniſhed at the King's Will.

Act 10. *Par.* 10. *King* James VI. Dec. 10, 1585. *Authors of ſlanderous Speeches or Writs ſhould be puniſhed to the Death.*

IT is ſtatuted and ordained by our Sovereign Lord and three Eſtates, That all his Highneſs's Subjects content themſelves in Quietneſs and dutiful Obedience to his Highneſs and his Authority; and that none of them preſume, or take upon Hand publickly to declaim, or privately to ſpeak or write any Purpoſe of Reproach or Slander of his Majeſty's Perſon, Eſtate or Government; or miſconſtrue his Proceedings, whereby any Miſliking may be proved betwixt his Highneſs and his Nobility, and loving Subjects in time coming, under the Pain of Death; certifying them that do in the contrary, they ſhall be reputed as ſeditious and wicked Inſtruments, Enemies to his Highneſs and the Commonwealth of this Realm: And the ſaid Pain of Death ſhall be executed upon them with all Rigour, in Example of others.

Act for Preſervation of his Majeſty's Perſon, Authority and Government, May 1662.

————And further, It is by his Majeſty and Eſtates of Parliament declared, ſtatuted and enacted, That if any Perſon or Perſons ſhall, by writing, printing, praying, preaching, libelling, remonſtrating, or by any malicious or adviſed ſpeaking, expreſs, publiſh, or declare any Words or Sentences, to ſtir up the People to the Hatred or Diſlike of his Majeſty's Royal Prerogative and Supremacy, in Cauſes Eccleſiaſtical, or of the Government of the Church by Archbiſhops and Biſhops, as it is now ſettled by Law————That every ſuch Perſon or Perſons ſo offending, and being legally convicted thereof, are hereby declared incapaple to enjoy or exerciſe any Place or Employment, civil, eccleſiaſtick, or military, within this Church and Kingdom, and ſhall be liable to ſuch further Pains as are due by the Law in ſuch Caſes.

Act 130. *Par.* 8. James VI. May 22, 1584. *Anent the Authority of the three Eſtates of Parliament.*

THE King's Majeſty conſidering the Honour and the Authority of his Supreme Court of Parliament, continued paſt all Memory of Man, unto their Days, as conſtitute upon the free Votes of the three Eſtates of this ancient Kingdom, by whom the ſame, under God, has ever been upholden, rebellious and traiterous Subjects puniſhed, the good and faithful preſerved and maintained, and the Laws and Acts of Parliament (by which all Men are governed) made and eſtabliſhed. And finding the Power, Dignity, and Authority of the ſaid Court of Parliament, of late Years called in ſome Doubt, at leaſt, ſome curiouſly travelling to have introduced ſome Innovation thereanent; his Majeſty's firm Will and Mind always being, as it is yet, That the Honour, Authority, and Dignity of his ſaid three Eſtates ſhall ſtand and continue in their own Integrity, according to the ancient and laudable Cuſtom by-gone, without any Alteration or Diminution: Therefore it is ſtatuted and ordained by your ſaid Sovereign Lord, and his ſaid three Eſtates in this preſent Parliament, That none of his Leiges or Subjects preſume, or take upon hand to impung the Dignity and Authority of the ſaid three Eſtates, or to ſeek or procure the Innovation or Diminution of the Power and Authority of the ſame three Eſtates, or any of them, in Time coming, under the Pain of Treaſon.

The Earl of Argyle's *firſt Petition for Advocates, or Council to be allowed him.*

To his Royal Highneſs, his Majeſty's High Commiſſioner, and to the
Right Honourable the Lords of his Majeſty's Privy-Council.

The humble Petition of Archibald *Earl of* Argyle,

Sheweth,

THAT your Petitioner being criminally indicted before the Lords Commiſſioners of Juſticiary, at the Inſtance of his Majeſty's Advocate, for Crimes of an high Nature. And whereas in this Caſe no Advocate will readily plead for the Petitioner, unleſs they have your Royal Highneſs, and Lordſhips Special Licenſe and Warrant to that Effect, which is uſual in the like Caſes.

> *It is therefore humbly deſired, that your Royal Highneſs and Lordſhips would give ſpecial Order and Warrant to Sir* George Lockhart, *his ordinary Advocate, to conſult and plead for him in the aforeſaid criminal Proceſs, without incurring any Hazard upon that Account:*

And your Petitioner ſhall ever pray.

Edenburgh, November 22, 1681.

The Council's Anſwer to the Earl of Argyle's *firſt Petition, and his having Advocates allowed him.*

HIS Royal Highneſs, his Majeſty's High Commiſſioner, and Lords of Privy-Council do refuſe the Deſire of the above-written Bill, but allow any Lawyers the Petitioner ſhall employ, to conſult and plead for him in the Proceſs of Treaſon, and other Crimes, to be purſued againſt him at the Inſtance of his Majeſty's Advocate.

Extr. By me,

WILL. PATERSON.

The Earl of Argyle's *ſecond Petition for Council to be allowed him.*

To his Royal Higneſs, his Majeſty's High Commiſſioner, and to the
Right Honourable the Lords of his Majeſty's Privy-Council.

The humble Petition of Archibald *Earl of* Argyle.

Sheweth,

THAT you Petitioner having given in a former Petition, humbly repreſenting, That he being criminally indicted before the Lords Commiſſioners of Juſticiary, at the Inſtance of his Majeſty's Advocate, for Crimes of an high Nature: And therefore deſired that your Royal Highneſs, and Lordſhips, would give ſpecial Warrant to Sir *George Lockhart*, to conſult and plead for him: Whereupon your Royal Highneſs and Lordſhips did allow the Petitioner to make Uſe of ſuch Advocates as he ſhould think fit to call. Accordingly your Petitioner have deſired Sir *George Lockhart* to conſult and plead for him, he hath as yet refuſed your Petitioner. And by the 11th Parliament of King *James* the VI. *Cap.* 38. as it is the undeniable Priviledge of all Subjects, accuſed for any Crimes, to have Liberty to provide themſelves of Advocates, to defend their Lives, Honour, and Lands, againſt whatſoever Accuſation; ſo the ſame Priviledge is not only by Parliament 11 King *James* the VI. *Cap.* 90. farther aſſerted and confirmed, but alſo it is declared, that in caſe the Advocates refuſe, the Judges are to compel them, leſt the Party accuſed ſhould be prejudiced: And this being an Affair of great Importance to your Petitioner, and Sir *George Lockhart* having been not only ſtill his ordinary Advocate, but alſo by his conſtant Converſe with him is beſt known to your Petitioner's Principles; and of whoſe eminent Abilities and Fidelity, your Petitioner (as many others have) hath had ſpecial Proof all along in his Concerns, and hath ſuch ſingular Confidence in him, that he is moſt neceſſary to your Petitioner at this Occaſion.

> *May it therefore pleaſe your Royal Highneſs and Lordſhips to interpoſe your Authority, by giving a ſpecial Order and Warrant to the ſaid Sir* George Lockhart, *to conſult and plead for him in the ſaid criminal Proceſs, conform to the Tenor of the ſaid Acts of Parliament, and conſtant known Practice in the like Caſes, which was never refuſed to any Subject of the meaneſt Quality, even to the greateſt Criminals. And your Royal Highneſs's and Lordſhips Anſwer is humbly craved.*

Edenburgh, November 24, 1681.

The Council's Anſwer to the Earl of Argyle's *ſecond Petition.*

HIS Royal Highneſs, his Majeſty's High-Commiſſioner, and Lords of Privy-Council, having conſidered the foreſaid Petition, do adhere to their former Order, allowing Advocates to appear for the Petitioner in the Proceſs aforeſaid,

Extr. By me,
WILL. PATERSON.

The Earl of Argyle's *Letter of Attorney, conſtituting* Alexander Dunbar *his Procurator, for requiring Sir* George Lockhart *to plead for him.*

WE *Archibald* Earl of *Argyle* do hereby ſubſtitute, conſtitute and ordain *Alexander Dunbar*, our Servitor, to be our Procurator, to paſs and require Sir *George Lockhart*, Advocate, to conſult and plead for us in the criminal Proceſs intended againſt us, at the Inſtance of his Majeſty's Advocate; and to compear with us, before the Lords Commiſſioners of Juſticiary, upon the 12th of *December* next, conform to an Act of Council, dated the 22d of *November* inſtant, allowing any Lawyers that we ſhould employ, to conſult and plead for us in the ſaid Proceſs, and to another Act of Council of the 24th of *November* inſtant, relative to the former, and conform to the Acts of Parliament. In Witneſs whereof we have ſubſcribed theſe Preſents, at *Edenburgh*-Caſte, *Nov.* 26, 1681. before theſe Witneſſes, *Duncan Campbell*, Servitor to *James Glen*, Stationer in *Edenburgh*, and *John Thom*, Merchant in the ſaid Burg.

Duncan Campbell, } Witneſſes.
John Thom, }

ARGYLE.

An Inſtrument whereby the Earl of *Argyle* required Sir *George Lockhart* to appear and plead for him.

Apud Edenburgum *vigeſimo ſexto die Menſis* Novembris, *Anno Domini milleſimo ſexcenteſimo octuageſimo primo, & Anno Regni* Car. II. *Regis trigeſimo tertio.*

THE which Day, in Preſence of me Notary-Publick, and Witneſſes under-ſubſcribed, compeared perſonally *Alexander Dunbar*, Servitor to a noble Earl, *Archibald* Earl of *Argyle*, as Procurator, and in Name of the ſaid Earl, conform to a Procuration ſubſcribed by the ſaid Earl at the Caſtle of *Edenburgh*, upon the 21ſt Day of *November*, 1681. making and conſtituting the ſaid *Alexander Dunbar* his Procurator, to the Effect underwritten; and paſſed to the perſonal Preſence of Sir *George Lockhart*, Advocate, in his own Lodging in *Edenburgh*, having and holding in his Hands an Act of his Majeſty's Privy-Council, of the Date of the 22d of *November*, 1681, inſtant, proceeding upon a Petition given in by the ſaid Earl of *Argyle* to the ſaid Lords, ſhewing, that he being criminally indicted before the Lords Commiſſioners of Juſticiary, at the Inſtance of his Majeſty's Advocate, for Crimes of an high Nature; and whereas in that Caſe no Advocates would readily plead for the ſaid Earl, unleſs they had his Royal Highneſs's and their Lordſhips ſpecial Licenſe and Warrant to that Effect, which is uſual in the like Caſes: And by the ſaid Petition humbly ſupplicated, that his Highneſs and the Council would give ſpecial Order and Command to the ſaid Sir *George Lockhart*, the ſaid Earl's ordinary Advocate, to conſult and plead for him in the foreſaid criminal Proceſs, without incurring any Hazard upon that Account. His Royal Highneſs, and Lords of the ſaid Privy-Council, did refuſe the Deſire of the ſaid Petition, but allowed any Lawyers the Petitioner ſhould employ, to conſult and plead for him in the Proceſs of Treaſon, and other Crimes to be purſued againſt him, at the Inſtance of his Majeſty's Advocate. And alſo the ſaid *Alexander Dunbar* having and holding in his Hands another Act of the ſaid Lords of Privy-Council, of the 24th of the ſaid Month, relative to, and narrating the foreſaid firſt Act, and proceeding upon another Supplication given in by the ſaid Earl, to the ſaid Lords, craving, that his Royal Highneſs and the ſaid Lords would interpoſe their Authority, by giving a poſitive and ſpecial Order and Warrant to the ſaid Sir *George Lockhart*, to conſult and plead with him in the aforeſaid criminal Proceſs, conform to the Tenor of the Acts of Parliament mentioned and particularized in the ſaid Petition, and frequent and known Practice in the like Caſes, which was never refuſed to any Subjects of the meaneſt Quality. His Royal Highneſs, and Lords of Privy-Council, having conſidered the aforeſaid Petition, did, by the ſaid Act, adhere to their former Order, allowing Advocates to appear for the ſaid Earl in the Proceſs foreſaid, as the ſaid Acts bear; and produced the ſaid Acts Procuratory foreſaid to the ſaid Sir *George Lockhart*, who took the ſame in his Hands, and read them over *ſucceſſive*; and after reading thereof, the ſaid *Alexander Dunbar* Procurator, and in Name and Behalf foreſaid, ſolemnly required the ſaid Sir *George Lockhart* as the ſaid noble Earl's ordinary Advocate, and as a Lawyer and Advocate, upon the ſaid Earl's reaſonable Expence, to conſult and adviſe the ſaid Earl's ſaid Proceſs at any Time and Place the ſaid Sir *George* ſhould appoint to meet thereupon, conform to the foreſaid two Acts of Council, and Acts of Parliament therein mentioned, appointing Advocates to conſult in ſuch Matters: which the ſaid Sir *George Lockhart* altogether refuſed: Whereupon the ſaid *Alexander Dunbar*, as Procurator, and in Name foreſaid, aſked and took the Inſtruments, one or more, in the Hands of me Notary-Publick under-ſubſcribed. And theſe Things were done within the ſaid Sir *George Lockhart*'s Lodging, on the *South* Side of the Street of *Edenburgh*, in the *Lane Mercat*, within the Dining-Room of the ſaid Lodging, betwixt four and five Hours in the Afternoon, Day, Month, Year, Place, and of his Majeſty's Reign, *reſpective* foreſaid, before *Robert Dixone*, and *John Leſly*, Servitors to *John Campbell*, Writer to his Majeſty's Signet, and *Dowgall Mac Aleſter*, Meſſenger in *Edenburgh*, with divers others, called and required to the Premiſſes.

> *Ita eſſe Ego* Johannes Broun, *Notarius Publicus, in Premiſſis requiſitus, Atteſtor Teſtantibus his meis ſigno & ſubſcriptione manualibus ſolitis & conſuetis.*

BROUN.

Robert Dickſone, }
Dowgall Mac Aleſter, } Witneſſes.
John Leſly. }

Wedneſday, the 12th of *December*, the Day of Compearance aſſigned to the Earl being now come, he was brought by a Guard of Soldiers from the Caſtle to the Place appointed for the Trial, and the Juſtice Court being met and fenced, the Earl, now Marquis of *Queenſbury*, then Juſtice-General, the Lords *Nairn*, *Collingtown*, *Forret*, *Newtoun* and *Kirkhouſe*, the Lords of Juſticiary ſitting in Judgment, and the other Formalities alſo performed, the Indictment above ſet down was read, and the Earl ſpoke as follows.

The Earl of Argyle's *Speech to the Lord Juſtice General, and the Lords of the Juſticiary, after he had been arraigned, and his Indictment read.*

My Lord Juſtice General, &c.

I Look upon it as an undeniable Privilege of the meaneſt Subject to explain his own Words in the moſt benign Senſe: And even when Perſons are under an ill Character, the Miſconſtruction of Words in themſelves not ill, can only reach a Preſumption or Aggravation but not any more.

But it is ſtrange to alledge, as well as, I hope, impoſſible, to make any that know me believe, that I could intend any thing but what was honeſt and honourable, ſuitable to the Principles of my Religion and Loyalty, though I did not explain myſelf at all.

My Lord, I pray you be not offended that I take up a little of your Time, to tell you, I have from my Youth made it my Buſineſs to ſerve his Majeſty faithfully, and have conſtantly, to my Power, appeared in his Service; eſpecially in all Times of Difficulty, and have never joined, nor complied with any Intereſt or Party, contrary to his Majeſty's Authority, and have all along ſerved him in his own way, without a Frown from his Majeſty theſe thirty Years.

As ſoon as I paſſed the Schools and Colleges, I went to travel to *France* and *Italy*, and was abroad 1647, 1648, and till the end of 1649.

My firſt Appearance in the World was to ſerve his Majeſty as Colonel of his Foot-Guards. And though at that time all the Commiſſioners were given by the then Parliament, yet I would not ſerve without a Commiſſion from his Majeſty, which I have ſtill the Honour to have by me.

After the Miſfortune of *Worceſter*, I continued in Arms for his Majeſty's Service; when *Scotland* was over-run with Uſurpers; and was alone with ſome of my Friends in Arms in the Year 1652. and did then keep up ſome Appearance of Oppoſition to them: And General Major *Dean* coming to *Argyleſhire*, and planting ſeveral Garriſons, he no ſooner went away but we fell upon the Garriſons he had left, and in one Day took two of them, and cut off a conſiderable Part of a third, and carried away in all about three hundred Priſoners: And in the End of that Year, I ſent Captain *Shaw* to his Majeſty, with my humble Opinion, how the War might be carried on; who returned to me with Inſtructions and Orders which I have yet lying by me.

After which, I joined with thoſe his Majeſty did commiſſionate, and ſtood out till the laſt, that the Earl of *Middleton*, his Majeſty's Lieutenant-General, gave me Orders to capitulate, which I did without any other Engagements to the Rebels but allowing Perſons to give Bail for my living peaceable: And did at my capitulating relieve ſeveral Priſoners by Exchange, whereof my Lord *Granard*, out of the Caſtle of *Edenburgh*, was one.

It is notarly known, that I was forefaulted by the Uſurpers, who were ſo jealous of me, that, contrary to their Faith, within eight Months after my Capitulation, upon Pretence I keeped Horſes above the Value they ſeized on me, and keeped me in one Priſon after another, till his Majeſty's happy Reſtoration, and this only becauſe I would not engage not to ſerve his Majeſty, though there was no Oath required.

I do with all Gratitude acknowledge his Majeſty's Goodneſs, Bounty and Royal Favours to me, when I was purſued before the Parliament in the Year 1662. His Majeſty was graciouſly pleaſed not to ſend me here in any opprobous Way, but upon a bare verbal Paroll. Upon which I came down Poſt, and preſented myſelf a Fortnight before the Day. Notwithſtanding whereof I was immediately clapt up in the Caſtle, but having ſatisfied his Majeſty at that Time of my entire Loyalty, I did not offer to plead by Advocates. And his Majeſty was not only pleaſed to pardon my Life, and to reſtore me to a Title and Fortune, but to put me in Truſt in his Service, in the moſt eminent Judicatories of this Kingdom, and to heap Favours upon me, far beyond whatever I did or can deſerve: Though I hope his Majeſty hath always found me faithful and thankful, and ready to beſtow all I have, or can have, for his Service: And I hope never hath had nor ever ſhall have Ground to repent any Favour he hath done me. And if I were now really guilty of the Crimes libelled, I ſhould think my elf a great Villain.

The next Occaſion I had to ſhew my particular Zeal to his Majeſty's Service was in *Anno* 1666, when the Inſurrection was made that was repreſt at *Pentland-Hills.* At the very firſt, the intercourſe betwixt this Place and me was ſtopt, ſo that I had neither Intelligence nor Orders from the Council, nor from the General; but upon a Letter from the now Archbiſhop of St. *Andrews*, telling me there was a Rebellion like to be in the three Kingdoms, and bidding me beware of *Ireland* and *Kintyre*, I brought together about two thouſand Men: I ſeized all the Gentlemen in *Kintyre* that had not taken the Declaration, though I found them peaceable. And I ſent a Gentleman to General *Dalziel*, to receive his Orders, who came to him juſt as they were going to the Action at *Pentland*, and was with him in it; and I kept my Men together till his Return. And when I met with conſiderable Trouble from my Neighbours, rebelliouſly in Arms, and had Commiſſions both on publick and private Accounts, have I not carried dutifully to his Majeſty, and done what was commanded with a juſt Moderation, which I can prove under the Hands of my Enemies, and by many infallible Demonſtrations?

Pardon me a few Words: Did I not in this preſent Parliament ſhew my Readineſs to ſerve his Majeſty and Royal Family, in aſſerting vigorouſly the lineal legal Succeſſion of the Crown, and had a Care to have it expreſſed in the Commiſſions of the Shires and Burghs I had Intereſt in? Was I not for offering proper Supplies to his Majeſty and his Succeſſor? And did I not concur to bind the Landlords for their Tenants, although I was mainly concerned? And have I not always kept my Tenants in Obedience to his Majeſty?

I ſay all this, not to arrogate any thing for doing what was my Honour and Duty to his Majeſty; but if after all this, upon no other Ground but Words that were ſpoken in abſolute Innocence, and without the leaſt Deſign, except for clearing my own Conſcience, and that are not capable of the ill Senſe wreſted from them by the Libel, I ſhould be further troubled, what Aſſurance can any of the greateſt Quality, Truſt, or Innocency have, that they are ſecure? eſpecially conſidering, that ſo many Scruples have been ſtarted, as all know, not only by many of the Orthodox Clergy, but by whole Preſbyteries, Synods, and ſome Biſhops, which were thought ſo conſiderable, that an eminent Biſhop took the Pains to write a Treatiſe, that was read over in Council, and allowed to be printed, and a Copy given to me, which contains all the Expreſſions I am charged for, and many more that may be ſtretched to a worſe Senſe.

Have I not ſhewed my Zeal to all the Ends of the *Teſt?* How then can it be imagined that I have any *ſiniſter* Deſign in any thing that I have ſaid? If I had done any thing contrary to it all the Courſe of my Life, which I hope ſhall not be found, yet one Act might pretend to be excuſed by a Habit. But nothing being queſtioned but the ſenſe of Words miſconſtrued to the greateſt Height, and ſtretched to imaginary Inſinuations, quite contrary to my Scope and Deſign, and ſo far contrary, not only to my Senſe, but my Principles, Intereſt, and Duty, that I hope my Lord Advocate will think he hath gone too far on in this Proceſs, and ſay plainly what he knows to be Truth by his Acquaintance with me, both in publick and private, *viz.* That I am neither Papiſt nor Fanatick, but truly loyal in my Principles and Practices.

The hearing of this Libel would trouble me beyond moſt of the Sufferings of my Life if my Innocence did not ſupport me, and the Hopes of being vindicated of this and other Calumnies before this publick and noble Auditory.

I leave my Defences to theſe Gentlemen that plead for me, they know my Innocence, and how groundleſs that Libel is.

I ſhall only ſay, as my Life hath moſt of it been ſpent in ſerving and ſuffering for his Majeſty; ſo, whatever be the Event of this Proceſs, I reſolve, while I breathe, to be loyal and faithful to his Majeſty. And whether I live publickly or in Obſcurity, my Head, my Heart, nor my Hand, ſhall never be wanting where I can be uſeful to his Majeſty's Service. And while I live, and when I die, I ſhall pray, that God Almighty would bleſs his Majeſty with a long, happy, and proſperous Reign; and that the lineal legal Succeſſors of the Crown may continue Monarchs of all his Majeſty's Dominions, and be Defenders of the true Primitive, Chriſtian, Apoſtolick, Catholick, Proteſtant Religion, while Sun and Moon endure.

God ſave the King.

The King's own Letter to this Nobleman, when he was Lord Lorn.

Cologne, Dec. 1654.

My Lord Lorn,

‘I AM very glad to hear from *Middleton*, what Affection and Zeal you
‘ ſhow to my Service, how conſtantly you adhere to him in all his
‘ Diſtreſſes, and what good Service you have performed upon the Rebels.
‘ I aſſure you, you ſhall find me very juſt, and kind to you in rewarding
‘ what you have done and ſuffered for me; and I hope you will have
‘ more Credit and Power with thoſe of your Kindred, and Dependants
‘ upon your Family, to engage them with you for me, than any body
‘ elſe can have to ſeduce them againſt me; and I ſhall look upon all
‘ thoſe who ſhall refuſe to follow you as unworthy of any Protection
‘ hereafter from me, which you will let them know. This honeſt
‘ Bearer, *M*——, will inform you of my Condition and Purpoſes, to
‘ whom you will give Credit; and he will tell you, that I am very much

Your affectionate Friend,

C. R.

General Middleton's *Order to the Earl of* Argyle, *who was then Lord* Lorn, *for capitulating with the* Engliſh, *wherein he largely expreſſeth his Worth and Loyalty.*

John Middleton, *Lieutenant-General, next and immediately under his Majeſty, and Commander in Chief of all the Forces raiſed, and to be raiſed, within the Kingdom of* Scotland.

SEEING the Lord *Lorn* hath given ſo ſingular Proofs of clear and perfect Loyalty to the King's Majeſty, and of pure and conſtant Affection to the Good of his Majeſty's Affairs, as never hitherto to have any Ways complied with the Enemy, and to have been principally inſtrumental in the enlivening of this late War, and one of the chief and firſt Movers in it, and hath readily, chearfully, and gallantly engaged, and reſolutely and conſtantly continued active in it, notwithſtanding the many powerful Diſſuaſions, Diſcouragements, and Oppoſitions he hath met withal from divers Hands, and hath, in the carrying on of the Service, ſhewn ſuch ſignal Fidelity, Integrity, Generoſity, Prudence, Courage, and Conduct, and ſuch high Virtue, Induſtry, and Ability, as are ſuitable to the Dignity of his noble Family, and the Truſt his Majeſty repoſed in him; and hath not only ſtood out againſt all Temptations and Enticements, but hath moſt nobly croſſed and repreſſed Deſigns and Attempts of deſerting the Service, and perſiſted loyally and firmly in it to the very laſt, through exceſſive Toil and many Difficulties, miſregarding all perſonal Inconveniences, and chuſing the Loſs of Friends, Fortune, and all private Concernments, and to endure the utmoſt Extremities rather than to ſwerve in the leaſt from his Duty, or taint his Reputation with the meaneſt Shadow of Diſloyalty and Diſhonour. I do, therefore, hereby teſtify and declare, that I am perfectly ſatisfied with his whole Deportments, in relation to the Enemy, and this late War; and do highly approve them, as being not only above all I can expreſs of their Worth, but almoſt beyond all Parallel. And I do withal hereby both allow, and moſt earneſtly deſire, and wiſh him, to loſe no Time in taking ſuch Courſe for his Safety and Preſervation by Treaty and Agreement, or Capitulation, as he ſhall judge moſt fit and expedient for the Good of his Perſon, Family, and Eſtate, ſince inevitable and invincible Neceſſity hath forced us to lay aſide this War. And I can now no other Way expreſs my Reſpects to him, nor contribute my Endeavour to do him Honour and Service. In Teſtimony whereof I have ſigned and ſealed theſe Preſents at *Dunveagave*, the laſt Day of *March*, 1655.

John Middleton.

Another Letter from the Earl of Middleton, *to the ſame Purpoſe.*

Paris, April 17, 1655.

My noble Lord,

I AM hopeful, that the Bearer of this Letter will be found one who has been a moſt faithful Servant to your Lordſhip, and my kind Friend, and a Sharer in my Troubles. Indeed I have been ſtrengthened by him to ſupport and overcome many Difficulties. He will acquaint you with what hath paſt, which truly was ſtrange to both of us, but your own Re-encounters will leſſen them. My Lord, I ſhall be faithful in giving you that Character which your worth and Merit may juſtly challenge. I profeſs it is, next to the Ruin of the Service, one of my chiefeſt Regrets that I could not poſſibly wait upon you before my going from *Scotland*, that I might have ſettled a Way of Correſpondence with you, and that your Lordſhip might have underſtood me better than yet you do; I ſhould have been plain in every thing, and indeed have made your Lordſhip my Confeſſor: And I am hopeful the Bearer will ſay ſomewhat for me, and I doubt not but your Lordſhip will truſt him. If it ſhall pleaſe God to bring me ſafe from beyond Sea, your Lordſhip ſhall hear from me by a ſure Hand. Sir *Ro. M.* will tell you a Way of correſponding. So that I ſhall ſay no more at preſent, but that I am, without Poſſibility of Change,

My noble Lord,
Your Lordſhip's moſt faithful,
and moſt humble Servant,
John Middleton.

A Letter from the Earl of Glencairn, *teſtifying his Eſteem for this Noble Perſon, and the Senſe he had of his Loyalty to the King, when few had the Courage to own him.*

My Lord,

LEST it may be my Misfortune, in all theſe great Revolutions, to be miſrepreſented to your Lordſhip, as a Perſon unworthy of your favourable Opinion (an Artifice very frequent in theſe Times) I did take Occaſion to call for a Friend and Servant of yours, the Laird of *Spanie*, on whoſe Diſcretion I did adventure to lay forth my Heart's Deſire, to obviate in the Bud any of theſe Miſunderſtandings. Your Lordſhip's true Worth and Zeal to your Country's Happineſs being ſo well known to me, and confirmed by our late Suffering-Acquaintance: And now finding how much it may conduce to theſe great Ends, we all wiſh that a perfect Unity may be amongſt all good and honeſt-hearted *Scotchmen*, though there be few more inſignificant than myſelf: Yet my Zeal for thoſe Ends obliges me to ſay, that if your Lordſhip's Health and Affairs could have permitted you to have been at *Edenburgh* in theſe late Times, you would have ſeen a great Inclination and Deſire, amongſt all here, of a perfect Unity, and of a mutual Reſpect to your Perſon, as of chief Eminence and Worth. And I here ſhall ſet it under my Hand, to witneſs againſt all my Informers, that none did with more Paſſion, nor ſhall with more continued Zeal, witneſs themſelves to be true Honourers of you, than he who deſires infinitely to be eſteemed,

My Lord,
Your moſt humble Servant,
GLENCAIRN.

What I cannot well write, I hope this diſcreet Gentleman will tell you, in my Name: And I ſhall only beg leave to ſay, that I am your moſt noble Lady's humble Servant.

After the reading of which Order and Letters, which yet the Court refuſed to record, the Earl's Advocate, or Council, Sir *George Lockhart* ſaid in his Defence as follows.

Sir George Lockhart's *Argument and Plea for the Earl of* Argyle.

SIR *George Lockhart* for the Earl of *Argyle*, alledgeth, That the Libel is not relevant, and whereupon he ought to be put to the Knowledge of an Inqueſt. For, It is alledged in the general, That all criminal Libels, whereupon any Perſon's Life, Eſtate and Reputation, can be drawn in Queſtion, ſhould be founded upon clear, poſitive and expreſs Acts of Parliament, and the Matter of Fact which is libelled, to be the contravention of thoſe Laws, ſhould be plain, clear, and direct Contraventions of the ſame, and not argued by Way of Implications and Inferences. Whereas in this Caſe, neither the Acts of Parliament founded upon, and libelled, can be in the leaſt the Foundation of this Libel: Nor is the Explication which is pretended to be made by the Pannel, at the Time of the taking of his Oath (if conſidered) any Contravention of thoſe Laws; which being premiſed, and the Pannel denying the Libel, as to the whole Articles and Points therein-contained, it is alledged in ſpecial:

That the Libel, in ſo far as it is founded upon the 21ſt Chap. Stat 1. *Robert* I. and upon 83d Act, Par. 6. *James* V. the 43d Act, Par 2. *James* I. and upon the 83d Act, Par. 10. *James* V. and upon 84th Act, Par. 8. *James* VI. and upon the 10th Act, Par. 10. *James* VI. and upon the 2d Act, Par. 1. Seſ. 2. of his Sacred Majeſty; and inferring thereupon, that the Pannel, by the pretended Explication given in by him to the Lords of his Majeſty's Privy-Council, as the Senſe of the Oath he had taken, doth commit the Crime of Leaſing-making, and depraving his Majeſty's Laws: The Inference and Subſumption is moſt unwarrantable, and the Pannel, though any ſuch thing were acknowledged and proved, can never be found guilty of contravening theſe Acts of Parliament. In reſpect it is evident, upon peruſal and Conſideration of theſe Acts of Parliament, that they only concern the Caſe of Leaſing-making tending to Sedition, and to beget Diſcord betwixt his Majeſty and his Subjects, and the Diſlike of his Majeſty's Government, and the Reproach of the ſame. And the ſaid Laws and Acts of Parliament were never underſtood or libelled upon, in any other Senſe. And all the former Acts of Parliament, which relate to the Crime of Leaſing-making in general Terms, and under the Qualification foreſaid, as tending to beget Diſcord betwixt his Majeſty and his Subjects, are explained and fully declared, as to what is the true Meaning and Import thereof, by the 134th Act, Par. 8. *James* VI. which relates to the ſame Crime of Leaſing-making, and which is expreſly deſcribed in theſe Terms, to be wicked and licentious, publick and private Speeches, and untrue Calumnies to the Diſdain and Contempt of his Majeſty's Council and Proceedings, and to the Diſhonour and Prejudice of his Highneſs and his Eſtate, ſtirring up his Highneſs's Subjects to Miſliking and Sedition, and Unquietneſs, which being the true Senſe and Import of the Acts of Parliament made againſt Leaſing-makers, there is nothing can be inferred from the Pannel's alledged Explication, which can be wreſted or conſtrued to be a Contravention of theſe Laws: In reſpect,

I. It is known by the whole Tenor of his Life, and graciouſly acknowledged by his Sacred Majeſty, by a Letter under his Royal Hand, that the Pannel did ever moſt zealouſly, vigorouſly, and faithfully promote and carry on his Majeſty's Service and Intereſt, even in the worſt and moſt difficult Times: Which is alſo acknowledged by a Paſs under the Earl of *Middleton*'s Hand, who had then a ſpecial Commiſſion from his Majeſty, for carrying on his Majeſty's Service in this Kingdom, as Lieutenant-General under his Majeſty; and by a Letter under the Earl's Hand, of the Date, both which do contain high Expreſſions of the Pannel's Loyalty, and of the great Services he had performed for his Majeſty's Intereſt. And his Majeſty, as being conſcious thereof, and perfectly knowing the Pannel's Loyalty, and his Zeal and Faithfulneſs for his Service, did think fit to entruſt the Pannel in Offices and Capacities of the greateſt Truſt of the Kingdom. And it is a juſt and rational Preſumption, which all Law makes and infers, that the Words and Expreſſions of Perſons, who by the Tenor and Courſe of their Lives have expreſſed their Duty and Loyalty to his Majeſty's Intereſt, are ever to be interpreted, and underſtood *in meliorem partem*. And by way of Implication and inference, to conclude and infer Crimes from the ſame, which the Uſer of ſuch Words and Expreſſions never meaned nor deſigned, is both unreaſonable and unjuſt.

II. As the foreſaid Acts of Parliament made againſt Leaſing-makers, and Depravers of his Majeſty's Laws, only proceed in the Terms foreſaid, where the Words and Speeches are plain, tending to beget Diſcord between the King and his Subjects, and to the Reproach and Diſlike of his Government, and when the ſame are ſpoke and vented in a ſubdolous, pernicious, and fraudulent Manner: So they never were, nor can be underſtood to proceed in the Caſe of a Perſon offering in the Preſence of a publick Judicature (whereof he had the Honour to be a Member) his ſincere and plain Meaning and Apprehenſion of what he conceived to be the true Senſe of the Act of Parliament impoſing and enjoining the *Teſt*: There being nothing more oppoſite to the Act of Parliament made againſt Leaſing-making, and venting and ſpreading abroad the ſame upon Seditious Deſigns, than the foreſaid Plain and open Declaration of his Senſe and Apprehenſion, what was the Meaning of the ſaid Act of Parliament. And it is of no Import to infer any Crime, and much leſs of any of the Crimes libelled, albeit the Pannel had erred and miſtaken in his Apprehenſion of the Act of Parliament. And it were a ſtrange Extenſion of the Act of Parliament made againſt Leaſing-makers, requiring the Qualifications foreſaid and the Acts againſt depraving his Majeſty's Laws, to make the Pannel, or any other Perſon guilty upon the Miſtakes and Miſapprehenſions of the Senſe of the Laws, wherein Men may miſtake and differ very much, and even eminent Lawyers and Judges. So that the Acts of Parliament againſt Leaſing-making, and depraving his Majeſty's Laws, can only be underſtood in the expreſs Terms and Qualifications foreſaid. Like as it neither is libelled, nor can be proven, that the Pannel, before he was called and required by the Lords of his Majeſty's Privy-Council to take the Oath, did ever, by Word or Practice, uſe any reproachful Speeches of the ſaid Act of Parliament, or of his Majeſty's Government; but being required to take the Oath, he did humbly, with all Submiſſion, declare what he apprehended to be the Senſe of the Act of Parliament, enjoining the *Teſt*, and in what Senſe he had Freedom to take the ſame.

III. The Act of Parliament enjoining the *Teſt* does not enjoin the ſame to be taken by all Perſons whatſoever, but only preſcribes it as a Qualification, without which Perſons could not aſſume or continue to act in publick Truſt: Which being an Oath to be taken by ſo ſolemn an Invocation of the Name of Almighty God, it is not only allowable by the Laws and Cuſtoms of all Nations, and the Opinion of all Divines, and Caſuiſts, Popiſh or Proteſtant, but alſo commended, that where a Party has any Scrupuloſity, or Unclearneſs in his Conſcience, as to the Matter of the Oath, that he ſhould exhibit and declare the Senſe and Meaning in which he is willing and able to take the Oath. And it is not at all material, whether the Scruples of a Man's Conſcience, in the Matter of an Oath, be in themſelves juſt or groundleſs, it being a certain *Maxim*, both in Law and Divinity, that *Conſcientia etiam erronea ligat*: And therefore though the Pannel had thought fit, for the clearing and Exoneration of his own Conſcience, in a Matter of the higheſt Concern as to his Peace and Repoſe, to have expreſſed and declared the expreſs Senſe in which he could take the Oath, whether the ſaid Senſe was conſiſtent with the Act of Parliament, or not, yet it does not in the leaſt import any Matter of Reproach or Reflection upon the Juſtice or Prudence of the Parliament in impoſing the ſaid Oath: But allenarly does evince the Weakneſs and Scrupuloſity of a Man's Conſcience, who neither did, nor ought to have taken the Oath but with an Explanation that would have ſaved his Conſcience to his Apprehenſion. Otherwiſe he had groſly ſinned before God, even though it was *Conſcientia errans*. And this is allowed and preſcribed by all Proteſtant Divines, as indiſpenſably neceſſary, and was never thought to import any Crime, and is alſo commended even by Popiſh Caſuiſts themſelves, who though they allow, in ſome Caſes, of Mental Reſervations and Equivocations, yet the expreſs Declaration of the Senſe of the Party is allowed and commended, as much more ingenuous: And *tutius Remedium Conſcientiæ ne illaqueetur*, as appears by *Bellarmine de Juramento*, and upon the ſame Title *de Interpretatione Juramenti*; and *Leſſius*, that famous Caſuiſt, *de Juſtitia & Jure*, *Dubitatione* 8, 9. *utrum ſi quis ſalvo animo aliquid Juramento promittat obligetur, & quale peccatum hoc ſit*. And which is the general Opinion of all Caſuiſts, and all Divines, as may appear by *Ameſius*, in his Treatiſe *de Conſcientia*, Sanderſon *de Juramento*, *Prelectione ſecunda*. And ſuch an expreſs Declaration of the Senſe and Meaning of any Party when required to take an Oath, for no other End but for the clearing and Exoneration of his own Conſcience, was never in the Opinion of any Lawyer, or any Divine, conſtrued to be the Crime of Leaſing-making, or of defamatory Libels, or depraving of publick Laws, or reproaching or miſconſtruing of the Government: But on the contrary, by the univerſal Suffrage of all Proteſtant Divines, there is expreſly required, in Caſes of a ſcrupulous Conſcience, an Abhorrence and Deteſtation of all reſerved Senſes, and of all *Amphibologies* and Equivocations, which are in themſelves unlawful and reprobate, upon that unanſwerable Reaſon, that *Juramentum* being the higheſt Act of Devotion and Religion, *in eo requiritur maxima ſimplicitas*; and that a Party is obliged, who has any Scruples of Conſcience, publickly and openly to clear and declare the ſame.

IV. Albeit it is not controverted, but that a Legiſlator, impoſing an Oath, or any publick Authority, before whom the Oath is taken, may, after hearing of the Senſe and Explication which a Perſon is willing to put upon it, either reject or accept of the ſame, if it be conceived not to be conſiſtent with the genuine Senſe of the Oath: Yet though it were rejected, it was never heard of, or pretended, that the Offering of a Senſe does import a Crime, but that notwithſtanding thereof, *Habetur pro Recuſante*, and as if he had not taken the Oath, and to be liable to the Certification of Law, as if he had been a Refuſer.

V. The Pannel having publickly and openly declared the Senſe in which he was free to take the Oath, it is offered to be proved, that he was allowed, and did accordingly proceed to the taking the Oath, and did thereafter take his Place, and ſit and vote, during that *Sederunt* of Privy-Council. So as the pretended Senſe and Explication, which he did then emit and give, can import no Crime againſt him.

VI. It is alſo offered to be proved, That before the Pannel was required to take the Oath, or did appear before his Royal Highneſs, and Lords of the Privy-Council, to take the ſame, there were a great many Papers ſpread abroad from Perſons, and Miniſters of the Orthodox Clergy; and, as the Pannel is informed, ſome thereof preſented to the Biſhops of the Church, in the name of Synods and Preſbyteries, which did, in downright Terms, charge the *Teſt* and Oath with alledged Contradictions and inconſiſtencies. And for Satisfaction whereof, ſome of the learned and Reverend Biſhops of the Church did write a learned and ſatisfying Anſwer, called, *A Vindication of tha* Teſt, *for clearing the Scruples, Difficulties and Miſtakes that were objected againſt it*. And which Vindication and Anſwer was exhibited, and read before the Lords of his Majeſty's Privy-Council, and allowed to be printed: And from which the Pannel argues,

1. That it neither is, nor can be pretended in this Libel, that the alledged Explication, wherein he did take the Oath, does propoſe the Scruples of his Conſcience in theſe Terms, which were propoſed by the Authors of theſe Objections, which do flatly and poſitively aſſert, that the Oath and *Teſt* do contain Matters of Inconſiſtency and Contradiction; whereas all that is pretended in this Libel, with the moſt abſolute Violence that can be put upon the Words, is arguing Implications and Inferences; which neither the Words are capable to bear, nor the Sincerity of the Earl's Intention and Deſign, nor the Courſe of his by-paſt Life can poſſibly admit of. And yet none of the Perſons who were the Authors of ſuch Papers, were ever judged or reputed criminal or guilty, and to be proſecuted for the odious and infamous Crimes libelled, of *Treaſon*, *Leaſing-making*, *Perjury*, and the like.

2. The Pannel does alſo argue from the ſaid Matter of Fact, that the alledged Explication libelled can neither in his Intention and Deſign, nor in the Words, infer or import any Crime againſt him, becauſe, before his being required, or appearing to take the Oath, there were ſpread abroad ſuch Scruples and Objections, by ſome of the Orthodox Clergy

and others; ſo that the Earl can never in any Senſe be conſtrued in his Explication wherein he took the Oath, to have done it *animo infamandi*, and to declaim againſt the Government: For the Scruples and Objections that were ſpread abroad by others, were a fair and rational Occaſion why the Earl in any Senſe or Explication which he offered might have ſaid, that he was confident the Parliament never intended to impoſe contradictory Oaths; and this is ſo far from importing the Inſinuations and Inference made by the Libel, that thereby the Parliament were ſo impious as to impoſe contradictory Oaths, as on the contrary, conſidering the Circumſtances fore-mentioned, that there were Papers ſpread abroad, inſinuating, that there were Inconſiſtencies and Contradictions contained therein; the ſaid Expreſſion was an high Vindication of the Honour and Juſtice of the Parliament, againſt the Calumnies and Miſrepreſentations which were caſt upon it, and was alſo a juſt Riſe for the Pannel, for the clearing and Exoneration of his own Conſcience, in the various Senſes and Apprehenſions which he found were going abroad as to the ſaid *Teſt*, humbly to offer his Senſe, in which he was clear and ſatisfied to take the Oath.

VII. To the Libel, in ſo far as it is founded upon the Act of Parliament, *viz. Act.* 130. *Par.* 8. *James* VI. declaring, That none ſhould preſume to impugn the Dignity or Authority of the three Eſtates of Parliament, or procure any Invaſion or Diminution thereof, under the Pain of Treaſon; as alſo, in ſo far as it is pretended in the Libel, That the Pannel, by offering the Senſe and Explication libelled, has aſſumed the Legiſlative Power, which is incommunicable, and has made a Law, or Part of a Law.

It is anſwered, The Libel is moſt groundleſs and irrelevant, and againſt which the Act of Parliament is opponed, which is ſo plain and evident upon the reading thereof, that it neither is nor can be ſubject to the leaſt Cavillation: And the plain Meaning whereof is nothing elſe but to impugn the Authority of Parliaments, as if the King and Parliament had not a Legiſlative Power, or were not the higheſt Repreſentative of the Kingdom; or that any of the three Eſtates were not eſſentially requiſite to conſtitute the Parliament. And beſides there is nothing more certain, than that the Occaſion of the ſaid Act, it's being made was in relation to the Biſhops and Clergy: And there is nothing in the pretended Explanation, that can be wreſted to import the leaſt Contravention of the ſaid Act, or to be an impugning of the three Eſtates of Parliament, or a ſeeking any Innovation therein. And it is admired, with what Shadow of Reaſon it can be pretended, that the Pannel has aſſumed a Legiſlative Power, or made a Part of a Law, ſeeing all that is contained in the alledged Explication libelled, is only a Declaration of the Earl's Senſe in which he was ſatisfied to take the Oath, and ſo reſpected none but himſelf, and for the clearing of his own Conſcience, which juſtly indeed the Word of God calls a Law to himſelf, without any incroaching upon the Legiſlative Power. And where was it ever debated, but that a Man in the taking of an Oath, if as to his Apprehenſions he thought any thing in it deſerved to be cleared, might declare the ſame, or that his exhibiting, at the Time of the taking of the Oath, his Senſe and Explication wherein he did take it, was ever reputed or pretended to be the aſſuming of a Legiſlative Power, it being the univerſal Practice of all Nations to allow this Liberty; and which Senſe may be either rejected or accepted, as the Legiſlator ſhall think fit, importing no more but a Party's private Senſe, for the Exoneration of his own Conſcience? And as to that Member of the Libel founded upon *Act* 19. *Par.* 3. *Queen* Mary, it contains nothing but a Declaration of the Pain of Perjury, and there is nothing in the Explication libelled, which can in the leaſt be inferred as a Contravention of the ſaid Act, in reſpect if it ſhould be proved, that the Pannel, at the Time of the taking of the Oath, did take it in the Words of the ſaid Explication, as his Senſe of the Oath, it is clear that the Senſe being declared at the Time of taking the Oath, and allowed as the Senſe wherein it was taken, the Pannel can only be underſtood to have taken it in that Senſe. And although publick Authority may conſider whether the Senſe given by the Pannel does ſatisfy the Law or not, yet that can import no more, though it was found not to ſatisfy, but to hold the Pannel as a Refuſer of the Oath: But it is abſolutely impoſſible to infer the Crimes of Perjury upon it, being, as is pretended by the Libel, the Pannel did only take it with the Declaration of the Senſe and Explication libelled.

VIII. As the Explication libelled does not at all import all, or any of the Crimes contained in the ſaid Libel, ſo by the common Principles of all Law, where a Perſon does emit Words for the clearing and Exoneration of his own Conſcience, although there were any Ambiguity, or Unclearneſs, or Involvedneſs in the Tenor or Import of the Expreſſions or Words, yet they are ever to be interpreted, *Interpretatione benigna & favorabili, according to the general Principles of Law and Reaſon.* And it never was, nor can be refuſed to any Perſon to interpret and put a congruous Senſe upon his own Words, eſpecially the Pannel being a Perſon of eminent Quality, and who hath given great Demonſtration, and undeniable Evidences of his fixt and unalterable Loyalty to his Majeſty's Intereſt and Service, and at the Time of emitting the ſaid Explication, was inveſted and entruſted in publick Capacities. And it is a juſt and rational Interpretation and Caution which *Sanderſon*, that judicious and eminent Caſuiſt gives *Prælect.* 2. That *dicta & facta principum, parentum, rectorum*, are ever to be looked upon as *benignæ Interpretationis*, and that *Dubia ſunt interpretenda in meliorem partem.* And there is nothing in the Explication libelled, which without Detorſion and Violence, and in the true Senſe and Deſign of the Pannel, is not capable of this benign Interpretation and Conſtruction, eſpecially reſpect being had to the Circumſtances wherein it was emitted and given, after a great many Objections, Scruples, and alledged Inconſiſtencies, were owned, vented, and ſpread abroad, which was a riſe to the Earl for uſing the Expreſſions contained in the pretended Declaration libelled.

IX. Theſe Words whereby it is pretended the Pannel declares, *he was ready to give Obedience as far as he could*, firſt, do not in the leaſt import, that the Parliament had impoſed any Oath which was in itſelf unlawful: But only the Pannel's Scrupuloſity and Unclearneſs in Matter of Conſcience. And it is hoped it cannot be a Crime, becauſe all Men cannot go the ſame Length. And if any ſuch Thing were argued, it might be argued ten Times more ſtrongly from a ſimple refuſing of the Oath, as if any Thing were enjoined which were ſo hard that it is not poſſible to comply with it: And yet ſuch Implications are moſt irrational and inconſequential, and neither in the Caſe of a ſimple and abſolute refuſing of the Oath, nor in the Caſe of an Explication of the Party's Senſe wherein he is willing to take the Oath, is there any Impeachment of the Juſtice and Prudence of the Legiſlator, who impoſeth this Oath, but ſingly a Declaration of the Scrupuloſity and Weakneſs of the Party, why he cannot take the Oath in other Terms: And ſuch Explications have been allowed by the Laws and Cuſtoms of all Nations, and are adviſed by all Divines, of whatſoever Principles, for the Solace and Security of a Man's Conſcience.

II. As to that Point of the Explication libelled, *That I am confident the Parliament never intended to impoſe contradictory Oaths*; it reſpects the former Anſwer, which, conſidering the plain and downright Objections which were ſpread abroad, and made againſt the Oath, as containing Inconſiſtencies and Contradictions, was an high Vindication of the Juſtice and Prudence of the Parliament.

III. As to theſe Words, *And therefore I think no Body can explain it but himſelf.* The plain and clear Meaning is nothing elſe but that the Oath being impoſed by Act of Parliament it was of no private Interpretation: And that therefore every Man who was to take it, behoved to take it in that Senſe which he apprehended to be the genuine Senſe of the Parliament. And it is impoſſible, without impugning common Senſe, that any Man could take it in any other Senſe, it being as impoſſible to ſee with another Man's Eyes as to ſee with his private Reaſon. And a Man's own private Senſe and Apprehenſion of the genuine Senſe, was the only proper Way wherein any Man could rationally take the Oath.

And as to theſe Words, *That he takes it as far as it is conſiſtent with himſelf and the Proteſtant Religion.* The Pannel neither intended nor expreſt more, but that he did take it as a true Proteſtant, and he hopes all Men have taken it as ſuch.

And as to that Clauſe wherein the Pannel is made to declare, *That he does not bind up himſelf in his Station, in a lawful Way, to wiſh and endeavour any Alteration he thinks to the Advantage of Church or State, not repugnant to the Proteſtant Religion and his Loyalty.*

It is anſwered, there is nothing in this Expreſſion that can import the leaſt Crime, or give the leaſt Umbrage for any Miſtake. For,

1. It is moſt certain, it is impoſſible to elicite any ſuch thing from the Oath, but that it was the Intention of the Parliament, that Perſons, notwithſtanding of the Oath, might concur in their Stations, and in a lawful Way, in any Law to the Advantage of Church and State. And no rational Man ever did, or can take the Oath in other Terms, that being contrary to his Allegiance and Duty to his Sacred Majeſty and Prince.

2. There is nothing in the ſaid Expreſſion which does in the leaſt Point at any Alteration in the Fundamentals of Government, either in Church or State; but, on the contrary, by the plain and clear Words and Meaning, rather for it's Perpetuity, Stability and Security. The Expreſſion being cautioned to the utmoſt Scrupuloſity as that it was to be done in a lawful Manner; that it was to be to the Advantage of Church or State; that it was to be conſiſtent with the Proteſtant Religion, and with his Loyalty, which was no other but the Duty and Loyalty of all faithful Subjects; and which he has ſignally and eminently expreſſed upon all Occaſions. So that how ſuch an Expreſſion can be drawn to import all or any of the Crimes libelled, paſſeth all natural Underſtanding.

And as to the laſt Words, *And this I underſtand as a Part of my Oath*, which is libelled to be a treaſonable Invaſion, and aſſuming of the Legiſlative Power. It is anſwered, it is moſt unwarrantable; and a Party's declaring the Senſe and Meaning in which he was free to take an Oath, does not at all reſpect or invade the Legiſlative Power, of which the Pannel never entertained a Thought, but has an abſolute Abhorrence and Deteſtation of ſuch Practices. But the plain and clear Meaning is, that the Senſe and Explication was a Part of his Oath, and not of the Law impoſing the Oath, theſe being as diſtant as the two Poles: And which Senſe was taken off the Earl's Hands, and he accordingly was allowed to take his Place at the Council-Board, and therefore repeats the former general Defences.

And to convince the Lords of Juſticiary, that there is nothing in the pretended Explication libelled which can be drawn to import any Crime, even of the loweſt Size and Degree, and that there is no Expreſſion therein contained that can be detorted and wreſted to import the ſame, is evident from that learned Vindication publiſhed and ſpread abroad by an eminent Biſhop, and which was read in the Face of the Privy Council, and does contain Expreſſions of the ſame Nature, and to the ſame Import contained in the pretended Explication libelled, as the Ground of this Indictment libelled againſt the Pannel. And it is poſitively offered to be proven that theſe Terms were given in, and read, and allowed to be printed, and (without taking Notice of the whole Tenor of the ſaid Vindication, which the Lords of Juſticiary are humbly deſired to peruſe, and conſider, and compare the ſame with the Explication libelled) the ſame acknowledgeth, that Scruples had been raiſed and ſpread abroad againſt the Oath; and alſo acknowledgeth, that there were Expreſſions therein that were dark and obſcure; and likewiſe takes Notice, that the Confeſſion ratified, *Par.* 1. *James* VI. to which the Oath relates, was haſtily made, and takes Notice of that Authority that made it, and acknowledges in plain Terms, that the Oath does not hinder any regular Endeavour to regulate or better the eſtabliſhed Government; but only prohibits irregular Endeavours and Attempts to invert the Subſtance or Body of the Government; and does likewiſe explain the Act of Parliament anent his Majeſty's Supremacy, that it does not reach the Alteration of the external Government of the Church. And the Pannel and his Proctors are far from inſinuating in the leaſt, that there is any Thing in the ſaid Vindication but what is conſiſtent with the exemplary Loyalty, Piety, and Learning, of the Writer of the ſame. And though others perhaps may differ in their private Opinion, as to this Interpretation of the Act of Parliament anent the King's Supremacy, yet it were moſt abſurd and irrational to pretend, that whether the Miſtake were upon the Interpretation of the Writer, or the Senſe of others, as to that Point, that ſuch Miſtakes or Miſapprehenſion henſions, upon either Hand, ſhould import or infer againſt them the Crimes of Leaſing-making, or depraving his Majeſty's Laws: For if ſuch Foundations were laid, Judges and Lawyers had a dangerous Employment, there being nothing more ordinary than to fall into Differences and Miſtakes, of the Senſe and Meaning of the Laws and Acts of Parliament. But ſuch Crimes cannot be inferred, but with and under the Qualifications abovementioned, of malicious and perverſe Deſigns, joined with licentious, wicked and reproachful Speeches ſpread abroad, to move Sedition and Diſlike of the Government. And the ſaid Laws were never otherwiſe interpreted, nor extended in any Caſe. And therefore the Explication libelled, neither as taken complexly, nor in the ſeveral Expreſſions thereof, nor in the Deſign of the Ingiver of the ſame, can in Law import againſt him all or any of the Crimes libelled.

In like Manner the Pannel conjoins with the Grounds abovementioned, the Proclamation iſſued forth by his Majeſty's Privy-Council, which acknowledges and proceeds upon a Narrative, that Scruples and Jealouſies were raiſed and ſpread abroad againſt the Act of Parliament enjoining the *Teſt*. For clearing and Satisfaction whereof, the ſaid Proclamation was iſſued forth, and is ſince approved by his Sacred Majeſty.

The King's Advocate's Argument and Plea againſt the Earl of Argyle.

HIS Majeſty's Advocate, for the Foundation of his Debate, does repreſent, that his Majeſty, to ſecure the Government from the rebellious Principles of the laſt Age, and the unjuſt Pretexts made uſe of in this, from Popery, and other Jealouſies; as alſo to ſecure the Proteſtant Religion, and the Crown, called a Parliament; and that the great Security reſolved on by the Parliament was this excellent *Teſt*, in which, that the old juggling Principles of the Covenant might not be renewed, wherein they ſtill ſwore to ſerve the King in their own Way, the Parliament did poſitively ordain, that this Oath ſhould be taken in the plain genuine Meaning of the Words, without any Evaſion whatſoever. Notwithſtanding whereof, the Earl of *Argyle*, by this Paper, does invent a new Way, whereby no Man is at all bound to it. For how can any Perſon be bound, if every Man will only obey it as far as he can, and as far as he conceives it conſiſtent with the Proteſtant Religion, and with itſelf, and reſerve to himſelf notwithſtanding thereof, to make any Alteration that he thinks conſiſtent with his Loyalty? And therefore his Majeſty's Advocate deſires to know, to what the Earl of *Argyle*, or any Man elſe, can be bound by this *Teſt?* What the Magiſtrate can expect, or what Way he can puniſh his Perjury? For if he be bound no farther than he himſelf can obey, or ſo far as this Oath is conſiſtent with the Proteſtant Religion or itſelf, *quomodo conſtat*, to whom or what is he bound? And who can determine that? Or againſt what Alteration is the Government ſecured, ſince he is Judge of his own Alteration? So that that Oath, that was to be taken without any Evaſion, is evaded in every ſingle Word or Letter; and the Government as inſecure as before the Act was made, becauſe the Taker is no farther bound than he pleaſes. From which it cannot be denied, but his Interpretation deſtroys not only this Act, but all Government, ſince it takes away the Security of all Government, and makes every Man's Conſcience, under which Name there goes ordinarily in this Age Humour and Intereſt, to be the Rule of the Taker's Obedience. Nor can it be conceived to what Purpoſe Laws, but eſpecially Oaths, needed to be made, if this were allowed; or how this cannot fall under the 107th *Act*, *Par.* 7. *James* VI. whereby it is ſtatuted, *That no Man interpret the Statutes otherwiſe than the Maker underſtood.* For what can be more contrary to the taking of them in the Maker's Senſe, than that every Man ſhould obey as far as he can, and be allowed to take them in a general Senſe, ſo far as they are conſiſtent with themſelves, and the Proteſtant Religion, without condeſcending wherein they do not agree with the Proteſtant Religion? And that they are not bound not to make any Alteration which they think good for the States? For all theſe make the Rule of Obedience in the Taker, whereas the poſitive Law makes it to be in the Maker. Or how could they be puniſhed for Perjury after this Oath? For when he were quarrelled for making Alterations againſt this Oath, and ſo to be perjured; he might eaſily anſwer, that he took this Oath only ſo far as it was conſiſtent with the Proteſtant Religion, and with a *Salvo*, that he might make any Alteration that he thought conſiſtent with his Loyalty. And as to theſe Points, upon which he were to be quarrelled, he might ſay, he did not think them to be inconſiſtent with his Loyalty, think we what we pleaſed, and ſo needed not be perjured, except he pleaſed to decide againſt himſelf: For in theſe Generals he reſerves to himſelf to be ſtill Judge. And this were indeed a fine Security for any Government. And by the ſame Rule that it loſes this Oath, it ſhews a Way of loſing all Oaths and Obedience: And conſequently ſtrikes at the Root of all Laws, as well as this: Whereas to ſhun all this, not only this excellent Statute 107, has ſecured all the reſt, but this is common Reaſon: And in the Opinion of all Divines, as well as Lawyers in all Nations, *Verba juramenti intelliguntur ſecundum mentem & Intentionem ejus, cui fit juramentum.* Which is ſet down, as the Grand Poſition, by *Saunderſon*, (whom they cite) *Page* 137, and is founded upon that Mother-Law, *Leg.* 10. *cui interrogatus f. f. de interrogationibus in Jure faciendis*; and without which no Man can have Senſe of Government in his Head, or practiſe it in any Nation. Whereas on the other Hand there is no Danger to any tender Conſcience, ſince there was no Force upon the Earl to take the Oath, but he took it for his own Advantage, and might have abſtained.

1. It is inferred from the above-written Matter of Fact, that the Earl is clearly guilty of Contravention of the 10th *Act*, *Par.* 10. *James* VI. whereby the Lieges are commanded not to write any purpoſe of Reproach of his Majeſty's Government, or miſconſtrue his Proceedings, whereby any Miſliking may be raiſed betwixt his Highneſs, his Nobility, or his People. And who can read this Paper, without ſeeing the King and the Parliament reproached openly in it? For who can hear, that the Oath is only taken as far as it is conſiſtent with itſelf and the Proteſtant Religion, but muſt neceſſarily conclude, that in ſeveral Things it is inconſiſtent with itſelf, and the Proteſtant Religion? For if it were not inconſiſtent with itſelf, and the Proteſtant Religion, why this Clauſe at all, but it might have been ſimply taken? For the only Reaſon of hindering it to be taken ſimply, was becauſe of the Inconſiſtency. *Ergo* there behoved neceſſarily to be an Inconſiſtency. And if there be any Inconſiſtency with the Proteſtant Religion, or any Contradiction in the Oath itſelf, can there be any Thing a greater Reproach on the Parliament, or a greater Ground of Miſlike to the People? And whereas it is pretended, that all Laws and Subſumptions ſhould be clear, and theſe are only Inferences: It is anſwered, that there are ſome Things which the Law can only forbid in general: And there are many Inferences which are as ſtrong and natural, and reproach as ſoon, or ſooner, than the plaineſt Defamations in the World do: For what is openly ſaid of Reproach to the King, does not wound him ſo much as many ſeditious Inſinuations have done in this Age and the laſt: So that whatever was the Earl's Deſign (albeit it is always conceived to be unkind to the Act, againſt which himſelf debated in Parliament) yet certainly the Law in ſuch Caſes is only to conſider what Effect this may have amongſt the People: And therefore the Acts of Parliament that were to guard againſt the miſconſtruing of his Majeſty's Government, do not only ſpeak of what was deſigned, but where a Diſliking may be cauſed; and ſo judgeth *ab effectu:* And conſequentially to the ſame emergent Reaſon, it makes all Things tending to the raiſing of Diſlike to be puniſhable by the *Act* 60. *Parl.* 6. Queen *Mary*; and the 9th *Act Parl.* 20. *James* VI. So that the Law deſigned to deter all Men by theſe indefinite and comprehenſive Expreſſions: And both in this and all the Laws of Leaſing-making, the Judges are to conſider what falls under theſe general and comprehenſive Words; nor could the Law be more ſpecial here, ſince the Makers of Reproach and Slander are ſo various that they could not be bound up or expreſt in any Law: But as it evidently appears, that no Man can hear the Words expreſt, if he believe this Paper, but he muſt think, the Parliament has made a very ridiculous Oath, inconſiſtent with itſelf and the Proteſtant Religion, the Words allowing no other Senſe, and having that natural Tendency; even as if a Man would ſay, I love ſuch a Man only in ſo far as he is an honeſt Man, he behoved certainly to conclude that the Man was not every Way honeſt; ſo if your Lordſhips will take Meaſures by other Parliaments, or your Predeceſſors, ye will clearly ſee, that they thought leſs than this a defaming of the Government, and miſconſtruing his Majeſty's Proceedings. For in *Balmarino's* Caſe the Juſtices find an humble Supplication made to the King himſelf to fall under theſe Acts now cited. Albeit, as that was a Supplication, ſo it contained the greateſt Expreſſions of Loyalty, and Offers of Life and Fortune that could be expreſt; yet becauſe it inſinuates darkly, that the King in the preceeding Parliament had not favoured the Proteſtant Religion, and they were ſorry he ſhould have taken Notes with his own Hands of what they ſaid, which ſeems to be moſt innocent, yet he was found guilty upon thoſe ſame very Acts. And the Parliament 1661 found his Lordſhip himſelf guilty of Leaſing-making, though he had only written a Letter to a private Friend, which requires no great Care nor Obſervation (but this Paper, which was to be a Part of his own Oath, does) becauſe after he had ſpoken of the Parliament in the firſt Part of this Letter, he thereafter added, *that the King would know their Tricks:* Which Words might be much more applicable to the private Perſons therein deſigned, than that the Words now inſiſted on can be capable of any ſuch Interpretation. And if either Interpretations, upon Pretext of exonering of Conſcience, or otherwiſe be allowed, a Man may eaſily defame as much as he pleaſes: And have we not ſeen the King moſt defamed by Covenants entered into upon Pretence to make him great and glorious by Remonſtrances made to take away his Brother and beſt Friend, upon Pretence of preſerving the Proteſtant Religion, and his ſacred Perſon? And did not all who rebelled againſt him in the laſt Age declare, that they thought themſelves bound in Duty to obey him, but ſtill as far as that could conſiſt with their Reſpect to the Proteſtant Religion, and the Laws and Liberties, which made all the reſt ineffectual? And whereas it is pretended, that by theſe Words *I take the ſame in as far as it is conſiſtent with itſelf and the Proteſtant Religion*, nothing more is meant, but that he takes it as a true Proteſtant: His Majeſty's Advocate appeals to your Lordſhips, and all the Hearers, if upon hearing this Expreſſion they ſhould take it in this Senſe, and not rather think that there is an Inconſiſtency. For if that were poſſible to be the ſenſe, what need he ſay at all, *as far as it is conſiſtent with itſelf?* Nor had the other Part, *as far as it is conſiſtent with the Proteſtant Religion*, been neceſſary. For it is either conſiſtent with the Proteſtant Religion, or otherwiſe they were Enemies to the Proteſtant Religion, that made it. Nor are any Lawyers or others in Danger, by pleading or writing: For theſe are very different from, and may be very eaſily pleaded without defaming a Law, and an Oath, when they go to take it. But if any Lawyer ſhould ſay, in pleading or writing, that the *Teſt* was inconſiſtent, or, which is all one, that it were not to be taken by any Man, but ſo far as it was conſiſtent with itſelf, and the Proteſtant Religion, no doubt this would be a Crime even in pleading, though pleading has a greater Allowance than deliberate ſwearing has. And as there is nothing wherein there is not ſome Inconveniency, ſo the Inconveniency of defaming the Government is much greater than that of any private Man's Hazard, who needs not err except he pleaſe.

Whereas it is pretended, that before the Earl gave in this Explication, there were other Explications ſpread abroad, and Anſwers read to them in Council: and that the Council itſelf gave an Explication. It was anſwered, that if this Paper be Leaſing-making, or miſconſtruing his Majeſty's Proceedings, and treaſonable, as is contended, then a thouſand of the like Offences cannot excuſe it. And when the King accuſed Noblemen, Miniſters, and others, in the Year 1661, for going on in the Rebellions of that Age, firſt with the Covenanters, and then with the Uſurpers, it was found no Defence, that the Nation was overgrown with thoſe Crimes, and that they were thought to be Duties in thoſe Days, yea, this were to invite Men to offend in Multitudes. And albeit ſometimes theſe who follow the Examples of Multitudes may thereby pretend this as an Excuſe to many, yet this was never a formal Defence againſt Guilt, nor was ever the chief of the Offenders favourable on that Head. And it is to be preſumed, that the Earl of *Argyle* would rather be followed by others, than that he would follow any Example. But his Majeſty's Advocate does abſolutely decline to debate a Point that may defame a conſtant and ſtanding Act of Parliament, by leaving upon Record a Memory of it's being oppoſed. Nor were this relevant, except it could be ſaid, the Council had allowed ſuch Explications which reflected upon the King and the Government: For the writing an Anſwer is no Allowance, but a condemning: Nor can the Council allow any more than they can remit: And though it may juſtly be denied that the Council heard even the Earl's own Explanation, yet the hearing or allowing him to ſit is no relevant Plea, becauſe they might very juſtly have taken a Time to conſider how far it was fit to accuſe upon that Head. And it is both juſt and fit for the Council to take Time; and by expreſs Act of Parliament the Negligence of the King's Officers does not bind them. For if this were allowed, leading Men in the Council might commit what Crimes they pleaſed in the Council, which certainly the King may quarrel many Years after. And though all the Council had allowed him that Day, any one Officer of State might have quarrelled it the next Day. As to the Opinion of *Bellarmine*, *Sanderſon*, and others, it is ever contended, that the Principles of the Covenant agree very well with thoſe of the Jeſuits, and both do ſtill allow Equivocations and Evaſions: But no ſolid orthodox Divine ever allowed, that a Man who was to ſwear without any Evaſion, ſhould ſwear ſo as he is bound to nothing, as it is contended the Earl is not, for the Reaſons repreſented. And as they ſtill recommend, that when Men are not clear they might abſtain, as the Earl might have done in this Caſe, ſo they ſtill conclude, that Men ſhould tell in clear Terms, what the Senſe is by which they are bound to the State: Whereas the Earl here tells only in the general, and in moſt ambiguous Terms, that he takes it as far as he can obey, and as far as it is conſiſtent with the Proteſtant Religion, and that he takes it in his own Senſe, and that he is not bound by it from making Alterations, but as far as he thinks it for the Advantage of Church or State: Which Senſe is a thouſand times more doubtful than the *Teſt*, and as in Effect nothing but what the Taker pleaſes himſelf.

As to the Treaſon founded on, his Majeſty's Advocate founds it firſt upon the fundamental and common Laws of this and all Nations, whereby it is Treaſon for any Man to make any Alteration he ſhall think for the Advantage of Church or State: Which he hopes is a Principle cannot be denied in the general. And whereas it is pretended, that this cannot be underſtood of mean Alterations, and of Alterations to be made in a lawful Way: It is anſwered, that as the Thing itſelf is Treaſon, ſo this Treaſon is not taken off by any of theſe Qualifications; becauſe he declares, he will wiſh and endeavour any Alteration he thinks fit: And any Alteration comprehends all Alterations that he thinks fit: *nam propoſitio indefinita æquipollet univerſali*. And the Word *any* is general in its own Nature, and is in plain Terms a reſerving to himſelf to make Alterations, both great and ſmall. And the Reſtriction is not, all Alterations that the King ſhall think fit, or are conſiſtent with the Laws and Acts of Parliament: but he is ſtill to be Judge of this, and his Loyalty is to be the Standard. Nor did the Covenanters in the laſt Age, nor do theſe who are daily executed, decline that they are bound to obey the King ſimply, but only that they are bound to obey him no otherwiſe than as far as his Commands are conſiſtent with the Law of God, of Nature, and of this Kingdom, and with the Covenant: And their Treaſon lies in this. And when it is aſked them, who ſhall be Judge in this, they ſtill make themſelves Judges. And the Reaſon of all Treaſon being, that the Government is not ſecure, it is deſired to be known, what way the Government can be ſecured after this Paper, ſince the Earl is ſtill Judge how far he is obliged, and what is his Loyalty. And if this had been ſufficient, the Covenant had been a very excellent Paper: For they are there bound to endeavour, in their ſeveral Stations, to defend the King's Perſon: But when the King challenged them, how they came to make War againſt him? their great Refuge was, that they were themſelves ſtill Judges as to that. And for illuſtrating this Power, the Lords of Juſticiary are deſired to conſider, *quid Juris*, if the Earl, or any Man elſe ſhould have reſerved to himſelf in this Oath a Liberty to riſe in Arms, or to oppoſe the lineal Succeſſion, though he had added *in a lawful manner:* For the Thing being in itſelf unlawful, this is but ſham, and *Proteſtatio contraria facto*. And if theſe be unlawful, notwithſtanding of ſuch Additions, ſo much more muſt this general Reſervation, *of making any Alterations*, likewiſe be unlawful, notwithſtanding of theſe Additions: For he that reſerves the general Power of making any Alteration, does, *a fortiori*, reſerve Power to make any Alteration, though never ſo fundamental. For all Particulars are included in the general; and whatever may be ſaid againſt the Particulars, may much more ſtrongly be ſaid againſt the General.

2. The 130th Act, Par. 8. *James* VI is expreſly founded on, becauſe nothing can be a greater Diminution of the Power of the Parliament, than to introduce a Way or Mean whereby all their Acts and Oaths ſhall be made inſignificant and ineffectual, as this Paper does make them, for the Reaſons repreſented. Nor are any of the Eſtates of Parliament ſecure at this Rate, but that they who reſerved a general Power to make all Alterations, may, under that General, come to alter any of them.

3. What can be a greater impugning of the Dignity and Authority of Parliaments, than to ſay, that the Parliament has made Acts for the Security of the Kingdom, which are in themſelves ridiculous, inconſiſtent with themſelves and the Proteſtant Religion?

And as to what is anſwered againſt invading the King's Prerogative, and the Legiſlative Power in Parliaments, in adding a Part to an Oath or Act, is not relevantly inferred, ſince the Senſe of theſe Words, *and this I underſtand as a Part of my Oath*, is not to be underſtood as if any thing were to be added to the Law, but only to the Oath, and to be an Interpretation of the Oath. It is replied, that after this no Man needs to add a Caution to the Oath in Parliament. But when he comes to take the Oath, do the Parliament what they pleaſe, he will add his own Part. Nor can this Part be looked upon as a Senſe: For if this were the Senſe before this Paper, he needed not underſtand it as a Part of it, for it wanted not that Part. And in general, as every Man may add his own Part, ſo the King can be ſecure of no Part. But your Lordſhips of Juſticiary are deſired to conſider, how dangerous it would be in this Kingdom, and how ill it would ſound in any other Kingdom, that Men ſhould be allowed to reſerve to themſelves Liberty to make any Alteration they thought fit in Church or State, as to the Legality of which, they were themſelves to be Judges: And how far, from Degree to Degree, this at laſt may come to abſolute Anarchy, and how ſcandalous a thing, as well as unſecure, this new Way may look in an Age wherein we are too much tracing the Steps of our rebellious Progenitors in the laſt, whoſe great Defection and Error was, that they thought themſelves, and not the King, the Authors of Reformation in Church and State. And no Man ever was barred by that, that the Way he was upon was not a lawful Way: For if it be allowed to every Man to take his own Way, every Man will think his own Way to be the lawful Way.

As to the Perjury, it is founded on this, firſt, That Perjury may be committed, not only by breaking an Oath, but even in the ſwearing of it, *viz.* to ſwear it with ſuch Evaſions as make the Oath ineffectual: For which *Sanderſon* is cited, Pag. 138. *Alterum Perjurii genus eſt novo aliquo excogitato Commento Juramenti vim declinare, aut eludere, & Jurans tenetur ſub pœna* Perjurii *implere Secundum Intentionem deferentis*; both which are here. For the Earl being bound by the very Oath, to ſwear in the genuine Meaning, without any Evaſion, he has ſworn ſo as he has evaded every Word, there being not one Word to which it can be ſaid particularly he is bound, as is ſaid. And it is undeniable, that he has not ſworn in the Senſe of the Makers of the Law, but in his own Senſe, which is Perjury, as is ſaid. And conſequentially, whatever Senſe may be allowed in ambiguous Caſes, yet there can be none where the Paper clearly bears Generals: And where he declares, that he takes it in his own Senſe, his Majeſty's Advocate declares, he will not burden himſelf, that Copies were diſperſt, though it is certain, ſince the very Paper itſelf by the giving in is chargeable with all that is above charged upon it.

Sir John Dalrymple's *Defence and Plea for the Earl of* Argyle, *by Way of Reply upon the King's Advocate.*

SIR *John Dalrymple* replies for the Pannel, That ſince the ſolid Grounds of Law adduced in the Defences have received no particular Anſwers, in Relation to the common Conſent of all Caſuiſts, *viz.* That a Party who takes an Oath is bound in Conſcience to clear and propoſe the Terms and Senſe in which he does underſtand the Oath: Nor in Relation to the ſeveral Grounds adduced concerning the legal and rational Interpretation of dubious Clauſes. And ſince theſe have received no Anſwers, the Grounds are not to be repeated: But the Proctors for the Pannel do farther inſiſt on theſe Defences.

1. 'Tis not alledged, that any Explanation was given in by the Pannel to any Perſon, or any Copy ſpread, before the Pannel did take the *Teſt* in Council: So that it cannot be pretended, that the many Scruples that have been moved concerning the *Teſt*, did ariſe from the Pannel's Explication: But on the contrary, all the Objections that are anſwered, and obviated in the Pannel's Explication, were not only privately muttered, or were the Thoughts of ſingle or illiterate Perſons, but they were the Difficulties propoſed by Synods and Preſbyteries, long before the Pannel came from home, or was required to take the *Teſt:* So that the general Terms of the Acts of Parliament founded upon in the Libel are not applicable to this Caſe: For as theſe Laws, in relation to Leaſing-makers, are only relative to atrocious wilful Inſinuations, or Miſconſtructions of his Majeſty's Perſon or Government, or the open depraving of his Laws, ſo the reſtrictive Clauſe, *whereby Sedition or Miſconſtructions may be moved, raiſed, or engendered betwixt his Majeſty and his Leiges*, cannot be applied to this Caſe, where all theſe Apprehenſions and Scruples were on Foot, and agitated long before the Pannel's Explanation.

As it cannot be pretended, that any new Duſt was raiſed by the Pannel's Explanation, ſo it is poſitively offered to be proved, that there is not one Word contained in this Explanation, but that either theſe individual Words, or much worſe, had been publickly propoſed, and *verbatim* read in Council, without the leaſt Diſcouragement, or the leaſt Objection made by any Member of the Council. And where a Writing, *ex propoſito* read in ſo high a Court, was univerſally agreed upon, without the Alteration of a Syllable, how can it be pretended, that any Perſon thereafter uſing the ſaid individual Terms in any Explanation, and far eaſier Terms, that they ſhall incur the high and infamous Crimes libelled? And the Queſtion is not here, whether the Council was a proper Judicature to have propoſed, or impoſed a Senſe, or allowed any Explanation of the *Teſt* to be publiſhed; but that is impoſſible that a Senſe they allowed, or being publickly read before them, and which the King's Advocate did not controul, that this ſhould import Treaſon, or any Crime: And though the Pannel's Advocate will not purſue or follow the Reply that has been made to this Point, yet certainly no Man of ſober Senſe will think that it is fit to inſinuate, that ſo high a Judicature might have authorized or acquieſced in ſuch Explanations as the Leiges thereafter ſhould be entrapped to have uſed.

If the Pannel had officiouſly or ultroneouſly offered a Senſe or Explanation of his Majeſty's Laws, which the Laws themſelves could not have born, it might juſtly have been alledged, that he was *extra ordinem*, and meddling in a Matter he was not concerned in, but where the Act of Council did enjoin, and he was required and cited to that Effect, it could neither be conſtructed as Oſtentation, or to move or encourage Scruples, or Reſiſtance, but it was abſolutely neceſſary, either for to have refuſed the *Teſt*, or elſe to have declared what he thought to be the true and genuine Meaning of it. And there being ſo many Objections publickly moved and known, his Explanation was nothing elſe but to clear, that he did not look upon theſe Scruples and Objections, moved by others, as well founded and rational in themſelves; and therefore he was able to take the *Teſt* in that Senſe the Council had heard or allowed. And it is not controverted, that the Senſe of the Legiſlator is the genuine Senſe both of Laws and Oaths: And if a Perſon were only interpreting the Meaning of either a Law or an Oath impoſed, he ſhould deprave and miſconſtruct the Law and Oath, if he rendered it wittingly and willingly in Terms inconſiſtent with the Meaning of the Impoſer: But there is a great Difference betwixt

twixt taking of Oaths, and interpreting Oaths; for when a Man comes to take an Oath, except his particular Senſe did agree with the genuine Meaning of the Impoſer, he cannot take that Oath, though he may very well interpret and declare what is the Senſe of the Legiſlator, which he may know, and yet perhaps not be able to take the Oath.

And therefore when there is any Doubtfulneſs in an Oath, and a Party is bound to take it, if then he gives in an Explication of the Senſe which he in his private Judgment doth apprehend to be the genuine Meaning, if that private Senſe be diſconform to the Legiſlator's Senſe in the Oath, then the Impoſer of the Oath, or he that has Power to offer it to the Party, if he conſider the Party's Senſe diſconform, he ought to reject the Oath, as not fulfilling the Intent of the Law impoſing it.

But it is impoſſible to ſtate that as a Crime, that a Party ſhould neither believe what is propoſed in the Oath, nor be able to take it; and he can run no farther Hazard, but the Penalty impoſed upon the Refuſer. And therefore in all Oaths there muſt be a Concourſe both of the Senſe impoſed by Authority, and of the private Senſe, Judgment, or Conſcience of the Party. And therefore if a Party ſhould take an Oath in the Senſe propoſed by Authority contrary to his own Senſe, he were perjured: Hereby it is evident that the Senſe of Authority is not ſufficient, without the Acquieſcence and Conſent of the private Perſon. And therefore it is very ſtrange, why that Part of the Pannel's Explanation ſhould be challenged, that he takes it in his own Senſe, the *poſterior* Words making it as plain as the Light, that that Senſe of his own is not what he pleaſes to make of the Oath, for it bears expreſly, that no body can explain it but for himſelf, and reconcile it as it is genuine, and agrees in it's own Senſe: So that there muſt be a Reconciliation betwixt his own Senſe and the genuine Senſe, which upon all Hands is acknowledged to be the Senſe of Authority. And if the Pannel had been of theſe lax and debauched Principles, that he might have evaded the Meaning and Energy of the Oath, by impoſing upon it what Senſe he pleaſed, certainly he would have contented himſelf in the general Refuge of Equivocation, or Mental Reſervation, and he would never have expoſed his Senſe to the World, in which he took this Oath, whereby he became abſolutely fixed and determined to the Oath, in that particular Senſe, and ſo had no Latitude of ſhuffling off the Energy or Obligation of the Oath: And it is likewiſe acknowledged, that the Caſes alledged in the Reply are true, *viz.* That the Perſon is guilty of Perjury, *ſi aliquo novo Commento* he would elude his Oath, or who doth not fulfil the Oath in the Senſe of the Impoſer. But that does not concern this Caſe: For in the foreſaid Citation, a Perſon, after he has taken an Oath, finding out ſome new Conceit to elude it, he is perjured: But in this Caſe, the Pannel did at and before his taking the *Teſt*, declare the Terms in which he underſtood it; ſo that this was not *novo aliquo Commento* to elude it. And the other Caſe, where a Party takes it in the Senſe of Authority, but has ſome ſubterfuge, or concealed Explanation, it is acknowledged to be Perjury. But in this Caſe there was no concealed Explanation; but it was publickly expreſt, and an Explanation given, which the Pannel deſigned, and underſtood as the Meaning of Authority, and had Ground to believe he was not miſtaken, ſince upon that Explanation he was received and allowed to ſit and vote in Council.

And as to that Part of the Reply, that explains the Treaſon, there can be no Treaſon in the Pannel's Caſe, becauſe the expreſs Act of Parliament founded upon, doth relate only to the Conſtitution of the Parliament: And I am ſure his Majeſty's Advocate cannot ſubſume in theſe Terms: And therefore in the Reply he recurs to the general Grounds of the Law, that the uſurping of his Majeſty's Authority, in making a Part of the Law, and to make Alterations in general, and without the King, are high and treaſonable Words or Deſigns, and ſuch as the Party pleaſes, and ſuch Deſigns as have been practiſed in the late Times. And that even the Adjection of fair and ſafe Words, as in the Covenant, does not ſecure from treaſonable Deſigns; and that it was ſo found in *Balmerino*'s Caſe, though it bear a fair Narrative of an humble Supplication.

It is replied, that the Uſurpation of making of Laws is undoubtedly treaſonable, but no ſuch Thing can be pretended or ſubſumed in this Caſe: For albeit the Pannel declares his Explanation to be a Part of his Oath, yet he never meaned to impoſe it as a Part of the Law, or that this Explanation ſhould be a Thing diſtinct, or a ſeparate Part even of his Oath, for his Explanation being *exegetick* of the ſeveral Parts of the Oath, it is no diſtinct Thing from the Oath, but declared to be a Part of the Oath *de natura rei.* And it was never pretended, that he that alledged any thing to be *de natura rei*, did ſay, that that was diſtinct and ſeparate, which were a Contradiction. And therefore the Argument is retorted, the Pannel having declared, this Explanation was, *de natura rei*, implied in the Oath, he neceſſarily made this Explanation no Addition or Extention of the Oath. So that for all this Explanation, the Oath is neither broader nor longer than it was.

And as to theſe Words, *I do not mean to bind up myſelf in my Station, and in a lawful Way, to wiſh and endeavour any Alteration I think to the Advantage of Church or State, not repugnant to the Proteſtant Religion, and my Loyalty.* It is a ſtrange thing how this Clauſe can be drawn in Queſtion, as treaſonable, when it may with better Reaſon be alledged, that there is no good Subject but is bound to ſay it. And albeit the Words *to endeavour in my Station*, be Words contained in the Covenant, yet that is no Reaſon why two Words in the Covenant may not be made uſe of in another very good and loyal Senſe. And there is no Man that ſhall have the Honour either to be entruſted by his Majeſty in his Council, or any other Judicature, or to be a Member of Parliament, but he is bound by his Loyalty to ſay the ſame thing. And there was never a Clauſe more cautiouſly expreſt; for the Words run, *to endeavour any Alteration I ſhall think to the Advantage of Church and State.* And though that was ſufficient, yet the Clauſe is ſo cautiouſly conceived, that it contains another Reſtriction, *not repugnant to Religion and his Loyalty.* So that except it could be alledged, that a Man by lawful Means, to the Advantage of Church and State, conſiſtent with his Religion and Loyalty, could make treaſonable Alterations, and Invaſions upon the Government and Monarchy, which are the higheſt Contradictions imaginable, there can be nothing againſt the Pannel. And albeit the Clauſe, *any Alterations*, might, without the Reſtrictions and Qualifications foreſaid, be generally extended, yet the preceding Words of *lawful Way*, and the rational Interpretation of the Emiſſion of Words, eſpecially before a ſolemn Judicatory, leaves no Place or Shadow to doubt, that theſe Alterations were no fundamental or treaſonable Alterations, but ſuch as the Frailty of human Affairs and Conſtitutions, and Viciſſitude of Things and Circumſtances, do conſtantly require in the moſt exact Conſtitutions under Heaven. And the Clauſe does not ſo much as import, that there is a preſent Neceſſity of Alteration, but it was a neceſſary and rational Proſpect, that albeit at preſent all things under Heaven had been done to ſecure the Religion and Government, yet there might occur Caſes that would require new Helps, Alterations, and Remedies. And it is not pretended in this Caſe for the Pannel, that he deſires to alleviate, or take off Words truly treaſonable, or having an ill Deſign, by the mixing of fair and ſafe, dutiful and ſubmiſſive Expreſſions, which indeed are Proteſtations *contrariæ facto.* For there is nothing in his Explanation, that either in his Deſign, or in the Words themſelves, being rationally and naturally interpreted, can infer the Crimes libelled, or any of them. And the Pannel's known Principles and known Practices, do not only clear that Loyalty that he has profeſt before the Lords of Juſticiary, and inſtructed by unqueſtionable Documents, but they put him far from the Suſpicion of theſe damnable Principles related in the Reply, of which the whole Tract of his Life hath been an entire Evidence of his Abhorrency and Deteſtation. And in the laſt Place, it is thought ſtrange, why that ſhould be repreſented as an Affront or Diſgrace to the Government, that the Parliament impoſed a *Teſt* which the Pannel is not able to take ſimply. And it is not pretended, that he hath defamed, written or ſpoken againſt the *Teſt* itſelf, or for the Inconvenience of it; but only that he hath not been able to ſee the good Ground upon which it may be ſimply taken. And this were to condemn him for want of Sight or Senſe, when the Law hath puniſhed no Man for not taking the *Teſt*, but only turned him out of the Government. And it is as ſtrange an Inference, that becauſe the Pannel declares, he believes the Parliament meaned no Contradiction and would take the *Teſt*, in as far as it is conſiſtent, that therefore he ſaid, the Parliament impoſed Contradictions: Which is ſo far from a rational Induction, that the Contradiction of theſe Subſumptions, in all Congruity of Language and Senſe, is neceſſarily true. And therefore the laſt Part of that Clauſe, *in ſo far as it is conſiſtent*, is a Conſequence inferred upon the former, *viz.* I believe the Parliament deſigned to impoſe no Contradictions: *Ergo*, I take the *Teſt* as conſiſtent, and in ſo far as it muſt be conſiſtent, if the Parliament did not impoſe Contradictions, as certainly they have not; and to convince the World, that in this Senſe this Explanation is receivable it was propoſed in Council, and allowed, and therefore without the higheſt Reflection it cannot now be quarrelled.

Sir George Lockhart's *ſecond Plea for the Earl of* Argyle, *by way of Reply upon the King's Advocate.*

SIR *George Lockhart* duplies, That the Defender repeats and oppones his former Defences, which are no ways elided, nor ſatisfied by the Reply made by his Majeſty's Advocate. And although it be eaſy for the King's Advocate, out of his Zeal, to pretend and argue Crimes of the higheſt Nature upon Inferences and Conſequences, neither conſiſtent with the Pannel's Deſign, nor with his Words and Expreſſions; yet there cannot be a more dangerous Foundation laid, for the Security and Intereſt of the Government, and the Security and Protection of the Subjects, than that Crimes ſhould be inferred but from clear, evident, and expreſs Laws, and plain, palpable Contravention of theſe Laws: It being both againſt the Laws of God and Man, that a Man ſhould be made an Offender for a Word, and eſpecially for Expreſſions which, according to Senſe and Reaſon, and conſidering the Time and Place where they were ſpoken by the Pannel, *viz.* as a Member of his Majeſty's Privy-Council, and in Preſence of his Royal Highneſs and the Members of Council, and when required to take the *Teſt*, were ſafe and innocent: And it were againſt all Law and Reaſon, to ſuppoſe that the Pannel either did, or deſigned to do any thing which may, or did import the Crimes libelled againſt him. And whereas it is pretended, that the Oath required and impoſed by Act of Parliament was for the Security of the Government; and that the Pannel, by his Explication, does evade the Oath, by taking it only ſo far as it is conſiſtent with the Proteſtant Religion, and his own Loyalty, whereof he was Judge. It is anſwered, that the Pretence is moſt unwarrantable, and the Security of his Majeſty's Government is not at all endangered (as God forbid it ſhould) though the Pannel, and a thouſand more had ſimply refuſed the *Teſt*, or had taken it in a Senſe which does not ſatisfy the Law; it being competent to publick Authority to conſider, whether the Pannel's Oath, in the Terms of the Explication wherein he did take it, does ſatisfy the Act of Parliament or not; and if not, there can be no rational Conſequence inferred thereupon, but that he is holden as a Refuſer of the Oath, and liable to the Certification of the Act of Parliament, of not aſſuming and continuing in any publick Truſt: And no more was intended or deſigned by the Act of Parliament itſelf, than ſtrictly to make the oath in the true and genuine Senſe and Meaning of the Parliament, an indiſpenſable Qualification of Perſons admitted to publick Truſt: So that it is not at all material to diſpute, whether the Pannel's Explication can be looked upon as a full Satisfaction of the Act, which whether it ſhould or not, it can import no Crime againſt him, it not being conſiſtent with Senſe and Reaſon, that a Perſon who abſolutely refuſeth the *Teſt*, upon the Scrupuloſity of his Conſcience, albeit he be not capable of publick Truſt, ſhould be, notwithſtanding, looked upon as guilty of no Crime: And yet another who was willing to go a greater Length, albeit he did demur and ſcruple as to the full Length, that he ſhould be reputed criminal and guilty of a Crime.

II. The Pannel repeats, and conjoins with this the Grounds above-mentioned, contained in his Defences, *viz.* That neither the Crimes libelled, nor any other Crime, were ever pretended or made uſe of againſt any others, who did ſpread abroad Objections of an high Nature, which yet were ſo favourably looked upon, as to be conſtrued only to proceed from Scrupuloſity of Conſcience, as alſo the Satisfaction endeavoured, is in ſuch Terms, and by ſuch Condeſcenſions, as do take in and juſtify the whole Terms of the Explication libelled.

It is of great Moment, and whereof the Lords of Juſticiary are deſired to take ſpecial Notice, both for clearing the abſolute Innocence of the Pannel's Meaning and Intention, and to take off all poſſible Miſconſtruction that can be wreſted or detorted from the Tenor and Expreſſions of the libelled Explication, that the Pannel was put to, and required to take the Oath, before the Lords of his Majeſty's Privy-Council did paſs and publiſh their Proclamation explaining the Oath, and declaring the genuine Senſe and Meaning thereof, namely, that it did not tie to the whole Articles of the *Confeſſion of Faith*, ratified by Act of Parliament, *James* VI. and which, as to ſeveral Articles thereof, had occaſioned the Scruples and Difficulties, and alledged Inconſiſtency and Contradiction betwixt the laſt Part of the Oath and the ſaid *Confeſſion*, and betwixt ſome of theſe Articles, and the Current of the Proteſtant Doctrine, received and contained in the *Syntagmæ* of the Proteſtant Confeſſions. And therefore if the Pannel at that Time did think fit, for the clearing and Exoneration of his own Conſcience, to uſe the Expreſſions in the Explication libelled, and yet with ſo much Duty and Confidence of the Parliament's Juſtice, as to their Meaning and Intention, *that the Parliament never intended to impoſe contradictory Oaths*; and that he *did take it ſo far as it was conſiſtent with itſelf, and the Proteſtant Religion*, not knowing then, whether the whole *Confeſſion* was to be reputed a Part of the Oath, and doubting thereanent; and which the Lords of his Majeſty's Privy-Council and his ſacred Majeſty by his Approbation ſince, have thought a Difficulty of ſo great Moment, as it was fit to clear the ſame by a publick Proclamation; how now is it poſſible, that any Judicatory under Heaven, which proceeds upon the ſolid Grounds of Law and Reaſon, and who (it cannot be doubted) will have a juſt Regard to the intrinſick Principles of Juſtice, and to all Men's Security, that they can now believe all, or any of the Crimes libelled, ſhould be in the leaſt inferred from all, or any of the Expreſſions contained in the ſaid Explication? But that on the contrary it was a warrantable Allowance, and Chriſtian Practice, condemned by the Law and Cuſtom of no Nation, that having Scruples in the Matter of an Oath which ſhould be taken in *Truth, Judgment, and Righteouſneſs*, and upon full Deliberation, and with a full Aſſurance and Sincerity of Mind, that he did plainly, openly, and clearly declare the Senſe in which he was willing to take it; and if Authority did allow it as the genuine Senſe of the Oath, the Pannel to be holden as a Taker of the Oath: And if upon farther Conſideration, Authority think not, that *habetur pro Recuſante*, and a Refuſer of the Oath, but no Ways to be looked upon as a Criminal or guilty Perſon.

And the Pannel repeats and conjoins with this Point of the Reply, that Point in his Defence whereby he poſitively offers to prove, 1. That his Explication, and the Senſe wherein he took the Oath, was heard, and publickly given and received in Council, and the Pannel thereafter allowed to take his Place, and ſit and vote in that *Sederunt*.

2. The Pannel alſo offers poſitively to prove, That the Tenor and Terms of his Senſe and Explication wherein he did take the Oath, is contained in that ſolid, learned, and pious Vindication, written by the Biſhop of *Edenburgh*, in anſwer to the Objections and alledged Inconſiſtencies and Contradictions in the Oath, and which Vindication was publickly read in Council, and ſo far approved, that it was allowed to be printed and publiſhed, and was accordingly diſperſed and ſpread abroad. And it is not of the leaſt Import, that the Proclamation of the Lords of Privy-Council, although it does only allow the ſame to be taken by the Clergy, yet at the ſame Time they expreſly declare the genuine Senſe and Meaning of the Parliament not to comprehend the whole Articles of the *Confeſſion*, which was not cleared before the Pannel's taking his Oath.

And whereas it is pretended, That the Acts of Parliament libelled upon, againſt Leaſing-makers, Depravers of his Majeſty's Laws, do obtain and take place, where-ever there are any Words or Expreſſions that have a Tendency in themſelves, or by a natural Conſequence, and rational Inferences, to reflect upon the Government, or miſconſtrue his Majeſty's Proceedings; and that the Explication libelled is ſuch, and that it was found ſo in the Caſe of *Balmerino*, albeit it was drawn up by way of humble Petition and Addreſs to his Majeſty, and with great Proteſtations and Expreſſions of Loyalty. It is anſwered, the Acts of Parliament libelled upon are opponed, and the 43d *Act. Par.* 8. *James* VI. and the other Acts, making the depraving of his Majeſty's Laws to be Crimes, do expreſsly require, that Speeches ſo judged be perverſe and licentious Speeches, *ex natura ſua probroſa* and reproachful, and ſpoke *animo defamandi*, and which could not receive any other rational Conſtruction, which cannot in the leaſt be applied to, or ſubſumed upon the Words, or Explication given in by the Pannel. And Law and Reaſon never infers or preſumes a Crime, where the Thing is capable of a fair and rational Conſtruction, and where it was done *palam* and publickly, and in Preſence of his Majeſty's High Commiſſioner, and Lords of his Majeſty's Privy-Council, whereof the Pannel had the Honour to be a Member, Perſons committing and deſigning to commit Crimes making uſe of Times and Places, and Companies of another Nature, on whom their Suggeſtions and Inſinuations may prevail. But it is a Violence to the common Reaſon of Mankind, to pretend, that a Perſon of the Pannel's Quality, having the Honour to ſerve his Majeſty in moſt eminent Capacities, and devoted to his Majeſty's Intereſt and Service, beyond the ſtricteſt Ties of Duty and Allegiance, by the tranſcendant Favours he had received, that the Pannel in thoſe Circumſtances, and in Preſence of his Royal Highneſs and Lords of Privy-Council, ſhould deſign to declaim, and *de facto*, declaim againſt and defame his Majeſty's Government: To ſuppoſe this is abſolutely contradictory to the common Principles and Practices of Law, and common Topicks of Reaſon.

And as to *Balmerino*'s Caſe, it is anſwered, that the Lords of Juſticiary are humbly deſired to call for and peruſe the ſaid Petition and Books of Adjournal, which was certainly a defamatory Libel of his Majeſty's Father, of bleſſed Memory, and of the States of Parliament in the higheſt Degree, bearing expreſsly, that there was nothing deſigned but an Innovation of the Proteſtant Religion, and the Subverſion and over-turning the Liberties and Privileges of the Parliament, and the Conſtitutions of the Articles, and other Things of that Kind, which made certainly of itſelf a moſt villainous and execrable Libel, containing the higheſt Crimes of *Treaſon* and *Perduellion*, and was not capable of any good Senſe or Interpretation, but was abſolutely pernicious and deſtructive: So that it is in vain to pretend, that the ſaid Libel did contain Prefaces and Proteſtations of Loyalty, which no Law regards, even *in ſimplici injuria & maledicto*, though committed by a private Perſon, *cum præfatione ſalvo honore*, or the like, and which were certainly ridiculous to ſuſtain in a Libel concerning Crimes of Treaſon.

And whereas it is pretended, that though others were guilty of theſe Crimes, it does not excuſe the Earl: And that the Lords of Privy-Council cannot remit Crimes; and the Negligence of the King's Officers cannot prejudge his Intereſt. It is anſwered, The Pannel is very confident, that neither the Lords of his Majeſty's Privy-Council, conſiſting of Perſons of eminent Loyalty and Judgment, nor his Majeſty's Officers, were capable of any ſuch Eſcape as is pretended: And if the Tenor of the Pannel's Explication did in the leaſt import the high and infamous Crimes libelled, as beyond all peradventure it does not, it were ſtrange, how the ſame being contained in the foreſaid Vindication, and the whole Clauſes thereof juſtified, that this ſhould have been looked on as no Crime, and allowed to be publiſhed. And the Pannel neither does, nor needs to make farther Uſe thereof, but to convince all diſintereſted Perſons, that his Explication can import no Crime.

And whereas it is pretended, That the Crime of Treaſon is inferred from the fundamental Laws of the Kingdom, and from that Clauſe of the Pannel's Explication, whereby he declares, he is *not bound up by any Thing in this Oath not to endeavour any Alteration in a lawful Way:* Which being an indefinite Propoſition, is equipollent to an univerſal, and is upon the Matter coincident with a Clauſe which was rebellious in its Conſequences, contained in the ſolemn League and Covenant. It is anſwered, that it is ſtrange, how ſuch a plain and innocent Clauſe, whereby, beyond all Queſtion, he does expreſs no more than was naturally imported in the Oath itſelf, whether expreſt or not, ſhould be made a Foundation to import the Crime of Treaſon, which no Lawyer ever allowed, except where it was founded upon expreſs Law & *Luce Meridiana Clarior:* And indeed if ſuch Stretches and Inferences can make Men guilty of Treaſon, no Man can be ſecure. And the Words in the Pannel's Declaration are plain and clear (yet *non ſunt cavillanda)* and import no more, but that, in his Station, and in a lawful Way, and conſiſtent with the Proteſtant Religion and his Loyalty, he might endeavour any Alteration to the Advantage of Church and State. And was there ever any loyal or rational Subject, that does, or can doubt, that this is the natural import of the Oath? And indeed it were a ſtrange Oath, if it were capable of another Senſe, and being deſigned for the Security of the Government, ſhould bind up Men's Hands to concur for its Advantage. And how was it poſſible, that the *Pannel*, or any other in the Capacity of a Privy-Councillor, or a Member of the Parliament, would have ſatisfied his Duty and Allegiance in other Terms? And whereas it is pretended, That there was the like Caſe in the pretended League and Covenant, it is anſwered, the Aſſertion is evidently a Miſtake; and though it were, the Argument is altogether inconſequential: For that League and Covenant was treaſonable in itſelf, as being a Combination entered into without his Majeſty's Authority, and was treaſonable in the Gloſſes that were put upon it, and was impoſed by abſolute Violence on the Subjects of this Kingdom, and how can the *Pannel* be in the leaſt ſuppoſed to have had any Reſpect to the ſaid League and Covenant, when he had ſo often taken the Declaration, diſowning and renouncing it, as an unlawful and ſinful Oath, and concurred in the many excellent Laws and Acts of Parliament made by his Majeſty, condemning the ſame as ſeditious and treaſonable? And whereas it is pretended, that the *Pannel* is guilty of Perjury, having taken the Oath in another Senſe than was conſiſtent with the genuine Senſe of the Parliament, and that by the Authority cited, he doth *commento eludere Juramentum*, which ought always to be taken in the Senſe of him that impoſeth the Oath: It is anſwered, the Pretence is moſt groundleſs, and Perjury never was, nor can be inferred, but by the Commiſſion, or Omiſſion of ſomething directly contrary to the Oath. And although it is true, that where an Oath is taken, without any Declaration of the expreſs Senſe of the Perſons who take it, it obliges *ſub pœna Perjurii*, in the Senſe, not of the Taker, but of the Impoſer of the Oath, becauſe expreſſing no Senſe, Law and Reaſon preſumes there is a full Acquieſcence in the Senſe and Meaning of the Impoſer of the Oath: And then if an Oath be not ſo taken, he that takes it is guilty of Perjury. Yet there was never Lawyer nor Divine, Popiſh or Proteſtant, but agree in this, that whatever be the Tenor of the Oath, if before the taking thereof, the Party in expreſs Terms does publickly and openly declare the Senſe in which he takes it, it is impoſſible it can infer the Crime of Perjury againſt him in any other Senſe, this not being *Commentum excogitatum*, after the taking of the Oath. And if this were not ſo, how is it poſſible, in Senſe and Reaſon, that ever any Explication or Senſe could ſolve the Scruples of a Man's Conſcience? For it might be always pretended, that notwithſtanding of the expreſs Senſe wherein he took it, he ſhould be guilty of Perjury from another Senſe. And that this is the irrefragable Opinion of all Divines, of whatever Perſuaſion, is not only clear from the Authority abovementioned, even thoſe who allow of reſerved Senſes, but more eſpecially by the univerſal Suffrage of all Proteſtant Divines, who though they do abominate all Thoughts of Subterfuges or Evaſions, after taking of the Oath, yet they do always allow and adviſe, for the Safety and Security of a doubting and ſcrupulous Conſcience, that they ſhould expreſs and declare, before the taking of the Oath, the true Senſe and Meaning wherein they have Freedom to take it; and for which *Sanderſon de Juramento* is cited. *Prelect.* 6. *Sect.* 10. *Page* 75. where his Words are, *ſane ut inter Jurandum omnia recte fiant, expedit ut de verborum ſenſu inter omnes partes quarum intereſt liquido conſtet, quod veteribus dictum, liquido Jurare.* And an Oath being one of the higheſt Acts of Devotion, containing *Cultam Latriæ*, there is nothing more conſonant to the

Nature of all Oaths, and to that Candour, Ingenuity, and Chriſtian Simplicity, which all Law and Religion requires in ſuch Caſes.

The King's Advocate's third Plea againſt the Earl of Argyle.

HIS Majeſty's Advocate conceives he has nothing to anſwer, as to Depraving, Leaſing-making, and Miſinterpreting, *&c.* ſave that this Oath was only deſigned to exclude Recuſants; and conſequently the *Pannel* may thereby be debarred from his Offices, but not made guilty of a Crime. To which he triplies, 1. If ever the Earl had ſimply refuſed, that had been true; but that did not all excuſe from defaming the Law, for a Defamer is not puniſhed for refuſing, but for defaming.

2. If he had ſimply refuſed, the Government had been in no more Hazard; but if Men will both retain their Places, and yet take the ſame in ſuch Words as ſecure not the Government, it were ſtrange to think, that the Deſign of the Law being to ſecure againſt Men's poſſeſſing who will not obey, that yet it ſhould allow them Poſſeſſion who do not obey. Nor is the Refuſer here in a better Caſe than the Earl, and others, who offered to obey, becauſe it is the defaming the Law, as ridiculous and inconſiſtent with that Proteſtant Religion, and Leaſing-making betwixt the King, the Nobility, and the People, the miſconſtruing, and miſrepreſenting, as hath been formerly urged, that puts the Earl in a worſe Condition. And all thoſe Arguments might be as well urged for any who had uncontrovertedly contravened theſe Acts, as for the *Pannel.*

Whereas it is pretended, That the King emitted a Proclamation to ſatisfy Diſſenters; it is anſwered, That the Proclamation was deſigned for none who had been Members of Parliament, and ſo ſhould have known the Senſe; but it was deſigned for meer Ignorants, not for ſuch as had defamed the Law, which is ſtill here charged upon the *Pannel.*

As to the Article of Treaſon, it is conceived, That it is unanſwerably founded upon the Common-Law, diſcharging all Men to make Alteration of the Government. As to which there needs no expreſs Statute, that being the very Eſſence of Government, and needing no Laws. Like as it falls *poſitively* under all the Laws that diſcharge the aſſuming the Royal or Legiſlative Power; for to alter the Government is inſeperably united to the Crown. Like as the Subſumption is as clear, the expreſs Words not bearing, That the Earl reſerves to himſelf a Power to propoſe to his Majeſty any Alterations, or to concur to ſerve his Majeſty in making Alterations; but owning in moſt general and arbitrary Terms, to wiſh and endeavour any Alteration he ſhould think fit for the Advantage of Church or State, and not determining any Thing that could bind him otherwiſe than according to his own Pleaſure: For the Word [*lawful*] is ſtill ſubjected to himſelf, and has ſubjoined to it, *as he ſhould think fit*, which governs the whole Propoſition; and in that Senſe, and as the Words are here ſet down, the greateſt Rebel in *Scotland* will ſubſcribe that Explanation: For there is no Man but will reſtrict himſelf to a lawful Obedience, providing he be Judge of the Lawfulneſs. And ſeeing all Oaths propoſed for the Security of Government require a certain depending upon the Legiſlature, and not upon the Taker, it is impoſſible that that End could be attained by any Qualification, how ſpecial ſoever, which is made to depend abſolutely upon the Taker, and not upon the Legiſlator. And we have often ſeen, how little Security there is in thoſe ſpecious Words, the very Covenant itſelf having not only the very Words above-repeated, but atteſting all the World to be Witneſſes to their Loyalty and Sincerity. And as to the former Inſtances, *viz.* riſing in Arms, or oppoſing the lawful Succeſſor, there is no Covenanter in *Scotland*, but will ſay, he will do neither, but in a lawful Way, and in his Station, and in a Way conſiſtent with his Loyalty, for a Man were mad to ſay otherwiſe: But yet when they come to explain this, they will only do it as they think fit, and will be Judges themſelves; and then will tell us, that defenſive Arms are lawful, and that no Popiſh Succeſſor ſhould ſucceed, nor no Succeſſor, unleſs he ſubſcribe the Covenant. And whereas it is pretended, that no Clauſe in the *Teſt* does exclude a Man from making Alterations; it is anſwered, that the Alterations which the *Teſt* allows are none at all but in Subordination to Authority. And as to the two Points above-mentioned, it excludes all Alterations as to theſe Points. And as to the making fundamental Alterations, this Reſervation allows to make any Alteration, and conſequently fundamental Alterations; to preclude which Libertiniſm, this excellent Law was invented.

Whereas it is pretended, that the *Pannel* deſigns not to add any Thing as a Part of the Law, but as a Part of his Oath, it is duplied, ſince the Oath is a Part of the Law, whoever adds to the Oath, adds to the Law.

Whereas it is pretended, that the Crime of Perjury cannot be inferred here, becauſe all Divines allow, that the Taker of an Oath is ſtill allowed to declare in what Senſe he takes the Oath; and that this is clear from *Sanderſon, Page* 175. It is triplied, that where there are two dubious Senſes, Lawyers and Divines allow, that the Taker ſhould clear himſelf, which of the two he ſhould take; which is very juſt, becauſe to which ſoever of the two he determines himſelf, the Legiſlator in that Caſe is ſure of him. But here it is not pretended, that there are two Senſes; nor does the *Pannel* declare in which of the two he takes it, or in what clear Senſe at all he takes it, which is indeed *liquido Jurare.* But here the *Pannel* neither condeſcends, what particular Clauſe of the *Teſt* is unclear; nor after he has condeſcended upon the Articles, does he condeſcend upon the Senſe, but in general myſterious Words, where he can neither be followed nor found out, he only takes it in ſo far as it is conſiſtent with itſelf and the Proteſtant Religion, reſerving the ſquaring all by his own Loyalty, as he did in the beginning declare, that he took it in his own Senſe; by which general Senſe, neither is the Government ſecure of any Thing it does enjoin, nor could he be puniſhed if he tranſgreſſed. Nor can it be doubted, but Perjury may be inferred by any equivocal or evading Senſe, *inter Jurandum*, as well as by breaking an Oath afterwards: Which is very clear from *Sanderſon, Pag.* 138. The Words whereof are, *alterum Perjurii genus eſt inter Jurandum detorquere verba*; and which is farther clear by the 28th *Page*; but above all, from the Principles of Reaſon, and the Neceſſity of Commerce and Government: For if Men may adhibit ſuch Gloſſes, even whilſt they ſwear, as may make the Oath uſeleſs, what Way will either Government or Commerce be maintained? And he deceives as much that deceives in ſwearing *ſalvis verbis*, as he who after he has ſworn, does break the Oath, nay and more too, becauſe the Breaking may come from Forgetfulneſs, or other Accidents: But the evading by general Clauſes, which bind no Man, does from the firſt Inſtance originally make all Oaths uſeleſs and dangerous, and that this Interpretation eludes the Oath abſolutely is very clear from what hath been formerly debated. For it may be argued, that the Earl broke the Oath in ſo far as the firſt Day he ſwears the Oath, which bears to be without any Evaſion (and muſt be ſo, notwithſtanding of whatever he could ſay:) and the next Day he gives in this Evaſion, which is a downright Violation of that Oath, and inconſiſtent with it. Nor was this Oath forced, but voluntarily emitted, to keep his own Places. And it was the greater Crime that it was done in the Council, becauſe that was to make it the more publick, and conſequently the more to miſrepreſent the Government.

After this Debate, which, according to the Cuſtom of the Court, was *verbatim* dictate by the Advocates of either Side, and written by the Clerk, and ſo took up much Time, and the Court having ſat at leaſt twelve Hours without Intermiſſion, it adjourned till the next Day, being *Tueſday* the 13th of *December*, at two of the Clock in the Afternoon: And then the Earl being again brought to the Bar, the following *Interloquutour* (that is Judgment and Sentence) of the *Lords of Juſticiary*, on the foregoing Debate, was read, and pronounced in open Court.

Edenburgh, December 12. 1681.

The Interloquutour of the Lords of Juſticiary.

THE Lords, Juſtice-General, and Commiſſioners of the Juſticiary, having conſidered the Libel and Debate, they ſuſtain the Defence proponed for the Earl of *Argyle*, the Pannel, in relation to the Perjury libelled, *viz. That he emitted this Explanation at, or before his taking the* Teſt, *firſt before his Royal Highneſs, his Majeſty's High Commiſſioner, and the Lords of his Majeſty's Privy-Council, relevant*, to elude that Article of the Libel.

The Lords ſuſtain the Libel, as being founded upon the Common-Law, and Explication libelled, and upon *Act* 130. *Parl.* 8. *James* VI. to infer the Pain of *Treaſon.*

They likewiſe ſuſtain the Libel, as founded upon the 10th *Act, Parl.* 10. *James* VI. to infer the Pain of Death, and likewiſe ſuſtain that Part of the Libel anent *Leaſing-making*, and *Leaſing-telling*, to infer the particular Pains mentioned in the ſeveral Acts libelled.

And repel the whole other *Defences, Duplies*, and *Quadruplies*, and remits the Libel, with the Defences anent the Perjury, to the Knowledge of an Aſſize.

Thereafter the *Aſſize*, that is the *Jury*, being conſtitute and ſworn, *viz.*

Liſt of the Aſſizers.

Marquis Montroſe,
E. of Middletonn,
E. of Airlie.
E. of Perth, P. C.
E. of Dulhouſie.

E. Roxburgh, P. C.
E. Dumfries.
E. Linlithgow, P. C.
Lord of Lindoors,
Lord Sinclare,

Lord Bruntiſland,
Laird of Goſfoord,
Laird of Claverhouſe,
Laird of Balnamoon,
Laird of Park Gordon.

HIS Majeſty's Advocate adduced four Witneſſes to prove the Points of the Indictment, remitted to the Knowledge of the *Aſſize, viz. John Drummond* of *Lundie*, then Governor of the Caſtle of *Edenburgh*, now Treaſurer-depute, Sir *William Paterſon*, and Mr. *Patrick Menzies*, Clerks of the Privy-Council, and *H. Stevenſon*, their under Clerk; who deponed, *That on the 4th of* November, *the Earl did give in an unſubſcribed Explanation of the* Teſt, *which he refuſed to ſign*; one of the Witneſſes alſo adding, *that he heard him make the ſame Explanation the Day before in Council, and that it was there accepted.*

Then his Majeſty's Advocate aſked, if the Earl would make Uſe of his *Exculpation* for eliding the Perjury libelled, *to wit*, that he had emitted the ſame Explanation, before taking the *Teſt*, in Preſence of his Royal Highneſs and the Council. To which the Earl anſwered, that, ſeeing they had ſuſtained the Libel, as to the *alledged Treaſon*, he would not trouble them about the *Perjury:* Eſpecially the Matter of Fact, referred by the *Interloquutour* to his Probation, being of itſelf ſo clear and notour.

Upon this Silence, the Advocate, taking Inſtruments, Proteſts, for an *Aſſize of Error*, in Caſe the *Aſſizers* ſhould *aſſoil* or acquit. Whereupon the *Aſſize* removing was incloſed: And, after ſome Time, returned *their Verdict*, which was read in open Court of this Tenour.

The Verdict of the Aſſize.

THE Aſſize *having elected and choſen the* Marquis *of* Montroſe *to be their* Chancellor, *they all in one Voice find the Earl of* Argyle *Guilty, and culpable of the Crimes of* Treaſon, Leaſing-making, *and* Leaſing-telling, *and find, by Plurality of Votes, the ſaid Earl Innocent and not Guilty of* Perjury.

And then the *Court* again adjourned: And the Privy-Council wrote the following Letter to his Majeſty.

Halyrudhouſe, December 14, 1681.

The Council's Letter to the King, deſiring Leave to pronounce Sentence againſt the Earl of Argyle.

May it pleaſe your Sacred Majeſty,

'IN Obedience to your Majeſty's Letter, dated the 15th of *November* laſt, we ordered your Majeſty's Advocate to inſiſt in that 'Proceſs, raiſed at *your Inſtance*, againſt the Earl of *Argyle:* And having 'allowed him a long Time for his Appearance, and any *Advocates* he pleaſed

‘ to employ, and Letters of Exculpation, for his Defence: He, after *full Debate*, and *clear Probation*, was found guilty of Treaſon, Leaſing-making betwixt your Majeſty, your Parliament, and your People, and the reproaching of your Laws and Acts of Parliament. But becauſe of your Majeſty's Letter, ordaining us to ſend your Majeſty a particular Account of what he ſhould be found guilty of, before the pronouncing of any Sentence againſt him, we thought it our Duty to ſend your Majeſty this Account of our and your Juſtices Proceedings therein; and to ſignify to your Majeſty, with all Submiſſion, that it is uſual and moſt fit for your Majeſty's Service and the Advantage of the Crown, that a Sentence be pronounced, upon the Verdict of the Aſſize, without which the Proceſs will be ſtill imperfect. After which, your Majeſty may, as you in your Royal Prudence and Clemency ſhall think fit, ordain all farther Execution to be ſiſted, during your Majeſty's Pleaſure: Which ſhall be dutifully obey'd by

Your Majeſty's moſt humble,
moſt faithful, and moſt obedient,
Subjects and Servants,

Sic Subſcribitur,

Alex. St. *And.*
Athol,
Douglas.
Montroſe,
Glencairn,
Wintoun,
Linlithgow.
Perth,
Roxburgh,
Dumfries,
Strathmore,
Airlie,
Ancram,
Livingſtoun,
Jo. Edinburgenſ.
Elphingſtoun,
Dalziell,
Geo. Gordon,
Ch. Maitland,
G. Mekenzie,
Ge. Mekenzie,
Ramſay,
J. Drummond.

The King's Anſwer to the Council's Letter.

C. R. 18 *Decemb.* 1681.

‘ MOST dearly, *&c.* having this Day received your Letter of the 14th Inſtant, giving an Account that our *Advocate* having been ordered by you to inſiſt in that Proceſs raiſed at our Inſtance againſt the *Earl* of *Argyle*, he was, after full Debate and clear Probation, found guilty of *Treaſon*, and *Leaſing-making, betwixt us, our Parliament, and our People*, and the *reproaching our Laws and Acts of Parliament:* We have now thought fit, notwithſtanding of what was ordered by us in our Letter to you of the 15th of *November* laſt, hereby to authorize you to grant a Warrand to our Juſtice General, and the remanent Judges of our Juſtice Court, for proceeding to pronounce a *Sentence*, upon the *Verdict* of the Jury, againſt the ſaid *Earl*; nevertheleſs it is our expreſs Pleaſure, and we do hereby require you, to take Care, that all Execution of the Sentence be ſtopped, until we ſhall think fit to declare our further Pleaſure in this Affair: For doing whereof, &c.’

Which Anſwer being read in *Council* on the *Thurſday*, and the *Court of Juſticiary*, according to it's laſt *Adjournment*, being to meet upon the *Friday*, after a little Heſitation *in Council*, whether the *Court of Juſticiary* could proceed to the Sentence of Forfaulture againſt *the Earl*, he being abſent, it was reſolved in the *Affirmative*; and what were the Grounds urged, either of *Heſitation* or *Reſolution*, I cannot preciſely ſay, there being nothing on Record that I can learn. But that you may have a full and ſatisfying Account, I ſhall briefly tell you what was ordinarily diſcourſed, a Part whereof I alſo find in a Petition given in by the Counteſs of *Argyle* to the Lords of Juſticiary, before pronouncing Sentence, but without any Anſwer or Effect. It was commonly ſaid, that by the Old Law, and Cuſtom, the *Court of Juſticiary* could no more in the Caſe of *Treaſon* than of any other *Crime* proceed further againſt a Perſon not compearing, and abſent, than to declare him *Out-Law* and *Fugitive:* And that, albeit it be ſingular, in the Caſe of Treaſon, that the Trial may go on, even to a final Sentence, though the Party be abſent, yet ſuch Trials were only proper to, and always reſerved for *Parliaments:* And that ſo it had been conſtantly obſerved until after the Rebellion in the Year 1666: but there being ſeveral Perſons *notourly* engaged in that Rebellion, who had eſcaped, and thereby withdrawn themſelves from *Juſtice*, it was thought, that the Want of a *Parliament*, for the Time, ought not to afford them any Immunity; and therefore it was reſolved by the *Council*, with Advice of the *Lords of Seſſion*, that the *Court of Juſticiary* ſhould ſummond, and proceed to Trial, and Sentence, againſt theſe Abſents, whether they compeared or not, and ſo it was done: Only becauſe the Thing was new and indeed an Innovation of the old Cuſtom, to make all ſure, in the *firſt Parliament* held thereafter, in the Year 1669, it was thought fit to confirm theſe Proceedings of the *Juſticiary*, in that Point, and alſo to make a perpetual Statute, that, in Caſe of *open Rebellion, and riſing in Arms* againſt the King and Government, the *Treaſon*, in all Time coming, might, by an Order from his Majeſty's Council, be tried, and the Actors proceeded againſt by the Lords of *Juſticiary*, even to final Sentence, whether the Traitors compeared or not. This being then the preſent Law and Cuſtom, it is apparent in the *firſt* Place, that the *Earl's Caſe*, not being that of an *open Rebellion*, and *riſing in Arms*, is not at all comprehended in the Act of Parliament, ſo that it is without Queſtion that, if in the Beginning he had not entered himſelf Priſoner, but abſented himſelf, *the Lords of Juſticiary* could not have gone further, than, upon a Citation, to have declared him *fugitive.* But *others* ſaid, that the Earl having both entered himſelf Priſoner, and compeared, and after *Debate* having been *found guilty*, before he made his Eſcape, the Caſe was much altered. And whether the *Court* could, notwithſtanding of the Earl's intervening Eſcape, yet go on to Sentence was ſtill debatable; for it was alledged for the *Affirmative*, that ſeeing the *Earl* had twice compeared, and that, after *Debate*, the *Court* had given *Judgment*, and the *Aſſize* returned their *Verdict*, ſo that nothing remained but the pronouncing of *Sentence*, it was abſurd to think that it ſhould be in the Power of the *Party*, thus *accuſed*, and *found guilty*, by his Eſcape to fruſtrate Juſtice, and withdraw himſelf from the Puniſhment he deſerved. But on the other Hand it was pleaded for the Earl; that firſt, it was a fundamental Rule, *that until once the Cauſe were concluded, no Sentence could be pronounced:* Next that it was a ſure *Maxim* in Law, that in *criminal Actions there neither is nor can be any other Concluſion of the Cauſe than the Party's Preſence and Silence*; ſo that, after all that had paſt, the Earl had ſtill Freedom to add what he thought fit, in his own Defence, before pronouncing Sentence, and therefore the *Lords of Juſticiary* could no more proceed to Sentence againſt him being *eſcaped*, than if he had been *abſent* from the Beginning, the *Cauſe* being in both Caſes equally *not concluded*, and the *Principle* of Law uniformly the ſame, *viz. that in Criminals* (except in Caſes excepted) *no final Sentence can be given in Abſence:* for, as the Law, in Caſe of *Abſence* from the Beginning, doth hold that *juſt Temper* as neither to ſuffer the *contumacious* to go altogether unpuniſhed, nor, on the other Hand, finally to condemn a *Party unheard.* And therefore doth only declare him fugitive, and there ſtops: So in the Caſe of an *Eſcape*, before Sentence, where it cannot be ſaid the Party was fully heard, and the *Cauſe concluded*, the Law doth not diſtinguiſh, nor can the Parity of Reaſon be refuſed. Admitting then that the *Cauſe* was ſo far advanced, againſt the Earl, that he was found *Guilty*; yet, 1. This is but a *declaring* of what the Law doth as plainly preſume againſt the Party abſent from the Beginning, and conſequently, of itſelf, can operate no further. 2*dly*, The finding of a Party *Guilty is no Concluſion* of the Cauſe. And, 3*dly*, As it was never ſeen nor heard that a *Party* was condemned *in Abſence* (except in excepted Caſes) whereof the Earl's is none, ſo he having eſcaped and *the Cauſe* remaining thereby *unconcluded*, the general Rule did ſtill hold, and no Sentence could be given againſt him.

It was alſo remembered, that the *Diets* and *Days* of the *Juſtice Court* are *peremptour*; and that in that Caſe, even *in Civil* far more in *Criminal Courts* and *Cauſes*, a *Citation* to hear *Sentence* is conſtantly required: Which induced ſome to think, that at leaſt the *Earl* ſhould have been lawfully *cited* to hear *Sentence* before it could be pronounced. But it is like this Courſe, as confeſſing a Difficulty, and occaſioning too long a Delay, was therefore not made uſe of. However, upon the whole, it was the general Opinion, that ſeeing the denouncing the Earl *Fugitive* would have wrought much more *in Law* than all that was commonly ſaid, at firſt, to be deſigned againſt him: And that *his Caſe* did appear every way ſo favourable, that impartial Men ſtill wondered how it came to be at all queſtioned, it had been better to have ſiſted the Proceſs, with his Eſcape, and taken the ordinary Courſe of Law, without making any more Stretches.

But, as I have told you, when the *Friday* came, the *Lords of Juſticiary*, without any Reſpect, or Anſwer given to the *Petition* above-mentioned, given in by the *Counteſs of Argyle* to the *Court* for a Stop, pronounced Sentence, firſt in the *Court*, and then cauſed publiſh the ſame, with all *Solemnity, at the Mercat Croſs of Edenburgh.*

‘ FOR as much as it is found by an Aſſize that *Archibald Earl of Argyle* is guilty and culpable of the Crimes of *Treaſon*, *Leaſing-making*, and *Leaſing-telling*, for which he was detained within the Caſtle of *Edenburgh*, out of which he *has now* ſince the ſaid *Verdict* made his Eſcape: Therefore the *Lords Commiſſioners of Juſticiary* diſcern and adjudge the ſaid *Archibald Earl of Argyle* to be execute to the Death, demained as a Traitor, and to underlye the Pains of *Treaſon*, and other Puniſhments appointed by the Laws of this Kingdom, when he ſhall be apprehended, at ſuch a Time and Place, and in ſuch Manner as his Majeſty in his Royal Pleaſure ſhall think fit to declare and appoint: And his *Name*, *Memory*, and *Honours*, to be extinct: And his *Arms* to be riven forth, and delete out of the *Books of Arms*, ſwa that his Poſterity may never have Place nor be able hereafter to bruick or joyſe any *Honour*, *Offices*, *Titles*, or *Dignities*, within this Realm in Time coming and to have forfaulted, amitted, and tint, all and ſundry his *Lands*, *Tenements*, *Annual-Rents*, *Offices*, *Titles*, *Dignities*, *Tacks*, *Steedings*, *Rowmes*, *Poſſeſſions*, *Goods*, and *Geere* whatſumever pertaining to him, to our *Sovereign Lord*, to remain perpetually with his *Highneſs in* Property. Which was pronounced for Doom—23 *December* 1681.’

After the reading and publiſhing whereof, the *Earl's Coat of Arms*, by Order of the *Court*, was alſo torn and ranverſed, both in the *Court* and at the *Mercat-Croſs:* Albeit ſome thought that this was rather a Part of *the Execution*, which his *Majeſty's Letter* diſcharges, than a neceſſary *Solemnity*, in the *Publication*; and the *Advocate* himſelf, ſays, p. 61. of his printed *Criminals*, that it ſhould only be practiſed in the Crime of *Perduellion* but not in other *Treaſons*.

He was afterwards retaken upon his Invaſion of *Scotland*, 1 *Jac.* II. and without any further Trial was executed by virtue of the above-mentioned Sentence *.

CXI. *The Trial of* George Boroſky *alias* Boratzi, Chriſtopher Vratz, *and* John Stern, *and* Charles-John *Count* Coningſmark, *at the* Old-Baily, *for the* Murder *of* Thomas Thynn, *Eſq*; February 28, 1681. 34 Car. II.

THERE having been an Indictment found at *Hicks*'s Hall by the Grand-Jury for the County of *Middleſex* againſt *Charles-George Boroſky*, *Chriſtopher Vratz*, and *John Stern*, for murdering *Thomas Thynn*, Eſq; and againſt *Charles-John* Count *Coningſmark*, as acceſſary before the Fact, the ſaid Perſons being in *Newgate*, were brought to the Bar to be arraigned and tried: And they being Foreigners, an Interpreter was ſworn to acquaint them, in a Language they underſtood, what they were accuſed of.

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* *Burnet*'s Hiſtory of his own Times, Vol. I. p. 631—633.

Clerk of the Crown. Charles Boroſky, hold up thy Hand. (*Which he did.*) *Chriſtopher Vratz*, hold up thy Hand. (*Which he did.*) *John Stern*, hold up thy Hand. (*Which he did.*) *Charles-John Coningsmark*, hold up thy Hand. (*Which he did.*)

‘You ſtand indicted in the County of *Middleſex* by the Names of *Charles-George Boroſky*, late of the Pariſh of St. *Martin*'s in the Fields, in the County of *Middleſex*, Labourer; otherwiſe called *George Boratzi*, of the ſame Pariſh and County, Labourer; *Chriſtopher Vratz* of the ſame Pariſh and County, Gentleman; *John Stern* of the ſame Pariſh and County, Gentleman; and *Charles-John Coningſmark*, of the ſame Pariſh and County, Eſq; otherwiſe called *John Coningſmark*, of the ſame Pariſh and County, Eſquire: For that you the ſaid *Charles-George Boroſky* alias *Boratzi*, *Chriſtopher Vratz*, and *John Stern*, not having God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, upon the twelfth Day of *February*, in the thirty fourth Year of the Reign of our Sovereign Lord King *Charles* the Second, with Force and Arms in the Pariſh of St. *Martin*'s in the Fields in the County of *Middleſex* aforeſaid, in and upon *Thomas Thynn*, Eſquire; in the Peace of God, and our ſaid Sovereign Lord the King, then and there being, feloniouſly, wilfully, and of your Malice aforethought, did make an Aſſault. And that thou the ſaid *George Boroſky* alias *Boratzi*, a certain Blunderbuſs of the Value of five Shillings, the ſaid Blunderbuſs being then charged with Gunpowder, and four Leaden Bullets; which ſaid Blunderbuſs thou the ſaid *George Boroſky* alias *Boratzi* in both thy Hands ſo as aforeſaid, loaden to and againſt the ſaid *Thomas Thynn* then and there hadſt and heldeſt. And that thou the aforeſaid *George Boroſky* alias *Boratzi*, knowing the Blunderbuſs aforeſaid, to be ſo as aforeſaid, charged with Gunpowder and Leaden Bullets, to and againſt the ſaid *Thomas Thynn* then and there, with Force of Arms, feloniouſly, wilfully and of thy Malice aforethought, didſt diſcharge and ſhoot off. And that thou the ſaid *George Boroſky* alias *Boratzi*, with the ſaid Leaden Bullets ſhot and ſent out of the Blunderbuſs aforeſaid, by the Violence and Force of the Gunpowder aforeſaid: And by thee the ſaid *George Boroſky* alias *Boratzi* ſo as aforeſaid diſcharged and ſhot off, the ſaid *Thomas Thynn* in and upon the right-ſide of the Body of the ſaid *Thomas Thynn*, near the ſhort Ribbs of the right-ſide of the Body of the ſaid *Thomas Thynn*, then and there feloniouſly, wilfully, and of thy Malice aforethought didſt ſtrike and wound; giving unto him the ſaid *Thomas Thynn* then and there with the Leaden Bullets aforeſaid, ſo as aforeſaid ſhot and ſent out of the Blunderbuſs aforeſaid by Force and Violence of the Gunpowder aforeſaid, by thee the ſaid *George Boroſky* alias *Boratzi*, ſo as aforeſaid diſcharged and ſent out, in and upon the right ſide of the Body of him the ſaid *Thomas Thynn*, near the ſhort Ribs, on the right-ſide of him the ſaid *Thomas Thynn* four mortal Wounds, every one of them of the Breadth of one Inch, and of the Depth of ſix Inches; of which ſaid mortal Wounds, he the ſaid *Thomas Thynn* from the ſaid twelfth Day of *February* in the thirty fourth Year aforeſaid, unto the thirteenth Day of the ſame Month of *February*, at the Pariſh of St. *Martin*'s in the Fields aforeſaid, did languiſh and lived languiſhing: On which ſaid thirteenth Day of *February*, in the thirty fourth Year aforeſaid, he the ſaid *Thomas Thynn* at the Pariſh of St. *Martin*'s in the Fields aforeſaid, of the mortal Wounds ſo as aforeſaid given, died. And that you the ſaid *Chriſtopher Vratz* and *John Stern*, then, that is to ſay at the Time of the Felony and Murder aforeſaid, by the ſaid *George Boroſky* alias *Boratzi*; ſo as aforeſaid feloniouſly, wilfully, and of Malice aforethought, done and committed, then and there feloniouſly, wilfully, and of your Malice aforethought, by Force and Arms were preſent, aiding, comforting, abetting, aſſiſting and maintaining the ſaid *George Boroſky* alias *Boratzi*, the Felony and Murder aforeſaid feloniouſly, wilfully, and of his Malice aforethought, to do and commit. And ſo you the ſaid *George Boroſky* alias *Boratzi*, *Chriſtopher Vratz* and *John Stern*, the ſaid *Thomas Thynn* in Manner and Form aforeſaid, feloniouſly, wilfully, and of your Malice aforethought didſt kill and murder, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. And that thou the ſaid *Charles-John Coningſmark* before the Felony and Murder aforeſaid, by the ſaid *George Boroſky* alias *Boratzi*, *Chriſtopher Vratz* and *John Stern* in Manner and Form aforeſaid, feloniouſly, wilfully, and of their Malice aforethought, done and committed, to wit, the ſaid twelfth Day of *February*, in the thirty fourth Year aforeſaid, at the Pariſh of St. *Martin*'s in the Fields aforeſaid, them the ſaid *George Boroſky* alias *Boratzi*, *Chriſtopher Vratz* and *John Stern* the Felony and Murder aforeſaid, in Manner and Form aforeſaid feloniouſly, to do and commit, feloniouſly, wilfully, and of thy Malice aforethought, didſt ſtir up, counſel, perſuade and procure, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity.’

Sir *Francis Pemberton.* *L. C. J.* Why you muſt read this to them now in their Language, or elſe they can't underſtand it.

L. C. J. North. You that are the Interpreter, tell them that you are going to interpret the Indictment to them by Degrees.

Mr. *Vandore.* Yes, my Lord, I will.

L. C J. Don't read all the Circumſtantials, but only the Subſtance of the Indictment.

Then the Clerk of the Crown went near the Bar, and dictated to the Interpreter deliberately, who interpreted it to the Priſoners.

L. C. J. Well, you have told them the Subſtance of it, that they are indicted for killing Mr. *Thynn.*——Mr. *Vandore*, Yes.

L. C. J. Well, what ſays the firſt Man?

Cl. of Cr. I aſked him if he be Guilty of the Murder whereof he ſtands indicted, and he ſays he is Not Guilty.

L. C. J. Does he ſay ſo?—Mr. *Vandore.* Yes, he ſays he is Not Guilty.

L. C. J. Why now tell him the Formality, that he muſt put himſelf upon the Jury here.

[*Then Sir* Nathanael Johnſon *was ſworn Interpreter.*]

L. C. J. Aſk him this Queſtion. Tell him he is accuſed of the Murder of Mr. *Thomas Thynn*; aſk him if he be Guilty or Not Guilty.

Mr. *Vandore.* He ſays he is Not Guilty, my Lord. I aſked him juſt now.

L. C. J. Then Sir *Nathanael Johnſon*, if you can make him to underſtand it, tell him, that our Manner of Trial here is by Twelve-Men, and that is by putting himſelf upon the Country, and therefore aſk him, how he will be tried. Tell him that the Method is by ſaying, *By God and the Country.*

Sir *N. Johnſon.* My Lord, he is a very dull kind of Man; he knows not how to anſwer, nor what to ſay; nor won't ſay any thing; that is the Truth of it.

L. C. J. Aſk him if he be willing to be tried after the Manner of the *Engliſh.*

Sir *N. Johnſon.* Yes, he ſays he is willing to be tried according to the Faſhion of the *Engliſh.*

L. C. J. North. He hath pleaded Not Guilty, and the other follows of courſe.

L. C. J. Aſk the other, the Captain, the ſame thing.

Sir *N. Johnſon.* He deſires a *French* Interpreter, for he ſpeaks *French.*

L. C. J. Surely here are enough People that underſtand *French*, but aſk him if he does not underſtand *Engliſh.*

Sir *N. Johnſon.* He can underſtand ſome, he ſays.

L. C. J. Then aſk him, whether he be Guilty, or Not.

Sir *N. Johnſon.* He ſays he is Not Guilty, my Lord.

L. C. J. Now aſk Mr. *Stern*, but firſt aſk the Captain how he will be tried.

Sir *N. Johnſon.* He ſays he will be tried by God, and half his own Country, and half *Engliſh.*

L. C. J. He ſhall have his Requeſt.

Sir *N. Johnſon.* He deſires one thing further.

L. C. J. Look you, Sir *Nathanael Johnſon*, you muſt tell him this; he ſhall be tried by half Foreigners and half *Engliſh*; that is it, I ſuppoſe, he deſires.

Sir *N. Johnſon.* My Lord, he deſires that there may be none of the Jury that are any thing a Kindred or Relation to Mr. *Thomas Thynn*, nor any particular Friend of his, and he is ſatisfied.

L. C J. No, there ſhall not, we will take Care of that. Now aſk Mr. *Stern* then the like Queſtion.

Sir *N. Johnſon.* My Lord, he ſays he is Not Guilty.

L. C. J. Aſk him too, how he will be tried; whether by a Jury?

Sir *N. Johnſon.* He ſays, he's content to be tried as the others are, by half Strangers and half *Engliſh.*

L. C. J. Now then aſk my Lord *Coningſmark* what he ſays.

Mr. *Thynn.* He ſpeaks *Engliſh*, my Lord.

L. C. J. But not well enough, may be, to underſtand the whole.

L. C. J. North. Sir *Nathanael*, what does he ſay?

Sir *N. Johnſon.* My Lord, he ſays it is a Concern of his Life, and therefore he deſires he may have not only one Interpreter, but others: He deſires he may have two or three, that they may make no Miſtake.

L. C. J. Very well.

Sir *N. Johnſon.* He ſays that I underſtand the *Dutch* Language; but his Life and Honour are concerned, and therefore he would have three or four.

L. C. J. Who would he have?

Sir *N. Johnſon.* Sir *Thomas Thynn* ſaid they had one that was brought by them.

Mr. *Thynn.* That is *Vandore*, who is ſworn already.

L. C. J. Look you, Sir *Nathanael*, tell my Lord, if he pleaſes, he ſhall have a *French* Interpreter; for I know he ſpeaksthat Language very well.

Sir *N. Johnſon.* My Lord, he ſays, that *High-Dutch* is his natural Language, and he can expreſs himſelf beſt in that.

[*Then one* Vanbaring *was called for by the Count, but did not appear.*]

L. Ch. Bar. Sir *N. Johnſon*, you muſt aſk the Count whether he be Guilty of the Indictment, as acceſſory before the Fact. *Wm. Montague*, Eſq;

Sir *N. Johnſon.* I have aſked, my Lord, and Not Guilty he anſwers.

Cl. of the Cr. How will you be tried?

Sir *N. Johnſon.* He ſays he will be tried by God and half his own Country, or half Foreigners and half *Engliſh*; and he deſires they may be Perſons of ſome Quality, as they uſe to treat Perſons of his Quality, and Strangers.

L. C. J. There ſhall be ſuch Strangers, tell him. You have Merchants of good Account, I ſuppoſe, upon this Pannel?

Under-Sheriff. Yes, my Lord, they are all ſuch.

Sir *N. Johnſon.* He deſires he may be tried diſtinctly from the others.

L. C. J. That cannot be: But look you. Sir, Pray tell my Lord this, that though the Evidence muſt be given, and the Jury muſt be charged all together, yet in this Caſe we will diſtinguiſh his Caſe to the Jury, if there be Occaſion.

L. C. Bar. And his Evidence will come diſtinct.

Mr. *Vandore.* My Lord, he aſks this Queſtion of your Lordſhip and this Honourable Court, if it be agreeable, and according to the Juſtice of this Nation, that my Lord may be allowed two or three Days Delay, becauſe he is to prepare himſelf and Witneſſes for his Trial.

Sir *N. Johnſon.* My Lord, he ſays this; his Witneſſes are not prepared, and he not having had Time to recollect himſelf, ſo as to fit himſelf for his Defence, therefore he begs the Favour of the Court, that he may have a Day or two's Time to recollect himſelf. He ſays he is to anſwer Circumſtances with Circumſtances, my Lord; he ſays he has ſome Witneſſes as to Circumſtances that are very material to anſwer ſuch Circumſtances as are brought againſt him; he does not underſtand the Law, my Lord, nor has had no Time to have any Counſel to inform himſelf.

L. C. J. You muſt tell him this, that which he is charged with is Matter of Fact, that none can inſtruct him in but himſelf; Counſel can do him no good in ſuch a Caſe as this.

Sir *N. Johnſon.* My Lord, he ſays, the Matters that are objected againſt him are only Circumſtances, my Lord, and they require an Anſwer, which he can do by other Circumſtances, and he deſires Time to recollect himſelf, two or three Days Reſpite; he deſires, if it were but a little Time, a Day or two.

Mr. *Thynn.* My Lord, our Witneſſes are all ready, and the Counſel inſtructed, and wait here to go on.

L. C. J. North. Look you; pray will you tell him, when the Trial is once begun, the Jury can neitheir eat nor drink till they have given their Verdict; that is the Law, and we can't change the Law, therefore we cannot allow him the Time he deſires. He knows what he is accuſed of, and has known it a good while, and has had Time to recollect himſelf and prepare himſelf.

Sir *N. Johnſon.* My Lord, he ſays, the Jury are not yet together, nor charged with him, and therefore till the Jury are charged, he thinks he may have Time, if your Lordſhip pleaſe to allow it.

L. C. J.

L. C. J. Look you, you muſt tell him, that he is to underſtand that here is but one Indictment againſt the Principals and himſelf; and we cannot try this by Piece-Meals; we cannot try the Principals now, and my Lord *Coninſgmark* another Time *.

Sir *N. Johnſon.* If it muſt be ſo, he ſays, he muſt throw himſelf upon your Lordſhip; he hopes he ſhall have nothing but what is juſt and fair, and he hopes your Lordſhip will be of Counſel to him, as the Faſhion of this Country is; if any Thing ariſes of Matter of Law, he deſires he may have the Advantage of it: And if he can't have a Day or two, he ſays the Innocency of his Caſe will protect him. Count *Coninſgmark* knowing how Innocent he is, won't ſtick for a Day or two, but he will be ready to be tried as your Lordſhip ſhall think fit; he has Innocence on his Side, and that will protect him.

L. C. J. Let my Lord know, that we will be careful in examining all Things that concern him.

Sir *N. Johnſon.* He ſays he does not fear it, my Lord, having to do with ſuch honourable Perſons, nor doubt it at all.

L. C. J. Then ſwear a Jury. But look you my Lord *Coningſmark*, conſider this; as the Gentlemen of the Jury come to be ſworn, if you do diſlike any of them, you may except againſt them.

Sir *N. Johnſon.* My Lord, he ſays, being altogether a Stranger here in *England*, and not knowing any of the Perſons, he begs the Favour of the Bench that he may have the Names of thoſe that are returned of the Jury, and a little Time to conſider of it.

L. C. J. That we cannot do: All we can do for you is, we will take as much Care as we can, that you may have indifferent Perſons, and Perſons of Quality.

L. C. J. North. Pray tell him, the Law gives him the Privilege of a peremptory Challenge.

Sir. *N. Johnſon.* He ſays, my Lord, he does not know who they are, but they may be Perſons that are touched, and may have ſomething of Evil-Will or Spleen againſt him. His Father ſerved againſt the King of *Denmark*, and againſt the *Poles* and the Papiſts, and his Father was a Proteſtant, and ſerved the Proteſtant Cauſe.

L. C. J. What Countrymen are they, Mr. Sheriff?

Under-Sheriff. They are *French* and *Dutch* moſt of them, I do not believe there is ever a *Dane* amongſt them.

L. C. J. We will call all *Frenchmen*, if he had rather have them than *Dutch*.

Sir *N. Johnſon.* He would very gladly have them all *High-Dutch*; if not, that he may have ſome.

L. C. J. I thought he had excepted againſt the *Dutch*.

Sir *N. Johnſon.* No, againſt the *Danes*; for his Father in the Wars burnt their Towns.

L. C. J. Examine them, as they come to the Book, if there be any of the *Roman* Catholick Religion, and don't let any ſuch be ſworn.

Mr. Sheriff *Pilkington.* There is none ſuch among them, I dare ſay.

L. C. J. Sir *N. Johnſon*, tell my Lord, he ſhall have no *Roman* Catholicks at all.

Sir *N. Johnſon.* He thanks your Lordſhip. He deſires he may have the Pannel to look upon, and he hopes that is an eaſy Favour.

L. C. J. Let him have the Pannel, if it will do him any good. He is a Stranger, ſatisfy him in what we can.

[*Which was delivered to him, and he looked it over.*]

L. C. J. Tell him, as the Jury is called, he ſhall have every one of the *Outlandiſhmen* and *Engliſhmen* brought before him.

Sir *N. Johnſon.* My Lord, he thanks you for this Favour.

L. C. B. Sir *N. Johnſon*, tell the Count, they call firſt an *Engliſhman*, then a Foreigner, and they ſhall be brought to view.

L. C. J. Pray, have you told the other Perſons, that their Time to Challenge is before the Jury is ſworn?——Sir *N. Johnſon.* The *Polander* ſays he can challenge none, becauſe knows none.

L. C. J. What ſay the reſt?——Mr. *Vandore.* They ſay they know no Body, and can except againſt no Body.

Cl. of Cr. Call Sir *Will. Roberts.* [*Who appearing, ſtood up.*]

L. C. J. My Lord *Coningſmark*, there is the Foreman.

Sir *N. Johnſon.* He has nothing to ſay againſt him.

L. C. J. Then hold him a Book, and ſwear him. [*Which was done.*]

Cl. of Cr. Call Mr. *Downing.*

Interpret. He ſays he is no Foreigner.

L. C. J. Then he muſt not be ſworn.

Cl. of Cr. *Moſes Charas.* [*Who appeared.*]

Interpret. He has nothing to ſay againſt him. But he himſelf ſays, he does not ſpeak *Engliſh*, but he deſires to ſpeak *French*.

Cl. of Cr. Then tell him in *French*, he muſt lay his Hand on the Book and be ſworn, and harken to his Oath.

Sir *Fr. Winnington.* We challenge him for the King.

L. C. J. For what Cauſe?

Sir *Fr. Winnington.* My Lord, we take it that we need not ſhew any Cauſe, unleſs there be any Want of the Number in the Pannel.

L. C. J. Then we muſt do him right, and tell him what Advantage the Law gives him. Tell my Lord, you that underſtand *Engliſh*, that this Gentleman is challenged for the King; and if the King ſhew any good Cauſe for it, he muſt not be ſworn, elſe he muſt. And the Way for him to cauſe the King's Counſel to ſhew their Cauſe, (if he deſire it) is to challenge all the reſt.

Mr. *Williams.* We wave our Challenge: for the Reaſon why we challenged him was, becauſe he did not underſtand *Engliſh*, which will be no Reaſon at all. [*Then he was ſworn.*]

Cl. of Cr. Sir *Henry Ingoldſby.*

Sir *N. Johnſon.* He challenges him, my Lord.

Cl. of Cr. Sir *William Gulſton.*

Sir *N. Johnſon.* He excepts againſt him, my Lord.

L. C. J. Does he challenge him in reſpect of what I ſaid to him about the *Outlandiſh* Gentlemen, that the King is to ſhew Cauſe? Or how does he challenge him?

Interpret. My Lord, he ſays he hears he is a Friend to Mr. *Thynn.*

L. C. J. Well, let him be paſſed by then.

Cl. of Cr. Sir *John Muſters.* [*Who did not appear.*]

Sir *N. Johnſon.* He ſays, my Lord, he only deſires indifferent Perſons.

Cl. of Cr. *Henry Herbert*, Eſq;——Sir *N. Johnſon.* He challenges him.

Cl. of Cr. *Richard Paget*, Eſq;——Sir *N. Johnſon.* He deſires to ſee him.

L. C. J. Let him be brought into the Middle, that he may look upon the Priſoners.

Interpret. He has nothing to ſay againſt him. [*Then he was ſworn.*

Cl. of Cr. *James Bucgone.*——*Interpret.* He excepts againſt him.

Cl. of Cr. *Claudius Derolee.*——*Interpret.* He excepts againſt him too.

Cl. of Cr. *Charles Beelow.*——*Interpret.* He ſays he looks like a Man, and he does not except againſt him. [*And he was ſworn.*]

Cl. of Cr. *Ralph Bucknall*, Eſq;——*Interpret.* He challenges him.

Cl. of Cr. *Thomas Earſby*, Eſq;——*Interpret.* He challenges him too.

L. C. J. Look you, Sir *Nath. Johnſon*, pray tell him he can challenge but twenty.

Sir *N. Johnſon.* He ſays very well; he will not do any more. He deſires the Favour, that thoſe that he challenges may not come near thoſe that are ſworn.

L. C. J. Well, it ſhall be ſo; we will take Care of it.

Cl. of Cr. *Richard Gowre*, Eſq;

Sir *N. Johnſon.* He excepts againſt him.

Cl. of Cr. *George Hocknall*, Eſq;

Interpret. He challenges him. [*But then the* Count *looking in his Paper, retracted the Challenge, and he was ſworn.*]

Cl. of Cr. *Peter Vandenhagen.*

Interpret. He ſays nothing to him. [*Then he was ſworn.*]

Cl. of Cr. *Walter Moyle*, Eſq;

Interpret. He does not challenge him. [*He was ſworn.*]

Cl. of Cr. *Chriſtopher Ripkey.*

Interpet. He does not challenge him. [*He was ſworn.*]

Cl. of Cr. *Thomas Henſlow*, Eſq;

Interpret. He does not except againſt him. [*Then he was ſworn.*]

Cl. of Cr. *Lewis Doncarr.*——*Interpret.* He challenges him.

Cl. of Cr. *Peter Lecane.* [*He did not appear.*]

David Collivaux.

Interpret. He challenges him, becauſe he knew Mr. *Thynn*, they ſay.

Cl of Cr. *Andrew Lodderley.*——*Interpret.* He challenges him.

Cl. of Cr. *James Burk.*——*Interpret.* He challenges him.

Cl. of Cr. *Daniel Griggion.*

Interpret. He does not challenge him. [*So he was ſworn.*]

Cl. of Cr. *Robert Jordan*, Eſq;——*Interpret.* He challenges him.

Cl. of Cr. *Lucy Knightley*, Eſq;——*Interpret.* He challenges him.

Cl. of Cr. *John Haynes*, Eſq;

Interpret. He does not except againſt him. [*He was ſworn.*]

Cl. of Cr. *Lewis le Count.*——*Interpret.* He challenges him.

Cl. of Cr. *John Belliew.*——*Interpret.* He challenges him.

Cl. of Cr. *James Frontein.*

Mr. *Williams.* We challenge him for the King.

Cl. of Cr. *John Maſſey.*——*Interpret.* He challenges him.

Cl. of Cr. *Andrew Primow.*——*Interpret.* He challenges him.

Cl. of Cr. *Nicholas Beufor.*——*Interpret.* He challenges him. He ſays they are all *Walloons*, and therefore he challenges them.

L. C. J. Why does he except againſt *Walloons*?

Interpret. Becauſe they have always ſerved againſt the *Swedes.*

Cl. of Cr. *John Lebarr.*

Interpret. He does not except againſt him. [*And ſo he was ſworn.*]

Cl. of Cr. *Cryer*, reckon theſe, *&c.*

Sir *Will. Roberts*, Bart.
Moſes Charas, Gent.
Richard Pagett, Eſq;
Charles Beelow, Gent.
Geo. Hocknall, Eſq;
Pet. Vandenhagen, Gent.
Walter Moyle, Eſq;
Chr. Ripkey, Gent.
Tho. Henſlow, Eſq;
Dan. Griggion, Gent.
John Haynes, Eſq; and
John Lebarr, Gent.

Then Proclamation for Information and Proſecution was made: And a Chair was ſet for the Count, *at his Requeſt.*

Cl. of Cr. Gentlemen, Look upon the Priſoners, you that are ſworn, and hearken to their Cauſe, they ſtand indicted *prout* in the Indictment, *mutatis mutandis*——againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment they have been arraigned, and thereunto have ſeverally pleaded, *Not Guilty:* And for their Trial, have put themſelves upon God and their Country; which Country you are. Your Charge is to enquire, whether they, or any of them are Guilty of the Offences whereof they ſtand indicted, or Not Guilty. And if you find them, or any of them Guilty, you are to find what Goods or Chattels, Lands or Tenements they had at the Time of the Felony and Murder committed, or at any Time ſince. If you find them or any of them Guilty, you are to enquire, whether they or any of them fled for it: If you find that they, or any of them fled for it, you are to enquire of their Goods and Chattels, as if you had found them Guilty; if you find them or any of them Not Guilty, nor that they did fly for it, you are to ſay ſo, and no more, and hear your Evidence. But if you acquit any one of the Principals——

L. C. J. That is a Miſtake, it muſt be all the Principals.

Cl. of Cr. If you acquit the Principals, you are not to enquire of *Charles-John Coningſmark* as Acceſſary before.

Mr. *Keene.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn of this Jury, *George Boroſky* alias *Boratzi*, *Chriſtopher Vratz*, and *John Stern*, the Priſoners at the Bar, ſtand here indicted; for that they not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the 12th Day of *February*, in the 34th Year of the Reign of this King, feloniouſly and voluntarily, and of their Malice aforethought, did make an Aſſault upon *Thomas Thynn*, Eſq; at the Pariſh of St. *Martin's in the Fields* in this County; and that the ſaid *George Boroſky* having in his Hands a Blunderbuſs, which he knew to be charged with four Leaden Bullets, did diſcharge it at Mr. *Thynn*, and gave him four mortal Wounds, of which Wounds he languiſhed till the 13th Day of *February*, and then died: And that they the ſaid *Chriſtopher Vratz* and *John Stern* were there preſent, aiding, aſſiſting and abetting him to commit the ſaid Felony and Murder; and ſo that they the ſaid *George Boroſky*, *Chriſtopher Vratz*, and *John Stern*, did of their Malice aforethought, in Manner aforeſaid, murder the ſaid *Thomas Thynn*. And *Charles-John Coningſmark*, the other Priſoner at the Bar, ſtands indicted, for that he before the Felony and Murder aforeſaid, ſo done and committed, to wit, the 12th Day of *February* aforeſaid, did of his Malice aforethought, move, incite, counſel, perſuade, and procure the ſaid *Boroſky*, *Vratz*, and *Stern*, to do that Murder, againſt the Peace of the King, his Crown and Dignity. To this Indictment they have ſeverally pleaded *Not Guilty*; and you are to enquire, whether they are Guilty, as they are charged, or no.

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* Moſt certainly they might, and it is frequently done, although there be but one Indictment, as in the Caſe of the Regicides and many other Caſes; but it was more for the Intereſt of the Count to try him then, though he was not aware of it himſelf.

Sir *Francis Withens*. My Lord and Gentlemen, I am of Counſel in this Caſe for the King, againſt the Priſoners at the Bar. There are three of them indicted as Principals in this Murder, the fourth as Acceſſary before. In this Caſe that is now before you, Gentlemen, I cannot chooſe but take Notice unto you, that a Murder of this nature has never been heard of to be perpetrated upon *Engliſh* Ground, both in reſpect of the Perſon murdered, and in reſpect of the Circumſtances of the Fact. For the Perſon murdered, was a Gentleman of that Quality and Eſtate, that he hath left but few Equals behind him. That this Man being in his Coach, ſhould be way-layed, ſurprized, and murdered, and this Murder committed in the midſt of our Streets, is that which works Amazement in all *Engliſh* Hearts. And our only Comfort upon this ſad Occaſion is, that there is not one Native of this Country found amongſt all thoſe that are accuſed to be Inſtruments in this barbarous Fact.

I did obſerve to you, Gentlemen, before, that there are three named to be Principals; *Boroſky*, whom for Diſtinction ſake, I ſhall call by the Name of the *Polander*, *Vratz*, who is called the Captain, and *Stern*, who is called the Lieutenant. *Boroſky* the *Polander*, we ſay, was the Man that diſcharged this Blunderbuſs againſt this worthy Gentleman that was ſlain; but though he was the only Man that diſcharged it, yet if we can ſatisfy you that *Vratz* and *Stern* were with him at the ſame Time, aiding and aſſiſting him when he gave the Blow, they are as much Principals as he that ſhot off the Gun. It will be natural to open to you what is ſaid againſt this Captain *Vratz*, he is a *Swede* by Birth, and did formerly belong to Count *Coningſmark*; he was a Retainer to him. Afterwards, I think in the War he was made a Captain. This Gentleman had been formerly in *England*, but at the laſt Time he came, which was three Weeks, or thereabouts, before the Murder was committed, his Lodging was in *King-Street* at *Weſtminſter*. This Captain *Vratz*, we ſhall prove, did often diſcourſe that he had a Quarrel with Mr. *Thynn*, that ſeveral Times before this Murder was actually done, he ordered his Servant to way-lay his Coach; and upon that very fatal Day, the 12th of *February*, when this unhappy Accident fell out, having Information that Mr. *Thynn* was gone out in his Coach, immediately he puts on his Boots, gives Order to his Servant to bring his Clothes to him at ſuch a Place, becauſe he ſhould remove his Lodging, he ſaid, that Night, that he ſhould bring his Clothes to the *Black-Bull Inn* in *Holborn*, and bring his Horſe thither too. When he went from his Lodging, the *Polander* went along with him, and they came to the *Black-Bull* in *Holborn*, where they met with *Stern*. We ſhall ſhew you, that theſe three Gentlemen being thus armed, one with a Blunderbuſs, the ſecond with Piſtols, and the other very well provided, rid out about ſix of the Clock, the Murder being committed about ſeven or eight. At their going out, they enquired which was their Way to *Temple-Bar*; they were ſeen to ride through the *Strand* to St. *James*'s, the Fact was done in the *Pall-Mall*, and we ſhall ſhew you the Way of it was thus; Mr. *Thynn* paſſing through the Street to go home in his Coach, three Perſons came riding up to the Coach Side, and while the one ſtopped the Horſes, immediately the Blunderbuſs was diſcharged into the Coach againſt Mr. *Thynn*, and gave him thoſe Wounds, of which the next Morning he died, Preſently theſe three Men ran away, but one of them let fall a Piſtol upon the Place, which I ſhall obſerve as a material Circumſtance againſt theſe Perſons, becauſe we ſhall prove whoſe the Blunderbuſs was. Theſe Things being done, this Murder committed, and they gone away, it began to work in People's Thoughts, and Circumſtances began to come out, that this Blunderbuſs ſhould be ordered to be brought by Captain *Vratz*, who had diſcourſed with many Perſons about the Quarrel he had with Mr. *Thynn*, and given Order to his Servant to way-lay his Coach; and theſe Perſons being rid out at that Time, there was a great Suſpicion that they did it. Great Care there was taken, and great Means uſed, as no doubt there would be, to apprehend the Malefactors; and by great Providence it was found out at laſt, that this Captain *Vratz*, according to his Word, had altered his Lodging, and was got to a Doctor's Houſe, that lived, I think, in *Leiceſter-Fields*. Being there ſurprized, and coming upon his Examination, he did not deny but he was there one of the three that was at the Place when and where Mr. *Thynn* was murdered, but he pretended, he did intend to fight him in a Duel, and kill him fairly, as he called it. But, Gentlemen, I muſt obſerve this to you, in my ſmall Time of Experience of the World, I never knew a Man go to fight a Duel, and carry out with him a Second with a Blunderbuſs. 'Tis not poſſible he ſhould go with ſuch a Deſign as he would inſinuate, but rather with an Intention of Murder. For the *Polander*, he came into *England* but the *Friday* before, and ſo we ſhall prove to you that which will ſtick hard upon the Count. Upon *Friday*, he being landed, he enquires for the young Count's Tutor, which was at an Academy of one Monſieur *Faubert*'s; and there he enquires for the Count's Secretary; he lay there, I think, that Night, and upon *Saturday* he was conveyed to the Count's Lodgings. There alſo he was lodged for one Night. The Count was pleaſed to beſpeak him a very good Sword, and a Coat for him, that he might be well armed, and there he lay on *Saturday* Night, as I ſaid, the Night before the Murder was committed. Upon *Sunday*, Gentlemen, there being a Meſſage ſent to this Doctor, where *Vratz* lay, the Night following that the Count would ſpeak with the Doctor, the Doctor came, and the Doctor and the *Polander* went away to Captain *Vratz*'s Lodging, and from thence to *Holborn*, to the *Black-Bull*, and the Captain was carried in as much Secrecy as he could, for he was carried in a Sedan; and I think we ſhall be able to prove, by the Perſons that carried him, that this was the Man. For the other Gentleman, *Stern*, the Lieutenant, as they call him, he was an ancient Acquaintance of Captain *Vratz*'s, had known him long ago in *England*, and complained to him, that Lodgings might be very dear; but the Captain told him, he had a Deſign; and if he would aſſiſt him as a brave Fellow, would maintain him, and he ſhould not want Money to bear all his Charges. But we ſhall prove that this was the third Perſon that rid out with the *Polander*, and the Captain in this Garb that I told you of, this Night that the Fact was done. And indeed, Gentlemen, upon their Examination, they have every one confeſſed the Fact; even the *Polander* confeſſed that he did ſhoot off the Blunderbuſs; and *Vratz* confeſſed that he was there, and the Lieutenant *Stern*; ſo that if there had been no more Evidence, it would have been ſufficient to maintain the Iſſue, and in our Circumſtances, it is more perhaps than could be expected. This, Gentlemen, is the principal Sum of the Evidence, that will be given againſt the three Principals. For the fourth, Gentlemen, Count *Coningſmark*, he is a Perſon of great Quality, and I am extraordinary ſorry to find the Evidence ſo ſtrong againſt him, as my Brief imports; I wiſh his Innocence were greater, and our Evidence leſs; for he is a Perſon of too great Quality, one would hope, to be concerned in a Thing of this Nature; but that he was the main Abettor and Procurer of this barbarous Buſineſs, we ſhall prove upon theſe Grounds: Firſt, That he had a Deſign upon Mr. *Thynn*'s Life; for, Gentlemen, coming into *England* about three Weeks before this Matter was tranſacted, firſt he lies in Diſguiſe, and lives private, and removes his Lodging from Place to Place frequently; that he ſent a Perſon to enquire of the *Swediſh* Reſident, whether, or no, if he ſhould kill Mr. *Thynn* in a Duel, he could by the Laws of *England* afterwards marry the Lady *Ogle?* So that Mr. *Thynn*'s Death was in Proſpect from the beginning. Gentlemen, we ſhall prove to you, as I did in ſome Meaſure open before, that the Count himſelf was pleaſed to give expreſs Order, that the *Polander* ſhould have a good Sword bought him; that before he came into *England*, he was very much troubled, by reaſon of the ſtormy Weather, for fear he ſhould be caſt away; that he lodged him in his own Lodging the Night before this Act was perpetrated; and that Captain *Vratz* was the Morning before, and immediately after, with the Count. Another thing, Gentlemen, that I had almoſt forgot: The Count was willing to be inſtructed in the Laws of *England*, and enquired, Whether a Man might lawfully ride out upon a *Sunday?* And being told, That after Sermon he might; he was very well ſatisfied; and the Day he enquired of it, was the Day that the Murder was committed. After the Thing was done, Count *Coningſmark*, the next Morning, pretended he was to go to *Windſor*, and leaves his Lodging; but inſtead of going to *Windſor*, (being ſtill in his Diſguiſe) he goes to *Rotherhith*, by the Water-ſide, and there, I think, he continues two or three Days in a black Peruke, (and that is Diſguiſe enough for ſuch a Gentleman) and afterwards he goes to *Graveſend*; but, I think, he was upon the Water ſome Time, before he thought it convenient to land; and there he was ſurprized in this Diſguiſe. And when he was ſurprized and taken, he ſhewed himſelf to be in great Diſorder; but being charged with the Fact, acknowledged nothing of the Matter. But how it ſhould come to paſs, that he ſhould lie ſo long diſguiſed, upon no Pretence that can be known, and afterwards to pretend that he had a Buſineſs to effect, and then he was to go into *France*, that will lie upon him to anſwer. But theſe are the inducing Evidences that we give to you; his keeping the *Polander* in his Houſe, his diſguiſing of himſelf, and his enquiring, Whether if he killed Mr. *Thynn*, he might not marry my Lady *Ogle?* His flight the next Day, and pretending to go to *Windſor*, when he went quite the other Way, and all in a Diſguiſe; and theſe Perſons not having any Appearance, or any Reaſon whatſoever, for any particular Quarrel to Mr. *Thynn*, but the Count having ſome Diſguſt to him, upon the Terms that the Witneſſes will tell you of by and by, and being related to the Count, we muſt leave it to you to judge, whether theſe Gentlemen did it ſingly and purely upon their own Heads, or whether they were not ſet upon it by the Count.

Sir *Fra. Winn*. My Lord, I ſhall not trouble you with repeating of our Evidence, but we will begin and call our Witniſſes, directly to prove the Murder done by theſe Gentlemen; we will prove the Fact downright upon them, and then we ſhall afterwards come to the Count.

Mr. *Williams*. My Lord, firſt we will direct Evidence to the Principals, and then to the Acceſſary. Call *William Cole* and *William Ellers*.

L. C. J. Swear ſome Perſon to interpret the Evidence that ſhall be given: I do it for the ſake of the *Aliens* that are of the Jury; for ſome of them underſtand no *Engliſh*, and they will not know what to make of the Evidence, if they do not repeat it to them in their own Language.

Then Vandore *and* Wright *were ſworn for the King.*

Sir *N. Johnſon*. My Lord deſires that the Doctor and the Taylor that are in Priſon may be ſent for, to be here, for they are Witneſſes for him.

Sir *Fra. Winn*. We deſire they may be here too, for they are Witneſſes for the King, and I believe they are here, my Lord.

Sir *N. Johnſon*. Mr. *Vandore* does not ſpeak *French*.

Sir *Will. Roberts*. Mr. *Craven* ſpeaks *Dutch* and *French* very well.

Mr. Craven *was ſworn.*

Sir *N. Johnſon*. The Count deſires the Favour of Pen and Ink.

L. C. J. Let the Count have Pen and Ink.

Mr. *Williams*. Call *William Cole* and *William Ellers*.

(*Who appeared, and were ſworn.*)

Which is *William Cole?* Set him up. Acquaint my Lord and the Jury how Mr. *Thynn* was aſſaulted, and the Manner of it.

Cole. My Lord, my Maſter was coming up St. *James*'s-*ſtreet* from the Counteſs of *Northumberland*'s.

Sir *Fra. Winn.* Name your Maſter.

Mr. *Williams.* Who was your Maſter?

Cole. Mr. *Thynn.* And I had a *Flambeau* in my Hand, and was going before the Coach, and coming along, at the lower End of St. *Alban*'s-*ſtreet*, I heard the Blunderbuſs go off; ſo upon that I turned my Face back, and ſaw a great Smoke, and heard my Maſter cry out he was murdered: And I ſee three Horſemen riding away on the right-ſide of the Coach, and I purſued after them, and cried out, Murder: I ran to the upper End of the the *Hay-market*, till I was quite ſpent, and was able to go no further; and turning back again, my Maſter was got into the Houſe, and I underſtood he was wounded: That is all I know.

Mr. *Williams.* You ſay you heard a Blunderbuſs go off, and turning back, you ſaw three Men riding away from the Coach?-----*Cole.* Yes.

Mr. *Williams.* Look upon the Priſoners at the Bar: Can you ſay all of them, or any of them were the Men?

Cole. No, I cannot; I did not ſee their Faces, but I ſaw the Horſe of one of them was a little Bay Horſe.

Mr. *Williams.* But do you take any of them Men to be one of the three?

Cole. I did not ſee any of their Faces.

Sir *Fra. Winn.* What Time of Night was it?

Cole. A Quarter after Eight.

Sir *Fra. Winn.* Pray what Day of the Week?-----*Cole. Sunday.*

Sir *Fra. Winn.* What Day of the Month?

Cole. The 11th or 12th of *February.*

Sir *Fra. Winn.* Then, where is *William Ellers?* Pray do you tell the Court and Jury how Mr. *Thynn* was wounded, and by whom, and what you know of it.

Ellers. My Lord, I came with my Maſter from St. *James*'s-*ſtreet*, from my Lady *Northumberland*'s, and as I came at St. *Alban*'s-*ſtreet*, there came three Men riding by the right-ſide of the Coach, and as they rid, one of them turned about, and bid me ſtop, you Dog; and juſt as I looked about, the Fire was let into the Coach upon my Maſter, and the Men ran away as faſt as they could.

Sir *Fra. Winn.* How many were there of them?

Ellers. There were three.

Sir. *Fra. Winn.* Were thoſe Men at the Bar, or any of them the Perſons?

Ellers. I cannot tell.

Sir *Fra. Winn.* What were the Words they ſaid when the Coach was ſtopped? Hold, hold, or ſtop, you Dog?

Mr. *Williams.* What Condition was your Maſter in then? Was he ſhot then?------*Ellers.* Yes.

Mr. *Williams.* We will give you ſome Evidence now out of their Examinations.

L. C. J. You had beſt give ſome Evidence of his Wounds.

Mr. *Williams.* Yes, we will. Call Mr. *Hobbs* the Surgeon.

L. C. J. Look you, Mr. *Craven*, you hear what theſe Witneſſes ſay, tell it to the Gentlemen of the Jury that are *Outlandiſh* Men, That theſe Witneſſes ſwear, there were three Men did do this Thing; the one of them ſtopped the Coach, and the other ſhot into it, but it was at that Time of Night, they could not know their Faces, and they all rid away.

Mr. *Craven.* My Lord, if you pleaſe, the Witneſſes may ſpeak by Degrees, and between every Witneſs I will give the Jury an Account.

L. C. J. Well, it ſhall be ſo; but they ſay no more than what I tell you, That three Men did do this.

Then he interpreted it to the Jury.

L. C. J. What ſays that Gentleman to you?

M. *Craven.* He ſays he hears that three Men did do it, but he ſays, he does not hear that they knew any of them.

Then Mr. Hobbs *was ſworn.*

Mr. *Williams.* Had you the ſearching of Mr. *Thynn*'s Body after it was hurt?-----Mr. *Hobbs.* Yes.

Mr. *Williams.* How did you find him?

Mr. *Hobbs.* I was with him, Sir, that Night he was wounded, and I found him ſhot with four Bullets, which entered into his Body and tore his Guts, and wounded his Liver and his Stomach, and his Gall, and wounded his great Guts, and his ſmall Guts, and broke one of the Ribs, and wounded the great Bone below.

Sir *Fra. Winn.* What Time came you to him?

Mr. *Hobbs.* About nine or ten of the Clock.

Sir *Fra. Winn.* Did he die of thoſe Wounds?

Mr. *Hobbs.* Yes he did die of thoſe Wounds.

Mr. *Williams.* Did you apprehend them all mortal, or any, or which of them?

Mr. *Hobbs.* I believe there was never a Wound but it might prove mortal.

Sir *Fra. Winn.* Now tell us what Day of the Week, and what Day of the Month it was.

Mr. *Hobbs.* It was *Sunday* Night, the 12th of *February*, I think.

L. C. J. What did you obſerve of the Bullets; was there any thing done to them more than ordinary?

Mr. *Hobbs.* I could not ſee any thing, I have them here, my Lord.

L. Chief Baron. Were they Iron or Lead?

Then Mr. Hobbs *delivered them into Court.*

Mr. *Hobbs.* Two of them, the little ones, may be Iron; for one of them went through a thick Bone, and yet there was no Impreſſion on it.

L. C. J. And this that has the Impreſſion, you think might be done againſt the Bones.-----Mr. *Hobbs.* Yes.

L. C. J. Was this left ragged on purpoſe to do the more Miſchief?

Mr. *Hobbs.* Which, my Lord?

L. C. J. This that is left at the End here. Would this be more mortal than another Bullet, or harder to heal?

Mr. *Hobbs.* No, but as they take up a greater Space in flying.

L. C. J. Would not the Raggedneſs hinder the Healing?

Mr. *Hobbs.* No, only bruiſe the Fleſh, which bruiſed Fleſh muſt come away before it can be healed. All Bullets wound by bruiſing of the Fleſh.

L. C. J. Well, theſe were the four Bullets that were found in Mr. *Thynn*'s Body?

Mr. *Hobbs.* I verily believe they are. Dr. *Lower* had them out of my Hands for a Day or two, but I believe them to be the ſame.

L. C. J. Was there any lodged in the Stomach?

Mr. *Hobbs.* Yes, one of the little ones.

L. C. J. Had they broke the great Bone?

Mr. *Hobbs.* Yes, the great Bone in the Bottom of the Belly.

L. C. J. Two of them?

Mr. *Hobbs.* A great one and a little one; two of them paſſed through that Bone, and lodged in the Back-bone.

L. C. J. Was any of them gone through the Body?

Mr. *Hobbs.* One of them lay between the Ribs and the Skin.

L. C. J. None were got quite through then?-----Mr. *Hobbs.* None.

Sir *Fra. Winn.* Call the Coroner, Mr. *White.*

L. C. J. Tell the Jury, Mr. *Craven*, what this Witneſs has ſaid.

[*Then he interpreted it.*

L. C. J. What ſays that Gentleman?

Mr. *Craven.* He ſays 'tis very well, he underſtands part of it.

L. C. J. Do the reſt of them underſtand it?

Sir *N. Johnſon.* He told it in *French* to the others.

L. C. J. Let Mr. *Hobbs* have the Bullets again when the Jury have ſeen them.

Then Mr. White *was ſworn.*

Sir *Fra. Winn.* Now we will aſk the Coroner a Queſtion or two. Pray will you acquaint my Lord, what you know of this Murder of Mr. *Thynn.*

Mr. *White* On the thirteenth of *February*, in the Afternoon, I ſat upon the Body of *Thomas Thynn*, Eſq; and I found he had four Holes on his right-ſide, behind his ſhort-ribs, and they ſeemed to be like Holes made with Bullets. And I gave Order to open the Body.

L. C. J. And there the Bullets were found?

Mr. *White.* There the Surgeon found them.

L. C. J. Were you by?

Mr. *White.* I was at the taking them out.

L. C. J. 'Tis fit that the *Polander* ſhould have one to interpret what is ſaid againſt him.

Mr. *Williams.* Captain *Vratz*, you hear what is ſaid, and underſtand it.

Interpreter. He ſays he does underſtand it.

Mr. *Williams.* Pray tell the *Polander* what is ſaid. That is, the two firſt Witneſſes ſay, Three Perſons aſſaulted the Coach, and one ſhot into the Coach, and by that Means Mr. *Thynn* was killed, by the Shot out of the Blunderbuſs: And the Surgeon does ſay, that theſe four Bullets were found in his Body.

[*Then it was interpreted to the* Polander.]

Interpreter. He ſays, my Lord, he cannot tell how many Bullets were in, he did not charge it himſelf, but he fired it, he ſays.

Sir *Fra. Winn.* He confeſſes he fired then.

Sir *W. Roberts.* My Lord, the Jury deſire to know if the *Pole* can tell who did charge it?-----*L. C. J. North.* Aſk him who charged it.

Interpreter. He can tell, my Lord, he ſays.

L. C. J. It will not be very material that, for his Evidence can charge no Body but himſelf.

Sir *Fra. Winn.* Now, my Lord, if you pleaſe, we will call thoſe Perſons, the Juſtices of the Peace that examined theſe Men upon their Apprehenſion, for the Murder of Mr. *Thynn.* Call Mr. *Bridgman* and Sir *John Reresby.*

[*Who were ſworn ſtanding upon the Bench.*]

Interpreter. My Lord, he ſays the Blunderbuſs was given him by the Captain.

Sir *Fra. Winn.* Mr. *Bridgman*, were you by at the taking of the Examination of theſe Perſons?

Mr. *Bridgman.* Yes, I was. And theſe were the Examinations that were taken.

Sir *Fra. Winn.* Were you by all the while?

Mr. *Bridgman.* Sir *John Reresby* and I did take theſe Examinations *. And I will read them if you pleaſe.

L. C. J. As to that, let it alone, if you pleaſe. Mr. *Bridgman*, when the *Polander* was examined concerning this Murder, what did he ſay?

Mr. *Bridgman.* He owned it, to the beſt of my Remembrance; but I refer to the Examination if I miſtake.

L. C. J. Look upon it to refreſh your Memory, Sir, and then tell us.

Mr. *Williams.* Look firſt what the *Polander* ſaid, and then we will go on to the others.

Sir *Fra. Winn.* Now, Sir, will you pleaſe to acquaint my Lord and the Jury what he or any of them confeſſed of the Fact.

L. C. J. What the *Polander* confeſſed firſt.

Mr. *Bridgman.* The *Polander*, upon his Examination before Sir *John Reresby* and me, did own that he came into *England* at the Deſire of Count *Coningſmark.*

L. C. J. Speak only as to himſelf; for it is Evidence only againſt himſelf.

Sir *Fra. Winn.* My Lord, his Confeſſion is entire, and we can't ſeparate it.

L. C. J. But we muſt direct what is juſt and fitting. His Evidence can charge no body but himſelf; and that is the Reaſon I would not have his Examination read; for it cannot be read but only againſt himſelf.

Mr. *Bridgman.* Upon his Examination he confeſſed, that he was preſent when the Captain ſtopped the Coach; that he fired the Muſquetoon by the Captain's Order; and that before he did it, the Captain bid him, as ſoon as ever he had ſtopped the Coach to fire.

Sir *Fra. Winn.* Did he confeſs he did fire?

Mr. *Bridgman.* Yes, he did.

L. C. J. North. As he does now.

L. C. J. Look you, now do you tell the *Polander*, that the Evidence gainſt him is, That he did fire this Muſquetoon, or Blunderbuſs, or what ayou will call it.----*Interpreter.* He does confeſs it

L. C. J. Tell him what I ſay, that this Evidence is given againſt him: That he did formerly acknowledge he diſcharged the Blunderbuſs into the Coach, when Captain *Vratz* ſtopped the Coach.

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* Theſe Examinations are inſerted at the End of this Trial, the Chief Juſtice, out of Favour to Count *Coningſmark*, not permitting them to be read in Court, as he ought to have done; for the Examinations are indeed no Evidence againſt any but the Examinant, yet are they not to be ſuppreſſed becauſe naming others, but ought nevertheleſs to be read, though with the aforeſaid Caution to be given to the Jury, otherwiſe the moſt material Evidence might be quite neglected, ſince all Confeſſions muſt be taken entire, or not at all.

Interpreter. Yes, my Lord, he ſays 'tis true, he fired according to his Order.

Sir *Fra. Winn.* Pray, Sir, conſider what was confeſſed by the Captain.

Mr. *Bridgman.* He confeſſed he had a Deſign to fight with Mr. *Thynn*, and Mr. *Thynn* having ſeveral times refuſed to fight with him, he reſolved to oblige him to fight by Force, and therefore he had taken theſe Perſons along with him; that if he ſhould fail in his Revenge, or after the thing done he ſhould be purſued, he might make his Eſcape. He confeſſed he was there, and ſtopped the Coach, but the *Polonian* fired by Miſtake; for he did not bid him fire, but only in caſe he ſhould be hindered from Fighting or making his Eſcape.

L. C. J. He confeſſed he came to fight Mr. *Thynn?*

Mr. *Bridgman.* Yes, he did ſo.

L. C. J. And that he ſtopped the Coach? Mr. *Bridgman.* Yes.

Sir *Fra. Winn.* You ſaid after the thing was done, what was that thing?

Mr. *Bridgman.* After he had fought, in caſe he ſhould be ſtopped in his Eſcape, he bid the *Polander* fire.

Sir *Fra. Winn.* Did he confeſs any thing of the Delivery of the Gun to him?

Mr. *Bridgman.* He confeſſed the *Polander* had the Gun, but he ſaid nothing from whom he had it.

L. C. J. Now Captain *Vratz*, you hear what is ſaid againſt you by this Gentleman; that you owned you came thither with a Deſign to fight Mr. *Thynn*, and force him to fight if he ſhould not be willing; and you brought theſe Men with you to carry you off, in caſe you ſhould kill him; that you did ſtop the Coach, and you ſaid you did not give him Order to fire, unleſs he refuſed to fight you.

Mr. *Bridgman.* No, unleſs he could not make his Eſcape.

L. C. J. Now what ſay you to this?

Sir *N. Johnſon.* He deſires to underſtand it.

L. C. J. Why then ſpeak it to him, you that are the Interpreter?

[*Then Mr.* Craven *interpreted it to him in* French.]

L. C. J. Now ſpeak aloud, and tell us what he ſays.

Mr. *Craven.* He ſays 'tis very true, that he was there, and had that Gentleman and the *Polander* along with him as his Servants, Mr. *Thynn* being a Gentleman that had always a great many Servants about him. And he ſays, my Lord, that he had received an Affront from Mr. *Thynn*; upon that, he challenged him, and ſent Letters out of *Holland* to deſire him to give Satisfaction by Fighting, but could have no Satisfaction; and therefore becauſe in *England* Duels were forbid, he thought to make a Rencounter of it, and took theſe Gentlemen along with him, that if ſo be Mr. *Thynn*'s Servants ſhould aſſault him, or knock him on the Head, or hinder him from eſcaping, that they might get him off.

Sir *Fra. Winn.* I beg one Favour of you, Sir, that you would aſk him one Queſtion, and that is, What the Affront was that Mr. *Thynn* gave him?

L. C. J. That he apprehends he gave him?

[*The Interpreter aſked him.*]

Mr. *Craven.* My Lord, he ſays, That at *Richmond* he heard he ſpoke and gave out very ill Language of Count *Coningſmark*, who was his Friend, and a Man he had many Obligations to, and ſo of himſelf too, and he would never acquaint Count *Coningſmark* with it, but would have Satisfaction, and take the Quarrel upon himſelf, being a Gentleman; he ſays, that he heard that he called him Hector, and gave ſuch ill Language as was never to be ſuffered.

Sir *N. Johnſon.* And the Faſhion in *Germany* is, if they won't fight, to ſhoot them.

Sir *Fra. Winn.* How can you tell that, Sir? the Interpreter that aſked the Queſtion ſays no ſuch thing.

L. C. J. Pray will you aſk him this, Whether ever he ſaw Mr. *Thynn*, and how many Times?

Mr. *Craven.* He ſays he has ſeen him ſeveral Times in the Playhouſe, and riding in his Coach; he did not ſee him at *Richmond*, for if he had, he would not have put it up ſo long.

Mr. *Williams.* I believe he never ſpoke to him in his Life.

L. C. J. Aſk him that Queſtion, whether he ever ſpoke to him?

Mr. *Craven.* He ſays he had no Friend to ſend to Mr. *Thynn*, and he could not ſpeak with Mr. *Thynn* himſelf; for Mr. *Thynn* might think that he was not a Gentleman good enough to fight with him.

L. C. J. Aſk him this, about what Time he ſaw him at the Play-houſe?

Mr. *Craven.* He ſays he does not remember exactly the Time when he did ſee him at the Play-houſe.

L. C. J. Aſk him whether this Affront that he pretends, was given him ſince he laſt came over, or when he was in *England* before?

Mr. *Craven.* He ſays 'tis eight Months ago ſince he received the Affront.

L. C. J. That was before he went out of *England?*

Mr. *Craven.* Yes, it was before.

Sir *Fra. Winn.* He ſays he writ to Mr. *Thynn* out of *Holland*; we deſire to know by whom he ſent his Challenge?

L. C. J. Aſk him if he ſent a Challenge to Mr. *Thynn*, and by whom?

Mr. *Craven.* He ſays he could ſend no leſs than a Gentleman; and he had never a Gentleman to ſend by, and ſo he ſent his Letter by the Poſt.

Mr. *Williams.* Mr. *Bridgman*, now we would aſk you concerning Mr. *Stern*, the third Man.

Mr. *Bridgman.* Let me have the Examination, and I will look upon it and tell you.

Mr. *Williams.* Pray, do Sir, tell us what he ſaid?

Mr. *Bridgman.* Upon his Examination he confeſſed, that the Captain told him, he had a Quarrel with a Gentleman, and that if he would aſſiſt him in it, he would make his Fortune. And that the Captain gave him Money to buy the Blunderbuſs.

Sir *Fra. Winn.* *Stern* did confeſs that, did he? Mr. *Bridgman.* Yes.

L. C. J. Did he confeſs he was at the Fact?

Mr. *Bridgman.* Yes, he confeſſed he was at the Fact; and he ſaid, when he came beyond *Charing-Croſs*, he was about ten Yards before, and he heard the Captain ſay, Stop, to the Coach, upon which he turned about, and preſently ſaw the Shot made, and he ſaw the other Perſons ride away, and he made away after them: And the Captain further told him, that he would give two or three, or four hundred Crowns, to find a Man that would kill Mr. *Thynn.*

Sir *Fra. Winn.* What did he ſpeak about ſtabbing, or about an *Italian?*

Mr. *Bridgman.* He ſaid that the Captain deſired him to get an *Italian* that would ſtab a Man, and that he would get two Poniards for that Purpoſe; and that it was before the *Polonian* came over.

L. C. J. This is no Evidence againſt the Captain; but pray will you tell *Stern* the Lieutenant what it is that Mr. *Bridgman* does teſtify againſt him; that he acknowledged thus and thus before him. And pray ſpeak it again, Mr. *Bridgman.*

Mr. *Bridgman.* The Captain told that Gentleman, that he had a Quarrel with a Gentleman, with whom he was reſolved to fight; that he wanted a good Servant, and if he would aſſiſt him, he would make his Fortune; that he gave him Money to buy the Muſquetoon, and owned he was there; that he went out with the Captain and *Polander* on Horſeback, about five or ſix o'Clock on *Sunday*; that they went towards *Charing-Croſs*, and when they were gone beyond *Charing-Croſs* into the *Pall-Mall*, he heard the Captain ſay to the Coachman, Stop; and turning immediately, he ſaw the Shot go off; and that they riding away, he followed them: And that before the *Polander* came over, the Captain deſired him to get an *Italian* to ſtab a Man.

[*Then that was interpreted to Stern.*]

Mr. *Craven.* My Lord, he denies that he ſpoke any thing of four hundred Pounds, or about the *Italian.*

L. C. J. Tell him it is teſtified, that he confeſſed he was at the Shooting of this Gentleman.

Mr. *Craven.* He ſays he was there, and being about ten Yards off, he heard one ſay, Hold to the Coach, but he cannot ſay it was the Captain.

Sir *Fra. Winn.* But was he there?---Mr. *Craven.* Yes, he ſays he was.

Sir *Fra. Winn.* Who cauſed him to be there?

L. C. J. Aſk him upon what Occaſion he was there?

Mr. *Craven.* He ſays the Captain entreated him to be there to be his Second, to fight with a Gentleman, and that was the Reaſon.

L. C. J. Pray tell him 'tis teſtified here, that he bought the Muſquetoon and charged it.

Mr. *Craven.* He ſays, he did aſſiſt at the Loading of it, he was by.

Sir *Fra. Winn.* Pray, my Lord, let us know who it was aſſiſted him?

L. C. J. Why, that is no Evidence againſt any body.

Sir *Fra. Winn.* But, my Lord, it was delivered to the *Polander* charged, and we deſire to know who loaded it?

L. C. J. North. That is no Evidence; but yet the Queſtion may be aſked, and the Jury may be told 'tis no Evidence.

L. C. J. But we muſt not let the Jury be poſſeſſed by that which is not Evidence:

L. C. J. North. Pray will you aſk him, Mr. *Craven*, who helped him to load the Gun?

Mr. *Craven.* The Captain was by, he ſays, and the Captain and he did it together.

Sir *Fra. Winn.* Now we will aſk Sir *John Rereſby* the ſame Queſtions: You were by, Sir, at the Examinations of theſe three Men, pray what did the *Polander* ſay upon his Examination?

Sir *John Rereſby.* My Lord, I cannot charge my Memory with the Particulars; but if your Lordſhip pleaſes, I will read it.

L. C. J. No, refreſh your Memory with it, and then tell us the Subſtance of it.

Sir *John Rereſby.* In general, he did confeſs to me, that he was the Perſon that did diſcharge the Blunderbuſs into Mr. *Thynn*'s Coach, and that he was commanded ſo to do by Captain *Vratz.*

L. C. J. That is the Subſtance of all.

Sir *Fra. Winn.* That is as to him; but what did Captain *Vratz* ſay?

L. C. J. He ſaid that he did go out with an Intention to fight with Mr. *Thynn*, and did take theſe Perſons with him; that he did not order the *Polander* to diſcharge, but he miſtook him when he bid the Coachman ſtand, the other apprehended he bid him ſhoot, and he did ſo.

Mr. *Williams.* What ſaid *Stern?*

Sir *John Rereſby.* *Stern* did ſay this, that the Captain told him he had a Quarrel with an *Engliſh* Gentleman, and deſired him to go along with him and aſſiſt him in it, and be his Second; but, ſaid he, I was chiefly carried out to keep off the People, in caſe there ſhould be a Croud about them when they were fighting; this is the chief Part of what they did confeſs.

L. C. J. We would not trouble you with more than is material. Did he acknowledge he was there at the Time when he was ſhot?

Sir *John Rereſby.* Yes, he did, about nine or ten Yards off, I think.

L. C. J. All three confeſſed they were there?

Sir *John Reresby.* Yes, they did ſo.

L. C. J. North. They had a Deſign of killing, which was unlawful.

Sir *John Reresby.* They ſaid they came on Purpoſe to fight.

Sir *Fra. Winn.* Call *Michael Fenderoſton.* My Lord, we would willingly ſpare your Time, and offer only what is proper in this Caſe, and now we ſhall produce our Evidence againſt the Count, and if any thing fall out in that Evidence that touches theſe three Men (which we think will be but the killing of dead Men) your Lordſhip will take Notice of it. Now we ſhall not go to open the Heads of our Evidence againſt the Count, Sir *Francis Withins* has given an Account of the general, and our Witneſſes will beſt declare it.

Mr. *Williams.* We will begin with *Frederick Hanſon.*

[*Who was ſworn and ſtood up.*]

Mr. *Hanſon.* How long have you known Count *Coningſmark?*

Mr. *Hanſon.* A matter of four Years.

Mr. *Williams.* Pray do you remember his laſt coming into *England?*

Mr. *Hanſon.* Yes, my Lord, I do remember it.

Mr. *Williams.* Then let us know the Time.

Mr. *Hanſon.* I think 'tis above a Month ſince.

Mr. *Williams.* Where was his Lodging firſt?

Mr. *Hanſon.* The firſt Time I ſaw him was in the Poſt-Houſe.

Mr. *Williams.* Did he come privately or publickly?

Mr. *Hanſon.* Privately, to my beſt Knowledge.

Mr. *Williams.* Which was his firſt Lodging?

Mr. *Hanſon.* In the *Hay-Market.*

Mr. *Williams.* Where there?------Mr. *Hanſon.* At the Corner Houſe.

Mr. *Williams.* How long did he continue there?

Mr. *Hanſon.* A matter of a Week.

Mr. *Williams.* Pray in all that Time did he keep privately at home, or did he go abroad ſometimes?

Mr. *Hanſon.* I believe he kept his Chamber all the Time.

Mr. *Wil.* Were you with him at any Time there?--Mr. *Hanſ.* Yes, I was.

Mr. *Wil.* What Company did uſe to be with him to your Knowledge?

Mr. *Hanſon.* To my Knowledge I have ſeen Dr. *Frederick* in his Company.

Mr. *Williams.* One Dr. *Frederick*, you ſay, who elſe?

Mr. *Hanſon.* When I came from *Whitehall* on a *Sunday* in the Evening, when my Lord was going to Bed, I called, if I could be admitted to ſee him, ſo I went in to him, and a little after the Doctor came.

Sir *Fr. Winn.* Pray, Sir, at that Time that he was in that Lodging, did he wear his own Hair, or was he in a Diſguiſe?

Mr. *Hanſon.* That *Sunday* Night he was in his Night-Cap and Night-Gown, ready to go to Bed.

Mr. *Williams.* When you firſt came to him to the Poſt-houſe, did you go of your own Accord, or were you ſent for?

Mr. *Hanſon.* Count *Coningſmark* ſent for me.

Mr. *Williams.* Was it ſent in his own Name, or the Name of another?

Mr. *Hanſon.* It was in a ſtrange Name, *Carlo Cuſk.*

Mr. *Williams.* Have you the Note by you?—Mr. *Hanſon.* No.

Mr. *Williams.* In whoſe Character was it writ?

Mr. *Hanſon.* In the Count's own Character.

Sir *Fr. Winn.* What was his Name in his firſt Lodging? What Title was he called by, Captain, or what?

Mr. *Hanſon.* I know of no other Name but only the Stranger.

Sir *Fr. Winn.* Was it known to any Perſon in the Family?

Mr. *Hanſon.* No.

Mr. *Williams* When did he remove from thence?

Mr. *Hanſon.* I know not.

Sir *Fr. Winn.* You ſay the firſt Place of his Lodging was in the *Hay-market*, where did you ſee him the ſecond Time?

Mr. *Hanſon.* At a Corner Houſe, I know not the Name of the Street.

Sir *Fra. Withens.* Did he direct you to come to him?

Mr. *Williams.* Had you any Diſcourſe with him, what his Buſineſs was here in *England?*

Mr. *Hanſon.* I aſked him, if we ſhould have his Company here ſome Time? He told me he was come over about ſome Buſineſs, and was afterwards to go into *France.*

Mr. *Williams.* Then he never told you what that Buſineſs was?

Mr. *Hanſon.* No.

Mr. *Williams.* Where was his ſecond Lodging, do you ſay?

Mr. *Hanſon.* It was at a Corner-Houſe, not above two Streets off from the former.

Mr. *Williams.* How long did he continue in his ſecond Lodging?

Mr. *Hanſon.* A few Days, becauſe the Chimney did ſo ſmoke, that he could have no Fire made in it.

Sir *Fra. Winn.* Then I aſk you in his ſecond Lodging, was he there publickly or privately?

Mr. *Hanſon.* He was there after the ſame Manner that he was in his firſt Lodging.

Mr. *Williams.* Whither went he afterwards?

Mr. *Hanſon.* To St. *Martin's-Lane*, I think it is called.

Mr. *Williams.* How long did he continue there?

Mr. *Hanſon.* There I ſaw him the laſt Time before he went away.

Mr. *Williams.* When was that?

Mr. *Hanſon.* It was *Sunday* Evening, after I came from *Whitehall.*

Mr. *Williams.* Was it near the Time of killing Mr. *Thynn?*

Mr. *Hanſon.* It was about two or three Hours afterwards.

Mr. *Williams.* Was he as private there as he was in his other Lodgings?

Mr. *Hanſon.* Yes.

Mr. *Williams.* What Company came to him thither?

Mr. *Hanſon.* The ſame that came to him in the other.

Sir *Fra. Winn.* Who were they?

Mr. *Hanſon.* The Doctor was in his Company.

Sir *Fra. Winn.* And who elſe?

Mr. *Hanſon.* I ſaw one Captain *Vratz* there.

Sir *Fra. Winn.* Sir, I aſk you upon your Oath, you are a Man of Underſtanding, Did you frequently ſee Captain *Vratz* in his Company? How often do you remember you ſaw him at his Lodging?

Mr. *Hanſon.* I do not remember that I ſaw Captain *Vratz* at that Lodging above one ſingle Time.

Mr. *Williams.* Pray, Sir, thus: Did Captain *Vratz* come with the Count into *England* this laſt Time?

Mr. *Hanſon.* To my beſt Remembrance he did.

Mr. *Williams* You ſay Captain *Vratz* came with the Count to *England.*

Mr. *Hanſon.* I believe he was before the Count, but not long before: I can't exactly tell.

Mr. *Williams.* How long before the Count?

Mr. *Hanſon.* Truly I can't tell, but I believe not long.

Mr. *Williams* What makes you think he came into *England* with him?

Mr. *Hanſon.* Becauſe I ſaw him in Company with the Count, as ſoon as I ſaw the Count.

Mr. *Williams.* Were they in Company at the Poſt-Houſe?

Mr. *Hanſon.* Yes.

Sir *Fra. Winn.* And you ſaw him once at his firſt Lodging?

Mr. *Hanſon* Yes.

Mr. *Williams.* Pray, Sir, have you carried any Meſſage from the Count to the *Swediſh* Reſident?

Mr. *Hanſon.* My Lord, I can ſay this upon my Oath, to my beſt Remembrance, Count *Coningſmark* never charged me, or gave me any poſitive Order to go to the *Swediſh* Envoy, but he did name the *Swediſh* Envoy to me, as if he were willing to know his Advice; and ſo I being obliged to pay my Reſpects to the *Swediſh* Envoy, who had treated the young Count and myſelf very civilly before; and ſo paying my Reſpects to the ſaid Envoy, I did remember the Converſation I had with the Count, and ſpoke with the ſaid Envoy about this Buſineſs, and that is all that I can ſay.

Sir *Fra. Winn.* What was that Meſſage?

Mr. *Hanſon.* I ſay there was no direct Meſſage: But I ſay this was the Buſineſs: Count *Coningſmark* told me in private familiar Diſcourſe, that he had heard that Eſquire *Thynn* had ſpoken ſome abuſive Language of him, and he would fain know what the Conſequence of this would be, if he ſhould call him to Account about this Buſineſs: And he named the *Swediſh* Envoy to me: And I ſaw his Deſire was to know his Opinion about the Buſineſs, what the Conſequence of it would be. So I ſpoke to the *Swediſh* Envoy, and he gave me this Anſwer, That if the Count ſhould any way meddle with Eſquire *Thynn*, he would have but a bad Living in *England*; but what the Law would ſay in that particular Caſe he could not anſwer, but he would enquire, and afterwards would give me an Account; but I never ſpake with him after.

Sir *Fra. Winn.* I aſk you, becauſe you have been formerly examined in another Place, about this Matter; Do you remember any Thing that ever you heard the Count ſpeaking of fighting with Mr. *Thynn?*

Mr. *Hanſon.* Count *Coningſmark* ſpoke to me in the *German* Language; I ſpoke to the *Swediſh* Agent in *French*; and when I was before the King and Council I ſpoke in *Engliſh*; therefore I deſire no evil Conſtruction may be made of it. I cannot remember the Count ſpake of killing or duelling. On the contrary I can ſwear for Count *Coningſmark* this, That I am confident he never told me that he had reſolved or would fight with Mr. *Thynn* or would call him to Account, but if he ſhould call him to Account, what would be the Conſequence of it.

Sir *Fra. Winn.* Call him to Account, about what?

Mr. *Hanſon.* The Count in familiar Diſcourſe with me did tell me, that he had heard Eſquire *Thynn* had ſpoke abuſively of him.

Sir *Fra. Winn.* How had he ſpoken abuſively of him?

Mr. *Hanſon.* He reflected upon his Perſon and upon his Horſe.

Mr. *Williams.* Was there any Thing in that Meſſage about marrying my Lady *Ogle?*

Mr. *Hanſon.* That was the laſt Part of the Queſtion, That if he ſhould meddle with Eſquire *Thynn*, what the Conſequence might be, if the Laws of *England* would be contrary to him in the Hopes or Pretenſions he might have to my Lady *Ogle.*

Mr. *Williams.* You mince your Words mightily; pray remember yourſelf; Did he ſpeak of killing Mr. *Thynn*, or that Mr. *Thynn* ſhould be deſtroyed?

Mr. *Hanſon.* No, his Phraſe was, if he ſhould have an Advantage of him, when he ſhould meddle with him, or call him to an Account, what the Conſequence might be; I can ſay this upon my Conſcience.

Sir *Fra. Winn.* Sir, you are in a Place where you are ſworn to ſpeak the Truth, the whole Truth, and nothing but the Truth: What Relation have you to Count *Coningſmark*'s Family?

Mr. *Hanſon.* I have no Relation to the Family at all.

Sir *Fra. Winn.* Are not you Governor to the young Count?

Mr. *Hanſon.* The Counteſs has given me her younger Son, for me to be his Companion in his Travels.

Sir *Fra. Winn.* Sir, I aſk you a plain Queſtion, let it lie at your own Door, if you won't tell the Truth; had you any Converſation with Count *Coningſmark*, wherein he did deſire you to aſk Advice of the *Swediſh* Envoy or Reſident here, about duelling Mr. *Thynn*, or in Caſe he ſhould kill Mr. *Thynn*, or upon any ſuch Account?

Mr. *Hanſon.* My Lord, I ſay this was ſpoken in ſeveral Languages, by the Count in *Dutch*, by myſelf to the Envoy in *French*; and I do know I ſwore before the King and Council, but I cannot lay this to Count *Coningſmark*'s Charge, for then I muſt forſwear myſelf.

Sir *Fra. Winn.* Sir, you can anſwer me all my Queſtions in *Engliſh*, if you pleaſe, what the Diſcourſe was.

L. C. J. Pray, Sir, thus: What was the Diſcourſe, as near as you can remember it, between Count *Coningſmark* and you, relating to Mr. *Thynn.*

L C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir *Fra. Winn.* And pray remember what you ſwore in another Place.

Mr. *Hanſon.* The Count ſent to me a Note, that he had a Mind to ſpeak with me, and he entertained me with a familiar Diſcourſe about his Travelling, and about the ſettling of his Buſineſs, and thereupon he fell upon other Diſcourſe about Mr. *Thynn*, and, not to miſtake, having had Time in my own Chamber, I have put it down in Writing, to ſatisfy my Lord and all this honourable Court, what I can ſay about this Matter.

[Mr. *Hanſon reads———'Tis very hard to give a true Account.*]

L. C. J. Read it to yourſelf, if you will, and tell us the Subſtance.

Mr. *Hanſon.* If my Words may not turn to the Prejudice of my Lord Count *Coningſmark*; but this is the Subſtance of the Thing. My Lord Count *Coningſmark* did tell me in a familiar Diſcourſe, that Eſquire *Thynn* had ſpoken ſome reflecting Words upon him; he did deſire to know if he did call him to Account, whether in this Caſe the Laws of *England* might not go contrary to his Deſign, in his Pretenſions that he might have upon my Lady *Ogle.* And in that familiar Diſcourſe, he ſeemed to think that Monſieur *Lienburgh* could give him Advice. In a little while afterwards, I was paying my Reſpects to the Envoy, and reflecting upon the Count's Converſation, I ſpoke to him about this Buſineſs, and his anſwer was this; he told me, that if he ſhould meddle with Mr. *Thynn*, he would have no good Living in *England*: But as to the particular Queſtion, what the Conſequence of the Law might be, he did not know, but would enquire and tell me; but I never aſked him any Queſtion about it afterwards. And if my Converſation with this Count, or with Monſieur *Lienburgh*, ſhould turn to the Count's Prejudice, I ſhould be anſwerable for it to God and my own Conſcience, all the Days of my Life. I deſire Mr. *Thynn*'s Blood might be revenged, but I deſire alſo that innocent Blood may be ſpared.

Sir *Fra. Winn.* Pray, Sir, will you look upon that Paper; you ſigned it.

L. C. J. North. Only to recollect your Memory.

[*Then he was ſhewed his Examination before the Council.*]

L. C. J. Now you have read it over; that there is under your own Hand? Do you now again deliver the Subſtance of your Diſcourſe you had with Count *Coningſmark*, as you will ſtand by it.

Mr. *Hanſon.* I ſee that there are Expreſſions in this Paper.

L. C. J. Speak not what is in that Paper, but what Diſcourſe (as near as you can) you had with Count *Coningſmark.*

Mr. *Hanſon.* My Diſcourſe with Count *Coningſmark* was this: In a familiar Diſcourſe amongſt other Things, he ſpoke, that he heard Eſquire *Thynn* had affronted him, I don't know upon what Subject, but I believe it was Words reflecting upon him and his Horſe; he did not tell me that he deſired me to go, nor did he give me any poſitive Charge to go to the *Swediſh* Envoy, but by the Diſcourſe I had with him, I did underſtand that he was deſirous to have his Advice; I thought his Inclinations were, that I ſhould go and aſk his Advice; I did not go on purpoſe to do the Meſſage, nor did I receive any Order that can be called a Meſſage, in my Life, to my Remembrance; but when I came to pay my Reſpects in a familiar Diſcourſe, I did propoſe this to the Envoy; what might be the Conſequence, if the Count ſhould call Mr. *Thynn* to Account; and he told me the ſame Anſwer that I have already told you. Now this I deſire only to conſider, that it was ſpoken in divers Languages; and if a Man ſhould write down my Expreſſions now, as they came from me, they would upon reading, perhaps, appear not ſo well; ſo if theſe Expreſſions of mine ſhould turn to Count *Coningſmark*'s Prejudice, as that I ſhould ſwear that this Phraſe of killing or duelling was uſed, or that ever Count *Coninſgmark* told me that he reſolved to call, or that he would call him to an Account, I might do him Wrong, perhaps; but if he ſhould call him to Account, what might be the Conſequence of it.

Sir *Fra. Winn.* I would not entangle you, but only I would ſeek after the Truth. I do not aſk you poſitively, whether he did bid you go to aſk Advice of the *Swediſh* Envoy, that he did reſolve ſo and ſo; but did he diſcourſe it thus, if he ſhould duel him, or fight him?

Mr. *Hanſon.* As I am before God Almighty, I cannot ſay I heard ſuch Expreſſions.

Mr. *Williams.* Pray, Sir, you confeſs you acquainted the Envoy with it?

Mr. *Hanſon.* Yes.

Mr. *Williams.* Did you bring the Envoy's Anſwer to the Gentleman, or no?

Mr. *Hanſon.* If I ſhould be upon the Goſpel, I am ſure I cannot exactly tell what was the Expreſſion.

L. C. Baron. What was it that you diſcerned he doubted, if he did call Mr. *Thynn* to Account?

Sir *Fra. Winn.* He ſpoke in Relation to a Marriage, pray what was it?

Mr. *Williams.* What did that *if* relate to?

Mr. *Hanſon.* If he ſhould aſk him Satisfaction about it, having heard that he had ſpoken abuſive Words of him.

Sir *Fra Winn.* What then was to follow?

Mr. *Hanſon.* If he ſhould call him to Account then how the Laws of *England* might do in this Point.

Mr. *Williams.* To whom?-----Mr. *Hanſon.* To the Count.

Mr. *Williams.* What ſhould befal him?

Mr. *Hanſon.* Whether the Law ſhould be contrary to him in the Deſign and Propoſals he might have concerning the young Counteſs of *Ogle.*

Mr. *Williams.* Well, I ſee you will give no reaſonable Anſwer to that; but now when came the *Polander* over into *England?*

Mr. *Hanſon.* I canot ſay poſitively I can tell when he came.

Mr. *Williams.* But when did you ſee him firſt?

Mr. *Hanſon.* Upon the *Friday* he came and aſked me for the Count at Monſieur *Faubert*'s Academy. Now the young Count *Coningſmark*'s Chamber and mine joins together, next to one another, and there came a Man with him, I do not know his Name, but if I ſee the Man I know him.

Mr. *Williams.* You ſay the *Polander* came over on *Friday.*

Mr. *Hanſon.* He came to me on *Friday.*

Mr. *Williams.* And he came to you to the *French Academy*, to enquire for Count *Coningſmark?*——Mr. *Hanſon.* Yes, he did ſo.

Mr. *Williams.* Had he any Letters?

Mr. *Hanſon.* Yes, he had two Letters.

Mr. *Williams.* From whom, and to whom?

Mr. *Hanſon.* I aſked him if he had any Letter for Count *Coningſmark*, and he ſaid no; but he told me he had two Letters, and the one was to the Count's Secretary, and the other was to the Count's Steward in *London.* So I gave him back his Letters, and aſked him whence he came? He told me he was juſt come into *England.* I aſked him whether he had been a great while at Sea? And he told me yes; and that it was ſtormy, and he had like to have been caſt away: ſaid I, I hear you are expected, therefore have you paid your Lodging? No, ſaid he; then, ſaid I, go and pay your Lodging, and come to me in the Morning early.

Sir *Fra. Winn.* You ſay you heard he was expected, pray who expected him?

Mr. *Hanſon.* The Count; for he had ſpoken formerly twice of the *Polander*, and in the great Storm thought he had been drowned. To the beſt of my Remembrance, I have heard the Count ſpeak twice of this *Polander.*

Sir *Fra. Winn.* Of this Man?

Mr. *Hanſon.* I ſuppoſe it is the ſame.

Sir *Fra. Winn.* You ſay you ſaw him on *Friday?*

Mr. *Hanſon.* Yes, I did.

Mr. *Williams.* When did he ſpeak of the ſtormy Weather, and that he was afraid the *Polander* might miſcarry?

Mr. *Hanſon.* About twelve or thirteen Days before.

Mr. *Williams.* Now ſay as near as you can what the Count ſaid.

Mr. *Hanſon.* He ſaid the *Polander* was a mighty able Man, and underſtood Horſes, and the Count had a Mind to buy *Engliſh* Horſes, and intended to have had this *Polander* as a Groom, to dreſs them after the *German* Way, and no Man was abler than the *Polander* to do it; and when he ſpoke of it, I went once to the 'Change, and enquired whether the Ship was loſt?

Sir *Fr. Winn.* By whoſe Direction did you go to enquire whether the Ship was loſt?

Mr. *Hanſon.* I had no Direction, but only Count *Coningſmark*'s ſpeaking about it.

Sir *Fra. Winn.* He ſeemed to be concerned at it, did he?

Mr. *Hanſon.* Yes, he was afraid that the *Polander* would be drowned.

Mr. *Williams.* You ſay you directed him to clear his Quarters?

Mr. *Hanſon.* Yes, I did ſo.

Mr. *Williams.* Did you ſee him again the next Day?

Mr. *Hanſon.* Yes, he came the next Day.

Mr. *Williams.* Was he the next Day in Company with the Count, or no?

Mr. *Hanſon.* I brought him to the Count.

Sir *Fra. Winn.* Where?

Mr. *Hanſon.* It was a little before Noon; becauſe I went the Backway, and left him at the Count's Lodging.

Mr. *Williams.* Did you leave him with the Count?

Mr. *Hanſon.* Yes, I did.

Mr. *Williams.* Pray as long as you were there, what paſſed between the Count and the *Polander?*

Mr. *Hanſon.* I remember very well what paſſed betwen the Count and him, for I have thought of it. He ſpoke to him, and called him *Thou*, as to his Servant, and aſked him where he had been all the while? And he anſwered, he had been at Sea, and toſſed up and down.

Sir *Fra. Withens.* Pray what Directions had you given about a Sword for that *Polander?*

Mr. *Hanſon.* I went to the Count's Lodgings, and being deſired by him to ſtay, I deſired he would excuſe me, for I could not ſtay, becauſe I was to go about another Buſineſs; he told me the Fellow was all naked, and he had no Man to ſend to buy him a Riding-Coat; I told him I would very willingly and heartily do it. And after I had dined I went to an Houſe near the *Hay-Market*, and bought a Riding-Coat, and brought the Riding-Coat to the Count's Lodgings. I delivered it to the Count. Then the Count told me his Man had never a Sword, and I aſked him how much his Lordſhip would pleaſe to beſtow on a Sword, he told me a matter of 10*s.* or thereabouts; I told him I did not know where I ſhould get ſuch a Sword, nor how to ſend for it, becauſe I was to meet his Brother; but I withal ſaid, it is no Matter for that, I will take Care you ſhall have it this Evening; I went into St. *Martin*'s-*Lane*, but could not find ever a Sword worth a Groat. Then I went as far as *Charing-Croſs* to a Cutler whom I knew, ſo I told him, Sir, ſaid I, I have a Commiſſion to beſtow ten Shillings upon a Sword for a Servant, therefore, ſaid I, I leave it to your Diſcretion, uſe my Friend well, and uſe yourſelf favourably too. I aſked him when I ſhould have the Sword, he told me in the Evening; I told him I would call for it when I came from the Play, where I I was to be with the Count's Brother. When I came back with the young Count *Coningſmark* from the Play, I called for the Sword, but he told me was it not ready. I ſeemed to be a little angry, and told him that it was ſtrange, a Gentleman could not get a little Sword ready for him in an whole Afternoon. Well, Sir, ſaid he, pray do not be impatient, I will ſend you the Sword, and afterwards he ſent it to the Academy, and I afterwards ſent the Sword to Count *Coningſmark*'s Lodgings.

Mr. *Williams.* Pray had you this Direction for the Sword after you had brought the *Polander* to the Count, or before?

Mr. *Hanſon.* Count *Coningſmark* did never give me any Direction or charge to buy a Sword for him, but I did offer my Service, if he pleaſed, becauſe he ſaid he had no Body to ſend.

Mr. *Williams.* Sir, you do not know the Queſtion, or you won't apprehend it; pray, when had you this Direction from the Count to buy this Sword?

Mr. *Hanſon.* On *Saturday* in the Afternoon.

Mr. *Williams.* When was it you brought the *Polander* to the Count?

Mr. *Hanſon.* In the Morning.

Mr. *Fra. Winn.* Pray let me aſk you another Queſtion. When was it you firſt heard Mr. *Thynn* was killed?

Mr. *Hanſon.* I heard it, I believe, about Eight o'Clock in the Evening on *Sunday.*

Sir *Fra. Winn.* Had you any Diſcourſe with the Count about the Murder?

Mr. *Hanſon.* Yes, I had.

Sir *Fra. Winn.* Pray tell what that Diſcourſe was?

Mr. *Hanſon.* I was at *Whitehall* till ten of the Clock, and then I went to the Count; but I deſire this may not be taken as an extraordinary Viſit, becauſe I uſed to go to him on *Sundays* in the Evenings, and thoſe three *Sundays* before he was taken, I uſed to come to him in the Evening, after I had been at *Whitehall.* When I came into his Lodgings, I found him in his Night-Cap, and his Night-Gown; he aſked me what News, I told him I could tell him great News, and that was of the killing of Eſquire *Thynn*, who was ſhot in his Coach: The Embaſſador of *Savoy* had told me all that he had heard about it, and I told it him. After I had ſpoken of this Buſineſs, he aſked me where his Brother was; I told him, his Brother was at the Duke of *Richmond*'s. And after ſome Diſcourſe I went away.

Sir *Fra. Winn.* When you told him of the Murder of Mr. *Thynn*, did he make no Anſwer, nor ſay any thing about it?

Mr. *Hanſon.* He did not make me any Anſwer, by which I could conclude that Count *Coningſmark* was any Way concerned in the Buſineſs.

Sir *Fra. Withens.* Pray, Sir, I aſk you upon your Oath, the Count is a Man of great Quality himſelf; when you told him of ſuch an horrid Murder, what, did he ſay nothing about it?

Mr. *Hanſon.* He aſked me ſeveral Queſtions what the People did ſay, but I would not make any Miſtake.

Sir *Fra. Winn.* Tell all he ſaid, Sir, about it.

Mr. *Hanſon.* I told him the greateſt News I had was, the killing of Mr. *Thynn*; and I told him who brought the News; and I told him the Court was heartily angry at it, that ſuch an Accident ſhould happen; and I ſaid it was an *Italian* Trick, not uſed in *England.*

Sir *Fra. Winn.* What ſaid he then?

Mr. *Williams.* Pray do you remember what he ſaid?

Mr. *Hanſon.* What I have anſwered now. He made me ſuch Queſtions upon this Story as I have told you.

L. C. J. Let him explain himſelf: Pray, as near as you can, relate what Diſcourſe you had with Count *Coningſmark* that *Sunday* Night, after you came to him and told him of the Murder.

Sir *Fra. Winn.* What did he ſay to you?

Mr. *Hanſon.* I will tell you, my Lord; the Count was ſurprized as every Man would be, to hear of ſo ſad an Accident, and ſo the Count aſked me what the People ſaid, ſo I told him what I heard at *Whitehall*; I cannot call to my Memory all the Particulars; but I ſaid the King was heartily ſorry, and all the Court, for ſo ſad an Accident, and I muſt wrong myſelf, or Count *Coningſmark*, If I ſhould undertake to relate exactly what paſſed, for I cannot remember it.

Mr. *Williams*. But you ſaid juſt now, that you told the Count it looked like an *Italian* Trick, not uſed in *England*.——Mr. *Hanſon*. Yes, I did ſo.

Mr. *Williams*. What did he reply to that?——Mr. *Hanſon*. Not a Word.

Mr. *Williams*. Did he mention any thing of Fortifications to you then?

Mr. *Hanſon*. Yes, he gave me a Plan, or a Draught of a Fortification done with his own Hand, and that was all the Diſcourſe.

Mr. *Williams*. So then he diverted the Diſcourſe to the Buſineſs of Fortification.

L. C. J. The Evidence is heard; what it is that he ended all the Diſcourſe with, ſhewing him a Paper of Fortifications.

Sir *Fr. Winn*. But this he does ſay, he aſked him what the People did ſay of it?

Mr. *Hanſon*. For my Life, I dare not ſay I remember any more than I have told.

L. C. J. Look you, Sir, now will you in *French* deliver this for the Benefit of thoſe Jurymen that don't underſtand *Engliſh*.

Mr. *Williams*. We pray, my Lord, that our Interpreter may do it.

L. C. J. When a Man can ſpeak both Languages, he needs no Interpreter, he is his own beſt Interpreter.

Mr. *Williams*. My Lord, I will tell you why I aſk it; there is a great deal of Difference, I find, where you examine a Man with the Hair, and where you examine him againſt the Hair: Where you find it difficult to make a Man anſwer, you will pump him with Queſtions, and croſs-interrogate him, to ſift out the Truth; now if you leave this Man to the Interpretation of what he hath ſaid himſelf, he will make a fine Story of it, and we ſhall be never the wiſer.

L. C. J. You may examine him in *French*, if you will.

Mr. *Williams*. And I underſtand none but Pedlar's *French*.

Sir *Fr. Winn*. The Truth of it is, what your Lordſhip ſays cannot be oppoſed regularly; but I do appeal to your Lordſhip, and all the Judges, and all the Court, whether this Man does anſwer like an ingenuous Man; you ſee he ſhifts.

L. C. J. I do not ſee it, nor do I believe any ſee he ſhifts in any thing you aſk of him; either he tells you what the Queſtion is, or the Reaſon of it; how far that is a Reaſon, is left to the Jury to conſider.

Sir. *Fr. Winn*. Certainly it can do no Hurt to have an Interpreter.

L. C. J. North. My Lord, if there be two Ways to take, 'tis beſt to take that which will give Satisfaction to all Perſons; let him be aſked by the Interpreter, what Queſtions the Counſel would have anſwered, and then let him tell his Anſwer in *French*.

L. C. J. If that be liked better, let it be ſo. Mr. *Craven*, can you tell the Subſtance of the Evidence that this Gentleman hath given?

Mr. *Craven*. No, I cannot, his Evidence has been ſo long, and ſo many croſs Queſtions have been aſked.

Sir. *Fr. Winn*. I would ſpare your Time——

L. C. J. But this is the way to ſpend our Time.

Sir *Fr. Winn*. I know your Lordſhip does not value Time in ſuch a Caſe as this, but you would have the Truth found out.

L. C. J. You muſt repeat firſt the Diſcourſe you had with Count *Coningſmark*.

Sir *Fr. Winn*. My Lord, we will reduce it to two or three Queſtions. Mr. *Craven*, will you pleaſe to aſk him what Diſcourſe he had with Count *Coningſmark*.

Mr. *Craven*. He ſays, the Diſcourſe he had with Count *Coningſmark* about the *Polander*, was, that he came over as a Groom to ſerve him to look after his Horſes; that he had Occaſion for ſeveral *Engliſh* Horſes, and *Engliſh* Servants to look after them as Grooms; and among the reſt of his Grooms, he intended the *Polander* ſhould be one, to dreſs his Horſes after the *German* Way.

Sir *Fr. Winn*. So far he goes as to that, That the *Polander* came over to ſerve the Count.

L. C. J. Look you Sir, does not he tell you, the Count had a Purpoſe to buy Horſes here?

Mr. *Craven*. He ſays there was a Diſcourſe about Bills of Exchange of 7000 Piſtoles to buy Horſes.

Sir *Fr. Winn*. Pray then will you aſk him, what Diſcourſe he had with Count *Coningſmark* about the Death of Mr. *Thynn*, and what the Conſequences in Law might be?

Mr. *Craven*. My Lord, he ſays, that the Diſcourſe with Count *Coningſmark*, concerning the *Swediſh* Agent, was, That in Caſe he ſhould aſk Satisfaction of Mr. *Thynn*, for the Affronts that he had given him, not underſtanding the Cuſtoms of the Nation, if he ſhould call him to Account, what Prejudice it might be to him; for he did not hear, he ſays, that Count *Coningſmark* deſigned any thing, or reſolved upon killing him, or any thing of that Nature; but whether if he ſhould call him to Account, what the Laws of *England* might be.

Mr. *Williams*. Call *John Wright*.

Sir *N. Johnſon*. My Lord, the Count deſires to know if he may be permitted to make his Defence againſt theſe Witneſſes?

L. C. J. No, he is not to make his Defence now. But pray tell him, if my Lord have a Deſire to aſk any Queſtions of this Witneſs, he may aſk what he pleaſes.

L. C. J. North. Let the Queſtion be put to the Interpreter, that we may know what the Queſtion is before the Witneſs gives an Anſwer.

Mr. *Craven*. He aſks him, if he has not ſeen him oftner in his Lodging undreſſed than dreſſed, and whether he was not to take Phyſick from his Phyſician?

Mr. *Hanſon*. I do not remember, that in all the Time I ſaw Count *Coningſmark*, I ſaw him dreſſed four times in his Coat, I cannot ſay I remember three times in all. The firſt time when he came, he was in a Campaign Coat; but all the time he was in his Lodging, as I remember, he was in his Night-Gown and Cap. As to the other Part of his Queſtion, whether I heard that he took Phyſick? I ſay this, When I ſaw Count *Coningſmark* firſt at his Lodging, when I came to him, on the *Sunday* Evening, I was told the Count was in Bed: It was late, but I ventured to go into his Room, and ſat a Quarter of an Hour there; and afterwards the Doctor came in, Dr. *Frederick*, I ſaw him oftentimes at his Lodging; and at the ſame Time the young Count was ſick of an Ague: And when he came one Evening to ſee the young Count, I aſked him what was the Diſtemper the Count had? The Doctor anſwered me, that he had not told any body that the Count was ſick, or what he was ſick of, but he hoped in God, in a ſhort time, he would be recovered.

Mr. *Craven*. He aſks him if he gave any poſitive Order, that he ſhould go of any Meſſage to the *Swediſh* Envoy?

Mr. *Hanſon*. This I have anſwered before, and I ſay now, if this Diſcourſe that I had with the *Swediſh* Envoy, turn to the Lord Count *Coningſmark*'s Prejudice, it would grate upon my Conſcience all my Life: Count *Coningſmark* never gave me any poſitive Order to carry any Meſſage; but I did gather, by his Diſcourſe, that the Count might be deſirous to know the Envoy's Opinion about this Queſtion; and therefore I thought, the Count deſiring it, I would do it to pleaſe him, rather than by Order. But I do not know that ever the Count had a Mind to give me ſuch on Order, but I did it voluntarily.

L. C. J. In plain *Engliſh*, Did he ever direct you to go to the *Swediſh* Envoy?

Mr. *Hanſon*. No, my Lord, he never did direct me.

L. C. Bar. How came you to chooſe a Foreigner on know what the Laws of *England* are?

Mr. *Hanſon*. I thought it would pleaſe the Count to know his Opinion.

L. C. Baron. But how came you to chuſe a Foreigner, I aſk?

Mr. *Hanſon*. He has been 19 Years here in *England*, and ſure he ſhould know.

Mr. *Craven*. My Lord, he aſks him if ever he told him that he had a Deſign to fight Mr. *Thynn*, or do him any Prejudice, or ſend him a Challenge?

Mr. *Hanſon*. My Lord, I am upon my Oath, and this I ſay, I ſpeak it before God and the Court, Count *Coningſmark* did never tell me that he had any Mind, or did reſolve to call Eſquire *Thynn* any ways to Account.

Mr. *Williams*. Call *John Wright*. [*Who ſtood up and was ſworn.*]

Sir *Fr. Wynn*. We ſhall aſk him but a Queſtion or two, my Lord.

Mr. *Williams*. Pray tell me the Time when this *Polander* came into *England*; that Man at the Bar?

Mr. *Wright*. He came the Tenth Day of this Month.

Mr. *Williams*. Pray what Ship did he come in? Where did you firſt meet with him?——Mr. *Wright*. Here in Town.

Mr. *Williams*. Where was it?

Mr. *Wright*. At the *Croſs-Keys* in *Throgmorton-Street*.

Mr. *Williams*. Pray, when you firſt ſaw him, what did he aſk you?

Mr. *Wright*, He aſked me where Count *Coningſmark*'s Lodgings were? I told him I thought he was at *Oxford*, I meant the young Gentleman, for I did not know the other was in Town; but I went and enquired, and they told me it was at *Faubert*'s Academy.

Mr. *Williams*. Whither went you with the *Polander* then?

Mr. *Wright*. I went to my Lord's Lodgings.

Mr. *Williams*. What Lord?—Mr. *Wright*. The young Count's Lodgings.

Mr. *Williams*. Well, and what then?

Mr. *Wright*. And I came to Mr. *Hanſon*, and he did deliver a Letter to Mr. *Hanſon*, and I ſtaid there about Half an Hour, or thereabouts.

Mr. *Williams*. When was this?

Mr. *Wright*. Upon *Friday* the tenth Day of this Month.

Mr. *Williams*. How long was Mr. *Hanſon* and the *Polander* together?

Mr. *Wright*. About Half an Hour.

Mr. *Williams*. What ſaid *Hanſon* to him in your Preſence?

Mr. *Wright*. Mr. *Hanſon* ſaid nothing.

Mr. *Williams*. Was there any thing ſaid about going back and paying his Lodging, and coming back?

Mr. *Wright*. Mr. *Hanſon* came down to me, and told me he was glad to ſee me, and bid me take the *Polander* back with me, and bring him to him to-morrow betimes, for he muſt diſpatch him about his Buſineſs.

Sir *Fr. Winn*. Then he ſaid nothing to the *Polander*?

Mr. *Wright*. No, but to me.

Sir *Fr. Winn*. Well, what did you do the next Morning?

Mr. *Wright*. I came to him the next Morning, to this *Polander*, and he took his Things with him, which was a Sea-bed that he had, and a Gun with a Wheel-Lock, and ſome other Things.

Sir *Fr. Winn*. And whither did you bring him?

Mr. *Wright*. I brought him to the Upper-End of the *Hay-Market*, Monſieur *Faubert*'s School.

Mr. *Williams*. To what Place did you come in the Morning, ſay you?

Mr. *Wright*. Sir, if it pleaſe you, I brought him within a Door or two of Mr. *Faubert*'s the Horſe-maſter, that teaches to ride the great Horſe; for he did deſire that we might go to an Houſe hard by, becauſe he would not carry his Carriage to my Lord, he had a Sea-bed, a Portmantle, a Gun, and other Things; and ſo I brought him to an Houſe, and there I called for a Pot of Ale; and he put down his Things and went out, I thought he had gone to make Water, but within a little while after returns again, and Mr. *Hanſon* comes in with him: He aſked me why I did not come ſooner; I told him I had ſome other Buſineſs, I was with ſome *French* Merchants to look upon ſome Goods. So he bid the *Pole* pay me for my Trouble, and take up his Things, and go along with him; and he did do ſo, and I never ſaw the *Pole* afterwards.

L. C. J. You that are the Interpreters, repeat what he hath ſaid to the Jury. [*Which was done.*]

Sir *Fr. Winn*. We have done with this Man, the Uſe we make of him is to follow this *Polander*, and we ſhall bring him to the Count by and by. Call Dr. *Frederick Harder*. [*Who was ſworn.*]

L. C. J. The Doctor underſtands *Engliſh*, don't he?

Sir *Fr. Winn*. Yes, we are told he does.

Mr. *Williams*. How long have you known the Count that ſtands there at the Bar?

Dr. *Harder*. I have known him a good while, it may be this four or five Years. I have known him four or five Years.

Mr. *Williams*. How long have you known Capt. *Vratz*?

Dr. *Harder*. About a Year and a half, or two Years

Mr. *Williams.* Was my Lord and Capt. *Vratz* acquainted then?

Dr. *Harder.* Yes.

Mr. *Williams.* Was he in Employment under my Lord? Was he in the Count's Service?

Dr. *Harder.* He was with the Count, but whether he was his Companion I cannot tell.

Mr. *Williams.* Did he live with the Count?———Dr. *Harder.* Yes.

Mr. *Williams.* Did Captain *Vratz,* when the Count came laſt over into *England,* come over with him?

Dr. *Harder.* Yes, by my Knowledge.

L. C. J. Do you know it or not?

Dr. *Harder.* Captain *Vratz* came to me, and told me, my Lord deſired to ſpeak with me, and I went with him to my Lord.

Sir *Fr. Winn.* Was that the firſt Meſſage you received from the Count?

Dr. *Harder.* Yes, it was.

Mr. *Williams.* How long was that ago?———Dr. *Harder.* The ſame Day the *Morocco* Embaſſador did exerciſe in *Hyde-Park.*

Sir *Fr. Winn.* How long is that ago?

Dr. *Harder.* About a Month ago.

Sir *Fr. Winn.* What was that his firſt Lodging after he came laſt into *England?*———Dr. *Harder.* It was in the *Hay-Market.*

L. C. J. Was it a Corner-Houſe, as the other Witneſs ſaith, or not?

Dr *Harder.* Yes, it was.

Mr. *Williams.* Was the Count a private Lodger there?

Dr. *Harder.* He lay in his Bed when I came to him; he came as a Traveller privately.

Mr. *Williams.* Did he go by his own Name, or another Name?

Dr. *Harder.* No body did queſtion him about his Name, but when I did come to him, I did diſcourſe him about his Body.

Mr. *Williams.* Pray Sir, thus: You went often to viſit him, pray did you enquire for him by his own Name, or any other Name?

Dr. *Harder.* He deſired that he might be private, becauſe he was to take ſome Medicines, and he would not have it known.

Mr. *Williams.* Now, Sir, I would aſk you, did you obſerve him to be in any Diſguiſe? Did he wear a Perriwig, or how?

Dr *Harder.* He had a Perriwig.

Mr. *Williams.* Was it a fair Perriwig, or what Colour?

Dr. *Harder.* It was brown or black.

Sir *Fr. Winn.* Sir, was he in a Diſguiſe, or no?

Dr. *Harder.* He had his own Clothes, but he had a Perriwig.

Sir *Fr. Winn.* Pray what Name did he go by, his right Name, or any particular Name?

Dr. *Harder.* In the firſt Beginning I gave him no Name; but, ſaid he to me, if any Body aſk you about me, I would not be known; for if they know that I lie privately thus, they will think I ail ſome ill Diſtemper, therefore I would have you call me by the Name of *Carlo Cuſki.*

Mr. *Williams.* Were you with him, pray Sir, upon the *Sunday* Morning that Mr. *Thynn* was murdered?

Dr. *Harder.* I cannot certainly tell, but I was with him in the Afternoon.

Sir *Fr. Winn.* Pray call yourſelf to Mind, Sir.

Dr. *Harder.* I cannot certainly tell.

Sir *Fr. Winn.* What Time were you with him in the Evening?

Dr. *Harder.* At Nine o'Clock at Night, or thereabouts.

Mr. *Williams.* Did you receive any Letter from Capt. *Vratz* at any Time?

Dr. *Harder.* I did upon *Saturday* Morning, the *Saturday* before Mr. *Thynn* was murdered.

Sir *Fr. Winn.* Have you that Letter about you?-------Dr. *Harder.* No.

Sir *Fr. Winn.* What was in the Letter?

Dr. *Harder.* He deſired me to go to the Count, who had a Deſire to ſpeak with me. I came there, and had ſome Speech with him about his Indiſpoſition. I told him he had better ſtay till next Day before he took Phyſick, becauſe it was cold Weather. And after that, went with the *Polander* to my Lodging, and the Captain's Man came in, and then ſaid, here is a Man that will direct you to Captain *Vratz*'s Lodging; which I did not know.

Mr. *Williams.* Look you, Sir, you ſay you went to the Count, did you ſhew the Count that Letter from Capt. *Vratz,* or no?

Dr. *Harder.* The Count ſaw it.

Mr. *Williams.* Then hear a little, When was it you ſhew'd the Letter to the Count? Was it *Saturday* or *Sunday?*

Dr. *Harder.* It was *Saturday.*

Mr. *Williams.* Now, was the *Polander* then in the Count's Lodgings, or no?--------Dr. *Harder.* Yes, he was.

Mr. *Williams.* Was there any Diſcourſe about him then?

Dr. *Harder.* I had never ſeen him in my Life.

Mr. *Williams.* But was there any with the Count?

Dr. *Harder.* No, not at all.

Sir *Fr. Winn.* Then, upon your Oath, I aſk you once more, Was the *Polander* ever in Company with you and my Lord at any Time?

Dr. *Harder.* No.

Sir *Fr. Winn.* Upon the *Sunday,* upon your Oath?------Dr. *Harder.* No.

Sir *Fr. Winn.* Nor the *Saturday* Evening?

Harder. No, I have not ſeen him ſince that Morning when the Captain's Man took him along with him to his Maſter.

Mr. *Williams.* Pray, how came the *Polander* into your Company on *Saturday* Morning?

Dr. *Harder.* I had him from my Lord's that Morning.

Mr. *Williams.* Then my Lord and the *Polander* were together?

Dr. *Harder.* No, they were not together.

Mr. *Williams.* Was the *Polander* in my Lord's Lodgings?

Dr. *Harder.* Yes, the *Polander* was below Stairs.

Mr. *Williams.* And did you take him from the Lodging?

Dr. *Harder.* Yes, I did.

Mr. *Williams.* How long did he continue with you?

Dr. *Harder.* Not at all, I went home with him.

Mr. *Williams.* Had you no Diſcourſe with him?

Dr. *Harder.* No, none at all.

Mr. *Williams.* Where did you part with him?

Dr. *Harder.* I brought him to my Houſe; and when he came in-a-doors, the Captain's Man being there, I told him there was a Man would ſhew him the Captain's Lodgings; and he took him away along with him.

Mr. *Williams.* You ſay, the Captain's Man had the *Polander* from you; pray name that Man?---------Dr. *Harder.* I cannot tell his Name.

Mr. *Williams.* Was his Name *Berg?*

Dr. *Harder.* I believe it was.

Sir *Fr. Winn.* You ſay you delivered a Letter from Captain *Vratz* on *Saturday* Morning to the Count?-------Dr. *Harder.* Yes.

Sir *Fr. Winn.* Did the Count read the Letter, and tell you the Contents of it?---------Dr. *Harder.* No, it was not ſealed.

Sir *Fr. Winn.* Did not you know the Contents of it then?

Dr. *Harder.* No.

Sir *Fr. Winn.* Pray, when you delivered the Letter from Captain *Vratz* to the Count, what did the Count ſay to you?--------Dr. *Harder.* The Letter was not written to the Count, but it was writ to me.

Mr. *Williams.* What was the Reaſon that you ſhewed it to him then?

Dr. *Harder.* I received a Letter from Captain *Vratz,* that the Count deſired to ſpeak with me; and afterwards I was deſired to direct this Man, the *Polander,* to Captain *Vratz*; and ſo I directed him to Captain *Vratz,* and nothing more I know.

Sir *Fr. Winn.* Well, Sir, one thing more and I have done with you; for you will not, I ſee, give a reaſonable Anſwer: pray, when the *Polander* came along with you from the Count's, did you obſerve he had any thing about him?----------Dr. *Harder.* He had a great Campaign Coat.

Sir *Fr. Winn.* Did he ſeem to have any thing under it?

Dr. *Harder.* He had a Portmantle under it, I think, or ſome ſuch thing.

Mr. *Craven.* My Lord, the Count deſires to aſk him ſome Queſtions.

L. C. J. Let him aſk what Queſtions he will.

Mr. *Craven.* My Lord, he aſks him whether he does not remember, when he firſt came to Town, he had not his Body full of Spots?

Dr. *Harder.* Yes, my Lord, when he came from *Tangier,* he had Spots over all his Breaſt; and it was feared they might get up higher towards his Neck, and endanger him very much.

Mr. *Craven.* He ſays, if my Lord pleaſes, he will ſhew it openly.

L. C. J. No, there is no need of that, Doctor. Did you give him Phyſick for that?

Dr. *Harder.* Yes, for that I did adminiſter Phyſick to him.

Mr. *Craven.* He ſays, my Lord, he over-heated himſelf in riding to *Tangier,* thinking to do the King and the Nation Service, and the Heat broke out in Spots over his Breaſt.

L. C. J. The Doctor knows nothing of that.

Mr. *Craven.* He aſks whether the Doctor was not deſired by him to cure him? whether he did not tell him he would cure him of thoſe Spots?

Dr. *Harder.* He deſired me to adminiſter Phyſick unto him.

Mr. *Craven.* He ſays he went to *Straſburgh,* and when he came back he was in the ſame Condition he was in before; and he aſks whether the Doctor did not undertake to cure him?

Dr. *Harder.* Yes, I did adminiſter Phyſick unto him; and this my own Man can teſtify and be Witneſs of; becauſe my Lord bid me take Care that he might be private, for he would not have it known that he did take Phyſick; but I told my Man, ſaid I, 'tis my Lord *Coningſmark,* and therefore pray take Care of him, and ſee that the Phyſick be made very well up.

L. C. J. You ſeem to intimate, as if he lay private to take Phyſick; pray let me aſk you this Queſtion, Did you give him Phyſick all this Time?

Dr. *Harder.* Not always purging Phyſick, but ſome Sort of Phyſick all the Time.

L. C. J. What every Night and Morning?

Dr. *Harder.* Yes, every Day.

Mr. *Craven.* The Count deſires to aſk him where he was that unhappy Day this Buſineſs was done?

Dr. *Harder.* I found him that Day ill, lying down upon the Bed, I aſked him how his Phyſick had worked: he told me he was afraid he had got ſome Cold; and indeed I found him very much diſordered, and I went home and fetched him ſome Phyſick to take that Night.

L. C. J. By the Oath you have taken, was there any other Occaſion, or had you any other Diſcourſe with him, when you came on the *Sunday* Night but concerning his Phyſick?

Dr. *Harder.* My Lord, I will tell you the Truth; I never heard the Count ſpeak any Word in my Life, that he had any Concern, or Deſign of any Quarrel at all, nor any Diſcourſe, but about the Adminſtration of his Phyſick.

L. C. J. Let me aſk you this Queſtion, for they deſire it here, What was the Occaſion? and whether you know the Occaſion, why my Lord altered his Lodgings ſo often?

Dr. *Harder.* The firſt Occaſion was this; Becauſe it was in the *Haymarket*; and his Man ſaid it would be quickly known if he did continue there; ſo he would take another Lodging, which was in *Rupert-ſtreet,* and there he lodged three Days; but the Chimney did ſo ſmoke, that my Lord could not ſtay, becauſe he could have no Fire in his Chamber, and the Weather was very cold, for it did ſnow, and therefore I told my Lord, it was not ſo proper for taking of Phyſick: Thereupon he deſired me to take him another Lodging in *Queen-ſtreet,* which I did look about for, but it was not ready, ſo he had a Lodging taken for him in St. *Martin's-Lane,* where he lodged till he went away.

Mr. *Williams.* Pray, Sir, the Phyſick that you gave the Count, did it require his keeping within Doors? might not he walk abroad with it, upon your Oath?---------Dr. *Harder.* It did require him to keep in.

Mr. *Williams.* Pray then, how comes it to paſs that the Count ſo ſuddenly could go by Water to *Graveſend?*

Dr. *Harder.* I do not know what was done afterwards.

Sir *Fr. Winn.* I would aſk you one Queſtion, and I would fain have you give me a fair Anſwer to it, What became of the Letter that Captain *Vratz* writ to you, and you ſhewed to the Count?

Dr. *Harder.* It remained there upon the Table.

Sir *Fr. Winn.* Did not you keep your own Letter?

Dr. *Harder.* It was not of any Concern.

Sir *Fr. Winn.* If the Letter were written to you, it is not ſo long ſince, but you can tell us the Contents of it; Pray, what were the Contents?

L. C. J. Can you remember what were the Contents?

Dr. *Harder.* He deſired me to go to Count *Coningſmark*, who would ſpeak with me, and that I would give his Man an Anſwer when I came from him.

Sir *Fr. Winn.* But what were you to go to the Count to do?

Dr. *Harder.* Nothing; but the Count diſcourſed to me about his own Body and Indiſpoſition.

Sir *Fr. Winn.* But Captain *Vratz* was no Phyſician; why ſhould he ſend you a Letter to talk about Phyſick?

Dr. *Harder.* It was nothing but my Lord would ſpeak with me.

Mr. *Williams.* We need not trouble ourſelves with this Fellow, he confeſſes he found the *Polander* in the Count's Houſe.

Sir *Fr. Withens.* Pray, Sir, let me aſk you, who was with the Count on *Sunday* Night.

Dr. *Harder.* Mr. *Hanſon* was there, I think.

Sir *Fr. Withens.* Who elſe?

Dr. *Harder.* The Captain came in, and went out again.

Sir *Fr. Winn.* What Time of Night was it that *Vratz* came into the Count?——Dr. *Harder.* It was at the ſame Time that I was with him.

Sir *Fr. Winn.* That he ſwears to be about nine o'Clock: Was it after Mr. *Thynn* was killed?——Dr. *Harder.* We had not heard it.

Sir *Fr. Winn.* Sir, was it nine of the Clock?

Dr. *Harder.* Yes, it was.

Mr. *Williams.* You ſay you found the *Polander* at the Count's Lodgings?

Dr. *Harder.* Yes, upon *Saturday* Morning.

Mr. *Williams.* Then he came along with you from the Count's Lodgings?--------Yes, to my Houſe.

Mr. *Williams.* And you parted with him there?

Dr. *Harder.* Yes, the Captain's Man took him away with him.

Mr. *Williams.* That was *Berg*, wa'nt it?--------Dr. *Harder.* Yes.

Then this Evidence was interpreted to the Jury.

Mr. *Craven.* He deſires the Jury ſhould know what the Doctor ſaid about his Sickneſs.

L. C. J. Let it be repeated to them.

Mr. *Craven.* He deſires to know whether he may not ſpeak it in *French* himſelf?

L. C. J. No, the Interpreter muſt do it; (*which was done.*) My Lord, would you aſk any more Queſtions of the Doctor?

Count *Con.* No more Queſtions but them I have aſked.

Sir. *Fr. Winn.* Call *Thomas Howgood.* [*Who was ſworn.*]

Mr. *Williams.* Pray, did you ſell any Sword to the Count?

Mr. *Howgood.* I ſold a Sword to the Governor; a broad Horſeman's Sword.

Mr. *Williams.* When was this?

Mr. *Howgood.* On *Saturday* was Fortnight.

Mr. *Williams.* What Time was it that he beſpoke it?

Mr. *Howgood.* He beſpoke it half an Hour after Six at Night.

Mr. *Williams.* What did he ſay to you when he bought it?

Mr. *Howgood.* He ſaid he would call for it about eight o'Clock at Night, when he came from the Play.

Mr. *Williams.* What Kind of Sword was it?

Mr. *Howgood.* An Horſeman's Sword, as broad as two Fingers, ſuch as the Gentlemen of the Guards wear.

Sir *Fr. Winn.* When he came for the Sword, what ſaid he?

Mr. *Howgood.* He was angry it was not done, and I told him that I would ſend it to him quickly.

Sir *Fr. Winn.* Where was it ſent?

Mr. *Howgood.* To the Governor's Lodgings at the Accademy.

Mr. *Williams.* Now, my Lord, we will call ſeveral Perſons that were privy to the concealing of this Gentleman, that can give you a better Account, *Richard Hays* and *Robert French.*

[Robert French *appeared, and was ſworn.*]

Sir *Fr. Winn.* Pray will you tell my Lord what you know of the Count's concealing himſelf and changing his Habit.

Mr. *French.* I never ſaw him, my Lord, before I came here in Court; but it ſeems he did lodge in my Houſe three or four Days.

Sir *Fr. Winn.* How long is it ſince?---------Mr. *French.* Between three Weeks and a Month ago, juſt ten Days before the Murder.

Sir *Fr. Winn.* What Name did he go by then?

Mr. *French.* I did not know his Name.

Sir *Fr. Winn.* Who uſed to reſort to him at that Time?

L. C. J. You ſay, Sir, you ſaw him not, what Company did come to him?--------Mr. *French.* I did not ſee him indeed.

Sir *Fr. Winn.* Pray did Captain *Vratz* come to him to your Houſe?

Mr. *French.* He lodged with him all the Time.

Sir *Fr. Winn.* You ſay you know Capt. *Vratz* was there?

Mr. *French.* Yes.

Mr. *Williams.* Did Dr. *Harder* uſe to come to him?

Mr. *French.* Yes, ſeveral Times a Day.

Mr. *Williams.* What Name did he enquire for him by?

Mr. *French.* The Doctor took the Lodging, and it was for a Stranger; I heard no Name at all.

Interpret. My Lord deſires to know, whether you did not ſuſpect he took Phyſick in the Houſe?--------Mr. *French.* I ſuppoſe the Doctor did give you an Account of that; I don't know that he did?

Interpret. Did not your Maid know of any ſuch Thing?

Mr. *French.* My Maid is here, ſhe will give you an Account.

Sir *Fr. Winn.* Call *Ann Prince*: (*Who was ſworn.*) Pray do you acquaint my Lord what you know of Count *Coningſmark*; whether ever you ſaw him at your Maſter's Houſe in the *Hay-market?*

Prince. Yes, he lodged there.

Mr. *Williams.* When?

Prince. He came thither laſt *Friday* was a Month.

Mr. *Williams.* How long did he ſtay there?

Prince. 'Till *Wedneſday.*

Mr. *Williams.* At that Time, who uſed to frequent his Company?

Prince. I know no body but the Doctor that uſed to come to him.

Mr. *Williams.* What Name did he go by?

Prince. No Name at all, as I know of; they did not aſk for him by any Name.

Mr. *Williams.* Did the Captain uſe to come to him?

L. C. J. Her Maſter ſays he did lie there.

Prince. Yes, he uſed to lodge there.

Mr. *Williams.* Did the Captain give him any Phyſick?

L. C. J. No, but the Doctor did.

Sir *Fr. Winn.* He only aſks a merry Queſtion.

L. C. J. But we are now upon the Life and Death of a Man, pray let us have thoſe Queſtions aſked that are ſerious, not ſuch light Things as are permitted in ordinary Caſes.

Sir *Fr. Winn.* Now, my Lord, we will call *Francis Watts.*

Mr. *Craven.* Maid, my Lord aſks, whether he did not take a Vomit in your Houſe?---------*Prince.* Not that I know of.

Then Francis Watts *was ſworn.*

L. C. J. How old is the Child?

Fr. Watts. Fifteen Years old laſt *Chriſtmas.*

L. C. Baron. Aſk him whether he underſtands what an Oath is?

Mr. *Thynn.* He was ſworn before the King and Council.

L. C. Baron. If he were ſworn before the Council, he may give Evidence here ſure.

Sir *Fr. Winn.* Were you at the Count's Service at any Time?

Watts. Yes.

Sir *Fr. Winn.* How long?

Watts. I was with him eleven Days: I came to him upon the *Friday.*

Sir *Fr. Winn.* How long was it before the Death of Mr. *Thynn?*

Watts. I think it was ten Days before the Death of Mr. *Thynn.*

Sir *Fr. Winn.* What was your Employment with him?

Watts. His Boy to wait upon him.

Sir *Fr. Winn.* Did you lie in the ſame Lodging?

Watts. No, at my Father's.

Sir *Fr. Winn.* What was the Agreement between your Father and the Count?---------*Watts.* Six-pence a Day and my Diet.

Sir *Fr. Winn.* What Company did you obſerve came to the Count's Lodgings?

Watts. That Gentleman there in the black Perriwig.

Sir *Fr. Winn.* Was he often with your Maſter?

Watts. Yes, every Day.

Sir *Fr. Winn.* How many Lodgings had he while you were with him?

Watts. Three: One in the *Hay-market*, and one in *Rupert-Street*, and then the laſt in St. *Martin*'s.

Mr. *Williams.* Thus, Child; do you remember the Time of killing Mr. *Thynn?*---------*Watts.* Yes.

Mr. *Williams.* Were you in your Maſter's Service then?

Watts Yes, I was.

Mr. *Williams.* Who was in your Maſter's Company that Morning before Mr. *Thynn* was killed?

Watts. I came up, as I uſed to do in the Morning, to my Maſter, and he aſked me what was the Matter with the Buſtle in the Street? And I told him ſome body was taken upon Suſpicion for killing Eſquire *Thynn.*

Sir *Fr. Winn.* That was on *Monday* Morning; but the *Sunday* Morning before, what Company did you obſerve there then?

Watts. I cannot tell any Thing exactly of the *Sunday* Morning.

Sir *Fr. Winn.* Was Captain *Vratz* there?

Watts. I can't exactly remember.

Sir *Fr. Winn.* What Time in the Evening was it reported Mr. *Thynn* was killed?----------*Watts.* About eight o'Clock.

Sir *Fr. Winn.* Can you tell who brought the firſt News?

Watts. One of my Lady *Seymour*'s Maids, who was telling the People of it below.

Sir *Fr. Winn.* Did you obſerve any Body come to your Maſter's Lodgings afterwards?----------*Watts.* Yes.

Sir *Fr. Winn.* Pray who came?

Watts. That Gentleman in the black Perriwig.

Mr. *Williams.* Pray in what Habit was he? And how came he in?

Watts. He came in a great Coat; I can't tell whether it was Cloth or Camblet.

Mr. *Williams.* And what, did he ſpeak to any Body, or go ſtrait up?

Watts. No, he ſpoke to no Body, but went ſtrait up Stairs.

Mr. *Williams.* Did he go up to your Maſter's Lodgings?

Watts. Yes, I believe ſo, but I ſtayed below in the Shop.

Mr. *Williams.* How long did you ſtay in the Shop?

Watts. I ſtayed there about half an Hour.

Mr. *Williams.* Did you leave him there?---------*Watts.* Yes, I did.

Mr. *Williams.* Did he continue there all the Time that you were in the Houſe?----------*Watts.* Yes.

Mr. *Williams.* What Time did you go away?

Watts. About three Quarters of an Hour after that Gentleman came in.

Sir *Fr. Withens.* Do you remember you had any Diſcourſe with the Count, about riding on *Sunday?*

Watts. He aſked me on *Sunday* in the Forenoon, whether People were ſuffered to ride about the Streets on Horſeback on *Sundays?*

Sir *Fr. Winn.* This was that *Sunday* Morning, was it?

Watts. Yes: He aſked if they might be ſuffered to ride obout the Streets on *Sunday?* I told him yes, before Sermon-time and after Sermon-time.

Sir *Fr. Winn.* About what Time of the Day was it that he had heard this Diſcouſe?

Watts. About ten or eleven o'Clock.

Sir *Fr. Winn.* Are you ſure it was *Sunday?*---------*Watts.* Yes.

Sir *Fr. Winn.* Then I aſk you another Queſtion: Upon *Sunday* Morning, or any other Time, do you remember that the *Polander* was with the Count, your Maſter?

Watts. He came in on the *Saturday* Morning.

Mr. *Williams.* Was he in the Company or Preſence of the Count?

Watts. I was above Stairs when he came in.

Sir *Fr. Winn.* What do you know of any Sword that was delivered to him?

Watts. Upon the *Sunday* Morning there was a Sword brought to my Maſter's Lodgings, and my Maſter's Man took it of me, and carried it up Stairs, and this Man, the *Polander*, afterwards had it below Stairs.

Mr. *Williams.* When was this Sword brought to your Maſter's Houſe?

Watts. It was on the *Sunday* Morning.

Mr. *Williams.* What, the Cutler brought the Sword?

Watts. No, it was ſent by a Porter from Mr. *Hanſon.*

Mr. *Williams.* What Room was it carried into when it was brought?

Watts. I think I did not carry it up: Yes, truly, now I remember, I did, and delivered it to my Maſter?

Mr. *Williams.* Pray what did the Count ſay to you?

Watts. I aſked him if there needed an Anſwer to the Note I carried with it, and he ſaid no.

Mr. *Williams.* To whom was the Sword delivered afterwards?

Watts. It was brought down, and afterwards this *Polander* had it.

Mr. *Williams.* That Man there?——*Watts.* Yes.

Mr. *Williams.* You ſay that the Sword was given to the *Polander:* Pray ſpeak that the Jury may hear. Who brought down the Sword?

Watts. I ſaw it in the *Polander*'s Keeping when it was below, but I cannot ſay who brought it down.

Sir *Fr. Winn.* Where did the *Polander* dine on *Saturday?*

Watts. He dined with my Maſter's Man and I on *Saturday.*

Sir *Fr. Winn.* Where did he lie that Night? At whoſe Chamber?

Watts. At our Lodgings in the Garret, in my Maſter's Man's Chamber.

Sir *Fr. Winn.* What Day was this, do you ſay?——*Watts.* *Saturday.*

Mr. *Williams.* When the *Polander* had the Sword, do you remember any Boots that he had under his Arm?

Watts. Yes, he had Boots under his Arm.

Mr. *Williams.* And he had the Sword with him when he went away?

Watts. Yes.

Mr. *Williams.* Had he any Coat?——*Watts.* Yes, a new Coat.

Mr. *Williams.* Well, I aſk you once more, what Time of Day was it that he went away with the Sword and the Boots?

Watts. It was in the Forenoon.

Mr. *Williams.* What Day of the Week?—*Watts.* *Sunday* Morning.

L. C. J. Ay, but your Doctor that you examined before, ſays, the *Polander* went away with him, and he was not there on *Sunday* Morning.

Sir *Fr. Winn.* It is true, my Lord, it was too tender a Point for the Doctor, he lies under ſome Suſpicion; and 'tis *proximus ardet* with him.

L. C. J. Well, call him again: Look you, Doctor, you were aſked before, and now you are aſked again, Were you at Count *Coningſmark*'s Lodging's on *Sunday* Morning?

Dr. *Harder.* I cannot certainly tell.

L. C. J. When did you ſee the *Polander* at the Count's Lodgings, and whether was it on *Sunday* Morning?

Dr. *Harder.* On *Sunday* Morning I did not ſee him. The only Time was when I fetched him from my Lord's; I have not ſeen him before nor ſince.

L. C. J. Then call the Boy again. Where did the *Polander* dine on *Saturday?*

Watts. He dined with me and my Maſter's Man.

L. C. J. Where?——*Watts.* Below in the Kitchen of our Lodgings.

L. C. J. Where lay the *Polander* that Night?

Watts. He lay in our Garret.

L. C. J. When went he from your Maſter's Lodgings?

Watts. On *Sunday* Morning.

Mr. *Williams.* Had he an old Coat or a new Coat upon him?

Watts. He had a new Coat.

L. C. J. Was the Doctor with him?

Watts. Yes, the Doctor went away with him.

Dr. *Harder.* I have not ſeen the *Polander* above once in my Life.

Sir *Fr. Winn.* But were you at the Count's on *Sunday* Morning, or no, I ask you?

Dr. *Harder.* I do not know whether it was *Saturday* or *Sunday.*

L. C. J. But when you fetched him away, was it *Saturday* or *Sunday* Morning?

Dr. *Harder.* My Lord, I cannot very well remember.

L. C. J. Had the *Polander* a Sword when you went away with him?

Dr. *Harder.* I cannot poſitively ſay, but (as Travellers commonly have) he might have a Sword.

Sir *Fr. Winn.* Now come to yourſelf, and deal honeſtly, for you are upon your Oath; I ask you, Friend, this, You ſay he might have a Sword, do you remember a Pair of Boots?—Dr. *Harder.* No, I do not.

Sir *Fr. Winn.* Do you remember the Coat he had uppermoſt?

Dr. *Harder.* Yes, he had ſomething under his Coat, but I don't know it was Boots.

L. C. Baron. Had he a Buff-Coat under his Campaign?—*Watts.* Yes.

Sir *Fr. Withens.* Let me ask you one Queſtion, young Man; Do you remember you ſaw any Muſquetoon in your Maſter's Lodging?

Watts. I did ſee a Gun there.

Sir *Fr. Withens.* When was that?——*Watts.* I ſaw it upon *Saturday.*

Mr. *Williams.* The Muſqetoon or Gun that was in your Maſter's Lodgings, was it that which was brought by the *Polander*, or no.

Watts. I can't tell that.

Mr. *Williams.* Was it a long Piece or a ſhort Piece?

Watts. It was not a ſhort Piece.

L. C. J. Did the *Polander* take it away with him?

Watts. No, not that I know of.

Mr. *Williams.* Now, young Man, I would ask you as to *Monday* Morning: About what Time on *Monday* Morning did you come to your Maſter's Lodgings?

Watts. It was between ſeven and eight o'Clock, a little after ſeven.

Mr. *Williams.* What Condition was he in? Was he in Bed, or up?

Watts. He was up.

Mr. *Williams.* What was he doing? Was he packing up?

Watts. Not that I ſee.

Sir *Fr. Winn.* It was when he aſked you about the Hubbub in the Street; pray tell what he ſaid to you?

Watts. He asked me what the Matter was with the Buſtle in the Street, and I told him that ſome were taken that had killed Eſquire *Thynn*; and I told him all the Story, as near as I could: He asked me when Eſquire *Thynn* was murdered; I told him the Night before; but I did not mind any thing that was done: But as I went down Stairs, I met with a Stranger, and he went up Stairs, but I never ſaw my Maſter after, till he was taken.

Sir *Fr. Winn.* Did he ask you what Mr. *Thynn* was?

Watts. Yes, and I told him I heard he was a Man of a great Eſtate, and well beloved, and that the Duke of *Monmouth* was in the Coach but a little before, and if he had not gone out, he had been killed too.

Sir *Fr. Winn.* What ſaid the Count to you, when you told him Mr. *Thynn* was well beloved?——*Watts.* He ſaid nothing.

Sir *Fr. Winn.* Can you remember who it was came to your Maſter then?

Watts. I know the Man if I ſee him again.

Sir *Fr. Wynn.* Do you know his Name?

Watts. No, I do not know his Name.

Mr. *Williams.* Were any of your Maſter's Goods carried away then?

Watts. Yes.

Mr. *Williams.* What Goods were carried away then?

Watts. Two Portmantles.

Mr. *Williams.* Who caried them away?

Watts. My Father carried them away.

Mr. *Williams.* What Time was it?

Watts. Between eight and nine of the Clock.

Sir *Fr. Winn.* It was time to be gone. How parted you and your Maſter?

Watts. The Stranger did come in, and I never ſaw my Maſter afterwards.

Sir *Fr. Winn.* What, did your Maſter take no Leave, nor ſay any Thing to you?——*Watts.* No.

Sir *Fr. Winn.* What Kind of Perriwig had he when he went away?

Watts. He had a black Perriwig.

Sir *Fr. Winn.* What Clothes?

Watts. A light-coloured Suit, with Gold Buttons.

L. C. Baron. Will the Count ask the Boy any Queſtions?

Mr. *Craven.* Did you ſee the Gun in the Room after the *Polander* was gone?——*Watts.* Yes.

L. C. J. 'Tis very plain that this Gun was none of the Gun that did this Miſchief, but the Gun the *Polander* brought over from beyond Sea.

Sir *Fr. Winn.* Call the Boy's Father, *Thomas Watts,* (*who was ſworn.*) How long have you known the Count?

T. Watts. I do not know him, but as I have ſeen him.

Sir *Fr. Winn.* Were you employed to carry any Thing for him?

T. Watts. Two or three Times I was.

Mr. *Williams.* When were you laſt employed by him?

T. Watts. The Morrow after the Murder was committed.

Mr. *Williams.* What Time in the Morning was it?

T. Watts. It was between eight and nine of the Clock in the Morning.

Mr. *Williams.* What was it you did for him?

T. Watts. I carried a Portmantle, and a Portmantle-Trunk, and ſome other Things.

Mr. *Williams.* Where were you directed to deliver theſe?

T. Watts. His Man told me they were to go to *Windſor.*

Mr. *Williams.* Well, tell the whole Story.

T. Watts. He bid me carry them to *Charing-Croſs*, that they might be put into the Coach there. But when he came to *Charing-Croſs*, a Coachman and he had ſome Words, and he bid him open his Boot, and then he took the Things from me, and put them into the Coach.

L. C. J. Who was it that told you they were to go to *Windſor?*

T. Watts. It was his Man.

Sir *Fr. Winn.* I would ask you, Sir, when was the firſt Time you knew the Count?

T. Watts. It was ten or eleven Days before.

Sir *Fr. Winn.* What was the Occaſion that brought you acquainted with him?

T. Watts. I was Dr. *Frederick*'s Porter, and he ſent me to carry ſome Things to the Count.

Mr. *Williams.* Was it your Son that waited upon him?

T. Watts. Yes. For when I brought the Things, they ſaid they had forgot to give me a Sword which I was to carry with the Things; and I ſaid, that I had a Boy that I would ſend, and I did ſo, and ſo they took a Liking to the Boy.

Mr. *Williams.* What was the Agreement for your Son's Service.

T. Watts. Six-pence a Day and his Victuals.

Sir *Fr. Winn.* What was the Man's Name (as you remember) that gave you the Things to carry to the Coach, which were ſaid to go for *Windſor?*

T. Watts. I can't tell his Name.

Mr. *Williams.* He that pinched and puſhed you back, and took the Things from you, and put them into the Coach?

L. C. J. Did you ſee the Count that Morning?

T. Watts. No, I did not ſee him.

Mr. *Williams.* Have you been laboured and ſought to by any Body to conceal your Boy, that he ſhould not be brought at this Trial?

T. Watts. No, Sir.

Mr. *Williams.* Had you no Endeavours uſed with you about it?

T. Watts. No.

Mr. *Williams.* Did no Body ſpeak of any ſuch Thing to you?

T. Watts. No.

Mr. *Williams.* Did any Merchant or any Body ſend to you about this Boy, to take him into Service?

T. Watts. There was a Merchant that would have helped the Boy to a Place on *Saturday* laſt, but the Perſons that would have procured it, were about it a good while ago.

Mr. *Williams.* Call *Derick Raynes* and *Richard Chappel,* (*who were ſworn, and* Raynes *ſtood up.*) When did you ſee the Count, the Priſoner at the Bar?

Raynes. On *Monday* in the Afternoon.

Mr. *Williams.* What Time was it in the Afternoon?

Raynes. In the Evening.

Mr. *Williams.* Where was it?—*Raynes.* At my Houſe.

Mr. *Williams.* Where is that?—*Raynes.* At *Rotherhith.*

Mr. *Williams.* How came the Count to your Houſe?

Raynes. I know not; I was not at Home when he came.

Mr. *Williams.* Pray when you ſaw him, had he his own Hair or a Perriwig, or how was he habited?

Raynes. He had black Hair then.

Mr. *Williams.* How long did he continue at your Houſe?—*Raynes.* From *Monday* 'till *Thurſday* Morning.

Mr. *Williams.* Was he privately there or publickly?

Raynes. He walked up and down the Houſe.

Sir *Fr. Winn.* What Countryman are you?——*Raynes.* I am a *Swede.*

Sir *Fr. Winn.* What became of him after *Thurſday*?

Raynes. On *Thurſday* Morning he took Water and went to *Deptford.*

Sir *Fr. Winn.* What Way did he go, by Boat, or how?

Raynes. A Waterman carried him.

Mr. *Williams.* Pray what did the Count ſay to you about his coming in a Diſguiſe to your Houſe?

Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was Count *Coningſmark.*

Mr. *Williams.* What did he ſay to you when you diſcovered that he was the Count? What did he tell you of his Buſineſs?

Raynes. He ſaid nothing; but that he was deſirous to go to *Graveſend.*

Sir *Fr. Winn.* Upon your Oath, Sir, did you furniſh him with any Clothes?

Raynes. Yes, I lent him a Coat.

Sir *Fr. Winn.* What ſay you to a black Suit?

Raynes. The black Suit did not belong to me.

Sir *Fr. Winn.* What ſay you to a Velvet Cap?

Raynes. I helped him to a Coat, Stockings, and Shoes.

Sir *Fr. Winn.* Then I aſk you, what did he declare to you?

Raynes. Why, he did deſire to have thoſe Clothes.

Sir *Fr. Winn.* You are an honeſt Man, tell the Truth.

Raynes. He declared nothing to me.

Sir *Fr. Winn.* When you dreſſed him, why did he put on that Habit?

Raynes. He thought his own Clothes were too cold to go upon the Water.

Sir *Fr. Winn.* Had he no Clothes before?

Raynes. Yes, he had.

Mr. *Williams.* You had the warmer Coat, had you?

Sir *Fr. Winn.* Did he deſire you to let him have your Clothes, becauſe he was in Trouble?

Raynes. He deſired a Coat of me, and a Pair of Stockings to keep his Legs warm; and when he had got them, his own Shoes would not come on, ſo I lent him a Pair of Shoes.

Sir *Fr. Winn.* I do aſk you, did he declare the Reaſon why he would have thoſe Clothes was, becauſe he would not be known?

Raynes. He ſaid he was afraid of coming into Trouble.

Sir *Fr. Winn.* Why were you unwilling to tell this?

Raynes. As ſoon as I came to know he was the Man, I told him he ſhould not ſtay in my Houſe.

Sir *Fr. Winn.* Did you lend him thoſe Clothes, or ſell them?

Raynes. I lent him them.

Sir *Fr. Winn.* Had you them again?—*Raynes.* No, I had not.

Sir *Fr. Winn.* Are you paid for them, or no?

Raynes. No, my Ship lies at the Key, and I came home late in the Evening, and found him there.

Sir *Fr. Winn.* Set up *Richard Chappel.*

Mr. *Williams.* When did you firſt ſee that Gentleman?

Chappel. On *Thurſday* Morning, at Ten of the Clock.

Mr. *Williams.* Where?

Chappel. At *Rotherhith.*

Mr. *Williams.* How came you to him? Who brought you?

Chappel. That Man.

Mr. *Williams.* What were you to do with him?

Chappel. To carry him to *Graveſend.*

Mr. *Williams.* Do you row in a Pair of Oars, or a Sculler.

Chappel. A Sculler.

Mr. *Williams.* Whither did you carry the Count that Day?

Chappel. To *Deptford.*

Mr. *Williams.* Whither the next Day?—*Chappel.* To *Greenwich.*

Mr. *Williams.* And whither then?

Chappel. To *Greenhith*, and then the next Day to *Graveſend.*

Mr. *Williams.* Was he in the ſame Clothes all the while?

Chappel. Yes, all the while.

L. C. Baron. Were you hired to wait upon him all that time?

Chappel. Yes, I was to have five Shillings every 24 Hours.

L. C. Baron. Was he alone?—*Chappel.* No, this Man was with him.

L. C. J. Did he go in the Sculler with him?

Chappel. Yes, to *Deptford.*

Mr. *Williams.* Well, now we will call the Gentleman that ſeized him at the Waterſide at *Graveſend.*

Sir *Fr. Winn.* What did the Count call himſelf? What Profeſſion did he tell you he was of?

Chappel. He told me he was a Merchant.

Sir *Fr. Winn.* Did he ſay he was a Jeweller, upon your Oath?

Chappel. Yes, he ſaid he had bought Jewels.

Sir *Fr. Winn.* Where is Mr. *Gibbons*, and Mr. *John Kid?*

[*Who were ſworn, and Mr.* Kid *ſtood up.*]

Mr. *Williams.* Mr. *Kid*, pray, Sir, will you acquaint my Lord and the Jury in what Condition you found the Count at *Graveſend?* Tell the whole Story, and ſpeak aloud, that all may hear you.

Mr. *Kid.* I had ſome Information upon *Friday* Night of him.

Mr. *Williams.* Of whom and what?

Mr. *Kid.* Of the Count where he was. So I made it my Buſineſs to enquire into it. On *Saturday* in the Afternoon a Gentleman came to me, and gave me certain Information where he thought that Gentleman the Count was. This Gentleman coming to me, ſaid, Mr. *Thynn* is a Stranger to me, but ſaid he, I would not have Mr. *Thynn*'s Blood lie at my Door. This ſame Perſon who is put out in the *Gazette*, I believe, is at a Neighbour's Houſe of mine. Says he, I deſire you to be private in it, becauſe it may do you a Prejudice; ſo we went into a Coach at *Charing-Croſs* to go to a Juſtice of Peace; I did not know where Sir *John Rereſby* lived, but enquired of Mr. *Gibbons*, who told me, but he was not at home, and Mr. *Bridgman* was not at home; ſo we went to the Recorder, and there we had a Warrant, and then I came by Water to *Rotherhith*, and this ſame *Raynes* that was examined, and his Wife where he lay, were gone to *Greenwich* to carry his Clothes, a grey Suit, and other Clothes that he had left. So going down to *Greenwich*, we called every Boat that was upon the River aboard of us, to know whence they came. And we had taken her Siſter along with us, and ſhe called out her Siſter's Name, *Mall Raynes*, and her Brother's Name, *Derick Raynes*, and ſo at laſt we got the Boat wherein they were, on board us. And we aſked the Man what he had done with the Gentleman that lay at his Houſe? He declared he was gone away, he did not know whither. So I went back again to this Gentleman that gave me this firſt Information, who did go to him as a Neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the Particulars: That if we miſſed him that night, we ſhould have him in the *Hope* upon *Monday* Morning, upon a Veſſel that was to be cleared on *Monday* Morning. So upon *Sunday* Night coming to *Graveſend* about Eight or Nine or Nine o'Clock, or thereabouts, there he landed. There were 13 or 14 *Swedes* at the ſame Houſe where he was to land; ſo we thought it convenient to take him at his firſt landing, for fear of further Danger. So I ſtaid at the *Red-Lion* Back-ſtairs, and he landed at the Fore-ſtairs, where the Watermen were. As ſoon as he was laid hold of, I came to him; ſaid I, your Lordſhip ſhall not want for any thing that is convenient. He deſired to know whether I knew him; I told him yes; and that his Name was Count *Coningſmark.* That is my Name, ſays he; I do not deny it. So the Mayor came, and the *Cuſtom-Houſe* Officers ſearched him, and found nothing at all of any Arms about him. He deſired he might be uſed like a Gentleman, and ſo he was; for there was no Abuſe given to him, as I know of. Coming up the River, the moſt of my Diſcourſe was about martial Affairs; a Serjeant that had the Command of a File of Muſqueteers, which the Deputy Governor ſent to guard the Count to *Whitehall*, a Gentleman ſitting there by me, was aſking me concerning Mr. *Thynn*'s Murder; I told him, that I was at *Newgate* on *Friday*, and there I ſaw thoſe that had done that barbarous Fact. With that, my Lord, aſked what Lodgings there were in *Newgate*? And whether the Captain had a good Lodging? I told him a very good one. He aſked me whether he confeſſed any thing? I told him he had confeſſed ſome Particulars. And, ſaid I, 'tis the moſt barbarous Thing that ever was done. Certainly, ſays my Lord, this Mr. *Thynn* muſt have Correſpondence and Commerce with ſome Lady that this Captain knew, that belonged to the Court, or he would never have done it. As for the *Polander*, I told him that he had confeſſed, he wept mightily. With that my Lord ſeemed very much concerned, and took up his Clothes and bit them, and ſat awhile up, but was very much diſcompoſed, and then deſired to lie down.

Sir *Fr. Winn.* That was, when you told him, the *Polander* had confeſſed?

Mr. *Kid.* Yes; my Lord was mightily altered in his Countenance.

Sir *Fr. Winn.* Did you at the firſt Time that you ſeized him charge him with the Murder?——Mr. *Kid.* No, I did not

Sir *Fr. Winn.* Was he in a Black Perriwig?

Mr. *Kid.* His Cap fell off, and his Perriwig, juſt as I came to him.

Sir *Fr. Winn.* Set up Mr. *Gibbons.* Pray will you tell what paſſed?

Mr. *Gibbons.* My Lord, as ſoon as ever he came to ſhore, I walked by him, and gave him a little kind of a Juſtle; and my Reaſon was, to ſee whether he had not a black Coat under his Campaign: I walked cloſe to him juſt in this Manner, as he walked along, ſo he turns about again and went down to the Waterſide, and aſked the Watermen; Watermen, Have you ſtowed your Boat? They anſwered, Yes. Then come away, ſaid he; ſo ſoon as he came back again, I catched him faſt hold by the Arm, and the firſt Word he ſaid to me was, What do you come to rob me? Said I, my Lord, you are my Priſoner, and I told him I was the King's Meſſenger, that had waited there ſeveral Days for him; and holding of him very hard, whether that was the Occaſion of it, or the Watermen that were on the other Side of him, he dropped down his Sword between his Legs; but when I named his Name, he gave a little Start, and his Perriwig dropped off his Face. We went up the Street to the Mayor, and the People crowding about us, were very rude and very rugged, and he deſired he might be well uſed. We did all we could to keep the People from him: We went up to the Mayor's Houſe, and when we came there, I deſired he might be ſearched, whether he had any Arms: He ſaid he had none, and there was none.

Sir *Fr. Winn.* When you had the Cuſtody of him, whither did you carry him?

Mr. *Gibbons.* We carried him to the Mayor's Houſe, and afterwards we removed him from his Houſe to an Inn.

Sir *Fr. Winn.* What did you do the next Day?

Mr. *Gibbons.* We ſtaid there about ſome two or three Hours. After an Hour, or half an Hour's Time, near upon an Hour, my Lord came to me, and aſked me my Name; and he ſaid, the Reaſon was, that after his Trouble was over, he would give me Thanks for my Civility to him. Captain *Sinkleer*, who ſtood by, gave him my Name before I could, that it was *Gibbons.* Yes, ſaid I, my Name is *Gibbons*, and I belong to the Duke of *Monmouth:* Why, ſays he, the Duke of *Monmouth* has no Command now, and therefore how could I take him by his Order? My Lord, ſaid I, I do not apprehend you by his Order; you have killed a very good Friend of mine, and had not Providence ordered it otherwiſe, you had like to have killed a more particular Friend, and a Maſter: So, my Lord, he ſeemed to be very ſorry at that; but, ſays he, I don't think they would have done any Harm to the Duke of *Monmouth.*

Sir *Fr. Winn.* What elſe did he ſay?

Mr. *Gibbons.* I think I have told you all that is material.

Sir *Fr. Winn.* Were you in the Boat at any Time, and gave him any Account of the Man's having confeſſed; what did he ſay to it?

Mr. *Gibbons.* Sir, I was not there, nor I did not come up in the ſame Boat with him.

Mr. *Williams.* Did he mention any thing about a Stain to his Blood?

Mr. *Gibbons.* I aſk your Pardon, he did ſo.

Mr. *Williams.* What did he ſay?

Mr. *Gibbons.* Says he, it is a Stain upon my Blood; but one good Action in the Wars, or one Lodging upon a Counterſcarp will waſh away all that.

L. C. J. What did he ſay was a Stain upon his Blood?

Mr. *Gibbons.* My Lord, if you pleaſe, I will tell you: As I ſaid, he aſked me my Name, becauſe he would come to give me Thanks for my Civility after his Trouble was over; the Captain, being quicker than I, told him my Name: Yes, Sir, ſaid I, 'tis *Gibbons,* and I belong to the Duke of *Monmouth*; ſaid he, he has no Command now, how could you come upon his Order? Said I, I do not come upon his Command, but you have killed a very good Friend of mine, and a Countryman; and if Providence had not ordered it otherwiſe, you had killed a more particular Friend of mine, and a Maſter, that I had ſerved many Years; ſaid he, I don't think they would have done the Duke of *Monmouth* any Injury: After that he walked up and down a-while, and then ſaid he, 'tis a Stain upon my Blood; but one good Action in the Wars, or a Lodging upon a Counterſcarp, will waſh away all that. The Mayor was in the Room, and ſeveral others.

Sir *Fr. Winn.* Pray, Sir, one Thing more; when you did ſpeak to him of Confeſſion, did he ſay any thing to you about Captain *Vratz?*

Mr. *Gibbons.* Sir, he was only aſking of me how Things were, what the People ſaid, or ſome ſuch Thing? I was not forward to tell him at firſt, but afterwards I did tell him, that the Captain had made a Confeſſion, though it was a Thing I did not know then. Says he, I do not believe the Captain would confeſs any Thing.

L. C. J. Did he ſay ſo?

Mr. *Gibbons.* Yes, he did, to the beſt of my Remembrance.

Sir *Fr. Winn.* We have done with our Evidence, my Lord.

L. C. J. My Lord *Coningſmark,* will you aſk him any thing?

Count *Coningſmark.* No.

L. C. J. Then the next Thing is, you heard the Evidence that is given againſt you. Now you muſt come to your Defence: I will put you in mind of ſome Things, my Lord, which Things it will concern you to give ſome Account of. It is here laid to your Charge, That you were acceſſory to this Murder of Mr. *Thynn,* and that you were the Perſon that directed and deſigned it. And theſe Evidences there are againſt you, That you were cognizant of this, and that you were the Perſon that deſigned this: That you came into *England* about a Fortnight or three Weeks before the Death of Mr. *Thynn*; that Captain *Vratz,* who was one of them that killed him, came with you, that he lay at your Lodging, that he was conſtantly with you, that you lay *incognito* there, and private, would not be known what your Name was, that you ſhifted Lodgings from Time to Time, that *Boroſky* the *Polander* came over by your Order, was brought to your Lodging, was provided for there, that he had Clothes, and he had a Sword provided by your Lordſhip for him, and that there was Care taken that it ſhould be an extraordinary good Sword, that you did diſcourſe to Mr. *Hanſon* about your calling Mr. *Thynn* to Account, and this much about the Time, or a little before the Time of his Death, and what the Laws of *England* would be in caſe you ſhould call Mr. *Thynn* to Account; and particularly you deſired to know what Monſieur *Lienberg*'s Opinion might be concerning it, and eſpecially what in Relation to my Lady *Ogle.* And that after all this, Mr. *Boroſky* was not only clothed by you, but was ſent by you to *Vratz,* (that the Doctor ſays) and after *Vratz* him, that he lay in your Lodging that Night before this evil Thing was done, and that after the Thing was done, the ſame Night *Vratz* came to your Lodging and was with you, and had private Conference with you, that the next Morning you got up and went away, though you had taken Phyſick the Night before, and though you yourſelf, nor your Doctor, thought you fit to go abroad, and you go away *incognito,* in a Perriwig, diſguiſed, you direct your Servant to carry your Clothes one way, while you go another; then you go down to the Water-ſide, and lie private near the River, at a *Swede*'s Houſe at *Rotherhith* for ſeveral Days together; you afterwards take great Care to conceal yourſelf, by changing your Clothes, and putting yourſelf in a Garb not like your own, and giving out you were a Merchant or a Jeweller, or ſome other Trade; that afterwards you trifled away the Time and went two or three Miles, and then ſtruck in upon one Side of the River, and afterwards on the other Side of the River, ſuſpiciouſly up and down not to be known, and this not like yourſelf in any manner, but in a pitiful poor Diſguiſe, and hire a Sculler to carry you, from whom you concealed yourſelf, and ſo all along you trifled away the Time 'till you were taken at *Graveſend*: That afterwards when you were taken, you were inquiſitive about the Captain, whether he did confeſs; that you ſhould likewiſe ſay ſome ſuch ſuſpicious Words as theſe, That you believed thoſe that killed Mr. *Thynn* had no Deſign againſt the Duke of *Monmouth*; that you believed the Captain would not confeſs; that you ſeemed to be concerned when you were told the *Polander* had confeſſed; that afterwards you ſhould ſay, my Lord, this is a Stain to my Blood; but one good Action in the Wars, or a Lodging upon a Counterſcarp, will take away all this, or waſh it clean. And then, which is alſo teſtified againſt you, that you ſhould aſk the Boy that very Morning of the Day the Murder was committed, whether they uſed in *London* here to permit Men to ride up and down on Horſe-back upon a *Sunday?* Now theſe Things, my Lord, it will import you to give ſome Account of.

Sir *N. Johnſon.* My Lord ſays, he deſires he may anſwer all theſe Things one after another.

L. C. J. Let him do ſo. And firſt let him anſwer what his Reaſon was to come into *England* in ſuch a Manner *incognito,* at this Time, and lie concealed, when he had been in *England* before, and lived in a mighty good Equipage and Condition?

Mr. *Craven.* My Lord, he ſays that hearing there was a Peace between *Swedeland* and *England,* and *Holland* deſigned, and like to be confirmed ſuddenly againſt the *French,* he came with a Deſign to ſerve *England,* and to raiſe a Regiment of Horſe here for the Service of the King of *England.*

Count *Coningſmark.* If any ſuch Peace ſhould be, if any Appearance of an Alliance between *England* and *Holland,* and *Swedeland,* I had a Deſign to propoſe, if I could have a Regiment.

L. C. J. Why did he come unknown, and in a Diſguiſe?

Sir *N. Johnſon.* *Secondly* he ſays, my Lord, the Reaſon of his coming *incognito* was, becauſe he had a Diſtemper upon his Arms and Breaſt, and having formerly tried and employed this Phyſician, and having Experience that he was an able Man, he was reſolved to lie privately till he had cured himſelf; for he could not drink Wine nor keep Company, having this Diſtemper upon him, and he was afraid, if he had kept Company, it would have hinder'd his Cure, and he ſhould not have been ſo ſoon cured, as if he kept in the Houſe; and he ſays, that this Equipage could not come 'till after, and he would not willingly appear 'till he had his Equipage as a Man of his Quality ought to do; and theſe were the Reaſons that made him keep private.

L. C. J. Pray aſk him upon what Occaſion he did change his Lodgings ſo often?

Sir *N. Johnſon.* He ſays that his firſt Lodging was changed becauſe it was too cold for him; and he ſays, the next Lodging, where he was, thoſe that were there can tell, the Room where he was ſmoked ſo cruelly, that he was not able to endure it. And he ſays, he liked the Houſe ſo well, that he ſent to ſee if the Chimney could be mended, and it was not to be done, otherwiſe he had gone back to that Houſe, and he has the Man and his Wife to bear Witneſs of it, if you pleaſe.

L. C. J. Let him call them.

Count. Call *Joſeph Parſons* and his Wife. [*But they did not appear.*]

L. C. J. Then aſk my Lord this, To what Purpoſe he did bring over this *Polander* here? He ought to conſider of that, and give an Account why he brought him hither.

Interpreter. He ſays this *Pole* was taken into his Service when he went to *Tangier,* when he went ſeveral Thouſand Miles to do the King's Service, and he had deſigned at that Time to bring him into *England* to dreſs his Horſes after the *German* Way.

L. C. J. Had the *Polander* been a Groom formerly?

Interpreter. He ſays, he thinks he had been Groom to his Uncle before.

L. C. J. But to what Purpoſe did he bring him hither?

Interpreter. He ſays there was a great Diſcourſe about *Straſburgh*'s being beſieged, he did deſign to buy ſome Horſes, for every one did arm themſelves; and he ſays he ſent over 1000 Piſtoles to be anſwered by the Merchants here, to buy Horſes.

L. C. J. Hath he any body to prove it?

Count. There is Mr. *Riſby,* Mr. *Hanſon,* and my Brother.

Young Count. My Lord, I had a Bill of Exchange.

L. C. J. For how much Money, my Lord?

Young Count. For 1000 Piſtoles, to buy Horſes, and he has bought one Horſe, and was to buy more.

L. C. J. Do you hear, Gentlemen, what he ſays? He came over to buy Horſes, and he returned 1000 Piſtoles for that Purpoſe; and his Brother does atteſt there was ſuch a Sum returned by Bills of Exchange, for the buying of Horſes.

Interpreter. My Lord, he ſays he does fear that the Jury that do not underſtand *Engliſh,* do not underſtand his Reaſons for being in a Diſguiſe.

L. C. J. Can't he give an Account of it himſelf?

Mr. *Williams.* No, my Lord, his Evidence muſt be interpreted to them by the Interpreter.

L. C. J. The Doctor's Evidence hath been heard already about the ſame Matter.

Sir *N. Johnſon.* He deſires, my Lord, to know this; whether he may not ſay the ſame Things over again to the Jury in *French?* there are a great many Perſons of Quality that underſtand it, and they will ſee whether he ſpeak true.

L. C. J. Let him, if he pleaſes.

Sir *Fr. Winn.* But then, my Lord, I hope that your Lordſhip will tell the Jury it goes for nothing without Proof.

[*Then the Count ſpoke to the Jury in* French.]

L. C. J. My Lord, I do not know whether the Gentlemen that are of your Right-Hand heard you or not.

Juryman. We underſtand not *French.* [*Then the Count ſpake it in* Dutch.]

Interpreter. He ſays, if it had not been for the great ſtormy Weather, the *Polander* had been ſooner in *London,* for he ſent for him before. He ſays, the Letters go from *Straſburgh* to *Hamburgh* in ſeven Days, and that moſt commonly Ships do come from thence in Eight Days, but in a great deal leſs Time than the *Polander* came over in. And he ſays, that he writ four Months before to fetch the *Polander* over, and he might have been here long ere now, if it had not been for the Weather.

L. C. J. Then, my Lord, I would aſk you ſome more Queſtions, which it concerns you to anſwer. Upon what Occaſion did you make your Diſcourſe of Mr. *Thynn*'s Death to Mr. *Hanſon?* Had you any Diſcourſe with him? And upon what Occaſion?

Sir *N. Johnſon.* My Lord, he ſays in common Diſcourſes, 'tis impoſſible to give an Account of the Diſcourſe, or remember the Occaſion of it ſo long ago.

L. C. J. Aſk him if he had any Quarrel with Mr. *Thynn?* Or knew Mr. *Thynn?*

Sir *N. Johnſon.* He ſays, my Lord, that he never had any Quarrel with Mr. *Thynn,* nor to the beſt of his Remembrance, with his Eyes, never ſaw Mr. *Thynn.*

L. C. J. Then I aſk you this, my Lord, did you ever hear Mr. *Thynn* had married my Lady *Ogle* before you laſt came into *England?*

Interpreter. He ſays, he never heard of it 'till he was going to *Straſburgh*, and then all the whole Town did talk of it.

L. C. J. How long is that ago?——*Interpreter.* Half a Year ago.

L. C. J. Then it was before his laſt coming into *England*

Sir *Fr. Winn.* My Lord, his Diſcourſe with Mr. *Hanſon*, was not when he was laſt in Town, but before.

L. C. J. Then pray aſk him this, What Occaſion he had to aſk the Boy upon *Sunday*, Whether Horſes might ride about the Town of a *Sunday?*

Interpreter. He ſays, my Lord, this is a very ſtrange Thing, That he ſhould go and aſk a Scullion-Boy, whether People might ride on *Sundays*, when he himſelf, over and over again, has rid upon *Sundays* to *Hyde-Park*, as many Perſons of Quality do.

L. C. J. Has he any Body to prove it?

Sir *N. Johnſon.* Here is Major *Oglethorp*, (who, with divers other Gentlemen, teſtified they had ſeen him riding divers Times, on *Sundays*, in *Hyde-Park*).

L. C. J. Then that Queſtion ſignifies nothing; there could be nothing in that Queſtion.

Sir. *N. Johnſon.* My Lord, he deſires that I may be examined concerning the Boy, of what I heard by Chance from the Boy himſelf, and I will give you an Account of it upon my Faith and Reputation.

L. C. J. Do ſo, Sir *Nathaniel*, ſay what you can ſay.

Sir *N. Johnſon.* My Lord, I having had the Honour to ſerve a-while under my Lord's Father, I was deſirous, knowing the Honour of the Family, and bearing a great Reſpect to it, to do my Lord all the reaſonable Service I could. So hearing my Lord was taken, and in *Newgate*, I went to wait upon him; and coming there, Mr. *Richardſon* told me, there was a little Boy waited at the Count's Door for his Wages, as he ſaid. So I ſpake to the Boy, and aſked him, what do'ſt thou ſtay for? He told me for his Wages. Said I, certainly my Lord will pay you your Wages; how long have you ſerved him? He ſaid, a little while; and then ſaid I, if you lived with him, what do you know of his Buſineſs? And then of himſelf he began and told me: Only this I know, That *Vratz* was in my Maſter's Chamber that Night, and the *Polander* that Night went out with a Pair of Boots under his Arm, and more than this I do not know. Said I, Boy, Who do you ſerve? Says he, I have no Maſter at preſent; but then of his own Accord he told me, Sir *Thomas Thynn* had promiſed him a Place, and in the mean Time, I am, ſays he, to go to ſerve my Lord *Privy-Seal*; ſo my Lord gave him twenty Shillings for his Wages.

Interpreter. My Lord deſires the Boy may be aſked, whether he did not go to fetch Phyſick.

L. C. J. Aſk him; where is the Boy?

Watts. No, I do not remember it.

L. C. J. Now, you ſhould put the Count in Mind.

Sir *Fr. Winn.* We obſerve what a Sort of Interpreter Sir *N. Johnſon* is: He ſpeaks more like an Advocate than an Interpreter; he mingles Interpreter, and Witneſs, and Advocate together, I don't know what to make of him.

L. C. J. The Count had taken Phyſick that Day.

Sir *Thomas Thynn.* My Lord, I deſire to be heard, I never ſpake to the Boy in all my Life.

Mr. *Thynn.* Nor I. But he gave the ſame Teſtimony he gives now, before the King and Council.

L. C. J. Look you, Sir *Thomas*, it does not concern you at all to ſpeak to that, there is no Reflection made upon you in it. But my Lord *Coningſmark*, it will concern you a little, to ſhew upon what Occaſion Captain *Vratz* came to you that Night that Mr. *Thynn* was killed.

Interpreter. He ſays, my Lord, he can't tell why he came there; 'tis a proper Queſtion to aſk Captain *Vratz* himſelf.

L. C. J. That can't be.

Interpreter. He ſays, my Lord, he kept his Chamber at that Time; he had taken Cold upon his taking Phyſick, and the Captain came to give him a Viſit, and he never reflected what any one came for; he was lying upon his Bed.

L. C. Baron. Pray aſk my Lord this: Why this Man, that was ſent over to attend Horſes, ſhould come upon the *Friday*, and a Campaign Coat be bought him on the *Saturday*, and he furniſhed with a Sword on the *Sunday?*

Interpreter. My Lord, the Noiſe is great, but I ſuppoſe your Lordſhip deſires to know what was the Reaſon why he bought a Sword for him and a Coat?

L. C. Baron. Ay, and how he came by the Buff-Coat?

Interpreter. He ſays he had that before.

L. C. Baron. But why muſt he have ſuch a ſtrong Baſket-hilted Sword furniſhed him in a Day's Time.

Interpreter. He ſays, my Lord, as to the Clothes, when he ſaw him with all his Clothes torn, he muſt of Neceſſity get him a Coat, or elſe he was a Shame to him and his Service. And as for the Sword, it was no more (he ſays) than what Servants of his Bulk and Making uſed to wear.

Sir *N. Johnſon.* And he ſays all the Servants of Gentlemen in *Germany* wear ſuch broad Swords.

L. C. J. You know it yourſelf, Sir *Nathaniel Johnſon*, you have travelled there.

Sir *N. Johnſon.* Yes, my Lord, they do; and the *Poles* much broader and greater Swords than the others. Here is one in Court that hath a great broad Sword now by his Side.

L. C. J. Now, my Lord, it will import you to give ſome Account, how, you having brought over this *Polander* (as you ſay) to chooſe Horſes, and help you in the Management of them, to take Care of them in the Nature of a Groom, how you came to part with him to Captain *Vratz* as ſoon as he came over?

Interpreter. My Lord, he ſays, being that he was ſick himſelf, and there was no Hopes of the Alliance between *England* and *Holland*, he had no ſuch Occaſion for him, as when he wrote for him, and therefore ſaw no Reaſon to keep him.

L. C. J. How long was it before that he wrote for him?

Count. My Lord, after the Siege of *Straſburgh*, when every Body thought there would have been a War, but it was not ſo; therefore I had not Need of him, but he had been ſeven Weeks at Sea; and, my Lord, 'tis a common Thing in *Germany*.

Interpreter. He ſays, 'tis a common Thing in their Country, to give Servants away, if there be no Occaſion for them.

Count. My Lord, it is a common Thing in *Germany*, it may be, it may not be ſo much uſed in *England* to give a Servant away.

L. C. Baron. What, the next Day that he comes over?

L. C. J. What ſay you, Sir *Nathaniel Johnſon?*

Sir *N. Johnſon.* Yes, my Lord, 'tis very frequent in *Germany* to give a Servant away if there be no uſe of him, for theſe *Polanders* are like Slaves.

Interpreter. And, my Lord, he ſays, that Mr. *Ruſſel* does know, that the Merchant that ſent him over hither is a Man of good Repute; and if this Man had had an ill Reputation in *Germany*, he would not have ſent him.

Witneſs. My Lord, I know very well he is a Man of very great Credit in *Hamburgh*, and of great Eſtate.

L. C. J. Did he ſend over this *Polander?*

Witneſs. Yes, my Lord, ſo I underſtand.

L. C. J. Can you ſpeak of his Credit, Sir *Nathaniel Johnſon?*

Witneſs. Of the Merchant's Credit I can, my Lord; I know him to be a Man of conſiderable Eſtate and Credit. He is a Man of ſuch Reputation, that he would not ſend a Man of an ill Reputation.

L. C. Baron. Oh, Sir, *Nemo repente fit turpiſſimus.* He could not be ſo ill a Man at the firſt Daſh; he muſt be a Man probable for ſuch a Service.

Sir *Fr. Winn.* You may obſerve, my Lord, how Sir *Nathaniel Johnſon*, who is Interpreter in the Caſe, is a Witneſs, and argues for the Priſoner too.

Mr. *Williams.* Pray, Sir *Nathaniel*, is a Rencounter the killing of a Man after this Manner?

Sir *N. Johnſon.* A Rencounter is another Sort of thing, Sir; you don't ſpeak as if you were a Soldier.

Mr. *Williams.* My being a Soldier or not is nothing to the Buſineſs; but the Captain ſaid, he intended to have made a Rencounter of it.

Sir *Fr. Winn.* But, my Lord, we deſire to take Notice of Sir *Nathaniel*'s Forwardneſs; for it may be a Precedent in other Caſes.

L. C. J. What do you talk of a Precedent? When did you ſee a Precedent of a like Trial of Strangers, that could ſpeak not a Word of *Engliſh*; but you would fain have the Court thought hard of, for doing Things that are extraordinary in this Caſe.

Mr. *Craven.* My Lord, he deſires he may inform the Jury what he ſent for this *Polander* for.

L. C. J. Let him.

[*Then the Count ſpake it in* French *and* Dutch.]

L. C. J. My Lord, another Thing is this, how came your Lordſhip preſently to go away in ſuch a private ſecret Manner, and to direct your Clothes to be ſent as it were to *Windſor?* And yourſelf to go away, and to make ſuch a private withdrawing of yourſelf down the River in this Manner?

Mr. *Craven.* My Lord, he ſays, that one *Markham*, that is here, came and told him, that upon the killing of this Man by the *Polander* and the Captain, who were taken in ſuch a Fact, there was a Diſcourſe of it that it might turn to his Prejudice, and that the common People do commonly fall upon Strangers; that his Taylor told him, that he heard the common People name him as concerned in it, and that he believed, if the common People did catch him, they would tear him to Pieces, and ſo his Friends did counſel him that he would withdraw himſelf.

L. C. J. Is the Taylor here? Call him.

Interpreter. Call *Markham* the Taylor. [*who ſtood up.*)

Sir *N. Johnſon.* My Lord, he ſays, that he was afraid the People might tear him to Pieces, before he could come to juſtify himſelf.

L. C. J. Look you, Friend, did you come to Count *Coningſmark*'s Lodgings after Mr. *Thynn* was killed, on the *Monday* Morning?

Markham. Yes.

L. C. J. What did you tell him?

Markham. I told him nothing, but I was ſent there by Mr. *Hanſon*; ſays he, tell the Count that the Duke of *Monmouth* and ſeveral Noblemen have been here: Now I had not ſeen the Count at that Time before, but he told me where he lodged; when I came there I told the Count of it, but he told me he knew nothing of it; but, ſaid he, I am ſorry if any ſuch Thing be done.

L. C. J. But what did you ſay his Friends adviſed him to about it?

Markham. I did ſay nothing of it.

[*Then the Count ſpake to him in* Dutch.]

Markham. That was afterwards.

L. C. J. What was that afterwards?

Markham. I was told, the People ſaid, if he were taken, he would be knocked on the Head.

L. C. J. What Time afterwards was it?

Markham. After he went away.

L. C. J. Who told you ſo then?

Markham. Mr. *Hanſon* told me ſo then; I would not tell a Lie for all the World.

Count. He can tell alſo when I went away——*the reſt he ſpake in* Dutch.

Interpreter. He ſays this Man can witneſs, that he aſked his Man what Money he had left, and he told him that he had not above 10 or 11*l.* ſo he put his Hand in his Bag and took out ſome, and put it into his Pocket.

Count. So ill was I provided for an Eſcape.

L. C. J. Aſk him that Queſtion; do you know any Thing of what Money he took with him?

Markham. No, I ſaw him take an handful of Silver, but what it was I can't tell.

Mr. *Thynn.* He had 7 or 8*l.* about him when he was taken.

Interpreter. He deſires Leave to tell it to the Jury, (*which he did.*)

L. C. J. Now, my Lord, this will require ſome Anſwer; how came you to tell thoſe Gentlemen that took you, that you believed Mr. *Vratz* and the reſt would have done the Duke of *Monmouth* no harm?

Interpreter. He ſays, the People told, when he was taken, that the Duke of *Monmouth* was in the Coach, and that they did follow the Coach a great way, and would not do the Action 'till the Duke of *Monmouth* was out of the Coach.

Count. They did tell me, the Croud that were about me, that thoſe that were taken ſaid they would not do it till the Duke was out.

Interpreter. And he ſays, that gave him ſufficient Reaſon to ſay to Mr. *Gibbons* that he did believe they had no Deſign upon his Grace the Duke of *Monmouth*.

L. C. J. He heard it ſo commonly, it ſeems. Now, my Lord, there is one Thing more that you ſhould explain yourſelf in, what you meant by this, when you ſaid it would be a Stain upon your Blood, yet one noble Act in War, or the Lodging upon a Counterſcarp, would waſh it off.

Interpreter. He ſays, my Lord, that though he knew himſelf not Guilty of any Thing, yet his being taken upon Suſpicion, and clapped up in Priſon, would be a great Diſgrace to him, and would be worſe reſented in his own Country than the Thing itſelf was: It being not the Cuſtom in his Country to take Perſons of his Quality Priſoners in that Manner.

L. C. J. Now, my Lord, is there any Perſon that you would have called to aſk any Queſtions of? If you have, they ſhall be called.

Count. No, my Lord; but if you pleaſe to give me Leave to tell ſomething that may be neceſſary. [*Then he ſpake in* Dutch.]

Sir *N. Johnſon.* My Lord, he ſays, if you will give him Leave, though it does not come very well from himſelf, yet he deſires to ſay ſomething for his own Reputation,

Mr. *Williams.* He ſhould be armed with Witneſſes to make his Defence.

L. C. J. 'Tis fit for Men that ſtand here to ſay any Thing that is reaſonable for themſelves. My Lord, if you can ſpeak any thing that you apprehend the Jury can underſtand, ſpeak to them what you pleaſe, ſo as they underſtand it, but do not be too long.

Mr. *Craven.* My Lord, if your Lordſhip pleaſe, he ſays he would ſpeak it firſt in *French*, and then in *German*.

L. C. J. Ay, but then the *Engliſhmen* of the Jury will not underſtand a Word of it; he had better ſpeak in *Engliſh* to the Jury.

L. C. J. North. My Lord, it is an indifferent Thing, it may be interpreted, not being Matter of Fact.

Sir *N. Johnſon.* My Lord, he ſays it is a great Happineſs in all his Trouble, that he was in a Country where he was to appear before a Proteſtant Judicature, himſelf being a Proteſtant, and his Fore-fathers alſo. He ſays, that his Fore-fathers, under *Guſtavus Adolphus*, were Soldiers, and did there, with their Swords in their Hands, and the Loſs of their Blood, endeavour to ſettle the Proteſtant Religion in *Germany*, and protect it there: He ſays, that it has been the Honour of himſelf and his Family, that they have always been ready to venture their Blood and their Lives for the advantage of the Proteſtant Religion, as the Examples of his Grandfather and Father do ſhew; and there never was any thing done by his Family but what was done for the Honour of his Country, and his Religion: And he ſays, that if any of his former Actions can give any the leaſt Suſpicion of his being Guilty of this, or any foul Fact, he is very willing to lay down his Life, and very willing to have it cut off immediately.

Count. Immediately.

Sir *N. Johnſon.* He ſays, that he is very ready, upon all Occaſions, to ſerve the King of *England*; and that he loves the *Engliſh* Nation ſo well, as always to be ready to do any Thing to ſerve them.

Count. Without any Intereſt in the World, againſt the Will of all my Relations; and I have brought my Brother into *England* to be brought up into the Proteſtant Religion, to ſhew my Inclinations to the Religion, and the *Engliſh* Nation.

L. C. J. Have you done?

Sir *Fr. Win.* Yes, my Lord, we have done with our Evidence, and we have no Matter of Fact to reply unto; but we think it is our Duty, conſidering the Defence my Lord has made, that we ſhould take ſome Care to put the King's Evidence a little together, it being a Caſe of ſuch Nature, and ſo cruel and horrid a Murder.

My Lord, and you Gentlemen of the Jury, I am of Counſel here for the King, and you are Gentlemen upon an Enquiry to find out the Offenders in a very great, a barbarous, and a wilful Murder. And, my Lord, in relation to the Principals, I need not ſpend your Lordſhip's and the Jury's Time about them; for all thoſe three Men, that are indicted as Principals, do, my Lord, confeſs the Fact, though they do it in a different Manner, and though in Form of Law they have pleaded Not Guilty; yet when they come to be aſked the Queſtion, their Guilt flies in their Faces, and they cannot deny it. So then for thoſe three Men there is no Need to ſpend Time in repeating the Evidence.

But, my Lord, that ſeems to require the Conſideration of the Jury is, whether this wicked and horrid Murder be only circumſcribed in the Guilt of it to thoſe three Men that have confeſſed it, or whether any rational Man in the World will believe, upon the Account they give themſelves, that they had only a Deſign, a Study, or a Delight to kill this innocent Gentleman. No, my Lord, the Thing muſt lie a little deeper, and there muſt be ſome other Reaſon why this barbarous Murder was committed, I would crave your Pardon for what I ſay. My Lord, I would not ſpeak any Thing that ſhould miſlead a Jury in Matters of Blood, and I think it was rightly ſaid by your Lordſhip, that when a Man is tried for his Life, we ought all to behave ourſelves ſeriouſly, as in a Matter of Weight and Moment. And ſo it is, I think, a very ſerious Thing, and a Matter of Concernment to us all to enquire who hath ſhed innocent Blood; for ſuch was this poor Gentleman's Blood that was killed, innocent Blood.

My Lord, this Count is a very unhappy Perſon to have ſuch a Relation as has been proved to be of the Principals: I will do my Lord no Wrong in the Repetition, if I do, and am miſtaken, I crave your Direction, I am ſure you will correct me in it. Two of the Perſons that are Principals, that was Captain *Vratz* and the *Polander*, happened to be Perſons relating to my Lord's Family as his Servants. For it is agreed by the Witneſſes that were that Count's Friends, that they came over into *England* with the Count, the laſt Time he came over in that private Manner; and 'tis likewiſe proved, and not denied by him, that Captain *Vratz* was frequently with him, not only to the very Day when this bloody Fact was done, but after that great Crime was committed: I ſay, my Lord; 'tis a very unfortunate Thing for this Lord, that thoſe Men ſhould have ſo near a Relation to him, who have had their Hands in it, and can give no Account why they did it.

My Lord, I do know, (and your Lordſhip has juſtly directed us) that no Evidence from one Priſoner, or the Confeſſion of one can charge the others in point of Evidence; but I cannot but take Notice, that Captain *Vratz* could give no Reaſon in the World for it, but as it were for ſome Affront to the Count and himſelf. But, my Lord, the Evidence that lies heavy upon this Lord at the Bar, is made up of theſe Particulars.

Firſt, That here is a Murder committed is plain, then that this Lord did fly, is alſo plain, and when he did fly, Gentlemen, he kept himſelf in Diſguiſe before that Fact was committed, and whether or no the Reaſons be ſufficient that he has given to your Lordſhip, and the Jury, muſt be left to Conſideration. He ſays, that he had not his Equipage, that he was not very well, and that he could not drink Wine: Thoſe I take to be the Reaſons given, why my Lord *Coningſmark* did conceal himſelf, 'till the Time after the Fact was committed.

L. C. J. He was taking of Phyſick, and he thought it might be prejudicial to him to drink Wine, or keep Company.

Sir *Fr. Winn.* But, my Lord, theſe Kind of Shifts, we think, are not able to balance the Evidence; for that which is truly the Evidence is this, Mr. *Hanſon*, who is very much converſant in that Family, and who did give his Evidence very unwillingly; yet, he did really confeſs that which will go very far in this Caſe; for after he was preſſed ſeveral Times (your Lordſhip, and the Court, and the Counſel preſſed him) to tell what was the Reaſon of that Diſcourſe he had with the *Swediſh* Reſident; and he was aſked, Had you any Command from my Lord *Coningſmark?* He anſwered no: but, ſays he, I thought it would pleaſe him, if I could have the Opinion of the Agent or Reſident to know what the Laws of *England* were, if ſo be he called Mr. *Thynn* to Account, and what the Conſequence would be in Reference to his Deſign upon my Lady *Ogle*, and upon this he does go, and aſk the Queſtion of the Reſident.

Now, What does he mean by this calling to Account? We muſt take Things according to the Reaſon of them. Certainly it was ſome Offence that he had taken to Mr. *Thynn*, and that is plain in regard when he was aſked what the Prejudice did refer to, Mr. *Hanſon* was pleaſed to name that great Lady, my Lady *Ogle*, and ſaid ſhe was mentioned, and he did deſire to know what the Influence of the Laws of *England* would be in that Matter, if he ſhould call him to Account.

My Lord, I think, with Submiſſion, it carries this in it, as if he had a Purpoſe in his Mind to call Mr. *Thynn* to Account by quarrelling with him and hazarding him in his Life; I do not undertake, nor would not, of myſelf, to expound it, but this I will ſay, it muſt ſignify ſomething, and muſt have ſome Conſideration; and without all Doubt, a Perſon of this Lord's Quality would not let fall ſuch an Expreſſion, but for ſome End and Purpoſe.

My Lord, after Mr. *Hanſon* had given his long Evidence, which came ſo difficultly from him, we traced it down by ſeveral Witneſſes, *Wright*, *Harder*, and others; that this *Polander* came over, as it happened, on the *Friday*, (which is a Thing comes mighty cloſe) upon the *Saturday* he is provided with a Coat and a Sword; on the *Sunday* he committed this inhuman bloody Fact. Now, it is a mighty unfortunate Circumſtance upon this Lord, that this ſhould be a Man whom my Lord *Coningſmark* ſhould be ſo very much concerned for, that becauſe he was not come, he ſhould be afraid he had miſcarried in the Weather; to that his Anſwer was this, that he was ſent for over by him to look after his Horſes, and he had come a great deal ſooner, if it had not been for the ſtormy Weather. But, your Lordſhip obſerves, that it was not above three or four Months before, and then by his own ſhewing the Buſineſs of Mr. *Thynn*, and his Marriage with my Lady *Ogle* was talked of far and near; and ſo, my Lord, it makes the Suſpicion of the Malice the greater, that he who has done this bloody Murder, and has been ſo much under the Command of this Lord's Family, that he ſhould come but two Days before, and the Count provide him with a Sword that very Day, and then that Letter from Captain *Vratz* to Dr. *Harder*, which he carried to the Count, and the Count read, but of which he can tell you none of the Contents; that ſpeaks ſomething in regard when the Doctor went away, this *Polander* was ſent to the Captain by the Doctor; but this is certain, however, there was a Sword that was brought by the Cutler, that Sword was carried up to the Count's Chamber, that Sword was delivered afterwards to the *Polander*; for he had it on the *Sunday* Morning when he went away with the Boots under his Arm, and the Campaign Coat upon his Back, with a Buff-Coat under it; and he went out, and never returned 'till the Fact was committed.

I ſay, my Lord, it carries a vehement Suſpicion, that he was privy to this Murder, becauſe this was a Servant at his Devotion, and your Lordſhip and the Jury ſee what Kind of a Creature he is, likely to do any thing, being at the Command of ſo great a Perſon.

But then, my Lord, to come cloſer to the Matter, (for I will only repeat that which is moſt material) there is the Evidence of the Boy, who I muſt ſay, tells you a very ſenſible Story; he tells you upon what Account he came to him, that he was there ten Days before the Murder was committed; he ſwears expreſly, that the *Polander* lay there the Night before, was there that Morning, went away with the Sword, and Dr. *Harder* with him; that this Murder was committed about eight o'Clock at Night, that Captain *Vratz* came buſtling into the Count's Lodgings, where he lay concealed, and the Boy, by Agreement, being to go home every Night, ſtaid 'till half an Hour paſt nine, and left the Captain there at that Time, and the Captain had been there in the Morning.

My Lord, ſurely it is a ſtrange Thing, and much to be wondered at, that the Captain, who had the Management of this Murder, had no where to go for a Refuge, but to his Patron my Lord *Coningſmark*, reeking hot with Mr. *Thynn*'s Blood, when the Blow was given, within an Hour after the Murder committed, (for ſo the Boy ſwears expreſly, for the Blow was given at eight o'Clock) a-Clock) and afterwards he went to the Doctor's to Bed, about ten a-Clock at Night, as the Doctor hath confeſſed ; I take that for a mighty Evidence. And then, my Lord, upon the *Monday* Morning, when the Boy comes in, the Count aſks him, *What was the Matter with the Buſtle in the Street the laſt Night?* Will any Man in *England* believe, but that he had had earlier News of it ? And for what Reaſon ſhould he aſk the Queſtion, if Mr. *Hanſon* ſpeaks true, who brought the News in from *White-hall?*

But the great Queſtion that we wonder ſhould be aſked the Boy, is, *What Mr.* Thynn *was?* Which certainly was a very odd Expreſſion, if we conſider what Mr. *Hanſon* ſays, *That the Count had mentioned him in his Diſcourſe, and my Lady* Ogle *too.* One of the Count's Anſwers was, *It could not be imagined that he could ſpeak to a Scullion-Boy* ; but you ſee the Boy ſwears it, and tells it ſo, as that it is very probable.

We now come, my Lord, to give an Account of his Flight.

The Father of the Boy comes in the Morning : And I would obſerve, though he pretended his Buſineſs and his Diſtemper brought him over, and that he was ill and under Cure ; yet this Matter made the Place too hot to hold him ; ſtay here he durſt not ; immediately he forgot his Phyſician's Preſcriptions, and gave Order to his Man to ſend away his Things. Then the Boy's Father was ſent for, and the Portmantles are given him, and he is told my Lord was going to *Windſor* ; but when he came to *Charing-Croſs*, the Things are put into a Coach in the *Strand*, and from thence they went for *Rotherhith*.

Then came the Man at whoſe Houſe he lay, and he was a *Swede*, and by the Way I would obſerve, the Witneſſes are moſt of them my Lord's own Friends, unwilling to tell the Truth 'till we get it (and that very hardly) from them. This Man was very unwilling to tell his Knowledge, but he got him the Clothes, which Clothes, by the Bulk of the Man, one would think would hardly fit the *Count* ; but the more he was diſguiſed, the more was his Security ; and when he was aſked this Queſtion, *Why he deſired to have thoſe Clothes to ſecure him?* He ſaid at laſt, *It was to prevent Trouble.*

Now let us conſider, my Lord, whether the Count has given any Anſwer to that. My Lord, there is nothing in what he ſaid, under Pardon. He ſays, *He went away, becauſe he was afraid the People would tear him in Pieces, before he could juſtify himſelf.* If he were innocent, he knew where to go to be ſecure from any Hurt from the People ; he might have applied himſelf to your Lordſhip, or to any other Magiſtrate. He is ſo ingenious he could not but know he might have protected himſelf under the Government, which protects and ſecures any Man whatſoever if he be innocent.

I have theſe two Things more to mention, and then I ſhall leave it to your Lordſhip, and the Jury ; and one is the Evidence of Mr. *Gibbons*, and Mr. *Kid*.

Mr. *Kid* gives that which to me is a very material Evidence of what paſſed when they ſeized him : As they were coming up the River, the Count aſks him, Whether there were any good Lodgings in *Newgate?* and particularly expreſſed his Care of the Captain, to aſk whether he were well lodged. And when he was told that the *Polander* had confeſſed, he ſays he ſeemed on the ſudden to be very much concerned, bit his Clothes, and threw himſelf along with ſome Agony. My Lord, an innocent Man needed not to uſe any ſuch Actions.

Then comes Mr. *Gibbons*, who was very inſtrumental in the purſuing of him, and is known to be an honeſt Man, he gives this Evidence, That when there was a Diſcourſe about Mr. *Thynn*, and his old Maſter the Duke of *Monmouth*, the Count preſently replied, *They meant to have done the Duke of* Monmouth *no Harm* ; and walking about the Room on a ſudden, burſt out into this Expreſſion, *This is a Stain upon my Blood* ; *but one good Action in the Wars, or lodging upon a Counterſcarp, will waſh it all away.*

Now, my Lord, as to what he anſwers to this, I ſay any Man may make that Evaſion which he would excuſe it by, to ſay that the Accuſation is a Scandal or a Stain, may be worſe than the Guilt of the Action : But your Lordſhip and the Jury ſee plainly, if ſo be the Thoughts of a Man's own Heart be that he is Guilty, it will break out ſome way or other. Theſe Things I only repeat, I leave them to the Conſideration of the Jury.

But when I have ſaid this, there is one Thing more, and that is, above all, relating to the Captain : Says Mr. *Gibbons*, *I did not know that the Captain had confeſſed, but I did venture to ſay he had* ; but the Count replied, *He did not believe the Captain had confeſſed.* My Lord, you ſee how the Captain appears before you, and if the Count will take upon him to ſay, he does not believe the Captain would confeſs ; it doth ſtrongly argue he knew as much of the Captain's Mind as he himſelf. Then look upon the reſolute Behaviour of the Captain, the Familiarity he lived in with the Count, that he had always been a Dependant upon his Family, it ſhews ſome Reaſon for his Aſſurance of Secrecy from the Captain, that he would not confeſs the Author of this moſt notorious Murder, and it lies heavy upon him. My Lord, I look upon the Diſcovery of this as a very miraculous Thing : And pray conſider, Gentlemen, where ſhall a Man go to ſettle his Thoughts for the Original Buſineſs ? Do you (or can you) think it was begun, invented and contrived by yonder three Men ? To what End or Purpoſe, or for what Advantage to them ? You have heard the Evidence that I have repeated to you ; you have heard what this Lord has ſaid for himſelf ; how he has fled, and what has been done. My Lord, I will not uſe any thing of Argument to perſuade the Jury ; but I cannot chuſe but ſay, we know no where to go for the Author of this villainous Fact, nor whom to accuſe as the prime Contriver, but this Count before you. I pray the God of Heaven to direct you in your Enquiry ; and if I have ſaid any thing amiſs, I beg your Pardon for it.

[*Then a great Shout was made, which the Court rebuked the People for.*]

Mr. *Williams.* My Lord, I did not think to have ſaid any thing more in this Caſe ; but I muſt crave your Lordſhip's and the Jury's Patience for a few Words. As for the three Perſons at the Bar (the *Pole*, the Captain, and the Lieutenant) it is, Gentlemen, very notorious they are Guilty of this moſt helliſh Murder. But all the Labour and Difficulty of this Matter is, how far this Count is Guilty or Not Guilty.

Pray, Gentlemen, do but obſerve the Nature of this Crime, and the Manner of our Evidence that has been given you. The Crime he is accuſed of, is, for being acceſſary to a wilful Murder : acceſſary before the Fact ; contriving of it, and laying the Train, which theſe Perſons were made uſe of to fire. This being ſo, it is almoſt impoſſible to give you that clear Light and pregnant Proof againſt an Acceſſary, as againſt the Principals. The Principal is he that doth the Fact ; that is notorious and open. The Acceſſary is the Perſon that prepares the Scheme, contrives the Management, firſt ſets the Wheel on work, gives the neceſſary Inſtructions, who lies behind the Curtain. Now, conſidering that, and the Nature of the Thing, it is impoſſible to give a clearer Evidence than what you have had.

Pray, Gentlemen, do but firſt conſider who hath been the Privadoes and the Intimates of this Count, with whom he has had Conference ſince he came into *England*, *Hanſon* and Dr. *Frederick*, who are brought as Witneſſes (though unwilling ones) againſt him : the Boy that was employed by him ; he is in no other Hands ; I cannot hear he was among any other Perſons but theſe, and Captain *Vratz*, and the *Polander*. Theſe are his Company and thoſe alone with whom he had Converſation. Now, Gentlemen, that we ſhould be able to produce theſe very Men (that were his only Companions) againſt him as Witneſſes, is a mighty Thing, conſidering the Privacy he lay in.

As for *Vratz*, his moſt intimate Privado, he came over with him into *England*, lived with him in his firſt Lodging, and was continually with him during his Stay. So then, What can we expect about this Man, Gentlemen, when he had laid his Deſign with all the Privacy he could, would have as little Converſation with *Engliſhmen* as he could. It was very craftily laid, that he would converſe with none but thoſe that were privy to his Deſign, or had an Hand in it in a great Meaſure. Then pray conſider how it was carried on, Gentlemen ; *Vratz*, who was the great Commander, and the *Polander*, who was the immediate Actor in it, had been his own Servants. *Vratz*, I ſay, he had a great Confidence in ; he came over with him ; and will not any Man believe, that this Man, who eat of his Bread, who lay in his Family, was a likely Man to do this for his ſake, that thus cheriſhed him? For whoſe ſake, pray, can it be thought to be ? Not for his own ſake ; for the Captain tells you he never had any Communication or Converſation with this unhappy Gentleman, Mr. *Thynn*. So that if it were as they would have it, that they did it out of Reſpect to this Count, who was the Captain's Friend, it will turn upon the ſame Point, and confirm the Suſpicion. Why ſhould the *Polander* do it, if he had no Reaſon to do it upon his own Account ? For he never ſaw the Face of Mr. *Thynn*, but was brought Hood-wink'd, in a Manner, to the Fact.

Therefore whether it were not done for his ſake, is that which you are to conſider ; and as a Proof that for the Count it was done, I ſhall pitch upon one Circumſtance that will bring it home to his Door, and that is, the Evidence of *Hanſon*, his Brother's Tutor : And, by the Way, I cannot but repeat it, that this Thread goes through all the Cloth, we have no Witneſſes but thoſe of his own familiar Acquaintance and Dependance. Now *Hanſon* has (though very ſhufflingly) told you, the Count and he had ſome Diſcourſe about my Lady *Ogle* ; and tho' we cannot come to know all the Circumſtances, yet he does acknowledge ſo much, as that there was Mention made of requiring Satisfaction of Mr. *Thynn*, or ſome Account of him, and what might be the Conſequences of the Laws of *England*, in Reference to my Lady *Ogle*, in caſe he ſhould call him to Account. So far he is plain, though he will not tell what the Diſcourſe was ; that there was a Diſcourſe of my Lady *Ogle*, of Mr. *Thynn*, of aſking Satisfaction of Mr. *Thynn*, or calling him to Account, and what the Conſequences in Law might be. And pray, Gentleman, obſerve, being to take Advice about this Matter, they would not conſult an *Engliſh* Lawyer, though I ſee one behind him now, but a Foreigner, the *Swediſh* Agent ; not aſk the Opinion of one Man of this Kingdom. And then he gives you a mighty Reaſon for it, That the *Swediſh* Reſident knew very well how to adviſe him in this Affair, becauſe he had lived in *England* about 19 Years : So that all his Acquaintance and Friends, the Managers of the Buſineſs, and thoſe conſulted with about it, all Outlandiſhmen ; I cannot ſay they are all Guilty, but I will ſay this makes our Proof more difficult.

Gentlemen, This being taken Notice of as a mighty Circumſtance, I would bring it a little more home to this Gentleman, whom we accuſe as acceſſary before the Fact. Pray conſider how all along he lay ſkulking, and hiding himſelf in Diſguiſe, and ſhifting his Lodging from Place to Place. I need not repeat it, but I would deſire you to think of what was concurrent with that very Day, and, as it were, concomitant with the very Murder, and that will appear to be ſufficient to ſatisfy any rational Man. We are not picking up an Evidence upon flying Words, or unconcluding Circumſtances, but we offer Facts to you, and Facts are to guide you, you being to compare Facts with Facts. As to his lurking and hiding, this Gentleman gives you no Manner of rational Account, that he had any Buſineſs with any Man in *England* that ſhould occaſion his lying private ; but only he tells you, he laboured under a Diſtemper that he would not have diſcovered ; and yet take him in that very Diſtemper, and in the Proceſs of his Cure, as ſoon as this Fact is over, the next Morning he values neither his Diſeaſe nor his Phyſick, but goes by Water, and made an Attempt to fly abroad. Will any underſtanding Man believe that he came privately into *England*, that he lay ſkulking here, that he made uſe of another Name, and other Clothes, that he ſhould do all theſe Things, and run away ſo immediately after the Fact was done, and all only becauſe of a little Diſtemper of Spots on his Breaſt ?

But then, ſays he, it was reported in the World, and told him the next Morning, that the People, the Rabble, would tear him in Pieces. He was aſked where he had this Report, and he brought up a Taylor, and depended mightily upon it, but the Taylor denied it ; and, Gentlemen, he that fails in one Thing he ſays, is not to be credited in another without good Proof. He ſays, that he ſaid no ſuch Thing, ſo that, Gentlemen, this fictitious Argument of his Fear falls to the Ground.

Then obſerve what follows upon this villainous Fact; he flies away privately, he goes to a *Swediſh* Houſe at *Rotherhith*, from thence by a *Swede* he muſt be put into a Sculler, and that Sculler muſt be towing of him for ſeveral Days together, till he come to *Graveſend*, from whence he was to have gone over Sea. Pray lay all this together, and weigh it well, and ſee if you can imagine any other Reaſon for it all, than what we alledge.

I would obſerve it to you, Gentlemen, and pray think of it, what the Count has ſaid to you in his own Defence in ſo many Languages, without Proof, muſt paſs for nothing. The Court has had a great deal of Patience to hear him, and ſhewn him a great deal of Favour in permitting it; but without Proof, I ſay, it all paſſeth for nothing. And what Proof he hath made of it, I muſt ſubmit to you; for I will not ſpend your Time in running into Particulars: And where he has proved any Thing, pray compare Facts with Facts, eſpecially that concerning the Captain, *Vratz*, which is not, in my Opinion, to be anſwered; that he lived with him, that he ſhould be with him on the *Sunday* Morning, that in the Evening he ſhould come thither again after the Fact done, that he ſhould be left in his Chamber, and continue in the Houſe ſo long. Will any one believe, that when *Vratz* came over with the Count from abroad, lodged with him here, was every Day with him in familiar Converſation, ſhould come that Morning before, and in the Evening immediately after, and ſtay with him ſo long, and yet the Count be innocent? Nay, will not any Man rather abſolutely conclude him an Acceſſory to the Murder?

Then, Gentlemen, take into your Conſideration his Flight, and Endeavours to eſcape out of the Hands of Juſtice; if there were no more, that is a great Evidence of his Guilt, but you have much more, and as ſtrong as you can deſire or expect. He ſays he was afraid of the People; alas! he needed not to fear that, he finds a very fair and generous Treatment here; he knew the Temper of our *Engliſh* Nation well enough, to know they do not preſently fly in Men's Faces; and he could not but know, he might, without Danger, reſign himſelf up to the Law if he were innocent.

Gentlemen, we have given you a fair and a full Evidence; we have offered you ſufficient Proof in Fact, and have offered no Shams to you; and I do not doubt but you will do Right to the Honour of *England*, and the Juſtice of the Nation, which are deeply concerned in this Caſe.

[*Then there was a great Noiſe made.*]

L. C. J. Look you, Gentlemen, the Counſel for the King have been very large in the repeating of the Evidence, therefore you muſt not expect from me, that I ſhould go over it again in the ſame Method that they have done. I will direct you a little as to ſome Points in Law as to this Caſe: Here is, as they tell you truly, a Murder as horrid and barbarous as peradventure can be committed upon any Subject. It is a Murder of a very bad Nature, ſo that the repeating of it is enough to make all Men abhor it; it needs no Aggravation, it is in its own Nature ſo very barbarous; and thoſe Gentlemen that had a Hand in it, muſt certainly needs be aſhamed, and look upon themſelves as not fit to be accounted Men, whoever they be that had any Hand in it, ſo barbarous and inhuman, and baſe in it's own Nature, and ſo unworthy of a Man.

I muſt tell you, Gentlemen, when one Man ſhoots another, and two are with him, though they do nothing but come on purpoſe to countenance that evil Fact, that is Murder in them all; all that were preſent are guilty whenever ſuch an Act is done: And three or four come together, and one does the Fact, and the others ſtand by to countenance it, whether they be there to bring the Party off, or to animate him, and put him into a Condition that he may murder and kill, it is Murder in all, and they are all as equally guilty as he that ſhot, or actually gave the Blow.

Now as to theſe three Perſons here, the *Polander* that ſhot, *Vratz* who was with him and ſtop'd the Coach, and *Stern* that was by with them, they do all acknowledge themſelves to be there at this Murder; the leaſt they ſay for themſelves, is, that they came to countenance a fighting with Mr. *Thynn*, that is the leaſt any of them ſay; for Captain *Vratz* makes this his Excuſe, that he intended to kill him (as he calls it) fairly, and the others were to ſtand by to let him make the beſt of it; ſo that they all came with a murderous Intent, and a Murder followed. And I muſt declare this for Law to you, that this is Murder in them all, if you believe themſelves; ſo that I think there is little, very little for you to conſider concerning theſe three Men, but according to what they have acknowledged of themſelves both before the Council, and here likewiſe in your own Preſence, they ſeem all to be guilty of this Murder.

The more doubtful Queſtion is concerning Count *Coningſmark*, that ſtands here before you, for he was not at the Murder, nor is he charged as Principal; and the Queſtion will be as to him, Whether he commanded, or gave any Authority or Direction to have this Murder committed? That is the Thing that is now charged upon him, and without that, he cannot be Acceſſory in this Caſe.

Now, Gentlemen, you muſt conſider as to that, ſeveral Things are certain and poſitive; That this *Polander* was once his Servant; That he was brought over from beyond Sea by his Order; That he was given by him to Captain *Vratz*; That *Vratz* was his great Acquaintance, and lay in his Lodging ſome Time, though not at this very Time. Theſe Things are plain: Now what Anſwer is given to this? You hear, he ſays, the *Polander* was taken for him, and hired as a Servant beyond Seas, knowing that he had ſkill in Horſes; and the Count having remitted Money to buy Horſes, he was willing to have him manage the Horſes, and to have his Judgment in them, and ſent for him three Months before for that Purpoſe, and that he came for that Purpoſe; but knowing that the Occaſion for which he was to buy his Horſes was paſſed over, there being like to be no War, and therefore there would be Occaſion for Horſes, he was willing to part with the *Polander*, as he ſays, is uſual for Perſons of Quality in his Country to do upon ſuch Occaſions, to give their Servants to one another; and ſo, having clothed him firſt, he gave him to Captain *Vratz*: And you hear how much of this is made good by Witneſſes, and how far this is ſatisfactory to you as an Excuſe and Reaſon for this, I leave to you.

There is more too that is very plain: It is apparent that the Count bid him come to his Lodging after this Murder was committed. According to the Calculation of the Time, it muſt be after the Murder, for that was about eight o'Clock, and he was there about Nine. You hear what Anſwer the Count gives to that; That he came as formerly he had done, he knowing nothing of this, nor of Mr. *Thynn*'s Murder, and that he did not ſpeak to him concerning it.

The next Thing, Gentlemen, is, 'Tis plain the Count did lie private when he came to *England*; and he tells you (he brings the Doctor to witneſs it) his Occaſion of Privacy was, becauſe he had a Sickneſs, which he was loth ſhould be known, having been formerly in Splendor in *England*; but now without his Equipage, he would not publickly appear; and he was afraid, if he appeared in Company, he ſhould be inticed to drink high, and that would retard his Cure. And the Doctor tells you, he was under his Hands for Cure of his Diſeaſe, which was ſome Spots upon his Body.

It is plain too that Count *Coningſmark* did go away the next Morning after he had heard of the Murder, he acknowledgeth it himſelf; and that he did conceal himſelf upon the Water, and was taken in ſuch a Manner as the Witneſſes ſpeak. But withal, he tells you the Occaſion of this was, a Stranger here, Captain *Vratz*, as he heard, was accuſed for the Murder, and ſeized, and he did not know what this might occaſion to him; how the common People might fall upon a Stranger that was of that Man's Acquaintance; and it was through his Fear of the People (leſt they ſhould fall upon him before he could vindicate himſelf) that he withdrew himſelf, and concealed himſelf in this Manner. As it was told you by the Counſel it was an unreaſonable Fear in him, for there is no ſuch diſorderly Proceeding (we thank God) in *England*; but he tells you he was afraid of it; and if he were, being a Stranger, he might not know our Conſtitution ſo well.

But I muſt tell you another Thing for Law, Gentlemen, which was urged by the Counſel for the King. Captain *Vratz* doth ſay, that he, knowing of an Affront that had been given to the Count, and having received an Affront himſelf, he did, without the Count's Knowledge, do this Murder, for Revenge, upon Mr. *Thynn*. It has been ſaid by the Counſel, it will be all one whether it were with the Knowledge of Count *Coningſmark*, or not. Now, I muſt tell you, Gentlemen, the Law is not ſo: For if a Gentleman has an Affront given him which he does ſeem to reſent, if any of his Servants officiouſly, without acquainting him with it, out of too much Zeal, and too forward a Reſpect to their Maſter's Honour, will go and piſtol and kill him that they apprehend has affronted their Maſter, he not knowing of it, it will not charge their Maſter with any Guilt at all. The Law, Gentlemen, is not ſo as was urged; for if it were without the Count's Knowledge and Direction, if a zealous Captain has gone and over-ſhot himſelf, out of reſpect to his Maſter's Honour, when really it was a Diſhonour to himſelf, and all that were acquainted with it, this cannot lie upon him, to make Count *Coningſmark* Guilty. But it lies upon me to direct you, for otherwiſe you might ſwallow it as a Maxim, to be all one in Law, which it is not.

So that it will return to this, Whether here be any Proof that Count *Coningſmark* did conſent to this Murder, or any ways countenance the killing of Mr. *Thynn*, or command any of theſe Perſons to do it.

Look you, Gentlemen, there are ſome ſuſpicious Speeches that are mentioned here of the Count's. One is, that the Boy ſhould ſay that the Count aſked him whether Men might ride in *London* on *Sundays?* You hear what Anſwer is given to that. The Count denieth that he aſked any ſuch Queſtion: And to ſhew and prove that ſuch a Queſtion could not likely be aſked, he ſays and proves, by divers Perſons, that it was an ordinary thing for himſelf to ride on *Sundays* in *Hide-Park*, before this Buſineſs long.

It is alſo ſaid, that when he was taken, he ſhould ſay, That he did believe they intended the Duke of *Monmouth* no Hurt. Now that he ſaid theſe Words he doth not here deny; but he ſays he ſpoke it upon the common Report, that theſe Men had watched the Coach till they ſaw his Grace out of it, and then they did do this Villainy; ſo that he apprehended they had no Deſign to hurt the Duke at all. This is the Anſwer he gives; how ſatisfactory it is, I leave it to you.

Then as to thoſe other Words; That it would reflect upon his Family, and ſtain his Blood; but he preſently recollected himſelf, and ſaid, One brave Action in the Wars, or Lodging upon a Counterſcarp, would waſh it off. You hear what he ſays to that: He looked upon it as an Injury to his Family, and it would be ſome Stain to his Blood, that he ſhould be accuſed of ſo baſe and unworthy an Act; but that Accuſation he thought might be waſhed off; and ſo, though he were innocent, it might be looked upon as a Stain, which a brave Behaviour in the Wars would wipe off.

Gentlemen, Thus, as near as I can, I have given you an Account of the moſt material Things that are objected againſt him, and his Anſwers to them. I muſt leave it to you, whether upon the Evidence which you have heard, you do believe that this Murder was directed or countenanced by Count *Coningſmark*. If it were, he then is Guilty as acceſſory before, and you muſt find it; but if you believe he did not know it till after the Murder was done, then he is innocent, and you muſt acquit him. And upon the whole, Gentlemen, I muſt leave it to you.

Then, it being late, after an Officer was ſworn to keep the Jury, the Court adjourned for a while; and in an half an Hour returned; and ſent for the Jury who came in and anſwering to their Names, gave this Verdict.

Cl. of Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Cr. George Boroſky, alias *Boratzi*, hold up thy Hand. *(Which he did.)* Look upon the Priſoner: How ſay you? Is he Guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. What Goods and Chattels, Lands and Tenements?

Foreman. None to our Knowledge.

Cl. of Cr. Chriſtopher Vratz, hold up thy hand—Is he Guilty, *&c.*

Foreman. Guilty.

Cl. of Cr. What Goods, *&c.*

Foreman. None to our Knowledge.

Cl. of Cr. John Stern, hold up thy Hand——Is he Guilty or, *&c.*

Foreman. Guilty.

Cl. of Cr. What Goods, *&c.*——*Foreman.* None to our Knowledge.

Cl. of Cr. Charles John Coningſmark, hold up thy Hand, (*which he did.*) How ſay you, is he Guilty of the Felony whereof he ſtands indicted as Acceſſary before, or not Guilty?

Foreman. Not Guilty.

Count *Con.* God bleſs the King and the honourable Bench.

Cl. of Cr. Then hearken to your Verdict as the Court hath recorded it, you ſay that *George Boroſky,* &c. and ſo you ſay all.

Then the Jury was diſmiſſed, and the Court ordered a Recognizance to be taken from the Count, with three Sureties, to appear the next Seſſions, and to anſwer any Appeal if brought; after which the Judges went away, and the Recorder, with the Lord Mayor and Aldermen, ſtayed to pronounce Sentence on the convicted Malefactors.

Cl. of Cr. Keeper, ſet *George Boroſky* to the Bar, hold up thy Hand, (*which he did.*) Thou ſtandeſt convicted of Murder, for killing *Thomas Thynn,* Eſq; what canſt thou ſay for thyſelf why the Court ſhould not give Judgment upon thee to die according to Law?

Interpreter. He ſays, he prays God to have Mercy upon him.

Cl. of Cr. Tie him up. Set *Chriſtopher Vratz* to the Bar----

Interpreter. He ſays he hears he is condemned, but he was never rightly examined, nor fairly tried *.

Cl. of Cr. Set *John Stern* to the Bar-----

Interpreter. He ſays he did it for the Captain's Sake, he went as a Second along with him.

Then the Priſoners being tied all up by the Executioner, Proclamation was made for Silence, during the pronouncing of the Sentence.

Mr. *Recorder.* You the Priſoners at the Bar, *George Boroſky, Chriſtopher Vratz,* and *John Stern,* you have been all indicted for the Murder of a Gentleman of great Quality, Mr. *Thynn*; a great, and heinous and a crying Crime, that cries aloud for Vengeance: You have been brought to your Trial, and tried indifferently by a Jury not conſiſting only of the Countrymen of the Party ſlain, but compounded of Foreigners and Freeholders of the County too. Theſe Impartial Men have found you Guilty, and indeed the Plainneſs of your Guilt is ſuch, that you yourſelves have acknowledged yourſelves Guilty. For when you were apprehended, your Guilt did ſo ſtare in your Faces, and you could give ſo little an Account how you had beſtowed that Time wherein he was murdered, that you were forced to confeſs your Intereſt in the Fact.

It is our Duty to pronounce the Sentence of the Law againſt you upon this Conviction; but it is alſo our Uſage to open the Nature of the Crime for which the convicted Perſon is to ſuffer Death, for the Conviction of the Offenders themſelves. Now your Crime is one of the deepeſt Die; it is the wilful ſhedding of innocent Blood, to which you could be led by nothing but what you are charged with in the Indictment, the Motion and Seduction of the Devil. This Crime of Murder is put into the higheſt and foremoſt Rank. When God himſelf had given Laws to the World under the old Adminiſtration, after the Command of honouring Father and Mother, in the next Place he forbids Murder. This Crime you have committed, and that, with the moſt aggravating Circumſtances that I have ever known attend any Crime of this Nature. It was committed upon a Gentleman of great Quality, that was ſo far from giving you any Provocation to it, that you acknowledge yourſelves you never had any Communication with him. It was done upon a Day when you ought to have exerciſed and buſied yourſelves in Acts of Piety and religious Worſhip. It was done in the Streets of the City, near the King's Royal Palace. But the greateſt Circumſtance of all, is the doing of it in ſuch a Manner, that is, it was done by Way-laying; a Sort of killing the moſt unworthy, the moſt baſe, and the moſt ungenerous of all other. For that it gives the Party aſſaulted no Liberty for any Prevention, or any Defence by any Prudence he can uſe; and the Conſequence of it is, as much as lies in the Malefactor, to deſtroy as well the Soul as the Body; by ſuch an inſidious Murder, to take a Man out of this Life, before he can have any Opportunity to prepare for another Life. Therefore in our publick ſolemn Prayers in our Church it has very juſtly and worthily been made part of our Liturgy, to pray to be delivered from Murder and ſudden Death.

You that are Strangers in this Country, if you had been tried and convicted of a Breach of our municipal Laws, the peculiar Laws of this Kingdom, much Indulgence might be ſhewn to you becauſe of your little Acquaintance with the Law. But that is not your Caſe: Your Offence is a Tranſgreſſion againſt the Law of God, written in large Characters in the Nature of Man. It is againſt the Laws of all Nations, even your own Country from whence you come, and any other Country where-ever you could go, are ſevere in their Laws againſt that by which you have broken the Law in ſo foul a Fact. The very *Barbarians* could ſay, *This Man is a Murtherer, and Divine Vengeance will not ſuffer him to live*; ſo that they all think the Divine Vengeance concerned to revenge it.

You have ſlain this innocent Gentleman, which is but a ſingle Diſtemper as it concerns him, but if it ſhould go unpuniſhed, it would turn to a peſtilential Contagion. If ſuch Aſſaſſinations and Murders of Perſons ſhould not be ſeverely puniſhed, it were a greater Woe than ever was brought upon this Kingdom. Therefore it is thought fit by his Majeſty, to make his Juſtice ſignal and exemplary upon thoſe that have thus baſely and inhumanly brought themſelves under the Cenſure of it. That when the Fame of this barbarous Action ſhall go abroad, his Juſtice ſhall alſo be celebrated upon the Actors, and that this Kingdom is maintained by Juſtice.

I have but one Thing more to ſay to you, and that is in Tenderneſs to you yourſelves. You are to conſider that you are to receive another Judgment than that you will be condemned by here, and that you may be prepared, for that is your great and your only Care. Now it is Repentance that is the only Antidote againſt the Sting of Death. You cannot be found innocent, yourſelves acknowledge your Guilt; then let it be your care to be found Penitent. For that Purpoſe you ſhall have the Aſſiſtance of ſome our learned Divines here, and you will do well to hearken to their good Counſels. I pray God you may ſubmit to Juſtice patiently, and that your Contrition may be correſpondent to your Crime, that ſo you may obtain Pardon and everlaſting Favour from God.

It remains only that we paſs the Sentence of Law againſt you, which is this:

That you ſhall go from hence to the Place from whence you came, from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck until you be dead: And the Lord have Mercy upon your Souls.

Then the Priſoners were carried away, and the Court adjourned.

On the 10th of *March* following they were all three executed, according to the Sentence, in the *Pall-Mall,* in the ſame Place where they had committed the *Murder. Stern* and *Boroſky* left each of them a Paper ſigned with their own Hands.

The Confeſſion of Lieutenant John Stern.

ABOUT twenty ſeven Years ago my Father ſent me out of *Swedeland* to *Germanland,* where for two Years together I went to School: Two Years after that came the *Muſcovites,* which obliged us to fly back to *Swedeland.* About twenty three Years ago I left *Sweden,* and went towards *Pomerania,* where I ſerved the Elector of *Brandenburg* a quarter of a Year; from thence I went through *Poland* towards the *German* Emperor's Dominions. From *Bohemia* I travelled into the *Netherlands,* from thence into *France*; from *France* again into the *Netherlands* with the Army: After the Peace, I went back to *Bohemia, Auſtria,* and *Hungary,* and after that again to the *Netherlands,* where I ſtayed eight Years; from thence I went farther, to *Holland, Denmark, Sweden, Poland,* and then to *Holſtein,* which was in the Year 81. During theſe thirteen Years I have been a Papiſt twelve Years, becauſe I was commonly all that Time in Popiſh Territories; but in *Holſtein* in the Year 81, I turned again to the *Lutheran* Religion, in which I was born and baptized, and in that, God willing, I mean to die. I could no longer bear with the *Popiſh* Religion, becauſe of their many Saints and Interceſſors. There is no Religion comes nearer to mine, than that of the *Proteſtants* in *England*; God grant they may live in Peace with the *Calvaniſts,* to prevent Quarrels, and in Oppoſition to the *Papiſts.*

And now I will let you know how I came to that late Misfortune here in *London.* About the end of *October* laſt I came to *London,* and lodged in the City, near the *Royal-Exchange* in *Broadſtreet,* in the *Dutch* Ordinary, at the Sign of the City of *Amſterdam.* When I had been there about a Month, a Gentleman came to lodge there, who called himſelf *Vallichs,* but his Name is *Vratz:* He and I began to be acquainted: At laſt he told me he had a Requeſt to me; to whom I replied, That to the utmoſt of my Power he might command me. To this he ſaid, That he had a Quarrel with a Gentleman, and deſired me to be his Second. I told him, without any Conſideration, I would. A Fortnight after he told me, That it was good Living thereabouts; and if I would take a Lodging in that Place, during the four Weeks he ſhould ſtay in *London,* he would pay for me. Hereupon he took four Servants; ſometimes he was for marrying, ſometimes for fighting; and if he could get one who would kill the Gentleman, he ſaid, he would give him 200, nay 300 Dollars. There it reſted for a while. He diſmiſſed two of his Servants, and was going for *France,* or *Holland.* The two Servants continued without Places. Six Days after, I took leave of my Acquaintance; and after my Things had been two Days on Shipboard, I went to the *Lutheran* Church, where I received a Letter from Capt. *Vratz.* O unhappy Letter! The Contents were as follows.

SIR,

'I AM ſorry I could not have the Honour to take my leave of you; 'but be it all to your Advantage. I am going for *France,* yet 'have not as yet a certain Commiſſion. In the mean while be pleaſed to 'continue either at Mr. *Block*'s, or in the City of *Amſterdam,* where I 'will not fail to pay for all. I am, your obliged Servant,

'*De Vratz,* alias *de Vallichs.*'

After I had read this unhappy Letter, I changed my Reſolution, and ſtayed here and fetched my Things from the Ship, and went to lodge in *Blackmoor-ſtreet.* About ten Weeks after he returns to *London,* ſends for me, and I came; and himſelf took a Lodging in *Weſtminſter,* where I was with him; and the Count himſelf lay one Night in the Captain's and my Lodging. The Captain then aſked me, How *Thynn* did? I told him, I could not tell, for I had never ſeen him. Thereupon he told me, *I muſt ſee now how to order it, that I may come at him; if I could get but ſome ſtout Fellows ------Do you know no* Frenchman *about Town, or what other People there is?* I ſaid, I would ſee. Then he added; could not one get an *Italian* who might diſpatch him, I would give him three or four hundred Dollars? I ſaid, I knew none: Hereupon he got four brace of Piſtols, three little ones, and one brace of great ones. The great ones, and one brace of little ones, he had by him before, and two long Swords; and then ſaid, Now he is a dead Man. He prayed me to cauſe two Poniards to be made, whereof he gave me the Draught, but I would not do it. And now he had a Mind to draw in a great many more. At laſt I had a very ſtrange ominous Dream. He ſaw I was muſing, and then aſked me, What I ailed? I told him, and he laughed, ſaying, There was no heed to be given to Dreams; yet the Dream proved too true. Now, I ſay, he was reſolved to kill him; when therefore he importuned me to engage more Men in the Buſineſs; I told him, What can you do with ſo many People, cannot you take three Horſes, you will have uſe for no more? Hereupon he fetched out Money, and on the *Friday,* before the Murder was done, he bought three Horſes. On *Sunday* following he told me, I ſhall get a brave Fellow, (that was the miſerable *Polonian*) who came to Town on *Friday,* and the *Sunday* after he killed the Gentleman, (according to Order from his Maſter, and you know who his Maſter was) myſelf being then, alas! in the Company. Half an Hour paſt four, the Gentleman went by in his Chariot before our Window. Thereupon we went for the Horſes, and afterwards rid toward the *Pall-Mall,* where we met the Gentleman in his Chariot, I rid before the Coach, the

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* This was becauſe when the Evidence for the King was finiſhed, he was never aſked what he had to ſay for himſelf, which ought to have been done, as is uſual in all Caſes, but is not unlikely the Court were apprehenſive he might lay the Guilt on the Count.

Captain went cloſe by it, and then cried, *Hold*, and ſhewed the *Polonian* the Man in the Coach; who thereupon gave Fire, and ſhot four or five Bullets into his Body. They ſay, he lived till next Morning, and then died. On *Monday* following we were all taken Priſoners, and muſt now die too; we have yet four Days to live: The Great God pardon us this Sin, for Chriſt his ſake. *Amen.* For I repent, from the bottom of my Heart, that in my old Age, to which I was advanced with Honour, I ſhould come to this Diſaſter: But 'tis done, and cannot be remedied. It is written, *The Days of our Years are few, and when we come to our beſt Age, it is then but Labour and Sorrow.*

Memorandum.] The Letter the Captain ſhewed me one Day, was to this Purpoſe.

I have given Captain Vratz *full Commiſſion to diſpoſe of the Places of Captain or Lieutenant, to whomſoever he ſhall find capable of it.* So far I read the Letter; five Lines lower ſtood theſe Words, 600 Dollars, which was not the Captain's Hand, or writing; it was *High-Dutch.* I ſeeing the Letter, threw it down upon the Table, but he put it up, and underneath the Letter was ſigned *Coningſmark.* Thus much I ſaw, but made no farther Reflections upon the Letter, becauſe, God knows, I was blinded.

Another *Memorandum*, I have forgot in the Papers, which, after my Death, are like to be publiſhed, *viz.* It hath been twice in my Thoughts, when Captain *Vratz* was in *Holland*, to go and tell Mr. *Thynn* what the Captain intended againſt him, but I ſtill forgot.

I deſire the Doctor, in caſe any Thing of the Captain's Writing ſhould come abroad, to compare what he ſaith with my Confeſſions, and to conſider one with the other, *Give unto* Cæſar *the Things that are* Cæſar'ſ, *and unto God the Things that are God's.* I hope I ſhall go with the Publican into the Temple of God: I am a great Sinner, yet God's Mercy is greater, wherein I truſt; nor will Chriſt therefore refuſe a Soul, though the Body is hanged up by the World. My Lords, ye Judges, I do wiſh you all Happineſs; I confeſs you have a weighty Office, God give you his Grace, that you may neither add to, nor diminiſh from a Cauſe. You have ſeen how I have expoſed all my Failings, and that openly to God, and to the whole World, becauſe others may take Warning by me, whom I leave behind me in the World. I beg of God, that People may conſider this my poor Writing, the Effect of the Aſſiſtance of God's Spirit, and the Deſire of a pious Soul.

The Captain deſired me that I would cauſe two Daggers to be made, becauſe at firſt it was reſolved, we ſhould fall upon Mr. *Thynn* on Foot; and he would have had ſome Italian or another to thruſt them into Mr. *Thynn*'s Body; yet I neither looked out for a Man fit for that Purpoſe, nor would I cauſe thoſe Daggers to be made. The Muſquetoon, or the Gun, I fetched indeed; but it was out of a Houſe, which the Captain deſcribed to me.

I muſt now die for a Man's Fortune, with whom I never changed Word all my Life; for a Woman, which I never ſaw; nay, for a Man that is dead, whom I never had a view of; and are not theſe three very great Things, I leave it to every Man's Conſideration? It would grieve a Man; I confeſs, it is a little hard, yet be it as God pleaſes? I have entirely reſigned myſelf to his Will. O Jeſu, receive my poor Soul into thy Hands, then ſhall I die thy Servant; my Soul I commend to thee, and then ſhall I feel no Pain nor Sorrow. *Amen, Amen.*

The Confeſſion of George Borodzycz *the* Polonian.

I *George Borodzycz* do here, in few Words, intend to make known to the World, how I came into the Service of Count *Coningſmark*. About eighteen Months ago I was recommended, by Letters, to the Quartermaſter General *Kemp* at *Staden*; and from thence I was to be ſent to the Count at *Tangier*; but by reaſon of the hard Winter I was ſtop'd, for the Ship in which I was to go ſtuck in the Ice in the River *Elbe*; this made me ſtay till farther Order. In *March* laſt I received a Letter, which ordered me to go and ſtay in a Manor belonging to the Count in the Biſhoprick of *Bremen*, and there expect new Orders from the Count. At laſt I received a Letter, with Orders to come by Land for *Holland*; but deſtitute of an Opportunity, I ſtaid till the 12th of *November* 1681, and then new Orders came, that I ſhould come for *England* to the Count's Brother, where I ſhould fetch Horſes, and convey them to *Straſburgh.* And accordingly I left *Hamburgh* the 24th of *December* 1681, and was at Sea till the 4th of *February* 1682. When I came to *London*, I lay the firſt Night in the City, hard by the *Royal Exchange*, at one *Block*'s; and from thence I was conducted to the Count's Brother, and from thence to the Count himſelf, who was to be my Maſter: When I came to him, Captain *Vratz* being with him, my Lord told me, I ſhould be with Capt. *Vratz* three Days, till his *i. e.* the Count's Baggage and Goods he had on Shipboard came. Whereupon the Captain ſaid, He would ſend his Man for me next Day, which was *Sunday*, which he did accordingly. I went with his Man, and my Lord charged me, I ſhould do what Capt. *Vratz* ſhould order me to do. I went thereupon to my Chamber, and ſaid the Lord's Prayer. On *Sunday*, about one of the Clock, came up the Captain's Man for me, and brought me to the Captain. When I ſaw him, he told me, *It's well you are come, for I have a Quarrel with an* Engliſh *Gentleman*; *I did formerly ſend him two Challenges, but he anſwered them not*; *whereupon Count* Coningſmark *and myſelf went for* France; *but that Gentlemen ſent ſix Fellows after us, who were to kill the Count and me. Accordingly they came on us, the Count received two Wounds, we killed two of them, and I am now come hither to attack that Gentleman in the open Streets as a Murderer*; *and as he hath begun, ſo I will make an end of it.* Whereupon he gave me the Gun, which I ſhould make uſe of to kill him. When hereupon I pleaded with Captain *Vratz*, and ſhewed myſelf unwilling, ſaying, That if we were taken we ſhould come to a very ill End. He anſwered, I need not trouble myſelf about that, if we ſhould be taken Priſoners, it was he that muſt ſuffer for it, not I; and for my Service, he would recommend me to Count *Coningſmark*; whereupon I thought with myſelf, that it might be here as it is in *Poland*, viz. where a Servant does a Thing by his Maſter's Order, the Maſter is to ſuffer for it, and not the Servant.

We went therefore ſoon after for our Horſes, and rid toward the *Pall-Mall.* The Captain told me, I will ſtop the Coach, and do you fire upon the Gentleman; which was done accordingly. *Lord have Mercy upon me.*

I am heartily ſorry that my honeſt Parents muſt receive this unwelcome News of me; the Almighty God take care of my Soul. I have great confidence in Almighty God, and know that he hath offered his Son upon the Croſs for the Sins of all Mankind. Therefore I believe that Satisfaction was alſo made for my Sins; and in this Faith, in the Name of God I will live and die. Lord Jeſu give me a happy End, for thy bitter Death and Paſſion ſake. *Amen.*

What pity is it, that I ſhould be about the Space of Seven Weeks upon the Sea, betwixt *Hamburgh* and *London*, and in great Danger Day and Night, and yet ſhould fall at laſt into this unexpected Misfortune! I can bear Witneſs, with a good Conſcience, that I knew nothing of the Buſineſs aforehand: The great God pardon thoſe Men that have brought me to this Fall; God keep every Mother's Child from all ſuch Diſaſters, for Chriſt his ſake. *Amen.*

And I deſire the Doctor to pray for me, and to let all the World know my Innocence after I am dead, that Men may ſee and fear.

GEORGE BORODZYCZ.

Captain *Vratz* would make no Confeſſion, but perſiſted in denying what the others had owned; never Man died with more Reſolution, and leſs Signs of Fear or Diſorder; his Carriage in the Cart both as he was led along, and at the Place of Execution, was aſtoniſhing; he was not only undaunted, but looked chearful, and ſmiled often: When the Rope was put about his Neck he did not change Colour, nor tremble, his Legs were firm under him; he looked often about on thoſe who ſtood in Balconies, or at the Windows, and ſeemed to fix his Eyes on ſome particular Perſons; three or four Times he ſmiled; he would not cover his Face as the reſt did, but continued in an undaunted Manner, looking up to Heaven with a chearfulneſs in his Countenance, and a little Motion of his Hands. Being aſked, if he had any Thing to ſay to the People, he ſaid no. When they had ſtood about a quarter of an Hour under the Gibbet, after they had been tied up, they were aſked, when they would give the Signal for being turned off; they anſwered they were ready; ſo a little while after the Cart was driven away; and thus they ended their Lives.

Captain *Vratz* was permitted to be buried, but *Stern* and *Boroſky* were hanged in Chains.

The Examination of Lieutenant John Stern, *taken before Sir* John Rereſby, *Bart. and* William Bridgman, *Eſq*; *two of Majeſty's Juſtices of the Peace of the County of* Middleſex, Feb. 17, 168½.

THIS Examinate ſaith, that ſeven Months ago he came into *England*, and lodged at the *Amſterdam* Ordinary. That about five Weeks after Captain *Vratz* came and lodged in the next Room to him, and in a few Days made an Acquaintance with him, and ſaid to him, It is dear living here, but as long as I ſtay it ſhall coſt you nothing. This Place is dear, I will go and lodge at another Place. Accordingly they went to an Houſe in St. *Nicholas Lane*, where the Captain paid for him. That the *Captain* told him, he had a Qurrel with a Gentleman with whom he would fight, and that he wanted a good Servant or two. That about fourteen Days after the *Captain* went out one Morning, ſaying, he would return in the Afternoon, but that he ſent for his Boots and came not again; that a certain Taylor (who wrought for the *Captain*) came and diſcharged the Lodgings. That the *Sunday* following he received a Letter from the *Captain*, excuſing his going away, and ſaying he would return in aight Days, (but he came not in nine or ten Weeks) that in the ſaid Letter the *Captain* directed him to go and lodge at the *Amſterdam* Ordinary, or one *Back*'s, ſaying, he would defray his Charges. That the *Captain* came to Town again a Day or two after the *Morocco* Ambaſſador had been to ſee the Guards in *Hide-Park.* That the Examinate then meeting the above mentioned Taylor (who is now Priſoner) with the *Captain*'s Sword (which he knew,) the Taylor told him the *Captain* deſired he would come and ſee him; that he accordingly went, but nothing paſt between them then of any Moment. That the next Day the Captain came to him, and began to diſcourſe again about his Quarrel, repeating that he wanted a good Servant or two, for he would fight. That about nine or ten Days ago the *Captain* told him he ſhould have a good Servant ſuddenly; and that if he this Examinate would aſſiſt him the *Captain*, he would make his Fortune. That the *Captain* gave him Money to buy a Muſquetoon, which he did accordingly. That this Day Sev'night the *Captain* bought three Horſes, and the Day after ſaid to this Examinate, I muſt have the Rogue now. Next Day, being *Sunday*, about Noon, when the *Polander* came, the *Captain* ſaid to this Examinate, Now I have got a brave Fellow; and ſo the *Captain* went to the *Polander* into another Room, and when he came back to this Examinate, he ſaid to him, This is a brave Fellow indeed, for he ſays thoſe that will not fight muſt be killed. That after Dinner the Captain ſent out one of his Servants to know whether the Gentleman (with whom he had a Quarrel) went out, that the Servant brought Word he was gone out, whereupon the *Captain* put on his Boots, and ſent this Examinate for two Horſes, to be brought to the *Black-Bull* in *Holborn*; ſoon after which another Perſon brought a third Horſe, and then the *Captain*, the *Polander*, and this Examinate, got on Horſeback, and went towards *Charing-Croſs*, and having gone further in the *Pall-Mall*, this Examinate being about ten Yards behind the Coach (which he had met and paſſed) heard the Captain ſay, Stop or halt to the Coachman, and preſently heard a Shot, and ſaw the Fire, upon which he turned about, and ſaw the other two Perſons ride away, whom he followed.

The Examinate being gone out of the Room, and deſiring to be brought in again, further ſaid, that the *Captain* hath often told him, that he would give two, three, or four hundred Crowns to find a Man to kill Mr. *Thynn.*

His further Examination taken Feb. 19, 168½.

He ſaith that he had it in his Thoughts twice to go to Mr. *Thynn* and acquaint him that the *Captain* was reſolved to kill him. That the *Captain* deſired him to get an *Italian* that would ſtab a Man, and that he this Examinate would get two Poniards made: And aſking the *Captain* how he would have them made? The Captain took Pen, Ink, and Paper, and made a Draught of them, adding, that if he could find ſuch an *Italian*, he would give him three or four hundred Crowns; that this was before the *Polander* came over. That upon the ſame Day when the Murder was committed, the *Captain* bid him charge the Muſquetoon with fifteen Bullets; whereupon he replied, that then they ſhould kill the Footmen, and all about the Coach. The *Captain* anſwered, it matters not for that. That this Examinate charged two Piſtols more, but put only five or ſix Bullets in the Muſquetoon. That ſome of the Bullets were wrapt up in Rags, with Roſin powdered, which would burn. That he heard the *Captain* ſay (as he thinks to the *Polander*) that if the Duke of *Monmouth* were with Mr. *Thynn*, nothing muſt be done. That the *Captain* told him, if he would aſſiſt him in this Buſineſs, he would procure him the Command of a Company. That as he was ſitting one Day melancholy by himſelf, the *Captain* came to him, and aſked him what he ailed? Whereupon this Examinate ſaid, that he had dreamt that four Dogs did fly at him, but that two were chained, and the other caught hold of him; upon which the *Captain* ſeemed concerned, but preſently plucked out a Letter which was ſigned *Coningſmark*, in which was expreſſed that the Count gave the *Captain* full Power to diſpoſe of the Captain-Lieutenant's Place of his Regiment, ſaying at the ſame Time (this Examinate not being willing to receive the Letter at firſt) What do you think I would be one of the Dogs to bite or deceive you? That he afterwards ſaw, towards the End of the Letter, the Figures of ſix hundred (which he thinks was to expreſs *Rix Dollars*) but what they concerned or related to, he knows not, for being he had ſeen the Power to diſpoſe of the Company, he read no further.

J. Reresby.
W. Bridgman.

The Examination of George Boroſky, *a* Polander, *the ſeventeenth of* February, 1681-2. *before Sir* John Rereſby, *Bart. and* William Bridgman, *Eſq; two of his Majeſty's Juſtices of the Peace for the County of* Middleſex, *who ſaith,*

THAT he came into *England* by the Deſire of Count *Coningſmark* (expreſſed to him by his Merchant at *Hamburgh*) but knew not for what Cauſe; but after he came, Count *Coningſmark* told him on *Saturday* the 11th Inſtant, that he had a Quarrel with an *Engliſh* Gentleman that had ſet ſix Perſons upon him upon the Road, in which Conflict he was wounded, and two of the Aſſailants were killed. Therefore ſince the ſaid Mr. *Thynn* did attempt for to kill him, he would make an End of it. He further ſaid, To-morrow will come a certain Servant to conduct you to the Captain, and what he bids you to do, that you are to obſerve. That a Perſon came on *Sunday* Morning about eleven o'Clock accordingly, and carried him to another Houſe, where he found the Perſon that conveyed him to the Captain, who told him that he muſt do what he bid him do, giving him a Muſquetoon, a Caſe of Piſtols, and a Pocket-Piſtol, he having a Sword before given him by the Count; and the Captain further added, repeating it five or ſix times, when we go out together, if I ſtop a Coach, do you fire into it, and then follow me. They accordingly took Horſe, and when they met the Coach, the Captain having a Piſtol in his Hand, cried to the Coach, *Hold*, and at the ſame Time bid this Examinate *fire*, which he did accordingly. That he being further examined as to Mr. *Hanſon*'s knowing any thing of this Matter, he ſaith he doth not know that he doth. That as to the Arms, there was a Blunderbuſs, two Swords, two Pair of Piſtols, three Pocket Piſtols, two Pair of Boots tied up together in a kind of Sea-Bed, and delivered to Dr. *Dubartin*, a *German* Doctor, who received them at his own Houſe.

J. Reresby.
W. Bridgman.

CXII. *The Trial of* Nathaniel Thompſon, William Pain, *and* John Farwell, *at the* Guild-Hall *of* London, *for writing, printing and publiſhing Letters, importing that Sir* Edmundbury Godfrey *murdered himſef; as alſo for ſeveral Falſities relating to the ſaid Matter printed in ſeveral Papers, called the* Loyal Proteſtant Intelligence, *June* 20, 1682. 34 Car. II.

The Jurors were,

Peter Houblon.
John Ellis.
William Barret.
Joſhua Brooks.
Gervas Byfield.
Jonathan Lee.
George Widdawes.
William Sambrook.
William Jacomb.
John Delmee.
Samuel Bayly.
Samuel Howard.

The INFORMATION.

FOR that in *Hillary* Term, in the 30th and 31ſt Years of this King's Reign, in the Court of King's Bench at *Weſtminſter*, by a Jury of the County of *Middleſex* were indicted, *Robert Green*, —— *Gerald*, Clerk, *Henry Berry*, *Lawrence Hill*, *Dominick Kelly*, and *Philbert Vernatt*; for that they by the Inſtigation of the Devil, *&c.* the 12th of *October*, in the 30th Year of this King's Reign, at the Pariſh of St. *Mary le Strand* in the County of *Middleſex* aforeſaid, with Force and Arms, in and upon Sir *Edmundbury Godfrey*, Kt. in the Peace of God and the King then and there being, feloniouſly, wilfully, and of their Malice aforethought, did make an Aſſault, and kill and murder him in this manner, *viz. Green* did fold and faſten a Linen Handkerchief about his Neck, and therewith choaked and ſtrangled him, of which choaking and ſtrangling he inſtantly died: And the others, *viz. Gerald*, *Berry*, *Hill*, *Kelly* and *Vernatt* were preſent, aiding, abetting, comforting, aſſiſting and maintaining the ſaid *Green* to kill and murder the ſaid Sir *Edmundbury Godfrey* in Form aforeſaid; and ſo they the ſaid *Green*, *Gerald*, *Berry*, *Hill*, *Kelly* and *Vernatt*, in Manner and Form aforeſaid, him the ſaid Sir *Edmundbury Godfrey* feloniouſly, wilfully, and of their Malice aforethought, did kill and murder, againſt the Peace of our ſaid Lord the King, his Crown and Dignity: To which Indictment afterwards, the ſaid Term, the ſaid *Robert Green*, *Henry Berry*, and *Lawrence Hill* ſeverally pleaded, Not Guilty, and put themſelves upon the Country; and after in the ſaid Term of St. *Hillary*, in the ſaid Court of King's Bench at *Weſtminſter*, for the Felony and Murder aforeſaid, by a Jury of their Country in due Manner were tried, and thereof lawfully convicted and attainted, as by the Record thereof in the ſaid Court of King's Bench at *Weſtminſter* remaining more fully apppears; which ſaid *Robert Green*, *Henry Berry* and *Lawrence Hill*, were afterwards executed and ſuffered Death, according to the Form and Effect of the Judgment and Attainder aforeſaid. And whereas one *Miles Prance*, upon the Trial of the Indictment aforeſaid, was produced a Witneſs and ſworn for the King, and gave material Evidence againſt the ſaid *Green*, *Berry* and *Hill*, to prove them Guilty of the Felony and Murder aforeſaid: And one *William Bedloe*, *John Brown*, *Elizabeth Curtis*, *Zachary Skillarne*, and *Nicholas Cambridge*, upon the Trial aforeſaid, were Witneſſes in like Manner produced and ſworn for the King, and gave divers material Evidences againſt the ſaid *Green*, *Berry* and *Hill*, to prove them Guilty of the ſaid Felony and Murder. And whereas alſo the ſaid —— *Gerald*, *Robert Green*, *Lawrence Hill*, *Dominick Kelly*, and *Philbert Vernatt*, at the Time of the Felony and Murder aforeſaid, were Papiſts, and Maintainers of the Romiſh Superſtitions: And the ſaid —— *Gerald*, *Dominick Kelly*, and *Philbert Vernatt* have fled, and not yet appeared to the ſaid Indictment. And whereas alſo by the Coroner's Inqueſt taken upon the View of the Body of the ſaid Sir *Edmundbury Godfrey* lying dead before *John Cooper*, Gent. one of the Coroners of the ſaid County of *Middleſex*, by the Oaths of honeſt and lawful Men of the ſame County, above the Number of twelve Perſons, it was found that certain Malefactors unknown, feloniouſly, and of their Malice prepenſe, him the ſaid Sir *Edmundbury Godfrey* did ſtrangle and choak, of which he died. The ſaid *Nathaniel Thompſon*, *William Pain* and *John Farwell*, well knowing the Premiſſes, and being Perſons deviliſhly affected, deviſing, practiſing, and with all their Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb, and as much as in them lay the due Courſe of the Law to deſtroy, and ſubvert and elude, and the Juſtice of this Kingdom of *England* to defame and ſcandalize, and as well the ſaid *Miles Prance*, *William Bedloe*, *John Brown*, *Elizabeth Curtis*, *Zachary Skillarne*, *Nicholas Cambridge*, as the ſaid *John Cooper*, and the honeſt and lawful Men ſworn upon Inqueſt aforeſaid, upon view of the Body aforeſaid, to bring into the greateſt Hatred, Contempt, and vile Eſteem with all the King's Subjects, and to deter the King's Subjects from finding, detecting, and proving the Deſigns of Papiſts againſt our Lord the King, and the true Religion now by Law eſtabliſhed, and impiouſly and wickedly deviſing and intending them the ſaid —— *Gerald*, *Dominick Kelly*, and *Philbert Vernatt*, from undergoing the Pains and Sentences by Law upon them to be inflicted, for the Murder aforeſaid, and to aid and aſſiſt them (although they be Guilty) to be found Not Guilty thereof; and to deceive and beguile the King's Subjects in the Premiſes with their falſe Affirmations and Arguments, and cauſe and procure that it ſhould be believed and eſteemed, that the ſaid *Green*, *Berry*, and *Hill*, the Perſons for the Murder of the ſaid Sir *Edmundbury Godfrey* as aforeſaid convicted and executed, had been convicted, and executed unjuſtly; and that the ſaid Sir *Edmundbury Godfrey* was *felo de ſe*, and himſelf had feloniouſly murdered. They the ſaid *Thompſon*, *Pain*, and *Farwel*, their moſt impious, wicked, and diabolical Intentions to fulfil and perfect afterwards, *to wit*, the 23d of *February*, in the four and thirtieth Year of the Reign of our now Sovereign Lord the King, at the Pariſh of St. *Mary le Bow*, *London*, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, and diabolically, made, compoſed, and cauſed to be printed, a certain falſe, ſcandalous, and defamatory Libel, entitled, *A Letter to Mr.* Miles Prance, *in relation to the Murder of Sir* Edmundbury Godfrey: In which ſaid Libel, amongſt other Things, it is contained as follows, *And hearing that the Coroner's Jury or Inqueſt were firſt of Opinion, and accordingly declared, he was* felo de ſe, *and that there was much Art and Skill uſed to procure their Verdict to the contrary, more particularly the refuſing of the Body, at their Inſtance and Requeſt, to be opened.* And in another Place of the ſame Libel, it is farther contained as follows, *They ſay, that if a Man or any other Creature be ſtrangled or hang'd, and his Body cold, and the Blood ſettled in the Veins (as he muſt needs be, if your Evidence be true)* (meaning the Evidence of the ſaid *Miles Prance) run twenty Swords through ſuch a Body, not one drop of Blood will come out; but on the contrary, his Body, when found, was full of Blood, in ſo much that (over and above the Cakes or great Gobbets of congealed putrified Blood found afterwards in his Clothes) the Conſtable when he pulled the Sword out of his Body, it craſhed againſt his Back Bone, and Gobbets of Blood and Water guſhed or gubbled out of that Wound in abundance, not only in that very Place where the Sword was pulled out, but in all his Paſſage to the White-houſe; eſpecially, there where his Body was lifted over two high Stumps, and alſo when he was laid upon the Table, the Blood and Water ſo iſſued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar:* So that they do aver, that that Wound that he received by that Sword, muſt of Neceſſity be the Cauſe of his Death. And in another Part of the ſame Libel, it is further contained as follows, *They obſerve that* Bedloe's, *before the Committee of Lords, and your Evidence in relation to this Gentleman's Death, are as different as the*

Eaſt is from the Weſt; *for you dog him out of St.* Clement's, *the other decoys him from* Charing-Croſs; *you ſwear he was ſtrangled with an Handkerchief near the Stables going to the Water-ſide*; Bedloe, *that he was ſmothered with a Pillow in a Room in the great Court in* Somerſet-houſe; *you ſay, he took Horſe at* Soho; Bedloe *ſays, that he took Coach at* Clarendon-houſe, *with many more ſuch like Contradictions*; *and conſidering the old Proverb, fore-warned, forearmed*; *a further and fuller Account of the whole Matter expect.* And that the ſaid *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, their moſt impious, wicked and diabolical Intentions to fulfil and perfect, afterwards, to wit, the third Day of *March*, in the ſaid four and thirtieth Year of the Reign of the ſaid late Lord the King, at the ſaid Pariſh of St. *Mary le Bow*, *London*, aforeſaid, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, evilly, maliciouſly, ſcandalouſly, and diabolically, made, compoſed, and cauſed to be printed, another falſe, ſcandalous, and defaming Libel; entitled, *a ſecond Letter to* Miles Prance, *in Reply to the Ghoſt of Sir* Edmundbury Godfrey. In which laſt mentioned Libel, amongſt other Things, it is further contained as follows, *Next, whereas my Letter ſaith (and that truly) that the Coroner's Jury were firſt of Opinion, and accordingly declared he was* felo de ſe; *and that much Art and Skill was uſed to procure their Verdict to the contrary.* And in another Place of the ſame laſt mentioned Libel, amongſt other Things, it is further contained as follows: *And it would be very material, if the Coroner would declare, what he received for that Job, and of whom*; *and what Evidence he had to induce the Jury to find (as the Inquiſition imports) that he was ſtrangled with a Linen Cloth, a Matter of Fact never ſo much as ſpoken of until you came in with your Evidence, which was not in ſome Weeks after*; *and I do again aver, that the Body was required by the Jury to be opened, and was refuſed*; *and if the Body was in their and the Coroner's Power (as the Ghoſt inſinuates) ſuch Power was concealed from and denied the Jury.* And in another Place of the ſame laſt mentioned Libel, it is, amongſt other Things, contained as follows: *He is to underſtand, that Mr.* Brown, *the two Surgeons (meaning the ſaid* Zachary Skillarne *and* Nicholas Cambridge) *and Mrs.* Curtis, *are no competent (nor can be material) Witneſſes in this Caſe.* And in another Place of the ſame laſt mentioned Libel, it is further contained as follows: *But Mr.* Prance, *it will be fully proved, that the Body was full of Blood, and that there were Cakes or Gobbets of dry Blood, found in his Clothes, which, with his Body, ſtunk extremely: And it will be alſo fully and effectually proved that his Eyes, Noſtrils, and Corners of his Mouth were Fly-blown.* And in another Place of the ſame laſt mentioned Libel, among other Things, it is contained as follows; *And as the ſeventh and laſt Paragraph, which relates only to the Difference betwixt you and Mr.* Bedloe's *Evidence, I I muſt take Notice, that what you and he ſwears is very contradictory.* And in another Place of the ſame laſt mentioned Libel, amongſt other Things, it is further contained as follows: *But I cannot omit to take further Notice of Mrs.* Curtis's *Affidavit, in relation to the Wax found upon the Clothes, in which I cannot ſay but ſhe may ſwear true*; *but this I do aver, that if it be ſo, thoſe Drops were put upon the Clothes long after he was found, and after the Jury had ſat on the Body*; *for there was no ſuch thing then on the Clothes. And, I ſuppoſe, this was ſome Artifice uſed by thoſe, who either out of Intereſt or Deſign, were deſirous to confirm his being murdered at* Somerſet-Houſe. And the ſaid Attorney-General for the ſame Lord the King, gives the Court here to underſtand and be informed; That the ſaid *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, in their further Proſecution aforeſaid, falſly, wickedly, and maliciouſly, their Contrivances and Intentions aforeſaid, afterwards, to wit, the 7th Day of *March*, in the four and thirtieth Year of our ſaid Lord the King, at the Pariſh of St. *Mary le Bow*, *London*, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, and deviliſhly, compoſed, made, and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, entiled, *The Loyal Proteſtant and True Domeſtick Intelligence, or News both from City and Country.* In which laſt mentioned Libel, it is contained as follows: *That there is not in the ſaid Letter* (meaning the ſaid falſe, ſcandalous, and defaming Libel) entitled, a Letter to Mr. *Miles Prance*, in relation to the Murder of Sir *Edmundbury Godfrey*, before firſt mentioned, the *leaſt Item or Circumſtance, but what will be by undeniable Evidence made out to be the Truth: So the ſaid Mr.* Prance, *having not as yet vouchſafed an Anſwer to that Letter, he will ſpeedily receive a further Letter relating to that Murder, wherein the further Truth will not only be fully ſet forth, and other Circumſtances ſet out.* And further, that the ſaid *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, in their further proſecuting, falſly, wickedly, and maliciouſly, their Contrivances and Intentions aforeſaid, with Force and Arms, *&c.* falſly, unlawfully, wickedly, maliciouſly, and deviliſhly, compoſed, and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, entitled, *The Loyal Proteſtant Intelligence*, &c. In which laſt mentioned Libel, amongſt other Things, it is contained as follows: *Whereas* Dick Janeway, *in this Day's Mercury, promiſes an Anſwer to the late Letter to Mr.* Prance, *&c. This is to give him and all the World Notice, that ſuch an Anſwer is impatiently expected by the Author of that Letter, who queſtions not but to prove every Tittle of that Letter, to the Satisfaction of all Mankind: And beſides, he is very deſirous that the* Courantier (*according to his laſt* Pacquet *of Advice from* Rome) *would go on, and uſe his Intereſt, to procure the Lord Mayor, Court of Aldermen, and Common Council of* London, *to inſpect the Truth of that Letter*; *whereby it will appear inevitably, that there is not one* Papiſt *or* Popiſhly affected *Perſon concerned in that Letter, or in the Proof of the Particulars thereof*; *but the ſame (with divers other material Circumſtances relating to the Murder of Sir* Edmundbury Godfrey, *and the* Fraud *and* Blind *put upon the World in relation thereto) will be more fully, plainly and manifeſtly proved, without giving ill Words, or ſcurrilous Language, or Reflections to any Perſons that really are, or ſuppoſed to be therein concerned in any Circumſtance whatſoever.* And that the ſaid *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, in their further Proſecution aforeſaid, falſly, wickedly, and maliciouſly, their Contrivances and Intentions, after, to wit, the firſt Day of *April*, in the four and thirtieth Year of the Reign of our ſaid Lord the King, with Force and Arms, *&c.* at the Pariſh of St. *Mary le Bow*, *London*, aforeſaid, falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, and deviliſhly, made, compoſed, and cauſed to be printed, a certain other falſe, ſcandalous, and defamatory Libel, entitled, *The Loyal Proteſtant Intelligence*, &c. In which laſt mentioned Libel, amongſt other Things, it is contained as follows; *Laſt* Wedneſday, Nathaniel Thompſon, *upon Summons, appeared before the Lords of his Majeſty's moſt honourable Privy Council, about the Letters to Mr.* Miles Prance, *concerning the Death of Sir* Edmundbury Godfrey, *where he juſtified the Matter, and produced the Authors, who are ready to prove (by undeniable and ſubſtantial Witneſſes, not in the leaſt accuſed or ſuſpected of* Popery, *as the malicious Party do ſuggeſt) that every Tittle and Iota of thoſe Letters are true.* And that in another Part of the laſt mentioned Libel, amongſt other Things, it is contained as follows; *Mr.* Thompſon *and the Gentlemen his Friends are to attend the next* Wedneſday *at Council, where they do not doubt, but that honourable Board will put them into a Method to prove the whole, or any Particular, which their Honours in their great Wiſdom ſhall think convenient to be brought to the Teſt or Examination.* And further, that the ſaid *Nathaniel Thompſon*, &c. the twenty third Day of *February*, in the aboveſaid thirty fourth Year of our ſaid Lord the King; and divers other Days and Times betwixt the ſaid twenty third of *February*, and the aforeſaid thirty fourth Year, and the Day of the exhibiting of the ſaid Information at the Pariſh of St. *Mary le Bow*, *London*, aforeſaid, knowingly, and every of them knowing the ſaid ſeveral Libels to be falſe, malicious, ſcandalous, and ſeditious, with Force and Arms, *&c.* falſly, unlawfully, unjuſtly, wickedly, maliciouſly, ſcandalouſly, ſeditiouſly, and deviliſhly, the ſaid falſe, malicious, ſcandalous and ſeditious Libels uttered and publiſhed, and each of them uttered and publiſhed in manifeſt Contempt of the Laws of this Kingdom of *England*, and the Scandal and Defamation of the publick Juſtice of the ſame, to the evil Example of all others in like Caſe offending; and againſt the King's Peace, his Crown and Dignity, *&c.*

Then Proclamation for Information being made, Mr. Thompſon *acquainted my Lord and the Jury with the Effect of the Information, as follows:*

Mr. *Thompſ.* My Lord, and you Gentlemen of the Jury, this is an Information againſt *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, and it is for writing and printing ſeveral ſcandalous Libels, about the Death of Sir *Edmundbury Godfrey*: In which we ſet forth, that *Green*, *Berry*, and *Hill*, were indicted for the Murder of Sir *Edmundbury Godfrey*, and thereof convicted and attainted; and that the ſaid *Green*, *Berry*, and *Hill*, were executed for it: That upon their Trial for that Matter ſeveral Witneſſes were examined, namely, Mr. *Prance*, *Bedloe*, and *Curtis*, and ſeveral others to prove, Sir *Edmundbury Godfrey* murdered at *Somerſet-houſe*: And before the Trial there was an Inqueſt taken by the Coroner of *Middleſex*, by which it does appear, that Sir *Edmundbury Godfrey* was murdered by ſeveral Perſons unknown; and that the Defendants, to reflect upon the Juſtice of the Nation, and ſcandalize the Witneſſes produced at that Trial, and to make it believed that theſe Perſons died wrongfully, did write and print ſeveral ſcandalous Libels and Letters, one of them entitled, *A Letter to* Miles Prance, *concerning the Murder of Sir* Edmundbury Godfrey; and in theſe Letters did ſuggeſt, as if he had been *felo de ſe*, and do reflect upon every one of the Witneſſes, as if they had contradicted themſelves; and alſo do reflect upon the Coroner, as though he had bribed the Jury; and do undertake by theſe Arguments, and ſeveral others (that you will hear) to prove, that Sir *Edmundbury Godfrey* murdered himſelf. And that in another Libel that *Thompſon* printed, called his *Loyal Proteſtant Intelligence*, he ſays, he will make it out by a cloud of Witneſſes. This we ſay is againſt the Peace of the King, and defaming of the Juſtice of the Nation: If we prove this Matter upon them, you are to find them Guilty.

Mr. Serj. *Maynard.* My Lord, the Matter which you have now before you, is as impudent a Thing as ever was done. Gentlemen, Sir *Edmundbury Godfrey* was murdered, and *Green* and the Contrivers of it have been executed for it; the Matter hath paſſed the Examination of the Parliament, and the King and Council and all: Now this *Thompſon* is a Printer, I may as well ſay a Printer of Libels, for he does conſtantly print Libels againſt the Religion eſtabliſhed, and the Juſtice of the Nation. The Jury that were impannelled upon the Coroner's Inqueſt, he ſays of them, that they at firſt did agree that he murdered himſelf, and afterwards did return, and find that he was murdered by others. Gentlemen, it is plain that he was murdered by others, and the particular Perſons have been tried for it, and found Guilty. Now this Perſon after all this, What does he do? He takes upon him to write a Letter to *Prance* (*Prance* was one of the Witneſſes in that Caſe) he writes it by the Name of a Letter, but it is a foul and wicked Libel; and therein ('tis too long for me to mention the Particulars) he ſcandalizes the publick Juſtice of the Nation, he undertakes to vindicate the Murderers, and to accuſe the Proceedings of the Nation. But, Gentlemen, we will prove theſe Men guilty of framing and publiſhing of theſe wicked Libels, and that is all that is needful to be done upon the point of Evidence. We will call our Witneſſes.

Then Mr. *Clare* was ſworn, and produced a Copy of the Record of the Conviction and Attainder of *Green*, *Berry*, and *Hill*, for the Murder of Sir *Edmundbury Godfrey*. As alſo a Copy of the Inquiſition, taken by the Coroner of *Middleſex*, upon the View of the Body of the ſaid Sir *Edmundbury Godfrey*, whereby it is found that he was murdered by them, ſtrangled with a Cord by Perſons unknown. Both which (Mr. *Clare* having ſworn to be true Copies) were read.

* *L. C. J.* This Matter of his being thus ſtrangled, was found before it was diſcovered who did the Murder. It was upon the Sight of the Body, and they ſuppoſed it to be done by a Cord, but afterwards it came to Light that it was done with an Handkerchief.

* *Sir* Francis Pemberton.

Mr. *Thompſ.* (To the Counſel of the Defendants) If you will put us to prove all, we muſt prove that theſe Men were executed.

Then Captain Richardſon *was ſworn.*

L. C. J. Were theſe Men executed for this Murder?

Capt. *Rich.* Yes, I ſaw them executed.

Then Mr. Prance *was ſworn.*

Mr. *Thompſ.* Did you give Evidence upon the Trial of *Green*, *Berry*, and *Hill*, for the Murder of Sir *Edmundbury Godfrey*?——Mr. *Prance.* Yes.

Mr. *Thompſ.* Do you remember that *Brown* was a Witneſs too?
Mr. *Prance.* Yes, *Brown* was.
Mr. *Thompſ.* Was *Curtis a* Witneſs, and Mr. *Bedloe?*
Mr. *Prance.* That *Curtis* was, I don't remember; Mr. *Bedloe* was.

Then Curtis *was ſworn.*

Mr. *Thompſ.* Were you a Witneſs at the Trial of *Green*, *Berry*, and *Hill?*
Mrs. *Curtis.* Yes, I was.

Then Sir John Nicholas, *and Sir* Philip Lloyd, *and* William Bridgman, *Eſq;* *were ſworn, and the two Letters in the Information were ſhewed to them.*

L. C. J. Were theſe ſhewed to the Defendants, *Thompſon*, and *Pain*, and *Farwell*, at the Council?
Sir *Phil. Lloyd.* Theſe were the ſame, I know becauſe they are endorſed by my Hand; *Thompſon* owned the printing of both, and one other of the Defendants owned the writing of one of them, and the other of the other.
L. C. J. But *Thompſon* owned the printing of both?
Sir *Phil. Lloyd.* Yes, my Lord.
Mr. Sol. Gen. Did *Pain* and *Farwell* own the bringing of both to *Thompſon* to print?
Sir *Phil. Lloyd.* One owned the one, and the other the other.

Then Sir John Nicholas *and Mr.* Bridgman *teſtified the ſame.*

Mr. *Saunders*, of Counſel for *Pain*, ſaid to Sir *Phil. Lloyd*, Did *Pain* or *Farwell* own that they brought both, or one the one, and the other the other?
Sir *Phil. Lloyd.* One the one, and the other the other.
Mr. *Saunders.* Then pray, Sir, which was that *Farwell* did own?
Sir *Phil. Lloyd.* My Lord, my own Memory does not tell me which, but here are Notes ſay that *Farwell* owned the firſt, and that *Pain* owned the ſecond.
L. C. J. Do you believe them to be true?
Sir *J. Nicholas.* Yes, Sir, I took the Notes.
Mr. *Yalding.* Did he readily diſcover his Authors?
Sir *Phil. Lloyd.* Yes, he did.
Aſſociat. The Title is thus, *A Letter to Mr.* Miles Prance, *in relation to the Murder of Sir* Edmundbury Godfrey. Shall I read it all?
L. C. J. All of it.
Read it in theſe Words; *Mr.* Prance.

A LETTER *to Mr.* Miles Prance, *in Relation to the Murder of Sir* Edmundbury Godfrey.

Mr. *Prance.*

PErceiving by ſome late Pamphlets ſeveral Rumours rais'd, as if there were Endeavours us'd to aſperſe your *Evidence* in Relation to the Death of Sir *E. B. G.* and to lay that Murder upon himſelf. And remembring the *Conſternation*, which then was in all People's Minds, by the Diſcovery at that Time of a dreadful and moſt horrid *Popiſh Plot*, which occaſioned divers to report, and moſt to believe (even ſeveral Days before the dead Body was found) *That he was murdered by the Papiſts at* Somerſet-houſe. And hearing that the *Coroner*'s *Jury* or *Inqueſt*, were firſt of Opinion, and accordingly declared he was *felo de ſe:* And that there was much Art and Skill uſed to procure their *Verdict* to the contrary: More particularly, the refuſing of the Body (at their Inſtance and Requeſt) to be opened; and oppoſing the Aſſiſtance of the *Coroner* of *Weſtminſter*, (who is taken notice of to be a knowing and impartial Man in the Execution of his Office;) who was deſired to, and did attend for that Purpoſe, but was diſmiſſed with a Guinea; telling him, they had no need of his Service. I made it my Buſineſs, partly for Your's, but chiefly for the Truth's ſake, to make a ſtrict Enquiry into the farther Cauſes of the aforeſaid Rumours, and do find theſe Particulars very much urged, and diſcourſed of, (*viz.*)

I.

In Oppoſition to the Evidence of his being dogged up and down, and lodg'd in a great Houſe at St. *Clement*'s on *Saturday* the 12th of *October* 1678. (being the Day he was firſt miſſing.) It is affirmed, he went out of his Houſe that very *Saturday* Morning about nine o'Clock (which is the laſt Time he ever returned thither;) and about ten that Forenoon was in the Fields walking towards *Marybone* (in which Pariſh his dead Corps was afterwards found) and was there met by a Brewer in St. *Giles*'s, who diſcourſed with him; and about eleven of the ſame Day he was ſeen paſſing by the Lady *Cook*'s Lodgings near the *Cock-pit*; after which, he was ſeen in St. *Martin's-lane*, went by the Church, and down *Church-Lane* into the *Strand*; about one paſſed by the Door of one Mr. *Ratcliff* an *Oilman* in the *Strand*, and ſoon after was met in the back Court of *Lincoln's-Inn* by two Gentlemen, who obſerved him to make a ſudden turn, and to go out at the back Door; they went out at that Door alſo, and did ſee him turn the corner Wall, between which Place and *Turn-ſtile*, he was met by a Barriſter at Law; and that a Perſon living near *Primroſe-hill*, declared before divers Perſons, that he ſaw him about three that *Saturday* in the Afternoon walking in thoſe Fields, his uſual Walk being that way.

II.

They ſay, the Place where, and the Poſture wherein he was found, are very remarkable. As to the Place, it was in a Ditch on the South-ſide of *Primroſe-Hill*, ſurrounded with divers *Cloſes*, fenced with high Mounds and Ditches, no Road near, only ſome deep dirty Lanes made only for the Conveniency for driving *Cows* and ſuch like *Cattle* in and out of the Grounds; and thoſe very Lanes not coming near 500 Yards of the Place, and impoſſible for any Man on Horſe-back with a *dead Corpſe* before him at Midnight to approach, unleſs Gaps were made in the Mounds, as the *Conſtable* and his Aſſiſtants found by Experience when they came on Horſeback thither. As to the Poſture, his Breaſt was unbuttoned, his Waiſtcoat and Shirt put up, his Sword run in under his left Pap next his Skin, the Point coming out at his right Shoulder about ſix Inches, his left Arm doubled under him, (on which his Head ſeemed to lean) and his right Arm ſtiff, ſtretched out upon the Bank, his Belly and Breaſt being ſupported by the Side of the Bank, his Knees knit together, and with his Hips a little bending or doubling under him.

And they infer from thence, that he being a tall raw-boned Man, (after he had been ſeveral Days dead) could never be crooked ſo as to be crammed into a *Sedan*, (which are very low built, and difficult to be carried with proper Braces, much more as you evidenced, with *Cords*) then ſtraitened, and his Legs opened, and mounted on Horſeback, and then put into the Poſture he was found in, and ſtiffened again.

III.

Now although the Matters aferesaid may be ſaid to be only *circumſtantial*, yet they produce undeniable Arguments againſt your Evidence, *viz. They ſay, that if a Man, or any other Creature, be ſtrangled, or hanged, and his Body cold, and the Blood ſettled in the Veins*, (as he muſt needs be, if your Evidence be true) *run twenty Swords through ſuch a Body, not one Drop of Blood will come out:* But on the contrary, his Body, when found, was full of Blood, inſomuch, that (over and above the *Cakes* or great Gobbets of congealed putrified Blood found afterwards in his *Clothes*) the *Conſtable* when he pulled the Sword out of his Body, it craſhed againſt his Back-bone, and Gobbets of Blood and Water guſhed or gubbled out of that Wound in abundance, not only in that very Place where the Sword was pulled out, but in all his Paſſage to the *White houſe*, eſpecially there where his Body was lifted over two high Stumps; and alſo when he was laid upon the Table, the Blood and Water ſo iſſued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar; ſo that they do aver that that Wound that he received by that Sword, muſt of Neceſſity be the Cauſe of his Death. And they take Notice, that ſo much of the Sword as was in his Body, was diſcoloured and blackiſh; and that Part that came out at his Back was of a dulliſh Colour, and the Point thereof was ruſty; alſo, that the *Clothes*, *Belt*, and *Scabbard*, were weather-beaten to *Rags*; his Body ſtunk extremely; his Eyes, Noſtrils, and Corners of his Mouth were Fly-blown; all which muſt naturally be by his being ſo long in the Air.

IV.

They ſay, *That when a Man is ſtrangled, or hanged, his Eyes will be extorted, his Face will be ſwelled and black*; whereas his Eyes were ſhut, his Face was pale, only the left part of his Chin, with his Breaſt and Belly being next the Earth, were putrified, and looked of a blue and greeniſh Colour, more eſpecially about the Wound; for that the Blood, when hot, running to the Wound, cauſed the greater Putrefaction in that Place: whereas, if the Wound had been made after he was dead and cold, the reſt of his Body would have putrified as ſoon, and as much as there.

V.

They ſay, *That the cleanneſs of his Shoes makes againſt your Evidence*; *for his Shoes were cleaned, or rather glazed on the very bottoms of the Soles, occaſioned by his walking in the Graſs, and Graſs-ſeeds were obſerved to ſtick in the Seams of his Shoes: And beſides, there was not one ſpeck of Dirt on his Clothes, or Legs, not ſo much as a Horſe-hair ſticking thereon*; whereas the *Conſtable*, and thoſe that went with him, were dirtied and moiled up to the very Saddle-ſkirts, and not eaſily to be cleaned? and Mr. *Prance*, you know that a tall *dead Man* on Horſe-back, cannot lift up his Legs to ſave them from the Dirt.

VI.

As to the looſeneſs of his Neck, and the Rim or green Circle about it, they ſay they are ridiculous and impertinent Arguments againſt ſo many demonſtrative ones; eſpecially, when there is not a *Nurſe*, or any Woman of Age, that hath buried any Relations, but will tell you 'tis very common for People to die with Necks as looſe as his was. And the Rim about his Neck was ſo far from being like one made with a *Cravat* or *Handerchief*, that it ſeems to be occaſioned by the great height and ſtiffneſs of his *Collar*, which was faſt buttoned about his Neck, and on which his Head reſted, and was unbuttoned about ten of the Clock the next Day, before the *Coroner* or *Jury* came. But if that Rim, or thoſe Bruiſes, that your Evidence ſeems to make the Cauſe of his Death, were really ſo; then they alledge, that in ſuch Caſe, the whole Maſs of Blood would have ſettled there, and his Neck and Bruiſes would have ſwelled, and have been perfect black, which was not in his Caſe.

VII.

They alſo ſay, That all theſe Matters are notorious, and will be proved by divers credible and undeniable Eye and Ear-witneſſes: And beſides, they obſerve, that *Bedloe*'s (before the *Committee of Lords*) and your Evidence, in Relation to this Gentleman's Death, are as different as the *Eaſt* is from the *Weſt*; for you dog him out of St. *Clement*'s; the other decoys him from *Charing-croſs:* You ſwear he was ſtrangled with a Handkerchief near the Stables going to the Water-ſide; *Bedloe*, that he was ſmothered with a *Pillow* in a Room in the great *Court* in *Somerſet-houſe.* You ſay, he took Horſe at *Sohoe*; *Bedloe* ſays, he took *Coach* at *Clarendon-houſe*; with many more ſuch like *Contradictions:* And conſidering the old Proverb, *Forewarn'd, fore-arm'd.* A further and fuller Account of the whole Matter expect, I being loath at preſent to exceed the Bounds of a Letter. I am,

SIR,

Cambridge,
Feb. 23, 1681.

Your very loving Friend,
TRUEMAN.

London, Printed for *M. G.* at the Sign of Sir *E. B. G.*'s Head near
Fleet-Bridge.

Sir *Fr. Winn.* Now read the other Letter.
Aſſociat. This is entitled, *A ſecond Letter to Mr.* Miles Prance, *in Reply to the Ghoſt of Sir* Edmundbury Godfrey.

Mr. *Prince.*

SINCE my laſt to you of the 23d paſt, I have ſeen a prolix, railing, and impertinent Pamphlet, intitled, *Sir* E. B. G.*'s Ghoſt*, and pretended to be an Anſwer to my ſaid Letter. And conceiving you are better acquainted with Ghoſts than myſelf, I thought fit to direct my Anſwer to that Ghoſt to you, and thereby ſhew the Ridiculouſneſs thereof as alſo vindicate the Truths contained in my ſaid former Letter, and ſhew you and the World further Circumſtances to juſtify the ſame; and therefore, according to the Method of my former Letter, I ſhall now proceed by theſe Heads.

And firſt, Not underſtanding what the Ghoſt means, by arraigning the Juſtice of the Nation, unleſs he would aſſert that all that are legally, (are likewiſe juſtly hanged;) and ſo conſequently, that the Mother and her two Sons were juſtly hanged in *Glouceſterſhire*, for the Murder of the Lady Viſcounteſs *Cambden*'s Steward, though he afterwards appeared alive; and I do not find that ever his Appearance arraigned the Juſtice of the Nation. And remitting the Conſideration of Mr. *Brown*'s, the Surgeons, and Mrs. *Curtis*'s Evidence in relation to the Blood, to it's proper Place; and affirming, (as the Truth is) that Mrs. *Celliers*, Mrs. *Mary Gibbon*, the *Newgate* Prieſts, *James Magragh*, and all other *Iriſh* Men, or *Iriſh* Evidences, or other Papiſt or Papiſts, or popiſhly affected Perſons whatſoever; as alſo thoſe concerned in the late Sham of his having hanged himſelf, are Strangers to, and had not the leaſt Knowledge or Intimation of the Contents of my ſaid former Letter, nor any Way concerned therein, or in, or with any Part thereof, (as the ſaid Ghoſt moſt falſly and maliciouſly inſinuates.) I take notice that the ſaid Ghoſt ſeems to admit ſo much of the Truth of the ſaid Letter, as that it was reported divers Days before the dead Body was found, that he was murdered in *Somerſet-houſe* by the Papiſts, and which Report was made even the next Morning after he was miſſing, (being *Sunday* the 13th of *October*, 1678.) Now I would fain have this Ghoſt to inform the World who firſt raiſed that Report: But as to Mr. *Dugdale*'s Letter of it, I cannot give it any better Anſwer, than that as his Evidence hath ſince been diſbelieved in Matters of greater Conſequence; ſo he not producing any ſuch Letter, you muſt give me leave alſo to ſuſpect him in this. But as to the other Evidences of Mr. *Birch* and the reſt; theirs I believe to be very true; for 'tis no Miracle that a Report ſo cunningly raiſed, (without any Ground) might as induſtriouſly be promulged to moſt Parts of the Kingdom, before the reſpective Days they ſpeak of, eſpecially when the Plot had filled all Mens Heads with Fears and Jealouſies, without which it had not been in the Power or Art of the Ghoſt, or any of his Tribe, to have ſuggeſted the leaſt Surmiſe to contradict his being *Felo de ſe.*

Next; Whereas my Letter ſaith, (and that truly) that the Coroner's Jury were firſt of Opinion, and accordingly declared, he was *Felo de ſe*, and that much Art and Skill was uſed to procure their Verdict to the contrary. This Ghoſt, inſtead of contradicting that Truth, would inſinuate, as if that Letter reflected upon the Reputation of the Jurors, when as there was no ſuch Thing implied or intended, they being known to be honeſt Men, of good Reputation, and free from Fraud or Guile, and conſequently the eaſier to be over-reached by the Cunning of thoſe and that Party, whoſe Intereſt it was to deceive them, and who never leave any Stone unturned to attain their Deſigns. And I cannot but obſerve how ſkilful and induſtrious theſe People ſtill are, to hide and prevent the Truth of that Man's Death from clearly appearing and ſhining forth, as without doubt it would, and muſt do, was not the Matter now (as formerly) puzzled with Legends, and long Stories, nothing to the Purpoſe. And as to the Coroner's Warrant for burying the Body, and recited in the Ghoſt, 'tis notorious they are common Tricks, uſed by Men of his Profeſſion, who (if any Money is like to come) will uſually adjourn the Jury; and then make ſuch Warrants (they knowing, that if the Verdict be *Felo de ſe*, 'tis then out of their Power to give leave to bury the Corps.) And it would be very material, if the Coroner would declare what he received for that Job, and of whom, and what Evidence he had to induce the Jury to find (as the Inquiſition imports) that he was ſtrangled with a Linen Cloth, a Matter of Fact never ſo much as ſpoken of, until you came in with your Evidence, which was not in ſome Weeks after. And I do again aver, that the Body was required by the Jurors to be opened, and was refuſed; and if the Body was in their and the Coroner's Power, (as the Ghoſt inſinuates) ſuch Power was concealed from, and denied the Jury. And 'tis very probable the Coroner of *Weſtminſter*'s Aſſiſtance was refuſed, for ſome ſuch indirect Doings, for that there was not the leaſt Difference betwixt the Coroners in relation to their Juriſdictions; and the *Weſtminſter* Coroner came not voluntarily of himſelf, but was importuned to be there by Mr. *Wigg*, and divers others of the chief Inhabitants of St. *Martin*'s Pariſh: And particularly, the Reverend Dr. *Lloyd* (who preached the Funeral Sermon) ſpoke to the Coroner of *Weſtminſter* before he went, ſo that it had been proper to have given the Matters mentioned in that Sermon, in Evidence before the Jury. And 'tis obſervable, the Perſon mentioned to give the Information to the Doctor of the two Wounds in the Body, and that two Hours before it was found, was never produced; for if he had, and that Sir *E. B. G.* had been murdered, ſuch Perſon might have been ſecured, and thereby the Murderers detected. But I ſuppoſe the Ghoſt will not pretend either that Sermon, or the Pamphlet printed by *Nath. Thompſon* to be legal, or (indeed) any Evidence at all.

And now, Mr. *Prance*, being come to the ſeveral Paragraphs of my Letter, I ſhall take them in order as they are placed, and give the Ghoſt particular Anſwers accordingly.

I.

As to Sir *E. B. G*'s Perambulations therein mentioned to be on the *Saturday* he was firſt miſſing, they are true in every Particular, and will be proved by divers able, credible, and undeniable Witneſſes. And how vain it is for the Ghoſt to aſk, Why theſe Witneſſes did not come in ſooner at the Trial of *Green*, *Berry*, and *Hill*, do you judge, when all the World remembers the great Torrent that carried all before it in favour of the Plot, and the Murder of Sir *E. B. G.* by the Papiſts, without which (as *T. O.* was heard to ſay) his Plot had failed: And when it is duly conſidered, that the two Perſons that firſt found the Body, (for no other Cauſe) ſuffered much in their Perſons and Eſtates, by a long and chargeable Impriſonment. And all others that then ſeemed to doubt of the truth of that Man's being murdered by the Papiſts, were ſtigmatized with the odious Names of Papiſts, and Encouragers (if not Promoters) of the Plot: It will appear no wonder, if People were unwilling to diſcover their Knowledges, or to come voluntarily (without Proceſs) to give their Evidence. And how can it be imagined thoſe three unfortunate Men, being kept cloſe Priſoners, could make enquiry after proper Evidences, or againſt the common Vogue) draw into Suſpicion the Aſſertion of his being murdered by the Papiſts?

II.

The Ghoſt hath ſo much Ingenuity to grant the ſecond Paragraph of my Letter, as to the Place and Poſture he was found in, but would avoid the Inacceſſibleneſs of the Place, pretending a Lane near, when as that Lane is, in effect, unpaſſable with two on a Horſe, and comes not within 500 Yards of the Place, and the Mounds thither very high, and the Conſtable and his Aſſiſtants (though they lived in the Pariſh, and well knew the Way) were forced to break a Gap in the Mounds, though they were ſingly horſed. And whereas the Ghoſt alledges, that you do not depoſe he was carried to the Place wholly on Horſeback, he hath run himſelf into a worſe Dilemma, having made no Proviſion of Men (either as to Strength or Number) to carry ſo great and weighty a Corps, in the dead of the Night, over ſuch Mounds and Fences; but let all inquiſitive People, deſirous of Truth, take the Pains but to go to the Place, (and that without any Burden on their Backs) they will ſoon be convinced of the Aſſertion of the Difficulty (if not Impoſſibility) of the bringing a dead Corps thither, either on Foot or on Horſeback. And the Pretenſions of the Ghoſt's, as to the limberneſs of the Body and Joints, does not anſwer that Part of my Letter which relates to the Impoſſibility of his being put into a *Sedan*. For his Body, when found, was ſtiff; ſo that what Limberneſs happened, or appeared afterwards, hath no relation to the Queſtion. For it's a certain Maxim, a dead limber Body cannot be ſtiffened. And pray, Mr. *Prance*, gives us an Account what became of the *Sedan*, and the Cords? And how you could carry it with Cords; for the meaneſt Sedan-man in the Town will tell you it is impracticable, or, rather impoſſible; and you may, if you pleaſe, make an Experiment with a Cord.

III.

As to the Body being full of Blood, when found, the Ghoſt endeavours to diſprove that Aſſertion, by the Evidence of Mr. *Brown* the Conſtable, the two Surgeons, and Mrs. *Curtis*, and produceth the Evidence given at the Trial of *Green*, *Berry*, and *Hill*, and an extrajudicial Affidavit ſince made by Mr. *Brown*, and another by Mrs. *Curtis*, to countenance ſuch his Denial. But, Mr. *Prance*, (when you ſee the Ghoſt) tell him the Matter of the Blood will (and I aſſure you and all the Word it will) be proved by divers credible and undeniable Evidence; and that I may pacify the Ghoſt in the mean Time, he is to underſtand that Mr. *Brown*, the two Surgeons, and Mrs. *Curtis*, are no competent (nor can be material) Witneſſes in this caſe. For Mr. *Brown*, as he did a raſh and unaccountable Act (to give it no worſe Name) in removing the Body before the Coroner and Jury ſaw it, (which hath occaſioned all this Diſpute) ſo he muſt not think to help himſelf by Affidavits, or to juſtify one ill Act by another: And beſides, as he unadviſedly (and contrary to all Law and Practice) removed the Body before the Coroner and Jury came; ſo he did the ſame in the dark, (about eight o'Clock at Night) when the Candle was blown out; whereby it was impoſſible for him to look for any Blood, ſo as to find it: And neither he or the Surgeons (by any Day-light) ſaw the Place where the Body was found, or where the Sword was pulled out, until after ten o'Clock the next Day; before which Time much of the Blood was taken up, and the reſt trampled out of Sight by the great Concourſe of the People which came thither. And as for Mrs. *Curtis*, ſhe only ſaw the Body after it was brought home, when as the Body was ſtrip'd at the *White-houſe*, and a Blanket borrowed there to wrap the Body in. So the World may judge of the Truth of her Affidavit. But (Mr. *Prance*) it will be fully proved, that the Body was full of Blood; and that there were Cakes, or Gobbets of dry Blood found in his Clothes, which (with his Body) ſtunk extremely. And it will be alſo fully and effectually proved, that his Eyes, Noſtrils, and Corners of his Mouth were Fly-blown; though the Ghoſt (without the leaſt colour of Reaſon) pretends it to be contrary to Nature and Reaſon; when as common Experience daily evinces the contrary. And I do obſerve, that the Ghoſt omits to take Notice of two material Circumſtances in this third Paragraph, (*viz.*) The firſt, as to the Sword's craſhing againſt the Backbone. The ſecond, as to that part of the Sword which was in his Body being diſcoloured. And pray, Mr. *Prance*, do you (or the Ghoſt) give the Reaſons thereof, and of it's Point being ruſty; as alſo, what was, or could be the Cauſe of the Spots in the Shirt, Waiſtcoat, and Drawers, of greeniſh Colour, mentioned in Mrs. *Curtis*'s Affidavit.

IV.

As to the fourth Paragraph of my Letter, I perceive the Ghoſt admits, that when a Man is ſtrangled or hanged, his Eyes will be extorted; and admits that Sir *E. B. Godfrey*'s Eyes (when found) were ſhut; only he ſeems to quarrel with the colour of his Face: And, ſeeing he admits his Face not black (as all hanged Men's are, when cold) I care not to conteſt, whether his Face was pale or ruddy, or a little ſwelled, or not, thoſe being very inconſiderable Circumſtances. But his denying the Putrefaction charged in that Paragraph, and the Conſequences deduced from thence, is not only a great Untruth, but is directly oppoſite to the Evidence given by Mr. *Skillarne*, at the Trial before mentioned, *Page* 37, 38.

V.

As to the fifth Paragraph, the Ghoſt is ſo far from anſwering the Aſſertions therein, as that he only quibbles at Words; and begging the Queſtion, deduces thence impertinent and ridiculous Arguments. For it will be proved, that his Shoes were glazed at the bottom of the Soles, and which muſt of Neceſſity be occaſioned by his walking on the Graſs. And (Mr. *Prance*) if you and the Ghoſt will walk together, you will eaſily experience it, and ſo may any Body elſe ſatisfy himſelf in this Speculation: As alſo, as to the Graſs-ſeeds that ſtuck in the Seams of his Shoes; which is ſo far from being impoſſible at that time of the Year, (as the Ghoſt would argue) as that it will be proved by undeniable Evidence. But (Mr. *Prance*) pray aſk the Ghoſt how he came there without a ſpeck of Dirt; and who pick'd the Horſe-hairs off his Clothes; and let him contrive (if he can) a probable or rational way for a dead Man on Horſeback to hold up his Legs, or to ſave them or his Clothes from the Dirt: For though a Man may walk thither very clean, yet 'tis impoſſible at that time of the Year to ride, either without being dirtied, and ſome Horſe-hairs ſticking on his Clothes. But perhaps the next Account from the Ghoſt will be, that he either rid with Gambadoes, or elſe a pair of Fiſhermen's Boots.

VI.

As to the ſixth Paragraph, pray, Mr. *Prance*, tell the Ghoſt, his railing againſt Popiſh Nurſes, and Popiſh Midwives, is no Anſwer to the Aſſertions in that Paragraph; for all the Women in the Town are competent Judges thereof, and I hope the Ghoſt will not ſay they are all Papiſts. But pray tell the Ghoſt he takes no Notice of the Height of the Collar, and it's being faſt button'd about his Neck when found; nor the concluſion of that Paragraph; and therefore I ſuppoſe he admits it to be true.

VII.

And as to the ſeventh and laſt Paragraph, which relates only to the Difference betwixt Your's and Mr. *Bedloe*'s Evidence; I muſt take Notice, that what you and he ſwear are very contradictory, and much more than I hinted in my ſaid Letter: And though part of it be as he and you were informed; yet you and he ſwear the Informations were received from the Perſons actually concerned in the Murder, and who had confidence enough in Mr. *Bedloe* (though he refuſed 4000*l.* to help to kill him, and 2000*l.* to help to carry him away) as to ſhew him the dead Body, and ſo were under no Temptation of miſ-informing either him or yourſelf. And pray, Mr. *Prance*, will you let the World know what Reward you were to have for that Job; for certainly you deſerved as much as Mr. *Bedloe*, and needed more, you having a Wife and Children, and he a Batchelor?

Thus, Mr. *Prance*, having gone through each Paragraph of my Letter, and anſwered the Ghoſt to your Satisfaction; I ſhould leave off here, fearing I have been too tedious already: But I cannot omit to take further Notice of Mrs. *Curtis*'s Affidavit, in relation to the drops of Wax found upon the Clothes, in which I cannot ſay but ſhe may ſwear true; but this I do aver, that if it be ſo, thoſe Drops were put upon the Clothes long after he was found, and after the Jury had ſat on the Body; for there was no ſuch thing then on the Clothes: And I ſuppoſe this was ſome Artifice uſed by thoſe, who either out of Intereſt or Deſign, were deſirous to confirm his being murdered at *Somerſet-houſe*, and to carry on the great Lie, and impertinent Story, then invented, and given out (amongſt others) that he was laid under the High-Altar there; and if my Information fail not, there were other ſuch-like Tricks uſed, which I ſhall make bold to acquaint thoſe more nearly concerned therein, than yourſelf; and ſhall give them to underſtand, that 'tis no wonder a Man in Sir *E. B. G*'s Circumſtances, ſhould kill himſelf, ſuch Accidents being no News to that Family, wherein Melancholy and Diſtraction (that often produces ſuch Effects) hath been predominant, and might occaſion the Words he ſpake to Sir *Thomas Robinſon*, as to his being the firſt Martyr.

And now, Mr. *Prance*, for a Concluſion, If you were guilty of the Murder of Sir *E. B. G.* how durſt you (as you did) on the *Friday* after he was found, go to *Primroſe-Hill* to ſee the Body, and not be afraid it ſhould at your approach have bled afreſh? And how came you (after *Green*, *Berry*, and *Hill*, were hanged) to declare, in Anſwer to a ſolemn Queſtion, that you knew nothing of the Death of Sir *E. B. G.*? Pray remember me to your old Friend and Lodger Mr. *Renn*, my Reſpects alſo to your Wife, not forgetting your little Daughter, who gave you ſo good Advice before you took your Journey into *Nottinghamſhire*, and help'd to take *Beddingfield*, who was bury'd fourteen Months.

I am,
Cambridge, March 13, 1681. *Your Loving Friend*,
TRUEMAN.

London, Printed for *N. Thompſon*. 1682.

Then the Aſſociate read out of a Paper, Intitled, The Loyal Proteſtant Intelligence, *&c.* Number 125. *Tueſday, March* 7, 1681. *the following Paragraph.*

March 4, 1682. WHereas the Mayor of *Gotham*, in his pretended *True Proteſtant Mercury* of *Saturday* laſt, ſeems mightily offended with a Letter therein mentioned to be ſent to Mr. *Prance*, concerning the Murder of Sir *E. B. Godfrey*; and endeavours to avoid the Examination of the Truth of the Matter of Fact contained in that Letter, by his old way of railing and ſtigmatizing all honeſt *Church of England Men* with the Name of *Papiſt*, or *popiſhly affected*: He and his *Whiggiſh Tribe*, are hereby deſired to take Notice, that there is not in the ſaid Letter the leaſt *Item* or Circumſtance, but what will be by undeniable Evidence made out to be the Truth. So the ſaid Mr. *Prance* having not as yet vouchſafed an Anſwer to that Letter, he will ſpeedily receive a further Letter relating to that Murder; wherein the further Truth will not only be fully ſet forth, and other Circumſtances ſet out; but alſo it will thereby plainly appear, that the Reputation of that dead Knight is ſo far from being therein murdered, or the Juſtice of the Nation from being queſtioned; as that it will concern Mr. *Prance*, Mr. *M. G.* and all Parties on that ſide, to lay their Heads together more effectually than they did on *Wedneſday* Morning laſt: For Truth ſeeks no Corners; and, were it not for a vicious and unſanctified Generation of Vipers, need not require an Advocate. For, though a Lie may prevail for a Time, and eclipſe the Truth, yet at length Truth will ſhine forth, with the Aſſiſtance of that God, who is the Author of Truth itſelf.

Then a Paragraph out of another of the like Intelligences, *was read. The* Intelligence *was* Number 127. *Saturday, March* 11, 1681.

March 9, 1682. WHereas *Dick Janeway*, in this Day's *Mercury*, promiſes an Anſwer to the late Letter to Mr. *Prance*, &c. This is to give him, and all the World Notice, that ſuch an Anſwer is impatiently expected by the Author of that Letter, who queſtions not but to prove every Tittle of that Letter, to the Satisfaction of all Mankind: And beſides, he is very deſirous that the *Courantier* (according to his laſt *Pacquet* of Advice from *Rome*) would go on, and uſe his Intereſt to procure the Lord Mayor, Court of Aldermen, and Common-Council of *London*, to inſpect the Truth of that Letter; whereby it will appear inevitably, that there is not one *Papiſt*, or *popiſhly affected* Perſon concerned in that Letter, or in the Proof of the Particulars thereof; but the ſame (with divers other material Circumſtances relating to the Murder of Sir *E. B. Godfrey*, and the *Fraud* and *Blind* put upon the World in relation thereto) will be more fully, plainly, and manifeſtly proved, without giving ill Words, or ſcurrilous Language, or Reflections to any Perſons that really are, or ſuppoſed to be therein concerned, in any Circumſtance whatſoever.

Mr. Serj. *Maynard.* You ſee what they have done; they ſay, What was teſtified againſt the Murderers of Sir *Edmundbury Godfrey*, was a Lie. They go over all the Evidence given againſt theſe Fellows, and undertake, by undeniable Witneſſes, to prove the contrary.

L. C. J. To the Defendant's Counſel; What ſay you to it?

Mr. *Saunders.* I am of Counſel for *Pain*, my Lord, the Charge againſt *Pain* is, That he ſhould own, that he did bring one of theſe Letters to be printed; I have forgot whether Sir *Philip Lloyd* ſaid the Firſt or the Second.

L. C. J. The Second he ſays.

Mr. *Saunders.* If *Pain* did own it, I think he did more ingeniouſly, than when he did make it, or bring it to the Preſs: But, my Lord, it was a raſh, unadviſed Act; but not out of any Malice: My Lord, we will prove that *Pain* was not a *Papiſt*, nor any of his Family. My Lord, this cannot juſtify or excuſe them, it will only extenuate their Fault. We will call ſome Witneſſes.

L. C. J. I will hear any thing in this Caſe, be as large as you will, you ſhan't ſay you are ſtinted; for it is a Buſineſs of mighty Concern.

Mr. *Gooding.* I am of Counſel, my Lord, for *Pain*: My Lord, we have made Application to Perſons to intercede for us; we are ſorry for what we have done, and have offered to give any Satisfaction.

L. C. J. To me he ſaid, he would make it out by *Five hundred* Witneſſes: They would make it as plain as the Day.

Mr. *Thompſon.* Since the laſt Time that was appointed for the Trial, they have printed, That they would prove it by *Threeſcore* Witneſſes; and were very ſorry it did not come on.

Mr. *Yalden.* I am of Counſel, my Lord, for *Thompſon*, who, I think, was unfortunately drawn into the Buſineſs; and that by *Pain* and *Farwell*, though they turn all upon him now. It was a great piece of Ingenuity for him to diſcover his Authors; and it had been very miſchievous if they had not been diſcovered.

L. C. J. What ſay you to the two *Proteſtant Intelligences*?

Mr. *Yalden.* They are as much the Author of them, as of the other. *Thompſoh* ſays, the Authors would be able to prove it by undeniable Witneſſes: *Thompſon*'s Intelligence is open to any Man that will put any Thing into it, and he is paid for his Pains.

Mr. *Oſborne.* I am of Counſel for *Farwell*, my Lord, it was a fooliſh thing to do as we have done; but that is no Satisfaction: My Client ſays he hath ſeveral Witneſſes.

L. C. J. Call them, they ſhall be heard.

Mr. *Farwell.* I begin with *Hazard*, my Lord, he and I went to the Place.

Then Hazard *was ſworn.*

Mr. *Hazard.* I went along with Mr. *Farwell.* He was at the *Rainbow Coffee-houſe*, it was in the Morning, and he deſired me to go to the Place where Sir *Edmundbury Godfrey* was found.

L. C. J. What Day was it?

Mr. *Hazard.* I can't tell, I went along with him, and ſtay'd as long as he did. I ſaw Sir *Edmundbury Godfrey* lying upon the Table, his Shoes were clean as if he had been on an *Haymow*, and his Eyes were cloſed.

L. C. J. Where was he?

Mr. *Hazard.* Upon a Table in the *White-houſe.* There were Gobbets of Blood (that I will aver, my Lord) by the Ditch-ſide, and likewiſe at a Place where there were two or three Things to go over, there was more Blood: I can't tell how he was carried, or how he came there, but I ſaw him at the *White-houſe.*

Mr. *Williams.* Who went along with you, beſides Mr. *Farwell*?

Mr. *Hazard.* No Body.

Mr. *Williams.* Did he bring you the Place where the Body lay?

Mr. *Hazard.* Yes.

Mr. Serj. *Maynard.* What did *Farwell* tell you when he deſired you to go with him?

Mr. *Hazard.* Why, Word was brought by one *Hancock* a Wood-monger, to the *Coffee-houſe*, ſome would not believe him, but ſent a Porter to Sir *Edmundbury Godfrey*'s Houſe, and then, when the Porter came, and ſaid the Body was found, and carried to a *White-houſe* on *Primroſe-hill*, he ſpake to me to go and ſee the Body, and I fetched my Coat and was there quickly.

Mr. *Williams.* When you came near the Ditch, did *Farwell* ſhew you the Place?

Mr. *Hazard.* He and others that were there.

Mr. *Williams.* I aſk you this, Did any Body ſhew you the Place where the Body lay, beſides *Farwell*?

Mr. *Hazard.* No.

Mr. *Oſborne* Did he go to the Place directly, or about over Ditches?

Mr. *Hazard.* Truly, I know the way to *Primroſe-hill* as well as he. We went as direct a Way as we could.

L. C. J. The ſtraighteſt Way to the Place?

Mr. *Hazard.* Yes: We went over ſeveral Ditches

Sir *Fra. Winn.* As you were going over ſeveral Ditches, there was no Body with you, but *Farwell*, was there?

Mr. *Hazard.* No.

Mr. *Williams.* Did you enquire of any Body as you went along?

Mr. *Hazard.* I can't remember ſuch a ſmall Circumſtance.

Then William Baſton *was ſworn.*

Mr. *Oſborne.* What do you know about the Blood that was in the Ditch where Sir *Edmundbury Godfrey* was found?

Mr. *Batſon.* The Morning after the Murder was diſcovered, and that Sir *Edmundbury Godfrey* was found in the Fields, I went with two or three Neighbours, and went to the *White-houſe*, and I ſaw him lie upon the Table in the *White-houſe*; and coming back again, they ſhewed me in a Ditch, where they ſaid he lay, ſome Blood, I cannot ſay it was his Blood; and going a little farther, I ſaw ſome more whitiſh Blood, and this all I can ſwear.

L. C. J. Was it froſty Weather?

Mr. *Batſon.* My Lord, I can't tell whether it was, but I'll aſſure you the Blood looked to me more like Blood that was laid there, than any thing elſe.

One Fiſher *was ſworn.*

Mr. *Farwell.* Was you there when Sir *Edmundbury Godfrey* was ſtripped?

Mr. *Fiſher.* Yes, I ſtripped him of his Clothes, pulled off his Hoſe and Shoes; I was Carpenter to my Lord *Wooten*, and I was ſent for in *October*, Day or two before, and I came to get the Houſe covered up, and to take Order with my Partner: And as I went, there was a Report that Sir *Edmundbury Godfrey* was found and laid up in the *White-Houſe*, and when I came, the Coroner and the Jury were there, and I got into the Room where Sir *Edmundbury Godfrey* lay upon the Table and took his Hat off; and I ſaw two Wounds within an Inch and a half one of another, one went no further than his Bone, and the other went through his Back. And, my Lord, immediately there was an Order come down from the Coroner to get him ſtripp'd. They aſk'd me if I would give an Hand, I told them yes. I pull'd off his Shoes, and they were clean, and I pulled off three pair of Stockings, and a pair of Socks, his black Breeches, and his Drawers, and they came off very well; there was a Man in the Company that deſired to help, ſo I got upon the Table, and ſet him upright with his Breech upon the Table, and his Feet hanging down; we unbutton'd his Coat, and pull'd it off, I came to his Flannel Shirt, and when I came to his Back, there was Blood. But I did not ſee any Blood till I came to his Back-part. About his Throat there was ſomething that had girt him.

L. C. J. He looked as if he were ſtrangled, did he?

Mr. *Fiſher.* Yes, and his Neck was ſo weak that you might turn it any where.

L. C. J. To the Defendant *Farwell.* How do you pretend he murdered himſelf? That he ran himſelf through?

Mr. *Farwell.* I make no Inference, my Lord. But I would only prove that what I write is true; I writ only the firſt Letter; and there are three Heads I am charged with upon that Letter, and That about the Blood is one. My Lord, I was concerned they ſhould pretend there was no Blood at all; when I came there, there was near my Hat full of Blood.

L. C. J. Can you tell who laid it there?

Mr. *Farwell.* My Lord, if you will hear two Witneſſes more, I will ſatisfy your Lordſhip who laid it there. My Lord, this Man was one of them that helped to remove the Body out of the Ditch.

Another Witneſs, John Rawſon, *called by Mr.* Farwell, *and ſworn.*

Rawſon. My Lord, I was there taking him up, we fetched the Conſtable, and pulled him out of the Ditch, and when we had done, we pulled the Sword out, and removed him to the Houſe, and there was Blood upon ſome Poſts (explaining himſelf to me, on a couple of Stumps to go over upon) and going into the Door, his Back did ſweep a little againſt the ſide, and there was ſome Water and Blood lighted there, and likewiſe lay upon the Table where he lay, and upon the Floor.

Mr. *Farwell.* Did the Blood of his Body fall upon the Floor, and go through the Floor into the Cellar?

Mr. *Rawſon.* Some Drops were there, I won't ſwear whether it were Blood or no, my Lord.

Mr. *Farwell.* My Lord, I deſire the ſame Queſtion may be put to Mrs. *Rawſon.*

Mrs. Rawſon *ſworn.*

Mrs. *Rawſon.* My Lord, if you pleaſe, I have not a word to ſay, but there was Blood and Water ran through the Table, that is all I can ſay.

Mr. *Farwell.* My Lord, as to the Difference between Mr. *Prance*'s Evidence, and Mr. *Bedloe*'s, I deſire I may prove the Difference between them.

L. C. J. You ſhall make any Proof you will.

John Stanley *called by Mr.* Farwell, *and ſworn.*

Mr. *Farwell.* I call him to prove the Copies of the Journals of the Houſe of Lords.

L. C. J. What would you infer from the Journals?

Mr. *Farwell.* My Lord, they charge me, that I ſhould ſay there is a great deal of Difference between the Evidence Mr. *Bedloe* gave in the Houſe of Lords, and the Evidence that *Prance* gave at the Trial of *Green*, *Berry*, and *Hill.*

L. C. J. Would you prove any Evidence given by *Bedloe* out of the Journals?

Mr. *Farwell.* I can prove he gave that Evidence before the Houſe of Lords.

But Mr. Farwell *afterwards went off from that Proof, and called Mr.* Hobbs, *Mr.* White, *Mr.* Chaſe *the Father, and Mr.* Chaſe *the Son, and Mr.* Lazinby, *who were ſworn.*

Mr. *Farwell.* I aſk Mr. *Chaſe*, what he obſerv'd about Sir *Edmundbury Godfrey?*

Mr. *Chaſe* the Son. My Lord, on *Friday* Morning the Day after the Body was found, I went to *Primroſe-hill*, in Company with my Father, to ſee the Body which they ſaid was found; I came into the Field where the Company in the Field ſaid the Body had been laid; the Body had been then carried into the Houſe, I looked into the Ditch where they ſaid the Body was laid, I could not ſee Blood in the Ditch, but four or five Yards aſide off the Ditch, there ſeem'd ſome Blood to me, which the Conſtable ſaid, followed the Sword when it was pulled out of the Body: I ſaw the Body in the Houſe, and ſaw the two Wounds; he had a great Contuſion on the left Ear, and his whole Face was very much bruiſed.

L. C. J. Do you believe there was any Violence offered to him?

Mr. *Chaſe.* My Lord, I believe he was ſtrangled, for I don't believe thoſe Injuries that were offered about him, could be after he was dead.

L. C. J. What ſay you, Mr. *Hobbs?*

Farwell. I deſire he may be aſked, Whether he did not propoſe to Mr. *Godfrey*, that the Body might be opened, that any Doubt may be laid aſide, concerning his being murdered in that Place?

Mr. *Hobbs.* My Lord.

L. C. J. Had you any doubt, whether he was murdered or not?

Mr. *Hobbs.* Indeed, my Lord, I thought he was ſtrangled, that was my Opinion, I can't tell whether I was miſtaken. I ſaid to Dr. *Goodall* it would be very well if Mr. *Godfrey* would ſend for a Surgeon and a Phyſician from the Court, and others from the City, to ſatisfy all Perſons.

Mr. *Farwell.* What Colour was his Face?

Mr. *Hobbs.* My Lord it was blotted.

L. C. J. Did it look as if Violence had been uſed to him?

Mr. *Hobbs.* Ay, my Lord; and the bloody Veſſels of his Eyes were ſo full, as if he had been troubled with ſore Eyes.

Mr. *Farwell.* Did you obſerve any Fly-blows in his Face?

Mr. *Hobbs.* No, my Lord, not that I know of.

L. C. J. What ſay you, Mr. *Chaſe?*

Mr. *Chaſe.* My Lord, on *Friday* when I came to ſee the Body at the *White-houſe*, I found a great Contuſion, and two Wounds, one yielded towards the right, the other went into the Body. I troubled myſelf no more at that Time, but the next Day I was deſired by Dr. *Lloyd*, that I would go to his Houſe and ſee the Body again, and there I found a ſwelling upon the left Ear, as if a Knot had been tied; there I found him beaten from this place to this, (pointing to the Neck and Stomach) I never ſaw any Man beaten ſo in my life. Before this Buſineſs was broached, Mr. *Farwell* did take me aſide at *Man's Coffee-houſe*, and did tell me what Proof he could make of this Buſineſs; I told him, Mr. *Farwell*, I love you well, don't meddle with the Buſineſs, for I know it is impoſſible any thing can be ſaid againſt it that hath the Face of Truth. I did ſo a ſecond time (my Lord) when the Book came out, I found one before I went to *New-Market*, and the other at *New-Market*; I was very much troubled to ſee them. The Night before *Eaſter*, the *Eve* of *Eaſter Day*, I met with Mr. *Farwell* at an Houſe where I had been with a good Friend of his and mine, and *Farwell* came and aſked for me, and he came up to the Room as they called for another Bottle of *Wine*, I told them it was needleſs, only ſince Mr. *Farwell* is come up, ſaid I, I will drink one Glaſs with you. And he told me then, that ſix Months before I had given him good Counſel if he had taken it.

Mr. *Farwell.* My Lord, I deſire Mr. *Smith* to be called.

L. C. J. Let him. But he came not then.

Mr. Brown *is called by Mr.* Farwell, *and ſworn.*

Mr. *Farwell.* I deſire Mr. *Brown* may be aſked, whether his Eyes were not Fly-blown?

L. C. J. 'Tis propos'd to you by Mr. *Farwell*, whether the Eyes of Sir *Edmundbury Godfrey* were not Fly-blown?

Mr. *Brown.* No, my Lord, I did not ſee any Fly-blows.

Mr. *Farwell.* Whether there were any Specks that one might call Fly-blows?

Mr. *Brown.* My Lord, I did not ſee any Specks that one might call Fly-blows.

Mr. *Farwell.* I deſire that I may call two Witneſſes to prove that he ſaid ſo.

L. C. J. What will you get by that, Mr. *Farwell*, to diſparage your Witneſs?

Mr. *Brown.* My Lord, Mr. *Farwell* would have had me ſay ſo, but I never ſaid ſo.

Then Smith *came.*

L. C. J. What do you aſk *Smith?*

Mr. *Farwell.* Only about the Blood.

Mr. *Brown.* My Lord, he came to me another time, and told me I was wrong in my Affidavit, as if he knew what I could make Affidavit of better than myſelf.

Mr. *Farwell.* My Lord, I was not the Party that told him ſo.

Mr. *Brown.* He was at my Houſe twice at *Marybone*, at the Sign of the *Sun.*

L. C. J. Was *Pain* with him there?

Mr. *Brown.* My Lord there was a Man with *Plate buttons* with him there. I don't know *Pain.*

Mr. Smith *ſworn.*

L. C. J. Well, what ſay you, Mr. *Smith*, it is required of you by Mr. *Farwell*, here to declare whether you took up any of Sir *Edmundbury Godfrey*'s Blood, and brought it home in your Handkerchief?

Mr. *Smith.* No, my Lord, I know nothing of that.

Mr. *Farwell.* I deſire *Rawſon* and his Wife may be called again.

Rawſon *appears.*

L. C. J. What ſay you, 'tis required by Mr. *Farwell*, whether you ſaw any Fly-blows in Sir *Edmundbury Godfrey*'s Eyes?

Mr. *Rawſon.* There was ſomething like Fly-blows, but I can't ſay they were Fly-blows.

L. C. J Did you obſerve the Flies were buſy at that time of the Year?

Mr. *Rawſon.* My Lord, I did not ſee them.

[*Then the People laughed.*]

Mr. *Farwell.* I deſire *Rawſon*'s Wife may come.

Mr. *Rawſon.* I muſt fetch her then.

Rawſon*'s Wife appears.*

L. C. J. Look you, Mr. *Farwell* requires of you to tell us, whether there were any Fly-blows in the Eyes of Sir *Edmundbury Godfrey?*

Mrs. *Rawſon.* If it pleaſe you, my Lord, there were a great many People ſaid there were Fly-blows, I took no great notice of them.

L. C. J. He aſks you what you ſay to his Mouth, and his Noſtrils, were there Fly-blows?

Mrs. *Rawſon.* If it pleaſe you, my Lord, I can't ſay nothing to it, for I did not much mind it, but they ſeemed Fly-blows.

L. C. J. Have you any more Witneſſes, Mr. *Farwell?*

Mr. *Farwell.* I pray Mr. *Lazinby* (my Lord) may be aſked, whether Men that kill themſelves look as Sir *Edmundbury Godfrey* did?

L. C. J. Mr. *Lazinby*, Mr. *Farwell* requires of you, whether you have ſeen Men that have killed themſelves look in ſuch a manner about the Neck and Face?

Mr. *Lazinby.* My Lord, he appeared to me to be ſtrangled, and that which ſtrangled him was kept about his Neck till he was cold. My Lord, People that are hanged and let down while warm, the Blood drains away by the Veſſels that are broken, and their Faces are rather leſs, and their Faces become very pale; but the Thing wherewith he was ſtrangled remaining about his Neck, the Blood could not drain away, but it made his Face look bloody. The two Mr. *Chaſes*, the King's Apothecary, was there when I was there, and the Blood that was ſome four Yards from the Ditch, I put my Finger in it, and ſmelt to it, and it ſmelt like that which comes from a Body after a Fornight's time dead, rather than a Week's; my Lord, it was Blood and Water. The Water will ſeparate from the Blood.

Sir *Fra. Winn.* But you believe he was ſtrangled?

Mr. *Lazinby.* Yes; his Neck from this place hither (pointing to the upper part of his Neck, and then to his Stomach and Breaſt) was very much diſcoloured and black, and his Mouth was diſcoloured. Now whenever a Man is bruiſed whilſt he is alive, or whilſt he is warm, that Part, after the Perſon is dead, will ſooneſt corrupt.

L. C. J. It ſtands to Reaſon that the bruiſed Part will firſt corrupt.

Mr. *Lazinby.* My Lord, after Mr. *Chaſe* the Apothecary and I had ſeen him at the *White-Houſe*, I went up to drink a Glaſs of Beer, and Mr. *Chaſe*'s Son unbuttoned Sir *Edmondbury Godfrey*'s Collar, which was more than I ſaw, when I was come in, and unbuttoning the Collar, there were two great Creaſes both above and below, ſo they ſent for me down for to come and ſee it, ſo I put the Collar together, and I perceived the Collar made the Mark like a ſtrait Ring upon a Finger, the Neck being ſwelled above the Collar and below, by the ſtrangling with a Cord or Cloth.

Sir *Fr. Winn.* Do you think he killed himſelf now, Mr. *Farwell?*

Mr. *Lazinby.* There was ſomething in the Cover of his Eyes, like Matter, but I can't ſay it was Fly-blows. His Eyes were open, my Lord, and his Eyes were Blood-ſhed, as Mr. *Hobb*'s hath given you an Account, as if he had an extraordinary great Cold, or a Man that had a Blow upon the Temples or Forehead.

Mr. *Farwell.* Whether were his Eye-lids cloſed?

Mr. *Lazinby.* My Lord, his Eyes were open when I ſaw him.

Mr. *Farwell.* When I ſaw him about ſix a Clock in the Morning, his Eyes were ſhut.

Mr. *Lazinby.* I felt upon his Clothes; I admired that his Clothes were not wet, there having been ſo great a Storm the Afternoon before.

L. C. J. And his Clothes were not wet?

Mr. *Lazinby.* His Clothes were as dry as mine.

Mr. *Farwell.* My Lord, they made a great Fire there, and dried his Clothes.

L. C. J. Come, Mr. *Farwell*, there is no Man ſo blind as he that won't ſee. Will you call any more Witneſſes?

Mr. *Farwell.* I will call no more Witneſſes; but I ſuppoſe they will offer againſt me that I am a Papiſt.

Mr. Serj. *Maynard.* No, no.

L. C. J. Truly your Religion is not worth the enquiring into: 'Tis not much to the purpoſe what Religion you are of.

Mr. Serj. *Maynard.* Gentlemen, you hear he hath been able to make no Defence for himſelf; but for the Satisfaction of the World, my Lord hath taken great Pains in hearing him. I ſhall ſpeak but very few Words, and call a Witneſs or two of ſome new Matter; that if it be poſſible to convince him, we will do it. We need not do it becauſe his own Witneſſes tells you of the ſeveral Bruiſes and Wounds he had; that there were no Fly-blows, no putrified Matter. How can a Man that ſtabs himſelf, bruiſe and beat himſelf in the manner that you have heard? There is never a Witneſs that hath ſpoken on his ſide, but hath ſpoken againſt him, to prove himſelf as malicious a Fellow as can be. What had he to do with this? Sir *Edmundbury Godfrey* was murdered, was found, inquiry made after it, and proſecution thereupon; now comes this Fellow and permits ſeveral Arguments againſt it, every one of them from Matter of Fact that is falſe, and yet publiſhes it to the World, that he will prove it by 500 undeniable Witneſſes. We will now call ſome Witneſſes to prove him as wicked a Liar as lives. I ſay what had he to do with it, only mere Malice; He would have me aſk him, what Religion he is of? I ſhall not aſk him, for I don't think he is of any; none of any Religion can be ſo wicked to own ſuch a Thing. We ſhall deſire the favour to call a Witneſs or two, to prove ſomething more than hath been proved in this Murder, though there was Evidence enough upon the Trial to prove it.

Mr. Sol. Gen. Gentlemen, Mr. *Farwell* does pretend that he hath only told ſo many Lies, and hath left the World to make uſe of it. And hath brought Witneſſes to colour this Matter over, in hopes to make you believe the Matter is true, But Mr. *Farwell* hath forgot himſelf, his Paper is quite otherwiſe, for he hath argued upon it, and made Inferences, that therefore Sir *Edmundbury Godfrey* murdered himſelf, therefore he is guilty of the higheſt Malice in the World. He tells a great many Falſities, and from thoſe Falſities hath inferred others. The Paper is full of Arguments.

L. C. J. Gentlemen, I did give him leave to go into what Evidence he would in this Caſe, not that I thought it material; for if he could have proved never ſo much, yet his Malice had never been the leſs to have gone and aſperſed the Government. What had he to do to meddle with it? To what purpoſe ſhould he write Books concerning the Matters of Government, to traduce the Juſtice of the Nation? The People had ſuffered as *Malefactors*, and what had he to do with it? If they had ſuffered innocently, he ought to have done no ſuch thing as this is.

Mr. Serj. *Maynard.* My Lord, but one Witneſs.

L. C. J. Pray call whom you will.

Mr. Serj. *Maynard.* *John Oakely.* We will prove that he was way-layed that very Day he was ſtrangled.

Mr. Sol. Gen. We have no need to call any Witneſſes now, to over-do a thing. We may leave it here.

Jury-Man. Pray, my Lord, if they have any more Witneſſes, let us hear them.

L. C. J. 'Tis nothing to this purpoſe to call any for the King, nor hath *Farwell*'s Evidence ſignified any thing to this. He did deſign, and would (no doubt of it) have been very much ſatisfied if he could have made but ſome probable Evidence that Sir *Edmundbury Godfrey* killed himſelf, and I was deſirous to hear what they would ſay for themſelves. But you hear what a kind of Evidence it is; not a Witneſs he hath called, but is as much againſt him as can be, and does evince it plainly, that the Man was killed, and that he was killed by ſtrangling; and ſo the Evidence was upon the Trial of *Green*, *Berry*, and *Hill.* If he could have raiſed a doubt about it, yet his Offence had not been mitigated by it, for a private Perſon is not to arraign the Juſtice of the Nation; but I was willing to hear what could be ſaid in the Caſe, whether a doubt could be made in the World, that Sir *Edmundbury Godfrey* was not murdered. And you ſee how his very Evidence hath, in all Things, confirmed the Evidence *Prance* hath given that he was killed, and that he was killed by ſtrangling. I muſt leave it with you, Gentlemen, they are all three in this Miſchief, 'tis a Combination of them to affront the publick Juſtice of the Nation, and what is the End of it? The End of it is to make People believe there is no Popiſh Plot; but it is plain he was killed by the Popiſh Party; as *Prance*, upon his Evidence againſt *Green*, and the others, atteſted. But if they could have made it out that he killed himſelf, all of them would have cried out the Popiſh Plot was a Sham, nothing but a thing raiſed by the Proteſtants againſt the Papiſts, and all the Plot muſt have gone for nothing. Gentlemen, I do leave it to you, whether upon this Evidence you do not believe them all to be Guilty of this Deſign, of traducing the Juſtice of the Nation.

The Jury *thereupon, without going from the Bar, found them all three Guilty of the Information.*

And the People gave a great Hum.

Monday, July 3, 1682.

N*Athaniel Thompſon*, *William Pain*, and *John Farwell*, were brought up by Rule, to the Bar of the Court of the King's Bench to receive their Judgment: Mr. *Thompſon*, the Counſellor, moved for Judgment, and particularly pray'd they might have ſome corporal Puniſhment, acquainting the Court, that ſince their Trial (though they had as much Time and Liberty given them by the *Lord Chief Juſtice*, to call their Witneſſes, and examine whom they would, as they could deſire) the very next News-Book *Thompſon* put out, he took upon him to give an Account, as though Juſtice had not been done him; and further ſaid, if there was any doubt of the Fact with Mr. *Thompſon*, or Mr. *Farwell*, or of Mr. *Pain*, there were Affidavits to ſatisfy the World about it.

Then Mr. Spence'*s Affidavit was read.*

R*Ichard Spence*, Citizen and Upholder of *London*, living in *Arundel-ſtreet* in the *Strand*, in the Pariſh of St. *Clement's-Dane*, in the County of *Middleſex*, having been twice ſuppœna'd to give Evidence for the King, upon an Information exhibited in the Crown-office againſt *Nathaniel Thompſon*, *William Pain*, and *John Farwell*, and not being called at their Trial to give Evidence in open Court, maketh Oath, That upon *Thurſday* the tenth Day of *October*, 1678, it being the *Thurſday* before Sir *Edmundbury Godfrey* was miſſing from his own Houſe in *Hartſhorn-lane* in the *Strand*: As he this Deponent was coming from St. *James*'s Market to go to his own Houſe, about ſeven of the Clock at Night, there were then at the Water-gate of *Somerſet-houſe*, five or ſix Men ſtanding together, who laid hold on this Deponent as he was paſſing by them, and they taking hold of both this Deponent's Arms, dragg'd him down about a Yard within the Water-gate of *Somerſet-houſe*, it being dark; but one of the ſaid Men, which this Deponent believes to have been *Hill*, (for that this Deponent knew *Hill* very well, as alſo his Maſter Doctor *Godwyn*,) cried out and ſaid this is not he, upon which they immediately let this Deponent go.

Jurat. 10 *die Julii,*
1682. *Coram me,*
W. Dolbin. RICHARD SPENCE.

Whereupon the *Clerk of the Crown* ſaid, that it was one Captain *Spence*, whom he knew very well, and that he was a tall black Man, and like Sir *Edmunbury Godfrey.*

Then John Oakley'*s Affidavit was read.*

J*OHN Oakley*, of the Pariſh of St. *Martin*'s in the *Fields*, in the County of *Middleſex*, Servant to Mr. *Robert Breedon* of *Hartſhorn-lane* in the ſaid Pariſh and County, Brewer, maketh Oath, That on *Saturday* the 12th Day of *October*, in the Year of our Lord 1678, about eight or nine of the Clock in the Evening, he was in the City of *London*, in the Company of his Father *Robert Oakley* of *Biſſiter* in the County of *Oxon*, Maltſter, and his Father came with him ſo far as *Ludgate*, where they parted. And this Deponent going homewards to his Maſter *Breedon*'s Houſe, coming by *Somerſet-houſe* in the *Strand*, when he came near the Gate of that Houſe which leads down to the Water-ſide, commonly called the Water-gate, which was about nine of the Clock at Night, he there ſaw Sir *Edmundbury Godfrey*, and paſs'd cloſe by him, and put off his Hat to him, and Sir *Edmundbury Godfrey* put off his Hat again to him; and after that this Deponent had paſſed beyond Sir *Edmundbury Godfrey*, he this Deponent turned about and looked upon him again, and Sir *Edmundbury Godfrey* ſtood ſtill, and there was a Man or two near Sir *Edmund.* And this Deponent further ſaith, that he knew Sir *Edmundbury Godfrey* very well, for that he ſaw him almoſt daily paſs by his Maſter *Breedon*'s Houſe in *Hartſhorn-lane*, going or coming from his own dwelling-Houſe, which was alſo in *Hartſhorn-lane.* And this Deponent further ſaith, that about two or three Days after, when the Rumour was that Sir *Edmundbury Godfrey* was miſſing, he acquainted his Fellow-Servant *Elizabeth Dekin*, that he ſaw Sir *Edmundbury Godfrey* near the Water-gate at *Somerſet-houſe* in the *Strand*, that very *Saturday* Night that he was reported to have been miſſing from his Houſe in *Hartſhorn-lane.* And this Deponent further ſaith, that he told the ſame Thing to his Uncle *Ralph Oakley* of the Pariſh of Little St. *Bartholomew*, about a Week after the time that Sir *Edmundbury Godfrey*'s Body was found; and alſo that he told the ſame Thing to his Father the aforeſaid *Robert Oakley*, and to ſeveral others in a ſhort time after.

Jurat 22 *die Junii,*
1682. *Coram me,*
JOHN OAKLEY.

Sworn to again the 1ſt of *July*, 1682, before Judge *Dolbin*, *Examinat* and is left filled up in the *Crown-Office.*

After which the Court conſulted together, and Mr. Juſtice *Jones* having firſt ſet out the Greatneſs of their Crime, gave the Judgment of the Court, which was, that *Thompſon* and *Farwell* ſhould ſtand upon the Pillory, in the Palace-yard, the laſt Day of the Term, between the Hours of Ten and One of the Clock, for the ſpace of an Hour, and each of them to pay an Hundred Pound Fine, and to be impriſoned till they had paid it. And as for *Pain*, he told him, becauſe the Court did not conceive him altogether ſo guilty, they would inflict no corporal Puniſhment on him, but did adjudge him to pay an Hundred Pound Fine, and to be impriſoned till he paid it.

Afterwards the Court was moved to explain their Judgment, it being apprehended that it was pronounced upon the Pillory; and the Court did declare that their Intention was (and ſo the Expreſſion upon the Pillory was to be underſtood) that they ſhould ſtand in the Pillory.

Acrordingly, *Wedneſday* the 5th of *July*, 1682, *Thompſon* and *Farwell* ſtood in the Pillory in the *Old Palace-yard* at *Weſtminſter*, with this Writing over their Heads.

> *For Libelling the Juſtice of the Nation, by making the World believe that Sir* Edmundbury Godfrey *murdered himſelf.*

CXIII. *The Trial of* Ford *Lord* Grey *of* Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, *and* Rebecca Jones, *at the* King's-Bench, *for a* Miſdemeanour, *in debauching the Lady* Henrietta Berkeley, *Daughter of the Earl of* Berkeley, Nov. 23. 1682. Mich. 34 Car. II.

THERE having been an Information preferred againſt the Right Honourable *Ford* Lord *Grey* of *Werk*, and others, by his Majeſty's Attorney-General Sir *Robert Sawyer*, the firſt Day of this *Michaelmas-Term*; and the Lord *Grey* having then pleaded to it *Not Guilty*, and the other *Defendants*, the like afterward, and the King's Attorney joined Iſſue upon it; *Tueſday* the 21ſt of *November*, was appointed for Trial of this Cauſe; but it was then adjourned to this Day, becauſe one of the Witneſſes for the King was not ready; but this Day it came on about Nine in the Morning at the *King*'s-*Bench-Bar*, and held till Two in the Afternoon*, all the Judges of the ſaid Court being preſent.

* *Sir* Francis Pemberton, *C. J. Sir* Thomas Jones, *Sir* William Dolben, *and Sir* Thomas Raymond.

Firſt, Proclamation was made for Silence, and then for Information, if any Perſon could give any, concerning the Miſdemeanour and Offence whereof the Defendants ſtood impeached: Then the Defendants being called, and appearing, were bid to look to their Challenges, and the Jury being all Gentlemen of the County of *Surrey*, were Called, Challenged, and Sworn in this Order.

Cl. of Cr. 1. Sir *Marmaduke Greſham*, Jur.
2. Sir *Edward Bromfield*, Jur.
3. Sir *Robert Knightley*, Jur.
Sir *John Thompſon*.

Mr. Serj. *Jeff.* We challenge him for the King.

Mr. *Holt.* Then we challenge *toutz per availe*, unleſs the King ſhew his Cauſe of Challenge; for by the Statute of 24 *Ed.* I. the King cannot challenge without Cauſe.

Mr. Serj. *Jeff.* But by the Courſe of Practice, all the Pannel muſt be called over before the King ſhew his Cauſe.

† *Mr. Att Gen.* Before the Party can have his Challenges allowed, he muſt ſhew his Cauſe; but they muſt go on with the Pannel in the King's Caſe, to ſee if the Jury be full without the Perſons challenged, and that is ſufficient.

† *Sir* Robert Sawyer.

‡ *L. C. J.* If they challenge any Perſon for the King, they muſt ſhew Cauſe in due time. For I take the Courſe to be, that the King cannot challenge without Cauſe, but he is not bound to ſhew his Cauſe preſently; it is otherwiſe in the Caſe of another Perſon.

‡ *Sir* Francis Pemberton.

Mr. Serj. *Jeff.* That hath always been the regular Courſe.

Mr. *Holt.* Our Challinging *toutz per availe*, doth ſet all the reſt aſide till Cauſe be ſhewn.

L. C. J. The Statute is, the King ſhall ſhew Cauſe: but when it comes in a Caſe between the King and another Party, that they both challenge, the other Party ſhall ſhew Cauſe firſt.

Mr. *Holt.* My Lord, we challenge *toutz per availe.*

L. C. J. You muſt ſhew a Reaſon for it then.

Mr. Att. Gen. The King ſhall not be drawn to ſhew his Cauſe, if there be enough in the Pannel beſides.

Mr. *Williams.* That is to ſay then, that the King may chooſe whom he pleaſeth againſt the Statute.

Mr. Serj. *Jeff.* No, Sir, we deſire none but honeſt and indifferent Gentlemen to try this Cauſe.

L. C. J. The old Challenge is taken away, by that Statute, from the King, *quia non ſunt boni pro Domino Rege*, and therefore if the King challenge any, he muſt ſhew Cauſe, but it muſt be in his Time, and not before you ſhew your's. Let him ſtand by a-while.

Cl. of Cr. *John Sandys*, Eſq;

Mr. Serj. *Jeff.* We challenge him for the King.

Mr. *Holt.* For what Cauſe, Sir?

Mr. Serj *Jeff.* We will tell you in good time.

Cl. of Cr. 4. *Sigiſmund Stiddulph*, Jur.
John Weſton.

Mr. *Weſton.* My Lord, I am no Freeholder.

Mr. *Holt.* He challenges himſelf.

L. C. J. Well, he muſt be ſet aſide.

Cl. of Cr. 5. *Thomas Vincent*, Jur.
6. *Philip Rawleigh*, Jur.
7. *Robert Gavel*, Jur.
8. *Edward Bray*, Jur.
9. *Thomas Newton*, Jur.
10. *John Halſey*, Jur.
11. *Thomas Burroughs*, Jur. and
12. *John Pettyward*, Jur.

Cl. of Cr. Gentlemen, you of the Jury that are ſworn, hearken to your Charge.

Surrey ſſ. SIR *Robert Sawyer*, Kt. His Majeſty's *Attorney General*, has exhibited an Information in this Court, againſt the Right Honourable *Ford* Lord *Grey* of *Werk*; *Robert Charnock*, late of the Pariſh of St. *Botolph*, *Aldgate*, *London*, Gent. *Anne Charnock*, Wife of the ſaid *Robert Charnock*; *David Jones*, of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Milliner; *Frances Jones*, Wife of the ſaid *David*; and *Rebecca Jones*, of the ſame, Widow; for that they (with divers other Evil-diſpoſed Perſons, to the ſaid *Attorney General* yet unknown) the 20th Day of *Auguſt*, in the 34th Year of the Reign of our Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh of *Epſom* in the County of *Surrey*, falſely, unlawfully, unjuſtly, and wickedly, by unlawful and impure Ways and Means, conſpiring, contriving, practiſing, and intending the final Ruin and Deſtruction of the Lady *Henrietta Berkeley*, then a Virgin unmarried, within the Age of 18 Years, and one of the Daughters of the Right Honourable *George* Earl of *Berkeley* (the ſaid Lady *Henrietta Berkeley*, then and there being under the Cuſtody, Government and Education of the aforeſaid Right Honourable *George* Earl of *Berkeley* her Father) they the ſaid *Ford* Lord *Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and divers other Perſons unknown, then and there falſely, unlawfully, and deviliſhly, to fulfil, perfect, and bring to effect, their moſt wicked, impious, and deviliſh Intentions aforeſaid; the ſaid Lady *Henrietta Berkeley*, to deſert the aforeſaid Right Honourable *George* Earl of *Berkeley*, Father of the aforeſaid Lady *Henrietta*; and to commit Whoredom, Fornication, and Adultery, and in Whoredom, Fornication, and Adultery, to live with the aforeſaid *Ford* Lord *Grey* (the ſaid *Ford* Lord *Grey*, then and long before, and yet, being the Huſband of the Lady *Mary*, another Daughter of the ſaid Right Honourable *George* Earl of *Berkeley*, and Siſter of the ſaid Lady *Henrietta*) againſt all Laws, as well Divine as Human, impiouſly, wickedly, impurely, and ſcandalouſly, to live and cohabit, did tempt, invite, and ſolicit, and every of them, then and there, did tempt, invite, and ſolicit. And that the aforeſaid *Ford* Lord *Grey*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, and other Perſons unknown, with Force and Arms, &c. unlawfully, unjuſtly, and without the Leave, and againſt the Will of the aforeſaid Right Honourable *George* Earl of *Berkeley*, in proſecution of their moſt wicked Conſpiracies aforeſaid; the ſaid Lady *Henrietta Berkeley*, then and there, about the Hour of Twelve in the Night-Time, of the ſaid 20th Day of *Auguſt*, in the Year aforeſaid, at the aforeſaid Pariſh of *Epſom* in the County of *Surrey* aforeſaid, out of the Dwelling-Houſe of the ſaid Right Honourable *George* Earl of *Berkeley* there ſituate and being, and out of the Cuſtody and Government of the ſaid Earl of *Berkeley*, did take, carry, and lead away. And the ſaid Lady *Henrietta Berkeley*, from the ſaid 20th Day of *Auguſt* in the Year aforeſaid, and continually afterwards, unto the Day of the Exhibition of this Information, at the Pariſh of *Epſom* aforeſaid, in the County of *Surrey* aforeſaid, and in divers ſecret Places there with the ſaid *Ford* Lord *Grey*, unlawfully, wickedly, and ſcandalouſly to live, cohabit, and remain, did procure and cauſe, and every of them did procure and cauſe, to the great Diſpleaſure of Almighty God, to the Ruin and Deſtruction of the ſaid Lady *Henrietta Berkeley*, to the Grief and Sorrow of all her Friends, and to the evil and moſt pernicious Example of all others in the like Caſe offending; and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity. To this Information, the Defendant, the Lord *Grey*, and the other Defendants, have ſeverally pleaded *Not Guilty*, and for their Trial, have put themſelves upon the Country, and the King's *Attorney* likewiſe, which Country you are: Your Charge is to enqure whether the Defendants, or any of them, are Guilty of the Offence and Miſdemeanour whereof they ſtand Impeached by this Information, or not Guilty: If you find them, or any of them, Guilty, you are to ſay ſo; if you find them, or any of them, not Guilty, you are to ſay ſo, and no more, and hear your Evidence.

[*For which Evidence to come in, Proclamation was made, and then* Edward Smith, *Eſq; a Bencher of the* Middle-Temple, *opened the Information.*]

Mr. *Smith.* May it pleaſe your Lordſhip, and, Gentlemen, you of the Jury; *Mr. Attorney General* hath exhibited an Information in this Court, againſt *Ford* Lord *Grey* of *Werk*, *Robert Charnock*, *Anne Charnock*, *David Jones*, *Frances Jones*, and *Rebecca Jones*, wherein is ſet forth, That the Defendants, the 20th of *Auguſt*, in the 34th Year of this King, at *Epſom*, in your County, did conſpire the Ruin and utter Deſtruction of the Lady *Henrietta Berkeley*, Daughter of the Right Honourable *George* Earl of *Berkeley*; and for the bringing about this Conſpiracy, they have ſeduced her to deſert her Father's Houſe, tho' ſhe be under the Age of 18 Years, and under the Cuſtody and Government of her Father; and ſolicited her to commit Whoredom and Adultery with my Lord *Grey*, who was before married to the Lady *Mary*, another Daughter of the Earl of *Berkeley*, and Siſter to the Lady *Henrietta*. That after they had thus inveigled her, they did upon the ſame 20th Day of *Auguſt*, carry her away out of the Houſe, without the Earl's Licence, and againſt his Will, to the intent ſhe might live an ungodly and diſhonourable Life with my Lord *Grey*. And after they had thus carried her away, they obſcured her in ſecret Places, and ſhifted about from Place to Place, and continued this Courſe of Life ever ſince. And this the Information ſays, is to the Diſpleaſure of Almighty God, the utter Ruin of the young Lady, the Grief and Affliction of her Friends, the evil Example of all others in the like Caſe offending, and againſt the King's Peace, his Crown and Dignity. To this all theſe Defendants have pleaded *Not Guilty*; if we ſhall prove them, or any of them, Guilty of any of the Matters charged in this Information, you ſhall do well to find them Guilty.

Mr. Att. Gen. My Lord, and Gentlemen of the Jury, the Courſe of our Evidence will be this; That this unhappy Gentleman my Lord *Grey*, has for four Years together, proſecuted an Amour with this young Lady; and when it came to be detected (ſome little Accident diſcovering ſomewhat of it) my Lady *Berkeley* did find there was ſome Buſineſs of an extraordinary nature betwen them, and thereupon forbid my Lord *Grey* her Houſe. My Lord *Grey* he made many Pretences to my Lady, that he might come to the Houſe to give them a Viſit before he departed, being to go into the Country; and he takes that opportunity to ſettle this Matter of conveying the young Lady away in a very ſhort time. And early on the *Sunday* Morning, ſhe was, by *Charnock*, another of the Defendants, conveyed from the Houſe of my Lord *Berkeley* at *Epſom*, and brought here to *London*. We ſhall in the Courſe of our Evidence ſhew how ſhe was ſhifted from Place to Place, and the ſeveral Purſuits that were made in ſearch after her. We ſhall diſcover to you, how ſhe was hurried from one Lodging to another, for fear of Diſcovery. Nay, we ſhall prove, that my Lord *Grey* has owned and confeſſed that he had her, that ſhe was in his Care and Cuſtody, and that he owned the ſeveral Inſtances of his Amours. But I had rather the Evidence ſhould ſpeak it, than I open ſo much as the Nature of it.

Mr. Sol. Gen. My Lord, we ſhall call our Witneſſes, who will very fully make out this Evidence that Mr. *Attorney* has opened to you. That my Lord *Grey* did a long time make Love to this young Lady, tho' he were before married to her Siſter. This Treaty was diſcover'd by my Lady *Berkeley* laſt Summer, upon an Accident of ſurprizing the young Lady in writing a Letter to my Lord, and thereupon my Lady *Berkeley* chargeth my Lord *Grey* with theſe Applications to her Daughter, that did ſo much miſbecome him. My Lord *Grey* was then ſo ſenſible of his Fault, that he ſeem'd very full of Penitence, and aſſured my Lady, he would never do the like again, and earneſtly deſired her by all means to conceal it from my Lord *Berkeley*; for if this ſhould once come to be known to him, he and the young Lady would not only be ruined, but it would occaſion an irreparable Breach between their two Families, and of all Friendſhip between my Lord *Berkeley* and him. And therefore he deſired my Lady *Berkeley* (who had juſtly forbid him her Houſe for this great Crime) leſt the World ſhould inquire into the Cauſes of it, and ſo it ſhould come to be known, that his Baniſhment from her Houſe might not be ſo ſoon or ſudden: But he begged of her Ladyſhip, that he might be permitted to make one Viſit more, and with all the Proteſtations in the World aſſured her, it was not with any purpoſe of Diſhonour, that he deſired to come and ſee her, but that his Departure might be by degrees, and ſo the leſs taken notice of. When my Lady had thus charged my Lord with his unworthy Carriage to her Family, and he had ſeem'd thus penitent for it, ſhe charges her Daughter alſo, with her giving any allowance to theſe undecent Practices of my Lord's; ſhe thereupon falls down on her Knees to her Mother, to aſk her Pardon for her great Offence, and, with Tears in her Eyes, confeſs'd ſhe had done very much amiſs, and did humbly hope ſhe might obtain her Forgiveneſs for it, being young, and ſeduc'd by my Lord *Grey*, and promiſed ſhe would ſee him no more, nor have any thing more to do with him. My Lord *Grey* he is permitted to come once more to the Houſe, upon thoſe Aſſeverations and Promiſes of his, that it ſhould be with no diſhonourable Purpoſes in the World. It was, it ſeems, in his way to his own Houſe at *Suſſex*, but coming thither, he takes an occaſion to continue there, and ſtay a little too long for a Viſit; whereupon my Lady *Berkeley* began to ſuſpect it was not a tranſient Viſit he came to make at her Houſe, but that he had ſome ill Deſign in proſecution of the ſame Fault that he had been ſo long guilty of. And that Suſpicion of her's was but too well grounded, as appear'd afterwards. Our Witneſſes will tell you, that my Lord *Grey*, juſt before his Departure, was obſerved to be very ſolicitous and earneſt with his Man *Charnock* (whom we ſhall prove by undeniable Evidence to be the Man that convey'd her away) giving him ſome Directions with great earneſtneſs, what to do was indeed not heard, but the Event will plainly ſhew it. For my Lord *Grey* himſelf, he went on his Journey into *Suſſex*, and lay at *Guilford* that Night ſhe was carried away, and the next Morning ſhe was miſſing. Thereupon my Lady ſends after my Lord *Grey*, juſtly ſuſpecting him to be guilty of this Violence and Outrage offered to her Daughter and Family, and they overtook him at *Guilford*, before he was got any further on his Journey, and there acquaint him the Lady was carried away, and that my Lady ſuſpected (as well ſhe might) he knew whither. Then immediately he makes haſte up to Town, and writes my Lady a Letter, that truly he would take Care to reſtore Peace to the Family, that by his Folly had been ſo much diſturbed: And there were ſome hopes of retrieving the Matter, that this Scandal upon ſo noble a Family might not be made publick; for certainly an Offence of this Nature was not fit ſhould be ſo, nor indeed was ever heard of in any Chriſtian Society; I am ſure I never read of any ſuch Cauſe in the Courts of Law. And it was impoſſible any way to have prevented the Scandal, but that which my Lady took, to paſs over all, by deſiring to have her Child reſtored again to her, before ſuch time as it was gone ſo far, as there is too great Reaſon to ſuſpect it now is. But after that, my Lord *Grey* was ſo far from performing what he had ſo ſolemnly promiſed, and making the Matter up, that he ſtood upon Terms; he was Maſter of the Lady, and he would diſpoſe of her as he thought fit: Third Perſons and Places muſt be appointed where ſhe muſt be diſpoſed of; with Capitulations, that he ſhould ſee her as often as he though fit; which was (if poſſible) a worſe Indignity than all that he had done before.

We ſhall prove to your Lordſhip, that he did, a long time before this Violence was offered, make Applications to this young Lady, and that muſt (as any Man will believe) be upon no good Account. We ſhall ſhew all the baſe Tranſactions in carrying away the Lady, after that Confidence which my Lady repoſed in his Proteſtations to do nothing diſhonourably, ſo as to admit him to make a Viſit; which certainly was the greateſt Breach of the very Laws of human Society, againſt all the Laws of Hoſpitality, beſides the great Tranſgreſſion of the Laws of God and Men. Yet even then, he ſeduced the Lady away. For we ſhall plainly prove ſhe was carried away by his Coach-man that once was, afterwards his Gentleman, and how ſhe was from time to time conveyed to and fro.

Mr. Serj. *Jeff.* This Story is indeed too melancholy to be often repeated, the Evidence had better tell it: Only this one Aggravation I would take Notice of, which will be made out in the Proof to you of this Matter charged; and that is this, That my Lord *Grey*, after ſuch time as it was known ſhe was in his Power, gave one Reaſon for his not delivering her up, (and I am ſorry to ſee his Lordſhip ſhould think it a Reaſon) he had inquired how far the Law would extend in ſuch a Caſe, and that he knew, and could give a Precedent for it (which the Witneſs will tell you of) that the Law could not reach him; and that as long as he had run ſuch a Courſe for obtaining that which was his greateſt Pleaſure, he would not now part with her, but upon ſuch Terms, that he might have acceſs to her when he pleaſed. To ſuch a height of Confidence was this Gentleman arrived, in this barbarous and infamous Wickedneſs. But, as I ſaid, it is a Story too black to be aggravated by any thing but by itſelf; we ſhall therefore call our Witneſſes, and prove our Fact.

[*About this time the Lady* Henrietta *came into the Court, and was ſet by the Table at the Judges Feet.*]

Earl of *Berkeley*. My Lord, my Daughter is here in Court, I deſire ſhe may be reſtored to me.

Mr. Serj. *Jeff.* Pray, my Lord *Berkeley*, give us leave to go on, it will be time enough to move that anon Swear my Lady *Berkeley*——(*which was done, but ſhe ſeem'd not able to ſpeak.*)—

Mr. *Sol. Gen.* I perceive my Lady is much moved at the ſight of her Daughter. Swear my Lady *Arabella* her Daughter. (*Which was done.*)

Mr. Serj. *Jeff.* Pray, Madam, will you acquaint my Lords the Judges, and Jury, what you know concerning the Letter you diſcovered, and how you came by that Diſcovery?

Lady *Arabella*. My Mother coming to my Lady *Harriett*'s Chamber, and ſeeing there a Pen wet with Ink, examined her where ſhe had been writing. She, in a great Confuſion, told her ſhe had been writing her Accompts. My Mother not being ſatisfied with her Anſwer, commanded me to ſearch the Room. Her Maid being then in the Room, I thought it not ſo much for her Honour to do it then. I followed my Mother down to Prayers; after Prayers were done, my Mother commanded my Lady *Harriett* to give me the Keys of her Cloſet and her Cabinet. When ſhe gave me the Key, ſhe put into my Hands a Letter, which was written to my Lord *Grey*, which was to this Effect.—*My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear the Noiſe. I Pray come agen* Sunday or Monday, *if the laſt, I ſhall be very impatient.*—I ſuppoſe my Lady *Harriett* gave my Lord *Grey* Intelligence that this was found out; for my Lord *Grey* ſent his Servant to me, to acquaint me he deſired to ſpeak with me. When he came in firſt, ſhe (I mean my Lady *Harriett*) fell down upon the Ground like a dead Creature. My Lord *Grey* took her up, and afterwards told me, ſaid he, *You ſee how far it is gone between us*; and he declared to me, he had no Love, no Conſideration for any Thing upon Earth but for her; *I mean dear Lady* Hen, ſaid he to me; for I ſay it juſt as he ſaid it. And after this, he told me, he would be revenged of all the Family, if they did expoſe her. I told him it would do us no Injury, and I did not value what he did ſay; for my own particular, I defied him and the Devil, and would never keep Counſel in this Affair And afterwards, when he told me he had no Love, no Conſideration for any Thing upon Earth but her, I told my Lady *Harriett*, *I am very much troubled and amazed, that you can ſit by and hear my Lord* Grey *ſay and declare, he has no Love for any but you, no Conſideration for any one upon Earth but you, when it ſo much concerns my Siſter; for my part, it ſtabs me to the Heart, to hear him make this Declaration againſt my poor Siſter* Grey——— [*Here ſhe ſtopt a while.*]

Mr. Serj. *Jeff.* Pray go on, Madam.

Lady *Arabella*. After this ſhe ſaid nothing; I told her, I ſuſpected my Woman had a Hand in it, and therefore I would turn her away. This Woman, when my Lady *Harriett* ran away, being charged with it, ſwore ſhe had never carried any Letters between them; but after my Mother's coming to *London*, both the Porter at St. *John*'s, and one *Thomas Plomer* accuſed her that ſhe had ſent Letters to *Charnock*, who was my Lord *Grey's* Coachman, now his Gentleman. I told her then, I did much wonder, ſhe being my Servant, ſhould convey Letters between them without my knowing: She then confeſs'd it to me, but withal ſhe told me, *How could I think there was any ill between a Brother-in-Law and a Siſter?* And upon this ſhe confeſs'd to me ſhe had ſent Letters to *Charnock*, tho' before ſhe had forſworn it.

Mr. Att. Gen. Madam, have you any thing farther to teſtify in this Cauſe? Have you any Matters that you remember more?

Lady *Arabella* There is more of it to the ſame Effect; but all of it is only to this Effect.

L. C. J. My Lady *Arabella*, pray let me aſk you, have you any more to ſay to this Matter?—— Lady *Arabella*. It is all to this purpoſe

Mr. Serj. *Jeff.* Then if you pleaſe, Madam, to turn now your Face this way towards the Gentlemen of the Jury, who have not heard what you ſaid, and give them the ſame Relation that you gave to the Court; and pray be pleaſed to lean over the Seat, and expoſe yourſelf a little, and let them have the ſame Story you told before, and pray tell the Time when it was.

[*Then ſhe turned her Face towards the Bar.*]

Lady *Arabella*. It was in *July*, Sir.

Mr. Serj. *Jeff* Pray, Madam, tell what happen'd then.

Lady *Arabella*. In *July* laſt, ſome time then, my Mother came into my Lady *Harriett*'s Chamber, and ſeeing a Pen wet with Ink, ſhe examined her who ſhe had been writing to. She, in great Confuſion told her, ſhe had been writing her Accompts, but my Mother was not ſatisfied with that Anſwer. The ſight of my Lord *Grey* doth put me quite out of Countenance and Patience.———[*Here ſhe ſtop'd again.*]

[*My Lord* Grey *then was by the Clerks under the Bar, and ſtood looking very ſtedfaſtly upon her.*]

L. C. J. Pray, my Lord *Grey*, ſit down (*which he did.*) It is not a very extraordinary Thing, for a Witneſs, in ſuch a Cauſe, to be daſhed out of Countenance.

E. of *Berkeley*. He would not, if he were not a very impudent barbarous Man, look ſo confidently and impudently upon her.

Mr. Serj. *Jeff.* My Lord, I would be very loth to deal otherwiſe than becomes me, with a Perſon of your Quality, but indeed this is not ſo handſome, and we muſt deſire you to ſit down. Pray go on, Madam.

Lady *Arabella*. After this, my Mother commanded me to ſearch my Lady *Harriett*'s Room; Her Maid being then in the Room, I thought it not ſo much for her Honour to do it then. I followed my Mother down to Prayers. After Prayers were done, my Mother commanded my Lady *Harriett* to give me the Keys of her Cabinet and of her Cloſet, and when ſhe gave me the Keys, ſhe put a Note into my Hand, which was to my Lord *Grey*; and that was to this Effect——*My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear any Noiſe: Pray come again* Sunday *or* Monday, *if the laſt I ſhall be very impatient.*—I ſuppoſe my Lady *Harriett* gave my Lord *Grey* intelligence of this, for he ſent a Servant to tell me he deſired to ſpeak with me. Upon his firſt coming in, my Lady *Harriett* fell upon the Ground like a dead Creature, and my Lord *Grey* took her up, and ſaid, *Now you ſee how far it is gone between us: I* *love nothing upon Earth but her*; *I mean dear Lady* Hen, ſaid he to me; *and if you do expoſe her*, *I will be revenged upon you and all the Family*, *for I have no Conſideration for any Thing but her*. After that I told him, We defied him, he could do us no Injury; and for my own particular, I defied him, and the Devil and all his Works, and would not have any thing to do with ſuch a Correſpondence. After this, I told my Lady *Harriet*, I was much troubled and amazed, that ſhe ſhould ſit by and hear my Lord *Grey*, her Brother-in-Law, ſay he had no Conſideration for any Thing on Earth but her. *For my part*, ſaid I, *Madam*, *it ſtabs me to the Heart*, *to hear this ſaid againſt my poor Siſter* Grey. I told her, I ſuſpected my Woman had an Hand in this Affair, and therefore I would put her away. Afterwards, the ſame Day my Lady *Harriett* ran away, this Woman came to me; and I then told her, *You have ruined her*, and aſked her, *Why would you ſend Letters between my Lord* Grey *and my Lady* Harriett? She denied it, and ſwore ſhe never did it, but when we came to *London*, the Porter of St. *John*'s came and accuſed her of conveying Letters to *Charnock*, my Lord *Grey*'s Gentleman, formerly his Coach-man. I then aſked her again about it; ſhe then acknowledged to me ſhe had done it, *But*, *Madam*, ſaid ſhe, *how could I think there could be any Prejudice or Ill between a Brother-in-Law and a Siſter-in-Law?* Said I, *Were not you my Servant? Why did you not tell me? Beſides*, *you know we have all reaſon to hate* Charnock *for a great many Things*. This is all I have to ſay that is material, all elſe is to the ſame Effect.

Mr. Serj *Jeff.* Now this Matter being thus diſcovered to the Counteſs of *Berkeley*, this unfortunate Young Lady's Mother; ſhe ſent for my Lord *Grey*, and we ſhall tell you what happen'd to be diſcourſed between them two, and between the Lady and her Mother, and what Promiſes of Amendment he made. My Lady *Berkeley*, pray will you tell what you know. [*She ſeem'd unable to do it.*]

———She is very much diſcompoſed, the ſight of her Daughter doth put her out of Order.

Lady *Arabella.* I have ſomething more to ſay, that is, I told my Lady *Harriett*, after my Lord *Grey* had made his declaration of his Love to my Siſter, to me, That if ever he had the Impudence to name her Name to me, I would immediately go to my Father, and tell him all.

[*Then the Counteſs lean'd forward*, *with her Hood much over her Face.*]

Mr. Att. Gen. Pray, my Lady *Berkeley*, compoſe yourſelf, and ſpeak as loud as you can.

Lady *Berkeley.* When I firſt diſcovered this unhappy Buſineſs, how my Son-in-Law, my Lord *Grey*, was in Love with his Siſter, I ſent to ſpeak with him, and I told him he had done barbarouſly and baſely, and falſely with me, in having an Intrigue with his Siſter-in-Law. That I looked upon him, next my own Son, as one that was engaged to ſtand up for the Honour of my Family, and inſtead of that, he had endeavour'd the Ruin of my Daughter, and had done worſe than if he had murdered her, to hold an Intrigue with her of Criminal Love. He ſaid, he did confeſs he had been falſe, and baſe, and unworthy to me, but he deſired me to conſider (and then he ſhed a great many Tears) what it was that made him guilty, and that made him do it. I bid him ſpeak. He ſaid he was aſham'd to tell me, but I might eaſily gueſs. I then ſaid, What? Are you indeed in Love with your Siſter-in-Law? He fell a weeping and ſaid, he was unfortunate; But if I made this Buſineſs Publick, and let it to take Air (he did not ſay this to threaten me, he would not have me to miſtake him) but if I told my Lord her Father, and his Wife of it, it might make him deſperate, and it might put ſuch Thoughts into his Wife's Head, that might be an occaſion of parting them; and that he being deſperate, he did not know what he might do, he might neither conſider Family, nor Relation. I told him this would make him very black in Story, tho' it were her Ruin. He ſaid that was true, but he cou'd not help it; he was miſerable, and if I knew how miſerable, I would pity him: He had the Confidence to tell me that. And then he deſired, tho' he ſaid I had no reaſon to hear him, or take any Counſel he gave me (and all this with a great may Tears) as if he were my Son *Durſley*, that I would keep his Secret. *For my Lord*, *if he heard it*, *would be in a great Paſſion*, *and poſſibly*, *he might not be able to contain himſelf*, *but let it break out into the World. He may call me Rogue and Raſcal perhaps in his Paſſion*, ſaid he, *and I ſhould be ſorry for it*, *but that would be all I could do*, *and what the evil Conſequence might be*, *he knew not*, *and therefore it were beſt to conceal it.* And after many words to pacify me, tho' nothing indeed, could be ſufficient for the Injury he had done me; he gave it me as his Advice, that I would let my Daughter *Harriett* go abroad into Publick Places with myſelf, and promiſed, if I did, he would always avoid them. For a young Lady to ſit always at Home, he ſaid it would not eaſily get her out of ſuch a Thing as this. And upon this he ſaid again, he was to go out of Town with the D. of *M.* in a few Days, and being he had been frequently in the Family before, it would be looked upon as a very ſtrange thing, that he went away, and did not appear there to take his Leave. He promiſed me, that if for the World's ſake, and for his Wife's ſake (that no one might take notice of it) I would let him come there, and Sup before he went into the Country, he would not offer any thing, by way of Letter or otherwiſe, that might give me any Offence. Upon which I did let him come, and he came in at Nine o'Clock at Night, and ſaid, I might very well look ill upon him, as my Daughter alſo did (his Siſter *Bell*) for none elſe in all the Family knew any thing of this Matter but ſhe and I. After Supper he went away, and and the next Night he ſent his Page (I think it was) with a Letter to me, he gave it to my Woman, and ſhe brought it to me; where he ſays that he would not go out of Town.-------If your Lordſhip pleaſe I will give you the Letter-------But he ſaid, he fear'd my Apprehenſions of him would continue.---------There is the Letter.

L. C. J. Show it my Lord *Grey*, let us ſee if he owns or denies it.

Lord *Grey.* Yes, pray do, I deny nothing that I have done.

Mr. Juſt. *Dolben.* Be pleaſed, Madam, to put it into the Court.

Mr. Att. Gen. It is only about his keeping away.

L. C. J. Shew it my Lord *Grey*.

Mr. Serj. *Jeff.* With Submiſſion, my Lord, it is fully proved without that.

L. C. J. Then let the Clerk read it, Brother.

Cl. of Crown. There is no Direction, that I ſee, upon it. It is ſubſcribed *Grey*.

[*Reads.*]

“MADAM,

AFTER I had waited on your Ladyſhip laſt Night, Sir *Thomas Armſtrong* came from the D. of *M.* to acquaint me that he could not poſſibly go into *Suſſex*; ſo that Journey is at an End. But your Ladyſhip's Apprehenſions of me I fear will continue: therefore I ſend this to aſſure you, that my ſhort ſtay in Town ſhall no way diſturb your Ladyſhip; if I can contribute to your Quiet, by avoiding all places where I may poſſibly ſee the Lady. I hope your Ladyſhip will remember the promiſe you made to divert her, and pardon me for minding you of it, ſince 'tis to no other End that I do ſo, but that ſhe may not ſuffer upon my Account: I am ſure, if ſhe doth not in your Opinion, ſhe never ſhall any other way. I wiſh your Ladyſhip all the Eaſe that you can deſire, and more quiet Thoughts than ever I expect to have. I am with great Devotion,

Your Ladyſhip's

moſt Humble, and

Obedient Servant,

GREY.”

Mr. Att. Gen. Madam, will you pleaſe to go on with your Evidence.

Lady *Arabella.* I have one thing more to ſay: After this, three or four Days after this ugly Buſineſs was found out, I told my Lady *Harriett*, ſhe was to go to my Siſter *Durſley*'s. She was, in a great Anger and Paſſion about it, which made my Mother ſo exaſperated againſt her, that I was a great while before I got my Mother to go near her again.

Mr. Serj. *Jeff.* My Lady *Berkeley*, will you pleaſe to go on?

Lady *Berkeley.* When I came to my Daughter, (my wretched unkind Daughter, I have been ſo kind a Mother to her, and would have died rather, upon the Oath I have taken, than have done this, if there had been any other way to reclaim her, and would have done any thing to have hid her Faults, and died ten times over, rather than this Diſhonour ſhould have come upon my Family.) This Child of mine, when I came up to her, fell into a great many Tears, and begged my Pardon for what ſhe had done, and ſaid, ſhe would never continue any Converſation with her Brother-in-Law any more, if I would forgive her; and ſhe ſaid all the things that would make a tender Mother believe her. I told her, I did not think it was ſafe for her to continue at my Houſe, for fear the World ſhould diſcover it, by my Lord *Grey*'s not coming to our Houſe as he uſed to do; and therefore I would ſend her to my Son's Wife, her Siſter *Durſley*, for my Lord *Grey* did ſeldom or never viſit there, and the World would not take notice of it. And I thought it better and ſafer for her to be there with her Siſter, than at home with me. Upon which this ungracious Child wept ſo bitterly, and begg'd ſo heartily of me that I would not ſend her away to her Siſter's, and told me, it would not be ſafe for her to be out of the Houſe from me. She told me, ſhe would obey me in any thing; and ſaid, ſhe would now confeſs to me, tho' ſhe had denied it before, that ſhe had writ my Lord *Grey* word that they were diſcovered, which was the Reaſon he did not come to me upon the firſt Letter that I ſent to him to come and ſpeak with me. And ſhe ſaid ſo many tender Things, that I believed her penitent, and forgave her, and had Compaſſion upon her, and told her (tho' ſhe had not deſerved ſo much from me) ſhe might be quiet (ſeeing her ſo much concerned) I would not tell her Siſter *Durſley* her Faults, nor ſend her thither, till I had ſpoken with her again. Upon which, ſhe, as I thought, continuing penitent, I kiſſed her in the Bed when ſhe was ſick, and hoped that all this ugly Buſineſs was over, and I ſhould have no more Affliction with her, eſpecially if my Lord removed his Family to *Durdants*, which he did. When we came there, ſhe came into my Chamber one *Sunday* Morning before I was awake, and threw her ſelf upon her Knees, and kiſſed my Hand, and cried out, Oh, Madam! I have offended you, I have done ill, I will be a good Child, and will never do ſo again; I will break off all Correſpondence with him, I will do what you pleaſe, any thing that you do deſire. Then, ſaid I, I hope you will be happy, and I forgive you. Oh; do not tell my Father, (ſhe ſaid) let not him know my Faults. No, ſaid I, I will not tell him; but if you will make a Friend of me, I deſire you will have no Correſpondence with your Brother-in-Law; and tho' you have done all this to offend me, I will treat you as a Siſter, more than as a Daughter, if you will but uſe this wicked Brother-in-Law as he deſerves. I tell you that Youth, and Virtue, and Honour, is too much to ſacrifice for a baſe Brother-in-Law. When ſhe had done this, ſhe came another Day into my Cloſet and there wept very much, and cry'd out, Oh, Madam! 'tis he, he is the Villain that has undone me, that has ruined me. Why? ſaid I, What has he done? Oh! ſaid ſhe, he hath ſeduced me to this. Oh! ſaid I, fear nothing, you have done nothing, I hope, that is ill, but only hearkening to his Love. Then I took her about the Neck and kiſſed her, and endeavoured to comfort her. Oh, Madam! ſaid ſhe, I have not deſerved this kindneſs from you; but 'tis he, he is the Villain that hath undone me: But I will do any thing that you will command me to do; if ever he ſend me any Letter, I will bring it to you unopened; but pray do not tell my Father of my Faults. I promiſed her I would not, ſo ſhe would but break off all Correſpondence with him———

[*Here ſhe ſwooned*, *and ſoon after recovered and went on.*]

———Then my Lord *Grey*'s Wife, my Daughter *Grey*, coming down to *Durdants*, he was to go to his own Houſe at *Up-Park* in *Suſſex*, and he writ down to his Wife to come up to *London*.-------It is poſſible I may omit ſome particular Things that were done juſt at ſuch or ſuch a Time, but I ſpeak all I can remember in general. My Lord *Grey*, when I ſpoke to him of it, told me, he would obey me in any Thing; if I would baniſh him the Houſe, he would never come near it; but then he pretended to adviſe me like my own Son, that the World would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where ſhe came, but he thought it beſt for her not to be kept too much at Home, nor he abſolutely forbid the Houſe, but he would by degrees come ſeldomer, once in ſix Weeks or two Months. But to go on to my

Daughter *Grey*'s coming down to *Durdants*; he writing to his Wife to come up to *London*, that he might ſpeak to her before he went to his own Houſe at *Up-Park*; my Daughter *Grey* deſired he might come thither, and it being in his way to *Suſſex*, I writ him word, that believing he was not able to go to *Up-Park* in one Day from *London*, he might call at my Lord's Houſe at *Durdants*, and dine there by the way, as calling in, intending to lie at *Guilford*, for it is juſt the half-way to *Guilford*. He, inſtead of coming to Dinner, came in at Nine o'Clock at Night (I am ſure it was ſo much) for it was ſo dark, we could hardly ſee the colour of his Horſes, from my Lord's great Gate, to the Place where we were in the Houſe: And coming at that time of Night, I thought if I turned him out of the Houſe, my Lord would wonder at it, and ſo would all the Family. Therefore I was forced, as I then thought, in point of Diſcretion, to let him lie there that Night, which he did; and he told me, Madam, I had not come here, but upon your Ladyſhip's Letter, nothing elſe ſhould have brought me: Becauſe I was to give him leave to come, knowing the Faults he had committed againſt the Honour of our Family. Upon which I told him, my Lord, I hope you have ſo much Honour and Generoſity in you, after the Promiſes you have made me, and the Confidence and Indulgence I have ſhewn you, that you will give my Daughter no Letters, and I will look to her otherwiſe, that you ſhall have no Converſation with her. He deſired me to walk up with him into the Gallery, and there he told me he had brought no Letters, and would have had me looked in his Pocket. I told him that would be to no purpoſe, for his Man *Charnock* (whom we knew he did not prefer from being his Coach-man to be his Gentleman, but for ſome extraordinary Service he did him, or he thought he would do him) might have Letters enough, and we be never the wiſer: But I truſted to his Honour and his Chriſtianity: and I told him, that his going on in any ſuch way would be her utter Ruin. He told me he would not ſtay there any longer than the next Day; nay; he would be gone immediately if I pleaſed, and he ſent his Coach to *London*, and had nothing but Horſes left. But his Wife deſiring her Huſband to ſtay, I had a very hard Taſk to go through, being earneſtly preſs'd, both by her and my own Lord's importunities for his ſtay. But my Lord *Grey*, whilſt he was there, did entertain me with his Paſſion, he had the Confidence to do it, and he wiſhed himſelf the verieſt Rake-hell in the World, ſo he had never ſeen her Face ſince he was married. And, ſaid he, Madam, you will always think me a Villain, and never have a good Opinion of me, I ſhall be always unfortunate, both in myſelf, and your bad Opinion of me. Seeing this, I thought it was time to do ſomething more; and I told him that Night he ſhould ſtay no longer, he ſhould be gone; and his Wife ſeemed to be much concerned, and would fain have him ſtay. For by this time ſhe began to find out that there was ſome Diſorder in her Mother and the Family, tho' ſhe knew not what it was; and ſhe ſent her Siſter *Lucy* to beg he might ſtay: I told her I would not ſuffer it: However, ſhe propoſed an expedient how her Siſter *Harriett* ſhould take Phyſick, and keep her Chamber while he was there. That I was in a ſort compelled to do, and I told him, upon their importunity for his ſtay, that his Siſter *Harriett* ſhould be ſeen no more by him, but take Phyſick while he ſtayed there: To which he replied, Madam, indeed it is rude for me to ſay it to you, but I muſt ſay it, give me my Choice, either to be drown'd or hanged. Upon this I was extremely diſturbed, and the next Morning, I told him, I was not ſatisfied he ſhould ſtay in *England*; he had ordered his Wife to go into *France*, and ſhe was to go within a Month after, I would have him go with her. He told me, he had Law-Suits, and he could not: I told him, he had told me before, they were of no great conſequence, and therefore they could not hinder him; and I preſſed him very much, and I fell into a great Paſſion at laſt; and told him, if he would not go, I would tell her Father, and he ſhould take care of her, to ſend her where ſhe ſhould be ſafe enough from him. For I was ſenſible the World would take notice if he came not thither; and, ſaid I, I am not able to bear you ſhould. Upon this, he promiſed me with all the Oaths, Imprecations, and promiſes in the World, that he would go and follow his Wife into *France* at *Chriſtmas*, and ſtay there eight Months; and by that time, I did hope, this unfortunate miſerable Buſineſs might be over: For I had a great kindneſs for my Child, and would have done any thing to ſave her, if it had been in my Power, or would yet do any thing: I would give my Life that the World did not know ſo much of it as now it muſt this Day. The World knows I had always the greateſt Kindneſs and Tenderneſs for her, which was ſuch, that ſome that are now here have ſaid ſince, that it was my Indulgence to her, and not making it known to my Lord, that encouraged this laſt ill Buſineſs. And thereupon my Lord *Grey* was ordered by me to go away, and he promiſed me ſo to do, which was upon *Saturday*. I then went up to her Chamber and ſaw her very melancholy, and did what I could to comfort her. Said I, I warrant you, by the Grace of God, do but do what you ought, and I will bring you off this Buſineſs; be chearful, and be not ſo much caſt down (for I thought ſhe was troubled at my Carriage to her) and tho' I ſaid ſome ſevere Things to you at Dinner (as I did talk of her going away, and being ſent abroad) be not troubled, for I only meant it out of Kindneſs to you; for all I deſign, is only to ſeek an Occaſion of getting him away; and therefore, as long as he ſtays, I will ſeem to whiſper with you, and look frowningly upon you, that if he hath any Tenderneſs for you, he may ſee I am angry with you, and do the more to leave you at quiet: But take no notice of it, for I now ſmile to you, tho' I frowned before him, be not affrighted. In the Afternoon I told her the ſame thing again. But then, ſaid ſhe, he will ſhew my Letters to him, and that will ruin my Reputation for ever, and that troubles me; but yet it need not, for I never writ to any Man but him, and if he doth ſhew them, he will expoſe himſelf for a baſe unworthy Man, and I can but deny it, and he can never prove it. This is true, ſaid I, and very well ſaid, and therefore be not afraid of him, but truſt to the Friendſhip of your Mother, and do as you ought to do, and I am confident we ſhall bring you clear off from this ugly Buſineſs. And then, ſaid ſhe, But oh, Madam! my Siſter, my Siſter *Grey*, will ſhe forgive me this? I told her, her Siſter *Grey* was good-natur'd and religious, and I made no doubt ſhe would forgive her the Folly of her Youth, and if ſhe would take up yet, ſhe was young, and her Siſter would impute it to that, and, ſaid I, *I am ſure ſhe will forgive you*; and I told her, I would do all that lay in my Power to aſſiſt her; and I bid her be chearful and truſt in God and in my Friendſhip. She was to blame, indeed, ſhe acknowledged; but ſhe was young, and he was cunning, and had made it his Buſineſs to delude and intice her. I told her it was true, and therefore now ſhe muſt conſider with herſelf, what was to be done to bring her off; which I doubted not, if ſhe would do but as ſhe ought; ſhe promiſed me ſo to do; and yet that very Night when I was in my Sleep ſhe ran away.———

[*Here ſhe ſwooned again*]

Mr. Serj. *Jeff.* What time went my Lord *Grey* away, Madam, that Day?

Lady *Berkeley*. He went away about four a Clock in the Afternoon.

Mr. Serj. *Jeff.* And the enſuing Night the Lady was gone?

Lady *Berkeley*. Yes, that Night ſhe went away too.

Mr. Serj. *Jeff.* My Lord, I crave leave to acquaint you with one Circumſtance that has been already hinted, that is about *Charnock*, a Perſon that is taken notice of by both the Ladies that have given Evidence, and one of the Defendants in this Information. This Man, as they ſeem to intimate, for ſome extraordinary Service he had done my Lord *Grey*, or was deſigned for the doing of, was removed from the Degree of his Coachman, to the waiting upon him in his Chamber. He at this time came with my Lord *Grey* to *Durdants*, a Houſe of my Lord *Berkeley*'s near *Epſom*, and which was in the way to my Lord *Grey*'s Houſe in *Suſſex*, that is called *Up-Park*. And they being there, notwithſtanding all thoſe Proteſtations and Promiſes made by my Lord *Grey* to his Lady Mother, as you have heard, to meddle no more in this Matter, yet we ſhall give you an account, how that the Day before the Night that the young Lady went away, my Lord *Grey* was very importunately buſy with his Man *Charnock*; what Diſcourſes they had, or what Directions he gave him perhaps may not be known; but his earneſtneſs in talking with him, and his impatience and reſtleſſneſs we ſhall prove; and then give you a very full Proof that *Charnock* was the Perſon that took her away; and then let the Jury and the Court make the Concluſion.

Mr. Att. Gen. It may be, my Lord, we ſhall not be able to prove the actual Taking-away from thence, but only by undeniable Circumſtantial Proof. Such Impieties uſe not to be acted openly.

L. C. J. Truly, as far as I can ſee, here has been more done barefaced, than one would think ſhould be done in any Chriſtian Nation.

[*Then a Clergyman that ſtood by was ſworn, but his Name not told.*]

Mr. Serj. *Jeff.* Pray, Sir, will you tell my Lord and the Jury what you know.

Mr.———.My Lord, I was at *Durdants*, my Lord *Berkeley*'s Houſe near *Epſom* in *Surrey*, at the time of this ill Accident, and ſome time after. And upon the *Saturday* in the Afternoon I (immediately after Dinner was over at my Lord's own Table) walked into the great pav'd Hall; and ſtood in the Door that looked towards the *Downs*; and my Lord *Grey* came into the Hall alone, and walked three or four times very thoughtfully, and then leaned upon the Window, and often looked upon the Ground, and within a little while he ſteps into the *Steward*'s *Hall*, where the Gentlemen were at Dinner, and he calls to *Charnock*, who came out to him. He takes him out of the Hall to the Foot of the Stair-caſe, and there they talked together a great while, and after ſome time my Lord *Grey* went away, and *Charnock* did ſo too, I think to his Dinner again, I cannot tell any thing to the contrary. The Reflection I made upon this Paſſage then was, That my Lord *Grey* was very punctual in giving his Servant Orders, which I thought he was to carry to *London* with him, but I ſuſpected nothing of this Matter, nor any thing elſe that was ill then. Mr. *Charnock* then paſſing by me, ſaid I, Mr. *Charnock*, How long will it be before you are going? He made me no Anſwer, not one word. Thereupon I went into the Library, and between that and Mr. *Charnock*'s Chamber there was but a very thin Wall, and preſently after I came into the Library, my Lord *Grey* ſent one (as the Meſſenger ſaid) for Mr. *Charnock*, and he went down to him, as I ſuppoſe, and in a little time came up again. And after that, I do believe, I did hear another Meſſenger come from him to Mr. *Charnock* again, I will not ſwear that, for I am not ſure of it; becauſe, being at that time buſy in reading, I made no Reflection upon it till afterwards. But about a Fortnight or three Weeks after, there comes a Gentleman to ſee me at my Lodgings, and falling into Diſcourſe what News there was; our firſt Diſcourſe was of the Lady's being miſſing; he ſaid, it would be ſad he feared when ſhe was heard of. Why, ſaid I, what do you mean? I ſuppoſe Mr. *Forreſter* and ſhe are together, for that was the talk of the Town. No, ſaid he, it is no ſuch thing; but if you will make it a Secret, unleſs it comes to be made a publick Buſineſs, I will tell you; I do not doubt my Lord *Grey* carried her away with a deſign to debauch her. That is hard to be believed, ſaid I; I cannot believe it. Why, ſaid he, you were there when he went away? Yes, ſaid I, but how long was that before the Lady was miſſing? Said he, it was that Afternoon. Then came into my Mind his earneſt Diſcourſe with *Charnock*, and that which I obſerved about it, and ſending ſo often for him; and I told that Perſon of it. Why *Charnock*, ſaid he, was the Man that took her away.

Mr. Serj. *Jeff.* Who was it that ſaid ſo to you, Sir? Name him.

Mr.----------. Mr. *Rogers*, my Lord *Berkeley*'s Chaplain.

Mr. Serj. *Jeff.* If your Lordſhip pleaſe to obſerve the particular Times, when my Lord *Grey* was ſo earneſt in giving *Charnock* Directions, that was on the *Saturday* at Noon, and it was that Night the young Lady went away.

L. C. J. When came my Lord *Grey* to my Lord *Berkeley*'s?

Mr. Att. Gen. The *Tueſday* or *Wedneſday* before, I think; ſome Days it was.

Mr. Serj. *Jeff.* But upon the *Saturday* Night it was ſhe went away; this unfortunate Lady that we have produced, her Mother, and ſo the Lady her Siſter, ſpoke both of their Fears of *Charnock*. Now we ſhall prove, that this *Charnock* was on the *Sunday* Morning, at eight of the Clock in the Morning, here in *London*, with a young Lady, in what Habit that young Lady was, our Witneſſes will tell you; and others will give you an Account what Habit this Lady went away in, and then it will be ſeen who ſhe was. Call *Eleanor Hilton.*

Mr. Att. Gen. But if you pleaſe, Mr. Serjeant, I think it will be proper firſt to examine my Lady *Lucy*, who upon the miſſing this young Lady, followed my Lord *Grey* to *Guilford*, and overtaking him, acquainted him with it, and immediately he took Poſt and came to *London.* Pray ſwear my Lady *Lucy.*

[*Which was done, ſhe being in a Box by the Bar.*]

L. C. J. Well, what do you aſk that Lady ?

Mr. Serj. *Jeff.* We produce her, my Lord, to hear what paſs'd between her and my Lord *Grey* at *Guilford.* Pray, Madam, will your Ladyſhip acquaint the Court what occaſion you had to go to *Guilford*, and what you ſaid to my Lord *Grey*, and what he ſaid to you, and did afterwards.

Lady *Lucy.* My Lord, as ſoon as my Lady *Harriett* was miſſing, ſuppoſing my Lord *Grey* could beſt give an Account where ſhe was, I went after him to *Guilford*, and he was gone half an hour from thence before I came thither, but by ſending Poſt after him, he was overtaken, and came back to me. I told him my Lady *Harriett* was gone away, and I conjured him by all that was ſacred and dear to him, to prevent ſo great a Misfortune as this would be to the Family. He then pretended he did not know any thing of her going, but promiſed me, that if he could find her out, he would endeavour to perſuade her to return Home, but he would not force her. After ſeveral Diſcourſes, which it is impoſſible for me to remember particularly (ſaying that he had done nothing that was illegal, and if ſhe did not any thing, we could do nothing againſt him;) he at laſt parted from me, to go to *London*, as I ſuppoſe. I begged of him that I might be permitted to go along with him, that I might ſpeak to her, ſuppoſing I might retrieve this Buſineſs, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a Day or two after, I think, I cannot tell juſtly the Time, and he pretended, he did not know where ſhe was, but only he knew where to ſend to her; and he would do all he could to get her to return Home. He was ſenſible of what a Misfortune this was to the Family. But ſoon after he went to *Up-Park* again, as he ſaid, to ſhew us that he was not with her. And he afterwards writ me a Letter, wherein he ſays, he could not perſuade her to come Home, but the Concluſion of it was, " He would do all he could to " reſtore Peace and Quiet to the Family, which by his Follies were ſo " miſerably diſturbed."

Lady *Arabella.* My Lord, I deſire to ſpeak one thing; About ſix Weeks ago I met my Lord *Grey* at my Lord Chief Juſtice's Chamber, and he told me, he had my Lady *Harriett Berkeley* in his Power, or in his Protection, or to that effect, he ſaid.

Mr. Att. Gen. Pray tell, Madam, when that was?

Lady *Arabella.* About ſix Weeks ago, I cannot juſtly ſay the Day.

Mr. Serj. *Jeff.* But if your Ladyſhip pleaſes, my Lady *Lucy*, it will very much ſatisfy the Jury, if you would ſhew the Letter you ſpeak of.

Mr. *Williams.* Ay, pray Madam, ſhew the Letter.

Lady *Lucy.* It was a Letter before that which he writ to me at *Durdants.*

L. C. J. When was that Letter you ſpeak of written ?

Lady *Lucy.* About a Week after my Siſter was gone, I cannot exactly remember the Day.

Mr. *Williams.* Pray, Madam, can you produce that Letter ?

Lady *Lucy.* No, I have it not here.

Mr. Serj. *Jeff.* Then ſwear *Eleanor Hilton.* [*Which was done.*]

Mr. Sol. Gen. Is your Name *Eleanor Hilton?*

Mrs. *Hilton.* Yes, it is, Sir.

Mr. Att. Gen. Pray ſpeak out, that my Lord and the Jury may hear you. Do you remember the 20th of *Auguſt* laſt? Did *Charnock* come to your Houſe with a young Lady? Did you ſee her, and what time of the Day was it?

Mrs. *Hilton.* I cannot tell what Day of the Month it was.

Mr. Serj. *Jeff.* What Day of the Week was it ?

Hilton. It was on a *Sunday.*

Mr. Sol. Gen. What Month was it in ?—*Hilton.* I cannot tell, truly.

Mr. Serj. *Jeff.* About what time of the Year was it ?

Hilton. About eight or nine Weeks ago, or ſomething more.

Mr. Serj. *Jeff.* Well, what did you ſee then ?

Hilton. There was a young Lady that came to our Houſe, ſhe came of herſelf, *Charnock* he was not with her; he came before indeed, and aſked me if I had any Room to ſpare, and I ſhewed him what we had; he went away, and I ſaw no more of him; afterwards, as I ſaid, ſhe came; but who ſhe was, or what ſhe was, I cannot tell.

Mr. Serj. *Jeff.* Can you deſcribe her Clothes ?

Hilton. She had a coloured Night-gown on of ſeveral Colours; I cannot ſay what particular Stuff it was: And ſhe had a Petticoat on White and Red.

Mr. Serj. *Jeff.* Did you ſee her Face ?—*Hilton.* I cannot ſay I did fully.

Mr. Att. Gen. Do you think you ſhould know her again, if you ſhould ſee her ?—*Hilton.* I cannot ſay that.

Mr. Serj. *Jeff.* (*to the Lady* Harriett) Pray Madam, will you ſtand up a little, and turn up your Hood. [*Which ſhe did.*]

Hilton. Truly I cannot ſay that is the Lady.

Mr. Att. Gen. Do you believe it was ſhe ?—*Hilton.* I cannot ſay it, truly.

Mr. Att. Gen. Have you ſeen her Picture ſince, and is this Lady like that Picture ?

——Mr. *Attorney*, ſhe ſays, ſhe cannot ſay it is the ſame Lady.

Mr. Sol. Gen. Pray, Miſtreſs, to what Purpoſe was ſhe brought to your Houſe ?---*Hilton.* They did not tell me that.

Mr. Att. Gen. Was it not to lodge there ?

Hilton. She ſtaid there but a while, and went away again.

Mr. Att. Gen. Whither did ſhe go then ?

Hilton. To one *Patten*'s in *Wild-ſtreet.*

Mr. Serj. *Jeff.* You went with her, Miſtreſs, did not you ?

Hilton Yes, I did ſo.

Mr. Serj. *Jeff.* Pray, was there any Letter or Note brought to your Houſe for *Charnock?*

Hilton. Yes, I brought it to Mrs. *Charnock.*

Mr. Serj. *Jeff.* Did you hear any Reaſon given for her Removal from your Houſe ?

Mr. Att. Gen. Pray did ſhe go to Bed at your Houſe ?

Hilton. She did lie down.

Mr. Serj. *Jeff.* What Time of the Day was it ?

Hilton. About nine or ten o'clock in the Morning ?

Mr. Sol. Gen. Pray, did ſhe ſay ſhe had been at Church, or what did ſhe ſay ?

Hilton. She ſaid ſomewhat to that Purpoſe, ſhe ſaid ſhe was weary.

Mr. Serj. *Jeff.* What Company came to the Lady, while ſhe was at your Houſe ?

Hilton. No Body but Mrs. *Charnock.*

Mr. Serj. *Jeff.* Did you ſee Mrs. *Charnock* in her Company ?—*Hilton.* Yes.

Mr. Serj. *Jeff.* You ſaw her come in to her ?—*Hilton.* Yes.

Mr. Serj. *Jeff.* Did ſhe behave herſelf to her, as to a Lady of Quality ?

Hilton. I cannot tell that, truly.

Mr. Serj. *Jeff.* Why, how did ſhe carry it to her ?

Hilton. Whether ſhe was in Bed or no, I cannot tell; but when ſhe came in, the young Lady ſaid, How do you, Mrs. *Charnock?* She ſaid, Your Servant, Madam, or to that purpoſe, I cannot exactly tell.

Mr. Serj. *Jeff.* You brought the Note to Mrs. *Charnock*, you ſay ?

Hilton. Yes.

Mr. Att. Gen. Did ſhe ſtay at Mrs. *Patten*'s after that ?

Hilton. I ſuppoſe ſhe might.

Mr. Sol. Gen. Pray recollect yourſelf a little, and tell us what Colour was her Manteau ?

Hilton. Truly, it was all manner of Colours, Red, and Green, and Blue, and I cannot tell what Colours.

Mr. Att. Gen. What coloured Petticoat ?---*Hilton.* Red and White.

Mr. Sol. Gen. How long after this, did you hear my Lord *Berkeley*'s Daughter was miſſing ?—*Hilton.* A While after.

Mr. Att. Gen. How long ? Was it that Week ?

Hilton. I cannot tell, it was not long after.

Mr. Att. Gen. Was it the ſame Lady that came to your Houſe in thoſe Clothes, that went to *Patten*'s at Night ?

L. C. J. Why, ſhe ſays ſhe went with her, do not examine her the ſame things over again.

Mr. Att. Gen. Were you examined before Sir *William Turner*, about this Matter ?-------*Hilton*, Yes, I was.

Mr. Att. Gen. Was it the Day of the Month you then ſaid it was ?

Hilton. I ſuppoſe it might; I cannot tell the Day of the Month.

Mr. Att. Gen. Was it the Month ?—*Hilton.* It is like it was.

L. C. J. She has fix'd it now to be about eight or nine Weeks ago.

Mr. Serj. *Jeff.* Did ſhe give any Reaſon why ſhe was removed ?

Hilton. None at all.

Mr. Serj. *Jeff.* Now, my Lord, we will bring it down to be this very Lady. My Lady *Arabella*, Pray, Madam, what Clothes did my Lady *Harrriett* go away in ?

Lady *Arabella.* My Lady *Harriett* had ſuch Clothes as they ſpeak of, I cannot ſay ſhe went away in her Night-gown, but here is one that can: But there was a ſtriped Night-gown of many Colours, Green, and Blue, and Red.

L. C. J. She does remember ſhe had ſuch a one, but ſhe cannot ſay ſhe went away in it.

Mr. Serj. *Jeff.* Was there not a chequer'd Petticoat Red and White ?

Lady *Arabella.* She had ſuch a Petticoat, but I cannot ſay ſhe went away in it; ſhe had alſo a White quilted Petticoat.

Mr. Serj. *Jeff.* Then ſwear Mrs. *Doney* (*Which was done.*) My Lord, we call this Gentlewoman to give an Account what Habit ſhe went away in; for ſhe lay with her always.

Mr. Att. Gen. Did you lie with my Lady *Harriett Berkeley*, when ſhe ſtole away ?

Mrs. *Doney.* Yes, indeed, Sir, I did lie in the Chamber that Night, and ſhe went away with her Morning Clothes, which lay ready for her there, againſt ſhe did riſe in the Morning. It was a ſtrip'd Night-gown of many Colours, and a Petticoat of White and Red, and a quilted Petticoat.

Mr. Att. Gen. Was ſhe ſo habited, that came to the Houſe, Mrs. *Hilton?*

L. C. J. She has ſaid ſo already.

Mr. Serj. *Jeff.* Now you are pleaſed to obſerve, that beſides the Circumſtances of the Clothes, there is mention made of a Note; Mrs. *Hilton* ſays ſhe received a Letter and gave it to Mrs. *Charnock*; and that ſoon after they went to *Patten*'s Houſe in *Wild-ſtreet.* We ſhall call the People of that Houſe, to give an Account what Gentlewoman it was that came to their Houſe. Pray ſwear Mr. *Patten.* [*Which was done.*]

Mr. Sol. Gen. Pray, will you tell my Lord and the Jury, whether Mr. *Charnock* and his Wife came to your Houſe, and with whom, and about what?

Mr. *Patten.* My Lord, about the latter end of *July*, or the beginning of *Auguſt*, Mr. *Charnock* and his Wife came to my Houſe when we were juſt removed, to take ſome Lodgings for a Perſon of Quality; but they did not ſay who. Said I then, We have no Lodgings now ready; ſaid they, We ſhall not want them yet, till towards the middle of *September.* Says my Wife, I ſuppoſe by that time our Houſe will be ready; and if it will do you any Kindneſs you may have it. About the 20th of *Auguſt* being *Sunday*, Mrs. *Hilton* brings a Gentlewoman with Mrs. *Charnock* to my Houſe; and when they were come, they called me up, and ſeeing them all three there, I told Mrs. *Charnock*, We have no Lodgings fit for any Body of any Quality, at preſent. Says Mrs. *Hilton*, Let's ſee the Candle, and runs up Stairs into a Room where there was a Bed, but no Hangings; when they came in, they locked themſelves into the Room. My Wife's Daughter being in the Houſe, I deſired her to ſend for my Wife, who was then abroad; which ſhe did. They deſired my Wife's Daughter to lodge with the Gentlewoman that they brought thither, and they were making the Bed ready. I ſent them up word, That I deſired they would walk into the Dining-room for the preſent; they ſent me word down again, They did not deſire to do that, for they were afraid the Light would be ſeen into the Street, and withal, if any Body came to enquire for

Mrs. *Charnock*, or Mrs. *Hilton*, I ſhould ſay there was no Body there. Preſently after, I think (or before, I cannot juſtly ſay which) a Letter was carried up Stairs to them, upon which they came down Stairs, and away they went up the Street, and when they were gone a little Way on Foot, Mrs. *Charnock* deſired them to turn back again, for ſhe hoped to get a Coach, and ſhe did ſo, and went away.

Mr. Att. Gen. So they did not lodge there?

Mr. *Patten.* No, they did not.

Mr. Serj. *Jeff.* Did they ſay any Thing of Care that was to be taken, how they paſſed by my Lady *Northumberland*'s?

Mr. *Patten.* My Lord, I do not well remember that: But the next Day Mrs. *Hilton* comes again to our Houſe, and ſhe runs up Stairs into the ſame Room, and ſits her down upon the Bed-ſide. Said I to her, Mrs. *Hilton*, What Gentlewoman was that that was here laſt Night? Says ſhe, I cannot tell, but I believe ſhe is ſome Perſon of Quality, for Mrs. *Charnock* brought her to our Houſe at ſeven o'Clock in the Morning. But whoever ſhe is, ſhe is much troubled, we could get her to eat nothing, but her Eyes were very red with crying, and we came away to your Houſe at Night; becauſe hearing ſome Noiſe of People in the Street, ſhe was afraid ſome of her Father's Servants were come, but it was only ſome People that were gathered about to obſerve the Blazing Star. So we whip'd out of the Door, and ſo came to your Houſe, for we had never a Back-door out of our own.

Mr. Att. Gen. Pray give an Account what Habit the Gentlewoman was in that came to your Houſe.

Mr. *Patten.* She had a ſtriped flowered Gown, very much ſullied, it was flung about her, juſt as if ſhe had newly come out of Bed. I did ſee her Face, but when I had juſt looked upon her, ſhe clapped her Hood together over it preſently.

Mr. Serj. *Jeff.* Do you think you ſhould know her again if you ſee her?

Mr. *Patten.* I believe I might.

Mr. Serj. *Jeff.* Pray, Madam, ſtand up again, and lift up your Hood.

[*Which ſhe did.*]

Mr. *Patten.* This is the Lady. I ſaw her Face twice, once as I told you, and then when ſhe went away, I dropped down, and peeped up, and looked her in the Face again, though ſhe hid it as much as ſhe could.

Mr. Att. Gen. Thus we have proved it upon *Charnock* and his Wife.

Mr. Serj. *Jeff.* He gives an Account of the 20th of *Auguſt*, which was the Day after ſhe went from her Father's Houſe. Pray call Mrs. *Fletcher*.

Mr. Att. Gen. We ſhall now prove, that they went from thence to one *Jones*'s; that my Lord *Grey* came there to take Lodgings, and after ſhe was brought, came thither again, and though he changed his Hair into a Perriwig, yet he was known for all his Diſguiſe.

Mr. Sol. Gen. My Lord, you ſee that it is proved upon three of the Defendants, my Lord *Grey*, and *Charnock*, and his Wife; now we ſhall prove it upon the other two, the *Jones*'s. Swear *Mary Fletcher*.

[*Which was done.*]

Mr. Serj. *Jeff.* Sweetheart, pray tell the Court where you lived, and when my Lord *Grey* came to your Houſe; tell the Time as near as you can, and the Day of the Week.

Fletcher. Sir, he came to *David Jones*'s on the *Tueſday* after my Lady *Berkeley* was miſſing.

L. C. J. Where does *David Jones* live?

Fletcher. At *Charing-Croſs* juſt over-againſt the *Statue*. And living there, my Lord *Grey* came there in a Hackney-Coach, firſt on the *Monday* without a Perriwig, or any Thing of that, and deſired Mr. *Jones* to come to the Coach-ſide, which he did, and after a little Diſcourſe with Mr. *Jones*, they came both into the Houſe, and went up two Pair of Stairs to look upon Lodgings. After that, I had order to make ready the Room for ſome Lodgers who were expected to come that Night, but did not till the next Day. About *Tueſday* at Nine of the Clock, my Lord *Grey* comes again in a Coach to the Door, and threw his Cloak over his Face, he was then without his Perriwig too, and deſired to ſpeak with Mr. *Jones*: I and my Fellow-Servant ſtanding at the Door, he deſired to ſpeak with my Maſter. I went to him and told him, and he came up, and after he had been at the Coach-ſide, he bid us go down, and keep down in the Kitchen, and would not let us come up any more. And afterwards my Fellow-Servant and I were bid to go to Bed, and my Miſtreſs ſhut up the Shop-windows herſelf.

Mr. Serj. *Jeff.* Well, go on, what happened after that?

Maid. Afterwards there was the Warming-pan, and the Candle-ſtick, and other Things were carried up into the Chamber by my Miſtreſs's Siſter. Says my Fellow-Servant, There is ſome great Stranger ſure, come to lodge here, that we muſt not know of. Ay, ſaid I, this is ſome great Intrigue or other. After a while came in ſome Company that ſtayed all Night. I know not who they were, nor how they came.

Mr. Serj. *Jeff.* Well, what was done the next Morning?

Maid. I was never admitted into the Room while they were there, but through the opening of the Door I did ſee one Lady in Bed, but I cannot ſay who ſhe was, nor what ſhe was.

Mr. Att. Gen. Do you know her if you ſee her again? Look at that Lady; is that ſhe?

Maid. No, I do not know her; I cannot ſay that is ſhe: My Miſtreſs, and my Miſtreſs's Siſter ſtood both before me, when I juſt peeped into the Room, and when ſhe perceived that, I did ſee her pull the Clothes over her Face.

Mr. Sol. Gen. How long did ſhe ſtay there?

Maid. Nine Nights.

Mr. Serj. *Jeff.* Do you know my Lord *Grey* well?

Maid. Yes, I have ſeen him often.

Mr. Serj. *Jeff.* And did you know him notwithſtanding his Diſguiſe?

Maid. Yes.

Mr. Serj *Jeff.* What did Mrs. *Jones* ſay to you about my Lord *Grey*?

Maid. She ſaid to us, What Fools were we, to ſay this was my Lord *Grey*, it was a Country Gentleman.

Mr. Serj. *Jeff.* But you are ſure it was my Lord *Grey*?

Maid. Yes, I am ſure it was he.

Mr. Att. Gen. Did any Body elſe lodge at your Houſe at that Time?

Maid. Yes, Captain *Fitz-Gerrard*.

Mr. Att. Gen. What Diſcourſe had you with him about this Lady?

Mr. *Williams.* You, Woman, Did my Lord *Grey* ſtay there?

Maid. I cannot ſay he did.

L. C. J. Mr. Attorney, if the Queſtion you aſk, be to introduce another Part of your Evidence from Captain *Fitz-Gerrard* himſelf, it may be ſomething; otherwiſe that can be no Evidence againſt the Defendants, what Diſcourſe was with another.

Mr. Serj. *Jeff.* It is ſo, my Lord; and therefore we aſk you, Sweetheart, what paſt between you and the Captain?

Maid. Captain *Fitz-Gerrard*, the *Monday*-Morning Seven-night, after my Lord *Grey* firſt came, called me to his Bed-ſide, and aſked me if I knew what Lady that was that lodged in the Houſe, and what Clothes ſhe wore, and whether ſhe were young or old, and whether ſhe were married or no? I told him I could not tell any Thing, for I could never ſee her.

Mr. Serj. *Jeff.* Do you know what Linen ſhe brought with her? Did you waſh any for her?-----*Maid.* Yes, one Shift.

Mr. Att. Gen. What kind of Shift was it?

Maid. I ſaid, It could be no Perſon of Quality by her Shift.

Mr. Serj. *Jeff.* Why ſo?

Maid. Becauſe the Body was finer than the Sleeves, and Ladies uſe to make the Sleeves finer than the Body.

[*At which there was ſome Laughing*]

Mr. *Williams.* A very petty Evidence!

Mr. Serj. *Jeff.* Pray call Mrs. *Doney* again, becauſe you ſhall not make ſo ſlight a Buſineſs of the Shift as you pretend, for ſuch Actions as theſe muſt be detected by Circumſtances.

Mr. Att. Gen. Mrs. *Doney*, Pray did you ſhew this Woman another of my Lady *Harriett Berkeley*'s Shifts?

Mrs. *Doney.* Yes, I did.

Mr. Serj. *Jeff.* Was it the Fellow of that ſhe went away with?

Mrs. *Doney.* Yes, it was.

Mr. Serj. *Jeff.* Woman, do you believe, upon your Oath, that was the Fellow of the Shift you ſaw?

Maid. Yes, Sir.

Mr. Serj. *Jeff.* Was the Body of that you ſaw from this Gentlewoman, finer than the Sleeves?

Maid. Yes, it was.

Mr. Sol. Gen. Then pray ſwear Captain *Fitz-Gerrard*.

[*Which was done.*]

Mr. Sol. Gen. Pray, Sir, will you tell the Court and the Jury, what Paſſages fell out at your Lodgings?

Capt. *Fitz-Gerrard.* My Lord, It was my Fortune ſix Months ago, to take a Lodging at Mr. *Jones*'s, and while I kept my Lodgings there, I had Occaſion ſometimes to go to *Windſor*, to wait upon his Majeſty; and one Night coming Home to my Lodging, my Servant that waits upon me in my Chamber, told me, there was a Lodger lately come to the Houſe, who lay in the upper Rooms. I aſked who it was; he told me, the Maid of the Houſe told him it was a Miſtreſs of my Lord *Grey*'s. I aſked how long ſhe had been there; he ſaid, it was but two or three Days ſince ſhe came. I never thought of this for four or five Days after, nor thought myſelf obliged to take Notice of the Diſcourſe of the Servant in the Houſe; but being in *Covent-Garden* in Company, there was ſome Diſcourſe about my Lady *Harriett Berkeley*'s being gone from her Father's, as it was the Talk of the Town. I came Home about nine o'clock at Night, and having no Servant juſt then ready to wait upon me, Mr *Jones* himſelf came very kindly to put me to Bed. I had ſome Fancy upon the Diſcourſe of the Town, this might be my Lady *Harriett*. Upon which, I ſaid to Mr. *Jones*, You cannot but hear of the Report of my Lady *Berkeley*'s being run away from her Father, and I know you have a Dependence upon my Lord *Grey*, and I have a Suſpicion you conceal her in your Houſe. If you do, ſaid I, you do a very diſhoneſt Thing, a very ill Thing, and occaſion a great deal of trouble and diſquiet to a noble Family. And poſſibly my Lord and my Lady may not know ſhe is alive; therefore, I deſire you as a Friend, to make a Diſcovery of the Lady, that they may know where ſhe is. He ſeemed very angry upon my ſaying of this, and told me, As long as I lodged in his Houſe quietly, I need not trouble myſelf who lodged there beſides. Upon that I thought more earneſtly upon this Thing; and I told him again, I am reſolved to go into the Room, and know who this Lady is that lies here, for now I ſuppoſe there is ſomething more in it. Says he again, No Body ſhall offer ſuch a Rudeneſs in my Houſe. Said I, I aſſure you I will do it. He grew very angry, but I went from him to my Sword and was going up. Says he, Pray, Mr. *Fitz-Gerrard* do not offer ſuch a Thing as this is; you would take it unkindly yourſelf to have your Houſe ſearched at this Time of Night. Well, ſaid I, upon Condition that I may ſee her To-morrow Morning before ſhe goes away, who ſhe is, I will make no Diſturbance in your Houſe To-night. Upon that he left the Room, promiſing me, I ſhould To-morrow Morning ſee who the Lady was. I went out early the next Morning upon ſome neceſſary Buſineſs, and coming Home between eleven and twelve o'Clock, ſaid I to him, Now is a very civil Time to ſee this Lady, who ſhe is, for it is not fit you ſhould receive any Perſon into your Houſe, in ſuch Circumſtances, when there is ſuch Cauſe of a Suſpicion. Says he, She is now gone out of the Houſe. And this is all that I can ſay in this Matter, I never ſaw the Lady there then, nor did I ever ſee her in my Life, but once or twice at *Epſom*.

L. C. J. Did they lock the Door upon you, Captain?

Capt. *Fitz-Gerrard.* No, they did not.

Mr. Serj. *Jeff.* And you know nothing more?

Capt. *Fitz-Gerrard.* I neither knew when ſhe came, nor who ſhe was.

Mr. Att. Gen. Then ſwear Mr. *Smith* here, who married one of my Lord *Berkeley*'s Daughters. [*Which was done.*]

Mr. *Smith.* Before my Lord *Berkeley* made this Affair publick, he uſed all Means poſſible to know where my Lady *Harriett* was; and after it was known to him what Concern my Lord *Grey* had in it, there were all Means uſed to make it up: and diſcourſing with my Lady *Berkeley* about it, it was propoſed that ſhe ſhould be married, but that would coſt a great deal of Money; that my Lord did not ſtick at, nor my Lady, if any Divine of the Church of *England* did think it proper to treat with any Parſon about it, after ſuch a ſecret Correſpondence between her and my Lord *Grey*. And my Lord ſaid, If my Lord *Grey* would not proſecute her with any more Viſits, he would give a Sum of Money to marry her. Said I, Then, my

Lord, will you give me Leave to wait upon my Lord *Grey* in it? He anſwered, Yes. So I went to him, and offered him that my Lord *Berkeley* would give 6000*l.* with her, if he would place her in a third Hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where ſhe was, but would not diſcover it. Says he, You muſt always ſuppoſe, I will take your Propoſal in this Manner, if ſhe is in my Power, which it may be ſhe is, it may be not. Said I, My Lord, you make that (if) only as a Subterfuge, for to be ſure, you know where ſhe is. Says he, She is beyond Seas, and if you will give me Leave to viſit her ſometimes, I will promiſe ſhe ſhall come again; but that depends upon Time and Tide, it cannot be ſo very ſoon. Said I my Lord, you may as well ſend Horſes to *Dover*, and ſo over to *Calais*, for I ſuppoſe ſhe may not be far. He ſaid it would be a Work of Time, but he would write to her. I deſired he would write that Night. For, ſaid I, my Lord, if this Buſineſs be taken in Time, ſhe may yet be ſaved, if you will contribute what you can to it. He promiſed me to write that Night to her, but it would be ſome Time before ſhe got to Town. Then diſcourſing further with my Lord about it. Says he, if I ſhould bring her to Town, I will not uſe any Force or Perſuaſion to her, if ſhe be obſtinately bent not to come Home again; betray her to be ſure I will not. I am ſure, my Lord, ſaid I, that your Perſuaſions would do very much with her, and a great deal of Good may come of it, if the Matter be ſpeeded. But, ſays he, if I ſhould bring her to Town, then my Lord *Berkeley* would diſturb her with my Lord Chief Juſtice's Warrant. Said I, If you will bring her to Town, I will aſk my Lord and my Lady, how long Time they will allow for the making up of this Treaty; and in the mean Time, ſhe ſhall be free from any Diſturbance. Says my Lady *Berkeley*, when I ſpoke to her of it, Though my Lord *Grey* has been ſo barbarous to a Family, that has been ſo kind to him; yet, if I give him my Word, I will keep it inviolably to him; and I do promiſe him, if he will bring her to any Place where my Daughter *Lucy* may viſit her, I will engage there ſhall be no Search made after her. And if he can contribute to carry her into a Place where ſhe may be ſafe, and not viſit her himſelf, he ſhall have 2000*l.* to do it. This Meſſage of my Lord's being barbarous, Madam, ſaid I, is not fit for me to carry to my Lord *Grey*, but you will promiſe not to take her away, if he bring her to Town, but from the Moment you know where ſhe is, ſhe ſhall be ſafe. Thereupon my Lord *Grey* promiſed to write to her; whether he did or not, I cannot tell. Afterwards he ſaid he had writ, but ſhe would not come.

Mr. Att. Gen. What Expence has my Lord been at in looking after her?

Mr. *Smith.* A great Expence; I cannot tell particularly.

Mr. Serj. *Jeff.* My Lord, we have but one Witneſs more, and that is a Gentleman, who, by Order from my Lord and Lady *Berkeley*, kept my Lord *Grey* Company, and he will tell your Lordſhip what my Lord *Grey* confeſſed to him, what a Paſſion he had for the Lady, and what Methods he uſed to get rid of it, but could not. Swear Mr. *Craven.*

[*Which was done.*]

Mr. Sol. Gen. Will you tell my Lord and the Jury, whether you were ſent by my Lord *Berkeley*, to be with my Lord *Grey* at *Up-Park*, and what paſſed there between you?

Mr. *Craven.* My Lord, the *Wedneſday* after my Lady *Harriett Berkeley* went away, my Lady *Berkeley* told me, my Lord *Grey* had proffered he would go down into the Country for ſix Months, to ſhew that he had no Deſigns upon her; and therefore, if ſhe would propoſe ſome Friend of her's to go along with him to keep him Company, he would be very well ſatisfied with it; and then my Lady *Berkeley* told me, ſhe would fix upon no Body but me, if he would take me with him. Then I met my Lord *Grey* on *Wedneſday* Morning at Sir *Thomas Armſtrong*'s, and afterwards, went down to his Houſe to him. When I came there, he met me on Horſeback, and came up civilly and kindly to me. I thought fit to give him a Caution, having received ſuch Orders from my Lady. My Lord, ſaid I, I am ſorry I am forced to come upon ſuch an Account as this, to be a Guard over your Words and Actions; and I am very much troubled that this unfortunate Thing has happened, and you are reputed to be the Occaſion of it. Says he, I do own, *Craven*, I have done a very ill Thing; but that is paſt, I cannot help that now; but the Thing that is to be thought on is, what is to be done for the future. My Lord, ſaid I, the beſt Way, if I may give you my Advice, were to ſend her Home again, before any Report be ſpread abroad of the Buſineſs. How can that be? Says he, I do not know where ſhe is, but I have had a Letter from her, as I told my Lady, I did believe I ſhould find a Letter here when I came down. I will ſhew you the Letter, which he did. My Lord, ſaid I, this Letter will be thought as of your penning before you came out of Town. I cannot tell what they will think, ſaid he, but here it is. Said I, my Lord, I have a great Reſpect for your Lordſhip, and do very much deſire, for your own Reputation and Honour, as well as their's, it may be made up in ſome Way before it be too publick. We were diſcourſing of this. How ſhall that be done, ſays my Lord *Grey*. My Lord, ſaid I, if you would conſent to this, to ſend her over into *France*, to *Calais* or *Diep*, we will there find ſome Body that will help her into a *Nunnery*; and when ſhe is there, ſhe may write to her Mother, that ſhe found ſhe had an Intention to marry her to a Match ſhe could not by any Means approve or like of, and therefore ſhe went away to prevent her being forced to it; and this would be as plauſible a Thing as any in the World. And when that Letter ſhould come, my Lady *Berkeley* ſhould ſhew it about to her Friends; nay more, ſhe ſhould go over herſelf to fetch her back again, that ſhe might receive her into her Houſe with Honour. He ſaid, That was a very plauſible Thing, and he would do it, if he could tell where ſhe was; but her Letter to him was, that ſhe was gone from her Father, but ſhe did not think fit to let him know where ſhe was, for Fear he ſhould deliver her up again. Then my Lord *Grey* aſked me in what Condition they were all at my Lord *Berkeley*'s about it. Said I, They are in ſuch a Confuſion and Trouble they are all mad almoſt. Says he, How does my Lord bear it? Said I, He is ſo afflicted that it will go near to break his Heart. Says he, He is indeed one of the Men in the World that is to be pitied; ſhe pitieth him very much, but for her Mother ſhe doth not care. One Day when we went out a Shooting, as we did ſeveral Days together; Mr. *Craven*, ſays he, I will tell you the whole Intrigue between my Lady *Harriett* and I. I have had a great Affection for her ever ſince ſhe was a Child, and have always been taking great delight in her Company; and keeping her Company ſo often till ſhe grew up, my Paſſion grew to that height, that I could ſtifle it no longer, but I was forced to tell her of it, and then I could not ſpeak to her of it, but writ. But withal I begged her to take no Notice of it to any Body, for if ſhe did, it would ruin us both. She was very angry to hear of it, and neither by writing nor ſpeaking could I perceive ſhe had any Affection for me again, till the Parliament ſat at *Oxford*; and then I did purſue my Love and my Amours, and at laſt, ſhe one Day told me, ſaid ſhe, I have now conſider'd of it, and if you do not leave writing or ſpeaking to me of this Matter, the very firſt time you write or ſpeak to me again, I will tell my Father and Mother of it. That ſtruck him ſo, he ſaid, that he did not know almoſt what to ſay or what to do, and he walked up and down juſt like a Ghoſt; but he hid it as well as he could, that it ſhould not be perceived by others. But that Parliament being quickly diſſolved, he did intend to go down to *Suſſex* to his Houſe there, being he found ſhe was reſolved againſt admitting his Affection, and he would ſtay there ſeveral Years, till he had weaned himſelf of his Paſſion, and by that time ſhe would be diſpoſed of otherwiſe, and he might be at Eaſe. And he hiding his trouble as much as he could from my Lord *Berkeley* and my Lady, forbore to ſpeak to her, but only when he ſaw her he could not forbear looking earneſtly upon her, and being troubled. My Lord *Berkeley*, not knowing any thing of it, aſked him to go to *London* with us and not to *Suſſex*; he was very much perſuaded by my Lord and my Lady to it: and at laſt, my Lady *Harriett Berkeley* came to him, and told him, Said ſhe, You are very much perſuaded by my Father and Mother to go to *London* and not to *Up-Park*, why do not you go with them? Madam, ſays he, you have ſtop'd my Journey to *London*, you have hindered my going with them, for I will rather ſuffer any thing than render you any Diſturbance, and if I go to *London* with you, I ſhall not be able to contain myſelf; but if I go to *Suſſex*, I alone ſhall have the trouble of it. But one Day, when my Lord of *Ayleſbury* was leading my Lady *Berkeley*, and my Lord *Grey* was leading my Lady *Harriett*, ſhe took my Lord *Grey*'s Hand and ſqueez'd it againſt her Breaſt, and there was the firſt time he perceived ſhe loved him again; and then ſhe told him he ſhould go to *London* with them; and he did go, and from that time, for a twelve-month before ſhe went away, he did ſee her frequently, almoſt every Night, purſuing his Amour in writing and ſpeaking to her as often as he could have Opportunity. And tho' my Lady *Berkeley* put a *French* Woman to lie with her, yet ſhe did uſe to riſe from the *French* Woman, and he did uſe to ſee her. And one Day, ſays he, do not you remember you came to the Chamber Door, and ſhe was angry at your coming, and that the Door was not bolted, and if you had come in, you had found me there?

Mr. Serj. *Jeff.* Do you remember any ſuch thing?

Mr. *Craven.* I do not, unleſs it were at *Durdants.* And, ſaye he, you cannot imagine what I have ſuffered to come to ſee her. I have been two Days locked up in her Cloſet without Meat or Drink, but only ſome Sweetmeats.

Mr. Serj. *Jeff.* What did he ſay of his making Addreſſes to other Ladies to take off his Paſſion?

Mr. *Craven.* He ſaid, He did all he could, for he would fain have avoided bringing ſuch an Infamy upon his own Family and his Lady's, and he did endeavour to cool his Paſſion, by making Love to two other Ladies, whom he courted, and enjoyed both of them, but yet all did ſignify nothing, he could not ſubdue it.

Mr. Att. Gen. Pray tell us what Terms he inſiſted upon, for his parting with her, and what he ſaid the Law was in the Caſe?

Mr. *Craven.* I told him, My Lord, beſides the Diſhonour you bring upon yourſelf and two Noble Families, you ſhould do all that in you lies, to avoid the Puniſhment that will come upon you for it by the Law. Oh, ſays he, you miſtake yourſelf in that, for you muſt think I have conſider'd of all that before; they cannot do any thing in Law againſt me for it; let them examine the Caſe of Mrs. *Heneage* and my Lord *Cavendiſh.*

Mr. Att. Gen. What, did he ſay he would not part with her but upon Terms?

Mr. *Craven.* He ſaid, I cannot perſuade her, and I will not betray her. Truly, ſaid I, My Lord, you had better betray her, and when ſhe comes to be ſenſible of her own Good, ſhe will thank you for it. Then he owned he had her in his Power, but would not part with her never to ſee her again.

Mr. Att. Gen. What were the Terms he ſtood upon?

Mr. *Craven.* My Lady *Berkeley* ſent me to the Coffee-houſe, and deſired me to aſk him, If he would give her an Anſwer to what ſhe had met him at my Lord Chief Juſtice's about. My Lord told me, He did not approve of ſending her to the Place propoſed, but he would ſend her to his own Siſter, his Brother-in-Law Mr. *Nevil*'s. I told my Lady of it, who ſaid, If he did ſtate the Caſe right to Mr. *Nevil*, ſhe was ſure he would not receive her, nor let him come to her if he did. After that, Mr *Petit*'s was propoſed, ſo he might viſit her. But he did ſay, If that be the Deſign, that they would have her from me, and I not to come at her when I pleaſe, they ſhall never ſee her while they live, nor will I ever deliver her.

Mr. Serj. *Jeff.* We reſt here, to know what they on the other Hand ſay to it, and we think this foul Fact is fully proved.

Lord *Cavendiſh.* My Lord Chief Juſtice, I deſire to be heard one Word in this Matter. This Gentleman, Mr. *Craven*, that was laſt examined, has been pleaſed to tell a very long improbable Story in itſelf, and amongſt other things that he has ſaid, he has been pleaſed to make uſe of my Name impertinently enough; for he ſpeaks of a Caſe that that noble Lord, he ſays, was pleaſed to mention to him. If he did mention that Caſe to him, and did name my Name, he alſo mentions the Caſe of two Ladies, he ſays, my Lord was concerned with. I deſire to know how he came to name my Name, and not name the two Ladies he ſpeaks of, that that noble Lord made his Courtſhip to and enjoy'd?

L. C. J. My Lord *Cavendiſh*, I could have wiſhed he had not named your Lordſhip, becauſe it was not at all to the Purpoſe.

Lord *Cavendiſh.* My Lord, I am not concerned at it at all, more than at the Impertinency of his uſing my Name.

L. C. J.

L. C. J. I could have wiſhed, indeed, the Gentleman had ſpared your Lordſhip's Name.

Lord *Cavendiſh.* I deſire to know why my Name was mentioned more than the two Ladies Names?

Mr. *Craven.* My Lord *Grey* did not mention the two Ladies Names to me.

Lord *Grey.* No, nor my Lord *Cavendiſh*'s neither; It is all a Lie.

Lord *Cavendiſh.* I will believe my Lord *Grey*'s Word more than I will his Oath.

L. C. J. That your Lordſhip may do if you pleaſe. But we muſt not do ſo here. Come, what ſay you to it on the other Side?

Mr. *Williams.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for my Lord *Grey* and the other Defendants: And that we may come cloſely to the Queſtion, I deſire I may firſt ſtate the Queſtion before you upon this Information, and then you will the better judge how far the Evidence that has been given, is pertinent to the Iſſue that you Gentlemen are to try. The Parts of the Information are theſe: That my Lord *Grey*, and the reſt of theſe Defendants, ſhould conſpire together to ruin and deſtroy this young Lady, and in the Execution thereof, to bring this their Conſpiracy to effect, they did often ſollicit and entice her to Adultery with my Lord *Grey*; and in Proſecution of theſe their ill Purpoſes and Deſigns, ſhe was by Force and Arms taken away from the Cuſtody and Tuition of the Earl of *Berkeley*, her Father, and being ſo taken away, my Lord *Grey*, and the reſt of them, did procure her to live ſcandalouſly with my Lord *Grey*, in Whoredom and Adultery. Theſe are the Parts of the Charge, and the Queſtion is, whether we are guilty of it? For the Evidence, I dare preſume to ſay, that they have not made any direct Proof of the Matter charged. On the other Side, they have, I do agree, offered ſomething conjectural, upon which a Man may imagine and think what he will; but how far you are to conclude the Defendants Guilty, out of thoſe Preſumptions, muſt be left to you; I know you will very well conſider of it. It is plain, we are in a very tender Caſe; it is a Caſe of Honour on all Sides, and I have often heard it, and always believed it, *That Perſons of Honour and Quality in the World, would rather loſe their Lives than their Honour.* And I believe it is the Opinion of my Client, my Lord *Grey*, as well as of the Proſecutors in this Information. And therefore, you, Gentlemen, I doubt not, will expect to have a clear Evidence to convict him of this Crime. And it is not only his Honour is concerned, but that alſo of another great, illuſtrious, and noble Family, to which he is by Marriage allied. So that the acquitting of my Lord *Grey* of this Matter, doth, in a great Meaſure, acquit the other Family of ſo great a Scandal. For that will falſify the Information, and by your Verdict you will remove thoſe Stains, that elſe may ſtick on both Sides. We are equally between the two Families, and your Conſideration will be, whether you will lay a Stain upon both of them, or acquit them both. Now there has been no Proof againſt my Lord *Grey*, of any one Point in the Information.—

L. C. J. No? Sure you are much miſtaken; it is a direct Proof againſt my Lord *Grey*, I muſt tell the Jury ſo, and therefore apply your Defence to it as you can.

Mr. *Williams.* Truly, my Lord, I hope it is not; and our Caſe is beſt ſtated, by laying open the Truth of the Fact, and then the Matter will plainly appear. I cannot go about to juſtify the Paſſion and the Folly, for I may well call it ſo, of my Lord *Grey* and this young Lady in this Caſe. It is misfortune enough, to be accuſed of a Thing of that Nature, and it may be a great deal worſe to be convicted. I ſhall agree there have been thoſe Tranſactions between them, that it may be, we cannot juſtify in ſtrictneſs every Thing that my Lord *Grey* has done. But yet, we ſay he is not guilty of this Information. We do agree, there has been an extraordinary Paſſion, nay, I muſt ſay, a very unjuſtifiable one, between this Lady and my Lord *Grey*: But to conclude out of that, that becauſe there was ſuch an unreaſonable, unjuſtifiable, extraordinary Affection between them, therefore we muſt infer and conclude him guilty of this Information, is a very forced unreaſonable Conſtruction; for there are Degrees in Love, and we muſt not conclude the worſt Thing a Man can be guilty of, becauſe he is guilty of ſome Degree. Then, to come Home to the Caſe of my Lord *Grey*, we ſhall prove, and give your Lordſhip and the Jury undeniable Satisfaction, that my Lord *Grey*'s ſo far from having inveigled away this young Lady, or being any Way inſtrumental to the conveying her away, that he uſed all Means he could to have prevented any Thing of that Nature before, by diſcovering to my Lady *Berkeley* her Mother, my Lady *Arabella*, and my Lady *Lucy*, her Siſters, all Perſons of great Honour, and her neareſt Relations, that ſhe did intend to go away, by warning them, and giving them full Notice, that there might be ſuch an Intention in the young Lady. We ſhall prove likewiſe, that no Man in the World could do more, when ſhe was gone, to retrieve her. We ſhall make it out by undeniable Circumſtances, proved even by their own Witneſſes. It happened that my Lord *Berkeley* and his Family withdrew to a Country-Houſe of his near *Epſom*, in your County, Gentlemen. My Lady had ſome Jealouſy, as ſhe has been pleaſed to teſtify, that there might be ſome extraordinary Paſſion between my Lord *Grey* and the young Lady; having diſcovered it by ſome Letters, as ſhe hath given Evidence. My Lord *Grey* acquainted her with his Suſpicion, that ſhe intended to go away, and was ſo juſt, that he did not conceal any one Thing that he knew; yea, to acquit himſelf that he had no ill Deſign himſelf, and if ſhe did get away it was none of his Fault, he produced a Copy of a Letter of Admonition, which my Lord *Grey* himſelf had written to her: And when my Lady had heard his Advice about it, and his Counſel he gave her, ſhe ſaid, her Father could not have given her better Counſel. This was ſo early as *July*; in the Beginning of *Auguſt*, my Lord *Berkeley* going down to his Country-Houſe at *Epſom*, and the Family removing thither. Then my Lord *Grey* was ſick here in Town; and in this Sickneſs of his, there was a Letter ſent to my Lord *Grey* from his Lady, deſiring him to come down to my Lord *Berkeley*'s; but it ſeems he had been under ſome Engagement to my Lady *Berkeley*, not to come without her Leave; and having Regard to his Word paſt to my Lady, he would not do it. My Lady *Berkeley*, in a few Days after, ſent for him herſelf, and therein thanks him that he was ſo juſt to his Word and Honour, that he would not come down without her Invitation. Upon *Tueſday* before this unhappy Lady went away from her Father's Houſe, my Lord *Grey* came to my Lord *Berkeley*'s. When he came down, he was very kindly received by my Lord and my Lady. On the *Thurſday* following my Lady *Berkeley* acquaints my Lord *Grey*, that this young Lady had a Deſign to leave her Father and Mother's Family, and run away. My Lord *Grey* was ſo frank with her, as to tell her; Madam, I have long ſuſpected ſuch a Thing, as I have told you; but Madam, your Daughter *Harriett* is all Day in your Eye, you may lock her up at Night, and ſecure her if you pleaſe. This was a timely Caution given before ſhe made her Eſcape. On the *Friday* following comes a Letter from an unknown Hand to my Lady *Berkeley*, that intimated, That except they had a great Care of their Daughter, and a ſtrict Eye over her, ſhe and her Father ſhould not long enjoy her Company. My Lady *Berkeley* ſhews this Letter to my Lord *Grey*, ſays he, Madam, this is no more than what I have often told you, I have have given you ſome Intimations already, and my Thoughts and Advice about it; and whoever it be that writ this Letter, I am afraid her Apprehenſions of ſome ill Uſage may put her upon ſome ſuch Deſign. And he repeated it again, Madam, let me caution and adviſe you, have her always in your Eye, and lock her up ſafe at Night. This was repeated over and over, to my Lady *Lucy*, and my Lady *Arabella*. Thus it continued till *Saturday*, my Lord *Grey* reſolved to go to his Country-Houſe at *Up-Park*, and took his Leave of my Lord *Berkeley* and his Family accordingly, and went that Night to *Guilford*, and there he lay, and roſe the next Morning to go onwards of his Journey, but was purſued, it ſeems, by my Lady *Lucy*. For ſhe tells you, When this young Lady had left her Father's Family, ſhe immediately on the *Sunday* Morning came to *Guilford*, and ſent after my Lord, who was newly gone on his Way, and was found on his Way to his Houſe in *Suſſex*. Having received my Lady *Lucy*'s Commands, he returns to *Guilford*, and there he had the firſt Notice given him of my Lady *Harriett*'s Eſcape; ſays he to my Lady *Lucy*, This is no more than I have fairly warned you of before; had you taken my Counſel. Was ſhe locked up? No, ſaid ſhe, ſhe is gone away, and your Lordſhip muſt needs know where ſhe is, and therefore pray get her to return Home again. Says my Lord *Grey*, I aſſure you I know nothing at all of it, and to give you all the Satisfaction I can in the World, I did not only warn you of it before, but I ſhall be as induſtrious as any of you all, you ſhall find, to recover her again. For that Purpoſe, I will ſee if ſhe have croſſed the River, or is gone any other Way; and if I can make any Diſcovery, by Letter or any other Way, I will ſend you Word immediately; and I am ſo ſincere with you, that if any Letter come to your Family for me, I give free Liberty to my Lord and all his Family to open them themſelves, and ſee what is in them; and if I do receive any from her any other Way, a true Copy of it ſhall be ſent; and more than all this, if my Lord be not ſatisfied with what I have ſaid, let my Lord or my Lady ſend, and ſet what Spy upon me and my Actions they pleaſe. And it ſeems he was taken at his Word, and they made Choice of a very proper Gentleman, and you heard what Diſcoveries he has made, and how he has worded the Matter. For firſt he makes my Lord *Grey* at one Time a very ſubtle Lover, full of all Intrigues, and one that could conceal all within himſelf, and yet (when it would do him ſo much Injury) ſo open, as abſolutely to unboſom himſelf to one that was an abſolute Spy upon him and his Actions, and tell him ſuch Things, as no Man in the World ſure is ſuch a Fool as to tell another in his Circumſtances. But that I leave to the Jury (as my Lord *Cavendiſh* has ſaid) to conſider of the Impertinency of his long Story. When he had parted from my Lady *Lucy* he comes to *London*, and uſeth all the Diligence he could to find her out. On *Wedneſday* again he leaves *London*, when he could not find her, and goeth to his own Houſe: Upon *Thurſday* this Gentleman Mr. *Craven* comes thither to him. There he finds a Letter from my Lady *Harriett*, and becauſe he would be exact to his Word, he keeps a Copy of the Letter, and ſends the Original of it to my Lord *Berkeley*'s. Now no Man will imangine, if he had ſuch an Intrigue with this Lady, as they would make the World believe, that he would ever have ſent ſuch a Letter out of his Cuſtody, which would have been a colourable Excuſe for him. Nay, we do not reſt here, but by the Way we produce this Letter to this Gentleman, who it ſeems, was our Guardian, and told him moreover, Here is my Anſwer to this Letter, and ſends a Copy of his Anſwer with the Letter from her to my Lady *Berkeley*. Then there comes a ſecond Letter, and he, according to his Word, diſcovers that, and there is not one Circumſtance in all his Carriage that doth accuſe him. After this ſecond Letter was imparted to my Lord *Berkeley*'s Family, he continued a while at *Suſſex*, and afterwards, when he returned to *London*, he uſed all the Means imaginable, for a Perſon that was ſo near concerned in Point of Relation, and in regard of his own Reputation, to have found her out, but could not. Theſe are the Circumſtances of my Lord *Grey*'s particular Intereſt in this Matter, and when we have made out theſe Circumſtances, we hope the World will believe him not guilty. It ſeems the young Lady is now in Court; ſhe is ſo juſt, it ſeems, as to come to do my Lord Right, and that one Thing will knock all their Conjectures on the Head; for ſhe beſt knows what has been done, and the Jury will conſider whether this be imaginable, that my Lord *Grey* ſhould conceal her all this while, and produce her now, when if any Violence hath been offered her ſhe may freely tell it. And as for the Man that could tell ſo very readily this was the very Lady that came to his Houſe, when ſhe had ſo hooded and muffled up herſelf, we muſt leave him and his Credit to the Jury. We ſhall therefore deſire, when we come to the Cloſe of our Evidence, that this young Lady may be here examined upon her Oath, and then, I hope, the Truth will come out.

Mr. *Thompſon.* My Lord, becauſe your Lordſhip ſeems to be ſomewhat ſatisfied that there is a direct Proof of the Matter charged againſt my Lord *Grey*, therefore I ſuppoſe it will not be amiſs to open the Fact, and in three Words to ſtate the Charge, and the Nature of their Evidence to maintain it.—

L. C. J. Come, come, call your Witneſſes and make out your Defence.

Mr. Juſt. *Dolben.* If you can prove what Mr. *Williams* ſays, you do ſomething, but do not think to make long Speeches; go on to the Evidence.

L. C. J. Pray, Mr. *Thompſon*, do not you believe we want any of your

Help to recollect the Evidence given, or to direct the Jury about it, do you diſprove it if you can.

Mr. *Thompſon*, My Lord, the Courſe of Practice I always took to be ſo, to open and obſerve upon the Evidence given, and then anſwer it. But I ſubmit to your Lordſhip for that; you may do as you pleaſe.

Lord *Grey*. Then, my Lord, I deſire I may ſpeak ſomething myſelf. Certainly, my Lord, no Man ever lay under a more infamous Accuſation, than I now do; and therefore, I hope, your Lordſhip will pardon me, if I defend myſelf as well as I can from it; and undoubtedly, if in any Caſe a Man be allowed to ſpeak for himſelf, it muſt be allowed to me in this. My Honour lies here at Stake, and if my Life did ſo too, I am not, nor ſhould be more concerned to ſave that, than I am to clear my Reputation, which is and ought to be very dear to me. My Lord, were I guilty of the Villainies that here are laid to my Charge, I certainly ſhould need no other Puniſhment, I am ſure, I could not have a worſe, than the Reflections of my own Conſcience for them, and I ought to be baniſh'd the Society of Mankind. My Lord, I muſt confeſs, I have been ſo unhappy (tho' it is more than they could elſe prove) as to have a very great Kindneſs for this unfortunate young Lady, my Lady *Harriett Berkeley*: but yet, not ſo criminal a one as the Witneſſes that have been produc'd would have you to believe, nor as the Information would inſinuate. I do here proteſt, I was no way aſſiſting to her Eſcape, nor privy to it; nor have I ever at all ſince detained her from her Father, tho' I have ſuffer'd a Fortnight's cloſe Confinement and Impriſonment for it; and all this I doubt not to make out to your Lordſhip's and the Jury's Satisfaction. I ſhall ſay no more of the Juſtice of my Cauſe, but endeavour to prove it; and, my Lord, this is that which I ſay to it. The Evidence that has been given conſiſts moſt of ſuch and ſuch Diſcourſes that have been between the Witneſſes and myſelf, and thoſe I ſhall give what Anſwer is fit to be given to them. A Negative, as your Lordſhip very well knows, is not to be proved. Particular Diſcourſes we have had, of the ſame Nature as Mr. *Williams* has opened, about my cautioning them concerning her Attempts to go away; and I ſhall appeal to my Lady *Berkeley* herſelf, whether that be not ſo. If my Lady *Berkeley* own it to be true, I hope that is very good Proof. My Lord, about the time that they ſpeak of, concerning the Letter, which I take to be in *June* or *July*, I was ſent for by my Lady *Berkeley* into her Chamber; when I came there, my Lady told me there was a Letter, which, ſhe ſaid, was deſign'd to go from her Daughter to me. I aſked her, If ſhe had read the Contents of the Letter, ſhe ſaid, No. I aſked her, whether the Direction of the Letter were to me, ſhe could not tell that. But my Lady had told me, her Daughter had given her the Account of what had paſſed between us, that ſhe was ſatisfied there was a Correſpondence of Love between us. To remove all Fears, I proffer'd to abſent myſelf. I deſire my Lady may anſwer whether this be not ſo.

L. C. J. That will be to intricate the Buſineſs, to go on thus. Pray, my Lord, if you will aſk any Queſtion of any Body, tell them your Counſel, and let them aſk them, but to make long Diſcourſes all Day is not to be permitted.

Lord *Grey*. My Lord, I will aſk then my Queſtions all together by and by. My Lady *Berkeley* going down with my Lord to *Durdants*, deſired that my Wife might go down with her, to which I readily conſented. Soon after that, I fell ſick and kept my Bed a while. When I was well again, and going into *Suſſex*, I ſent for my Wife to Town, and would not go fetch her, becauſe I would keep my Word with her Ladyſhip. My Lady *Berkeley* thereupon wrote me a Letter, wherein ſhe thank'd me for not coming according to my Promiſe, and commended my Modeſty in it; and ſaid, There would be no Apprehenſion of any Ill from me, if I did come thither for a ſhort time. And thereupon being invited by her Ladyſhip, to take her Houſe in my way to *Suſſex*, I did come down thither. And I urge this, to ſhew that there was no Conſpiracy or Deſign of any ſuch thing in me, for I had not gone to *Durdants*, if I had not been ſent for, and ſo there was no deſign in my going. When I came thither it was the *Tueſday*, and on the *Thurſday* my Lady *Berkeley* did acquaint me, She was under great Apprehenſions and Fears; and I aſked her the Reaſon of it. She told me, That ſhe had been at ſome Eaſe, her Daughter having made a great Submiſſion to her, and Promiſe of conſtant Obedience, and that ſhe would do all as ſhe would have her, if ſhe would but give her Leave to go to Town with her; but yet, for all this, one Morning ſhe puts on her Hoods and Scarfs, and was going away, and had done it, but that the *French* Woman and another prevented it. I told my Lady *Berkeley* then, Madam, ſaid I, I have good reaſon to believe ſhe may have ſome ſuch Intention. I did not give my Reaſon at that time, but I ſhall by and by. But, ſaid I, if ſhe do go away, I cannot imagine but that it is poſſible ſhe may ſend to me, and I will give your Ladyſhip notice as ſoon as ever I know; and tho' you ſeem to be ſatisfied, and to think your Daughter ſecure here, yet you do not think her ſo indeed; and you muſt needs uſe her ill, or ſhe would have no Thoughts of going from you. For my Part, if ſhe do go away and come to me, I will ſhun it as I would Death, and you have now fair warning; ſhe is all Day in your Eye, pray be ſure to lock her up ſafe at Night. Upon *Friday* following comes a Letter without a Name to it, and Mr. *Williams* has open'd to you the Contents of the Letter. She read the Letter when her Daughter was in the Room, who aſked what the Letter was, and being denied to have any Account of it, was in the greateſt Confuſion in the World, and leaped and run down Stairs like a mad Thing, and my Lady herſelf was very much diſturbed at it. When I ſaw the Letter, Madam, ſaid I, this Letter ought to confirm you in the Reſolution of taking my Advice; it can come from no Body, but ſome one that is to aſſiſt in the executing of this Deſign, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have ſufficient Caution given you to make you careful. Whereas, my Lord, if I had been in any ſort of Conſpiracy of that Nature, to take her away, my Lady *Berkeley* certainly ſhould have been the laſt Woman in the World that I would have communicated it to. My Lord, I went away from *Durdants* on the *Saturday*, and ſo to *Guilford*, where I lay that Night, and went on my Journey the next Morning, but was overtaken on the Road, by a Meſſenger from Lady *Lucy*, who was come to *Guilford* to ſpeak with me; when I came back to her, ſhe told me, My Lady *Harriett* was gone away that Night, and they did believe I knew where ſhe was. Said I, Madam, I have as great a Share in this Misfortune as any of you all, becauſe of your Suſpicion; but ſure you muſt have uſed her very ill and make her do this; and you are much to blame, when you had all that warning from me; why did you not ſecure her, and lock her up as I adviſ'd you? Said ſhe, She was lock'd up, but the Key was left in the Door. Upon this I went to *London*, and I had appointed my Lady *Lucy* to meet her on *Monday* Morning, to give an Account what I could learn; but I told her, that I had heard nothing of her, nor is there any Proof that I did ſee her at any time, till I own'd it before your Lordſhip at your Chamber. She ſeem'd not to believe me when I told her ſo. Madam, ſaid I, It is certainly true; and to convince you that I have no hand in this Matter, I will go immediately into *Suſſex*, and there I will ſtay as long as you will have me; and if you pleaſe to go yourſelf with me, or ſend any Body elſe, to obſerve what I do. She thought it not fit for herſelf to go with me: But my Lady *Berkeley* and ſhe afterwards pitched upon Mr. *Craven*, who had been a long time a Servant in the Family, and I agreed with my Lady in that, to have him, and receive him as a Spy upon me. Diſcourſing with my Lady *Lucy*, ſaid I, Madam, Now I will tell you the Reaſon, which I forbore to tell my Lady *Berkeley*, why I had good Ground to ſuſpect my Lady *Harriett* had a Deſign to go away, and it was this; My Lady *Harriett* came to me one Day, about ſix Weeks or more ago, in the Court-yard at St. *John*'s, and ſays ſhe to me, I am uſed like a Dog, I live the Life of a Slave here, I can endure it no longer; by the Eternal God that made me, I will not be alive long, unleſs I can ſet myſelf at Liberty. This I ſaid to my Lady *Lucy*; and theſe, ſaid I, were Reaſons enough for me to warn you to look well after her. I did, according to Agreement, go into *Suſſex* immediately; and I then told my Lady *Lucy*, I believed I might have a Letter from my Lady *Harriett*, by the *Wedneſday* Night's Poſt, becauſe, ſaid I, ſhe cannot write ſooner than that, and if I have, I will ſend you word. When I was there, Mr. *Craven* came the next Day to my Houſe; and as ſoon as he came, ſaid I, Here is a Letter I have received from my Lady *Harriett*, and if you will, you may take a Copy of it. I took a Copy of it myſelf, and ſent the Original of it to my Lady *Lucy*, though they have not thought fit to produce the Letter now in Court, that your Lordſhip and the Jury might ſee it. But here is mine, which is the firſt Account what was become of her after ſhe went away, that I received, except what Account I had from my Lady *Lucy* at *Guilford*; and this will ſhew to all the World, that I was not ſo much privy to her going away, as they ſay I was. I had denied to aſſiſt her in it, when ſhe complained to me of her ill Uſage; and when ſhe attempted to go away before, I, upon my Lady's telling me of it, gave her ſufficient Caution. And for the truth of all this, I appeal to thoſe very Witneſſes that have been produced againſt me. When I had ſhewn this Letter to Mr. *Craven*, I ſent it away by a Servant of my own, to my Lord *Berkeley*'s, and writ to my Lady *Lucy*, and deſired her to pen whatever Anſwer ſhe ſhould think fit to ſend. My Lady *Lucy* did write to me back again, and told me the Subſtance of what I was to write, but the penning of it ſhe did leave to me, for ſhe believed I would do it effectually. I did write an Anſwer to my Lady *Harriett*'s Letter, and that Anſwer I ſhewed to Mr. *Craven*, and aſked him if it were ſufficient, and he ſeemed to approve of it. The Lady herſelf is in Court, I know not whether ſhe can give an Account of the Letter, I ſuppoſe ſhe can tell you what an one it was. I had afterwards another Letter from her in Anſwer to mine, and that I have here, and it will appear by both of thoſe Letters, whether I had any Intereſt in her going away. Tho' perhaps that would not have been ſuch a Crime neither; and yet I think withal, that there is not a tittle of Proof that I had any hand in it, not one Proof of any Circumſtance like it. And if there be any Crime, it muſt be the taking her away, to ſuch an Intent and Purpoſe as is charged in the Information. Before I came to Town, I was ſent for about ſome other Buſineſs, yet I would not come till I had my Lady's Conſent; for I ſent her word, my Lady *Harriett* writ in her Letter, that ſhe was going beyond Sea, and if I went to *London* I might prevent it, but I would not go without my Lady's or Mr. *Craven*'s Conſent and Approbation. When I came to Town, I was one Day at the Coffee-houſe in *Covent-Garden*, I was then ſent to by this Lady, who was in an Hackney-Coach at the Door, and when I came to the Coach-ſide to her, ſhe gave me a tedious Hiſtory of her ill Uſage at home, which made her come away. And when your Lordſhip's Warrants were out to ſearch for her, I came up to your Lordſhip, and I dare appeal to your Lordſhip, whether I did not acquaint you, that ſhe only ſought for Protection, and was willing to return home, ſo ſhe ſhould be ſatisfied ſhe ſhould not be ill treated again. You then told me, I could not protect her againſt her Father. I then told your Lordſhip and my Lady *Berkeley*, She was not in my Houſe, nor in my Cuſtody. They replied, She was in my Power; but how could ſhe be in my Power, when ſhe was not in my Cuſtody, nor in my Lodging? But my Crime was, that I knew where ſhe was. And if I do deſerve Puniſhment for keeping my Word and Faith with her, which I gave her in a Letter, upon her Importunity not to betray her, I muſt ſubmit to it, I could not in Honour do otherwiſe. My Lord, I deſire this firſt Letter may be read, which was firſt ſent by my Lady *Harriett* to me.

L. C. J. Surely, my Lord, for all your long Diſcourſe, you cannot but apprehend yourſelf miſtaken, when you ſay there is no Crime charged in the Information, but the taking her away to ſuch an Intent and Purpoſe. Surely there are other Things beſides that. And what you ſpeak, if not proved, your Lordſhip knows, muſt paſs for nothing.

Mr. *Williams*. My Lord, your Lordſhip has made a right Diſtinction between Diſcourſes and Proofs. Therefore Diſcourſes between Strangers and third Perſons, are not to be ſtood upon, but the Proofs are; and all the Evidence together muſt be left to the Jury, to conſider what is material and pertinent, and what not. We ſhall therefore go on to our Evidence; and ſhall begin with my Lady *Berkeley* firſt, and aſk her Ladyſhip ſome Queſtions. And we deſire to know whether ſhe hath ſeen this Letter?

L. C. J. But take notice, the Letter you propoſe, we cannot read it.

Mr. *Williams*. But, my Lord, it was agreed between my Lady *Lucy* and my Lord *Grey*, that if he received any Letters from my Lady *Harriett*, he ſhould communicate them to my Lady *Berkeley*, and this Letter coming to him, he firſt ſhews it to *Craven*, this Man that was thus ſet as a Spy upon him, and after ſent it to my Lady *Lucy*, and whatſoever Anſwer they would have ſent, was promiſed ſhould be, and accordingly was firſt ſhewn to *Craven*, and then ſent. If this were the Agreement, and theſe Letters were thus written, then ſure we may read them.

L. C. J. You may aſk my Lady *Berkeley* any Queſtions, but muſt not read any ſuch Letters.

Mr. Serj. *Jeff.* Pray, Mr. *Williams*, let us go according to the courſe of Law, and give no Evidence, but what is fit to be given as Evidence.

Mr. *Williams.* Then thus, Madam, pray can you remember the Diſcourſe that paſt between my Lord *Grey* and your Ladyſhip in *June*, concerning your Daughter and him?

Lady *Berkeley.* Where?——Mr. *Williams.* At St. *John*'s.

Lady *Berkeley.* I do not well know what Diſcourſe you mean; but any particular Diſcourſe that was there I will anſwer to.

Mr. *Williams.* That Diſcourſe that paſt between you the firſt time that you acquainted my Lord *Grey* that you ſuſpected there was too much Familiarity between him and your Daughter.

Lady *Berkeley.* The firſt time do you ſay?

Mr. *Williams.* Yes, Madam; I think you were pleaſed to ſay, that upon your firſt Diſcovery, you ſent for him and talked with him.

Lady *Berkeley.* I did not ſay upon my firſt Diſcovery, but when I had diſcovered it. For I would be very punctual to the Truth in my Evidence.

Mr. *Williams.* You ſay, your Ladyſhip had ſome Diſcourſe with him in *June.*—Lady *Berkeley.* I think it was in *June.*

Mr. *Williams.* Pray, Madam, can you remember what my Lord *Grey* promiſed your Ladyſhip then?

Lady *Berkeley.* He told me then, he would obey me in any thing, even if I would baniſh him my Houſe.

Mr. *Williams.* Was there any Letter then produc'd by your Ladyſhip or my Lord *Grey*?—Lady *Berkeley.* Of what concern?

Mr. *Williams.* Any Letter that related to your Daughter?

Lady *Berkeley.* No; but I told him of a Letter that was found, that ſhe had writ to him.

Mr. *Williams.* Madam, pray have you that Letter, or any Copy of it?

Lady *Berkeley.* No, it was torn to Pieces; I can bring the Pieces, I believe, if there were occaſion.

Mr. *Thompſon.* Your Ladyſhip read it, I ſuppoſe?

Lady *Berkeley.* No, my Daughter *Bell* read it, and tore it in Pieces.

Mr. *Williams.* Was there any Diſcourſe between your Ladyſhip and my Lord *Grey*, about any other Letter?—Lady *Berkeley.* Not at that time.

Mr. *Williams.* Was there at any other time?

Lady *Berkeley.* Yes, at the *Charter-houſe* at my Lord's Houſe, one Day my Lord *Grey* deſired me to walk into the Gallery, for he had ſomething to communicate to me, and the Diſcourſe that paſt between us then was this; he ſhew'd me there a Letter of the paſſionate Love he had for her, with ſome good Counſel in it.

Mr. *Williams.* Did your Ladyſhip approve of the Counſel he gave her?

Lady *Berkeley.* Never when there was ſo much Love and Paſſion in the Letter.

Mr. *Williams.* Pray, Madam, recollect yourſelf, were you not pleaſed to like of that Letter?

Lady *Berkeley.* I could never like of the paſſionate Expreſſions in it; there might be ſomething in it well ſaid enough, but with the greateſt Expreſſions of Paſſion and Love; inſomuch, that he himſelf ſaid of it, Madam, I'm aſham'd of that Part, and would have had me overlooked it.

Mr. *Williams.* Did your Ladyſhip ſay, Her Father could not give her better Advice?—Lady *Berkeley.* Not that I know of.

Mr. *Thompſon.* Pray, Madam, did you ever ſay ſo?

Lady *Berkeley.* Surely I did not: For I could not but think he could give her a great deal better Advice.

Mr. *Williams.* Does your Ladyſhip, pray Madam, remember any Diſcourſe between my Lord *Grey*, and you, upon the *Thurſday* before your Daughter went away?—Lady *Berkeley.* I cannot tell for *Thurſday.*

Mr. *Williams.* Does your Ladyſhip remember the Letter you received from an unknown Hand?—Lady *Berkeley.* Yes, I do.

Mr. *Williams.* Did you ſhew that Letter, or read it to my Lord *Grey*?

Lady *Berkeley.* My Lord *Grey* came up to me, and ſeem'd to be very careful of my Concerns; Madam, ſaid he, Pray take care, for I ſaw a Letter directed to your Ladyſhip, without the Mark of the Poſt, or the Penny-Poſt upon it. And, ſaid he, I give you this Caution about it before it comes to you. Becauſe my Lord was by, I aroſe up and went to the other ſide of the Room, and my Lord *Grey* followed me, and when I took up the Letter, I ſaw ſomething that I thought to be very odd and unuſual in his Carriage, as if he were in great Diſorder, as I was; and I went to my Chamber, thither my Lord *Grey* followed me, and that Letter he would ſee, becauſe he ſaid, it had put me in ſome Diſorder: I told him he ſhould not ſee it as then. I ſent for my Daughter *Lucy* into my Cloſet, and ſhewed it her, and ſhe was in great Diſorder about it too.

Mr. *Williams.* Pray, Madam, can you remember whether that Letter did Caution you to look well to your Daughter, or elſe you were not like to have her Company long?

Lady *Berkeley.* The Letter did ſay ſome ſuch Thing, I muſt look after my Daughter, or I ſhould loſe her.

Mr. *Thompſon.* And this was on the *Friday* before ſhe left your Ladyſhip, Madam, was it not?—Lady *Berkeley.* Yes, it was ſo, I think.

Mr. *Williams.* Pray, Madam, what did my Lord *Grey* ſay upon that?

Lady *Berkeley.* He was extremely earneſt to ſee the Letter, becauſe, he ſaid, it had ſo diſordered me; and at laſt I was perſuaded to let him ſee the Letter; he turned the Letter up-ſide down, and looked on the Subſcription. Madam, ſays he, is this all that diſorders you ſo much, I am uſed to have many ſuch Letters by the Penny-Poſt; this is nothing but to amuſe you. It is a very ſilly Letter, and written by ſome Woman, as you may ſee by the Spelling.

Mr. *Williams.* Did he caution you to lock up your Daughter a-Nights to ſecure her?

Lady *Berkeley.* Not one Word upon this Letter; but the next Morning again talking about this Letter, he ſaid, It was a fooliſh Letter, and what ſhould I trouble myſelf about it for?

Mr. *Williams.* But, Madam, had you any Caution given you by my Lord *Grey* about this Time, to take care of your Daughter?

Lady *Berkeley.* Not that I remember, to lock her up.

Mr. *Williams.* What then did he ſay?

Lady *Berkeley.* I will tell you what he ſaid to me once or twice. Madam, whatever you do, do not make her deſperate. I aſked him what he meant by that Word? Said he, It is not neceſſary to explain that Word to you; I meant nothing, but do not uſe her Ill. Now, my Lord, I was ſo far from that, that I uſed her with all the Tenderneſs of a Mother, like a Siſter rather than a Daughter; nay, he himſelf has confeſſed, ſhe was better uſed than he imagined ſhe was.

Mr. *Williams.* Did your Ladyſhip, at any time, intimate to my Lord *Grey*, that you had any apprehenſions of her intending to go away?

Lady *Berkeley.* I did tell him, That when I was at *London*, my Woman that lay with her, did riſe about Eight o'Clock, and left my Daughter alone in the Room, and when ſhe came up again, my Daughter had put on her Hood and Scarf, and her Petticoat was pin'd up, as ready to go out, and the Woman being affrighted at this, called up my other Daughter, and ſo prevented it; and after came and told me ſhe had pin'd up her Petticoat thus about her, and ſhe did not know what ſhe meant to do. Upon this I went to my Daughter, and, ſaid I, What is the Reaſon that you pin'd up your Petticoat, and put on your Hood and Scarf? Says ſhe, I had not my Scarf on. But ſays my Woman to me, when I came into the Room, you thruſt ſomething into your Gown. It is true, I did ſo, Madam, ſaid ſhe, but it was upon this Account, I had got a Sheet of Paper, upon which I intended to write, and ſeeing her come in, I put it in my Gown.

Mr. *Williams.* Pray, Madam, did my Lord *Grey* at any time caution your Ladyſhip about your Daughter, to lock her up, or tell you his Opinion that he thought ſhe would leave you?

Lady *Berkeley.* I cannot poſitively ſay that; but he uſed to ſay to me, Madam, do not make her deſperate; I do not know that ever he adviſed me, as to the locking her up.

Mr. *Thompſon.* Did he deſire you, Madam, to take care that ſhe did not go away from you?—Lady *Berkeley.* I do not remember it.

Mr. *Williams.* Pray, Madam, can you tell who brought that Letter from an unknown Hand to you at *Durdants*?

Lady *Berkeley.* It came down with other Letters to my Lord's Steward.

Mr. Serj. *Jeff.* But your Ladyſhip ſays my Lord *Grey* was very ſolicitous about that Letter.

Lady *Berkeley.* Yes, Sir, he came to me, and very earneſtly cautioned me about it: For, ſaid he, I ſee there is neither the General-Poſt nor the Penny-Poſt Mark upon it. And knowing himſelf guilty of what he was guilty of, he might be afraid leſt my Lord ſhould ſee it, and ſo his Buſineſs come out.

Mr. *Williams.* Pray, my Lady *Lucy*, do you remember that ever my Lord *Grey* adviſed the locking her up?

Lady Lucy. Upon diſcourſing of the Letter that came from an unknown Hand, my Mother ſaid to my Lord *Grey*, Sure that is ſuch a horrid thing that it can never be done; my Lord *Grey* might then reply and ſay, If you fear it, you may lock her up: but I do deny that ever I heard him ſay any thing to caution my Mother, that he thought ſhe was going.

Mr. *Williams.* Madam, the Queſtion I aſk your Ladyſhip is, whether my Lord *Grey* did or no direct or adviſe to lock her up?

Lady *Lucy.* Upon my Mother's Diſcourſe concerning the unknown Letter, and how ſad a Thing that would be, he might ſay, That if ſhe feared that, ſhe might lock her up; but he never did ſay that he did think ſhe would go.

Mr. *Thompſon.* Pray, when was this, Madam? how long before ſhe left the Family?—Lady *Lucy.* The Day before.

Mr. *Williams.* Then, Madam, for the Diſcourſe you had with him at *Guilford*, what ſaid he he would do?

Lady *Lucy.* It was at *London*, that he paſſed his Word to go down into the Country.

Mr. *Williams.* What did he promiſe you to do there, Madam?

Lady *Lucy.* He ſaid he would not ſtir from *Up-Park* till he heard from my Father.

Mr. *Williams*, What did my Lord ſay to you, Madam, about the Letters he ſhould receive?

Lady *Lucy.* He did ſay he would ſend us all the Letters that came to him from her, and if any came to our Hands we were to open them.

Mr. *Williams.* Was my Lord *Grey* willing to receive a Spy, Madam, upon him?—Lady *Lucy.* Yes, he was.

Mr. *Williams.* Was there any Letter ſent to your Ladyſhip from my Lord *Grey*?

Lady *Lucy.* Yes, there was a Letter with one in it from my Lady *Harriett.*

Mr. *Williams.* Have you thoſe Letters by you, Madam?

Lady *Lucy.* No, I have neither of them here.

Mr. *Williams.* Can you tell the Contents of it?

Lady *Lucy.* I have told them already.

Mr. *Williams.* Pray, Madam, will you pleaſe to recollect yourſelf a little, when you were at *Guilford*, and told my Lord *Grey* that my Lady *Harriett* was gone away, did not my Lord tell you, you had not obſerved the Directions and Advice he gave about her, to lock her up; and did not you then anſwer him, Yes, the Door was lock'd, but the Key was left in?

Lady *Lucy.* I did reply, the Woman had not lock'd it carefully enough after her.

Mr. *Williams.* Did you not ſay, that the door was lock'd, but the Key was left in?—Lady *Lucy.* I do not remember a Word of that.

Mr. *Williams.* Madam, will you pleaſe to caſt your Eye upon that Letter, and ſee if that Paper be a true Copy of the Letter you had?

L. C. J. What Paper is that you offer, Mr. *Williams*?

Mr. *Williams.* It is a Letter from the young Lady to my Lord *Grey.*

L. C. J. You know no uſe can be made of that Paper, why do you offer it? It is contended that my Lord had the Lady in his Power, and then would not ſhe write any Thing?

Mr. *Williams.* Then, my Lord, there is th~~e young~~ Lady herſelf, we deſire ſhe may be examined.

Mr. Serj. *Jefferies.* But before we part with my Lady *Lucy*, if you have done, we deſire to aſk her a Queſtion: It is here inſinuated, as if there had been ſome Hardſhip put upon this young Lady, or ſome ill Uſage in her Father's Family: Now for the Honour of that noble Family, I would have that Point clear'd; and therefore, pray Madam, did you ever obſerve any Unkindneſs, any Severity or harſh Uſage, that was uſed to this Lady, by my Lord or my Lady at any time?

Lady *Lucy*. So far from that, that all of us had a Jealouſy that ſhe was loved beſt.

Mr. Serj. *Jefferies*. Pray take Notice of that, Gentlemen.

L. C. J. Pray, Madam, let me aſk you one Queſtion. After my Lady had diſcovered this Evil Affection between my Lord *Grey* and this young Lady, did ſhe then put any indecent Severities upon her, or uſe her very hardly?

Lady *Lucy*. My Lord, I came out of *France* but two Days before ſhe went away. I ſaw no ſuch thing.

Mr. *Williams*. We aſk her about my Lord *Grey*, and you aſk her about a third Perſon.

Mr. Serj. *Jefferies*. Oh good Mr. *Williams*, we know why we aſk her that Queſtion. It is an extraordinary Caſe. Pray my Lady *Arabella*, will you anſwer the ſame Queſtion?

L. C. J. Ay, Madam, pray let me aſk you; after this ill Buſineſs between my Lord and her was diſcovered, did my Lady *Berkeley*, (I cannot ſay my Lord, for he knew nothing of the Matter till ſhe was gone away) uſe her ill or unkindly?

Lady *Arabella*. No, no, my Lord; no Mother in the World could be more indulgent and kind. She did indeed find it neceſſary to have a ſtricter Eye over her, and ſhe did put a Woman about her to look after her, and did not permit her to write any Letters. She had, or expreſſed a greater Kindneſs for her, than any of us all beſides.

Lady *Berkeley*. Ay, and that my Lord *Grey* knows to be true.

L. C. J. No, no, when my Lord *Grey* was in his Paſſion, he might ſay ſo, but he has no Proof to ſhew of it.

Mr. Serj. *Jefferies*. My Lady *Lucy* and my Lady *Arabella*, what Perſon did you fear ſhould take her away, pray?

Lady *Arabella*. We were not afraid of any Body but my Lord *Grey*.

Lady *Lucy*. There was no Reaſon for fear of any Body but him.

Mr. *Williams*. My Lord, there is the young Lady, we deſire ſhe may be ſworn.

Mr. Att. Gen. We oppoſe it, Sir, and have very good Reaſon ſo to do, and we think it is time to do it now, if ever.

L. C. J. Why ſhould ſhe not be ſworn, Mr. *Attorney*?

Mr. Juſt. *Dolben*. If the Lady herſelf have the Confidence to be ſworn, I ſee no Reaſon why ſhe ſhould not.

Mr. Att. Gen. This Caſe, my Lord, is in the Nature of a Raviſhment of Ward, for it is for taking a young Lady out of the Tuition and Cuſtody of her Father, who is her Guardian by Nature, and it is apparent in the Proofs, ſhe is highly Criminal in this very Matter herſelf, in conſenting to go away in ſuch a Manner, and to ſuch an evil Purpoſe; and now ſhe comes to excuſe one, that is not only a Partaker in her Fault, but the firſt Seducer. Now, my Lord, when we have proved this Matter of Love upon her, that is laid in the Information, ſure ſhe cannot be a Witneſs for them, ſhe would be a Witneſs to excuſe herſelf.

L. C. J. Mr. *Attorney*, I do think truly, that notwithſtanding what you ſay, ſhe may be a Witneſs, being no Party to the Information. But withal, I think there is very little Credit to be given to what ſhe ſays.

Mr. *Williams*. Sure theſe Gentlemen forget themſelves much in offering to hinder or oppoſe one's being a Witneſs, that is no Party in the Cauſe.

Mr. Serj. *Jefferies*. Truly, my Lord, we would prevent Perjury if we could. [*Then ſhe was ſworn.*]

L. C. J. Brother *Jefferies*, we cannot oppoſe it, if they will preſs it, and ſhe conſent; but I tell you what I think of it.

Mr. *Williams*. If ſhe be ſworn, my Lord, we would aſk her a Queſtion or two. Madam, we would deſire your Ladyſhip to anſwer whether my Lord *Grey* had any hand in your Eſcape?

Lady *Henrietta*. No, Sir.

Mr. Juſt. *Dolben*. You are upon your Oath, Madam; have a care what you ſay; conſider with yourſelf.

Lady *Henrietta*. Yes, I know I am upon my Oath, and I do upon my Oath ſay it.

Mr. *Williams*. Did my Lord *Grey* adviſe you to it?

Lady *Henrietta*. No, I had no Advice from him, nor any Body about him, nor did he know any Thing of it, it was all my own Deſign.

Mr. Serj. *Jefferies*. Madam, I would aſk you this Queſtion, and pray conſider well before you anſwer it. Did you ſee my Lord *Grey* on the *Sunday* after you went away from your Father's?

Lady *Henrietta*. No, I did not.

Mr. Serj. *Jefferies*. Did you ſee him on *Monday*?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Did you on *Tueſday*?—Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Did you on *Wedneſday*?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Good God! Pray, Madam, how long afterwards was it that you ſaw him?

Lady *Henrietta*. Sir, it was a great while after.

Mr. *Williams*. How many Days or Weeks after was it?

Lady *Henrietta*. Sir, I cannot tell.

Mr. Serj. *Jefferies*. As near as you can, Madam, when was it?

Lady *Henrietta*. I can remember the firſt Place that I ſaw him at after, but the Time exactly I cannot.

Mr. *Williams*. Where was that, Madam?

Lady *Henrietta*. It was in a Hackney-Coach.

Mr. *Williams*. That was the Time, I ſuppoſe, that you ſent for him out of the Coffee-Houſe in *Covent-Garden*?

Lady *Henrietta*. Yes, I did ſo.

Mr. *Williams*. Pray, Madam, did you write any Letter to my Lord *Grey* after your going away?

Lady *Henrietta*. Yes, I did by the next Poſt.

Mr. *Williams*. When did you write that Letter, Madam?

Lady *Henrietta*. I did write it upon the *Tueſday* after I came away. I hope that is no Offence.

L. C. J. No? Is it not? You ſhould have writ to ſome Body elſe ſure.

Lady *Henrietta*. I thought him the fitteſt Perſon for me to write to, and I did not imagine it would be any ways ſcandalous for him, he being the neareſt Relation I had in the World, except my own Brother, that could protect me.

Mr. *Williams*. Had you any Anſwer from my Lord *Grey* to that Matter, Madam?

Lady *Henrietta*. Yes; and a very harſh Letter it was.

Mr. *Williams*. Did you write him any other Letter?

Lady *Henrietta*. Yes; but I received no Anſwer of it at all.

Mr. *Thompſon*. Pray, Madam, did my Lord *Grey*, at any time, perſuade you to return to your Father's?

Lady *Henrietta*. Yes, he did ſo ſeveral times.

Mr. Serj. *Jefferies*. Pray, Madam, do you know *Charnock*, that was my Lord *Grey*'s Gentleman?—Lady *Henrietta*. Yes, I do.

Mr. Serj. *Jefferies*. Upon your Oath, did not he carry you away from *Durdants*?——Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Nor did not his Wife aſſiſt you in it?

Lady *Henrietta*. No.

Mr. Serj. *Jefferies*. Nor was ſhe not with you on the *Sunday* Morning?

Lady *Henrietta*. No, nor was not with me.

Mr. Att. Gen. Were you not at Mrs. *Hilton*'s then, Madam?

Lady *Henrietta*. No.

Mr. Att. Gen. Were you at *Patten*'s?———Lady *Henrietta*. No.

Mr. Sol. Gen. Nor at *Jones*'s?

Lady *Henrietta*. No, nor at *Jones*'s upon my Oath.

Mr. Att. Gen. Pray, who did come with you from *Durdant*'s?

Lady *Henrietta*. I ſhall not give any Account of that, for I will not betray any Body for their Kindneſs to me.

Mr. *Wallop*. If it be no Body in the Information, ſhe is not bound to tell who it was.

Lady *Henrietta*. If I have vowed to them before, not to diſcover, I will not break my Vow to them.

Mr. Juſt. *Dolben*. If they aſk you of any Body in the Information, you have heard their Names, you muſt tell if it were any of them, but you are not bound to tell if it were any one elſe.

Lady *Henrietta*. No, it was none of them. I went away upon another Account.

L. C. J. If you have no further Queſtions to aſk her, pray, Madam, ſit down again.

Lady *Henrietta*. Will you not give me leave to tell the Reaſon why I left my Father's Houſe?

Mr. Juſt. *Dolben*. If they will aſk you it they may. You are their Witneſs.

Mr. *Williams*. No, my Lord, we do not think fit to aſk her any ſuch Queſtion; ſhe acquits us, and that is enough.

Lady *Henrietta*. But I deſire to tell it myſelf.

L. C. J. Truly, I ſee no Reaſon to permit it, except we ſaw you were a more indifferent Perſon to give Evidence than we find you.

Lady *Henrietta*. Will you not give me leave to ſpeak for myſelf?

Mr. Juſt. *Dolben*. My Lord, let her ſpeak what ſhe has a Mind to, the Jury are Gentlemen of Diſcretion enough, to regard it no more than they ought. But, Madam, for God's ſake conſider you are upon your Oath; and do not add willful Perjury to your other Faults.

Lady *Henrietta*. I have been very much reflected upon here to Day, and my Reputation ſuffers much by the Cenſure of the World, and therefore—

L. C. J. You have injured your own Reputation, and proſtituted both your Body and your Honour, and are not to be believed.

Mr. Juſt. *Jones*. You are, Madam, to anſwer only ſuch Queſtions as are aſked you pertinent to the Iſſue that the Jury are to try, and if the Counſel will aſk you no Queſtions, you are not to tell any Story of yourſelf.

Mr. *Ireton*. My Lord, as to the Evidence of *Patten*, the Caſe is quite otherwiſe than they would repreſent it to be, about *Charnock*'s coming thither for Lodgings, for Mrs. *Patten* is a Midwife, and uſed to lay Mrs. *Charnock*, and it was for her to lye in at *Patten*'s Houſe, becauſe it would be inconvenient to lye in at my Lord *Grey*'s.

L. C. J. What does that ſignify? But prove what you can.

Mr. *Thompſon*. Where is Mrs. *Patten*, they would not produce her, becauſe they knew it was againſt them? [*She appearing was ſworn.*]

L. C. J. Well, what do you aſk of this Woman now?

Mr. *Ireton*. I would aſk her, my Lord, whether were there any Lodgings beſpoke in your Houſe againſt *September*?

Mrs. *Patten*. I know nothing of that.

Mr. *Ireton*. Was there any Body in *June* or *July* at your Houſe to beſpeak Lodgings?

Mrs. *Patten*. I cannot tell the Month nor the Day.

Mr. *Thompſon*. Pray Miſtreſs ſpeak what you do know.

Mrs. *Patten*. Mr. *Charnock* and his Wife did come to my Houſe laſt Summer.

Mr. *Williams*. What was their Buſineſs?—Mrs. *Patten*. For Lodgings.

Mr. *Thompſon*. Did they tell you who they were for? Did they talk about Lying-in?

Mrs. *Patten*. They were only for his Wife.

Mr. *Ireton*. Did he tell you what time he ſhould come?

Mrs. *Patten*. He did tell me they were not fit to come into yet, but they might at ſuch a Time, but ſhe did not know her own Reckoning: But they were not taken.

Mr. *Ireton*. Are not you a Midwife?

Mrs. *Patten*. I was Mrs. *Charnock*'s.

L. C. J. What is that to this Purpoſe?

Mr. Serj. *Jefferies*. Now you are ſweetly brought to Bed.

Mr. *Ireton*. Pray, Woman, will you tell what they ſaid to you.

Mrs. *Patten*. Mr. *Charnock* and his Wife came to our Houſe for Lodgings. I aſked her who they were for; ſhe ſaid they were for a Gentlewoman. I aſked her who ſhe was. Says ſhe, For myſelf to lye in here. Said I, How comes that about? Says ſhe, About the Time that I reckon my Lord's Family will be in Town, and I find it not convenient to lye in at our own Houſe; then my Father and Mother have ſent for me into the Country, to lye in there, but I cannot think of going thither, becauſe of changing my Midwife. Then, ſaid I, truly, Mrs. *Charnock*, any thing in my Houſe is at your Service. Said ſhe, I think it convenient rather to be here than to go into the Country; but I do not deſire that my Lord's Family ſhould know that I intend to lye-in here, for I would not inconvenience my Lady's Houſe, and yet my Lady, it may be, will not permit me to go out.

L. C. J.

L. C. J. But, Miſtreſs, there came one to your Houſe from Mrs. *Hilton*'s, Who was that?

Mrs. *Patten.* I do not know; I was not at Home then.

L. C. J. Did you not come Home before they went away?

Mrs. *Patten.* No, Sir.

Mr. Serj. *Jefferies.* Was that Woman they brought to lye in in your Houſe, Miſtreſs?—Mrs. *Patten.* Who do you mean, Sir?

Mr. Serj. *Jefferies.* The other Gentlewoman that came with Mrs. *Charnock* and Mrs. *Hilton.* The Lady that ſpoke juſt now.

Mrs. *Patten.* I do not know; I never ſaw her Face in my Life, that I know of; what my Huſband ſaw I cannot tell, I ſaw her not; it may be ſhe, it may be not, for any thing I know.

L. C. J. Well, Gentlemen, have you done, will you call any more Witneſſes?

Mr *Williams.* We have done, unleſs they call any more.

Mr. Serj. *Jefferies.* We ſhall only call a noble Lord, my Lord of *Aileſbury*, to teſtify what he knows, being very much converſant in the Family, of the Treatment he has obſerved of this Lady.

L. C. J. That needs not, for there is no Body that fixeth any thing of the Matter upon my Lord or my Lady.

Mr. *Wallop.* We do hope in your Lordſhip's Obſervations upon the Evidence to the Jury, you will pleaſe to take Notice, that there is no Colour of Evidence of any actual Force upon the Lady which is laid in the Information, that my Lord did *vi & armis abducere*, &c.

L. C. J. Oh, Mr. *Wallop*, fear not, I ſhall obſerve right to the Jury; but you have read the Book that is written concerning Juries lately, I perceive.

Mr. Serj. *Jefferies.* He has ſtudied ſuch Books no doubt, and has learned very good Counſel from *Whitacre.*

L. C. J. Look you, Gentlemen of the Jury, here is an Information on the behalf of the King, againſt my Lord *Grey*, and the other Defendants; and it doth ſet forth, that my Lord *Grey* having married one of the Daughters of the Earl of *Berkeley*, and having Opportunity thereby of coming to the Earl of *Berkeley*'s Houſe, he did unlawfully ſolicite the Lady *Henrietta*, another Daughter of the Earl of *Berkeley*'s, a young Lady, to unlawful Love; and that he did entice her from her Father's Houſe; and that he did cauſe her to be conveyed away from thence againſt her Father's Conſent; and that he did unlawfully uſe her Company afterwards in a very ill Manner, an unjuſtifiable Manner; and this, Gentlemen, is the Subſtance of the Information; in truth, it is laid, that he did live in Fornication with her. Now, Gentlemen, to this, my Lord *Grey*, and the other Perſons, the *Charnocks* and the *Jones*'s have all pleaded not Guilty to it. Now then, the Queſtion before you is, whether there were any ſuch unlawful Solicitation of this Lady's Love; and whether there was any Inveiglement of her to withdraw herſelf and run away from her Father's Houſe without his Conſent; and whether my Lord *Grey* did at any Time frequent her Company afterwards. Gentlemen, the Evidence that has been given, you have heard what it is, and it is very plain, if you do believe theſe Witneſſes that ſpeak it from my Lord's own Mouth) that he hath a long time unlawfully ſolicited her to Luſt. For there is nothing elſe in it, Gentlemen, (that is the plain *Engliſh* of it all) he has enticed her to unlawful Luſt. My Lady ſhe gives Evidence of it from his own Mouth, that there was an Intrigue of unlawful Love between them: She ſays my Lord *Grey* condemned himſelf for it ſeveral times, but yet proſecuted it; he own'd it was a moſt diſingenuous and diſhonourable thing in him, which indeed it was; he did therein in Truth make a right Eſtimate of the thing. He did own he had betrayed the Family, and brought it into great Scandal, and had abuſed both Father and Mother by this unlawful Solicitation of their Daughter to this unworthy wicked Affection; but he excuſed it all with the Greatneſs of his Paſſion, and that was all; he pray'd her to conſider, it was a great and paſſionate Love, a Love that he could not reſiſt; he loved her above all Women living, and many fair Promiſes of Amendment and deſiſting he made, but you ſee how he has performed them. You hear my Lady *Arabella* tells you there was a Letter written by my Lady *Harriett*, this Lady that appears now in Court as a Witneſs for my Lord *Grey*, which ſhe had out of her own Hand, and ſhe tells you the Effect of it; it was to invite my Lord another Night, as he had been with her a former Night; and to ſhew the Greatneſs of her Longing for him, ſhe deſires it might be quickly, not to ſtay till *Monday*, for if he did, ſhe ſhould be mighty impatient, if he delayed ſo long; and withal ſhe told him, her Siſter *Bell*, which I take to be my Lady *Arabella*, had not diſcovered it, nor heard the Noiſe that was between them that Night they were together. My Lady *Lucy*, ſhe tells you, he owned there was an unlawful Love between him and her Siſter, it muſt needs then be true, if he owned it to her, and he ſaid that it put him upon mighty Inconveniencies, and he owned he had done ſo much wrong to the Family, that he could never repair it. You hear my Lady tells you ſhe forbid him the Family; and you hear likewiſe, what little Deſigns he had, and what he pretended that he might continue to come to the Famliy, if you believe my Lady. For he pretended that this would be the way to make it publick, if he were forbid the Houſe altogether; but he would be under her Direction, he would do nothing but what ſhe ſhould approve of; that he would not apply himſelf to her Daughter to ſpeak to her, nor write to her. And you hear that for all this, he did, before my Lady *Arabella*, vent a great deal of Paſſion for her, that ſhe was the only Perſon in the World he had any Love for; that my Lady *Arabella* tells you ſhe heard him ſay, when he had ſeen her fall down like a dead Woman. When he had made my Lady a Promiſe that he would not come without Leave, he ſends his own Wife thither firſt to beg that he might come down, and very earneſt and importunate ſhe was with her Mother, not knowing any thing of the Intrigue, but was made inſtrumental to get Leave to come down. And at Length Leave was given him to dine there, as he went to *Suſſex*; but he comes at Nine o'Clock at Night, and then Excuſes were made by him for it; and my Lord *Berkeley* deſiring him to ſtay, who was not acquainted with the unlawful Affection that was between his Daughter and him, and accordingly he did ſtay till *Saturday.* You hear, Gentlemen, what is ſaid to you now, as to her carrying away, for all that has been hitherto obſerved to you, has been only to the unlawful Solicitation of this Lady to unlawful Love. My Lady tells you, that that very Night that my Lord *Grey* went from her Houſe was her Daughter carried away. You ſee then, the Queſtion will be, whether my Lord had any hand in carrying her away, and for that you muſt weigh theſe Circumſtances. It is pretty manifeſt that this Coach-man, that is, *Charnock* did carry her away. Now the Chaplain, tells you, that my Lord was earneſt in ſeveral Diſcourſes that Day with *Charnock*, and under ſome great Trouble, he could diſcern that in his Countenance; and ſeveral times he was ſent for to him, as tho' there was ſome mighty earneſt Buſineſs impoſed upon *Charnock* to do. *Charnock* made as tho' he went away, it ſeems with his Lord, who went away about Four o'Clock; and the Lady was carried away in the Morning between Twelve and One, which is the Time ſpoken of. Now to prove that *Charnock* carried her away, you have theſe Circumſtances: She was brought to the Houſe of *Hilton*, there was a Lady brought in there that Morning about Nine o'Clock by *Charnock*; *Charnock* was the Afternoon before going to *Up-Park* with his Lord, but it is manifeſt that he was back that Morning at *London*, and ſo brought the Lady thither that Morning If you believe *Hilton*, the Witneſs, it is manifeſt ſhe had been a Journey, and was very weary, ſo that ſhe was fain to go to Bed at Nine o'Clock. This Lady that was there brought by *Charnock* and his Wife, was afterwards carried to *Patten*'s Houſe, Mrs. *Hilton* ſwears it; and Mr. *Patten* ſwears they did come in there. There was a great deal of Policy uſed in the Caſe, and Care taken; and Mrs. *Hilton* tells you why; they ſaw ſome Men about the Door, which they were afraid might be Men that came to look after the Lady, and ſo they ſlid away thro' the Back-door, which proves ſomething in that ſhe was to be concealed. Then conſider the Circumſtances of the Clothes that do ſo exactly agree. There was a Gown with red and green Flowers ſtriped, and there was Petticoat ſtriped with red, and a white quilted Petticoat under that the Lady had on that came to *Patten*'s; and the Lady's Woman who lay with her and look'd after her, deſcribes to you her Gown and Petticoat to be the ſame as thoſe were that the Lady had on, who was hurried away from *Patten*'s Houſe at Night to another Lodging. We cannot indeed diſcover where that was. Now then, after this, my Lord *Grey*, he undertakes to my Lady *Berkeley*, that he would go to *Up-Park*, and ſtay there till he had Leave to come to Town. *Patten* who ſaw the Lady, ſwears this is the very Lady that ſits here, and who has been examined, but denies it. If ſhe was the Lady that was brought to *Patten*'s, ſhe was the ſame that was brought to *Hilton*'s, whither *Charnock* brought her; and ſo there is a full Evidence of the Guilt of *Charnock* and his Wife, who was the Solicitor about the Buſineſs, took Lodgings for her, help'd her away from *Hilton*'s, and help'd her to *Patten*'s, and from *Patten*'s ſomewhere elſe. So that if you believe them, *Charnock* and his Wife are both Guilty. As to my Lord *Grey*, who went to *Up-Park* on the *Wedneſday*, ſoon after he came to Town again, and it is poſitively ſworn that he came to *Jones*'s upon the *Tueſday*, and ſent for *Jones* out to come to him, who was in a Hackney-Coach, where he diſcourſed with him a pretty while, and afterwards the Room is provided for the Lady up two Pair of Stairs in *Jones*'s Houſe. She is brought thither, my Lord *Grey* came twice to the Houſe, and both Times without his Perriwig, as the Maid ſwears ſhe knew him very well, and there he took Lodgings for a Lady, and that Lady came afterwards. Now if this falls out to be my Lord *Berkeley*'s Daughter, then you have it puſh'd home upon my Lord *Grey*. That this was my Lord *Berkeley*'s Daughter, you have this Evidence made up of Circumſtances. *Firſt*, The Policy uſed in the Caſe by my Lord, to have all ſo privately managed. Another Circumſtance there is, tho' at firſt it ſeems but ſlight, yet if it be well conſider'd will ſignify very much, and that is what the Maid does teſtify. She ſays her Linnen was brought down to be waſhed, and there was a Shift that was very remarkable, for it had the Body of one ſort of Cloth, and the Sleeves of another, and that ſhe took ſpecial Notice of it, and thence would have concluded that the Lady was not a Perſon of Quality; and another of thoſe very Shifts that belonged to my Lady *Harriett* was brought to her afterwards, and ſhe ſwears it was of the ſame Faſhion and Make with that which the Lady had that lodged in their Houſe; and it was, as all do agree, juſt in the ſame manner as this was, with the Body of one Cloth and the Sleeves of another. Then, there is Colonel *Fitz-Gerrard* was in thoſe very Lodgings at that time; and he comes and tells you, that having heard of my Lord *Berkeley*'s Daughter's Departure from her Father, and conſidering the Circumſtances that he had heard the Maid ſay that it was my Lord *Grey*'s Miſtreſs that was brought in thither, and ſuch other Circumſtances concurring, he did conclude this to be the Lady, and he tells *Jones* his Suſpicions concerning it (whoſe Wife was by the Way ſo very officious to conceal the Lady, that ſhe would not ſuffer her Maids to come up Stairs, but would rather ſhut up the Shop-windows herſelf, than the Maids ſhould come to ſee her.) Mr. *Jones* having Diſcourſe with the Colonel about this, and finding the Lady was ſmoked, was angry at the Colonel's Curioſity, which increaſed the Colonel's Suſpicion. He told *Jones*, This muſt needs be the Lady, and I will ſee her. Which he very much fearing, intreated him not to diſturb his Houſe at that time of Night, and upon Promiſe to let him ſee her the next Morning, he deſiſted; but told him, He knew not what he was doing, he did a very ill thing to conceal a young Lady from her Friends; her Father and Mother not knowing where ſhe was, might give her over for Dead. But in the Morning the Lady was convey'd away. This, to me is a ſhrewd Circumſtance that *Jones* knew her to be the Lady, and to conceal all the Matter, got ſo much time to ſend her away. To what Purpoſe elſe was ſhe carried away, when the Colonel was to ſee her, that he might be ſatisfied about his Suſpicion, and ſo acquaint her Father? But ſhe was conveyed away preſently. Gentlemen, it is manifeſt by all the Witneſſes, and by what the Defendants Counſel themſelves opened, that under this Abſence of the Lady from her Father, he had an Intercourſe of Letters with her, which is a great Circumſtance to prove that ſhe was carried away by his Contrivance. He could tell the Lady *Lucy*, That ſhe ſhould never be brought back again, without he might have leave to viſit her. So that, it ſeems, he had full Power over her. There is another Gentleman, who has told you he was ſet as a Spy over him; and if you believe him, my Lord *Grey* has made a Confeſſion to him as he would to his Ghoſtly Father; he has told you the Intrigue of all his unlawful Love, from the Beginning to the End; how long he was engaged in it before he had any Comfort from the Lady, when he had the firſt Demonſtration of Kindneſs from her, and the whole Matter all along. There is another Gentleman that was ſent to treat with my Lord (Mr. *Smith)* concerning this; he tells you my Lord *Grey* and he being in a long Diſcourſe, he offered that he would deliver her to one Perſon, but not to another: She ſhould be firſt ſent to his Brother-in-law, Mr. *Nevil*'s in *Berkſhire*; afterwards to another Place, Mr. *Petit*'s, ſo as he might have Acceſs to her; but he tells you alſo, this was the Concluſion of all, He would never part with her, nor never deliver her, upon any other Terms, than that he might have Acceſs to her whenever he would. Now lay all this together, and ſee what it amounts to. He that had ſo great a Paſſion for her, he that could not be without the Sight of her, but uſed ſuch Ways to come to ſpeak to her; he that had Letters from her all along; he that had ſuch Power over her, that he could deliver her, as he ſaid, or not, and would keep her in Spite of her Father, unleſs he might have Leave to viſit her as often as he pleaſed; and conſider then, I ſay, whether it is not more than probable, that he had a Hand in carrying her away. It is plain, beyond all Contradiction, ſhe was carried away by his Man, who was in his Company that Night; he pretended to go to *Up-Park*, but was in *London* the next Morning by nine o'Clock. My Lord came afterwards to take Lodgings for her, two Days one after another. Whether then he be not as guilty as *Charnock*, or any of the reſt, nay, indeed, the main Mover of this ill Thing, you are to conſider upon the Evidence that has been given. But you muſt, withal, take into your Conſideration, what my Lord *Grey* ſays for himſelf. He has aſked ſeveral Queſtions of the Ladies that were examined, but truly never a one worth the remembring, that I know of, or that made to his Purpoſe. He does indeed pretend that the young Lady was hardly uſed at Home, and that ſhe fled to him as to a Sanctuary for Protection; and you hear the ſeveral Witneſſes examined to that Point; and they all ſay ſhe was uſed, notwithſtanding the Diſcovery of this ill Buſineſs, with the greateſt Kindneſs and Reſpect that a Child could be uſed with by her Mother, and no Hardſhip put upon her, but only ſhe was forbid to write any Letters to my Lord *Grey*, and had a Maid put upon her, to keep her from running away, becauſe once before ſhe attempted it, as her Mother did believe. The Lady herſelf is here, ſhe has been examined; ſhe indeed denies this all along; ſhe ſays that this Coach-man *Charnock* did not carry her away; ſhe ſays ſhe was not at *Hilton*'s, nor at *Patten*'s, nor at *Jones*'s; that ſhe never ſee my Lord *Grey* till a long Time after ſhe went from her Father's. But this is all diſproved by the other Witneſſes; and ſo whether you will believe her ſingle Teſtimony, or their's, I muſt leave it to you. You muſt conſider under what Circumſtances ſhe is, and truly ſhe doth not ſeem to be any Way fit to be believed in this Matter. *Jones* and his Wife are as guilty as any of the reſt, for their Contrivance to keep her ſecret, eſpecially, after that he had promiſed *Fitz-Gerrard* to let him ſee her. Look you, as to the long Diſcourſe my Lord *Grey* made, I muſt tell you, it is not to be believed further than it is proved. Now my Lord *Grey* did tell us, that he from Time to Time had given Caution to my Lady, that ſhe ſhould look to her Daughter, and lock her up, for elſe ſhe would, as he believed, run away. My Lady denies it all, and ſo it goes all for nothing, and you are to take no Notice of it. I muſt leave it to you, whether you do believe what theſe Witneſſes have ſworn, if you do believe the Evidence produced for the King, moſt certainly they are all five guilty of the Charge in the Information.

Mr. Juſt. *Dolben*. There is no Evidence againſt *Rebecca Jones*.

L. C. J. No, there is not.

Mr. Serj. *Jefferies*. No, we cannot inſiſt upon it that there is, you muſt find her not guilty.

Mr. Juſt. *Jones*. I muſt remember you of one Thing, Gentlemen, and that is, what drop'd from my Lord *Grey*'s own Mouth, that when my Lord, as he ſays, gave his Advice that ſhe ſhould be looked after carefully, he would not give his Reaſon for it, but after he did, as he ſays, tell it my Lady *Lucy*, that ſhe complained to him at St. *John*'s, that ſhe led the Life of a Dog, or a ſlave, and ſhe would not endure it any longer, and deſired him to aſſiſt her, or ſhe would do herſelf a Miſchief. Why was not this told before?

L. C. J. Ay, but Brother, my Lady *Berkeley* denies it all too.

[*Then the Jury began to withdraw.*]

Earl of *Berkeley*. My Lord Chief Juſtice, I deſire I may have my Daughter delivered to me again.

L. C. J. My Lord *Berkeley* muſt have his Daughter again.

Lady *Henrietta*. I will not go to my Father again.

Mr. Juſt. *Dolben*. My Lord, ſhe being now in Court, and there being a *Homine replegiando* againſt my Lord *Grey*, for her, upon which he was committed, we muſt now examine her. Are you under any Cuſtody or Reſtraint, Madam?——Lady *Henrietta*, No, my Lord, I am not.

L. C. J. Then we cannot deny my Lord *Berkeley* the Cuſtody of his own Daughter.

Lady *Henrietta*. My Lord, I am married.

L. C. J. To whom?——Lady *Henrietta*. To Mr. *Turner*.

L. C. J. What *Turner*? Where is he?

Lady *Henrietta*. He is here in Court.

[*He being among the Crowd, Way was made for him to come in, and he ſtood by the Lady and the Judges.*]

L. C. J. Let's ſee him that has married you. Are you married to this Lady?——Mr. *Turner*. Yes, I am ſo, my Lord.

L. C. J. What are you?——Mr. *Turner*. I am a Gentleman.

L. C. J. Where do you live?

Mr. *Turner*. Sometimes in Town, ſometimes in the Country.

L. C. J. Where do you live when you are in the Country?

Mr. *Turner*. Sometimes in *Somerſetſhire*.

Mr. Juſt. *Dolben*. He is, I believe, the Son of Sir *William Turner* that was the Advocate, he is a little like him.

Mr. Serj. *Jefferies*. Ay, we all know Mr. *Turner* well enough. And to ſatisfy you this is all a Part of the ſame Deſign, and one of the fouleſt Practices that ever was uſed, we ſhall prove he was married to another Perſon before, that is now alive, and has Children by him.

Mr. *Turner*. Ay, do, Sir *George*, if you can, for there never was any ſuch Thing.

Mr. Serj. *Jefferies*. Pray, Sir, did not you live at *Bromley* with a Woman as Man and Wife, and had divers Children, and living ſo intima were you not queſtioned for it, and you and ſhe owned yourſelves to be Man and Wife?

Mr. *Turner*. My Lord, there is no ſuch Thing; but this is my Wife I do acknowledge.

Mr. Att. Gen. We pray, my Lord, that he may have his Oath.

Mr. *Turner*. My Lord, here are the Witneſſes ready to prove it that were by.

Earl of *Berkeley*. Truly as to that, to examine this Matter by Witneſſes, I conceive this Court, though it be a great Court, yet has not the Cognizance of Marriages: And though here be a Pretence of a Marriage, yet I know you will not determine it, how ready ſoever he be to make it out by Witneſſes, but I deſire ſhe may be delivered up to me, her Father, and let him take his Remedy.

L. C. J. I ſee no Reaſon but my Lord may take his Daughter.

Earl of *Berkeley*. I deſire the Court will deliver her to me.

Mr. Juſt. *Dolben*. My Lord, we cannot diſpoſe of any other Man's Wife, and they ſay they are married. We have nothing to do in it.

L. C J. My Lord *Berkeley*, your Daughter is free for you to take her; as for Mr. *Turner*, if he thinks he has any Right to the Lady, let him take his Courſe. Are you at Liberty and under no Reſtraint?

Lady *Henrietta*. I will go with my Huſband.

Earl of *Berkeley*. Huſſey, you ſhall go with me Home.

Lady *Henrietta*. I will go with my Huſband.

Earl of *Berkeley*. Huſſey, you ſhall go with me, I ſay.

Lady *Henrietta*. I will go with my Huſband.

Mr. *Williams*. Now the Lady is here, I ſuppoſe my Lord *Grey* muſt be diſcharged of his Impriſonment.

Mr. Serj. *Jefferies*. No, my Lord, we pray he may be continued in Cuſtody.

L. C. J. How can we do that, Brother, the Commitment upon the Writ *de Homine replegiando* is but till the Body be produced, and here ſhe is, and ſays, ſhe is under no Reſtraint.

Mr. Serj. *Jefferies*. My Lord, if you pleaſe to take a little Time to conſider of it, we hope we may ſatisfy you that he ought ſtill to be in Cuſtody.

L. C. J. That you can never do, Brother.

Mr. Serj. *Jefferies*. But your Lordſhip ſees upon the Proofs to Day, this is a Cauſe of an extraordinary foul Nature, and what Verdict the Jury may give upon it we do not know.

Mr. Att. Gen. The Truth of it is, we would have my Lord *Grey* forthcoming, in Caſe he ſhould be convicted, to receive the Judgment of the Court.

L. C. J. You cannot have Judgment this Term, Mr. *Attorney*, that is to be ſure, for there are not four Days left. And my Lord *Grey* is to be found to be ſure, there never yet, before this, was any Thing that reflected upon him, though this, indeed, is too much and too black if he be guilty.

Mr. Juſt. *Dolben*. Brother, you do ill to preſs us to what cannot be done; we, it may be, went further then ordinary in what we did, in committing him, being a Peer, but we did it to get the young Lady at Liberty; here ſhe now appears, and ſays ſhe is under no Reſtraint; What ſhall we do? She is properly the Plaintiff in the *Homine replegiando*, and muſt declare, if ſhe pleaſe, but we cannot detain him in Cuſtody.

L. C. J. My Lord ſhall give Security to anſwer her Suit upon the *Homine replegiando*

Mr. *Williams*. We will do it immediately.

L. C. J. We did, when it was moved the other Day by my Brother *Maynard*, who told us of ancient Precedents, promiſe to look into them, and when we did ſo, we found them to be as much to the Purpoſe, as if he had caſt his Cap into the Air, they ſignified nothing at all to his Point. But we did then tell him (as we did at firſt tell my Lord ſo) if he did produce the Lady, we would immediately bail him. And ſhe being now produced, we are bound by Law to bail him. Take his Bail.

[*And accordingly he was bailed at the Suit of the Lady* Henrietta Berkeley, *by Mr.* Forreſter, *and Mr.* Thomas Wharton.]

Earl of *Berkeley*. My Lord, I deſire I may have my Daughter again.

L. C. J. My Lord, we do not hinder you, you may take her.

Lady *Henrietta*. I will go with my Huſband.

Earl of *Berkeley*. Then all that are my Friends ſeize her I charge you.

L. C. J. Nay, let us have no breaking of the Peace in the Court. But, my Lord *Cavendiſh*, the Court does perceive, you have apprehended yourſelf to be affronted by that Gentleman Mr. *Craven*'s naming you in his Evidence; and taking Notice of it, they think fit to let you know, that they expect you ſhould not think of righting yourſelf, as they have ſome Thoughts you may intend. And therefore you muſt lay aſide any ſuch Thoughts of any ſuch Satisfaction. You would do yourſelf more Wrong by attempting to right yourſelf in any ſuch Way.

Lord *Cavendiſh*. My Lord, I am ſatisfied that your Lordſhip does think it was impertinently ſpoken by him, and ſhall not concern myſelf any further, but only deſire that the Court would give him ſome Reproof for it.

Then the Court broke up, and paſſing through the Hall there was a great Scuffle about the Lady, and Swords drawn on both Sides, but my Lord Chief Juſtice coming by, ordered the Tipſtaff that attended him (who had formerly a Warrant to ſearch for her and take her into Cuſtody) to take Charge of her, and carry her over to the *King's-Bench*; and Mr. *Turner* aſking if he ſhould be committed too, the Chief Juſtice told him, he might go with her if he would, which he did, and as it is reported, they lay together that Night in the *Marſhal's-Houſe*, and ſhe was releaſed out of Priſon, by Order of the Court, the laſt Day of the Term.

On the Morning after the Trial, being *Friday* the 24th of *November*, the Jury that tried the Cauſe, having (as is uſual in all Caſes not Capital tried at the Bar, where the Court do not ſit long enough to take the Verdict) given in a private Verdict the Evening before, at a Judge's Chamber, and being now called over, all appeared, and being aſked if they did abide by the Verdict that they gave the Night before, they anſwer'd, *Yes*; which was read by the Clerk of the Crown to be, *That all the Defendants were guilty of the Matters charged in the Information, except* Rebecca Jones, *who was not guilty*; which Verdict being recorded, was commended by the Court and the Kings Counſel, and the Jury diſcharged.

But in the next Vacation the Matter was compromiſed, and ſo no Judgment was ever prayed, or entered upon Record, but Mr *Attorney General* was pleaſed, before the next *Hillary-Term*, to enter a *Noli Proſequi* as to all the Defendants.

CXIV. *Proceedings*

CXIV. *Proceedings between the King and the City of* London, *on an Information in nature of a* Quo Warranto †, *in the* King's-Bench, 168¾. Hil. 35 Car. II.

Mich' 33 Car. II. *in* B. R. Rot. 137. *Sir* Robert Sawyer, *Knight, His Majeſty's Attorney General, againſt the Lord Mayor, and Commonalty, and Citizens of* London.

The Information in nature of a Quo Warranto *ſets forth*,

THAT the Mayor, and Commonalty, and Citizens of the City of *London*, by the ſpace of a Month then laſt paſt, and more, uſed, and yet do claim to have and uſe, without any lawful Warrant, or regal Grant, within the City of *London* aforeſaid, and the Liberties and Privileges of the ſame City, the Liberties and Privileges following, *viz.*

I. To be of themſelves a Body Corporate and Politick, by the Name *of Mayor and Commonalty, and Citizens of the City of* London.

II. To have Sheriffs *Civitat' & Com' London' & Com' Midd'.* and to name, elect, make, and conſtitute them.

III. That the Mayor and Aldermen of the ſaid City ſhould be Juſtices of the Peace, and hold Seſſions of the Peace.

All which Liberties, Privileges, and Franchiſes the ſaid Mayor and Commonalty, and Citizens of *London*, upon the King did by the ſpace aforeſaid uſurp, and yet do uſurp.

Plea. THE Mayor and Commonalty, and Citizens, appear by their Attorney, and plead,

I. As to their being a Body Politick and Corporate, they preſcribe, and ſay,

1. That the City of *London* is, and time out of mind hath been, an ancient City, and that the Citizens of that City are, and by all that time have been, a Body Corporate and Politick, by Name of *Mayor and Commonalty, and Citizens of the City of* London.

That in *Magna Charta de libertatib' Angliæ*, in the Parliament holden 9 *Hen.* III. it was enacted, *Quod civitas London' habeat omnes libertates ſuas antiquas, & conſuetudines ſuas.*

That in the Parliament 1 *Ed.* III. that King by his Charter *De aſſenſu Prelatorum, Comitum, Baronum, & totius communitatis regni ſui*, and by Authority of the ſame Parliament, having recited that the ſame Citizens, at the time of the making *Magna Charta*, and alſo in the time of *Edward the Confeſſor, William the Conqueror*, and other his Progenitors, had divers Liberties and Cuſtoms, Wills and Grants by Authority aforeſaid, That the ſame Citizens ſhall have their Liberties according to *Magna Charta*——And that for any perſonal Treſpaſs *alicujus miniſtri ejuſdem civitatis, libertas civitatis illius in manus ejuſdem Domini Regis* Ed. III. *vel heredum ſuorum, non caperetur, ſed hujuſmodi miniſter prout qualitatem tranſgreſſionis puniretur.*

They plead alſo,

That in the Parliament holden 7 *R.* II. *Omnes conſuetudines, libertates, francheſia, & privilegia civitatis predict' tunc civibus civitatis illius, & eorum ſucceſſoribus, licet uſi non fuerint, vel abuſi fuerint, authoritate ejuſdem Parliamenti ratificat' fuerunt.*

Then they plead the Confirmation of ſeveral later Kings by their Charters; as of

King *Henry* VI. by his Charter, dated 26 *Octob.* 23 *H.* VI.
King *Edward* IV. by his Charter, dated 9 *Novem.* 2 *Ed.* IV.
King *Henry* VII. by his Charter, dated 23 *July*, 20 *H.* VII.
King *James* I. by his Charter, dated 25 *Sept.* 6 *Jac.* I.
King *Charles* I. by his Charter, dated 18 *Oct.* 14 *C.* I.
King *Charles* II. by his Charter, dated 24 *Jan.* 15 *C.* II.

Ac eo Warranto they claim to be, and are a Body Politick, *&c.* and traverſe their uſurping upon the King.

II. As to the having, electing, making, and conſtituting Sheriffs of *London* and *Middleſex*, they plead,

That they are, and time out of mind were, a Body Politick and Corporate, as well by the Name of *Mayor and Commonalty, and Citizens, quam per nomen* Civium *London*. And that King *John*, by his Letters Patents under the Great Seal of *England*, in Court produced, dated 5 *Julii, anno regni ſui primo*, granted to the Citizens of *London*, that they ſhould have the electing, making, and conſtituting Sheriffs of *London* and *Middleſex imperpetuum.*

Then they plead this Liberty and Franchiſe confirmed to them by all the aforementioned Statutes and Charters, *ac eo Warranto* they claim to make and conſtitute Sheriffs.

III. As to the Mayors and Aldermen being Juſtices of the Peace, and holding Seſſions, they plead,

That the City is, and time out of mind was, an ancient City and County, and the Citizens a Body Politick.

That King *Charles* the Firſt, by his Letters Patents, dated 18 *Octob.* 14 *Car.* I. granted to the Mayor and Commonalty, and Citizens of the City of *London*, That the Mayor and Aldermen of *London*, ſuch of them as had been Mayors, ſhould be Juſtices of the Peace, and ſhould hold Seſſions. *& eo Warranto* they claim to be Juſtices, and hold Seſſions.

Reſponſ. TO this Plea the Attorney General replies. And as to the Mayor, and Commonalty, and Citizens of *London*, being a Body Politick and Corporate,

Firſt takes iſſue, that they never were a Body Corporate, and for this puts himſelf upon the Country. And then goes over and pleads.

That the Mayor, Commonalty, and Citizens, aſſuming upon themſelves to be a Body Politick and Corporate, and by reaſon thereof to have Power and Authority to convocate and aſſemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preſerving the King's Peace——Under Colour and Pretext thereof, but reſpecting only their private Gain and Profit, and againſt the Truſt in a Body Corporate by the Laws of this Kingdom repoſed, aſſumed an unlawful and unjuſt Authority to levy Money upon the King's Subjects, to their own proper Uſe, by colour of Laws and Ordinances by them *de facto* ordained or eſtabliſhed; and in proſecution and execution of ſuch illegal and unjuſt Power and Authority by them uſurped, 17 of *Septemb.* 26 *Car.* II. in their Common Council aſſembled, made, conſtituted, and publiſhed a certain Law, by them *de facto* enacted, for the levying of ſeveral Sums of Money of all the King's Subjects, coming to the publick Markets within the City to ſell their Proviſions, *viz.* Of every Perſon for every Horſe-load of Proviſions into any publick Market within the ſaid City, brought to ſell, 2*d.* *per* Day. For every Dorſer of Proviſions, 6*d.* *per.* Day. For every Cart-load not drawn with more than three Horſes, 4*d.* *per* Day. If drawn with more than three Horſes, 6*d.* *per* Day. And that theſe Sums of Money ſhould be paid to the Uſe of the Mayor, Commonalty, and Citizens: and if any refuſed to pay, then to be removed from his Place in the Market. And that by colour of this Law, the Mayor, Commonalty, and Citizens, for their own private Gain, had illegally, by the ſpace of ſeven Years next after the making this Ordinance, received divers great Sums of Money, in all amounting to 5000*l.* *per Annum*, in Oppreſſion of the King's Subjects.

And further, That whereas a Seſſion of Parliament was holden by Prorogation, and continued to the 10th of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next:

The Mayor, Commonalty, and Citizens, 13 *Jan.* 32 *Car.* II. in their Common Council aſſembled, unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and without any lawful Authority, aſſumed upon themſelves *ad cenſendum & judicandum dictum Dominum Regem, & prorogationem Parliamenti per Dominum Regem ſic fact'.* And then and there in Common Council aſſembled, did give their Votes and Order, that a certain Petition under the name of the Mayor, Aldermen, and Commons of the City of *London*, in Common Council aſſembled, to the King ſhould be exhibited; in which ſaid Petition was contained,

That by the Prorogation, the Proſecution of the publick Juſtice of the Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and of his Proteſtant Subjects, had received Interruption. And that the Mayor and Commonalty, and Citizens in the ſame Common Council aſſembled, did unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and with Intention that the ſaid Petition ſhould be diſpers'd amongſt the King's Subjects, to induce an Opinion in them, that the ſaid King by proroguing the Parliament, had obſtructed the publick Juſtice, and to incite the King's Subjects to Hatred of the King's Perſon and Government, and to diſturb the Peace of the Kingdom, did order that the ſaid Petition ſhould be printed, and the ſame was printed accordingly to the Intent and Purpoſe aforeſaid.

By which the Mayor, Commonalty, and Citizens aforeſaid, the Privilege, Liberty, and Franchiſe of being a Body Politick and Corporate did forfeit, and afterwards, by the time in the Information, that Liberty and Franchiſe of being a Body Politick did uſurp upon the King. *Et hoc, &c.*

And as to the other two Pleas, *viz.* The making and having Sheriffs and Juſtices of the Peace, the Attorney General imparles to *Mich.* Term.

Rejoinder. THE Mayor, Commonalty, and Citizens, as to the *Plea* of the Attorney General, pleaded in aſſigning a Forfeiture of their being a Body Politick and Corporate,

Proteſtando, That thoſe *Pleas*, by the Attorney pleaded, and the matter in the ſame contained, are inſufficient in the Law to forejudge or exclude the Mayor and Commonalty, and Citizens from being a Corporation.

Proteſtando etiam, That no Act or Deed, or By-Law made by the Mayor, Aldermen, and Common Council is the Act or Deed of the Body Corporate.

Proteſtando etiam, That they, the Mayor and Commonalty, and Citizens of *London*, never took upon them any unlawful or unjuſt Authority to tax the King's Subjects for their own private Gain, or did ever levy or exact from the King's Subjects, coming to Markets, ſuch yearly Sums as in the Replication are alledged---For *Plea* ſay,

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† *Burn.* Hiſt own Times, Vol. I. p. 533.

That *London* is the Metropolis of *England*, and very populous, & *Celeberrimum Emporium totius Europæ.*

That there are, and Time out of mind, have been divers public Markets for Proviſion and Merchandiſe within the ſaid City to be ſold.

That the Mayor and Commanalty, and Citizens have been, time out of mind, and yet are, ſeiz'd of theſe Markets in Fee, and by all the ſaid time at their own Coſts and Expences have provided and have accuſtomed, and ought to provide at their own coſts Places for the holding the ſaid Markets and Stalls, and Standings, and other Accommodations for Perſons bringing Proviſions and Merchandizes to the ſaid Markets and Superviſors and other Officers for the better preſerving and ordering the ſaid Markets; and of the great concourſe of Perſons coming to the ſame; and for the ſuſtaining and ſupporting of the ſaid Coſts and Expences, by all the time aforeſaid have had, and ought to have reaſonable Tolls, Rates, or Sums of Money, of Perſons coming to the ſaid Markets for their Stalls, Standings and other Accommodations by them for the better expoſing their Commodities had and enjoyed.

They further ſay, That the Citizens and Freemen of *London* are very numerous, *(viz.)* 50000 and more.

That within the ſaid City there hath been, time out of mind, a Common Council aſſembled, as often as neceſſary, conſiſting of the Mayor, Aldermen, and of certain of the Citizens, not exceeding 250 Perſons thereto annually elected, called the Commons of the ſaid City.

That there is a Cuſtom within the ſaid City for the Mayor, Aldermen, and Common Council, to make By-Laws and Ordinances for the Regulation and Government of the publick Markets within the City.

That theſe Liberties and Cuſtoms of the City were confirmed by *Magna Charta*, and the other Statutes in the Plea abovementioned.

That by reaſon of the burning of the City in *Sept.* 1666. and the Alterations in the Market-Houſes and Places thereby occaſioned, for the eſtabliſhing and reſettling the Markets within the City, 17 *Sept.* 26 *Car.* II. the then Mayor, Aldermen, and Commons, in Common Council aſſembled, according to the ſaid Cuſtom, for the better Regulation of the ſaid Market, did make and publiſh an Ordinance, entituled, *An Act for the Settlement and Well-ordering the publick Markets within the City of* London, by which ſaid Ordinance reciting that for the accommodation of the Market-people with Stalls, Shelters, and other Neceſſaries for their ſtanding in the Markets, and for the amendment, paving, and cleanſing the Market-places, and for the ſupport and defraying the incident Charges thereof, there have been always certain reaſonable Rates and Duties paid for the ſame. And to the intent that the ſaid Rates may be aſcertained and made publick to all Market-people, and the Collectors reſtrained from exacting—It was enacted and ordained by the ſaid Common Council, that the Rates and Sums in the Replication ſhould be paid to the uſe of the Mayor and Commonalty and Citizens; or upon refuſal, to be removed out of the Market. And they aver, that theſe are all the Rates or Duties paid, and were reaſonable Sums to be paid; and theſe they have demanded and received for the Uſe and Purpoſe aforeſaid, as was lawful for them to do.

As to the other matter alledged by the Attorney General in aſſigning the Forfeiture, they ſay,

That within this Kingdom *(viz.)* at the Pariſh of St. *Michael Baſſiſhaw*, *London*, there was an execrable Plot and Conſpiracy proſecuted by Papiſts to deſtroy the King, and to ſubvert the ancient Government, and ſuppreſs the true Religion in this Kingdom eſtabliſhed.

That Sir *Edmundbury Godfrey* took Examinations of Witneſſes, and Informations of the ſame; and alſo of the burning of *London* by the *Papiſts.*

That divers of theſe Conſpirators had lain in wait for him, and murthered him, to the intent to ſuppreſs his Examinations, and to deter other Magiſtrates from acting in the Diſcovery.

That *Green* and others were try'd, and hang'd for this Murder.

That *Coleman*, and others were alſo try'd, and executed for the ſame Conſpiracy.

That *William* Lord *Powis*, Lord *Arundel* of *Warder*, Lord *Petre*, Lord *Bellaſis*, were impeached by the Commons in Parliament of *High Treaſon* for the ſame Conſpiracies, and ſent to the *Tower.*

That the King in his Speech to that Parliament had recommended to them the further purſuit and examination of that Conſpiracy, declaring he thought not himſelf nor them ſafe, till that matter were gone through with; and therefore that it was neceſſary that the ſaid Lords in the *Tower* ſhould be brought to their Trials, that Juſtice might be done; and the Parliament having made an Addreſs to the King, wherein both Lords and Commons declared their being deeply ſenſible of the ſad condition of the Realm, occaſioned chiefly by the Conſpiracies of a Popiſh Party, who had plotted and intended the Deſtruction of the King, and Subverſion of the Government and Religion of the Kingdom; and thereupon a Solemn Faſt kept purſuant to the King's Proclamation, grounded upon the ſaid Addreſs, and divers Bills prepared to be paſs'd into Laws for Preſervation of his Proteſtant Subjects.

Theſe Impeachments and Bills being thus depending, and the Lords in the *Tower* not tried, the Parliament was upon the 10th of *January* prorogued, as the Attorney General above in his Replication hath alledged, by reaſon whereof the Citizens and Inhabitants of the ſaid City, being faithful Subjects to the King, were much diſquieted with the Senſe and Apprehenſions of the Danger threatening the Perſon of the King, His Government and Realm, by reaſon of the Conſpiracies aforeſaid, as is by both King and Parliament affirmed and declared; and conceiving no better means to prevent, than by the Sitting of the Parliament; and having received a Petition from divers faithful Subjects, Citizens of *London*, to the ſame effect: And it being lawful to petition, the Mayor Sir *Patience Ward*, and the Aldermen and Commons, in Common Council aſſembled, for the preſervation of the King and His Government, did cauſe to be written the Petition in the Replication mentioned, which is ſet forth in *hæc verba*; and did Order, that after the ſame was preſented to the King, it ſhould be printed for the ſatisfaction of the troubled Minds of the ſaid Citizens; and traverſe the writing or making any other Petition, or making this to any other end or intent than they have pleaded.

Surrejoinder. THE Attorney General as to the Plea of the Mayor, and Commonalty, and Citizens pleaded to the the making and publiſhing the Ordinance about the Markets.

Proteſtando, That the Mayor, and Commonalty, and Citizens were not ſeiz'd of the Markets, nor at their charges provided Stalls and Neceſſaries, or Market-places.

Proteſtando etiam, That the ſaid Rates and Sums were not reaſonable.

For Plea ſaith, That by a Statute made 22 *Car.* II. it was enacted, that Places for Markets ſhould be ſet out, and 2*d. per* Chaldron upon Coals for the Charge of that, and many other things, was given; and that they received a great Sum out of that Duty for the Purpoſe aforeſaid; and yet for their own private Lucre took the Money by the Ordinance.

And traverſeth, That the Mayor, and Commonalty and Citizens, time out of mind, *habuerunt & habere conſueverunt Tolneta, Ratas, ſive denariorum ſummas per ipſos Majorem, Communitatem, & Cives ſuperius ſuppoſit. per prefatam Legem, ſive Ordinationem predict' Aſſeſſ. & in certitudinem reduct. prout per placitum ſuum ſuperius rejungendo placitat' ſupponitur.*

And to the Plea of the Mayor, and Commonalty, and Citizens, pleaded to the Reſidue of the Attorney's matter aſſigned for a Forfeiture, as aforeſaid.

The Attorney *Proteſtando*, That the aforeſaid Prorogation of the Parliament was for urgent Cauſes concerning the good of the Kingdom, and thereby the proſecution of publick Juſtice not interrupted.

And demurs to the ſaid Plea of the Mayor, and Commonalty, and Citizens by them pleaded as to the Petition.

Rebutter. THE Mayor, and Commonalty, and Citizens, as to the making and publiſhing the Ordinance for the Payment of Monies by thoſe that come to the ſaid Markets, ſay as before,

That the Mayor and Commonalty, and Citizens have, time out of Mind, had, and accuſtomed to have, reaſonable Tolls, Rates, or Sums of Money of all Perſons coming to theſe Markets with Victuals and Proviſions there to be ſold, for Stalls, Standings, and other Accommodations, by them had for expoſing their Victuals and Proviſions to Sale. And of this they put themſelves upon the Country, &c. To this Mr. Attorney demurs.

And as to the Plea by the Mayor, and Commonalty, and Citizens pleaded to the Reſidue of the Matter by the Attorney General, aſſigned for Forfeiture, they join in Demurrer †.

This great Caſe was only twice argued at the Bar: Firſt, by Mr. Finch, *the King's Sollicitor, for the King; and Sir* George Treby, *Recorder of* London, *for the City. And next by Sir* Robert Sawyer, *the King's Attorney General, for the King; and* Henry Pollexfen *for the City.*

The Firſt Argument was in *Hilary Term* on *Wedneſday, Febr.* 7.

Mr. Sollicitor. THE Queſtions in this Caſe, as I think, will be,

I. Whether any Corporation can be forfeited?

II. Whether the City of *London* differ from other Corporations as to point of Forfeiture?

III. Whether any Act of the Mayor, Aldermen, and Common Council, in Common Council aſſembled, be ſo much the Act of the Corporation, as can make a Forfeiture?

IV. Whether the Acts by them done in making the By-Law, and receiving Money by it; or in making the Petition, and cauſing it to be printed and publiſhed, be ſuch Acts, as if done by the Corporation, will make a Forfeiture of the Corporation?

I. The Firſt of theſe Queſtions truly I ſhould not make any Queſtion at all, but that this Caſe has been a Caſe of ſo great Expectation, every man hath diſcourſed about it, and the pejudice that ſome have entertained concerning it, have drawn them to aſſert the Negative Propoſition. Therefore, my Lord, becauſe this ſtrikes to the whole, though I think it hath no Foundation in Law, I will beg leave to remove this Objection out of the Caſe.

1. Firſt of all, No Corporation hath any other Creation than any other Franchiſes have, and ſubſiſt upon the ſame Terms that other Franchiſes do.

2. There is a Truſt or a Condition in Law, that is annexed to, and grows upon all Franchiſes, that they be not abuſed, and the Breach of them is a Forfeiture of the very being of the Franchiſe.

3. And as there is no Foundation of that Opinion in Law, ſo the Miſchiefs would be great, if the Law were otherwiſe. For,

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† When the Demurrer in this Caſe was joined (*viz. Mich.* Term, 34 *Car.* II.) Mr. Serjeant *Pemberton* was Chief Juſtice of the *King's-Bench.* But before *Hilary* Term, when it came to be argued, he was removed, and made Chief Juſtice of the *Common-Bench*; and Sir *Edmund Saunders*, who had been Counſel for the King, in drawing and adviſing the Pleadings, was made Chief Juſtice of the *King's-Bench.*

1. Firſt, that no Corporation hath any other Creation than other Franchiſes have; 'tis undoubtedly true that the King is the Original and Commencement of all Franchiſes; they have their beginning from him, the Books are clear and full in it: I need not quote them, though there are many, *Kelway* 138. 17 *Ed.* II. 530. in the Reports of thoſe times ſet forth by Mr. Serjeant *Maynard.* Now, my Lord, there can be no Corporation, but by the King's Letters Patents; for even the Preſcription doth ſuppoſe there was the King's Patent to create it at firſt. And therefore the proper inquiry will be about the Second thing.

2. How far the Breach of Truſt that is annexed to a Franchiſe, is a Forfeiture of that Franchiſe.

Firſt of all, There is no Rule in Law more certain, than that the Miſuſer of a Franchiſe is a Forfeiture of that Franchiſe. This the Statute of 18 *Ed.* II. does very well prove, which was an Act of Grace to reſtore Franchiſes to thoſe that had loſt and forfeited them. There it was reſtrained *Ita quod libertat' non ſint abuſæ.* And my Lord *Coke* 2 *Inſt.* in his Obſervations upon the Statute of *Weſtm'* 1. that Chapter of it that concerns Towns that exacted more Murage than was granted, *fol.* 223. ſays, They ſhall loſe that Grant for ever; ſays the *Mirror of Juſt.* which my Lord *Coke* there quotes, that is no more than the Common Law; for the Law wills that every Man ſhould loſe his Franchiſe, that does miſuſe it: So the Abbot of St. *Albans* Caſe, 8 *Hen.* IV. 18. The King ſeized the Franchiſe into his hand, becauſe the Abbot, who had the Gaol, would not give Pledges to make Deliverance, and for detaining his Priſoners a long time without making a lawful Deliverance. And ſo 20 *Ed.* IV. 6. The Abbot of *Crowland*'s Caſe for detaining Priſoners acquitted after Fees paid, the King ſeized the Gaol for ever. Theſe two are cited by my Lord *Coke* 2 *Inſt.* 43. And in Sir *George Reynel*'s Caſe, 9 *Report*, *Fitzherbert*'s *Abridgment*, *Titl' coron' placit'* 233. a Layman was taken in a Robbery, the Ordinary challenges him as a Clerk, whereas he was a Layman: It was ruled, that for his falſe challenge the Ordinary ſhould loſe his Temporalities to the King, and loſe his Franchiſe to challenge Clerks, for him and his Succeſſors for ever. Thus far is plain, That Franchiſes, if miſuſed, are forfeited; and that though enjoyed by Perſons in a corporate capacity, as appears by the Caſes put. And then as a Corporation may forfeit any Franchiſe they are ſeized of in right of the Corporation, ſo may a Corporation forfeit the Franchiſe of the Corporation itſelf, upon the ſame ground and reaſon in Law: unleſs any one will ſay, The Franchiſe of being a Corporation cannot be miſuſed; and that would be very ſtrange matter to aſſert.

Every Corporation is entruſted with a Franchiſe to make Laws for governing the Subject within it's Juriſdiction. If that Power be exerciſed to the Subjects prejudice, as it may be, it were an hard matter if there were no Law to redreſs that Grievance. Suppoſe a Corporation under their common Seal ſhould authoriſe a Rebellion, would any Man ſay that were no Forfeiture? 'Tis ſaid indeed by *Pigott*, 21 *Ed.* IV. *f.* 13. *Arguendo* upon a Caſe (where the Queſtion is, *Whether a Corporation ſhould avoid a Bond entred into by the Mayor by Dureſs*,) That a Corporation can neither commit Treaſon or Felony; but upon the ſame Reaſon that he urges, That a Corporation cannot act at all, that is, abſtractedly from all the Members of it; for ſo this Notion is, that a Corporation is a Body in conſideration of Law only, and not Reality; and therefore the particular Act even of the head of that Body ſhall affect him perſonally only. But this is only a Notion of his arguing; but it is the beſt Opinion of that Book, that Dureſs to the Members did ſo affect the Corporation, that it ſhould avoid the Bond.

Now, my Lord, a Corporation may be ſurrendred; and ſurely that that may be ſurrendred, may be forfeited; and I ſhall offer you ſome Authorities in this caſe, 12 *E.* III. *rot. clauſ. memb.* 36. a Writ is directed to the Conſtable of *Dover*, reciting, That the Cinque-Ports had ſeized divers Goods of ſeveral Merchant Strangers *Portugueſes*, and others; and the Writ commands that Right ſhould be done, or elſe the Franchiſe ſhould be ſeiſed into the King's Hands, 6 *Ed.* II. *rot. clauſ. N°.* 5. The Liberties of the City of *Briſtol* were ſeiſed, and the Cuſtody of it granted to for divers Contempts and Injuries done *per Majorem, Balivos, & Communitat'* to the King; and ſo the cloſe Rolls of *R.* II. *m.* 6.

There is another Caſe that comes further, *Paſc.* 9 *Ed.* I. *Majus rot.* 25. I find it likewiſe among my Lord Chief Juſtice *Hales* Collections, that he has given to *Lincolns-Inn* Library; I took it out of that Book: 'Tis in the Collection of the *Adjudicata* in the time of *Ed.* I. *fol.* 28. *a.* Thus it was: There was the Abbot of St. *Auſtin* in *Canterbury* had made an Agreement with the Men of *Sandwich*, about paying Ten Hogſheads of Wine yearly to the Abbot; and there was due to the Abbot ſome Thirty Marks, and he had Judgment, and Execution went out; and thus 'tis in the Book, *Vic. de———mandatur, quod levari fac'* 30 *Marcas de bonis ipſius, ad opus Abbatis, pro pretio* 10 *Dolcorum Vini annuatim ſolvend'.* And they made Reſcue when the Sheriff came to execute the Writ, and they were ſued for that; and the Judgment of the King and his Council, which was by Parliament, for it was adjourned into Parliament, was, *Quod libertas de Sandwich forisfact' ſit.* And there is this Obſervation, tho' it be written with the ſame Hand, which is not his, but the Clerk's that tranſcribed it, *Judicium illud extendit contra Barones* 5 *Portuum, & eorum libertates, ut mihi videtur.* Theſe are the Words of that Book: And this will go a great way with the City of *London*, as to their Confirmation of *Magna Charta*; for the Cinque-Ports are confirmed by Act of Parliament, as well as they.

But, my Lord, there are many Caſes of like nature, and that even in the Caſe of the City of *London* too, as I ſhall ſhew you by and by. Now tho' theſe are not Judgments in *Quo Warranto*'s, to out a Corporation of a Franchiſe of being a Corporation, yet it ſhews, that theſe things were Forfeitures of all the Franchiſes of a Corporation; for a Seizure is never but where there is Matter for Forfeiture found upon Record, as in Sir *George Reynel*'s Caſe; or to ground a Forrfeiture, upon which to bring a *Quo Warranto*, as in our Caſe. But in the Caſe of 9 *Ed.* I. there it does appear Judgment was given by the Parliament, that the Liberty ſhould be forfeited, not that it ſhould be ſeiſed into the King's Hands only.

Now, my Lord, where all the Franchiſes of a Corporation are forfeited, what is the Corporation? Truly, 'tis nothing, 'tis but a Name; a Corporation without a Power to act, is nothing at all. Indeed, I do not find any Judgment in a *Quo Warranto* of a Corporation being forfeited; yet, my Lord, it doth not follow from thence that this cannot be by Law; for many *Quo Warranto's* have been brought againſt *London*, and other Places too, to out Corporations of their Franchiſes, but it hath always ended in Submiſſion to the King, and ſo they have been at quiet. All the *Quo Warranto*'s in Mr. Attorney *Palmer*'s time, after the King's Reſtauration, againſt the ſeveral Corporations, they all ſubmitted; and yet that was to queſtion the very being of their Corporations.

Now, my Lord, pray conſider a little upon the Rule of Law. It ſhould ſeem very ſtrange, if a Corporation ſhould neglect to come into Eyre, or into the King's Bench, the ſame Term that a *Quo Warranto* is brought againſt them, they muſt be outed of their Franchiſe for ever, as 'tis ſaid 15 *Ed.* IV. 6 & 7. And yet, when all the Contempts and Oppoſitions imaginable are found upon Record, that this ſhould not be a Forfeiture, that ſeems abſurd that a Neglect in Eyre ſhould do it, but all the Oppreſſions and Offences in the World, when found upon Record, ſhould not do it.

3. But, my Lord, the Miſchiefs that would follow from hence are very great. How many Oppreſſions and Offences would be daily committed, if every Corporation were a Franchiſe and Juriſdiction independent upon the Crown? and the Puniſhment truly of ſome particular Men for thoſe Offences would not be adequate, where the Power of offending and miſgoverning ſhould ſtill remain; ſure that were no adequate Redreſs of ſuch an Inconvenience. And to this purpoſe my Lord, I ſhall humbly offer a Caſe, and 'tis that great Caſe between the Earls of *Glouceſter* and *Hereford*, *Hil'* 20 *Ed.* I. *in B. R. rot. Wallie* 14. 'Tis likewiſe in *Riley*'s *Placita Parliamenti*, 83, 86. The Caſe is this in ſhort: They both claimed the Liberty of *Returna Brevium*, and they had incurred great Contempts in refuſing to obey the King's Writs; and Judgment was given againſt them, that the Liberty ſhould be ſeiſed for this Reaſon, which, I think, will go a great way in this Caſe, and for which I offer it, *Quia puniendus eſt Dominus libertatis in eo quo deliquit.* I think, my Lord, as I ſaid, that will go a great way in this Caſe to ſhew the Reaſon of the Law.

My Lord, if the granting of too many and too large Franchiſes were a Miſchief, as certainly it was by the Law, and as appears by the Commons Petitions 21 *Ed.* III. *rot. Parl. N°.* 17. where they pray, That new and large Franchiſes may not be granted, becauſe it tended to the overthrowing the Common Law, and great Oppreſſion of the People. And the King's Anſwer was, That Care ſhould be taken for the time to come. I ſay then, if this were ſuch a Miſchief, that there ought not to be granted new and large Franchiſes, much more would it be a Miſchief, if theſe Franchiſes ſhould not be under the Controul of the Law, when they exerciſe ſuch Oppreſſion. And ſo, my Lord, I ſhall leave that Point; for I think it will be pretty clear, that a Corporation may forfeit their Being of a Corporation.

II. I ſhall next conſider, *Whether the City of* London *be in any other Plight than any other Corporations.* I think, truly, there is no Difference at all. Now this Queſtion doth depend upon what they have ſet forth by their Plea; and that is, the Confirmation of *Magna Charta*, *cap.* 9. *Civitas London' habeat omnes libertates ſuas antiquas, & conſuetudines ſuas.* And then the Act of 1 *E.* III. upon which my Lord *Coke*, in his 4 *Inſt.* 253. ſays, that the Franchiſe of this City ſhall not for any Cauſe be ſeiſed into the King's Hands. And then that of 7 *R.* II. which ſays, that the City ſhall enjoy it's whole Liberties, *licet non uſi vel abuſi.* This is their Foundation, upon which they would diſtinguiſh this City from all other Corporations. Now as to theſe things, I give theſe Anſwers:

Firſt for *Magna Charta*, That plainly is no more a Confirmation to them, than 'tis to other Cities and Corporations. For not only the City of *London* is named to have it's ancient Liberties and Cuſtoms preſerved, but 'tis likewiſe *omnes aliæ Civitat' &c.* and all Cities, Burroughs, and Towns, and the Barons of Cinque-Ports, and all other Ports, ſhould have all their Liberties and free Cuſtoms. So my Lord *Coke* agrees it in his Comment. And in what he cites out of the *Mirror of Juſtice*, and other ancient Authors of our Law, they ſhould enjoy their Franchiſes which they had Right to by lawful Title of the Gift and Confirmation of the King, and which they had not forfeited by any Abuſe. So that the Act which confirmed them, did not purge former Forfeitures, much leſs did it licenſe other Abuſes.

Then for their Acts of 1 *E.* III. and 7 *R.* II. I ſhall humbly offer this, That as they are in truth no Acts of Parliament at all, ſo they will not concern this Queſtion, whatſoever my Lord *Coke* ſays concerning them. But I ſhall give ſome inſtances before theſe Acts, to ſhew that they never had ſuch an unqueſtionable Power as they now dream of, and then ſome Inſtances in after times, that there either were no ſuch Acts, or no ſuch Senſe at leaſt is to be put upon them, as they have ſtrained to make.

Firſt, it appears 15 *E.* I. that the Franchiſe of the City of *London* was ſeiſed into the King's Hand, and *Johannes de Britton* was made *Cuſtos Civitatis London*, who was no Freeman; and this implies, that the Franchiſe was ſeiſed into the King's Hands, for they had a Power to chooſe *de ſeipſis*, by Charter from King *John*, a Citizen to be Mayor or chief Governor; but here was another Governor appointed them.

Then *Rot' Pat'* 26 *E.* I. *Rex pro bono ſervicio civit' London' reddit eis civit' ſuam London' habend' dict' civibus ad volunt' Regis. Teſte Rege.* So that both the City, and all its Franchiſes, were ſeiſed at that time; for he reſtored the very City of *London* to the Citizens *habend'* during his

Will and Pleaſure. Thus, my Lord, it ſtood in the time of *E.* I. Then in the time of *E.* II. ſeiſed again; 14 *E.* II. *memb.* 21. of the Pat. Rolls, in 21. *Rex dimiſit civibus London' officium Major' civitat' London.* 15 *E.* II. *Rex dedit licentiam eligendi Major' London'.* And in the ſecond part of Pat' Rolls 15 *E.* II. *m.* 5. the King recites, That whereas in the Fourteenth Year of his Reign he had replevied to them the Office of Mayor, *uſque quindenam Sancti Martini*, and alſo recites, which Office was ſeiſed into the King's Hands by the Juſtice of Eyre in the Tower of *London*, and he was willing to continue it longer to them, *ex gratia ſpeciali* he did grant them the ſaid Office, *quamdiu*, &c.

Then the ſecond part of Pat' Rolls in 20 *E.* II. it is recited, That the King had ſeiſed the Office of the Mayoralty, and had replevied it from time to time; and that one *Hammond de Chigwell* was made Mayor, the King had accepted of him for Mayor, *Et Rex volens eis gratiam uberiorem facere*, grants him the Office of Mayor.

Now, my Lord, theſe Seizures ſhew plainly, that the Franchiſes of the City were forfeitable; for either they were ſeiſed upon Matter of Record found for a Forfeiture, or elſe upon ſome Matter which was to be a Ground of a Forfeiture. So then they were abſolutely gone, and I do not find that theſe were ever taken out of the King's Hands by Proceſs of Law, but were reſtored by Grace and Favour; for till the 20 *E.* II. it appears, that they ſo long continued in the King's Hands, and he abſolutely diſpoſed of them.

Here is now a Favour to them, and a plenary Reſtitution. Thus it ſtood in the Reigns of *E.* I. and *E.* II.

Now the next thing will be for their Act of 1 *E.* III. which they back with my Lord *Coke*'s Obſervation upon it, that it was *Authoritate Parliamenti.* Now, truly My Lord, there is no ſuch Act of Parliament that is any where extant. For it is not in Print, neither are there any Parliament Rolls of *E.* III's time till 4 *E.* III. And he that cites it, my Lord *Coke* himſelf, cites no Roll at all for it; ſo that where we ſhall find this Act of Parliament, truly I do not know. But this Act at beſt amounts to no more, than that for any perſonal Treſpaſs of Officers the Liberties of the City ſhould not be ſeized: but that ſignifies nothing, for that is not our Caſe. There are Acts of the Corporations, not of particular Officers; though I cannot but obſerve how the Law was taken to be at that time, before this their pretended Act, even for the Offence of private Officers; and that appears to be the Law too in the Caſe of 9. *E.* I. which I cited before, which was only the Offence of the Mayor of *Sandwich*, who refuſed to anſwer for a Treſpaſs, and a Reſcue was committed, and the whole Liberty ſeized.

Now this Act of 1 *E.* III. be it what it will, though they would take it in that Senſe, that no Forfeiture ſhould be incurred for the Treſpaſs of an Officer, yet I find quite the contrary thereunto, and that it hath not prevailed even in that Senſe. For 5 *E.* III. *rot. clauſ.* 14. there the King did diſcharge one from the Office of Mayor, and commands the Aldermen and Comonalty to chooſe another. Now this, my Lord, I take to be not ſo much a puniſhment of the Officer, as a breaking in upon the Franchiſe itſelf. But I ſhall ſhew more fully in the Reign of *R.* II. that this was done.

Yet I will firſt take notice of the Statute of *R.* II. which is the next thing that they rely upon; and this, with Submiſſion, is no Act of Parliament neither; for though my Lord *Coke*, in his 5th Inſt. 205. ſays, this is the Statute mentioned in our Books, which ſupports the Cuſtoms in *London* to deviſe in *Mortmain*, and other Cuſtoms againſt Acts of Parliament and cites Authorities in the Margin; yet my Lord, I have looked, and can find none of them to ſpeak to the purpoſe for which they are cited, but the Book of 7. *H.* VI. *fol.* 1. where the Cuſtom of *London* to deviſe in *Mortmain* is in Queſtion; and there it was ruled a good Cuſtom, becauſe of the Statute that confirms it after the Statute of *Mortmain*, but ſays the Book, *Quere the Statute*; ſo that they were not well apprized of the Statute in thoſe Days, though this were the Foundation of all theſe Reſolutions of that kind.

It appears by the Roll, that it is no Act of Parliament in the Nature of it, for it is 7 *R.* II. N°. 37. 'tis a Prayer of the Commons, That there might be a Patent granted to the City confirming their Liberties, *licet non uſi vel abuſi fuerint.* And the Anſwer was, *Le Roy le veult*; but this is no Act of Parliament, it is no more than a Confirmation of the Letters Patents, which had been *Primo*, *R.* II. Beſides further, there never was any Patent granted in Purſuance of this Act: And yet 'tis plain, that if it had been ſo, it would only have extended to Forfeitures that were paſt, but could never amount to a Diſpenſation or Licenſe for the future. And my Lord, this appears by theſe Authorities and Records that I ſhall now cite. The firſt part of *Pat' Rolls* 16 *R.* II. *membr.* 36, 37. whereby it fully appears, That notwithſtanding theſe pretended Statutes, there was no ſuch Privilege in the City, but that for the Offences of their Officers, or themſelves, the Franchiſe ſhould be ſeized.

But, my Lord, I muſt a little obſerve, that truly the City have attempted to raiſe themſelves above the Fear of any Judgment in any of the King's Courts; for in *Primo R.* II. *Parl. Roll* 126. there they petition for a Confirmation of their Character, with a Clauſe of *licet non uſi vel abuſi*, which was that they then would have to be done in Parliament for them. But they do likewiſe deſire in their Petition, that notwithſtanding any Statute, Privilege, Charters, Judgment made, or to be made to the contrary, their Liberties might be confirmed; of this, 'tis ſaid, The King will adviſe. There is in 1 *R.* II. *Parliament Rolls* 121. as pleaſant a Petition as the other; they there do deſire, that the Interpretation of their Charter may be left to themſelves; and where it is doubting, ſuch Meaning as they ſhould put upon it ſhould be allowable. But to that the King's Anſwer was, That he would make the Interpretation of his own Charters, according as his Council ſhould adviſe. So that I obſerve, they would fain have been abſolute, but they could never do it; it hath always been denied them. So that from what was done at this time, and after 7 *R.* II. it does appear plainly, that there was no Difference between the City of *London* and any other Corporation, only this is really the greateſt. But as all Greatneſs is the King's Favour; ſo when Men forget their Duty, in abuſing the King's Favour, this great Court is the Place to put them in Mind of it. I come then to the Third Queſtion:

III. *Whether the Act of the Mayor, Aldermen, and Commonalty, in Common Council aſſembled, be an Act of the Corporation, ſo as to make a Forfeiture of the whole?* And with Submiſſion, my Lord, that will be pretty clear too upon theſe Reaſons:

1. Firſt of all, the whole Corporation is fully repreſented by them, notwithſtanding the Diſparity of Number ſet forth in their Rejoinder.

2. Again, All By-laws and Ordinances made for the good Government and Order of the City, are certainly the Acts of the Corporation; but the ſole Power of making thoſe Laws is in the Mayor, Aldermen, and Common Council; and therefore ſure the whole Power of the Corporation is in the Common Council.

3. They have the ſole Power of the Corporation-Seal. They can bind all the whole Corporation by any Alienation to, or Charge upon their Inheritance; and by Conſequence they may ſurrender all or any of their Franchiſes, and then as I ſaid, they may forfeit them.

4. They have pleaded that there hath been Time out of mind a Common Council, conſiſting of the Mayor, Aldermen, and Two hundred and fifty Citizens, who are called the Commons of the City. So that it ſhall be intended now, that as they have preſcribed for it as incident to their Corporation, it was part of their Original Conſtitution to be thus repreſented by them, and ruled and governed by their Laws: But there is another reaſon for it, and that is, that it is an inſeparable incident to a Corporation, implied in Law without grant, that they have a power to make By-Laws to bind the Corporation, without which there were no Government in a Corporation; and therefore a miſuſure of that Power muſt be a Forfeiture of their Corporation, becauſe 'tis a breach of their Original Truſt: 22 *Aſſiſ. pl.* 34. there is this Rule given, and a true one it is, Where there are many Franchiſes granted, which do not depend one upon another, there the miſuſure of one is a Forfeiture of that one which was miſuſed; but where there are ſeveral parts of a Franchiſe depending all upon the ſaid Franchiſe, if any part be miſuſed, the entire Franchiſe ſhall be forfeited. As for inſtance, if a Man have a Fair, a Court of Pypowders is incident to it, the miſuſure of that Court of Pypowders is a Forfeiture of the whole Fair itſelf; for where any Part is abuſed that is incident to an entire Franchiſe, that Abuſe forfeits the whole.

And this is the Opinion of *Palmer's Reports* in the Caſe of the Corporation of *Maidenhead*, where 'tis doubted whether the Market was forfeited for taking too much Toll, becauſe the Toll was not inſeparably incident to the Market, and ſo was not dependent upon the entire Franchiſe, and there the rule is taken, as I have ſaid before, that the miſuſure of a part of an entire Franchiſe: or a power that is incident to it, is a Forfeiture of the Franchiſe.

Then, my Lord, if they cannot forfeit here, the whole power of the Truſt of the Corporation is repoſed in them, and may be miſuſed by them, to the Oppreſſion of the King's Subjects, and there is no remedy, if they ſhall not be puniſhed at all. For it is much harder to ſay, that ſeveral Acts of all the particular Perſons ſhould forfeit the Corporation, than that their joint Act ſhould do it. But this, my Lord, is an Act contrary to the truſt upon creating the Corporation, and may be a miſuſure to the prejudice and oppreſſion of all people; and if this ſhould not forfeit the Corporation, there is no remedy at all, but the power remains of oppreſſing as it did before.

Now, my Lord, I think, with ſubmiſſion, I have made it pretty plain; and as they are not diſtinguiſhed from other Corporations in Point of Privilege as to Forfeitures, ſo this is their Act, and ſhall bind them, being done by their Repreſentatives.

IV. Then the fourth Point will be, *Whether theſe Offences ſet forth in the Replication are Forfeitures?*

1. The firſt is the making of that Law in the Common Council for the levying of Sums of Money upon the King's Subjects, and the actual levying of thoſe Sums accordingly; and this they juſtify under their Preſcription to have reaſonable Tolls, as they ſet forth in their Pleadings, from all Perſons that come to their Markets to ſell Proviſion there, and power to reduce their Tolls to a certainty by an Act of Common Council. This is their Juſtification; ſo that, my Lord, the firſt thing to be conſidered is,

(1.) What right they have to theſe Tolls or Sums of Money aſſeſſed by the By-law? and then,

(2.) Whether if they have no right, their taking upon them to make a Law be a Forfeiture?

(1.) For their Right, that depends upon a preſcription to have reaſonable Toll, as they ſet it forth, and this, as they have pleaded it, appears to be no right at all; for a preſcription to have Toll and Tollage, not ſhewing how much in certain, is void; for reaſonable Toll is not incident to a Market, but the Party has it by the King's Grant, and ſo 'twas adjudged in this Court, *Mich.* 39 & 40 *Eliz.* cited by my Lord *Coke* in the *Second Inſt.* 220. So if the King grant a Toll, if he do not in his Grant aſcertain how much ſhall be taken for Toll, that Grant is void, and ſo is the Preſcription too, as you may ſee in the Corporation of *Maidenhead* in *Palmer*'s Reports, *fol.* 79. grounded upon 9 *H.* VI. 45. & 11 *H.* VI. 19. and ſo he cites the Opinion of *Popham* in the Caſe of *Heedy* and *Weeldhouſe*, for no Subject can preſcribe to have Toll, but by the Grant of the King.

But, my Lord, this is not properly a Toll neither, nor in the nature of a Toll; for that is always paid by the Buyer, and never paid before a Sale; but here all that comes to the Market, whether they buy or not buy, ſell or not ſell, they muſt pay by this Law. My Lord, I confeſs there may be a cuſtom for Perſons to pay for Standings in a Fair or Market, as that Caſe was 9 *H.* VI. 45. but yet that muſt be preſcribed for in a certain Sum, which is not done here. And this cuſtomary Payment is in the ſame nature as a Toll traverſe, or a Toll through, which cannot be in an uncertain Sum; for they are all by Preſcription and a Grant of them now uncertain would not be good.

But, my Lord, however, Judgment upon theſe Pleadings muſt be given againſt the City; for either the Preſcription, as they have ſet it forth, is good, or it is not good; if it be good, then the Traverſe that is taken is well taken, *to wit*, that they have no ſuch Cuſtom, and they ought to have taken iſſue upon that which they have not done; for, my Lord, they have taken Iſſue thus, That, Time out of Mind, they have had reaſonable Toll of all Perſons coming to the Market to ſell their Proviſion, without tying of it to the reaſonable Toll aſſeſſed and reduced to Certainty by the Law; and this is naught: For though they had a reaſonable Toll in general, taking the Preſcription to be good, yet if either that reaſonable Toll in the uſe of it were not taken in that Manner, or to that Value that they aſſeſs by their By-law, then have they done Wrong; and therefore our Traverſe is proper to their reaſonable Toll, that they had not, Time out of Mind, ſuch a Toll as they ſet forth; for it muſt be ſuch a reaſonable Toll as may anſwer to that which is aſſeſſed in the By-law; and that they have not put in Iſſue. For the King, when once he hath granted a Market, cannot after grant Toll to that Market, becauſe it is a free Market, and the People have Right to come to it as a free Market; neither can they, when once by Cuſtom they have exerciſed their Power of aſſeſſing reaſonable Toll, alter that at their Pleaſure; for it being once ſet, all People have Right to come upon ſuch Terms: And if they increaſe the Toll, under Pretence to reduce it to Certainty, it will be void; for they may lower their Price if they will, but they can never come to increaſe the Penalty. If, therefore, they have done Ill in not taking Iſſue upon the Traverſe, which does take in the full Subſtance of their Rejoinder; if it be good, then Judgment muſt be given againſt them upon that Reaſon; ſo then, my Lord, the Queſtion will be,

(2.) *Whether the making of a Law to raiſe Money at large upon the Subject be a Forfeiture of the Charter?* And truly, my Lord, that it is. For,

Firſt, It is the uſurping of a Power that they neither can have, nor have by Law.

Secondly, It is a Breach of the Truſt annexed to the Corporation; for 'tis a Miſuſure of the Franchiſe, to the Oppreſſion of the King's Subjects; and therefore the Charter muſt be forfeited, and not the other Franchiſe; not the Franchiſe of a Toll, for they have none; not the Franchiſe of the Market, for that would be nothing. If the Market be forfeited, it muſt either be extinguiſhed or kept, if it be extinguiſhed, 'tis a Puniſhment to others that did not offend; and if it be kept, though it be forfeited, 'tis no Puniſhment to them that do offend: And 'tis a Queſtion whether a Market may be forfeited for taking unreaſonable Toll; and that appears in the Caſe of *Maidenhead*. And, as my Lord *Coke* ſays upon the Statute about taking outragious Toll, the Franchiſe ſhould be ſeized only till it be redeemed by them.

But, my Lord, however, without going far into that Matter, this Offence lies not only in taking the Money, but in taking upon them, and uſurping a Power to make Laws to raiſe Money. They have taken upon them a legiſlative Power to oppreſs their Fellow Subjects, that is their Offence, and that is a Miſuſure of their Franchiſe. My Lord, in the Caſe of Ship-money it was not the *Quantum* of Money that was raiſed, that was complained or quarrelled at, but it was the Manner of levying of it without an Act of Parliament. The Logick and Conſequence of that was it, which was ſo much debated and ſtood upon. So here, the Abuſe and the Offence is the making the Law, and the Conſequence of that; for by the ſame Reaſon that they have a Preſcription to lay ſo much, they may have a Preſcription to lay ten Times as much. So that upon what I offer upon this Point, I conceive it ought to amount to a Forfeiture of their Charter, and the Loſs of their Corporation.

Then the next Thing will be that which is the laſt Matter, that is the Petition, and that is of a ſtrange nature; where the Offence is not only in preſenting, but in printing and diſperſing of it; it charges the King with interrupting the publick Juſtice of the Nation, and the making the neceſſary Proviſions for the Security of his Proteſtant Subjects; for, my Lord, to ſay, that the Prorogation of the Parliament, which is the King's Act, who ſurely has alone, and none but he, the undoubted Prerogative of calling, proroguing, and diſſolving Parliaments; to ſay that Act of his was an Interruption of Juſtice, is all one as to ſay, the King did interrupt: And 'tis done by them as a Corporation; 'tis the Act of the City in their Common Council in the Name of the Corporatian; and, as we have pleaded it, the Mayor, Citizens, and Commonalty, in Common Council did do it, which ſure is the Corporation, as they would have it. And that I rely upon for the Reaſons I offered before upon that Point.

Then the Matter of this Petition is the taking upon them to cenſure the King and his Government by this Petition. The printing and diſperſing it is now publickly ſcandalizing and libelling the King; for 'tis in the Nature of an Appeal to the People: 'tis unlawful to print any Man's private Caſe, while it is depending in any Court of Judicature, before it comes to Judgment, becauſe 'tis an Appeal to the People. And that was my Lord Chief Juſtice *Hales*'s Opinion in Colonel *King*'s Caſe. And the ill Conſequences of ſuch Proceedings are ſo many, and the Danger ſo evident in theſe licentious Days, that I do not know indeed whither it may tend.

The Fact is confeſſed by them in their Rejoinder; but they ſay they did it to alleviate Men's Fears, and quiet their Minds *abſq; hoc*, that they did it *aliter vel alio modo*. Surely, my Lord, this is no ſort of Excuſe in the World, nor is it capable of any. They have owned the Thing, but they have excuſed it in the Manner of doing thereof. And I may venture to ſay the Traverſe is impertinent: Suppoſe a Man be indicted for publiſhing a Libel, and he owns the Fact, but doth traverſe *abſq; hoc*, that he did it *maliciofe*, or with an intent to defame, that ſurely would be an idle Thing; for thoſe are Conſtructions that the Law puts upon it, and are not Matters traverſable, or to be put in iſſue. But if the Fact be done the Law ſays, 'tis maliciouſly done, and with ſuch an Intention. Therefore a Confeſſion of the Fact is a Confeſſion of all the Conſequences that the Law puts upon the Fact.

My Lord, this can Amount to no leſs than the Forfeiture of their Charter, not only for the greatneſs of the Offence, but becauſe otherwiſe the Law would be unequal; for if this were the Caſe of a private common Perſon, he muſt be fined and impriſoned during the King's Pleaſure, as was the Caſe of *Harriſon* in I. *Cr.* 503. for Words ſpoken of Juſtice *Hutton*. Now, my Lord, a Corporation is not capable of ſuffering this Impriſonment; and therefore 'tis a much greater Offence in them, as the Body is greater than any particular Member: And then, that which is a greater Offence would have a leſs Puniſhment, if the Charter itſelf were not forfeited, than it would if a particular Perſon were puniſhed. And give me leave to apply here the Reaſon of the Earl of *Glouceſter*'s Caſe, that I cited before, *Quia Dominus Libertatis puniretur in eo quo deliquit.* So they ſhall loſe their Charter for the Abuſe of that Power that was intruſted with them by their Charter. Therefore, upon the whole Matter, I do humbly pray your Judgment for the King, that they may be outed of their Franchiſe of being a Corporation.

May it pleaſe your Lordſhip,

Sir *George Treby.*

I AM of Counſel in this Caſe for the Mayor, Commonalty, and Citizens of *London*.

The Record hath been truly opened by Mr. Solicitor in all Particulars, except an Omiſſion of one or two, which I ſhall mention.

The Information ſets forth and charges, That the Mayor, Commonalty, and Citizens of *London*, had, by the ſpace of a Month before the Information, uſed, or claimed to uſe, without any Warrant or Royal Grant, the Liberties therein ſet forth; that is to ſay; to be of themſelves a Body Politick and Corporate with ſuch a Name, and by that Name to plead and be impleaded, to anſwer and be anſwered; and likewiſe to make Sheriffs and Juſtices of the Peace: But as to theſe there are only Imparlances, and I ſuppoſe Continuances. But as to the firſt Article, the Defendants plead and preſcribe, That they are a Body politick Time out of Mind; and then they ſet forth, indeed, ſeveral Acts of Parliament, and Charters of Confirmation. To this Mr. Attorney General doth reply two Things:

Firſt, He takes Iſſue upon the Preſcription, That they are not Time out of Mind a Body politick with ſuch a Name; and then he aſſigns a Forfeiture, which Mr. Solicitor, indeed, does call two Cauſes; but they rather ſeem to be but one joint Cauſe; but yet take them to be two.

The firſt is, That the City did aſſume upon themſelves a Power to meet and make Laws for the Government of the City, and thereupon did make the Law which is now in Queſtion; and thereby did levy, and order to be levied, for one Horſe Load of Proviſion ſo much, *&c.* and that this ſhould be paid to the Uſe of the City, and for Default of paying, the Perſons denying to pay this Rate, ſhould be removed from their Standings in the Market.

The ſecond Branch is, *The Petition*, and therein are thoſe Words which Mr. Solicitor hath repeated about the Prorogation of the Parliament.

And to all this the Defendants do rejoin, That the City of *London* has, Time out of Mind, been ſeized of theſe Markets; and they ſay, That the City of *London* is the Metropolis of the Kingdom, and conſiſts of above fifty thouſand Citizens and Inhabitants; and that (at their proper Coſts and Charges) they are to provide, and always have provided a Market-place to ſell Proviſion in, and alſo Officers for the Preſervation of good Order, and Regulation of that great Concourſe of People that comes thither, and that they have always amended and cleanſed the Markets; and for theſe Charges of the Market-places, and Officers, and cleanſing of the Markets, they have always received, and ought to receive reaſonable Tolls. They ſay that Time out of Mind there has been a Common Council in the City, and that, for the like Time there has been a Cuſtom, that they ſhould make By-laws for the better Regulation of the Markets, for the ordering where ſuch and ſuch Markets ſhould be held, and for the aſſeſſing and reducing to Certainty the Tolls and Rates that are to be paid by Perſons coming to the Markets, ſo as ſuch Laws be profitable to the King and his People, and agreeable to the Laws of the Kingdom; and then again they ſet forth the ſeveral Confirmations of their Cuſtoms and Privileges by Acts of Parliaments and Charters.

And then, as to the ſecond Branch of their Forfeitures, they ſet forth, That there was ſuch a Plot, and ſuch Proceedings in the Courts of Juſtice againſt the Conſpirators, and that there were ſeveral Judgments and Executions upon it; and they ſet forth ſeveral of the King's gracious Speeches to his People in Parliament: amongſt other Things, that he did there, in his Speech therein mentioned, recommend to the Lords and Commons in Parliament aſſembled, to purſue the further Examination of the Plot; adding, That he thought not himſelf nor them ſafe, till that Matter was gone through with, and that the Lords in the *Tower* might be brought to their ſpeedy Trial, that Juſtice might be done. They ſet forth likewiſe an Addreſs of both Houſes for a Faſt, wherein they deſire that the King would iſſue forth his Proclamation, which Proclamation is accordingly iſſued; and in that it is expreſſed (I cannot repeat the Words, but to this Purpoſe), *That the Dangers impending could not be prevented, but by the Bleſſing of God upon the Councils of his Majeſty and the Parliament.* Then they ſet forth, That the Parliament was preparing ſeveral Bills for the Preſervation of his Majeſty's Perſon and the Proteſtant Religion, and the Peace of the Kingdom; and thoſe Bills could not be enacted elſewhere, and that they were then depending: And they ſet forth further, that the Parliament was prorogued before thoſe Bills were enacted: And they ſet forth alſo, that the Lords impeached could not be tried, but in Parliament; and that by the Law of the Land it is lawful for the King's Subjects in their Diſtreſſes, and for Redreſs of Grievances, humbly to petition the King for Remedy in that Behalf; and that for Satisfaction of the Citizens, who had made their Applications to the Common Council, and for the alleviating of their Fears; and out of their Zeal for the Preſervation of the King's Perſon, and the Proteſtant Religion, they did give their Votes to this Petition, as is charged; and they give their Reaſons for it; that is, it was ordered to be printed, to the Intent that falſe Rumours (concerning the Citizens petitioning of the King) might be prevented, and the Enemies of our Lord the King from proceeding in their Conſpiracy be deterred, and the Fears and Perturbations in the Minds of the King's Subjects might be allayed, and that the Citizens and Inhabitants of the ſaid

City might better know what was done upon their Application to the Common Council.

My Lord, I have taken ſome Notes of what Mr. Solicitor has ſaid; but I beg your Lordſhip's Leave, that I may firſt deliver what I have prepared upon the Argument; and afterwards I will talk upon my Notes, and give particular Anſwers to the particular Things he has inſiſted upon, for ſo much of them as I ſhall not anſwer in my Diſcourſe, which I muſt beg your Lordſhip's Patience in; for I fear I ſhall be pretty long.

I ſhall go on upon the ſame Points Mr. Solicitor has done, and endeavour to meet him, and give an anſwer in all Particulars, and ſhall add a Point or two which he has not mentioned; as particularly, that this Information (as it is here laid upon this *Quo Warranto*) is not brought againſt right Perſons; for it is brought againſt the Mayor, Commonalty, and Citizens of the City of *London*. Whereas it ought to be brought againſt particular Perſons for uſurping ſuch a Corporation, if it can be brought at all.

The firſt thing that I ſhall go upon, is, *That a Corporation cannot be forfeited*; for now we muſt begin as it were from the Replication; for there is diſcloſed all the Matter, upon which the Streſs of this Point lies.

And that a Corporation cannot be forfeited, I think will appear by opening the Notion and Nature of a Corporation, which you may find in my Lord *Coke*'s *1ſt Inſt. fol.* 202. 250. he ſays, It is a Body to take in Succeſſion, framed as to that Capacity by the Policy of Man, and called a Corporation, becauſe the Perſons are made into a Body, and ſo are of Capacity to take or grant, *&c.* And he ſays, *That Perſons capable of purchaſing are of two ſorts*; *Perſons Natural created of God, ſuch as private Men, as* J. S. *and* J. N. *and Perſons created by the Policy of Man, as Perſons incorporated into Bodies Politick.* So then if this be the true Notion of a Corporation, then all the Queſtion is, Whether there ſhall remain ſuch a Perſon in the World as this Corporation of the Mayor, Commonalty, and Citizens of *London?*

And that this is a meer Perſonality and Capacity will further appear even by this *Quo Warranto* itſelf, which ſays, *That we did claim and uſurp to be a Corporation under ſuch a Name, and thereby to plead and be impleaded, to anſwer and to be anſwered:* So that there is no more now can be conſidered in this Record, but whether we have or can have the Capacity of being Plaintiff and Defendant.

My Lord, in *Brook*'s *Abridg.* tit. *Corporation* (I cite not what is ſaid there as an Authority, but only as an Opinion), he joins the Titles Corporations and Capacities together: I ſay, it is only the Judgment and Notion of the Man, who your Lordſhip knows never uſes to join any Words as Titles, but what are ſynonymous; and there he joins Corporations and Capacities, to ſhew the Nature of a Corporation is a Capacity. And ſuitable to this is what Juſtice *Windham* ſays in Dr. *Patrick*'s Caſe; *A Corporation is a mere Capacity, a civil Capacity*, ſays he, *I do call it an* Ens rationis; whether he did affect that Word becauſe it was in the Caſe of a Man in the Univerſity, I cannot tell; but the Meaning was, that this was the Notion of a Corporation, that it was an inviſible Perſon and Capacity only.

Now, my Lord, I do not love to litigate about Words: I muſt confeſs that Mr. Solicitor does not ſpeak without ſome Authority, when he calls a Corporation a Franchiſe; but I ſay it is not properly a Franchiſe to have a Power to be impleaded and to plead; for as to that they are Conſequents, which belong to the Perſon rather than a Liberty or Franchiſe that is ſuperadded to it. Therefore in *Hobart* 210. *Norris* and *Stap*'s Caſe, the Caſe of the Wardens and Fellowſhip of the Weavers of *Newbury*; I think it unneceſſary to cite the whole Caſe, but there my Lord *Hobart* ſays, *Though Licence or Power to make Laws is given to a Corporation by a ſpecial Clauſe*, yet it is needleſs, for I hold it to be included by Law in the very Act of incorporating; and ſo is alſo the Power to ſue and to be ſued: Such Body is a Perſon that muſt anſwer the Law as a Defendant, and ſue as a Plaintiff.

But I do agree, I ſay, that there is one Caſe, and yet but one in all the World, wherein a Corporation is called a Franchiſe; and it is in *Coke*'s *Entries*, tit. *Quo Warranto, Placito primo*; a *Quo Warranto* is brought againſt ſeveral Perſons, to ſhew by what Warrant they claim divers Liberties, Privileges, and Franchiſes, as to be of themſelves a Body Politick and Corporate, by the Name of the Burgeſſes of *Helmeſley* in the County of *York*. So that under that general Word I confeſs it may be called a Franchiſe; and the rather, becauſe Mr. *Noy* (a Man of great Learning) in his great Argument of *Fulcher* and *Haywood*'s Caſe in Mr. Juſtice *Jones* Reports, ſays it is a Franchiſe, for it was called ſo in ſuch a Plea.

But now, my Lord, that it is not in it's own Nature forfeitable, is made plain by all thoſe qualifications that have been attributed to it, and Expreſſions in our Law Books about it: As that a Mayor and Commonalty, or Body Corporate, can never die, *1ſt Inſt. fol.* 9. *b.* 3 *Coke* 60. *a.* 2 *Bulſtr.* 233. 21 *Edw* IV. *fol.* 13. a Mayor and all the Officers; but the Commonalty have Succeſſion *in perpetuum*, and can never be ſaid to die: And this Notion, my Lord, has gone further than *England*: I beg your Lordſhip's Pardon if I take the Liberty to cite a very learned Author *Grotius*, in his Book *De jure Belli & Pacis*, *lib.* 2. *cap.* 9. he ſays, *Cities are Immortal*; and a City does not therefore ceaſe to be a City, though all the Citizens of it ſhould die.

But the diſſolving of a Corporation by a Judgment in Law, as is here ſought, I believe is a Thing that never came within the Compaſs of any Man's Imagination till now, no, not ſo much as in the putting of a Caſe. For in all my Search (and upon this Occaſion I have beſtowed a great deal of Time in ſearching) I cannot find that it ever ſo much as entered into the Conception of any Man before; and I am the more confirmed in it, becauſe ſo learned a Gentleman as Mr. Solicitor, has not cited any one ſuch Caſe, wherein it has been (I do not ſay adjudged, but) even ſo much as queſtioned or attempted; and therefore I may very boldly call this a Caſe *primæ impreſſionis*.

1 *Inſt. fol.* 13. *b.* there it is ſaid, If Lands holden of *J. S.* be given to an Abbot and his Succeſſors; in this Caſe, if the Abbot and all the Convent die, ſo that the Body Politick is diſſolved, the Donor ſhall have again his Land, and not the Lord, by Eſcheat. So that he does allow a Body Politic may be diſſolved indeed; but it is not properly a diſſolving, nor a dying of that Body, but a taking away of the Subjects in which it did ſubſiſt, or to which it did adhere. And therefore unleſs it be by ſuch an Accident, as all of them dying, or by Violence, as in the Caſe of the Monks of *Bangor*, I never heard before that a Corporation was diſſolved; to be ſure not by a Judgment in Law. My Lord *Rolls*, in his Abridgment, *Part* 1. *fol.* 514. tit. *Corporation*, at the Letter *I*, makes it a Head of one of his Titles, *How a Corporation can be diſſolved*; and therefore was led very properly to enquire into all Things that might diſſolve a Corporation; for that Book is in the Nature of a Common Place Book. Now under that Head he cites not only the common Caſe, if all the Members die, then 'tis a Diſſolution; but he ſays further, and he cites an Authority for it, If a Corporation conſiſts of ſo many *Confratres*, and ſo many Siſters, and all the Siſters die, this Corporation is diſſolved; for both the Brothers and Siſters are integral Parts of the Corporation, and it cannot ſubſiſt by halves. But he does not go further, he does not ſay, If they ſhall levy too much Money upon the Market, nay, he does not ſay, if they ſhould commit Treaſon (if it were poſſible they could do ſo) which had been more proper to have inſtanced in, he being naturally led to it under that Title; for that is a thing that happens a thouſand times oftner than the Death of all the Members. And, under Favour, if the Law be ſo as they would have it, every Penalty levied upon a By-Law does endanger the Corporation every whit as much as this of the Rates upon the Markets.

Littleton, my Lord, in his *Sect.* 108. (it is a general Rule, but commonly taken Notice of, and may be in this Caſe) ſays there, upon the Statute of *Merton*, An Action will not lie againſt a Guardian for the Diſparagement of his Ward, becauſe it was never heard of from the time of the making of that Statute, that ſuch an Action was brought; and yet he adds, that the Words of the Statute might very properly ground ſuch an Action. Now, my Lord, that was a matter of two hundred Years before *Littleton* wrote, that that Statute was made; and 'tis poſſible ſuch an Action might have been brought, but not remembered, and that is an Action brought by an Inferior againſt a Superior, the Ward againſt his Guardian; but here this Suit, if it can be brought, is brought by the King, who is Supreme, and therefore there can be no Reaſon to think, but he would have brought many of theſe Suits to have diſſolved Corporations, if by Law it might have been done.

Beſides, my Lord, Acts of Parliament can never be antiquated, becauſe a Statute is a Law in Writing; but the Common Law is not a Law unleſs it be repeated and practiſed. And ſo is *Davis*'s Opinion in the Preface to his Book, and in the Body of his Reports too: He ſays, That when People have tried and uſed ſuch an Act, and found it uſeful and profitable to the Publick, and fit to be practiſed, that Act of Repeating begets a Cuſtom, and ſo becomes in it's Name and Nature the Common Law of the Land. But now, my Lord, if I can challenge all the Times, and all the Precedents that ever were in this Kingdom, to ſhew me where ever there was a forfeiture of a Corporation, or a Judgment given againſt a Corporation to forfeit it; no, nor ever thought of till this laſt Year, I think I may aſſert 'tis not Law: And if it extend to this Corporation of *London*, it muſt have extended to all Corporations formerly, and it muſt do ſo to all ſtill.

In the Caſe of Eccleſiaſtical Leaſes, in the fifth Report, and in ſeveral other Places, there is a large Diſcourſe of what Biſhops and other Spiritual Corporations might do at Common Law; 'tis ſaid, They might grant for Years, for Life, in Tail, or in Fee. But what might they grant? their Lands and Tenements, their Poſſeſſions and Revenues; but never one Word, that they could grant away themſelves, or Politick Capacity; ſtill that which was their very Being, was not in their own Power to grant away; and, if it were not to grant, much leſs were it in their own Power to forfeit: For if it ſhould be ſo, there is never an Hoſpital in *England*, but if it have taken too much Toll, were to be deſtroyed; and never a Biſhoprick, Deanry, and Chapter (nay, almoſt particular Parſonages, for they are Spiritual Corporations too, and all the Corporations of *England* are under the ſame Rule of Law) if they have tranſgreſſed in any of the Kinds aſſigned here for a Forfeiture, but were to loſe their very Being.

That theſe were in the Power of theſe Spiritual Corporations at the Common Law, no Man doubts; and if any Man does tell me, that the reſtraining Statutes do extend to the Corporation, truly I muſt deny it; for it is Lands, Tenements, and ſuch Things, that are mentioned, and there is Proviſion made only againſt Grants, and not againſt Forfeitures. A Forfeiture, Mr. Solicitor ſays, muſt be a great Breach of Truſt; and ſo it muſt indeed! and how then ſhould they anſwer for it? If a Biſhop, or a Dean and Chapter, have Lands in Fee upon Condition, and they break the Condition, their Lands are gone: But if that Breach of Condition ſhould amount to a Forfeiture of their being a Corporation, that were very ſtrange; this would diſſolve and deſtroy all the Colleges in the Univerſities, and all the Charity in the Kingdom; for every Breach of ſuch Condition would be a Breach of Truſt.

My Lord, there was a very proper Time when this might have been thought of, if it could have been maintained for Law, and that was in the Time of *H.* VIII. He ſent out Dr. *London* and others with a Commiſſion of Inquiry, to examine into all the Miſdemeanors of the Monaſteries, Convents, and Colleges. To what Purpoſe was all this done? Could he not have brought *Quo Warranto*'s againſt them? He needed not have hunted much for Miſdemeanors and Offences; if they had but raiſed five Pounds, nay, for ought I know, if they had but raiſed five Pence upon a Market, or the like, they had all been diſſolved; and 'twas ſo much the worſe in this Caſe then, for this Reaſon: In thoſe Regular, Religious Houſes, and Corporations, the Body of them was dead, and the Abbot or Head was only to appear for them, and plead and defend for them. Therefore 'tis ſaid in the 1 *Inſt.* 103. *a.* that in a *Quo Warranto* againſt an Abbot, or Biſhop, or a Prior, for Franchiſes and Liberties, if the Abbot or Prior diſclaim alone, this ſhall bind their Succeſſors; and if it were poſſible that there might have been a Forfeiture, yet without ſo much as troubling himſelf to aſſign that Forfeiture, he might have gone that way by *Quo Warranto* to get a Diſclaimer.

And 'tis very well known, there were Men put in thoſe Houſes to be Heads of them, on purpoſe to try if they could ſurrender them: And that they needed not to have done, nor have aſked the Conſent of the Members to have ſurrendered; for they needed only to have brought a *Quo Warranto*; for after the Renunciation of the Pope's Power and Supremacy, King *H.* VIII. did grant his *Conge d'eſlire* to chooſe the Heads of thoſe Corporations; and when they were once there, and a *Quo Warranto* iſſued, the Abbot or Prior might ſay, This Corporation is but a Liberty or a Franchiſe, and I am the King's Creature, I will diſclaim the Liberties, and there is an end of the Franchiſe: But this was not thought of *in diebus illis.*

I think, my Lord, that in caſe of a Town the Law is clear; though I ſhall not at preſent much contend with Mr. Solicitor upon that Point, that *London* ſtands upon greater and better Circumſtances than other Corporations and Towns. It is all one as to the main Points, whether it do, or not; though I ſhall ſay enough as to the particular Reaſon, to anſwer what he ſays to the contrary, by and by. But yet this I will ſay, a Corporation in a Town is more protected in Law, than others are: For, ſays my Lord *Coke*, if a Town or Borough does decay, yet it ſhall remain a Town or Borough; as is plain in the Inſtance of the Burgeſſes of *Old Sarum*, and the like. So that it ſeems, that though the Death of the Abbot and his Convent does deſtroy that Corporation, yet the Dilapidations and Decays of a Town does not deſtroy it, but it remains a Town ſtill; nor is the Liberty of ſending Burgeſſes to Parliament deſtroyed, or forfeited.

I confeſs, my Lord, I do not ſee but that at this rate a *Quo Warranto* may be brought againſt a particular Man, to know by what Authority he claims to have the Liberty of a Subject, to ſue and be ſued, to plead and be impleaded: 'Tis a Capacity that's born with him, and belongs to him as he is born in *England*, or as he is by Act of Parliament naturalized, and made a Subject; eſpecially in the caſe of Denization it comes home to the Point. Why ſhould not a *Quo Warranto* be brought againſt a Man, to know by what Warrant he claims to be a Denizen, and in that reſpect to plead and be impleaded, to ſue and be ſued? Theſe are relative Capacities, that ſtick and adhere to the Perſon; and if you once conſtitute the Perſon, you ſhall never ſay he ſhall not have the Incidents to ſuch a Perſon.

This Caſe indeed, my Lord, that I put laſt, is ſo groſs a Thing, that it was never drawn in queſtion, though ſome others have, as Dignities, Lordſhips, and the like; and yet no *Quo Warranto* was ever brought, or can lie in theſe Caſes. And that is the Opinion upon that great and ſolemn Argument of the Caſe of the Earl of *Oxford*, in Mr. Juſtice *Jones*'s Reports; where it was held, that an Earldom, or the like, is a perſonal Dignity, and ſuch a one is in the nature of a publick Perſon, and by no means can part with or ſurrender that Capacity. And ſo your Lordſhip knows it was adjudged lately in the Houſe of Lords in Parliament, upon the Petition of the Lord *Purbeck:* They all voted there, that Peerage could not be determined, nor ſurrendered; no, although there was a Fine levied, and all the Inſtruments of Law that could be contrived to annul it; and I cannot ſee, but that if this Capacity of a Corporation be liable to a Forfeiture, all others muſt be ſo too.

There is one Capacity indeed, and a ſmall one, that a Feme Covert has by the Cuſtom of *London*, That ſhe ſhall trade without her Huſband, as ſole Merchant, and be ſued ſo, and ſhall ſue: The Huſband indeed is named, but only for Conformity; the Action is againſt her, and the Judgment againſt her ſeverally, and the Debt muſt be levied of her Eſtate; can it be thought that a *Quo Warranto* lies for ſuch a meer Capacity? No more than it can lie to know, by what Warrant ſuch an one claims to be an Executor, or Adminiſtrator, or an Overſeer of a Will; and yet there an Action is brought againſt them in ſuch a Capacity, and as ſuch they ſue and are ſued, though perhaps they would be glad to be rid of that Capacity too.

My Lord, 'tis true what my Lord *Coke* ſays in his 2 *Inſt*. 664. there was a Cuſtom to take Tithes of Marriage Goods within the Dominion of *Wales*, which is taken away by a Statute; and there he ſays, If a Cuſtom, that was once reaſonable and tolerable become grievous, and not anſwerable to the Reaſon whereon it was grounded, yet it cannot be taken away but by Act of Parliament; for an Inheritance once fixed cannot be taken away but by Parliament. If this be ſo of a little Cuſtom in *Wales*, how much more is it ſo of this great Corporation of *London*, and, which is more yet, of all the Corporations in *England?*

My Lord, Mr. Solicitor was pleaſed to ſay that a Corporation might be ſurrendered. I muſt confeſs, I ſhould not willingly have meddled with that Point at this Time; but ſince it has been mentioned, I will only endeavour to ſay ſo much as may anſwer him in what he intended it for, as a Ground for the better proving the Point of Forfeitures. I believe Mr. Solicitor (becauſe he cited no Authority for it) might reſt very much upon the ſuppoſed ſurrenders in the Time of *H.* VIII. the Surrenders that were made of the Monaſteries then; and I do believe he does preſume, as others have thought, that thoſe were Surrenders of their Corporations: Truly, my Lord, I believe they were not; and to prove that they were not, I ſhall rely upon the Dean and Chapter of *Norwich*'s Caſe, 3 *Coke* 73. which is alſo reported in 2 *Anderſon* 120. and I ſhall at the ſame Time mention another Caſe, and that is the Caſe cited before of *Fulcher* and *Haywood*, in *Jones* 166. and in *Palmer* 491. where the ſame Queſtion comes to be debated, *Whether the Deanry and Chapter of* Norwich *was given up and deſtroyed by their Surrender?*

My Lord, in the Report of that Caſe in *Palmer*, I will firſt remember your Lordſhip of what is ſaid by *Whitlock* in his Argument of that Caſe; it is *fol.* 501. of that Book; there *Whitlock* ſitting in this very Court, ſays, That although the King can create and grant a Corporation, yet he cannot diſſolve a Corporation; and a Dean and Chapter being a ſettled Corporation, by their own Act cannot diſſolve themſelves; being once a ſettled Corporation cannot be *felo de ſe*. But I ſay further, thoſe Acts of Parliament made in *H.* VIII.'s Time (they are all in your Lordſhip's Memory) that of 27 *H.* VIII. gave all the Monaſteries under two hundred Pounds a Year to the King; that of the 30 *H.* VIII. *cap.* 13. recites, that ſeveral other Monaſteries had been granted, ſurrendred, and forfeited to the King; and it ſays, that the King ſhall have them, *&c.* I do allow there are the words *ſurrendered* and *forfeited*, and I mention them on purpoſe to anſwer them; and this is the Anſwer I give them.

Firſt, for the Word *Surrender*. When the Monaſteries were ſurrendred, that was only a Grant of the Lands, and nothing elſe; the word *Monaſtery* can carry nothing elſe in it. And ſo is *Wortly* and *Adams*'s Caſe in *Plowden*'s *Com.* 194. where there is a great Diſcourſe of the Surrenders of the Monaſteries, and the Acts of Parliament about them, and what enſued upon them; but in all that Book it was not by any Means admitted, that the Corporation, or any of that, was by theſe Surrenders diſſolved: And, my Lord, as to the word *Surrender*, it is fully ſatisfied by the words *Lands* and *Tenements.*

Secondly, as to the word *forfeited*, my Anſwer is this: The Corporation is not named in the Surrender, and therefore cannot be preſumed to be intended to be ſurrendred; and then there are other Things, as Leets, Liberties, and Franchiſes, which are named, and are capable of being forfeited, and ſo the word *forfeited* may be applied to them, and very properly; for they are liable to a Forfeiture, but the word *Corporation* is not at all mentioned.

But for another underſtanding of the word *forfeited*, I deſire your Lordſhip would give me leave to cite a Caſe in the 2d *Part* of *Rolls*'s Reports, *fol.* 101. (which is called the *Continuation* of his Reports) and it agreeth exactly with the Hiſtory of thoſe Times: There were ſome Abbots, as the Abbot of *Glaſtenbury*, the Abbot of *Reading*, and the Abbot of *Colcheſter*, that were ſtiff Men, and would not ſurrender; thereupon the King gets them indicted of Treaſon, (the Story is well known how he handled thoſe Men) and thereupon they did graft a Kind of Opinion, that their Land was forfeited by this means; for a ſmall Pretence would ſerve then to put People into an Act of Parliament of Attainder; and he tells you, that was the Reaſon why they put the word *forfeited* into the Act of Parliament; and then diſbottom themſelves upon the Statute 26 *H.* VIII. *cap.* 13. that Statute that gives to the King any Eſtate of Inheritance, whereof any one is ſeized that commits Treaſon. Though I do not by any Means allow it to be Law, that thoſe Clergymen by their own Acts could forfeit ſo much as the Lands of their Corporation; but it was taken for a Pretence, and ſo they put in the word *forfeited.*

Beſides, another Thing is this, the ſame Statute ſays, *The King ſhall have and enjoy the Things there given him, in the ſame manner as they the Abbots, Priors,* &c. *ſhould have enjoyed them.* Now if the King ſhall enjoy all as they did, and in the ſame manner, what then muſt he enjoy? It may well extend to Lands, to Leets, and to Markets, and particular Franchiſes; all thoſe Things the King may have: But ſhall the King have their very Corporate Capacity? Shall the King have and enjoy the Liberty of ſuing, and being ſued, by the Name of the Abbot and Prior, or the like? That Office, ſure, he cannot execute; it is inconſiſtent with Senſe or Reaſon to ſay, that he ſhall have it, or can have it. And in theſe Statutes they did doubtleſs accumulate Words to make them look the bigger, becauſe they were to make a great Preſent to *H.* VIII. by theſe Means.

Then comes 32 *H.* VIII. *eap.* 24. that relates to the Corporation of the Knights of St. *John* at *Jeruſalem*; and it ſeems by the penning of that Statute, that this very Queſtion had been taken notice of ſince the Time of the making of the laſt Statute in 30; for there it is declared, That that Corporation of St. *John* at *Jeruſalem* ſhall be diſſolved, and that the King ſhall have their Lands. So that their taking notice, and providing directly to diſſolve it, ſhews, that they had by that time conſidered, that neither the Surrender of their Lands, nor the veſting of them in the King, had done any Thing to the Corporation, ſave only they had deſerted their Houſe, and fancied themſelves diſſolved, becauſe they were turned out of their Poſſeſſions.

My Lord, in the great Caſe of *Haywood* and *Fulcher*, 'tis again and again ſaid there, That the Surrender of the Dean and Chapter, (where they ſurrendred all their Church, and all their Franchiſes and Hereditaments) was no Surrender of the Corporation, no, though the King did take it to be a Surrender, for he accepted it as a Surrender, and granted them a new Incorporation of the ſame Name, only adding, *Ex fundatione Regis Edwardi Sexti*. So that he did take it to be a good Surrender, but it was adjudged that it was not a good one; and ſo it is held in 3 *Coke* 73. And ſo ſays the Dean of *Wells*'s Caſe in *Dyer* 273. the Surrender is, *Diaconatus Eccleſiæ Cathedralis de Wells:* One would think it impoſſible to have ſurrendred any Thing by a ſtronger Word; but yet there they ſay, 'tis not good without an Act of Parliament.

And whereas it hath been ſometimes ſaid, as it is there, they were diſſolved, and they have been diſſolved by the Surrenders, and the like; there is a very good Anſwer given to all that Diſcourſe in *Palmer* 495. where 'tis ſaid, When they ſpeak of a Diſſolution by Surrender, 'tis a Relation of Fact only, and not of Law; that is, they were diſſolved in Fact, ſo as that they did deſert their Houſe, and did demean themſelves as if they were diſcorporated, but they were not ſo in Law; for they fancied a Corporation could not be without Lands, and ſo, when their Lands and Church were given up, they thought all was gone and diſſolved: For (ſaid they) a Dean and Chapter muſt be a Dean and Chapter of ſome Place, and when the Land is gone, how can they be ſaid to be of ſuch a Place? No, ſaid the Judges there, that is no Reaſon at all; for the Corporation was before they had any Lands; and if thoſe Lands were all evicted, or they all diſſeized of them, yet they are a Corporation ſtill. And in *Roll*'s *Abr.* 2. *Part* 185. 'tis ſaid, the Abbies came to the King by the Statutes of Diſſolution; ſo that they had no Opinion that the Surrender did carry even their Lands, though I do admit they did carry their Lands; but I may ſay they could carry no more, they could not carry their Being of the Corporation.

There is a Caſe in *Dyer* 282. and 'tis the only Caſe that ſeems againſt us in this Point; there were two Deans and Chapters of St. *Patrick* and *Chriſt Church* in *Dublin*, in *Ireland*; and theſe both, and not one of them, were together one Chapter of the Archbiſhop of *Dublin*, Time out of Mind, and one of theſe ſurrendered, and then their

Houſe was uſed for a Place for the Courts of Juſtice, and continued ſo; and then a Leaſe is made by the Biſhop, and that confirmed by the only remaining Dean and Chapter, which was that of *Chriſt Church*: And whether that Leaſe was good or no was the Queſtion, and truly that was the only Queſtion that is made there in that Book; and ſo 'tis of little Authority as to any Thing elſe; but 'tis true, that that Book does ſay in the End of the Caſe, that the Leaſe was held good, *quia Corporatio & Capitulum Sancti* Patricii *prædicti fuit per donum & ſurſum redditionem Decani & Capituli prædicti legitime diſſolutum & determinatum.* My Lord, to that I anſwer:

Firſt, There was no Occaſion for this Reaſon, becauſe it did digreſs from the main Point in the Caſe, as it is truly obſerved in *Palmer*, *fol.* 502. next.

Secondly, It was a private extrajudicial Opinion; it was the Opinion of but five Judges, and for ought appears ſeven might be of another Opinion, and yet the Caſe was ſent for the Opinion of all the Judges here, becauſe the Lawyers in *Ireland*, it ſeems, did make a great Doubt of it. And it was alſo an Opinion and Judgment of the favourable Side, for it was to confirm a Predeceſſor's Leaſe. But,

Thirdly, Certainly, my Lord, the Caſe is miſtaken, for the Surrender could not be good without the Conſent of the Biſhop, which is alſo added in the End of the Caſe there: He is the Patron, and muſt neceſſarily confirm their Acts to make them valid, eſpecially they being inſtituted, and given to him for his Advice in the Government of the Church, and the Diſpoſal of it's Lands.

Fourthly, my Lord, I have this further Anſwer to give it, that my Lord *Coke* ſays in 1 *Leon.* 234. (and 'tis not denied) that this Surrender was by Act of Parliament, or elſe it had not been good. And beyond that,

Fifthly, I have by me a Manuſcript of my Lord *Dyer*'s Reports, the moſt authentick one, which was my Lord *Coke*'s, and has his own Hand to it in ſundry places; and by that he does often correct the Prints of *Dyer*, and ſo alſo he might have done in this Caſe; for there all theſe *Latin* Words are left out, there is not one of them, nor any Space left to put them in, nor any Blot for their being raſed out, it is an Addition of the Publiſher, and printed in another Letter than the reſt of the Caſe is; 'tis not in that Book, which I take to be the trueſt Original of *Dyer*: Beſides, my Lord *Coke*'s Anſwer, that it was by Act of Parliament makes an End of all. And truly, my Lord, that the Determination of ſuch Things ſhould be by Act of Parliament I ſhall cite you one Authority, and I borrow it from Mr. Solicitor, who has mentioned it before 'tis *Rot. Par.* 8 *R.* II. *num.* 11. and it is taken Notice of by my Lord *Coke*, who cites it in his 4 *Inſt.* 228. To which I add alſo, that the Liberties were ſeized, and the Caſe determined in Parliament: There the Caſe was this, the Mayor, Bailiffs, and Commonalty of *Cambridge*, had committed a notorious Uproar and Tumult; they had aſſaulted the Colleges of the Univerſity, they had impriſoned the Vice-Chancellor, and ſome of the Scholars, they had extorted from them two Releaſes, and a Bond of 3000 Pounds; and after all this great Uproar and Tumult a Writ went out, but whence? From the Parliament, and there they are ſummoned to appear, and there they are to ſhew Cauſe why the Liberties ſhould not be ſeized, as forfeited; and there upon full hearing it was adjudged by the King, with the full Conſent of the Lords and Commons in Parliament, that the Liberties ſhould be ſeized as forfeited: All this is taken Notice of by my Lord *Coke*. But yet, as if he thought it not enough to have ſaid all this in the Body of the Book, he puts down in the Margin of that Book theſe Words, *Nota*, It was done by Act of Parliament. And that it was taken, that a Corporation cannot be diſſolved but by Parliament, I ſhall cite your Lordſhip *Davis*'s Reports, *fol.* 1. *b.* where he ſays, that neither by the Surrenders, nor by the Acts of Parliament that gave their Poſſeſſions to the Crown, were thoſe Corporations diſſolved; the Surrenders did not do it, and the Acts of Parliament did not intend it.

But, my Lord, I ſhall diſmiſs this Point, for indeed it will not conduce to the Queſlion, which is not, *Whether a Corporation be ſurrenderable, or no?* but, *Whether it be forfeitable?*

Now there are many Things that are renounceable, that yet are not forfeitable; an Annuity *pro Conſilio impenſo & impendendo* may be ſurrendred, and ſo is *Empſon*'s Caſe in *Dyer*, *fol.* 2. but it cannot be forfeited for Treaſon, 'tis a Thing that adheres to the Perſon, and there is a Privity in it that makes it not forfeitable; ſo a Guardianſhip in Soccage, a Man may renounce it as well as he may Executorſhip, but they are neither of them forfeitable; and ſo is the Truſt of a Freehold, and ſeveral other like Things.

My Lord, as to what Mr. Solicitor has ſaid, *That a Corporation may be ſeized, and therefore it may be forfeited*; I think certainly that is no good Concluſion at all. Thoſe Words of Seizures of the Liberties, and ſeizing into the King's Hands, he has with great Learning collected a great many Records about them, and they make a great Sound at firſt, but when they are narrowly looked into, they make nothing of Argument at all; they have ſlept a long Time, and are but imperfectly remembred; they may ſerve to amuſe People, but when they are conſidered they will ſignify very little. *Vet. Nat. Br. fol.* 161. He diſtinguiſhes there (and every Body muſt) between the Cauſes of the Seizure of a Franchiſe into the King's Hands, and the Cauſes of a Forfeiture; and there he ſets down ſeveral Things, and then adds *ſtude differentiam iſtorum:* ſo that there is a Difference, and that Difference ought well to be adviſed upon. In 2 *Edw.* III. 28 & 29. *Scrope* gives the Rule, ſays he, in ſome Caſes a Franchiſe ought to be taken into the King's Hands, and in ſome Caſes it ought to be ſeized till a Fine be made to the King; and in ſome Caſes it ought to be fore-judged; and ſo he makes three Diſtinctions. Now, my Lord, this will anſwer (as I ſhall obſerve by and by) all that Mr. Solicitor has produced about Seiſures, either by Act of Parliament, or for a Fine, or for a Diſtreſs for want of an Appearance. If a real Action, there goes out a *Grand Cape*, and there the Lands ſhall be ſeiſed into the King's Hands, and that look big upon Record; but if you come to know the meaning of it, 'tis only that the Sheriff ſhould return Iſſues upon it, and that is a very little Thing; the King has no Pretence to the Title of the Land, nor is the Suit his Suit, but the Party's: So the Seizing of a Biſhop's Temporalities, and the Lands of Priors Aliens, and the like. But Words muſt have a reaſonable and legal conſtruction; as when a Statute is made, that if a Man does ſo and ſo his Body ſhall be at the King's Will, and he ſhall do with him at his Pleaſure, as in the Statute of Maintenance, and the Statute againſt tranſporting of Money, that is nothing but that he ſhall forfeit the Uſe of his Body, and the Liberty of his Body, and ſhall be impriſoned for the Offences.

All this I ſhew, to diſtinguiſh about this Word Seiſure, and by that diſtinction to anſwer the Weight of all the Records that Mr. Solicitor has cited. Thoſe Seiſures that were of any Towns, I ſay, they were only till they had made a Fine to the King; and when the King had ſo ſeiſed them, what did he do? He put in a *Cuſtos* upon them, which was to keep them in good Order; he put them into a ſafe Hand, but it was never intended to ſuſpend or deſtroy the Corporation: For the Corporation went on as it did before, it might ſue as it did before, and was as liable to be ſued as before; it was to put a Guard upon them, not for their Deſtruction, but for their Preſervation; to quell Inſurrections, to keep peace and good Order among them; the Seiſure of the Liberties was not a ſeiſing of the Corporation, becauſe a Corporation is not a Liberty, it cannot be ſeiſed; for the King cannot exercíſe the Liberty of a Corporation; the King may ſeiſe the Mayoralty, and the King may put in ſuch a Deputy, that may be a *Cuſtos*, he may ſeiſe the Sheriffalty, he may ſeiſe a Leet, or a Market, or he may receive the Profits of them, and execute by Deputy the Purport of them: But what can he do when he has ſeiſed the Corporation? Can he himſelf be the Mayor, Commonalty, and Citizens of the City of *London?* or can he put in any one to be ſuch Corporation? It is not a Thing manurable, 'tis not a Thing ſeiſable, nor ever was ſeiſed; for the King can ſeize nothing, but what he can have and uſe when he has ſeiſed it. And therefore all thoſe *Cuſtodes* that were put into *London*, upon the ſeiſing of the Liberties, were only in the Nature of the Lord Lieutenants, that were to keep Order in the City, and prevent Breaches of the Peace; but ſtill the Cuſtoms, the Courts, and the Uſages of the City went on as they did before; I cite not any Record indeed for it, becauſe there is no need, 'tis ſo well known; but if there be any doubt of it, we will make it appear, that during all thoſe times Mr. Solicitor ſpeaks of, who has cited a great many Records, and if he can find as many more, yet ſtill all along the City was in *Statu quo*, as to their being a Corporation; they did ſue and were ſued, and they did all manner of Acts as a Corporation, which ſhews that it was not ſo much as ſuſpended, much leſs forfeited. This is without Contradiction very plain, during all the time of thoſe Seiſures. If it had been forfeited at all, it muſt have been extinct; and if there could have been a Judgment given againſt it, it could not have been taken into the King's Hands, but it muſt have been an *Ouſter* of the Liberties.

In *Yelverton* there is a Caſe of the King againſt *Staverton*, a *Quo Warranto* is brought againſt *Staverton* for keeping a Court Leet, and a Court Baron, within the Hundred and Manor of *Warfield*; the Defendant diſclaims the Court Leet; as to the Court Baron, the great Doubt is whether a *Quo Warranto* can be brought for it, it appearing that he had a Manor; for that is inſeparable to a Manor. For he that has the Demeſnes and Copyholds, muſt call his Tenants together to do Suit and Service; and 'tis agreed indeed a *Quo Warranto* will lie. But *Fleming*, Chief Juſtice, and *Fenner* doubted of it. And in that caſe Judgment muſt be, that he ſhall be ouſted of the Liberty, and not that it ſhall be ſeiſed; for the King cannot uſe it, and therefore 'tis impoſſible, that it ſhould be taken into his Hands: And ſo 'tis, as I ſaid, of a Biſhop's Temporalities, and the Lands of Priors Aliens, and the like; it is a meer Perſonality, and cannot be ſeiſed.

But Mr. Solicitor ſays a Corporation can commit a Crime: Truly I do very much queſtion that, nay, I ſhall deny it by and by: But if they do commit a Crime, the Puniſhment muſt be by other means than a Forfeiture; and I will cite your Lordſhip a parallel Caſe: For as I ſaid before, a Corporation is an Ability or Capacity like that of a Denizen, and ſo can no more be forfeited than a Denizenſhip can. There is *Verſeline Manning*'s Caſe in *Lane*'s Reports, 58. and the ſame Caſe is in *Rolls* 1. *Abr.* 195. in an Office of Intruſion, it is there found, that *Verſeline Manning* was a Denizen by Letters Patents, and in the Letters Patents there was a Clauſe, as is uſual in Patents of Denization, Proviſo, that *Verſeline Manning* the Denizen ſhould do liege Homage, and that he ſhould be obedient and obſerve the Laws of this Realm. The office finds that he never did Homage, nor was obedient to all the Laws of the Realm; and it was urged that conſequently he had loſt his Denization, for Breach of the Condition. No, ſays the Court there, by no means, this muſt have a reaſonable Conſtruction, not to take away his Capacity of being uſed as a Subject, and ſo ſuing and being ſued; but the Proviſo is to be interpreted thus, for his Non obedience of the Law he ſhall forfeit the Penalties appointed by the Law: So, I ſay, a Corporation, if they do offend the Laws, ſhall forfeit and undergo the Penalties appointed by the Law, but not be diſcorporated, any more than a Denizen undenizened.

My Lord, the next Point that I go upon is, what I at firſt mentioned, and that is this, That this *Quo Warranto* is not well brought, and there can be no Judgment given againſt us upon it, if we ſhould admit (which I do not) that a Corporation is forfeitable; or if I ſhould grant (which I do not neither, but ſhall come to that afterwards) that the Particulars aſſigned are Cauſes of a Forfeiture.

Now this *Quo Warranto* is brought againſt the Mayor, Commonalty, and Citizens, of the City of *London*, that is to ſay, againſt the Corporation (for that is the corporate Name, and no Man ſure is ſo vain as to think that can be the Chriſtian Name or Surname of any natural Perſon) therefore I ſay 'tis brought againſt us as a Corporation, and charges us, that we have uſurped the Liberty of being a Corporation, under ſuch a Name, for a Month before the Information brought. Now, my Lord, I ſay this is impoſſible, and this is repugnant; for the Queſtion is here, whether we are a Corporation, and that is a Liberty to be Plaintiff and Defendant? And then comes Mr. Attorney, and admits us to be Defendants; for he ſues by that Name, and yet the very Queſtion that he does bring us to diſpute on is, whether we are capable of being Defendants, or no: That is juſt as if he ſhould have ſaid, I have brought you into Court, and you muſt be Defendants, or elſe I have brought you here for nothing; for there is no Cauſe depending without Parties, Plaintiff and Defendant; and then I will aſſign for the Cauſe of my Suit, that you are no Defendants; nor is it poſſible for you to be Defendants.

My Lord, this is plain Reaſon; but I ſhall ſtrengthen it with great Authority, and that is the Caſe upon a Writ of Error, out of *Ireland*, to reverſe a Judgment given in a *Quo Warranto* againſt the Corporation of *Dublin:* It is in *Palmer* the firſt Caſe, and 2 *Rolls fol.* 113 & 125. A *Quo Warranto* is brought againſt *Cuſack*, and other Aldermen of *Dublin*, who pretended to have Privileges, and a Guild, and to be a Corporation, and this I preſume is for their being a Corporation; for there is a *Curia adviſare vult* as to the Corporation, and ſo 'tis not put in the Caſe, but 'tis alſo brought for ſeveral Liberties that they did pretend to claim; as that they only, and none others, ſhould ſell and buy all Merchandizes, and nobody ſhould buy of another, or ſell to another, but to them; that all Merchandizes ſhould be brought to their Common-hall, *&c.* Now, as to theſe Liberties, they are forejudged, that the Liberties ſhould be ſeized, and they ouſted; as to their being a Corporation, *Curia adviſare vult*; ſo the Caſe is in *Palmer:* But in the other Book in 2 *Rolls* 115. it is agreed, if a *Quo Warranto* be brought to diſſolve the Being of a Corporation, it ought to be brought againſt particular Perſons; for the Writ ſuppoſes, that they are not a Corporation; and 'tis to falſify the Suppoſal of the Writ to name them as a Corporation. Now here this Writ, it ſuppoſes them to be a Corporation, or elſe they could not be Defendants; and then it comes and falſifies that Suppoſal, by aſſigning that they are no Corporation, nor ever were, or if they had been, they had forfeited it; and ſo all the Foundation that this Writ ſtands upon is deſtroyed.

In this Caſe of *Cuſack* I am aſſiſted further with a Report of it in my Lord Chief Juſtice *Hales*'s Book; a Report of very great Authority with all Men of our Profeſſion: And there he ſays expreſly, If a *Quo Warranto* be brought for the uſurping a Corporation, it muſt be brought againſt particular Perſons, becauſe it goes in Diſaffirmance of the Corporation; and Judgment ſhall be given, that they be ouſted of the Corporation; but if it be for Liberties claimed by a Corporation, then it muſt be brought againſt them as a Corporation.

Lord Chief Juſtice. What Folio is it in my Lord *Hales*'s Book, Mr. Recorder?

Mr. Recorder. It is my Lord *Hales*'s Common-place Book, which is in *Lincoln's-Inn* Library, *fol.* 168. *placito* 7. and this is our Caſe directly. If you go about to ſay, our Corporation is forfeited, or muſt be diſſolved, nay more, (as you ſay here) we never have been a Corporation; or by Forfeiture our Corporation is loſt long ago, then there is nothing can come before the Court properly, but that *J. S.* and *J. N.* particular Perſons, have uſurped to be a Corporation, when they are none. This Information is brought in Diſaffirmance of their being a Corporation; and therefore there muſt be ſet up ſomebody capable of being a Defendant in ſuch a Suit; and who can that be but particular Perſons, which ought to have been named, as they are in that Caſe of *Cuſack?* For as Judgment of Ouſter of particular Liberties, given againſt particular Perſons, will not bind the Body of the Corporation; ſo the Judgment, that they are not a Corporation, will not be good, unleſs it be given againſt thoſe particular Perſons that uſurp the Corporation. And I do ſay further, that individual Freemen of *London* cannot poſſibly be bound by this Judgment: For they are not here before you, nor were they ever ſo; for it is the Corporation here that is made the Defendant. And I do not now conſider the Number that make up that Body (*London*'s being ſo populous doth not alter the Caſe;) for the Caſe is the ſame, if it were the Corporation of *Queenborough*, or any other petty Corporation. Suppoſe twenty Men be a Corporation, or pretend to be a Corporation, and you come to enquire by what particular Means theſe Twenty Men pretend to be a Corporation, or, as the Words of this *Quo Warranto* are, *uſurped* to be a Corporation; you muſt not ſay that they are one, and then ſay, that they uſurped it; for 'tis not the Corporation that uſurps to be a Corporation, that is impoſſible; but it is the particular Perſons that uſurp to be a Corporation, when indeed they are not one. A Corporation may uſurp a Market, they may uſurp a Leet, but they cannot uſurp themſelves. In *Townſend*'s Book of printed Precedents (which is a laborious Thing, and wherein he has collected all the Precedents he could meet with of *Quo Warranto's*) there is but one in all the Collection, that was brought againſt any Perſons upon the Score of being a Corporation: And what is that? How was it brought? Not againſt a Corporation that was, but againſt a Corporation that never was, that is to ſay, a Parcel of People, that took upon themſelves to be a Corporation, when they were not; and that is the ſame ſingle Precedent in *Coke's Entries* 527. tit. *Quo Warranto.* The King againſt *Helden*, and other Burgeſſes of *Helmſley*, for uſurping to be a Corporation by the Name of the Burgeſſes of *Helmſley.* And how does the Attorney General there bring the Writ? He brings it againſt particular Perſons. My Lord *Hobart*, who was then Attorney General, never thought he could have maintained his *Quo Warranto*, or expected Judgment againſt them, if he had brought it againſt the Burgeſſes of *Helmſley* generally, and then have ſaid, that they were no Corporation; but he brings it againſt thoſe particular Perſons, and thereupon they come in and diſclaim their being ſuch a Corporation, and the having the other Liberties; and the Judgment is, That of thoſe Liberties thoſe particular People ſhould be ouſted, and ſhould not intermeddle with them.

Now, my Lord, what Judgment can be given in this Caſe, that the Mayor, Commonalty, and Citizens, ſhall not intermeddle with the being of Mayor, Commonalty, and Citizens? 'Tis a very reaſonable Judgment, that *Helden* and thoſe particular Perſons ſhould not intermeddle with ſuch a Liberty, or be in ſuch a Corporation; but if ſuch a Judgment be given againſt the City here, that would be as much as to ſay, That you have never been what you are, or you ſhall never be what you are, that is the *Engl'ſh* of it.

And, my Lord, I am ſure, as there never was but one *Quo Warranto*, that we can find any printed Precedent of againſt the Being of a Corporation, ſo that very Precedent is not againſt thoſe that really were ſo, but particular Perſons that uſurped to be ſo. And if you ſearch all the Records of this Kingdom, and all the Books in all the Offices, you will never find any that is brought againſt a Corporation, for being a Corporation, upon Pretence that they might be made none by a Forfeiture; and no Prerogative of the King ſhall extend to excuſe this, but his Action ſhall abate, if it be not right brought, as well as the Subjects, and ſo is *Plowd' Com. fol.* 85.

Further, my Lord, I have another Authority in this Point; and that is in the Caſe of the Corporation of *Maidenhead*, which hath been ſo often cited by Mr. Solicitor, and it is in *Palmer* 80, 81. where it is ſaid, When the Attorney General hath ſuppoſed them to be a Corporation, it is not uſual to plead them to be a Corporation; otherwiſe, if he had queſtioned them as Inhabitants of ſuch a Town, then they ought to enable themſelves: Thoſe are the Words of that Book; and what can be more plain? Here the Attorney General ſuppoſes us to be a Corporation, his Replication flies in his own Face; and he having ſuppoſed it at firſt, he is bound not to queſtion us for our being a Corporation at any time after. As to the Buſineſs of *forisfecerunt*, it is a ſtrange and a new Word, that never came into any *Quo Warranto* before, that I know of; but we will accept the new Word, but not the Thing, and that they have forfeited by ſuch and ſuch Acts: This ſure ſure will be very hard upon us; for if it be a Forfeiture, it muſt relate to the Time of the Thing done, to the Time of the making the Act of the Common Council, to the Time of the Toll levied, or to the Time of the Petition; and if it do ſo, it muſt relate like a Forfeiture for Treaſon; it muſt reach all mean Acts, all the Leaſes that we have made ſince, are gone; all the Judgments that we have given in any Cauſe, are *coram non Judice*, and void; all the Acts of the Corporation are overturned by this Forfeiture; and we have been under a vaſt Miſtake all this while. We have had no Mayors nor Sheriffs, no kind of Officers, no manner of regular and legal Proceedings; but we have been under a great Miſtake ever ſince this Money was ordained or levied. We have forfeited all; and that it is ſo, is plain, becauſe in all *Quo Warranto's*, wherein Perſons are convicted for uſurping of Liberties, there is a Fine ſet upon them for continuing that Uſurpation, and Reaſon good; then if it be an Offence for continuing the Liberty, we muſt be fined for doing it ever ſince the Forfeiture, when, if Mr. Attorney General's Rule be right, there has been no ſuch Corporation; but we ought to have diſcontinued all our acting as a Corporation, and laid it down; and ſo every Step that we have taken ſince hath been irregular, and every Act void.

If ſo be an Action be brought againſt Baron and Feme, and the Plaintiff ſhould in his Replication ſay, they were divorced ſeveral Years before, has he not undone all his Pleading? Here then is our Caſe: Mr. Attorney General admits us to be ſueable, and yet charges us to have no Capacity to be ſued: I do implead you, but you have no right to be impleaded; here he brings us into Court, and when he has brought us here, he quarrels with us for being here. He makes us Defendants, and then queſtions whether we ought to be ſo; and ſo his great Charge againſt us is, that we are what he would have us to be, and what he hath made us to be; for if a Month before the Information, the Corporation was not, but the very Being of the Corporation was uſurped, how come we at the Month's End to be Defendants? Here comes a new Creation interpoſed in that Time, and makes Parties ſueable in the Court, when by the Charge in the Information we were not ſo a Month before.

And then, my Lord, the Information is not quite ſo bad, but the Replication is worſe: Firſt, he takes Iſſue, that we never were a Corporation, at all; and the next Thing is, if ever you were a Corporation, you have ceaſed ſo to be, becauſe you have forfeited it ſo and ſo ſeveral Years ago. This is juſt then to put a common Caſe, (and I confeſs, a very familiar one it is) if I ſhould bring an Action againſt a Man, and when he hath pleaded, I ſhould by way of Replication ſet forth, there never was any ſuch Man as the Defendant, and take iſſue upon it; or, if there were, that he was dead Ten Years ago: And yet this is the Subſtance of Mr. Attorney's Iſſue, and his Replication.

My Lord, the Authorities before cited in *Palmer*, *Coke*'s Entries, *Rolls*, and my Lord *Hales*'s Common-place Book, are not all; for I have ſome other that never ſaw the Light in Print yet; and that is the Caſe of the King againſt *Bradwell* and others, *Trin.* 18. of this King. A *Quo Warranto* was brought againſt them for uſurping to be a Corporation or Company of Muſicians; it had been a ſtrange Thing, if the *Quo Warranto* had been brought againſt that Corporation, and then the Attorney General had ſaid they were no Corporation, nor ever were; there they did think beſt and fitteſt to go againſt *Bradwell*, and the reſt, and that by Name, and only ſo, not againſt the Body Corporate. So in that Caſe of the Corporation of *Worceſter*, which was lately tried before your Lordſhip in this Court; when the *Quo Warranto* was brought againſt ſuch Men for uſurping to be all Aldermen and Common Council-men; if the Attorney General had once called them Common Council-men, it had been a great Repugnancy for him afterwards to ſay, that they were none: or if they were, that that Privilege of their's was loſt ſo long ago. So in the Caſe of the *Quo Warranto* againſt the *Bermudas* Company; it was againſt a Corporation, and againſt particular Perſons by Name both. Theſe Things have been conſidered, and doubtleſs they have gone on in an ordinary way. I muſt confeſs, I was not privy to that particular Caſe; but by the Report of that Caſe, which I have ſeen, I have been informed, that the Corporation never appeared; for they ſaid, 'tis not Senſe for us to appear; for it being a Queſtion by what Warrant we are a Corporation, it is not we, ſuppoſing us a Corporation, that do uſurp, but the particular Perſons that do uſurp, if it be at all uſurped. Now, my Lord, if that had been a regular Suit, no doubt but there would have been Judgment againſt the Corporation, which there was not; and certainly the Replication of Forfeitures was not good againſt the Corporation, but againſt the particular Perſons only.

All Mr. Solicitor's Authorities for ſeiſing, hold true, if the Corporation would never appear: And what is the Reaſon it ſhould be brought againſt *J. S.* and *J. N.* but becauſe Corporations do never appear in ſuch a Caſe, in regard it were not congruous they ſhould appear? for the *Quo*

Warranto muſt intend it ſo, that they were not a Corporation in Being, by implying a Forfeiture. Then ſay I, no Judgment at all can be given upon this Score; *Non admittitur exceptio ejuſdem rei, cujus petitur diſſolutio*; a Man ſhall never be admitted to controvert that to be in Being, which he himſelf deſires ſhould be deſtroyed, and ſo has allowed it to be. Shall Mr. Attorney be admitted to deny the Suppoſal of his own Writ? And truly I think I might very well leave this Part of the Caſe, and this Point, to Mr. Attorney General himſelf; for if he will have any thing to be anſwered by us, he muſt maintain us to be a Corporation capable of anſwering; and ſo I have Reaſon to expect, that againſt his own Replication he will be pleaſed to ſupport the Being of our Corporation, and ſo diſmiſs us hence.

My Lord, I have done with this Point, and now I come to the Replication, which indeed is a Kind of a new *Quo Warranto*; for it brings in new Matter, and therein they do charge Two Forfeitures; the one is, by reaſon of the Abuſe of the Market, the other is, by reaſon of the Petition. My Lord, I ſhall anſwer both of them. That we were ſeiſed of the Market, that is pleaded, and that is agreed: That we were ſeiſed of Tolls, and were to have reaſonable Tolls, that is agreed too: That there is a Cuſtom in *London* to have Common Councils, and that this was by Common Council, is agreed; all this is agreed by the Demurrer: That this Toll (though by the way I muſt confeſs, and will agree with Mr. Solicitor, that it is not properly to be called a Toll; for a Toll is only for Goods ſold; and when they are ſold, in Recompence for the Officer's Attendance for the Teſtification of the Contracts, and the entering them in their Books; but I agree, this is not ſuch a Duty for Goods bought and ſold, but it) is for the Accommodation of Perſons repairing thereunto for their Stalls; and, if I would call it by any particular Word, I had rather call it Stallage than any thing elſe; it is for thoſe Accommodations, which we have been at vaſt Charge in preparing and providing, and for the Maintenance of requiſite Officers, and for the cleanſing of the Markets. Now Mr. Solicitor objects, That we cannot preſcribe for a Toll uncertain, and he cites the Caſe of Murage, and the like; and ſo I muſt confeſs, where Murage is granted, 'tis commonly a Thing uncertain; ſo is Pontage, and the like; but I believe (if I had thought, that it would have been a Point inſiſted upon) I could have brought you Inſtances where Murage, and ſuch-like Things, have been granted in general, and they would have been ancient ones indeed: And there is a Neceſſity for it in ſome Caſes; for when a Town will repair its Walls, the Charge may be greater or leſs, as the particular Accidents may be, and ſo perhaps a certain Duty would not do it. When a Wall is to be built, there the Duty may be certain; but when it is built, to keep it in Repair, the Duty of Murage may be uncertain, according to the Charge; and if the Caſe be not ſo, it will come little to our Purpoſe, which is a Duty upon a great and a continuing Charge. I will name him ſome Things that he muſt agree, and I know he will grant, are uncertain, as Pickage and Stallage, which are Duties for picking in my Earth to dig Holes for the Poſts of Stalls to be fixed in: Now there can never be, nor ever was, any circumſcribing in thoſe Matters; for Circumſtances in every of thoſe Caſes muſt govern it. If I have Occaſion for my Stall to uſe a Foot of Ground, one ſort of Sum is neceſſary; if ten Feet, another Sum; it ought to be equal indeed, but it could never be good, if it were limited to a Sum certain; and in all Grants that ever were of Pickage and Stallage, they were never reduced to a Certainty; and thoſe are Things too that relate to a Market.

And ſo I take it to be for Keyage, Anchorage, and the like; for when there are Poſts or Places for Ships, to which they may be fixed, the Owner of the Port may have a Compenſation for that; but that muſt needs be uncertain, according to the Circumſtances; if a Ship be bigger or leſſer, if a Ship ſtay a Month or a Day, it is not fit the ſame Rate ſhould be paid; nor is it uſually granted by particular Words, *Co. Entr.* 535 & 526, *Placit'* 4. the King againſt the City of *London* for the Water-Bailage, and other Things They pleaded only a Right in general, and do not ſay what the Particulars were; and yet one of the Things demanded in the *Quo Warranto*, was, as I ſaid, the Water-Bailage; which, ſure, if any thing ought to be certain, that ought. In that Caſe it was good Pleading; though I think I could ſay more againſt it than this Thing, that is in the Nature of Stallage; ſo that all that Mr. Solicitor hath built upon that muſt, I think, needs vaniſh.

My Lord, I do not think but *London* ought to be, and is as much under the Obedience and Correction of the King, as any City; but yet I believe, in theſe Caſes of their Cuſtoms, you will give that Allowance and Indulgence to it, that all your Predeceſſors have done, which is greater than they have given to any other Corporations in the Kingdom, and that becauſe it was *London*. That there ſhould be ſuch a Thing as a Foreign Attachment, I think, is hardly allowed in other Places; I am ſure, I have known it denied in ſome, that a Contract in Writing ſhould be equal to a Book-Debt; that a Feme Merchant ſhould ſue or be ſued without her Huſband; or if he be named, he ſhould only be named for Conformity. You take Notice, that *London* is a Port Town, and that Men that trade there, ſometimes go beyond Seas, and in their Abſence their Wives trade by themſelves, and perhaps carry on diſtinct Trades while they are here; and ſo they may do in other Places, may be; but only for the ſake of *London* do you take Notice of theſe Things there, and not elſewhere. Their Penalties, that are ſued for in their Courts, a great many of them are ſuch as would not be well maintained in other Courts, or in any other Place; and yet they are maintained there, as namely, That their Penalties ſhould be ſued for before the Mayor and Aldermen, when the Benefit of them goes to their Uſe; and yet that is allowed in the Eighth Report, notwithſtanding the grand Objection, that they are in ſome ſort Judges and Parties, *Rolls* 2 *p. Abr.* Tit. *Preſcription*, Letter *H.* Fol. 266. N°. 2. & 3. The City of *London* may preſcribe to have a Court of Chancery in *London*, of Matters tried in the Sheriffs Court, though ſuch a Court cannot be granted by the King's Letters Patents; but the Mayor and Citizens of *York* cannot preſcribe for ſuch a Court, becauſe it were very dangerous, that ſuch petty Corporations ſhould have ſuch Courts. And, whatſoever is ſaid by my Lord *Hobart* in his Reports, 63. I do affirm, there is no Act of Parliament that erects a Court of Chancery in *London* or the Cinque-Ports. If Mr. Solicitor had ſtruggled with me about the being, or not being of that Act of Parliament, I would have agreed with him, that there was no ſuch, ſooner than ſome that he ſays are none. The Cuſtoms of *London* have been upheld, and, I muſt confeſs, I think that is very ſtrange, even againſt the general Words of an Act of Parliament, 2 *Inſt.* 20. A Gaolar in *London* may permit his Priſoner, that is in Execution, to go at large with a Batoon in any Place within their Juriſdiction, and it is no Eſcape. And ſo is *Plowden*'s *Com.* 36. A Citizen of *London* may ſet up one Retale Trade, though he was bred to another, notwithſtanding of the Statute 5° of the Queen. And for a general Rule take that that is ſaid in *Palmer* 542. Thoſe of *London* may preſcribe againſt a Statute; and the Reaſon is, becauſe their Liberties are confirmed by Statute, and other Towns are not. In *Rolls Rep.* 1 *P.* 105. *Sprike* againſt *Tenant*, my Lord *Coke* being then Chief Juſtice, ſays, We take notice of the Cuſtoms in our Courts, and other Courts in *Weſtminſter Hall*, and in *London*. *Fleetwood*, Recorder of *London*, ſays a very ſtrange thing in 1 *Leon'* 284. *Hollingſhead*'s and *King*'s Caſe, and in 4 *Leon'* 182. that the King's Courts ought to take Notice, that thoſe of *London* have a Court of Record; for if a *Quo Warranto* iſſues to the Juſtices in Eyre, it does not belong to them of *London* to claim their Liberties; for all the King's Courts have Notice of them. And truly I have been informed, I mean by Copies of Records, that when the Juſtices in Eyre came to the *Tower*, this was a Privilege allowed to them, they were not bound to ſet forth their Liberties, as others were.

My Lord, I think this, as it is pleaded, is a Duty very juſtifiable, and very well payable, by virtue of this Cuſtom. I do agree, as I ſaid, a Toll is properly for Goods ſold, and this is a Cuſtom for the Accommodation of thoſe that brought Goods to be ſold; and it is like that 1 *Leonard* 218. my Lord *Cobham*'s Caſe, a Duty paid for the Standing in the Cellar; and there that is held to be good. In *Rolls* 2 *p.* of the *Abridgment*, 123. Letter *B. Hickman*'s Caſe, the Lord of a Manor may preſcribe to have the Eighth Part of a Buſhel of Corn in Four Buſhels that are brought to the Market within the Manor, in the Name of the Toll, and that is for Stallage only; for it is ſaid there, Whether it be ſold or not. And in the ſame Book, *fol.* 265. the City of *Dublin* ſet forth, that they are Owners of the Port of Dublin, and that they maintained Perches in the ſaid River, to direct the Ships in the deep Channel, and that they kept the Key and the Crane; and therefore, in Conſideration of that, they preſcribed and demanded Three Pence in the Pound for all Merchandizes in the ſaid Port, and it was held good. Now I agree Toll-through, that cannot be preſcribed for ſimply and generally; but by Toll-through I mean, as you know, for paſſing and repaſſing through only, and not for ſtaying. But yet even that may be preſcribed for too, in Conſideration of repairing a great Highway, or a very foul Way, or maintaining a Bridge, and the like. And therefore, if our Conſiderations here be as good, then we maintaining thoſe great Places may preſcribe for this Duty, as for paſſing through the Streets, though it were no Market.

There is a famous Caſe reported in *Rolls* 1 p. Fol. 1. & 44. and it is in 2 *Bulſtrode*, and alſo in *Moor*; it was the Caſe of the Bell-man of *Litchfield*: A Preſcription is made, that the Corporation of *Litchfield* hath a Market, and they ought to repair the Way to it, and to appoint a Bell-man that ſhould ſweep the Market-place; and that for this the ſaid Bell-man, time out of mind, had taken of thoſe that brought Corn to the ſaid Market, and opened their Sacks to ſell, a Pint of Corn, if but a Buſhel or under; if more, a Quart. So that if it were opened and not ſold, yet he was to have that Duty, and that Preſcription was adjudged to them by all the Judges; and yet it does not appear there, whether the repairing that Way coſt them 5*s.* or 5000*l.* and yet by Intendment they would not account it unreaſonable, though it might have been urged it was very unequal; if they could take a Pint for that which was under a Buſhel, perhaps they would take, by that Means, half of what the Party bought; but if there were Fifteen Buſhels, they had but a Quart, and this was objected as to the Inequality of it; and yet they all paſſed over that by a reaſonable Intendment, and would not deny the Preſcription to be good. And the Caſe of Cranage in *Dyer*, and the Caſe of 21 *H.* vii. 16. are admitted to be good Law, where the Town of *Glouceſter* preſcribed for a Toll of Boats paſſing by the River near the Town.

Now, my Lord, for ours, there was very great Reaſon to induce it, the great Alterations that were made in *London* by the Fire; and it was not the firſt Time that *London* was burnt: And if there ſhould be War, and ſo great Alterations and Confuſions, there were great Cauſe, that the City, that lays out great Sums, and muſt be at ſuch a publick Charge, ſhould not be Loſers by it.

And we do ſet forth more than they do in the Caſe of *Litchfield*, that we provided the Market-places at our own Charge; and if they will uſe them, they muſt expect to pay ſome Compenſation for it; that we do keep Officers, and pay them for cleanſing and keeping Order in the Markets: And above all that, we provide Standings and Stalls, and ſuch Accommodations, and that I am ſure is a Proviſion no Lord of a Market is bound to make, unleſs he will; and therefore the Market-people, that are accommodated by it, have great Reaſon to pay for it; and we pay all the Taxes for the Market-places, for the Ground is ours; and that is not alledged in the Pleading indeed, but it muſt be implied, becauſe we pay the Taxes, and they that have the Standings are not liable to pay the Taxes: And ſo is the Judgment in *Rolls*, 2 *p.* 238. and the ſecond *Abr.* 289. And in the Caſe of *Cuſack* Juſtice *Dodderidge* ſays, that the redeeming of one Fair from the Abbot of *Weſtminſter* coſt the city of *London* 8000*l.* for he had a Fair at *Weſtminſter*, and a Market for Forty Days, and that during that Time no Sale ſhould be in *London*, or the Places adjacent; and a great Rate it was, if it were ſo. The Meaſure of a Toll is according to my Lord *Coke* 2 *Inſt.* 58. when the Thing demanded for Wares or Merchandiſes does ſo burden the Commodity, that the Merchant cannot have a convenient Gain by Trading therewith; and thereby Trade is loſt or hindred, then it is an evil Toll. But here indeed the Market-people are better accommodated than ever they were; and Trade is ſo far from being diſcouraged, as that it is increaſed, as is implied in the Replication; for it is ſaid we receive 5000*l.* a Year, which if it were ſo unequal, would not certainly be paid, nor could be, if there were not great Trade there. So that the Increaſe of Trade is the thing complained of in this *Quo Warranto*. And the Truth of it is, I have examined and looked into the Fact of theſe Things, and there is nothing in this By-law, but what was really anciently paid, except only in one Inſtance, whether it were 6*d.* or no, that was paid when a Cart was drawn by Two Horſes, which now is but 4*d.* and if we have increaſed the Toll, which I doubt whether it be ſo or no, it is only in a very Trifle.

Now, my Lord, this Caſe, I think, is a ſtronger Caſe than that in 5 *Rep.* the Chamberlain of *London*'s Caſe; there is no Conſideration of Stalls, or cleanſing the Place, but only they had an Officer to ſearch and view, and that was a new Appointment of their own; they could not preſcribe for it, but it was thought a Penny was a reaſonable Recompence, and the Subject had a Benefit by it; and if he would bring his Cloth to *London* to be ſold, he ſhould come thither to have it viewed, and give a Recompence for it. Now *London* is all Market indeed, every Shop is a Market; and it hath been well ſaid of the Judges ſeveral times in *Weſtminſter-Hall*, that *London* is the Market of all *England*; and there is never an Acre in *England*, but is the better for that.

As to the Impoſition upon Coals, that is but an Inducement; and an Inducement is never to be relied upon; it is not to be ſtood upon; and Mr. Solicitor did very honourably decline it, and did not make any thing of it, nor trouble the Caſe with it.

When the City did make this Act of Common Council, they did conſult with their Counſel for Matter of Law, and with their Officers and Fellow Citizens for Matter of Fact, and did adjuſt theſe Rates, and enacted them to be paid, they being reaſonable ones, and according to the ancient Uſage; but if they were miſtaken, it will be no Cauſe for you to give Judgment againſt them, for many other Reaſons: As firſt, you cannot judge this to be unreaſonable. I have not heard one Word ſaid, that this is an unreaſonable oppreſſive Toll. Here is Money levied; What then? If it be a reaſonable Sum, it is not ſo great; it does not deſerve the Name of Oppreſſion. I ſay, it is not ſo great an Oppreſſion, if they ſhould have been miſtaken in the Form of inſtituting the levying of it; if they might have done it under their Common Seal, and now they have done it without that by Act of Common Council. Nay, it does not deſerve that you ſhould judge it unreaſonable; you cannot do it here, for the Conſiderations are meritorious, and equivalent to it the great Charge they were at in building, and they ſtill daily are at in cleanſing and repairing, and providing Stalls. But, however, the Caſe is not ſo diſcloſed here, that you can judicially determine this to be an unreaſonable Toll; according to the Rule in *Coke*'s *Magna Charta* 222. the Toll of a Market need not be certain, only it muſt be reaſonable; and what ſhall be deemed reaſonable the Judges muſt determine, if it come judicially before them. So ſhall reaſonable Cuſtoms, and reaſonable Fines, and reaſonable Services, and reaſonable Time to remove Goods, and the like, they muſt be judged by the Diſcretion of the Juſtices upon the true State of the Caſe before them. Now this Caſe muſt have all its Circumſtances ſtated and agreed by Demurrer, or found by Verdict. And ſo is 4 *Rep.* 27. *b.* and *Hobart* 135. and 174. as in the Caſe of Copyholders Fines, the Quality and yearly Value of the Land muſt appear, or elſe there cannot be Judgment whether it be reaſonable or no. In the 13th *Report. fol.* 3. & *Croke Car.* 196. Where the Queſtion was, Whether the Lord of a Manor might aſſeſs two Years and an half Value of Copyhold Lands, according to the Rack-rents for a Fine upon Surrender and Admittance, and upon Nonpayment to enter for the Forfeiture; as ſuppoſe Land, it be rented at 20*l.* a Year, here is 50*l.* demanded for Admittance; there it appeared judicially that it was unreaſonable; and ſo it was adjudged, becauſe the Value was certain. But who can here ſay, Whether the providing of Markets coſts 5*s.* or 500*l*? It is not eſtimable. Perhaps we have overbought all theſe Tolls that they call unreaſonable; we aver it to be reaſonable, the Demurrer agrees it to be ſo, and you muſt intend it to be ſo, unleſs the contrary be ſet forth clearly in its Circumſtances; for he that will have a Forfeiture, muſt ſhew the Circumſtances to make it out.

My Lord, another Thing is this, to anſwer Mr. Solicitor in that Point: I ſay, an unreaſonable By-law is no reaſonable Cauſe or Colour for forfeiting a Corporation, admitting it to be unreaſonable, though I grant it not. My Lord *Hobart* in *Norris* and *Stap*'s Caſe, *Hob.* 211. ſays, that though Power to make Laws is given by ſpecial Clauſes in all Incorporations, yet it is needleſs; for that is included by Law in the very Act of Incorporating. For as Reaſon is given for the natural Body for the governing of it, ſo Bodies Corporate muſt have Laws as a politick Reaſon to govern them. Reaſon is a Faculty in them as 'tis in a Man, and may err; and therefore, ſays he, If the King do grant Letters Patents of Incorporation to Perſons, and he doth thereby make Ordinances and By-laws himſelf, they are ſubject to the ſame Conſtruction and Rule of Law, as if they were made afterwards by the Corporation. For the King can no more make an unreaſonable By-law than a Corporation; but if the King do, ſhall that affect the Corporation, and make the Corporation void by way of Repugnancy, or an inſtantaneous Breach of Condition? No, it ſhall not. And therefore as they may receive unreaſonable Rules from the King, without defeating of the Corporation, or having their Being thereby vacated; ſo they may make unreaſonable By-laws without the ſame Danger of deſtroying the Corporation. The Caſes are very many, wherein By-laws have been judged unreaſonable; the Truth of it is, there is a great Misfortune in the penning and making of thoſe By-laws; by ſome Means or other there is ſomething diſcerned that ſtill proves an Exception to it, as we ſee in the Caſe of the Carmen and the Woodmongers; their By-law was made and re-made, and corrected again and again, before it could be made to hold Water in this Court. So in the Taylors of *Ipſwich*'s Caſe, the *Bradnox*'s Caſe, which was here lately. All theſe have been adjudged void; but what then? In all theſe Caſes it was never ſaid, Hereby your Corporation is deſtroyed, you have erred in making a By-law, and therefore you have loſt your being of a Corporation. Beſides, if there were but a Colour for it, and it were any thing tolerable, ſurely that were enough to make us excuſable in ſuch a matter. If it has been received, as we agree it has, the Officers are Treſpaſſers, every Individual of them are ſueable, and any Man may bring his Action againſt them. But they that come to the Market, think not fit to complain; if they did not like the Market, they would not come at all; and if they did not like the Payment, they would not come neither; and there is no levying of any thing unleſs they do come.

Now, my Lord, I will admit the levying and the receiving, and yet I ſay this is no Forfeiture; for here is a Miſtake of Law, or a Miſtake of Fact, by Colour whereof Money is received: This by no means will work a Forfeiture of a Corporation; for at that rate, every Penalty that has been levied by a By-law will be adjudged a Levying of Money without Law, and ſo forfeit the Corporation; which has not been done in other Caſes of By-laws, and thoſe much worſe than this; becauſe moſt of thoſe By-laws were made for levying Money upon Men for exerciſing a Trade; and 'tis much more to ſay that you ſhould levy ſuch Sums of Money upon every Stroke of honeſt Induſtry, whereby a Man gets his Livelihood, than that you ſhall pay ſo much for your Accommodation in my Ground for the better vending your Goods. This hath been held good in ſome Caſes, but in others it hath been held naught; and this hath been all received and levied to the Uſe of the City too, and ſo 'tis a levying of Money, whereby they have a great Advantage; nay, 'tis worſe ſtill, becauſe it is impoſed by Force, and recovered by Force: but here 'tis a voluntary Penalty, no Force, no Compulſion, only their being removed from their Standings, no other Penalty, no Impriſonment, or the like; but if you do not like the Conditions, you may be gone: I deſire you to walk out of this Market, if you don't like the Price of the Proviſions; and to be gone from the Stall, if you don't like the Price of the Standing. We were not bound to provide theſe Stalls for you, but having provided them, if you don't like them, you may leave them; in other Caſes, the Man is impriſoned, and ſued by Action for the Penalty; here at any time, if you don't like, you may be gone.

My Lord, I am very confident, if this be ſo, that all Monies levied by a Corporation without Law are Forfeitures, or where the Law is miſtaken; then I dare boldly affirm, that we never were a Corporation two Months ſince *London* was *London*; but by virtue of ſome old ſleeping By-law or other, that has been ſet on foot, Monies have been levied, which perhaps will not be in Strictneſs allowed good: And if all theſe had been Forfeitures, we had been in a ſtrange Condition, not one Month or two ſhould paſs over us, but we had forfeited it; and never can there be perhaps a Month to the End of the World, but we ſhould ſtill be forfeiting. And what is ſaid of us, may be ſaid of any other Corporation that happens to make By-laws. And I am ſure in former Times there were Monies levied with a Witneſs, I mean not the late Times of Rebellion only, but an hundred Years ago, ſtrange Exorbitances of that nature were committed by *London* and other Corporations; then they went by way of Information, but never was it thought that it could affect the Being of a Corporation: If it ſhould do ſo, I do not know whether it will go at laſt. The greater or the leſſer Sum is not that that will difference the Law. Is it a Forfeiture to receive 5000*l.*? Why is it not a Forfeiture to receive 500*l.*? Why not to receive 5*s.*? Why not to receive 5*d.*? No Bounds can be ſet for that, if it be a Tranſgreſſion of the law; here is a Tort and a Wrong done by your By-law, that you have levied 5*d.* and therefore all this great Inheritance of *London*, this, that is the greateſt Inheritance of the Kingdom, is forfeited for a Trifle, upon Three Halfpence, or a Baſket of Eggs.

Nay, my Lord, to go further, I ſay, If this be a Forfeiture, I ſay it is only a Forfeiture of the Market; nay, not ſo much neither, 'tis only a Forfeiture of the Toll: My Lord, I cannot but once more mention that excellent Notion of my Lord *Hobart*, That the Power of making By-laws is included in the Act of the Corporation; for as Reaſon, ſays he, is given to a natural Body to govern it, ſo a politick Body muſt have Laws, as its Reaſon, to govern it. Now then the making of theſe Laws is but the Exerciſe of that Reaſon, declaring the Mind of the Corporation, for the Direction of the Officers of it, what to do, and what to take; and 'tis but like the Mind of a Man that directs his Hand what to do. For this is not like the Duty of Stallage, that relates to the Publick, and relates alſo to ſomething that before they had no Intereſt in; but only relates to the Adminiſtration of a private Property, and directs the Manner of that Adminiſtration. They are Lords of the Market, and that is caſual to them, it is not neceſſary for them ſo to be. If any Corporation bid their Officers levy ſo much Money; ſuppoſe they bid them take more Toll than is due, or levy more Money for Rent than is due for the Land, why this might be looked upon as a great Breach of Truſt and Encroachment: They ſhould have had but 6*d.* and they took 7*d.* and this done by Act of Common Council, which is their way of expreſſing their Mind; yet ſurely it would be no Forfeiture, becauſe the Land is their own, and the Adminiſtration of it belongs to them only in point of Intereſt and Property. Suppoſe a Gentleman has a Market, and his Reaſon, which is his By-law, as my Lord *Hobart* ſays, puts him upon taking of Toll; but he does a little miſtake the Law or the Cuſtom, he bids his Servant take ſo much, which perhaps may be too much for Toll; does this deſtroy his Capacity of ſueing and being ſued? You may as well ſay ſuch a particular Perſon ſhall not plead, or be impleaded, if he do ſo and ſo. Nay this, if he were a Denizen, does not forfeit his Denization, and yet a Denizen is as perfectly a Creature of the King's as a Corporation is. It is *Baſilicon Doron*, it is the Bounty and Kindneſs of the King to one born out of his Dominions, to give him the Capacity of a Subject, to ſue and be ſued, and the like, which cannot be forfeited, even for Breach of Conditions in the Letters Patents of Denization. For this is within *Verſellin Manning*'s Caſe; if he does not obeſerve the Laws of the Land, 'tis true, he muſt be puniſhed for it, but he ſhall not be undenizen'd.

My Lord, there is a Statute, which I think is a moſt plain Declaration of the Law in this Caſe, and 'tis the Stat. of *Weſt.* 1. *cap.* 31. Some call it the 30th, becauſe they differ in the numerating and heading of the Chapters. 'Tis the Statute concerning thoſe that take outrageous Tolls in Market Towns. The Statute ſays, *Le Roy prendra la Franchiſe del' March en ſa Maine.* The King ſhall ſeize the Franchiſe into his own Hands. My Lord *Coke* in his Comment upon that Statute ſays, he ſhall ſeize the Franchiſe of the Fair or Market, till it be redeemed by the Owner, that's all. But this is intended, ſays he, upon an Office to be found; for in Statutes all Incidents ſhall be ſupplied by Intendment.

Now in the *Quo Warranto* that was brought againſt the Corporation of *Maidenhead* in *Palmer's Reports*, there is this very Caſe. That Corporation took an outrageous Toll, too much Toll, or that that was not juſtifiable, for going over their Bridge. Yet it was ſo far from being imagined, that this ſhould be a Forfeiture, (and yet the Caſe is the ſame, let any Man diſtinguiſh it that can) that it was a Queſtion whether the Market was forfeited, or no, as you may ſee in that Book, *fol.* 82. And there 'tis ſaid by *Dodderidge*, and at laſt it was agreed by all the Court, that it ſhould be a Forfeiture only of the Toll, and not of the Market. And I deſire that that *Folio* may be noted by your Lordſhip, and that you will pleaſe to look into what is ſaid in that Caſe; for 'tis debated before, and it ſeemed as if they would have forfeited the Market by it, but not the Corporation; and yet that was not forfeited neither. And to this I will apply that Rule that Mr. Solicitor himſelf did mention, *Puniatur in eo quo peccat.* You have offended in the Toll, therefore you ſhall ſuffer in the Toll, not in the Market, to be ſure not in the Corporation. For if it were that, it ſhould affect the Market, it would be becauſe it hath ſome relation to a Market as a Toll hath; but how can this poſſibly affect or touch the Corporation? The Statute indeed goes thus far, and ſays, Whoſoever ſhall take outrageous Toll ſhall forfeit the Market; but then ſhall we come and add, Whoever ſhall take outrageous Toll, ſhall forfeit his Capacity of holding a Market, or any thing elſe? Do they complain of us for taking the Legiſlative Power upon us, and therefore we ſhall forfeit our Corporation, when the Statute itſelf has appointed the Puniſhment, and ſays only, the Market ſhall be forfeited, and ſo make a new Law themſelves? Statutes are ſuppoſed to be penal enough of themſelves, and all penal Statutes are to be taken equitably as to the Penalty, and not ſtretch'd beyond the Letter. And where-ever a Statute inflicts a Penalty, and ſays you ſhall forfeit ſo much, as my Lord *Hobart* ſays, the Common Law ſhuts up the Negative, that you ſhall forfeit no more. How then is it poſſible we ſhould forfeit that, which if it were forfeitable at all, is not within the Proviſion of this Law?

'Tis true, as Mr. Solicitor hath ſaid in the Book of Aſſiſes that he cited in *Vet. Nat. Brev'* 161. it is ſaid you ſhall forfeit in the Caſe of a Miſuſer (where the Liberties are not depending one upon another) only the Liberty that is abuſed; but how that can be applied for him I underſtand not; for nothing can be more flat and plain againſt him: If ſo be we ſhould forfeit our Toll or our Market, be it ſo; nay, if we ſhould forfeit our Liberty of having a Common Council, what then? How is it poſſible to bring it up to a Forfeiture of the Corporation? You ſhall forfeit a Court of Pypowders, if you forfeit your Market, becauſe 'tis incident to it, and dependent upon it, and ſubject to what Dangers the Market itſelf is ſubject to; but the Being of a Corporation, nothing can tranſcend that. To be ſure what is incident to it, cannot tranſcend it; 'tis but a Subject to that which is ſuperior.

For Example ſake, my Lord, I will cite you a Caſe, which is the Caſe of the City of *London* too about the Meaſurage of Coals. It is Sir *Julius Ceſar*'s Caſe, 1 *Leon'* 106. And I chuſe io cite that Book; for though it did not come out with your Lordſhip's Authority, yet my late Lord Chancellor gave this juſt Account of it, That it was one of the beſt of our later Reports. Sir *Julius Ceſar* libelled in the Admiralty againſt the Officer of the City for meaſuring Coals upon the *Thames*. *Fleetwood* came to the Bar, and prayed a Prohibition, and *Edgerton* the Solicitor on the other Side complained, that the Mayor of *London* did take a Fine for this Meaſurage, and made an Office of it; and this he conceived was Extortion (which is the Thing complained of here in ſo many Words;) and being upon the *Thames*, ſhould be puniſhed in the Admiralty. As to that the Judges replied, by no means, and *Wrey* and *Gawdey* ſaid, If it be Extortion in the Mayor, there is no Remedy for it in the Court of Admiralty, but in the King's Courts: And it ſhall be redreſſed here in a *Quo Warranto*, ſays *Gawdey*. 'Tis true, a *Quo Warranto* might well have been brought for redreſſing that Extortion; but it could not mean thereby, that the Corporation ſhould be diſſolved: And that it was ſo underſtood, is moſt plain; for accordingly a *Quo Warranto* is brought. You have it in *Coke*'s *Entries fol.* 535. and 536. *placit'* 4. And the City of *London* appeared and pleaded, and preſcribed to it; and thereupon the Attorney General that then was, my Lord *Coke* himſelf, was ſatisfied, and confeſſed their Title, and Judgment was given for them; and ſince it hath been held good and they have enjoyed it in Peace; and this I hope is a good Example for Mr. Attorney to follow in this Caſe.

My Lord, I come now to that Part which I come leaſt willingly to, I mean that of the Petition; and that which I have to ſay in it, is this, my Lord: Firſt I ſay, That this Petition is juſtified in the Pleading, and I hope it is very juſtifiable; if it were but excuſable, 'tis enough. That it is juſtifiable to petition the King in our Neceſſities and Extremities, is plain from what my Lord *Hobart* ſays, *fol.* 220. He ſays it was reſolved by the Court in *Renham*'s Caſe, that it was lawful for any Subject to petition to the King for a Redreſs, in an humble and modeſt manner: For, as 'tis there ſaid, Acceſs to the Sovereign muſt not be ſhut up in caſe of the Subjects Diſtreſſes. Now the Common Council are not leſs privileged than any other ſure, but rather more in this kind of Addreſſing and Petitioning: I cannot tell what Crime to make of this, there is ſo much alledged againſt us.

I did very well obſerve truly, and would always obſerve and remember in all ſuch Caſes, what my Lord Keeper here ſaid to your Lordſhip, *That Council ſhould not ſo much ſpeak, as if they would abet the Guilt of their Client, rather than advocate for their Innocency.*

My Lord, if the Words themſelves that are alledged are not Words that are unlawful to be delivered or ſpoken, then all this that they are dreſſed up with of the Intention to cenſure the King, and to bring him into Diſlike with his People, all that muſt go for nothing, and are not to weigh in the Caſe. Now the Words are theſe: *That there was a Prorogation, and by means of this, there being depending ſo many Impeachments of Lords and others, and Bills in the Parliament in both Houſes, which could not be perfected any where but there, the Proſecution of the publick Juſtice, and the making Proviſions neceſſary for the Preſervation of his Majeſty and his Proteſtant Subjects, received an Interruption.* Now, my Lord, I conceive theſe Words are not Words that in themſelves are unlawful, and for that your Lordſhip will be pleaſed to conſider our Plea; I need not repeat it, you have it before you: If they are in Senſe and Subſtance the ſame Words that have been ſpoken by the King, and the Lords and Commons in Parliament; he that will not be ſatisfied with that Authority, will not be ſatisfied with any. Then what do we ſay? We ſay, that the Proſecution of the publick Juſtice received an Interruption: Does not the King ſay ſo, and more, in his Speech we have ſet forth, wherein he recommends it to both Houſes, that Juſtice may be done? What is the Meaning then but this? If the further Proſecution of the Offenders goes not on, Juſtice is not done. And ſo we ſpeak but the King's Words. We ſay, they are not tried, or they were not tried; they themſelves complain of it to this Day; and therefore Juſtice did receive an Interruption. I am confident, without Reflection, that honourable Perſon my Lord *Danby*, in this Point, hath ſaid Words much more liable to Exception, though truly Words, that I believe deſerve no Rebuke. He has complained, that Juſtice was not done in his Caſe, becauſe he was not tried, and that when he deſired to be tried too; but his Liberty taken away, and he forfeited that which was dearer to him than Lands or Honours, his Health, whereby he endangered his Life, and loſt all the Comforts of Life. If it were lawful for him to ſay, as certainly it was, That Juſtice was not done in his Caſe, why might not the City ſay ſo? Either theſe Lords ought to be condemned, or they ought to be acquitted: 'Tis hard to ſay Juſtice is done, when they lie ſo long in Priſon, and are not either acquitted or condemned.

Then we ſay this, That the making Proviſion for the Preſervation of the King's Perſon, and of his Proteſtant Subjects, received an Interruption. To this Part we give this Anſwer: We ſet forth, That there were Bills depending in the Parliament for this Purpoſe, and that is agreed to us by the Demurrer; and that theſe Bills could not paſs into Laws, any more than the Lords could be tried but in Parliament. Why then if it be ſo, that the Matter cannot be done, nor Proviſion made, but (as that Proclamation, that iſſued for the Faſt, ſaid, and as the Addreſſes of both Houſes for the Faſt do ſay) by the Bleſſing of God upon the Counſels of King and Parliament; if theſe Counſels, or the King and his Parliament are interrupted, this is not done. To make ſuch an high Crime of this I do not underſtand; I would not be thought to ſpeak any thing to juſtify that which is really a Crime; but this is that I ſay, 'Tis not in Law unlawful for us to petition the King, or addreſs to him: But, my Lord, to take off the Edge of this Buſineſs, I ſhall beg Leave to read to your Lordſhip a Speech of the King's, made the 6th of *March* following, and therein there are theſe Words, *The further Proſecution of the Plot.*

My Lord, let any Man read, and ſpell, and ſee how in Subſtance the Words in our Petition differ from the Words of the King, making thoſe Laws neceſſary for the Security of himſelf and the Kingdom, and this ſpoken the 6th of *March*, when this very Petition now complained of was preſented in *January* or *February* before, and there was no Parliament between. No Man will ſay, that there were Laws ſufficient for the Security of the King and Kingdom, when the King himſelf ſpeaks of the Neceſſity of making ſuch: So then, thoſe Laws that were preparing received an Interruption. The Lords were not tried: Is not that an Interruption of Juſtice? Since they could be tried no-where elſe, as muſt be granted; and the King recommends it to them as not done, but neceſſary to be done. So the King ſaid before, and ſo it is implied here. There is no ſuch thing ſaid in the Petition, *That the King did interrupt Juſtice, and the Proceedings of the Parliament:* It is an Inference and a Conſequence made by Wit and Art: not that the King did interrupt, or intend to interrupt Juſtice; but it ſays, *By the Prorogation of the Parliament the publick Juſtice received an Interruption.*

My Lord, ſuppoſe at that Time there had been a Peſtilence here, and the King had been as much reſolved to meet his Two Houſes as they him, but by reaſon of the Peſtilence he were neceſſitated and forced to make a Prorogation; then there comes ſuch a Petition from the City, and ſays, That by reaſon of this Prorogation thoſe Bills that were depending did not paſs, and the publick Juſtice received an Interruption: What is the Offence of this? 'Tis all true. If there be Bills depending, and Impeachments, that can no other where be tried, they do receive Interruption by a Prorogation. Can any Man ſay this is falſe? The Charge in the Replication is, *That we did falſly and maliciouſly ſay*, what? that which is true, and that which the King had ſaid before, and that which the Lords and Commons ſaid after him, *That till thoſe Things were done they were not ſafe*; and thoſe Things as yet were not done.

My Lord, there is this further in it, the Petition is ſet forth *in hæc verba*; and therefore I may take any thing out of it to explain it, and reſtore it to itſelf; for this indeed is a very reſtrained Conſtruction of the Petition.

It ſays, when this interruption by the Prorogation was receiv'd, *That the King for urgent Cauſes, and very good Reaſons, did prorogue the Parliament.* It is his Prerogative to do ſo? and God forbid but he ſhould have it. I think, without doubt, we ſhould be more at a Loſs for want of that Prerogative, than we can by the Uſe of it. It is mine, and I believe every good Man's Opinion, that that Prerogative is very neceſſary and profitable for us all; but it is the Conſequence of it, that this Interruption of Juſtice is received; nay, we are ſo far from ſaying, that the King did interrupt Juſtice, or intending it, that we ſay, we do hope the King's gracious Intentions were only to make way for the better Concurrence of his Majeſty and his Parliament. The King does, *for great Cauſes*, and beſt known to himſelf, who has the Prerogative, *prorogue the Parliament*; whereby, as a mere Conſequence, not as the King's Intention, *the publick Juſtice is interrupted*: Nay, this we affirm was with a good Intention in the King, *that he might the better be enabled to concur with his Parliament*, as is ſet forth in the Petition. Can there be any thing more properly ſaid? 'Tis the greateſt Juſtification of the Prorogation that can be. The King has prorogued the Parliament: What to do? Why Juſtice hath in View received an Interruption, but not in the Intention of the King. We know what the Meaning of it is, and ſo we ſet forth in our very Petition, *it is to gain Time, that he may the better concur with his Parliament.* It is a great Commendation of the King's Purpoſe, inſtead of charging him with Injuſtice, that he did reſolve to concur with his Parliament for ſuch Ends, and accordingly did prorogue the Parliament.

Now the Attorney General hath put in, that it was *ea intentione*; there is the Sting of the Buſineſs to put in thoſe Words, to make that which we may lawfully ſpeak, of itſelf to be an Offence. But truly that ſignifies juſt nothing: It can never hurt a Thing that is true, it has great Authority in it, if it be applied to a Thing that is unlawful; but if in Subſtance it be true, and the Thing itſelf juſtifiable, thoſe Words make nothing in the Caſe; and I think I need not argue that Point, but refer myſelf to the great Caſe that was in *Weſtminſter-hall*; and that is the Reverſal of the Judgment given in this Court againſt my Lord *Hollis*, which was a Reverſal in Parliament; and is printed in the laſt Impreſſion of Mr. Juſtice *Coke*'s Reports by Order of Parliament; and there they explode all the Notion of *ea intentione*, and this Buſineſs. A Man ſpeaks Words that he might ſpeak in Parliament (though I know not whether he might, or no, but the great Thing is, if Words, that in themſelves are tolerable to be ſpoken, be ſpoken, you ſhall not come and ſay they were ſpoken with an ill Intention; though, as I ſhall ſhew by-and-by, this hath a kind of Fatality in it, and that is this, that it is done with an ill Mind by a Corporation that hath no Mind at all.

Mr. Att. Gen. Juſt now you ſaid it had a Mind, and Reaſon was its Mind.

Mr. Recorder. I ſaid as my Lord *Hobart* ſays, that a By-law to it is a Mind, as Reaſon is to a Man, but it hath no moral Mind. My Lord, then I ſay, the Citizens of *London* were indeed at that Time under great Conſternation, by reaſon of the Conſpiracies that had been diſcovered in Parliament, and in the Courts of Juſtice; and it had been declared by the late Lord Chancellor, at the Trial of the Lord *Stafford*, which your Lordſhip may very well remember, *That* London *was burnt by the Papiſts; and therefore it was no Wonder, that they were deſirous, that themſelves and the Kingdom ſhould be put into great Security againſt thoſe Enemies.* This, my Lord, I confeſs is a tender Point, and I would not ſpeak a Word in it without a Law-book to back me. I remember that my Lord *Hobart* ſays, that Zeal and Indignation are fervent Paſſions. The City of *London* had great Indignation againſt the Papiſts for this Conſpiracy againſt the King and Kingdom, and the Religion eſtabliſhed by Law. There was no Diſaffection in the City at this Time, when this Petition was made, ſure; and I wonder, that any Man ſhould ſay, that knows *London*, and was acquainted with it then, and looks upon this Petition which paſſed *nemine contradicente*, that they had ſuch an Intention as is inſinuated; and pray let him read the Names of the worthy Aldermen that then ſat upon the Bench, and the other Names of the Common Council-men then preſent, and then let him ſay, if, without Reflection, the King have more loyal Subjects in the City of *London* than theſe Men were. And do you think, if there had been in it any Sedition, or any of thoſe ill Qualities that make up the ill Adverbs, which are joined to it in the Replication, not one of all thoſe loyally diſpoſed Men would have ſpoken againſt it? But alas! all of it paſſed *nemine contradicente*.

My Lord, I ſay, that if the Matter of it be juſtifiable, as I think it is, then all theſe Words will ſignify nothing, if there were never ſo many more of them: And the preſenting and carrying of it to the King, that is no Offence, that is not ſo much as pretended to be one. And, my Lord, I think it a very harſh Tranſlation of the Word into *Latin*, when the Petition ſays, That the Parliament's Proceedings, or the publick Juſtice, received an Interruption, to put that Word of *Obſtructionem* in; truly I think a better Word might have been found to expreſs the ſoft Expreſſion in the Petition: and they need not have put that hard violent Word *Obſtructionem*, when to make *Engliſh* of it they tranſlated it *Interruption*.

But, my Lord, they do admit, I ſay, that the making and preſenting of it to the King is not the Offence, ſo much as the Publiſhing of it, by which it is expoſed to many others beſides. Now to excuſe that, the Anſwer we give is this; and 'tis that which will carry a very reaſonable Ground of Juſtification in it: Certain Citizens, that were private Men, had petitioned the Common Council, and thereby they were importuned to make known the Deſires of the City to the King, and it was reaſonable to make known to thoſe Citizens what the Common Council had done, to prevent falſe Rumours, which we knew were rife enough in thoſe Days; and to ſhew, that there was nothing ill in it, we did print it. And 'tis alſo all driving at the common Intereſt, at the King's Safety, the Preſervation of the Church and the Government eſtabliſhed: All this they did deſire might be known to theſe Citizens, and all others that inquired about it; and therefore they printed it, to evidence that there was nothing of ill intended in it. And I do wonder, I muſt confeſs, that this Objection of the publiſhing of this Petition ſhould be ſo much inſiſted upon; for they ſay, that the Mayor, Commonalty, and Citizens of the City of *London* did it; and ſay not any thing of the Common Council, that they did print it: Now they that did vote it, knew it without printing; and 'tis alledged in the Pleadings, and confeſſed by the Demurrer, that the Mayor, Commonalty, and Citizens of *London*, that is, the Corporation, conſiſts of above 50,000 Men, which cannot well be intended otherwiſe. Why then, here is a Petition that is agreed to be well enough lodged as to the Perſons that voted it, it being the Liberty of the Subject to petition; and if this had been only preſented to the King, though it had been by thoſe 50,000 Men, nay, if it had been by 10,000 Men, who had been the Corporation, it had been well enough, ſo it had not been printed, but only kept private to themſelves: Why then 'tis very ſtrange, that what is known to all *London*, ſo great a Part of the Kingdom, ſhould be lawful, but it ſhould be heinouſly unlawful to ſend the News of it further. It went further than the City of *London*; and therefore 'tis ſuch an Offence as ſhall be a Forfeiture of the Corporation. My Lord, there is the Caſe of *Lake* and *King*, the Petition to the Parliament was ſcandalous in itſelf, yet it ſtood protected, being preſented to the Parliament; and it was lawful to print it, provided it were delivered to a Committee of Parliament, or only to thoſe that were Members; though 'tis ſaid there, that the Printing of it is a great Publiſhing; for the Compoſers, Correctors, and other Perſons, that are concerned in the Preſs, read every Letter of it. But it was anſwered, that Printing is but a more expeditious Way of Writing; and if he had imployed 20 Clerks, it had been a greater Publiſhing than three or four Printers. Poſſibly the Printers might not read it, or not be able to read it well, or not all of them read it at that Time.

Now here, my Lord, ſure it was lawful to acquaint the Citizens what they had done, if you take it to be the Act of the Common Council, and the Common Council to be the Repreſentative of the City. It was always agreed by the Houſe of Commons, that any Member might ſend the Votes to thoſe that ſent them thither, and whom they repreſented; they have blamed indeed Men for ſending the Debates, but never for communicating the Votes: And what they may do by Writing, that they may do by Printing. Why then might not the Citizens of *London*, who by Cuſtom chooſe thoſe Common Council-men, well deſire to know, and might well know, what they had done? And then what they might do by Writing, they might by Printing; for that is but another Way, though a more ſuitable and compendious Way, of exhibiting any thing that you would have go to many. And if it be lawful to impart it to all the City, and all the City does know it, though it does go further, 'tis no Matter; for what is known to *London*, may very well be known to all the Nation beſides, without Offence, if it did go further. Beſides, it ſhall never be intended it was publiſhed further, or that any others knew of it; for 'tis ſaid to be publiſhed in the Pariſh of St. *Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, and that is in *London*, to the Citizens of *London*; and ſo they only talked of it amongſt themſelves. Beſides, the main Thing which I go upon, is, if there be no Ill in the Thing itſelf, the *ea intentione* can make no Crime by a bare Affirmation, which we deny; and if it might be well ſaid or done, it is lawful to print it, and the Publication is no Offence neither.

My Lord, the next Point I come to is this, That a Corporation cannot poſſibly commit a capital Crime, or any other Crime againſt the Peace: And I ſhall offer this Dilemma, Either it was done ſeditiouſly, or not; if not, then there is no ſufficient Aſſignment of a Cauſe of Forfeiture; if it were, then 'tis a Crime for which the Offender is indictable; and that, I ſay, is abſolutely impoſſible for a Corporation to be guilty of. And here I will throw in alſo that Buſineſs of the Toll; and I will, for Argument's ſake, admit the Taking of a wrongful Toll to be Robbery, and then let the Argument go on. I have heard it ſaid within the Bar occaſionally, that a Corporation is intruſted with the Government; and that they may commit Treaſon, and raiſe Sedition, as Mr. Solicitor hath ſaid; I ſuppoſe it muſt be under their Great Seal: But I confeſs, I believe it is rather ſpoken to amuſe, than to ſatisfy: But I really think it is no ill nor unjuſtly Thing for me to ſay, nor againſt the Government to affirm, That 'tis impoſſible a Corporation can commit Treaſon, or that it is intruſted with the Government in any ſuch Kind.

But firſt, my Lord, I ſhall ſhew you what Opinion former Times had, and that becauſe ſuch an Opinion as this hath been broached of late Days.

L. C. J. Mr. Recorder, will you be much longer? Becauſe I muſt ſit here at *Niſi prius* this Afternoon, and yet I would fain hear the Argument, if it would not be too long.

Mr. *Recorder.* No, my Lord: I have almoſt done, and will cut ſhort.

In 21 *E.* 4. *fol.* 13. *b.* 'tis ſaid by *Pigott*, That a Mayor has two Abilities; the one to his own Uſe, to make and to grant, and to do as another natural Perſon does; and then the Mayor, as Mayor and Commonalty, hath another Capacity to their common Uſe and Profit; and that is but a Name, an *Ens rationis*, a Thing that cannot be ſeen, and is no Subſtance; and for this Name or Corporation, 'tis impoſſible they can do or ſuffer any Wrong, as to beat or be beaten, as ſuch a Body; but the Wrong is made to every Member of the Body, as to his own proper Perſon, and not as to the Name of Corporation; nor can the Corporation do a perſonal Wrong to another; nor can they commit Treaſon or Felony as to the Corporation, nor againſt any other Perſon. And if a Writ of Debt be brought againſt the Mayor and Commonalty, or other ſuch Body, upon an Obligation, and they plead it is not their Deed, and it is found their Deed, they ſhall not be impriſoned as another ſingle Perſon ſhall. The ſame Law is, if they are found Diſſeiſers with Force, they ſhall not be impriſoned, nor in a Writ of Raviſhment of Ward ſhall they either be impriſoned, or abjure the Realm; for ſuch a Body is but a Name, to which ſuch an Act cannot be done. So ſays *Cateſby* in the ſame Book; In a Writ brought againſt them no *Capias* ſhall iſſue, becauſe they are but as a dead Perſon in Law; and the Appearance upon a *Capias* cannot be otherwiſe than perſonal. And ſo to this Purpoſe ſays the Chief Juſtice there; If this Body will do any thing, it muſt be done by Writing. And all along it is the Tenor of the whole Caſe, that a Corporation cannot commit Treaſon, or any other Crime. But the Reaſon of the Thing is above any Authority. Suppoſe, that they under their common Seal ſhould commit Treaſon, and you bring an Indictment of Treaſon againſt the Mayor, Commonalty, and Citizens of the City of *London*, what Judgment ſhall be given againſt them in their Corporate Capacity? What? It ſhall be, that *Suſpendatur per collum Corpus politicum.* And then, what Execution ſhall be done upon that Sentence? What? muſt they hang up the Common Seal? Nothing elſe you can do can affect them; but in their private Capacity, there they may be puniſhed as ſingle Perſons.

A Penal Statute ſays, that he or ſhe, that offends againſt the Law, ſhall forfeit ſo much, or incur ſuch a Penalty: Is a Corporation Male, or Female, that it ſhould come under ſuch a Proviſion? But the real Reaſon of the Law is this, it is a Civil Being, it is *Ens civile*, it is *Corpus po-*

liticum; it hath civil Qualities, but it hath no moral Qualities; and all Offences conſiſt in the immorality of them, and there muſt be Malice to make that Immorality. No Words or Acts are Treaſon or Felony, unleſs there be a traiterous Mind, or a felonious Mind; and therefore a Madman cannot be guilty of Treaſon or Felony. Serjeant brought an Action for theſe Words, that he had ſpoken Treaſon; it was moved in Arreſt of Judgment, that this cannot be actionable; for he might ſpeak Treaſon in putting a Caſe: Ay! that were well, ſaid they, if it could be underſtood ſo; but we muſt intend it, that he ſpoke Treaſon, as his own Words *ex corde ſuo*, which makes it Treaſon; for Treaſon conſiſts in the Immorality of the Mind.

Another Reaſon is what *Pigott* ſaid, as I ſaid before, That a Corporation is but a Name, an *Ens rationis*, a Thing, that cannot ſee or be ſeen, and indeed is no Subſtance, nor can do or ſuffer Wrong, nor any thing where a corporal Appearance is requiſite. What my Lord *Dyer* ſays in *Moor* 68. that he never ſaw, is, I believe, true in general, what no Man ever did ſee, that a Corporation could be bound in a Recogniſance or Statute Merchant; and why? becauſe it muſt be acknowledged in Perſon: And ſo in this Caſe, the Guilt follows the Perſon, but cannot a mere Capacity. In all Crimes the Offender muſt appear in Perſon, and plead in Perſon, and ſuffer in Perſon; but you can never bring the Mayor, Commonalty, and Citizens into Gaol, to appear and plead to an Indictment, to receive a Judgment, or ſuffer Execution. Can a Body Politick, that is inviſible, appear in Perſon; But then there is this great Objection: By this Means, they ſay, if there be no Puniſhing of them, there is no Government, and they may commit Treaſon under the Great Seal, they may raiſe Armies, and inſtigate a Rebellion, and all with Impunity. My Lord, I ſay no, and I give two Anſwers to it, that are not to be replied to; and the firſt is this:

1. All theſe Perſons, that are met together, though they are met *corporaliter*, in their corporate Capacity, for the Acts of the Corporation at that Time; yet when they go out of their corporate Buſineſs, and commit Treaſon or Felony, the Crime does not *egredi perſonas*, every one of them is a Traitor or a Felon; and notwithſtanding they appeared there under the Pretence of a Corporation, yet they are all liable in their private ſeveral Capacities, every one of them muſt be indicted perſonally, and ſuffer perſonally: For when they go about to do ſuch a Thing, it is out of the Buſineſs of the Corporation; and they muſt anſwer for their own particular Offences. But,

2. I have another Anſwer to give to it. This Objection is to be retorted on the other Side, that if a Corporation authorize the levying of War under their common Seal, they ſhall be affected by it in their politick Capacity, and are liable to the Law in that Capacity only, and muſt ſuffer in that Capacity only: And the Conſequence of that is, they are diſcharged in their private Capacity; and this is a Law of Indemnity and Protection for all Crimes; for a Man cannot be liable two Ways for Treaſon, or Felony, or any other Crimes: If he be not liable in his private, he is in his publick Capacity; if not in his publick, he is in his private. And what is the Conſequence of that? This is a Diſpenſation for a Corporation met together in a Body, to do any illegal Thing, or to commit any enormous Crime; for the King's Counſel ſay this, We are reſponſible for it in our politick Capacity; and what Execution can then be done to puniſh that Corporation with ſuch a Puniſhment as the Law inflicts, that is, Impriſonment, or Death, any more than upon an Action of Debt brought againſt them upon a Bond, and *Non eſt factum* pleaded, and found for the Plaintiff? Can they be impriſoned? and the like. So that this ſhall protect and ſhelter them in the Commiſſion of any capital Offence; for if they are to ſuffer for it as a Corporation, you muſt take Judgment againſt them, as the Law gives it; and how will that be done againſt an inviſible Body? What will be the Execution againſt the *Corpus Politicum*, that can neither ſee nor be ſeen?

I think this mighty plain; and I muſt confeſs, I wonder how it could ever enter into the Mind of any Man, that a Corporation could commit a corporate Crime. I have, as it became me, in regard of the Duty of my Place, and before that, for my own Learning, read *Stamford's Pleas of the Crown*, my Lord *Coke*'s *4th Inſtitutes*, *Poulton de Pace Regni*, my Lord *Hales*'s *Pleas of the Crown*, *Dalton*'s *Juſtice of the Peace*, and other Books on that Subject; but I defy any Man to ſhew me in any of thoſe Treatiſes concerning criminal Matters, any Reſolution, that ever a Corporation could be ſo concerned, that they ſhould be brought before a Juſtice of Peace, or proceeded againſt upon any Law for Treaſon or Felony, or be hanged in their political Capacity.

My Lord, I ſhall conclude all my Diſcourſe of this Kind (and I have almoſt done, becauſe I perceive I incroach upon your Patience) with an Obſervation I have made upon the 19 *H.* 7. *c.* 7. and it is the Statute, that makes Proviſion againſt Corporations, that made By-laws againſt the Prerogative. That Statute ſays, That ſome Corporations did ſo; now an higher Offence than that, ſure, cannot well be deſcribed; and there that Law ſays, that thoſe that do ſo, that make ſuch By-laws againſt the Prerogative, ſhall forfeit for ſo doing, for every Offence, forty Pounds, unleſs they are confirmed by the Chancellor and the Treaſurer, and Chief Juſtices, or any Three of them. Now to what Purpoſe was this Statute made; if the making of an ill By-law (and worſe cannot be than a By-law againſt the King's Prerogative) ſhould be a Forfeiture of the Being of a Corporation? How vainly did the King and Parliament imploy themſelves to make a Statute, that a Corporation ſhould forfeit 40 Pounds for ſuch an Offence? No Man will ſay they had rather take that Penalty than another, when they might have a greater, if a greater could be had by Law. If they might have had a *Quo Warranto*, and thereby deſtroy the Corporation, ſurely they would not have ſtood for the Penalty of 40 *l.* for they might eaſily have got more Money: No, they might have ſaid, We will never paſs it by, unleſs you will give us 4000 *l.* or a far greater Sum; nor ſhall you have your Corporation again, without you give us a conſiderable Recompence for it. And when the Proceſs and the Proceedings were ſo expeditious and eaſy to come at in a *Quo Warranto*, as it was eaſy in thoſe Days, why ſhould they put the King to the Delays, in an Action of Debt for ſo ſmall a Penalty as 40 *l.*? So that I take it to be a direct Judgment of the Parliament in that Caſe, that no Corporation ſhould or could be forfeited for the making of any By-law that was irregular, though it were even againſt the King's Prerogative.

But to haſten to a Concluſion, I have all this while, my Lord, ſuppoſed, that the Mayor, Commonalty, and Citizens of *London* have done this: But it is not ſo; this is not the Act of the Mayor, Commonalty, and Citizens, 'tis not the two hundredth part of the Corporation, 'tis but the Act of the Common Council; and we have diſtinguiſhed ourſelves by pleading, that it does not conſiſt of above 250, when the City contains above 50,000. I muſt confeſs the Council is not taken notice of much in Law; as is ſeen in *Warren*'s Caſe, 2 *Crook* 540. & 2 *Rolls* 112. *Warren*, being one of the Common Council of *Coventry*, and diſplaced, ſued out a Writ of Reſtitution; and upon that Writ it was returned, that by Cuſtom the City might place and diſplace *ad libitum*; they there held, that the Cuſtom was good: But it is not ſo of a Freeman or Alderman, becauſe he hath a Freehold; but a Common Council is a thing collateral to a Corporation, and the Office of a Common Council is nothing but only to give Aſſiſtance and Advice, which they may refuſe at their Pleaſure. In *Eſtwick*'s Caſe in *Style* 32. & 2 *Rolls* 456. it is ſaid, That 'tis a Place merely by Cuſtom, and that the Common Council is properly but only a Court of Advice; and, my Lord, you ſhall never intend more than that they were a Court of Advice: All the Riſe of their Power is but by Cuſtom, and that Cuſtom is pleaded to give Advice for the Benefit of the City, and make By-laws for the Good of the Corporation; and that is confeſſed by the Demurrer, and you ſhall intend no more than what is opened in the Pleading.

And then 'tis evident this was done by a very ſmall Part of the Citizens of *London*; and that does no way affect the whole Corporation ſure. In *James Bagg*'s Caſe, 1 *Rolls fol.* 226. it is ſaid, That if a Patent be procured by ſome Perſons of a Corporation, and the greater Part do not aſſent to it, that ſhall not bind a Corporation. And if ſo be a Charter ſealed, and ſent by the King, becauſe not accepted *in pais*, by the greater Party, bind not, ſhall an Act done by a few, and an Act done, that tends to a Forfeiture, bind the Whole in point of their Being? There is no Ground to ſay, that the Common Council repreſents the City, no more than a Counſel does his Client, or an Attorney his Maſter; only as far as is for the Benefit of the City, they are choſen and intruſted to make By-laws; if they offend, they are but Miniſters and Officers, and ſo they are within the Statute of *Edw.* III. which I mention, though I think we have no Need of that in the Caſe to help us; if they make an unreaſonable By-law, it is void, and every Man that is aggrieved by it may have his Remedy, may bring his Action. Shall you ſupply this by an Intendment, that they have ſuch a Relation? that they are the Repreſentatives of the City of *London*? that they have a Power to forfeit the Corporation? No, my Lord, by Law they are Part of the Corporation, but they have no ſuch Power to forfeit the Corporation. A Cuſtom ſhall never be conſtrued to enable a Man to do a Wrong; and a great Wrong it is, that they that are truſted, and truſted but for a Year, and truſted but for the Good of the Corporation of which they are Part, ſhould give up the Being, or, what is worſe, forfeit the Being of that Corporation. The Cuſtom of *Kent*, that makes an Infant capable of making a Feoffment, ſhall never enable an Infant Tenant in Tail to make a Feoffment, ſo as to work a Diſcontinuance of the Eſtate Tail, and put the Heir to his *Formedon*. Every illegal Act of their's is beyond their Commiſſion, and a Nullity of that is all in reſpect of themſelves; and it is as if they had never done it as to the Corporation, for they are by no means the Corporation; for tho' they uſe the Common Seal in ſome Caſes, at ſome Times, ſo do the Court of Aldermen in other Caſes; but it is only in other Caſes wherein they are particularly intruſted. If an Act of Common Council ſay, that I ſhall have ſuch and ſuch Lands of the City's, that Act ſignifies nothing, but as a Direction and Advice; when it is under the Common Seal, it is an Act of Corporation, and proceeding by Advice of Common Council, it binds.

Now, my Lord, this is the more unreaſonable, becauſe we know, that the Practice of the Common Council in *London* being to adviſe for all the Inhabitants, they are choſen by the Unfreemen as well as others; and it is a ſtrange Thing, that they ſhould have a Capacity to give away the Liberty of the Citizens, when they are choſen by others as well as them. They had no ſuch Truſt for them; nay, all Truſt they had was to keep their Liberties, and not to deſtroy them. Has any Man a Truſt to deſtroy himſelf? Sure no Man is truſted by God himſelf to be *Felo de ſe*. And certainly then you can never underſtand it to be in the Nature of a Truſt to deſtroy another; and the leaſt Citizen, my Lord, has as much and as true an Intereſt in the Corporation of the City of *London*, as the greateſt: And therefore 250, if they had been much the greater Number of the Citizens, would ſignify nothing to the reſt of the Body.

My Lord, I ſhall only ſay this little more: Here is no Crime charged relating to them as a Corporation: Here is indeed a fine Word uſed, that we did this *contra fiduciam in corpore politico repoſitam*; but all this is but an imaginary Truſt, the King never gave them a Power or Authority, or intruſted them to make By-laws that were unreaſonable; he gave them a Power to make reaſonable By-laws, and ſo he does every Corporation. And the ſame Law that gave them the Power, limits that Power, and ſays, if they go beyond that Power, it is a Nullity. And theſe Acts relate not to them as a Corporation; the Petition is not ſo much as ſaid to be againſt any Truſt repoſed in the Corporation; certainly there never was any ſuch Truſt. Did ever the King intruſt them to adviſe him about the Matters contained in the Petition? And if not, then it is not *contra fiduciam*; therefore it relates to particular Perſons: If it be an Offence, I hope it is none of the Corporation's.

But then the levying of Money, that is *contra fiduciam*; they took upon them an illegal and unjuſt Power in the Common Council. Suppoſe it ſo, how does this belong to the Corporation? It is an Incroachment upon Property, it is the moſt arbitrary Thing in the World. Whether they have the Market, and the Dominion of it, or not, is matter of Fact, and being pleaded, is confeſſed by the Demurrer: And then for the Power of making By-laws, that is a Thing that cannot poſſibly be taken from them while they are a Corporation; it is that which muſt be in them as a Corporation, like the Faculty of Reaſon in a Man, to expreſs his Reſolutions by. And it is no more, than if a Man, that has a Market, bid his Servant go and remove ſuch as have Stalls there, unleſs they will pay ſo much. That Direction is as good a Law as this, and as bad a Law as this, and no more. There is nothing elſe in it but the Direction of the Officers, what they ſhall do in the ordering of the Markets, and diſpoſing of the City's Property.

Then as to the formal Method of expreſſing themſelves, whether it be by Act of Common Council, or under the Common Seal, or by their natural Voice, it is all one, it is not a Thing that concerns them as a Body Politick: But if it were illegal and miſtaken, I ſay, the Penalty is only, that it ſhall be void. What the Common Council, nay, what the Corporation does within the Limits of its Authority, is good; what beyond that it does, is void. If I command my Servant to diſtrain for Rent, and he kills a Man in the doing of it, this, as to me, is void; but as to himſelf, that is chargeable upon him. And what I ſay of the Common Council, I ſay of the Corporation itſelf, that it is a Capacity, and a limited Capacity; it is the Act of the Members, not of the Corporation, if they do wrong. The Common Council can act for the Good of the City, and the City can do no more, if they themſelves ſhould meet. *Crooke*, *Eliz. fol.* 85. the Queen makes a Leaſe for Years of Lands to the Men of *Cheſterfield*, by the Name of Aldermen, and they by that Name grant all their Intereſt to *Clerk*; ſays that Book, This is void: for the Queen granting them a Leaſe as to the Aldermen of *Cheſterfieid*, this makes them a Corporation, and gives them a Capacity to take, but not to grant. And ſo *Rolls Abr.* 1. *p.* 513. And therefore no Corporation is to be conſidered as a Corporation, but only when it acts according to the Capacity allowed to it; and as to the reſt, it all turns into their private Capacity, but it affects not the Body, nor hath any ſuch Relation as to bind it.

My Lord, all the Queſtion here is, Whether there ſhall be ſuch a Perſon *in eſſe* as this Corporation? Whether the City of *London* ſhall ſubſiſt as ſuch a Perſon, to ſue and be ſued, to plead and be impleaded? There is nothing of Government or Miſgovernment in the Caſe; but it is all about our Capacity, and nothing elſe, whether we ſhall be Defendant or Plaintiff in any Court.

My Lord, *Magna Charta*, and all the other Acts, that have gone in Confirmation of it, ſhew the great Care of the Government in all Ages to preſerve the City of *London*; and I look upon them as ſo many Declarations of the Immortality of it, and of all other Corporations. I ſhall uſe a ſtrange Argument perhaps at firſt Hearing, but it is to me a great Evidence for us, that *Magna Charta* does not confirm our Being, but our Liberties and Privileges; it ſays, That the City of *London* ſhall have all its Liberties, it confirms its Leets, its Markets, and all thoſe Things, that is, it confirms all that it has; it has not ſaved indeed, if a Corporation indeed be built upon a Corporation; but that particular Liberty may be deſtroyed, as that of *Bridewell*, and the like; but it does more than confirm its Being, for it does implicitly declare, that that was impoſſible to be forfeited: They confirm what needed Confirmation; but for their Being there was no Need of that; it only confirmed the ſupervenient Liberties, without which it might be a Corporation; but as to its Being, it meddled not with that. And if it were not ſo, it were an unreaſonable Thing, that we ſhould have ſo many Acts of Parliament, that give ſuch particular Powers to the Mayor and Commonalty of *London*; and ſcarce any Act of Parliament, that relates to the Publick, but *London* is mentioned, and taken care of in it. Are not all theſe Declarations, that *London* ſhould ſtand for ever? Would not any one have ſaid elſe, Pray what do you put ſuch Confidence in *London* for? There is not ſuch a fickle Thing upon the Earth as the Being of the Corporation of *London*. If they lay but 6*d*. upon a Joynt of Meat, they are gone, and there is not a Month in the Year but they forfeit their Being.

The Act for Adminiſtration hath a Proviſo, that ſays, it ſhall not extend to *London*: Why does any Man think, that this Law was not intended to be as perpetual for *London*, as for other Parts of the Kingdom? They did not queſtion but *London* would be a Corporation as long as *England* was *England*. It would be a ſtrange Thing in the Example of it, that the World ſhould be taught by one Inſtance, that a Corporation can be ruined, when ſo many People put their Truſts in thoſe Corporations, and ſo many vaſt Inheritances depend upon them. And I think the King and the Government, or thoſe you call ſo, are more concerned to preſerve *London*, than all the Perſons that are in it. I would not ſpeak it in this Place by way of Argument for my Client, but I think I could maintain it in all Places; only I hope and believe I ſhall have no Need for it.

My Lord, all Innovations (as this muſt certainly be a very great one) are dangerous; this Frame of Government has laſted and been preſerved for many Hundreds of Years, and I hope will be ſo as long as the World endures.

My Lord, I am ſenſible I need your Patience; but I have juſt done. Here is a Charge that has very little, indeed there is nothing in the Matter of it; but the Weight and Conſequences are fitter to be meditated upon, than ſpoken of. And therefore for theſe Reaſons I do pray, that theſe Liberties may be adjudged to us, and we may be diſmiſſed out of this Court.

Now, my Lord, if your Lordſhip pleaſe, I will give an Anſwer to Mr. Solicitor's Authorities.

Lord Chief Juſtice. I ſuppoſe you do intend to argue it again, and therefore there will not be ſo much Need of that now; beſides, it is late, and I cannot ſtay.

Mr. Attorney General. My Lord, I think it may be very proper to have one other Argument, the firſt Week in *Eaſter* Term.

Lord Chief Juſtice. Take what Day you will, Mr. Attorney.

Mr. Attorney General. Let it be the firſt *Friday* in the Term, if you pleaſe, my Lord.

Lord Chief Juſtice. Let it be ſo. Look you, Mr. Recorder, I perceive you do agree, that the *Petition*, ſetting forth, that the King having prorogued the Parliament, and thereby that Common Juſtice had received Interruption; you have juſtified in your Plea, (I took it always to be ſo) and now at the Bar, That the King by the Prorogation did interrupt the Juſtice of the Kingdom.

Mr. *Recorder.* No, no, my Lord: Then I have Reaſon to ſpeak again, to make myſelf rightly underſtood.

Lord Chief Juſtice. Why, look you, you do agree, that the King had prorogued the Parliament, and thereby that publick Juſtice was interrupted; if that were ſo, by whoſe Means, and by whom did the publick Juſtice receive Interruption, if not by the King? I did take it to be ſo really, and that you had juſtified it.

Mr. *Recorder.* My Lord, I do agree, as we ſay, and the King himſelf ſaid, that theſe Acts were not paſſed, nor the Lords tried; and ſo Juſtice was not done: And I would aſk your Lordſhip, or any other indifferent Perſon, whether Juſtice were done, or neceſſary Proviſion for theſe Things made, if thoſe Bills were unpaſſed? If it were ſo, it is a natural Truth, that thereby the Trial, and Acquittal, or Condemnation of the Lords was interrupted; and ſo was the Security oy the King's Perſon, and the Proteſtant Religion, the Bills not being paſſed. For the King calls upon the Parliament to paſs them the next Seſſion, therefore they were not paſſed in the former Seſſion. This is by no means a charging of the Interruption of Juſtice upon the King; every great Thing, that is done by the King, may have a prejudicial Influence, it may be, as to ſome Particulars; but to ſay, that thereby Juſtice is interrupted, is not to charge any Blame upon the King; becauſe, though it may be prejudicial in one Particular, yet it may be uſeful to the Publick. No doubt, if the King do prorogue the Parliament for never ſo great Ends, and neceſſary Cauſes, yet if I have but one Bill paſſing there, ſuppoſe it be a private Bill about Naturalization, or the like, if a Prorogation comes, it is naturally true, that that is interrupted; but that is not laying a Blame upon the King.

Lord Chief Juſtice. May it be ſaid, that the publick Juſtice is interrupted, if a Bill for Naturalization, or the like, paſs not before the Prorogation? I ſpeak it for this only, that they that argue next may think upon it. The Petition does ſay, that the publick Juſtice was interrupted: Did they mean it was true? or did they mean it was not true? If they did mean it was true, then you have done well to juſtify it, to ſay it was ſo, and the King had done amiſs in proroguing the Parliament. Yet it ſeems, the Common Council of *London*, neither by Charter nor Preſcription, had any Right to controul the King, nor to be of the King's Council neither; and therefore it was a Matter purely *dehors*. If the Matter were not true, why do you put in your Petition? If it be true, juſtify it, if you can. But here is the Matter; I would have a good Anſwer given me to this Point: The Petition was to the King; if ſo be the Petition had been delivered to the King, (as it may be it was) it was but one ſingle Petition to the King; that might be well enough, if there had been no more in the Caſe, it is very poſſible it might not have been a Queſtion at this Time: But pray, I would know of them that argue next, by what Law or Authority it was, and what was the Meaning of it, that that which did not require two Clerks to write, in order to its being preſented to the King, muſt be printed? By what Law is it to be juſtified? the Printing and Publiſhing of this Petition, and ſending it all over the Nation, whereby the Mayor, Aldermen, and Common Council of the City of *London*, do let all the Nation know, that they do look upon the King as one, that by the Prorogation of the Parliament had given the publick Juſtice of the Nation an Interruption? Pray by what Cuſtom or Law is this publiſhed? In the Caſe *de Libellis famoſis* (even in the Caſe of a Subject) it is adjudged, that if you print a Libel, though the Matter of it be true, you ſhall be puniſhed for it: Now when it is argued again, I would deſire ſome good Satisfaction in that, what Reaſon or Ground there was for printing or publiſhing this Petition, unleſs it be to that Intent which is ſet forth by Mr. Attorney General in his Replication?

Now for the other Point, as you have ordered the Matter, you hold, that a Corporation cannot be forfeited. Mr. Sollicitor did take ſome Pains to argue, that there was no Statute, that did protect you from a Forfeiture; he was not aware of what you did inſiſt upon: You ſay, that by the Common Law Corporations cannot forfeit their Being; if ſo be they cannot, there is an End of the Queſtion. But I pray you do you take it, that a Corporation can commit any corporate Act, or no? For according to your Definition of the Matter, if nothing will ſerve but the Act of the Mayor, Aldermen, and all the Citizens, I believe I may ſafely ſay, and ſo will every one elſe, that never any corporate Act was done by the City of *London* ſince it was a City.

We know on the other Side, and you, when it makes for your Turn, told us, that the Mayor, Aldermen, and Common Council could make By-laws, and they were good, and binding, that is, when it lay in your Way. For you make a Preſcription in your Plea, and ſo alſo you have ſaid at the Bar, that they may make By-laws to bind the Corporation, ſo that it ſeems when it is for your Conveniency, then the Mayor, Aldermen, and Common Council can do as much as all the Corporation; but when you come to be touched with ſomething, that you have done, in which you have gone beyond what you ſhould have done, then the Citizens are 50,000 Men, and theſe are but 250 Perſons, that have done theſe Things. Either the Mayor, Aldermen, and Common Council are the governing Part of the Corporation, or elſe they ſignify juſt Nothing: If they be, then whatſoever they agree upon binds the Whole, and muſt be taken as a corporate Act; or otherwiſe you will bring it to this Paſs, that the Corporation can do Nothing at all. For if the whole Corporation be not bound by ſuch an Act, then it is impoſſible for you ever to do an Act that ſhall be an Act of the Corporation; ſo that that will be pretty hard for you, that are for the City, I think, to maintain. Then I have but one Word more (I give no Opinion, but only tell you what I would have you apply yourſelves to): Is the Truſt of making By-laws annexed to the Lord of the Market? or it is annexed to the Lord Mayor? or it is annexed to the Corporation? Surely the Power of making By-laws is annexed to the Corporation; and I cannot ſee how, as Owners of the Markets, they have that Power. Now by your Diſtinction, where there is a Franchiſe that does neceſſarily depend upon another, there the Abuſe of any Part does forfeit the whole Franchiſe. If then this Power be annexed to the Corporation, as ſure I think it is, (but I reſerve myſelf till I have heard a further Argument about it) then conſider, whether or no, when they have abuſed that Power, in making this By-law, that is knit to them as a Corporation, it does not affect the Being of a Corporation? For it is ſtrange a Corporation ſhould commit a Fault, and not be puniſhed for it. I tell you, I deliver no Opinion in any thing now, but theſe Things I would have you give me ſome Satisfaction in; and there are indeed ſeveral other Things, that will require Conſideration: I only hint theſe now.

The Second Argument was in Eaſter *Term, on* Friday, April 27.

Attor. Gen. THIS Caſe between the King and the City muſt be acknowledged to be a Caſe of Importance, both as it refers to the general Government of the Kingdom, and that of the City in particular. As it concerns the Particular of the City, it doth not bode ſuch diſmal Conſequences, as ſome Men endeavour to frighten their Neighbours with; as if it were hereby deſigned to demoliſh at once all their Liberties, and to lay waſte and open the City of *London*, and to reduce it to the Condition of a Country Village; than which nothing could be more maliciouſly ſuggeſted of ſo excellent a Prince, who hath given ſuch large Demonſtrations, not only of his general Care of all his People's Welfare, but of his more eſpecial and particular Kindneſs to this City of *London*. This *Quo Warranto* is not brought to deſtroy, but to reform and amend the Government of the City, by running off thoſe Exceſſes and Exorbitances of Power, which ſome Men (contrary to their Duty, and the known Laws of the Land) have aſſumed to themſelves under Colour of their Corporate Capacity, to the Reviling of their Prince, the Oppreſſion of their Fellow Subjects, and to the infinite Diſquiet of their Fellow Citizens. I ſhall not recount the Miſchiefs which thoſe Exorbitances have of late wrought within the City, both as to its Peace and Profit, as likewiſe to the Obſtruction of the free Courſe of Juſtice, that few Cauſes eſcaped the Crime of Maintenance from a divided Party. Theſe Exorbitances committed by the City, caſting ſo great an Influence over the whole Kingdom, make the King's Interpoſition in a Courſe of Law neceſſary, by gently laying his Hands upon them for their Cure. Herein the Politick Body of his Subjects reſembles the Natural, that the diſaffected Members are beſt cured by laying on the King's Hands upon the Body. It hath been obſerved, that the City of *London* was never better governed, nor flouriſhed more, than after it came from under the King's Hands. The Reaſon given by *Edw.* I. at his Parliament in 18 *Edw.* I. of Denial of the Petitions of the Citizens of *London*, to be reſtored to their former State, *ſcil.* To have a Mayor and their ancient Liberties, is this: *Quia ſunt in bono Statu, & omnia bene, & in pace, & nullum Commodum apparet* to change it then. The City was in as good Plight, both as to its Quiet, and good Government and Profits too, whilſt in the Hands of the King, under the Common Law Government, as it would be in the Hands of the Corporation. Neither did the City ſuffer by being in the Hands of the Crown, as it was in the Reigns of *Edw.* I. *Edw.* II. *Edw.* III. and *Richard* II. nor their ancient Cuſtoms and Privileges deſtroyed; but they were thereby indeed reſtrained and held within the modeſt Rules of Government, in Subordination to the general Government of the Kingdom: And therefore the Danger threatened by this Suit will not be ſo fatal to the Being or Well-being of the City, as was ſuggeſted. Nay, I may with great Aſſurance ſay, That if the City receive the leaſt Harm hereby, their, or their Managers, obſtinate and final Impenitence muſt draw it upon themſelves. For though the Concluſion of the Replication upon the Aſſignment of the Forfeiture be, That the Liberties be ſeized, and they *ab iiſdem penitus excludantur*, that is but the formal Concluſion upon Aſſignment of Forfeitures; it ſhews what the Judgment of the Law may be, if demanded by the King's Attorney, and neceſſitated by the City's Obſtinacy, but doth not exclude the King's Grace. But the Importance of this Caſe, to the general Government of the Kingdom, is of another Nature; and the Conſequences thereof, both to the King, and his Subjects in general, appear now far greater than before, from the Manner and Grounds of the Defence made for the City at the Bar: *viz.* from the general Topicks of Corporations, That they are immortal and indiſſoluble; that no Treaſons or Seditions againſt their Prince can be committed by the Members of a Corporation, even though thoſe Members meet, and act jointly in the ſame Manner and Method, as they do all other Corporate Acts; no, though they ſhould vote Raiſing of Men againſt their Prince; and ſhould give Authority (under their Common Seal) to levy Money for that Purpoſe; that Murders, Felonies, and Oppreſſions of their Fellow Subjects, either by unjuſt Impriſonments, or levying Money upon them; that none of theſe Crimes committed by the Majority of the Members of any Corporation, and authorized under the Common Seal, will affect the Corporation, or the Government thereof, in point of Forfeiture: But a Corporation once conſtituted, is out of the Reach of the Common Law, to determine its Being, or its Governments, for any Cauſes whatſoever. If ſuch Notions as theſe could be true, or ſhould receive the leaſt Countenance in a Court of Law, it would be unſafe, either for the King or any of his Subjects, to live in or near a Corporation. And the Complaint made by the Commons in Parliament 21 *Edw.* III. that the Increaſe of Franchiſes tended to the Extinguiſhment and Overthrow of the Common Law, would ſoon be made good to the Purpoſe, when ſuch great Bodies of Men, as the Corporations within *England* conſiſt of, ſhall jointly have a Power allowed them, *Quidlibet impune audendi*, without being capable of Separation. The Diſtinction between the Politick Capacity and the Natural, to ſubject the one to Puniſhment, and not the other, was framed in the *Jeſuits* School, to encourage Subjects to rebel againſt their Princes; but never yet ſo far improved the Diſtinction to apply it to Corporations, which (if they had thought of it) would have been more efficacious to their Purpoſe, than as they applied it; Aſſurance of Impunity being the ſtrongeſt Argument for a Commiſſion of any Crime. The Caſe being of ſuch Conſequence both to the King, and his Subjects in general, I ſhall endeavour to examine it by the Rules and Precedents of Law, that I may ſever what is mere notional, from what is of Subſtance in it. I forbear to trouble the Court again with opening the whole Pleadings, but ſhall take the Caſe as it hath been opened: Wherein the general Queſtion is, *Whether by any thing diſcloſed upon the Pleadings, it appear to the Court, that the Mayor, Citizens, and Commonalty, of* London, *have forfeited their Right of being and acting as a Body Politick, and ſubjected that Right to be ſeized into the King's Hands?*

In ſtating of the Queſtion, I forbear to ſtyle it a Franchiſe or Liberty, that I may not by anticipating preclude the Force of Mr. Recorder's Argument, That it is no Liberty or Franchiſe; but may reſerve the entire Conſideration thereof to its proper Place. And therefore I ſhall call it a Right, for ſuch moſt certainly it is; and it includes both *Jus agendi, & Jus habendi*. Before we can arrive at the main Queſtion, certainly preliminary Points have been moved and debated; ſome to the Form of the Suit and Pleadings, others relating to the Matter thereof.

To the Form Mr. Recorder took three Exceptions:

1. That the Information is not well laid, becauſe not brought againſt particular Members by Name, which ought to be in all Caſes, where the Right of Corporations is queſtioned or ſtruck at.

2. That the Replication is worſe, importing a Contradiction both to the Suppoſal of the Information, and to itſelf; becauſe it denieth *London* to be a Corporation, which the Information allowed, and admitted it too, to be a Corporation, by aſſigning Cauſes of Forfeiture.

3. That no Judgment can be given upon theſe Pleadings, either of *Seizure* or *Ouſter*; not of Seizure, becauſe the King cannot ſeize what he cannot hold when ſeized: And the Body Politick, by which Name it is ſued, cannot be ouſted of itſelf.

The great Triumph Mr. Recorder erected upon the Strength of theſe Exceptions, as for an aſſured Victory already obtained, makes it neceſſary for me to give a more particular Anſwer to them, than their Weight would otherwiſe require. For the Authorities cited by him argue very little to this Purpoſe: And indeed he hath been ſo unfortunate in quoting of Authorities, that how little ſoever they ſeem to make for him, as to the Point he produceth them, yet they flatly make againſt him in ſome other material Point, not only by his Authorities, but his Objections themſelves, to the Form of the Information, admit, that a Corporation is in its Nature ſeparable by Judgment of *Ouſter* againſt the particular Members by their Natural Names. The Opinion of my Lord *Hales*, in his Common-place Book, *Quo Warranto, fol.* 168. *pl.* 7. argues, he did not think of the Indiſſolubility of Corporations; but it is no Opinion, that the only Way to impeach them was by a Suit againſt particular Perſons; for it is only a ſhort Reference to the Caſes of *Cuſack*, and others of *Ireland*; and *Farrer* and others of the *Virginia* Company: Which Caſes (as alſo that of *Fiſher*, *Helden*, and others of the Borough of *Hebmerley*; the Caſe of the *Muſicians*, and the *Bermudas* Company; and the other Caſes cited by Mr. Recorder) do fully prove, that Corporations are Franchiſes, and may be queſtioned and impeached in the very Point of being Corporations, by Suits of *Quo Warranto*. And they do prove, that the Suit my be brought againſt ſome particular Members by Name: And againſt the reſt of the Corporations by the general Words; as, *Et alios Liberos homines, & alios Burgenſes, & alios de Fraternitate*. And theſe general Words are material and operative; for a Judgment thereupon binds the Whole. In the Caſe of *Cuſack* againſt particular Members by Name, *cum diverſis aliis Civibus Civitat' Dublin'*, Judgment was given to out not only the particular Men, but *alios Cives, & Succeſſores ſuos*. Upon the Writ of Error, it was aſſigned upon Record as one of the Cauſes of Error, that Judgment was given to out the Corporation of thoſe Liberties; yet no parties by their Names of incorporation; but Judgment was affirmed. And the *Quere* that is made in *Rolls* 2 Report, in the Caſe of *Ferrars*, and others of the *Virginia* Company; Whether the Corporation were barred? probably did ariſe from the Non-obſervance of the Records, where Judgment was given, as well againſt the *alios Plantatores*, as the particular Men made Parties. In both theſe Caſes the Suit was as well againſt the reſt of the Corporation as the particular Men: The Appearance by Attorney was entered for both, and the Plea as well in the Name of the reſt, as the particular Men, and Judgment againſt both. And the Judgment againſt the *Virginia* Company diſcharged that Company.

Quo Warranto 168. pl. 7.

Paſch. 17. Jac. I. Rot. 2.

Mich. 21. Jac. I. Rot. 9.

Theſe, and the other Precedents produced by Mr. Recorder, do prove, that the King's Suit may be brought againſt particular Perſons by Name, and againſt the Reſidue of the Corporation, by a general Name of *& alios homines*; or againſt particular Perſons, and alſo againſt the Corporation, by the very Name of Incorporation, as the Caſe of *Bermudas* Company: But they do not argue the King hath not a further Election, either to bring his Suit for queſtioning the Corporation, by the proper Name of Incorporation, without naming of particular Perſon, or by ſome other general Name, which ſufficiently deſcribes the Perſons. I ſhall therefore apply theſe Anſwers to the Objection warranted by Precedents of Law; that where-ever many Perſons are jointly concerned in Charge or Diſcharge, and the King hath Cauſe of Suit againſt them, he may ſue them, either by naming ſome particular Perſons, with a general Reference to others; or he may ſue only by a common Name of Deſcription, without admitting them to be a Corporation, eſpecially where the general Name ſufficiently deſcribes the Perſons, who took this Corporation; and this as well for Offences at Common Law, as againſt Statute Laws. Where Murder is committed in the Day-time in a walled Town, *tota Villata oneratur*; and ſo for Repair of Highways, or Nuiſances in Highways, Repairs of Bridges, and for levying of the Hue and Cry. The King's Suit, either by Indictment or information, hath been uſed both ways, either naming ſome few particular Inhabitants, but then always with a general Reference *& alios Inhabitantes*, which is eſſential, otherwiſe both Indictment and Information would be naught; or they are frequently only by the general Name of Inhabitants, within a Pariſh, Hundred, or County, as the Caſe is, without naming any particular Inhabitants at all. To produce Inſtances of this Nature would be infinite, the Caſes frequenly falling out both at the Aſſizes, and in this Court. It is ſo in Caſes of *Quo Warranto*. *Rot.* 15. 23. *R.* a *Quo Warranto* againſt the Inhabitants of *Denbigh*, for uſing ſeveral Liberties, as to hold a Court of Pleas before the Bailiff, and chooſing two Aldermen, *&c.* upon Plea and Demurrer, Judgment of Seizure is given, *& quod*

Mich. 27. Eliz. Co. Ent. 537.

Hil. 40 Eliz. R. 38.

quod Inhabitantes capiantur. A *Quo Warranto* brought by *Gerrard* the Queen's Attorney, againſt *Homines & tenentes Manerii de Kings Haurſton in Com. Bedford*, for claiming to be diſcharged of Knights Wages, *&c.* they pleaded the Manor to be ancient Demeſne; and their Plea was confeſſed, and Judgment for the Tenants, without naming any particular Tenant. Theſe general Names of Inhabitants and Tenants were ſufficient Deſcriptions of the Perſons whom the King ſued; and yet this Suit, by thoſe Names, works no Concluſion that they were a Corporation. So *Cives, Burgenſes, & Communitas* of ſuch a Place, are general Names to deſcribe the Inhabitants of the Place by, antecedent to their being a Corporation. The like of *Mayor, Bailiff and Burgeſſes, Mayor and Citizens, and Pontenarii*; where *Burgeſſes* is but an Addition of the Name of an Officer to the common Name of the Inhabitants, and properly deſcribes the Perſons whom the King ſueth. By theſe Names of general Deſcription, they are capable to take this Right of Incorporation by the King's Grant. The Grant doth not enable them to take this Right; and if by ſuch general Names in the King's Grant they may take, there can no Reaſon be aſſigned, why they may not be ſued by the ſame Name they took, when they are queſtioned for this Right, be the Name of Corporation the ſame, or any other. Upon Pleadings in the Caſe of a common Perſon, *Major & Cives* ſhall not neceſſarily be intended a Corporation, without it be eſpecially ſet forth.

Palmer.

Inter Jerom & Neal 20 *Eliz. B. R.* 1 *Leonard* 106, in Treſpaſs and Battery, the Defendant pleads *Saliſbury* an ancient City, and a Cuſtom there, that if any Affray be committed upon any Officer, upon Complaint to the Mayor, he, as a Juſtice of Peace, might ſend for the Offender, and juſtifies, under the Commandment of the Mayor, to bring the Plaintiff before him: And on Demurrer joined, and Judgment againſt the Defendant, one of the Grounds thereof was, that it did not appear that *Saliſbury* was a Corporation, although it did appear that *Saliſbury* was a City, and had a Mayor; much leſs ſhall it conclude the King, who is not ſo ſtrictly bound in his Suites as common Perſons are. It is true, that in the Caſe of *Maidenhead* there are three Judges againſt *Mountague*, of Opinion, that they need not ſet forth they are a Corporation, becauſe they are not queſtioned for it by their Information, but ſuppoſed to be one, and queſtioned only for a Market, which they claimed by the King's Grant. In the ſame Caſe it is agreed, if they had been ſued by any other general Name, but the very Name of Incorporation, they ſhould not be intended a Corporation, according to the Caſe of the King againſt the Corporation of *Denbigh*. And whoever looks into the Record, muſt conclude *Mountague*'s Opinion to outweigh that of the other three Judges. The Suit againſt them was by the Name of the *Pontenarii*; the Grants which they plead, recite the Corporation of the *Pontenarii* to be diſſolved, and the Grant is a new Grant to the Bridgemaſters: So that there was no room for any Intendment, that it was a Corporation before the Grant, againſt their own Plea; but that which ſeems in the Caſe to have preſerved the Bridgemaſters, is, that the Judges inclined to an Opinion, that it being for Maintenance of a Bridge, which was of neceſſary and publick Uſe, the Grant itſelf might amount to a new Incorporaiton, which was a plain Waver of the former Opinion; and if the three Judges had continued their Opinion, Judgment would have been entered for the Defendant; but no Judgment was ever given in that Caſe: So that *Mayor, Citizens, and Commonalty of London* being a general Name, ſufficiently deſcribing the Perſons againſt whom the Suit is brought, may be uſed in the King's Suits without any manner of Concluſion to the King. But in the next place, it is yet ſtronger, where one of the Articles of the Suit is for uſurping the Corporate Right, that prevents all Colour of Pretence for any Concluſion; herein this Caſe differs much from that of *Maidenhead*, as to the Form of the Information. And in ſuch Caſes, where the queſtioning the Right is a ſpecial Article, the Form of the Information is the ſame againſt all Corporations, whether by juſt Title, or altogether uſurped, and by Wrong; the Suit ſuppoſeth them all to be by Wrong, and uſurped; and whether by Right or Wrong, cannot be known, till the Title by Pleading be diſcloſed and diſcuſſed; and many times not then neither, becauſe the Liberty may be loſt by Default of Pleading, upon *Nihil dicit*, or Miſpleader, by pleading a wrong Title, or inſufficiently pleading a right Title.

B.R.R. 5 Car. 1 Rot. 28.

A *Quo Warranto contra Præpoſitum & Burgenſes burgi ſive villæ de Card*, for claiming to be a Corporation, and divers other Liberties: They plead, that they claim nothing but under the Biſhop of *Bath* and *Wells*. It appears by the Plea, that they had no good Incorporation, and Judgment might have been entered againſt them: But the Biſhop obtained a Grant from the King of a new Incorporation, which I have ſeen and peruſed, and thereupon a *Noli proſequi* was entered.

Hil. Car. 1. Rot. 25.

B.R. Mich. 20 Jac. 1. R. 17.

A *Quo Warranto* againſt the Commonalty of the City of *Canterbury*, for claiming to be a Corporation, and divers other Liberties: They plead to all, and ſeveral Iſſues taken in ſeveral Parts of the Plea, and Breaches aſſigned to others for a Forfeiture. *Quo Warranto* againſt the Bailiff and Aldermen of *New Radnor* is of the ſame Nature; and Multitudes of others I could produce, where the Suit is brought in the ſame Form as our's, to queſtion the Right of a Corporation againſt them by their Corporate Name.

My laſt Anſwer is, That where the King proceeds for a Forfeiture upon Breach of Condition, the Right is not determined till Judgment of Seizure; for it is a miſtaken Ground, that Forfeitures to all Purpoſes relate to the Time of the Forfeiture: For as to Copyhold Eſtates, Offices, and Liberties, in Caſe of the King, which may be determined by Breaches of Fact, they are not avoided till the Fact, which cauſes the Forfeiture, be found upon Record: So that the Suit is well grounded againſt them, by the Name of *Mayor, Citizens, and Commonalty*: for they continue ſuch till Seizure, and till then are a Corporation *de facto*.

2. I ſhall be ſhort in my Anſwers to the Objections to the Replication, becauſe they are in Effect already anſwered by what I have ſaid. The Traverſe of the Title by Preſcription is puſuant to the Suppoſal of the Information, which ſuppoſeth they have uſurped that very Liberty, and puts them upon ſhewing their Title by that Name; even put the Caſe they have a good Title by that Name, by this Patent, or by Act of Parliament, and they will wave it, and ſet up a Title by Preſcription. And this was done in the Caſe of *Canterbury* before, and in the Caſe of

Trin. 6. Jac. 1. Rot. 3.

New Malton; where, upon the very ſame Information as our's againſt the Bailiff and Burgeſſes of *New Malton* in *Com. Ebor.* they pleaded their Title to their Corporation by Preſcription, and Iſſue taken; and it proved fatal to them; for Verdict and Judgment went againſt them.

Then for the Contrariety of the Replication to itſelf, none appears; for the Traverſing of the Preſcription by ſuch Name, is no Denial; but it may be a Corporation by Preſcription by another Name, or it may have that Name alſo by Grant. And the farther Replication is, That aſſuming upon themſelves to be a Corporation by that Name, they committed the ſeveral Acts, which are aſſigned for Breaches. And that is the only Advantage the King hath. By Informations of *Quo Warranto* he may go upon the Title, and take Advantage of any Defect therein, or of the Pleading thereof, and may alſo aſſign Breaches for a Forfeiture, as is held in the Caſe of *Maidenhead* Bridge. In the Caſe of *Canterbury*, Iſſue was taken upon ſome Liberties, Breaches aſſigned to others. The King may plead ſeveral Pleas, and take ſeveral Iſſues, and demur to part, as he ſhall be adviſed.

3. The Objection, that no Judgment can be given upon theſe Pleadings, ariſeth principally upon two notable Errors, againſt plain and expreſs Authorities of Law.

(1) That nothing can be ſeized into the King's Hand, which the King cannot hold and enjoy when it is there.

(2) That every Judgment upon a Forfeiture ought to be a Judgment of Ouſter.

Theſe miſtaken Grounds having been ſo often made uſe of by Mr. Recorder in other Parts of this Argument, for ſupporting a Suppoſition, That a Corporation cannot be forfeited, I ſhall (to avoid Repetition) leave them to be conſidered when I come to his main Argument; and therefore ſhall proceed to conſider the preliminary Points moved relating to the Matter; *viz.*

Firſt, Whether the Right of Incorporation of being a Body Politick may be forfeited, or ſeized into the King's Hands?

Admitting it may be, then,

Secondly, Whether the Acts of Common Council, or the Members aſſembled in Common Council, which is all one, may work ſuch Forfeiture, or Cauſe of Seizure?

Firſt, As to the firſt Point, I muſt confeſs the Weakneſs of my Underſtanding, that upon what hath been offered from Reaſon or Authorities of Law, I cannot apprehend it rendered in the leaſt doubtful to a Court of Law, whatever it may be in a Common Hall, and Publick Aſſemblies of the City, where ſtrong Lungs have a Preference before a rational Head, but that the Right of being a Body Politick may be forfeited, or ſuſpended.

It was moved as a Doubt by Mr. Solicitor, but as a vulgar Error obtruded from publick Prints upon the unthinking and unwary Citizens; which poſſibly gave Encouragement to the many Exorbitances committed within the City, and particularly to thoſe now laid to their Charge; and, I thought, ſufficient had been ſpoken by Mr. Solicitor to have prevented the Growth of ſo miſchievous an Error. But for that Mr. Recorder did *ex animo* eſpouſe that Opinion, as if no Man were in his right Wits, that did not concur with him in Opinion, and as if there were ſomething in it indeed, hath laid his main Streſs upon it, and erected it as his *Palladium* to defend the City by. And probably this Image (for, if examined, I fear it will prove no other than a Work of Imagination) may make that Impreſſion upon ſome Men, that, conceiting themſelves to be Citizens and Aldermen of an invincible and immortal City, incapable of Diſſolution, they may dream of being an independant Commonwealth within a Kingdom, and unaccountable to the King, or his Laws. It is therefore made neceſſary for me (with your Leave) to miſpend ſome of your Time in ſpeaking again to this Point; which I ſhall do.

1. By briefly ſtating what this Right is, whence it ariſeth, and for what Purpoſe it was framed or introduced?
2. I will examine the Reaſons and Grounds produced by Mr. Recorder, why it cannot be forfeited?
3. Then I ſhall offer the Reaſons and Authorities of Law, that it may and hath been forfeited and ſeized into the King's Hands.

In ſpeaking to all which I will not ſo far diſtruſt the Memory of the Court, as to repeat what hath been ſo well urged by Mr. Solicitor from Reaſon and Authorities, but ſhall endeavour to avoid it what I can.

1. As to the firſt Thing propoſed, This Right of a Corporation, aggregate of many, (to which I ſhall confine my Diſcourſes, being the only thing under Conſideration) is a Right granted to many natural Perſons to be, have, enjoy, and act as one Body and Perſon. It confers *jus Perſonæ, & Perſonam efficit*, which our Law Books expreſs by the Names of *Perſona Politica*, and *Corpus Politicum*, and, as ſuch, is capable of all Civil Rights, both *habendi & agendi*. The Inſtruments of Creation of this Right, and the Claims thereof upon Pleadings, do beſt declare the Nature of it, *viz. Quod homines Inhabitantes, Cives, Burgenſes*, or ſuch other general Name, deſcribing the Perſons who are to take, *ſint unum Corpus Corporatum re, facto, & nomine*. And when Preſcription is made for a Body Politick, *&c. Quod Homines & Cives*, or *Homines & Burgenſes ſunt, & à tempore cujus*, &c. *fuerunt unum Corpus Corporatum re & facto per nomen*——So that it is ſomething more than a Notion, or mere Name, *Corpus Corporatum* fully expreſſeth it, a Body made up of ſeveral viſible Bodies *in unum collecta, & vinculo Juris unita*. And a Corporation is every whit as viſible a Body, as an Army: For though the Commiſſion or Authority be not ſeen by every one; yet the Body united by that Authority, is ſeen by all but the Blind; and if the King or the Law demand the Authority, it muſt be produced and ſhewn and is as viſible in the Eye of the Law, as any other Right whatſoever, whereof natural Perſons are capable. It ſeems ſtrange,

and almoſt beyond all Excuſe, that the Recorder of *London* ſhould never have ſeen that great Body Politick aſſembled; unleſs he will excuſe himſelf, that he is the Mouth of the City, and not the Eyes. Co. 11. b. f. 29. Sir *James Bagg*'s Caſe, *Co.* 11. *b.* allows it to be ſuch a Right, that every Member, ſeparately conſidered, hath a Freehold therein; and all, jointly conſidered, have an Inheritance Lit. 250. which may go in Succeſſion. It is the ſame Right which Bract. 28. f. 56. the Civilians ſtyle *Collegium*, or *Univerſitas*, and ſo ſtyled Co. 10. b. fo. 14. here in *Bracton*'s time; *ſcil. Si Rex conceſſerit alicui----- Univerſitati ſicut Civibus vel Burgenſibus.*

Natural Perſons, as ſuch, are capable of taking and holding this Right. It is neither taken nor held in their Politick Capacity, but their Natural; for many Men, as Men, are capable of Union, which is evident by the Charters of Creation, and the Pleadings in all ſuch Caſes; it is *Homines & Burgenſes*, *Homines & Cives*, who are conſtituted *unum Corpus Corporatum.* And as the Natural Perſons are an eſſential Part conſtituting the Body Politick; ſo all the Operations and Exerciſe of this Right are only performed by the Natural Perſons, 21 *Ed.* 4. 21 Ed. 4. fol. 14. *fol.* 14. That Book and other Authorities, are expreſs in the Point; though in a Caſe ſo evident, there needed no Authority. And therefore when the Queſtion is of *Non uſer* or *Abuſer* of Franchiſes by a Corporation, it muſt of Neceſſity be intended for ſome Acts or Negligence of the Natural Perſons, or thoſe Officers that are employed by them. And the Queſtion will reſt only upon this, What Acts, or what Omiſſions of the Natural Perſons, will affect this Right, wherein all the Members of the Body have an Intereſt?

This Right is merely of human Inſtitution; and therefore as to its Birth, Form, Extent, or Limits, is directed and ſupported by the municipal Laws of each Country, and therefore for that Reaſon is ſtyled by our Books *Political.* By the Conſtitution of our Laws, this Right, as all Juriſdictions and Franchiſes, is lodged in the Crown, and thence only is derived. *Bracton* upon the Queſtion, *Quis concedere poſſit libertates, & quibus & qualiter transferuntur?* thus reſolves it: *Dominus Rex habet omnia Jura in manu ſua, quæ ad Coronam & Regalem pertinent poteſtatem, & Regni gubernaculum; habet etiam Juſtitiam & Judicium, quæ ſunt Juridictiones; habet etiam ea quæ ad Pacem pertinent. Ea quæ dicuntur Privilegia, licet pertineant ad Coronam, poſſunt ad Privatas Perſonas transferri, ſed de gratia ipſius Regis ſpeciali.* And then ſheweth, that ſuch Grantees as Uſufructuaries may enjoy them, *donec amiſerint per abuſum vel non uſum.* The whole Current of our Books to this Day concur with 49 Ed. 3. 3. this ancient Author in this Point, That none can make a Corporation but the King; ſuch Power cannot be preſcribed for, it is ſo inherent to the Crown. The principal Caſe was of the Whitelawers in *London*, who preſcribed, That by the Cuſtom of *London*, the Men of any Art or Myſtery might act as a Guild or Fraternity, and were capable of a Deviſe; and plead their Cuſtom confirmed by ſeveral Charters; and, no doubt, would have pleaded ſome of the Acts of Parliament now pleaded, if the learned Counſel had then thought there had been any thing of Force in them. Judgment was given againſt them, for that none had ſuch Power but the King. In that Caſe it appears, that the Abbot and Prior of *Weſtminſter* were one entire Corporation, and divided by the King, and, after the Severance, a *Quare impedit* maintained by the Prior againſt the Abbot.

Some Corporations are by the King alone, as Dean Bro. Corporat. 34. and Chapter, Mayor and Commonalty; ſome by the Pope alone; ſome mixt, by the King for their Temporal Poſſeſſions, by the Pope for their Spiritualties. Whether the King grant them by Charter out of Parliament, or in Parliament, or by Act of Parliament, the King is ſtill the Donor, and the Fountain and Spring from which this and all other Liberties flow. A Title by Preſcription always ſuppoſeth a Grant in or out of Parliament, and is allowed by Law for ſupporting long Poſſeſſions, grounded upon ancient Grants before, time out of Memory; but by what Title ſoever theſe or any other Rights are derived down, whether Grant or Preſcription, their Natures remain the ſame, and they are governed by the ſame Rules of Law, and are equally ſubject to the like Civil Accidents, the one as well as the other.

The laſt thing inquirable into this Head is, To what End and Purpoſe ſuch Corporations were elected, and allowed by the Policy of our Laws.

The general Intent and End of all Civil Incorporations is in order to better Government. Government relates principally either to Perſons or Things: That which relates principally to Perſons may be properly called General Government; becauſe, properly ſpeaking, Perſons only are the Subjects of Government. That which relates to Things is called Special Government, becauſe limited to the Managery of particular Things, as Trade, Charity, and ſuch-like; for the Government whereof ſeveral Companies and Corporations for Trade were erected, and ſeveral Hoſpitals and Houſes for Charities. Of this Nature are the *Trinity-Houſes* for regulating Navigation; and ſo the College of *Phyſicians*, the Corporation of *Pariſh-Clerks*, and a Multitude of other Special Corporations in *England.* The only End of erecting theſe Special Corporations was, for the better Order and Government of the ſeveral Matters ſpecially committed to their Care.

The Corporations for General Government only, are thoſe of Cities and Towns, Mayor and Citizens, Mayor and Burgeſſes, Mayor and Commonalty, and ſuch-like. The Corporations, as they are for the Government of Men only, having nothing ſpecially committed to their Care upon the Incorporation, ſo they are erected for no other End or Purpoſe than Government. And if either at the Time of the Incorporation, which very few are, or afterwards, they have any Special Matter committed to their Care, it is purely collateral to the Ends and Deſign of erecting theſe ſort of Incorporations within Cities and Towns. This appears by the Charters of Creation both ancient and modern; the Form is much the ſame, which is after this manner: *Nos volentes, quod de cætero imperpetuum in eadem Civitate, Burgo, aut Villa* [as the Caſe is] *Libertat' & Precinct' ejuſdem habeatur unus certus & indubitatus modus pro cuſtodia pacis noſtræ, ac pro bono regimine & gubernatione Civitatis, Burgi, & Villæ, ac Populi ibidem inhabitantium, & aliorum illic confluentium; & quod Civitas, Burgus, aut Villa, pace concordia, & quiete ſint, ad formidinem & terrorem malorum delinquentium, & in præmium bonorum; ac etiam ut pax noſtra ceteraque facta juſtitia & bono regimine ibidem melius cuſtodiri valeant & poſſint.* Theſe are the Grounds upon which Corporations are erected.

The Limits and Extents of their Corporations, and Juriſdiction, are limited by their Characters; and there is a plain Difference made in many Charters between this and other Liberties, as to the End of granting; this being erected only *pro bono regimine*, being a Burden, and chargeable in the Execution of that publick Truſt. Many other Liberties and Privileges, both of Eaſe and Profit, are granted to them *pro meliore ſuſtentatione* of thoſe Charges, which the Government would neceſſarily require. Since the Statute of *Mortmain* they cannot purchaſe without a ſpecial *Non obſtante.* They cannot engroſs Trade, by excluding Foreigners; *Norris* and *Stap*'s Caſe, *Hob.* 211. So that no Hob. 211. private Benefit can be aſſigned to be the End of erecting them. The Power of making By-laws, which is incident to a Corporation, is only for better Government; and by that Rule they muſt be judged.

Having conſidered the Nature of a Body Politick aggregate, whence it flows, and for what Purpoſe it was erected.

2. I proceed to examine the Grounds and Reaſons produced, why it cannot be forfeited, or ſeized into the King's Hands?

Many things were produced by Mr. Recorder, to make good his Aſſertion, more *ad captandum populum*, than to perſuade a Court of Law. I will not miſpend your Time in peruſing the jocular Part of the Argument, which may make the Citizens ſmile one way, and the Learned in the Law another way; but I ſhall collect together what ſeems to have any Force of Argument. The Grounds the Argument went upon ſeem to be theſe:

(1) That a Corporation is no Liberty or Franchiſe, but a mere Capacity of ſuing, and being ſued.

(2) That a Corporation, in its Nature, is not capable of being forfeited or diſſolved.

(3) That it cannot be ſurrendered.

(4) That the Forfeiting or Diſſolving of any Corporation was never put in Practice, nor ſo much as ever came within the Compaſs of any Man's Imagination.

(1) As to the firſt, *A Corporation is no Liberty, but a Capacity.* Now it is proved, even juſt as all the reſt will appear to be proved, by ſtrong Averments, and Quotations of Books that prove no ſuch thing. The Authorities were 1 *Inſt.* 250. *Bro.* Title *Corporation and Capacities.* In the Inſtitutes the Words are, *A Body Politick is a Body, to take in Succeſſion, framed as to that Capacity by Policy.* The Authority is expreſs againſt him, that a Body or Perſon Politick hath a Capacity to take in Succeſſion, and is not a mere Capacity; and the other Words of the ſame Author, are, *And made into a Body and Capacity to take and grant:* So that this Authority fails; it neither proves it no Liberty, nor to be a mere Capacity.

That of *Bro.* Tit. *Corporation*, proves leſs, for *Capacity* is of larger Signification, and incident to Natural Perſons, as well as Corporate Perſons; and ſuch Inſtances are ſet down under that Title of *Alienees*, *&c.* and it is a great Imputation to the Memory of ſo learned a Perſon, that he ſhould think, that *Corporations* and *Capacities* were ſynonymous, or that he ſhould tautologize in a Title in an Abridgment.

The Definition Mr. Recorder gives of a Corporation, that it is *a Capacity of ſuing and being ſued*, which ſerved him for many a Jeſt in his Diſcourſe, is no better than to define a Man to be *Animal bipes*, or, which is nearer, a mere Capacity of walking with two Feet. Although the Authorities fail, and prove not the Matter, yet it is of that Importance to the Cauſe, that a Corporation be no Liberty, that ſomething muſt be thought upon to make it out. For if it be admitted to be a Liberty, the Authorities will be too ſtrong, that every Liberty and Franchiſe carries with it a Condition, that it be uſed, and well uſed, the Breach of which will amount to a Forfeiture. And therefore, when nothing elſe can be found to prove it no Liberty, recourſe muſt be had to the negative Argument, backed with ſtrong Averments, that it was never ſo ſtyled in any Authority of Law, except in one Caſe, in the Co. Ent. Q. W. Town of *Helmſly*, *Co. Ent. Quo Warranto*, and Mr. *Noy*'s Opinion in *Hayward* and *Fulcher*'s Caſe, grounded only upon the Caſe of *Helmſly.* But one Swallow makes no Spring; and it was well Mr. Recorder ſpied it in that Caſe, otherwiſe the Averment had been without any Exception.

If the Point had reſted upon that Precedent, and Mr. *Noy*'s Opinion, it would have better Authorities for it, than any could be produced againſt it. But there are Multitudes of Authorities, whereby Corporations are not only called, but appear to be Liberties and Franchiſes; ſeveral have been cited by Mr. Recorder, but not ſeen, or overlook'd by him.

In the Caſe of *Cuſack* and others, in all the Parts of the Record it is ſtyled a Franchiſe or Liberty; and Paſch. 17 Jac. 1. Rot. 2 particularly in the Continuance, *Curia adviſare vult*, and time taken to adviſe upon it as a Liberty. So in the Caſe of *Farrer*, and others of the *Virginia* Company through- Mich. 2. Jac 1. R. 39. out the Record ſtyled a Liberty and Franchiſe, even in the Judgment itſelf. Mr. *Noy* knew of theſe Caſes, and many more before this time; but knew it to be the Guiſe of learned Men, in clear Caſes, and of daily Experience, not to repeat many Authorities.

The Records of the Caſes cited by Mr. Recorder of the Borough of *Hebmerly*, the Caſe of the *Muſicians*, and *Bermudas* Company, *&c.* do all call it a Franchiſe or Liberty. The Caſes T. 6. Jac. 1. R. 3. Hil. I have already cited do ſo too; Againſt the Bailiff and Burgeſs of *New Malton*; againſt the Mayor and Commonalty of *Canterbury*; againſt the Portreve and Bur- 2 Car. 1. R. 25. P. 5. Car. 1. R. 28. geſs of *Chard.* Many more I have peruſed, but conceive it too much to trouble the Court with them at preſent. It is certainly true in all the Records of *Quo Warranto*, where-ever there is a ſpecial Article againſt a Corporation for being a Body Politick, it is always impeached by the Name of a Franchiſe and Liberty; and Multitudes there are of that Nature. And in ſo clear a Caſe I omit to mention the Writs of *Non omittas*, for entering into Corporations, and the Returns of their Bailiffs; which make out evidently, that Corporations are Franchiſes, and the Limits of the Corporation, and Limits of the Franchiſes are all one.

(2) The next Argument is drawn from the Nature and Qualities of Bodies Politick, That they are inviſible, immortal, impeccable, and therefore impatible, with a large Jargon of *non ens, & ens rationis.* Certainly this Argument was fetched from the Clouds at the City's Charge; and it coſt them dear: For I cannot believe it could enter into the Reaſon of any Man, much leſs of learned Men, that a Body framed by the Policy of Man can be immortal; or that a Body, compacted of many bulky viſible Bodies, can be inviſible; or a Body, whoſe very Parts and Members are mortal, is in its own Nature immortal. Mr. Recorder admits, that the Death of all ends the Corporation; and therefore if any learned Men have uſed ſuch hyperbolical Expreſſions, moſt certainly they never intended the Citizens of *London*, or other populous Town or City within *England*, of whom the Queſtion is, but of ſome Corporation in *Utopia*, where the Citizens neither eat, drink, nor die, or at leaſt of ſome Corporation that never had other Exiſtence but in the Brain.

The Authorities cited were *Co.* 1. *Inſt.* 9. *Bulſtrod* 233. 21 *Edw.* 4. 13. and many others; and many more might have been cited, and to as much Purpoſe; as *Co.* 10. *fol.* 32. *Sutton*'s Hoſpital, brings in a whole Regiment of Authorities ſpeaking to the ſame Purpoſe. I do not remember that Book was cited, and there was Reaſon for it; for in Concluſion it ſpoils the Argument, *viz.* that theſe Expreſſions are of Corporations in Abſtracts, not coupled with particular Men of this or that Town, where the Men act all, and the Corporation doth nothing otherwiſe than what the Men do. If it be conſidered abſtracted from particular Men, it is but a bare Right, and coupled in the Notion of it with Men in general, who are the proper Subjects of Government, and remains only in Notion, and may well enough ſuſtain theſe Epithets which have been given it, as all other Rights and Notions may; but whilſt it remains ſuch, it can no more ſue or be ſued, than commit Treaſons, Felonies, Riots, or other Treſpaſſes, either againſt the Government or particular Men; neither hath it any Exiſtence *in re & facto*, but in the Brain.

The Caſe indeed that is cited 1 *Inſt.* 9. is applicable to any particular Corporation; the Caſe is thus put: If a Man gives Lands to a Mayor and Commonalty, or other Body aggregate, conſiſting of many capable Perſons, without naming Succeſſors, the Law conſtrueth it a Fee Simple, becauſe in Judgment of Law they never die. If this be any Authority, it is from the Immortality of many Perſons capable, for they are the Perſons who are ſaid in Judgment of Law not to die. Where my Lord *Coke*'s Senſe is plain, that theſe natural Perſons, though capable to take in their natural Capacities jointly, which the Law would adjudge an Eſtate for Lives; yet the Grant being made to them by their Corporate Name, they take in that Capacity, and the Grant is not determinable upon their Death, but ſhall continue with the Corporation whilſt it continueth. That my Lord *Coke* never dreamt of Immortality of a Body Politick, fully appears in his Writings: 1 *Inſt.* 13. where he puts the Caſe inſiſted on by Mr. Recorder of a Diſſolution by Death of Abbot and Monk. He after puts the Caſe generally of other Corporations, as Dean and Chapter, Mayor and Commonalty: If Lands be given to them, and the Corporation be diſſolved, the Lands ſhall eſcheat to the Donors, upon a Condition in Law: in the firſt Grant, if the Law raiſe ſuch Condition upon Grant of Lands, much rather doth it upon the Grant of the Incorporation, where the Intent of the Donor is as ſpecial, and upon a greater Truſt. That my Lord *Coke* underſtood it of other Diſſolutions than by Death only, he refers in the Margin to the Caſe of the Knights Templars, which was not diſſolved by the Death of the Members. That Corporations were diſſolved many Years before the Statute *De terris Templariorum*, 17 *Ed.* 2. the Statute recites, the Corporation was diſſolved, and that the King and ſeveral other Lords had entered upon all their Lands and Eſcheats: The Judgment of the Parliament was, they were well diſſolved, and the Lords well intitled by Eſcheat, as the Law ſtood; and therefore by Act ſettles them upon the Hoſpitallers. This Corporation was diſſolved by the Pope, and upon the Ground of *Non uſer*. The End of their Corporation was for guiding Chriſtian Pilgrims to the *Holy Land* and *Jeruſalem*, which the *Saracens* and *Turks* having over-run, and poſſeſſed themſelves thereof, the Members of the Order never came there, but diſpoſed of themſelves in ſeveral Parts of Chriſtendom. The Order was erected by Pope *Honorius*, 21 *H.* 1. *Anno* 1120. and was diſſolved by *Clemens Quintus*, 4 *Ed.* 2. *Anno* 1311. thirteen Years before the Statute: and their Spiritual Corporation, which was the Principal, being diſſolved, the Power of holding Lands, conferred by Temporal Princes, determined, 2 *Inſt.* 431. & *H.* 432.

1 *Inſt. fol.* 102. the Caſe is put where the Tenant held by *Homage Anceſtrel* of a Body Politick diſſolved; the Homage is gone, though a new Corporation be founded by the ſame Name. That my Lord *Coke* never entertained ſuch an Opinion, appears by his Argument in the Caſe of the Dean and Chapter of *Norwich*, when Attorney General. His Miſtreſs's Heart was much upon that Caſe to preſerve their Lands; and it was well argued by Mr. Attorney, and no doubt well ſtudied; but this Topick, from the Indiſſolubility of Corporations, never came into his Head. Beſides the Statutes of Confirmation, he inſiſted upon theſe things: *Firſt*, That the Words of the Surrender were not ſufficient to ſurrender the Corporation; *Secondly*, That they were the Biſhop's Council, and in ſome ſort one Corporation with him; *Thirdly*, From the great Miſchiefs which would enſue. This new Invention alone would have done the Buſineſs, if he had been ſo fortunate to have found it out; or if any of the Judges had thought of it, they would not have gone about it ſo long, as at length to ground their Reſolutions only upon the Points which did ariſe upon the Statutes. *Fitzherbert* is of the ſame Opinion, That if an Abbey be diſſolved, a Preſentation ſhall eſcheat to the Lord of whom it was held.

Fitz. N. Brev. fol. 33.

(3) The next Argument produced by Mr. Recorder was, *That a Corporation could not be ſurrendered*; upon which Head I will not entertain your Time, for theſe Reaſons: *Firſt*, Becauſe it was not to the Queſtion, and that Mr. Recorder admits, that many things may be forfeited, which cannot be ſurrendred; *Secondly*, Becauſe the Point may come judicially into Debate, ſome Diſlike having been taken to Surrenders lately made; and I chooſe to refer myſelf to that Queſtion which comes properly in Judgment; *Thirdly*, But my laſt and principal Reaſon is, that he hath produced no Authority of Law to make good his Aſſertion.

The Authorities of the Caſes of the Dean and Chapter of *Norwich. Mich.* 40 & 41 *Eliz.* and *Hayward* and *Fulcher*'s Caſe, *Hil.* 3 *Car.* 1. which both relate to the ſame Surrender, and are in effect the ſame Caſe, only in the latter Caſe the Surrender is diſcloſed to the Court to be larger than did appear in the former Caſe; and though many Books are cited, yet they all contain but theſe two Caſes, which make ſtrongly againſt him. For throughout theſe Caſes, both in ſtating the Queſtion, Arguments of Counſel, and Reſolutions of the Judges, it is plainly admitted, that a Corporation might be ſurrendred. Otherwiſe the ſtating of the Queſtion in the firſt Caſe, upon the Effect of the Words in the Surrender *of all their Poſſeſſions and Cathedral Church*, Whether ſufficient to ſurrender the Corporation? and the Arguments thereupon, and the Reſolution of the Judges was needleſs; but it was plainly admitted, that a Corporation may be diſſolved; and it was the Common Law Point they did reſolve, that they were all idle and illuſory. And ſo in the ſecond Caſe, Whether the Dean and Chapter, without the Biſhop, could ſurrender the Corporation? it is all along admitted, both by the Counſel upon the Grounds they went upon, and by the Judges in their Reſolutions, that it might be ſurrendred, *concurrentibus his quæ in jure requiruntur*; and therefore, by the Reſolution of the Judges, it could not not be done without the Biſhop, becauſe he had an Intereſt in them. And when *Whitlock* in his Argument had recourſe to a more general Reaſon, which was, That the Surrender could not be good, becauſe then they ſhould be *Felo de ſe*, which is againſt Nature; *Jones* takes him up, and flatly denies it, and ſaith, That a Dean and Chapter might diſſolve themſelves by *Ceſſer*; or if all die, or reſign, the Corporation is diſſolved; but concurred with him, that the Surrender did not diſſolve it, becauſe the Biſhop was no Party, nor conſenting; and in the End *Whitlock* concludes his Argument, that it could not be done without the Biſhop. And the Saying of *Whitlock* in that Caſe, *That the King may grant, but not diſſolve a Corporation*, is certainly true in the ſame Senſe as it is of Lands, and all other Rights whatſoever; the King may grant, but cannot reſume without Cauſe; yet all may be forfeited upon due Cauſe, and by Judgment of Law returned to the King.

Palmer 501.
Jones 168.
Palmer 503.

(4) The laſt Topick of Argument, by which Mr. Recorder concluded a Corporation cannot be forfeited, is a *Non uſer*; becauſe never any Corporation was forfeited, nor did it ever enter into any Man's Imagination, that it could be forfeited. This indeed doth put the Proof upon me; and Mr. Solicitor hath already made it out with great Learning by ſeveral Inſtances of Corporations ſeized into the King's Hands for Forfeitures committted by them; ſome by Judgments, others by Inquiſitions finding thoſe Forfeitures. But Mr. Recorder with one Blaſt hath blown them all away, that they are but mere Sounds, and look big with Seizure, and ſeizing of Liberties into the King's Hands, but, when ſtrictly examined, they are of no Subſtance; and the Fruit of all the Examination ends in a Difference he hath found out between *Seizures* and *Forfeitures*; much ſuch another Difference as was that between a *Liberty* and a *Capacity*, upon which the whole Weight of the Argument turned, *That a Corporation was no Liberty, but a Capacity.* And if ſo little a Diſtinction be enough to anſwer the Weight of Mr. Solicitor's Arguments, it will be in vain for me to attempt further Inſtances, unleſs I can reconcile this little Difference, and ſhew it to be as ineffectual as that between a *Liberty* and a *Capacity* was before; and therefore I crave leave, in the firſt place, to examine this ſhort Anſwer to ſo many and ſo great Authorities.

It is objected, That thoſe are Precedents of Seizures, but not of Forfeitures; for Seizures in the Caſe of the King's Suits, and of the Biſhop's Temporalities, are of the ſame Nature as Seizures upon the Grand *Cape*'s and *Diſtringas* in Suits between Party and Party, only to anſwer Iſſues. And when Liberties of Towns are mentioned to be ſeized, the Towns only are ſeized, and not the Corporation, which remains *in ſtatu quo*; but where a Forfeiture is, there muſt be Judgment of *Ouſter.* Every Sentence almoſt of this Anſwer is contrary to all the Books and Records of Law, that I know of. The Authorities cited to prove the Differences are *Nat. Brev. fol.* 161, 162. which ſaith, Inquire into the Cauſes of Seizures, and Cauſes of Forfeiture; but what theſe Cauſes are, which may be Cauſes of one, and not of the other, are not diſcloſed. But my Lord *Coke*, in the Counteſs of *Shewſbury*'s Caſe, determines the Difference, and makes them all one. There are, ſaith he, three Cauſes of Forfeiture or Seizure of Offices for Matter of Fact, *Abuſer*, *Non uſer*, and *Refuſer.* He makes the Cauſes of both to be the ſame: Forfeiture is but the Fact upon which the Seizure is grounded, where the Subject hath Title of Entry for a Forfeiture, in the Cauſes of the Entry, different from the Cauſes of the Forfeture. So in the King's Caſe, where Liberties are ſeized for an *Abuſer*, whether it be by Judgment, or upon an Inquiſition, or Preſentment, finding the Abuſe; can it be a Queſtion with any learned Man, but the Seizure is for the Forfeiture? The King cannot ſeize without Cauſe, and the Cauſe muſt be ſome Fact in Breach of the Condition in Law annexed to the Liberty. The other Authority produced is of the *Quo Warranto* againſt *Roger Mortimer*, cited 2 *Ed.* 3. 29. *in Strata Marcella*, *Co.* 9. *fol.* 28. where upon Denial of Aid, and the Defendants not anſwering over, Judgment was given of fore-judger of the Liberty, and Error brought; where *Scroop* ſaith, That in ſome Caſes Franchiſe ſhall be put into the King's Hands, in ſome Caſes ſeized in the Right of the King until Fine; and in ſome Caſes it ſhall be fore-judged, which holds for ever. I do admit this Caſe to be good Law, but it makes nothing to the Purpoſe to prove the Difference; or that Seizures by the King for Miſuſers are not for Forfeitures, or that Judgment of *Ouſter* are only Evidence of Forfeitures, or to prove a Seizure in the King's Suit, is of the ſame Nature as the *Grand Cape* or *Diſtringas*, upon mean Proceſs in the Suits of common Perſons. And becauſe neither the Book Caſes, nor Mr. Recorder have given any Light into the Caſes, which may vary the Judgment in a *Quo Warranto*, I will endeavour to ſtate the Matter, how it ſtands upon Seizures of Liberties :

(1.) Liberties may be ſeized into the King's Hands by the Award of the Court, which, in that Book, is ſtyled, *Put into the King's Hands* ; and that in two Caſes principally :

Where the Defendants are ſummoned to appear at the King's Suit, and make Defaults.

Where a Contempt appears upon Record, in returning or executing the King's Proceſs.

I ſhall give Inſtances of each. For the latter, 2 *Ed.* 4. *fol.* 5. in caſe of Bailiffs, upon Error, the Bailiff appeared, and prayed a Day to bring in the Record ; they failed at the Day : The better Opinion is, their Franchiſe ſhall be re-ſeized. And *Vavaſor* there ſaith, If a Lord of a Franchiſe do any Treſpaſs, or Contempt to the King's Court, it is Cauſe in the ſame Court to reſeize the Franchiſe. For the former, 15 *Ed.* 4. 6. *in Quo Warranto*, if the Defendant appear not at the Day, the Liberties ſhall be ſeized ; and if he doth not replevin them, as in *Eyre*, they ſhall be abſolutely forfeited ; for the Statute of *Quo Warranto* directs the King's Courts to proceed in *Quo Warranto* as in the *Eyre*.

Trin. 16. *Jac.* 1. *Brigg*'s Caſe, in *Quo Warranto*, the Defendant appeared not at the Day ; the Liberties were ſeized, *Roll. Rep.* 2 *part*, *fol.* 46.

Trin. 17 *Jac.* 1. *Roll.* 2. *part*, 92. *Quo Warranto* againſt the Mayor and Burgeſſes of *Wigmore in Com. Lancaſt.* upon Default made at the Day, it was agreed by the Court, That if they ſhewed not good Cauſe to excuſe their Default, their Liberties ſhould be ſeized into the King's Hands ; This being in the Caſe of a Corporation, the *Capias in manus* ſhould be of the Politick Perſon which made the Default. Where Seizure is by Award of the Court for a Contempt in Court, the Court may admit the Parties to affix and order Reſtitution ; ſo where by Award of the Court, on Default of Appearance at the King's Suit, a Seizure is made, which is in Nature of a Diſtreſs, to bring in the Party, by putting him out of the Poſſeſſion of the Liberty, till he appear and replevy ; the Court, if the Defendants come in time, and pray it, may deliver them the Poſſeſſion upon Replevin ; and this by the new Statute *de Quo Warranto*, 30 *Edw.* 1. Before that Statute the general Writ of Summons to anſwer to Liberties, as alſo the particular Writs of Summons upon the Kings Special Suits, ſuperſeded the Uſe of any Liberty till the Juſtices met on the Day of Return. Which Miſchief was remedied by that Statute ; if they appeared not at the Day, the Liberties were to be ſeized in Nature of a Diſtreſs, to enforce their Appearance. And upon Appearance, if they demanded to replevy them, the Judges might deliver back the Poſſeſſion of the Liberties upon Security to proſecute their Claim, and anſwer the mean Profits, if any, in caſe Judgment were againſt them ; much in the ſame manner as the Practice is in the Court of *Exchequer* upon all Seizures to this Day, by the Seizures the King is in Poſſeſſion : But if the Party appear and plead, and put in Security, he is by Rule of Court permitted to receive the Profits. But this Statute not limiting any Time for his Appearance, or to reply, that remained as it did before upon the old Statute of *Quo Warranto*, 18 *E.* 1. which refers to the Practice in *Eyre* : So that if the Party did not Replevin in Time, the former Seizure would amount to a Seizure after Judgment by Default, which is final.

(2.) Again, Liberties are ſeized into the King's Hands by Judgment of Court in the King's Suits, whether the Judgment be by Default, or *Nihil dicit* ; upon Demurrer, or Iſſue tried, this Judgment is final, and the Court cannot admit to a Fine, or award Reſtitution, unleſs upon Error brought. This Court is to ſet the Fine upon the *Capiatur*, but not the Fine for Redemption : that is purely in the King's Breaſt, *& ex gratia Regis*. There is no ſuch formal Judgment of Seizure until Fine ; but this upon Judgment and another Seizure upon Inquiſition, or Preſentment, which I ſhall mention, are the Seizures in the King's Right, repreſented in *Mortimer*'s Caſe, but frequently entered *quouſque Dominus Rex aliud præceperit*. What was intended by a Judgment of Ouſter in that Book, and in what Caſes by the Courſe of the King's Courts it ought to be, will beſt appear by an ancient Rule, taken and agreed by the Judges in *Edward* the Fourth's Time, before they were promiſcuouſly uſed. The Rule is thus : Where it clearly appears to the Court, that where a Liberty is uſurped by Wrong, and upon no Title, either by the King's Grant, or otherwiſe, there Judgment only of Ouſter ſhall be entered : But where it appears, that the King or his Anceſtors have once granted a Liberty, and the Liberty be miſuſed, Judgment of Seizure into the King's Hands ſhall be given. Theſe Rules carry their own Light with them : That which came out of the King's Hands, as *Bracton* uſeth the Word, is properly returned there again by Seizure, or (as our ancient Books phraſe it) by Re-ſeizure. But that which never came thence, but merely uſurped upon him, ſhall be vacated, and by Judgment of Law declared null and void.

There is another Caſe, which is there likewiſe reſolved, and that is, where it is doubtful to the Court, whether the Liberty commenced by Grant, or by Wrong ; that for the Uncertainty the beſt and ſafeſt Courſe is, that Judgment be given of Seizure. This laſt Caſe was the principal Caſe in that Book, the Queſtion ariſing upon a Default, What Judgment ſhould be given ? and by that Rule Judgment was given of Seizure, not of Ouſter. And agreeable to theſe Rules, all the Judgments which I have met with have been given ; and this Courſe hath been found moſt beneficial to the Subject, who, though by Forfeiture, Miſpleading ,r Default, he may loſe his Liberty, may have recourſe to the King's Mercy for Reſtitution.

Mich. 20. Jac. 1. Rot. 17.

In the Caſe of the Bailiffs and Aldermen of *New Radnor*, which was by Default, Judgment of Seizure only was given.

Trin. 6. Jac. 1. Rot. 3.

In the Caſe of *New Malton*, though the Iſſue, that the Corporation was by Preſcription, was tried againſt them ; yet having long acted as a Corporation, they might have miſpleaded their Title, as the City of *London* hath done, in claiming that by Preſcription, which commenced by Grant within Time of Memory, Judgment only of Seizure was given, and not of Ouſter. In all Caſes of Diſclaimer, Judgment only of Ouſter ſhall be given ; upon the ſame Rule Judgment only of Ouſter was given in the Caſe of *Staverton*, reported in *Yelverton* and *Crook* : But the Entry there is miſtaken ; for it is entered *Mich.* 8. *Jac.* 1. *Rot.* 2. for it appeared to the Court, that it was a mere Uſurpation without Title ; for that no ſuch Court as he claimed could be gained by Preſcription, nor indeed by Grant, through the Meanneſs of his Eſtate. Mr. Recorder inſiſted upon this Judgment, as a Meaſure for all Judgments upon Forfeitures of Liberties, but plainly miſtook the Reaſon of it. Upon the Reaſon of theſe Rules, in ſuch Caſes where Grants do appear, but either the Parties are not capable of taking, or the Liberty granted, not allowable by Law, the Courſe hath been to enter a mixed Judgment both of Seizure and of Ouſter.

Hil. 27 Eliz. Rot. 15. Co. Ent. 537.

In the Caſe of the Inhabitants of *Denbigh*, who claimed by Charter ſeveral Liberties ; but it appearing they had no Capacity to take, yet the Uſurpation being by Colour of Letters Patents, the Judgment was mixed both of Seizure and Ouſter ; for there was no poſſibility of Reſtitution, becauſe they were not capable.

Paſch. 17 Jac. 1. Rot. 2.

And in the Caſe of *Cuſack* it appearing to the Court, that the Liberties granted did not paſs, nor could be lawfully uſed ; yet the Uſurpation being by Colour of a Grant, Judgment of Seizure was given, as well as Ouſter, in theſe Caſes, as likewiſe in Sir *George Reynell*'s Caſe ; and by Multitudes of Caſes of Offices ſeized, it appears how vain the Objection was, that the King cannot ſeize a Corporation, becauſe he cannot have it, or be the Mayor and Commonalty ; for not only what the King may have or hold, but what he may diſpoſe of, are in Judgment of Law, ſaid to be in his Hands ; and it is the proper Office of the Hand *diſponere*, as well as *tenere*. And what but colourably came out of the Crown, though it cannot ſubſiſt by Law in a Subject, ſhall be ſeized, as in *Cuſack*'s Caſe.

3.) In the laſt Place there are other Seizures, which are by Proceſs by Commiſſion of Inquiry upon Inquiſition found, or upon Preſentment ; and ſuch are always for Forfeitures, upon Faults found in Breach of Conditions annexed by Law. That the King is in Poſſeſſion of all incorporeal Rights by ſuch Seizures upon Inquiſition, appears by the Reſolution in Sir *George Reynell*'s Caſe. In theſe Caſes of Seizure for Forfeitures, no Court, or the Lord of the Liberty, whether Body Politick, or Natural, can admit to a Fine, and thereupon make Reſtitution ; neither is there any other way by Law to take off the King's Hands, but by direct Traverſe of the Fact, if the Fact found be not true ; or by Demurrer, if the Fact found be not in Law ſufficient Cauſe of Forfeiture. The Facts upon which ſuch Seizures have been made, have been generally ſo notorious, and the Conſequence of Law upon them, taken to be ſo evident, that I never met with any ſuch Inquiſition ever traverſed or demurred to ; but the Application for Reſtitution hath ſtill been to the King's Grace. And theſe Inquiſitions have been taken either *ex officio* by the Sheriff, or by ſpecial Commiſſions. The Sheriff by his general Commiſſion is intruſted with the Preſervation of the whole County, and the publick Peace thereof.

And though in the Grant of Corporations and other Liberties, there be ſpecial Clauſes excluſive, *Ita quod*, *&c.* Yet theſe Clauſes, as the Grants themſelves, have another *Ita quod* annexed to them by Law, that they preſerve good Government, and do not abuſe the Franchiſe, by committing or permitting Riots and great Diſorders in Breach of the publick Peace ; which if they do, is by Law a *Non omittas* to the Sheriff, to inquire and take care of the publick Peace within the Liberty.

The Town of *Hereford* was ſeized into the King's Hands by the Sheriff of the County, for holding of a Market contrary to the King's Prohibition. Upon Certificate thereof into Chancery, the King's Writ iſſues to the Sheriff, approving thereof, and commanding him to keep it in the King's Hands, *Donec dominus Rex aliud inde præceperit. Rot. Clauſo.* 15 *H.* 3. *memb.* 7. *Hales lib. K. fol.* 41.

Of Seizures made upon Preſentments, and Inquiſitions taken by Commiſſions, there are many Inſtances, ſome whereof I ſhall mention when I come to the Precedents. The Seizures upon Judgment, or for a Forfeiture, which are always in the King's Right, do as effectually put the King into Poſſeſſion, and ouſt the natural Perſons from uſing the Right, as any Judgment of *Ouſter* whatſoever. And the Difference between ſuch Seizures, and thoſe upon the Grand *Cape*, which are only upon Mean Proceſs, and in Right of the Subject, and in his Aid, is too apparent to be further inlarged upon. There is ſome Reſemblance between this Seizure upon the Grand *Cape*, and that in the King's Suit for Default, that Appearance for both are upon Mean Proceſs, and both repleviable, if the Defendant or Tenant come in Time.

There is alſo a further Reſemblance between them, which makes not for Mr. Recorder's Purpoſe ; and that is, in that both are loſt for ever, if the Parties come not in Time. For at Common Law, if upon a *præcipe quod reddat*, and the Lands ſeized into the King's Hands upon the Grand *Cape*, the Tenant makes Default, and comes not within forty Days, he could not wage his Law to excuſe his Default, but the Demandant ſhould have Judgment to recover the Land preſently, 15 *Ed.* 4. *fol.* 7.

The Difference that it was not the Franchiſe or Liberty of the Corporation, but the Towns themſelves were ſeized into the King's Hand, is as void of Authority as of Law. Sometimes indeed *Civitas & villa*, in Records, are uſed promiſcuouſly for the Franchiſe and Freedom, which is jointly uſed and enjoyed by the Inhabitants, exempt from the Common Law Juriſdiction : And in ſuch Caſe, the Seizure of the City or *Ville*, and of the Franchiſe, is all one ; and the Inhabitants thereby put under the Government of the Common Law, diſcharged of the Franchiſe. But if the Town or City be taken for the natural Perſons who are the Inhabitants, or for the Houſes wherein they inhabited, which they muſt be upon Mr. Recorder's Diſtinction, otherwiſe it will be a Diſtinction without a Difference ; neither the Inhabitants nor Houſes were ever ſeized, or could be ſeized, into the King's Hands upon ſuch Inquiſitions as have been found, and Judgments of Seizure that have been given. The only Proof for this Difference was a ſtrong Averment, that whilſt the City of

London lay under the ſeveral Seizures, ſometimes of the Mayoralty only, at other times of the whole Franchiſe, the Corporation was as vigorous as ever, and in *Statu quo*; not ſo much as ſuſpended, but did exerciſe all Corporate Acts as before. An Averment againſt the expreſs Senſe of all the Citizens when under thoſe Seizures, and againſt many Authorities of Law.

Rell. Prerog. 204. At the Parliament, 18 *Ed.* 1. the Citizens (for they had then no Mayor) petitioned the King in Parliament, *Quod Rex velit eis concedere priſtinum Statum, ſc. Majorem & antiquas Libertates.* They petitioned not for their Houſes, or the Liberty of their Perſons, thoſe were never ſeized; but to be reſtored to the Mayoralty, and their ancient Liberties, which were under Seizure in the King's Hands. If the Corporation had been in *Statu quo*, they would not have troubled the Commons to preſent ſuch a Petition, nor the King to grant ſo idle a Petition, as *eis concedere priſtinum ſtatum*; but they, who knew their Condition better than Mr. Recorder, could admit themſelves out of Poſſeſſion both of their Mayoralty, and their ancient Liberties, and pray to be reſtored to them. And the King's Anſwer was, he was not at preſent adviſed *ſtatum mutare.* My Lord *Coke*'s Opinion is,
that the Chapter, when no Dean or Commonalty, when
1 Inſt. 263 *b.* no Mayor, have not Capacity ſo much as to make continual Claim, nor to take by Purchaſe, nor ſue any Action.

21 Ed. 4. 27. If the Commons of *London* meet on *Michaelmas-day*, and chooſe a Mayor, the old Mayor not preſent, the Election is void; and ſo any other Act without the Mayor. If the Commonalty
21 Ed. 4. 69. in the Vacancy of a Mayor make Obligation under their Common Seal, it is void; how much ſtronger will the Caſe be, when the whole Franchiſe is ſeized?

I have now removed the Objections which lay in my Way, by opening the Nature and Effect of Seizures of Liberties into the King's Hands, and where Judgment of Seizure, and whereof Ouſter are properly given; whereby it may appear, that this ſpecial *Capias* of *Capias in manus Regis* is as proper an Execution againſt the Body Politick, as the common *Capias* againſt the Body Natural; and in Judgment of Law the Politick Perſon is as properly ſaid *civiliter mortua* by Judgment of Seizure, as the Natural Perſon is ſaid *civiliter mortua* by Judgment of any Attainder for any Capital Offence. Mr. Recorder acknowledges, that in caſe of Natural Perſons, when the Law gives Forfeiture of the Body, or of the Liberty of the Body, it is all one in Judgment of Law; the Law is the ſame when it ſpeaks of Bodies Politick, to forfeit the Liberty of the Body Politick, and to forfeit the Body Politick.

3. My Way thus cleared, I will lay down the Grounds and Reaſons of Law, upon which I conceive, with ſome Clearneſs, that Corporations may be forfeited and ſeized into the King's Hands, as well as Offices, or any other Liberties whatſoever; and then ſhall inſtance in ſome further Precedents, whereby it will appear they have been forfeited and ſeized. My Grounds are principally theſe:

(1) That there is a Condition in Law annexed to the Franchiſe of a Corporation, upon its firſt Erection, as ſtrong, if not ſtronger, than to any other Franchiſe or Liberty whatſoever.

(2) That there is nothing extraordinary or peculiar in the Nature of a Corporation, to hinder taking Advantage of the Condition broken, or to exempt it from the common Condition of other Liberties in Conſideration of Law.

(1) As to the firſt, Where-ever the Law introduceth or alloweth any Right upon a Truſt, or for the Benefit of the Publick, it implies a Condition, that the Truſt be diſcharged, and the Ends of its Creation complied with. This Condition implied by Law is of ſtricter Obligation than Conditions expreſs; it ſhall bind Infants and Femes Covert, 8 *Co.* 44. The principal Caſe is of Offices; but the Book ſaith, *So it is of all Liberties and Franchiſes.* And indeed throughout our Books, the Caſes of Offices of Publick Truſts and Franchiſes run parallel; and the greater the Truſt is, or of greater Neceſſity to be performed, the Condition is ſtill the ſtricter. And therefore in Franchiſes, as well as Liberties, if the Franchiſe be for the better Adminiſtration of Juſtice, and of Neceſſity. *Non uſer* will be adjudged a Breach of Condition; but where not of Neceſſity, bare *Non uſer* will not be a Breach; yet *Refuſer*, which is an obſtinate and wilful *Non uſer*, may be a Breach; but in caſe of all Liberties and Franchiſes whatſoever, *Abuſer* was ever judged a Breach of the Condition. This Matter, upon the Queſtion of Forfeiture of an Office, is well ſtated in the Counteſs of *Shrewſbury*'s Caſe, 9 *Co.* 50. Now this Franchiſe of a Corporation is granted upon a far greater Truſt and Confidence than any other Liberty whatſoever, as I have already ſhewn; *viz.* For the Government and Peace of the Inhabitants, and others coming within the Liberty of the Franchiſe, in Subordination to the general Government of the King; and that they are intruſted therewith by the King upon the publick Account of Government only, and not for any private Reſpect or Benefit whatſoever. Other Franchiſes are either ſubordinate and auxiliary to this, as to hold Courts, have Gaols, and ſuch like, for the better Adminiſtration of the ſeveral Parts of Government; or elſe are of Profit or Eaſe, *pro meliori ſuſtentatione* of the Charge and Burden of this ſubordinate Government. And therefore *Banks*, in the Argument of *Hayward* and *Fulcher*'s Caſe, *Palmer* 495. calls it the *Principal Liberty*, and other Liberties the *Acceſſories.*

Inſt. 432. In the Caſe of Knights Templars, the Corparation was diſſolved upon the Account of *Non uſer*, though without their Default; but the End of their Inſtitution ceaſed. The Caſe is much ſtronger where it is a voluntary *Ceſſer*, as where the Abbots and Monks put off their Habit, and leave their Houſes; this *Non uſer* will be a good Cauſe of diſcharging the Order. Where the Commonalty have Power to chooſe every Year a Mayor, if they do not chooſe a Mayor, their Franchiſe ſhall be forfeited, or they may be fined, upon this Reaſon, that common Juſtice fails for want of ſuch an Officer, which was a Breach of the Condition annexed to their Liberty by *Non uſer*, 21 *E.* 4. 14. It appears by this Caſe, That the Commonalty, in the Vacancy of a Mayor, are to this Purpoſe a Corporation, to chooſe a Mayor to perfect the Body; and 'tis the only Corporate Act, that they are by Law enabled to do without a Mayor; and this Right may be forfeited too. And as by never chooſing a Mayor, they themſelves would diſſolve the Corporation; ſo by forfeiting their Right, it is in the Power of the Law to diſſolve them. It alſo appears expreſly by this Caſe, that the King may proceed either for a Fine, or upon a Forfeiture, as he may do in the Caſes of all Offices and Franchiſes whatſoever, as he ſhall be adviſed.

If *Non uſer* in ſome Caſes (as I have ſhewn) will forfeit a Corporate Right, no Shadow of Reaſon can be offered, why *Miſuſer* or *Abuſer* will not do it as well as in all other Liberties. For as greater the Truſt is, or ſtronger the Condition, ſo an *Abuſer* of that Truſt is a far greater Breach of the Condition, than a ſimple *Non uſer.* Single Bodies Politick have indiſputably ſuch Conditions annexed to them upon the Truſt of their Creation; and the Breach of the Condition is in Law good Cauſe of ſeparating the politick Perſon from the natural, by Deprivation, which in the Civil Law is of the ſame Effect as Judgment of *Ouſter* by the Common Law; and their Suſpenſion hath ſome Reſemblance with our Seizures into the King's Hands. If Mr. Recorder had but obſerved the different Laws that Spiritual Corporations and Civil Corporations are guided by, he would not have raiſed his Wonder to that Height, that *Quo Warranto*'s were never brought againſt Monaſteries, Biſhops, Deans and Chapters, Parſons and Vicars, and that bringing it now againſt the City of *London* threatened the whole Hierarchy of the Church; when, with his Leave all theſe, if they offend, may by Law loſe their Corporate Right, which may be ſevered from them by a certain Inſtrument called *Deprivation*, the Edge of which is no ſharper than Judgment of Seizure, or *Ouſter* in our Law. And certainly the Union between the politick and natural Body is as cloſe and as ſtrong in ſingle Corporations, as in aggregate; and the ſame Authors have beſtowed upon them the ſame Epithet, and that they cannot commit Treaſon and Felony; and the Body Corporate of the Biſhop, Parſon, Prior, Alien, *&c.* is as inviſible, immortal, and as politick as that of aggregate Bodies. Yet not only Treaſon and Felony, but far leſs Miſdemeanours committed by the natural Perſons will forfeit the Corporate Right, amd amount to a Breach of the Condition annexed by Law. So little Crimes, as Waſte, and wilful Dilapidations, will be Cauſes of Forfeitures; many of the Caſes thereof are put in Sir *James Bagg*'s Caſe, to which I refer, 11 *Co.* 98. For I do take that Caſe to be an expreſs Judgment in Point, That there is a Condition annexed by Law to every Corporation, and that the Breach thereof is a Forfeiture. The Reſolution there is, that any Member of the Body may forfeit his Corporate Right, and may by Law be diveſted of it, which Right is there called his *Freedom* and *Liberty.* And it is the ſame Right or Liberty, in which all, jointly conſidered, have an Inheritance, wherein each Member hath a Freehold; for they are not ſeized of this Right in their Corporate Capacity, but as Natural Perſons, the Queſtion being of that Right which gives them the Corporate Capacity. And what any Member may forfeit, every Member may; and the ſame Acts which will forfeit the Right of every Member, ſeparately conſidered, if done jointly by all the Members, will have the ſame Effect. What Act will amount to a Forfeiture, that Caſe generally determines, whatſoever is contrary to the Duty and Truſt of a Member; eſpecially if the Fact be contrary to his Oath, the Oath of Allegiance by the Statute 7 *Jac. cap.* 6. is made a Part of the Freeman's Oath. The Caſe goes further, and aſſigns many Particulars, which will be Breaches of the Condition, *viz.* Attainders, Forgery, Perjury, Conſpiracy, or any other infamous Crimes, at the King's Suit; if theſe will be ſufficient Cauſe, there can be no doubt but Treaſons, Felonies, and Oppreſſions, Seditions, and other Attempts in diſturbing the Government, will be good Cauſes of Disfranchiſement of any or many of the Members who commit ſuch Crimes; and this upon the Truſt and Condition implied by Law, upon the firſt Erection of the Corporation; for the preſent Members are under no other Truſt or Condition as to this Matter, than what the Law impoſed upon the firſt Members.

I cannot ſee how the Counſel for the City can evade the Force of Sir *James Bagg*'s Caſe, unleſs it be by a Diſtinction or two:

1.) Between every Man, and all Men; every Man may forfeit his Part, but all Men cannot forfeit the whole: Juſt ſuch another Diſtinction as was made to all the Precedents between Seizures and Forfeitures.

2.) The other Diſtinction ſeems to have a little more Colour, and it is between the King and the Corporation.

The Corporation, ſay they, are intruſted by Law with Power over their Members to remove them for acting againſt their Duty; but the King cannot disfranchiſe any particular Member: and if he cannot disfranchiſe any one Member, much leſs can he all Members, or ſeize their Liberties into his Hands, which in Law amounts to a Disfranchiſement of all the Members.

I anſwer, The King may do both the one and the other; and in ſaying the King can do it, I mean in Courſe of Law.

1.] The King doth it, when the ſubordinate Miniſters and Governors within the Corporation do it; for they do it as his Miniſters in Execution of his Laws; and it is their Duty to do it, according to the Truſt he hath repoſed in them, and the Power he gave them; and this Authority is greater or leſſer, as he is pleaſed to grant it, as it appears by Sir *James Bagg*'s Caſe. If the King grant them expreſs Authority to remove, they may remove the Offender before Conviction at Law. But if no expreſs Power be granted, a Conviction at Law muſt be firſt had; and the Judgment of the Law directs their Duty, and they are accountable herein to the King in his Courts of Law: If they miſtake the Law, and diſplace a Member convicted of an Offence, which amounts not to a Forfeiture, the Party ſhall be reſtored by *Mandamus*; an excellent Precedent of Reſtitution, if they do not their Duty, to disfranchiſe where the Offence requires it.

2.] The King may do it, by commanding them to do it
by his Writ out of the Court where the Conviction re- Dier 333.
mains, or out of the Chancery, as he may the Coroner of the County,
Mayor, and other Officers, as the Precedents have been. 13 Co.
A Writ to remove the Mayor of *Berwick.* So where an Alder- 9 Car. 1.
man is dead, the King may ſend his *Mandamus* to chooſe Memb. 29.

P. 3. Car. 1.

another, as done in the Caſe of *Lanceſton*, *P.* 8. *Car.* 1. 23 *R. Hale*, Corporat. *Pl.* 5. If they yield not Obedience, they may be fined, or may incur the Forfeiture of their Liberties, as the Caſe may require.

3.] In caſe the Corporation cannot do Juſtice in puniſhing and diſplacing the Offenders, either becauſe the Majority are Offenders, or favouring, or abetting the Offenders, there being a Failure of Juſtice in the Franchiſe, which the Law will not permit, by Judgment of Law the City or *Ville* ſhall be reſtored to the Government and Juriſdiction of the Common Law, by Seizure of the Franchiſe into the King's Hands.

4.] Failure of Juſtice, and the not ſuppreſſing and puniſhing of notorious Riots and Tumults, have been adjudged good Cauſes of Forfeiture of Liberties: and the Plea of *Non Ability* to ſuppreſs them, diſallowed as any Cauſe of Excuſe, as to the Point of Forfeitures of the Liberties, which doth and will appear by the Precedents inſiſted on by Mr. Solicitor, and what I ſhall ſuperadd. So that I conceive the Authority of Sir *James Bagg*'s Caſe remains unſhaken, that there is a Condition annexed to the Franchiſe of a Corporation, the Breach whereof will be a Forfeiture. The greater the Truſt of any Member of a Corporation is, the ſtricter is the Condition; as where any of the Members are choſen into any Places, which more immediately concern the good Government of the Corporation, a leſs Crime will be the Cauſe of his Removal, than will be a Diſfranchiſement of a private Member, as in the Caſe of an Alderman.

Tayler's Caſe, Trin. 14. Jac. 1. B. R. Roll. Reſtitution 455. pl. 1.

It was reſolved, for being a Drunkard and Haunter of Taverns, he being a Magiſtrate more immediately intruſted with the Government, was Cauſe of Removal; though he have Freehold in the Place, yet it is upon ſpecial Truſt and Confidence. The Law will be the ſame, if the Magiſtrate gives the leaſt Encouragement to popular Tumults, or frequent Conventicles, and unlawful Aſſemblies. And it is no Objection to ſay, that ſome Statute Laws have laid a Penalty for the Offences, as it is in the Caſe of Drunkenneſs, and many Offences of Officers; and in Common Law Offences, the Law provides a Penalty againſt the Offender by Fine or Impriſonment; and yet the ſame Offence, if a Breach of Condition, will be Cauſe of Diſfranchiſement, as appears in Sir *James Bagg*'s Caſe. The Penalties inflicted by Statutes or Common Law, are for the Breaches of particular laws; but the diſplacing of a Magiſtrate is for Breach of the general Truſt of his Place, wherewith he is intruſted for the Publick; and having broken that Truſt and Condition, the Law adjudgeth him unfit to be intruſted, *ne quicquam detrimenti capiat Reſpublica.* The Queſtion, What Acts of a Member will forfeit his Corporate Right? is no-where in our Books ſo diſtinctly put as in Sir *James Bagg*'s Caſe. But the Queſtion, What Acts of the Members, and of what Number of the Members, will forfeit the whole Franchiſe? I know no-where diſtinctiy put in our Books, but as they lie ſcattered in the Inſtances of Forfeitures taken, and Franchiſes ſeized; otherwiſe than upon the general Rules of *non uſer & abuſer* of the Truſt committed to them. But the Civilians do largely treat upon theſe Queſtions; Whether the Cities, Colleges, and Univerſities may be forfeited and diſſolved, and what Acts of the Members will be Cauſes of ſuch Forfeitures? And therefore I crave Leave, before I conclude this Head, from the Condition annexed by Law to all Corporations, only to mention one of them. It is *Oldradus de Ponte*, in his Book intituled, *Conſilia ſive Reſponſa, & Aureæ Quæſtiones:* Where he debates the Point at large *Pro* and *Con.* and puts the Objections of ſome Authors, which are much the ſame enthuſiaſtick Raptures, as have been made uſe of in this Caſe; *viz.* that they have no Souls, but are immortal Bodies, and ſuch-like Stuff. But he reſolves the Queſtion thus; I will repeat his own Words: *Sed licet non habent veram perſonam, tamen habent perſonam fictam fictione Juris. Et ideo dicit Lex, quod Municipium Curiæ & Societatem perſonæ ſuſtinent: Et ſic eadem fictione animam habent, & delinquere poſſunt, & puniri, ea tamen pœna quæ poſſit cadere in eas, ſcilicet, quod privetur Privilegiis, & ſic Capite minuitur. Et ſic ſicut vera perſona per mortem naturalem deſinit eſſe quod erat, ſic iſta perſona ficta per mortem Civilem, quæ eſt, ut privetur Privilegiis, deſinit eſſe quod erat, quia amôdo non erit Univerſitas.* And then aſſigns the Cauſes generally: *Et quod Privilegia poſſint revocari, cum incipiunt eſſe iniqua vel damnoſa. Et non poteſt eſſe magis iniquum, ſi utatur eo in contumeliam concedentis.* Though this be a full Opinion of a learned Man, as to the Caſe in queſtion, both as to the general Queſtion of Forfeiture, and the particular Breaches aſſigned; yet I uſe it not as an Authority; but only to ſhew the Concordance of other Laws with the Law and Practice within this Kingdom; and that learned Men have before now not only dreamt of ſuch a thing, but have concluded the Point upon Debate and Reaſon of Law, That Corporations may be forfeited and diſſolved, when their Privileges, as uſed by the Members *incipiunt eſſe iniqua vel damnoſa.*

Oldradus de Pont. fol. 29.

(2.) My other Ground is, that there is nothing extraordinary or particular in the Nature of Corporations aggregate, to exempt them from the Condition of ſingle Corporations, or of other Liberties: If there be, it hath not yet been ſhewn. It muſt ariſe either from the Number of the Perſons who take, and are the Subjects of this Liberty, becauſe they are many; or from the Right conferred upon them. The Number of the Perſons conſtituting this Body contributes nothing towards the Indiſſolubility thereof, pleaded for. They were ſeveral natural Perſons before the Union, and remain ſo many natural Perſons; and by retaining their natural Capacities, are as capable of being ſeparated, as they were before capable to be united by taking this Right. And as to the Number of the Perſons, a Corporation differs nothing from other Communities, which may aſſemble and act in a Body: As the voluntary Societies in Inns of Court and Chancery, and Armies, which act under Commiſſions, to ſome Perſons to collect and aſſemble, others to act jointly under them. Theſe Societies have their peculiar Rules and Laws to act by, and act jointly, and in a Body, as Corporations do: But yet, in the one Caſe, if the Members ſo agree; or in the other Caſe, the Commiſſion be revoked, they are all ſeparated, and the Union diſſolved. So as to the Nature or Numbers of the Perſons collected, a Corporation differs nothing from other Societies not incorporated. From Number may be preſumed a greater Duration, and it is moſt probable many may outlive one; but it is certain that many ſhall die as one Man, and probable, that all may die before others elected, which was admitted to be a Diſſolution of the Body Politick: but ingeniouſly diſtinguiſhed, that this was rather a Separation of the Perſons from the Body, than of the Politick Body from the Perſons. Be it ſo, it is admitted then they are ſeparable, and that Number cannot protect the Natural Perſons from being ſevered from the Body Politick by natural Death. And I have already ſhewn, that Number contributes nothing to the Indiſſolubility of a Corporation, by Separation of the Members one from the other, which is called a Civil Death; and in Caſes of Civil Death, the ſeparating the Liberty from the Perſon, or the Perſons from the Liberty, is all one. To take the Office from the Officer, or remove the Officer from the Office, is all one; and ſo in Diſfranchiſement, to take away the Freedom of a Member, or to remove him from his Freedom, is all one: And ſo in Forfeiture of Franchiſes, the Judgment of *Ouſter* is formally putting the Perſons from the Franchiſe, and Judgment of Seizure taking the Franchiſe from the Perſons; but in effect they are the ſame *viz.* a Separation between the Perſons and the Franchiſe. And this Separation being wrought by a Condition in Law annexed upon the Union, the Number of Perſons can no more prevent it, than where Lands, or incorporate Inheritances, are granted to many and their Heirs, upon an expreſs Condition that no Advantage could be taken of the Condition broken, becauſe the Grant is to many Men.

From the Nature of the Right or Franchiſe, as little can be inferred for this inſeparable Union pretended.

1.) In its Creation, it is merely by the Policy of Man, and the Rule is taken in *Calvin*'s Caſe, 7 *Co. fo.* 25. That what is by the Law of Man, may be altered. And divers other Books ſpeaking of the Effects of human Conſtitutions, laying down as a certain Rule, *Quicquid colligitur diſſolvi poteſt*; mortal Beings cannot confer Immortality.

All Rights whatſoever are incorporate, and ſometimes *abuſivè* are ſtyled immortal, which by Intendment of Law is only, that they have continuance ſo long as any Perſons ſubſiſt capable of having them: And in this Senſe the Right to Lands and Corporate Inheritances are of greater Duration than many Liberties, and particularly thoſe of Corporations; becauſe they ſubſiſt when they return to the Crown, which many Liberties do not, but are then extinct. *Strata Marcella*, 9 *Co.* & 15 *Ed.* 4. *fo.* 6.

2.) As to the Nature of this Right, whether it be conſidered as a Right of taking and holding in another Capacity than that of natural Perſons, or as a Right of taking in Succeſſion, under neither Conſideration can it import any inſeparable Quality. In the former, it is both the ſame with that of ſingle Corporations, and plainly implies a Truſt. In all the Caſes of our Law, where-ever any Perſons take in another's Capacity than their own, it is always upon Truſt, as Executors or Adminiſtrators, Churchwardens, *&c.* and all ſingle Corporations: And where the Law creates the Truſt, the Law provides Remedy, if the Truſt be broken, for putting the Truſt into ſafer Hands. And likewiſe, if conſidered as a Right framed by Policy, to take in Succeſſion, it is in Subſtance the very ſame with that of ſingle Corporations, and if any Advantage be in point of Duration, it inclines to the Side of ſingle Corporations; as better framed by Policy to have Continuance, than the other of aggregate Corporations.

1.] Becauſe the Choice of the Succeſſions, whether elective, donative, or preſentative, is placed elſewhere, and not in the Perſon himſelf, that it cannot be in his Power to prevent the Succeſſion.

2.] Becauſe the Law leaves it not in his Power to determine the Corporation, either by Surrender or Forfeiture, but during his Life; and ſo cannot prejudice his Succeſſion.

But in Lay Corporations the Power of Succeſſion being intruſted with them by Elections to continue it, the whole Right is in them, and conſequently in their Power to determine it, either by not electing, or electing thoſe the Law incapacitates, which is the Caſe of *Worceſter*; or every Man of them may for good Cauſe be disfranchiſed, or the Franchiſe for Cauſe ſeized, and conſequently, for want of Succeſſion, fail. Beſides, to go in Succeſſion, doth not neceſſarily imply a Perpetuity: Goods may go in Succeſſion, as to Churchwardens. A Chattel Leaſe may go in Succeſſion. The King grants Lands for Years, rendering the Rent to the Aldermen of *Cheſterfield*; they take in Poſſeſſion as a Corporation, *Cro. Eliz.* 35. *(Mich.* 26). The ſame Caſe, *Hales*, *Corporation pl.* 25. Upon theſe Grounds that there is a Condition annexed to all Corporations as well as other Liberties, and that there is nothing peculiar in the Nature of Corporations aggregate, to exempt them from being liable to Seizure for Breaches of that Condition, I conclude, Corporations may be taken into the King's Hands by Seizure; which is a Separation of the Liberty of being a Body Politick from the Natural Perſons, who (as *Bracton* phraſeth it) were but *Uſufructuarii*, and had not *Abſolutum Dominium.* And by this Separation the Natural Perſons are only reſtored to the Goverment of the Common Law.

The Miſchiefs that would inevitably follow, were the Law otherwiſe, have been inſiſted on by Mr. Solicitor. It were to ſet up independent Commonwealths within the Kingdom; and according to the Judgment of the Parliament 21 *Ed.* 3. would certainly tend to the utter Overthrow of the Common Law, and the Crown too, in which all ſovereign Power to do Right, both to itſelf and the Subjects, is only lodged by the Common Law of this Realm.

21 E. 3. pl. 17.

The Anſwer Mr. Recorder applied to the Miſchiefs, that they may be otherwiſe puniſhed, is of little avail. Though he did not expreſs in what Manner they might be puniſhed, yet it muſt be intended by Fine, or at the Suit of the Perſons injured by their Oppreſſions. The ſame Anſwer may be applied to the Oppreſſions by Officers, and the Abuſes of all Liberties whatſoever, and likewiſe to excuſe the Diſfranchiſement of any one Member of a Corporation: But that is no ſufficient Remedy to cure the Miſchiefs, whilſt the Cauſe ſtill remains and is in as great Power to oppreſs, as before; which nothing can ſufficiently reſtrain, but the Loſs, at the leaſt, the Fear of the Loſs of that Power. To put the Subjects grieved to contend with Corporations for their Relief by their ſeveral Actions, were for the Common Law to lay a greater Burden upon them, than what they ſuffered from the Corporation; as was ſufficiently experimented in the Caſe of the Duty of Water-bailage of *London*, before the *Quo Warranto* was brought to reſcue them: And if they recover Damages, thoſe Damages can only be levied upon the common Goods and Eſtate of 39 H. 6. 64. 9 H. 6. 36. Fitzh. Ex. 128. the Corporation, 8 *H.* 6. 1. And many Corporations have little or nothing in Common Stock, and few Corporations ſufficient to make Satiesfaction for all their Oppreſſions. And to proſecute for a Fine is no Satisfaction to thoſe who are injured, nor doth remove the Cauſe of the Oppreſſion. And the Law would be deficient, if ſuch inferior Juriſdictions, or Corporations, were not ſubject to the Common Law upon the like Conditions as other Liberties, Franchiſes, and inferior Juriſdictions are.

Mr. Recorder hath affirmed it with great Aſſurance, That never any till this Suit ever ſo much as thought of reſuming Corporations, which are ſubordinate Governments. I ſhall only requeſt of him, and of the other Gentlemen of the City's Counſel, to ſhew me the Opinion of one learned Man of this Kingdom, or any other Nation, diliberately delivered upon the Queſtion, That fedatory and ſubordinate Governments cannot, for any Cauſe whatſoever, be forfeited or reſumed. That *de facto* they have been reſumed in other Nations, is teſtified by many Authors, with their Opinions, that *de Jure* they may ſo be; which I forbear to trouble the Court with. Within this Kingdom of that Nature are Counties Palatine, the Cinque Ports, the Liberties of *Ely*, Lordſhips, Marches, and ſuch-like, and the Corporations of Cities and Towns; which are all held of the Crown of *England.* What the Practice and judicial Opinions have been concerning theſe Liberties, according to the Law of this Land, Mr. Solicitor hath ſhewn in ſeveral Inſtances; which I ſhall not repeat, but ſhall produce ſome others to prove the ſame Matter. I beg Leave to reſcue a very conſiderable Precedent produced by Mr. Solicitor, from the Gloſs Mr. Recorder was pleaſed to put upon it, That it was an Act of Parliament; when 'tis no ſuch Matter, but a Judgment of the King's Bench in Point upon a Forfeiture. It is the Caſe of *Sandwich*, cited *p.* 9. *Ed.* 1. *Rot. majus* 35. *Kanc.* The Record is amongſt the Plea Rolls, in the Treaſury or Tally Office.

It was upon an Information at the King's Suit, preſented by the Sheriff of the County againſt the Mayor of *Sandwich*, and Three others, for aſſaulting the Sheriff's Bailiff upon Execution of the King's Writ within *Stanore*, beating the Officer, and taking the Writ from him, and tearing it, and ſtamping it under his Feet. They plead to the Juriſdiction, that *Stanore* was within the Liberty of *Sandwich*, within the Cinque Ports; and that *De aliqua ſeductione fac' corporis Regis*, *non tenentur reſpondere alibi*, than at the Court at *Shepway.* The Plea was over-rul'd upon this Ground, That none could claim ſuch a Liberty without expreſs Grant; and they ſhew no Charter for it, and were ruled to anſwer over. They inſiſt upon that Exemption, and refuſe to give any farther Anſwer; whereupon Judgment was given, that they be committed to Priſon: And the Judgment goes farther, *Et quia* Johannes Dennis *Major de* Sandwich *convictus eſt de tranſgreſſionibus prædictis*; *&* *factum Majoratus in his quæ tangunt Comitatum eſt factum ipſius Communitatis*, *conſideratum eſt*, *quod Communitas de* Sandwico *amittat Libertatem ſuam.* This is an expreſs Judgment of this Court upon the Forfeiture of the Liberty, for a Crime committed by the Mayor and others, in a Matter relating to the whole Liberty. Before this, the Franchiſe of *Sandwich* was ſeized, as forfeited into the King's Hands for a notorious Riot committed by the Inhabitants, in Obſtruction of Juſtice, 3 *Ed.* 1.

The Caſe upon that Record was thus: Upon an Inquiſition found of Purpreſtures within the King's Warren of *Dover*, by ſtopping a Water-courſe, whereby Paſch. 3 Ed. 1. Kanc' 54. Dorſo Rot. majus. the Warren was overflown, a Writ iſſued from the Court of *Dover*, to diſtrain the Offender by his Goods, to amend and remove the Purpreſture: The Officer diſtrains the Cattle of *Simon Ercheſton*, who was the Offender, and lived at *Sandwich*, within the Cinque Port. Some of the Men of *Sandwich* make Reſcous; and when the Conſtable of *Dover* ſent Meſſengers to complain to the Mayor of *Sandwich* of this Reſcous, and to require Redreſs; after the Complaint made, and no Redreſs had, ſeveral of the Men of *Sandwich* fell upon the Meſſengers, and ſeverely beat them. Then the Conſtable ſent more Officers to ſee Right done, againſt whom the Town was barrocaded and chained, and his Officers kept out by the Townſmen in hoſtile Manner. Then the Conſtable went in Perſon, and after ſome time ſuppreſſed the Tumult, and upon their Submiſſion, the Commonalty prayed the Conſtable would deliver their Submiſſion to the King, which they then delivered to him under their Common Seal; and accordingly was delivered by the Conſtable to the King and Council, and adjourned into Parliament: And the Mayor, Bailiffs, and Commonalty ordered to be there at a certain Day, before the King and his Counſel in Parliament. Upon hearing thereof in the Preſence of the Mayor and Bailiffs for the whole Commonalty, Judgment is thus entered upon that Record; *Conſideratum fuit per Dominum Regem & concilium ſuum in Parliamento*, *quod Majoratus & Libertas de* Sandwich *pro prædictis Trangreſſionibus in manus Regis capiatur*, *& tradatur in cuſtodia Conſtabulario de* Dover, *ad diſponendum de prædicta Villa ſecundum communem Legem & Conſuetudinem Regni*, *non obſtante aliqua Libertate.* It evidently appears, both by the Form and Matter of it, that that Form was judicial, and not legiſlative, and agreeable to the Forms of Judgment in the other Common Law Courts, and in our Law Books. Here is a Judgment only of Seizure upon a Forfeiture, yet it amounted to a real Ouſter; for the Town was actually diveſted of the Liberty, and delivered up to the Government of the Common Law. For *capiatur Majoratus & Libertas de* Sandwich in the Singular Number, in *manus Regis tradatur in cuſtodia Conſtabulario ſuo*, who is the Common Law Officer, within the Cinque Ports, is no more than leaving the Town to the Government of the Common Law; which is fuller explained by the ſubſequent Words of *diſponendum de Villa ſecundum Legem & Conſuetudinem Regni.* And it appears by this Record, that there is a Difference between the Liberty and the *Ville*, though ſometimes *Ville* is uſed for the Liberty of the *Ville*; but here the Mayoralty and the Liberty are ſeized, and the *Ville* delivered over to the Common Law Officer.

The next Precedent I inſiſt upon, is that recited by Mr. Recorder, the Caſe of the Town of *Cambridge*, but lamentably defaced by my Lord *Coke*'s marginal Note, and Mr. Recorder's Averment, that by the Record it appears to have been by common Conſent of Parliament. I rather inſiſt upon this, for that Mr. Recorder hath acknowledged its Force, that it worked upon the Corporate Right, and was upon a Forfeiture; but lays the Force of it in its being an Act of Parliament, when in Truth it is a plain Judgment of a Court of Law, and it appears by the Record it was no Act of Parliament. 5 R. 2. N. 45. to 66. Mr. Recorder cited the Record 8 *R.* 2. *No.* 11. 4. *Inſt.* 228. and it is probable Mr. Recorder looked no further than that Book for it: In the Margin it is ſo cited, but miſcited; yet in the Body of the Book, in putting the Caſe, it is truly cited; for the Record is 5 *R.* 2. 45. to 66. and it is evident by the marginal Note; and my Lord *Coke*'s ſaying it was the common Conſent, miſguided Mr. Recorder, to affirm it to be an Act of Parliament, when the contrary appears by the Record. The Complaint to the King and his Council in Parliament againſt the Town of *Cambridge* was for a great Riot committed, and an Aſſault upon the Univerſity; and the Fact in Subſtance is the ſame as related in the Fourth Inſtitute. It was proſecuted at two Suits, the one againſt the late Mayor and Bailiffs, who were at the Time of the Riot in their Natural Capacity; the other againſt the Mayor, Bailiffs, and Commonalty, in their Corporate Capacity; the Writs returnable *coram nobis & concilio noſtro.* The former Mayor and Bailiffs appear, and plead in their Natural Capacity, that they were neither aſſenting nor aiding to the Riot; neither did or ſaid any thing, that might turn to the Damage of the Univerſity, unleſs only by Coaction, and outrageous Compulſion: And there ſeems to have been no further Proceedings in that Suit. Upon the other Writ, the Mayor, Bailiffs, and Commonalty appear, and pray they may have a Copy of the Articles, which were read to them, and Counſel allowed to them, and Time to anſwer; and ſuch Anſwer was returned, as is mentioned in the 4th *Inſt.* But in the Record it is ſaid, it was anſwered by the Court; and that the Court told them, that at preſent they ſhould not be put to anſwer to the Crime, (which muſt be in order to a Fine) but only touching their Liberties. Then touching their Liberties, they put in a Plea by Cotton's Records. their Counſel, to the Juriſdiction of the Court, which is omitted in my Lord *Coke*; only he ſaith, after many dilatory Shifts and Subterfuges following therein, the Court over-ruled the Plea to the Juriſdiction, and ruled them to anſwer in chief; and if not, Judgment ſhould be entered by *Nihil dicit.* They then pleaded a frivolus Plea, partly Not guilty, partly in Excuſe; and the King's Serjeant replied, and the Plea was held naught. Thereupon they ſubmitted, as to the Franchiſe, to the King's Grace, ſaving that it might be no Concluſion to them, if they ſhould be called in Queſtion for the Crime. Whereupon Judgment of Seizure was only given. The Words of the Record ſay thus: *Noſtre Seigneur le Roy de Aſſent des Prelates & Seigneurs en ceſt Parliament fiſt ſeiſer la dit Franchiſe en ſa maine come forfeit pur la ditz Cauſes.* Throughout the Record it appears by all the Proceedings they were judicial; but the Plea to the Juriſdiction of the Court, and the Judgment by the King and Lords, only are Demonſtrations it was no Act of Parliament, nor adjudged by the legiſlative Power, but by a Court of Law.

It appears upon the ſame Record, that the King granted ſeveral of the Particulars which were ſeized, to the Univerſity, who enjoy them to this Day. *Et la Remnante de la Franchiſs de la dit Ville* the King granted to the Mayor and Bailiffs, to hold of him and his Heirs, at the ancient Rent of 101 Marks.

33 *Ed.* 1. *Plac. parl.* 277. The Liberty of the City of *Wincheſter* ſeized into the King's Hands by Judgment of the King and Lords, for ſuffering a Hoſtage of *Baion*, who was committed to their Charge by the King for ſafe Cuſtody, to eſcape, to the King's great Damage. The Writ of Seizure is directed to the Sheriff of the County, *quod prædictam Civitatem Wintoniæ*, *& Libertatem ejuſdem Civitatis*, *cum omnibus ad eas tangentibus ſine dilatione capiat in manum Regis*, *& eas ſalvas cuſtodiat*, *donec Rex aliud præceperit.* Whereby the Franchiſe being ſeized, the Men of the City are put under the Government of the common Law Officer. Afterwards the City compounded with the King for 500 Marks, and then the King *reddidit eiſdem Majori & Civibus Civitat. & Libertat. prædict. habend. & tenendum in forma qua eas tenuerunt ante captionem earundem in manus Regis*, and Letters Patents of Reſtitution were granted, and a Writ of Reſtitution directed to the Sheriff.

Theſe were Judgments by the King and Lords in Parliament, upon Forfeitures, and were Judgments of Seizure only, according to the ſettled Rule and Practice in the Common Law Courts.

Mich. 18. *Ed.* 3. *Rot.* 161. *B. R.* in the Treaſury or Tally Office. A Judgment of the King's Bench againſt the Town of *Ipſwich*, upon a Forfeiture. The Bailiffs of *Ipſwich* are impleaded by the King, upon a ſpecial Information, reciting that in the *King's Bench*, ſitting there, ſeveral Malefactors were indicted for the Death of one *John Holtby*; and that many of the ſaid Town, *tam de majoribus quam de medioc ibus*, did comfort and encourage the Felons after the Felony committed, and treated and entertained them with Viands and great Joy. And, after the Departure of the Juſtices, kept a mock Court publickly, and ſummoned the Juſtices, and the Officers of the Court, to appear under ſeveral Pains. To which the Bailiffs appeared, and were oppoſed, by the Court, Why they did not attach and ſtay the Malefactors? They anſwered, The Malefactors flew to Sanctuary. Being further oppoſed, that they did not attach thoſe of the Town, that furniſhed the Malefactors with *eſculenta & poculenta*, they pleaded, *quod non auſi fuerunt*, *eo quod tanta fuit multitudo gaudentium*, *& plures eorum fuere e parentela Malefactorum:* Whereupon Judgment was given *contra Balivos & Communitat. quod cuſtodia ejuſdem Villæ ſeiſiatur in manus Regis*, *& quod aliquis ex Parte Domini Regis*, *qui ſit auſus ad pacem Domini Regis manutenendam*, *ſe intromittat in eadem Villa*, *quouſque Dominus Rex aliud inde dixerit.* Which the

Record ſhews, is the Bailiff of the County, the common Law Officer. And the Mayor and Bailiffs in open Court ſurrendered their Staffs of Office. This Judgment is agreeable to thoſe in Parliament, and of Seizure only.

R. Clauſ. 7. *Johan' Memb.* 24. *Civitas & Libertas Norwici* was ſeized into the King's Hands, for hanging Approvers without the Licenſe of the King or his Juſtices; and the Mayor was ſummoned to anſwer for the Damage done to the King. *Rot. Fin' Memb.* 10. (13 *Ed.* 1.) the Liberties of *Norwich* ſeized for a great Riot, and burning the Church: The Caſe is mentioned *Roll. Prerogative, fol.* 204. The Liberties of *Norwich* were again ſeized, 21 *H.* 6. upon a Preſentment of a great Riot taken before *Forteſcue*, and afterwards regranted to them, 27 *H.* 6. *Patt. Roll. Memb.* 19. The Caſe is cited by Mr. *Noy*, in the Caſe of the City of *London*, concerning the Death of Dr. *Lamb*, *Cro. Car.* 252.

The Liberties of *Oxford* were ſeized, 32 *H.* 3. for a great Riot committed by the Townſmen, when the King's Brother was there, and killing of his Brother's Baker. The Writ to the Sheriff runs thus; *Quod capiat in manus Regis villam de Oxon. ut eam ſalvam cuſtodiat ad opus Regis, ita quod Major & homines ejuſdem nullam inde habeant adminiſtrationem*; the King in the ſame Year pardons them, and grants them Reſtitution, and a Writ to the Sheriff to put them into Poſſeſſion, 32 *H.* 3. *Memb.* 13. *Hal. Lib. L. f.* 326.

Again the Liberties of *Oxford* were ſeized 29 *Ed.* 3. and Part of their Liberties granted to the Univerſity, which are enjoyed by them to this Day, and the Reſidue reſtored to the Town; the Seizure was for a Riot committed, *Rot. Clauſ.* 29 *Ed.* 3. *M.* 21.

20 *H.* 3. The Liberties of *Eveſham*, for uſing falſe Meaſures, when the King was there, and afterwards, upon Submiſſion of the Abbots and Monks, the King makes Reſtitution to them, *R. Cl.* 20 *H.* 3. *M.* 8.

18 *Ed.* 1. The Town of *Southampton* was ſeized into the King's Hands, for wounding, even to Death, an Officer in ſerving the King's Writs: They after ſubmitted to a Fine, and took a new Grant, and raiſed their Fee-farm Rent to 20*l.* *per Ann. Roll. Prerog. fol.* 204.

It would be too great a Trouble to the Court, to cite more Precedents of Seizures for Forfeitures. In all theſe Inſtances Reſtitution was never made by the Court, but by the ſpecial Grace of the King, after Submiſſion to him, and upon ſuch Terms as he was pleaſed to accept; and in ſome Caſes was pleaſed to reſtore them to the Whole; in other Caſes, but to the Part of the Liberties. That this Liberty of being a Body Politick may be ſeized into the King's Hands by *Quo Warranto*, Mr. Recorder in Effect hath admitted it, if the Suit be brought againſt particular Members, and the Caſes produced by him prove it. For in the Caſe of *Cuſack*, the *Curia adviſare vult* was upon that very Point of being a Body Politick: And the Caſe of the *Virginia* Company, the very Liberty of being a Body Politick is by the Judgment ſeized into the King's Hands.

I will give ſome Inſtances where it hath been done, in Caſes of *Quo Warranto*, againſt them by the incorporate Name.

Fitz. Avowry 129. In the *Iter* of *Lancaſter*, a *Quo Warranto* againſt the Bailiffs and Commonalty of *Lancaſter:* They appear, and claim by a Charter of King *John*, whereby the King grants to them all ſuch Franchiſes, which the Borough of *Northampton* had; but do not ſet forth upon Record what Franchiſes *Northampton* had; nor do make Title to the Franchiſe by Preſcription: And for that Reaſon Judgment was given, their Franchiſe be ſeized into the King's Hands as forfeited.

B. R. Mich. 20 Jac. 1. Rot. 17. In the Caſe I before cited, a *Quo Warranto* againſt the Bailiffs and Aldermen of *New Radnor*, and Judgment againſt them by Default, that the Liberty ſhould be taken and ſeized into the King's Hands, though afterwards it was reverſed, becauſe *in miſericordia* was entered inſtead of a *Capiatur pro fine*; yet it is a Judgment in Point, that a Corporation might be forfeited and ſeized by Default in Pleading.

The Caſe of *New Malton*, *Trin.* 6. *Jac* 1. *R.* 3. is an expreſs Authority, that this Liberty may be ſeized by Judgment in a *Quo Warranto* againſt the Inhabitants of a Town, by their Corporate Name. It is brought againſt the Bailiffs and Burgeſſes of *New Malton*; and the Form of the Information is the very ſame with this againſt the City of *London*. They plead by their Corporate Name, and intitle themſelves to the Liberty by Preſcription; and Verdict and Judgment againſt them by their Corporate Name of Seizure only, that the Liberty be taken and ſeized iuto the King's Hands; and which is more, the *Capiantur pro fine* againſt them is entered againſt them by the Corporate Name of *Ballivi & Burgenſes*, though the Corporation by the Seizure was diſſolved; and the Reaſon no doubt was, that that general Name was a ſufficient Deſcription of the Perſons who were liable to the Fine for their Uſurpation. And no Doubt can be made, but that the true Liberty may be forfeited and loſt, by inſiſting upon a wrong Title, as well as by Default, or any other Forfeiture whatſoever. This Town lies under the Weight of that Judgment to this Day; and are no Corporation; and being oppoſed by the Intereſt of the Lord *Eure*, who proſecuted that *Quo Warranto*, did never obtain any Reſtitution or Regrant.

Mich. 15 Car. 2. 23 R. A *Quo Warranto* againſt the Bailiffs and Burgeſſes of *Berkhamſtead in Com. Hertford:* They appeared, and Judgment *pro defectu reſponſi* given of Seizure, *Paſch.* 16. *Car.* 2. and they are no Corporation at this Day. In the ancient Eyres, the Juſtices in Eyre, when upon Claims put in, the Liberties were loſt, either upon ſome Defect in Pleading, or for ſome ſmall Abuſer or Miſtake, the Juſtices were intruſted with the King's Mercy, to admit to a Fine for Redemption, and make Reſtitution: But Judgment firſt paſſed for Seizure. And regularly upon the general Summons of *Quo Warranto* in Eyre, or ſpecial Suit of *Quo Warranto*, which are all founded in the ſame Right, no other Judgment can be given, if for the King, but a *Capias in manus*, or of *Ouſter*; if for the Defendants, a Judgment of Allowance, or *Eat ſine die*. The *Capias pro fine* is collateral, and for the Uſurpation, not for the Cauſe of Forfeiture or Seizure. It was one of the Articles of Inquiry in Eyre, how they had uſed their Liberties? If an Abuſe was found, though never ſo ſmall, Judgment of Seizure was given; though afterwards redeemed by Fine upon Submiſſion. *Quo Warranto* upon a Claim of View of Frank-pledge in Eyre. It was demanded of the Defendant, If he had any Pillory or Tumbrel? He anſwered, He had not. Judgment was prayed on the Behalf of the King; for that amounted to a Forfeiture; and if that were not ſufficient, that then it might be inquired on Behalf of the King, how they had uſed the Liberty? The Jury find, that the Defendants and their Anceſtors had View of Frank-pledge, but find that the Defendants had taken Amerciaments of Offenders againſt the Aſſize for Bread and Beer, amounting to two Shillings, in ſuch Caſes where the Offenders ſhould have been puniſhed by the Pillory and Tumbrel. *Ideo conſideratum eſt, quod Viſus capiatur in manus Regis.* And then they pray they may have their Liberty again upon a Fine, which is granted to them, upon Pledges for well uſing of their Liberties. And there is no Difference where the Liberty is loſt upon a defective Claim or Miſpleading, or for a Forfeiture in *Quo Warranto*; the Judgment is the ſame of *Capias in manus*; and it is all one, whether the Cauſe of Forfeiture be found by a Jury, or confeſſed upon the Pleadings, in a *Quo Warranto*.

Raſtal. pl. 1. fol. 540.

The next preliminary Point which was moved, is, Whether the Acts of Common Council be the Acts of the Corporation, and do oblige them?

It ſeems a ſtrange Queſtion, that when to aſſemble, conſult, determine, and to make Orders and By-laws for the Rule and Government incident to every Corporation, without ſpecial Clauſes of Grant, and that herein only conſiſts the Exerciſe of the Politick Reaſon of the whole Body, it ſhould be doubted, Whether what they determine and reſolve upon, being ſo jointly aſſembled, be a Corporation Act, or may affect the Corporation? Upon the Erection of all Corporations, this Power of aſſembling, deliberating, and determining for the Corporation, is either intruſted with a few particular Members, whoſe Continuance in that Truſt (both as to the preſent Members, and the Succeſſion of them) is directed by the ſeveral Charters: Or elſe it is intruſted with the whole Body, and that either expreſly in plain Words, or by Implication of Law, when the Charters are altogether ſilent therein: The Law in ſuch Caſe lodgeth the Power of aſſembling, debating, and determining for the Corporation, in all the Members; and the Whole, jointly aſſembled, (or ſo many of them as upon Notice ſhall appear) conſtitute the Common Council: And ſuch Aſſembly is not ſtyled the Common Council from being retained and giving of Counſel, as Mr. Recorder would have it, in which Senſe he only, and the Common Serjeant, are the Common Council of the City; but they are ſo called from their joint aſſembling and conſulting for themſelves, who conſtitute the Body Politick. In the ſame Senſe, the Parliaments of *England*, by many Authorities, are called *Communia Regni Concilia*. This Power, thus lodged in the Whole, may be the Whole, or the major Part, which always binds the Whole, being lodged or delegated to a certain Number, which may repreſent the Whole. In ſuch Caſe, where the Power is transferred, thoſe Members to whom it is transferred conſtitute the Common Council in the ſame manner, and their Acts are of the ſame Obligation, as where all meet, unleſs the Delegation were not general, but certain Caſes reſerved for the Determination of the Whole, as hath been done in ſeveral Corporations; but in all Caſes not excepted, their Acts are the Acts of the whole Body. Where the Common Council is conſtituted of the whole Body, or of all the Members who will meet upon Notice, there is no room left for Doubt, but their Acts, and the Acts of the whole Corporation are the ſame. Mr. Recorder ſeems the only Perſon that ever doubted it, and is not to be beaten from his Holds:

Firſt, That the Common Council conſiſt only of particular Members, and their Acts bind only the Members; *& Actio non egreditur Perſonam.*

Secondly, That no Corporation Act can be without the Common Seal.

Thirdly, That the Acts of the Common Council of *London* are under the Protection of the Statute or Charter in Parliament of 1 *Ed.* 3. their Acts are perſonal, and they but Miniſters of the City; and that the Charter provides, that the Liberty of the City ſhall not be taken into the King's Hands for any perſonal Treſpaſs of any Miniſter of the City.

For the firſt, I have already demonſtrated, that there are no Acts of the Corporation, but what are performed by the particular Members; I will not repeat. I have produced many Inſtances, that in point of Crime the Acts of particular Members do affect the Corporation, touching their Liberty. That they do ſo in point of Wrong between Subject and Subject, the Caſes are infinite; I will only mention the Authorities: 9 *H.* 6. 36. *b.* 8 *H.* 6. 1. *a.* & 14. *b.* 45 *Ed.* 3. 2. *b.* 15 *Ed.* 4. 1. *b.* 5 *H.* 7. 26. *a.* 4 *H.* 7. 13. *a.* 32 *H.* 6. 9. *a.* 7. I ſhall add one Caſe more, that abſolutely deſtroys Mr. Recorder's Hypotheſis, upon which he relies, *That a Corporation cannot do or ſuffer any Wrong*; it is 48 *Ed.* 3. 17. *b.* The Mayor and Commonalty of *Lincoln* bring Covenant againſt the Mayor and Commonalty of *Derby*, upon a Deed of Covenants made by the Predeceſſors of thoſe of *Derby* to the Predeceſſors of *Lincoln*, that thoſe of the Town of *Lincoln* ſhould be diſcharged from Toll for their Merchandizes brought to *Derby*. In their Count they aſſign for Breach, that two of the Burgeſſes of *Derby* by Name did exact and take Toll of ſeveral of the Burgeſſes of *Lincoln*. The Defendants firſt take Exception to the Count for Variance from the Writ; that the Writ ſuppoſeth and alledgeth the Breach to have been committed by the Mayor and Commonalty, and the Count aſſigns the Breach by two Burgeſſes: The Exception is over-ruled, and the Court held purſuaht to the Writ for the the Breach of Covenant, which binds the Whole, and muſt be made by Members. Then it was inſiſted upon, in point of Law, That the Act of the two Burgeſſes did not oblige the Corporation. It was admitted, that the Act of all the Members met together would oblige the Corporation: But it was reſolved, that it was a Breach, and obliged the Corporation; and that the taking of Toll by their Officers was a taking of Toll by the Corporation; and the Reaſon given is, that all the Members of the Corporation cannot, by any common Intendment, be underſtood to meet together to take Toll. Here is an expreſs Judgment, that *Crimen egreditur Perſonam*, and ſhall render the Corporation liable for Wrongs done to a particular Member of another Corporation. Much ſtronger is the Caſe of the King upon Breaches of the Condition in Law, as I have ſhewn, where the Acts of the particular Members, committed againſt the Kings Officers, are adjudged done againſt the King, and render the Corporation liable; but when all meet together, and do not act, I may ſay it was never yet doubted but the Corporation was obliged.

Trin. 17. Car. 1. Cro. 540.

Trin. 23. Car. 1. Rol. Reſtit. Pl. 8. fol. 456.

The Caſe of *Warren*, which was cited, of the Place of Common Council-Man of *Coventry*, is nothing to this Purpoſe; nor the Reaſon given, That ſuch Place was collateral to a Corporation; which was no more, than that the Court could not *ex Officio* take Notice of it as a fixed Place or Office, but muſt take it upon the Return; it being variouſly uſed in ſeveral Corporations, as I have ſhewed; and the Cuſtom being returned to chooſe and remove them *ad libitum*, the Court could not judge otherwiſe, as they may of the Freedom of any Member, which is the ſame in all Corporations. And therefore in the Caſe of *Eſtwick* and *Bret*, Common Council-men of *London*, where the Court could take notice, they were choſen for a Time certain, the Court adjudged they could not be removed without Cauſe, and granted Reſtitution. That the Members of a Corporation can be puniſhed only in one Capacity, and not in both Capacities, and impeaching them for Treaſons and Felonies in their Corporate Capacities, will be licenſing them, or at leaſt giving them an Exemption and Encouragement to commit theſe Crimes *impune* in their Natural Capacities, is a Strain ſo much above *Ela*, that I cannot underſtand it. Sir *James Bagg*'s Caſe teacheth other Doctrine, That the puniſhing of any of the Members criminally for infamous Offences, by Fine, Impriſonment, or Pillory, at the King's Suit, doth not exempt the Criminal from Disfranchiſement.

The many Precedents I have produced do prove, that the Rioters or Members, who committed the Cauſe of Forfeiture, were not diſcharged by proceeding againſt their Liberties. In the Caſe of *Norwich*, for hanging the Approvers, the Liberty was ſeized for Miſgovernment, and Proceſs iſſued againſt the Mayor to anſwer it at *Weſtminſter*, *criminaliter*. And in the Caſe of *Cambridge*, the Court told them, they did not then put it upon them to anſwer criminally, but as to their Liberties. And they themſelves knew, that by Seizure of their Liberties they were not diſcharged of their Crime: And therefore in the Plea of Submiſſion they inſert a Saving, that it might be no Concluſion to them, in caſe they were impeached criminally. Mr. Recorder doth admit, that if all the Members commit Treaſon, and be executed, the Politick Perſon is deſtroyed as well as the Natural Perſons, and that juſtly too for ſo great an Offence; and therefore the Extent of Forfeitures doth not encourage, but deter Offenders from Commiſſion of the Crimes. And the Citizens, when they know that their Riots, Oppreſſions, and Libelling of the Government, do not only ſubject their Perſons to Puniſhment, who are the immediate Actors, but alſo ſubject the Conſtitution and Government of their City to be queſtioned, will look upon themſelves under ſtricter Bonds for diſcharging their Duties, than common Subjects are. And therefore the Nobility, who have ſo great a Share in the Government, for Treaſons, do not only forfeit their Lands and Lives, but their Right of Peerage, which is a ſpecial Truſt for Government; and that was forfeited in Caſes where their Lands were not forfeited, but only during their Lives, upon the Condition annexed to that ſpecial Truſt; as before the Statute of 26 *H.* 8. if a Nobleman (to him and the Heirs Males of his Body) having entailed Lands, commit Treaſon, his Lands are not forfeited from his Heir in Tail; but the Dignity is forfeited and extinct, and not ſupported by the Statute of *Donis*, by reaſon of the Condition annexed, *Nevil*'s Caſe, 7 *Co. fo.* 34. The Law is the ſame, where the Dignity is granted in Parliament, or by Act of Parliament, it is no leſs forfeitable in one Caſe than in the other; the Condition the Law annexed is ſtill the ſame. If when the Members of a Corporation, *corporaliter* aſſembled, commit Treaſon againſt their Prince, it muſt certainly be acknowledged to be againſt their Duty, in whatever Capacity they be conſidered; eſpecially ſince the Statute of King *James*, which makes the Oath of Allegiance to be Part of every Freeman's Oath; and the Corporate Right is held of the King. If the Law allowed no other Way of taking Advantage of Forfeiture of the corporate Right, but by executing of all the Members, the Law itſelf might be accuſed of as great Tyranny as ever was practiſed by the greateſt of Tyrants. And to this, and nothing elſe, the Principle laid down by Mr. Recorder, that Treaſons, Murders, and Felonies of the Members do not affect the Corporation in Law, doth directly tend, *viz.* to introduce Cruelty.

The Objection that no Acts are Corporate Acts, or can affect the Corporation, but what are under the Common Seal, nothing certainly can be more vain than ſuch an Aſſertion. Then no Mayor, Sheriffs, or other Officers, ever acted legally in their Choice by the Corporation, becauſe not under the Common Seal: Then no By-laws are valid as Corporate Acts, becauſe not under the Common Seal: The ſame may be ſaid by moſt of the Corporate Acts in Cities and Towns.

In the Caſe of *Cambridge* before the King and Lords, 5 *R.* 2. *Birdfield* and other Burgeſſes appeared on the Behalf of the Commonalty. The Court demanded of them, If they had Authority under the Common Seal of the Town? They anſwer, the Town had no Common Seal, but that they were choſen at a common Aſſembly of the Town ſummoned for that Purpoſe, which is the Common Council, to appear for the Commonalty, to anſwer and receive *ce queux la ley volt*, and the Authority was adjudged ſufficient. The Common Council, ſay they, are but Miniſters of the City, and the Liberty of the City hath a ſpecial Protection againſt the perſonal Acts of their Miniſters by their Charter in *Parl.* 1 *E.* 3. I have a Copy of that Charter by me from the Records in the Tower. The King's Grant indeed is, *de aſſenſu Prælatorum, Comitum, Baronum, & totius Communitatis Regni in inſtanti Parliamento.* The Conſiderations of the Charter are *pro melioratione Civitatis*, and for the laudable Services of the Mayor, Aldermen, and Commonalty, performed to the King and his Anceſtors; but the Grant is only *Civ. Civitatis prædict. habendum ſibi & ſucceſſorib. ſuis.* The Words of the Grant are: *Quod pro aliqua perſonali tranſgreſſione vel judicio perſonali alicujus miniſtri ejuſdem Civitatis non capiatur libertas illius in manum noſtram vel heredum noſtrorum, nec cuſtos in eadem Civitate ea occaſione deputetur; ſed hujuſmodi Miniſter, prout qualitas tranſgreſſionis requirit, puniatur.* Theſe are all the Words in that Charter, which refer to this Matter; and the ſame were granted to them in ſome former Charters out of Parliament. This appears by this Charter in Parliament, that *Libertas Civitatis*, which is the Franchiſe or Corporation, had been ſeized, and might be ſeized, for ſome perſonal Miſcarriages of the Miniſters; for it is merely the King's Grant that exempts them from it for the time to come. I do agree, that every perſonal Miſcarriage of their Miniſters was never any Cauſe of Forfeiture; but it muſt be Miſcarriages of Omiſſion or Commiſſion, which amounted to a Miſgovernment within the Corporation. As 30 *H.* 2. *Rot. Cl. memb.* 5. The City of *London* was taken into the King's Hands, for not levying a Hue and Cry upon the Death of Perſons who were ſlain, *Hale Lib.* L. *fo.* 269. *H.* 3. *memb.* 2. Their Liberty ſeized for giving of falſe Judgment in the Huſtings, *Lib.* L. 309. Theſe are ſufficient to ſhew what are the *perſonalis Tranſgreſſio*, and *perſonale Judicium* intended to the Charter; though many the like Inſtances may be produced. Who are the Miniſters intended, partly appears by the Charter; but fuller by other Authorities, *viz.* Mayor, and Aldermen, and Sheriffs, who are in that Charter expreſly mentioned. But this Charter did not prove of any great or long Advantage to the City, in differing them as to this Privilege from other Corporations; for they were met with, either by exceſſive Fines ſet upon their Officers for perſonal Defaults and falſe Judgments; or that it excuſed the City only upon the firſt Offence; and if again they committed the like Offence, it was no longer perſonal, but become their Offence, becauſe they did not diſplace their Officer to provide againſt his reiterated Crimes. And therefore, as Mr. Solicitor hath ſhewn, the Liberty of the City of *London* was after this ſeized into the King's Hands for Miſgovernment; beſides the Puniſhment of their Miniſters became difficult, becauſe the Offences being committed in *London*, the Inquiry of them muſt be by Men of the ſame, who favoured theſe Officers. And thereupon, to ſettle this Matter, an Act of Parliament was made by the ſame King, which is in Print. The principal Grounds of the Act, as the Act recites, 28 *Ed.* 3. *c.* 10. were that the notorious Errors, Defaults, and Miſpriſions for Default of good Governance of the Mayor, Sheriffs, and Aldermen of *London*, could not be enquired of, nor found by Men of the ſame City. The Act ſettles the Rule, that for the firſt Default of the Mayor, Sheriffs, and Aldermen, they ſhall forfeit 1000 Marks; for the ſecond Offence 2000 Marks; and for the third Default, the Franchiſe and Liberties of the City ſhall be taken into the King's Hands, and this for the Defaults of their Miniſters; which is a plain Judgment in Parliament, that the Franchiſe of *London* may be forfeited; and explains the Charter of the *1ſt Ed.* 3. And to make the Remedy effectual, theſe Defaults are omitted to be enquired after by the Juries of Foreign Counties; and ſo ſhut the Door againſt all Pretences for the Charter, 1 *E.* 3. and former Charters. It is enacted, that the Ordinance ſhall be held firm and ſtable, notwithſtanding any Franchiſes, Privileges, or Cuſtoms. By this Law the Fines of their Miniſters for their firſt and ſecond Offences, in Breach of good Government, are aſcertained, which by the former Charters were at Diſcretion; but for the third Offence of their Miniſters, their Franchiſe might be ſeized as before 1 *E.* 3. and their other Charters might, for the Offence of Miſgovernment, and from thence till this Statute for the ſecond Offence. But neither the Charter 1 *E.* 3. or this Law, did extend to any outrageous Acts of their Members, as Breach of their Duty and good Government, but only to the perſonal Acts of the Mayor, Sheriffs, and Aldermen, in their ſeveral Truſts committed to their Managery. Under this Law the City of *London* ſtood till 1 *H.* 4. from which King the City expected greater Favours than ordinary, as having merited them by being the chief Inſtruments of his Promotion to the Crown; but the manner wherein they were inſtrumental, I forbear to mention. Yet from that King they could obtain no more, as to the Forfeitures for the perſonal Offences of their Miniſters and Officers, than to be put into equal Condition with other Cities and Boroughs. The Statute, after Recital of 28 *Edw.* 3. that our Lord the King conſidered the good and lawful Behaviour of the Mayor, Sheriffs, and Aldermen, and of the Commonalty of *London* towards him, and therefore willing to eaſe and mitigate the Penalty aforeſaid, by Aſſent of Lords and Commons hath ordained and eſtabliſhed, that the Penalty aforeſaid, as well of the 1000 and 2000 Marks, and the Seizure of the Franchiſe, ſhall not be limited in a certainty; but the Penalty in the Caſe ſhall be by the Advice and Diſcretion of the Juſtices, as other Cities and Boroughs be within this Realm; and that the Remnant of the Statutes ſtand in their Force: So that from 1 *H.* 4. the City of *London* never could pretend to any other Exemption from Forfeiture of their Franchiſe than other Cities and Boroughs may.

Here I crave leave to join ſome other Records to thoſe produced by Mr. Solicitor, particularly relating to the City of *London*.

2 *Pat. Roll. pars* 2. *memb.* 9. The King appoints *John* Lord *Breaton* *Cuſtos* of the City, with Commiſſion to amerce and puniſh the Aldermen and others of the City, according to their Demerits.

8 *Ed.* 2. *Memb.* 3. *dorſ.* A Writ iſſues for the orderly chooſing of the Mayor and Sheriffs, which began then to be tumultuous, and, as the Record ſaith, *Quod quidem populares & plebes, conſpiratione inter eas habita, diſſidia innumeraque facinora in dicta civitate nocte dieque perpetrantes, conventiculaque clandeſtina in locis privatis facientes, non vocati & ſummoniti, hujuſmodi Electionibus ſe immiſcent communicationibus & clamoribus.* The Writ recites the Elections to have been *per Aldermannos & alios cives diſcretiores & potentiores*; and commands that they be ſo done, *prout in eadem civitate antiquit' fieri conſuevit*: Otherwiſe, that the King would not admit them, when preſented to him, or his Exchequer.

14 *Ed.* 2. *pars* 2. *memb.* 22. The King grants the Office of Mayor, ſeized into his Hands at the *Iter* in the *Tower*, to *Robert Kendall*, *durante beneplacito*.

15 *Ed.* 2. *pars* 1. *memb.* 2. The King firſt replevins to the Aldermen, Sheriffs, and Citizens the Office of Mayor, who preſent to the King *Hamond de Chigwel* for the Office, and the King admits him; and then the King grants to the Aldermen, Sheriffs, and Citizens, the Mayoralty to hold at the King's Pleaſure.

26 *Ed.* 2. *memb.* 5. The King abſolutely reſtores to them the Mayoralty, to chooſe as before the Seizure into his Hands.

16 *R.* 2. *pars* 1. *memb.* 28. *dorſ.* A Commiſſion iſſueth to the Duke of *Glouceſter*, and ſeveral Lords and Judges, to inquire of the Defaults of the Mayor, Aldermen, and Sheriffs, upon the Statute of 28 *Ed.* 3.

16 *R.* 2. *memb.* 2. *dorſo.* The Commiſſioners ſat at *Eaton*, *in Com. Bucks*, and the Mayor, Sheriffs, and Aldermen, were convicted of ſeveral Miſcarriages, and the Liberty of the City (by the Judgment of the Court) ſeized into the King's Hands; and the King (by the Advice of his Council at *Windſor*) conſtituted *Baldwyn Badington* Mayor in the Room of *William Venner*, and two other Sheriffs, and 24 Aldermen, to hold during the King's Pleaſure; and they all took their Oaths before the King and his Privy Council: And in that Record the Prior of *Chriſt-Church* was ſworn an Alderman.

16 *R.* 2. *pars* 2. *memb.* 31. In the ſame Year the King, at the Interceſſion of the Queen, grants to the Aldermen, Sheriffs, and Citizens, that they might uſe their Franchiſes as they did before the Seizure; but with this Clauſe of Reſtriction, *Quouſque aliter ordinaverimus.* Upon which the City choſe *John Hend* Mayor, and *John Shadworth* and *Henry Venner* Sheriffs, who were removed the ſame Year by the King, and *Henry Dalingrugs* appointed Mayor, to hold during the King's Pleaſure.

16 *R.* 2. *pars* 1. *memb.* 36. The Record aſſigns the Cauſe, *Pro minus diſcreta & inſufficienti gubernatione & regimine civitatis noſtræ.*

20 *R.* 2. The King makes full Reſtitution to them of their Liberties; in Print, and in the Charter pleaded.

22 *H.* 6. *memb.* 25. *dorſo.* Elections of Mayor and Sheriff beginning again to be tumultuous, a Writ in the nature of that in *Edward* the Second's Time iſſued, commanding the Choice to be *per Aldermannos, necnon diſcretiores dictæ civitatis, adhuc ſpecialiter ſummonitos*, according to the ancient Cuſtom: And after, in *Edward* the Fourth's Time, the Choice was ſettled upon the Livery-men by Act of Common-council.

So then there can remain no Queſtion, but that the Mayor, Sheriffs, Aldermen, and all the Commons in Council aſſembled, may commit Acts for which their Franchiſe may be ſeized; And though there may be no real Difference where all the Commons aſſemble, and where only a certain Number elected by the reſt; yet I ſhall not farther diſcuſs that Point at this Time, becauſe that Queſtion doth not ariſe upon this Record. For the Offences wherewith they are charged are both laid, *in* the Replication, to be committed by the Mayor, Citizens, and Commonalty of *London*, by which muſt be intended the whole Body.

The whole Body plead to it; but in the Rejoinder they do not traverſe; and deny they did the Facts: So that as to the Actors, it muſt be intended they are the ſame Perſons, who are ſued and defend upon Record, which are all the Members of the Corporation.

There are two Branches of the firſt Offence laid in the Replication:

1. That the Mayor, Citizens, and Commonalty in Common Council aſſembled, did make and publiſh a Law for levying of Money.

2. That the Mayor, Citizens, and Commonalty, by Colour of that illegal By-law, did exact and levy upon the King's Subjects divers great Sums of Money.

In the Rejoinder they take it by Proteſtation, that no Act or Fact of the Mayor, Aldermen, and Common Council, is an Act or Fact of the Body Corporate, or Politick; which is *Proteſtatio Juris, non Facti*, and is that Error I have endeavoured to refute, that the Acts of all the Members of the Corporation aſſembled in Common Council, are not the Acts of the Corporation. But yet by this Proteſtation of Matter of Law they would inſinuate a Not Guilty as to making of the Law, and ſeem afraid to own it, and do not barefacedly own it. But after they have intitled themſelves to the Markets, in ſuch a manner as I afterwards conſider, then they proceed to number the People, which ſurely was not done upon any legal Ground to move your Judgments. Then ſay they, that Time out of Mind there hath been a Common Council not exceeding 250 Perſons, elected out of the Freemen; but do not ſay of what Number it doth conſiſt, nor by whom elected, whether by Citizens or Foreigners, by the Mayor, Aldermen, or by whom choſen, ſo as the Court may judge of the Matter of law ſo ſtrongly proteſted, whether they were the Repreſentatives of the whole Body, or no. Then they ſay, Sir *William Hooker* Mayor, and the Aldermen of the City, *ac communarii, ſive cives de Communi Concilio ejuſdem Civitatis*; which may as well be intended of Mr. Recorder and the Common Serjeant, who are *de Communi Concilio civitatis*, as of any other; for the Perſons are not named, nor is it ſaid they were elected, nor by whom, nor any Words of Reference to the Cuſtom alledged; but generally, that they met in *Communi Concilio ſecundum conſuetudinem civitatis*, not referring to the former Cuſtom alledged. But being met, they made the By-law for the ſeveral Sums of Money, to be received for the Uſe of the Mayor, Citizens, and Commonalty. Which Rates, and no other, the Mayor, Citizens, and Commonalty, *exegerunt & perceperunt*, according to the By-law. *Qui quidem Actus ſive Ordinatio eſt eadem Lex* ſuppoſed, by the Replication, to be made by them the Mayor, Citizens, and Commonalty. And traverſe *abſque hoc*, that any Law was made for Monies of Perſons coming to the Markets *aliter vel alio modo* than they had before ſet forth. I know thoſe learned Gentlemen who ſigned this Plea, and the other to the Charge of the Petition, if they could have found ſufficient Matter of Juſtification to either, they would not have ſuffered them to appear upon Record in ſuch uncouth Dreſſes; and therefore Deficiency of Matter may excuſe the Inſufficiency of Pleading; for there is Skill ſhewed in the Contrivance to have drawn on a Demurrer; for nothing was dreaded more than an open Examination of the Facts upon a Publick Trial, which would have fallen very little ſhort in both Caſes, as to the Aggravation laid in the Replication.

Upon this Pleading the Mayor, Citizens, and Commonalty have confeſſed, that the By-law was made for them, and the Monies to be levied for their Uſe. They have alſo confeſſed, that by Force of that By-law they exacted and received the Moneys; and their Juſtification will be conſidered by-and-by. But as to the making the Law, they neither confeſs it made by themſelves, nor by any deriving Authority under them; neither do they traverſe, or deny it. For the Averment, that it is the ſame Law, and the Traverſe, that any Law was made *aliter vel alio modo*, is no legal Denial, that the whole Corporation (conſiſting of Mayor, Citizens, and Commonalty) did not make that Law upon which an Iſſue could be taken. Beſides, if Mr. Recorder would have the Court intend, that the Common Council, ſet forth in the Rejoinder, is a diſtinct Body of Men from the Politick Body of the whole City, the whole Plea amounts but to the General Iſſue. What the Conſequence thereof will be, I will conſider upon the Point of the Crimes ſet forth; but at preſent the Court cannot otherwiſe intend, but that they that made this Law and this Petition, were the ſame Mayor, Citizens, and Commonalty, who are expreſly charged therewith, and in their Pleas they do not traverſe or deny it. It is juſt ſuch another Plea, as where an Information is brought againſt ſeveral Perſons for killing and taking away of the King's Deer; the Defendants ſhould plead, that certain Perſons (not naming them, nor from whence they come, nor by whom ſent) pretended a Cuſtom to kill the King's Deer, and according to that Cuſtom they killed the King's Deer, for the Defendants Uſe, and the Defendants carried away the Deer. Who (I pray) ſhall the Court intend killed the Deer, but the Defendants, or ſome by their Authority?

I now come to the main Point of the Caſe:

Whether by any thing diſcloſed upon thoſe Pleadings, there appears a ſufficient Title to the King, for the Court to give Judgment of Seizure of the Franchiſe of the City of London? The Title I inſiſt upon for the King, is for a Forfeiture by Acts done by the Mayor, Citizens, and Commonalty, in Breach of their Duty, and the Publick Truſt repoſed in them upon their firſt Erection. It is my part to maintain, that the Cauſes aſſigned are ſufficient in themſelves, and ſufficiently diſcloſed to the Court, for the Court to give Judgment upon. I ſhall conſider them,

Firſt, As they ſtand upon the Replication, as Crimes laid to their Charge, which will amount to a Forfeiture of the Franchiſe.

Secondly, How they ſtand upon the Rejoinder and other Pleadings, whether ſufficiently traverſed or denied, confeſſed and avoided, or in the leaſt extenuated?

Firſt, The Crimes laid in the Replication, are two in general:

1. Oppreſſion of the King's Subjects by Colour of Law: And,

2. Stirring up Seditions by Libelling their Prince, and his Government.

Theſe two only are laid in the Replication, but collected out of many ſufficient Cauſes for Seizure of any Franchiſe. The notorious Riots committed in the Face of Juſtice, to the Comforting and Abetting of Criminals, and Terror of the Judges; and thoſe not only not ſuppreſſed or puniſhed by the Magiſtrates, but countenanced and encouraged by them. The Tumults of many Thouſands, expoſing and burning in Effigy ſeveral of the King's Proteſtant Subjects, not ſuppreſſed or puniſhed by the Magiſtrates; but by ſome encouraged, and by Contributions ſupported. The Encouragement of Libels and Libellers of the King and Government, by and within the City. Theſe and many more I could enumerate, are common Offences to the City of *London*, with other Cities, and populous Corporations; but theſe are ſuch as have been in the Caſes produced adjudged Cauſes of Forfeiture of the Franchiſes for Miſgovernment.

And in theſe *London* hath but imitated itſelf in former Times, and other Cities and Boroughs.

But in the Caſes inſiſted upon, *London* hath out-done itſelf, and all other Cities and Boroughs too, by aſſuming a Power to make Laws for levying of Money upon Foreigners for their own Uſe; and to deliberate, adjudge and condemn their Prince's publick Actions, and publickly libelling of them to his Subjects. Never did *London* before now, or any other City or Borough, (in Times of Peace, and not under an actual Rebellion) commit the like Breaches upon the Government, to aſſume a Power ſuperior to any the King hath in like Caſes, to lay Burdens upon his People, and to levy Money, and to invade the King's Prerogative by deliberating and determining of his publick Actions to the Conſequences thereof, and publickly libelling them to the reſt of his Subjects. And in Execution of ſuch unjuſt Power, that the Mayor, Citizens, and Commonalty, did make and publiſh a Law for levying of Money upon the King's Subjects, as well Foreigners, as others, coming to the publick Markets with Proviſions. And chargeth ſeveral Particulars, and divers other Sums impoſed upon all Comers to the Markets, whether they ſell or no; and that if any Perſon refuſed to pay, he ſhould be put out of the Market.

Again, That the Mayor, Citizens, and Commonalty, by Pretext of this Law, made by themſelves, and for their own private Lucre) did exact and levy yearly, of the King's Subjects, Sums of Money amounting to Five thouſand Pounds *per Annum*, and converted and diſpoſed the ſame to their own Uſe, in Subverſion of the good Government of the City; in Oppreſſion and Depauperating the King's Subjects coming to the Markets; in Raiſing the Prices of Proviſions in Markets, to the Damage of the King's Subjects; to the manifeſt Diſheriſon of the King and his Crown, contrary to the Truſt repoſed in them as a Body Politick.

In the firſt Branch of their levying Money, there is this Crime laid to their Charge: An Abuſion of the Liberty of a Body Politick in it's higheſt Point of Truſt, *viz.* of making Laws for the better Government of its Members, and other the King's Subjects repairing to the City. This is no diſtinct Liberty from the Body Politick, but incident to it, as hath been ſhewn; and therefore cannot for any Abuſe be ſingly loſt, or ſevered from their Body Politick, no more than the Body Politick can ſubſiſt, or attain the Ends of good Government, without ſuch a Power, which the Law raiſeth for a better Diſcharge of that Truſt. But the Law entruſteth no Corporation with a Power to levy Money for their private Profit, be the Colour what it will; nor can ſuch Power be derived from the Crown to any Corporation; neither can any Authority be produced, that gives the leaſt Countenance to ſuch an Authority: The Caſe of *Blackwell-Hall* is expreſs againſt it; that was ruled good, becauſe it was *pro bono publico*, and not *pro privato lucro*; it was but a ſmall Reward for the Officer who attended that Buſineſs; the City got nothing thereby. Corporations, as well as other Communities not incorporate, are by Law entruſted with Power to raiſe

Money for Uſes public to the Community; but ſuch Power is confined to the Precincts of the Community; they cannot lay their Charge upon Foreigners; as for Reparation of Churches, Highways, Bridges, and ſuch-like publick Charges. Theſe Crimes, at Common Law, came the neareſt Treaſon of any. Sir *Thomas Halley*, 20 *R.* 2. for preferring a ſcandalous Bill, was adjudged to die as a Traitor; his Life ſpared at the Inſtance of the Biſhops; and after 1 *H.* 4. *N.* 9. upon his Petition, the Judgment was reverſed. To lay Impoſitions upon the King's Subjects was not only an Incroachment on Royal Power, but of the Power of Parliaments. And what Incroachments of Royal Power were Treaſon, what not, was in the Breaſt of the Judges, as appears by the Petition in Parliament, 21 *Ed.* 3. *N.* 15. and after ſettled by the Statute, 25 *Ed.* 3. Certainly that they have an immediate Tendency to a Rebellion, is evident. To alienate the Subjects Affection from their Prince, is a great Step that Way; and for ſo great a Body of Men (both for Riches and Reputation) to adjudge and publiſh, that the King, by his Prorogation, hath interrupted the publick Juſtice of the Kingdom, and the neceſſary Proviſions for his own Safety, and the Preſervation of his Proteſtant Subjects, is in Effect to determine and publiſh the King unfit for the Government, and by neceſſary Conſequence would alien the Affections of ſuch as ſhould believe them. Add to this the Power they aſſume, and juſtify, to levy Money to their own Uſe, upon Foreigners as well as Citizens, and that to any Sum; which Mr. Recorder preſſed as the Force of his Argument, that little or more made no Difference. When thoſe they have perſuaded to draw their Affections, ſhall be aſſured of ſuch a Legiſlative Power to aſſiſt them with Supplies; what Conſequences may be expected, every Man may judge. Eſpecially if one thing more had been effected, as was contrived and endeavoured to be eſtabliſhed; that *London* ſhould become the *Aſylum* of all Malecontents, as *Rome* was heretofore, who might there vent their Gall againſt the Government *impune*, and without Fear of Conviction.

I ſhall conſider the Offences particularly, as they ſtand upon the Replication, as to the Levying of Money.

1. They are charged, that they in Common Council aſſembled, reſpecting only their private Lucre, and in Breach of the Truſt repoſed in them for good Government, did aſſume upon them an illegal and unjuſt Power and Authority to levy Money upon the King's Subjects to their own Uſe, without any lawful Authority. And the City of *London* have by ſeveral Charters ſuch expreſs Power given them, but it is confined to their own Members; neither the King nor the Law ever gave them any Power over Foreigners, to charge them for the private Profit of this City. Now to aſſume ſuch a Power is a plain Uſurpation by a Body Politick upon the Crown and the Law, and is a manifeſt Breach of that Truſt for good Government, by an open and avowed Oppreſſion of the King's Subjects by Colour of Law, which is the worſt of Oppreſſions; and therefore the Law not only gives a new Name, but layeth heavier Penalties upon Oppreſſions committed by Perſons in public Truſt. It is called Extortion, and Oppreſſion, where committed by any Perſon in publick Offices or Truſts. It is not ſufficient, that the injured Perſons may have their Actions, or that they may be fined at the King's Suit; but the Law gives a Forfeiture of the Places of Truſt, and all may be exacted from them, if the King pleaſe. The Perſons injured may recover their Damages: They may be fined at the King's Suit, and their Offices ſeized; the Law adjudging all theſe Penalties but equal to the Crime. The Markets, as they ſtand upon the Replication, muſt be intended Free Markets, as the Streets of *London*, are for all the King's Subjects to have recourſe to with their Proviſions for Supply of the Inhabitants, without Payment of any Toll. The Sums of Money, for buying whereof the Law is made, as ſet out in the Replication, cannot be for any Toll of Markets, nor for Piccage or Stallage, which may be annexed to Markets; but Impoſition upon the Perſons or Goods coming and brought thither, whether they ſell or not, and whether they have any Stalls or not. And the Proceſs is admirable, that if the Perſon refuſe to pay, he ſhall be turned out of the the Market; as if the Law were, that every Man that walks in the Streets ſhould pay 6*d.* and if he refuſe, he ſhould be turned out of the City. I muſt confeſs, the Proceſs is as good as the Law. Thus this Crime ſtands upon the Replication. How have the Mayor, Citizens, and Commonalty varied it in their Rejoinder? Not one Jot; for as to this Point of Charge, that they uſurped ſuch a Power, and did execute it by making a Law for levying of Money in Oppreſſion of the King's Subjects, they give no Anſwer at all, either by traverſing or denying, confeſſing and avoiding. If they had traverſed their making of the Law, the Special Plea had amounted to the General Iſſue; but as it is, there is no Anſwer at all given to it. And therefore, if the making of ſuch Law, in the manner ſet forth in the Replication, be an Abuſion of the Franchiſe, Judgment of Seizure muſt be given for that Abuſe.

The Reaſons given by Mr. Recorder, that the making of this Law will not forfeit the Franchiſe, were theſe:

(1.) That if the King had made ſuch a By-law in the Charter of Incorporation, that would not have forfeited the Corporation; no more can it, if it be made by the Corporation afterwards.

I do not underſtand the myſtick Inference of this Argument, unleſs it be to continue the Allegory of reſembling Corporations to Kings, that they can do no Wrong, and conſequently can forfeit nothing by their Acts, though againſt Law. Where the King anneхeth any Power to any Offices or Corporations, which the Law allows them not to exerciſe, the Law doth not adjudge the whole Grant void, but only thoſe Powers: But if Officers or Corporations ſhall aſſume upon themſelves to exerciſe Powers which the King could not grant, againſt the End of their Inſtitution, by Extortion and Oppreſſion of the King's Subjects, it is not ſufficient, that the Acts are void, becauſe illegal; but the Offenders ſhall be puniſhed in ſuch manner as the Law provides.

(2.) In all the Suits where By-laws have been adjudged unreaſonable and void, it was never held or ſaid, that ſuch By-laws forfeited the Corporation; and if it ſhould, every little Miſtake in the By-law ſhould forfeit the Corporation, which would render the State of Corporations very unſteady and uncertain.

1.) I anſwer, firſt, That in thoſe Suits between Party and Party, there was no occaſion for the Court to declare how far the By-law has intrenched upon the Prerogative, by Breach of the Condition in Law annexed to the Liberty. But I remember, in the Caſe of the Mayor of *Wicomb*, *Mich.* 27 *Car.* 2. upon Complaint in this Court to my Lord Chief Juſtice *Hales*, of his Refuſal to ſign the Poor's Rates, he publickly declared to him, That if he perſiſted in his Obſtinacy, a *Quo Warranto* might be brought to ſeize the Franchiſe.

2.) There is a plain Difference between By-laws for regulating the Actions of the Members, and others within the Corporation, with a Penalty to inforce Obedience, and a Law directly for levying of Money: In the latter Caſe, the levying of the Money is the principal End of the Law; and to levy it *pro privato lucro*, and upon Foreigners, can receive no Palliation from being a Miſtake againſt all the Laws and Authorities that are extant. But in the former Caſes they have a Semblance for common Benefit, and poſſibly might be for the Benefit of all the Members, could the Reſtriction be made by Law; and the Penalty is but collateral, to inforce Obedience, and will ſtand and fall as the Law determines of the Principal. And the Law no-where determines all the Caſes where the Liberty of any Members (as to Trade) may not, or may be reſtrained, whereby there is Room left for Miſtakes; but againſt ſo known and univerſal a Principle, that no Corporation can levy Money for their private Profit, no Excuſe of Miſtake can be admitted.

3.) That which ſhelters all other By-laws from Oppreſſion, is wanting in this; that as to the Recovery of the Penalty, they refer to a Courſe of Law, whereby they ſubmit their By-law to the Judgment of Law for its Validity, that if they have committed any Miſtake, it may be corrected by Law. But here the Remedy is plain Force; if the Perſon do not pay, he ſhall be turned out of the Market with his Goods: What was ſettled by Wrong, ſhall be recovered by Force. Thus Mr. Recorder's arguing makes the Duty a mere voluntary Payment; it is, *Solve, aut abi*, he hath his Election to pay, or be gone. I have not met with a more arbitrary Principle aſſerted or defended in a Court of Law. Should the King lay an Impoſition of 12*d.* on every one that entered *Whitehall*, with Order to the Porter to turn him out on Refuſal of Payment, what a Duſt would this make, that the Subjects Rights to have Acceſs to their Prince were invaded? Why it is no more than *Solve, aut abi.* The Right of all the King's Subjects, to come with the Proviſions to publick Markets, is far greater, and as great as of the Lord Mayor, or of any of the Citizens to come there; and the putting ſuch Terms upon their Right is abſolutely illegal, in the worſt Senſe that Word is at any time uſed. And herein Mr. Recorder was in the right, that more or leſs are not material, becauſe every Sum impoſed in ſuch Caſe is illegal, and what is illegal, cannot be reaſonable; which abſolutely precludes the Averment, that the Sums were reaſonable; which obtains only in ſuch Caſes, where of common Right ſome Sum may be taken.

4.) In the laſt Place, the queſtioning of a Liberty in a *Quo Warranto*, whether upon the Title, or for a Forfeiture, is upon the Right between the King and the Corporation? In caſe of Miſtakes and common Errors committed, thoſe are not to be juſtified upon a Queſtion of Right; and if they be, they are no longer Miſtakes, but wilful Crimes. And therefore, in all Times ſuch Miſtakes, both in making of Laws and Matters of Fact, have been paſſed by and pardoned by the Charter of Confirmation, *etiam ſi abuſi fuerint.* And in the Multitudes of *Quo Warranto*'s that have been brought, moſt ended by Submiſſion before Pleader. But where it ſhall be inſiſted upon in point of Right, though in a ſmaller Point of Oppreſſion, upon ſuch Grounds as may equally intitle them to commit the greateſt Oppreſſions, *Magis & Minus*, do not affect the Caſe in point of the Right or Forfeiture; but the Queſtion is, Whether they have broken their Truſt? And if ſo adjudged, Forfeiture is a neceſſary Conſequence.

(3.) The Third Reaſon Mr. Recorder inſiſted upon is 19 *H.* 7. *cap.* 7. That there had been no need of that Law, if Corporations By-laws would be Cauſe of Seizure.

1.) I anſwer, That Statute extends not to the By-laws of Cities and Boroughs incorporated; but to Guilds and ſpecial Fraternities.

2.) It extends to good By-laws as well as bad, for greater Caution, that they put no new By-laws in Ure till allowed; but the Allowance makes them neither better nor worſe, only ſhelters for the 40*l.* Penalty, as in the Taylors of *Ipſwich*'s Caſe, *c.* 11. *b. f.* 54. So that the By-laws are but of the ſame Force they were before that Statute, *&c.* If they are good Laws, they may be executed without Allowance; and I have before ſhewn, that the Addition of another Penalty doth not diſpenſe with the Penalty upon Breach of the Condition given by the Common Law. The other Crime of Oppreſſion they are charged with, is, that they did exact and levy, to their own Uſe, the ſeveral Sums, and others, amounting to 5000*l.* *per Ann* in Opreſſion of the King's Subjects, and raiſing the Prices in the Markets for their own private Lucre.

Secondly, In their Rejoinder, taking by Proteſtation they are not of that Value, the Mayor, Citizens, and Commonalty acknowledge the exacting and receiving the Monies to their own private Uſe, but ſay not of what Value they are; but be they of what Value they will, attempt a Juſtification. It muſt be admitted, that if the Juſtification be inſufficient, the Court cannot otherwiſe judge of the Crime than as it is laid in the Replication; where it appears to be as great Extortion and Oppreſſion of the King's Subjects, and continued for many Years together, by Colour of an Authority uſurped by them, as ever was practiſed by any Subjects upon their fellow Subjects; which cannot be denied to be an apparent Breach of that Truſt committed to them, for the better Adminiſtration of the Laws and Juſtice to the King's Subjects.

The Parts of their Juſtification are theſe:

(1.) A Cuſtom, that Time out of Mind, there have been publick Markets within the City.

(2.) They make Title to theſe public Markets by Preſcription, but claim not any Toll of common Right belonging to theſe Markets.

So that both upon the Cuſtom alledged, and Preſcription made, the Court cannot otherwiſe intend but they were free Markets, as in truth they were. Then they alledge a Cuſtom, that Time out of Mind, they uſed at their Charge to provide Places where the Markets were held, and

Stalls and Stations, and other Accommodations for the Market-people, and Surveyors, and other Officers, for the better Government of the Market-people; and did cleanſe, and were bound to cleanſe, the Market-places. And for defraying of their Charges for all the time aforeſaid, they had and uſed to have *diverſa rationabilia Tolneta, Ratas, ſive denariorum ſummas*, of all Perſons coming to the Market, for Stalls, Stations, and other Accommodations for the ſelling of their Proviſions. Although they received Monies Time out of Mind, and until the By-laws, they cannot tell what theſe Sums were, nor what to call them, whether Tolls, Rates, or Sums of Money. Tolls they could not be, that is admitted of all Hands, becauſe againſt common Right, and to be paid upon Entry into the Market, whether ſold, or not. They do not intitle themſelves ſo much as to Piccage or Stallage; for they make no Title to the Land where the Markets have been, or are held. And we all know, that before the Act of Parliament provided at the publick Charge fit Places, and ſettled them upon a publick Truſt for Market-people, what Proviſion was made of Places by the City, *viz.* in the publick Streets, where there ever was a Free Market for Proviſions, as would have been made evident, had the City tendered a ſufficient Iſſue. Beſides, the Sums charged in the Replication can neither be of Piccage or Stallage; but laid upon Goods brought within the Market, whether the Vender made uſe of any Stall, or Breaking of the Ground, or no. Neither is it averred in this Plea, or by any Words of Reference can it be inferred, that the Sums in the Replication are the ſame with thoſe they claim; they claim only by Cuſtom *rationabilia Tolneta, Rata, ſive denarior' Summas.*

(3.) Mr. Recorder would juſtify this Plea, that ſuch a general Claim, with an Averment that they are reaſonable, is a ſufficient Juſtification of particular Charges, which are againſt common Right; and inſiſted upon the Claim of the City of *London* of the Water-Bailiff's Office, with the Fees thereto belonging; and the Caſe of *Maidenhead* in *Palmer*'s Reports, of the Market, with the Toll thereto belonging. Theſe Precedents anſwer themſelves, there was no particular Charge for the Toll or Fees, but what is charged particularly is anſwered; beſides, the Toll and Fees are claimed of common Right, as belonging to the Market and Office. In *Maidenhead*'s Caſe, the Judges agreed, that Toll according to common Right might be granted by General Words; but Toll againſt common Right could not, nor be preſcribed for but in Certainty. In that Caſe reported by my Lord *Hales*, Franchiſe *pl.* 11. the Difference is expreſly taken; and the Authorities cited of 9 *H.* 6. 45. 11 *H.* 6. 14. *Fit Avowry* 126. That Demands againſt common Right ought to be preſcribed for in Certainty; and the Authorities produced by Mr. Recorder in the Lord *Cobham*'s Caſe, 1 Len. 218. *Hickman*'s Caſe, 2 *Roll. Abridg.* 125. and *Roll.* 2. *Abridg.* 265. The Caſe of *Dublin* for *Keyage* or *Cranage*, ſo the Caſe of *Hill* and *Hawks*, and the Bell-man of *Litchfield*, prove it. No Man queſtions but Cities and Boroughs, upon good Conſideration, may preſcribe for Sums of Money againſt common Right; and may preſcribe for an apt Remedy for Recovery of ſuch Sums; but all the Authorities prove it muſt be preſcribed for in Certainty, that the Court may judge of the Reaſonableneſs of it. And whoever claims againſt common Right, muſt make out his Demand, both in Certainty, and that it is reaſonable; it is otherwiſe, where according to common Right, as in Fines for Copyhold Eſtates, it is incumbent on the Tenant to ſhew if unreaſonable. Beſides, this Cuſtom is void, becauſe they do not intitle themſelves to any Remedy for theſe uncertain Sums.

(4.) The next part of the Juſtification is, that Time out of Mind, within the City there hath been a Common Council; the Imperfection whereof I have already obſerved.

(5.) They ſet forth a Cuſtom for this Common Council to make Laws for the better Government of the Markets, and appointing convenient Places and Times for the Markets. *Et ex Aſſeſſione & in certitudinem reductione* of reaſonable Tolls, Rates, or Sums of Money to be paid by Perſons coming to the Market, *pro Stallis, Stationibus, & aliis Accommodationibus*; ſo as theſe Laws be profitable to the King and his People, and not contrary to the Laws of the Land. For the firſt Part of the ſpecial Cuſtom, for the better Government of the Markets, and appointing convenient Places and Times, it needed not; for it is incident of common Right to every Lord of a Market, and the Grantee of every Market, without ſpecial Clauſes, hath the ſame Power and Truſt. And yet it is uſhered in with great Solemnity, a Confirmation by *Magna Charta*, a Charter in Parliament, 1 *Ed.* 3. & 7 *R.* 2. to make good a Cuſtom, which is but the Common Law. Unleſs they ſet up this Cuſtom to divert themſelves, who have pleaded themſelves Lords of the Markets, and ſo to fix it in others who are no Lords of the Markets; and thence to infer, that the Cuſtom having intruſted others than the Mayor, Citizens, and Commonalty, with the Government of the Market, they the Lords of the Market ought not to ſuffer for the Miſgovernment of thoſe other Members. The ſecond Part of the Cuſtom is inſenſible. To make Laws and Orders *ex Aſſeſſione & in certitudinem reductione* of reaſonable Tolls, Rates, or Sums of Money, to be paid by all Perſons coming to the Markets, for Stalls, Stations, and all other Accommodations. What is meant by *Aſſeſſione* without an *Anglice*, I cannot imagine: it is no Law Term; in its proper Signification, it ſignifieth Sitting together; whence our Seſſions quarterly, and Seſſions of Parliament have their Name. The general Rates ſet by the Parliament upon the ſeveral Counties are ſometimes called Aſſeſſments, and thoſe entruſted with equally dividing the Rates in the ſeveral Parcels upon the Inhabitants, are called Aſſeſſors. In which of theſe Senſes, or what Senſe the City's Counſel apply this Word, I cannot reſolve; for Mr. Recorder did not reſolve it. It ſeems by the ſubſequent Words to be explained *in certitudinem ponere*, and to have ſome Reſemblance to the Parochial Aſſeſſments, where the Duty before is impoſed by Law, but the Aſcertaining of every Man's Proportion is done by the Aſſeſſors: And this Mr. Recorder inclined to in his Endeavours to ſupport the Cuſtom, generally for reaſonable Rates. And in this Senſe too the City ſeems to underſtand it, by waving of the Aſſeſſment in the Rebutter. In our Surrejoinder we traverſe the Preſcription of taking of the Rates mentioned to be by the By-law aſſeſſed, and reduced into Certainty; which Iſſue they waive, and inſiſt only upon their Preſcription generally alledged. Now, if taken in this Senſe, the Clauſe is wholly inſenſible and incertain, becauſe the Tolls, Rates, or Sums of Money to be paid, are not referred to any former Law that impoſed them; they do not ſo much as refer to the Preſcription, and the Sums claimed thereby; but the Clauſe is independent and abſolute of itſelf. Neither can the Court now intend it to refer to thoſe Sums claimed, becauſe we would have ſo intended it; and therefore took an apt Traverſe; but the City waived it in their Rebutter; and they do lie under this *Dilemma*, that either it muſt be ſo intended, and then being traverſed and waived by them, the Iſſue muſt be taken againſt them; or it cannot be ſo intended, and then the Cuſtom is incertain and inſenſible. And it cannot be intended by the Court for levying of Money by a new Impoſition for the private Advantage of the City; that (as I have ſhewn) would be againſt Law, and is contrary to the Preſcription they have made, and would vitiate their Plea, by claiming the Thing by Preſcription, and by a new Law.

(6.) They ſet forth a By-law, which imports a new Impoſition throughout, of ſeveral Sums to be paid to the Mayor, Citizens, and Commonalty; and they provide a new Remedy, that the Refuſer ſhould be removed out of the Market. They aver, indeed, the Sums are reaſonable; but ſet out no Fact upon which the Court may any ways judge they are ſo; which are incumbent upon him that will claim any thing againſt the common Right. They do not ſo much as aver, that the Mayor, Citizens, and Commonalty laid out one Penny out of their Revenue, for providing the Markets and Stalls, or what other Stations or Accommodations they furniſhed the Market-people with, ſo as to give the leaſt Support to this extraordinary By-law.

And this Averment was induſtriouſly left out, leſt Iſſue might be taken upon it; and ſufficiently proved, that both the Places, Stalls, and Conveniencies, were provided for out of the public Monies granted by Parliament, in Truſt for all the King's Subjects coming to the Market, as we have ſet out in our Surrejoinder. Then it would have evidently appeared, that this By-law was not only in Breach of the Common Law Truſt repoſed in them for good Government; but in Breach of that Truſt repoſed in them by act of Parliament. For all the King's Subjects, and theſe publick Monies received and laid out upon that Truſt, are made the Conſideration to ground the Subjects Oppreſſions upon by this By-law. Though they laid out not one Penny, as appears to the Court, yet they acknowledge to have received all the Money to their own Uſe; and their Juſtification failing, it muſt be intended, they did it in ſuch manner as is ſet out in the Replication, which chargeth the higheſt Oppreſſion that can be poſſibly committed by Subjects upon Subjects, and is deſtructive of common Juſtice and good Government. It is likewiſe as great an Uſurpation upon the Crown, to lay Taxes upon the King's Subjects without his Authority, and openly and avowedly to juſtify it. How much ſuperior this Offence is to thoſe, whereupon Inſtances of Seizure have been given, I leave to the Obſervation of the Court. Their Reply, that the Toll only can be forfeited, or at moſt the Markets, can weigh little. That the Markets cannot be forfeited, Mr. Recorder admits upon the Authority of the Caſe of *Maidenhead*, that Toll is not incident to a Market. This Impoſition is wholly foreign to the Markets, which muſt be intended Free-Markets, wherein all the King's Subjects have Right to ſell and buy, diſcharged of Toll, which ſhall be intended to have its Commencement by Erection, not by Grant to any Perſon, which the King may do in Caſes of Fairs and Markets. Or if they be granted to any Perſon, if without Tolls, ſuch Grants are upon Truſt, for Benefit of the King's Subjects to buy and ſell in; and the Grantee entruſted with the Rule and good Government thereof, for the Benefit of others. Beſides, the ſeizing of the Markets is no puniſhment of the Corporation, but of all the King's Subjects, who are the Perſons oppreſſed, and whoſe Rights are invaded by this Impoſition. The Oppreſſion is by the Corporation, and by an Authority they claim over the King's Subjects, to lay an Impoſition upon their Goods, and to levy it by Force; which is an Abuſe of the Power the Law hath entruſted them with, and a Miſuſer of the Franchiſe to Oppreſſion. To forfeit the Sums exacted and levied is idle, and no Puniſhment; for they never had Right to them, and ſo no Right can be forfeited. In the Caſe of *Maidenhead*, where a reaſonable Toll was granted, they had a Right to Toll, which may be forfeited by Abuſer, in taking an unreaſonable Toll; but where there is no Right to take any thing, there is no Right to be forfeited, but that Right by Colour whereof the Extortion or Oppreſſion is committed. If an Officer, by Colour of his Office, oppreſs, the Office is forfeited, or the Officer may be fined; the Caſes were cited by Mr. Solicitor. The Levying of two Shillings for the Penalty of breaking the Aſſize, forfeited the View of Frankpledge. Uſing of falſe Weights and Meaſures forfeited the Franchiſe of *Eveſham*. And generally, whatever is an apparent Breach of good Government, wherewith every Franchiſe is intruſted, will, in Point of Right between the King and the Franchiſe, amount to a Forfeiture; becauſe it is a Breach of publick Truſt repoſed in them by Law.

R. Quo Warranto 1.

2. I ſhall conclude with the laſt Branch of their Crimes laid to their Charge:

For invading the King's Prerogative, and publickly libelling of him, and his publick Acts, to the People.

The Replication chargeth the ſeveral Facts thus:

(1.) That the Mayor, Citizens, and Commonalty, in Common Council aſſembled, maliciouſly, adviſedly, and ſeditiouſly, and without any lawful Authority, took upon them to cenſure the King, and the Prorogation of Parliament made by the King.

(2.) That they gave their Suffrages, and ordered a Petition ſhould be preſented to the King, in the Name of the Mayor, Aldermen, and Commonalty, containing the ſcandalous Matter alledged.

(3.) That they maliciouſly, adviſedly, and ſeditiouſly, and to the Intent the ſaid Petition ſhould be diſperſed and made publick, to perſuade them, that the King by the Prorogation had obſtructed the publick Juſtice of the Kingdom, and to ſtir them up to a Diſlike of the King's Perſon and Government, and to diſturb the Peace of the Kingdom; did order the ſaid Petition (containing the ſaid ſcandalous Matter) to be printed.

(4.) They afterwards malicioufly, advifedly, and feditioufly, and to the Intent that the Petition ſhould be diſperſed and publiſhed among the King's Subjects, to aliene and withdraw their Affections from the King and his Government, did print, and cauſe to be printed and publiſhed the ſaid Petition, in Contempt and Scandal of the King and his Government, and to the promoting and exciting of Sedition and Diſturbance of the Peace within this Kingdom.

The Crimes, at Common Law, were *contra Pacem*, and puniſhable by Fine and Impriſonment in particular Subjects; where committed by Perſons in publick Office, or intruſted with Government and Preſervation of the Peace, they are of a deeper Dye. In the Title of the Statute, 13 *Car.* 2. *cap.* 1. for Preſervation of the King's Perſon and Government, they are called ſeditious Practices and Attempts; for Prevention whereof that Law provides, *That if any Perſon or Perſons ſhall malicioufly and adviſedly* (*by Writing or Printing*) *expreſs, publiſh, or declare any Words, Sentence, or Thing, to incite or ſtir up the People to Hatred or Diſlike of the Perſon of his Majeſty, or the eſtabliſhed Government*; *ſuch Perſon is made incapable of any Office or Place of Truſt, and to be further puniſhed, according to the Common Law and Statutes in ſuch Caſes.*

This Law takes Notice, they were Crimes at Common Law, and puniſhable as ſeditious Practices. Sir *James Bagg*'s Caſe allows Conſpiracies and ignominious Crimes to be Cauſes of Disfranchiſement; much more a Conſpiracy of all the Members, to libel the Government, and alienate the Affections of the People from their Prince.

Now, What Anſwer do they give to theſe Charges in either Rejoinder?

To the firſt and laſt they give none at all; they ſhew no Authority for them in Common Council to debate, deliberate upon, and to determine of Prorogations of Parliaments by the King, or the Conſequences thereof, which are *inter ardua Regni*, and not to be treated of but by the King's Writ: They are not of the King's and Kingdom's Common Council, but intruſted to adviſe in Affairs of the City, and *ne ſutor ultra crepidam.* They are charged to have done this adviſedly, ſeditioufly, and without any Authority; and it is charged precedent to the Petition.

To the fourth, for printing and publiſhing of it, to the Intent that it ſhould be diſperſed amongſt the King's Subjects, to aliene and withdraw their Affections from the King, laid to be 13 *Jan.* 32 *Car.* 2. they ſay it was printed by *Samuel Roycroft*, by the Mayor's Appointment; *Quæ quidem Petitio & Impreſſio ſunt eadem Petitio, Impreſſio, & Publicatio*, in the Replication mentioned: And traverſe, *Abſque hoc quod aliqua Petitio concern' Prorogationem præd' fact', ordinat', publicat', ſic impreſſ. fuit aliter, vel alio modo quam*; but do not add *vel alio tempore.* In which reſpect this Plea is ſtronger than the former, to involve the City in the Guilt.

Then they own, the Petition was voted and ordered to be preferred and printed *nemine contradicente*, to be ſure to leave not one Citizen out of the Guilt; but they do aver, the Printing was to undeceive their fellow Citizens, whereas the Charge is, that it was to deceive them. The whole Plea amounts but to the general Iſſue, admitting the Petition itſelf were juſtifiable, and the making of the Petition lawful. Many Things in themſelves are lawful, yet if done with an evil Intent, and for an evil Purpoſe, become unlawful and criminal, and upon *Not Guilty*, Proof muſt be made of the evil Intent; where the Thing itſelf is lawful, there needs no other Proof. To lie under an Hedge on *Shuter*'s-*Hill* is lawful; but to lie there in Wait to kill or rob a Man, is unlawful, and imports Scandal. To lay Wool near the Sea-ſide is lawful; but laying it there with an Intent to export it, is criminal, and forfeits the Wool. And it is not good in Pleading to anſwer ſuch Intent with contrary averments; but where the Intent is Subſtance, it muſt be traverſed or denied ſpecially, otherwiſe the Plea amounts to but the general Iſſue. This Manner of Defence, or Shadow of Juſtification, proves one eſpecial Ingredient of the Charge; that it was done *adviſate.* The City ſay, it was done upon weighty Conſiderations, and many Occurrences deliberated upon, and relate to them, all upon Record, that the Court may judge, whether they had not good Reaſon for what they did. And if they could judge, that their whole Hiſtory taken together are no ſufficient Conſiderations for any Subjects to agree or order any Petition to be preferred and printed, to ſtir up the Subjects to a Diſlike of the King's Perſon and Government, which is charged upon them, and not anſwered; the Court muſt adjudge the Fact to be done malicioufly, and ſeditioufly. But the Words of the Petition are in themſelves ſcandalous to the King and Government. Petitioning is lawful, and the City of *London* have often petitioned the King with good Acceptation, and obſerved a good Decorum becoming Subjects, both in the Matter and Manner of their Petitions; they uſed not to adviſe or meddle in Matters of State, but when ſent for to adviſe, they confined themſelves to the Affairs of the City. They never before, as I have met with, charged the King's Acts of State as Interruptions of the Proſecution of publick Juſtice.

Lukner and Cruchly, 4 Car. Cro. 140. Lock and Lock 15 Jac. 1. Roll. Abr. 50.

The Words of the Petition are, *Your Petitioners were extremely ſurpriſed at the late Prorogation, whereby the Proſecution of the publick Juſtice of the Kingdom, and the making the Proviſions neceſſary for the Preſervation of your Majeſty, and your Proteſtant Subjects, hath received an Interruption.* To delay, interrupt, or deny Juſtice, ſpoken of any Perſon intruſted with the Adminiſtration of Juſtice, and ſpoken of him in point of his Truſt, always imports Scandal; in the Caſe of the common Magiſtrates, they do neceſſarily import Breach of Duty; neither in common Parlance amongſt the Vulgar, nor any Hiſtory or Author, that I have met with, were they ever uſed in any Senſe of Credit or Reputation to the Perſon of whom they were ſpoken or publiſhed. Interruption of Juſtice is a greater Imputation than Delay barely, becauſe the one may be a mere Omiſſion, but Interruption imports ſome Act, whereby Juſtice is ſtopped; but both are temporary Denials of Juſtice, as Denial is an abſolute Stop of Juſtice. *Nulli negabimus aut differemus Juſtitiam*, are not only the Words, but the Duty of every King. To ſay or publiſh of or to a King, in the Point of the Exerciſe of his kingly Office, and a Point of as high Truſt as any is, that of the Prorogation of Parliaments, that he hath interrupted the Proſecution of the publick Juſtice of the Kingdom, imports the greateſt Scandal imaginable: For it was more of the King's Duty than of either Houſes of Parliament, to promote the Proſecution of publick Juſtice, eſpecially in the Caſes ſet forth, which ſo nearly concerned his Perſon; and therefore the Charging of the King with the Interruption of that Juſtice, is of greater Imputation to the King; and the more Inſtances they give, it is an Aggravation of their Crime, by charging the King with interrupting the publick Juſtice in all theſe Inſtances. And there is as much Venom concealed in as few Words, as ever I met with. *Tacitus* did never outdo the Penner of that Petition, whereby all the principal Attributes the Law makes neceſſary for Princes, are impeached at once, both the Judgment, Mercy and Wiſdom of the King, The Interruption of the publick Juſtice reflects upon his Juſtice in a high Manner. The Interruption of the Means of his own Preſervation, beſides his Juſtice, reflects upon his Wiſdom; that the King ſhould not take Care thereof, or did not foreſee the Danger he put himſelf into, by the Prorogation. The Interruption of the Means for the Preſervation of his Proteſtant Subjects, impeacheth his Mercy too, and chargeth the King with Cruelty to his Subjects, in taking no better care for their Preſervation, when under ſuch imminent Dangers; with a ſecret Inſinuation, that as he had ſtopped Juſtice againſt his Popiſh Subjects, ſo he was regardleſs of the Preſervation of his Proteſtant Subjects. What greater Malice could be incloſed in a Nut-ſhell? If Words were dubious, and of a double Signification, and might be taken in a good Senſe as well as bad, they ought not to be publiſhed by Subjects of their Prince; and when charged to be ſpoken or publiſhed in the worſt Senſe, to withdraw the Subjects Affections from their Prince, the Court cannot intend them ſpoken in any other Senſe; that muſt appear upon the Evidence, which cannot be in this Caſe, becauſe they have not pleaded the general Iſſue, nor traverſed that Point. But here the Words can bear no other Senſe, but a direct Scandal to the King and his Government, in the Point of Prorogation of Parliaments. That the City ſo underſtood them, is evident by the Petition, in that very Clauſe, where they ſay, they were extremely ſurpriſed at the late Prorogation. Why ſhould they be ſurpriſed? If the King had done nothing thereby, but what was juſt and good for his People, they had often taſted of his Goodneſs, and could not be ſurpriſed at that. It muſt then be ſome very ill Thing in the Prorogation, that ſo extremely ſurpriſed them, and filled them with ſuch Terrors, as throughout the Petition they expreſs. And they diſcover their Minds plainly, that the Effects of the Prorogation were the Cauſes of their Surpriſal, *viz.* The Interruption of the Proſecution of the publick Juſtice of the Kingdom, and of making the neceſſary Proviſions for the Preſervation of the King and his Proteſtant Subjects; and in the next Paragraph they explain themſelves further, and call that a Delay, which before they called an Interruption; that they were even impatient of the leaſt Delay, of the long-hoped-for Security, whilſt they ſee the King's Life invaded, and the true Religion undermined, and their Families and innocent Poſterity likely to be ſubjected to Blood, Confuſion, and Ruin. The panick Fear, and diſmal Conſequences, are charged upon the Prorogation. And to what other Purpoſe do they publiſh this ſevere Sentence upon the Prorogation, with their diſmal Fears, but to affrighten the King's Subjects, and beget the like Fears in them? The natural Conſequence whereof is, to withdraw their Affection: *Oderunt quem metuerunt Populi.*

Mr. Recorder, though he could not produce one Authority, that To interrupt publick Juſtice, was ever uſed in a good or juſtifiable Senſe; yet endeavours to evade the Scandal of the Words by proper Anſwers.

That theſe Words are not ſpoken of the King, but of the Prorogation, as Conſequences of it. Is not this Quibbling? The Prorogation is only the King's Act of proroguing the High Court of Parliament. And to charge the Acts of a King, or other ſubordinate Magiſtrate in Execution of his Office, with Injuſtice, Folly, or Inſanity, is the ſame Thing as to charge the Perſons themſelves.

No, ſaith Mr. Recorder, unleſs the Action had been charged to have been done with ſuch Intention; but they do not charge the King: And that it is ſo explained in another Part of the Petition, by ſaying, *But that which ſupports them againſt Deſpair, is the Hopes they derive from your Majeſty's Goodneſs, that your Intention was, by this Prorogation, to make way for your better Concurrence with the Counſel of your Parliament.* Evil Intention may make an Act, otherwiſe good, to be bad and againſt Law, by Intendment of Law; the Intention is evil, and the Perſon anſwerable for all the Conſequences thereof. If a Man throw a great Stone over the Wall, and a Perſon is killed, the Law adjudgeth it Murder: He cannot juſtify it by averring he had another Intention. So in the Matter of Scandal, if an unlawful Act or Crime, which purports Scandal, be charged upon a Perſon, it is no Juſtification, or Excuſe, to aver he did not charge the Perſon, nor his Acts, with doing it with an evil Intent; but as the Law ſupplies Malice in the Criminal, where the Act is unlawful, ſo it intends Malice in the Libeller, in a Matter which in itſelf imports Scandal. Several Caſes may be put to this Purpoſe. To charge the Wife with poiſoning her Huſband, is actionable, though not alledged done voluntarily, or with an Intent to kill; the Law intends it. In this Caſe, they charge that the King by his Prorogation interrupted the publick Juſtice of the Kingdom, and with the diſmal Conſequences, which in their Judgment would follow thereupon, and publiſh this to affrighten the whole Kingdom; and that they were near deſpairing of their Safety, but hoped his Majeſty did likewiſe intend by the Prorogation to make Way for his better Concurrence with the Counſel of his Parliament. A pretty Compliment for ſo infamous a Charge! And if it import any thing, it is a further Reflection upon the King, that he had not before concurred with the Counſel of his Parliament. But to fix the Matter home, Mr. Recorder, in the laſt place, juſtifies this Libel from the Truth of the Fact, that the publick Juſtice of the Kingdom, and finding out Means for Preſervation of the King and his Subjects, had received an Interruption by the Prorogation. This toucheth to the Quick, and is more than the City have averred in all their Pleadings; they have nakedly repreſented their ſeveral Facts, precedent to the Petition; and leave it to the Court to judge

Roll. Ab. 71.

whether there be ſufficient to juſtify them, to make and publiſh ſuch a Petition. But to aver it to be true, is to equal the Crime of the Petition, in charging the Prorogation with the Interruption of the publick Juſtice. But I hope, upon better Conſideration, he will change his Opinion, and likewiſe upon the Inference he made, that if true, it is no Scandal to print and publiſh it to the King's Subjects; for in both Points he is apparently miſtaken. It is admitted there was a Plot, and ſuch Proceedings as are ſet forth againſt Delinquents; and that the King by his Proclamation and in his Speech expreſſed his Senſe of the Plot, and preſſed the Parliament to proceed to Trial of the Lords in the Tower committed for the Plot, and that there are many ſuch Bills depending in Parliament. And it ſhall be admitted, that upon the Prorogation all theſe Proceedings were ſtayed, and, if Mr. Recorder pleaſe, received an Interruption; and to ſay ſo is true. But in this Caſe, if the City had been of an Opinion, that the Parliament, upon the King's Signification of his Pleaſure they ſhould proceed to the Trial of the Lords, did not make ſuch Haſte to try them, as the City judged was neceſſary for the Preſervation of their Lives and Fortunes; and thereupon the City ſhould have petitioned the Parliament to proceed to the immediate Trial of the Lords in the Tower, and thereby charge them, that they had delayed them the publick Juſtice of the Kingdom, by not proceeding ſooner to the Trial of them, according to the King's Deſire; Mr. Recorder would not have averred the Matter of Delay of Juſtice to be true, and therefore no Scandal to the Parliament; but he would then have found out the Difference between ſtaying of Suits and Proceedings in Courts by the proper Judges, and the Delays and Interruptions of Common Juſtice; the latter are unlawful and criminal, and againſt the Duty of the Judges, but the former upon juſt Grounds are lawful, and many times in Proſecution of common Juſtice; and many times to proceed in ſuch Caſes, would be great Injuſtice either to the Criminal or the Publick, where the Witneſſes on either Side are not ready, or for ſome other good Cauſe the Judges put off Cauſes till another Time, or adjourn a Court before all the Cauſes be tried. No Lawyer can truly ſay, that by the putting off the Cauſe, the Proſecution of Juſtice hath been interrupted; or will it be any juſt Juſtification for him for ſuch Scandal, that there were Cauſes depending before the Adjournment. The Acts of inferior Magiſtrates are not to be examined, cenſured, and adjudged, much leſs ſcandalized by thoſe, that are under their Magiſtracy; That would let in Confuſion, and tend to the Overthrow of all Government. To ſay of a Juſtice of the Peace, *You have perverted Juſtice*, is actionable; *Seignior De la Ware* and *Pawlet*, *Trin.* 37 *El. More* 409.

Mich. 1 *Car.* 1. *Cro.* 14. Sir *John Iſham verſus Yorke*; *I have been with Sir* John Iſham *for Juſtice, but could never yet get any at his Hands but Injuſtice.*

Trin. 7 *Car. Cro.* 223 *W. Marſham verſus Briggs*; *Sir* William Marſham *is but an half-eared Juſtice, he will hear but one Side.*

Mich. 8 *Eliz. Rot.* 1. *Walſh* was indicted for ſcandalizing one Sir *Robert Catline*, Chief Juſtice, and this Court, by ſaying, *My Lord Chief Juſtice is incenſed againſt me: I cannot have Juſtice, nor can I be heard*; *for it is made a Court of Conſcience.* He was afterwards diſcharged upon the general Pardon, 8 *Eliz.*

They may be judged by Superiors, but not by Inferiors. Where the Common Law alloweth or authorizeth the Staying of Proceedings by Adjournment, or otherwiſe; to ſay the Act is done to delay or interrupt the publick Juſtice of the Kingdom, or that thereby the publick Juſtice of the Kingdom hath received Interruption, is not only highly ſcandalous, but abſolutely untrue: For it is according to the Rules of Common Law, and the publick Juſtice of the Kingdom, and may be the promoting of common Juſtice, and for the Benefit of the Publick, and ought to be ſo intended, when done according to Law. For the Reaſons of ſuch Acts, much leſs the ſecret Intentions of the Judges, or of the Perſons whom the Law hath entruſted with ſuch Powers, are not to be examined, cenſured, or condemned by any Subjects, by any Corporation whatſoever. Petitions may be rejected by either Houſe of Parliament, and ſo may Bills too, though they have the greateſt Semblance of common Benefit; yet this is no Denial of Juſtice, nor to be ſcandalized under any ſuch Notion: They may defer the Conſideration thereof, or enter upon other Buſineſs; that is no Delay or Interruption of Common Juſtice.

The King may do the like; he may reject the Bills paſſed by both Houſes, or he may adviſe upon them by theſe Acts, which the Law allows to be no Interruption of publick Juſtice: The King may adjourn or prorogue the Court of Parliament. Anciently thoſe Words were uſed and taken promiſcuouſly, though now from the different Effects they are differently uſed. And Mr. Recorder owns, that the King is by Law intruſted with this Power, and it is happy for the Subjects he is ſo intruſted, it being for their Benefit; which is a flat Contradiction to his Poſition, that it is true, that the publick Juſtice of the Kingdom is interrupted, or hath received an Interruption, by the Prorogation: Becauſe what is juſt and lawful, *ſecundum legem terræ*, cannot be unjuſt or unlawful, which every Interruption of publick Juſtice is; and if the Act be not unlawful, it is no Delay or Interruption of Juſtice. And if the Subjects cannot examine into or cenſure theſe lawful Actions of their Princes, but muſt intend them to be upon juſt Grounds, and for their Benefit, and in order to their common Safety; to charge their Prince's Actions with the Interrupting of publick Juſtice, and of the Means for his own and his People's Preſervation; and to publiſh this to all his Subjects, is, in Judgment of Law, a falſe, ſcandalous, and malicious Libel; and if not ſufficiently puniſhed, where will it end? To publiſh a Libel is in no Caſe lawful, be the Matter never ſo true, nay, though the Party who is libelled be dead; and the Degrees of the Crime, where againſt a private Perſon, and where againſt a publick Perſon, appear in the Caſe cited by Mr. Solicitor in the Reports, *fol.* 125. And that it is againſt all Laws both of God and Man, and the Miſchiefs there repreſented. In the Caſe of all Common Pleas, the Offender ſhall be fined, and by the Statute of 13 *Car.* 2. all natural Perſons are for the future diſabled, and incapable of any Office or Place of Truſt, where the Libel is againſt the King. But where the Matter is falſe, and the Libel publiſhed againſt the King, to withdraw his People's Affections from him, and that by the joint Counſels of a Corporation, there can little Room for a Queſtion remain, but they have broken their original Truſt for good Government, and miſuſed their Liberty to Licentiouſneſs. How criminal is it for private Subjects to deliberate of, and determine, and publickly to cenſure the Counſels and Actions of their Princes, will appear by the Caſe of *Stubs*, *Mich.* 21 & 22 *Eliz. Rot.* 3. where the Caſe was, that a Treaty of Marriage being on Foot between the Queen and Duke of *Anjou*, *John Stubs* publiſhed a Book called, *The Diſcovery of a gaping Gulph, whereinto* England *is like to fall by another* French *Marriage*, containing a Diſſuaſive againſt the Marriage: And therein amongſt other things chargeth, *That this Marriage hath Sin in itſelf, and of itſelf only*; *for being againſt the Law of God.* And in another Place, *That it opens all the Ports of Foreign Enemies*, with ſeveral bad Reflections upon the Duke. This Book was delivered by *Stubs* to *Hugh Singleton*, a Stationer, to print, who cauſed it to be printed and publiſhed. They were both indicted for it in this Court, and the Indictment laid to be, with Intent to hinder the lawful Purpoſe of the Queen and the Duke to marry, and to animate and ſtir up the Queen's Subjects to Rebellion, and to raiſe Diſcord between the Queen and her Subjects, and to ſubvert the good Government of the Kingdom. Upon *Not Guilty* pleaded (for they had not the Confidence to juſtify) they were found Guilty, and Judgment given for cutting off their right Hands upon the Statute 1 *Eliz. cap.* 6. for libelling the Queen. In this Caſe the Cenſuring of the Queen's lawful Purpoſes, in a more private Matter than the Adminiſtration of her Regal Office, by common Subjects not called to adviſe, is a Subverſion of good Government within the Kingdom; and the Publiſhing the Effects and Conſequences thereof to be ſinful and dangerous to the Kingdom, is a Libelling of the Queen and her Government within the Statute. The Cenſuring of the Exerciſe of the King's lawful Prorogation, and charging it with the Interruption of publick Juſtice, is of a more dangerous Nature. Every natural Perſon convicted of this Offence, is by the Statute of 13 *Car.* 2. diſabled for any publick Truſt; the Proceeding againſt the natural Perſon could not be for Want of Proof, it being tranſacted in their Council. In this Proceſs againſt the Whole, they have confeſſed it with the Aggravations laid. If the King paſs not a Bill which the City of *London* have a Mind to, this Rejection of ſuch Bill ſhall in Print be publiſhed to all his Subjects to be a Denial of Juſtice. If the King reprieve a Malefactor, it ſhall be a Delay or Interruption of publick Juſtice. To pardon a Malefactor ſhall be a Denial of publick Juſtice of the Kingdom. So that the Tenure whereby the City of *London* hold their Franchiſe, and all their Liberties, will be quite changed and altered, without the Aid of Act of Parliament. The City will no longer hold all their Liberties from the Crown *quamdiu ſe bene geſſerint*, which was their ancient Tenure, reſerved by the Crown and the Laws of the Land upon their firſt Erection, but will gain *abſolutum Dominium*. And the King ſhall exerciſe no juſt Prerogative, but at their good Pleaſure; otherwiſe they will blaſt him to his People, and aliene their Affections from him. I have done with the Caſe. I have nothing more to offer. I have at large proved, that the Corporation of *London* is a great Franchiſe and Liberty. I have proved that Point of Forfeiture, and their Demeanours towards the Crown: They ſtand in the ſame Level with other Cities and Boroughs, which be forfeited and ſeized. I have preſented to the Court two ſuperlative Offences, both againſt their Prince and their Fellow Subjects, as well can be; wherein they have exceeded all other Cities and Boroughs, and themſelves too in any former Age. The Manner of their Pleading, and Defence at the Bar, argue the Diſeaſe to be dangerous and infectious to other Cities and Boroughs, and of the Nature of the King's Evil incurable without the King's Hands. I have this Day brought them in Judgment before the Court, in order to their Cure. Nothing remains for effecting of the Cure, but the Judgment of the Court for Seizure of the Franchiſe of *London* into the King's Hands; which I demand for the King.

Mr. Attorney General having taken up ſo much Time, the Court put off the Hearing the Counſel for the City till another Day, when Mr. Pollexfen *argued as follows:*

Mr. *Pollexfen.* IN this Caſe, when I conſider the Greatneſs and Conſequence of it, That it affects the King, the Parliament, the Laws, the very Government under which we have lived, this great City of *London*, and all other Corporations and People of *England*, and their Poſterities, for ever, I cannot but be troubled, that I ſhould be the Man to whoſe Lot it ſhould fall to argue it; but that which comforts me is, that your Lordſhip, and the Court, upon whom the Judgment of this great Caſe depends, will help out my Defects, and according to what is required in the great Places you bear, take care and provide, that by your Judgment the ancient Government and Laws of this Kingdom receive no Damage or Alteration. The King's Counſel have on their Side only ſome general Words out of old Records of Forfeitures and Seiſures of Liberties which are of uncertain and doubtful Senſe; but there is not on their Side produced any one Precedent, Judgment, or Opinion to maintain the Point in Queſtion, *viz.* That a Corporation, or Body Politick, ever was determined, or diſſolved, or taken away for a Forfeiture: No, not in the maddeſt of Times, in the Times of *Edward* the 2*d*, and *Richard* the 2*d*, when the Tumults and Diſorders were ſo great, that they not only ſeized and took away the Liberties and Franchiſes, but the Lives of Princes, Nobles, Judges, Lawyers, and all that ſtood in their Way: In thoſe Times, though they have hunted and ſearched with all Diligence, not one Inſtance of a Corporation taken away, or diſſolved by a Forfeiture, is cited. So that from hence I hope I may ſafely conclude, that I argue in this Caſe for the old and known Laws, as they have been ever practiſed through all Ages, and againſt that which never hath been practiſed or known; which is a great Encouragement to me. The Pleadings being very long, I ſhall only repeat ſo much of them as I uſe, when I come in order to ſpeak of them.

I. The firſt thing proper to be ſpoken to is the Information itſelf, and therein I make this Queſtion: Whether as to that Part thereof, that chargeth the Corporation with uſurping upon themſelves the Being of a Corporation, whether that be properly brought againſt the Body Politick, as this is, or ought to have been brought againſt the particular Perſons? I do agree, that as to the other Things mentioned in the Information, the having Sheriffs, Juſtices, *&c.* the Information is properly brought againſt the Corporation: And I do alſo agree, that it may be good as to thoſe Things, though bad and inſufficient as to the Charging the Corporation with Uſurpation of their Being, without lawful Warrant or Authority. And, that I may come ſingly to this Queſtion, I do put out all the other Franchiſes in the Information, and take only what concerns this Point; and then the Information, as to this Point, chargeth, That the Mayor, Commonalty, and Citizens of *London*, by the Space of a Month laſt paſt, before the Information, did uſe, and claim to have and uſe, without any Warrant or Regal Conceſſion, within the City of *London*, the Liberty and Franchiſe following, *viz.* to be a Body Politick, *Re*, *Facto*, *&* *Nomine*, by Name of Mayor, and Commonalty, and Citizens, and by that Name to plead and be impleaded; which Liberty, Privilege, and Franchiſe, the ſame Mayor, Commonalty, and Citizens, upon the King, by the Time aforeſaid, have, and yet do uſurp. This is the Subſtance of the Information as to this Point; and, Whether this Information thus brought as to this Matter be ſufficient in the Law, upon which a Judgment can be given, or ought to have been brought againſt particular Perſons, is the Queſtion. I conceive it ought to have been brought againſt particular Perſons, and is inſufficient as it is, and that no Judgment can be given upon it, ſuppoſing the Defendants had demurred, or pleaded nothing to it. To make out the Inſufficiencies, I deſire to conſider what it imports.

1. The very Bringing the Writ, and exhibiting the Information againſt the Corporation, imports and admits the Mayor, Commonalty, and Citizens, to be a Body Politick, capable to be ſued and impleaded, *reſpondere & reſponderi*; otherwiſe there is no Defendant, no Perſon in Court, againſt whom the Suit is brought. It is not enough, that the Perſon ſued be a Perſon by Suppoſition, or a pretended Perſon, but none in Reality. If a Writ or Information be brought againſt a Baron and Feme, this muſt admit, that they are Baron and Feme really and truly; and if there be any thing after in the Writ or Information, that ſhews, that they are not truly and really Baron and Feme, but that they do wrongfully and unduly take upon them to be Baron and Feme, when in Truth they are not, this would be contrariant and repugnant, and abate the Writ or Information. The like is ſuppoſed by the Bringing the Writ or Information againſt the Body Politick; it ſuppoſeth and affirmeth them really and truly to be ſuch, and the ſubſequent Affirmation, that they uſurped ſo to be, and are not ſo really, is contrariant and repugnant.

2. When in the Information it is alledged, that the Mayor, Commonalty, and Citizens, the Liberty, Privilege, and Franchiſe of being a Body Politick, *Re*, *Facto & Nomine*, and to be ſued and impleaded upon the King, have and yet do uſurp; to uſurp or do any Act of Neceſſity imports and admits a precedent Exiſtence of the Perſon that doth uſurp, or do the Act to the Act done. Particular Perſons may uſurp, and take upon themſelves, that which they have no Right unto: The Perſons, that did the Act, did before exiſt, and had a Being. And when a Corporation is ſaid to uſurp, it of Neceſſity muſt be ſuppoſed to have a precedent Being. The Senſe of Uſurpation in a *Quo Warranto* is the Subject's taking upon him Franchiſes without Warrant.

My Lord *Coke* ſaith, That Uſurpation in the Common Law hath two Significations: *Inſt.* 1. 277. *b.*

1.) The one, when a Stranger preſents to a Benefice, and his Clerk inſtituted and inducted, he gains the Advowſon by Uſurpation.

2.) The other, when any Subject without lawful Warrant doth uſe any Royal Franchiſes, he is ſaid then to uſurp upon the King.

So that an Uſurpation ſuppoſeth of Neceſſity a Subject or a Perſon precedently *in eſſe*, that uſeth the Franchiſe, or that doth uſurp. That which is not *in eſſe*, that hath no Exiſtence, cannot uſe any Franchiſe, cannot uſurp. The very alledging that they uſurp, doth admit of Neceſſity an Exiſtence precedent in the Corporation, ſuch as can uſurp, or act, and therefore this Information is inconſiſtent with itſelf.

3. But another Reaſon to prove, that it ought to be againſt particular Perſons, and cannot be againſt the Body Politick, is drawn from the Judgment, that muſt be given upon this Information, if Judgment for the King. The Judgment muſt have two Things in it:

1.) To damn the Corporation, *Quod penitus extinguatur & excludatur* from being a Corporation for the future; for being wrongfully uſurped, it cannot be continued: A Judgment to continue Wrong and Uſurpation can never be a right Judgment.

2.) A Fine to the King, for the uſurping it for the Time paſt. This Judgment may and ought to be given, where the Information is againſt particular Perſons, for uſurping upon themſelves to be a Corporation, and they ſhall be fined and impriſoned; but this cannot be where the Information is againſt the Body Politick; for by the Judgment the Body Politick is extinguiſhed and diſſolved, and no Fine can be impoſed upon that which is not: So that hereby the King muſt loſe his Fine, which the particular Perſons uſurping ought to pay, and the Law is agreeable always to itſelf, and the Means anſwerable to the End. I ſuppoſe no Man will affirm, that where a Suit or Judgment is againſt a Corporation, that the Fine or Execution ſhall be againſt all, or any particular Member.

For the Precedents and Authorities in this Point,

(1.) I do agree, that there be Precedents in the Crown-Office of *Quo Warranto*'s brought againſt Corporations in ſuch Manner as this is brought, for uſurping to be a Corporation, and to claim divers other Liberties.

Quo Warranto againſt the Bailiffs and Burgeſſes of *Stratford*, for claiming to be a Corporation, and to have divers Liberties and Franchiſes; thereupon a Plea put in, and a Confeſſion of their Claim by the King's Attorney. *P.* 2 *El. r.* 1.

The like againſt the Corporation of *Reading*, the like Plea and Confeſſion, the very next Term after the Information filed. *M.* 3 & 4 *El. r.* 4.

Againſt the Corporation of *Horſham*, a Plea and Confeſſion by the Attorney. *H.* 14. *Jac. r.* 37.

The like againſt the Corporation of *Dover*; but nothing done upon it beſides Plea put in. *H.* 19 *Jac. r.* 26.

The like againſt *Bath*, a Claim put in, and confeſſed. *H.* 20 *Jac.*

The like againſt *Brackley*, and a *Noli proſequi.* *H.* 20 *Jac. r.* 58.

The like againſt *Boſton*, a Claim put in, and confeſſed. *T.* 3 *C.* 1. *r.* 22.

The like againſt *New Sarum*, Imparlance, and nothing more upon it. *T.* 2 *C.* 1. *r.* 47.

The like againſt *Bridgport*, Claim and Confeſſion. *T.* 6 *Car.* 1. *r.* 43.

The like againſt *Biddeford*, a Claim and *Noli proſequi.* *M.* 2. *C.* 1. *r.* 36.

The like againſt *Wicomb*; they plead themſelves a Corporation by another Name, and traverſe the Name in the Information; nothing more on the Roll. *M.* 8 *C.* 1. *r.* 42.

And it is probable, there may be more like theſe; but if of any Authority, they are for me, and not againſt me.

1.) For that they all being for claiming other Liberties, as well as to be a Corporation, and being good and ſufficient as to the other Liberties and Privileges, that the Corporation claims; though inſufficient for this of claiming to be a Corporation, they muſt be proceeded upon, if the Attorney pleaſeth. But is any to be found where only the Claiming to be a Body Politick, and nothing elſe? or if other Things queſtioned, yet only proceeded in as to this Particular of claiming to be a Body Politick, as in this Caſe? That will be like.

2.) In all theſe nothing is done; a Claim or Plea put in, and that confeſſed, or *Non proſ.* or not proceeded upon to Judgment. Perhaps not proceeded in, becauſe inſufficient; and ſo are Authorities for me: For there being ſo many of theſe, which are either *Non proſ.* or not proceeded in, perhaps the Reaſon might be, becauſe inſufficient in the Law, as to the Corporation, and ſo are Authorities for me in this Caſe. But one there is found.

Quo Warranto verſ. Bailiffs and Burgeſſes of *New Malton* in *Yorkſhire*; *T.* 6 *Jac. r.* 3. *Quo Warranto* they claim divers Liberties, as Courts, Markets, and others, and amongſt the reſt to be a Body Politick. They put in a Plea, and make their Claim by Preſcription; Iſſue is joined, and tried by *Niſi Prius* at *York*, and found againſt the Corporation, and a Judgment entered, *Quod Libertat' & Francheſiæ prædict' in manus domini Regis capiantur & ſeiſiantur, & quod Ballivi & Burgenſes capiant' ad ſatisfaciend' Dom' Reg' pro Fine ſuo pro Uſurpation' Libertat' & Francheſiæ prædict'.*

There is no mention of this Caſe in any Book or Report, as far as I can learn; ſo that this paſſed *ſub ſilentio.* Next, how can this Judgment be good?

[1.] How can that be a right and lawful Judgment, which ſhall be given for the Continuing a Thing, that is by the very Judgment adjudged to be unlawfully uſurped, and a Fine for it? It is directly *oppoſitum in objecto.*

[2.] How can the Corporation be ſeized into the King's Hands? *Extinguatur & excludatur* is proper; the Corporation cannot be in the King.

[3.] How could the Bailiffs and Burgeſſes be fined? When they are vaniſhed and gone, there is no Corporation in Being; that which is laid upon a Corporation cannot be levied upon the particular Members.

I have made Inquiry after this Borough of *New Malton*: It is a ſmall Borough, within the Manor of the Anceſtors of my Lord *Eure*; it did anciently ſend Burgeſſes to Parliament, but from the Time of King *Ed.* 1. to the Beginning of the Long Parliament, 1640, it ſent none then; upon Petition a Writ was ordered, and they then and ever ſince have choſen Burgeſſes: My Lord *Eure* being Lord of the Manor, and offended with them, did proſecute this *Quo Warranto*, and they having neither Lands, Revenues, or Eſtates, to defend themſelves, he eaſily prevailed, they never in Truth being incorporate, nor having any Charter. But that which I give for Anſwer to theſe Precedents is,

1.] They are all, where not only the Being of the Corporation, but alſo divers other Liberties were in Queſtion; ſo that the Informations were good in part, and not worth the while to queſtion whether good as to that Part of their being a Corporation. The Fine upon them for uſurping the other Liberties, would have been more than they could bear or pay.

2.] That this is but one Judgment, and in a Caſe of a ſmall Borough, and that Judgment, as entered, not agreeable, but inconſiſtent with the Rules of Law or Reaſon. The Body Politick could not be ſeized into the King's Hands; but whenever a Judgment is given for the King, for Liberty which is uſurped, or extinct in the Crown, the Judgment muſt be *quod extinguatur*, and that the Perſon that claimed them *de inceps Libertat' & Francheſiis prædict' nullatenus intromittat', ſed ab uſu earund' amodo omnino ceſſat*; *quodque*, the Perſon that uſed them, *pro uſurpacion' Libertat' & Franch. prædict' ſuper Dominum Regem capiat' ad reſpondendum dict' Dom' Reg' de Fine ſuo pro Uſurpacione Libertat. & Franch. prædict'.* That this is the Form, *C. En.* 559. *a.* 537. 527. *b.*

3.] That this Judgment of *New Malton* paſſed *ſub ſilentio*; for there is no Mention of it in any Book, nor doth it appear that ever the Queſtion was moved or debated. And for Precedents in Matters of Practice and Proceſs, they are of Authority; but in point of Law, unleſs they have been upon Debate, are of little Authority to prove what the Law is. *Rep.* 4. 94. *Slade*'s *Caſe*, *L.* 5. *E.* 4. 110.

But on the contrary, all the Precedents that are in any printed Books of Informations, were brought to queſtion, Whether Body Politick, or not, are againſt particular Perſons by Name:

Againſt *Chriſtopher Helden*, and others, *C. En.* 527. *Pal.* 9. *fo.*

Quo Warranto againſt *Cuſack*, and others, *Rol.* 2. *r.* 113. 115.

Quo Warranto againſt the *Virginia* Company was brought againſt *Nic' Farder*, and others, *Quo Warranto* they claimed to be a Corporation. *Rol.* 2. 455. Some of them pleaded inſufficiently, upon which there was a Demur, and a Queſtion, How the Judgment ſhould be entered? for that the Maſter and Chief of the Company were left out of the *Quo Warranto.* By which it appears, that it ought to be brought againſt the Maſter, and particular Members by Name.

Next, for the expreſs Authorities in this Caſe, to prove it cannot be againſt the Corporation, *Rol. Rep.* 15. is expreſs, That if a *Quo Warranto* be brought to diſſolve a Corporation, the Writ ought to be brought againſt the particular Perſons; for the Writ ſuppoſeth, that it is no Corporation.

The Difference there taken, when the Attorney General ſuppoſeth the Defendant to be a Corporation, otherwiſe when he queſtions them as Inhabitants of a Vill, then they ought to enable themſelves, they muſt then ſhew themſelves a Corporation, alſo prove it.

My Lord *Hales* in his Common-place Book, in *Lincolns Inn* Library, *fol.* 168. ſaith thus: *Nota, ſc. Quo Warranto ſoit port pur uſurper de une Corporation ſerra port vers particular Perſons, quia in diſaffirmance del Corporation, & Judgment ſerra donne que ſerra ouſte; mes ſi le Quo Warranto ſoit port pur Liberties claim. per Corporation, ſerra port vers la Corporation.* This is poſitive.

This, if it were only my Lord *Hales*'s Judgment, were of no little Authority; but I think it is a Report taken upon the Caſe of the *Quo Warranto* againſt *Cuſack* and others. But Mr. Attorney finding, as I believe, all the Precedents to be againſt him, (for in them all there are either *non Proſ.* or no Proceeding to Judgment, the Cauſes whereof, or at leaſt ſome of them, probably might be the Inſufficiences of theſe Informations) and finding alſo the Authorities in Print, which have been cited to be all againſt him, and none for him, endeavoured to maintain the Information as brought not againſt the Corporation, but againſt the Citizens or Inhabitants of the City in their natural Capacities; and to that Purpoſe cited the Caſe, *C. En.* 537. of a *Quo Warranto* againſt the Inhabitants of a Village. *Quo Warranto* they claimed to be a Body Politick; and argued, That a *Quo Warranto* lies againſt the *Cives* of ſuch a City, or *Burgenſes*, or Tenants. This ſeems to be rather a ſudden Conceit, and altogether undigeſted, and not well conſidered. But in Anſwer thereunto, and to prove, that this Writ is brought againſt the Defendants as a Corporation, and cannot legally be taken in any other Caſe; if a Mayor and Commonalty plead, that they are ſeized in Fee, they need not ſay in Right of their Corporation, the Name ſhews them to be a Corporation, it need not be alledged. *Leo.* 1. 153. An Action there brought by the Guardians and Fellowſhip of *Weavers*; the Book ſaith, That they need not ſet themſelves out to be incorporate, the Name ſhews it; ſo of Cities, ſaith the Book, *Hob.* 211. So then, when the Writ is brought againſt a Mayor and Commonalty, or Mayor, Commonalty and Citizens, the Law takes Notice of them to be a Corporation, and the Writ againſt them as ſuch; the Name ſhews it. But againſt Inhabitants of a Village, a Writ brought by that Name, that cannot be taken to be other than Inhabitants, the Name ſo ſhews it; and in ſuch Caſe, ſome of the Inhabitants, by Name (*viz.*) *A.* and *B.* appear in Perſon, in their own, and Names of the reſt of the Inhabitants, and plead, and are Defendants, *Co. En.* 537. So did they, as appears in that Precedent. No Appearance ever was of Inhabitants in other manner. But in this Caſe here are no Perſons that do appear by Name, but the Corporation appear, and make an Attorney under their Common Seal. The Corporation, and no particular Perſons, are the Defendants before you, or elſe you have no Defendants before you; for there is none appearing in Perſon, here is no Defendant, nor none againſt whom you can give Judgment; but all the whole Proceedings vain and againſt nobody. So that if we ſhould admit, as Mr. Attorney argues, That this Information is not brought againſt the Corporation; then there can be no Judgment for want of Defendants appearing in their natural Capacities; you muſt have it againſt the Corporation, or nobody. A Mayor cannot be but where there is a Corporation; therefore this Notion is impoſſible, as I conceive. So that if there were nothing elſe in the Caſe, if the Information be ill brought, they can have no Judgment againſt us.

II. But admit, that the Information as to this Point be ſufficient, then I proceed to conſider the other Parts of this Caſe; the Plea: That contains the Defendants Title, (*viz.*) That ſhe is a Corporation Time out of mind, and many Confirmations by Acts of Parliament and Charters. It is not denied, but that the Title made by the Plea is good.

But next the Replication, that contains,

1. An Iſſue upon the Preſcription (*viz.*) That the Citizens of *London* have not been Time out of Mind a Corporation by Name of Mayor, Commonalty, and Citizens, *&c.*

2. A Pleading over, That the Mayor, and Commonalty, and Citizens taking upon them (*aſſumentes ſuper ſe*) to be a Body Politick, and to have Power to make By-laws,

1.) *Colore inde*, but for their private Gain, & *contra fiduciam per Dominum Regem & Leges hujus Regni* in them repoſed, took upon them to raiſe Money upon the King's Subjects, by Colour of an Ordinance by them *de facto* made; and in Proſecution of this uſurped Power, the Mayor, Commonalty, and Citizens, in their Common Council aſſembled, publiſhed a Law for levying Money upon the King's Subjects, that came to the Markets within the City, 17 *Septem.* 26 *Car.* 2. (*viz.*) *De qualibet Perſona*, for every Horſe load of Proviſions brought into any publick Market within the City to be ſold, 2*d.* a Day; for every Dorſer of Proviſion, 1*d.* a Day; for every Cart-load drawn with not more than three Horſes, 4*d.* a Day; if with more, 6*d.* a Day; that if any refuſed to pay, he ſhould be amoved from his Place in the Market: That, by Colour of this By-law, the Mayor, and Commonalty, and Citizens have extorted great Sums of Money for their own private Gain, amounting to Five thouſand Pounds *per Annum.*

2.) And farther, That whereas there was a Seſſion of Parliament holden 21 *Octob.* 32 *C.* 2. and continued till the 10*th* of *Jan.* 82. and then by the King prorogued to the 20*th* of that inſtant *January*; the Mayor, Commonalty and Citizens, *Jan.* 13. in their Common Council aſſembled, *malitioſe, adviſate, & ſeditioſe, abſque legali Authoritate, in ſe aſſumpſerunt ad cenſendum & judicandum dict' Dom' Regem nunc, & Prorogationem Parliamenti*, by the King prorogued; and in the ſame Common Council, *Vota & Suffragia ſua dederunt & ordinaverunt*, That a Petition *ſub nomine* the Mayor, Aldermen, and Commons of the City of *London*, in Common Council aſſembled, to the King ſhould be exhibited: In which Petition it was contained, That by that Prorogation the Proſecution of the publick Juſtice of this Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and his Proteſtant Subjects, had received Interruption. And that the Mayor, Commonalty, and Citizens, in the ſame Common Council, did unlawfully, *malitioſe, adviſate, & ſeditioſe*, with Intent that the ſame Petition might be publiſhed and diſperſed among the King's Subjects, to induce in them an Opinion, that the King had by that Prorogation obſtructed the publick Juſtice, and to incite Hatred againſt the King's Perſon and Government, and to diſturb the Peace, did order that Petition, containing the ſaid ſcandalous Matter, to be printed; and thereupon, to thoſe ill Ends and Purpoſes, they cauſed it to be printed and publiſhed: By which the Mayor, Commonalty, and Citizens, the aforeſaid Liberty and Franchiſe of being a Body Politick *foriſfecerunt*, and after, by the Time in the Information, have and yet do uſurp it.

Before I come to the Matter, I would ſpeak to the Pleading herein, and in the ſubſequent Surrejoinder: And for the Pleading in it, I think it is as ſingular and unprecedented as the Matter of it is. This Replication, ſuppoſing the Matter had been the Act of the Body Politick, and good and ſufficient, yet as pleaded, is inſufficient, and not warrantable by any Law or Practice ever known. It contains,

1. An Iſſue, *viz.* no Corporation Time out of Mind.

2. Two Cauſes of Forfeiture of the Corporation, admitting they once were a Corporation.

So that, though the Point in Queſtion be but one, *viz.* Whether we are lawfully a Corporation or no Corporation, though the Plea is ſingle, that we are a Corporation by Preſcription Time out of Mind; yet here is, to try this Point,

1. An Iſſue.

2. A double Plea, alledging two Cauſes to avoid it for a Forfeiture.

This I conceive cannot legally be done, though in the King's Caſe. I do agree, the King hath great Prerogatives in Pleadings; and as far as ever they have been allowed or enjoyed, let them be ſo ſtill; but that the King can to the ſame Matter both take Iſſue, and alſo plead over at the ſame time, That I deny. It is moſt reaſonable, that the Law ſhould be careful to preſerve the King's Rights; but on the other Side, I think it is not reaſonable, that the Law ſhould admit or allow as legal, any way of Proceeding that ſhould deſtroy or render the Subject's Right indefenſible, be his Right as good as it may be. If ſo be that Mr. Attorney may both take Iſſue upon the Fact, and alſo plead over, I would, by your leave, aſk, How many Iſſues, and how many Pleas over, the King's Attorney may have? Suppoſe the King bring a *Quare impedit*, or Writ of Right, or any other Action, the Defendant makes his Title, which is uſually done, by many Grants and Conveyances from one to another, to bring it to himſelf. May the King's Attorney now take as many Iſſues as Facts iſſuable, plead as many Pleas as he pleaſeth, and all this *ſimul & ſemel?* It is true, that in this Caſe Mr. Attorney hath aſſigned only two Breaches, or Cauſes of Forfeiture; but he might, if he had pleaſed, by the ſame Reaſon, have aſſigned two hundred. If this may be, are we not all at Mr. Attorney's Mercy? If this may not be, then how many Pleas? Is it in Law defined? *In favorem Vitæ* a Man may plead a ſpecial Plea, and plead alſo Not Guilty, but not ſeveral ſpecial Pleas; but that there is any ſuch Prerogative for Mr. Attorney, in Suits betwixt the King and his Subjects, I can find no Inſtance or Authority for it: For though it be true, as I have ſaid, that the King hath great Prerogatives in Pleading, yet it is as true, that this is not boundleſs; but that if in the King's Writs there be Miſtakes, or his Writ or his Action miſconceived, he ſhall be bound by it in like Manner as Subjects are or ſhall.

Partridge againſt *Strange*, *Com.* 84. *a.* 236. *a.* and in the ſame Book, in my Lord *Berkeley*'s Caſe, it is expreſsly ſaid, That though the King hath many Prerogatives concerning his Perſon, Debts, and Duties; yet the Common Law hath ſo admeaſured his Prerogative, that it ſhall not take away, or prejudice the Inheritance of any.

The King hath a Prerogative, that he may waive his Demurrer, and take Iſſue; or waive his Iſſue, and demur upon the Plea: But, ſaith the ſame Book, *fol.* 236. he muſt do it the ſame Term, not in any other Term; for then he may do it *in infinitum*, without End, and the Party hereby may loſe his Inheritance; and for that the Common Law will not ſuffer the King to have ſuch a Prerogative. Theſe are the Words of the Book. And in the Point, that this Prerogative muſt be made uſe of the ſame Term, and that the King's Attorney cannot vary in another Term, and waive his Iſſue, is 13 *E.* 4. 8. *Bro. Prer.* 69. 28 *Hen.* 8. 2. So in making Title to a *Quare Impedit*, he at the End of the Term waived his firſt Title, and made another. But it is true alſo, that as to the Point of waiving Demurrers, and taking Iſſue in another Term, there is Authority, that he may ſo do; *Rex verſ. Bagſhaw*, *Cr.* 1. 347. But whether it may be done or not in another Term, is not material to our Caſe: But the Uſe I make of theſe Caſes is to prove, that the King's Attorney ſhould not have both together *ſimul & ſemel*, as in this Caſe he hath done; he muſt waive one before he can have another Plea. For thoſe Debates about his varying his Plea, by waiving his Iſſue and Demurring, or waiving his Demurrer, and taking Iſſue, ſignify nothing, if he may in one Plea, and at the ſame time take Iſſue and demur, or plead over to the ſame Matter or Point, as is done in this Caſe; therefore thoſe Books ſtrongly prove, that the Prerogative, that the King hath, is by waiving or relinquiſhing one, and chooſing the other; and therefore not to have or uſe altogether and at once, as is done in this Caſe.

The King ſhall be bound by one Iſſue, he ſhall not have divers, 9 *H.* 4. 5. So that as this Replication is at the ſame time *ſimul & ſemel* to the ſame Matter, to take Iſſue, that we were not a Corporation time out of Mind, and to plead two Matters of Fact for Forfeiture, is the firſt Attempt that ever was of this Kind, and in its Conſequence confounding the Right of the Subject, and leaves him perhaps only but a Colour of Law, but moſt difficult, if not impoſſible by it to be defended, let his Right be what it will, if Iſſues and Pleas without Number may be by the King's Attorney joined and pleaded, and the Subject muſt anſwer. The very Charge beſides will undo the Subject, and wreſt him out of his Eſtate by the Law, that ſhould preſerve him. This Point, if I miſtake not, will deſerve Conſideration, if it be new, and the firſt Project (for ſo I beg leave to call it) of its Kind; for I know no Book or Inſtance of the like, unwarrantable by old Laws and Rules of Pleading. The old

Laws and Ways are good and ſafe: *Eventos varios res nova ſemper habet* Perhaps the Conſequence and Miſchiefs attending this way of joining Iſſue, and at the ſame Time pleading over as many Pleas as Mr. Attorney pleaſeth, are as great as any other in this Caſe, and not leſs to be minded or regarded. As of the one Side, great are the King's Prerogatives, and moſt neceſſary to be preſerved and maintained; ſo it cannot be denied, but that the Law hath ſet Limits and Bounds, which muſt be kept and obſerved in pleading, which is the Method and Mean of preſerving and determining Rights, without which no Man can be preſerved by the Law. But ſuppoſing that ſeveral Cauſes of Forfeitures may be aſſigned, yet they muſt be all Facts done at the ſame Time, or they confound one the other; for if the firſt Fact was a Forfeiture, thereby the Corporation was determined, and at an End, and the ſubſequent could not be the Act of the true lawful Corporation; for that was forfeited, determined, and gone, by the precedent Forfeiture: and if ſo, that it was forfeited and gone by the precedent Act, *viz.* the making the Ordinance *Septemb.* 17. 26 *C.* 2. then how could it act and forfeit itſelf ſix Years after, in the Year Thirty-two? This ſeems impoſſible. But to avoid this, Mr. Attorney in his Argument, doth hold, That though the Act be a Forfeiture, yet till there be a Judgment, or ſomething on Record, to determine the Corporation, (and in this Caſe the Judgment to be given ſhall do that Work) till ſuch Judgment, the Corporation remains: Then taking it as Mr. Attorney will have it, and as the Truth is, ſuppoſing a Forfeiture, until that Forfeiture appear on Record, or that there be ſome Office or Inquiſition that finds it, and that returned, and on Record, were it of any Eſtate in Lands, Tenements, Hereditaments, or Offices, it is not determined or veſted in the King, but continues. This is quite contrary and contradictory to all that you have done, and the very Foundation of this *Quo Warranto*; for if you admit, as then you do, that the Forfeiture *ipſo facto* did not determine, but that it muſt be this *Quo Warranto*, or Judgment upon it, that muſt determine the Corporation; and that the Corporation, notwithſtanding ſuch Act, was or is in Being; then they have not uſurped upon the King: They are the ſame Corporation they were; they have the ſame Power to act they had; they have the ſame Warrant and Right they had, only ſubject to a Judgment againſt them, that may be given hereafter for a Fact, already paſt: For ſince that an Uſurpation is a fortious and wrongful uſing a Liberty or Franchiſe upon the King, without lawful Authority; then, ſuppoſing ſuch an Act of Forfeiture doth not *ipſo facto* determine or diſſolve, but a Judgment, or ſome other Act of Record muſt firſt be had before ſuch Diſſolution; then till ſuch Judgment, or Act of Record, they are lawfully a Corporation in Being, and their lawful Warrant remains, and they did not, nor could ſo long uſurp their Being, and then hereby is your own Information deſtroyed and abated: For there you ſay, that they did by the Space of a Month, without any Warrant, uſe and uſurp the Liberty to be a Corporation. But hereby you grant, that it was not uſed unlawfully, nor uſurped; but notwithſtanding the Forfeiture the Corporation lawfully continued, unleſs there had been ſome Judgment, or other Act, on Record, to determine it. This I reſt upon as impoſſible to be avoided. Is it poſſible, that a Corporation or Body Politick can at the ſame Time be lawfully and rightfully ſuch, and not lawfully and rightfully ſuch? Can Right and Wrong be the ſame? Can the ſame Thing rightfully be, or have its Being, and at the ſame time not rightfully be, or have its Being? Can we poſſibly be at the ſame Time, *viz.* the Time mentioned in the Information, a lawful Corporation, and yet an uſurped or unlawful Corporation? Could we then have a lawful and rightful Authority to be a Corporation, and at the ſame Time have no lawful or rightful Authority to be ſo? Theſe ſeem to be Contradictions; and if ſo, are the moſt difficult of all things to be believed or impoſed; therefore to be plain in this Matter, either tell us, that we are yet till Judgment a Corporation or Body Politick lawfully and rightfully, or not. If you ſay we are, then as yet we are no unlawful Corporation, nor have uſurped to be one, as in your Information and Replication you have alledged. We have not then unlawfully taken upon us to be a Corporation, and therefore cannot have Judgment againſt us; or be fined for having or being that which we lawfully have or be, as you now admit we are; conſequently you muſt go ſome other way, you have deſtroyed your own Information, and can have no Judgment upon it. But perhaps this Conceſſion of Mr. Attorney, that the old and lawful Corporation and Body Politick is ſtill in Being, and ſhall ſo continue, till by Judgment or Matter on Record determined, may only be ſome ſudden Thoughts; for not only the Matter, but the whole Proceedings in this Suit, being at leaſt unexperienced, and perhaps much out of Practice, it might eaſily happen, that in an haſty Proceeding, all things might not be thought on, nor all the Objections nor Inconveniencies foreſeen, and perhaps the Conſequence of the Poſition, that a Miſcarriage, or doing an unlawful Act, ſhould *ipſo facto* forfeit the Body Politick or Corporation, might make a Man ſtart, and caſt about how to avoid it, and flying from one Danger run into another. Theſe are things ordinarily happening, and perhaps have in this Caſe happened, and were the Cauſe of this Conceſſion, that the old and lawful Corporation is yet in Being, which is contrary to the whole Frame and Scope of both the Information and Replication, and probably never thought on or intended when the Information or Replication was made, being quite contrary and inconſiſtent with the Frame and Foundation of them both. If it be holden, according to this Conceſſion, that the old and lawful Corporation was not by the ſuppoſed Acts of Forfeiture diſſolved and determined *ipſo facto*, but remained and continued lawfully a Corporation, and yet is ſo; then we have not uſurped, but are a lawful Corporation during the Time in the Information, and not as therein ſuppoſed by Uſurpation, and without lawful Authority; and thereby the Information confounded and abated.

But ſuppoſing, according to what the Information and Replication ſuppoſe, that the Acts of Forfeiture did *ipſo facto* diſſolve and determine the Corporation; for they will at laſt, I doubt, come to that again: for this preſent Thought, that it ſhall be forfeit, but not diſſolved or determined till Judgment, will be ſubject to almoſt all the ſame Inconveniencies; for when Judgment is given, the Forfeiture muſt relate to the Time of Offence, and to avoid all mean Acts, as in other Caſes it doth: But to paſs this over.

III. Suppoſing the Information good, the Replication good, and the Matters alledged for Forfeiture to be as in the Replication alledged: The next thing I pray Leave to ſpeak unto, is, Whether the Matter alledged in the Rejoinder be not ſufficient to juſtify or excuſe the two Facts alledged for Cauſe of Forfeiture? I conceive they are. The Pleadings here muſt firſt be ſtated.

1. As to the Ordinance or By-laws for the Toll in the Markets. As to that, the Defendants in their Rejoinder have alledged, That the City of *London* is, and was always, the Capital and moſt populous City of the Kingdom; that there are and always have been great publick Markets within the ſaid City; that the Mayor, Commonalty, and Citizens are, and always have been, ſeized of thoſe Markets in their Demeſne as of Fee, and at their own proper Charges provided Market-places, Stalls, Standings, and other Accommodations for Perſons coming to thoſe Markets, and Overſeers and Officers for better Regulation, and keeping good Order, and cleanſing the ſame; that for defraying thoſe Charges, they have, and always had and received, divers reaſonable Tolls, Rates, or Sums of Money, of all Perſons to thoſe Markets coming, for Stalls, Standings, and other Accommodations by them had, for expoſing to Sale their Victuals and Proviſions in thoſe Markets; that the Freemen of the City of *London* are numerous, above fifty thouſand; that there hath been, Time out of Mind, a Common Council, conſiſting of the Mayor, Aldermen, and certain Freemen annually elected, not exceeding the Number of two hundred and fifty, called the Commons; that there is a Cuſtom within the City, that the Common Council make By-laws and Ordinances for the better Regulation and Government of the publick Markets, and for the appointing convenient Places and Times when and where, within the City, the Markets ſhall be kept, and for the aſſeſſing and reducing to Certainty reaſonable Tolls, Rates, or Sums of Money, to be paid by Perſons coming to the ſame Markets, for their Stalls, Stations, and other Accommodations by them had, for expoſing to Sale their Victuals as often as, and when to them ſhould be thought expedient, ſo as their Ordinance be uſeful to the King and his People, conſonant to Reaſon, and not contrary to the Laws of the Land; that this Cuſtom is confined by *Mag. Char. Stat.* 1 *E.* 3. *Stat.* 7. *R.* 2. that after the burning and rebuilding *London*, and the Alterations thereby made, Controverſies, did ariſe within the City concerning the Markets and Tolls; that thereupon Sir *William Hooker*, then Mayor, and the Aldermen, and Commons in Common Council aſſembled, did make an Ordinance, intituled, *An Act for the Settlement and well-ordering the ſeveral publick Markets within the City:* By which reciting, that whereas for Accommodation of Market-people with Stalls and Neceſſaries for their Standings, for cleanſing and paving the ſame, for defraying incident Charges about the ſame, reaſonable Rates had always been paid. To the end the Rates to be paid might be aſcertained, that the Market-people might know what to pay, and the Officers what to take, to avoid Extortion, it was ordered, there ſhould be paid by the Market-people for their Stalls, Standings, and Accommodations in the Markets, For every Horſe-load of Proviſion under publick Shelter 2*d.* a Day, for every Doſſer 1*d.* a Day, for every Cart-load drawn with not above three Horſes 3*d.* a Day, with more Horſes, 4*d.* a Day, and upon Refuſal to pay, to be removed: Then they aver, that theſe Rates are reaſonable; that they are all the Rates that are paid by ſuch Market-people to the Uſe of the City; that theſe Rates they have received ſince the making theſe Ordinances; that there is no other Ordinance for raiſing Moneys for ſuch Proviſions expoſed to Sale in their Markets in any Manner made.

To this Rejoinder Mr. Attorney hath ſur-rejoined, and taken it by Proteſtation, That the City were not ſeized of the Markets, nor at their own Coſts provided Stalls and other Accommodations; and that the Rates by the Ordinance appointed were not reaſonable. For Plea ſets forth an Act of Parliament made 22 *Car.* 2. enacting, *That to the end apt and convenient Places within the City ſhould be put out for Buildings, and keeping the Markets; and that the* Royal-Exchange, Old-Bailey, *and common Gaols and Priſons within the City, ſhould be made more commodious*; for the enabling the City to do theſe things, they ſhould have a Duty out of Coals imported betwixt *May* 1670. and *Mich.* 1687. into the Port of *London*, 12*d. per* Chaldron; which Duty they have accordingly received, amounting to a great Sum; and notwithſtanding that Duty, without Title or Right, the Defendants made the By-law, for their pirvate Gain, *abſq; hoc*, that the Mayor, and Commonalty, and Citizens, have Time out of Mind had, or accuſtomed to have, *Tolneta, ratas, ſive denariorum ſummas per ipſos Majorem, Communitatem, ac Cives Civitatis prædict' ſuperius ſuppoſit' fore per præfat' legem ſive ordinationem prædict' aſſeſſ' & in certitudinem reduct' prout per placitum ſuperius rejungend' ſupponitur.*

The Defendants they rebut, and ſay, that they have always had reaſonable Tolls, Rates, or Sums of Money of all Perſons coming to their Markets to ſell their Proviſions, for their Stalls and Accommodations: *Et de hoc ponit ſe ſuper patriam:* The Attorney demurs. Upon his pleadings, the Queſtions are, Whether the Matters alledged by the Defendants, in Juſtification of the Ordinance, or By-law, be a good Juſtification in Law, or not? If it be, Mr. Attorney in his Sur-rejoinder hath given no Anſwer to it at all; he hath neither confeſſed it, nor denied it. The Rejoinder ſaith, that the Defendants are, and always have been, ſeized of the Markets in Fee; that they at their Charge provided Market-places, Stalls, Standings, and Officers for the Accommodations of the Markets, and cleanſing them; that for defraying thoſe Charges, they have always had divers reaſonable Tolls and Rates for Standings, and other Accommodations; that the Common Council have, as often as expedient, always made Ordinances for regulating thoſe Markets, and for aſſeſſing and reducing to Certainty reaſonable Tolls, Rates, and Sums of Money to be paid by the Market-people for their Accommodations; that according to this Cuſtom, they made the Ordinance and By-law. Mr.

Attorney in his Sur-rejoinder hath not denied any Part of this; but offers a Traverſe to that which is no-where alledged or ſuppoſed. It is never pretended, that the City have had, Time out of Mind, the very Tolls and Sums of Money for Toll aſſeſſed by the Ordinance. There is not a Word in the Rejoinder to that Purpoſe, but to the contrary; (*viz.*) That they, in their Rejoinder, claim a Power by Ordinance of Common Council to aſſeſs and ſet the Rates of theſe Tolls and Payments as often as and when to them ſhall ſeem expedient. It is admitted in the Rejoinder, that theſe Sums were not Time out of Mind, only they had Power to ſet, aſſeſs, and aſcertain, as often as expedient: Therefore when Mr. Attorney traverſeth our having, Time out of Mind, the Tolls, Rates, and Sums of Money by the Ordinance aſſeſſed, and *in certitud' reduct'* this is plain, beſides any thing claimed or pretended unto, if he had intended to traverſe what we have alledged, that we have had Time out of Mind divers reaſonable Tolls and Sums of Money for Stalls and Accommodations: Or if he would have traverſed the Inſtance alledged for the Common Council aſſeſſing thoſe Tolls, as often as expedient, that was plain and eaſy to do; but that he hath not done: He hath only traverſed whether the Tolls, Rates, and Sums of Money, by the Ordinance aſſeſſed, and reduced into Certainty, have been Time out of Mind. This is the proper Senſe of his Traverſe; but if doubtful in its Senſe, his Traverſe is nought for that Cauſe; for dubious Words can make no Iſſue for the Jury to try, elſe Men ſhould be tricked and enſnared by doubtful Words to pervert Right: So that if the Matter alledged in the Record be ſufficient in Law to juſtify the making this Ordinance or By-law, then what is done therein by the Act of Common Council is lawfully and rightfully done, and no Forfeiture. I do agree, that for a Lord of a Market to preſcribe to have a Toll uncertain, and as often as expedient, to aſcertain it, is no good Preſcription. But that is not our Caſe; I do diſtinguiſh betwixt that and this Caſe: Where there is by Cuſtom, confirmed by Acts of Parliament, (for I ſhall ſhew that they are Acts of Parliament, notwithſtanding what hath been objected againſt them) a Power and Authority veſted in the Lord Mayor, Aldermen, andCommon Council, to regulate and order the People Trades, and Markets in the City, and the Places, and Conveniences, and Officers, from time to time, and conſequently to regulate and aſcertain the Tolls or Rates to be paid by the Market-people, to prevent Extortion and Diſorders; that ſuch Cuſtom is legal. The Chamberlain of *London*'s Caſe: An Ordinance that no Broad Cloth ſhall be ſold in the City, before it be brought to *Blackwell-Hall* to be ſearched, and a Penny for every Cloth to be paid for Hallage, under pain of forfeiting 6*s.* 8*d.* a Cloth, to be recovered in the City Courts, *Rep.* 5. 69. Though objected that this was an Impoſition of Payment of Money upon the King's Subjects, yet adjudged good, and a *Procedendo* granted.

An Ordinance that no Unfreeman ſhall uſe a Trade in *London*, adjudged good, *City of* London'*s Caſe*, *Rep.* 8. *fol.* 1. A Multitude of Ordinances they have for regulating all manner of Trades, and of Rates and Prices; and as much Reaſon there is to object againſt them, as this Ordinance, or the Cuſtom in this Caſe: But the City of *London* have a Government and Power of making Ordinances for governing and regulating Trades, buying and ſelling within the City, placed in the Common Council, and confirmed by Act of Parliament; and therefore not like the Caſe of any private Lord of a Market. But it is true, their Ordinances muſt be unreaſonable. The Payments that are impoſed by this Ordinance, are only impoſed upon thoſe that are under Shelter. It is Reaſon a Recompence ſhould be paid; and there is no Unreaſonableneſs or Injuſtice appears in the Ordinance, but a reaſonable Recompence. But the Cuſtom or Power of the Common Council is not denied, as I take it: For they have not denied the Power to regulate and aſcertain the Tolls or Sums of Money alledged to be in the Common Council; if they had, that muſt have been tried: Nor have they denied the Rates ſet to be reaſonable. So that I think, as to this Matter, we have well-intitled ourſelves, and juſtified our making our By-law, and taking the Tolls or Rates thereby appointed; and nothing in the Sur-rejoinder againſt us to the contrary is objected.

But for confirming and making good our Cuſtoms, in the Plea, there are three Acts of Parliament pleaded:

1. *Magna Charta.*
2. *Stat.* 1. *E.* 3.
3. *Stat.* 7. *R.* 2.

The King's Counſel have not denied *Magna Charta* to be a Statute, but have denied the other two to be Statutes, or Acts of Parliament; and the Reaſons given by them are:

Becauſe not in Print, nor Roll of it to be found; or becauſe nobody knows where to find it.

As to the firſt, Private Acts of Parliament do not uſe to be printed, few are.

As to the ſecond, Suppoſe there were no Roll to be found. Doth this after ſo long a time conclude there was none ſuch? eſpecially ſince Mr. Solicitor was pleaſed to acknowledge, that there are no Parliament Rolls of *E.* 3. till 4 *E.* 3. It is true, that almoſt all the Parliament Rolls of *H.* 3. *E.* 1. *E.* 2. and till 4 *E.* 3. are indeed loſt. But beſides, in thoſe Days publick Acts were not only entred upon the Parliament Rolls, but from thence tranſcribed, and ſent under the Great Seal to be publiſhed by the Sheriffs of the Counties, in the Cities and Boroughs, and alſo by Writ to the Courts in *Weſtminſter-Hall*, to be there entered and recorded, of which there are many found, eſpecially in the *Exchequer*; and hence came the Rule in Law, that Judges, *ex Officio*, are bound to take Notice of general Acts of Parliament: But for private Acts, they were put under the Great Seal, and the Parties intereſted had the ſame to produce: But that theſe in this Caſe ſhould be queſtioned to be Acts, is ſtrange.

But to prove them Acts: As to the Act, 1 *E.* 3.

(1.) We have pleaded it under the Great Seal of King *E.* 3. that made it with a *Profert hic in Cur'*, and ſhewn it with our Plea as we ought; and this is Evidence ſufficient of itſelf. If the ſame, produced under the Great Seal put to it when made, be not ſufficient Evidence to ſatisfy, what can be?

(2.) But in this Caſe it is inrolled upon Record alſo, *Inter placita Coronæ penes Camerarios in Scaccario*; it is enrolled there, *Trin.* 1. *E.* 3. *r.* 61, 62.

But perhaps it may be objected alſo, That this was no Act of Parliament, but only a Grant or Patent in Parliament; becauſe it is that the King *de aſſenſu Prælator' Comitu Baron' ac totius Communitat' regni in præſenti Parliamento.*

I anſwer, that Acts of Parliament obſerve not any certain Form. In the Caſe of the Earldom of *Oxford* expreſly, *Jones* 103. that there was Variety in penning Acts of Parliament in ancient time, *Dominus Rex per Concilium fidelium ſubditor' ſuor' ſtatuit*, and other Forms there, are yet good Acts. But that they were anciently in Form of Patents or Grants in Parliament, *Magna Charta*, *C.* 1. is in Form of a Charter or Grant. The Form of the Act of Parliament, 11 *E.* 3. *Prince*'s *Caſe*, *R.* 8. *fol.* 8. for creating the Prince Prince of *Wales*, begins *Edwardus Dei Gratia*, &c. in Form of Patent, and is *De communi aſſenſu & conſilio Prælator' Comitu*, *Baron' & aliorum de concilio noſtro in præſenti Parliamento*, and adjudged a good Act of Parliament; and the Authorities and Reaſons to prove it an Act of Parliament are *fol.* 18, 19, 20, ſo full, that it might be thought that this Objection would never have been made: And that this is in the ſame Form that all the reſt of the Acts of this very Parliament of the 1 *E.* 3. *Mem.* 17. are, appears by the Patent Roll of the ſame Parliament. A Charter granted by the King *de aſſenſu Prælator' Comitu*, *Baron' Communit' Regni in Parliamento apud Weſtm'* to enable the City to apprehend Felons in *Southwark*. An Act in the ſame Form, for the annulling the Conviction of Treaſon that was againſt *Roger Mortimer*, in the Time of *E.* 2. *Rot. Clauſ.* 1 *E.* 3. An Exemplification then entered of an Act made in the ſame Form in the ſame Parliament, for the anulling the Attainder of *Thomas* Earl of *Lancaſter*, attainted *tempore E.* 2. *Rot. Pat.* 2 *E.* 3. *P. S.* 1. *M.* 17. Divers other Acts of Parliament in the ſame Form made 1 *E.* 3. for annulling divers other Attainders that ſwere *tempore E.* 2. So that as to this Act of Parliament 1 *E.* 3. I think the Objections are anſwered, and that it is an Act, as pleaded, *Rot. Pat.* 2 *E.* 3. *P. S.* 2. *M.* 11. *Inſt.* 2. 527. 639.

And as to the other Act 7 *R.* 2. that that is no Act of Parliament, only a Prayer of the Commons, that there might be a Patent granted to the City, confirming their Liberties, *licet uſi vel abuſi fuerint*; and the Anwer was, *Le Roy le veult.*

They object for Reaſons againſt that being an Act of Parliament,

Firſt, That it wants the Aſſent of the Lords.

Secondly, It is only a Prayer of the Commons to have their Liberties confirmed, and the King's Anſwer *Le Roy le veult*, but nothing done to confirm it.

As to the firſt Objection, ſuppoſing it true that there is no mention made of the Aſſent of the Lords, yet the Act is a good Act.

1. It appears to be in Parliament *ad inſtantiam & requiſitionem Communitat' Regni noſtri in præſenti Parliamento.*

2.) The Anſwer in Parliament, that is given by the King to the making all Laws, is given to this, *Le Roy le veult.*

3.) And next, it is admitted to be upon the Parliament Roll, 7 *R.* 2. *Num.* 27. I have before ſaid, that Acts of Parliament are not in any certain form; ſometimes entered as Charters or Grants, ſometimes as Articles, ſometimes and frequently as Petitions; the Books I have already cited proved it. But according to the Courſe of Parliaments, let it be in what Form it will, let it begin in which Houſe it will, yet it muſt go through both the Houſes of Parliament, before it can come to the King for his Royal Aſſent. If either Houſe rejects or refuſeth, there it ends, it comes not to the King; nor is the Royal Aſſent in theſe great operative Words, *Le Roy le veult*, in Parliament given to any thing, but what the whole Parliament have aſſented and agreed unto: So that this is an Objection grounded upon a Reaſon contrary to all the Courſe of Parliaments, which ſhews, that the Lords Aſſent was to it, though not mentioned. *Selden*'s *Mare Clauſ.* 249. gives a full Reſolution herein: *Certiſſimum eſt*, ſaith he, that according to Cuſtom no Anſwer is given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it be brought in firſt by the Lords, or by the Commons, hath paſſed both Houſes, as it is known to all that are verſed in the Affairs and Records of Parliament. And in the Prince's Caſe before cited, there the Act is ſaid to be *de Aſſenſu & Conſil'* of the Lords, but doth not name the Commons; And this anſwers the other Reaſon alſo, *viz.* That it ſhould only be a Prayer and Petition alſo, to have a Charter of Confirmation granted: For ſince the Forms are in manner of Petitions, ſince the Royal Aſſent or Words, *Le Roy le veult*, is never put to any Bills in Parliament, but ſuch as are thereby made and paſſed into Laws, the giving the Royal Aſſent is ſufficient in this Caſe to prove it a Law. But for further Evidence, we have it under the great Seal of King *R.* 2. thus penned: *Ad inſtantiam & requiſitionem Communit' Regni noſtri Angl' in præſenti Parliamento noſtro*, *pro majori Quiete & Pace inter Legeos noſtros focendis*, *& pro bono publico de aſſenſu Prælatorum*, *Dominor' Procerum*, *& Magnat' nobis in eodem Parliamento aſſiſtentium*, *&c.* So that hereby it is fully proved, and ſhewn, that though the Aſſent of the Lords be not mentioned in the Copy, yet that it was had, and under the great Seal of *R.* 2. it ſo appears. We have alſo, in our Book of the Acts of that Time in the City, the Proclamation made upon the firſt promulging this Act, in the Time of Sir *Nicholas Brember*, Lord Mayor, *Lib. H. f.* 169. *a & b.* and therein it is alſo entered in the ſame Words, as before, under the great Seal of *R.* 2. *de aſſenſu Prælator'*, *&c.* Next our Books and continual Practice ever ſince. It is true, that in the 7 *Hen.* 6. *fol.* 1. when it is ſaid, that the Cuſtoms of *London* were confirmed by Statute, *Quære*, what Statute! but it is no tthere made a *Quære*, whether this were a Statute? *Inſtit.* 4. 250. *Rep.* 5. 63. *Rep.* 8. 162. all ſay, that the Cuſtoms of *London* are confirmed by Parliament, 7 *R.* 2. Juſtice *Jones* 283. hath it *verbatim* out of the Parliament Roll. The conſtant Courſe of Pleading the Cuſtoms of *London*, is to plead a Confirmation of them by this Act of Parliament: So that as to this Point there is not any one Book or Opinion before this Day, in favour of what is affirmed, that theſe are not Acts of Parliament; and our Plea ſtands good in Law, and the Ordinance,

dinance, and By-law, and Cuſtom is good, and then no Forfeiture thereby.

But ſuppoſe, and admit, that this By-law be the Act of the Corporation, and not good and ſufficient in Law, nor in Law juſtifiable, *Quid ſequitur?* Then it is void in Law. Then if it be void in Law, how can it make a Forfeiture? Suppoſe a Leſſee for Years, or for Life, makes a Feoffment, but it is not duly executed for want of Livery and Seiſin, by which it is void in Law, can this make a Forfeiture of the Eſtate of the Leſſee? Suppoſe a Corporation *Tenant pur auter vie* makes a Feoffment which is void for want of Livery duly made, will this forfeit their Eſtate? A void Act ſhall not deſtroy or forfeit a precedent Eſtate. A Parſon, that hath a former Benefice, accepts a ſecond Benefice incompatible, was inſtituted and inducted, but did not read the Articles, his firſt Benefice was not forfeit or void hereby, becauſe by the Statute the not reading his Articles had made his Inſtitution and Induction void. *Dyer* 377 *b.* So that then whether this By-law or Ordinance were good and void in Law, perhaps is not much material; it cannot make any Forfeiture of the Corporation, it can have no ſuch Effect; for if it be a good and lawful By-law, no Forfeiture can be for doing a good and lawful Act. If the Ordinance be not warrantable by Law, then it is void in Law; if void in Law, a void Act can make no Forfeiture.

But you received, ſay they, and exacted from the King's Subjects Sums of Money by this Ordinance.

I anſwer, Suppoſe we did, and that we had no Right to have this Money; if an Officer, by Colour of his Office, receive more than is due, it is Extortion, and a Crime puniſhable: But if a Perſon, that is no Officer, take Money that is not due, or more than is his Due, the Parties injured have their Remedies by Action; but this is no Crime for which any Forfeiture or Penalty is incurred by the Perſon that ſo takes or receives the Money. Suppoſe a Lord of a Manor exact or take greater Fines or Sums of Money from his Copyholders or Tenants than he ought, they have their Remedies by Actions againſt thoſe that receive; ſo if a Corporation receive or take Money ſuppoſed to be due, but in Truth is not, how can this forfeit any thing?

But you took upon you, ſay they, a Power and Authority to tax the King's People, and to take and receive the Money ſo taxed.

I anſwer, This is but the ſame thing, only put into greater Words. It is ſtill but the making of an unlawful By-law, and thereby appointing Money to be paid which ought not, or more than ſhould be; and as to the turning of it, or expreſſing it in ſtately Words, of taking upon you, or uſurping Authority to impoſe upon, and tax the King's People; whoſoever doth any Act or Thing, he takes upon him, and doth alſo execute the Power and Authority of doing that Act or Thing, which is comprehended in the Thing done. The making a By-law, or Ordinance, whereby more is ordered to be paid than ought, or Money appointed to be paid where none is due, is ſtill all the Fact and Thing done; and if that make no Forfeiture of the Corporation, or Crime puniſhable by Indictment or Information, except only as the Statute 19 *H.* 7. *c.* 7. which I ſhall hereafter mention, hath appointed for Forfeiture of 40*s.* the taking or uſurping the Power to do it, cannot be more, or effect more, than the doing the thing which comprehends it.

2. As to the other Cauſe alledged in the Replication for Forfeiture, the Petition printing, and publiſhing it; in the Replication 'tis alledged, That the Parliament the 10th of *January* was prorogued to the 20th of *January*; that the 13th of *January* the Mayor, Commonalty, and Citizens of *London*, in their Common Council aſſembled, *malitioſe, adviſate & ſeditioſe*, took upon them *ad judicand' & cenſend'* the King, and the Prorogation of the Parliament by the King ſo made; and that the Mayor and Commonalty, and Citizens of *London*, ſo in the ſaid Common Council aſſembled, did give their Votes and Order that a Petition, in the Name of the Mayor, Aldermen, and Commons of the City of *London*, in Common Council aſſembled, ſhould be exhibited to the King: In which Petition it was contained, that by that Prorogation the Proſecution of the publick Juſtice of the Kingdom, and the making neceſſary Proviſions for the Preſervation of the King, and his Proteſtant Subjects, had received Interruption; and that the Mayor, Commonalty, and Citizens of *London*, in Common Council, as aforeſaid, aſſembled, maliciouſly and ſeditiouſly, to the Intent the ſame ſhould be diſperſed among the King's Subjects, and to cauſe an Opinion that the King obſtructed the publick Juſtice, and to ſtir up Hatred and Diſlike againſt the King's Perſon and Government, did order the ſaid Petition to be printed; and afterwards they did print it, and cauſed it to be publiſhed.

The Defendants in their Rejoinder to this Breach ſet forth and alledge, That there was a Plot againſt the Life of the King, the Government, and the Proteſtant Religion; and ſet forth all the Proceedings upon it, the Attainders and Impeachments of the Lords in the Tower in Parliament depending, the Proclamations declaring the Dangers by this Plot, that they could not otherwiſe in human Reaſon be prevented, but by the Bleſſing of God upon the Conſultations and Endeavours of that great Council the Parliament, and commanding a general Faſt to be kept in *London* the 22d of *December*, and that it was kept accordingly; the Proceedings in the Parliament towards the Trial of the Lords, and preparing Bills to be enacted into Laws, for Preſervation of the King and his Subjects againſt theſe Plots and Conſpiracies: that divers of the Citizens, loyal Subjects, being much affrighted, and troubled in their Minds, with the Apprehenſion of theſe Dangers, did exhibit their Petition to Sir *Patience Ward*, then Lord Mayor, and the Aldermen, and Commons in Common Council then aſſembled, containing their Fears and Apprehenſions and Expectations from the King and that Parliament; did petition, that the Common Council would petition for the ſitting of that Parliament, at that time prorogued. And thereupon the Mayor and Aldermen, (naming them) and Commons in Common Council aſſembled from their Hearts truly loyal to the King, and for the Satifaction of the Citizens, who had exhibited that Petition, and of Intent to preſerve the Perſon of the King, and his Government, did give their Votes, aud order a Petition ſhould be exhibited to the King in the Name of the Mayor, Aldermen, and Commons in Common Council aſſembled, and ſet forth the Petition in the Name of the Mayor, Aldermen, and Commons in Common Council aſſembled *in hæc verba*: Wherein among other things it is contained, That they were extremely ſurpriſed at the late Prorogation, whereby the Proſecution of the Public Juſtice of the Kingdom, and the making Proviſions neceſſary for preſerving the King's Perſon, and his Proteſtant Subjects, received Interruption. And did farther agree and order that that Petition, after it had been preſented, ſhould be printed, which was ſo ordered with Intent, that falſe Reports concerning the Petition might be prevented; the Enemies of the King and the Conſpirators, from proceeding in the Conſpiracy, deterred the Troubles in the Minds of the Citizens alleviated, and the Citizens know what had been done upon their Petition; that the Petition was delivered to the King, and afterwards printed; that this is the ſame Petition and Printing in the Replication mentioned *abſq; hoc*, that any Petition of or concerning the Prorogation of the Parliament was made, ordered, publiſhed, or printed in any other manner than they have alledged, as the Attorney General ſuppoſeth. To this Part of the Rejoinder Mr. Attorney hath demurred generally by the Demurrer, the Fact alledged in the Replication is admitted to be true. And it is true, that there are no Words, that are written or ſpoken, but are ſubject to various Conſtructions: But I take it, that no Words, whether written or ſpoken, ought to be taken in an ill Senſe, if they may reaſonably be taken in a better; *Nemo præſumitur eſſe malus*; and therefore the Words muſt ſtand as they are penn'd: And having firſt expreſſed their Fears, and next their Hopes, from the King and Parliament's Proceedings in Trial of thoſe that were impeached, and making Laws for their Security, and how they were ſurpriſed at the Prorogation; then they ſay, That by that Prorogation, the Proſecution of the publick Juſtice of this Kingdom, and the making neceſſary Proviſions for the Preſervation of the King and his Proteſtant Subjects, had received Interruption. It is mentioned only as a Conſequence of the Prorogation, it is not ſaid or expreſſed, that the King did interrupt; for I think there is great Difference betwixt the one ſort of Expreſſion and the other. An ill Conſequence may attend a good, and commendable, and moſt neceſſary Act; but no Conſequences can make an ill Act good; and therefore the expreſſing the Conſequence doth not neceſſarily condemn or declare the Act to be an ill Act. Suppoſe, that in the Time of the great Plague a Man had had a Suit in *Weſtminſter-Hall*, wherein all his Eſtate had been concerned, and had ſaid or writ, that by the Adjournment of the Terms by the King, the Proceedings of the Courts of Juſtice in his Suit had received an Interruption, had theſe Words been puniſhable? The Adjournment was then the moſt neceſſary and commendable Act that could be for the Preſervation of the King's Subjects in that raging Peſtilence; and the Act itſelf being ſo good and neceſſary, though there were ſuch Conſequence as to that particular Suit, the writing or ſaying, that it had ſuch a Conſequence, ſuch an Interruption, did not, I conceive, condemn, judge, declare or expreſs the Act to be ill. Suppoſe a Man had had a Bill depending in that Parliament, to be enacted for the enabling him to ſell his Land to pay his Debts, to free him from a Gaol: Or, ſuppoſe that ſome one of the Lords impeached in that Parliament had made a Petition for the Sitting of the Parliament, and had therein expreſſed as a Reaſon and Ground of his Petition, the like Words as in this Petition: What would the Court have judged of it? Are not the Caſes much the ſame? If they are, there will be no Diſtinction of Perſons in Judgment; I am ſure there ought not. Perhaps when this Petition was made, there might be too much Heat in the Minds of Men; and it is true that Heat increaſeth Heat, and Fire kindles Fire; it is time for all ſorts to grow cool and temperate, and to weigh and conſider we are, or ſhould be, conſidering Men. This Petition was made *Nemine contradicente*, and undoubtedly among ſuch a Number as the Common Council, there muſt be Men of Variety of Tempers and Diſpoſitions: But for the greateſt Number of the Aldermen, and Common Council, think of them; we know the Men, many of them; can we imagine, that they had either the leaſt ill thought or Meaning towards the King, his Perſon or Government, in this Petition, or the printing it? And as for the printing it, that, my Lord, ſtands upon the ſame Reaſons and Grounds: For if there be nothing ill or unlawful in it contained, then the printing and publiſhing of that which contains nothing ill or unlawful, is not, as I conceive, ill or unlawful. Printing is but a more expeditious way of writing, and is good or bad as the Matter printed is good or bad. The Defendants in their Rejoinder have ſet forth their whole Caſe, the Reaſons and Grounds of what the Common Council did, and the Manner and Intent of their doing it; all which Fact cannot be denied to be true, but is now confeſſed by the Demurrer. It hath not, nor can be ſaid, but it is well pleaded, and might have been traverſed and denied if not true: But it is confeſſed by the Demurrer to be true, and therefore that muſt be taken to be the Fact, and not as alledged in the Replication, and then ſo taken, I ſubmit it to your Judgment.

3. But the next thing conſiderable is, Whether, ſuppoſing and admitting that if done by the Body Politick, it hath been a Miſcarriage or a Crime? Whether not being done by the Body Politick, nor under the Common Seal, but by Common Council, whether thereby the Being of the Corporation ſhall be forfeit?

A Common Council in Corporations is generally a ſelect Number of the Body Corporate, conſtituted to adviſe and aſſiſt the Corporation in their ordinary Affairs and Buſineſs. There is no certain Rule nor Meaſure of their Power wherein all the Common Councils agree. In ſome Corporations the Common Council have greater Authority, in ſome leſs, according to the ſeveral Authorities by their reſpective Charters, where the Corporations are by Charters; or by Cuſtom or Uſage, where the Corporations are by Preſcription: But in all they are a ſubſervient Number of Men, conſtituted and authorized for particular Ends and Purpoſes: And in this Caſe I think the Court can take Notice of the Common Council no otherwiſe than upon the Record they appear to be. The Replication doth not ſay what they are, but would go in the Dark, by Intention and Preſumption, the beſt Way and Method to arbitrary Determination. The Rejoinder ſaith, that the Citizens and Freemen are a great Number, fifty thouſand, and more. That there hath been

Time out of Mind a Common Council, conſiſting of the Mayor and Aldermen for the Time being, and of certain Freemen, not exceeding two hundred and fifty, annually elected to ſerve as Common Council Men, and are called the Common Council the City; that Time out of Mind there hath been a Cuſtom, that theMayor, Aldermen, and ſuch Citizens, ſo elected to be of the Common Council, according to Cuſtom, have been accuſtomed to make By-laws and Ordinances, for the better Regulation of the publick Markets, for appointing Times and Places, and aſſeſſing and reducing into Certainty reaſonable Tolls, Rates, and Sums ofMaoney, payable for Stalls and Standings in the Market: For any thing appears upon the Record, this is all they have Power to do: *Non conſtat* to the Court, that they have any other Power or Authority over Lands, Eſtates, or any thing elſe. Next, if this which in the Rejoinder is alledged, of the Being and Power, be true, and ſo admitted, then what they did in making the Ordinance, was done by good and lawful Power and Authority, and then can be no Offence: But if to make the Ordinance be an Offence, and an unlawful Act, you deny the Cuſtom to be good, and ſay, the Cuſtom is void, and againſt Law, and for that Reaſon the Ordinance illegal. Then *non conſtat*, that they had any Power at all to do any thing, and then a Common Council to adviſe without Power to do any Act; and if ſo, How can a Parcel or Part of a Corporation, not authorized to do any Act, do an Act that ſhall forfeit? Suppoſe a particular Company, as the Mercers, had done this, could this be a Forfeiture? But if to avoid this you will ſay, that the Court ſhall take Notice of the Common Council of *London*, to have the Management of the Buſineſs of the Corporation belonging to them; this I think the Court cannot do, and I cannot ſee how poſſibly they can, as a Court, judicially take notice hereof. Suppoſe our Queſtion had been concerning another Corporation, could the Court then, as a Court, judicially have taken notice of the Power or Authority of their Common Council? Mr. Solicitor in his Argument held, that there was no Difference betwixt *London* and another Corporation, except that *London* was the biggeſt. Then put the Caſe of any other Corporation, could the Court judicially have taken notice of their Power or Intereſt, without having it ſpecially ſet forth? Is it poſſible the Court can, ſince they differ one from the other, as much as their Charters or Conſtitutions do differ, of which there are hardly to be found two in *England* that do agree in their Powers? If it had been of another Corporation, of Neceſſity the Conſtitution of the Common Council muſt have been ſet forth. If you are upon a By-law, made by any other than the Body Politick itſelf, muſt not the Power and Authority of thoſe that made it be ſhewn, and ſet forth in Pleading, in any Caſe where there is Occaſion to uſe it? How otherwiſe could the Court judge or determine of it? So that taking the Law to be as the other Side ſaith, that *London* differs not from any other Corporation; it is no-where alledged in the Pleading, that they have Power to make By-laws, for the ordering and governing the City, or that they can bind all the Corporation in Sale or Diſpoſition of their Lands, or have the Power of the Common Seal: Therefore when the King's Counſel argue from theſe Powers, their Power of forfeiting, they argue quite out of the Record; they have no-where alledged or pleaded what they are, or what Power they have, as they ſhould have done, if they had ſo intended. So as to this Particular, here is nothing before the Court, nothing upon Record, to ſhew how or which way the Body Politick ſhould be concerned in theſe Acts of about two hundred and fifty of their Members, called the Common Council. Whereſoever any By-laws or Ordinances are pleaded, the Power to make theſe By-laws or Ordinances is pleaded, and ſo are all particular and derived Authorities, whenever Occaſion to plead them, and neceſſary they ſhould be ſo: For it is Fact, that the other Side may and ought to be at Liberty to deny it, if he ſee Cauſe; and therefore if they will hcve it, that the Common Council have abuſed ſome Power or Authority they have, thereby to forfeit the Corporation, they ought to have ſhewn it; to ſay that Notice ſhall be taken, or it ſhall be intended or preſumed, is in Truth a Preſumption upon the Court, as if the Court ſhould take notice of, intend, or preſume, what the King's Counſel would have, which the Court cannot, nor will do, more in this than in other Caſes. But ſuppoſing the Court will take more notaie of *London* than any other Corporation, and will take notice of the Common Council there, and of their Power and Authority; and I will ſuppoſe, as the other Side do, that they have the Power of making By-laws, of leaſing, granting, and managing the City-lands and Revenues, and of ſealing with the Common Seal, and that this they have by Cuſtom; then ſurely, ſay the other Side, they have the Power of ſurrendering and forfeiting the Corporation. If I ſhould anſwer, Surely and without doubt they have not, this would not argue they have not; but the Argument ſhould come of the other Side, to prove they have; they have not, nor can produce any Caſe or Opinion to prove it; and the very Thought, that they could, is ſo new, that I believe none can be found like it. But let us conſider the Nature of this thing a little particularly: Though general Diſcourſes are moſt eaſy and florid, yet perhaps a particular Inquiry may beſt diſcover. Admit, that they have the Power the other Side ſay they have; yet they are not the Corporation, but a Part conſtituted for theſe particular Ends and Purpoſes, for which they are impowered. Corporations had their Creations by Charter; that gives them their Being, and the Form, Method, and Power of Action. Suppoſe, that the firſt Charter of Incorporation that was granted to *London* did grant, that the Citizens ſhould be incorporate, and a Body Politick, by the Name of Mayor, and Commonalty, and Citizens: that there ſhould be a Mayor, ſo many Aldermen, and ſo many of the Citizens annually elected, that ſhould be a Common Council; and that they ſhould have Power to make By-laws, to demiſe or grant their Lands, under the Common Seal, in the Name of the Corporation. If they do any Act not within their Commiſſion, is not that void? Suppoſe a Grant made to the Common Council, would not that be void? Suppoſe a Grant made by the Common Council, in the Name of the Common Council under Seal, or in the Name of the Corporation, but not under Common Seal, is not all this void? This I only inſtance, to ſhew that their Charter and Authority is, their Power and Warrant they are to act by: Did ever any Man hear of, or ſee a Charter giving the Common Council Power to ſurrender the Corporation? Or was it ever thought of before theſe Days? If then no ſuch Power by the Charter be given, if they cannot do it without Power given them, ſhew me their Power, or elſe I think I may conclude, ſure they cannot ſurrender the Corporation without Power. But the Common Council in *London*, that is by Cuſtom, and their Power is by Cuſtom. Then if the Queſtion be, What is their Power? It is anſwered, What they have uſed and accuſtomed to do, that they may do; what they have not uſed or accuſtomed to do, that they cannot do; for if Cuſtom and Uſage be the Authoiity, that Authority can go no farther than their Cuſtom and Uſage goes. Then put the Queſtion, Have the Common Council uſed to ſurrender or forfeit the Charter? Nobody can ſay it. What Reaſon then is there for any Man to ſay they can do it? It is probable, that the Common Council in *London* had firſt their Inſtitution from ſome By-law or Ordinance, though now not to be produced, but conſumed by Time. But be it that, or any other imagined Commencement, can it be imagined, that thoſe that gave them their original Authority, gave them Power to ſurrender the Corporationor forfeit it? Suppoſe that the Power given them did authorize them not only to make By-laws and Ordinances for the good Order and Government of the Corporation, to grant or demiſe their Lands and Revenues, but had ſome general Words in it to act and manage the Matters of the Corporation: Is it not againſt all Senſe to ſuppoſe, that that which is deputed and conſtituted for the well-ordering and managing of the Corporation, ſhould have Power to ſurrender it? Then as the Counſel of the other Side argue, that becauſe they may ſurrender, they may forfeit. By the ſame Reaſon, I hope, I may argue, if they cannot ſurrender or diſpoſe of the Corporation, they cannot forfeit. Next, thoſe Acts of the Common Council are not done neither in the Name, nor as the Acts of the Corporation, nor under any Seal; but do import in themſelves only to be the Acts of the Common Council: The Ordinance, that is made by the Mayor, Aldermen, and Commons, in Common Council aſſembled. The Petition is the Petition of the Lord Mayor, Aldermen, and Commons, in Council aſſembled: Their Leaſes or Grants are in the Names of the Corporation, and under the Common Seal; and the Common Council only miniſterial to the Corporation in ordering, managing, and diſpoſing all for the Benefit and Advantage of the Corporation, to avoid the Inconveniency of aſſembling the numerous Body. But that any thing, that hath but a miniſterial Power, for the Service and Benefit of their Principal, ſhould have Power to diſpoſe of, ſell, convey, or ſurrender, and deſtroy their Principal, is no Conſequence in Law or Reaſon. No Deputy, Aſſiſtant, or Bailiff, hath ſuch Power; if he exceed his Authority, his Act is void. Is it not ſo with all Authorities and derived Powers? What they do beyond their Authority cannot bind thoſe from whom they derive it. It cannot be the Act of the Corporation; for a Corporation cannot make a Petition, no more than they can make a Deed, or ſubſcribe a Writing, except under the Common Seal. Corporations cannot make a Leaſe at Will, licenſe a Man to enter upon their Lands, or do any like Act, but under their Common Seal; nor can they commit a Treſpaſs or Diſſeiſin but by Command precedent, or Aſſent ſubſequent, under their Common Seal. How then can this be their Act? There is nothing in it that imports it ſhould be theirs, nor ever intended to be theirs; it is not done by them, nor in their Names, but by the Common Council, and in the Name of the Common Council. If we may take notice of what is out of the Record, we know that they have in *London* a greater Aſſembly than the Common Council, *viz.* the Common Hall, wherein the Common Council are no more than others. Can the Petition of the Mayor, or Mayor and Aldermen, in their Names, be taken to be the Act of the Corporation? If that cannot be, why ſhould the Petition of the Common Council in their own Names be any other than their own Petition, as their Ordinance and By-law are theirs, and not the Corporation's? 12 *H.* 7. 25, 26. 9 *E.* 4. 39.

The Caſe of Corporations takes notice of their Power, as Common Councils, to exclude the Commonalty, and the reſt of the Corporation. The Act allows the Common Council's ordering Petitions. But where it it to be found, that it was ever ſaid or thought on before, that they could forfeit or diſſolve the Corporation? *Rep.* 4. 77. 13 *C.* 2. *cap.* 5.

4. But ſuppoſing all that I have ſaid againſt me; and ſuppoſing the Acts of the Common Council to be the Acts of the Corporation, and ſuppoſing thoſe Acts, *viz.* the making the Ordinance and Petition not juſtifiable or excuſable; then the great Point will be, whether they or either of them are ſuch Miſcarriages or Offences in Law, for which the Charter, that is, the very Being of the Corporation, ſhall be forfeit? This I call the great Point; for I think it to be as great in Conſequence as ever any at this Bar, as if *Magna Charta* were at ſtake? for in my Apprehenſion, not only *London*, but all the Corporations of *England*, and the Govertment of *England*, will be deeply concerned in the Queſtion. For let us but conſider what a vaſt Part of *England* is concerned in the Corporations of *England*.

(1.) Eccleſiaſtical, or mixt, as Archbiſhops, Biſhops, Dean and Chapters, Parſons, Vicars, Univerſities, Colleges, Hoſpitals of all ſorts.

(2) All the Cities and conſiderable Towns and Boroughs in *England*.

(3.) The very Frame of our Government is concerned; for one of the Eſtates of the Kingdom, *viz.* The Commons in Parliament, conſiſts of Knights, Citizens, and Burgeſſes; the Citizens and Burgeſſes are uſually choſen by them that are free of the reſpective Cities and Corporations; and where not choſen by them, yet the Elections are generally under their Power and Influence, and the Return made by them.

Perhaps alſo a Peerage is a ſort of Corporation. Perhaps the World itſelf, at leaſt this little World, will no longer be able to ſubſiſt in Health than the due Order and juſt Temperament of the ſeveral Parts and Powers therein are preſerved, and contain themſelves within their own Bounds. The taking away or infeebling any principal Part brings a Lameneſs and Deformity, Pain and Diſorder upon, and at length confounds the Whole. The Laws anſwer their Ends, whereof the principal is the Preſervation of the Government, which preſerves the Laws, they cannot ſubſiſt one without the other; therefore whatſoever it is that tends to the Subverſion, or leaving at Will and Pleaſure, that which is ſo conſiderable in our Government as Corporations are, ought to be thoroughly conſidered.

The better to examine and conſider this great Point: In the firſt Place, the Reaſons given on the other Side are,

Firſt, That if Corporations be not forfeitable for their Miſcarriages, they will attempt and do extravagant Acts, raiſe Sedition or Rebellion, and there will be no adequate Puniſhment to their Miſcarriages.

In Anſwer to this Reaſon, I ſay, that there is no illegal Act that they can attempt or commit, but that they are under the ſame Severities and Corrections of Law, as any other the King's Subjects, not incorporate, are. Though it be true, that the Corporation itſelf is only a Body Politick, an inviſible Body, yet the Members of it, they are viſible. If they as Members of that Corporation commit or do any unlawful Act, they are puniſhable for it in their own private Capacities: If they make any Ordinance or By-law to raiſe Money unlawfully upon any of their Members, or others, the By-law or Ordinance is void: If they receive or collect any Money by it, the Receivers and Collectors are to anſwer it, they are to be ſued as any other Subject. Suppoſe a Lord of a Manor or Market make an unlawful Order to collect or take Money from his Tenants or Copyholders, or unreaſonable Tolls in his Markets; this Order is void in Law, and thoſe that collect or receive any Money by it are anſwerable for it, and the Parties grieved have their proper Actions aud Remedies, and perhaps the Markets, or at leaſt the Tolls may be ſeized, or forfeit for this Miſcarriage. This is the Proviſion that by Law is made againſt ſuch Exactions, and this is juſt, and adequate, and reaſonable. And if a Corporation made ſuch Ordinance, By-law, or Order, and thereby there is the ſame Receipt or Exaction, the Subject hath the ſame Remedy, and there is the ſame Forfeiture of Toll or Market, as in caſe of any natural Perſon, or Lord of a Manor; and the Proviſions by Law made are juſt, and reaſonable, and adequate, in this Caſe of the Corporation, as of the other. The like for any Offence that can be committed, it muſt be done by particular Members, and they muſt anſwer for it. And this is no new Opinion; 21 *E.* 4. 14. is expreſs, that a Mayor, and Commonalty, or other Body Politick, cannot commit Treaſon, although all the Commonalty do commit Treaſon; every of them is a Traitor in his own Perſon. I might cite other Authorities to this Purpoſe, but they have been already cited by Mr. Recorder in his Argument; and though the Counſel for the King would make theſe Books to be but ſome ſlight Opinions, yet unleſs they could ſhew ſome Authority, Book or Caſe to the contrary, their deſpiſing or little valuing what they can find no Anſwer for, will not render the Authority and conſtant Opinions of our Books of leſs Eſteem than they ought to be. It is no Excuſe, if they do an unlawful Act, that they are Members of a Corporation, or did it as a Corporation. Nobody can ſay this will excuſe them; ſo that, notwithſtanding their being a Corporation, they are as ſubject to the Law, be the Offence Treaſon, Sedition, or any other Crime or Offence, as any other the King's Subjects are; every particular Member, that acted or committed that Offence, is anſwerable to the Law for it. The particular Members that commit the unlawful Act, and all that act under their Authority, are ſubject to the ſame Law as all other the King's Subjects. And therefore this Reaſon, that elſe there will be no Puniſhment upon them adequate to the Offence, and conſequently a Miſchief and Inconvenience, is but a Shadow, and nothing proportionable to the Miſchiefs and Inconveniencies attending the Poſition of a Forfeiture of the other Side. But conſider the Injuſtice that would be of the other Side, if this ſhould be ſo: We know Aſſemblies determine their Acts by the Major Vote, and great Struggling there is, as we too frequently ſee in their Debates and Reſolutions, and carried by Majority of one or two Votes, ſometimes by Surprizes and undue Management, ſometimes by Fear and Terror: Suppoſe an evil Act ſo carried or managed, is it Reaſon that all the whole Corporation ſhould be thereby forfeit; and thereby all other Men, to whom they owe any Debts, muſt loſe them, and the many Intereſts and Livelihoods depending upon the Corporation, the Cuſtoms, Courts, Offices, and Privileges belonging to it, endleſs to enumerate, ſhall all be undone and deſtroyed?

Secondly, The next Reaſon that hath been given is, that it is a general Rule in Law, That the abuſing or miſuſing of a Franchiſe is a Forfeiture of the Franchiſe.

I anſwer, This is true in the Senſe that the Books do ſay it; for if a Man miſuſe or abuſe a particular Franchiſe, he ſhall forfeit that particular Franchiſe; but he ſhall not forfeit any other, except it be depending upon, and incident to it. And the Caſes cited prove nothing farther: That when a Man hath divers Franchiſes not depending one upon another, and miſuſeth one Franchiſe, he ſhall not thereby forfeit the reſt, but only that which he miſuſeth. 22 *Aſſ. p.* 34. *Br. Fran.* 34. And therefore the Caſes cited, where the Abbot of *Crowland*, and the Abbot of *St. Albans*, had Franchiſes of Cuſtodies of Gaols; one would not be at the Coſt of a Commiſſion of Gaol-delivery, the other did detain in Priſon after legal Diſcharge, and Fees paid, 8 *H* 4. 18. *Rep.* 9. 96. *b.* 24 *E.* 4. *b. Inſt.* 2. 43. This was a Miſuſer of thoſe Franchiſes and Forfeitures. So alſo perhaps if there be a Franchiſe that hath Incidents to it; as Pypowders to a Fair, Pillory to a Leet: An Abuſer of the Incident, as the Court of Pypowders, or the not having a Pillory, may forfeit the Market or the Leet. If the Lord of a Market take outrageous Toll, he ſhall forfeit the Market, *Stat. Weſt.* 1. *cap.* 31 *Inſt.* 2. 219. But doth this prove, that if a Corporation have Fairs, Markets, Gaols, or Leets, and miſuſeth any of them, that the Body Politick, the Corporation, ſhall be forfeit? If this be ſo, the Abbots, they being Corporations, in the Caſes of the Abbots of *St. Albans* and *Crowland*, ſhould have forfeited not only the Liberties of having Gaols, but the very Corporations or Bodies Politick, of being Abbots; a conceit never yet imagined. Can you ſay the City of *London* is either dependant or incident to the Markets; or on the contrary, that the Markets are ſo incident or dependant upon the Corporation, that they cannot be one without the other? Can this be ſaid? If this cannot be ſaid with Reaſon, how can then the taking theſe Tolls admit they were outrageous, and a Forfeiture of the Market, forfeit the Corporation? The making the Ordinance, ſuppoſing they made it, is but the Mean by which they took it. Your Books only prove the Abuſe of a Franchiſe, a Forfeiture of that Franchiſe, or Incidents to it, and no other: But the Inference in this Caſe is not the Forfeiture of that particular Franchiſe, but of the Being of the Corporation that owned the Franchiſe; which is a plain *non ſequitur*, unleſs you ſay the Corporation is incident to the Market. Arguments from general Rules are the moſt fallible, eſpecially in Law; and that this is ſuch, I hope moſt plainly to ſhew in the diſtinguiſhing the different Nature of Franchiſes; which I ſhall do preſently, only taking in my Way their next Reaſon that they offer, and anſwer both together; which is,

Thirdly, That a Corporation is a Franchiſe; that it commenceth by Grant, and therefore is forfeitable and ſurrenderable, as other Franchiſes are; and if they be ſurrenderable, then alſo are they forfeitable.

I do agree, that *Franchiſe* is a large Word, it is of the like Senſe of Liberty or Privilege. Therefore in *Quo Warranto*, Franchiſes, Liberties, and Privileges, ſeem to be of the ſame Senſe. To be a Subject born, and to have Liberty and Privilege of a Freeman, and no Villain, is a great Franchiſe; and therefore in Law, when a Villain is made free, we ſay he is infranchiſed, he hath the Franchiſe, Liberty, and Privilege of being a Freeman. An Alien, he is made Denizen by Letters Patents; a Perſon attained is pardoned by Letters Patents, and a Reſtitution in Blood granted, and made a new Creature. By theſe Grants the Alien and the Perſon reſtored have ſuch Franchiſes, Liberties, and Privileges granted them, that though before they were not capable to take, hold, or enjoy, or act as natural-born Subjects or Freemen; yet hereby they have ſuch Capacity granted. Next, I think it will be granted, that this Franchiſe, Liberty, Privilege, or Capacity, is not ſurrenderable or forfeitable, except only in Caſes of Treaſon or Felony, where they forfeit their Lives; by theſe Inſtances this is proved, that it is no true Poſition, that whatſoever is grantable is ſurrenderable; and if ſurrenderable, forfeitable; which is one of the Reaſons given by the King's Counſel, why a Corporation is forfeitable; for theſe Franchiſes or Privileges are by Grant, and yet not ſurrenderable or forfeitable; and this alſo ſhews, that Arguments general, and from general Rules, are moſt fallible, and fit only to take weak Apprehenſions. But next, conſider what it is to be a Body Politick or Corporation. A Body Politick is framed and conſtituted in ſimilitude or likeneſs of a natural Body, with Capacity to take, hold, and enjoy, and act as a natural Body, and can no more ſurrender or forfeit his Being, while the Members of that Body are ſubſiſting, than a natural Body can while alive. It is only a Capacity framed and created in a Multitude to be and act as one Perſon; they are incorporate and made one Body Politick, that have Power, and Capacity, or Franchiſe of acting, taking, holding, and granting; this is their Franchiſe, admit it ſo, but differs from others. Franchiſes and Liberties of all other Natures are Eſtates and Inheritances grantable and conveyable from one to another, as other Eſtates are; this is no ſuch thing, grantable, or transferrable; other Franchiſes and Liberties affect the King's Subjects, and are Privileges claimed, wherein the King and the reſt of his Subjects, not claiming the Franchiſe, are more concerned than in this of being a Body Politick; for other Franchiſes either convey ſome Profit from the King, as Felons Goods, Waifs, Eſtrays, Wrecks, or the like; or affect his Subjects, as Courts, Gaols, Returns of Writs, Fairs, Markets, and the like: But this of being a Body Politick is only a Capacity to be a Perſon capable of having and holding what may be granted unto it, and of granting and acting as a natural Body, and affects the King, or other his Subjects, no otherwiſe, than giving Capacity to take, hold, and enjoy what they can get, as other Perſons capacitated may. Other Franchiſes, Liberties, and Privileges are diſtinct and ſeparate Eſtates, and if any one be forfeit, as it may for Miſuſer, the reſt are not; except Incidents and Appurtenances. But if the Being of a Corporation be forfeited, all their Eſtates, Lands, Goods and Chattels are gone at once: So that though you admit and call this a Liberty or Franchiſe, it is nothing like in its Nature to thoſe Things generally known and underſtood by the Name of Franchiſes or Liberties; and general Sayings are generally to be underſtood of ſuch Things as are generally ſo taken and called. If then there be ſuch great and apparent Difference betwixt this of the being a Body Politick, ſuppoſing it being, in a general and large Senſe, a Franchiſe, Liberty, or Privilege, and other particular Franchiſes, admitting that which is ſaid, that the Miſuſer of a Franchiſe is a Forfeiture, holds generally true, yet it is not in every Particular true; where there is ſuch apparent Difference and Reaſon to diſtinguiſh, as betwixt the Being of a Corporation or a Body Politick, which is only a Capacity, and other particular Franchiſes, which are Eſtates; there is alſo apparent Reaſon to diſtinguiſh betwixt one and the other, they being ſo much differing one from the other in Nature and Reality. But next, that this was never taken in Law to be ſuch a Franchiſe, Liberty, or Privilege, as was comprehended under the general Meaning of Franchiſe or Liberty: by *Stat. of Gloſt'* 6 *E.* 1. *Inſt.* 2. 278. Writs were to go to all Sheriffs forty Days before the Eire, of general Summons, for all to come in at the Eire to claim their Privileges; and the ſecond Day of the Sitting of the Juſtices in Eire a Proclamation made to the ſame purpoſe. In the Comment upon that Statute it appears, *Inſt.* 2. 281, 282. that if the Party did not appear, his Franchiſes were ſeized into the King's Hands, *Nomine diſtrictionis*; and if not replevied, ſitting the Eire, they were forfeit or loſt for ever. If the Party did appear, and did not claim, then they were loſt for ever. In all the Proceedings in Eire there is no ſuch Thing can be found, that the Corporations did come in and make Claims to their being Corporations or Bodies Politick, or that ever any were ſeized, if it be ſeizable, into the King's Hands, or was forfeit for not claiming. *Fulcher* and *Heyward's C. Palm.* 491. It appears, that the Dean and Chapter there ſurrendered their Charter, and all their Manors, Lands, Poſſeſſions, Privileges, Franchiſes, and Hereditaments, Spiritual and Temporal, and this with Intent to ſurrender, that there might be a new Corporation erected; as is recited in the Letters patents of new Erection.

In this Caſe, *Rep.* 3. 75. *And.* 2. 120. *Jones* 168. reſolved, That by this Surrender the old Corporation was not ſurrendred. This Judgment doth conclude, and muſt be given, either becauſe by the Word Franchiſe, and the other general Words, the Franchiſe of being a Corporation was not comprehended; or if the Word is ſufficient, and did compriſe it, that it could not by Law be ſurrendred. This I think ſufficiently ſhews, that Corporations were in Law as Perſons natural are, and in like manner claimed; and that the being a Body Politick, or Corporation, was not to be claimed, compriſed, or meant within the general Word Franchiſes, no more than the Liberty or Franchiſe of Denizen, or Manumiſſion. Next, no Inſtance can be given of any Seizure of any Corporation, or Body Politick, for any Forfeiture: Seizure of their Liberties, or putting Officers upon them, is quite another Thing, as I ſhall ſhew preſently: So that theſe general Sayings in Law Books, that Miſuſer of a Franchiſe forfeits the Franchiſe, neither in Law or Reaſon extends to the Being of a Body Politick or Corporation, but is applicable only to particular Franchiſes of other Natures; and the other Reaſon, that that which is grantable is forfeitable, is as fallacious, as before appears.

3. As for the Records cited to prove, that the Corporation or Body Politick may be forfeited, I will ſtate thoſe that are moſt effective, and do them Right therein.

Johannes Dennis, Mayor of *Sandwich*, *P.* 9. *E.* 1. and three more, were attached to anſwer *Domino Regi de placito tranſgr' & unde Robertus de Stokho*, Sheriff of *Kent*, *qui ſequitur pro ipſo Rege*, complains, that he had ſent his Bailiffs (naming them) to make Execution of the King's Writ, *in Villa de Stanore*, *quæ eſt Baronia domini Regis*, and that the Defendants, with Swords drawn, took away the King's Writ, and trod it under their Feet, and would not ſuffer it to be executed; *unde dicit quod deterioratus eſt*, *& damnum habet ad Valentiam* 2000 Marks. The Mayor appears, and pleads to the Juriſdiction, that he ought not to anſwer this Matter, except in the Court of *Shipway* The Sheriff replies, that *Stanore* is the King's Barony, belonging to the Barony of *St. Auſtins*, and relies upon a Record before Juſtices in Eire, where an Amerciament upon that Ville was formerly ſet. The Mayor refuſeth to plead over. Then a Day is given over, then it is entred thus: *Poſteaq*; *coram Domino Rege*, *& ejus Concil'*, *quia Barones de l' Cinq*; *Ports*, *nec aliqui alii in Regno noſtro poſſint clamare talem libertatem*, *quod non reſponderent Domino Regi de contemptu ſibi fact'*, *ubi Dominus Rex eas adjornare voluerit*; *et quia prædict' Barones non protulerunt aliquas Chartas a Regibus conceſſas*, *in quibus non fuit excepta Regia Dignitas*, *conſideratum eſt quod reſpondeant*; *& quia* le Defendants would not anſwer any otherwhere than in *Shipway*, *conſideratum eſt quod habeantur in defenſionem*, *pro convictis de prædict' Tranſgr' & Contempt'*. *Et quia* the ſaid *John Dennis* is convicted of the ſaid Offence, and the Fact of the Mayor, in thoſe things, which touch the Commonalty, is the Fact of the Commonalty, *conſideratum eſt quod Communitas de* Sandwich *amittat Libertatem ſuam*, *&c.* Then follows *Poſtea*, *in præſentia* of the Biſhop of *Bath* and *Wells*, then Chancellor, and others, *cum Aſſenſu Regis*, an Agreement betwixt the Abbot of *St. Auſtins*, the Men of *Stanore* and *Sandwich*, *de omnibus contentionibus*. And then goes a long Agreement betwixt the Abbot and the Men of *Sandwich* and *Stanore*, concerning their Juriſdictions and Courts: *Et ſi aliqua pars contra concordantiam illam ire vel facere*, *alia pars habeat ſuam recuperare per breve Domini Regis de Judicio exeunte de iſto Recordo*. *Et pro hac prædict' homines vadiant prædict' Abbati* 100 Marks, which the Abbot remits for 10 *doliis Vini*, *pretii* 30 Marks, to be paid at the Feaſt of St. *John* the Baptiſt. This is the Record at large; and for the Extract in the Collections at *Lincoln*'s Inn, whether it be of this Record, or any Execution that went out upon it, *non conſtat:* But that I think it could not be upon this Record; for the Record is not 30 Marks *annuatim*, as the Abſtract is, and the Entry of the *videtur* at the Concluſion, *quod Judicium extendit contra Barones quinque Portuum*, *& eorum Libertates*, *ut mihi videtur*, that is not my Lord *Hales*'s Note, nor doth it appear whoſe it was. Out of this Record how can a Man infer, that a Corporation ſhall be forfeit for the Miſcarriage of the Mayor or Officer? How doth it appear from hence, that they ſhould loſe or forfeit their being a Corporation? By *amittat Libertatem* all that is meant thereby is their Liberty in *Stanore*, or the Liberty they claimed to be impleaded in the Court of *Shipway*; and the Note in the Extract, *videtur quod Judicium extendit verſus Barones*, muſt be, I think, taken to be as to their Liberty in *Stanore*, or to be ſued only in the Court of *Shipway*. I have taken the more Notice of this Record, becauſe it hath Countenance of a judicial Proceeding; but as to all the other Records cited,

A Writ to the Sheriff of *Glouceſter*, reciting, that the King, for Injuries and Contempts done by the Mayor and Commonalty of *Briſtol*, the Liberty of that Ville by *Bartholomew de Baddleſmere*, *Cuſtos* of that Ville, into his Hands had ſeized. 6 *E.* 2. *R. Cl. m.* 5. The Writ commands the Sheriff, that the *Cuſtos* ſhould have the Execution of Writs as the Mayor and Bailiffs uſed to have. And in the Times of *Henry* the Third, *Edward* the Firſt, *Edward* the Second, and *Richard* the Second, there were frequent Seizures of the Office of Mayor; and the Kings did put in a *Cuſtos* in the Place of Mayor, or made a Mayor, and theſe are called Seizures of Liberties.

King *Henry* the Third put in a *Cuſtos* over *London*, which continued till the 54th of his Reign, and then was taken off, and the City reſtored to its Election. 49 *H.* 3.

Edward the Firſt put in a *Cuſtos*, and continued ſo to do till the 24th Year of his Reign, and then was taken off. 15 *E.* 1.

The 14th of *Edward* the Second a Seizure of the Office of Mayor by *Henry de Staunton*, and his Fellows, Juſtices in Eire in the Tower, and Mayors put in by the King till the 20th of *Edward* the Second, and then reſtored: But for that of *Richard* the Second, give me leave to digreſs, and give you the State of it out of the City Regiſters, which are more full than theſe cited.

A Writ from the King to the Mayor, Sheriffs, and Aldermen, commanding them to come with twenty-four principal Citizens, before the King and his Council at *Nottingham*, *in craſtino Sancti Johannis Baptiſt tunc prox fut'*, and to bring ſufficient Authority from the Commonalty to anſwer ſuch things as ſhould be objected. 16 *R.* 2. *July* 22. *Lib. H. fol.* 269. *b. City Reg.* They appeared, and had a Letter of Attorney, *ubi pro diverſis defectionibus in Commiſſione ſua ſub communi Sigillo*, *& aliis de cauſis*, the Mayor and Sheriffs were diſcharged of their Offices, and committed *diverſis Priſonis*; and afterwards, the firſt of *July*, Sir *Edward Dallingrigg*, made *Cuſtos* by the King, came to the *Guildhall*, and his Commiſſion being read, he was ſworn before the Aldermen, *ſecundum quod Majores ante jurare ſolebant*; the King alſo made the Sheriffs, and they were alſo ſworn. This is alſo entered in the City Regiſter, *Lib. H. fol.* 270. *b.*

It appears that the King firſt ſwore the *Cuſtos*, and the Sheriffs, to be true to him, and alſo turned out the Aldermen. And that the Proceedings were before the Duke of *Glouceſter*, and other Lords, by a Commiſſion to inquire of all Defaults in the Mayor and Sheriffs, in the well-governing of the City, awarded upon the Statute made by the King's Grandfather; and that they were convicted by their own Confeſſion, and thereupon the Liberty of the City ſeized.

The Pardon and Reſtitution entered, and thereby it is recited, that the Proceedings were upon the Statute, and the Judgment was, That for the firſt Offence they ſhould forfeit One Thouſand Marks; for the ſecond, Two thouſand Marks; and for the third Offence, that the Liberty ſhould be ſeized 19 *Sept.* 16. *R.* 2. *Lib. H. fol.* 272. *a. ubi ſupra.*

The Statute 28 *E.* 3. *cap.* 10. enacted, That the Mayor, Sheriffs, and Aldermen of *London*, which have the Governance of the ſame, ſhall cauſe the Errors, Defaults, and Miſpriſions in and about the ſame, to be corrected and redreſſed from time to time, upon Pain, that is to ſay, to forfeit to the King for the firſt Default, One thouſand Marks; for the ſecond Default, Two thouſand Marks; and for the third Default, the Franchiſes and Liberties of the City ſhall be ſeized into the King's Hands. And that the Trial of theſe Defaults ſhall be by Inqueſts of foreign Countries, and the Pains levied upon the Mayor, Sheriffs, and Aldermen. Upon this Statute were the Proceedings of *R.* 2. grounded.

The other Side have likewiſe much relied upon another Seizure made of the Liberties of the City of *Cambridge*.

A great Riot committed by the Town upon the Univerſity, heard in Parliament by way of Petition, and Form of Articles exhibited by the Scholars againſt the Mayor and Bailiffs. Upon reading of which it was demanded of them, What they could ſay, why their Liberties ſhould not be ſeized? After many Shifts they ſubmitted themſelves to the King's Mercy. The King thereupon, by common Conſent in Parliament, ſeized the ſame Liberties into his Hands, as aforeſaid, and then granted divers Liberties to the Univerſities, and certain Liberties the King granted to the ſaid Mayor and Bailiffs, and increaſed their former. Theſe are the moſt ſubſtantial; it would be too tedious to repeat all, for there have been in thoſe Days, but not ſince, many like Seizures of Liberties, as theſe; only general, but nothing particular to our Purpoſe, and though not cited, I ſhall alſo mention thoſe in *Crook.* 5 *R.* 2. *Rot. Par. N.* 45. *Inſt.* 4. 228.

Certiorari to the Mayor of *Fith*; they diſobeyed the Writ, and gave ſcurvy Words *Cr.* 1. 252. *Tyndal*'s *Caſe*; and thereupon Mr. *Noy* cited two Caſes of Seizures of Liberties. The Biſhop of *Durham* had contemned the King's Proceſs, and impriſoned the Meſſenger. An Information exhibited againſt him, the Offence proved; adjudged he ſhould pay a Fine, *& quod capiatur*, and ſhould loſe his Liberties for his time; becauſe *juſtum eſt quod in eo quod peccat in eo puniatur.* 33 *E.* 1. *Rot.* 101. Another *in Banco Com'*, a Prohibition awarded to the Biſhop of *Norwich*; and he excommunicated the Party that brought the Writ; 21 *E.* 3. *Rot.* 46. the Party brought his Action, adjudged againſt the Biſhop, that his Temporalities ſhould be ſeized till he abſolved the Party, and ſatisfied the King for his Contempt, and that the Party ſhould recover 10,000*l.* Damages. I anſwer to them,

(1.) That they were all above three hundred Years ago, except that of 16 *R.* 2. which is above two hundred and ninety, and no ſuch thing ever was done ſince; what Streſs or Weight can be given to ſuch Proceedings? To what Rules of Law, ſince known or practiſed, can we bring theſe Proceedings? Are they now legal Precedents for the like things to be done. The Writs out of old Records for the Ship money, and the Knighthood-money, had as good Records to warrant them, and much more plain to the Purpoſe than theſe. The Precedents of *Edward* the Second, and *Richard* the Second, either of their Lives, or of their Deaths, or of the Lives or Deaths of ſome of the Judges of thoſe Days, ought, as I conceive, to be no examples. And for *H.* 3. *E.* 1. *E.* 2. and *R.* 2. and thoſe Times, they were Times of great Troubles and Diſorders; and what was then done is no Rule or Precedent for this Court, or any other Court of Juſtice to go by, unleſs by latter Times allowed or approved. No Law-book or Report of any judicial Proceedings, either of *E.* 2. or of *E.* 3. or any latter Book of Law, that I have yet heard of, or met with, (and I doubt not but if there had been any, the King's Council would have made uſe of them) hath ever given ſo much Credit or Countenance to theſe Proceedings, as to take any notice of them. To make uſe of old Records or Precedents, the Grounds or Reaſons whereof cannot now be known, to ſubvert any Law or Government eſtabliſhed, is neither adviſable nor commendable. But for further Anſwer to them:

(2.) As to that of 16 *R.* 2. that you ſee is grounded upon the Statute 28 *E.* 3. *c.* 10. and can ſignify nothing to the preſent Purpoſe; for there, according to that Statute, they condemn the Mayor, Sheriffs, and Aldermen, upon their Confeſſion, that they had miſgoverned the City. The Mayor and Sheriffs being committed to Priſon, and this done before Dukes and Earls, by ſpecial Commiſſion to that Purpoſe appointed, and convicted by their Confeſſion, for the firſt, ſecond, third Offence, all at once, is this of good Authority in Law? And for the others, that of *E.* 2. was before Juſtices in Eire at the Tower, the Office of Mayoralty ſeized into the King's Hands, and replevied from Year to Year. And that Seizure that was made by King *E.* 1. for what Reaſons or Grounds, or by what ſort of Proceedings, doth not appear; all that doth appear of it is, that *de facto Cuſtodes* and Mayors were put upon the City; but *quo jure*, who can tell? We know theſe Times were Times of Trouble, in the Barons Wars. The Barons, *Simon Mountford*, Earl of *Leiceſter*, being their General, fought a Battle with the King at *Lewes*, and took the King and Prince *Edward* the Firſt, both Priſoners. 48 *H.* 3. The Barons differing among themſelves, and the Earl of *Glouceſter* joined with the Prince, who got out of Priſon, another Battle was fought at *Eveſham*, and the great Earl *Mountford* ſlain; 49 *H.* 3. and then at *Wincheſter* by Parliament all his Party, and the Liberties of the City of *London* ſeized; and in ſuch Times as theſe, and which followed in *E.* 1. *E.* 2. and *R.* 2. it is not to be marvelled if there were many Seizures and *Cuſtodes* put on the City; it is more a Marvel they were not deſtroyed. The Statutes made in theſe Times ſhew not only the Diſorders, but that the Liberties were greatly infringed, or elſe there would not have been Statutes to confirm them; whether the infringing or ſeizing were the Cauſe or Effect, is hard to know; but juſt before in thoſe Times there were undoubtedly many extravagant Acts of all Sides, which produced *Magna Charta*, made the 9 *H.* 3. for confirming of the Liberties and Privileges not only of *London*, but of all other Towns; and after theſe Times, in the three Reigns of the three ſucceeding Kings, how many other Statutes for confirming the Liberties and Privileges of the Cities and Towns were made, 1 *H.* 4. *cap.* 15? The Penalties and Forfeitures impoſed by the Statute 28 *E.* 3. *cap.* 10. upon the City of *London*, put into the ſame Condition with other Cities and Boroughs, as to Penalties and Seizures. A Statute confirming to all the Cities and Boroughs the Liberties and Franchiſes, which they by former Grants or Confirmations had, *viz.* 4 *H.* 4. *cap.* 1. confirmed in like manner by 7 *H.* 4. *cap.* 1. Again confirmed in like manner by 3 *H.* 5. *cap.* 1. Again confirmed by Statute of 2 *H.* 6. *cap.* 1. By which it appears what a Senſe and Memory they had of the Seizures that had been of their Liberties and Privileges, that they never thought them ſufficiently confirmed; but they were ſufficiently confirmed; for from the Time of *R.* 2. to this Day, we do not find any Seizure of any Liberties or Franchiſes, or *Cuſtos* made or put upon them. That which was in thoſe Days of Violence done, ſhew them the worſt of Times, but are no Precedents for the beſt. But next,

Suppoſing and admitting theſe Records of theſe Times of good Authority, and as authentick Precedents as can be, they are ſo far from proving againſt me, that I hope to make it moſt plainly to appear, that they are ſtrong and plain Authorities and Evidence againſt them, and for me. It is ordinary in diſputing or arguing to loſe the Point diſputed or argued. That I may not commit ſo great an Error, but may evince and make plain what I have affirmed, give me leave to look back to the Information and Replication, and from thence to make the Points that we argue, ſingle, clear, and open. The Information that ſaith, that we uſurped upon the King to be a Corporation and Body Politick, but in Truth are none. The Bar ſets forth the Title to be a Corporation by Preſcription, Time out of Mind. The Replication, that endeavours to avoid the Bar, by allowing that we were once a Corporation lawfully; but that by our Miſcarriages we have forfeited our being a Corporation, and thereby became none, and after that uſurp'd to be one. So that, that which the other Side maintains, is, That by our Miſ-feaſances we have committed a Forfeiture of our old lawful and rightful Corporation. This I deny; the Affirmation is upon them to prove, and they producing no Record that expreſſes any ſuch Forfeiture of a Corporation, but only Records generally ſaying, that the Liberties ſhould be forfeited or ſeized, the Queſtion is, What the Meaning is in theſe old Records of forfeiting and ſeizing Liberties? Mr. Attorney was pleaſed to take it, and ſo did Mr. Solicitor, as I think, that forfeiting and ſeizing were much one. I ſhall not diſpute that; but whether in any of thoſe Records the Corporation or Body Politick were by theſe Words taken to be forfeited? Mr. Attorney was ſo careful to avoid the Conſequences of a Forfeiture of a Corporation, which are ſo great and deſtructive, that he would not by a Judgment in a *Quo Warranto* againſt a Corporation have the Corporation determined, no more than he would by the Forfeiture *ipſo facto* have it determined, but that there ſhould be ſome Seizure into the King's Hands; but what that is, or how to be underſtood, I cannot imagine. For if the Corporation be not to be diſſolved and determined, in whom ſhould it reſt or remain after ſuch Forfeitures, or during ſuch Seizure? Shall it after Forfeiture remain in the ſame Perſons that it was in? Shall it ſubſiſt, live, and act as before? or ſhall it be in *Limbo patrum*, or in *Nubibus?* Is a Corporation transferrable to any other Perſon or Perſons? Can a Corporation be conveyed or transferred? That is impoſſible; and ſo it appears in the Dean and Chapter of *Norwich* Caſe, and *Fulcher* and *Heyward*, and 1 *Inſt.* in the Caſe of the Homage Anceſtral before cited. That a Corporation is not transferrable from one Body of Men to another; therefore the King cannot poſſibly have it, nor can he grant it. Ay, but ſaith Mr. Attorney, it ſhall be ſeized, and in the King's Hands; what is meant by theſe Words? How can it be in the King's Hands, if not transferrable? Next, What ſhall the King do with it, ſhall he grant it to others? No, that is impoſſible; by the Caſes cited, it ſo appears the King may make a new, but he cannot grant an old Corporation, becauſe not transferrable. Then if he cannot grant, if it be not transferrable, if a Corporation or Body Politick be by Law framed in Similitude of a natural Body, then it is no more transferrable than a natural Body is. The Body Politick cannot be taken out of the Hands of the Perſons incorporate. From hence then, if this be ſo, it will follow of Neceſſity, that the Corporation, if it cannot be transferred to the King, or by the King's Grant, out of the Perſons in whom it is, to others, it muſt remain where it is, or be diſſolved. Next, that which I ſhall ſhew is,

That by the Words *forfeiting* and *ſeizing* Liberties in thoſe old Records, it cannot be meant forfeiting and ſeizing a Corporation or Body Politick; they ſtill continued. But that which is the true Senſe of theſe Words, forfeiting and ſeizing Liberties in thoſe Records was, if the Abuſe or Miſuſe were of a particular Franchiſe, as of Courts, Priſons, Markets, or the like, the King had them forfeited to him. If the Abuſe were by a Corporation, they acted by their active Parts, by their Mayors, Bailiffs, Sheriffs, Coroners, or the like; the King ſeized theſe Offices, turned the Corporation-officers out, and put others into their Places. This was the Courſe in the Eires, where theſe Seizures in thoſe Days uſually were: But for ſeizing Corporations as forfeit, there hath been no Inſtance of it in any Time; but the contrary is moſt evident. For the Corporations, notwithſtanding the ſuppoſed Forfeitures or Seizures, remained ſtill in Being; and this is evident even to Senſe. The Seizures, that have been mentioned, have been of *London*, *Briſtol*, *Glouceſter*, *Cambridge*, and Cinque-Ports, *Ipſwich*, and *Wincheſter*.

I offer to your Conſideration, whether theſe Cities of *London* and *Briſtol*, *Glouceſter*, *Cambridge*, and alſo the Cinque-Ports, ever ſince, have not continually in all Pleadings, Claims, and Titles, made themſelves a Title by Preſcription? Are they not by Preſcription to this Day? Do they not claim their Markets, Tolls, and all their Privileges by Preſcription? Do not the Acts of Parliament that immediately follow theſe Seizures made by *H.* 4. *H.* 5. *H.* 6 in the Times ſucceeding, all confirm their Privileges? Not a word of granting new Privileges, but confirming the old; which ſhews plainly, that in thoſe Days the Corporations were not thought or imagined to be determined or diſſolved. By theſe Seizures, or ſuppoſed Forfeitures, the Enjoyment or Poſſeſſion, for the Space of three hundred Years, is Evidence ſufficient of their remaining and being Bodies Politick by Preſcription, which they could not be if they were forfeited, as pretended. For by Forfeiture they muſt mean the loſing their Corporation, or being diveſted; no other Senſe can be, or ever was, of Forfeiture. Could they forfeit them, and yet keep them? Could they loſe them, and yet have them? If they could not, then it is plain, that ſince they always have had them, they never forfeited or loſt them. But for farther Evidence hereof, I ſhall make it moſt plainly to appear, that during the very Times of theſe Seizures the Corporations remained and acted as Corporations; and that at that Time it was never thought or imagined, that during the Seizures the Corporations were forfeit; all that was done was, that the Election of their Mayor, or of their Sheriff, was *de facto* taken from them, and either a *Cuſtos*, or a Mayor, by the King put over them, and continued till thoſe Kings Diſpleaſures were over, and then they choſe their own Officers again: But no Thought then of forfeiting the Corporation. By the City Books, as well as Records, this is moſt evident. The putting a *Cuſtos* by King *E.* 1. continued for the Space of eleven Years, from the 15 *E.* 1. to the 26 *E* 1. and then they choſe their Mayor again. By the City Books it appears that their Court of Huſtings all along continued, as at other Times, Aldermen all along. *Lib. A. fol.* 50, 51. 135.

Radulphus de Sandwyco Cuſtos Civitat' London, *Henricus le Walleys*, and others, Aldermen, (naming them) *& univerſalis Communitas ejuſdem Civitatis*, make a Conveyance of a Houſe to *John de Bangwell*, 18 *E.* 1.

The Court of Aldermen holden before the *Cuſtos* and Aldermen, 18 *E.* 1. *Lib. A. fol.* 110.

With the King's Remembrancer in the Exchequer, *Cives London venerunt coram Baronibus, & præſentaverunt Johannem de Canluar' & Willielmum de Betoyne ad reſpondend' pro Civitat' prædict' & Com' Middleſex, de his quæ ad Officium Vicecomitis pertinent, & ad hoc faciend' præſtiterunt Sacramentum*, 16 *E.* 1. *Ro.* 1.

Ibidem, The Preſentment and Swearing two other Sheriffs, 18 *E.* 1. *Ro.* 1.

Ibidem, The like, 21 *E.* 1. *Ro.* 3.

Ibidem, The like, 23 *E.* 3. *Ro.* 3.

Auby le Artheir attachiatus fuit ad reſpond' Communitat' Civitat' London' de placito, for that he, being no Freeman, merchandized in the City, 21 *E.* 1. *Lib. C. fol.* 19. *b.*

Another like Suit againſt an Un-freeman. *Lib. C. fol.* 7. *b.*

A Writ of Right in the Huſtings, brought by the Corporation. *Communitas Civitat' London per Radulphum Pecocks Attornatum ſuum petit verſus Hugonem Epiſcopum de Bedlam unum Meſſuagium, &c.* 22 *E.* 1.

All the Aldermen, and twelve Citizens, were called before the King and his Council, and the King reſtored them the Election of their Mayor, and they choſe *Henry de Gabeys* Mayor. And on *Monday* following comes the King's Writ, whereby the King, for good Services, *reddidimus & reſtituimus Civibus London Civitatem, una cum Majoritate & Libertatibus ſuis, quas certis de cauſis dudum capi fecimus in manum noſtram.* So that hereby it moſt evidently appears, the Corporation was not forfeit, loſt, or diſſolved, only a *Cuſtos* put over them, which acted in the Place of Mayor; and when removed, they choſe their Mayor again, 26 *E.* 1. *Lib. B. fol.* 38.

The Liberties not forfeit, only ſeized into the King's Hands; ſo ſaith the Writ *dudum capi fecimus in manum noſtram.* The Record of *Cambridge* I have looked upon; it plainly appears in it, that the Corporation was not forfeited and diſſolved, as you ſuppoſe: For it appears, that when they ſubmitted to the King to do with their Franchiſes what he pleaſed; yet it was *ſalvo* to the Mayor and Bailiffs, their Reſponſe to all other Matters. And afterwards, at the ſame Time, the King grants to the ſame Mayor and Bailiffs divers Liberties; by which it appears, that the Corporation was not forfeit, but ſtill in Being, notwithſtanding the Seizure and Forfeiture.

The Seizure that was by King *Edward* the Second was in no ſort any Forfeiture or Determination of their Corporation; but either under a *Cuſtos*, or under a Mayor put in by the King.

The *Cuſtos*, Aldermen, and Commonalty, appeared, and turned out ſome of their Aldermen. *Lib. E. fol.* 11. *b.*

They choſe and ſwore their Sheriffs, and by this Time they had a Mayor again; but the Office of Mayoralty, granted them by the King. *Lib. D. fol.* 6.

The King grants to *Nicolas de Farringdon* the Office of Mayor, *quamdiu nobis placuerit.* 16 *E.* 2. *Lib. E. fol.* 146.

They had a Writ reſtoring to them the Office of their Mayor again, 20 *E.* 2.

Then for the Seizure of 16 *R.* 2. that continued but from the 22d of *July* unto the 19th of *September* following; and the Form or Colour of Law that they had for that, was the Statute of 28 *E.* 3. and the *Cuſtos* put in ſworn at *Guildhall*, and took the Oath of the Mayor, as appears in the Book which I cited; where it is mentioned to be upon that Statute. *Lib. H.* 269. *b.* 16 *R.* 2.

But for farther Evidence; in the Treaſurer's Remembrancer's Office in the Exchequer, 4 *E.* 3. *Rot.* 2. *in Bago de Quo Warranto in Itinere Northampton & Bedford, Quo Warranto verſus Villam de Bedford*; in that Record are theſe Things: Firſt, that the Village of *Bedford* had not at the laſt preceding Eire made Claim of divers Liberties, and thereupon in that Eire adjudged, *quod omnes Libertates non clamat' capt' fuiſſent in manus*

Domini Regis, and had not been replevied, but the Corporation not ſeized. Thereupon the Corporation offer a Fine of eight Marks to the King, *pro licentia clamandi* their Liberties, and admitted to a Fine: But then it appeared, that the Mayor and the Coroners had ſat in Judgment, and condemned Men for Felonies committed out of the Juriſdiction; and thereupon *Conſideratum eſt, quod prædict' Libertas de* Infangtheife, *& Officia Major', Ballivorum, & Coronatorum ejuſdem Villæ capiant' in manus Domini Regis. Sed quia cæteræ Libertates & conſuetud' Villæ prædict' abſque Miniſtris pro communi utilitate Populi ibidem nequeant conſervari*, the Court puts *Johannem de Tound Cuſtos, Johannem Wymound* and *Richardum Rounds* Bailiffs, and *Nicolas Aſtwood* and *William de Knight* Coroners, who were all ſworn to execute thoſe Offices, and to anſwer the King the Profits. Hereby it appears, that the Courſe was not to forfeit or diſſolve the Corporation: they never were ſo unreaſonable; for hereby all their Lands and Goods, and all the Debts owing by them, or to them, would all be loſt: All they did was, they put in Officers to preſerve the Corporations. So that I think there is nothing more plain, that though the Liberties were ſeized, and that Officers, *Cuſtos*, or Mayors, were put upon them; yet the Corporations, or Bodies Politick, or their Liberties, were not forfeit or determined. If they had been either forfeited or determined, could the Writs of Reſtitution have ſet them up again? The old could never be reſtored or ſet up again, but by Act of Parliament; they might have had new Charters, and have been made new Corporations; but the old could never have been reſtored, if once forfeited, as now imagined. So that the Point betwixt us is, Whether the Records of *E.* 1. *E.* 2. and *R.* 2. of Forfeitures and Seizures of Liberties, ſuppoſing the Cauſes or Offences for which they were ſeized were very great and provoking, as in all Probability they were, do prove that thereby the Corporations were forfeit, diſſolved, or determined? It appears they were not forfeit. You can never avoid it. If abuſing the Franchiſe or Liberty of being a Corporation be a Forfeiture, as you affirm, and that they were ſeized for being forfeit; then the Offences that were committed by theſe Corporations in thoſe Princes times, were Forfeitures, and conſequently the Seizures diſſolved the Corporations. They could not forfeit and loſe their Corporations, and yet keep them. And that they ſtill had their Being, is moſt evident by the Records of thoſe Times, ſhewing, that they acted, and enjoyed their Corporations under thoſe Seizures, only a *Cuſtos* inſtead of a Mayor, all other Things the ſame; that they have in all Ages ever ſince been allowed to be Corporations by Preſcription, never denied or queſtioned; that the Acts of Parliament immediately following, confirming their Privileges, never queſtioned their having them. Never any Thoughts of making void any Forfeitures by theſe Acts, or any new Grants, but always pleaded by Preſcription. Theſe Things plainly ſhew, that the Offences committed in thoſe Times did not forfeit the Corporation; and all that dark Authority they have out of thoſe Records is directly againſt them, proves only that theſe Abuſes gave only Cauſe of Seizure of ſome Offices, but no Forfeiture of the Corporation, that ſtill continued.

Having thus anſwered thoſe old Records, and ſhewn that they are of Authority for me againſt them; and ſince it hath been ſtirred in this Caſe, whether a Corporation or Body Politick be ſurrenderable or not, and inſiſted upon, by the other Side, that it is, and from thence an Argument drawn to prove, that if ſurrenderable, it is forfeitable: Whether it be ſurrenderable, or not, perhaps is alſo doubtful, ſo that I think a Man cannot argue from it any thing. Firſt, I am ſure there is no great Reaſon why it ſhould be; for ſince that Men that are of the Corporation take, upon their coming to be made Free, an Oath to preſerve the Rights, Liberties, and Privileges of it; and ſince the active Members are intruſted for all the other Members that elect and chooſe them, and alſo for their Succeſſors; I cannot ſee how a Man can ſatisfy himſelf in ſo doing.

Sir *James Bagg*'s Caſe, *Rep.* 11. 98. they forfeit their Freedom by doing contrary to their Oath and Truſt. If every Freeman by his Oath and Truſt be obliged to ſeek the Benefit of the Corporation, to ſurrender is againſt the Oath. The Law ſeems to have a Care of preſerving Corporations; and therefore provides, that the taking any new Charter, though there be many Alterations in Offices and Names, yet doth not ſurrender the old. But were it of any other Franchiſe, the taking anew of the ſame thing is a Surrender of the old.

Dean and Chapter of *Norwich*'s Caſe, *Rep.* 3. 73.

Fulcher and *Heyward*'s Caſe ſeems a ſtrong one to prove it nor ſurrenderable, *Jones* 266. And though the Biſhop did not in that Caſe join in the Surrender, that cannot hinder; becauſe the Biſhop is no Part of the Corporation, and therefore cannot hinder them to ſurrender, if they will.

A Vill incorporate by the Name of Bailiffs, 4 *H.* 26. 22. *b.* The King *de novo* incorporates them by the Name of Sheriffs: Are their Privileges that they before had, gone? No, *Dieu defend*, ſaith the Book. But this being not my Queſtion, I intend not to debate it thoroughly, but to keep to the Point of a Forfeiture of a Body Politick or Corporation, and farther to examine the Reaſonableneſs and Juſtice of this Doctrine of Forfeiture, and ſee how adequate and juſt it is; for that is the thing, I perceive, deſired.

Firſt, Their Poſition is, That a Corporation, or Being of a Body Politick, is a Liberty or Franchiſe; and if abuſed or miſuſed, is forfeited, determined, and diſſolved.

That I may a little underſtand this Poſition and conſider of Abuſe and Miſuſe, and of the Extents and Conſequences of it: By Abuſe or Miſuſe, every Act that a Corporation doth, that is not juſtifiable by Law, is, as I take it, an Abuſer or Miſuſer. If a Corporation receive any Money that is not due to them, if it be by Virtue of any By-law, that is a Forfeiture, though it be but a Groat. What if they by their Common Seal Command their Servant to enter into ſuch Lands, or diſtrain ſuch a Man's Cattle for Rent not due; is not this a taking upon them to opreſs the King's Subjects, and to extort from them their Lands or Moneys where not due? This is a Miſuſer. A Body Politick, as I have ſaid, is but a Perſon created in Reſemblance of a natural Perſon, to have a Capacity to take, hold, and enjoy to particular Ends and Purpoſes. And hold or enjoy is not poſſible, without acting; and all that act muſt of Neceſſity be ſubject to Errors ſometimes, in their Actions, as natural Perſons are. And muſt it be ſo penal to them, that every Error, Miſuſer, or Abuſer, muſt be a Forfeiture? Can it be reaſonable or juſt in Law, that this can be? Laws are made for Preſervation, not for Deſtruction; if every Abuſer or Miſuſer forfeit, be it a ſmall Tranſgreſſion, is it either reaſonable or probable, that any Law ſhall puniſh it with Deſtruction of the Body? The greateſt Offence, be it Treaſon or Rebellion, or the leaſt illegal Act, Offence, or Miſdemeanour, muſt have the ſame Meaſure of Puniſhment by this Rule; and the Law then doth not diſtinguiſh. If a natural Body, or Perſon, hath a Market, and orders his Servants to take ſuch Tolls, and he takes them; what would this Crime be beſides Forfeiture of his Market? Why ſhould a Corporation then, not only in ſuch Caſe, or for any Offence or Miſcarriage to the Value of a Penny, forfeit and loſe, as in the Caſe of High Treaſon, his Life or Being, Lands, Goods, and All? This cannot be agreeable to any Rules or Reaſon of our Law; and therefore I take it, it cannot be the Law. The next thing I deſign to inſiſt upon is,

Secondly, The Miſchiefs and Inconveniencies that muſt attend this Doctrine or Law of forfeiting and ſurrendering, if the Law be ſo.

Let us then conſider, whether this at one Stroke do not make all the Corporations in *England*, of all ſorts, forfeit at once, and perhaps many Years ſince. Is there any Corporation in *England* that hath not offended or tranſgreſſed? All manner of Corporations fall under this Rule. If they have tranſgreſſed or done any ſuch Act as makes a Forfeiture (as every Miſcarriage, for any thing I can ſee to the contrary, doth) whether the Corporation be *ipſo facto* diſſolved by the Offence committed, or elſe by the Judgment which muſt relate to the Offence, to avoid all mean Acts done by the Corporation; all that they have done ſince ſuch Miſcarriage, they have done without Right; and all that they think they have a Title to as a Corporation, they are miſtaken in, they have none. Perhaps if a Parliament ſhould be called, thoſe forfeited Corporations can lawfully ſend no Burgeſſes. I do not know whether I am miſtaken, or not, I only offer this to Conſideration amongſt others: As (give me leave to venture a little farther upon theſe Conſiderations of Surrenders and Forfeitures of Corporations) can a Biſhop, Dean and Chapter, Prebendary, Parſon, *&c.* ſurrender his Corporation or Body Politick? If they can, moſt of them, perhaps, are of the Foundation of the Crown, and had their Lands from thence. We have many Statutes made to reſtrain their Alienations: Thoſe of Queen *Elizabeth* did not extend to hinder their Alienations to the Crown; but perhaps, out of Hope of Preferment, they aliened to the Crown, till the Statute of 1 *Jacobi, cap.* 3. took away that Power alſo of conveying to the Crown: Can theſe forfeit the Corporations? Perhaps we are Sinners all, or at leaſt, as the Balance at ſome time or other may be holden may be found too light: We are upon a Point that goes to Poſterity; Fear and Favour, what may it do, and what may it not do? If they may ſurrender or forfeit, what Effects may this have upon the whole Eccleſiaſtical Eſtate? If this had been known in the Days of King *Henry* the Eighth, perhaps there would have been no great need of Acts of Parliament to make him Head of the Church, or to have diſſolved the Monaſteries. Suppoſe that Colleges, Hoſpitals, and other Corporations founded for Charity, can ſurrender or forfeit; the preſent Maſters and Fellows, and the Heirs of the Donors, may truck; what Effect may this have upon them? what Ways may they find out? Alſo Cities and Boroughs; what Diviſions and Contentions hath it already produced, ſome for ſurrendring, others for defending, what Animoſities are about it? The End of the Law is to preſerve Peace and Quiet. Diviſions and Diſſentions frequently end in the Deſtruction of both Parties. The Citizens and Burgeſſes are, I think, three Parts of four of the Houſe of Commons. It is conſiderable what Effects this may have in Parliaments, our Laws and Poſterity perhaps not a little concerned herein; and if ſo, ſurely this is a great Caſe. But if only the City of *London*, give me leave to ſee what the ill Conſequences and Miſchiefs will be. Arguments from Miſchiefs and Inconveniencies are forcible Arguments in Law: So ſaith *Littleton*, and my Lord *Cook* upon *Littleton*. And Men muſt be deſperate and ſenſual, that deſpiſe future Miſchiefs and Inconveniences. And many other Places there cited, *Inſt.* 1. 11. 60.

1. All their Lands will be gone, and revert to the Donors, and their Heirs. By Diſſolutions of Corporations all their Privileges are gone, and their Lands revert to their Donors, or Lords, of whom they were holden. *Jones* 190. *F. N. B.* 33. *k. Inſt* 113. *b.*

2. All their Markets, Tolls, and Duties, that they claim by Preſcription; whereby the Government and the Honour of the City, the publick Halls, Gates, Priſons, Bridges, and other Edifices, are in a great meaſure maintained.

3. All the Debts owing to the City, and all their perſonal Eſtate, by the Death or Diſſolution of the Corporation, will be gone; but who ſhall have them? Perhaps *non definitur in jure.*

4. All the Liberties, and cuſtomary Privileges, that the Freemen of the City, their Wives and Children claim, *viz.* to have cuſtomary Shares in their Huſbands or Fathers Eſtates; to be exempt from Tolls in other Towns, Ports, and Markets; to exclude Foreigners and Unfreemen from uſing their Trades in *London*, and many others.

5. All the Acts of Parliament that give particular Powers and Authorities to the Lord Mayor and Aldermen, or Common Council, or Corporation, reſpecting either the Government or Juſtice of the City; as about Miniſters, and Payment of their Dues, Buildings, Paving of Streets, Sewers, Inſurance Office, and many others.

6. What ſhall become of the Orphans, and all the Moneys and Debts the City owes, and all the Charities in the City? We have ſeen the City burnt, and may remember what a Swarm were unhived thereby; but we never yet ſaw it diſſolved, nor are the Conſequences meaſurable. And though it pleaſe his Majeſty, upon the Diſſolution of this, to grant a new Charter, yet it will be impoſſible any of theſe Things can be preſerved: Their Lands, Eſtates, Debts, Privileges, Cuſtoms, are all Perſonal,

and annexed to the Corporation, and muſt live and die with it; the ſaid Acts of Parliament are all fixed to this Corporation, and ſo are the Charities, and cannot, as I conceive, be ever transferred to any other to be new created. A new Corporation can be in no Succeſſion or Privity with the old. If a Body Politick be once diſſolved, though a new one be founded of the ſame Name, that can have no Succeſſion to the old, nor come in Privity to it: Therefore it is, that in the Dean and Chapter of *Norwich*'s, Caſe, and in *Fulcher* and *Heyward*'s Caſe, the Preſervation of the old Corporation is inſiſted on. *Inſt.* 1. 102. *b.* If every Abuſer committed by a Corporation be a Forfeiture, Determination, or Diſſolution, is there any one in *England* not forfeited and diſſolved? Abuſe is a Word of a wonderful large Senſe: When the Law ſpeaks of a Franchiſe abuſed or miſuſed, it is applicable to a particular Franchiſe, as to a Market, Court, or the like; and if that Franchiſe be miſuſed, or abuſed, in Oppreſſion or Miſuſe, contrary to the Ends of it, ſome Certainty there is in it: But the Abuſe of a Corporation extends to all its Acts, and all Eſtates of the Corporation; and all the Privileges of all the particular Perſons, and all that are concerned in them are Sufferers for every Abuſe, or Miſuſe, or Miſ-act, or Treſpaſs, how ſmall ſoever. Who can tell in the Actions of a Perſon what may be taken to be ill or illegally done, or an Abuſe? Who will truſt a Corporation, if its Duration and Exiſtence be ſo fickle and infirm, that every Abuſer or Miſuſer ſhall forfeit it? There will be no need of Officers to be amoved, thereby to determine this Corporation at Will and Pleaſure, this Poſition contains enough to do all. Theſe great Conſequences, attending this Doctrine of Forfeiture, are Reaſons to prove the Law otherwiſe.

But ſaith Mr. Attorney, (if I underſtand him) We do not intend to deſtroy the Corporation, though we ſay in our Pleading, That you have forfeited your old Corporation, that you have, without any lawful Authority, uſurped upon the King, and pray in our Replication, that *de Libertate, Privilegio, & Francheſia illa (viz.* the being a Corporation) *abindicantur & excludentur.* Theſe are but Words of Form, we only will lay the King's Hands gently upon it, and ſeize it; but the Corporation ſhall not be deſtroyed or diſſolved.

I anſwer, This is wonderful, and a great Compliment to the City, as I take it; let us not flatter or deceive one another. We are not now in the irregular Days in the Records mentioned, nor in ſuch ſort of Proceedings as in thoſe diſtracted Times. Let us not go by blind Conjectures out of old Records, and bring in unknown Ways. We are now in a *Quo Warranto*, which, as Mr. Attorney truly ſaith, is in the Nature of a Writ of Right; and a Writ of Right is the higheſt Writ that is in the Law; and the Judgment therein, and in this *Quo Warranto* muſt be concluſive to all Parties. If given againſt the Defendants, it muſt conclude them for ever, and diſſolve their Corporation; and if given againſt the King, he ſhall never hereafter bring it in Queſtion for any Cauſe precedent. *Rep.* 9. 28. *Inſt.* 2. 282. 495. *Cook's Entries* 527. *D.* hath a Precedent of it. *Conſideratum eſt, quod* the Defendant *de & in Libertatibus, Privilegiis, & Francheſiis præd. in Informatione prædict' ſpecificat' nullo modo ſe intromittat, ſed ab iiſdem penitus excludatur.* The like againſt *Ferrers*, and the *Virginia* Company, and many others may be found, *M.* 21. *Jac.* 1. *r.* 9. The Court cannot alter the Judgment, it will be erroneous if they do. And to talk of a Judgment of a Seizure, what is the Meaning of it, or ſuch Judgment? Is it final, or not final? The Court muſt give a final Judgment, that the Party, if he think fit, may have his Writ of Error. The Court will not take any of your old Records to go by, if any ſuch are to be found, that would warrant any other Judgment: Therefore a Seizure, without ſuch a Judgment, that determines the Corporation, cannot be any way brought to paſs, as I believe, nor can I underſtand in whom, by your Seizure, you would have the old Corporation to ſubſiſt. Transferred from the Perſons, in whom it now ſubſiſts, I think is impoſſible, but diſſolved by your Judgment it may be: And I hope your Lordſhip will not be induced by ſingular unwarrantable Things, that a Judgment ſhould be given, that ſhall neither diſſolve the Corporation, nor continue it, that ſhall neither be for Plaintiff or Defendant, that ſhall leave the Corporation neither alive nor dead, but *in Tranſitu*, or *Limbo Patrum:* A Judgment, *quod capiantur*, or *quod Libertates & Francheſiæ prædict' ſeiſiantur in manus Domini Regis.* Was there ever any the like? What ſhall be underſtood by it? Shall we be afterwards a Corporation? Shall our Magiſtrates continue? Shall we have our Lands, Markets, Tolls, Cuſtoms, or Franchiſes, or not? Or ſhall we be none, and yet not diſſolved? I muſt confeſs, I am confounded in theſe Notions.

Next, as to the Authorities in Law for me:

1. I take it to be a great Authority for me, that there is no Precedent or Judgment, or Book-caſe produced or found, that ever a Corporation was forfeited. It lies upon the other Side to produce it, or ſhew it; and no doubt they would, if there had been any, but there is none by the Authorities they cite; you may eaſily perceive, any ſort would not be omitted.

2. The Nature of a Corporation, as our Books do deſcribe it, ſhews it not forfeitable. I take it plain out of the Caſe of *Sutton*'s Hoſpital, and the other Books there cited. *Rep.* 10. 92. *b.* 21 *E.* 4. 72. A Corporation aggregate is inviſible, immortal, and reſts only in Intendment and Conſideration of Law, cannot commit Treaſon or Felony, be out-lawed, excommunicate, hath no Soul, cannot appear in Perſon, cannot do Fealty, cannot be impriſoned, not ſubject to Imbecillity or Death. *Br. Corp.* 24. 34. They cannot commit any actual Treſpaſs or Diſſeiſin, except under their Common Seal, by Command precedent, or Aſſent ſubſequent: When our Books ſay, that they are a Body Politick, and reſt or have their Being in Intendment or Conſideration of Law, thereby is meant, that they are by Law enabled to act to particular Ends and Intents anſwerable to their Ends and Creations. Their Ends or Creations are only to be ſubſervient to the publick Good, and Government, and Preſervation of the City or Town incorporate, and of the Members thereof. And if there be any Act done by the Members, that are the active Part of ſuch Corporation, to any other Intent, End, or Purpoſe, this is not the Act of the Corporation, but of the particular Members, and they only are anſwerable for it. And as to particular Offences and Miſcarriages in this Caſe alledged, it cannot be denied, but that the particular Members are anſwerable for it; and if they, then according to all Books, they ought not to be doubly chargeable or anſwerable in both Capacities. And the Argument cited out of *Bagg*'s Caſe, of a Freeman convict of Perjury, and thereupon disfranchiſed, doth not prove, that they ſhall be puniſhed in a double Capacity; for the Corporation is not thereby puniſhed, but preſerved. The Being of a Body Politick is only a Capacity, and in reſemblance of a natural Body, and no more forfeitable than a natural Body. It is ſeizing and forfeiting of Liberties, that we meet with; that is ſuch as are generally ſpoken of; as Markets, Courts, Juriſdictions, and the like: And in the old Records, by ſeizing the Liberties of a Corporation is meant the taking from them their Officers, and putting in others upon them for a Time. But a Forfeiting, Diſſolving, and determining the Body Politick, never was yet done or known, nor, as reaſonable to believe, ever entered into any Man's Thoughts till now; for I have already ſhewn, that Offences and Miſcarriages, that were committed by the Corporations in thoſe troubleſome Times of *E.* 1. *E.* 2. and *R.* 2. for which their Liberties were ſeized, were not Forfeitures and Determinations of thoſe Corporations; they all remain Corporations by Preſcription to this Day: And I have alſo taken Notice, that the Acts of Parliament, that were made in the ſucceeding Kings Reigns, of *H.* 4. *H.* 5. and *H.* 6. are only Acts of Confirmation to the Cities and Boroughs of their Liberties and Privileges. From that Time till within theſe three Years, I believe it never entered into any Man's Thoughts, that a Corporation was forfeitable; for farther Proof whereof divers other Statutes, and the whole Series of Matter is Argument.

The Statute 15 *Hen.* 6. *cap.* 6. that provides againſt Abuſes and Exactions made by Societies incorporate, by their By-laws and Ordinances, and appoints a Forfeiture of Ten Pounds, and of their Power to make By-laws: To what End ſhould this be, if the Corporations themſelves were forfeited, or thought ſo to be?

The Statute of 19 *H.* 7. *cap.* 7. recites the Statute of *H.* 6. and the Exactions and Abuſes by Fellowſhips, by their By-laws and Ordinances; and appoints a Penalty of Forty Pounds, if they exact Money by an unlawful and unwarranted By-law, not examined and ſigned by the Chancellor and Chief Juſtice.

The Statute of 12 *H.* 7. *c.* 6. ſets forth grievous Exactions by the Fellowſhip of Merchant Adventurers by their By-laws, and impoſeth a Penalty for the future.

The Statutes 22 *H.* 8. 4. 28 *H.* 8. 5. ſhew like Exactions by Corporations upon Apprentices by their Ordinances and By-laws, provides Remedy, and enacts Penalty. If in thoſe Times it had been thought or imagined, that a Corporation had been forfeitable, every of theſe Offences forfeited it, what need farther Remedy? In the Caſe of *Hoddy* and *Wheehouſe*, of exceſſive Toll by the Town of *Northampton*, *Moore* 474. 39 *Eliz.* In the *Quo Warranto* againſt a Corporation, though the Queſtion was concerning their taking Toll, and whether they had forfeited their Market, or only their Toll; no Thought of forfeiting their Corporation was ever mentioned. So that I think I may conclude with the tumultuous Times of *Edw.* 1. *Edw.* 2. and *Richard* 2. what was then done, doth plainly ſhew the Corporations were not forfeit or diſſolved: That by all the Acts of Parliament, and Proceedings in almoſt all the Reigns of any Length or Duration, from that Time to this very Caſe, the Opinions and Thoughts of Men were otherwiſe; as by the Statutes and Tranſactions appear: Not one Opinion, Book, or Authority, produced, or to be found. The great Concern not only of this great City, but of all other Cities, Towns, and Corporations, Eccleſiaſtical and Temporal, all depend upon it. And which is more than all, the very Government by Law eſtabliſhed will be in great Danger of Alteration by it.

I have argued long, and tried your Lordſhip's Patience; the Weight and Length of the Caſe, and Rareneſs of the Matter, there never having been the like before in any Age, will, I hope, excuſe me. But beſides the whole Frame and Foundation, that the other Side have laid, being all built upon general undigeſted Notions, as I take it, *viz.* that Abuſer and Miſuſer of Liberties forfeits them, without diſtinguiſhing betwixt one Thing and another; that the Words Forfeiting and Seizing Liberties, found in old Records, ſhould be Authorities to prove Forfeiting Corporations or Beings of the Body Politick, though no ſuch Thing then, or at any time ſince, till very lately, was ever thought on or imagined: It was neceſſary for me to open and ſet forth theſe general Notions, and to explain and diſtinguiſh; which, I hope I have done, that it may appear what the Senſe of them is, how far they agree with Law and Juſtice, and how far not. And if, in the Doing hereof, or in the ſetting out the repugnant or inconſiſtent Matters or Opinions ariſing in this Caſe, to maintain this *Quo Warranto*, I have expreſſed myſelf in any other manner than became me, I humbly beg Pardon for it; and that it may not reflect upon the Cauſe, nor prejudice it.

Upon the whole Matter, if this Information brought againſt the Body Politick for uſurping to be a Body Politick, ought to have been brought againſt the particular Perſons; if it be repugnant or contradictory, that a Corporation can uſurp to be a Corporation; that a Body Politick or Being can uſurp to be a Body Politick or Being, before it had a Being, or to be that ſame Body Politick or Being, which it was when it did uſurp; if forfeiting a Franchiſe, or Liberty, or other Eſtate, cannot determine or veſt that Franchiſe or Eſtate in the King, till the Forfeiture appear on Record; then the old Corporation ſuppoſed to be forfeited, if it were ſo, did notwithſtanding, and yet doth continue in Being, there being no Record to determine it; and conſequently that, which is pretended a new one by Uſurpation, is impoſſible. If by Seizure into the King's Hands (as pretended) the Continuance of the Corporation be intended, how inconſiſtent is it with Law or Juſtice to continue any thing in the King, that is wrongfully uſurped, and the Parties to be puniſhed, fined, and committed for uſurping? If Mr. Attorney's Replication, taking Iſſue upon our Preſcription to be a Corporation, and going over, and alledging ſeveral diſtinct Cauſes of Forfeitures, cannot by Law be maintained, and in the Example doth introduce a Way to bring all Men's Eſtates ſubject to Mr. Attorney's Will and Pleaſure, (for, let any Man's

Right be as good as can be, it will be ſcarce poſſible to defend it, if ſuch Pleadings as in his Replication be allowable by Law) then be the Matter in Law as much againſt us as poſſible, yet Mr. Attorney can have no Judgment for him upon this Information. Next, Suppoſing the Information all good in Law; yet, if the Judgments, Records, and Authority, that have been cited by them for Seizures, do plainly ſhew, that Seizures and Forfeitures are very different in their Natures; that the Corporations all continued notwithſtanding the Seizures; and the Seizure was only the King's putting in Mayors and Officers to act in them, inſtead of others elected or conſtituted by the Corporation, and they remain Corporations by Preſcription to this Day, and never were forfeited, diſſolved or determined by ſuch Seizures; if the general Authorities in Books, that the Miſuſing or Abuſing a Franchiſe be truly applicable to Franchiſes, (that are Eſtates and Intereſts grantable or conveyable from Man to Man) and never were intended of ſuch a Thing, as is rather a Capacity or Being than a Franchiſe; if there be no Caſe, or Precedent, or Opinion to be found for it; if, on the contrary, the particular Caſes cited prove, that where the Corporations have by Miſcarriages forfeited particular Franchiſes, they do not forfeit their Corporations; if there be ſcarce any Corporation in *England*, that have not at ſome Time or other done ſomething they ſhould not, or omitted to do ſomething they ſhould, and thereby forfeited their Corporation, and conſequently all are Uſurpers, and their corporate Acts ſince done, all void: If the Corporation here hath done nothing, but that the Mayor, Aldermen, and Common Council, are only Delegates, Deputies, or Miniſters of the Corporation for particular Purpoſes; if Servants, Deputies, or Delegates do that which they have no Authority to do, they muſt anſwer for it in their own Perſons; but their Maſters, or thoſe that deputed or delegated them for another Purpoſe, they are innocent; they ſhall not ſuffer by it, though no Acts of Parliament had been in the Caſe; if the Acts of Parliament againſt ſeizing the Liberties of the City, for or by reaſon of any Miſcarriage of their Officers or Miniſters, extend to theſe Acts of the Mayor, Aldermen, and Common Council; if ſo be that theſe Acts were the Acts of the Corporation; yet, with Submiſſion, if they have ſhewn a good and legal Right, by their Cuſtom and Title, to make By-laws for regulating and ſettling the Markets and Tolls, and that which they have done be, as pleaded, reaſonable, and that there was reaſonable Ground at that Time for their Petition, which they have ſet forth; if all theſe Particulars that I have now ſummed up be againſt me, then Judgment muſt be againſt me; though I know not what that Judgment can be. But if any one of theſe Particulars, thus repeated be for me, and againſt Mr. Attorney; then Mr. Attorney can have no Judgment againſt the City; but Judgment muſt be for them; which I humbly pray.

THE next Term, *viz. Trinit.* 35 *Car.* 2. (Chief Juſtice *Saunders* dying the Day of the Judgment given, or the next Day after) Mr. Juſtice *Jones*, Juſtice *Raymond*, and Juſtice *Withens*, being in Court, Juſtice *Jones* pronounced the Judgment of the Court, and Juſtice *Raymond* and Juſtice *Withens* affirmed, that Chief Juſtice *Saunders* was of the ſame Opinion with them, and that they all agreed,

1. That a Corporation aggregate might be ſeized. That the Statute 28 *E.* 3. *cap.* 10. is expreſs, that the Franchiſes and Liberties of the City, upon ſuch Defaults, ſhould be taken into the King's Hands. And that Bodies Politick may offend, and be pardoned, appears by the general Article of Pardon, 12 *Car.* 2. whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 *Car.* 2. which provides that no Corporation ſhall be avoided for any thing by them miſdone or omitted to be done, ſhews alſo that their Charters may be avoided for Things by them miſdone, or omitted to be done.

2. That exacting and taking Money by the pretended By-law, was Extortion, and a Forfeiture of the Franchiſe of being a Corporation.

3. That the Petition was ſcandalous and libellous, and the making it and publiſhing it a Forfeiture.

4. That the Act of the Common Council was the Act of the Corporation.

5. That the Matter ſet forth in the Record did not excuſe or avoid thoſe Forfeitures ſet forth in the Replication.

6. That the Information was well founded (*a*).

And gave Judgment, That the Franchiſe ſhould be ſeized into the King's Hands, but the Entry thereof reſpited till the King's Pleaſure was known in it. Juſtice *Raymond* and Juſtice *Withens* declare, that they were of the ſame Opinion *in omnibus*.

And accordingly, after Entry made by Mr. Attorney, That as to the Iſſue joined to be tried by the Country; as to the Claiming to have and conſtitute Sheriffs; as to the having the Mayor and Aldermen to be Juſtices of the Peace, and to hold Seſſions, *quod ipſe pro Domino Rege ulterius non vult proſequi*; Judgment is entered:

Ideo conſideratum eſt, quod præfat' Major & Communitas ac Cives Civitat' Lond' as to the Iſſue aforeſaid, betwixt our Lord the King and them joined, and as to the Liberties and Franchiſes aforeſaid by them claimed, to have and elect Sheriffs, and to have their Mayor and Aldermen to be Juſtices of the Peace, and hold Seſſions, *eant inde ſine die, ſalvo jure Dom' Regis, ſi al', &c. Et quoad dictas ſeparales materias in lege unde tam præd' Att' Gen' quam præd' Major et Communitas & Cives Civit' præd' poſuerunt ſe in Judicium Curiæ*, the Court adviſe till *Trinity Term*; and then *pro eo quod videtur Curiæ hic quod præfat' Major & Communitas ac Cives Civitat' præd' forisfecerunt Domino Regi nunc Libertat' Privileg' & Francheſ. præd' ob cauſas in Replication' præfat' Attorn' Gen' ſuperius ſpecificat' quod Placita præfat' Major & Communitat' ac Civium Civitat' præd' ſuperius rejungendo & repellendo in ea parte placitat' materiaque in iiſd' content' minus ſufficien' & invalid' in lege exiſtunt ad præcludend' dict' Dom' Reg' a Forisfactura præd. aut ad Major' & Communitat' ac Cives Civitat' præd' ad clamand' Libertat' Privileg' & Francheſ. præd' ſibi allocand' & adjudicand' manutend' maturaque Deliberatione ſuperinde prius habit' conſiderat' eſt, quod Libertat' Privileg' & Francheſ. præd. fore de ſeipſis unum Corpus corporat' & Politic' in re, facto & nomine per nomen Majoris Communitatis & Civium Civitat' Lond' ac per idem nomen placitare & implacitari, reſpondere & reſponderi per ejuſd' Majorem & Communitatem, ac Cives Civitat' London præd' ſuperius clamat' capiantur & ſeiſiantur in manus Domini Regis; & quod præfat' Major & Communitas ac Cives Civitat' Lond' præd' capiantur ad ſatisfaciend' dict' Dom Reg' de Fine ſuo pro Uſurpatione Libertat' Privileg' & Francheſ. prædict'.*

Thus was the Metropolis *of the Kingdom deprived of its Charter and Magiſtrates, till the Year* 1688, *when King* James, *terrified at the News of the Prince of* Orange's *intended Invaſion, thought fit to reſtore it,* October *the 6th, and ordered Lord Chancellor* Jefferies *to carry it back himſelf; whereupon Sir* George Treby *was reſtored to his Place of Recorder, and the reſt of the Magiſtrates, according to the ancient Conſtitution of the City.*

POSTSCRIPT.

THE Queſtion concerning the Surrender of the Corporations, or Bodies Politick, not being directly in the Caſe, but in the Arguments on both Sides inſiſted on, it may not be unneceſſary to ſtate that Point, and collect what hath been in the Debates or Arguments alledged on either ſide, that the eaſier View and Judgment may be made of it. By Surrender in this Queſtion is, by both ſides, meant and intended ſome Deed or Inſtrument in Writing, whereby a Body Corporate or Politick can ſurrender and diſſolve itſelf. It is agreed that a Body Politick may be diſſolved, either by the Death of the Perſons incorporate, or their Refuſer to act, nominate, or elect Officers or Miniſters, ſo as there remain not ſufficient, authorized or enabled by their Charter or Conſtitution, to preſerve their Being: This is admitted to be a Ceſſer, or Diſſolution of the Corporation, and ſuch a ſort of yielding up, or Surrender, is admitted poſſible. But whether by any Deed or Inſtrument in Writing it can be done, that is the Queſtion intended. For the Surrender, it hath been alledged,

1. That the Being of a Body Politick is a Liberty, Privilege, and Franchiſe, that had its Commencement by the King's Charter, or by Preſcription, which ſuppoſes a Charter; and if it have its Beginning and Creation by Charter, which is the King's Deed that grants it; by Deed again it may be regranted and ſurrendered: And it is a Maxim in Law, *Unumquodque diſſolvi poteſt eod' modo quo ligatur.* And inſtances in Fairs, Markets, Leets, and ſuch-like Franchiſes, granted by Charter, which, ſay they, may be ſurrendered by Deed, or Regrant.

2. That it is neceſſary that it ſhould be diſſolvible by Surrender. Perhaps a Town may come to decay, and not be able to defray the Charge that the Support and Maintenance of the Corporation may require; for every one ſees that Ornaments and Officers muſt be, and theſe cannot be bought or maintain'd without Eſtates; and poor Men are not able, without Ruin to their Families, to bear the Magiſtracies and Offices; and therefore it is neceſſary there ſhould be a Power in them to ſurrender.

3. That the Books and Caſes in Law do prove, that a Corporation, or Body Politick, may ſurrender itſelf, and thereby be diſſolved.

Dy. 273. There the Caſe is thus ſtated: The Deanry of the Cathedral Church of *Wells* was diſſolved by the Surrender of *Fitz-Williams, tempore H.* 8. And the Prebend of *Currey*, in the ſame Church, was alſo ſurrendered by *Goodman*, Prebendary there, 1 *E.* 6. And in this Year the Diſſolution of the Deanry was confirmed, and the Deanry extinct by Act of Parliament, and a new Dean erected and created; to which new Deanry, the Lands and Poſſeſſions of the old were annexed, amongſt other Poſſeſſions, and the Nomination of the new Dean and Succeſſors given by that Act to the King; and that he ſhould have the ſame Power in *Choro & Capitulo*, as the old Dean had; ſaving to all Strangers, other than the Biſhop of *Bath* and *Wells*, the old Dean, and the old Prebendary, and their Succeſſors. In this Caſe it is admitted, and taken for granted, that the Deanry, and alſo the Prebend, were ſurrendered.

Dy. 284. There the Archbiſhop of *Dublin* had two Chapters, *viz.* the Dean and Chapter of *St. Patrick*, and the Dean and Chapter of *Chriſt Church*, and both theſe uſed to confirm the Biſhop's Leaſes. The Dean and Chapter of *St. Patrick*, by Deed under their Common Seal, gave and ſurrendered all their Church, Houſes, Lands and Poſſeſſions to the King, without Licence or Conſent of their Biſhop, being their Ordinary, and Patron of the moſt Part of the Prebends. After this Surrender their Church was uſed as the Common Hall, for the four Courts in the Term there; and a Leaſe is made by the Archbiſhop, confirmed by the Dean and Chapter of *Chriſt-Church* only; and whether the Succeſſor of the Archbiſhop were bound by this Leaſe was the Queſtion. The Judges in *Ireland* were divided in Opinion, and thereupon the Caſe was ſent over for the Opinion of the Judges here: And the Opinions and Reſolutions of five Juſtices, *viz. Catlyn, Dyer, Saunders, Welſh*, and *Carus*, certified to the Lord Deputy of *Ireland*, under ther Hands, were, *Quod non fuit aliud Capitulum in eſſe tempore confirmationes Dimiſſion' præd' niſi* Chriſt-Church *tantum, quia Corporatio & Capitulum Sancti* Patrick *fuit per donum & ſurſum reddition' Decani & Capituli præd' legitime diſſolutum abſque conſenſu Archiepiſcopi.*

Jones 168. The Opinion of Juſtice *Jones* there, that a Corporation may be diſſolved by an Act proper, *viz.* by Reſignation.

On the other ſide, it hath been anſwered,

1. Admitting it to be true, That to be a Body Politick, is a Liberty, Privilege, and Franchiſe, created by Charter, which is the King's Deed; yet it doth not follow, that it may be ſurrendered by Deed: For the Charters that incorporate the Citizens, or Inhabitants of ſuch a City, Town, or Place, and make them a Body capable of taking and having Lands, Goods, or Chattels, to ſue and to be ſued, and to have a Common Seal, and to act according to the Powers, Ends and Purpoſes, in their Charters contained, only give them a Capacity for thoſe Ends. The Liberty, Privilege and Franchiſe that they have, goes no farther. They cannot transfer this Privilege, or Franchiſe, to any other Perſons. Theſe are only perſonal Franchiſes or Capacities, fixed in the Perſons to whom they are granted, like to Patents of Denization granted to Aliens, whereby a Capacity is granted to have, hold, and act, as a natural-born Subject; Grants of enfranchiſing a Villain; theſe are Grants that cannot

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(*a*) See the Petition of the *Mayor*, and *Aldermen*, and Lord Keeper *North*'s Speech to them, in *State Trials*, Vol. VIII. p. 446——447 cannot be ſurrendered; theſe are Franchiſes and Capacities like this; theſe are Exceptions to the general Rule, *Unumquodque diſſolvitur eodem modo, &c.* So alſo of Fairs, Markets, Courts, *&c.* they are created by Charter, they may be granted over, or granted to the King, but if they be regranted to the King, they are not extinct, but remain in the King.

Abbot of *Strata Marcella*'s Caſe, *Rep.* 9. 25. *b.* ſhews the Difference thus: When the King grants Franchiſes, that were in the Crown before the Grant, as *Bona Felonium*, Deodands, Wreck, *&c.* and theſe come again to the Crown, they are merged in the Crown, and the King is ſeized of them *Jure Coronæ*; but when a Privilege, Liberty, Franchiſe, or Juriſdiction, was at firſt erected or ordained by the King, there, by the coming of it again to the Crown, they are not extinct; and inſtanceth in Fairs, Markets, Hundreds, Leets, *& ſimilia.* They are not diſſolved or gone, for thereby Subjects would be prejudiced: For if the Court ſhould be ſo granted, and thereby diſſolved, the Subjects Judgments and Suits in thoſe Courts would be all loſt. Theſe are other Exceptions to that general Rule, *Unumquodque, &c.*

2. That the Reaſon given for the Surrenders of Corporations from the Poverty that may happen, for the Conveniency of ſome Corporation, is anſwerable; for that doth not very frequently happen: But when it doth happen, if they are weary of it, they may let it alone, and not act, or chooſe Officers; it will ceaſe of itſelf, they need not be at the Charge or Trouble of a Surrender: But on the other Side, the Inconveniencies are very great, and are ſome of them before ſpecified. The Eſtabliſhment of the Church is all in Corporations, Biſhops, Deans, Chapters, Prebends, Parſons, Vicars; if theſe be ſurrenderable, as by the Caſes cited, without Conſent of Biſhops (a Prebend is, as to his Being, but as a Parſon, or a Vicar) the Univerſities, Colleges, Hoſpitals all the Cities, conſiderable Towns, Trades, and Myſteries, are Corporations; if theſe be ſurrenderable, it affects our old Government.

3. As for the Books and Authorities, *Dy.* 273. the Diſſolution of the Corporation thereby ſurrendered is only mentioned in putting the Caſe, it is not debated, nor was it material in the Caſe: For the Act of Parliament there ſettled the new Dean and Chapter; and the Prebendary, and the Matter of the Caſe ariſeth upon the Deprivation of Dean *Goodman*, and the Appeal, and Reverſion of that Sentence, there is not as much as any Opinion in the Caſe concerning the Diſſolution or Surrender, whether good or bad. But what may reaſonably be inferred from that Caſe is, that the Surrender and Diſſolution thereby was not good in Law; for if it had, what needed the having an Act of Parliament to ſecure againſt the old Dean and Prebendary? which yet appears in the Caſe was had.

And, *Co. Rep.* 3. 75. *b.* in the Caſe of the Dean and Chapter of *Norwich* this Caſe of *Dyer* is cited, and there it is expreſly ſaid, that that Surrender was not thought good, till confirmed by Act of Parliament.

And as for the other Caſe, *Dyer* 282. of the Surrender of the Dean and Chapter of *St. Patrick*, the Opinion of the Judges there given is, by all the Judges, 3 *Car.* 1. in the Caſe of *Hayward* and *Fulcher*, in *Jones* 168. denied to be Law, and ſaid to be a private Reſolution. So that theſe two Caſes in *Dyer* having been by thoſe latter Authorities denied, remain no Authorities. And as for the other Authority, *viz.* The Opinion of Juſtice *Jones* 168. that a Corporation may be diſſolved by a proper Act, *viz.* by Reſignation, that is true, taken in the Senſe he ſpeaks it: It is ſpoken of a Dean and Chapter reſigning to the Ordinary, *viz.* the Dean reſigning his Place of Dean, and the Prebendaries of the Chapter reſigning their Prebends to the Ordinary, whereby their Churches and Prebends became void, and to be ſupplied by the reſpective Patron, collating or preſenting, as in Caſes of Reſignation, by any Parſon or Vicar to his Ordinary. But this is nothing of a Surrender of the Body Politick to the King, and thereby diſſolving the Corporation, and deſtroying all Supply, by new Preſentments or Collations. And this appears by the very Words of Juſtice *Jones* there; for when he ſaith, they may be diſſolved by a proper Act, *viz.* by Reſignation; the next Words are, or by Death of the whole Corporation, and the King being Patron, it is in his Election whether he will collate *de novo*, or not; and till he collates the Corporation is in ſuſpenſe; but if the Biſhop be Patron, then the Biſhop, upon the Reſignation, hath Power to collate, and thereby to continue the Corporation: So that it is very plain, that the Reſignation he ſpeaks of is not meant for any Surrender to the King, or any thing that determines the Corporation, except the Patron will not collate, and thereby ſuffer the Corporation to ceaſe; but on the contrary, that a Corporation cannot be diſſolved by any Surrender.

The Suppreſſion and Diſſolution of the Abbeys, Priories and Monaſteries, by *H.* 8. was no Diſſolution of their Bodies Politick. *Br. Extinguiſhment*, 75. *Br. Corporation*, 78. *Davies, Rep.* 1. *Moore's Rep.* 282. Though their Houſes and all the Poſſeſſions were gone, and the Perſons either diſcharged of their Orders, or ſent into other Houſes; yet reſolved, that the Corporations remained. And it can ſcarce be imagined, but in ſome of thoſe Caſes it would have been practiſed, or at leaſt ſomething ſaid about ſurrendering their Body Politick, if it had been then thought ſurrenderable. But the Caſe of the Dean and Chapter of *Norwich, Rep.* 3. 41 *Eliz.* before-cited, and the Caſe of *Hayward* and *Fulcher* before-mentioned in 3 *Car.* 1. *Jones*, 168. *Palm. Rep.* 500, 501. *Anderſ.* 2. 120. have been cited as Judgments againſt Surrenders by all the Judges of the King's Bench. The Caſe was, That the Dean and Chapter of *Norwich*, 3 *Junii*, 1 *E.* 6. ſurrendered to the King their Cathedral Church, and all their Manors, Lands, Tenements, Hereditaments, Franchiſes, and Liberties, Spiritual and Temporal, by whatſoever Names they are known, or which they have or ought to have in the Right of their Church. And by the Caſe 41 *Eliz. Co. Rep.* 3. 74. and the Opinion of all the Judges of the King's Bench, 3 *Car.* 1. adjudged, that this was no Surrender of the Corporation.

They object, That the Words of the Surrender do not ſhew any Intent to ſurrender the Corporation, but only the Poſſeſſions.

I anſwer, The Being of a Corporation is a Franchiſe or Liberty; and there is an expreſs Surrender of all Franchiſes and Liberties, Spiritual and Temporal, by what Name ſoever known, which they have in the Right of their Church: And this was a Spiritual Franchiſe, which they had in Right of their Church.

Next, this Surrender was made with Intent to diſſolve the Corporation, and to have a new one erected: This appears by the new Charter of Erection, made in *November* following; which recites the Surrender made to that Intent. It is not any-where in the many Arguments of that Caſe alledged, that there wanted Words in the Surrender to do it, which would have been, if that had been the Ground of their Judgment.

In the Caſe cited out of *Dyer* 282. there the Words of the Surrender were, that they ſurrendered their Church, Houſes, Lands, and Poſſeſſions, which are not half ſo large and ample Words as in this Surrender are contained; and the other Side cite that as an Authority, to prove a Corporation ſurrendered, and admit the Words there ſufficient, and deny them to be ſufficient here, though much more large, expreſs, and general. The arguing there in *Palmer* 501. that it is againſt the Nature and Conſtitution of Corporations, that by the Words put in their Charters, by their very Conſtitution, are to have perpetual Succeſſion, *perpetuis Temporibus duratur'*, and which by their Oaths they are ſworn to preſerve, or they ſhould be *Felo de ſe.* And the expreſs Words of the Judges reported in theſe Books ſhew their Opinion, that the Corporation could not be ſurrendered. *Jones* 168. *Dodderidge* Juſtice, there ſaith, that the Dean and Chapter cannot ſurrender their Corporation. *Palm.* 501. *Whitlock Inſt.* there ſaith, For that the Dean and Chapter are Counſel to the Biſhop inſtituted to that Purpoſe, they cannot diſſolve themſelves; for the Publick Corporation is the Soul to the Body, that cannot be granted or ſever'd; though the King can create a Corporation, he cannot diſſolve it. And *Jones Inſt.* there 502. ſaith, that the Dean and Chapter were Counſel to the Biſhop, and cannot deſtroy themſelves; if they could, great Inconvenience thereby will enſue to the Church.

CXV. *The Trial of* * Thomas Pilkington, *Eſq*; Samuel Shute, *Eſq*; *Sheriffs*, Henry Corniſh, *Alderman*, Ford Grey *of* Werk, *Sir* Thomas Player, *Knight*, *Chamberlain of* London, Slingsby Bethel, *Eſq*; Francis Jenks †, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll, *Sen. at* Niſi-Prius *at the* Guild-hall *of* London, *for a* Riot, *and an* Aſſault *and* Battery *on Sir* John Moore ‡, *then* Lord Mayor, May *the* 8*th* 1683. 35 CAR. II.

The INFORMATION.

London ſſ. BE it remember'd, that *Robert Sawyer*, Knight, Attorney-General of our Lord the King, who for our ſaid Lord the King in this behalf proſecuteth, cometh into Court in his proper Perſon on *Friday* next after fifteen Days of the *Holy Trinity*, in this ſame Term, and for our ſaid Lord the King doth give the Court here to underſtand and be informed, that the Four-and-twentieth Day of *June*, in the Four-and-thirtieth Year of his now Majeſty's Reign, at the *Guild-hall* of the City of *London*, a certain Court for aſſembling the Citizens and Freemen of the City of *London*, called a Common-hall, being ſummoned and called by Sir *John Moore*, Knight, then and yet Mayor of the City of *London*, was in a lawful Manner held before the ſaid Sir *John Moore*, Knight, Mayor of the City aforeſaid, as well for the due Election of Sheriffs of the City aforeſaid, for the Execution of the Office of Sheriff of the ſaid City for one whole Year, next following after the Vigil of the Feaſt of St. *Michael* then and yet next coming, as for the Election of divers other Officers of the ſaid City: And that then and there in the ſaid Court it was begun to take the Poll of the Electors then and there preſent, for the making known of the Election of the Perſons to ſerve in the Office of Sheriffs of the ſaid City, for the Year aforeſaid. And that the ſaid Sir *John Moore*, Knight, Mayor of the ſaid City, afterwards the ſaid 24th Day of *June*, in the 24th Year aforeſaid, at *Guild-hall* of the ſaid City of *London*, (to wit) in the Pariſh of St. *Michael Baſſiſhaw*, *London*, in a lawful Manner did make and cauſe to be made Proclamation for the Adjourning of the ſaid Court ſo as aforeſaid held, and then and there did adjourn the ſaid Court until *Tueſday* then next following, to be held at the *Guild-hall* of the ſaid City of *London*; and then and there after the ſaid Adjournment, ſo as aforeſaid made, the ſaid Sir *John Moore*, Knight, Mayor of the ſaid City of *London*, did make and cauſe to be made publick Proclamation for the Departure of all Perſons upon the ſaid Occaſion there aſſembled: And further the ſaid Attorney-General doth give the Court to underſtand and be informed, That *Thomas Pilkington*, late of *London*, Eſq; and *Samuel Shute*, late of *London*, Eſq; then Sheriffs of the ſaid City of *London*, and *Henry Corniſh*, late of *London*, Eſq; *Ford* Lord *Grey* of *Werk*, &c. the ſaid Premiſes ſufficiently knowing, but being ill diſpoſed Perſons, and deviſing and intending to diſquiet, moleſt and trouble the Peace of our ſaid Lord the King, and the common Tranquillity of this Kingdom of *England*, they the ſaid *Thomas Pilkington* and *Samuel Shute*, under Colour of the Office of Sheriffs of the ſaid City of

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* *Burn. Hiſt. Own Times*, Vol. I. p. 535. He was afterwards Lord Mayor for two Years together, 1689, 1690.

† See *State Trials*, Vol. VII. p. 468.

‡ *Burn. Hiſt. Own Times*, Vol. I. p. 528. 530.

London, and the ſaid *Henry Corniſh*, *Ford* Lord *Grey*, and others afterwards, and after the Adjournment aforeſaid, (to wit) the ſaid 24th Day of *June*, in the 34th Year aforeſaid, at the Pariſh of St. *Michael Baſſiſhaw*, *London*, aforeſaid, in the ſaid *Guild-hall*, there with Force and Arms, riotouſly, routouſly, unlawfully, and ſeditiouſly, did aſſemble, congregate, and unite themſelves with very many other ill-diſpoſed Perſons, and Breakers of the Peace of our ſaid Lord the King, to the Number of One Thouſand Perſons, to the ſaid Attorney-General of our ſaid Lord the King as yet unknown, to diſturb the Peace of our ſaid Lord the King; and being ſo aſſembled, congregated, and united, then and there with Force and Arms, *&c.* riotouſly, routouſly, and unlawfully, in and upon the ſaid Sir *John Moore*, Knight, Mayor of the City aforeſaid, in the Peace of God, and our ſaid Lord the King, then and there being, did make an Aſſault and Affray, and him the ſaid Sir *John Moore*, Knight, then and there did beat, wound, and evil-intreat, ſo that of his Life it was greatly deſpaired; and after the Adjournment aforeſaid, and Proclamation ſo as aforeſaid made by the ſaid Sir *John Moore*, Knight, Mayor of the ſaid City, they the ſaid *Thomas Pilkington* and *Samuel Shute*, then and there by Colour of their Office of Sheriffs of the ſaid City of *London*. and the ſaid *Henry Corniſh*, *Ford* Lord *Grey*, &c. with divers other Perſons to the ſaid Attorney-General of our ſaid Lord the King as yet unknown, unlawfully and ſeditiouſly aiding and aſſiſting the ſaid *Thomas Pilkington* and *Samuel Shute* with Force and Arms, *&c.* riotouſly, routouſly, and unlawfully, did there continue to take the Poll of the Perſons ſo then and there unlawfully aſſembled, as if the ſaid Perſons had been lawfully aſſembled for the Election of Sheriffs of the ſaid City; and that the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, &c. then and there unlawfully, tumultuouſly, and ſeditiouſly, did affirm, and every one of them did affirm, ſay, and with a loud Voice to the ſaid ill-diſpoſed Perſons affirm, that the ſaid Sir *John Moore*, Knight, Mayor of the ſaid City of *London*, did unlawfully and unjuſtly aſſume upon himſelf the Liberty to adjourn the ſaid Court, which did not belong to him: And that the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, &c. then and there, the ſaid unlawful and ill-diſpoſed Perſons, ſo as aforeſaid, aſſembled and congregated with Force and Arms, riotouſly, routouſly, unlawfully, and ſeditiouſly, by the Space of three Hours, to diſturb the Peace of our ſaid Lord the King, and to commit the Riot aforeſaid, did ſtir up, move, perſuade, procure, and then and there by the whole Time aforeſaid in *Guild-hall*, *London*, aforeſaid, in the Pariſh aforeſaid, great Rumours, Cries, Hollowings, and terrible and unwonted Noiſes, with Force and Arms, *&c.* riotouſly, routouſly, unlawfully, tumultuouſly and ſeditiouſly, did make and cauſe to be made, and did ſtir up, in Contempt of our ſaid Lord the King, and the manifeſt Diſturbance and Violation of his Laws and his Peace, to the great Danger of ſtirring up and moving of a Tumult, and the Spilling of much Blood there, to the great Terror, Trouble, and Fear of all his Majeſty's Liege-people, Subjects of our ſaid Lord the King, to the ill Example of all others in the like Caſe offending; and againſt the Peace of our ſaid Lord the King, his Crown and Dignity, *&c.* Whereupon the ſaid Attorney-General of our ſaid Lord the King, for our ſaid Lord the King, prayeth the Advice of the Court in the Premiſes, and due Proceſs of Law againſt the ſaid *Thomas Pilkington*, *Samuel Shute*, *Henry Corniſh*, *Ford* Lord *Grey*, &c. in this Behalf to be made to anſwer our ſaid Lord the King, of and in the Premiſes, *&c.*

To this Information *the Defendants had pleaded Not Guilty.*

Cryer. YOU *Good Men of* Niſi-Prius, *ſummoned to appear here this Day, between our Sovereign Lord the* King, *and* Thomas Pilkington, *and others, Defendants; Anſwer to your Names, and ſave your Iſſues.*

The Jury appeared.

Mr. *Sommers.* My Lord, I am to challenge the Array.

Mr. *Thompſon.* My Lord, I deſire this Challenge may be read.

The Challenge *read in* French.

L. C. J. * Gentlemen, I am ſorry you ſhould have ſo bad an Opinion of me, as to be ſo little a Lawyer not to know this is but a Trifle, and nothing in't. Pray, Gentlemen, don't put theſe things upon me.

* *Sir* Edmond Saunders.

Mr. *Thompſon.* I deſire it may be read, my Lord.

L. C. J. You would not have done this before another Judge: You would not have done it, if Sir *Matthew Hale* had been here.

Mr. *Thompſon.* My Lord, I believe if there had been nothing in it, it would not have been ſigned.

Mr. *Att. Gen.* † Very few but Mr. *Thompſon* would urge it.

† *Sir* Robert Sawyer.

Mr. *Thompſon.* I don't know whether you think ſo, or not, Mr. *Attorney*; but I have a great deal to offer, if you pleaſe to anſwer it. We offer our Challenge in point of Law.

L. C. J. There is no Law in it.

Mr. *Thompſon.* We deſire it may be read in *Engliſh*.

L. C. J. Why? Do you think I don't underſtand it? This is only to tickle the People.

The Challenge *read by the Clerk* accordingly.

Mr. Serj. *Jeff.* Here's a Tale of a Tub, indeed!

L. C. J. Ay, it is nothing elſe; and I wonder Lawyers would put ſuch a Thing upon me.

Mr. *Thoupſon.* My Lord, we deſire this *Challenge* may be allowed.

L. C. J. No, indeed won't I, there is no Colour for it; and I am apt to think, there are not many Lawyers in *England* would have put ſuch a Thing upon me: Becauſe I am willing to hear any thing, and where there is any Colour of Law, I am not willing to do amiſs: Therefore you think I am now become ſo very weak, you may put any thing upon me; without you think I was always ſo, and therefore may be ſo at this Time. For, pray now conſider, if ſo be the King's Counſel ſhould come and plead this *Challenge*, what would be the Conſequence of it? I thought you would have ſaid, that the *Sheriffs* had been a-kin to the King, but you have made it worſe. You do come with a long Tale here of the whole Merits of the Cauſe, and more than yet doth appear; and by this you would have the *Challenge* to be allowed: In ſuch a Caſe a Man may come and tell a Tale of the Merits of the Cauſe, and then it muſt be tried by the *Challenge*. If the Sheriffs do return an Inqueſt for the King, and the Sheriffs do hold of the King a Fee-farm, or have a Penſion or an Annuity from the King, the Book doth ſay, that in ſome Caſes it is a *Challenge*; for though they cannot be challenged as being favourable for the King, yet for thoſe Reaſons they may be challenged. But what is here? Here you tell a long Proceſs concerning a Difference between the Mayor and the Sheriffs, and all this Matter is wrapp'd up all together; and if all this were true, it is no *Challenge* at all.

Mr. *Thompſon.* We ſhall ſpeak with all Submiſſion to your Jugdment, my Lord.——Good, Mr. *Attorney*, give me Leave.

Mr. *Attorney General.* I move for you.

Mr. *Thompſon.* If you pleaſe, you may move for yourſelf; I don't need you to move for me. My Lord, with Submiſſion, the Information is not good: My Lord, it is an Information that doth ſet forth, that my Lord Mayor had Right of Adjourning the Poll, when an Election is to be for Sheriffs. My Lord, if he had not that Right, it can be no Riot according to this Information. My Lord, upon his Adjourning, Mr. Sheriff *North* was choſen: My Lord, if that Adjournment was not according to Law, Mr. Sheriff *North* never was Sheriff of *London*; then, my Lord, here is the Caſe in this Queſtion of Title; for Mr. *North* doth come in Queſtion, Whether he be a legal Sheriff of *London*?

L. C. J. Prove to me now that of Sheriff *North*; Pray what Annuity, Penſion, or Fee-farm hath he as Sheriff of *London*, whereby he is concerned?

Mr. *Thompſon.* My Lord, there are other Reaſons which I ſhall ſhew to you; and the firſt Reaſon, my Lord, in this Caſe, is this; it will appear the Election of Mr. *North* is intereſted in this Matter; and Sir *John Moore* had not an Opportunity to adjourn the Poll, Mr. *North* was not choſen duly Sheriff; now, if the Sheriff's Choice come in Queſtion in point of Right, it is a good *Challenge*.

L. C. J. In point of Profit it might be ſo, and not in all Caſes neither; for he that holds Lands *in Capite* of the King, cannot be challenged for all that.

Mr. *Thompſon.* I think, my Lord, this is a common Caſe in our Books, That if in caſe a Sheriff be concerned in point of Title, this is a principal Challenge, becauſe that he is intereſted in that Title, he is no Perſon by Law to return a Jury. I don't doubt but your Lordſhip will do that which is right, and according to Law. My Lord, I ſay, where a Sheriff is intereſted in point of Title, he is no Perſon by Law to return a Jury, and this Queſtion will appear plainly upon this Information; for if in caſe this was not a lawful Adjournment by Sir *John Moore*, this is not a lawful Return——Gentlemen, *my Lord*, I know, will hear me, if *you* have but Patience; I always ſpeak and ſtand up for my Clients as I ought to do. If *you* pleaſe to let me have Liberty, I have *my Lord's*. If a Sheriff be concerned in point of Title, it is a principal Challenge, and the Sheriff ought not to return the Jury, but the *Coroner*: And, my Lord, much more in this Caſe; for that the very Title to the Office of Sheriff is here in Queſtion, and therefore he is no Perſon fit to return this Jury, my Lord. We deſire your Lordſhip's Opinion.

L. C. J. Mr. *Thompſon*, Methinks you have found out an Invention, that the King ſhould never have Power to try it even ſo long as the World ſtands. Say you, Sheriff *North* is not a right Sheriff, Who ſhould have been? Why, ſay you, *Dubois* and *Papillon*, or one, or both of them. Now the King he hath brought his Suit for a Riot.

Mr. Serj. *Jeff.* And an Aſſault and Battery upon Sir *John Moore*.

Mr. *Thompſon.* That is a Fiction.

L. C. J. The King hath brought his Suit, and brought it to an Iſſue. Why now, if ſo be this Challenge ſhould have any thing in it, then the King muſt have challenged *North*, and what muſt he have done then? Why, for *Papillon* and *Dubois*, they are not Sheriffs *in actu*, then, ſay you, the *Coroner*. Pray, Mr. *Thompſon*, if ſo be the King had made the *Venire* either to *Papillon* or *Dubois*, or to the *Coroner*: Whether or no had not the Cauſe been found againſt the King, before one Word had been ſaid actually for him? You ſay the Queſtion is, Whether he be a Sheriff or not? If the King had challenged him, and made the *Venire* to the *Coroner*, for God's ſake, Had not that made an End of the Queſtion?

Mr. *Thompſon.* No, my Lord, not at all.

L. C. J. Now? Then I underſtand nothing.

Mr. *Thompſon.* My Lord, if the Sheriff appear to be concern'd, it doth not determine the Cauſe.

L. C. J. But it does by your own Opening now. You ſay the Queſtion is, for which you do now challenge the Array, becauſe it is returned by Sir *Dudley North*, ſuppoſed to be one of the Sheriffs, and tell the whole Proceſs, how that in Truth it is a Queſtion whether he be a Sheriff or not; and therefore, ſay you, or you ſay nothing, that the *Venire* ſhould not go to *North*.

Mr. *Thompſon.* No, my Lord, I pray, good my Lord———

L. C. J. Should it have gone to *Dudley North*, and then have been challenged for him?

Mr. *Thompſon.* No, I beſeech your Lordſhip, we do not ſay ſo. My Lord, we ſay, That whereas they do charge in the Information, that there was an Aſſembly for the Election of Sheriffs, and that Sir *John Moore* being then Mayor, did lawfully, according to Law, adjourn this Aſſembly; and that afterwards the Defendants, *Pilkington* and *Shute*, did continue this Aſſembly, and took a Poll, and ſo they would make this a Riot in the Continuance of it: My Lord, we do ſay this, That the Election of Mr. *North* upon this Point doth come in Queſtion; and my Lord, we do ſay, That if that be not a legal Adjournment, then Mr. *North* is not legally choſen.

L. C. J. Right, now you have told it in more Words.

Mr. *Thompſon.* We ſay, If the Election be intereſted, they are all Parties by Law.

Mr. Serj. *Jeff.* Who would you have the Proceſs go to?

Mr. *Thompſon.* To the *Coroner*.

L. C. J. Very well, upon my Word. If he were Sheriff, it cannot go to the *Coroner*, you know, and therefore if he were challenged, to go to the *Coroner*———

Mr. *Thompſon.* *Sub judice lis eſt*, my Lord.

Mr. Serj. *Jefferies.* We deſire for the King, that the Challenge may be over-ruled.

L. C. J. Ay, ay.

Mr. Serj. *Jefferies.* I deſire the Jury may be ſworn.

Mr. *Williams.* Certainly if they be impanelled by Perſons that are not Sheriffs, that is a good Challenge, that is admitted by every body; now we have made a Challenge, and that is a good Cauſe of Challenge certainly, if that were the Cauſe. But now, my Lord, I muſt confeſs what your Lordſhip ſays, it is a difficult Matter to challenge any Array, becauſe they are arrayed by a Perſon that hath an Intereſt, or ſome ſuch thing that is a Challenge of the Array, but that is not the Matter in this Caſe. It cannot be denied, if theſe Perſons were not Sheriffs of *London*, that that is a good Cauſe. I take the Reſult of the Challenge to be this: Say we, the principal Queſtion of this Information, the Riot, will depend upon this Queſtion, Whether there were a regular Adjournment or not? There, ſay we, begins the Queſtion of the Riot. If ſo be that my Lord Mayor of *London* that was, had Power to adjourn the Court, and it be admitted a regular Adjournment, certainly the Riot would follow, and what follows then? Then comes on a Queſtion, and it is immediately conſequent upon it, That theſe Gentlemen be actual Sheriffs of *London*, they being actually choſen upon this Adjournment, they are actually Sheriffs: But if really my Lord Mayor had no Power to adjourn, and that Power was in the Sheriffs, that they were actually taking the Poll, and the Poll was for Mr. *Dubois* and Mr. *Papillon:* Then the Queſtion is, if ſo be the Adjournment by my Lord Mayor were not a good Adjournment, then the Poll was a regular Poll taken by the Sheriffs, then conſequently thoſe that were elected upon that were truly choſen, and then it is a right Challenge. Theſe Gentlemen, I muſt confeſs, they are Sheriffs *de facto*; but we know very well there may be Sheriffs *de facto*, and there may be other Sheriffs *de jure*, theſe Things are very conſiſtent. If ſo be that Mr. *Papillon* and *Dubois* be duly elected, they are Sheriffs *de jure*, but they want the Formality, for they are not ſworn, and cannot return a Jury. On the other ſide, the Sheriffs are Sheriffs *de facto*, but not legally choſen, and the Riot will depend upon that Queſtion, of the other Perſons that are Sheriffs *de facto* and not *de jure*. This we ſuggeſt in this, Whether your Lordſhip will receive this challenge, or whether your Lordſhip will proceed firſt to the Trial of the Cauſe, and let this follow. My Lord, Might not there have been ſomething in this Caſe upon the Roll at *Weſtminſter?* Might there not have been a Surmiſe to this Purpoſe, becauſe there is ſuch a Queſtion upon the Roll? For it appears, that the Common Hall was for the Election of Sheriffs, and that it was adjourn'd by the Mayor: And what follow'd? Might there not be ſuch a Surmiſe, that the *Venire facias* ſhould not go to the Sheriffs, but to the Coroner? Might there not have been ſuch a thing?

L. C. J. My Speech is but bad: Let me know what Objection is made, and if I can but retain it in my Memory, I don't queſtion but to give you Satisfaction. If the King had brought an Information againſt Mr. Sheriff *North*, and charged him with a Crime, there is no manner of Queſtion, that the King ſhould have challenged as he was a Sheriff, and ſent the *Venire* to the Coroner, or other Officer; here he is not accuſed, nor to be acquitted, of any Crime. Gentlemen, I put you upon this, if ſo be that the Sheriff of *London* ſhould get a great deal of Money, (but I never underſtood, that he got by it) if you prove, that he hath got any conſiderable Matter by the Office, it would be ſomething in the Caſe, that he ſhould be greedy of the Office. But look ye, on the other Side, if there be nothing in it one way or another, that there is Profit accruing to him by the Office, what can the Law ſay? But here was the Queſtion between, indeed and in truth as you do open it, between the Mayor, Sir *John Moore*, I think, and the Sheriffs that then were, that was the Queſtion between them. Now what is this in point of Law, that the Sheriffs muſt be challenged? They muſt be challenged, becauſe it is return'd by theſe Sheriffs: You can't ſay the Sheriffs do favour—the King.

Mr. Sol. Gen. My Lord, we trouble your Lordſhip about a Queſtion very unneceſſary: The Sheriff is not concerned in this Queſtion, neither can the Conſequences affect the Sheriff any way.

Sir *Fr. Winn.* My Lord, if I don't ſhew that he is concern'd, notwithſtanding what Mr. Solicitor ſays, it is another matter. If this had been upon a common Riot, and not related to the Election of Sheriffs, it would have been harder againſt us. I only offer a Word or two, and ſubmit to your Lordſhip. This Information doth take notice of the Election of Sheriffs, and of an Irregularity in diſturbing the late Lord Mayor about adjourning the Poll; I do believe, my Lord, it will not be deny'd, but that in this Cauſe a Riot or no Riot will depend upon the Poll, or the Mayor's adjourning. If that be ſo, that which your Lordſhip is pleaſed to urge, That the Sheriff gets nothing, yet that he hath aſſumed the Office *de facto*, appears by the Return, that is very plain, my Lord, he hath aſſumed it, and did exerciſe it. If it appear to be legal or illegal upon the Adjournment by the Mayor, then it muſt have one of theſe two Conſequences. My Lord, I humbly conceive, till the Sheriffalty had been agreed, it would have done very well for Mr. *Attorney* to let this Riot alone, unleſs he would have made it a common Riot; if he would have been pleaſed to ſtay till the Law had determin'd who had been the right Sheriffs, then *Proceſs* would have gone for the King. And, my Lord, there is another Thing under Favour: If Mr. Attorney had been pleaſed to proſecute for the King, then ſurely, my Lord, there was a Way to lay it ſo that the Proceſs ſhould be returned by Perſons unintereſted, and not by the Sheriff whoſe Election is in Controverſy: I don't argue out of the Record, but by the Record itſelf. If in caſe it doth appear ſtill to be under Conſideration; if that be ſo, I do humbly conceive, becauſe that Right of Election of Sheriffs is undetermined, that therefore he might have made the Proceſs to the Coroner, if he would have made it before; but it ſhould not be heard before the Election of the Sheriffs, becauſe it will be a Riot, or not a Riot, upon that.

L. C. J. Good now, Sir *Francis*, you miſtake, it could not be to the *Coroner*.

Mr. Sol. Gen. My Lord, it is but wearying your Lordſhip to no Purpoſe.

Mr. *Wallop.* If he be not Sheriff, that Title of his depending upon my Lord Mayor's Adjournment, which is reaſonably ſet forth, it is concerned in the Conſequence of the Cauſe.

Mr. Att. Gen. If you pleaſe, my Lord, I will anſwer what hath been ſaid. Mr. *Thompſon* did firſt urge according to the Rules of Law, if the Matter that appears upon the Record be the Thing in Queſtion; that if the Sheriff be intereſted in that Matter, that that is a good Cauſe of Challenge. That is a good Rule, and the Law is ſo; but that is nothing to this Purpoſe; my Lord, here upon the Record there is nothing in queſtion but a Fine for the King, nothing to be recovered: Where Lands are in queſtion, as in an *Ejectment*, if the Sheriff be intereſted in that Land, in that caſe that is a good Challenge; but here appears nothing by the Record, here is nothing in queſtion but a Fine for the King; ſo that certainly that Caſe, in point of Law, is nothing to the Purpoſe. Then they ſay it appears in the Record by Recital, and in the Information, for that is the Subſtance of all they ſay: It doth appear there, as it is ſaid, that the Mayor did adjourn the Court, and ſo the Queſtion of the Riot will very much ſtand upon the Validity of that Adjournment. But it doth not wholly ſtand upon that; for there are many outrageous Actions, Aſſaults of the Mayor, throwing off his Hat, great Clamours; thruſting and preſſing many of the Aldermen; nay, bruiſing them; ſo that this Riot, notwithſtanding the Adjournment, be that as it will, will appear, in the Upſhot of the Cauſe, to be a Riot, notwithſtanding that Queſtion. But in the ſecond Place, the Queſtion of Mr. *North*'s being a Sheriff, or not a Sheriff, no ways depends upon this Adjournment, no Pretence of the Title depends upon that; ſo, my Lord, they have ſuggeſted a Thing that is foreign to the Record; it depends purely that, upon a Cuſtom of the City for my Lord Mayor to elect, not upon the Power of my Lord Mayor's Adjournment; for after that they proceeded on with the former Choice of Mr. *Papillon* and Mr. *Dubois*; ſo that whether that Adjournment be a good Adjournment, or no good Adjournment, his Title will depend upon that, whether at the ſecond Meeting or no Mr. *Papillon* and the other Gentleman be well choſen, and Mr. *North* not well choſen; ſo that his Title doth not depend upon this Queſtion one way or other. But, my Lord, that which makes this as frivolous a Thing as ever was urged in a Court of Law, my Lord, that it ſhould have been upon Rule before any Direction to the Sheriff or Coroner, if they would have had *Proceſs*; they have ſuggeſted Matter of Fact wholly out of the Record, Matters have been ſuggeſted, that it might have been tried before it came to Direction; now there appears nothing in the Record to bring a Challenge to try the Matter; nay, as they themſelves ſay, it is to try the Merits of the whole Information, that the Information depends upon that Queſtion, Whether the Mayor may adjourn? It is a great Uſurpation upon the Government of this City, as they have done in other Things to the King. My Lord Mayor is the Supreme Magiſtrate here, and the Sheriffs have nothing to do in this Point, and therefore I pray it may be over-ruled, and that the Jury may be ſworn.

Mr. *Thompſon.* We would have, my Lord, the Benefit of a Bill of Exceptions.

Mr. Serj. *Jefferies.* Swear the Jury, ſwear the Jury.

Mr. *Thompſon.* I have another Challenge.

L. C. J. I tell you plainly, I ſee nothing in it for a Bill of Exceptions.

Mr. *Thompſon.* We deſire we may have the Benefit of a Bill of Exceptions. My Lord, if this be the Caſe of trying a Riot, we muſt take what Advantage we can in point of Law.

Mr. Serj. *Jefferies.* We come to counſel the King, as we ought to do, by Law.

Mr. *Thompſon.* My Lord, I challenge, on the behalf of my Lord *Grey*, this Jury.

[*Challenge read.*]

Seignior Grey.

Mr. Att. Gen. They call that a *Newgate* Challenge.

Mr. *Wallop.* That was a Challenge taken at the *Old Baily.*

Mr. *Thompſon.* And over-ruled.

Mr. Serj. *Jefferies.* And I pray it may be ſo here.

L. C. J. I think your Challenge is, that they are not Sheriffs?

Mr. *Thompſon.* My Lord, Is the Fact true or falſe? I deſire of theſe Gentlemen, if it be inſufficient in point of Law, let them demur.

Mr. Serj. *Jefferies.* Pray tell me, *Robin Hood* upon *Greendale* ſtood; and therefore you muſt not demur to it.

Mr. *Thompſon.* If the Challenge be not good, there muſt be a Defect in it either in point of Law, or in point of Fact. I deſire, on the Behalf of my Lord *Grey*, this Challenge may be allowed.

Mr. Serj. *Jefferies.* And I pray for the King, that it may be over-ruled.

L. C. J. I think you have owned them to be Sheriffs already.

Mr. Serj. *Jefferies.* My Lord *Grey* did own it in his Challenge, becauſe there were no Knights.

L. C. J. We try a great many *Niſi-Prius* here ſometimes, two or three Days after the Term, every Defendant, that thinks it goes hard with him, we muſt have a Trial ſtill, whether the Sheriffs be Sheriffs, or no? This that you have done now, may be done in every Cauſe that we may be trying. Upon your Evidence if you can prove them none, you go a great way.

Mr. *Thompſon.* My Lord, we deſire the Challenge may be allowed, or otherwiſe a Bill of Exceptions. My Lord, we pray a Bill of Exceptions.

Mr. Serj. *Jefferies.* This Diſcourſe is only for Diſcourſe ſake; I pray the Jury may be ſworn.

L. C. J. Ay, ay, ſwear the Jury.

Sir Benjamin Newland, *&c. ſworn.*

Mr. *Thompſon.* We challenge Mr. *Fenſil*; he hath given Evidence in this Cauſe at the Council-Table.

L. C. J. What then?

Mr. Att. Gen. My Lord, they ſhall have all fair.

L. C. J. Mr. *Attorney* ſays he won't ſtand upon it.

Mr. *Thompſon.* My Lord, we pray a Bill of Exceptions.

L. C. J. I think many would not have offer'd it beſides you. Shall I go and ſign a Bill of Exceptions, to let all the World know this is ſo, and ſo all the World muſt try whether they be Sheriffs of *London?*

Mr. *Thompſon.* My Lord, don't ſay ſo; for I think all the Counſel in the Court would.

L. C. J. If it doth fall out, that in truth they don't happen to be Sheriffs, ſurely you ſhall have all the Advantage that can be for you; but pray don't think, that I will put off a Trial upon every Suggeſtion that the

Sheriffs are not Sheriffs. You ſhall have all that is Law by the Grace of God, and I am not afraid, that you or any Man ſhould ſay, I don't do Juſtice; I am not bound to gratify every Man's Humour; I am to do according to my Conſcience, and the beſt of my Knowledge, and according to my Oath; and I will do that, and gratify no Man.

Sir *Benjamin Newland*		*Henry Wagſtaff*
Sir *John Matthews*		*Barthol. Ferriman*
Sir *John Buckworth*		*Thomas Blackmore*
Sir *Thomas Griffith*	Jur.	*Samuel Newton*
Sir *Edmund Wiſeman*		*William Watton*
Percival Gilburne		*George Villars.*

Cryer, *O yes, O yes, O yes, If any Man can inform my Lord the King's Juſtice, the King's Serjeant, or the King's Attorney, or this Inqueſt now to be taken,* &c.

Mr. *Dolbin.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, this is an Information brought by the King againſt *Thomas Pilkington,* &c.

Gentlemen, the Information ſets forth, *That upon the 24th of* June *laſt, in* Guildhall, *there was a Common Hall ſummon'd by Sir* John Moore, *Knight, and thereupon held for the Election of Sheriffs for the Year then enſuing the Feaſt of St.* Michael: *And that on the ſame 24th of* June, *Sir* John Moore, *then Mayor, adjourn'd the Court till the* Tueſday *following by Proclamation. That after the ſaid Adjournment, my Lord Mayor made Proclamation for all Perſons to depart; and that the Defendants, intending to diſturb the Peace of the King after the Adjournment aforeſaid, did unlawfully, with many Perſons unknown, meet together, and riotouſly aſſault the Lord Mayor. And after the Adjournment by Proclamation, two of the Defendants,* Pilkington *and* Shute, *by Colour of their Office as Sheriffs of this City, and the reſt of the Defendants, did continue the Poll, and unlawfully affirm to the People, That Sir* John Moore *had no Power to adjourn them. And that they continued this great Tumult three Hours, to the Terror of the King's Subjects, and the evil Example of others, and againſt the Peace of our Sovereign Lord the King. To this the Defendants have pleaded* Not Guilty, *&c.*

Mr. Att. Gen. This Information, my Lord, is brought for ſettling the Peace in this City, and to ſhew before you all, who is the Supreme Magiſtrate under the King in this City; for that, Gentlemen, you ſee, is grown a great Queſtion, Whether my Lord Mayor is not only in the Hall, but in his Chair, the Supreme Magiſtrate?

Gentlemen, I muſt acquaint you, that my Lord Mayor in all Times, even before the City had the Election of him, was the King's Lieutenant, and the Supreme Magiſtrate in the City, and no publick Aſſemblies could ever meet together without his Summons; he was the great and chief Director, and this I believe in all your Obſervations that are of the Jury, I can make it evident, that this hath been the conſtant Frame of this Government in the City: For the Sheriffs, Gentlemen, they are no Corporation Officers, they are County Officers, as in all the Counties of *England,* and they are the King's Officers for the Execution of the King's Writs, and the Preſervation of the King's Peace; but the Government of the Corporation is in the Mayor, and not in the Sheriffs. Gentlemen, the Queſtion now ariſing here, is about the Election of Sheriffs; it's true there were very diſorderly tumultuous Proceedings; my Lord Mayor he comes and doth appoint another Day for them, and diſcharges them at that Time. We will make appear to you, that it was always his Right in all Times, both to ſummon a Common Hall, and diſſipate it, and appoint them another Day, or to diſſolve them, as the Mayor did ſee Cauſe. The Mayor having, according to the ancient Manner, adjourned this Court, the Sheriffs they proceed; do not only refuſe to obey, but they proceed, and make Proclamation, that it is not in the Power of the Mayor, taking upon them that which never any Sheriffs did in any Time; they make Proclamation contrary to what the Mayor had done, and continue the Poll, and proceed and proclaim the Mayor had uſurped that Power which was their's, tho' afterwards they transferr'd the Supreme Power to the Liverymen; but I think no Age will ſuffer, that the Supreme Power ſhould be in the Liverymen, that are expreſly appointed to act by a Common Council, which is indeed the Repreſentative of the whole City. But this, Gentlemen, being done by the Sheriffs having uſurped the Power of the Mayor, they did proceed in a riotous Manner; when the Mayor attempted to go out of the Hall, they ſtruck him, ſtruck his Hat off, and preſſed ſeveral of the Aldermen; the Evidence will make out in what an outrageous Manner it was carried on. If the others had made Oppoſition, how ſoon had all been in Confuſion upon this Uſurpation, that the Sheriffs had ſet up for themſelves, that they are the Delegates of the People, and muſt appear to be the Supreme Magiſtrates of the City of *London!* I think the Citizens themſelves will never endure, that thoſe that are but County Officers, ſhould ever invade the Government of the Corporation. Gentlemen, we will ſhew you the Particulars of this, and you have nothing to inquire after, but whether they are Guilty of the Riot or no?

Mr. Sol. Gen. My Lord, we will call our Witneſſes, and prove our Caſe by theſe Steps. For the Queſtion, That whether or no the Defendants in the Information were guilty of a Riot, in continuing the Aſſembly after my Lord Mayor had adjourn'd them, we will prove it by theſe Steps, that it is in the Power of the Lord Mayor to call a Common Hall, and adjourn the Common Hall; That, my Lord, when the Common Hall was aſſembled for the Purpoſe of electing Sheriffs, that he did adjourn the Common Hall; and that contrary to his Adjournment the Sheriffs continued it, declaring my Lord Mayor had no Right ſo to do; and that afterwards my Lord Mayor commanded them to depart, and they continued their Aſſembly there in a very riotous Manner; and as my Lord Mayor came down, they offer'd Inſolencies to his Perſon, and they continued the Aſſembly there in a riotous Manner, and commended the Sheriffs that did aſſert their Right, following them in a riotous Manner into *Cheapſide,* crying out in a factious Manner, *God bleſs the Proteſtant Sheriffs.*

Mr. Serj. *Jefferies.* My Lord, we would begin with our Witneſſes; but for the Gentlemen of the Jury, which I think are Men that belong to the City, and that the thing may be very intelligible, I beg Leave to acquaint your Lordſhip with the Methods that have always been proceeded in, in Choices of this Nature. My Lord, we will make it appear, and I think it will not be doubted by any Man that knows the City of *London,* that Common Halls are always ſummon'd to appear by the Intimation of the Mayor, of the Mayor himſelf, at any Time when he finds an Occaſion, either for the aſſembling of a Common Council, or the aſſembling of a Common Hall, *&c.* Precepts are iſſued; they are Words that you, Gentlemen, do underſtand very well, to ſummon a Common Hall from time to time. It is very true, tho' they do uſually make Summons for *Midſummer-Day,* yet *Midſummer-Day* being a publick and notorious Day for the Choice of ſome particular Perſons, they are not ſo continually exact in Summons; for they do preſume, that every body takes Notice of the Day. But I am to give your Lordſhip an Account: Whereas in the Record there is only Notice taken concerning the Sheriffs on *Midſummer-Day,* it is notoriouſly known to all Gentlemen that are Inhabitants in *London,* there is a Choice of Chamberlain, and Auditors of the Bridge-houſe and Chamber-accounts, down to Ale-conners; and that the Sheriffs of *London, qua* Sheriffs of *London,* are no more in the Caſe than any private Man is. I do take Notice of this, to give you an Account, that as ſoon as theſe Officers are diſpatched, I myſelf had the Honour to ſerve the City ſome Time, and know it very well; therefore I take the Liberty to explain it to ſome of theſe Gentlemen that are Foreigners. My Lord, as ſoon as ever this is done, (as it was frequent before People were ſo ambitious to come into the Office of Sheriffs, as they have been within two or three Years; for it was not known, till of late, that People were fond of the Office; there is a Term they uſe, *To go a Birding,* as they call it, they did not ſeek for the Office, as they have done of late) when there was any Perſon came off from ſerving, that is, paid a Fine of 400 *l.* for coming off; then the uſual Method was to call another Common Hall; for they never made Application to Mr. Sheriff, *Good Mr. Sheriff, let us have a Common Hall:* But the common way, was in time of Vacation, (for in *Auguſt,* there are no ſuch things as Courts of Aldermen held; Courts are not then held, except the Sheriffs Court) then to go to my Lord Mayor's Houſe, and he appoints them to come to a Common Hall, a Meeting for to chuſe ſuch and ſuch: He orders the Sword-bearer, or other Officer that is Attendant upon his Perſon in his Houſe, to ſend forth Summons, in order to ſuch a Thing as the aſſembling a Common Hall, and there may be ſometimes but one Sheriff there; nay, I have known it ſometimes when there hath been never a Sheriff, and yet they have not thought they have wanted a Judge of that Aſſembly: But, my Lord, when all the Matter is over, and Perſons are declared to be choſen into this or that, or the other Office in the Common Hall, then an Officer in the City, not an Officer of the Sheriffs, but an Officer which is called by the Name of the *Common Cryer,* he makes Proclamation upon the Huſtings, where my Lord Mayor is Judge, for all Gentlemen to depart for that Time, and to give their Attendance there to another Summons. And now, my Lord, to make the thing a little more intelligible, there is a Difference between the Choice of the County Officers and the Corporation Officers; for at the Election of City Officers, the *Common Serjeant,* the *Common Cryer,* and *Town Clerk,* are the Officers that attend and manage the Common Hall, where my Lord Mayor is looked upon to be the Superintendant; but at the Election of Parliament-men, the Writ is directed to the Sheriffs, and they interpoſe in all the Management; and then the *Common Serjeant* and *Common Cryer* have nothing to do; but at ſuch times, the *Secondaries of the Compter,* which are Deputies to the Sheriffs, they come and manage the whole Affair. This I tell you, becauſe I have been pretty well acquainted with the Methods of the City. I do very well remember I had the Honour to ſerve the City of *London,* at that Time Sir *Robert Clayton* was Lord Mayor; and there was a great Occaſion to try a Perſon about the Aſſaſſination of Mr. *Arnold;* and the Queſtion was, Whether they ſhould proceed to a Poll or not? becauſe they were to go to the *Seſſions-Houſe* in the *Old-Baily,* in order to the trying of that Perſon. That worthy Gentleman being then in the Chair, I had the Honour to ſit by him; ordered the Court to be adjourned for a Day or two, becauſe they were to go to the *Seſſions.* There was no aſking the Sheriffs Opinion when Sir *Robert Clayton* was *Lord Mayor,* nor there was no ſuch thing then; but now the Caſe was altered, for Sir *John Moore* was *Lord Mayor.* Now, my Lord, Sir *John Moore,* like a good Magiſtrate, endeavouring to preſerve the Privileges of the Chair, there happened a Controverſy amongſt the Members of the Common Hall, whereby the publick Peace of the Kingdom might have been very much injured, as well as the Peace of the City much diſturbed. To prevent which, Sir *John Moore,* with the Advice of his worthy Brethren the Aldermen, came upon the Huſtings, and found they were all in an Uproar, and not cool enough for any Debate; for they were wound up to that Height of Fury or Madneſs, that they had not a good Word to beſtow upon their Magiſtrates, nor upon him whom their chief Magiſtrate did repreſent. For we muſt tell you, when they cried, *Pray God bleſs the King,* as is uſual for the Officer upon ſuch Occaſions; many cried, *No, God bleſs the Sheriffs, the Proteſtant Sheriffs.* Whereupon my Lord Mayor, for Preſervation of the Peace, adjourned the Common Hall, and required the Members to depart and come down off the Huſtings: The Rabble, (for by the way, a great many of theſe Perſons in this *Information,* as Mr. *Goodenough,* and the reſt of them, were not Liverymen, nor concerned in the Election one way or other; but came there on purpoſe to foment and to raiſe up the Spirits and malignant Diſpoſitions of a ſort of People that are Enemies to the Government; they came to foment Quarrels, and not maintain Peace) my Lord, when my Lord Mayor came off the Huſtings, they came upon him, had him down upon his knees, and his Hat off; and if ſome Gentlemen had not come in, they had trod him under Feet; ſuch an Indignity was then done to the Lord Mayor of *London,* who, I think I may ſay, deſerved as well from the Government of this City, as any Gentleman that ever preſided in that Office, that before had not been heard. My Lord, we will call our Witneſſes, to prove the Manner of the Elections to be as I have opened it, and to prove the Matter in the Information.—Call the *Common Serjeant* and Mr. *Lightfoot,* the *Common Cryer,* and the *Sword-bearer.*

Mr. Att. Gen. Mr. *Lightfoot,* pray give an Account to the Jury and the Court, of the Manner of Election, and chuſing of a Common Hall, and the Manner of it.

Mr. *Lightfoot.* My Lord, I have been almoſt 25 Years an Attorney; I always took it, that the Serjeant of the Chamber had Order to go down to the Clerks or Beadles of the Companies, to ſummon a Common Hall by ſuch a Day.

Mr. Att Gen. By whoſe Command?

Mr. *Lightfoot.* By my Lord Mayor's.

Mr. Att. Gen. In all your Time, did the Sheriffs ever ſummons any?

Mr. *Lightfoot.* O, No.

Mr. Serj. *Jefferies.* Pray Mr. *Lightfoot,* thus: When they were met, what was the uſual Method?

Mr. *Lightfoot.* Before the Lord Mayor and Aldermen were ſet, the People walked up and down the Hall till the Lord Mayor did come; but as ſoon as my Lord Mayor came, the *Common Cryer* made Proclamation, *O yes, you good Men of the Livery, ſummoned ſuch a Day for Election, and ſo draw near, and give your Attendance.*

Mr. Att. Gen. Whoſe officer was the *Common Cryer?*

Mr. *Lightfoot.* My *Lord Mayor*'s Officer.

Mr. Serj. *Jefferies.* A Corporation Officer.

Mr. Att. Gen. Now for the diſſolving them.

Mr. *Lightfoot.* When they have done the Buſineſs, Mr. *Town Clerk,* as I take it, takes his Direction from the *Lord Mayor,* and he bids the Officer make Proclamation; *You good Men of the Livery, depart hence for this Time, and appear at a new Summons.*

Mr. Att. Gen. Did the Sheriffs ever diſſolve them?

Mr. *Lightfoot.* Never.

Mr. Att. Gen. Did the *Common Hall* do it?

Mr. *Lightfoot.* No, there was no ſuch thing.

Mr. *Jones.* Mr. *Lightfoot,* after my *Lord Mayor* had diſmiſs'd the Hall, did you ever hear the *Sheriffs* keep them together?

Mr. *Lightfoot.* All the People went away till within this three or four Years.

Mr. *Jones.* Since when?

Mr. *Lightfoot.* Since Mr. *Bethel,* about that Time.

Mr. Serj. *Jefferies.* Ay, in *Bethel* and *Corniſh*'s Time, then began the Buſtle.

Mr. *Williams.* You ſay you have been an Attorney 25 Years; I would aſk you, In all that Time, Mr. *Lightfoot,* in all that Time, did you ever know the Lord Mayor adjourn the Common Hall to a certain Day?

Mr. *Lightfoot.* There was never any Occaſion.

Mr. *Thompſon.* Anſwer my Queſtion.

Mr. *Lightfoot.* I never did.

Sir *Fr. Winn.* I would aſk you another Queſtion, Mr. *Lightfoot:* Did you ever know, before the Election was over, when the Electors were chuſing Sheriffs, or polling, or debating it, did you ever know in the Middle of it, the Mayor, againſt the Will of the Sheriffs, adjourn it?

Mr. *Lightfoot.* No, no.

Mr. Sol. Gen. Did ever the Sheriffs undertake to keep them together before theſe late Times?—Mr. *Lightfoot.* No, never.

Mr. *Thompſon.* Pray, Sir, this: Though it is uſual, after the Sheriffs have taken the Poll, to acquaint my Lord Mayor, Did you ever know, that the Sheriffs have adjourn'd the Common Hall without acquainting my Lord Mayor?—Mr. *Lightfoot.* No.

Mr. *Thompſon.* I aſk you one Queſtion more: Do you remember when there was a Poll between Sir *Thomas Stamp* and another?

Mr. *Lightfoot.* No, I do not charge my Memory with it.

Mr. *Thompſon.* Do you remember when there was a Poll between Sir *Robert Clayton* and Mr. *Kyffen?*—Mr. *Lightfoot.* I was about the Hall.

Mr. Serj. *Jefferies.* Do you remember when there was a Poll between Sir *Simon Lewis* and Mr. *Jenks?* Who did manage that Poll?

Mr. Com. Serj. I did.

Mr. *Williams.* Are you upon your Oath?—*Mr. Com. Serj.* Yes, I am.

Mr. *Lightfoot.* When they were gone to the Poll, I went out of the Hall?

Mr. Att. Gen. Did you ever look upon it, that the Sheriffs had any thing more to do than others?—Mr. *Lightfoot.* No.

Mr. Att. Gen. Who were induced to take the Poll? Was it by the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot.* I have been appointed by my Lord Mayor. I do know, that the Sheriffs have taken upon them to appoint a Poll, and then my Lord appointed his Clerks in the Houſe to be aſſiſtant to the Common Serjeant, and the Town Clerk: I never was but in two Polls, one for Mr. *Box,* and another for my Lord Mayor. One went on with the Poll in one Place, and the other in another.

Mr. Att. Gen. But before that Time, Sir?—Mr. *Lightfoot.* I know nothing of that, Sir, I was never concerned before.

Mr. *Holt.* Pray, Sir, who uſed to manage the Poll before this Time?

Sir *Fr. Winn.* Mr. *Lightfoot,* I would aſk you a Queſtion: Who managed the Poll before?

Mr. *Lightfoot.* I have been in a Common Hall when they have been chuſing Sheriffs, when ſeveral have fined. And it hath been upon the Queſtion, when the Hall hath divided, and they have polled in the Hall.

Sir *Fr. Winn.* Who polled then?—Mr. *Lightfoot.* The Sheriffs and the Officers ſtood and ſaw them go out, and this is within theſe few Years.

Sir *Fr. Winn.* Mr. *Lightfoot,* I aſk you thus: Now in all your Obſervations, when there was any Conteſt, who was Sheriff upon the Election, and the Diviſions during the Time of Election, and before it, were at an End, who did manage it, the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot.* When the Court had been proclaimed, and the Recorder had ſpoken to them, my Lord Mayor and the Aldermen withdrew from the Huſtings, and the Sheriffs and other Officers ſtood there with them; then the Commons propoſed who they would have put in Nomination, and they were put up; then the Sheriffs have turned back to the Gentlemen upon the Huſtings to aſk their Opinions, How are your Opinions concerning the Hands? We do think it goes ſo; then it hath been declared.

Sir *Fr. Winn.* By whom?—Mr. *Lightfoot.* The Common Cryer, or the Common Serjeant.

Sir *Fr. Winn.* You ſay, as ſoon as my Lord Mayor withdrew, during the Time of Election, the two Sheriffs managed the Hall.

Mr. *Lightfoot.* In that manner with others.

Sir *Fr. Winn.* Mr. *Lightfoot,* do you remember who adjourned the Hall, when Mr. *Bethel* and Mr. *Corniſh* were choſen?—Mr. *Lightfoot.* I can't tell.

Mr. Serj. *Jefferies.* Mr. *Common Serjeant,* are you ſworn?

Mr. *Com. Serj.* Yes.

Mr. Serj. *Jefferies.* Pray will you tell my Lord and the Jury what you have obſerved in particular, becauſe I mentioned it, in the Time of Sir *Robert Clayton?* Mention how that was.

Mr. Com. Serj. My Lord, when the Common Crier hath made Proclamation, the Lord Mayor and Court of Aldermen being ſet upon the Huſtings, Mr. *Recorder* makes a Speech; as ſoon as that is done, my Lord Mayor and the Aldermen retire into this Court, leaving the Sheriffs and me, and the reſt of the Officers, upon the Huſtings, and I there manage the Election; and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall. I declare the Election, and I manage the Election, and do it as the Duty of my Place.

Mr. *Williams.* Who manages the Election?

Mr. Com. Serj. I manage the Election; I declare what is my Opinion of the Election in the Hall; and I come and make Report to my Lord Mayor in this Courſe; then my Lord Mayor, and the Aldermen, and the Recorder, come down again. I remember particularly when Sir *Robert Clayton* was Lord Mayor, it was about the Choice of Mr. *Bethel* and Alderman *Corniſh,* and there was a great Diſturbance in the Hall; then I came into the Court, and after I had made my Report, I offer'd to give the Paper to the Recorder that then was, Sir *George Jefferies.* He told me, That the People would not hear him, and therefore he would not take the Paper. Upon that Sir *Robert Clayton* ſaid to me, Pr'ythee, do thou ſpeak to them; they will hear thee, if they will hear any body; for the Hall was in a great Uproar, and they call'd to throw me off the Huſtings, and then I made Anſwer to Sir *Robert Clayton;* Sir, it is not the Duty of my Office, and when I do any thing that is not my Office, I ſhall expect particular Directions. Then, ſaith he, you muſt tell them, I muſt adjourn them till *Monday,* becauſe I go to the *Old Baily* to try the Aſſaſſinates of *Arnold.* Thereupon the Hall was adjourned, and Proclamation made to depart; and my Lord Mayor attempting to go, was beat back twice or thrice, but at laſt they let him and the Aldermen go, and kept the Sheriffs and me till Evening. At laſt Mr. *Papillon* came up to me; Mr. *Papillon,* ſays I, I am glad to ſee you, you will hear Reaſon. Says he, Why do not you go on with the Poll? I told him, my Lord Mayor had adjourned the Hall. Says he, I did not hear it before; but now you tell me ſo, I will go out of the Hall. Says I, Sir, you will do very well to tell the Hall ſo; which he did, and ſome went away; and further Adjournments were made by the Direction of my Lord Mayor.

Mr. Att. Gen I would aſk you a Queſtion or two: Who do you look upon to be the Chief Magiſtrate of the City?

Mr. Com. Serj. My Lord Mayor, Sir.

Mr. Att. Gen. Pray, in all your Time till this, was there no Uproar? Did ever any Sheriff undertake to controul the Mayor in the Buſineſs of putting Queſtions, or taking Votes?

Mr. Com. Serj. Sir, there was never any Diſpute till Mr. Sheriff *Bethel* was upon the Huſtings, and then there was.

Mr. Att. Gen. As whoſe Officer did you do it?---*Mr. Com. Serj.* My Lord Mayor's, and the City of *London*'s; I have nothing to do with the Sheriffs; for when there is a Writ comes for the Choice of Parliamentmen, directed to the Sheriffs, I never do it, but Mr. *Secondary.*

Mr. Att. Gen. I ſpeak of latter Diſturbances.

Mr. Com. Serj. The firſt Diſpute about Sheriffs, ſince I was Common Serjeant, was about Mr. *Jenks,* and that Poll was taken by the Direction of the Lord Mayor, by the Town Clerk, and myſelf; and our Books ſay, If there be a Diſpute in the Common Hall, it muſt be decided as in the Common Council. It is in *Liber albus.*

Mr. Att. Gen. Liber niger.

Mr. Serj. *Jefferies.* No, *Liber albus.*

Mr. Att. Gen. Liber albus? It is *Liber niger,* they turn the white Book into a black Book now.

Sir *Fr. Winn.* At that Time, Sir, when my Lord Mayor was willing to go to the *Old Baily,* Did the Sheriffs do any thing farther?

Mr. Com. Serj. The Sheriffs did not meddle in the Matter.

Mr. Serj. *Jefferies.* Mr. *King,* pray give my Lord and the Jury an Account of what you know of this Matter.

Mr. *Peter King.* I have been at a Court of Common Hall 28 Years, my Lord, and have been concerned; I never looked upon the Sheriffs to have any Concern there. And I do very well remember Sir *George Jefferies;* I do remember and know, they did always in ancient Times take Advice of the Officers by, and they never did eſteem themſelves in thoſe Days, to be any more concerned than as the beſt Officers to be preferred before the reſt: When my Lord ſays, Come up, they come in Order, the Maſters and Wardens of the Companies.

Mr. Att. Gen. Who did do the Buſineſs upon the Huſtings?

Mr. *King.* All of them, Sir, all together.

Mr. Att. Gen. Was there never any Difference about the Votes?

Mr. *King.* Sometimes they have ſtood upon it.

Mr. Att. Gen. When there was a Queſtion made to know who had the moſt, who decided it?---Mr. *King.* They generally aſked one another, What do you think, and what do you think? I ſpeak for twenty Years together ſince the King came in.

Mr. Att. Gen. I hope in God there hath been a King in *England* for twenty Years, tho' perhaps ſome of the Sheriffs that were then in Debate, would have had none.

Mr. *Thompſon.* Mr. *King,* I only deſire to know this of you, becauſe I know you know Queſtions; I deſire, my Lord, to know whether he ſpeaks it to be a Matter of Right, or his Opinion; for we know Mr. *King*'s Opinion will go a great way in this Matter. Do you ſpeak it as a Thing of Right, or as your Conceptions?

Mr. *King.* Sir, it would be a thing very confident in me to determine of the Right, but only as I always eſteem'd it.

Mr. Serj. *Jefferies.* Mr. *King,* I would aſk you this Queſtion; Pray do you tell your Belief upon the Obſervation that you have made from time to time of the Practice there?---Mr. *King.* An hundred and a hundred Common Halls I believe I have been at.

Mr. *Thompſon.* That's good Store.

Mr. Serj. *Jefferies.* That may be when there are many Fines; when I was Common Serjeant, there were 5000 Pounds Fines one Year.

Sir *Fr. Winn.* I deſire you to give your Opinion; you ſay they are all equal that are there.

Mr. *King.* Every Officer in his Degree: for if twenty Men go together, he that is beſt ſpeaks firſt.

Mr. Att. Gen. Were the Sheriffs allowed to be there, or no?

Mr. *King.* The Sheriffs are always bound to attend my Lord Mayor by their Oaths, unleſs they have lawful Excuſe.

Mr. *Jones.* Mr. *King*, did the Sheriffs ever continue the Aſſembly after it was diſſolved?—Mr. *King.* No, Sir.

Mr. *Jones.* Or could they do it?—Mr. *King.* I can't ſay that.

Mr. *Thompſon.* Did you ever know my Lord Mayor adjourn the Court till the Hall had done?—Mr. *King.* I can't tell.

Mr. *Thompſon.* I tell you, Sir, Sir *Samuel Starling* did.

Mr. Serj. *Jefferies.* But the Sheriffs could not do it.

Mr. *Thompſon.* Nor he neither; for he paid for it.

Mr. *Holt.* Mr. *King*, I aſk this Queſtion; Who declares the Poll in the Hall?—Mr. *King.* The Common Serjeant.

Mr. *Holt.* Who directs him uſually?—Mr. *King.* His Office directs itſelf.

Mr. *Holt.* I aſk, if the Sheriffs don't agree, who is elected before the Common Serjeant make Proclamation.

Mr. *King.* They always agree, unleſs it be very clear; I have known the Common Serjeant do it ſeveral times without diſputing.

Mr. Com. Serj. When Perſons are put in Nomination, and the Hands are held up; I generally aſk the People about me, who have moſt, and particularly the Sheriffs, and ſo make Declaration.

L. C. J. The Officers aſk one another, who they think has moſt? That doth not give them the Juriſdiction, that they chooſe Officers without the Lord Mayor or Sheriffs: But, for aught that I ſee, theſe Officers have had more to do about the Choice than the Sheriffs have. Theſe Officers conſult one with another commonly, and conclude which Side have moſt; and then report it to my Lord Mayor.

Mr. Serj. *Jefferies.* Firſt of all, when they put any Queſtion for any Officer in the Common Hall, the uſual way of putting the Queſtion is, *As many of you as would have ſuch a Man to be ſuch an Officer, hold up your Hands:* And if the Election be clear, Proclamation is made preſently: If not, the Common Serjeant aſks, *Who they think hath the Majority?* Which being declared, they acquieſce. But ſince Mr. *Bethel* came in, there have been very hot Diſputes in the World; but before his Time there were Attempts made to keep Sheriffs off, but never before to get Sheriffs on. And after the Election is declared below, immediately they go to my Lord Mayor, and report it to him: And then comes down the Mayor and Aldermen to the *Huſtings*, and the Recorder ſays, *We are informed, that ſuch and ſuch Perſons have been put in Nomination, and the Election paſſed upon ſuch and ſuch.* And then the Lord Mayor commands the Aſſembly to be diſſolv'd.

Mr. *Wells.* When the Common Hall is firſt met together, are not the Lord Mayor and Aldermen generally preſent?

Mr. Com. Cryer. At the firſt Meeting.

Mr. Serj. *Jefferies.* When they are there ſet, give an Account what Proclamation is there made.

Mr. Att. Gen. How long have you known it?

Mr. Com. Cryer. I have been in this Place almoſt ſeventeen Years; I always come with my Lord Mayor; I do make Proclamation by Order of my Lord Mayor, dictated by the Town-Clerk; and I take the Words from the Town-Clerk; and his Words I ſay; *You good Men of the Livery, ſummoned to appear here this Day, for the Confirmation of ſuch a one choſen by my Lord Mayor, and another fit and able Perſon, to be Sheriffs of the City of* London, *and County of* Middleſex *for the Year enſuing, draw near, and give your Attendance.* I never adjourned the Court in my Life, but by Order from my Lord Mayor; nor never diſſolved the Court, but by Order from my Lord Mayor.

Mr. Serj. *Jefferies.* *Mr. Com. Cryer*, I would fain know this; When my Lord Mayor is gone, and the Aldermen, during the Election, do you ever diſmiſs the Court before my Lord comes down again; and do not you take the very Words of Diſſolution from the Town-Clerk?

Mr. Com. Cryer. I do ſo.

Mr. Serj. *Jefferies.* And what is uſual in your Time when Sheriffs have fined off; who gives Directions for a Common Hall?

Mr. Com. Cryer. My Lord Mayor, Sir.

Mr. Att. Gen. Who is it puts the Queſtion, the Common Serjeant or the Cryer?

Mr. Com. Cryer. The Common Serjeant dictates the Words to me, and I never take them from any other; I have taken the Paper into my own Hands, but never but one Year neither, when they were in a Confuſion; the Time when Mr. *Bethel* was choſen there was ſome Difference, I did read the Names that Time, and never but that one Time. I always take the Words from the Common Serjeant; I never put any Vote, but what I have from the Common Serjeant.

Mr. Att. Gen. Do the Sheriffs put any Vote?

Mr. Com. Cryer. Never, Sir.

L. C. J. I do not underſtand him; I think he did mean, when *Bethel* was choſen, he put the Queſtion by ſomebody elſe.

Mr. Serj. *Jefferies.* No, no, he took the Paper in his Hand. Before he uſed to take Dictates from the Common Serjeant; but there was a Confuſion when *Bethel* was choſen, and then he took the Paper from the Common Serjeant and read it.

Mr. Com. Cryer. He gave the Paper into my Hand.

Mr. Com. Serj. My Lord, they made ſuch a Noiſe, that he could not hear me.

Mr. *Williams.* Mr. *Wells*, How long have you been Common Cryer?

Mr. Com. Cryer. About ſeventeen Years.

Mr. *Williams.* In all that Time did you ever hear the Lord Mayor adjourn the Court to a certain Day?—*Mr. Com. Cryer.* Yes.

Mr. *Williams.* To a certain Day?—*Mr. Com. Cryer.* My Lord Mayor adjourn'd this Common Hall to a certain Day.

Mr. *Williams.* I aſk you upon your Oath again, Did you ever know the Lord Mayor adjourn a Common Hall to a Day certain?

Mr. Serj. *Jefferies.* Do you remember that of Sir *Robert Clayton*'s?

L. C. J. If ſo be they be adjourned, to meet upon a new Summons, if there be Occaſion, no Queſtion but he may to a certain Day.

Mr. *Williams.* Now we are upon Matter of Fact.

Sir *Fr. Winn.* Did you ever know my Lord Mayor adjourn them before the Election of Sheriffs was over? Here is my Queſtion, obſerve it. When after once my Lord Mayor is gone out of the Hall, when the Election begins, did you ever know my Lord come and diſturb the Election, or adjourn it before it was done?

Mr. Com. Cryer. I never knew any thing of it before now.

Mr. Att. Gen. Mr. *Wells*, Do you remember that Inſtance in Sir *Robert Clayton*'s Time?—*Mr. Com. Cryer.* No, Sir.

Mr. Att. Gen. Have not you known my Lord Mayor diſſolve the Court before the Buſineſs hath been done; take up his Sword and be gone?

Mr. Com. Cryer. When he hath a mind to adjourn the Court, and declare it, I adjourn it by his Order.

Mr. Att. Gen. But have you not known him take up his Sword, and be gone before the Election is over?

Mr. Com. Cryer. Sir *Robert Clayton* did do that before the Buſineſs was done.

Mr. *Thompſon.* Mr. *Wells*, Do not you remember, in Sir *Samuel Starling*'s Caſe, that he did adjourn the Hall?

Mr. Com. Cryer. He diſſolved the Hall.

Mr. *Thompſon.* Very well.

Mr. Serj. *Jefferies.* He did diſſolve the Hall, and ſo hath every Lord Mayor ſince. My Lord, if your Lordſhip pleaſe, I perceive this Gentleman makes a Queſtion, Whether ever there was an Adjournment of a Common Hall before ſuch a time as the Election of Sheriffs was over. I will give you an Anſwer to that Queſtion, and a very fair one, and a plain one: I ſay, till the Time of *Bethel*, in Sir *Robert Clayton*'s Mayoralty, there was never ſuch a Thing as a Poll for Sheriffs.

L. C. J. Silence, that we may hear.

Mr. *Williams.* My Lord, we only aſk a Queſtion, we aſk a Queſtion, and take our Anſwer.

Mr. Serj. *Jefferies.* Will you give us Leave to go on, Sir?

Mr. Att. Gen. Sir *William Hooker*, Pray how long is it ſince your were Sheriff of *London?*—Sir *William Hooker.* About Sixteen or Seventeen Years ago.

Mr. Att. Gen. You have been Sheriff and Lord Mayor of *London:* I would only know, Whether you looked upon it as your Right when you were Sheriff?

Sir *William Hooker.* No, nor ever durſt preſume to think it: In thoſe Days it was not thought upon.

Mr. Att. Gen. When you were Lord Mayor, did you order Summons for Common Halls?—Sir *William Hooker.* Always.

Mr. Att Gen. Did you ever uſe to conſult with your Sheriffs when to call a Common Hall?

Sir *William Hooker* Never; and I think no ſuch Thing was ever heard of under the Sun, till of late.

Mr. *Thompſon.* Sir *William Hooker*, did you ever adjourn the Court before the Buſineſs was done?—Sir *William Hooker.* I never ſaw any ſuch Occaſion; Rebellion was not ripe then.

Mr. Att. Gen. Sir *William*, Pray thus; Have you ever in a Common Council, or Common Hall, known my Lord Mayor riſe before the Buſineſs was done, and take his Sword?

Sir *William Hooker.* I confeſs I muſt own it, that when Things grew to a greater Height, I was forced once in this Place to cauſe the Sword to be taken up and go out, and the Court was diſſolved, and durſt not go on after I was gone.

Mr. Serj. *Jefferies.* Now, my Lord, if your Lordſhip pleaſe, I deſire to call the Sword-bearer.

Mr. *Williams,* Sir *William Hooker*, if I may, without Offence, aſk you, How old are you?—Sir *William Hooker.* Seventy Years of Age, Sir.

Mr. *Williams.* You ſay, you never knew Rebellion ripe?

Sir *William Hooker.* Good Sir, I perceive you are very apt to miſtake; I lived in 41 and 42.

Mr. Att. Gen. Sir *William*, Can you remember the Meeting in 48?

Sir *William Hooker.* Ay, very well.

Mr. Att. Gen. Then they uſurped the very ſame Power, and an Act of Parliament to confirm it.

Mr. Serj. *Jefferies.* My Lord, I deſire Mr. Sword-bearer may be ſworn.

Sir *Fr. Winn.* Pray, Sir, in all the Time that you have been acquainted with the Cuſtoms of *London*, did you ever know when there was an Election for Sheriffs, that the Lord Mayor did interpoſe or meddle till the Election was over?

Sir *William Hooker.* Sir, of late Years I have not appeared, becauſe of an Infirmity, I cannot be long in *London*; but in all that Time I uſed to appear, I never did obſerve any ſuch Thing.

Sir *Fr. Winn.* That the Mayor ever meddled?

Sir *William Hooker.* Nay, Sir, that the Sheriffs ever meddled. When I was Sheriff of *London*, I durſt not preſume to meddle, but left the whole to my Lord Mayor.

Sir *Fr. Winn.* Did you ever know, when the Election of Sheriffs was in a Common Hall, that the Lord Mayor offered to diſturb them till the Election was over?

Sir *William Hooker.* Truly I do not remember any ſuch Thing. Sir *Fr. Winnington*, I would give you a full Anſwer; I do tell you, as it hath been declared, my Lord Mayor and Aldermen come into the Court, and a Report is made; when this is done, they leave the Management of the Affair to others; we come and ſit down till it is done.

Sir *Fr. Winn.* To whom do you leave the Concernment?

Sir *William Hooker.* To the Officers that it belongs to.

Sir *Fr. Winn.* Who are thoſe Officers?—Sir *W. Hooker.* I never heard it diſputed till juſt now.

Mr. *Jones.* Sir *W. Hooker*, you have been an ancient Citizen: Do you remember, that ever the Sheriffs preſumed to hold this Court?

Sir *William Hooker.* No, never in my Life.—You may confound any Man at this Rate.

Mr. *Williams.* Pray, Sir, in your Time was there a Poll for Sheriffs in *London?*—Sir *William Hooker.* Truly not as I remember.

Mr. *Williams.* Do you remember any Poll in your Time? If you don't remember a Poll, you can't remember who took it.

Mr. Sol. Gen. Pray, Sir *William Hooker*, do you ever remember the Sheriffs appointed the Common Serjeant to take the Poll?

Sir *William Hooker.* Never in my Life.

Mr. Serj. *Jefferies.* Mr. Sword-bearer, I won't aſk you how old you are; I deſire to know how long you have been an Officer in this City?

Mr. *Sword-bearer.* Three-and-twenty Years.

Mr. Serj. *Jeff.* I deſire to know in all your Time, who ordered Common Halls? Who gave Direction for the ſummoning Common Halls?

Mr. Sword-bearer. My Lord Mayor always.

Mr. Serj. *Jeff.* Did my Lord Mayor uſe to ſend for the Sheriffs, to know of them when they would be pleaſed to have a Common Hall?

Mr. Sword-bearer. I never knew that the Sheriffs did interpoſe in calling a Common Hall in my Life.

Mr. Serj. *Jeff.* Mr. *Sword-bearer*, at ſuch time as the Buſineſs was done, when the Common Cryer had Directions for diſſolving the Common Hall, pray who uſed to give theſe Directions all along?

Mr. Sword-bearer. It was done by the Town Clerk, and my Lord Mayor's Officers.

Mr. Serj. *Jeff.* Did ever the Sheriffs continue the Hall after my Lord Mayor had adjourned it?

Mr. Sword-bearer. Truly I know no ſuch thing.

Mr. *Thompſon.* Mr. *Sword-bearer*, I would aſk you one Queſtion: If in Caſe the Common Serjeant, or the Common Cryer, or any other Officers do put a Queſtion that the Commons would not have put, who orders them to put the right Queſtion?

Mr, Sword-bearer. I can't ſay any thing to that.

Mr. Att. Gen. After the Common Serjeant comes up and reports what is done, then what doth my Lord Mayor do?

Mr. Sword-bearer. My *Lord Mayor* and the *Aldermen* go down to the Huſtings, and it is declared by the Recorder, or the Common Serjeant, by the Order of my *Lord Mayor.*——I think my *Lord Mayor* went once down to give them ſome Satisfaction upon a Diſpute.

Sir *Fra. Winn.* Mr. *Man*, during the Election did you ever hear them adjourn'd before it was over?

Mr. Sword-bearer. No, Sir; nor never heard any Occaſion for it.

Mr. *Williams.* The *Common Serjeant* affirms himſelf to be a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen*; have you known a Common Serjeant ſay, he was a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen?*

Mr. Sword-bearer. I never was in a Common Hall upon any ſuch Diſpute, I am with my Lord Mayor.

Mr. Serj. *Jeff.* I have known a Recorder reprehended by a very learned Lawyer, for ſaying, *My Maſters the Aldermen.*

Sir *Fra. Winn.* I aſk you who hath the Management of the Common Hall in the Abſence of the Mayor.

Mr. Sword-bearer. I am always here waiting upon my Lord Mayor.

Mr. Serj. *Jeff.* My Lord, if your Lordſhip pleaſe, we will reſt here as to Point of Right. Now, my Lord, in the next place we will come to that which is a more immediate Queſtion before you, and we will prove the manner of it, and the Perſons that are guilty; for that is the next Step we are to go,——Mr. *Bancroft.*

Mr. *Williams.* My Lord, they have laid in the Information, That the Sheriffs are duly Elected, for one Year next following, from the Eve of St. *Michael*; now prove your Election to be for that Year you have laid in your Information.

Mr. *Thompſon.* My Lord, they have certainly in Fact miſtaken their Information. My Lord, they do declare that the Common Hall was held, according to Cuſtom, for the Election of Sheriffs, to hold that Office from the Eve of St. *Michael*, for the Year next enſuing: Now, my Lord, that is not ſo in Fact, nor never was, for the Election is for a Year to commence on *Michaelmas* Day. They take on the Eve the Office upon them, but they do abſolutely exerciſe the Office for a Year from that Time, from the Eve. Now, my Lord, we ſay, that Day is excluded; we are ſure it is a Common Caſe, it is known very well; as in a Leaſe, the *Habendum* from any Date, the Day of the Date is no part of that Leaſe, it is excluſive and no part of the Term, and therefore, my Lord, if they do not prove it as they have laid it, we hope they will be nonſuited.

Mr. Sol. Gen. That is another piece of Law.

Mr. *Holt.* The Eve of *Michaelmas* Day, we make this Objection, and put you to prove it.

Mr. Serj. *Jeff.* Give us Leave to go on: Gentlemen, let us prove what we think fit; and if we have not made it out, then make your Exceptions.

Mr. *Holt.* Mr. Serjeant, I think it is proper to put it now, for if there be no ſuch Election, there can be no ſuch Riot; for they have made it a Riot in a ſpecial manner.

Mr. Serj. *Jeff.* Mr. *Holt*, under your Favour, it is not a Time now.

Mr. Att. Gen. This is the oddeſt way; theſe Gentlemen take upon them ſo: I will not prove it; and pray be quiet till I come to my time.

Sir *Fra. Winn.* Pray, Mr. *Attorney*, if we have an Objection to make, if the Court pleaſes we may be heard.

Mr. Serj. *Jeff.* Certainly it was never known, that when Mr. *Attorney* exhibited an Information, to tell us how to prove it. Surely, Gentlemen, you will give us Leave to go on with our Proof, won't ye?

Mr. *Molloy.* Mr. *Bancroft*, How long have you been a Servant of the City? By whoſe Order was the Hall ſummoned?

Mr. *Bancroft.* By my Lord Mayor's.

Mr. —— Who hath diſſolved them?——Mr. *Bancroft.* My Lord Mayor.

Mr. ——— Did you ever know the Sheriffs give any Order for the diſſolving of it?——Mr. *Bancroft.* No.

Mr. *Thompſon.* Did you ever know it diſſolved before the Buſineſs was done for which they were call'd? Did my Lord Mayor in your time either diſſolve them, or ſend them going, till the Election was over?

Mr. *Bancroft.* I can ſay nothing to that.

Mr. Att. Gen. Mr. *Bancroft*, I would aſk you this, Sir; Did the Sheriffs ever continue the Hall after my Lord Mayor had diſſolved it?

Mr. *Bancroft.* No, I never knew that in my Life.

Sir *Fra. Winn.* Mr. *Bancroft*, I would aſk you a Queſtion; I don't aſk you who calls them, or bids them go home; during the Time of the Election did my Lord Mayor ever meddle?

Mr. *Bancroft.* My Lord Mayor withdraws?

Sir *Fra. Winn.* Who are thoſe among the Commons, that manage the Buſineſs when my Lord Mayor withdraws?

Mr. *Bancroft.* The Sheriffs, and the Common Serjeant, and the Common Cryer.

Sir *Fra. Winn.* Who manages the Election? Who declares the Election? Who declares who is choſen?

Mr. *Bancroft.* When the Election is made below, then the Sheriffs come up, and the Common Serjeant, and the Common Cryer along with them, and acquaint my Lord Mayor, and he goes down, and there doth confirm the Election; and withal, when the Work is done he diſſolves the Court.

Mr. *Williams.* Did you ever know a Poll for Sheriffs?

Mr. *Thompſon.* Do you take the Common Serjeant to be an Officer of the Commons of *London*, or an Officer of my Lord Mayor's?

Mr. *Bancroft.* I cannot be certain what he is.

Mr. *Thompſon.* If in caſe the Common Serjeant differ from them in declaring the Poll, is it not uſual for the Common Hall to order him to put it up again?

Mr. Serj. *Jeff.* Who does make a Judgment of the Election, the Common Serjeant, or the Sheriffs?—Mr. *Bancroft.* The Sheriffs

Mr. Serj. *Jeff.* Does not the Common Serjeant make Obſervation as well as the Sheriffs?

Mr. *Bancroft.* The Sheriffs give their Opinions in it.

Mr. Serj. *Jeff.* Now, my Lord, if your Lordſhip pleaſe, if they had done, we would deſire to go on to our Fact; for otherwiſe, for ought I perceive, we ſhall be in here till this Time To-morrow, and they ſay, we muſt not adjourn till the Cauſe is over. Mr. Common Cryer; hark you, Mr. Common Cryer, were you preſent at *Midſummer* Day when this Buſineſs happened? Give my Lord and the Jury an Account of the Carriage then.

Mr. Com. Cryer. I was there at the Beginning of the Election; I did make Proclamation, and afterwards there was a Poll demanded, and the Poll was begun, and I went home with my Lord Mayor; afterwards my Lord Mayor came back again, and there was a Hubbub; but about five or ſix a Clock, my Lord Mayor came down upon the *Huſtings*, and I adjourn'd the Court till another Day; I did adjourn it by his Order, according as I uſed to do, and then I went away with my Lord Mayor.

Mr. Att. Gen. But what Uſage had you in going out?

Mr. Com. Cryer. I went before my Lord Mayor, I was not with him.

Mr. *Williams.* Where was the Adjournment?

Mr. Com. Cryer. Upon the *Huſtings.*

Mr. *Williams.* Were the Sheriffs polling the People then?

Mr. Com. Cryer. I don't know that, Sir.

Mr. *Williams.* Were the Sheriffs near the *Huſtings?*

Mr. Com. Cryer. I don't know, I ſaw them not.

Sir *Fra. Winn.* Upon the Election of them, when my Lord Mayor came to adjourn the Court, were the Sheriffs acquainted with it? Where were the Sheriffs?

Mr. Com. Cryer. My Lord Mayor ſent to them.

Mr. Serj. *Jeff.* Mr. *Weſton*, Pray will you tell my Lord and the Jury what Directions you had from my Lord Mayor, and how he was uſed when he came out of the Hall?

Mr. *Weſton.* My Lord Mayor ſent me, my Lord, to the Sheriffs under the *Lumbard-Houſe* twice to come up to the Council Chamber, and they told me: One told me he was upon the King's Buſineſs; and the other ſaid he could not come; and about half an Hour after, my Lord, Sheriff *Pilkington* came up to my Lord Mayor into the Council-Chamber, and then immediately came down to the Court of *Huſtings*, and Mr. Common Cryer, by my Lord Mayor's Order, did adjourn the Court from *Saturday* till *Tueſday* following; and as we were coming out of the Hall, when Mr. Common Cryer had adjourn'd the Court, and ſaid, *God ſave the King*, a great Part of the Hall hiſs'd; and, but that there were ſo many honeſt Gentlemen about my Lord, I was afraid my Lord would have come to ſome Miſchief; but coming to go into the Porch-yard, I ſaw his Hat off, and I went to catch his Hat, and caught one of his Officers by the Head, that was knocked down or fell down, that held up his Train. My Lord, the Sword was at that Diſtance, farther than it is between your Honour and where I ſtand, and crouded far away; and when my Lord came out into the Yard, Gentlemen, ſays he, I deſire you would go home to your Lodgings, and commanded them in the *King's Name* to depart: And, ſays he to me, Pray go you back, and let the Sheriffs know, and tell them I have adjourn'd the Court till *Tueſday.* Upon my Lord's Command, I went back to let the Sheriffs know, that my Lord had adjourned the Court till *Tueſday.*

Mr. Serj. *Jeff.* Both of them, both *Shute* and *Pilkington?*

Mr. *Weſton.* No, *Shute*; t'other was by.

Mr. Serj. *Jeff.* It was in his hearing, was it not?

Mr. *Weſton.* It was in his hearing.

Mr. Serj. *Jeff.* Did you ſee my Lord Mayor down, and his Hat off?

Mr. *Weſton* I ſaw his Hat off, Sir *George*, but I can't tell how it came off.

Mr. *Williams.* You ſay, you ſaw my Lord's Hat off; can you tell whether my Lord was ſo courteous to take his Hat off or no?

Mr. *Weſton.* I dare ſay, my Lord did not.

Mr. *Williams.* Did he, or no? I aſk you upon your Oath?

Mr. *Weſton.* I can't tell that, Sir.

L. C. J. I can't think that thoſe Gentlemen were ſo extraordinary civil to my Lord Mayor, that when the Common Cryer made Proclamation *God ſave the King*, that there ſhould be hiſſing; thoſe that hiſſed were not extraordinary civil to my Lord Mayor, and I believe you don't think ſo neither.

Mr. *Williams.* I aſk you a Queſtion. My Lord Mayor's Hat was off—

L. C. J. Ay, and it muſt be ſuppoſed it was to compliment thoſe fine Men that hiſs'd at *God ſave the King.*

Mr. Serj. *Jeff.* My Lord, if your Lordſhip pleaſes, I would deſire to know what Account any of them can give of the Opinion they had of the King, to be ſure they had a great Opinion of his Repreſentative: But my Lord Mayor, I find, was ſo extraordinary civil, that to this Rabble he muſt not only pull off his Hat, but fling his Hat to the Ground to them.

Mr. *Thompſon.* I aſk you whether you know that any of the Defendants in this Information did throw my Lord Mayor's Hat off, or no?

Mr. *Weſton.* I can't ſay that.

Mr. Serj. *Jeff.* It is not a Farthing matter.

Sir *Fra. Winn.* Here is a mighty Riot upon the Hat.

Mr. *Weſton.* Now I deſired them to keep back; my Lord Mayor's Friends did preſs back as much as they could, to preſerve my Lord Mayor; they preſs'd more forward, as the other kept back, and I deſired them to forbear, nay, commanded them in the *King's Name*, and upon their Peril, and took my Cane to ſtrike at ſome of them.

Mr. *Williams.* Did you?

Mr. Serj. *Jeff.* He ſerved them well enough.

L. C. J. He did ſo. Do you think a Magiſtrate is to be crouded and preſs'd upon?

Mr. *Weſton.* I ſtruck at them, and ſaid, Gentlemen, keep back, and intreated them and commanded them, and all would not do.

Mr. Serj. *Jeff.* I would only ſay this, Mr. Common Serjeant; What did you hear when Proclamation was made to depart?

Mr. Com. Serj. My Lord, I was not in the Hall when Proclamation was made; but I heard them cry out, *No God bleſs the King*; and I heard them cry out, *Down with the Sword*; *No Lord Mayor, no King*,

Mr. *Williams.* Can you name any Perſon that ſaid this?

Mr. Com. Serj. My Lord, I laid hold on one Man that cried, *No God ſave the King*; *No Lord Mayor*, and the Rabble got him from me, one that I heard ſay ſo.

Mr. *Williams.* Mr. Common Serjeant, you ſay you heard this; can you name any Perſon?

Mr. Common Serj. I tell you I caught hold of him, and the Rabble got him from me.

Mr. *Williams.* Can you name any one?

Mr. Com. Serj. I tell you I cannot.

Mr. Serj. *Jeff.* My Lord, I hope that will not much prevail in this Place; but I hope it doth juſtify my Lord Mayor for endeavouring to diſperſe the Rabble that came together to that Height when the King was *prayed for*, to cry out, *No King*, *No Lord Mayor.* And we don't give this in Evidence againſt any one Perſon, for it was done in a tumultuous Manner; but they were ſo fond of this Man, as that they reſcued him from him; and to fix it upon them, we will prove they were every one of them concerned in the Riot. Mr. *Craddock*, What Account can you give of this Matter?

Mr. *Craddock.* I was ſtanding at the Place where they poll'd, and my Lord Mayor was coming towards it to proteſt againſt their Manner of Proceeding; and Sheriff *Bethel* came to me and ſaid, *Reſiſt him* (I think) *he hath nothing to do here.*

Mr. Serj. *Jeff.* That was *Bethel*, *Slingſby Bethel?*

Mr. *Craddock.* It was either *oppoſe*, or *reſiſt him.*

Mr. Sol. Gen. He ſays he thinks he ſaid, *Reſiſt him*; but he is ſure it was either *oppoſe*, or *reſiſt him.*

Mr. Serj. *Jeff.* Did you ſee Mr. *Jenks* there?

Mr. *Craddock.* I can't ſay I did: I ſaw Mr. *Jenks* juſt as my Lord Mayor came down, not after.

Mr. Serj. *Jeff.* Did you ſee Mr. *John Deagle* there?

Mr. *Craddock.* I did not ſee Mr. *Deagle.*

Mr. Att. Gen. How did they uſe my Lord Mayor?

Mr. *Craddock.* I was not very near my Lord; my Lord, I ſtood at the Place where the Poll was taking.

Mr. *Thompſon.* Mr. *Craddock*, We deſire to aſk you this Queſtion, that you ſpeak particularly to Mr. *Bethel*; Was it before my Lord Mayor had adjourn'd the Poll, or after?

Mr. *Craddock.* It was juſt as my Lord Mayor came to proteſt againſt the Manner of Polling.

Mr. *Thompſon.* Was the Poll adjourn'd before or after?

Mr. *Craddock.* It was after.

Mr. *Williams.* Mr. *Bethel*, you ſay he ſaid, *Oppoſe*, or *Reſiſt*; did he ſay it was before the Poll was adjourn'd?

Mr. *Craddock.* Yes, Sir, it was before.

Mr. *Williams.* Can you ſay what the Words were?

Mr. *Craddock.* It was either *Oppoſe*, or *Reſiſt*, *he hath no Authority here.*

Mr. Serj. *Jeff.* Which is *George Reeves?* Mr. *Reeves*, Pray will you tell us what you did obſerve done at this Time by Mr. *Pilkington*, or Mr. *Shute*, or any Perſon elſe?

Mr. *Reeves.* I came about four or five o'Clock to the Polling-place where the Coaches uſe to ſtand, and I ſaw the Sword up; I ſuppoſe my Lord Mayor was there, and came to ſtop their Proceedings in Polling; and there was a great Conteſt among them; ſome ſaying, *He had nothing to do there: He hath no more to do than I*, ſays one; another cried, *Stop the Sword*, *Stop the Sword*; and I laid hold of him, and got him a little way, and made account to have carried him to the Sheriffs, and the Lord Mayor, but ſomebody got him away.

Mr. Serj. *Jeff.* What did you obſerve *Shute* and *Pilkington* do?

Mr. *Reeves.* They encouraged the People to poll.

Mr. *Jones.* After my Lord Mayor was gone?——Mr. *Reeves.* Yes.

Mr. *Jones.* Pray you, Sir, did you obſerve either Mr. *Shute* or Mr. *Pilkington* encourage the People to Hollow or Shout, or thoſe Things?

Mr. *Reeves.* No, Sir.

L. C. J. Hark you, Friend *Reeves*, hark you? How do you know that *Pilkington* or *Shute* were Polling? Are you ſure they were Polling after my Lord was gone?

Mr. *Reeves.* They were at the Polling-places, and they did not go away a great while after that.

L. C. J. From the People that were about them?—-Mr. *Reeves.* No.

Sir *Fra. Winn.* We agree it; in Fact it was ſo.

Mr. Att. Gen. Richard Fletcher, pray will you give the Court an Account of what they did?

Mr. Serj. *Jeff.* *John Hill*, What did you obſerve there?

Mr. *Hill.* About five o' Clock my Lord Mayor came to the Hall; there was with him then Sir *James Edwards*, and Sir *William Pritchard*, now Lord Mayor, to the beſt of my Memory, and he told them he diſliked their Polling any more; and there came a tall black Man; ſays he, *Mr. Sheriff, go on, it is your Buſineſs, we will ſtand by you:* about a Quarter of an Hour after my Lord came out of the Hall to the great Crowd, ſome of the People Hiſſing, and ſome making a Noiſe; and one came to the Sheriffs, and, ſays he, *Gentlemen, Why do not you make Proclamation with Oyes?* And they continued there till towards eight o' Clock.

Mr. Serj. *Jeff.* Did you hear no Officer adjourn the Court?

Mr. *Hill.* My Lord Mayor went home, I ſaw him within Doors, and I came back again.

Mr. Att. Gen. Was there no Proclamation made afterwards?

Mr. *Hill.* By ſome of the Officers, but I did not take particular Notice.

Mr. Att. Gen. Who did you ſee here after you went home with my Lord Mayor, and came back again?

Mr. *Hill.* I ſaw here Mr. *Robert Key* for one; and I ſaw Mr. *Goodenough* come in between eight and nine here in the Hall; and my Lord *Grey* came in, and ſeveral other Gentlemen.

L. C. J. What did they do when they came?

Mr. Serj. *Jeff.* Hark you, *Hill:* Was my Lord *Grey* and Mr. *Goodenough*, and Mr. *Key*, were they among the People?

Mr. *Hill.* After the Sheriffs came up, they went into the *Orphan*'s Court; Mr. *Goodenough* came in and out; and my Lord *Grey* went in to them.

Mr. Serj. *Jeff.* Did they appear among the People up and down in the Hall?

Mr. *Hill.* They went thro' the Hall to and fro.

Sir *Fra. Winn.* What was the Chriſtian Name of that *Goodenough?*

Mr. *Hill.* I know him; he that was Under-Sheriff laſt Year: I know him well enough, and he knows me; yes, that is Mr. *Goodenough?*

Lord *Grey.* I deſire to aſk this Witneſs a Queſtion, my Lord.

L. C. J. Let your Counſel aſk, my Lord.

Mr. Serj. *Jeff.* I deſire to know another Queſtion. Did you ſee Mr. *Corniſh?*

Mr. *Hill.* I ſaw Mr. Alderman *Corniſh* walk in the Hall; but I can't tell whether he went into the Room or no. After my Lord was gone, he did come up into the Mayor's Court, and came through among the People.

Mr. *Thompſon. Hill*, you ſpeak of my Lord *Grey*; upon your Oath did you ſee my Lord *Grey* walk to and fro in the Hall, or only came thorough?

Mr. *Hill.* My Lord *Grey* came in at that Gate, and went thorough the in Hall, and went in to the Sheriffs.

Mr. *Williams.* I would aſk you this upon your Oath. Did you ſee him do any thing more?

Mr. *Hill.* No; I was there to diſcharge my Office.

Lord *Grey.* My Lord, I own my being there; but only deſire to aſk a Queſtion that will clear this Matter.

Mr. *Hill.* I ſaw my Lord *Grey* come up to thoſe Stairs, and he went into the *Orphan*'s Court.

Mr. Serj. *Jeff.* How long might that be after the Poll?

Mr. *Hill.* After the Sheriffs came up, I believe it might be half an Hour, or a Quarter of an Hour, near an Hour.

Mr. *Williams.* Did you ſee my Lord *Grey* do any thing more than walk?

Mr. *Hill.* I ſaw him come to the *Orphan*'s Court, and they would not open the Door at firſt; but they ſaid it is my Lord *Grey*, and then they let him in.

L. C. J. Your own Counſel is aſking, my Lord; I am willing you ſhould aſk a Queſtion if your own Counſel will let you. Gentlemen, my Lord would aſk a Queſtion himſelf, and you won't let him.

Lord *Grey.* My Lord, though I do not know this Gentleman at all, yet I will venture to aſk him a Queſtion. Pray, Sir, did you ſee me ſpeak to any one Man:

Mr. *Hill.* I have anſwered that already; I ſay not.

Lord *Grey.* Were the Books brought from the polling Place by the Sheriffs before I came, before that I went in there? — My Lord, I was there, and ſhall give you an Account of it.

L. C. J. It had been better, my Lord, if you had kept away.

Mr. Serj. *Jeff. Fletcher*, pray will you tell my Lord and the Jury, what you obſerved that Day here, after my Lord Mayor was gone, and had adjourned the Court?

Mr. *Fletcher.* On the 24th of *June* I was here by Order of Sheriff *Shute*, after my Lord Mayor had adjourned the Court, and it was to call all Men that were to poll to come forward, for the Books were to be ſhut up, and I went away immediately; I was very hot, and went away to the *Three-Tun* Tavern.

Mr. Serj. *Jeff.* Did you ſee Mr. *Shute* there?

Mr. *Fletcher.* Mr. *Pilkington* was there, and Mr. *Shute* too.

Mr. Serj. *Jeff.* Can you name any Body elſe?

Mr. *Fletcher.* No; I can name nobody elſe.

Mr. Serj. *Jeff.* What did Mr. *Shute* ſay?

Mr. *Fletcher.* He ordered me to make Proclamation for all Men, them that had a Right to poll, to come and poll, for the Books were to be ſhut up.

Mr. Serj. *Jeff.* Captain *Clark*, Pray will you give an Account of what you obſerved?

Capt. *Clark.* I came down into the Hall, and I did hear a Whiſpering, whereupon I went to guard my Lord Mayor; my Lord Mayor came down upon the *Huſtings*, and Proclamation was made for the Adjournment of the Court; whereupon when Proclamation, *God ſave the King*, was made, an hundred, *&c.* I believe more, hiſt at that; I laid hold of one of them *No King's-man*, *no Sword's-man*, cry'd they. *Sirrah*, *you are a Raſcal*, *and a Traytor in your Heart*, ſaid I, and laid faſt hold of him; but there was a very great Croud; and ſays one or two, *For God's ſake*, *Captain* Clark, *do you guard my Lord*; there was Mr. *Weſton* and Major *Kelſey*; *My Lord*, ſaid they, *is in Danger*; ſaid I, *Gentlemen*, *keep by him*, *or go before*, *I will be in your Rear Guard.* My Lord Mayor was down upon his Knee, I can't tell how he came down; *Preſs on*, *preſs on*, this was the Cry, and *God ſave the Sheriffs.* After coming down the Steps, I preſſed as near as I could to my Lord Mayor, to keep them off; *Now*, ſaid I, *this is the Time to keep the Rabble off*, *now face about*; I had my Sword in my Hand, and with the Pommel of my Sword kept them off; *Before God*, ſaid I, *I will keep you off*; and ſo I waited on my Lord home, and went and drank a Glaſs of Sack. About an Hour or two Hours afterwards, I came down to the Hall and found the People ſhouting, *God ſave the Sheriffs*, *God ſave the Sheriffs: What nothing*, ſaid I, *of my Lord Mayor? But*, ſaid I, *this is not a Place to quarrel in*, *let us not quarrel together.* I ſaw the Sheriffs *Pilkington* and *Shute* were concerned in carrying on the Poll, and this they continued to do for ſome time; at laſt, *I am weary of the Hall*, ſaid I, *I will go home*; and this was between eight and nine o' Clock.

Mr. Serj. *Jeff.* Can you remember any body elſe beſides the Sheriffs?

Capt. *Clark.* No, Sir, I cannot.

Mr. Serj *Jeff.* Can you remember Sir *Thomas Player?*

Capt. *Clark.* No, I can't.

Mr. Serj. *Jeff.* Captain *Clark*, did you know never-a-one of them that cried out ſo?

Capt. *Clark.* No, my Lord, I was before Sir *Robert Clayton.*

Mr. Serj. *Jeff.* Major *Kelſey*, Pray will you give my Lord and the Jury an Account of what you ſaw on *Midſummer-Day?*

Major *Kelſey*. My Lord, when my Lord came out of the Court, I went after, and ſome cried, *Stop him, ſtop him*; but I got between them, and ſome of my Lord's Friends kept them off; but when we came juſt to the going-out, they gave a Shout, and I ſaw my Lord Mayor's Hat upon his Back, and I can't tell whether he touched the Ground with his Hand, but I was e'en almoſt down; ſaid I, *Gentlemen, do you intend to murder my Lord Mayor?*

Mr. Serj. *Jeff.* Who did you ſee there?

Major *Kelſey*. Indeed, Sir, I was almoſt down, and did not ſee their Faces.

Mr. Serj. *Jeff.* Mr. *Trice Hammon*, I would only aſk you, Who did you ſee, who did you obſerve to be there?

Mr. *Hammon*. About nine a Clock at Night, or ſomething before, I ſtood at the Door that leads to the * *Common Pleas*, and there came in Alderman *Corniſh* and *Goodenough*, and old *Key*, an old white-hair'd Man; and by-and-by my Maſter Sheriff *Shute* came out and told me, *I ſhall give you all Satisfaction by-and by. God bleſs you, Mr.* Sheriff, ſaid I; and he went again, and there I ſtaid till they came out, and then he went up on the *Huſtings*; and I went along with him when he came out.

Mr. Serj. *Jeff.* Who went with him out to go to the *Huſtings?*

Mr. *Hammon*. Sir *William Gulſton*, and ſeveral other Men; there is never a Name in the Indictment more.

Mr. Serj. *Jeff.* None of them that are in the Indictment? Name them.

Mr. *Hammon*. I have named them.

Mr. Serj. *Jeff.* Prithee name them.

Mr. *Hammon*. Mr. Alderman *Corniſh*, both the Sheriffs, my Lord *Grey*, Mr. *Goodenough*, and old Mr. *Key*.

Mr. *Thompſon*. Which *Goodenough?*

Mr. *Hammon*. That Mr. *Goodenough* that ſtands there.

Mr. Serj. *Jeff.* There is ſuch a Noiſe, that I did not very well hear that Word.

Mr. *Hammon*. *Goodenough*; not that *Goodenough* that looks upon me, but he that ſtands behind.

Mr. Serj. *Jeff.* He falls behind now, but he ran up-and-down then; and Alderman *Corniſh* was there too.

Mr. *Jones*. You Witneſs, you have named all theſe Men; what did *Shute* do, or what did he ſay?

Mr. *Hamm*. When he came upon the *Huſtings*, he made Proclamation himſelf, becauſe one or two refuſed it, he did it himſelf; and afer a while he adjourned the Court upon the *Huſtings*; this was on *Midſummer-Day*.

Mr. *Jones*. What did he ſay?

Mr. *Hammon*. As the Common Cryer uſually ſays at ſuch Times.

Mr. *Thompſon*. You ſay you ſaw Mr. *Goodenough*, and you ſaw my Lord *Grey*; upon your Oath, can you ſay they did any thing, or was any thing done in Abuſe to my Lord Mayor?

Mr. *Hammon*. They did not tell me, my Lord, what they did.

Mr. *Thompſon*. I aſk you what did they do?

L. C. J. Mighty buſy they were.

Mr. *Thompſon*. How long was it after my Lord Mayor adjourned the Court?———Mr. *Hammon*. About two Hours.

Mr. Serj. *Jeff.* So much the worſe.

L. C. J. You muſt underſtand it was ſome time before Mr. Sheriff had made his Adjournment, they were buſy till that Time.

Mr. Serj. *Jeff.* My Lord, if your Lordſhip pleaſes, I do agree with Mr. *Thompſon*, that the Jury ſhould remember that this was two Hours after my Lord Mayor had adjourned the Court.

Lord *Grey*. I deſire, my Lord, I may aſk him ſome Queſtions. You ſay you ſaw me go to the Council-chamber, at what time, and who went with me?------Mr. *Hammon*. A little before Candle-light.

Lord *Grey*. You ſay all the Company went out with the Sheriffs, and went away.——Mr. *Hammon*. My Lord, I did not ſay you came out.

Mr. Att. Gen. My Lord was of the Upper Houſe.

Mr. *Thompſon*. Yes, and may be there again.

Lord *Grey*. I hope I ſhall be there, Mr. *Attorney*.

Mr. Att. Gen. It had better you had been ſo then, my Lord.

Lord *Grey*. It will be the worſe for you; I ſhan't lie Perdue for you.

Mr. Att. Gen. If you threaten me, my Lord, I ſhall take notice of it. My Lord, I have done you a Kindneſs; but if you come under my Hands again I ſhall not do it.

L. C J. They would not have it ſaid, *God ſave the King*; and, my Lord, you were with ſome of thoſe that abuſed him.

Lord *Grey*. After it was over, my Lord.

Mr. Att. Gen. You were not within your Duty here.

Lord *Grey*. My Lord, it was after the Poll was cloſed.

Mr. Serj. *Jeff.* My Lord, I deſire, if you pleaſe, what is uſual in all Cauſes, that we might go on without any Interruption. Let us go on for the King, and then make all the Defence you can. Don't think either to hiſs or threaten us out of our Cauſe. Mr. *Higgins*, give my Lord and the Jury an Account of what you ſaw or heard.

Mr. *Higgins*. My Lord, I attended with ſeveral of our Company by my Lord Mayor's Coach to *Guild-hall*, and was in the Council-chamber, and he ſent for the Sheriff; after that he went away; and when *God ſave the King* was ſaid, ſaid they *God ſave the Proteſtant Sheriffs*.

Mr. Serj. *Jeff.* I deſire to know, Mr. *Higgins*, this, what they ſaid?

Mr. *Higgins*. They cried, *Down with the Sword*.

Mr. *Thompſon*. Mr. *Attorney* is making a Speech to us, I don't know what he hath ſaid.

Mr. Serj. *Jeff.* I don't think Mr. *Attorney* thinks you worth a Speech. Mr. *Higgins*, I deſire to aſk you a Queſtion, I aſk you this Queſtion upon your Oath, after the Adjournment of the Court, and after this very inſolent Behaviour of ſome of the Rabble that were there, for I can call them no better, who did you ſee there?

Mr. *Higgins*. After I went home, I went to ſee my Lord ſafe home, and came back again, I ſaw one *Freeman*, that they call the *Proteſtant Cheeſemonger*, calling, *To Poll, to Poll.*

Mr. Serj. *Jeff.* Pray who elſe did you ſee?

Mr. *Higgins*. I ſaw Mr. Alderman *Corniſh* come up towards the Sheriffs: *Gentlemen*, ſaid he, *You are doing right.*

Mr. Serj. *Jeff.* Did you hear Mr. Alderman *Corniſh* ſay ſo: What, this Gentleman? Do you know him?

Mr. *Higgins*. Says he to Sheriff *Shute*, You ſhall have all Right done to you.

Mr. Serj. *Jeff.* Who elſe did you ſee there?

Mr. *Higgins*. I ſaw Mr. *Swinock*.

Mr. Serj. *Jeff.* Did you ſee Mr. *Key?* Did you ſee Mr. *Pilkington?*

Mr. *Higgins*. I did not ſee Mr. *Pilkington*: I ſaw *Shute*.

Mr. Serj. *Jeff.* Did you ſee Mr. *Jekyl?*----Mr. *Higgins*. Yes.

Mr. Serj. *Jeff.* Which of them do you mean?

Mr. *Higgins*. The elder Man.

Mr. Serj. *Jeff.* There is *John Jekyl* the elder, Gentlemen; and *John Jekyl* the younger.

Mr. *Higgins*. I was diſputing with a Fellow that his Toes came out of his Shoes, and had a green Apron; ſaid I, *Are you a Livery-Man? Yes, I am*, ſaid he, *Surely*, ſaid I, *they don't uſe to make ſuch as you are Livery-Men*. Says Mr. *Jekyl*, *He may be as good a Man as you, for aught I know.* That was about half an Hour after my Lord Mayor went home.

Mr. Serj. *Jeff.* What Time was the Adjournment?

Mr. *Higgins*. About five or ſix. I was ſpeaking ſomething, *You are all in a Riot. This is no Riot*, ſays Mr. *Swinock* to me; I can never meet you, but you are railing againſt the King's Evidence.

L. C. J. The King's Evidence, what was that?

Mr. *Williams*. What was done by Mr. *Jekyl?*

Mr. *Higgins*. He was talking among the People.

Mr. Serj. *Jeff.* He did encourage among the reſt.

Mr. *Williams*. You are in a Paſſion now.

Mr. Serj. *Jeff.* No, Sir, I am not.

Mr. *Higgins*. He ſeconded Mr. *Corniſh* when he ſaid, *Inſiſt upon your Rights.*

Mr. Serj *Jeff.* Who did ſo?

Mr. *Higgins*. *Freeman*, my Lord, that they call the *Proteſtant Cheeſemonger*.

Mr. *Williams*. A very pretty Word indeed.

Mr. Serj. *Jeff.* Aye, ſo it is; he is ſo called; you will give us Leave to hear what the Witneſſes ſpeak.

Mr. *Williams*. Another Epithet would do a great deal better.

Mr. Serj. *Jeff.* *William Bell*, what was done upon the Spot? Was there any Hurt?

Mr. *Williams*. Do you ſay, upon your Oath, that Gentleman was there?

Mr. *Higgins*. I have ſeen him in the Balcony.

Mr. Serj. *Jeff.* He ſays, he uſes to be there upon publick Days in the Coffee-houſe.-----*Bell*, I would deſire to know of you, whether you are able to give an Account after my Lord Mayor's Adjournment, who was there? Name as many Perſons as you can.

Mr. *Bell*. Mr. *Bethel*; and I ſaw Mr. *Corniſh* go through the little Gate into the Yard.

Mr. Serj. *Jeff.* Who elſe?

Mr. *Bell*. That is all, Sir; Sheriff *Pilkington* delivered two Poll-Books into my Hand.

Mr. Att. Gen. Mr. *Vavaſor*, will you tell my Lord and the Jury what you ſaw?

Mr. *Vavaſor*. It happen'd thus: Mr. *Hammon* had taken a Man upon Execution, who was Bail for a Client of mine who had paid the Moneys long before; upon that I came to know who employed him; and coming here, I found Mr. *Hammon* in that Place, and the Croud was ſo great, *Don't go back again*, ſaid he, *for you will go near to be abuſed.* Whilſt I ſtaid there, I aſked him what was the Meaning; ſays he, *In this Room are the Sheriffs and ſome others caſting up the Poll*; and whilſt I ſtaid, there came in Mr. *Goodenough* to-and-fro from them, and before they would admit any, they would know their Names; there was Mr. *Key*, my Lord *Grey*, and and Sir *William Gulſton*.

Mr. *Att. Gen.* What afterwards?

Mr. *Vavaſor*. Yes, Mr. *Corniſh* was there; he and Sheriff *Shute* came out together, and they went upon thoſe Stairs under the Clock.

Mr. Att. Gen. Who came out with Sheriff *Shute?*---Mr. *Vavaſor. Corniſh.*

Mr. *Williams*. What *Corniſh?*—Mr. *Vavaſor*. Alderman *Corniſh?*

Mr. *Williams*. Very mannerly.

Mr. Serj. *Jeff.* His Name was *Corniſh* before he was an Alderman.

Mr. *Vavaſor*. And Sheriff *Shute* told the People, *If they would ſtay a little time, he would give them Satisfaction.* Upon that, Mr. *Corniſh* went through the Company; and when they came to the *Huſtings*, Mr. *Shute* ordered Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to adjourn at nine a Clock; We the Sheriffs of* London *and* Middleſex, *being the proper Officers, do adjourn it to* Tueſday *at nine of the Clock.* Upon that, an antient Gentleman deſired they might proclaim the Election. Then ſays *Shute*, that *I can't do it now, for we have taken very good Counſel for what we do.* Had it not been for Mr. *Hammon*, I had been, I believe, trod under Foot ſufficiently.

Mr. Serj. *Jeff.* Mr. *Denham*, who did you ſee?

Mr. *Denham*. I ſaw Sir *Thomas Player*, and Mr. *Jenks*.

Mr. Serj. *Jeff.* Where did you ſee them, pray?

Mr. *Denham*. In the Yard. I went home with my Lord Mayor, and then I ſaw them. I had a kind of a Glance, but I can't ſwear poſitively to Mr. *Jenks*.

Mr. Serj. *Jeff.* Sir *Thomas Player*, and Mr. *Jenks*, what did you ſee them do?

Sir *Fr. Winn*. Hark you, Friend, where was it you ſaw them?

Mr. *Denham*. In the Yard.

Sir *Fr. Winn*. What did you ſee them do?--Mr. *Denham*. Nothng at all.

Mr. Serj. *Jeff.* How many People might be there then? Two or thre hundred?-----Mr. *Denham*. Above a thouſand.

Mr. *Williams*. What did you hear Sir *Thomas Player* ſay?

Mr. *Denham*. Nothing.

Mr. *Williams*. How far was he from his own Door?

Mr. *Denham*. On t'other Side the Hall.

Mr. *Williams*. A mighty way indeed, a mighty thing. What ſaid Mr. *Jenks?*

Mr. *Denham*. I can't ſay, Sir, that I heard him ſpeak a Word, only in the Tumult.

Sir *Fr. Winn*. Friend, I aſk you this; I think I heard you ſay, you ſaw Sir *Thomas Player* and Mr. *Jenks* in the Yard, but you did not ſee them do any thing at all?------Mr. *Denham*. No.

Mr. Serj. *Jeff.* Pray, Mr. *Farrington*, will you tell my Lord and the Jury what you ſaw after my Lord Mayor had adjourned the Court?

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* The ſame Place which before was called the *Orphan's* Court.

Mr. *Farrington.* I ſaw there Sheriff *Pilkington*, *Shute*, Sir *Thomas Player*, Mr. *Wickham* the Scrivener in *Lothbury*, Mr. *Jenks*, *Babington*, one *Jennings* an Upholſterer.

L. C. J. Sir *Thomas Player* you ſay in the firſt Place?

Mr. *Farrington.* Yes, and *Wickham*, my Lord, a Scrivener in *Lothbury*.

L. C. J. Who then?

Mr. *Farrington.* Sheriff *Pilkington* and *Shute*, and Mr. *Corniſh*, Alderman *Corniſh*.

Mr. Serj. *Jeff.* Did you ſee one *Deagle* there?—Mr. *Farrington.* No, Sir.

Mr. Serj. *Jeff.* *Wickham* you ſaw there?

Mr. *Farrington.* Ay, Sir, I know him very well.

Mr. *Thompſon.* What is *Wickham*'s Chriſtian Name?

Mr. Serj. *Jeff.* *John Wickham*, he goes by that Name, it may be he was not chriſten'd. Was *Jenks* there, do you know him?

Mr. *Farrington.* The Linen-draper.

Mr. Serj. *Jeff.* Ay, very well, he goes by the Name of *Francis Jenks.* Did you ſee *Jekyl* there?

Mr. *Farrington.* I don't know the Name; I ſaw a great many I knew by Sight, but not their Names.

Mr. *Holt.* What did theſe Gentlemen do?

Mr. *Farrington.* I'll tell you, Sir; there was Sheriff *Pilkington* and Sheriff *Shute*, I went in where they were taking the Poll; ſaid I, *Gentlemen, my Lord Mayor hath adjourned the Court, what do you here? I ſuppoſe it lies in my Lord Mayor's Power*; *if it lies in him to call, certainly he muſt diſſolve.*

Mr. *Williams.* You argued thus.

Mr. Serj. *Jeff.* Pray give us Leave to go on.

Mr. *Farrington.* There was Mr. *Wickham*, and ſays he, *My Lord Mayor hath nothing to do here, neither will we be ruled by any of your Tory Lord Mayors. This is not the firſt Aſperſion*, ſaid I, *that you have caſt upon a Gentleman that loves the Church and the Government eſtabliſhed by Law*; and they fell about me, and had it not been for Mr. *Fletcher* and Mr. *Hill*, I believe they had done me a Miſchief; for they trod upon my Toes; who did it I can't tell.

Mr. Serj. *Jeff.* But you ſay Sir *Thomas Player*, and *Pilkington*, and Alderman *Corniſh*, were amongſt them?

Mr. *Farrington.* Yes, Sir.

Mr. Serj. *Jeff.* That's enough.—Pray Mr. *Cartwright*, will you tell my Lord and the Jury what you obſerved there, and who was there.

Mr. *Cartwright.* I know the Names of no Perſons that were there; all that I can ſay was this: As ſoon as my Lord Mayor adjourned the Court upon the *Huſtings*, he came down, and going out of the Hall, he had like to have been thrown down, had it not been for Mr. *Shaw*; and going to ſave my Lord Mayor, I wrenched my Back, and I ſpit Blood for ſeven Days after.

Mr. Serj. *Jeff.* Tell that, Mr. *Cartwright* over again.

Mr. *Cartwright.* My Back was wrenched in ſaving my Lord Mayor, and I ſpit Blood ſeven Days after.

Mr. Serj. *Jeff.* Endeavouring to ſave my Lord Mayor his Back was ſo wrenched, that he ſpit Blood ſix or ſeven Days after. Hark you, Mr. *Cartwright*, ever ſince that Time have you found any Indiſpoſition?

Mr. *Cartwright.* I have not been my own Man ſince.

Mr. *Williams.* He took a Surfeit.

Mr. Serj. *Jeff.* He took a Surfeit of ill Company I am ſure.

Mr. Sol. Gen. Mr. *Shaw*, give my Lord and the Jury an Account of what you know.

Mr. *Shaw.* My Lord, my Lord Mayor ſent to the Sheriffs, and ordered them to forbear polling, and come up to the Chamber, and ſent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make Proclamation for them to depart; and if they ſtaid, that he would look upon them as Rioters; and there was hiſſing and a great deal of Crowd; and there was Sir *James Edwards* in the Court, they hunched him with their Elbows; and as his Lordſhip came down, going down the Steps there was ſuch a Crowd, that if I had not catched his Lordſhip in my Arms, he had fallen upon his Forehead, and his Hat was off.

L. C. J. Who did you ſee ſo miſbehave themſelves?

Mr. *Shaw.* My Lord, I can't tell.

Mr. Serj. *Jeff.* I think we have now proved it againſt every body we deſign, ſave only againſt Mr. *Deagle*; for we do not now proceed againſt *Dorman*, *Newman* and *Benjamin Alſop.* Now, my Lord, we will only prove againſt *John Deagle*, and then we ſhall have done. Mr. *Kemp*, will you tell my Lord and the Jury who you ſaw here? Did you obſerve any Particulars after the Court was adjourned?

Mr. *Kemp.* I don't remember I obſerved any one Man.

Mr. Serj. *Jeff.* You don't? Had you any Diſcourſe with Mr. *Deagle* at any time?—Mr. *Kemp.* Yes, I had.

Mr. Serj. *Jeff.* What did he tell you?

Mr. *Kemp.* He did confeſs he was there about Seven a Clock at Night.

Mr. Serj. *Jeff.* He did own he was amongſt them?

Mr. *Kemp.* Yes, with Alderman *Corniſh.*

Mr. Serj. *Jeff.* What ſay you, Mr. *Rigby?*

Mr. *Rigby.* I ſaw him about Seven a Clock.

Mr. Serj. *Jeff.* Was he in the Crowd?

Mr. *Rigby.* Yes, amongſt the People.

Mr. Serj. *Jeff.* Here is all now, Gentlemen, but *Dorman*, *Newman* and *Benjamin Alſop*, and we don't go againſt them now. After they had done this, and hiſs'd at the King, and cried, *No King, no Lord Mayor*, what Acclamations went theſe People off with?

Mr. *Hammon.* When the Court was broke up by the Sheriffs, they cried, *God ſave our true Proteſtant Sheriffs*; and in that manner they hollowed us.

Mr. Serj. *Jeff.* What ſay you?

Mr. *Hammon.* They hollowed us home, Sir, as far as *Fiſhmonger's-Hall.*

Mr. Serj. *Jeff.* They began with a Hiſs, and ended with a Hollow.

Mr. *Williams.* Gentlemen, I am Counſel for the Defendants; and, my Lord, the Queſtion is, under Favour, Whether theſe Perſons taken for Defendants, whether they be guilty of this Riot, as it is laid in the Information. We are now upon a ſpecial Caſe, and the Queſtion is, Whether guilty, or not guilty? My Lord, in the firſt Place, for the Cries; what the Cry was hath been too often mentioned; for thoſe Cries, there is nothing at all fix'd upon any Perſon that is Defendant; all that is charged upon us, is, that we were in the Hall it ſeems, and becauſe there was this Noiſe heard, therefore we muſt be guilty. In this Crowd where we are, I hear hiſſing, eſpecially at t'other End of the Hall; which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if ſome of thoſe Perſons had been apprehended for their hiſſing. I won't ſay, Gentlemen, that either one Party or t'other in the Conteſt made the Noiſe of hiſſing, but there is nothing of it fix'd upon any of us. Our Caſe is this, my Lord, with Favour; When we have ſtated our Caſe and proved it, we are very innocent, and not guilty of the Riot. In ſome meaſure it hath been ſtated on the other Side. They ſay in the Information, that the Lord Mayor called a Common Hall; we don't diſpute that matter, we agree it, that the Lord Mayor of *London* is the King's Lieutenant; but to make ſuch an Inference, That becauſe the Lord Mayor is the King's Lieutenant in the City of *London*, that he muſt execute all the Offices in the City, is of no Credit in the World; ſo that they are miſtaken in that. Men are bounded in their Offices. The Lord Mayor does not execute all the Offices in the City tho' he be Lord Mayor. The Queſtion between us is this; Whether the Sheriffs, in this Caſe, did more than their Office as Sheriffs of the City of *London.* There is a Superiority due to the Lord Mayor. Another Thing we agree with them; we agree it is in the Lord Mayor only to call theſe Common Halls, and as Mr. Serjeant *Jefferies*, that hath been in a good Office in the City, he agrees it himſelf: and it is apparent, there are ſome fix'd Days for Election; but yet tho' there be fix'd Days for Election, yet there muſt be that Formality of a Summons from the Lord Mayor to the City, to meet in order to the Election of Sheriffs for the City of *London* and other Officers; that we do agree that my Lord Mayor hath the Power of calling Common Halls, and he is the proper Officer. We agree alſo, Gentlemen, that when the Buſineſs is done, for there is nothing in vain in Nature, and there is nothing in Government that ſhould be in vain, when the Buſineſs is done, my Lord Mayor is to bid the Company, *Fare them well*, which you may call diſcharging the Common Hall; we agree That to be commonly and uſually done by my Lord Mayor. But herein we differ, which we are to try, the Right of the Office of Sheriffs being the Queſtion; it is a Queſtion of Right, and I don't ſee the Government is concerned one way or other.

L. C. J. Upon my Word I do ſee it; and ſurely you muſt be blind, or elſe you would ſee it too: When a Company is got together, *No God ſave the King, no King, no Lord Mayor.*

Mr. *Wiliams.* My Lord, I thought I had opened it plainly, I ſpeak before a great many People; I deſire, my Lord, this may be very well heard. I thought I had ſaid very well, from all theſe Noiſes and Cries we are all innocent, we juſtify nothing of it, only we would have been glad if they had apprehended any Man that made that Noiſe; it had been a very happy thing if one of them, or all of them had been Defendants to be tried. My Clients are Defendants, they are innocent and unconcern'd; it is a Crime committed by ſome where theſe Gentlemen were by, but they are innocent; we hear hiſſing at t'other End of the Room, it was an ill thing, and of a treaſonable Complexion; but for theſe Gentlemen they are unconcern'd. The Queſtion between the Lord Mayor and the Sheriffs of the City, is a Queſtion of Right between the Mayor and Sheriffs, Whether it be the Prerogative of the Mayor, or the Right of the Sheriffs? And I ſay, under Correction again, this Queſtion, Whether my Lord Mayor of *London* may adjourn the Common Hall to a certain Day, is a Queſtion of Right; Whether he can do it, or the Sheriffs? and I don't ſee what Conſequence it can have upon the Government. The Lord Mayor is the King's Deputy, the Sheriffs they are the King's Officers; and the Queſtion is, Whether it be in the Lord Mayor or the Sheriffs of *London* to adjourn it? They are very good Subjects, I am ſure this very Year they are ſo; therefore I wonder at theſe Gentlemen of the King's Counſel, that will meddle with the Government, and ſay the Government is concerned in this; I appeal to any Man if there be any more Concern in this; I ſay this, here was a Common Hall call'd, grounded upon Cuſtom in the City of *London*, and here is a ſingle Queſtion, Whether theſe Sheriffs did any more than their Duty; whether they were guilty of a Riot in continuing this Poll? Gentlemen, this is the Method we ſhall take. Firſt of all, it is not proved, that ever the Lord Mayor, before this Time, did ever attempt to adjourn a Common Hall to any certain time; all the Witneſſes that were call'd, that pretend to be knowing in the Cuſtoms of *London*, the Common Serjeant himſelf, he does not pretend that it was adjourn'd to a Day.

Mr. Serj. *Jeff.* You miſtake. Sir *Robert Clayton* did from *Saturday* to *Monday.*

L. C. J. What need if there had been no Precedent? If ſo be an Aſſembly of People are met about Buſineſs, and they can't make an End of it in a reaſonable time, muſt they be kept all Night till they have? What Argument will you make of it? If a Man may call and diſſolve, do you think if there be Occaſion, but, by the Law itſelf, that he may adjourn to a convenient Hour?

Mr. *Williams.* That will be a Queſtion between us. My Lord, what I ſay certainly of Fact carries ſomething in it.

L. C. J. Not at all.

Mr. *Williams.* Then my Lord I have done.

L. C. J. Give us Leave to underſtand ſomething, Sir.

Sir *Fra. Winn.* My Lord, by your Lordſhip's Favour——

L. C. J. I ſpake to Mr. *Williams*, and he takes it ſo heinouſly at my Hand that Facts ſignify nothing; I do again ſay it, the Fact ſignifies nothing. For I tell you again as Law, it is not denied the Lord Mayor may call, he may diſſolve; then I ſay by Law without Fact, by Cuſtom, he that can both call and diſſolve, may adjourn to a convenient Time. Do not Judges of Aſſize of all the Counties of *England* do it, when a Cauſe is appointed to be tried in ſuch a County ſuch a Day, and it may be it is tried three Days after? And yet I pray find me the Statute or Commiſſion, or find me one thing or another, beſides the very Law itſelf, that doth give them Leave to adjourn from time to time.

Mr. *Williams.* My Lord, there is a mighty Difference, but I am only upon Fact; theſe Gentlemen will agree it was never practiſed before before Sir *Robert Clayton's* Time; what the Conſequence in Law will be, that is in your Lordſhip's Breaſt; I am now ſpeaking upon the Evidence that this hath not been practiſed. What the Law is, for that we are to have your Judgment, which I humbly crave, I will be judged by Gentlemen that are my *Seniors*, and better read in this Matter; but, my Lord, a Man may have a Power of calling or diſſolving, and not of adjourning; it may be ſo. But, my Lord, admitting it to be ſo for this Time; yet, my Lord, whether we are guilty of a Riot, take the Circumſtances of our Caſe. Whether the Right of adjourning be in the Sheriffs, yea, or nay; it is a Queſtion of Right, and I had rather apply myſelf to your Lordſhip, than to the Jury. If there were a Queſtion of Right between the Lord Mayor and the Sheriffs, it may be admitted by our Counſel, that it was his Right to adjourn the Court, and probably the Sheriffs might be in the Wrong, and the Lord Mayor in the Right. The Lord Mayor adjourns the Court, and they continue it; they go on with the Poll, and go on with the Execution of their Office, as they apprehended; if they were ſtill for their Right, I hope your Lordſhip will not make this a Riot. My Lord, for the Circumſtances that followed, the Noiſe that was made, which I don't love to mention; if, I ſay, they were guilty of this, I am ſilent; but if they did no more, as I hear no more proved upon them than continuing the Poll, then, I ſay, it will be hard to make them guilty of the Riot. And another thing is this; my Lord, we all know, if there were a thouſand Electors, any Man knows, that when there is a Queſtion upon an Election, it is impoſſible ſuch a thing ſhall be carried on but there will be Reviling, ill Language, and the like; and to turn all theſe things to a Riot, a thing ſo common from the Beginning of Elections to this Time, if there be a Diviſion and Polling, there will be ſomething you may turn to a Riot. But, I ſay this, they have not inſtanced in any one Defendant, that he was guilty of any one particular Act that amounted to a Riot in itſelf, they have not inſtanced in one. They ſay of Alderman *Corniſh*, that he was of the ſame Opinion with the Sheriffs, that they did inſiſt upon the Rights of the City, he took it to be the Right of the Sheriffs; *And*, ſays one of them, I *will ſtand upon it*, *Bethel* that had been Sheriff. Now we will call our Witneſſes, we will prove what hath been the conſtant Practice in the City, we will prove the Methods of Adjournment; and, my Lord, this is to be ſaid, which your Lordſhip will obſerve, That the Sheriffs adjourned the Court to the very ſame Time with my Lord Mayor; ſo that it was no more than to bring the Matter to an Iſſue in this Caſe.

Sir *Fr. Winn.* Spare me a Word in this Caſe, my Lord. There is no Evidence produced againſt *Trenchard*, nor againſt *Jekyl* the younger, nor againſt *Bifield*, nor ——— Of theſe there is no Queſtion, but they are as if they were out of the Information; I muſt beg Leave for a Word or two as to thoſe Defendants, that they have offered ſome Evidence againſt. The Queſtion is now before your Lordſhip, Whether they are guilty of a Riot or no? My Lord, for aught I ſee, it will ſtand upon a Nicety of Judgment; yet, if there be not Matter enough, Gentlemen, to make the Defendants guilty of a Riot, then it will clear the Defendants. My Lord, as to thoſe Words, that really were Words that ought to be inquired into, who they were that ſpoke them in relation to his Majeſty; I think it was a very ill Thing of thoſe Men that ſaw them, that they would not neglect all manner of Buſineſs to ſeize them, I think it was a Duty to fix upon them; but, my Lord, there is no Evidence to put it upon any of the Defendants. My Lord, that being pared off, now the Queſtion is, that the Meeting together was lawful, that is agreed; then when they came together, my Lord. I do think, that if we do rely upon the Evidence, it will be a mighty hard thing to make this a Riot; ſetting aſide thoſe villainous Words that were ſpoken, which cannot relate to the Defendants. Suppoſe, my Lord, that among the Electors the whole Common Hall of the City, there doth a Diſpute ariſe, before the Election is over, concerning the Adjournment of the Sheriffs or the Lord Mayor; ſome Men are of one Opinion, ſome are of another; and their Evidence, Mr. *Peter King* and another, Attorneys, I aſked the Queſtion ſeveral times, *Did the Lord Mayor of London ever interpoſe or concern himſelf in adjourning the Hall, till the Election was quite finiſhed?* And they ſaid, *No.* Then, my Lord, I muſt ſay it as to theſe particular Defendants, in ſuch a Concourſe of People as were met there, it is as ſlender a Proof of a Riot as ever was, and intimates that the Citizens of *London*, they that happen not to be the greater Number, they that loſe the Election, may be found guilty of a Riot in chuſing other Officers, as well as in the Buſineſs of Sheriffs; which being ſo tender a Point, I think it will be a very ſevere Expoſition, my Lord, to make this a Riot. But now for the Matter: we will call to your Lordſhip ſeveral Witneſſes, Men that have been Magiſtrates in the City, that it was always looked upon, that my Lord Mayor, as he is the principal Magiſtrate, he gives Notice for Common Halls; and when the ſeveral Electors are met, and the Buſineſs is over, he directs them to go home, and diſſolves them; but my Lord Mayor meddles not in every little Adminiſtration of the Election of Officers, but leaves them to inferior Officers, the Sheriffs and others; that is their Duty; my Lord, with Submiſſion, they poll them, and ſend them home during the Election, therefore by Law they do this; for, my Lord, the Cuſtom of a City, and the Cuſtom of a Place, is the Law of the Place; and if the Cuſtom of the Place had been, that the Sheriffs have been the Perſons that have managed it, it is their Right; but their Common Serjeant he ſays he hath the ſole Management of it; then if it be as Mr. Common Serjeant ſays, if that muſt go, upon my Word, Gentlemen, your Privileges are reduced to a little Compaſs.—

L. C. J. They did confer one with another who they took to have the moſt Voices, and ſo reported it; not that he did claim any thing in his own Right, but as an Officer of the City. Now it is plain, and I think there is no Inconveniency falls upon it, if an Officer acquaints my Lord Mayor, according to the beſt of our Judgment, we think ſuch a Man hath the moſt Voices; that does not give him a Right for him to make an Officer, not at all.

Sir *Fr. Winn.* I ſay what he ſaid in his Evidence; but one of the Attorneys ſwears, that they have all equal Power; I wonder then who ſhould make an End of the Buſineſs. My Lord, we will call to your Lordſhip ancient Citizens, that have been frequent at Elections, to give you an Account that the Sheriffs always had the Management; that my Lord Mayor never concerned himſelf, till he had Notice it was determined; and if that be ſo, and the Practice hath been ſo, then I don't ſee, under Favour, my Lord, how they will make this a Riot; that is the Caſe.

Mr. *Thompſon.* Sir *Robert Clayton*, will you pleaſe to tell my Lord and the Jury in what manner the Election of Sheriffs hath been, and how the Mayors have uſually left it to the Sheriffs in that Caſe?

Sir *Robert Clayton.* My Lord, I have never heard this Matter hath been in Queſtion till of late; ſo I cannot declare much upon my own Knowledge, how the Truth of Fact is or ſhould be; I can only ſay this, what the Practice hath been. When I came to the Chair, I did endeavour to know my Duty, and to do it. The firſt time I had Occaſion to take Notice of this Matter was in the Year of my Mayoralty; I did then, according to Cuſtom, ſummon a Common Hall; when I had ſummon'd it, there was a Perſon preſented to the Hall I had drank to; the Hall did refuſe him, and there was a great Noiſe and Hubbub upon it; and we found a way to accommodate that Matter, and left them to chuſe two Sheriffs for themſelves. I retired into this Court together with my Brethren, and Mr. Recorder that was then: We ſent for the Sheriffs up to examine the Matter; they told us, that they could not agree the Thing, there were four Perſons in Nomination, but they had granted a Poll. After this we went down into the Hall; of that Mr. Common Serjeant hath given ſome Account, and Mr. Serjeant *Jefferies*; I ſhall to the beſt of my Memory give the beſt Account I can of it: I ſhall only tell you what I did underſtand to be my Duty: I do not determine what the Practice was, but what I underſtood to be my Duty. When we came down into the Common Hall, to declare how the Matter ſtood, and that a Poll was agreed upon and granted, we would have adjourned the Court to a longer Time; but the People cried out, to go to the Poll preſently. I was, as you have been told by Mr. Common Serjeant, to go to the Trial of one *Giles*, upon the Aſſaſſination of *Arnold*, to the *Old Baily*. I did twice or thrice attempt to get down out of the Hall through the Crowd, and was repulſed, the Crowd was ſo great I could not get through, but was fain to retire back again to the *Huſtings*, as I remember, two or three times. There might be ſome ſuch Diſcourſe as Mr. Common Serjeant hath ſaid; but thus far I can remember, that I did both myſelf, and the Common Serjeant, ſignify to them the Buſineſs I was about, and ſo many Aldermen as made up a Bench, together with Mr. Recorder, to manage that Buſineſs, muſt go; and that I would leave the Sheriffs to manage the Poll, which I thought was their Duty.

Mr. *Thompſon.* Did you take it to be their Right?

Sir *R. Clayton.* I did not apprehend it to be my Right then.

Mr. *Thompſon.* And therefore you left it to the Sheriffs as their Right?

Sir *R. Clayton.* I left it to the Sheriffs to manage the ſame.

Mr. *Williams.* Sir *Robert Clayton*, I ſuppoſe when you were Lord Mayor, you were as much for the Honour of the Chair as any Man, you would not have quitted the Right of the Chair?

Sir *R. Clayton.* I did not; there was a Trial of me in that Caſe.

Mr. *Williams.* Now, Sir, for adjourning the Poll: Did you know any ſuch Queſtion, whether a Poll was to be adjourn'd upon the Election of any Sheriffs?

Sir *R. Clayton.* There hath been a great Noiſe about Adjournments of late. That Poll was the moſt litigious of any that I know we have had before or ſince; that was adjourn'd for ſeveral Days.

Mr. *Williams.* Who adjourn'd that Poll?

Sir *R. Clayton.* The Sheriffs did adjourn it, I think, Gentlemen; I do think the Sheriffs did adjourn it, I was not preſent.

Mr. Att. Gen. Sir *Robert*, don't ſerve the Court thus.

Mr. *Williams.* Don't brow-beat our Witneſſes, Gentlemen; I know, Mr. Attorney, you are an Example of fair Practice: We are examining our Witneſſes.

Sir *R. Clayton.* Pray, my Lord, let me explain myſelf; I ſhall let Mr. Attorney General underſtand me. I did never appear at *Guild-hall*, unleſs upon the Account of a Court of Aldermen; I did never appear at *Guild-hall*, but the firſt Day we had Conſultations here in this Court about the Adjournment, and upon the *Huſtings* about going about the Buſineſs we intended, and the Hall was very intent upon the Poll; I twice attempted to go out, and could not get out; whereupon we were fain to acquaint the Hall, as well as we could for the Noiſe, of the Buſineſs we were to go about, and they let me go. I left behind the Sheriffs and the Common Serjeant; how long they ſtay'd, I can't tell; I can upon my own Knowledge give no Account of them. I was not conſulted, to the beſt of my Knowledge, afterwards, nor did give any particular Directions for Adjournment. I did not do it for this Reaſon; I did not look upon it to be in my Power: If I had ſuch a Power, I did not underſtand it.

Mr. *Williams.* Sir *Robert*, how many Days do you think that Poll continued?---Sir *R. Clayton.* About ſix Days.

Mr. *Williams.* Of thoſe ſix, how many Days were you preſent?

Sir *R. Clayton.* I did not underſtand it to be my Duty, and ſo did not look after it.

Mr. *Thompſon.* Sir *Robert Clayton*, I deſire to aſk you a Queſtion, as to this Matter you have given in Evidence: Do you give it to the beſt of your Remembrance, or poſitively?

Sir *R. Clayton.* I tell you, I ſpeak to the beſt of my Remembrance every thing that I ſay.

Mr. Att. Gen. Sir *Robert Clayton*, I beg your Favour, To the beſt of your Remembrance is no Evidence, it is ſo lately; if you pleaſe, Sir *Robert*, you are to give Evidence of a Thing about three Years ago. I aſk you, upon your Oath, Who were your Sheriffs?

Sir *R. Clayton.* Sir *Jonathan Raymond*, and Sir *Simon Lewis*.

Mr. Att. Gen. I would aſk you then a plain Queſtion, Sir *Robert*, becauſe you come in with your Remembrance: Did you give expreſs Direction to the Common Serjeant or the Sheriffs to adjourn, upon your Oath?

Sir *R. Clayton.* I muſt, Mr. Attorney General, by your Favour, take in my Remembrance.

Mr. Att. Gen. Then you are no Evidence. Sir *Robert*, Did you give Directions or not, upon your Oath?

Sir *R. Clayton.* I can't ſay it was given.

Mr. Att. Gen. Did you, or did you not?

Sir *R. Clayton.* My Lord, I hope I have ſpoke *Engliſh* in the Caſe: We did diſcourſe of the Adjournment in this Court, I believe it was diſcourſed below; but, as I ſaid, I was engaged to go to the *Old Baily*, and I would leave that Matter to the Sheriffs, whoſe proper Buſineſs I underſtood it to be.

Mr. Att. Gen. I aſked you, Sir *Robert*, one of the plaineſt Queſtions that ever was aſked; I aſk you, whether you gave the Sheriffs or the Common Serjeant expreſs Order to adjourn?

Sir *R. Clayton.* I believe I did not.

Mr. Att. Gen. Did the Sheriffs tell you they had a Right then?

Sir *R. Clayton.* There was no Diſpute who had the Right.

Mr. Serj. *Jefferies.* Sir *Robert Clayton*, if you pleaſe, I would aſk you a Queſtion or two. Do you remember that the Court was adjourned while you were there or not? Do you underſtand the Queſtion, Sir *Robert?* Do you remember the Common Hall was adjourned while you were there?

Sir *R. Clayton.* Yes, Sir, if you give me Leave to explain myſelf, I think the Common Hall was adjourn'd; it was declared; but there was ſuch a Noiſe in the Hall, that the People could not hear it.

Mr. Serj. *Jefferies.* But there was a ſort of Declaration made by yourſelf, you did make an Adjournment; but the Noiſe was ſuch, that the People did not hear: And if you remember, there was a Perſon affronted one of the Sheriffs, and I committed him to Cuſtody upon it.

Sir *R. Clayton.* We deſir'd to adjourn for an Hour or two, that we might go and refreſh ourſelves.

Mr. Serj. *Jefferies.* Then you remember there was an Adjournment: I aſk you whether it was appointed to be made by you or the Sheriffs?

Sir *R. Clayton.* Truly I believe it was appointed by me.

Mr. Serj. *Jefferies.* Sir *Robert*, by aſking a Queſtion or two, Sir *Robert*, I know I ſhall bring ſome Things to your Remembrance.

Sir *R. Clayton.* My Lord, I don't know I have given any great Occaſion of Laughter to my Brethren; theſe Adjournments have been very common with us, and I might agree to it, or order it, or direct it; but one of them I believe I did, or two of them.

Mr. Serj. *Jefferies.* Sir *Robert*, I would only have a Queſtion or two aſked, and I know by aſking a Queſtion or two, I ſhall bring Things to your Memory, which I am ſure you cannot eaſily forget: Were there Directions given for Proclamation to be made for all Parties to depart in the King's Name?

Sir *R. Clayton.* I believe there might.

Mr. Serj. *Jefferies.* The next Queſtion is, Whether the Sheriffs ordered that Proclamation to be made for all Parties to depart?

Sir *R. Clayton.* If it were done while I was preſent, I make no Doubt in the Caſe but I did direct it, I make no Queſtion of that.

Mr. Serj. *Jefferies.* Very well: Now, Sir *Robert Clayton*, we are got to an Adjournment to a Time by your Direction, and Proclamation by your Direction. Now I will aſk another Queſtion, upon your Oath: Was not you in the Common Hall, and gave order for an Adjournment till *Monday* following; for I remember that Day to be *Saturday?*

Sir *R. Clayton.* Truly I don't remember that.

Mr. Serj. *Jefferies.* You do not! Sir *Robert*, you know very well that the Sheriffs of *London*, when the Lord Mayor and Aldermen come back to the *Huſtings*, the Sheriffs ſit remote, one on the Right-hand, and the other on the Left, furtheſt from the Lord Mayor; ſo that all the Aldermen ſit nearer to the Lord Mayor than the Sheriffs do: Did you mind that the Sheriffs came to you to ſpeak to you any thing of an Adjournment?

Sir *R. Clayton.* I never ſaw it.

Mr. *Jones.* I would aſk you a Queſtion or two: You know this Gentleman, don't you? [*Pointing to the Common Serjeant.*]

Sir *R. Clayton.* Yes.

Mr. *Jones.* Did he attend the Court at that Time?

Sir *R. Clayton.* Yes.

Mr. *Jones.* Sir *Robert*, I aſk you a fair Queſtion, Did you lay any Command on him to adjourn the Hall at that Time, from *Saturday* till *Monday?*—Sir *R. Clayton.* Pray, my Lord, give me Leave to anſwer Mr. *Jones* in my own way.

Mr. *Jones.* My Lord, I'm in your Judgment, it is a fair Queſtion within his own Recognizance lately done, he ought to anſwer poſitively, Yes or No.

Sir *R. Clayton.* Am not I upon my Oath; can you tell me what I can ſay?

Mr. *Jones.* Ay or No. Any honeſt Man would do it.

Sir *Fr. Winn.* All Witneſſes anſwer their own way, Don't they?

Mr. *Jones.* Let him anſwer then his own way.

Mr. Att. Gen. My Lord, you know there is a Rule in Chancery, if it be a Matter within ſeven Years, if it be not anſwer'd poſitively, it is no Anſwer: If one aſks a Witneſs a Queſtion that lies within a little while, if he will not anſwer either affirmatively, or negatively, he is no Witneſs.

L. C. J. I can't tell, Mr. Attorney.

Mr. *Jones.* Will you anſwer or no, Sir *Robert Clayton*, whether you commanded the Common Serjeant to go and adjourn the Hall or no?

Sir *R. Clayton.* I don't remember that I did.

Mr. *Jones.* Then I only aſk you this further Queſtion, Whether Mr. Common Serjeant did not tell you, that it was not his proper Buſineſs to do it, and that unleſs you would lay expreſs Commands upon him, and put the very Words in his Mouth, he did deſire to be excuſed, and did he not ſtand there? [*Pointing to the Bar.*]

Sir *R. Clayton.* I have heard, Sir, what Mr. Common Serjeant did ſay, and I cannot charge my Memory with it; but I have that Charity for Mr. Common Serjeant, to believe there might be Diſcourſe to that Purpoſe.

Sir *Fr. Winn.* Mr. *Love*, in all your Experience, what do you remember?

Mr. *Williams.* How long have you known *Guild-hall* and Elections?

Mr. *Love.* I ſuppoſe, my Lord, theſe Gentlemen don't expect I ſhould ſay any thing that was done that Day; but, my Lord, all that I ſuppoſe you expect from me is, what I did obſerve to be the Practice of the City; to the beſt of my Remembrance, I ſhall give you an Account. My Lord, about 22 Years ago, I did obſerve the Practice to be this; when I was call'd into this Office of Sheriff, I took it as a thing for granted, that it was the Sheriff's Office to manage the Common Hall, that I did, as my Lord Mayor's was to have a Sword borne before him; I have received it by Tradition from all before me, and my own Experience. My Lord, I remember when we came to chuſe Sheriffs upon *Midſummer Day*, after the Lord Mayor and Aldermen had been there, my Lord Mayor ſaid to me and my Brother Sheriff; Gentlemen, look to your Office. We accordingly went to it, and choſe two Sheriffs, one Gentleman that had been drank to by my Lord Mayor, I think it was Alderman ———; but notwithſtanding that Drinking to him, we took no Notice of that as a Ceremony, he was put in Nomination among others, and being a Senior ſitting Alderman, we returned him; otherwiſe, my Lord, I aſſure you I would not have returned him, notwithſtanding the Drinking. After once that the Lord Mayor and Aldermen withdrew to go to the Council-Chamber, they ſaid to us, Now, Gentlemen, look to your Office.

Mr. *Thompſon.* What was your Office?

Mr. *Love.* To chuſe Sheriffs.

Mr. *Thompſon.* Did my Lord Mayor meddle with the Election, or left it to the Sheriffs?

Mr. *Love.* Left it to the Sheriffs.

Mr. *Williams.* What was your Opinion, Sir, was it in the Lord Mayor to take the Poll, or the Sheriffs?

Mr. *Love.* Truly, Sir, I am not a competent Judge of whoſe Right it was; but if my Lord Mayor had gone about to meddle in it, I ſhould have prayed my Lord Mayor to meddle in his own Office, and let me alone with mine.

Mr. Att. Gen. Yes, Mr. *Love*, you were then the Tribunes of the People.

Sir *Fr. Winn.* Here are ſome ſay the Common Serjeant and the Common Cryer have a Power, nay, the whole Power of ordering the Hall during the Election. What is the Office of the Common Serjeant there?

Mr. *Love.* Truly, Sir, I look upon the Common Serjeant and the Common Cryer as Perſons left to aſſiſt us, becauſe they could not put us to the Trouble of Crying *Oyes* ourſelves; and if any Common Serjeant or Common Cryer had durſt to put a Queſtion without my Direction, I would have known whether he could or no.

Sir *Fr. Winn.* Mr. *Love*, Was it ever diſcours'd to you when you was Sheriff, or before, or ſince, that ever my Lord Mayor did interpoſe before the Election was over?

Mr. *Love.* Since I was diſcharged of being a Magiſtrate, I never was at a Common Hall ſince. I have ſpent my Money for the City's Service, but never got a Penny by them; I never heard, that ever the Lord Mayor, till theſe late Times, interpoſed, but that the Sheriffs managed the whole Buſineſs of chuſing Sheriffs.

Mr. Att. Gen. Mr. *Love*, I deſire to have a Word with you; you ſpeak of the Time of your Reign; I would aſk you a plain Queſtion, Was it before the King came in?—Mr. *Love.* It was that Year the King came in.

Mr. Att. Gen. Was you choſen before?—Mr. *Love.* Yes, I was.

Mr. Att. Gen. Do you remember an Act of Parliament in 48, then in Force, of ſhutting out my Lord Mayor?

Mr. Serj. *Jefferies.* I would aſk him a Queſtion or two. Hark you, Mr. *Love*, Let me aſk you a Queſtion or two.

Mr. *Love.* Sir *George*, I would give Mr. Attorney an Anſwer.

L. C. J. What would you make of it? If you aſk him of an Act of Parliament, it is ſomething.

Mr. Att. Gen. You ſpeak of a Time when my Lord Mayor had no more to do with it than I had. There was an Ordinance of Parliament, did you never ſee that?

Mr. *Love.* To the beſt of my Remembrance I never ſaw it in my Life.

Mr. Att. Gen. Nor heard of ſuch a Thing?

Mr. Serj. *Jefferies.* Hark you, Mr. *Love*, I perceive you would have diſputed with my Lord Mayor; who was the Lord Mayor that you talk of?---Mr. *Love.* Sir *Thomas Allen.*

Mr. Serj. *Jefferies.* Now I would deſire to know whether you remember the City before the King came in?---Mr. *Love.* For a little while.

Mr. Serj. *Jefferies.* Do you remember any thing of that Cuſtom of the Lord Mayor's Drinking to Sheriffs; was not that uſed before the King came in?

Mr. *Love.* A long time.

Mr. Serj. *Jefferies.* It is well enough; a long time.

Mr. *Williams.* My Lord, we have ſeven or eight more to the ſame Purpoſe, but we are ſatisfied with theſe, Gentlemen: We will prove, if there was any thing like a Riot, we will prove my Lord Mayor, and thoſe that were with him, were the Authors of it.

L. C. J. When Multitudes of People are gather'd together upon a lawful Occaſion, ſuppoſing that they had a Right to be there, I do ſay, that in that caſe it would be much a Mitigation of the Fine, ſo for this ſame Riot; but on the other Side you muſt know, that theſe Men that do it, it doth not excuſe them, for *ignorantia juris* is not an Excuſe. It is true, if they had had a lawful Occaſion to continue to do it, but in truth they had not, that will excuſe them *à tanto*, but *non à toto.*

Mr. *Holt.* My Lord, I beg to put in this Caſe; there is a great deal of Difference where a Perſon does claim a Right to himſelf, and does an extravagant Action. Now, my Lord, theſe Perſons did claim a Right to themſelves to continue the Common Hall, and that it was not in my Lord Mayor's Power to adjourn it without them: Now, my Lord, they claimed this Right, if they uſed no Violence that is excuſable. If I ſhould claim a Right to another Man's Eſtate, tho' I have no Title, and ſay I have a Right, and give it out in Speeches, no Action lies againſt me; but if I do an extravagant Action, and ſay another Man hath a Title, there lies an Action againſt me.

L. C. J. Now go to your Fact.

Sir *Fr. Winn.* My Lord, put a Point to us, and we need not call more Witneſſes.

L. C. J. I don't ſpeak to hinder you from calling your Witneſſes.

Sir *Fr. Winn.* I put this Caſe, we undertake to prove, that it was always looked upon, that it was the Right of the Sheriffs: Suppoſe, my Lord, upon the Diſpute it ſhould be found, that the Opinion of the Jury ſhould be otherwiſe; will this turn to an illegal Act?

L. C. J. Call your Witneſſes.

Mr. *Wallop.* I beſeech your Lordſhip I may put one Caſe in this Point; in a Point of Right, if they have a probable Cauſe to inſiſt upon it. Suppoſe I ſend forty Men to a Wood, and take a Car or a Team, if they be a competent Number to cut down Wood, if we are miſtaken in the Title, that is no Riot. *Lambert* puts the Caſe.

L. C. J. But what if I had ſent a great many Men to cut down the whole Wood?

Mr. *Williams.* We will call ſome Witneſſes that will take us off from the Riot thus, if ſo be we can excuſe ourſelves of the Diſorder, and put it upon my Lord Mayor, then we are innocent.

L. C. J.

L. C. J. Very well, if you do that.

Mr. ————. Mr. *Sibley*, Are you acquainted with the Manner of the Election of Sheriffs? How long have you known it?

Mr. *Sibley*. I have been of the Livery ever ſince 39; in all my Time, I ſpeak, Gentlemen, to the beſt of my Remembrance; it hath been the Cuſtom in all my Time, except here of late, that the Sheriffs of *London* have had the Management of the Election.

Mr. ——. Did my Lord Mayor ever interpoſe till the Election was over?

Mr. *Sibley*. I never knew my Lord Mayor interpoſe till lately.

Sir *Fr. Winn*. Did you ever hear my Lord Mayor pretend to it till of late?—Mr. *Sibley*. No, my Lord.

Sir *Fr. Winn*. Did the Mayor uſe to be preſent at any Election during the Election?—Mr. *Sibley*. I have been moſt commonly there.

Sir *Fr. Winn*. But the Mayor; would the Mayor be there?

Mr. *Sibley*. The Mayor and Aldermen went off the Bench.

Sir *Fr. Winn*. Who managed the Elections?—Mr. *Sibley*. The Sheriffs.

Sir *Fr. Winn*. Were the Common Serjeant and the Common Cryer there?

Mr. *Sibley*. The Common Serjeant and the Common Cryer are always there.

L. C. J. I pray thus; you have known the City, it ſeems, a great while. I would aſk you this: Pray who did call the Aſſembly that was to chuſe the Sheriffs, did the Sheriffs, or the Lord Mayor?

Mr. *Sibley*. We commonly received the Tickets by the Officers of the Companies.

L. C. J. Did the Officers of the Companies ſummon the Aſſembly? Hark you, pray, Sir, recollect yourſelf; Do you take it, that the Officers, the Beadles it may be, of the ſeveral Companies, did they ſummon the Livery-men, and ſo a Common Hall was call'd together; was it ſo in your Time?

Mr. *Sibley*. It hath been commonly ſo; we have received Tickets from the Beadle of the Company.

L. C. J. And my Lord Mayor had nothing to do with it then?

Mr. *Sibley*. What Order the Maſters and Wardens had from my Lord Mayor, I never inquired into that.

L. C. J. When the Hall was diſſolved, who ordered Proclamation to be made, the Sheriffs or the Lord Mayor?

Mr. *Sibley*. My Lord Mayor hath not uſed to be there.

Mr. *Thompſon*. When they had done, they went away. He won't trouble your Lordſhip.

L. C. J. Pray, had my Lord any hand in Summoning; did he direct the Summoning of them?—Mr. *Sibley*. It is more than I know.

L. C. J. You bring a Witneſs that knows nothing of the Matter.

Mr. Serj. *Jefferies*. Mr. Deputy *Sibley*. Give me Leave to aſk Mr. *Sibley* a Queſtion or two: I ſhall ſet him to-rights preſently. Mr. *Sibley*, if I be not miſtaken, you are one of the Company of Tallow-Chandlers, and you have been Maſter of the Company, and you have been Warden of the Company. You very well know what Directions are given to the Beadle are generally by the Maſter or Wardens: Pray, upon your Oath, when you were Maſter or Warden, was there ever any Precept ſent to you to ſummon a Common Hall?—Mr. *Sibley*. Indeed I don't remember that, Sir.

Mr. *Thompſon*. If your Lordſhip pleaſe, we have done with our Evidence; I would beg your Lordſhip's Opinion in it.

Sir *Fr. Winn*. We do admit my Lord Mayor ſummons the Court.

L. C. J. But you bring a Witneſs that knows nothing in the World of it, but yet you would have it taken for Goſpel, that the Sheriffs had all the Management before that time forty Years together, till now very lately. But when he comes to be aſked, how is this Aſſembly or Common Hall call'd together, alas! he knows no more of that than one in *Utopia*.

Mr. *Thompſon*. My Lord, we have ſeveral other Witneſſes, but we will call no more.

Mr. Att. Gen. If you have no more, we will call two or three more.

Mr. *Thompſon*. We have ſome to prove, that my Lord *Grey* came to ſpeak with Sir *William Gulſton*, and went away again; and we deſire to call Sir *Thomas Armſtrong*.

Sir *Fr. Winn*. My Lord, if your Lordſhip pleaſes, thus, there will be it ſeems ſome particular Defences made. Your Lordſhip hath heard their Evidence, and what we have ſaid; we deſire to call two or three Witneſſes to another Head. Your Lordſhip hath heard there was ſome Rudeneſs by ſome of the People, but who they were it doth not appear. We will call two or three Witneſſes of the Behaviour of thoſe Men and Company that came with my Lord Mayor; that whatſoever Diſturbance was made, they were the chief Men that made the Diſturbance, and my Lord Mayor could not help it, nor we neither.

L. C. J. Sir *Francis*, I believe thoſe Men that would not have *God ſave the King*, my Lord Mayor could not hinder them; but will you undertake to prove, that thoſe that came with my Lord Mayor, that they were the Men?—Sir *Fr Winn*. They were with them, my Lord.

Mr. Serj. *Jefferies*. They were with them that cry'd, *God bleſs the Proteſtant Sheriffs*.

Mr. *Sibley*. My Lord, I deſire to explain myſelf to what I ſaid; it is ſeveral Years ago ſince I was Maſter of the Company; I do not remember, but I believe the Summons was directed from my Lord Mayor.

Mr. *Freak*. Mr. *Winſtanley*, what Account can you give to my Lord and the Jury?

Mr. *Winſtanley*. I have lived near the Hall, and I often came in, but I was not a Livery-man upon that Poll that was between Mr *Kiffen* and Sir *Robert Clayton*; the Sheriffs managed it.

Mr. *Freak*. Who managed it?—Mr. *Winſtanley*. The Sheriffs.

Mr. *Freak*. Who declared?—Mr. *Winſtanley*. The Sheriffs.

Mr. *Freak*. Did the Mayor come down to declare the Election?

Mr. *Winſtanley*. The Mayor came down after the Poll, but the Sheriffs took the Poll.

Mr. *Freak*. Who was then Mayor?

Mr. *Winſtanley*. Sir *James Edwards* was Sheriff, and Sir *John Smith*.

Mr. *Freak*. Who was Mayor?

Mr. Serj. *Jefferies*. It was Sir *Samuel Starling*.

Mr. *Freak*. Who put the Queſtion upon the *Huſtings*?

Mr. *Winſtanley*. I can't tell.

Mr. *Freak*. What did you hear the Sheriffs ſay, or ſee them do?

Mr. *Winſtanley*. The Sheriffs preſently granted a Poll, and parted one to one Door, and the other to t'other.

Mr. *Freak*. And who took the Poll?

Mr. *Winſtanley*. The Sheriffs took it.

Mr. *Freak*. Who declared the Election?---Mr. *Winſtanley*. The Sheriffs.

Mr. *Freak*. Who were Sheriffs then?

Mr. *Winſtanley*. Sir *James Edwards*, and Sir *John Smith*.

Mr. Serj. *Jefferies*. Mr. *Winſtanley*, I would aſk you this Queſtion: Do you take it upon your Oath, that the Sheriffs declared the Election?

Mr. *Winſtanley*. I declare upon my Oath, that the Sheriffs took the Poll.

Mr. Serj. *Jefferies*. Mr. *Winſtanley*, you may gueſs pretty well what I mean by this. Firſt of all, I aſk you, Did the Sheriffs put the Queſtion?

Mr. *Winſtanley*. The Sheriffs took the Poll, Sir.

Mr. Serj. *Jefferies*. Nay, anſwer my Queſtion: Did the Sheriffs put the Queſtion, or did any body elſe?

Mr. *Winſtanley*. Truly, Sir, I have forgot; you were there.

Mr. Serj. *Jefferies*. I know I was, Sir: I know very well: I aſk you upon your Oath, who was it that declared the Election afterwards, upon your Oath?

Mr. *Winſtanley*. Truly, Sir *George*, I don't remember.

Mr. Serj. *Jefferies*. Mr. *Winſtanley*, one went out at one Door, you ſay; and t'other went out at t'other, you ſay; now I ſay; Who took Notice, and told the Names of thoſe that went out at one Door and t'other?

Mr. *Winſtanley*. The two Sheriffs.

Mr. Serj. *Jefferies*. Who elſe?---Mr. *Winſtanley*. I can't tell.

Mr. Serj. *Jefferies*. Do you remember me there at the great Door, when they poll'd and went out? Do you remember who told them?

Mr. *Winſtanley*. No, truly.

Mr. Serj. *Jefferies*. Pray, do you remember when one Mr. *Broome*, a Wax-chandler, was choſen Ale-conner?---Mr. *Winſtanley*. I was in the Hall; but I do not charge my Memory with it.

Mr. Sol. Gen. Hark you, Mr. *Winſtanley*, Who is it grants the Poll when it is demanded?

Mr. *Winſtanley*. I do remember very well, Sir *George Jefferies* was in the Hall; they demanded a Poll, and ſo went out.

Mr. Sol. Gen. Who granted it?---Mr. *Winſtanley*. The two Sheriffs.

Mr. Serj. *Jefferies*. I will put you a Caſe nearer home, Mr. *Winſtanley*: You remember when Sir *Thomas Player* was choſen Chamberlain, when the Queſtion was put, Who ſhould be Chamberlain, between him and a Gentleman I ſee not far from me; Who, do you remember, managed the Poll then?---Mr. *Winſtanley*. There was no Need, Sir *George*.

L. C. J. What do you mean to do with theſe little Witneſſes? You call Witneſſes that know nothing of the Matter, or nothing to the Purpoſe.

Mr. Serj. *Jefferies*. My Lord, let me aſk him but one Queſtion more: I know he hath been a very great Evidence in this Caſe; I remember when that Gentleman was in for Bridge-maſter: Who was the Poll demanded of at that Time?

Mr. *Winſtanley*. Truly, Sir, I think it was demanded of the Court.

Mr. Serj. *Jefferies*. Of the Court?

Mr. *Winſtanley*. Uſually upon other Days, my Lord Mayor, and the Court come down; but upon *Midſummer Day* they go up.

Mr. Serj. *Jefferies*. But I aſk you, of whom the Poll was demanded at that Time?

Mr. *Winſtanley*. I don't remember it, I'll aſſure you.

L. C. J. You told us that Point would be granted, and you would not ſtand upon it.

Mr. *Williams*. My Lord, where there are ſo many Men, there may be many Minds: I would have your Lordſhip and the Jury hear them.

Mr. *Jones*. The Government is concerned, Mr. *Williams*.

Mr. Serj. *Jefferies*. This is not a Matter of Mirth I'll aſſure you; it reaches the Government.

Mr. *Williams*. My Lord Mayor hath the Power of adjourning the Hall, but not till the Buſineſs is done.

Mr. *Thompſon*. My Lord, I would put you a Caſe *--- Sure, Mr. *Jones*, I ought to be heard. If my Lord Mayor hath Power to call a Common Hall, he hath not to adjourn it before the Buſineſs is done.

* *Here Mr.* Jones *offered to interrupt him.*

L. C. J. If a Writ come to the Sheriffs to chuſe Parliament-men, then the Sheriffs have it; but this is my Lord Mayor's Office, he hath Power to diſſolve and adjourn.

Mr. *Thompſon*. I ſpeak to this Caſe, my Lord; I will ſhew your Lordſhip an Inſtance where it cannot be done. My Lord Mayor hath Power to call here, and he hath Power to diſſolve, ſay they: My Lord, it cannot be, with Submiſſion, in all Caſes. He hath Power to call an Aſſembly when there is a Mayor to be choſen; and the Citizens have a Privilege to move their Mayor, or continue him: Now if it were in the Power of the Mayor, and there ſhould happen a Queſtion, Who they were? For, in a great Number of Electors, if it were in his Power to adjourn from time to time, he muſt continue Mayor.

L. C. J. It is plain he may do it for all your Objection. You know it was agreed by all Sides, that Sir *Samuel Starling*, the Lord Mayor, had well diſſolved the Aſſembly, that is, in point of Law, and they could not ſay the Aſſembly was in Being; yet afterwards there was an Action brought againſt him; and there they laid, how that maliciouſly, and to the Intent that he who was choſen into the Place of Bridge-Maſter, to which he was duly elected, ſhould be ſet aſide, he goes and diſſolves the Aſſembly, and denied to grant him a Poll, which they ought to have had; yet for all that the Aſſembly was well diſſolved.

Mr. Serj. *Jefferies*. Conclude, Gentlemen, conclude.

Mr. *Thompſon*. That which I have to ſay is a Point of Law.

Mr. Serj. *Jefferies*. Sir *Fr. Winnington*, if you deſign to conclude, I tell you beforehand, I would not interrupt you; we will call a Witneſs or two.

Sir *Fr. Winn*. My Lord, becauſe we would make an End, I will call two of thoſe Men that came with my Lord Mayor, to ſhew that if there was any Rudeneſs, thoſe very People that came with my Lord Mayor, were the Cauſe of it.

Mr. Sol. Gen. That they that came with my Lord Mayor cauſed them to ſtay after my Lord was gone?

Mr. *Thompſon.* Mr. *Jackſon*, pray can you remember, whether any of the Defendants here were concern'd in any Affront to my Lord Mayor, or who it was that my Lord Mayor received an Affront from?

Mr. *Jackſon.* I did obſerve, my Lord, as he went out of the Hall, I took my Back and ſet it againſt the Crowd, and had my Face towards my Lord Mayor; and I was crowded ſo, that I could ſcarce ſee myſelf one way or other, but got off the Steps at laſt, and went home with my Lord Mayor.

Mr. *Thompſon.* Can you ſay who ſtruck off the Hat?

Mr. Sol. Gen. Where do you live, pray?

Mr. *Jackſon.* I live at *Charing-croſs.*

Mr. Sol. Gen. With whom?---Mr. *Jackſon.* With myſelf, Sir.

Sir. *Fr. Winn.* What is your Name?

Mr. Serj. *Jefferies.* Don't you know the Sword-bearer of *Briſtol*, Sir *Francis?*

Mr. *Thompſon.* Mr. *Roe*, were you here when my Lord Mayor was crowded? Who offered any Affront?

Mr. *Williams.* Pray will you give my Lord and the Jury an Account of what you heard, and where the Diſorder began?

Mr. *Roe.* My Lord, I was in *Cheapſide*, and I heard a great Noiſe of huzzaing, and a terrible Noiſe indeed; and I met with a Fellow running, my Lord, and I ſtopt the Fellow: What is the Matter? Nothing, ſaid he, but an old Fellow riding *Skimmington* and *Skeleton*; and in the Street I ſaw a matter of a Hundred with their Hats upon Sticks, crying, Damn the Whigs; ſaid I, *Gentlemen, What's the Matter?* ſaid they, *The Work is done to ſtop the Poll*; and that is all.

L. C. J. Hark you, Were you in *Guild-Hall?*

Mr. *Roe.* I followed them a little Way down the Street.

L. C. J. Hark you, Did you ſee my Lord Mayor's Hat down upon the Ground; and was he like to be thrown down; did you ſee that?

Mr. *Roe.* No, I ſaw nothing of that; I heard ſuch a Noiſe, I was glad I had got rid of them.

Mr. *Williams.* My Lord, we have no more to ſay in the general; all that I have to ſay now is for my Lord *Grey*. The Evidence againſt my Lord *Grey*, was, that he was here: Now, my Lord, we have Witneſſes more particularly to defend my Lord *Grey*.

Mr. Att. Gen. We ſhall call a Witneſs or two to clear what that Gentleman ſaid when Sir *Robert Clayton* was Mayor.

Mr. Serj. *Jefferies.* Pray, Gentlemen, let us have a little Patience. Pray, my Lord, if your Lordſhip pleaſe---Here is ſuch a horrid Noiſe---Upon all the Matter, I don't perceive, but Sir *Robert Clayton* does himſelf believe Proclamation was made by him; he does believe the Adjournment was made by him; but as to the Adjournment to *Monday*, he is not certain of that. But if your Lordſhip pleaſes, we have here both the Sheriffs, Sir *Jonathan Raymond*, and Sir *Simon Lewis*, that will ſhew the Court whether there was any ſuch thing.

Mr. Att. Gen. Before *Bethel* came out of the North, no Sheriff ever pretended to it.

Mr. Serj. *Jefferies.* Pray, Sir *Simon Lewis.* I deſire you would ſatisfy my Lord and the Jury concerning the Adjournment when you went to the Seſſions Houſe in the *Old Baily:* Did you order the Adjournment of the Poll, or my Lord Mayor?

Sir *Simon Lewis.* We came and waited upon my Lord Mayor here, and told him they demanded a Poll without; we took his Directions, and my Lord Mayor did adjourn the Court, by reaſon that the Aſſaſſinators of *Arnold* were to be try'd; and by reaſon of that it was adjourn'd till *Monday*, and my Lord Mayor and the Aldermen went thither; but indeed we were left as Priſoners, and I receiv'd a Blow on my Breaſt.

Mr. Att. Gen. Sir *Jonathan Raymond*, Did you pretend to have the Power then of adjourning the Court?

Sir *Jon. Raymond.* My Lord did adjourn the Court becauſe of that Trial, and then afterwards we went upon the Poll; we were ſeveral Days upon it: We only appointed from Day to Day till we had made an End; and when we had made an End, we declared it to my Lord Mayor and the Court of Aldermen; and my Lord Mayor and the Court of Aldermen came upon the *Huſtings*, and declared who it fell upon.

Mr. Att. Gen. Sir *James Smith*, When you were Sheriff, did you pretend to have any ſuch Power?

Mr. Serj. *Jefferies.* Upon your Oath, Did you pretend to have a Power of adjourning Common Halls?

Sir *J. Smith.* No, Sir; we were Sheriffs immediately after Sir *Robert Clayton*; I never heard it queſtioned but my Lord Mayor had the Right of it.

Sir *Fr. Winn.* Sir *Jonathan Raymond*, I think you ſay the Sheriffs did adjourn from Day to Day at that Time?

Sir *J. Raymond.* We could not make an End of Polling; and we did appoint from Day to Day till we had made an End of Polling.

Mr. Com. Serj. My Lord, I will give your Lordſhip an Account of that whole Day's Proceedings: We came to the Hall, and after Mr. Recorder, Sir *George Jefferies*, had attempted to ſpeak to the Hall, (for they were in ſuch a Tumult they would not ſuffer him to ſpeak) my Lord Mayor withdrew: There was a very great Clamour and Noiſe; but at laſt the Queſtion was put; and I came up with the Sheriffs hither, and acquainted my Lord, that Mr. *Bethel* and Alderman *Corniſh* had the moſt Hands, and that there was a Poll demanded between Mr. *Box* and Mr. *Nicholſon*, and Mr. *Bethel* and Mr. *Corniſh*; then the Diſpute lay as between *Box* and *Nicholſon*, and Alderman *Corniſh* and Mr. *Bethel:* I acquainted my Lord Mayor that was, Sir *Robert Clayton*, that Mr. Recorder ſaid he would not go down to make Declaration, they would not hear him: Upon that Sir *Robert Clayton* took a Paper and gave it to me, with theſe very Words: [It is the greateſt Tumult I was ever in all my Life, and I have ſome Reaſon to remember it.] Pry'thee, ſays he, do you make Declaration to them; for if they will hear any body, they will hear thee: Sir, ſays I, becauſe it is not the Duty of my Office, I deſire your particular Direction: Then, ſays he, tell them I muſt adjourn it till *Monday*, becauſe I muſt go to the *Old Baily*, to try the Aſſaſſinates of *Arnold:* Whereupon the Hall was adjourn'd, and in a great Tumult, and my Lord Mayor attempting to go out, he was beat back twice or three times; he ſpake ſomething to them, and they went away, leaving me and the Sheriffs upon the *Huſtings*, and there they kept us Priſoners till ſix or ſeven o'Clock at Night. On *Monday*, when we came to Poll again by his Direction, I went to his Houſe, and he gave me Direction to go with the Sheriffs to adjourn it: afterwards there was a Court of Aldermen purpoſely called, and, upon their Direction, I took the Poll and kept it, and every Adjournment was made by his particular Direction to me.

Sir *Robert Clayton.* Gentlemen, I do deſire I may explain myſelf, becauſe I was imperfectly heard: Some Part of the Story that Mr. Common Serjeant does ſay, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember, that Mr. Recorder was not willing to go down, there was ſuch a Hubbub; I remember that very well. The particular Words I ſaid to him, I cannot charge my Memory with; we had diſcourſed. I remember the Adjournment, and we diſcours'd of the Adjournment below; we made Proclamation, but the Noiſe was ſo great they could not hear; and upon my attempting to go out, I was beaten back twice or thrice, and then we were fain to let them know the Buſineſs we went about as well as we could, and then they let me go, and I left the Sheriffs with them to agree of the Manner and Methods of Polling. There were ſeveral Adjournments made afterwards; I can't charge myſelf with it: I might be particularly conſulted; but for the particular Times of Adjournment, I did not think myſelf concerned in point of Reputation; if I thought I had been blameable, I ſhould have concerned myſelf to have given more particular Directions.

Mr. *Thompſon.* If your Lordſhip pleaſe, I have but this; admitting the Right to be in the Lord Mayor——

L. C. J. Do you make a Doubt of it now?

Mr. *Thompſon.* Admitting it, thoſe Gentlemen that came to continue the Poll, it is a Queſtion whether they can be guilty of the Riot or not.

Mr. *W——*. There are ſome three or four of the Defendants that have a particular Caſe; that ſtands by themſelves; and it reſts upon this Point, Whether my Lord Mayor hath this Power or not? For ſo much of the Evidence as concerns any Noiſe or Hiſſing, or any thing of that, That relates to the Time of Adjournment; for it was done at the Time of the Adjournment. As for Mr. *Corniſh*, Mr. *Goodenough*, my Lord *Grey*, and one or two more, they did not come till within ſome three Hours after that, ſo that they cannot be engaged in the Noiſe, or That.

L. C. J. It is no matter, they came time enough.

Mr. *Williams.* We have done, my Lord, with the general Evidence; we have ſomething to ſay in Defence of my Lord *Grey*; all the Evidence againſt my Lord *Grey* is this, that he was here about Seven a Clock at Night. For that, Gentlemen, we ſay this; that my Lord *Grey* had ſome Buſineſs here, and my Lord's Buſineſs was this; my Lord *Grey* was here about the Sale of a Manor in *Eſſex* with Sir *William Gulſton*; my Lord, they had appointed this very Day for that Buſineſs, it was my Lord's Intereſt mightily to purſue it, and Sir *William* happened to be at Sir *Thomas Player*'s, and knowing this to be an Election-day, my Lord dined that Day at an Eating-houſe in the *Hay-Market*, and afterwards came to *Peter*'s Coffee-Houſe in *Covent-Garden*, and ſtaid there till between Four and Five a Clock in the Afternoon, when he thought the Heat would be over; and then he came to make Inquiry after Sir *William*, and took up in *Bruen*'s Coffee-houſe about Five or Six a Clock; there he continued quiet in the Houſe till all the Noiſe was over; then he ſent to inquire for Sir *William Gulſton*, and hearing he was at Sir *Thomas Player*'s, he and Sir *William* went to a Tavern, and there they treated, and finiſhed the Affair. My Lord, we will prove it; Call Mr. *Ireton.*

Mr. *Ireton.* My Lord, I know that at this very Time my Lord *Grey* was treating with Sir *William Gulſton* about the Manor of *Corsfield* in *Eſſex*, and my Lord *Grey* and Sir *William Gulſton* had appointed to meet that Night at t'other End of the Town, if the Poll were ended. In the Evening I met my Lord *Grey*, who told me he had been with Sir *William Gulſton* in *London*, and had diſpatch'd the Buſineſs.

L. C. J. Did my Lord tell you ſo?

Lord *Grey.* He treated for me, my Lord, with him.

L. C. J. Pray, for God's-ſake, you muſt lay your Matter a little cloſer together; if he was to treat about the Purchaſe of a Manor, was there no convenient Place for Company to treat about it, but while they were caſting up the Poll-books with the Sheriffs and *Goodenough?* Was that Place fit?

Mr. *Holt.* My Lord had appointed to ſpeak with Sir *William Gulſton* that Day in *Covent-Garden*, if the Poll had been over; but not finding him there, came into the City.

Lord *Grey.* That Gentleman went between Sir *William Gulſton* and I.

L. C. J. Where were you to meet?

Lord *Grey.* At the *Roſe* Tavern in *Covent-Garden.*

L. C. J. What made you here then?

Lord *Grey.* Not finding him there, I came hither, and ſpake with Sir *William Gulſton* in that very Room. The Poll was over, and the Company gone.

Mr. *Williams.* Mr. *Ireton*, Do you know there was any Treaty between my Lord *Grey* and Sir *William Gulſton* about the Sale of any Land?

Mr. *Ireton.* Yes, Sir, I do.

Mr. *Williams.* When was that Treaty?

Mr. *Ireton.* About a Twelve-month ſince.

Mr. *Williams.* Do you know they had any Diſcourſe about it?

Mr. *Ireton*, Sir, they had; I think it was *Midſummer-day*, the Day the Election of Sheriffs was.

Mr. *Williams.* Were they about that Treaty that Day?

Mr. *Ireton.* That Day, my Lord.

Mr. *Williams.* Where was the Treaty?

Mr. *Ireton.* In Sir *Thomas Player*'s Houſe.

Mr. *Williams.* What Time of the Day?

Mr. *Ireton.* About Twelve a Clock.

Mr. *Williams.* Where went my Lord afterwards?

Mr. *Ireton.* My Lord went to Dinner, as he told me, in the *Hay-Market.*

Mr. *Williams.* Did you know of any Appointment to meet again?

Mr. *Ireton.* I was informed ſo, but cannot poſitively tell.

Mr. *Williams.* Sir *Thomas Armſtrong*, Pray, Sir, will you give an Account where my Lord was that Day?

Sir *Thomas Armſtrong.* I came up this Way about Six a Clock, and was in a Coffee-houſe by *Guildhall.*

Mr. *Williams.* Do you know any thing about that Treaty?

Sir *Tho. Armſtrong.* I ſaw them together that Night. I ſaw them together at Sir *Thomas Player*'s about Twelve o'Clock, and again at Eight.

Mr. *Williams.* Do you know any thing of treating about this Land in *Eſſex?*

Sir *Tho. Armſtrong.* No, I do not.

Mr. Att. Gen. You did not ſee them in the Chamber?

Sir *Tho. Armſtrong.* Does any body ſay I did?

Lord *Grey.* My Lord, I will give you an Account of it.

Mr. *Williams.* My Lord, Mr. *Ireton* tells you this; my Lord *Grey* and Sir *William Gulſton* were in Treaty about buying theſe Lands that very Morning together; ſays Sir *Thomas Armſtrong*, about Noon; afterwards my Lord went to the *Hay-Market*, and ſtaid there till Evening, and my Lord and Sir *William* were together again at Night. My Lord, this Caſe will depend upon your Lordſhip's Directions. It is very plain, that my Lord Mayor of *London* hath the ſummoning the Common Hall, and when the Buſineſs is done he hath the diſcharging them. My Lord, if it be true what Mr. *Love* and others ſay, they tell you, that in all their Time, their Opinion is ſo, that it belongeth to the Sheriffs, and not to the Lord Mayor; what may be the Conſequence, lies in your Lordſhip's Opinion. Now for the Conſequence of it, if it were no more than a Matter of Opinion and Right, and the Sheriffs inſiſt upon it: Are theſe Defendants and the Sheriffs guilty of theſe Outrages? For there is nothing proved upon them. This don't make them guilty of any thing more than a bare continuing the Poll. Therefore, my Lord, I muſt ſubmit to your Direction, how far the Jury will find us, or any of us, guilty of a Riot in this Caſe.

Sir *Fr. Winn.* My Lord, we agree they did continue the Poll, and the Defendants did apprehend it was lawful for them ſo to do; if the Jury ſhould think they did miſapprehend what was the ancient Uſage of the City; if your Lordſhip ſhould be of Opinion, that by Law the Lord Mayor ought to do it; yet I do ſay, it being ſo probable a Caſe, their inſiſting upon it will not make it a Riot: Your Lordſhip will be pleaſed, I hope, to take notice of it, if they find the Mayor hath Power to adjourn it.

Mr. *Wallop.* I humbly conceive, that the Information does in truth deſtroy itſelf, for it is agreed on all Hands, as the Information ſets forth, that they came together upon very lawful Occaſions; and the Information ſets forth, that by Colour of their Office they did as if they were lawfully aſſembled. Now, my Lord, they have overthrown the Definition of a Riot, for a Riot is, when three or more are come together to do an unlawful Act, and they do it. So that it is a very hard matter to make this a Riot.

L. C. J. Does not this Matter appear upon Record?

Mr. *Holt.* No, no, my Lord, it don't.

Mr. *Wallop.* If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Miſdemeanours, this can never be a Riot. But, ſay they, here was an Adjournment, a Command by my Lord Mayor to adjourn the Court, and they continue after Adjournment: Now, my Lord, the Queſtion is, Whether he had Power to adjourn it or no, the Citizens did inſiſt upon it, that he had no Power. Now, Gentlemen of the Jury, if you find in your Conſcience, that the Citizens had a probable Cauſe, and they inſiſt upon it, this can never be a Riot.

Mr. *Holt.* It doth appear that they were lawfully aſſembled together. And for the throwing off my Lord Mayor's Hat, ſuppoſe that my Lord Mayor hath a Power for to adjourn the Court, yet, my Lord, it muſt be agreed, that thoſe that come thither muſt have a convenient Time to depart; for my Lord Mayor, as ſoon as ever he had adjourn'd the Court, he went away, and all the Hall could not go of a ſudden, but muſt have a convenient Time to go; ſome followed him immediately, and the other Gentlemen that ſtaid behind, not at all conſenting to that rude Action about my Lord Mayor, cannot be guilty, for there is no Proof of any Miſcarriage committed by any of theſe Defendants; it may be there was ſome Diſcourſe concerning the Power of my Lord Mayor. I only mind your Lordſhip of Sir *Robert Atkins*'s Caſe, a late Caſe in the *King's-Bench*; there can be no Aſſembly to chooſe an Alderman, as in that Caſe, unleſs the Mayor was there; the Aſſembly was held, and yet, Gentlemen, becauſe it was not done in a tumultuous manner, but with a good Intent, it was held, that Sir *Robert Atkins* was not guilty of a Riot. There muſt be an evil Intention to do ſome Miſchief.

Mr. —— *Turner* brought his Action againſt Sir *Samuel Starling* for diſſolving the Hall: And, my Lord, that being the Caſe of the Election of a Bridge-maſter, ſurely there is a parallel Reaſon for the Sheriffs.

L. C. J. That Caſe is againſt them.

Mr. —— No, my Lord.

L. C. J. There the Lord Mayor hath a Power by Law to diſſolve the Aſſembly, tho' in truth he ſhould not have done it.

Mr. Sol. Gen. The Action was brought for denying a Poll, my Lord.

Mr. *Thompſon.* It is laid in that Declaration, that it is the Cuſtom of the City, that my Lord Mayor cannot diſſolve.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have now heard all the Evidence *———

* *The Counſel clamour'd.*

L. C. J. Gentlemen, you ſhall not over-rule me ſo; Becauſe I am willing to hear every body, therefore you impoſe upon me. You ſhall have Law, by the Grace of God, as far as I am able.

Mr. *Att. Gen.* We have now done with the Evidence on both Sides, and you do now ſee the Right of the Lord Mayor, notwithſtanding all the vulgar and popular Diſcourſes is aſſerted; it appears now upon full Evidence, they themſelves do not contradict it, that my Lord Mayor is the ſupreme Magiſtrate of this City, both for calling all your Aſſemblies, and for diſſolving them; they won't pretend againſt this; but indeed they make a Queſtion whether my Lord Mayor can adjourn or no. Neceſſity of Affairs requires it ſometimes, if there be ſuch a Tumult, ſuch an Interruption, that they cannot proceed orderly; or if the Matter be ſo long that they can't determine it in one Day, there is a Neceſſity that there muſt be an Adjournment to another Time; and they give you no Inſtances, Gentlemen, that ever the Sheriffs in any Age did attempt it, never any Sheriffs made an Adjournment of his own Accord. Mr. *Love*, he gives no Inſtance of an Adjournment, he only tells you of his Supremacy at that time when my Lord Mayor had nothing to do with it; and, Gentlemen, at that time you muſt remember when he was elected, the Law was otherwiſe when Mr. *Love* was elected; then the Sheriffs were the Tribunes of the People, and they had ſhut my Lord Mayor quite out of their Common Hall, and declared, that he had no Power to diſſolve or adjourn them. The next Inſtance is that of Sir *Robert Clayton*'s, and how do they make that out? Sir *Robert Clayton* ſwears only upon his own Memory, and what is that? He remembers juſt nothing. He does think the Common Serjeant does ſpeak Truth in ſome Things, but he can't remember other Things. But we prove not only an Adjournment from *Saturday* to *Monday*, but other Adjournments by ſpecial Direction from Sir *Robert Clayton.* So that whatever Mr. *Love* did fancy of the Authority of Sheriffs, to tell my Lord Mayor he had nothing to do therewith; yet that my Lord Mayor is certainly the Chief Magiſtrate, we have proved all along to this preſent Time, till within theſe two or three Years, and whenever there was an Adjournment, we have proved it to you, that it was by my Lord Mayor. So that it is nothing like the Caſe put by the Gentlemen on the other Side; there was never any Shadow of Pretence for Right. Whoever knows *London*, muſt know the Sheriffs of *London* are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County, granted to be choſen by the Sheriffs: They are in their particular Caſes Judges, for chooſing Parliament-men, but in no Coporation Act whatſoever: So that, Gentlemen, you ſee there is no Pretence for that: But admit there were, what is it like the Caſe when a Man lays Claim to a wood, and he ſends three or four Perſons, or half a dozen Perſons to cut it down? Yet, Mr. *Wallop*, notwithſtanding your Authority, tho' that be not a Riot, it is a Rout, where you will ſend ſuch a Number to raiſe Terror in the King's People, and they will continue together after they are commanded to depart by a Magiſtrate. But it is a different thing where Men will concern themſelves in a Matter of publick Government, as if any Man ſhould pretend he hath the King's Commiſſion to take your Lordſhip off the Bench.

So that here is quite a different thing; this relates immediately to the Government; here the publick Peace of the City is in Danger, and if my Lord Mayor had been a Perſon of great Spirit, and had preſently raiſed others to have ſuppreſs'd this Riot, then the City had been in a fine Condition, by theſe People that would have *No God bleſs the King*, but *God bleſs the Sheriffs.* There is no Pretence of Right can juſtify ſuch a thing: Now, my Lord, for a Riot, this muſt be acknowledged to be; for many to meet together to do an unlawful thing, is a Riot.

Mr. *Wallop.* And do it.

Mr. Att. Gen. And do it, I put in that too, Sir. The Meeting here is unlawful, and it is as certain that my Lord Mayor hath Power to adjourn, that is a Conſequence of Law, if the Adjournment be neceſſary, and he is the only Judge of Adjournment; and when he hath adjourn'd, I do ſay the continuing Perſons together to do that, which if they had ſummon'd them to do had been unlawful, is as much an unlawful Thing, and a Riot, as that. I would fain know, if the Sheriffs had ſummon'd all the Citizens together to meet and chooſe Sheriffs, or any others, would any Man queſtion but this is an unlawful Act, a Subverſion of the ancient Government of the City, the uſurping an Authority in the City contrary to the King's Grant and the Charter? And after they are adjourn'd, if they will make Proclamation, and order the People to ſtay, and go on with the Poll, is not that the ſame thing in point of Law? Surely no Man almoſt of common Senſe but will ſay, it is the ſame thing. In the Caſe that Mr. *Wallop* puts, if there be any Diſorders committed, precedent to the Magiſtrate's diſſolving the Society; that will not amount to a Riot; but if the Magiſtrate comes and makes Proclamation for them to depart, and they ſtay after, it makes a Riot, if they continue ſtill together, it is a Rout and an unlawful Aſſembly. But they ſay there is no Proof that theſe Gentlemen, that are in the Information, are guilty of the Riot; they are all Parties to the Riot, the very being there, and giving Countenance to it, is an unlawful thing. Pray, Gentlemen, if Ten Men ſhould go to rob a Houſe, and one ſtands off at a Diſtance, is not the Tenth Man guilty of the Burglary? If there be as many Perſons together, and Three only do an unlawful Act, and the others give Protection, for Number is always a Protection, are not all theſe Gentlemen guilty? And therefore, Gentlemen, it is hoped you will ſettle the City by deſtroying this Pretence, which hath been fluttering in the Air, but hath no Ground for it.

L. C. J. Gentlemen of the Jury, this is an Information againſt ſeveral, for a Riot, and it ſets forth, that there was a Common Hall that was call'd by the Lord Mayor for chooſing ſeveral Officers, and that afterwards the Lord Mayor did diſſolve that Aſſembly, and yet notwithſtanding the Defendants (ſo many as by-and-by I ſhall name to you, that they have given Evidence againſt, they) kept together and committed a Riot; it is ſaid ſo particularly in the Information. For the Matter in Fact that hath heen altercated between them, the Queſtion is, whether the Lord Mayor for the Time being hath Power in himſelf to call an Aſſembly, and to diſſolve it? And truly as to this Point, even the Counſel for the Defendants did one while grant it, but another while did bring Witneſs that did know nothing of the Matter, I muſt needs ſay. But for aught I ſee, even until this very time, the Lord Mayor did call the Aſſembly, and he did diſſolve it, and that they did ſeem to grant even at the Beginning of the Cauſe: But then they make a Diſtinction, but he could not adjourn it to a certain Time. That was a very weak thing to ſay, that if the Lord Mayor may call and diſſolve the Hall, that he cannot adjourn it to a convenient Hour. Suppoſe now the Buſineſs to be done was not diſpatched ſooner than this time a-night, ſo that upon the Matter they muſt be either adjourned till To-morrow, or kept in the Hall all Night: Does any Man think, that that Magiſtrate that hath Power to call and diſſolve, hath not Power to adjourn? There is no Man doubts of it in Fact or Law; and that it was ſo, Sir *Robert Clayton* did that very thing; if there had been no Precedent, it had been all one. But they make a great deal of Buſineſs of it, how that the Sheriffs were the Men, and that the Lord Mayor was nobody, and that ſhews it was ſomewhat of the Commonwealth's Seed, that was like to grow up among the good Corn.——* Pray, Gentlemen, that is a very undecent Thing; you put an Indignity upon the King, for you ought not to do it, if you knew your Duty: Pray, Gentlemen, forbear it, it does not become a Court of Juſtice.

* *Here the People humm'd and interrupted my Lord.*

I will tell you, when Things were topſy-turvey, I can't tell what was done, and I would be loth to have it raked up now. They might as well (as I perceive they have at another time ſaid) have ſaid, that the Power of diſſolving and adjourning might have been in the Livery-men, all People, every body; and ſo then if they had been together by the Ears, I don't know who muſt have parted them, that is the Truth of it. But I think their own Counſel are very well ſatisfied both in Fact and Law, that the Lord Mayor, for the Time being, hath this Power of calling, diſſolving, and adjourning the Aſſembly. Then there is another thing that is to be conſidered, and that is this; the Defendants they ſay, We did miſtake the Law, it was only a Miſtake of the Law, and nothing elſe; and we did do all to a good Intent, and therefore it muſt not be a Riot. To give you ſome Satisfaction in that: Firſt, I muſt tell you, that a Man muſt not excuſe himſelf of a Crime, by ſaying he was ignorant of the Law; for if ſo be that turn to an Excuſe, it is impoſſible to convict any Man; if ſo be he muſt be excuſed becauſe he did not know the Law, then no Man would be found guilty. But if it appear, that the Defendants did verily believe that the Law was for them, that may be conſidered in another Place; if ſo be that they were really ignorant, the Fine, it may be, may be the leſs, but it won't excuſe them from all. But truly, in the next Place, you muſt conſider, whether or no theſe Gentlemen were ignorant, or whether or no they did not, in a tumultuary way, make a Riot to ſet up a Magiſtracy by the Power of the People. For I muſt tell you, I have not heard by the Defendants, and I will appeal to your Memory, I have not heard, before this Time, that ever the Sheriffs did quarrel with the Mayor, or continue a Common Hall after the Mayor had adjourned it. As for theſe Gentlemen, they could not be ignorant of it, becauſe the daily Practice before their Eyes was for the Mayor to do it. But this was a new Notion got into their Heads, tho' it was otherwiſe before, it muſt be ſo now; and one ſaid, they would have no Tory Mayor to be Mayor; thus the King ſhould have ſomething to do to ſupport the Mayor by his Power, for aught I know. Now, Gentlemen, for the Parties that are accuſed to be in it, there is *T. Pilkington*, *Samuel Shute*, *Henry Corniſh*, Lord *Grey*, Sir *Thomas Player*, *Slingsby Bethel*, *Francis Jenks*, *John Deagle*, *Richard Freeman*, *Richard Goodenough*, *Robert Key*, *John Wickham*, *Samuel Swinock*, and *John Jekyl* the elder; ſome Witneſſes are to ſome, and others to others, but ſome of them have ſeven or eight Witneſſes. There is *Pilkington*, and *Shute*, and *Corniſh*, theſe had a great many Witneſſes againſt them; others have two. Firſt, for the Sheriffs, and Mr. *Corniſh*, that had been Sheriff but two Years before, they kept them together after my Lord Mayor was gone; and to ſee what People they were, No, *Not God bleſs the King*, no, no, *but the Proteſtant Sheriffs*; ſo that in truth the King muſt be put out of his Throne, to put theſe two Sheriffs in it. It is not proved, that either of theſe did ſay ſo, nor the others neither, but they were thoſe that clung to them, and they would help them, and they would ſet them to rights, and I know not what; and there is no other way to know in this Caſe what they were, but by theſe they kept Company with; and it may be, (I would be loth to ſay ill, it may be) it was in order to dethrone the King as far as they could; for my Lord Mayor, when truly he had adjourn'd the Hall, and was going home, he had like to be trod under Foot himſelf, his Hat was down, and that was the great Reſpect they gave to his Majeſty's Lieutenant in the City. It is true, it cannot be ſaid who it was, but thoſe were the People that would have *No God ſave the King*, and thoſe the Mayor had nothing to do with. The Sheriffs they would go on to poll, and caſt up their Books, and would make a Diſquiſition who had moſt Hands, and the like; three hours after my Lord Mayor was gone, there were ſo many that did countenance and foment this ſort of Proceedings. There is a ſhrewd Act that was made ſince his Majeſty came in, that the Villany of ſome Men might be ſtopp'd, thirteenth-fourteenth of the King, that for Words in ſome Caſes makes High Treaſon; it is well his Majeſty does not take any ſevere Proſecution, but I can tell you, I would not have Men preſume upon it. It can't be ſaid, You or you ſaid ſo; yet they kept them together, they were they that kept all this Rabble three Hours together; the Lord Mayor does adjourn the Court, and they muſt have ſome time to be gone, and thereupon would perſuade us they could not get away in three Hours; they aſk for a Poll, and caſt up the Scrutiny, and I know not what. There are ſome, and that is my Lord *Grey* and Mr. *Goodenough*, how theſe two ſhould come there I know not, they had nothing to do here, and therefore I doubt it will be worſe upon them than upon the reſt, for they had nothing to do here, they muſt come to ſet the Citizens together by the Ears. My Lord *Grey* he ſays, and hath called ſome Witneſſes, that he had Buſineſs with Sir *William Gulſton*, about the Sale of *Corsfield* in *Eſſex*; but I do not ſee any of his Witneſſes that do ſay he came to ſpeak with Sir *William Gulſton* here, he came here to ſee how the Poll went. But, look you, Gentlemen, he hath given ſome ſort of Evidence, and the Counſel did open it very fairly, but the Evidence did not come fully. If you think he did only come upon real Occaſions to Sir *William Gulſton*, only to ſpeak to him about that Buſineſs, and concern'd himſelf no otherwiſe, then you will do well to find him Not guilty; if you do not, you muſt find him likewiſe as well as the reſt, for *Goodenough* he was here to promote the Matter. There is one, and truly he ſaid, that for his part, as the reſt would have *No God bleſs the King*, ſo truly he would have *No Tory Mayor*. And all this Flame, I muſt tell you, took Fire from this Spark, that the Sheriffs might do what they thought fit about chooſing Officers. Gentlemen, it hath been a long Trial, and it may be I have not taken it well; my Memory is bad, and I am but weak: I don't queſtion but your Memories are better than mine; conſider your Verdict, and find ſo many as you ſhall think fit.

The Jury withdrew, and in ſome time returned.

Are you all agreed of your Verdict?

Jury. Yes.

Who ſhall ſpeak for you?

Jury. The Foreman.

Do you find the Defendants Guilty of the Treſpaſs and Riot? *&c.*

Foreman. We find them all Guilty in that Paper.

This is your Verdict?

Jury. Yes.

T. Pilkington, *S. Shute*, *H. Corniſh*, Lord *Grey*, Sir *Thomas Player*, *S. Bethel*, *F. Jenks*, *J. Deagle*, *R. Freeman*, *R. Goodenough*, *R. Key*, *J. Wickham*, *S. Swinock*, and *John Jekyl* the Elder, are Guilty.

You ſay they are all Guilty? *&c.*

Jury. Yes.

On the 15th of *June* following, Mr. *Attorney-General* moved in the Court of *King's Bench* at *Weſtminſter*, that Judgment might be awarded againſt them upon their former Conviction, in order to their being fined for the Riot, *&c.* But the Lord Chief Juſtice *Saunders*, and Mr. Juſtice *Raymond*, by reaſon of their Indiſpoſitions, being neither of them on the Bench, Mr. Juſtice *Jones*, with the Conſent of Mr. *Attorney General*, referred it to the 19th Inſtant, when Mr. *Attorney* again moved for Judgment, alledging the Heinouſneſs of the Crime, *viz.* That it was an open Affront to Juſtice and Magiſtracy, and might prove an evil Precedent, if it ſhould eſcape unpuniſh'd, which he prayed it might not do; but that ſince they had been fairly convicted, the Court, in purſuance thereof, would award ſuch Fines as might deter others from the like Attempts, *&c.* Upon this Motion Mr. *Williams*, of Counſel for the Defendants, moved, That ſeeing there had firſt a *Venire* been directed to Mr. *Pilkington* and Mr. *Shute*, late Sheriffs of *London*, and afterward an *Alias Venire* to the preſent Sheriffs, and yet that in the Information all the Defendants were joined, tho', as he ſuggeſted, that at the time of the firſt *Venire* ſome of them were not made known, and that ſince Mr. *Pilkington*, Mr. *Shute*, *&c.* had appeared upon the firſt, and many of the others not till the ſecond; he humbly prayed, that an Error might be thereon aſſigned.

To which the King's Counſel reply'd, That if any Prejudice was ſuſtained in the Methods and Manner of Proceeding to the Trial of the Perſons convicted of the Riot and Battery, it was ſuſtained on the Part of the King; and ſeeing he was willing to diſpenſe with it, that not in the leaſt affected the Defendants, unleſs in redounding to their Advantage; for that they had a legal Trial, all of them pleading Not guilty, and putting themſelves upon their Country, to try the Iſſue between the King and them, which Country had found them guilty of the Offences before-mentioned, and that now nothing remained but the Judgment of the Court in awarding their Fines, *&c.*

To this it was alledged, that ſeeing they were aſſembled in *Guild-hall* upon a lawful Occaſion, they could not be guilty of a Riot, or the like Miſdemeanour, the Legality of their firſt Aſſembling not admitting thereof: But this Allegation was over-ruled for theſe Reaſons; That altho' an Aſſembly be never ſo legally conveened, yet if they tumult or break the Peace, the Legality of the Aſſembly cannot bear them out: And moreover, that when the Lord Mayor had adjourned the Poll, the Aſſembly was no longer a lawful Aſſembly, but ought immediately to have departed to their reſpective Habitations, which the Defendants not only delayed to do, but in Contempt of Authority continued the Poll, and in a riotous manner aſſaulted the Perſon of the Mayor. And that for Inference, If a Congregation be aſſembled at a Church, to hear Divine Service, which in itſelf is lawful; yet if Blows happen, or a riotous or diſorderly Tumult is made, the Legality of the Meeting ſhall in no wiſe excuſe the Authors of ſuch Diſorders from the Penalties of the Law, *&c.* of which Opinion were not only the Counſel for the King, but the Judges likewiſe.

Theſe, and ſuch-like, being the Arguments of this Day, Mr. Juſtice *Jones* being indiſpoſed, and Mr. Juſtice *Raymond* not coming upon the Bench, the paſſing Sentence was deferred till *Friday* the 22d Inſtant, and from thence till *Monday* the 25th Inſtant, at which time Mr. Juſtice *Jones* being indiſpoſed, it was put off till *Tueſday*, the 26th of *June*; when Mr. *Attorney* moved for Judgment, requiring, that the Parties found guilty upon the Information, might be fined; and was ſeconded by Mr. Serjeant *Jefferies*; both of them praying, that they might have good Fines ſet on them, as an Example to deter others from the like Attempts; as alſo did Mr. *Jones*, of Counſel for the King; when, on the other Side, Sir *Francis Winnington*, Mr. *Williams*, Mr. *Wallop*, Mr. *Pollexfen*, Mr. *Thompſon*, and Mr. *Holt*, of Counſel for the Defendants, urged many Arguments for the Extenuation of the Fines, ſeeing they were at the Mercy of the Court, alledging, That the Defendants, did that of which they were convicted rather out of Ignorance than Malice, or any Deſign they had to injure or affront the Goverment; as not being then capable to determine, whether the Right to adjourn the Common Hall lay in the Lord Mayor or Sheriffs. But after the Arguments on both Sides had been heard, Mr. Juſtice *Jones* proceeded to declare the Heinouſneſs of the Fact, and what an evil Precedent it might prove if it ſhould paſs unpuniſhed; and after ſome Conference with Mr. Juſtice *Withens*, he proceeded to award their Fines as followeth:

On *Thomas Pilkington*, Eſq; by reaſon of his being a Priſoner, only 500*l.* *S. Shute*, Eſq; 1000 Marks, *Ford* Lord *Grey* of *Werk* 1000 Marks, Sir *Thomas Player*, *Kt.* 500 Marks, *Slingsby Bethel*, Eſq; 1000 Marks, *H. Corniſh* 1000 Marks, *Francis Jenks* 300 Marks, *R. Freeman* 300 Marks, *R. Goodenough* 500 Marks. *John Deagle* 400 Marks, *Robert Key* 100 Marks, *John Wickham* 100 Marks, *S. Swinock* 500 Marks, and on *John Jekyl*, ſenior, 200 Marks; all of them appearing in Court, except the Lord *Grey*, Mr. *Key*, and Mr. *Goodenough*, and according as they appeared to be of Ability, ſo were their Fines regulated.

This Judgment was afterwards reverſed in Parliament, 1 *Wil.* and *Mary*; and the Defendants petition'd, that the Proſecutors and Judges might be excepted out of the then intended Act of Grace.

To

To the KING's moſt Excellent MAJESTY.

The humble Petition of Sir Thomas Pilkington, *Knt. Lord Mayor of* London, Slingſby Bethel, *Eſq*; Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, *and* John Wickham, *in behalf of themſelves, and of the reſpective Executors and Adminiſtrators of Sir* Thomas Player, *Kt. deceaſed*, Henry Cornish, *Eſq*; *deceaſed*, Samuel Shute, *Eſq*; *deceaſed*, *and of* Francis Jenks, *deceaſed.*

SHEWETH,

THAT your Petitioners, and the ſaid deceaſed Perſons, were, in the Year 1682, and 1683, by the Contrivance and Confederacy of Sir *John Moore*, Kt. Sir *Dudley North*, Kt. Sir *Peter Rich*, Kt. Sir *Edmund Saunders*, Kt. late Chief Juſtice of the *King's-Bench*, and ſome others, proſecuted and convicted for a Riot; the Fact objected againſt them being no other in truth, than the peaceable doing their Duties as Citizens of *London* and *Engliſhmen*, in Election of Sheriffs for the ſaid City and County of *Middleſex*.

That in the Proceedings upon the ſaid pretended Riot, many notorious Violations of the Law were committed, and your Petitioners denied common Juſtice by the Combination and Confederacy of the Perſons laſt abovenamed, and others; inſomuch that your Petitioners, and the ſaid deceaſed Defendants, were by Judgment of the Court of *King's-Bench*, in *Trinity Term* 1683, unreaſonably fined 4100*l.* and were, by Impriſonment and otherwiſe, forced to pay the ſame; which Sum of 4100*l.* was long ſince paid into the *Exchequer*.

That at your Petitioners Proſecution, the ſaid Judgment was reverſed, the laſt Parliament, as erroneous; whereby your Majeſty ſtands by Law liable to make Reſtitution of the ſaid Sum of 4100*l.* as your Petitioners are adviſed.

Now foraſmuch as your Majeſty's generous Undertaking in coming into this Kingdom, tended only for the vindicating and eſtabliſhing our Religion, Laws and Liberties, and for relieving the Oppreſſed; and for that it is agreeable to Equity, that ſuch as did the Wrong ſhould make the Reſtitution: And your Petitioners hoping the Parliament now aſſembled will take the whole Matter into their Conſideration, and paſs a Bill for Relief of your Petitioners out of the Confederates Eſtates, and not leave them to be ſatisfied by your Majeſty:

Your Petitioners therefore humbly beſeech your Majeſty, That the ſaid Confederates, the Proſecutors of your Petitioners, and the Judges, and Others concerned therein, may be Excepted in the Act of Grace, *intended by your Majeſty, as to All they did in relation to the Proſecution and Judgment upon the pretended* Riot *above ſpecified.*

And your Petitioners ſhall always pray, *&c.*

This Act of Grace is 2 *Gul. & Mar. c.* 10. but there is no ſuch Exception in it, only of Sir *Francis Withens*, who was excepted upon other Accounts.

CXVI. *The Trial of Sir* PATIENCE WARD, *Kt.* [*] *at the* King's-Bench, *for* Perjury *at the Trial between the Duke of* York *Plaintiff, and* Thomas Pilkington, *Eſq*; *Defendant, on an Action* [†] *upon the Statute* de Scandalis Magnatum. 19 May 1683. Paſchæ. 35 Car. II.

The JURY were,

Sir Thomas Bridges, *Kt.*
Henry Reynell, *Eſq*;
Thomas Herriott, *Eſq*;
Thomas Airſby, *Eſq*;
Richard Paget, *Eſq*;
John Foſter, *Eſq*;
Thomas Eaglesfield, *Eſq*;
Edward Mapleſden, *Eſq*;
John Sharp, *Eſq*;
James Suckle, *Gent.*
John Olinger, *Gent.*
Richard Fiſher, *Gent.*

AN Information had been preferred by the *Attorney General* againſt Sir *Patience Ward*, for that he had maliciouſly and wilfully perjured himſelf in the Court of *King's-Bench*, upon the Trial between the Duke of *York*, and *Thomas Pilkington*, Eſq; to which the defendant pleaded *Not Guilty*, and was tried *May* 19.

Cryer. Oyez: If any Man will give Evidence on the Behalf of our Sovereign Lord the King, againſt the Defendant Sir *Patience Ward*, let him come forth, and he ſhall be heard.

Mr. *Dolben.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, This is an Information of *Perjury* preferred againſt Sir *Patience Ward.* Whereas the moſt illuſtrious *James* Duke of *York* brought an Action upon the Statute *de Scandalis Magnatum* againſt *Thomas Pilkington*, wherein was declared, that, whereas he was the only Brother to our Sovereign Lord the King, the ſaid *Pilkington* did ſpeak in the hearing of divers of his Majeſty's liege Subjects, theſe falſe and Scandalous Words, *He hath burnt the City*, (meaning the City of *London*) *and is* (meaning the ſaid Duke) *come to cut our Throats.* Gentlemen, the Information ſets forth further, that the Defendant *Pilkington* pleaded he was *Not guilty*, and that upon the Trial of this Iſſue, Sir *Patience Ward* was produced as a Witneſs upon the Behalf of the Defendant *Pilkington*; and that the ſaid Sir *Patience Ward* then and there was duly ſworn to ſpeak the Truth, the whole Truth, and nothing but the Truth, in the Premiſes; and that the ſaid Sir *Patience Ward* did falſely and corruptly ſwear and give in Evidence to the Jurors empannelled to try the Iſſue aforeſaid, *That there was no mention at the Time of this Diſcourſe aforeſaid had between the ſaid* Thomas Pilkington *and divers of his Majeſty's Subjects, concerning the ſaid* James *Duke of* York, *that there was no mention of cutting of Throats, and that before Mr.* Pilkington (meaning the ſaid *Thomas Pilkington*) *came in*, (meaning the Time when the Diſcourſe aforeſaid was had) *the Diſcourſe about the Duke of* York *was over*; *and further, that the Duke of* York *was not named*, (meaning at that Time when the Diſcourſe aforeſaid was had) whereas in truth at the ſame time there was mention of cutting of Throats; and whereas, before Mr. *Pilkington* came in, the Diſcourſe concerning the Duke of *York* was not ended; and whereas the ſaid Duke of *York* was named at the Time when the Diſcourſe aforeſaid was had, ſo that the ſaid Sir *Patience Ward* in the Caſe aforeſaid did commit wilful and flat *Perjury.*

Sir *Robert Sawyer.* Mr. *Att. Gen.* My Lord, and you Gentlemen of the Jury, Sir *Patience Ward* the Defendant ſtands accuſed for *Perjury*, commited in a Cauſe, that was between the Duke of *York* Plaintiff, and Mr. *Pilkington* Defendant, and in that Cauſe Mr. *Pilkington* was accuſed to have ſpoken falſe Words of the Duke of *York*, *He hath burnt our City, and is come to cut our Throats*; to excuſe this, Sir *Patience Ward* he comes, and ſwears poſitively, firſt, *That the Duke of* York *was not mentioned in the Diſcourſe, and therefore thoſe Words could not be meant of the Duke of* York; this little Evaſion we don't trouble you with; but they related to one *Hubert*, hanged many Years before; however we will lay that aſide, and not trouble you with it. The next direct Matter, which proves it was maliciouſly done, that he was ſo ill a Man, and that he had ſpoken ſuch Words, he ſwears, *That all the Diſcourſe relating to the Duke of* York *was over before* Pilkington *came into the Room.* This Allegation is directly falſe, he ſwears poſitively, *there was no mention made of cutting Throats.* Gentlemen, we will firſt prove unto you the Words; then we will prove unto you that they were falſe, for *Pilkington* did ſpeak theſe Words of the Duke of *York.* Gentlemen, we will leave it to you whether this Gentleman hath not forſworn himſelf.

Mr. S. *Jeff.* If it pleaſe your Lordſhip, and you Gentlemen of the Jury, I muſt needs ſay, that this is a Cauſe of very great Conſequence of one Side and t'other; it concerns a very great Perſon, a Man that has been *Lord Mayor* of *London*, and I think is ſtill an *Alderman* of *London*; it is in its own Nature of very great Conſequence, it is no leſs than the charging him with the Crime of wilful *Perjury*; it comes to a publick Audience, as it was very requiſite it ſhould. The Crime we charge this Gentleman with was committed in this very Place, in the Face of this Court, and I think to the Admiration and Aſtoniſhment of all Perſons, that heard this Gentleman ſwear at that very Time: And therefore, that the thing may be intelligible to theſe Gentlemen, I ſhall crave your Lordſhip's Patience, to give an Account how this Matter was: This Matter was attended with Circumſtances of Malice, which ſhew it was not a Slip in Evidence, but a malicious perjuring himſelf, Gentlemen; and they are theſe. Upon his Royal Highneſs's Return out of *Scotland*, and coming to *Newmarket* to his Majeſty, a very loyal Gentleman, then Lord Mayor of *London*, Sir *John Moore* by Name, with ſome other Perſons, that I have in my Eye, had it in Proſpect, as it became them to do, to ſo great a Prince as he was, to wait upon him. My Lord, there being this Deſign of the Aldermen and Lord Mayor to attend upon his Royal Highneſs, to congratulate his Arrival from *Scotland*; in order thereto, upon a ſpecial Court-day, there was an Order made, that the Lord Mayor and Aldermen ſhould attend his Majeſty, to deſire his Leave, that they might come and attend likewiſe his Royal Highneſs, to congratulate his late Arrival. This I think was upon a ſpecial Court, before they went to Church, upon a *Sunday.* In order to this, there happen'd another Meeting of the Lord Mayor and Aldermen, to proſecute this Deſign of their's, to wait upon his Royal Highneſs, to congratulate his Arrival; and thereupon an Intimation was given to Sir *Patience Ward*, with one of the Sheriffs, *Pilkington*, of their Intentions. At which time, Sir *William Hooker*, and another worthy Gentleman, Sir *Harry Tulſe*, happening to be together in a Place, which I preſume ſome of you do well know, in the Long Gallery or Anti-chamber to the Council Room, where the Lord Mayor and Aldermen moſt uſually ſit, ſome Diſcourſe aroſe touching the Occaſion of their then Meeting; whereupon a Queſtion was propoſed, Whether they ſhould wait upon his Royal Highneſs or not? One of theſe Gentlemen was pleaſed to ſay, at that Time, that it was too late now the Court had determined it, there being then preſent this Sir *Patience Ward*, and theſe two Gentlemen along with Mr. *Pilkington* then Sheriff, who, in Objection to the Propoſal of waiting upon the Duke of *York*, (after this Diſcourſe was over, and after they had mentioned the Duke of *York*'s Name to him) ſaid, *He hath burnt the City, and is now come to cut the Throats of our Wives and Children.* This, Gentlemen, was to deter and fright the others from going, and given as a Reaſon why he would not go to attend the Duke of *York.* My Lord, this thing happening thus, an Action was brought for this, and came to a Trial before your Lordſhip. It is very true, in that Trial we did only produce Sir *Harry Tulſe*, that was preſent, and he ſwore to all the Words about *burning the City*, and likewiſe to the *cutting of Throats.* But Sir *Patience Ward*, without any manner of Heſitation; nay, and not only that, (I appeal to the Memory of thoſe that heard him ſwear at that Time) but boaſting himſelf, as having as good a Memory as any Man in *England*, (though he was cautioned at that time to have a Care what he ſwore) did poſitively ſay, *The Duke of* York *was not named after* Pilkington *was there*; that *the Diſcourſe of the Duke of* York *was done before he came in.* He doubled his Evidence on purpoſe to make the thing more plain. But afterwards, when it came a little further to be diſcourſed of, I appeal to the Memory of the Court, and the Gentlemen at the Bar, whether he did not flutter about in *St. James*'s *Park*, and out comes *Hubert*; the Duke of *York* was not named, but *Hubert*, *Hubert*, *I clapped my Hand upon his Mouth, ſays I, you mean Hubert*, and ſo we had got *Hubert* into the Cauſe on purpoſe to ſhuffle out the Buſineſs about the Duke of *York*. My Lord, after this (I do it to refreſh the Memory of theſe Gentlemen) he was poſitive, and ſaid, *I do poſitively ſay, there was not a Word of cutting of Throats*, even to the Surprize not only of all the Auditors, but even of all thoſe People that were concerned in Affection for him, as well as they who were engaged in the Cauſe that they were to ſupport. My Lord, in the firſt Place, we will give you an Account, that it was a deſigned and malicious Evidence, neceſſary for the bringing off that Man, for if there was not a Word ſpoken of the Duke of *York*, then our *Action* was no Action; if there was not a Word ſpoken of *cutting of Throats*, then, of conſequence, the Verdict muſt have been againſt us; and therefore finding there was but one Evidence, which was Sir *Harry Tulſe* againſt his Evidence, that made him ſwear ſo poſitively; but afterwards your Lordſhip may pleaſe to remember, we called Sir *William Hooker* a (Gentleman of well known integrity) to preſerve the Credit of ſo great a Prince, maugre the Malice of all his Enemies. I ſpeak this to ſhew it is fit, it is neceſſary to clear this Cauſe. In the firſt Place we will prove what is recited in this Record, and give you an Account what this Perſon did ſwear at the Time of the Trial. The Matters, that I have opened, I think they will ſufficiently ſatisfy the Court and the Jury, as they did ſatisfy the Jury before, that what Sir *Patience Ward* ſwore then, is falſe now, and was falſe then.

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[*] *Burnet*'s Hiſtory of his Own Times, Vol. I. p. 536.

[†] In this Action the Duke of *York* had recovered 100,000*l.* Damages

The Record of Pilkington's *Trial read.*

Mr. S. *Jeff.* Read the Information. *The Record was* Anno prædicto, *but when it was recited in the Information, it was* Anno ultimo ſupradicto.

Mr. *Ward.* It is neceſſary, when we come by way of Recital of the Record, to recite the very Words in the Record, now in the Record it is *Anno prædicto.*

Mr. *Williams.* My Lord, they are reciting the Record.

Sir *Edmund Saunders.* *L. C. J.* They do not recite it in *hæc verba*, the Subſtance is true, the Words are varying from the Record, in the Record they are *Anno prædicto*, but in the Recital, *Anno ultimo ſupradicto.*

Mr. *Williams.* That is not the ſame in Subſtance as to ſay *Anno prædict'*, *the Year beforeſaid*, there are many *Anni prædicti*, and that may refer to any of them; if there had been but one, it might have been ſo, but when there are ſeveral Years mentioned before, *Anno ultimo prædict'* reſtrains it to the laſt Year *prædict'*.

Mr. Attor. Gen. You may ſpend as much Time as you will; in the firſt Record there was but one Year mentioned.

Sir *George Treby.* Mr. *Recorder.* That the City of *London* was burnt in the Year 66; that was one Year mentioned before, I am ſure.

Mr. Attor. Gen. There are ſeveral Years mentioned in this Record; there we muſt ſay *ultimo prædict'*

L. C. J. The Objection is, That whereas it was in the Record *Anno prædict'*, here you have more, and when you recite *Anno prædict'*. you add *ultimo.*

Mr. S. *Jeff.* We could not do it otherwiſe, my Lord.

L. C. J. As if a thing could not be well except it were in ſuch preciſe Words: That was *Anno prædict'*; this, you ſay, is *Anno ultimo prædict'*. Now if the firſt had been *Anno ultimo ſupradict'*, and in this you had ſaid *Anno prædict'*, when ſeveral were mentioned, then it might have been an Objection; now it is not.

Mr. S. *Jeff.* If Sir *Patience* had been as exact in ſwearing, as you are in obſerving, he had done well enough.

——— Call Mr. *Hatch.* [*Who was ſworn.*]

Mr. *Williams.* Pray let's know your Name, Sir?

Mr. *Hatch.* My Name is *Hatch.*

Mr. S. *Jeff.* Pray, Mr. *Hatch*, was you preſent at the Trial between his Royal Highneſs and Mr. *Pilkington?*

Mr. *Hatch.* Yes, my Lord, I was preſent.

Mr. S. *Jeff.* Was Sir *Patience Ward* produced as a Witneſs?

Mr. *Hatch.* Sir *Patience Ward* was ſworn.

Mr. S. *Jeff.* What did he ſwear?

Mr. *Hatch.* He did ſwear, upon his Oath, That the Sheriffs were not preſent; that there were ſome Aldermen at the Table in the matted Gallery in *Guild-hall* ſmoking a Pipe of Tobacco, and that they had ſome Diſcourſe about waiting upon the King and the Duke, purſuant to an Order from my Lord Mayor the Day before, and he ſaid, the Sheriffs were not preſent.

Mr. S. *Jeff.* What Sheriffs?

Mr. *Hatch.* The Sheriff: And he did afterwards ſay, he did poſitively affirm, upon his Oath, that *Pilkington* did not come in till all the Diſcourſe was over about the Duke.

Mr. S. *Jeff.* What did he ſay about cutting of Throats?

Mr. *Williams.* Good Mr. Serjeant.

Mr. *Jones.* You ſay he poſitively ſaid, there was no Diſcourſe about the Duke of *York* after *Pilkington* came in.

Mr. *Hatch.* But then after, my Lord, he ſaid; I do poſitively affirm, upon my Oath, that *Pilkington* did not come in till all the Diſcourſe was over *concerning the Duke of* York. And further, there was Diſcourſe about burning the City by the Papiſts, ſaith *Pilkington*, *he hath burnt the City*; with that Sir *Patience Ward* took him by the Shoulder, ſaying, Explain yourſelf: What! you mean *Hubert, I warrant you? Yes*, ſaid he. He being aſked the Queſtion, Whether any thing of the *Duke* was named, he ſaid, *No:* And further, Whether there was not any mention of *cutting of Throats*, *he did poſitively ſay, There was no mention made of cutting of Throats.*

Mr. *Williams.* Mr. *Hatch*, Where were you placed at the Trial?

Mr. *Hatch.* At the Trial, Mr. *Williams*, I ſtood juſt there.

Mr. *Williams.* Had you a Pen and Ink about you?

Mr. *Hatch.* Yes, Sir, I write Characters.

Mr. *Williams.* Pray, Sir, did you take the Words in Writing then, or no, in the Court?——Mr. *Hatch. I believe I might, I can't poſitively tell.*

Mr. *Thompſon.* Have you your Notes here?—Mr. *Hatch. I think I have not.*

Mr. *Thompſon.* A Man of a good Memory.

Mr. S. *Jeff.* We have a matter of ſome thirty or forty Witneſſes; don't make ſuch a Rout.

Mr. *Pollexfen.* Mr. *Hatch*, you are repeating what Sir *Patience Ward* ſaid; Did he, in that Evidence, mention the Duke of *York*, or not?

Mr. *Hatch.* He ſaid, there was Diſcourſe about going to the King at *St. James*'s, but not to the Duke. Sir *George Jefferies* aſked him that very Queſtion.

Mr. *Pollexfen.* Let him now repeat the Evidence which he ſwore juſt before.

Mr. S. *Jeff.* I thought that would not have been ſuch a mighty Queſtion at this Time of Day.

Mr. *Williams.* I deſire he may ſay again what was ſworn by Sir *Patience Ward.*

Mr. S. *Jeff.* Begin and repeat, Sir, in what manner he ſwore, in the very ſame Form he ſpake then.

Mr. *Hatch.* Sir *Patience Ward*, being ſworn and examined upon the Account of Mr. *Pilkington*, did ſay, That *there were ſome Aldermen met at the Matted Gallery, the Matted Chamber in* Guild-hall, *and ſmoaking a Pipe of Tobacco, and there was Diſcourſe of waiting upon the King, and the Duke, purſuant to an Order of the Lord Mayor the Day before*; and being aſked, Whether Mr. *Pilkington* was not preſent, he ſaid, *The Sheriffs were not preſent, but at the Court of taking Licences in* Guild-hall, *and that there was a Diſcourſe about burning the City by the Papiſts, and*, ſays Mr. *Pilkington*, *Hath he burnt the City? Hath he burnt the City? Upon that, Sir* Patience Ward *took him by the Shoulder, and bid him explain himſelf: You meant* Hubert, *I warrant you*, ſaith he. *Yes*, ſaith *Pilkington*; and being aſked, Whether there was any Diſcourſe about the Duke of *York*, he ſaid *No*; but poſitively ſaid, that *there was no mention made of cutting of Throats.*

Then Mr. Boxton *was ſworn.*

Mr. *Williams.* Your Name, Sir.

Mr. *Boxton.* My Name is *Boxton.*

Mr. S. *Jeff.* Mr. *Boxton*, will you tell my Lord and the Jury, whether you remember what was ſaid by Sir *Patience Ward?*

Mr. *Boxton.* My Lord, I was preſent at his Trial, I happened to return the Jury.

Mr. S. *Jeff.* Pray will you tell my Lord and the Jury, what was ſaid by Sir *Patience Ward?*

Mr. *Boxton.* My Lord, I was preſent at this Trial, having returned the Jury that was to try that Cauſe of his Royal Highneſs: I was above in the Gallery, and I could not ſo well underſtand it; but as that Gentleman ſaid before, he was ſaying, *he heard no mention made of cutting of Throats*; I can't ſay the very Words, for I took no Notes.

Mr. *Williams.* You were in the Gallery then?

Mr. *Boxton.* Yes, Sir.

Mr. S *Jeff.* Pray, Mr. Aſton, I think you was preſent.

Mr. *Aſton.* I was preſent in the Court that Day, and I do remember, that Sir *Patience Ward* did ſwear, I think poſitively, to the beſt of my Remembrance, that *the Duke of* York *was not named while Mr.* Pilkington *was by.* That is all I do remember.

Mr. S. *Jeff.* What do you mean by *poſitively?* that he uſed the Word *poſitively?*

Mr. *Aſton.* I think I am pretty ſure he did take it *poſitively*, or *upon his Oath.*

Mr. S. *Jeff.* What he did take poſitively?

Mr. *Aſton.* That the Duke of *York* was not named while Mr. *Pilkington* was by.

Mr. S. *Jeff.* Do you remember any thing elſe?

Mr. *Aſton.* As to *cutting of Throats*, I do not remember it. Several People have aſked me, and I gave them that Relation, or elſe I believe, *that* had been out of my Mind.

Mr. Wood *ſworn.*

Mr. S. *Jeff.* Mr. *Wood*, pray will you give my Lord and the Jury an Account of what you heard Sir *Patience Ward* ſwear, in the Cauſe between his Royal Highneſs and Mr. *Pilkington.*

Mr. *Wood.* My Lord, I was in Court when Sir *Patience Ward* gave Evidence for Mr. *Pilkington*, and I heard Sir *Patience Ward* ſay, that *the Duke of* York *was not named*; and that *the Diſcourſe concerning the Duke was over before Mr.* Pilkington *came in*, and that *there was no mention of cutting of Throats.*

Mr. *Jones.* Did he ſwear theſe Things poſitively, or as he believed, or heard?

Mr. *Wood.* To the beſt of my Remembrance, I think he clapt his Hand upon his Breaſt, and ſaid *poſitively there was no mention of cutting of Throats.*

Mr. Attor. Gen. Do you ſpeak of your beſt Remembrance as to his Poſture, or to the Word?

Mr. S. *Jeff.* Did he ſay that Word *poſitively?*

Mr. *Wood.* To the beſt of my Remembrance, he ſaid *poſitively*, or *upon my Oath*; one of them he did ſay, I can't tell which.

Mr. S. *Jeff.* Either he ſaid *poſitively*, or *upon my Oath.* Now, my Lord, if your Lordſhip pleaſes, we have given your Lordſhip and the Jury, a ſufficient Account how *poſitive* this Gentlemen was; but as poſitive as he was at that Time, we will give you an Account, that he did forſwear himſelf.

Swear Sir James Smith *(which was done).*

Mr. Attor. Gen. Pray will you tell the Court what you can ſay?

Sir *James Smith.* I did little think to be called to give any Evidence upon the Account of Sir *Patience Ward*, conſidering the Relation that is between us, as Aldermen. I did not take particular Notice, but I do remember, that he uſed that kind of Poſture as they ſay, and did *poſitively*, or *upon his Oath*, ſay, I can't be certain of the Words he uſed, that *Mr.* Pilkington *was not there while they were diſcourſing concerning going to* St. James's, *for he did declare, the Duke of* York *was not talked of*, and I do remember a very good Circumſtance that he did ſwear ſo, for my Lord Chief Juſtice *Pemberton* was pleaſed to apply himſelf to Sir *Harry Tulſe* upon it; and I remember Sir *Harry Tulſe* made Anſwer, *I am very ſorry to ſay it, he was there all the while.*

Mr. Att. Gen. Did you hear any thing about *cutting of Throats?*

Sir *James Smith.* I don't remember that.

Sir William Rawſterne *ſworn.*

Mr. Serj *Jeff.* What ſay you, Sir *William Rawſterne?*

Sir *Will. Rawſterne.* My Lord, I was here, but I took no particular Notice, but I do remember, that Sir *Patience Ward* did ſay, that the *Duke was not named when* Pilkington *was in the Room*; I can ſay nothing elſe.

Mr. *Jones.* Did you hear him ſwear it?

Sir *Will. Rawſterne.* Yes, Sir.

Mr. Serj. *Jeff.* Sir *James Smith*, did he ſwear it upon his Oath?

Sir *Ja. Smith.* My Lord, I ſaid before, I cannot ſay the Word he expreſſed it in, but either *poſitively*, or *upon his Oath, he was not there all the while that Diſcourſe was.*

Mr. *Pollexfen.* Firſt he ſays, the Diſcourſe was of going to *St. James*'s.

Sir *Ja. Smith.* My Lord, as I ſaid before, he did declare, that the Sheriff that then was, Mr. *Pilkington*, was not by while they were diſcourſing of going to *St. James*'s, for he ſaid they did not ſpeak of the Duke of *York*; but the Diſcourſe was about going to *St. James*'s and that Diſcourſe was at an End before Mr. *Pilkington* came in; and while they were talking about firing the City, upon that Mr. *Pilkington* ſaying, *he hath fired the City*, he deſired him to explain himſelf, whether he did not mean *Hubert.*

Sir John Peake *ſworn.*

Mr. Serj. *Jeff.* Sir *John Peake*, I deſire to know what you can ſay?

Sir *John Peake.* I was preſent at the Trial, and Sir *Patience*, I do remember this, laid his Hand upon his Breaſt, and either ſaid poſitively, or upon his Oath, I cannot tell which, one of the two I am certain of, *That Mr.* Pilkington *was not by when the Duke of* York *was mentioned.*

Mr. Serj. *Jeff.* What about cutting of Throats?

Sir *John Peake.* There was ſomething ſaid of cutting of Throats, but I am not ſo poſitive.

Mr. Serj. *Jeff.* Sir *Thomas Field*, I think you was one of the Jury that tried the Cauſe.

Sir *Tho. Field.* Yes, Sir, I was upon the Jury.

Mr. Serj. *Jeff.* Pray do you remember that Sir *Patience Ward* was a Witneſs?

Sir *Tho. Field.* Yes, I do remember it.

Mr. Serj. *Jeff.* Do you remember what he ſwore?

Sir *Tho. Field.* I do remember he ſwore the Duke *was not named*; *that I can remember.*

Mr. *Att. Gen.* Do you remember any thing elſe?

Mr. Serj. *Jeff.* Do you remember any thing about cutting of Throats?

Sir *Tho. Field.* There was ſomething, I cannot poſitively ſay that.

Mr. Serj. *Jeff.* Do you remember what other Words he ſaid?

Sir *Tho. Field.* He did ſay likewiſe, *that Mr.* Pilkington *was not in the Room when any thing was ſpoken relating to the Duke of* York.

Mr. Serj. *Jeff.* Sir *Francis Butler*, Pray will you pleaſe to give my Lord and the Jury an Account whether you were of the Jury, in the Cauſe between his Royal Highneſs and Mr. *Pilkington?*

Sir *Fra. Butler.* I was of that Jury.

Mr. Serj. *Jeff.* I think you were the Foreman, Sir.

Sir *Fra. Butler.* I was the Foreman.

Mr. Serj. *Jeff.* Pray, do you remember Sir *Patience Ward* was produced as a Witneſs?

Sir *Fra. Butler.* He was produced.

Mr. Serj. *Jeff.* Do you rememember any thing he ſwore? and what?

Sir *Fra. Butler.* The Evidence he ſwore (which I thought we had reaſon to obſerve, for the great Queſtion was, Whether the Words related to the Duke of *York*, or no?) was, that it did not relate to the Duke of *York*; and Sir *Patience Ward* was proving Alderman *Pilkington* was not in the Room while they diſcourſed of the Duke of *York*, and that the Duke of *York* was not named.

Mr. Serj. *Jeff.* Did he ſwear that poſitively?

Sir *Fra. Butler.* To the beſt of my Remembrance, *poſitively*; I heard nothing of Qualification at all.

Mr. Serj. *Jeff.* This is a Gentleman of great Worth, and the Foreman of that Jury.

Sir *Fra. Butler.* We did debate it after we went out of the Court, among ourſelves, before we brought in our Verdict, and I remember ſomething more in it; for we ſhould have laid a little more Weight upon his Evidence, if he had not ſaid, that when Sir *William Hooker* took ſome Exceptions at his Words, and aſked, *What do you mean?* Sir *Patience Ward* then laid one Hand upon Alderman *Pilkington*'s Mouth, and, as I remember, t'other upon his Breaſt, and aſked, *What do you mean?* And t'other anſwered, *Hubert.* That made us believe his Evidence was to be laid by.

Mr. Serj. *Jeff.* Now, my Lord, if your Lordſhip pleaſes, I think we have ſufficiently ſatisfied your Lordſhip, and the Jury, what Words he ſwore; now we will prove that they were *falſe.*

Mr. Att. Gen. Sir *Harry Tulſe*, pray, will you acquaint my Lord, and the Jury—We will aſk you firſt; Sir *Harry Tulſe*, were you preſent when this Gentleman ſwore?

Sir *H. Tulſe.* I was preſent; I ſat down on a Fore-ſeat, and he gave his Evidence behind: I never ſaw him touch the Book, nor kiſs it.

Mr. Att. Gen. What did you hear him ſay?

Sir *H. Tulſe.* I was a little diſcompoſed at what I had heard him ſay, and ſo I am not able to give an Account, and I thought I had ſome Reaſon for it.

Mr. Serj. *Jeff.* Why, what Reaſon? Was it becauſe he ſwore truly or raſhly?

Mr. *Thompſon.* Good Mr. *Serjeant*, don't lead ſo.

Mr. *Williams.* I think it is a Reflection upon an Alderman to be led by any.

Mr. Att. Gen. Mr. *Williams*, I can ſhew you, you have led Aldermen, and againſt Law too.

Mr. *Finch.*

Mr. Sol. Gen. Will you pleaſe to give my Lord an Account whether Mr. *Pilkington* was by when there was any Diſcourſe about the Duke of *York?*

Sir *H. Tulſe.* Gentlemen, I don't know whether you expect the Account I formerly gave; that I think I have very perfect in my Memory.

Mr. Att. Gen. Give an Account of that Paſſage.

Sir *H. Tulſe.* The Evidence I gave was this: Upon the Tenth Day of *April*, (I will not be poſitive, I think it was that Day) according to an Order of Court made the Day before, we met at *Guild-hall*; there was Sir *William Hooker*, Sir *Patience Ward*, Sheriff *Pilkington*, and myſelf, I remember no more; and Alderman *Pilkington* ſaid, *He burnt our City, and is come*, or *will come*, one of theſe two Words, *to cut our Throats.* This was the Evidence that I gave, this was true. I was aſked by the Court, what was the preceding Diſcourſe, whether made by Alderman *Pilkington*, or Sir *Patience Ward*, I can't be poſitive; but it was concerning an Order of going to *St. James*'s, or to the Duke of *York*, one of the two; he did complain of that Order, they were complaining of that Order, and ſeemed to me as if they would have it re-debated; I made Anſwer, it was too late, for the Court had agreed it.

Mr. Att. Gen. Was there any Diſcourſe concerning the Duke of *York* while Mr. *Pilkington* was by?

Sir *H. Tulſe.* *Alderman* Pilkington *was by all the while the Diſcourſe was.*

Mr. *Att. Gen.* And was there any Diſcourſe about the Duke of *York?*

Sir *H. Tulſe.* *I did never hear the Duke of* York *named by Alderman* Pilkington *at all*, as I remember; they complained of the Order made the Day before, that is, concerning going to *St. James*'s, or to the Duke of *York*, ſeeming to me as though they would have it re-debated; upon upon which I made Anſwer it was too late now, for the Court had agreed it; and then came theſe Words, *He hath burnt our City, and is come*, or *will come, to cut our Throats.*

Mr. Att. Gen. Do you ſay *Pilkington* was there when the Diſcourſe was?

Sir *H. Tulſe.* Yes, Sir.

Mr. Serj. *Jeff.* Sir *Harry Tulſe*, I would aſk you a Queſtion, by your Favour, you ſay there was then mention of cutting of Throats, and you ſay Mr. *Pilkington* did not name the Duke of *York* himſelf, that you can't ſay; but you ſay he was there while there was a Diſcourſe about going to congratulate the Duke.

Sir *H. Tulſe.* I cannot be poſitive of that; we diſcourſed about the Order, that was the Order that was made before, to congratulate the Duke of *York* I cannot ſay that Alderman *Pilkington* did ever name the Duke of *York*, but *he was preſent at that Diſcourſe.*

Mr. *Sol. Gen.* Sir *Harry Tulſe*, you ſay there was mention made concerning debating the Order, was there mention made of the Order? Did they name what Order they would have re-debated?

Sir *H. Tulſe.* Yes, Sir. The Order was this, an Order made the Day before, that we ſhould go and congratulate the King's ſafe Return, and with the King's good Leave or Licence, we ſhould then congratulate the Duke of *York*, that was the ſubject Matter.

Mr. Serj. *Jeff.* *Pilkington* was preſent then?

Sir *H. Tulſe.* He was preſent there.

Mr. Serj. *Jeff.* And upon that Diſcourſe, pray, Sir *Harry Tulſe*, did *Pilkington* ſay theſe Words, He hath burnt the City, and is come to cut our Throats?

Sir *H. Tulſe.* No, Sir, that did not immediately follow.

Mr. *Sol. Gen.* Sir *Harry Tulſe*, what Order did they ſay they would have re-debated?

Sir *H. Tulſe.* I took it for the Order made the Day before.

Mr. Sol. Gen. Did they name the Order?

Sir *H. Tulſe.* I did make mention of the Order, that the Court had agreed it, and it was too late for that.

L. C. J. He ſays it was too late to be debated or ſpoke of in Court, I apprehend it ſo.

Mr. Juſt. *Jones.* Was the Duke named, or not?

Sir *H. Tulſe.* At that Time, truly, Sir, I cannot poſitively ſay he was named; for the Debate was about the Order made to congratulate the Duke of *York*, or of going to St. *James*'s; one of them, I am ſure, was named, but I cannot be poſitive.

Jury-man. I deſire to know whether this Gentleman was there all the while.

Sir *H. Tulſe.* My Lord, I believe I was there all the Time that there was a Word ſpoke in this matter, the whole Time.

Mr. Serj. *Jeff.* Sir *Harry Tulſe*, I would aſk you another Queſtion: Who did you apprehend to be meant, when *Pilkington* ſaid, He hath burnt the City? Who do you think he meant by that?

Sir *H. Tulſe.* I will anſwer any thing that the Court thinks fit I ſhould anſwer. I humbly pray my Lord and the Court would aſk me Queſtions.

L. C. J. Sir *Harry Tulſe*, it was ſaid the City was burnt. Pray who did you apprehend was meant that burnt the City? Who did they mean?

Sir *H. Tulſe.* Who did I apprehend, my Lord? Truly, my Lord, I think I was the Man that made Anſwer, that it was *Hubert* that burnt the City, becauſe he was hang'd for it.

Mr. Juſt. *Withins.* Did you apprehend it was *Hubert?*

Sir *H. Tulſe.* My Lord, there was a Talk of *Hubert*; and I remember Sir *Patience Ward* took hold of it, and bid him explain himſelf, Who do you mean? *Hubert?* And then there was a little Stop among us; and, as I remember, I made this Anſwer, I think, that *Hubert* burnt the City, for that he was hang'd for it.

L. C. J. Hark you; I would aſk you one Queſtion, if you pleaſe; You heard the Expreſſion of *cutting* of *Throats*, *he is*, or *will come to cut our Throats?*

Sir *H. Tulſe.* Yes, my Lord.

L. C. J. Pray who did you apprehend ſhould be meant by that? He could not mean *Hubert*, ſurely, for that?

Sir *H. Tulſe.* My Lord, I muſt give my Opinion, *that it was the Duke of* York.

Mr. *Thompſon.* Did you underſtand that he meant ſo at that Time?

Mr. Serj. *Jeff.* Sir *William Hooker*, will you give an Account of it?

Sir *W. Hooker.* My Lord, I will, as near as I can, tell the very Words; I may loſe ſome Words, but of the Matter of Fact, I am confident I ſhall miſs nothing. We met in purſuance to an Order made the Day before; the Order was made to meet on the *Monday* following, to wait upon the *King* and the Duke of *York.* My Lord, accordingly, when I came into the Gallery, I found Sir *George Waterman* ſitting on one Side, and I ſat oppoſite to him, and Sir *Henry Tulſe* at the End of the Table; not long after, came in Sir *Patience Ward*, my Load, Sir *Patience Ward* ſat down cloſe by me, and Mr. *Pilkington* ſtood at the other End of the Table oppoſite to me. My Lord, to the beſt of my Remembrance and Belief, Sir *Patience Ward* did move, that we might conſider this Buſineſs of waiting on the *Duke*, and, my Lord, Anſwer was made, I do believe by Sir *Henry Tulſe*, that it was now too late, for my Lord Mayor was come, and would be going; upon his ſaying it was too late in this manner, *Pilkingion* ſtanding at the End of the Table, ſaid theſe Words; *Hath he burnt the City, and is he come to cut our Throats?* Upon this, my Lord, I reply'd; Brother *Pilkington*, ſaid I, thou art infinitely miſtaken in this Point; thou mayeſt as well charge it upon a Child unborn as upon him; for the Duke of *York* was as careful in the Fire to preſerve the City at the ſame time, in a Yard in *Coleman-ſtreet*, as any who was by was; though the Aſhes came upon our Heads; and I never knew a Man look more carefully than he did at the ſame Time. This, my Lord, is the Subſtance, but I can't ſay that Mr. *Pilkington* made a Reply either one Way or other, but I think there was ſomething of *Hubert* ſpoke beſides. Then Sir *George Waterman* went away, and I went away afterwards.

Mr. Att. Gen. So that you are poſitive that *Pilkington* did ſay, *he is come to cut our Throats?*

Sir *W. Hooker. Hath he burnt the City? And is he come to cut our Throats?*

Mr. Serj. *Jeff.* And did you immediately tell him this of the Duke of *York?*—Sir *W. Hooker.* Immediately.

Mr. Sol. Gen. I think you ſay it was purſuant to an Order about waiting on the Duke of *York?*

Mr. Att. Gen. Did you name the Duke of *York?*

Sir *W. Hooker.* I did name the Duke of *York* to *Pilkington*, after theſe Words were ſpoke.

Mr. Serj. *Jeff. Pilkington* was there then before the Diſcourſe of the Duke of *York*. Was Sir *Patience Ward* there while the Diſcourſe was, concerning *cutting of Throats?*

Sir *W. Hooker.* I am not able to ſwear whether Sir *Patience Ward* did hear it or no; undoubtedly he was there.

Mr. Sol. Gen. Sir *William*, do you think that Sir *Patience Ward* did wink when he ſtopt his Mouth, or no?

Sir *W. Hooker.* Truly I did not ſee him ſtop his Mouth.

Mr. Sol. Gen. Sir *William*, was it plain to you that he meant the Duke of *York?*

Sir *W. Hooker.* I am not able to know other Men's Thoughts; but certainly nothing could appear more plain.

Mr. Sol. Gen. Was the Subject-matter of Diſcourſe concerning the Duke of *York?*

Sir *W. Hooker.* About that, and nothing elſe.

Mr. Serj. *Jeff.* He named the Duke of *York*, did he?

Sir *W. Hooker.* He did not name the Duke of *York*; I don't ſay that.

Mr. Serj. *Jeff.* But you named him.—Sir *W. Hooker.* Yes, Sir.

Mr. Att. Gen. Was that all you diſcours'd of?

Sir *W. Hooker.* This is all.

Mr. Serj. *Jeff.* Here is the Order.

Mr. *Williams.* We agree the Order.

Mr. Serj. *Jeff.* For the preſent we will reſt here, and ſee what Account they will give.

Mr. Recorder. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of Counſel for Sir *Patience Ward*, the Defendant. My Lord, as the Counſel for the King ſay they will reſt it here, ſo if we ſhould reſt here too, I think there is nothing proved that ſticks upon us. My Lord, I obſerve *firſt*, that of all their Witneſſes they produce concerning the Words in Court, there is not one of them all, but the firſt, pretends to be a Penman, and he ſays he believes he did write, he can't tell whether he writ or no, and he can't tell whether he hath his Notes about him, and this is all we can have of him. And the Truth is, they vary ſo much among themſelves, that that is enough to make any one wonder, on the whole ſpeaking of the Words. And we ſee theſe worthy Aldermen are very cautious; they did expect to be call'd upon their Oaths, I did take particular Notice of it. The Truth is, my Lord, for this Matter, it is certainly as great and heinous a Crime as any can be, and I believe theſe Gentlemen will think, that in this Caſe, they ſhould have no leſs Evidence to convict this Gentleman of this foul Crime of Perjury, than to convict him of any Crime that concerns his Life. The Truth of it is, if ſuch a foul Diſreputation and Scandal ſhould ſtick, yet the Jury muſt have plain Proof. If there were a raſh Word, if there were a Miſtake in a Perſon's Remembrance, it is not every Slip that will criminate a Man of Perjury, it muſt be a wilful and corrupt forſwearing a Man's ſelf againſt his own Knowledge, and nothing leſs than that is ſufficient. My Lord, it is agreed on all Hands, the Record ſhews it, that the Duke hath recovered a Verdict. The Cauſe went for him. If the Duke would have had a Verdict, he hath it; if he would have had more Damages, for aught I know he might; he hath more than an 100,000*l.* for he hath all Coſts, to the utmoſt Farthing. My Lord, in Caſes of this Nature, a Man's Words muſt be taken together. Your Lordſhip will acquaint the Jury, that if there be any thing in any Part of his Evidence, that does explain, that does limit, that does qualify it, the whole Diſcourſe muſt be taken as one entire Evidence, and that he ſhall have the Advantage of it in every Part. My Lord, the Uſe I would make of this is to this Purpoſe, that whatever theſe Witneſſes fix upon him, they do it by culling and picking out Pieces of Words; they don't pretend upon their Memory, much leſs upon Writing, that they are able to repeat the whole Evidence. Your Lordſhip does very well remember the Lady *Carr*'s Caſe, a greater and plainer Inſtance than this, if it were proved as it was pretended, in Chancery; ſhe ſwears ſhe never received Money of ſuch a Man, and ſhe made a ſecond Anſwer, and there ſhe ſays ſhe received no Money after *ſuch a time*, and it was reſolved, that that ſhould be taken together, and that that was no Perjury. My Lord, we ſhall inſiſt upon the two Things: *Firſt* of all, that the Words were not ſpoken as they are laid, that they were not ſworn by Sir *Patience Ward* as they are laid and charged in the Information, for they are charged there poſitively and directly; but we ſay they were ſpoken with all the Caution that any Man can ſpeak them with, as *he believed*, and to the *beſt of his Memory*, and *as he apprehended*; and this, I ſay, circumſcribed with great Caution and great Tenderneſs. If they had been ſpoken as they are laid, yet this could not be Perjury; that is the *ſecond Thing*. So that if it fall out that he was miſtaken in this, your Lordſhip will acquaint the Jury, that a *raſh Oath is not Perjury*, if it were ſo. My Lord, as to the latter Part, Sir *Harry Tulſe* does go a great way; for he ſays, that he can't take upon him to ſay that Sir *Patience Ward* ever ſaw Mr. *Pilkington*; if he did never ſee Mr. *Pilkington*, how can he be charged with Perjury then, for ſaying he was not there? Under Favour, if he did not ſee him there, he muſt ſwear according to his Senſes, that he was not there, and you cannot charge Perjury upon that. It demonſtrates the Uncertainty of theſe Words, that when they come to lay the Declaration, they are fain to lay theſe Words four ſeveral Ways, as they do. And yet theſe two worthy *Aldermen* ſay, they took down the Words that very Day. If theſe Words were ſo uncertain then, though they were writ down, what ſhould make them otherwiſe now?

Mr. Att. Gen. There hath not been ſuch a Word ſaid yet.

Mr. Recorder. We will prove it, Sir. As to the *third Point*, we ſay this: It is charged there was no cutting of Throats, no mention of cutting of Throats; as to that, my Lord, I take it from one of their Witneſſes Mouths, that is, Mr. *Buxton*; he ſays, that Sir *Patience Ward* ſwore, that he heard no mention of cutting of Throats; under Favour, Sir, to ſay that there was no mention of cutting of Throats, that is poſitive, that there was no ſuch thing ſpoken; but their own Witneſs ſays, that there was no ſuch thing heard. Can there be a greater Difference than for a Man to ſay, there was no ſuch Word *ſpoken*, and to ſay, there was no ſuch Word *heard by me?* This of cutting of Throats, if it were ſpoken at all, tho' I believe it was; for I have that good Opinion of theſe worthy Aldermen, I mean Sir *William Hooker* and Sir *Henry Tulſe*, that I preſume there was ſomething about cutting of Throats; but I anſwer, that Sir *Patience Ward* might not hear it. And I think they have given a very good Ground for it: Says Sir *Harry Tulſe*, Is he, or will he, come to cut our Throats? Whether it were *is*, or whether it were *will*, that he cannot tell. Sir *William Hooker*, ſays he, *is come* to cut our Throats: One ſpeaks affirmatively, the other interrogatively. Sir *Henry Tulſe* ſays it was *our Throats*; ſays Sir *William Hooker*, the *Throats of our Wives and Children*. Do not theſe two Aldermen differ as much between themſelves, as either or both of them do with Sir *Patience Ward*, when Sir *Harry Tulſe* ſhall ſay, there were no *Wives and Children* mentioned? It is no Reflection at all, and I hope there will be no Cauſe to reflect upon the other Alderman. The *next Point* is, that there was a Diſcourſe concerning the Duke of *York*, and that it was before Mr. *Pilkington* came in. Here the Witneſſes vary extremely; one ſays before he *came in*; another ſays, before he came to the *Table*; another ſays, while he was in the *Room*; all theſe Varieties we find in the Witneſſes that ſwear the Words out of Sir *Patience Ward*'s Mouth; and certainly Sir *Patience Ward* would never ſay theſe Words; it is impoſſible to ſay the Diſcourſe concerning the Duke was ended, when in the very next Words he ſays, the Duke was not named at all: For, my Lord, Sir *Henry Tulſe* ſays, he was never named. But, my Lord, beſides this, if I ſay he was not there in the Sight and View of Sir *Patience Ward*, he is not guilty, be it true or falſe, that he was there before the Diſcourſe ended; for it is a long Room, and no Man can ſay but a Man might be behind Sir *Patience Ward* as he ſat at the Table. The *ſecond Thing*, my Lord, is this, that the Duke was not named; that he is charged to have ſworn. My Lord, the Evidence that he delivered was, that the Duke was not named in his Hearing. Now Sir *Harry Tulſe* ſays the very ſame that Sir *Patience Ward* did, that there was a Diſcourſe about an Order, he ſays, but nobody named the Duke, and Sir *William Hooker* ſays, the Duke was not named.

Mr. Juſt. *Withins.* He ſays he cannot ſay he was named.

Mr. Recorder. 'Till after the Words ſpoken; and, my Lord, it was ſo doubtful, that it ſeems there was need of Explication; for the Words, (under Favour) as proved, do not relate to cutting of Throats, but to the *burning of the City*; and what Sir *William Hooker* ſays afterwards, makes it more plain. If we prove theſe Things, that Sir *Patience Ward* carried himſelf thus, if he expreſſed himſelf with ſo much Caution, under Favour, that doth clearly avoid this Charge in the Information. But, my Lord, if there were Perjury, it was committed at the Trial of Mr. *Pilkington*, and at that Trial when it was committed, it was beſt underſtood; for here is no new Evidence as to the Words ſpoken in the Gallery; therefore, under Favour, the Perjury was as obſervable then, and more, becauſe it was freſh then. Now it is ſaid, that it was with great Aſtoniſhment; we ſhall give in Evidence, that there was no ſuch Apprehenſion that the *Court*, that the *Counſel*, that *every* body did apprehend it as delivered with that Caution as I have opened it to your Lordſhip: *Firſt*, Sir *George Jefferies*, in the very Concluſion, aſked him, if there were nothing ſpoke of the Duke while Mr. *Pilkington* was by. No, ſaith he, not to the beſt of my Memory, ſaith Sir *Patience Ward*. Saith Sir *George Jefferies*, by Reply, Your *Invention is better than your Memory*. Surely that were the moſt impertinent Thing in the World, if it had been otherwiſe. And every body knows Sir *George Jefferies* is a Man that would not have ſaid ſuch a Thing, if he had not wholly referr'd to his Memory, and given him an Occaſion for that Reply. And Mr. *Solicitor*, he ſays theſe Words, in repeating the Evidence to the Jury: Sir *Patience Ward* goes a great way to confirm that of the other Aldermen, and that ſhews, that they did obſerve it far enough from Perjury; and my Lord *Chief Juſtice*, my Lord, when he came to direct the Jury, he ſays, that Sir *Patience Ward* had ſaid, that, as he conceived, there was no mention of cutting of Throats, and ſo on; and ſays he, it is eaſy to forget ſuch Circumſtances. If, in the Judgment of my Lord Chief Juſtice, it were an eaſy thing to forget, can it be wilful Perjury in any Man to teſtify that which was ſpoken as he conceiv'd? And truly, my Lord, it is the more for that my Lord Chief Juſtice was upon his Oath as well as the Witneſſes: And your Lordſhips, that ſat with him, would have rectified my Lord Chief Juſtice, if he had miſapprehended him: And the Jury did apprehend it ſo, and looked upon Sir *Patience Ward*'s Evidence as a Confirmation. My Lord, all theſe things are negative, and they do refer to the Memory, and that my Lord Chief Juſtice ſaid a Man may eaſily forget, and that is enough to excuſe him. Beſides, my Lord, this was given in Evidence ſeven or eight Months after the Time that the Words were ſpoken; and if any Man were to repeat what was ſaid at this Bar, no doubt but in ſeven or eight Months they would differ more than Sir *Patience Ward* did from theſe Gentlemen. Beſides, my Lord, he is a Man of good Reputation and Credit, he hath born great Offices in the City, Mayor and Sheriff of *London*,

don, and this a Crime for mean Perſons, and we think much leſs Evidence than this will ſatiſfy your Lordſhip. We will prove what was ſaid at the Trial, not by the imperfect Memories of People that did not write, or cannot tell whether they writ or not; but by ſome that did take very exact Notes, and eſpecially by one that wrote the whole.

Mr. *Williams.* My Lord, the Queſtion is, what was ſpoken by Sir *Patience Ward.* My Lord, if Sir *Patience Ward* did not ſwear as they have laid it in the Information, Sir *Patience Ward* is not guilty. They have laid the Information thus: That as to the cutting of Throats it was ſworn poſitively by Sir *Patience Ward*; but if Sir *Patience Ward* did only ſpeak as by Hearſay, as he heard, that there was no mention of cutting of Throats in his hearing, then we are not guilty. My Lord, how far then the Evidence doth touch us in this Matter, how far they have proved us guilty, is to be conſidered. I do not find, that any one Witneſs in this Trial ſays, that Sir *Patience Ward* did ſwear poſitively, that there was no mention of cutting of Throats. Every Man that ſpeaks, ſpeaks to the beſt of his Memory, and to the beſt of his Knowledge, and no otherwiſe; and I will appeal to your Lordſhip, upon what every Witneſs hath ſaid, whether any Witneſs can be convicted of Perjury; for every Man hath appealed to his Memory. Obſerve every Witneſs, and not any of them do agree. The two Aldermen that were then ſworn, one of them Sir *Harry Tulſe*, tell you of the Diſcourſe concerning coming to burn the City, and cutting of Throats: as I take it, Sir *Harry Tulſe* ſaid it by way of Queſtion, *Is he come, is he come to cut our Throats?* Sir *William Hooker* tells it poſitively, *he is come, he is come to cut our Throats.* If Gentlemen do vary, as theſe two Witneſſes, and have ſeveral Apprehenſions of the ſame thing, it ought to have no Influence upon this. In this Caſe, we are here for wilful Perjury. If it be a Miſtake of the Memory, that will never come up to Perjury. We will make it out, that it was ſpoken with great Caution and Reſtriction. And then for the other of the two Aſſignments, if this be true, that there was no Diſcourſe of the Duke of *York*, then the ſecond will naturally fall. The firſt thing is this, that he ſhould ſwear there was no Diſcourſe of the Duke of *York*; if this be true, that there was no Diſcourſe of the Duke of *York*, then the ſecond will fall. If the Diſcourſe of the Duke of *York* was done before Mr. *Pilkington* came into the Room, if there were no Diſcourſe of the Duke of *York*, it is impoſſible that ſhould be the Meaning. And here I muſt obſerve, Sir *Harry Tulſe* is a Thouſand Witneſſes in this Caſe; he tells you expreſly, that there was no Diſcourſe of the Duke of *York*, he hath told you plainly there was no Diſcourſe of the Duke of *York*, nor any Diſcourſe of the Duke's Name; and what ſays Sir *Harry Tulſe?* He ſays very plainly, there was a Diſcourſe of an Order made the Day before. We allow the Duke is mention'd in that Order, but the Queſtion is, whether there was mention of the Duke's Name at this Time. If you believe Sir *Harry Tulſe*, there was no mention of the Duke's Name.

Mr. Juſt. *Jones.* He did not remember that there was. He did not remember that the Duke of *York* was named.

Sir *Fra. Winn.* By any body.

Mr. Juſt. *Jones.* He does not ſay, that the Duke was not named.

Mr. *Williams.* Sir *Harry Tulſe* is as much obliged to remember in this Caſe as any Man here. This will be a mighty Evidence to juſtify my Client, then the Perjury will certainly fall upon theſe, but we will clear this too. In this Matter Sir *Patience Ward* was a moſt cautious Evidence, ſo is *he*, he did not ſay poſitively, that there was no mention of the Duke's Name, but he ſays, to the *beſt of his Remembrance.* So that there is nothing proved againſt us. We will call Mr. *Blaney*, Mr. *Blaney* is a thouſand Men in this Caſe.

Sir *Geo. Jeff.* Is he ſo?

Mr. *Williams.* He takes Notes exactly. We will tell you what was ſworn by Sir *Patience Ward.*

Sir *Geo. Jeff.* I have known him out in a Verdict.

Mr. *Pollexfen.* That the Duke of *York*'s Name was named in the Diſcourſe is not proved; nobody ſays it was before the Words ſpoken.

Mr. Juſt. *Jones.* After the Words ſpoken; it was then he tells you; but it was not before the Time of the Diſcourſe.

Mr. *Pollexfon.* There was a Diſcourſe of going to *St. James*'s, and upon this Diſcourſe theſe Words were ſpoken, that *Pilkington* did ſpeak; but the naming the Duke was after the ſpeaking of the Words in the Declaration; therefore, there being nobody that does prove, that the Duke was named in any Diſcourſe preceding the Words ſpoken by *Pilkington*, I think it is no Evidence at all.

L. C. J. You make things ſo intricate, that no Man ſhall be able to underſtand what another ſays, but muſt take it as you would have it. When it was ſaid he had burnt the City, well, what ſays t'other? Sir *William Hooker* I think, makes Anſwer, ſays he, the Duke is as innocent as a Child, and he was one that endeavoured to ſave it. Muſt not we underſtand, now, that this was a Diſcourſe of the Duke all this while?

Mr. *Pollexfen.* My Lord, the Queſtion is, whether there were any ſuch Diſcourſe preceding the Words, or any thing in Queſtion, but what happen'd after the Words?

Sir *Geo. Treby.* If the Duke were not named before the Words, can the Name of the Duke refer to the expounding of them?

Sir *Geo. Jeff.* No; but *Hubert*, ten Years after he was hang'd.

Sir *Fra. Winn.* My Lord, I ſee we are in Queſtion for corrupt and wilful Perjury.

L. C. J. You had beſt call your Witneſſes; for aught appears you are ſo yet.

Sir *Fra. Winn.* We will call our Witneſſes, and ſhew what he did ſwear.——Mr. *Blaney*, will you acquaint my Lord and the Jury, whether you were by at that Trial; and give an Account of what you know Sir *Patience Ward* did ſwear, and whether you took any Notes?

Mr. *Blaney.* I was preſent at the Trial between his Royal Highneſs and Mr. *Pilkington*; I did ſit upon one of thoſe Stools there, and I did take Notes, to the beſt of my Skill.

Sir *Geo. Jeff.* Have you your Notes?---Mr. *Blaney.* Yes, Sir.

Mr. *Williams.* Firſt of all, acquaint my Lord and the Jury, what was ſworn by Sir *Patience Ward.*

Mr. *Blaney.* Having received a *Subpœna* from Sir *Patience Ward* about this Matter, I looked over my Notes, and turned down the Leaves in ſeveral Places.

Mr. *Williams.* Tell what Sir *Patience Ward* ſowre concerning cutting of Throats; and what that was; Recollect yourſelf about what was ſworn by Sir *Patience Ward* concerning cutting of Throats.

Mr. Att. Gen. Pray, Sir, don't look upon your Notes.

Sir *Fra. Winn.* Your Witneſs don't remember whether he writ Notes or no.

Mr. *Blaney.* I have read my Notes To-day, again, and looked upon them; I do find it is thus, and I do really believe to be true; for I don't know I never altered any Man's Evidence, either in Subſtance or Form. He did then ſay, *Upon my Oath, if it were the laſt Word I was to ſpeak, I did not hear one Word of cutting Throats.*

Mr. *Williams.* Pray, Sir, ſay as he ſaid.

Mr. *Blaney.* Theſe were the Words: *Upon the Oath I have taken, if were the laſt Word I was to ſpeak, I did not hear one Word of cutting of Throats.*

Sir *Fra. Winn.* Was it writ ſo in your Notes at that Time.

Mr. *Blaney.* It is ſo in my Notes.

Sir *Fra. Winn.* Are your Notes alter'd ſince?---Mr. *Blaney.* No, Sir.

Sir *Fra. Winn.* There was no Thought of Perjury then?

Sir *Geo. Jeff.* Not by him, but by others.

Mr. *Williams.* Are theſe the Notes that were then taken?

Mr. *Blaney.* Theſe are the Notes that were then taken.

Sir *Fra. Winn.* I aſk you this; did you take them as he ſaid them?

Mr. *Blaney.* I did, to the beſt of my Skill, neither added nor diminiſhed; Sir *Patience* in the Beginning of his Evidence did ſay theſe Words: That there was nothing mentioned of the Duke, but of *St. James*'s, in his Hearing.

Sir *Fra. Winn.* Are you ſure the Words are there?

Mr. *Blaney.* They are here. Any Man that could read my Short-hand may ſee it.

Sir *Fra. Winn.* Were the Words then taken?

Mr. *Blaney.* They were then taken.

Sir *Fra. Winn.* Are they altered ſince?---Mr. *Blaney.* They are not, Sir.

Sir *Fra. Winn.* How are the Words?

Mr. *Blaney.* That there was nothing mentioned of the Duke's Name, but of *St. James*'s in his Hearing.

Mr. *Williams.* If this be true, it ſhuts out the ſecond Aſſignment; but however we will aſk him concerning the other Aſſignment, whether there was any Diſcourſe concerning the Duke after *Pilkington* came in.

Mr. *Blaney.* If you pleaſe, Mr. S. *Jefferies* was pleaſed to preſs it upon Sir *Patience Ward.* Sir, you were pleaſed to aſk the Queſtion, Was all the Diſcourſe over concerning going to *St. James*'s, or the Duke of *York*, before Mr. *Pilkington* came in? Was it all over before Mr. *Pilkington* came in? And Mr. S. *Jefferies* then ſaid———

Sir *Geo. Jeff.* What did he anſwer to my Queſtion? Was there nothing ſaid of it while he was by?

Mr. *Blaney.* Sir *Patience Ward* ſaid, *Not one Syllable of it to my Memory*; whereupon Sir *George Jefferies* ſaid, *Your Invention is better than your Memory.* And he reply'd, my Lord, *I thank God, I have a good Memory, though perhaps that Gentleman hath not.*

Mr. *Williams.* Was this written down in your Book?

Mr. *Blaney.* It was then taken by me in Writing, in my Book.

Mr. *Williams.* Is any thing altered?---Mr. *Blaney.* Not one Word.

Mr. *Williams* Did you write them ſitting there as they were ſpoken?

Mr. *Blaney.* Juſt as he ſaid them: There I ſat where Mr. *Owen* ſits now.

Mr. Att. Gen. Do you ſwear you remember any Part of it?

Mr. *Blaney.* Sir, this I do remember, as well as I can remember any thing in the World.

Mr. Att. Gen. Blaney, tell me poſitively what he ſaid.

Mr. *Blaney.* He ſaid, *Not one Syllable of it to my Memory*; I do remember it.

Mr. Att. Gen. Upon what Queſtion?

Mr. *Blaney.* Sir, of the Duke's being not named, but *St. James*'s, I do remember likewiſe; but I can't well ſay any thing of the Buſineſs of *cutting of Throats*; I find it in my Book unaltered, I do not know that I am miſtaken.

Mr. Serj. *Jeff.* Hark you, Mr. *Blaney*; I know his Notes have been miſtaken ſometimes; I remember once upon *Raree-ſhow* Buſineſs, they were miſtaken. Upon your Oath, Sir, did you hear Sir *Patience Ward* ſpeak at that Time any Words concerning a Law-ſuit? Look upon your Notes.

Mr. *Blaney.* Sir, I will ſo.

Mr. *Pollexfen.* What have we to do with *Raree-ſhow?* Are we trying that?

Mr. Juſt. *Withins.* Gentlemen, don't be angry, let the Cauſe be tried fairly.

Mr. Serj. *Jeff.* I may aſk a Queſtion, I hope. I aſk a fair Queſtion, I would fain meet with that among his Characters.

Mr. *Blaney.* Sir, *I would not have looked it over, if I had met with any ſuch thing in my Notes.*

Mr. Att. Gen. Can you ſwear any thing poſitively upon your Notes?

Mr. Serj. *Jeff.* It is ſome Diſcourſe near the Queſtion.

Mr. *Blaney. Then, Sir, indeed it is not in my Notes.*

Mr. Serj. *Jeff.* Did Sir *Patience Ward* uſe the Word *poſitively* at any time in your Notes; and tell us to what?

Mr. Att. Gen. Whether he was poſitive to any one Thing?

Mr. Serj. *Jeff.* Did he ſwear poſitively to any one Thing? And tell us to what? I deſire to be ſatisfied by Mr. *Blaney*'s Notes. Some Men can take Notes on the one Side, and forget Things on the other.

Mr. *Williams.* Come, Mr. *Beaver.*

Mr. *Blaney. I don't ſee the Word poſitive.*

Mr. Serj. *Jeff.* No, not at all.

Mr. *Blaney. I don't pretend to ſay I have written every Word.*

Mr. Serj. *Jeff.* But you do pretend to write more than he ſaid.

Mr. *Williams.* What he writ is true.

Sir *Fra. Winn.* He does not undertake to ſay he writ every Word that paſs'd, but whether or no he writ any Word that was not ſaid. Is all that you writ true?

Mr. *Blaney. I verily believe it is true.*

L. C. J. Is that any manner of Satisfaction when he hath not taken all that was ſaid, and ſo ſpoiled the Senſe, by leaving out ſome of the Words?

Mr. Juſt. *Withins.* How is it poſſible for a Man to be a good Witneſs, that comes and ſwears in one Part, I know nothing of any ſuch Words; and at another Time ſays he does not write all in his Notes?

Sir *G. Treby*. Let that paſs for a Rule, and then no Witneſs they produce can be believed.

Sir *Fr. Winn*. They have given Evidence by Witneſſes *viva voce*, without Notes, and make an Objection, becauſe he does not remember every Paſſage; therefore he ſignifies nothing. We urge it in point of Evidence, my Lord; he is known to be a Man very dexterous in writing Short-hand; in a material Thing he ſwears to the beſt of his Remembrance. He took them from the Mouth of the Perſon that ſwore at that Time. My Lord, we aſked him whether he writ any thing that was not ſaid. We leave it in point of Evidence, my Lord, to encounter theirs.

Mr. *Williams*. We would give our Evidence in, if they would give us Leave.----*Richard Beaver*, Were you by, at Mr. *Pilkington*'s Trial?

Mr. *Beaver*. My Lord, I was by all the while.

Mr. Juſt. *Jones*. Did you take Notes?

Mr. *Willams*. Were you preſent at the Trial of Mr. *Pilkington?*

Mr. *Beaver*. I was preſent.

Mr. *Williams*. Can you remember what was ſworn by Sir *Patience Ward* upon that Trial?----Mr. *Beaver*. Yes, Sir.

Mr. *Williams*. Can you remember what Sir *Patience Ward* ſwore concerning cutting of Throats?

Mr. *Beaver*. My Lord, he did ſay, That to his *beſt Remembrance* the Diſcourſe was over before *Pilkington* came into the Room. To the beſt of my Remembrance, my Lord, that Diſcourſe concerning the Duke was over before *Pilkington* came into the Room.

Mr. *Williams*. How did he expreſs it? Pray ſwear what Sir *Patience Ward* ſpake; tell how he expreſſed himſelf.

Mr. *Beaver*. Sir *Patience Ward* did ſay, to the beſt of his Remembrance, That the Diſcourſe concerning his Highneſs the Duke of *York* was over before Sheriff *Pilkington* came into the Room, where they were ſmoaking Tobacco.

Mr. *Williams*. He ſaid theſe Words to the beſt of his Remembrance?

Mr. *Beaver*. He did ſo. Upon which Sir *George Jefferies* ſaid again to him, that he had a good Memory, and he ſaid he had, and my *Lord Chief Juſtice* ſaid, You may thank God you have a good Memory; my *Lord Chief Juſtice* himſelf ſaid ſo.

Mr. *Williams*. What did he ſay?

Mr. *Beaver*. To the beſt of his Knowledge, he did not hear any thing of cutting of Throats.

Sir *Fr. Winn*. Can you remember the Way of his Expreſſion?

Mr. *Beaver*. The Way of his Expreſſion was, as I remember, to the beſt of my Remembrance, he did ſtrike his Hand upon his Breaſt, and ſaid, When Sheriff *Pilkington* came in, he ſtruck his Hand upon his Breaſt, and aſked him if he meant *Hubert*, ſo he ſaid, *upon his Salvation*, or to the beſt of his Knowledge.

Sir *Fr. Winn*. What did he ſay?-----Mr. *Beaver*. He ſaid------

Sir *Fr. Winn*. What did he ſay concerning *cutting of Throats?*

Mr. *Beaver*. He ſaid he did not hear any thing, *as he believed*.

Mr. Juſt. *Jones*. Of what?-----Mr. *Beaver*. Of cutting of Throats.

Mr. Juſt. *Jones*. Is that all he ſaid, he did not hear any thing of cutting of Throats?

L. C. J. You Friend; you ſaid that Sir *Patience Ward* ſaid he did not remember any thing of cutting of Throats; did you ſay ſo?

Mr. *Beaver*. Yes, my Lord.

L. C. J. And thereupon you ſay, My *Lord Chief Juſtice* did commend his Memory for it; pry'thee, how came he to be praiſed for ſuch a great Memory, when he ſaid he did not remember any thing? Thou haſt not laid the Plot well together.

Mr. Juſt. *Withens*. Was he commended becauſe he ſaid he did not remember?

Mr. Juſt. *Jones*. Where did you ſtand?

Mr. *Beaver*. I ſtood over-againſt Sir *Patience Ward*.

Mr. Juſt. *Jones*. Did you hear well?

Mr. *Beaver*. Yes, my Lord, I heard every Word. He ſaid he got Honour by ſpeaking Words againſt the Duke of *York*.

Mr. Juſt. *Jones*. What is that?

Mr. *Beaver*. That *Pilkington* had got Honour by ſpeaking againſt his Highneſs the Duke of *York*.

Mr. Serj. *Jeff*. In the mean time look that Part out in your Notes, that he ſpeaks of. Now I would aſk you a Queſtion, Friend.

Mr. Att. Gen. Pray will you recollect yourſelf? Did you hear Sir *Patience Ward* ſay, to the beſt of his Remembrance, the Diſcourſe concerning the Duke of *York* was ended before *Pilkington* came in? Pray what did he ſay, touching the Diſcourſe of the Duke of *York?*

Mr. *Beaver*. Sir, he ſaid to his beſt Remembrance, that Diſcourſe was over.

Mr. Att. Gen. What Diſcourſe?

Mr. *Beaver*. Concerning his Highneſs, that it was over.

Mr. Serj. *Jeff*. Mr. *Beaver*, I would aſk you a Queſtion, becauſe I know you will remember it preſently. Do you remember any thing Sir *Patience Ward* ſwore, that he never had a Law-ſuit in his Life? Do you remember any thing of that?

Mr. *Beaver*. If you pleaſe, Sir, there was ſomething ſaid of that.

Mr. Serj. *Jeff*. Then look that in your Notes too, Mr. *Blaney* ----Pray, upon your Oath, do you remember he uſed the Word *Poſitively?*

Mr. *Beaver*. Nothing at all, *poſitively*.

L C J. Upon my Word your Memory muſt be commended.

Mr. Serj. *Jeff*. Mr. *Beaver*, where do you live, Mr. *Beaver?*

Mr. *Beaver*. I live, Sir! You know well enough, Sir: What would you ſay to me?

Mr. Serj. *Jeff*. I only deſire to know where you live, Sir.

Mr. *Beaver*. I live in *Soaper-Lane*, Sir.

Mr. *Williams*. He is an honeſt Man. He was commended when he was Church-warden.

Mr. Serj. *Jeff*. Many a wiſe Man hath been in that Employ.

Mr. *Williams*. Mr. *Criſp*, you were preſent at the Trial between his Royal Highneſs and Mr. *Pilkington*.

Mr. *Criſp*. My Lord, I was preſent here.

Mr. *Williams*. Can you remember, Sir, what was ſworn by Sir *Patience Ward* concerning *cutting of Throats*, and how he ſware it?

Mr. *Criſp*. I cannot give any perfect Account: I was here, and a great many Expreſſions I did hear, a great many I did not hear. I heard Sir *Henry Tulſe* give ſome Account, and Sir *William Hooker*, that Mr. *Pilkington* ſhould ſay ſuch Words about the Duke's being come——

Mr. Juſt. *Withens*. Go on, pray, Gentlemen.

Mr. *Williams*. Can you ſay any thing of what Sir *Patience Ward* ſware about cutting of Throats?

Mr. *Criſp*. Sir *Patience Ward* was ſpeaking whether or no ſuch Words were ſpoken that were ſwore; he did ſay there was ſomething ſaid, that *he was come to burn the City*, that he did confeſs: but as to *cutting of Throats*, there was not a Word ſpoken *in my Hearing*, or to the beſt of my *Remembrance*, or ſomething to that Purpoſe, I cannot be poſitive.

Mr. *Williams*. Can you be poſitive in this, Sir, that he ſaid *in his Hearing*, or *I cannot be poſitive?*—Mr. *Criſp*. I took it in that Way, Sir.

Mr. *Williams*. Pray, Mr. *Criſp*, I would aſk you this? Do you remember any thing he ſaid, whether Mr. *Pilkington* was in the Room, when there was any Diſcourſe of his Royal Highneſs, or the Duke of *York?*

Mr. *Criſp*. To the beſt of my Memory, he ſpake it thus: We were diſcourſing together about going to wait on his Majeſty, and then to go to his Royal Highneſs; and we entered into ſome other Diſcourſe; and when we were diſcourſing of that, Mr. *Pilkington* came to the Table to us: It was concerning the Work of the Day; and when we were about that Diſcourſe, Mr. *Pilkington* came to us to the Table. Whether he ſaid he was not in the Room, or came into the Room then, I can't tell; but I remember he ſaid he came to the Table to us when we were about this Diſcourſe.

Sir *Fr. Winn*. Do you remember any thing that my *Lord Chief Juſtice* ſaid to Sir *Patience Ward*'s Evidence?

Mr. *Criſp*. That I remember more than any other Particular, becauſe Sir *George Jefferies* had made ſome Reflection upon Sir *Patience Ward*, and my Lord ſaid, Sir *Patience*, that is uſual with Counſel to ſpeak ſo to Evidence; but do you go on with your Evidence for all that, ſays my *Lord Chief Juſtice*; Sir *Patience*, recollect yourſelf; it is ſuppoſed by your Evidence, that you leave out thoſe Words, either about the Duke of *York*'s being named, or about *cutting of Throats*; therefore, Sir *Patience*, recollect yourſelf. Says Sir *Patience*, I do ſpeak it to the beſt of *my Memory*. Says Sir *George Jefferies*, upon that or ſome other Time, *Your Invention is better than your Memory*, which I took more Notice of than other Things.

Sir *Fr. Winn*. When my *Lord Chief Juſtice* bade him recollect himſelf, how did he expreſs himſelf? Did he ſay, to the beſt of his *Memory?*

Mr. *Criſp*. That he did, poſitively.

Mr. *Williams*. Mr. *Criſp*, recollect yourſelf, as near as may be: When my *Lord Chief Juſtice* made that Anſwer, either to thoſe Words of *cutting of Throats*, or the Duke of *York*'s being mentioned; was it in the Concluſion of his Evidence?

Mr. *Criſp*. It was towards the Concluſion; for I went away, being very much ſweltered.

Mr. Serj. *Jeff*. Mr. *Criſp*, did you hear Sir *Patience Ward* ſay, in his Evidence, that he never had any Suit?

Mr. *Criſp*. He did ſpeak ſomething when you did reflect upon him, *I don't remember that ever I had any thing to do with Courts*; *my Buſineſs is at Home*.

Mr. Serj. *Jeff*. A further Queſtion I aſk.----Mr. *Criſp*, can you tell, upon your Oath, whether Sir *Patience Ward* ſwore any thing poſitively?

Mr. *Criſp*. I don't know, Sir; I took no Notes at all; I cannot ſwear, or declare thoſe Words were not ſpoken; but ſtill it was in *his Hearing*, or the *beſt of his Memory*.

Mr. Serj. *Jeff*. Do you remember he ever uſed the Word *poſitively*, or was poſitive in any Part of that Trial?

Mr. *Criſp*. I do remember he ſpoke it very poſitively; but whether he ſaid the Word *poſitive*, I can't ſay: But ſtill it was with this Reſervation.

Mr. Serj. *Jeff*. Hark you, Mr. *Criſp*, I will aſk you one Thing more. Do you take it upon your Oath poſitively, that he uſed either to the *beſt of his Memory*, or the *beſt of his Belief*, in any thing he ſaid?

Mr. *Criſp*. In his Anſwer to my *Lord Chief Juſtice* he did.

Mr. Serj. *Jeff*. In any other Part, will you take it upon your Oath, poſitively, that he ever uſed the *beſt of his Remembrance*, or the *beſt of his Belief?*

Mr. *Criſp*. I ſaid before, I did not fix it in my Memory.

Sir *Fr. Winn*. My Lord, he thinks it convenient to ſay to the beſt of his Memory too----Call Mr. *Wright*.

Here the King's Counſel attempted to remark on the Evidence.

Mr. *Williams*. Pray, my Lord, when we have given all our Evidence intire, if they have any Obſervation, we will ſubmit to it; but to remark upon every Witneſs, would occaſion too many Interruptions. We would give our Evidence intire.

L. C. J. You will agree, that they may aſk a Queſtion when you have done with them?

Mr. *Holt* (to Mr. *Wright*.) Was you preſent at the Trial between his Royal Highneſs and Mr. *Pilkington?*

Mr. *Wright*. Yes, Sir; and Sir *Patience Ward*, I remember, was aſked this Queſtion, Whether he heard any Words concerning killing, or cutting of Throats; and Sir *Patience Ward* ſaid, For *killing I heard that Diſcourſe*; *but for cutting of Throats, he never mentioned.*

Mr. *Williams*. You are a Gentleman that exerciſe your Memory; pray, Sir, did he ſay any thing of cutting of Throats?

Mr. *Wright*. It was to *his Hearing, or the beſt of his Remembrance*; he did it very cautiouſly.

Mr. *Williams*. Was it as he believed or remembered, Mr. *Wright?* Did he ſay poſitively there was no Diſcourſe of cutting of Throats, poſitively, or with any Reference to his Hearing?

Mr. *Wright*. As far as I can remember, thus he ſaid, There was a Diſcourſe concerning *firing the City, but not concerning cutting of Throats.*

Mr. *Williams*. Did he ſay that poſitively, or to the beſt of his Underſtanding?

Mr. *Wright*. The Occaſion of it was this, Sir, whether Mr. *Pilkington* was preſent when the Diſcourſe was about waiting on his Majeſty, to congratulate his coming to Town from *Newmarket*, and his Royal Highneſs; Sir *Patience Ward* did believe he was not then preſent when the Diſcourſe was; he was in *Guild-hall*, with the Lord Mayor, licenſing of Ale-houſes.

Sir *Fr. Winn*. When he did mention that about *cutting of Throats*, how did he expreſs himſelf?

Mr. *Wright. I believe, or do think, there was no ſuch Word ſpoken.*

Mr. Serj. *Jeff.* I would aſk your Parſon one Queſtion.

Mr. *Wright.* What you pleaſe, Sir *George.*

Mr. Att. Gen. Can you ſwear yourſelf poſitively what he ſaid ?

Mr. *Wright.* I ſwear thus far, according to my Remembrance.

Mr. Serj. *Jeff.* I would aſk him a Queſtion——

Mr. Att. Gen. All Iſſues muſt be tried by Belief or Memory ; what new Practice is this ? Can you ſwear this upon your Oath, or do you only ſay, I think or believe it ?

Mr. *Wright.* I ſpeak to the beſt of *my Remembrance.*

Mr. Serj. *Jeff.* Mr. *Wright*, I would aſk you a Queſtion. If I take you right, at the Beginning, there was a Talk concerning killing and cutting of Throats ; my Lord, I appeal to the Memory of the Court and the Jury, if he did not ſay it two or three times over. Mr. *Wright*, remember what I ſay.

Mr. *Recorder.* He did ſay it cautiouſly.

Mr. Juſt. *Jones.* He did not inſiſt upon it.

Mr. Serj. *Jeff.* Was there any Diſcourſe, upon your Oath, when Sir *Patience Ward* gave his Teſtimony, that there was any Diſcourſe concerning killing and cutting of Throats ?

Mr. *Wright.* He *believed that the Word killing was not ſpoken in Mr.* Pilkington*'s hearing.*

Mr. Serj. *Jeff.* Now I aſk you another Queſtion. Now, Mr. *Wright*, pray do you remember that there was any Diſcourſe concerning Sir *Patience*'s having a Law-ſuit, or no Law-ſuit ?

Mr. *Wright.* Sir *Patience* ſaid this when you made a Reflection up n him. My Lord, *I hope you will not ſuffer me to be abuſed ; for I never remember I was in any Court upon any Occaſion of Law before.*

Mr. Serj. *Jeff.* Now I would aſk you another Queſtion, Mr. *Wright*, becauſe you have remembered more than other People have remembered ; you have, by your Profeſſion, an extraordinary Occaſion to uſe your Memory ; do you take it upon your Oath, that he did give any Evidence poſitively ?----Mr. *Wright.* I do not *remember he uſed the Word poſitively.*

Mr. Serj. *Jeff.* Did he ſwear any thing poſitively ?

Mr. *Wright.* I do not know what you mean by *poſitively.*

Mr. Serj. *Jeff.* Do you take it upon your Oath, that he did poſitively declare any thing in that Trial ? Methinks a Man of your Profeſſion ſhould underſtand that.

L. C. J. Did he ſpeak *poſitively*, or *the beſt of his Remembrance?* Do not you underſtand that Word ?

Mr. Serj. *Jeff.* Or directly, or *categorically*, or any Word you uſe ; I perceive you do not underſtand *poſitive*, therefore I put another Word.

Mr. Att. Gen. Did he ſwear any thing poſitively ?

Mr. *Wright.* The moſt of his *Evidence* that I heard, was with *cautionary Words*, to *the beſt of his Remembrance.*

Mr. Serj. *Jeff.* Do you remember he ſwore any thing poſitively ?

Mr. *Wright.* I cannot remember, Sir, the whole Trial.

Mr. Serj. *Jeff.* Did he ſwear any thing directly or poſitively ?

Mr. *Wright.* Thus far he ſaid, To *the beſt of my Remembrance, to the beſt of my Knowledge, this Diſcourſe was over.*

Mr. Serj. *Jeff.* Did he directly ſwear it ?

Mr. *Wright.* My Lord, he *ſpake cautionarily, thoſe Words he ſpake directly.*

Mr. Att. Gen. Did he ſwear any thing indirectly ?

Mr. Serj. *Jeff.* Where does my *Parſon* live ? Where do you live, Mr. *Wright?* Upon your Oath, where do you live, before you go ?

Mr. *Wright.* If it be *a material Queſtion, I will anſwer it.*

Mr. Juſt. *Raymund.* You muſt do it.

Mr. *Wright.* My Lord, I live in *Eſſex* at *Walthamſtow.*

Mr. Serj. *Jeff.* Are you the Miniſter of the Place ?

Mr. *Wright.* Yes, Sir.

Mr. Serj. *Jeff.* He hath heard the Word *killing*, which nobody elſe heard before.

Mr. *Williams.* Pray call Col. *Birch.*

Mr. *Holt.* Come, Col. *Birch*, will you come over on this Side ?

Mr. *Williams.* Thus, were you at the Trial between his Royal Highneſs and Mr. *Pilkington?*

Col. *Birch.* I was —— My Lord, I am ſworn to ſpeak the Truth, and the whole Truth, and nothing but the Truth. As for ſpeaking nothing but the Truth, I ſhall be ſure to do ; as to ſpeak the whole Truth, I cannot. My Lord, I ſtood where thoſe Gentlemen do. Sometimes I could hear, ſometimes I fell back, and could not hear, ſo that indeed I cannot ſpeak to any one Sentence as it was delivered. This is all I can ſay.

Mr. *Williams.* Then ſay what you can.

Mr. *Holt.* Colonel, pleaſe to go your own way.

Col. *Birch.* My Lord, that which I took Notice of was the *Caution* that I obſerved Sir *Patience Ward* to give his Evidence with, that was the principal Thing ; I heard ſome Pieces of other Things, and then by-and-by I was put out of Hearing. *But methought it was ſomething ſtrange, becauſe I have not uſually heard the like, and therefore I charged my Memory with it* ; that is, *Some Things he ſaid to the beſt of his Memory, other Things as he remembered, or to the beſt of his Knowledge* ; theſe *were the Things that I charged my Memory withal, but to what Sentence he applied, I am not able to give your Lordſhip an Account, upon my Oath.*

Mr. *Williams.* Colonel *Birch*, did you obſerve this in giving his Evidence, generally : Was it according to his Remembrance, or cautiouſly ?

Col. *Birch.* That was the main Thing he ſpoke of ; *what he did in the general, was with Caution.*

Mr. Att. Gen. Can you judge of that by what you heard ?

Col. *Birch.* I am very ancient, Mr. Attorney ; but I can judge of a Man's Caution by his ſpeaking.

Mr. Att. Gen. Colonel, did you ſee him ſtrike his Hand upon his Breaſt ?

Col. *Birch. I do not remember. I cannot apply it to any Sentence* ; but from henceforth I will never give Evidence, but what I can do directly.

Mr. *Williams.* Mr. *Northey*, were you at the Trial between his Royal Highneſs and Mr. *Pilkington?*

Mr. *Northey.* My Lord, I was there, and ſtood behind there, but I could not hear very perfectly, to know any Sentences fully.

Mr. *Williams.* What did you obſerve ?

Mr. *Northey.* I do remember that Sir *Patience Ward* did ſeveral times ſay, *to the beſt of his Memory, and to the beſt of his Knowledge, one Time particularly, Sir* George Jefferies *did particularly ſay, that his Invention was better than his Memory.*

Mr. *Thompſon.* Was that towards the Concluſion of his Evidence ?

Mr. *Northey. He did it ſeveral Times.*

Mr. *Thompſon.* But that time, Sir ?

Mr. *Northey. He did ſwear very cautiouſly, to the beſt of his Remembrance* ; I cannot, my Lord, ſay what he ſwore.

Mr. Serj. *Jeff.* You heard my Queſtion : When I ſaid to him his Invention was better than his Memory, upon your Oath, upon what Occaſion was it ?

Mr. *Northey.* Really I cannot ſay, Sir *George*, what ; *but your Voice being much louder than other Men's I heard you plainly.*

Mr. *Holt.* Mr. *Nelſon*, were you at the Trial ?

Mr. *Nelſon.* My Lord, I was preſent at the Trial, *and in ſome Caſes Sir* Patience Ward *did rely upon his Memory*, for Sir *George* told him, *his Invention was better than his Memory.*

Mr. *Williams.* Do you remember generally he did ſo ?

Mr. *Nelſon. I had not remembered this, Mr.* Williams, *if it had not been for Sir* George Jefferies*'s Reply.*

Sir *Fra. Winnington.* Mr. *Baker*, pray will you tell my Lord what you know of Sir *Patience Ward*'s giving Evidence ?

Mr. *Baker.* My Lord, according to the beſt of my Remembrance, my Lord Chief Juſtice *Pemberton* did ſay, Sir *Patience*, Sir *Patience, you ſpeak to the beſt of your Memory, to the beſt of your Remembrance* ; I ſay, my Lord Chief Juſtice *Pemberton* did ſpeak to Sir *Patience Ward*, Sir *Patience*, Sir *Patience, you ſpeak to the beſt of your Memory.* My Lord, ſays he, *I do it to the beſt of my Remembrance, my Lord, all that I can ſay.*

Mr. *Williams.* Can you remember the Occaſion of this, or the Time ?

Mr. *Baker.* My Lord ſpoke to him once or twice ; as I remember, he ſaid once, Mind your Evidence, Sir *Patience* ; Sir *Patience* was angry a little at ſomebody.

Mr. *Williams.* Can you ſay what was it ?

Mr. *Baker.* Some Words, as I remember, paſſed between Sir *George Jefferies* and Sir *Patience.*

Mr. *Williams.* And what was the Occaſion ?

Mr. *Baker. I cannot remember, indeed.*

Mr. *Williams.* Did you obſerve upon the Trial, that Sir *Patience Ward* did ſwear generally poſitively, or to the beſt of his Remembrance ?

Mr. *Baker. I apprehended him to ſwear to his Hearing and Memory ſometimes.*

Mr. Juſt. *Jones.* Do you remember the particular Things he ſwore ?

Mr. *Baker.* No, my Lord.

Mr. Serj. *Jeff.* I would aſk Mr. *Blaney* this : I know you exactly take Notice of what he ſays ; find out in your Book, Sir *Patience*, Sir *Patience*, you ſpeak to your Memory.

Mr. *Williams.* Mr. *Bennet*, pray can you remember what was ſworn by Sir *Patience Ward?*

Mr. *Bennet.* Sir, I was here, and I could hear very little ; but then ſome time after, ſomething towards the latter End, I got my Head in, and could hear a little, and that was that Mr. *Pilkington* was not at the Table, and the Diſcourſe was ended before he came, of waiting upon his Royal Highneſs, about going to his Majeſty, and after to St. *James*'s.

Mr. *Williams.* How did he ſpeak that, poſitively, or to his Remembrance ?

Mr. *Bennet.* He was aſked both by you and Sir *George Jefferies.* He did not anſwer you, but he anſwered Sir *George* ; for Sir *George* aſked him this Queſtion, Was this Diſcourſe quite over before Mr. *Pilkington* came in ? He did declare—(I will tell you immediately, if you will give me Leave) *He did declare not one Tittle was ſpoken, or to that Purpoſe.* It was the latter Part, near it I am ſure.

Sir *Fra. Winnington.* How did he expreſs himſelf in that ?

Mr. *Bennet.* He declared, as I have told you, *that not one Syllable was ſpoken in his Hearing.*

Sir *Fra. Winnington.* He ſays, my Lord, that not one Syllable was ſpoken in his Hearing.

Mr. Serj. *Jeff.* The Court hears what he ſays.

Sir *Fra. Winnington.* Sir, that agrees with the Notes of Mr. *Blaney.*

Mr. Serj. *Jeff.* The Word that he ſaid was, to the beſt of his Memory. How was the Word, Sir *Patience*, Sir *Patience!*

Mr. *Blaney.* That was not in, Sir.

Sir *Fra. Winnington.* My Lord, now we will go to another Part of the Evidence ; we will call Perſons of Quality, that have long known Sir *Patience Ward*, that will give your Lordſhip an Account, whether he be a Man likely to forſwear himſelf corruptly and wilfully.—Sir *William Ruſſel*, are you ſworn ? Pray how long have you known Sir *Patience Ward?*

Sir *Will. Ruſſel. Near upon twenty Years.*

Sir *Fra. Winnington.* Pray will you give an Account what you know of him ?

Sir *Will. Ruſſel. I have had ſeveral Tranſactions with him for conſiderable Sums of Money, I never found but very fair, and honeſt, and reputable Dealing.* I have known him almoſt twenty Years, I have dealt with him for ſeveral Sums of Money, and have found him very fair, juſt and reputable in all Tranſactions between him and me.

Mr. *Williams.* Do you think he would wilfully or corruptly forſwear himſelf ?

Sir *Will. Ruſſel.* I never had that Opinion of him : I was impannelled upon the Jury, but the Court refuſed me, and I went away.

Mr. *Williams.* Sir, did you obſerve him to be a Man of Truth in his Trading ?

Sir *Will. Ruſſel. Ever*, Sir.

Mr. *Williams.* Was he given to tell Lyes, or prevaricate ?

Sir *Will. Ruſſel.* I always found him *a Man of Truth and Juſtice* in his Dealing, all the Time I dealt with him.

Mr. Serj. *Jeff.* Sir *William*, I know you will ſpeak the Truth ; you are a civil Gentleman. Have you not taken him to be a factious ſeditious Man ? Did you look upon him to be a Man well-affected to the King and Government ?

Sir *Will. Ruſſel.* I never did concern myſelf in thoſe Affairs much, I never had any Converſe with him about them.

Mr. Serj. *Jeff.* I know you were a Common-Council-man in his Mayoralty.

Sir *Will. Ruſſel.* I was a Common Council-man in his Time.

Mr. Att. Gen. Pray, upon your Oath, did you look upon him to be a Man well affected to the Government?

Sir *Will. Ruſſel.* I do not underſtand, Mr. *Attorney*, that I ought to paſs my Opinion upon Perſons in that Point.

Mr. Att. Gen. Have you not obſerved in the City his Actions there?

Sir *Will. Ruſſel.* I was concerned at that time when he was Mayor.

Mr. Att. Gen. How did you obſerve him?

Sir *Will. Ruſſel.* I do not know that I have heard him ſpeak in a Court of Aldermen.

Mr. Att. Gen. I aſk you, Sir, would he ſtrain a Point to ſerve a Party?

Sir *Will. Ruſſel. I do not know*, Sir.

Mr. *Williams.* I think you have known Sir *Patience* a great while: Do you take him to be a good Subject to the King, or no?

Sir *Will. Ruſſel. I never knew otherwiſe by him.*

Sir *Fra. Winn.* Mr. *John Johnſon.*

Mr. Juſt. *Jones.* This kind of Evidence doth weigh very little.

Mr. Recorder. It is a very improbable thing, that a Man that hath borne ſo many great Offices, that hath repreſented the King in that great Office of Lord Mayor, ſhould be guilty of this.

Mr. Att. Gen. My Lord, if they talk of Reputation at large, we will call all the Court here for the Reputation of our Witneſſes.

Mr. Juſt. *Jones.* For a Man that hath been ſo eminent as Sir *Patience* hath been, there is very little more to be ſaid for his Reputation.

Sir *Fra. Winn.* Mr. *Johnſon*, do you know Sir *Patience Ward?*

Mr. *Johnſon. Yes, Sir.*

Sir *Fra. Winn.* How long, Mr. *Johnſon*, have you known him?

Mr. *Johnſon.* Ten or twelve Years, Sir.

Sir *Fra. Winn.* Have you had Dealing with him?

Mr. *Johnſon. Yes, Sir, for conſiderable Sums, for Thouſands of Pounds.*

Sir *Fra. Winn.* Has he dealt with you as a juſt Man?

Mr. *Johnſon. A very honeſt juſt Man as ever I dealt with in my Life.*

Sir *Fra. Winn.* Do you think he would forſwear himſelf?

Mr. *Johnſon. I don't think he would tell a lie.*

Mr. Att. Gen. No, not for a Party?

Mr. *Johnſon. No, not for a Party. Said I, Sir* Patience Ward, *you are looked upon to be a Perſon diſaffected to the Government. Says he, It is my Misfortune*; *I am as loyal as any Man in* England.

Mr. Juſt. *Withins.* Hark you, Sir, pray how came you to queſtion whether he was or no?

Mr. *Johnſon.* Being intimate with him, Sir.

Mr. Juſt. *Withins.* What made you doubt, to aſk the Queſtion?

Mr. *Pollexfen.* Do you apprehend him to be a Man that would forſwear himſelf?---Mr. *Johnſon.* No, truly, he was a Man of few Words.

Mr. *Pollexfen.* Was he cautious?

Mr. *Johnſon.* Yes, Sir, *as exact a Man as ever I dealt with in my Life.*--- I am very well known in the Court, I don't come to ſerve a Party. I can ſerve his Majeſty as well as ſome in Court.

Sir *Fra. Winn.* Mr. *Toriano*, how long have you known Sir *Patience Ward?*

Mr. *Toriano.* Thirty Years.

Sir *Fra. Winn.* In all the Time have you looked upon him as fair in his Dealing?

Mr. *Toriano.* I have known him a Man of Truth, one that would not be falſe, to his Knowledge.

Sir *Fra. Winn.* Do you think he would forſwear himſelf?

Mr. *Toriano.* I don't think he would tell a Lye to his Knowledge.

Mr. Serj. *Jeff.* You ſay how long you have known Sir *Patience Ward*: Have you not wondered within three or four Years?

Mr. *Toriano.* I have not meddled with Things. He hath by his Diſcourſe been as loyal a Man as any.

Mr. *Williams.* Mr. *Pickering*, how long have you been acquainted with Sir *Patience Ward?*

Mr. *Pickering.* My Lord, I have been acquainted near forty Years. We have dealt together as long as he did follow a Trade.

Mr. *Williams.* Pray, in your Converſation and Dealing with him, did you obſerve him a Man given to Lying, or Falſeneſs, or Deceitfulneſs, in his Converſation and Dealing?

Mr. *Pickering.* I never in all my Life did obſerve him guilty of any thing inclining that way, but of a fair Converſation, never given to many Words.

Mr. *Williams.* Do you think he would corruptly forſwear himſelf upon any Account?

Mr. *Pickering.* Truly I believe not willingly do it, nor any thing that way.

Mr. Att. Gen. Mr. *Pickering*, you have obſerved him to be ſwerving of late?

Mr. *Pickering.* Truly I have been a Common Council-man in the Ward where he is Alderman, and all the Diſcourſe I heard from him was very loyal truly.

Mr. Serj. *Jeff.* By his Actions you have looked upon him to be a Man very well affected to the Government?

Sir *Geo. Treby.* (To Capt. *Griffith.*) Do you know Sir *Patience Ward?*

Capt. *Griffith.* I have known him ever ſince he hath been Alderman of that Ward.

Sir *Geo. Treby.* How many Years, Sir?

Capt. *Griffith.* About thirteen or fourteen Years.

Sir *Geo. Treby.* In all that Time how have you looked upon him?

Capt. *Griffith.* I have looked upon him in that Repute he was in as an Alderman. I never had any Dealing with him.

Sir *Geo. Treby.* Did you think he would forſwear himſelf?

Capt. *Griffith.* No truly, I think no Man of Honour would forſwear himſelf.

Mr. Att. Gen. Captain *Griffith*, upon your Oath, how hath he carried himſelf towards the Government?

Mr. *Williams.* Sir *Harry Tulſe*, in all your Time did you find him to be a Man given to tell Stories for Truth?

Sir *Harry Tulſe.* Sir, I never had any Dealing with him in Matter of Trade.

Mr. *Williams.* How did you find him in his Converſation?

Sir *Harry Tulſe.* Truly, Sir, I never heard any thing ill of him.

Mr. *Williams.* Did you find him a Man of Falſity or Truth in his Converſation?

Sir *Harry Tulſe.* I never had any Dealing, ſo can ſpeak little; I never heard any thing amiſs of him; I have heard he is a very conſiderable Merchant, and I believe he is ſo, and accounted a very civil Gentleman. I have had the Honour to ſit in the Court of Aldermen ten Years with him, and we have had ſometimes ſome Difference in Judgment.

Sir *Geo. Treby.* Would he wilfully forſwear himſelf, do you think?

Sir *Harry Tulſe.* Truly, I believe not.

Mr. Serj. *Jeff.* Do you believe every thing he ſwore at the laſt Trial was true? You are upon your Oath, Sir *Harry Tulſe.*

Sir *Harry Tulſe.* I believe they were not true.

Mr. Serj. *Jeff.* Sir *William Hooker*, we would give you no more Trouble.

Mr. *Williams.* Becauſe they called you, Sir *William*, I would aſk you a Queſtion, what do you think of Sir *Patience Ward?*

Sir *William Hooker.* Truly thus, according as it hath been ſaid; but truly when I conſider what a Condition Sir *Patience Ward* was in, when he delivered his Evidence; for to my Remembrance, he looked like a Man three quarters dead—

Mr. Serj. *Jeff.* Do you believe whatever he ſwore was true?

Sir *William Hooker.* I do not remember any thing he ſwore then.

Mr. Juſt. *Jones.* Have you done?

Mr. *Williams.* We have done, we leave it to the Court.

Mr. Serj. *Jeff* Sir *Francis Lee*---Sir *Francis*, were you at this Trial, and do you remember what Sir *Patience Ward* ſaid at the Trial?

Sir *Fra. Winn.* Always you come with Drops at laſt.

Mr. *Williams.* This is a new way of going to Work.

Sir *Fra. Lee.* I was upon the Jury between his Royal Highneſs and Mr. *Pilkington*, and Sir *Patience* did ſwear, that Mr. *Pilkington* was not in the Room, when the Diſcourſe concerning the Duke of *York* was mentioned; but afterwards did ſwear, when Mr. *Pilkington* ſaid, he hath burnt the City, ſaid he, I clapp'd my Hand upon his Mouth, and t'other upon his Breaſt, and bid him explain himſelf; who do you mean? *Hubert?* Sir *Francis Butler*, who was our Foreman, and ſtood next to me, jogg'd me, and bid me take Notice of that; and ſo I did: And after we had this Diſcourſe together, he ſaid, Sir *Francis*, I would have had you to take Notice: Did you take Notice of it? I told him I did. Truly, it ſeemed clear to me, *That he ſhould ſwear he was not preſent at the Diſcourſe about the Duke of* York, *and afterwards he muſt infer he meant the Duke of* York; *or elſe, what ſhould he have ſtopp'd his Mouth for?*

Mr. *Williams.* My Lord, here are Gentlemen that heard all the Trial, they might have been called certainly in Order. But, my Lord, to come in at laſt, when the thing is heard on both Sides, then to come in with Witneſſes again, I don't underſtand.

L. C. J. They may call theirs, when you have done with yours.

Sir *Fra. Winn.* My Lord, I will but put this one Inſtance; in a *civil* Cauſe it hath been denied, much more in Perjury.

Mr. *Williams.* We will leave it to the Court; if Mr. *Attorney* ſays he will, we will.

Mr. Juſt. *Withins.* Take your Liberty on both Sides, I pray.

Mr. Att. Gen. If Sir *Patience* did not know it to be falſe, then it is no Perjury.

Sir *Geo. Treby.* I ſaid no ſuch Words.

Mr. Juſt. *Withins.* They reſolve they will conclude; therefore, Gentlemen, take your Time.

Mr. Att. Gen. I remember what you propoſed t'other Day, you made a Speech after two or three o'th' Clock in the Afternoon.

Sir *Geo Treby.* Who, did I?

Mr. Juſt. *Withins.* Nay, good Gentlemen, don't quarrel.

Sir *Geo. Treby.* I deſire to ſay a Word or two. That your Evidence doth not at all encounter ours, it ſtands with it; let them have as much Reputation as they will. They ſay, Sir *Patience Ward* did ſay thus and thus, as concerning cutting of Throats, and as concerning the Diſcourſe being ended, and as concerning the Duke's being not named; ours ſay the ſame too: but they ſay more; they ſay, he ſaid with all the Caution in the World, from the Beginning to the End. My Lord Chief Juſtice bids him recollect himſelf; he ſays, he ſpeaks to his Memory. Upon Sir *George Jefferies*'s Queſtion, he ſays, he ſpeaks to the beſt of his Remembrance, and thereupon is that memorable Reply of Sir *George*, Your Invention is better than your Memory. One of their own Witneſſes ſays it was ſo, and ſo ſays Mr. *Blaney*, and ſo ſays another Witneſs. While the Diſcourſe continued, whether he was there or no, Sir *Harry Tulſe* doth agree, that he cannot ſay he did ſee him. Now, under Favour, if he did not ſee him, he might ſay he was not there, for no Man can ſwear otherwiſe than according to his Senſes; what a Man does not ſee, may be behind his Back, although he had not limited himſelf with that Caution, as he did limit himſelf with the greateſt Caution, and ſaid, as he did *believe*, he was not there. My Lord, none of their Witneſſes will undertake to ſay he uſed the Word *Poſitive*: They don't deny the Thing, it is impoſſible any Man ſhould; but that there were theſe Words of Limitation, they might be ſaid, and not heard by them, they might be ſaid, and not obſerved by them. None of them did pretend to write Notes, except the firſt; and from the Evidence of the firſt, I have all the Reaſon in the World to believe, that *his Notes* did contain all thoſe Cautions, and all thoſe Qualifications, that we ſpeak of; why elſe ſhould he be to ſeek to that written Short-hand? He *did not know whether he had Notes here*; he did know, whether he had conſulted the Notes ſince. Would any Man in the World lay by Notes at this rate, that intended to give full Evidence? Though I will ſay that for him, he does not undertake to ſay poſitively, but according to the beſt of his Memory, and according to his Belief. Sir *William Hooker* ſays, he was in a great Confuſion. Here are a great many Gentlemen beyond all Exception in the World, that do ſay his Dealing was ſo fair, that he never told a Lye, that he was moſt exact and moſt juſt in his Dealing. It is impoſſible that a Man ſhould avoid ſuch an Evil as this is, for ſo long a Time, and in ſo great Places and Offices, and ſhould now at laſt be guilty of ſuch a vile and baſe Sort of Crime as Perjury is, which no Man ought to preſume of another, unleſs there be the greateſt and plaineſt proof to the contrary. But, my Lord, on our Side is the plaineſt Proof that can be, by Witneſſes that remember the Words as well as the Qualifications; and one of our Witneſſes is worth Abundance of their Witneſſes that did not write, eſpecially ſuch a one as *does not ſhew his Notes*. But as I ſaid before, they were teſtified by Sir *Patience Ward*, with all thoſe Cautions; and we do think, that there is no Colour in the World that this ſhould be Perjury.

Mr. *Williams*. Gentlemen, I am of Counſel for the Defendant, and the Queſtion is, Gentlemen, Whether Sir *Patience Ward* be guilty of the wilful and malicious Perjury that is laid to his Charge in this *Information?* Gentlemen, it is agreed on all hands, and that will appear to you, there hath been no manner of Evidence given for the King againſt Sir *Patience Ward*, either as to his Honour, or Reputation, or Truth: There is nothing, Gentlemen, endeavoured to be charged upon him, but this particular Crime. The Gentlemen that proſecute him do not offer any one Thing againſt his Reputation or his Dealing; ſo that, Gentlemen, for aught appears to you yet, before this was laid to his Charge, he was a very clear Man. Gentlemen, he hath borne great Offices in the City of *London*; he hath been Lord Mayor of *London*; he is now in a conſiderable place of Magiſtracy; he is an *Alderman*. We have proved by ſeveral Gentlemen, he is a Man of great Value, a Man of great Reckoning and Dealing, a Man of Truth, a Man of Veracity, a Man, that they believe, would not forſwear himſelf for a World: Gentlemen, the very Witneſſes againſt us, they ſay it. Sir *William Hooker* tells you, he was under that Conſternation, he was like a Man three Parts dead, ſo that there could be nothing of Malice in that Man; he was without Senſe, without Paſſion; and if any thing was done, it was done as it were by a dead Man, a Man that was ſenſeleſs. Sir *Harry Tulſe* believes, he would not willingly have perjured himſelf; then he is not guilty of wilful Perjury, and that is the Queſtion you are to try. Now I have ſaid this, Gentlemen, as to the Condition of the Perſon. And now for the Imputations that are laid upon him. The ſecond Obſervation that I make, is from the Nature of the Crime; we are accuſed of Perjury, *firſt*, that we have perjured ourſelves. That in any one caſual Thing done upon any Account whatſoever, to prove the Fact done, that a Man is perjured, it is an eaſy Matter. Men are ſubject to miſtake; the Words ſpoken, Gentlemen, were ſpoken in a very few Moments. Conſider what a Thing the Memory of Man is, how ſubject Men are to miſtake Words. To ſay, that Men ſhall not differ, that there ſhall be no Variation between Man and Man, it is to put an End to all Converſation, there would be no bringing of Witneſſes, if there might be no Variation. Nay, Gentlemen, to juſtify what I have obſerved to you, obſerve theſe two Gentlemen: Sir *H Tulſe*, he tells you, that the Words were by way of Queſtion, *Is the Duke come?* That *Pilkington* ſhould ſpeak the Words by way of Queſtion, *Is he come? Is he come to cut our Throats?* So that he tells you, *Pilkington* ſaid theſe Words by way of Interrogation. This is the Evidence of Sir *Harry Tulſe*; and both of them agree, Gentlemen, that they were ſpoken at one Time. What ſays Sir *William Hooker?* How does he apprehend theſe Words? He tells you they were poſitive in the preſent Tenſe: *He is come, he is come to deſtroy our Wives and Children.* So that if theſe Gentlemen miſtake, one takes them by way of *Queſtion*; t'other ſays, they were delivered *poſitively*, in the preſent Tenſe. Suppoſe this were brought againſt theſe Perſons, no Man will ſay this is Perjury. As theſe Gentlemen have miſremembered, ſo might Sir *Patience Ward* have miſremembered; and if he had, it is his Infirmity, no Crime: For any Man is ſubject to miſtake. We are now upon the Perjury, and it is not any thing that is Affirmative, but they are Negatives. The firſt *Negative* is this, that he ſhould ſay there was no Mention of cutting of Throats. Say? The Queſtion is, What was the Diſcourſe about cutting of Throats? Say I there was no Diſcourſe about cutting of Throats; it is natural to a Man to ſay, I heard no ſuch Thing, and every Man muſt ſpeak to his Hearing; it is that which muſt pierce your Ears; that Organ muſt be touched. There was no Diſcourſe, I heard no Diſcourſe; I could ſay no otherwiſe, nor any Man that goes by common Reaſon. It muſt be by Hearing, it is not natural: Won't you believe what they ſay, that Sir *Patience Ward* did ſay, and Mr. *Blaney*, and other Witneſſes with him, there was no ſuch Diſcourſe? Is it not rational for a Man to believe there was no ſuch Diſcourſe? So that, I take it, was the Nature of the Thing. For the other Thing, there is not one Man that hath proved it to you, that he ſaid there was no Diſcourſe of cutting of Throats. Let them ſhew me that Witneſs that he did poſitively ſay it, and then I will give up the Cauſe, for my Share. I am ſure Mr. *Aſton*, a Clerk in the Court, he ſays it was, to the beſt of his Obſervation. Mr. *Aſton* is a Man that uſes to be here, and a vigilant Man in the Court; he does not take it upon him poſitively. Theſe worthy Gentlemen, the Aldermen, don't take upon them poſitively. Their Witneſſes were wary in it. Are there any two of them agree how the Words were ſpoken? So that, Gentlemen, there is no poſitive Proof againſt us. Now the Proof lies on our Part. We prove very plainly by Mr. *Blaney*; and can any Man do better in this Caſe? The ſame Evidence runs to the other two Inſtances, as to this; therefore I do not love to multiply Words. Now our Evidence is to juſtify this. Here is Mr. *Blaney*, he ſat in a moſt proper Place, and the moſt likely to hear of any Man in the Court; he ſat in the Middle, between the Court and the Jury, near the Witneſſes, heard as much as any about the Court. He tells you directly, he did refer his Evidence to his *Hearing*; he tells you, he referr'd all the Parts of it either to his *Memory* or his *Obſervation*. He does not truſt to a frail Memory; but he tells you he took it in Writing, and tells you that Writing is here; he produces it here. He is a Gentleman that uſes to take Writing; ſo that if you give Credit to this Gentleman, certainly he is in the right. Mr. *Blaney* is not alone in this Matter; we have called ſeveral, and they agree with Mr. *Blaney*. Every Witneſs that ſpeaks juſtifies Mr. *Blaney*. So that we have ſo many Witneſſes that juſtify every thing, or moſt of the Things that we have ſaid. Now, Gentlemen, when I have ſaid all this to you, conſider; for there are ſome Things remarkable in all Cauſes, and the Truth is, all the Witneſſes give you one remarkable Inſtance, and that is, of Sir *Geo. Jefferies*, that he made a Comment upon the Word *Memory*; he admired his Invention, but leſſened his Memory, as if the Gentleman had been troubled, that he had not remembered; for I remember it was a Reflection upon his Memory, that his Memory was not better; but commended his Invention mightily. So that this, Gentlemen, is a remarkable Thing. They give you that Inſtance to juſtify what was ſaid by Mr. *Blaney*. Now, Gentlemen, I have ſaid all this to you, we muſt rely upon theſe Things. They aſk, Whether any thing that was ſaid, was poſitive? It was a Trial laſted ſome Hours; and I think Sir *Patience Ward* was an Hour in examining. Did he ſay any Word poſitively? Can any Man anſwer ſuch a Queſtion? It is an impertinent Queſtion. Gentlemen, upon thoſe three Matters that are aſſign'd, whereof he was accuſed; as for thoſe three Things, they are anſwered particularly. Gentlemen, now we are in your Hands, and the Queſtion is, What you will do in our Caſe? Here is a poſitive Proof for us; all the Preſumptions that can be for us; here is the Proof of our Reputation; here is nothing againſt the Gentleman's Reputation; and a *Man of Honour had rather be tried for his Head, than for his Ears.* I know, Gentlemen, you are Men of Value, Men that value your own Reputation; I leave it to you, whether you can in Conſcience ſay, upon your Oaths, that this Gentleman is guilty of wilful Perjury.

Sir *Fr. Winn*. My Lord, this is a Cauſe of great Importance, not only now, but in point of Example hereafter. My Lord, the Information is, that Sir *Patience Ward*, by his Conſent, and out of a wicked Mind, did falſely, voluntarily, and corruptly ſwear ſo and ſo: So that if ſo be that he hath not ſworn wilfully and corruptly, I know your Lordſhip and the Court will tell the Jury, he is not guilty of Perjury. Truly, my Lord, in this Caſe, I muſt obſerve to your Lordſhip and the Jury, that we are now contending what Witneſſes have the beſt Memory; for the Thing is not in controverſy for any Act done, but our Defence is, what Sir *Patience Ward* did ſwear at the Time when he was at the Trial. I muſt ſay, there are no Memorials in this Cauſe given on the other Side, of any Man that did undertake to write down at that inſtant Time for the King; but one Man ſays, he cannot very well tell whether he took Notes or no. So that I do ſay, my Lord, with your Lordſhip's Leave, that of all the Witneſſes they have produced, there is not any one of them but does vary in Words; they are not conſiſtent in Expreſſion, even to any particular Queſtions that were aſked; and can it be ſaid to be wilful and corrupt Perjury, upon ſuch an uncertain Evidence? I don't doubt, Gentlemen, but you will take great Care of it. My Lord, I will mention but two Particulars to your Lordſhip, that I think, go through the Caſe. My Lord, Mr. *Blaney* hath told you ſeveral Particulars that have been remembered; he writ it at that Time, without any Variation; it hath a great Advantage over the other Side, that have only retain'd it in their Memories, and their Memories might fail them, and differ from the Time of ſpeaking; but here the Writing remains; that was writ at that very Inſtant; here it was freſh written out of his Mouth. The Queſtion was aſked, Can you ſwear, Mr. *Blaney*, you writ every Word, or no? It was aſked the Witneſſes, Can you ſwear, that he ſwore nothing *poſitively?* I muſt confeſs, my Lord, it is a Queſtion that is ſtrange for a Man to anſwer. Any thing poſitive! Does he know what a Man means? He muſt reduce it to Particulars. But, my Lord, I have aſked Mr. *Blaney*, Did you take it as it came from his Mouth? He ſwears theſe Words he ſpake, and there is no Variation, but written inſtantly at that very Time. My Lord, I do think this is a Thing goes a great way. My Lord, there is one thing more that I think goes through the Cauſe, and that is Mr. *Criſp*; for *Criſp* acquaints your Lordſhip, that when there was ſome Variation between the Aſſertion of Sir *Harry Tulſe* and Sir *Patience Ward*, my Lord *Chief Juſtice* gave an Admonition to Sir *Patience Ward*, Sir *Patience*, Sir *Patience*, recollect yourſelf. My Lord ſaith he, what I deliver, I do according to the beſt of my Remembrance; and then this afterwards (for this was at the End of his Evidence) is a Qualification quite through the Cauſe. This being to weigh it with t'other Side. But I would ſay one Thing more; to what End ſhould this be? Is any Man damnified by this Oath? Is there any Man can ſay this Oath hath prejudiced any Man in his Reputation or Eſtate? It was very ſtrange, that a Man that hath brought ſo many Witneſſes, and thoſe very worthy Perſons, that ſay they believe he would not forſwear himſelf, ſhould do this for nothing, that a Man ſhould be the wickedeſt Man in the World at *one Jump*, that you can hear nothing of any Act of Falſity of him before. Now when there are ſuch plain Evidences, undubitable Evidences, it is a Thing of great Conſequence. And Colonel *Birch* ſays, generally, as he does remember and believe, he did cautiouſly ſpeak. And Sir *William Hooker* ſays, he was under Conſternation at this Time. So that it appears he had much Caution; and if ſo, it is of mighty Conſequence, and concerns any Witneſſes to come. Here is a Man perjured, and a great many Witneſſes may. You are not to mind what is ſaid by the Counſel of both Sides, but what is ſaid in point of Proof. It will make all Men cautious, becauſe they may infer Danger by a poſitive Aſſertion. My Lord, this is a Caſe of Perjury, in which I, and every honeſt Man, that values his Reputation, ſhould be tender. If this Man be guilty, it is a great Crime; I muſt leave it to your Conſciences.

Mr. *Pollexfen*. The Nature of the Caſe I do humbly pray your Lordſhip to take into Conſideration, and the Jury. It muſt be wilful and corrupt; for ſo are the Words in this Information, and in all Indictments: It muſt be *wilful and corrupt Perjury*. My Lord, if ſo be that ſeveral Witneſſes interfering one with another, one remembering one Parcel of Words that were ſpoken at the ſame time, any Man ſhould be perjured in this Caſe, by remembering, and not remembering, no Man almoſt durſt be a Witneſs. What diſcourſe hath paſs'd, let us but obſerve in this Matter. Here were three Aldermen preſent; one of them ſwears there was no Diſcourſe of cutting of Throats; it is a *Negative*, not an Affirmation; and no Man that hears him, but muſt ſay of it, *no Diſcourſe that he heard.* When I ſay there was no Diſcourſe of ſuch a Thing, any Man will underſtand, No ſuch Diſcourſe came to my Obſervation or Hearing. For the others that ſay there was ſuch Diſcourſe, they vary themſelves; one ſays it was *cutting our Throats*; t'other, *cutting the Throats of our Wives and Children.* I only ſay this to ſhew the Weakneſs and Fallibility of Men's Memories, that carry Things ſo in an Uncertainty. Two or three Men ſwear a Man ſaid ſo, t'other ſays he did not; no Man can underſtand it in any other Senſe, but he did not hear him ſay ſo: For a Man can ſay no more of what another ſays, than what he heard. So, my Lord, conſidering the Circumſtances of the Caſe, it is ſo that Men may perjure one another upon Omiſſions. One Man may bring one little Part of a Diſcourſe, and another another; it will be a very unſafe Thing for a Man to be a Witneſs ſo. But my Lord, the next Thing is this of poſitive Evidence, and upon Remembrance. My Lord, if ſo be there muſt be poſitive Evidence to convict a Man of Perjury, I would leave it to your Lordſhip in the Cauſe, whether there be any among all their Witneſſes, have proved it poſitively? Next, my Lord, if ſo be that we muſt have of t'other Side poſitive Evidence, we have more poſitive Evidence than they, under Favour, conſidering that Mr. *Blaney* hath his Notes. This I anſwer to that Objection of theirs, Did he ſay any thing poſitive? Did you write down this or that? That is not the Matter; there is no Man that writes all: But the Queſtion is of that he did write, Whether that be true? If that be true, it is more certain, being written at that Time, being written here in Court, when there was no Thought of being made uſe of as an Evidence, is ſtronger than many Men's ſlippery Memories. But *he* in this is back'd with a great many other Witneſſes that do ſpeak it, though not ſo poſitively as he does, becauſe he hath his Notes to help him; and he ſays particularly to one Thing, that he does particularly remember it. And, ſo, being they were written at that Time, that is, under Favour, a better Evidence than twenty ſlippery Men's Evidence can be. So that taking all this together, conſidering the Perſon accuſed, and the great Offices he hath borne, conſidering the great Shame and Scandal of the Crime, all Men that have known him for twenty Years together, ſaying he was not any falſe Man; better a Man had taken his Head from him, than taken away his Reputation. Unleſs, my Lord, there be plain and full Evidence, I hope it will not affect us, nor Witneſſes that ſhall come afterwards.

Mr. Att. Gen. The Matter, Gentlemen, before you, is, Whether or or no Sir *Patience Ward*, for ſwearing theſe Words, be guilty of wilful or corrupt Perjury? I ſhall admit that; but it is the firſt time I ever heard of, that we muſt go to prove the Intentions of this Gentleman, that if he did not intend to ſwear wilfully, or voluntarily falſe, that it will not be a corrupt or wilful Perjury. My Lord, therefore I muſt obſerve this to the Jury; if the Matter that he ſwears be falſe, the Law conſtrues it to be corrupt and wilful: If the Matter, I ſay, does directly come in Iſſue, and he in that Iſſue ſwears that which is falſe, ſo that it hath an Influence upon that Iſſue, the Law conſtrues it corrupt and wilful: For that is the Reaſon, my Lord, why that Regard is given to all Oaths in Cauſes, that they may be plain and direct; and a great Puniſhment is upon them, if they are not true; that is the only Reaſon for it, and no other. For without Doubt, we have nothing to prove the Caſe, but theſe two Things; for we cannot ſearch into a Man's Intentions, that when he ſpeaks of the Duke of *York*, he intends *Hubert*; but we muſt take Things as they are, whatever a Man intends. So the Jury are to inquire but of *two* Things; Whether or no theſe Words *were ſpoken by him*, as they are laid? The next is, *Whether they are falſe?* We have nothing more to do: But if we prove theſe two Things, that the Words that were ſpoken, were ſpoken by him as they are laid, in that Manner, not as theſe other Witneſſes would have, with the Words, *I believe*, and, *as I remember*, but that they were plainly and poſitively ſpoken, my Lord, that we are to prove, and we have proved it. The *next* Thing we are to prove, is, that the Words are *falſe*; that they are falſe, they do admit by all the Witneſſes; they don't go about to encounter that Proof at all; they have not at all endeavoured it, but that theſe Words, as they are laid, are abſolutely falſe; and they were contrary to the Matter that was in Iſſue in that Caſe. That this Gentleman ſpake them, my Lord, the very Thing ſpeaks; for he was heard by the Court as a Witneſs, and as their Evidence in the whole Cauſe; and the Court, after he was examined, put it upon this Gentleman, *What do you ſwear?* If it had been all, *as I remember*, and, *as I believe*, the Court would have declared it was no Evidence. My Lord, if a Matter be in Iſſue, and a Man comes and ſays, *as I remember*, and *believe*, this doth not encounter the Iſſue, nor the Proof that is for that Iſſue, when there were two poſitive Witneſſes, that poſitively ſwore the Words, that the Court ſhould then refer it upon the Teſtimony of Sir *Patience Ward* to the Jury, the Court would give Judgment he was no Evidence; it is plain he was no Evidence, if he ſwore to his Memory and Belief. That that is no Evidence, the Reaſon is plain; for there would be an End of all Trials, if ever that ſort of Doctrine be admitted: No Man can be perjured upon *his Remembrance*, nor upon *his Belief*; who can tell he believes contrary to what he ſays? So that there is an End of that which ought to be the Cure of all the falſe Witneſſes in *England*; for I take it in point of Law, the beſt of *Remembrance* in this Nature, or *as I believe*, is no Evidence at all; and therefore the inſiſting much upon that, is to charge the Court with Injuſtice to put that upon the Jury, and the Jury need not have given any Reaſon why they would not believe him; for there had been an End, if he had ſaid, *as I remember*; the Jury might have ſaid preſently, there are two poſitive Witneſſes againſt him. The two firſt Witneſſes we have call'd, *Hatch* and *Wood*; they do ſwear as to thoſe Words of *cutting of Throats*; they ſwear it poſitively, both of them. Whether he uſed the Word *poſitively*, or whether it was *upon his Oath*, that, indeed, they could not ſpeak to, but they were poſitive, without any Reference to *his Belief or his Memory*. To the other Point of the Duke of *York* and *Pilkington* being there, that they ſpeak poſitively to, and I think Sir *James Smith* doth ſpeak as poſitively that he was ſure his Words were, either *I do poſitively ſay*, or *upon my Oath*, one of them; but without any Words of Reference. Mr. *Aſton*, who is a Clerk of this Court, and ſat there in this Place, he ſpeaks to that poſitively.

Sir *Fra. Winnington*. *I think* I am *pretty ſure*, *I think*, theſe are the Words.

Mr. Att. Gen. The Foreman of the Jury he repeats the ſame poſitively, and gives a plain Reaſon; if it were not poſitive, it were an idle Thing.

Mr. *Williams*. Will you do us Injury in the Cauſe?

Mr. *Aſton*. If he ſpake any Words of Mitigation, they were ſo low, I could not hear; and I think I could hear them all.

Mr. Juſt. *Withins*. Pray go on.

Mr. Att Gen. I ſay, my Lord, ſeveral Witneſſes we produced, and Sir *William Hooker* particularly; for we had never made uſe of him, if there had been only ſo idle an Evidence, for we did not call Sir *William Hooker* till after his Evidence was given, to encounter this poſitive Evidence. We then produced Sir *William Hooker*, after he had given poſitive Evidence, and Sir *William Hooker* did ſwear it poſitively upon him again; then the Court aſked him, *What do you ſwear?* My Lord, after this, he might be ſhy in his Evidence, and ſay, *I remember*, and *I believe* After this, we put it upon him again, and then we ſay the Words were ſworn poſitively; for by way of Hear-ſay and Belief is no Evidence. Now Mr. *Blaney* is all in all, and I think now Mr. *Blaney* will ſignify nothing: I ſay, my Lord, Mr. *Blaney*, what is his Evidence? He pulls out his Notes, and there he tells you, to ſuch a Queſtion there was ſuch an Anſwer, and there indeed it is *to the beſt of his Remembrance*. But what does Mr. *Blaney* tell you? Mr. *Blaney* poſitively tells you, that theſe are but ſhort Notes, many Things omitted, and I perceive whole Sentences omitted, a great deal of Diſcourſe omitted; and that appears by that Paſſage of Sir *George Jefferies*'s Interrogation. Then, my Lord, in one Place he comes and ſays, *to the beſt of my Remembrance*; afterwards he is preſs'd; for ſurely it was to no Purpoſe we would let ſuch an Evidence paſs, but when he is preſs'd; Mr. Alderman, is it ſo, or no? For Belief is no Evidence. There, my Lord, he anſwers poſitively, and that is omitted out of Mr. *Blaney*'s Book: This was neceſſary, my Lord, we ſhould do, and not let ſuch a Thing paſs, as that *to the beſt of my Remembrance*. My Lord, then to ſee what Mr. *Blaney* himſelf ſays, he took Notes, he did not anſwer one Thing poſitively throughout the Whole; for which he is to be rejected, I think, as no Witneſs in the Caſe, as a Perſon that comes and ſwears by Hearſay; and it was ſo remarkable a Thing, my Lord, that we who are of the King's Counſel, ſhould take Notice of it to the Court. He is no Witneſs; he ſwears nothing poſitively: It is an Art, my Lord, was never invented till of late, and if it be allowed, it will make an End of all Trials; for you will have as much *forſwearing*, as you have *lying*. Here is one gives Evidence he never told a Lye in his Life, and I care not whether the Jury believe that or no. Surely, my Lord, we ſhould not let a Man go away with ſuch an Anſwer as this, *to his Remembrance*. If they take upon them this Way of Swearing, I tell you plainly they are no Witneſſes at all. My Lord, I muſt appeal to the Court, if ſuch a Thing be allowed, what will become of all Trials? The Puniſhment of Perjuries does make Men cautious in Swearing; and ſo it was from the Beginning, ever ſince Swearing was allowed to decide Cauſes, Perjury was to be puniſhed. By the Law of God it was ſeverely puniſhed. If there be a new way introduced of giving Evidence, *to the beſt of my Remembrance*, you have ſhut out the Puniſhment. Can you convict any Man of all their Witneſſes, when none of them ſwear? Colonel *Birch* and others, they come and ſay to *ſome Things*, there were theſe qualifying Words; if it had been to material Things, my Lord, were we ſo ſenſeleſs, or the Court ſo ſenſeleſs, to let *the beſt of my Remembrance* paſs for Evidence? So that, my Lord, they do not tell you plainly, they ſpeak nothing at all expreſs. When they are aſk'd, Can you ſwear that he added theſe Words, *to the beſt of my Remembrance?* they ſay he did to ſome Things, but are not poſitive to what. So that your Lordſhip ſees we have plain Teſtimony, they have no Proof. So you ſee what ſort of Evidence this is. Now, my Lord, for his *Crime*. He hath been a fair Dealer, ſurely, in the World, or elſe he could never have gain'd ſuch an Eſtate; but when Men are engaged in Parties, we ſee what a Man will do for a Party, and to help a ſickly Brother, that was falling into the Pit, over the Hedge. But I ſay, my Lord, it is impoſſible, that their Evidence ſhould encounter ours. And, indeed, if we had had Notice, that this would have been given as material Evidence, truly we could have given a great deal to ſhew the many Blots in this Gentleman; but, my Lord, I ſay this is not material, of what Reputation a Man hath been, but whether or no he ſpake theſe Words in this Manner; and whether they are falſe; that they are falſe *is granted*, and that he ſpake them as they are laid, that *we have proved*.

Mr. Sol. Gen. The Queſtions that we were to prove were, Whether Sir *Patience Ward* did give his Evidence at the Trial between the Duke of *York* and *Pilkington?* Whether or no he did ſwear poſitively, that *Pilkington* did not come in till the Diſcourſe concerning the Duke of *York* was over? Whether he did ſwear poſitively, that there was no mention made of *cutting of Throats?* Sir *Patience Ward*, we ſay, did take upon him to ſwear this before poſitively, and not with that Reſtriction that they would have paſs'd upon them. We call'd two Witneſſes, and they are both very poſitive in it; for they ſwear, That Sir *Patience Ward* did ſwear, *That all the Diſcourſe concerning the Duke of* York *was over before Mr.* Pilkington *came in*; that they ſwear poſitively, that he did it poſitively; both of them do ſwear, that Sir *Patience Ward* did take it *upon his Oath*, and to the Manner of it, poſitively; though he did not uſe the Word *poſitively*, yet they ſwear them without any ſuch Reſtriction. Theſe are the two Witneſſes, *Hatch* and *Wood*. Then there is Sir *Fra. Butler* hath given you an Account of his Evidence, and they did debate it among themſelves, and give you the Reaſon why they did not believe Sir *Patience Ward*. Now, *firſt*, they encounter us with the Evidence of Mr. *Blaney*, and his Notes muſt be the Meaſure of the Truth of his Caſe, and nothing muſt be taken for true but what he hath writ; he tells you at the ſame time he had not writ all. Mr. *Attorney* made a full Obſervation upon that: Suppoſe he did ſay he did not hear any mention of *cutting of Throats*, or did ſay to the *beſt of his Remembrance*, yet ſurely that doth not contradict our Witneſſes, that take upon them to ſwear poſitively, that he ſwore it without any ſuch Reſtriction; and it is reaſonable to believe he might be preſs'd to ſay ſomething to the Queſtions that were aſked; for if he ſaid he did hear it, it had been an immaterial Evidence. Sir *Fra. Butler* doth take upon him to ſay, that he did ſay it without Reſtriction; and their conſidering the Weight of it to reject it as untrue, doth make good what our Witneſſes have ſaid, that he did ſwear it without any Reſtriction. But after all this, they ſay he cannot be found guilty, for this might not be wilful and corrupt Perjury; nay, they go ſo far, that they are ſetting up a Doctrine, that I dare ſay no Man ſhall be guilty of Perjury for any Words he ſhall ſwear *wilfully* and corruptly. If a Man is conſcious to himſelf, that the Truth is otherwiſe, or if he be uncertain whether it be ſo or no, yet if he take upon him to ſwear it, that is wilful Perjury in him, for he did not know it to be as he did affirm. Now, my Lord, I ſhall offer but one Circumſtance more: Conſider how this Diſcourſe did riſe; it was upon a Debate concerning waiting upon his Royal Highneſs upon his Return, they were all preſent in the Gallery at *Guildhall*; and it is reaſonable to be preſumed, that every one muſt hear the whole Diſcourſe———And Sir *Patience Ward*, by the Action he did in this Caſe, muſt be preſumed to hear every Particular of it. When Mr. *Pilkington* came to theſe Words, *He hath burnt the City, and is come to cut our Throats, Sir* Patience Ward *catches him, and ſtops him immediately upon his ſaying this.* Now he that was ſo near him as to lay Hands upon him, ſurely it cannot be preſumed but he muſt hear what he ſaid, and he check'd him for what he ſaid, and would fain have fetch'd him off by an Invention that ſerves to little Purpoſe; but did verify this, that he had ſpoken Words of the Duke of *York*, and therefore did adminiſter an Excuſe to him; therefore I ſay it cannot be preſumed but that he muſt hear it. But however, if he took upon him to ſwear a thing poſitively, that he was *not certain of*, it will be wilful and corrupt Perjury in him. But, they ſay, though he ſhould ſay it poſitively, it muſt be underſtood *he did not hear it*; that he ſwears there was no ſuch Diſcourſe as *he did hear*. At this Rate, my Lord, no Man will be found guilty of Perjury, but there will be all the Miſchief in the World introduced; for a Man that ſwears to the beſt of his Remembrance, there will be no Danger of that Man's being indicted of Perjury, that is no Evidence. But a Man that will take upon him to ſwear poſitively there was no ſuch Diſcourſe, he is an Evidence, and a material Evidence in the Caſe. Suppoſe, my Lord, there were Witneſſes concerning the Publication of a Man's *Laſt Will*; that there were two Witneſſes did ſit upon the ſick Man's Bed, one ſwears he did hear him publiſh it in that Form, and that this was his *Laſt Will and Teſtament*; the other comes and ſays poſitively, he ſaid no ſuch Words; certainly this is a very material Evidence. Shall that Man come off from a Conviction of Perjury in this Caſe, by ſaying he did not hear? What a dangerous Caſe are all Men's Inheritances in at that Rate? My Lord, I will not trouble your Lordſhip, only there is one Obſervation they have made, which I cannot let paſs, that there is no Damage in the Caſe. If a Man ſhould forge a Deed, and the Jury detect this Forgery, there is no great Damage, ſhall the Man be accuſed, becauſe he is diſcovered? Shall no Perjury be puniſhed, but what is ſucceſsful?

Sir *Geo. Jefferies.* I ſhould not have troubled you in this Cauſe, but that Mr. *Solicitor* was call'd into another Court. My Lord, I ſhall not offer any thing in this Cauſe, nor repeat any thing that hath been ſaid. My Lord, I ſhall ſay of this Cauſe, what the Gentlemen of the other Side ſaid; it is a Cauſe of very great Conſequence, and it is a Cauſe of that Conſequence, that I know it hath a very great Impreſſion upon your Lordſhip, and likewiſe upon the Jury; and they are not now come to try whether or no Sir *Patience Ward* did deal very fairly between Man and Man in a Matter of Money, but whether or no Sir *Patience Ward* did ſwear what we have alledged in the Information he did ſwear, and what he did ſwear was true: And for that Matter, my Lord, I muſt needs agree with them; nay, I cannot believe the Gentlemen of the Jury will take any thing to be Evidence that is ſaid by us that are Counſel at the Bar; but only ſo far forth as they have Evidence proved to them in Court; for in caſe we were to guide Juries; I confeſs Mr. *Pollexfen* hath determined it, by ſaying the Jury's Verdict muſt be falſe, if they find againſt Sir *Patience Ward*; which I think is a pretty ſtrange Inference, and one of the ſharpeſt Inferences for ſuch a way of Reaſoning, that I confeſs my poor Senſe won't reach it. In the *next* Place, I ſay, the Gentlemen of the Jury ought not to take any Conſideration in this of his Reputation, notwithſtanding all his Dealings before this Cauſe; for certainly till ſuch time as Sir *Patience Ward* came to be called upon his Oath, any Man of Conſcience and Juſtice, and common Charity, had he been aſked the Queſtion, he muſt have ſaid he did not believe, that Sir *Patience Ward* would wilfully forſwear himſelf. God forbid any Man ſhould have ſuch a Thought of him, if he were a Man of leſs Quality than Sir *Patience Ward!* But I muſt conclude, that after Sir *Harry Tulſe* was of that Opinion, ſo I muſt conclude with Sir *Harry Tulſe*, if in our Caſe he be to be believed, at that Time he did believe he did forſwear himſelf.———Pray, good Sir, give me Leave, I will not, to the beſt of my Remembrance, do you any thing of Injuſtice. My Lord, I do ſay, in this Caſe, that though he hath been Lord Mayor of *London*, and borne the Office of Sheriff, and though he is now an Alderman, yet, I do ſay, Perſons that have borne theſe great Offices, have been guilty of greater Crimes, that is, Crimes that have greater Puniſhments, than this Gentleman is now accuſed of; I mean that of Rebellion, and all that Mankind can be capable of: So that it is not the Dignity of Place excuſes Men from Offence. But certainly upon his Evidence, Sir *Patience Ward* ought to be believed by the Jury guilty of wilful Perjury, rather than three or four *Aldermen* that ſwore againſt him. Gentlemen, the next Thing is, the Obſervation of Mr. *Williams*, of the Variance and Difference of Expreſſion between theſe two worthy *Aldermen*, Sir *Harry Tulſe*, and Sir *William Hooker*; one comes and ſays as though it were *poſitive*, t'other as though it were a *Queſtion*. If it can be expreſſed, my Lord, either one way or t'other, or both, he would be guilty of Perjury; for your Lordſhip remembers the Record mentioned in this Record, and all the Words that were ſwore by Sir *Harry Tulſe*, were Part of the Action that *Pilkington* was charged with; all the Words Sir *William Hooker* ſwore, were likewiſe Words put in the Record; ſo that both of them were material to the Iſſue. Now what comes Sir *Patience Ward* to do? Does Sir *Patience Ward* come and teſtify it to make a Difference between theſe two Gentlemen? You ſee both of them agree there was a Talk of *cutting of Throats*. Says Sir *Harry Tulſe*, *Is he now come to cut our Throats?* Says Sir *William Hooker*, *Is he now come to cut the Throats of our Wives and Children?* What ſays Sir *Patience Ward* as a third Man? He ſays there was no ſuch Diſcourſe of *cutting of Throats*, that is the thing theſe Gentlemen have a Mind to forget; one ſays *he is come to burn the City. Is he come to burn the City*, ſays t'other? That is not the main Queſtion; theſe are little minute Differences. It is the Prudence of Mankind to take all Words in their Affirmations, rather than to make Contradictions between them. In this Caſe he finds there was a Neceſſity to ſerve a Turn, and he comes poſitively, and ſays, all the Diſcourſe about the Duke of *York* was ended before ſuch time as *Pilkington* came in; and there is an End of all, in caſe he ſwears true; for in this Oath he abſolutely contradicts what both theſe Gentlemen ſwore; for this is not ſuch a little Variance as theſe Gentlemen would have you to believe. But, Gentlemen, I ſhall apply myſelf to the Evidence they have offered, which is deſigned to overthrow ours. The *firſt* is, Mr. *Blaney*, and there is a great Value put upon Mr. *Blaney*; he ſat in a convenient Place, juſt in the Middle, and there he took Notes, and believes he did not alter them. Now I appeal to your Lordſhip, and the Court, I appeal to the Jury, whether or no their own Witneſſes did not hear Sir *Patience Ward* ſay, *he had never been in a Trial*; he never took notice of a Word of that. And another Man (Mr. *Baker*) ſays, that my Lord *Chief Juſtice* ſaid, *Sir* Patience, *Sir* Patience, *have a Care*; *you ſpeak according to the beſt of your Remembrance.* Now, my Lord, Mr. *Blaney* takes not the leaſt Notice of that in his ſhort Notes. The Queſtion was aſked Mr. *Blaney*, Can you take, upon your Oath, that he ſwore any thing poſitively, or that he did not? *Truly, I can't tell*; *not in my Hearing*, are his Words. Next comes *Beaver*; his Word was, *In my Hearing.* It was Mr. *Blaney*'s Short-hand Remarks that Mr. *Beaver* prefaces all his Diſcourſe with, to the beſt of my Remembrance. They have called Witneſſes that could not be poſitive. I appeal to your Lordſhip, and the Memory of the Jury, whether ever any one of them was able to ſay, that the Words, *to the beſt of my Remembrance*, were annex'd to this, or that, or t'other Sentence. But, my Lord, on the other Side, I muſt ſay, that there are here Aldermen that have ſat upon the Bench, and have behaved themſelves with Loyalty and Integrity to the King and Government; theſe very Aldermen here do poſitively ſay, Sir *James Smith*, Sir *John Peake*, Sir *William Rawſterne*; it is true he cannot be poſitive as to the Buſineſs concerning *cutting of Throats*; but as to the firſt, does not Sir *James Smith* particularly ſay, *I cannot ſay whether he did ſay poſitively, or whether he did ſay, upon my Oath*; but he did undertake to ſay, that either the one or the other he was poſitive in, that he was very expreſs that the Duke of *York* was not named after *Pilkington* came in. And for the ſaying, that *Blaney* took Notes at that very Time, therefore Mr. *Blaney* muſt be a Man of Ten thouſand, as they call him; he is worth Ten thouſand Witneſſes, becauſe he took Short-hand Notes: I would have you conſider what Sir *Francis Butler* ſays, that was Foreman of the Jury at that Time, that bid Sir *Francis Lee* take notice of it at that Time; he did it poſitively: He ſays, Sir *Francis* took notice of that, and ſays he, *we debated it immediately among ourſelves.* And I remember, particularly, Sir *Francis Lee*, Sir *Francis Butler*, and Sir *Thomas Field*, all three do agree together; this poſitive Oath they ſwear Sir *Patience Ward* did make. They did debate immediately after, among themſelves, two Witneſſes ſwearing againſt him was the Occaſion of the Debate. But, my Lord, I muſt come to another Thing: Mr. *Aſton*, a Clerk in the Court, a Man very well us'd both to Writing and Hearing; Mr. *Aſton*, as well placed as Mr. *Blaney*, he gives this Account: *I do poſitively ſay, That the Duke was not named after ſuch time as* Pilkington *came there.* But his being a frail Memory, as they would have it, and no Notes to refreſh him, they put no great Value upon it: But I remember what Mr. *Aſton* ſaid; I have ſeveral Times aſked the Queſtion, and that makes me contain this Thing in my Memory. This does Mr. *Aſton* poſitively ſpeak to. So there, Gentlemen, all theſe five or ſix ſeveral Witneſſes do poſitively ſwear to it: The two firſt Witneſſes they are poſitive, *Hatch* and *Wood*; they do directly ſwear to every Particular. Gentlemen, you are not to mind the Flouriſhes that are made by the Gentlemen at the Bar; here is a Lord Mayor of *London*, here is an Alderman, can you believe him guilty? But do you think that theſe Gentlemen of Quality, that have acquitted themſelves ſo dutifully, and ſo loyally, as they have done, and ſo faithfully, that no Man can lay a Blemiſh upon them, will you take it upon your Oaths, that theſe Gentlemen are forſworn? Will you take it upon your Oaths? That will be a ſtrange Thing! The Laws and the Exerciſe of Juſtice are concern'd, and are to be maintain'd. I beg your Lordſhip's Pardon, that I have taken up ſo much Time. My Lord, I ſay, Juſtice is to be done; there is no Man ſo big as to be exempted from Puniſhment: The greater the Perſon is, the greater is his Crime. One that will come and tell an Untruth in a Court of Juſtice, the greater the Perſon, the more is the Crime. We have given your Lordſhip, and the Gentlemen of the Jury, an Account of the Matter before you, and we ſhall leave it to you.

L. C. J. Gentlemen of the Jury, this is an Information againſt Sir *Patience Ward* for Perjury; and the Information doth ſet forth, that there was an Action that was brought by his Royal Highneſs againſt *Thomas Pilkington*, and it was for ſpeaking ſcandalous Words of his Highneſs; ſaying, *he burnt the City*, and that *he was come to cut their Throats, and cut their Wives and Childrens Throats.* Theſe were the Words that were laid in that Action. That Action was in this Court in *Michaelmas* Term laſt. The Information that now is before you, is this: Sir *Patience Ward* he was ſworn to give Evidence, and that he in his Evidence, upon his Oath, did poſitively ſwear, upon mentioning the Diſcourſe concerning his Royal Highneſs, by *Pilkington*, and concerning his burning the City, and cutting of Throats, Sir *Patience* did ſay, that there was not any mention of *cutting of Throats at all, and that before Mr.* Pilkington *came in the Diſcourſe of the Duke of* York *was over.* And upon this *Mr. Attorney General* hath aſſigned a Perjury, that this was falſe; whereupon the Defendant hath pleaded Not guilty. The Queſtion is, whether Sir *Patience Ward* is guilty of this Perjury, or no. In the *firſt* Place, I muſt aver to you, that if ſo be this was falſe, then this muſt be what the Law calls a wilful and malicious Perjury. For it was the very Point in Queſtion then, it was an Action brought againſt *Pilkington*; the Queſtion, Whether he ſaid theſe Words or not? And Sir *Patience Ward* he did come, and did ſwear, that there was no ſuch thing. Plainly, that was to acquit the Defendant, So that it was the principal Matter that was to be conſidered. Now for aught I do perceive plainly —— Pray do not go with any Miſtake, for I would be loth to do wrong in this; but as far as I do perceive, one Side and t'other upon the Matter do agree, that if Sir *Patience Ward* did ſwear it poſitively, it is agreed on both Sides that it was falſe; it is agreed; for aught I ſee, there is nothing at all ſaid to the contrary. Here are three ſubſtantial Men, Men of very good Quality, that do all ſay there was a Diſcourſe of his Royal Highneſs in *Pilkington*'s Preſence, and in the Preſence of Sir *Patience Ward*; they do likewiſe all of them ſwear, that there were ſuch Words. So that I ſay it is agreed, for aught that I ſee, that it is plain, that it was ſo in Fact, that there was a Diſcourſe of the Duke, and that it was in *Pilkington*'s Preſence, and that there was likewiſe mention of cutting of Throats. Now the Matter that you are to conſider; I will tell you, you are to conſider, whether or no this was ſpoken by Sir *Patience Ward* poſitively, or, as the Defendants would have it, that it was not ſpoken in his Hearing, or as he remembered; for they would qualify it, and ſay that the Defendant did not ſay it poſitively, but with thoſe Qualifications; and if with thoſe Qualifications, then it is plain he cannot be convicted of Perjury; becauſe no Man can be convicted for ſaying he did not remember. This I muſt obſerve to you, though, by the way, ſuppoſe now that Sir *Patience Ward* comes here, and ſays that it was not ſpoken in his Hearing, or in his Remembrance, take it that way, there is this conſiderable, Why Sir *Patience Ward* did hear it ſpoken, and ſo far heard it, that he took notice of it, and would reſtrain it, and put an Interpretation upon it? Would any Man, that had minded his Oath, would *he* have ſaid, that nothing was ſaid in his Hearing, when even he himſelf was preſent; nay, and ſo take away the Excuſe of his not hearing, tho' he were by? He himſelf takes notice of it, and if I take it right, he puts an Interpretation upon it when he talk'd of burning the City; Oh, it is, *Hubert*. It is very hard for a Man to ſwear it was not in his Hearing. ———Pray ſet me right, if I miſtake

Mr. *Pollexfen*. No Man denies but theſe Words were ſpoken; but the going to *St. James*'s, and the Duke of *York*, whether that were not before he came in?

Sir. *Geo. Jefferies*. It was one entire Sentence my Lord.

L. C. J. I do take it, the Evidence was, that *Pilkington* did ſay, he had burnt the City, and he was, or would, come to cut their Childrens Throats; that was in one Sentence: For the burning the City, Sir *Patience Ward* being there at that Time when *Pilkington* ſaid the Words, *Oh*, ſays he, *you mean* Hubert; *ask'd the Queſtion, Who he meant by it?* he meant *Hubert*.

Mr. *Williams*. He did not hear t'other Part.

L. C. J. That I will leave to the Jury; that is to ſay, there were upon the Matter but two Clauſes, *burning the City*, and *coming to cut our Throats*. And now it is, for aught I perceive, agreed, that Sir *Patience* did hear one Part of the Sentence, and did not hear t'other. But this I will make an Obſervation on by-and-by. But ſurely he did not ſo well, if it were no more than that for a Man to ſay he did not hear any ſuch thing, when it is plain he took notice of it at the ſame time. For that, Gentlemen, that they ſay here is no Man that hath any Harm; if a Man does commit wilful Perjury, though no Man is injured by it, hath not he committed a Crime? And though he had not injured any Man by his Perjury, it might have fallen out, that he might have done it; and if ſo be it hath not Succeſs, it is the ſame Crime: For it is very plain, if ſo be the Jury had given a greater Credit to Sir *Patience Ward*, than they did to the other two Gentlemen, then it is very plain it had gone another way, and that had been an Injury. And therefore, Gentlemen, that is nothing at all. But that you muſt lay aſide, and you muſt come to this Matter, that is the Principal Point. The Queſtion is, Whether or no Sir *Patience Ward* did give his Evidence with Qualification, as he did believe, or as he had heard, or believed, or whatſoever it was, or whether he did give the Evidence poſitively. At the Trial there was two, I think three, but two that were at firſt examined, that did prove the Words ſpoken by him againſt the Duke of *York*, and ſwore they did reprove him for it. Sir *Patience Ward* was produced by the Defendant, for to defend the Iſſue on his Side, and to prove him to be not guilty in that Action, that he had not ſaid the Words. Now it is plain, if ſo be Sir *Patience Ward* ſaid only, *I don't believe ſuch a Thing*, *I don't remember it*, or any ſuch thing, that certainly had not been an Evidence that had been worth the Conſideration of the Jury; for that was no more Evidence than any Men that they might take up; the next Man in the Court might have ſaid, he did not believe it, or the like. Now for the King, in this Caſe, there are ſeveral, I think there are eight or nine; and they all of them do ſay, that they remember it very well; nay, and ſome of the Witneſſes do ſay, they took ſpecial Notice of it then, for they were ſomething aſtoniſh'd to hear ſuch Evidence. It is true, all of them don't come to both Parts, but either to one Part, or to both; they all agree in this, that it was poſitive Evidence, and not as *he believed*, or *heard*. There was a Queſtion about Mr. *Aſton*, and he was aſked himſelf; he ſays it was *poſitive*; if he did qualify it, it was ſo low, he could not hear it; and that he might do as he pleaſed. I think there is none of theſe Gentlemen, that any thing at all is to be alledged againſt. That eight or nine Gentlemen, and ſome of them of very good Quality, and all of them of very good Credit, that they ſhould join together to perjure themſelves, for a Revenge upon Sir *Patience Ward*, is ſtrange. For aught appears, there is not any Man appears, but is ſorry for him, and ſome of them have a Kindneſs and Reſpect for him. That is the Evidence the former give; I can't go to every one of the Evidences, to open what they ſay; that will make it very long; and I think there is no Occaſion for it. You have heard it well, and I believe remember it better, poſſibly, than I do. On the *other Side*, for the Defendants: They do bring you, in the firſt place, Mr. *Blaney*; and he does ſay, That he hath taken Notes, and in his Notes it was by Qualifications that Sir *Patience Ward* did ſpeak, that it was according to the beſt of his Knowledge, and that he was here, and ſat here in a Place where he could very well hear all that was ſaid, and that he took it from Sir *Patience Ward*'s Mouth. This is ſaid againſt him, that it is plain he did not take every thing; and whether or no this was taken truly, or not, is ſtill a Queſtion for you to conſider on. They, when they did call him, did ſay he was as good as *Ten thouſand*. They would have his Witneſs to be of more Value than Nine thouſand that did ſwear upon their Memories, and they had ſome Reaſon to ſay ſo too, for to obſerve there is never a Man that does come poſitively; but he does ſay, as he takes it, and he was ſure it was right, although in ſome other Parts it is plain he did miſs. But he does ſay, it was true. But then for the next Witneſſes, Mr. *Beaver* and Mr. *Criſp*, they do come and ſay, how that the Defendant did interlard his Diſcourſe, as he believed, and as he heard. But when he came to be pinched upon that Point, Do you ſwear this Thing poſitively, or according to the beſt of your Memory, then every one of them, (pray correct me, if I be miſtaken) every one of theſe Witneſſes did ſay, it was according to the beſt of Memory. And, Gentlemen, the nine Witneſſes on t'other Side, every one of them did take it upon them.

Council. No, no.

L. C. J. Look you, look you, Gentlemen, one ſpake to one Part of the Words, another to another; but theſe Witneſſes did ſwear *poſitively* to what they did ſwear.

Mr. *Williams*. They were upon their *Memories* ſtill.

Mr. Juſt. *Withins*. Sir *Francis Butler*, Sir *Henry Lee*, was not, nor Sir *Thomas Field*; and *Hatch* and *Wood* was not.

L. C. J. But did take it upon them *poſitively*. For your Witneſſes, there was *Beaver*, and *Criſp*, and *Wright*, theſe three they did ſay, that Sir *Patience Ward* did ſay, *as he believed*, or according to the beſt of his Memory; but they would not take it upon their Memories preciſely, but according to the beſt of their Memories. And now for Colonel *Birch*, and *Northey*, and *Nelſon*, and *Baker*, and *Perry*; they ſaid, that he ſaid, according to the beſt of his Memory, but they could not hear very well what was ſaid; ſo that they could not ſay any one Sentence that was ſaid, and that is, I think, the moſt of the Evidence, all your Evidence, *as to Words*. You have brought ſome Perſons to teſtify for *Credit*; truly, I think, that of all the Aldermen, one that hath paſs'd the Chair, ſhould not have brought under an Alderman, at leaſt, to have juſtified him. But 'tis plain there are others come and ſay, he was a fair Dealer, and they have known him for a grear many Years. Nay, I muſt confeſs, here was one of his Brethren, Sir *Harry Tulſe*, and truly he looked upon him as a fair Dealer, and did not look upon him as ſtain'd with any enormous Vice whatſoever. When he was aſked by the King's Counſel, whether he did believe he had ſworn true in this Particular, he could not ſay ſo there. But, Gentlemen, for all this, I do not ſee any thing whatſoever hath been ſaid, that doth ſtick upon his Reputation, only this very Thing that he muſt be tried upon. And, Gentlemen, upon the Evidence you have heard, you are to conſider the Merits of the Cauſe, and not the Perſon, one way or other, any otherwiſe than doth relate to it. If you believe the Witneſſes that have ſworn for the King, that he did ſwear this *poſitively*, then it is agreed, that it was falſe; if he did ſwear it poſitively, then you muſt find the *Defendant Guilty*. If ſo be you believe the Evidence that hath been given on the Defendant's Part, againſt the King's Evidence, if you do believe that, and not the King's Evidence, then you muſt acquit the Defendant. It is a great Crime, that is the Truth of it.

The Jury withdrew, and after ſome Time return'd, and brought the Defendant in Guilty; *but before the Day for Sentence, he thought it beſt to go out of the Way, having had Intelligence they intended to ſet him in the* Pillory.

CXVII. *The Trial of Captain* Thomas Walcot*, *at the* Old Bailey, *for* High Treaſon, July 12, 1683. 35 Car. II.

THURSDAY July 12. 1683. at the *Seſſions-Houſe* in the *Old Bailey*, *London*: The Court being met, and Proclamation made for Attendance, the Proceedings were as follow:

Thomas Walcot being ſet to the Bar, and after having held up his Hand, the Indictment was read as follows:

‘ *London*. The Jurors for our Sovereign Lord the King, upon their Oaths,
‘ preſent, That *Thomas Walcot*, late of *London*, Gentleman, as a falſe Trai-
‘ tor againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord
‘ *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*
‘ King, his natural Lord, not having the Fear of God in his Heart; nor
‘ weighing the Duty of his Allegiance, but being moved and ſeduced by the
‘ Inſtigation of the Devil; and the true Duty, and natural Obedience,
‘ which True and Faithful Subjects of our Sovereign Lord the King, to-
‘ wards him our ſaid Lord the King, do bear, and of Right ought to bear,
‘ wholly withdrawing; and with his whole Strength intending the Peace
‘ and common Tranquillity of this Kingdom of *England* to diſturb, and War
‘ and Rebellion againſt our ſaid Lord the King to move and ſtir up, and the
‘ Government of our ſaid Lord the King within this Kingdom of *England*
‘ to ſubvert, and our ſaid Lord the King from his Title, Honour and King-
‘ ly Name of the Imperial Crown of this his Kingdom of *England* to put
‘ down and deprive, and our ſaid Lord the King to Death and final Deſtruc-
‘ tion to bring and put, the ſecond Day of *March*, in the Year of the Reign
‘ of our Sovereign Lord *Charles* II. King of *England*, &c. the Five-and-
‘ thirtieth, and divers other Days and Times, as well before as after, at the
‘ Pariſh of *St. Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, afore-
‘ ſaid, maliciouſly and traiterouſly, with divers other Traitors, to the Ju-
‘ rors aforeſaid unknown, did conſpire, compaſs, imagine and intend our

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* *Burnet*'s Hiſtory of his own Times, Vol. I. p. 558.

‘ ſaid Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power, and Government of this his Kingdom of *England* to deprive and throw down, but alſo our ſaid Lord the King to kill and to Death to bring and put, and the ancient Government of this his Kingdom of *England* to change, alter, and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King, through his whole Kingdom of *England*, to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, and ſtir up, within this Kingdom of *England:* And to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, the ſaid *Thomas Walcot* as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, maliciouſly, traiterouſly and adviſedly did aſſemble, meet together, and conſult with the aforeſaid other Traitors, to the Jurors aforeſaid unknown, and with them did treat of and for the executing and perfecting their Treaſons, Compaſſings, Imaginations and Purpoſes aforeſaid; and that the ſaid *Thomas Walcot* as a falſe Traitor, maliciouſly, traiterouſly, and adviſedly, then and there, and divers other Days and Times, as well before as after, did take upon himſelf, and to the aforeſaid other Traitors did promiſe to be aiding and aſſiſting in the Execution of the Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and in providing Armour and armed Men, to fulfil and perfect the ſaid Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid. And the ſaid moſt wicked Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid to fulfil and bring to paſs, he the ſaid *Thomas Walcot* as a falſe Traitor, maliciouſly, traiterouſly and adviſedly, then and there did procure and prepare Arms, to wit, Blunderbuſſes, Carbines, and Piſtols, againſt the Duty of his Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statutes in that Caſe made and provided, *&c.*’

Cl. of Cr. What ſayſt thou, *Thomas Walcot?* Art thou Guilty of this High Treaſon, whereof thou ſtandeſt indicted, or Not guilty?

Capt. *Walcot.* Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Capt. *Walcot.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Then were William Hone, John Rouſe, *and* William Blague *arraigned, who pleaded* Not guilty *to their Indictments; and the Court adjourn'd till the Afternoon. When* Thomas Walcot *being again brought to the Bar, after ſome Exceptions, the following* Jury *was impannell'd:*

Nicolas Charlton,
Chriſtopher Pitts,
Robert Beddingfield,
John Pelling,
William Windbury,
Thomas Seaton,

Jur'

William Rutland,
Thomas Short,
Theophilus Man,
John Genew,
John Short,
Thomas Nicholas.

Cryer. Oyes, If any one can inform my Lords the King's Juſtices, *&c.*

Sir *Francis Pemberton.*

L. C. J. Mr. *Sheriffs,* This is an extraordinary Caſe; it is reaſonable the Evidence ſhould be well heard: I require you both to keep the Court quiet.———Mr. *Tanner,* ſwear the King's Evidence one at a time.

Clerk. Thomas Walcot, Hold up thy Hand. You of the Jury, look upon the Priſoner, and hearken to his Charge: He ſtands indicted by the Name of *Thomas Walcot,* Gent. *prout* in the Indictment before, *mutatis mutandis.* Upon this Indictment he hath been arraigned, and thereunto pleaded Not guilty, and for his Trial put himſelf upon his Country; which Country you are. Your Charge is to inquire, *&c.*

Mr. *North.* May it pleaſe your Lordſhip, and you that are ſworn, the Priſoner ſtands charged, That he being a falſe Traitor to the King, and intending to raiſe War and Rebellion againſt the King, and to bring his Majeſty to an untimely Death, did on the ſecond of *March,* in the five-and-thirtieth Year of the King, at the Pariſh of *St. Michael Baſſiſhaw,* meet with other Traitors like himſelf, and there conſpired to bring theſe Treaſons to Effect; and accordingly promiſed to be aiding and aſſiſting to provide Arms for it; and did actually provide ſeveral Arms, as Carbines, Blunderbuſſes, and Piſtols, for the perpetrating this Treaſon. This is the Charge, to which he ſays he is Not guilty. We will call our Witneſſes and prove it, and then you are to find it.

Sir *Robert Sawyer.*

Mr. Att. Gen. Gentlemen of the Jury, the Priſoner at the Bar is accuſed of the higheſt of Crimes, High Treaſon againſt his Sovereign Lord, in compaſſing the Murder of the King, in raiſing Rebellion within this Kingdom, to the overthrowing of the beſt conſtituted, and the moſt excellent Government in the World. Gentlemen, he does not ſtand alone; and therefore he is charged in the Indictment with a Conſpiracy with many others; I am heartily ſorry to ſay there are many. Indeed there is hardly any Kingdom or Nation, wherein there are not diſcontented Perſons, whoſe narrow Fortunes, or malevolent Spirits, render them uneaſy in that Condition God Almighty hath put them; but to find Men that pretend to be Chriſtians, or to have any thing of Virtue, and under the beſt of Governments, that indeed is a matter of Wonder; and indeed it caſts ſo great a Stain and Reproach upon the Proteſtant Name, that it is not to be wiped off, but by the ſevereſt Juſtice of the Kingdom. Gentlemen, this Deſign was for a general Riſing, and at the ſame time to aſſaſſinate the King and the Duke of *York:* This is the Deſign which the whole Courſe of our Evidence will open to you, and lies ſo naked, that I hope no *Engliſhman* that lives, but will ſee through theſe Men, that have made ſuch a Noiſe and Tumult in theſe latter Days. This Deſign to aſſaſſinate the King, and the Riſing, was deſigned to be in *October* laſt, upon the King's Return from *Newmarket*; and at that time there was a Noble Lord, that is gone now to his own Place, as will appear by the Evidence, that furniſhed them with conſiderable Sums of Money, for the providing Men and Arms for the aſſaſſinating the King at that time; but the Aſſaſſinates were not then ready, as God appointed they ſhould not be ready; and ſo at that time they were diſappointed. Then the general Riſing was put off till Queen *Elizabeth*'s Day, which will open your Eyes to ſee upon what Grounds the tumultuous Meetings were encouraged in the City, to the Terror of all honeſt Men: But that Riſing was alſo diſappointed becauſe ſome of the Conſpirators were not ready with their Men in the Country. And then, Gentlemen, though it was preſs'd on by the Perſon I mentioned, he then thought it high time to leave theſe Confederates to themſelves. Gentlemen, after this we ſhall trace them in their ſeveral Meetings and Conſultations; for there was a time, that they ſtruggled with themſelves, which ſhould be effected firſt, whether they ſhould firſt kill the King and the Duke; or whether they ſhould firſt riſe, and proſecute him in an open Rebellion, and deſtroy him that way. And the Courſe of our Evidence will ſhew, how ingenious theſe Men were; for it appears there were Men of great Ingenuity and Courage, as appears by the Priſoner at the Bar; and they would diſcourſe of theſe Matters in Phraſes, that common Perſons ſhould not underſtand them.———

Capt. *Walcot.* I do not underſtand you.

Mr. Att. Gen. I ſpeak as loud as I can. At their Meetings, for cutting off the King, that *was the executing of a Bargain and Sale*; and *a ſhort Conveyance,* to come to their End. The raiſing of a War, that was under the Notion, and ſo to be diſcours'd of, of *executing a Leaſe and Releaſe, to work both upon the Poſſeſſion and upon the Reverſion:* And under theſe myſtical Terms they diſcours'd of all theſe Subjects, when they were in publick Places.

Capt. *Walcot.* I do not hear.

Mr. Att. Gen. You will hear the Witneſſes, and that will concern you more. Then, Gentlemen, in theſe ſeveral Meetings they contrived to allot every Man in his Part; ſome were to provide Arms, others were to provide Men to do the Execution, which was laſt reſolved upon to be at the *Rye,* upon the King's laſt Return from *Newmarket.* Gentlemen, in all theſe Parts, which I hope to prove, the Priſoner will appear to have a principal Part in them all: In all the Conſultations and Adviſings for the raiſing Men, wherein he was to be a principal Commander, according to the Skill he hath; but for the Aſſaſſination at the *Rye, Rumbold* was to conduct the Men hired for that Purpoſe. Gentlemen, accordingly the Time was appointed for his Majeſty to come, and the Aſſaſſinates to meet him there: But it pleaſed God, that that was diſappointed by a miraculous Fire; for ſo all *Engliſhmen* may call it: And whereas they were to go down on *Friday* to *Rumbold*'s Houſe, and the King to come up on *Saturday,* the Fire brought him to Town on *Tueſday*: But notwithſtanding this great Providence to divert them, *Rumbold* and others of the Confederates reſolved to go on with it ſtill; and ſeveral Places were appointed, and ſeveral Officers were appointed to view thoſe Places, either between *Hampton-Court* and *Windſor,* or elſe to do it at the *Play-houſes,* or upon the King's Paſſage from the *Play-houſe,* by *Bedford-wall* at *Covent-Garden*; but if theſe ſhould fail, they were reſolved to do it at the *Bull-feaſt.* Gentlemen, they went further; they provided Arms; which very Arms opportunely fell into our Hands: We ſeized thoſe very Arms that were bought for that Purpoſe to kill the King and the Duke. We ſhall go through with it; I will name you the material Places of their Meetings, that ſo you may underſtand the Witneſſes; the *Green-Dragon* Tavern on *Snow-hill,* the *Salutation* Tavern in *Lombard-ſtreet,* the *Angel* Tavern near the *Exchange,* and Mr. *Weſt*'s Chamber in the *Middle-Temple*; theſe were ſome of the principal Places, tho' they had ſeveral other Places, wherein all theſe Matters were conſulted und tranſacted. They had prepared a new Model of Government, and they were for overturning all, as all theſe Politicians do; tho' they had a moſt excellent Government, yet they had a better in their own Brains; or, at leaſt, their Share would be greater in it, as all Rebels have a Proſpect of. Gentlemen, for the other Parts, we ſhall have leſs Occaſion to give Evidence of now; for every one had their particular Part; ſome for the great Deſign of the Riſing, ſome for the Killing of the King, whereof that Gentleman, the Priſoner, was one; and there were other Parts aſſign'd to others, for taking and ſurpriſing the *Tower.* We will call our Witneſſes, and prove all that we have opened, and make it as clear to you as the Sun ſhines: Such a prodigious Villainy nothing but a Firebrand from Hell could kindle in Men's Minds, to kill the beſt of Kings, and to deſtroy the beſt Frame of Government. Gentlemen, I do not queſtion your Juſtice, but that this Man ſhall pay what is due to the Juſtice of the Kingdom.

Mr. Serj. *Jefferies.* My Lord, I only deſire to give an Account of the Method of our Evidence.

Capt. *Walcot.* My Lord, I deſire I may have the Favour of Pen and Ink.

L. C. J. That you ſhall have.

Mr. Serj. *Jefferies.* My Lord, and you, Gentlemen of the Jury, Mr. Attorney hath already given you an Account of the Deſign that was to be put in Execution by a Parcel of evil Men, whereof the Priſoner at the Bar we charge to be one. We ſhall not detain you longer with opening the Matter, but beg the Favour of the Court, that we may acquaint you a little with the Method we intend to follow in calling our Evidence for the King againſt the Priſoner at the Bar. In the firſt place, my Lord, we will call our Witneſſes, to give your Lordſhip and the Jury Satisfaction, That there was a Deſign in general, and that that Deſign was firſt intended to be a general Riſing over all the Kingdom; in which Deſign the Priſoner at the Bar had a very conſiderable Share; and was looked upon to be a very proper and fit Perſon for the Managery of that Part of the Deſign: For other Meetings, and at what Places, Mr. Attorney hath already opened to you. We will then come to more particular Agreements that were between them, in order to the carrying on this admirable good Work, as it hath been truly ſtated, for the Deſtruction of the beſt and moſt merciful of Kings, and for the Deſtruction of the beſt of Religions, the Religion of the Church of *England.* I take Notice of it, becauſe all Men may know, The moſt of theſe Perſons, nay all of them, concerned in this helliſh Conſpiracy, were Diſſenters from the Church of *England.*

And the better to effect this horrid Villainy, (I am ſure I want Words, and ſo does any Man elſe, to expreſs the Baſeneſs of theſe Crimes, the better to effect this Thing) the way it was to be done, was by taking off the King, and by taking off his Brother too. At length after ſeveral Debates, and ſome Propoſals made between theſe Perſons, they came to a Determination, and an actual Reſolution, to take off the King, and his Royal Brother. My Lord, we will prove generally, that this was the Intent of the Deſign, or the Plot in general. My Lord, we will then give you an Account, That they entered into ſeveral Conſultations for a new

Model and Frame of Government; for they intended to ſet up the People, and they had even fix'd a certain Superiority, and reſolved, as all People of their Principles have a mind, according to their ſeveral Inclinations, to fix the Power in the People; Gentlemen, an old Tenet, that brought the King's Father to that untimely and horrid End, by fixing the Power in the People. Theſe Gentlemen had a mind to inſinuate and engage the People, by fixing the Power in them, and ſaying, that publick Proclamations were to be made. And after this horrid and barbarous Murder intended upon the King and the Duke, there were Declarations to be made in the Names of ſuch and ſuch Lords, and the Aſſociating Members of the laſt Houſe of Commons; theſe were the Perſons thought fit, in whoſe Hands the Power of the whole Kingdom ſhould be lodged. Gentlemen, after we have given you an Account of the ſeveral Meetings, then we will come to the Priſoner at the Bar, and prove againſt him, That he had not only an Hand in the firſt Part of the Plot, about the Riſing, but he was alſo to be one of thoſe Villains that were to murder the King: I cannot expreſs myſelf in more moderate Terms, and I am ſure no Man can blame me that hears the Proof. Gentlemen, when we have thus given you this Evidence, I hope we ſhall ſatisfy the Court, and all Mankind, That Perſons that have been thus guilty, under Pretence of Religion, or under any other Pretence whatſoever, are fit Objects of the Severity of human Laws. If we prove againſt the Priſoner at the Bar, That he had an Hand in this horrid Conſpiracy, I make no Doubt but you will ſhew yourſelves to be *Engliſhmen*, loyal Men, and overtake all Men that thirſt after the King's Blood.

Mr. *Finch.*

Mr. Sol. Gen. Gentlemen, we will call our Witneſſes; and as no Man can doubt, but the Murder of the King, that vile deſign, would have been ſeconded by a Power to back that horrid Villany; ſo we ſhall ſhew you, That this Gentleman was concerned in both Parts, in the immediate Aſſaſſination of the King, and the raiſing of Arms. We need not go about to give you an Hiſtory of the Thing any other way than in applying it to this Perſon, for there is no Part of this Conſpiracy he can clear himſelf from, and all the Evidence that ſpeak of this Deſign, ſpeak of this Man as a chief Actor in it.

Mr. Att. Gen. Call Col. *Rumſey.* [*Who was ſworn.*

Mr. Sol. Gen. Col. *Rumſey*, Pray, give my Lord and the Jury an Account of what you know of the Priſoner at the Bar, whether he were concerned, either in relation to the Murder of the King, or the raiſing Arms.

L. C. J. Mr. *Rumſey*, raiſe your Voice ſo audibly, that you may be heard.

Col. *Rumſey.* The firſt Meeting I had with this Gentleman was at Mr. *Weſt*'s Chamber.

Mr. Att. Gen. Before you begin to tell of your Meeting, give an Account of any Riſing that you heard of.

Col. *Rumſey.* Sir, about the latter End of *October*, or the Beginning of *November*, I was with my Lord *Shafteſbury* late at Night, and he told me, That the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, and Sir *Thomas Armſtrong*, were at one Mr. *Shepherd*'s Houſe, near *Lombard-ſtreet.* He deſired me to go to know what they had done about the raiſing Arms at *Taunton.* I did go, and Mr. *Shepherd* carried me up to them, and they told me, That Mr. *Trenchard* had failed them about the Men, and they could proceed no further at that time.

L. C. J. What *Shepherd* was this?

Col. *Rumſey.* Mr. *Shepherd*, the Merchant, near *Lombard-ſtreet*, one Mr. *Thomas Shepherd.* And ſo I came to my Lord the next Day, and told him of it; and then he made his Preparation to be gone for *Holland.*

L. C. J. What Diſcourſe had you with my Lord *Shafteſbury* thereupon? What did he ſay? What made you believe he made Preparation to be gone?

Col. *Rumſey.* My Lord, he ſaid there was no Dependence upon thoſe Gentlemen that met, and he would leave *England.* After that, a Fortnight or three Weeks, there was a Meeting one Day at Mr. *Weſt*'s Chamber, and there was Mr. *Weſt*, and Mr. *Goodenough*, and Mr. *Wade*, and ſomebody elſe there was, but I cannot remember his Name. Captain *Walcot* was in *Holland* then. There it was propoſed nothing was to be done by a general Riſing; but there was no ſurer way than to take off the King and the Duke; and that to that Intent and Purpoſe they could not carry it on without Mr. *Ferguſon*; and ſo he was writ for into *Holland*; and he came out of *Holland* upon that Letter, and Captain *Walcot* with him. After Mr. *Ferguſon*'s coming back from *Holland*, there was very ſuddenly a Meeting again, and then it was concluded, that nothing was to be effected without taking off the King and the Duke, or to that Purpoſe. Mr. *Ferguſon* was not at that Meeting. There were two or three Meetings before Captain *Walcot* was there, to find out Men, and they could not find out a Number of Men, without which Mr. *Rumbold* would not undertake it. So, about three or four Meetings after, Captain *Walcot* came; and he was reſolved at laſt to join in the Matter; but he would not have any hand in attacking the Coach, but he would command a Party that ſhould charge the Guards.

L. C. J. What did he ſay?

Col. *Rumſey.* He would not meddle with the King in the Coach, but he would command a Party that ſhould charge the Guards that came along with him.

Mr. Att. Gen. After what manner was it ſettled that it ſhould be done?

Col. *Rumſey.* There were ſeveral Parties; one ſmall Party was to have killed the Poſtilion, another to kill the Horſes, and Mr. *Rumbold* with a certain Number to ſeize the Coach, and Capt. *Walcot* the Guards.

Mr. Att. Gen. Where was it to be done?

Col. *Rumſey.* At Mr. *Rumbold*'s Houſe.

L. C. J. Where is that?

Col. *Rumſey.* Near *Hodſdon.*

L. C. J. For what Purpoſe was Mr. *Rumbold* and thoſe other Men to attack the Coach?

Col. *Rumſey.* To murder the King and the Duke.

L. C. J. How was it deſign'd to be done, by Piſtol, or how?

Col. *Rumſey.* By Blunderbuſſes, and if they miſſed, then Swords.

Mr. Att. Gen. Did they give any Directions about preparing Arms?

Col. *Rumſey.* When that time fail'd, after the Fire fell out at *Newmarket*——

L. C. J. When was this to be done?

Col. *Rumſey.* When the King returned from *Newmarket.*

L. C. J. About what time?—Col. *Rumſey.* The *Saturday* before *Eaſter.*

L. C. J. I don't aſk you the Day; but was it when the King was laſt at *Newmarket*, or before?—Col. *Rumſey.* Laſt at *Newmarket.*

L. C. J. When he was laſt at *Newmarket*, in his Return from thence?

Col. *Rumſey.* In his Return from thence.

L. C. J. Whereabouts?

Col. *Rumſey.* At *Rumbold*'s Houſe, which is near *Hodſdon.*

L. C. J. In *Hertfordſhire?*

Col. *Rumſey.* In *Hertfordſhire.*

L. C. J. And you ſay, thoſe Methods were chalked out by them, that *Rumbold* and ſome others were to attack the Coach, others to kill the Poſtilion, others to kill the Horſes; and this Gentleman, with a commanded Party, was to fall upon the Guards? You ſay this?

Col. *Rumſey.* Yes, my Lord.

Capt. *Walcot.* I would beg Leave, my Lord——

L. C. J. Stay, Captain *Walcot*, you ſhall have Leave to aſk him any thing by and-by; but you muſt firſt let the King's Counſel have done with him.

Mr. Att. Gen. I would aſk you what you know of a Deſign at any other time?—Col. *Rumſey.* I do know nothing, I heard by Mr. *Weſt*, but I knew nothing before.

L. C. J. Mr. *Rumſey*, About what time was this Reſolution taken up, as near as you can? I aſk neither the Day nor the Week, but about what Month?

Col. *Rumſey.* The Beginning of it was in *February.*

L. C. J. Laſt *February?*

Col. *Rumſey.* Laſt *February.* Mr. *Ferguſon*, and Captain *Walcot*, came to this Town upon *Aſh-Wedneſday.*

Mr. Serj. *Jefferies.* What other Meetings were you at, Sir?

Col. *Rumſey.* This was the firſt, when the Priſoner at the Bar came in. The firſt Time was at Mr. *Weſt*'s Chamber, where he came: There it was conſidered and debated.

Mr. Serj. *Jefferies.* Very well, you ſay that was the firſt Time Capt. *Walcot* came in?

Col. *Rumſey.* It was at Mr. *Weſt*'s Chamber: This was before the King came from *Newmarket* that they were to do this, and the Number of Men could not be got ready; ſo there were ſeveral Meetings afterward at Mr. *Weſt*'s Chamber, to conſult whether they could raiſe the Number they reſolved upon; and there were Notes brought by Mr. *Goodenough*, and Mr *Rumbold*, of many Names, I cannot ſay who elſe brought Notes of the Men's Names, to ſee that they might not be deceived in the Number; and that Time Captain *Walcot* was there, and did undertake to go to Mr. *Rumbold*'s Houſe; and I think did go down to the very Place.

L. C. J. Look you, Sir, Was there any Number of Men inſiſted upon for doing this Villainy?

Col. *Rumſey.* Capt. *Rumbold* did inſiſt upon 50 Men.

L. C. J. But Capt. *Walcot*, How many was he to have?

Col. *Rumſey.* It was not divided to a perfect Number.

Mr. Serj. *Jefferies.* What other Meetings were you at with Captain *Walcot?*

Col. *Rumſey.* I was at the *Salutation* with him, and the *Green-Dragon* with him.

Mr. Serj. *Jefferies.* Where is that?

Col. *Rumſey.* The *Green-Dragon* is upon *Snow-hill.*

Mr. Serj. *Jefferies.* Where is the *Salutation?*

Col. *Rumſey.* In *Lombard-ſtreet.*

Mr. Serj. *Jefferies.* Now tell what Diſcourſes you had there?

Col. *Rumſey.* That was about dividing the City into 20 Parts, to ſee how many Men could be raiſed out of every Part, and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loſs.

Mr. Att. Gen. Who was intruſted with this to do it?

Col. *Rumſey.* Mr. *Goodenough*, Mr. *Weſt*, and Mr. *Wade.*

Mr. Att. Gen. What Account did they give of what they had done?

Col. *Rumſey.* Mr. *Goodenough* gave an Account of 7 Parts of the 20, and ſaid out of them would be raiſed 2900 Men, and made an Eſtimate, that the other 13 would not raiſe above as many more; for thoſe were the moſt conſiderable Parts, as *Wapping* and *Southwark.*

Mr. Serj. *Jefferies.* Mr. *Rumſey*, Pray what Conſultation had you afterward, and what was done after?

L. C. J. Pray let us go on a little *gradatim.* What was the Reaſon, that this was not effected when the King returned from *Newmarket?*

Col. *Rumſey.* The Fire happened, and brought the King ſooner from *Newmarket* than the Men could be got ready.

L. C. J. Was there a Day appointed for the doing this? Had you a Proſpect when the King would return?

Col. *Rumſey.* Yes, it was commonly talked that it would be the *Saturday* before *Eaſter*, but he came on the *Tueſday* before.

L. C. J. Then give us an Account how that Deſign was diſappointed at that time.

Col. *Rumſey.* The Fire happened in *Newmarket*, and they were all in Confuſion, and could not get their Men ready by *Tueſday*; the News came upon *Friday* to Town.

L. C. J. Of the Fire?

Col. *Rumſey.* Of the Fire, and there was a Meeting. Mr. *Ferguſon* lodged then in *Covent-Garden*, and ſent to ſeveral to come to him, to ſee if Men could be got together againſt *Tueſday*, when the King was to come in; and it could not be done, and it was laid aſide for that time.

Mr. Att. Gen. Upon that, what Reſolution was taken?

Col. *Rumſey.* Then they had a Meeting, and *Ferguſon* was not there, there was Capt. *Walcot*, Mr. *Weſt*, and Mr. *Goodenough*; this was immediately after this Diſappointment: I am not certain whether it was in Mr. *Weſt*'s Chamber; and that there might no Accident happen afterwards to hinder it, it was reſolved, that Money ſhould be raiſed for the buying of Arms; and Mr. *Ferguſon* undertook to raiſe Money to buy Arms, and Mr. *Weſt* did undertake to provide them.

Mr. Att. Gen. Who undertook to provide Men ?

Col. *Rumſey.* Mr. *Goodenough* and Mr. *Rumbold.*

L. C. J. Look you, Colonel *Rumſey*, after this Diſappointment, when this next Meeting was, had you any further Deſign upon the King then ?

Col. *Rumſey.* Yes, my Lord.

L. C. J. Give us ſome Account of that.

Col. *Rumſey.* It was to be done a coming from *Windſor* to *London*, or from *Windſor* to *Hampton-Court*, or the *Play-houſe* ; and therefore that Arms ſhould be ready againſt any Opportunity that ſhould happen, let it be what it would : And Mr. *Weſt* did undertake to provide Arms, and he told me he bought them, and did not get his Money in ſix or ſeven Weeks after. A Day or two after, going to *Ferguſon*, he told him now he might have his Money, if he would ſend a Note to Major *Wildman* ; but after, he was told, that Major *Wildman* would not pay it by Note, but he muſt ſend Mr. *Rumbold* to him for it ; for he would truſt nobody elſe but him. And ſo Mr. *Weſt* did ſend Mr. *Rumbold*, and he was there at his Houſe by ſix o'Clock in the Morning, but he was gone out of Town an Hour before ; ſo Mr. *Weſt* went to Mr. *Ferguſon*, and he then told him, that he ſhould have Money in two or three Days, if he would come to him ; and Mr. *Weſt* did go to him, and he paid him an hundred Pounds.

Mr. Att. Gen. Was there any Proviſion made for a Riſing now again ?

Col. *Rumſey.* Yes, this general Riſing, by this Diviſion of the City, was intended to be ready againſt the firſt Opportunity that happened.

Mr. Att. Gen. Before this Diſcovery, did you keep up theſe Meetings ?

Mr. Sol. Gen. When was your laſt Time ?

Col. *Rumſey.* My Lord, I think it was the very *Thurſday* before the Diſcovery ; but then on *Friday* or *Saturday* we had Inklings that this was diſcovered, and did meet at the *George* upon *Ludgate-Hill.*

L. C. J. Who met then ?

Col. *Rumſey.* I think it was the very *Thurſday* before ; I am not very certain ; we met at the *Salutation* in *Lombard-ſtreet*, and there was Captain *Walcot*, Mr. *Weſt*, Mr. *Wade*, the two *Goodenoughs*, and Mr. *Neltbrop*, and myſelf.

Mr. Att. Gen. What did it come to, pray, what was your Diſcourſe then and Reſolution ?

Col. *Rumſey.* The Reſolution was ſtill to carry it on. We went thither to know of Mr. *Goodenough* what was done about the other thirteen Parts ; he told us he had no Account, but he ſaid, he thought he ſhould have a Meeting on *Saturday* in the Afternoon at *Ludgate-Hill*, at the *George*, to have his Anſwer ; but the Diſcovery coming, there did only meet Mr. *Norton*, Mr. *Bourn* ;—there was another, I don't know who the other was ; there was a fourth.

Mr. Att. Gen. Mr. *Rumſey*, Pray, after the Diſcovery, What did you reſolve upon ? What Meetings had you upon your Flight ?

Col. *Rumſey.* We met at Capt. *Tracy*'s.

Mr. Att. Gen. What Day was that ?

Col. *Rumſey.* That was upon the *Monday* after the Diſcovery.

Mr. Serj. *Jeff.* Who was there ?

Col. *Rumſey.* There was Capt. *Walcot*, Mr. *Weſt*, Mr. *Wade*, Mr. *Neltbrop*, the two *Goodenoughs*, and Mr. *Ferguſon.*

Mr. Att. Gen. What did you Diſcourſe of there ?

Col. *Rumſey.* There was exclaiming againſt Mr. *Keeling*, and taking Reſolutions to be gone.

L. C. J. Mr. *Keeling !* What was *Keeling ?*

Col. *Rumſey.* Mr. *Keeling* was he that made the Diſcovery.

Mr. Serj. *Jeff.* Have you ever been in *Keeling*'s Company ?

Col. *Rumſey.* I was that time we met at the *Salutation* ; he came in there for a quarter of an Hour.

L. C. J. Look you, Sir, Do you know Capt. *Walcot ?* Are you ſure it is that Gentleman at the Bar ?

Col. *Rumſey.* Yes, my Lord.

L. C. J. Hath he owned always the Name of *Walcot ?*

Col. *Rumſey.* Yes, my Lord.

L. G J. What did he ſay to Mr. *Keeling*, when he came to the *Salutation ?*

Col. *Rumſey.* There was in that very Day's *Gazette* a Report of the Riſing at *Cologne*, and one *Gulick* that headed them ; and ſaid Mr. *Weſt* to *Keeling*, he ſhould be our *Gulick.*

Mr. Att. Gen. Pray, how did he interpret it at that time ?

Col. *Rumſey.* Mr. *Weſt* ſaid, that *Gulick* was *Keeling*, *Gu* was *Keel*, and *lick* was *ing.*

Mr. Serj. *Jeff.* A Quirk upon his Name.

Mr. Att. Gen. When you reſolved to fly, had you any Diſcourſe of making a Stand, and fighting the Government then ?

Col. *Rumſey.* Not that I know of, I was not all the time with them.

L. C J. Look you, Colonel *Rumſey*, let me aſk you this : What was *Keeling* to do ? Was there any Poſt aſſigned to *Keeling* in this ?

Col. *Rumſey.* I never ſaw him before.

L. C. J. How long was it before the Diſcovery that you did ſee him ?

Col. *Rumſey.* The *Thurſday* before.

L. C. J. At the *Salutation Tavern ?*

Col. *Rumſey.* Yes : He was there call'd *Gulick.*

Mr. Serj. *Jeff.* If Capt. *Walcot* will aſk him any Queſtions, he may.

L. C. J. Look you, Mr. *Walcot*, Now you may aſk Col. *Rumſey* ; tell me what Queſtions you would have aſked, and I will aſk him.

Capt. *Walcot.* I deſire Colonel *Rumſey* may be aſked, Whether I ever met at Mr. *Weſt*'s Chamber, till after his Majeſty's Return from *Newmarket ?*

L. C. J. Look you, Sir, you hear the Queſtion ; it is, Whether ever Mr. *Walcot* met with Mr. *Weſt*, till after the King's Return from *Newmarket ?*

Col. *Rumſey.* Till after ?

L. C. J. Till after the King's Return.---Col. *Rumſey.* Yes, Sir.

Capt. *Walcot.* My Lord, I have ſufficient Evidence againſt that.

Mr. Serj. *Jeff.* I think that he was to undertake the Guards ; that was before the King came from *Newmarket.*

L. C. J. He hath given this Evidence, He was there, and he would not attack the Coach ; he would not meddle with the King, but he would fall upon the Guards.

Capt. *Walcot.* Shall I ſpeak a Word, my Lord ?

L. C. J. Look you, I will tell you, you ſhall have your Anſwers to theſe things ; you have Pen, Ink, and Paper.

Capt. *Walcot.* But I have a bad Memory, and I am afraid I ſhall forget this very Thing.

Mr. Serj. *Jeff.* I hope the Jury will not forget it.

L. C. J. Look you, Mr. *Walcot*, we muſt not admit you to break in upon the King's Evidence. When that is heard, you ſhall have your Liberty to make your Anſwer to any thing, and call any Witneſs.

Col. *Rumſey.* My Lord, I will give one Inſtance more : There was one Meeting at the *Five Bells* in the *Strand*, where there was only *Ferguſon*, Captain *Rumbold*, Mr. *Weſt*, *Goodenough*, and myſelf : And Mr. *Ferguſon* told us that Night, that Captain *Walcot* would come the next Meeting we had at Mr. *Weſt*'s Chamber.

L. C. J. Then Captain *Walcot* was not with you at the *Five Bells ?*

Col. *Rumſey.* Mr. *Ferguſon* told us he would come in the next time at Mr. *Weſt*'s Chamber, and there he did come.

L. C. J. And that was before the King went to *Newmarket*. Pray, Sir, anſwer this, Was this before the King went to *Newmarket*, or not ?

Col. *Rumſey.* No, my Lord, this was when he was at *Newmarket* ; for the King was at *Newmarket* when he and Mr. *Ferguſon* came from *Holland*, the King was then at *Newmarket.*

Mr. Serj. *Jeff.* Now we will call Mr. *Keeling.* [*Who was ſworn.*

Mr. Att. Gen. Pray, will you acquaint my Lord, and the Jury, what you know of theſe Conſpiracies touching this Man.

Mr. *Keeling.* Some time, my Lord, before the King went to *Newmarket*, I was at the *Sun-Tavern*, and in company with *Richard Rumbold*, *Richard Geoodenough*, and ſome others. *Goodenough* calls me forth of the Room, and aſked me, what Men I could procure ? I aſked him, For what Purpoſe ? He ſaid, To go down towards *Newmarket*. I aſked, for what End ? He ſaid, To kill the King, and the Duke of *York*. I told him, I thought none. Before the King came from *Newmarket* he renewed his Queſtion to me again ſeveral times : I had in the *Interim* ſome Diſcourſe with *Burton* and *Thompſon*. *Burton* told me, That *Barber* would be concern'd ; and he alſo told me, *Thompſon* would. The *Saturday* after the Fire happened at *Newmarket*, *Rumbold* came down to my Houſe on the *Friday*, the Day that the News was of the Fire, the Day that he commonly came to Town, he came to my Houſe ; it was on the *Friday*, to ſee thoſe Men I could procure, and he deſired to ſee them on the Morrow, which was the *Saturday* before the King returned. The *Saturday* after the Fire I went into *London*, and met Mr. *Rumbold* that Day at the *Exchange*, and he then put me in Mind of the Matter again. I did go to *Burton* and *Thompſon*, and *Barber* ; the Place appointed on *Saturday* was the *Mitre-Tavern*, at the Corner of *Duke's-place* within *Aldgate*. He did meet there, where there was ſome Diſcourſe happened tending to that Matter by *Rumbold* ; the Subſtance of which was, Whether they were willing to go down ? I think he called the Place by the Name of *The Rye*, that is his Houſe ; there being, ſays he, no greater Conveniency than in that, I believe ſcarce in *England*, for the executing ſuch a Deſign, being an Houſe very intire to itſelf, and very remote from Neighbours, beſides the Advantage that belongs to it of a Court or Wall. And, among other Diſcourſe, this was an Argument to prevail with thoſe Perſons : For, ſaith he, it will be a keeping one of the Commandments, to kill the King and the Duke of *York* ; for, ſays he, if that be not done, there will be otherwiſe a great deal of Bloodſhed committed. He alſo told us the way that he deſign'd to effect this at his Houſe ; That he had a Conveniency for our Horſes ; and that there would be ſo many to ſhoot at the Poſtilion and the Horſes ; and there would be ſo many appointed at the Coach, and ſo many Men to attack the Guards ; and if there was a Failure in ſhooting the Coach-horſes, that then there ſhould be Men in the Habit of Country-men, with a Cart in the Lane, and they ſhould run this Cart athwart the Lane, and ſo ſtop the Coach. I believe there might be ſome other Particulars, which, at preſent, I do not remember. From thence we went to the *Exchange*, and there we met in the Afternoon at the *Dolphin-Tavern* in *Bartholomew-Lane* ; there was *Rumbold*, *Weſt*, *Goodenough*, and *Hone* the Joyner. And after we had been there a little, *Weſt* aſked *Rumbold*, Whether he heard the King would come home that Night ? He ſaid, Yes, he heard ſo ; but ſaid *Weſt*, I believe he won't come till *Monday*, and I hope he won't come till *Saturday* ; for that was the Day appointed to go down to the *Rye*, to meet the King and the Duke of *York*. Said *Rumbold*, I hope they will not come till then : But, ſaid *Weſt*, if they do come, How many *Swan-quills* muſt you have ? How many *Gooſe-quills ?* And how many *Crow-quills*, with *Sand* and *Ink*, muſt you havs ? Said they, *Six Swan-quills*, *Twenty Gooſe-quills*, and *Twenty or Thirty Crow-quills.*

L. C. J. Explain that.

Mr. *Keeling.* I am coming to it. I aſked *Weſt* or *Rumbold*, or both of them, what they intended by it ? They told me Swan-quills were Blunderbuſſes, Gooſe-quills Muſkets, and Crow-quills were Piſtols, Sand and Ink, Powder and Bullet. This is all, my Lord, as I remember in general as to the Deſign.

L. C. J. What can you ſay concerning the Priſoner at the Bar ?

Mr. *Keeling.* I was at the *Salutation-Tavern*, and Captain *Walcot* was there ; and when I came in, there was ſome Perſon called me *Culing*, and I a little ſtranged at it, not knowing the Meaning. Says I, Gentlemen, What do you deſign by it ? Says one, Here's a good Health to our Engliſh *Culing*. Says *Weſt*, *Culing* in *Dutch* is *Keeling* in *Engliſh*. And ſays Mr. *Weſt*, I hope to ſee Mr. *Keeeling* at the Head of as good an Army in *Wapping*, as *Culing* is at *Collen*. I ſuppoſe Captain *Walcot* remembers it very well. I can ſay no more, Sir, to the Priſoner at the Bar ; I remember not to have ſeen him any other time upon this Deſign.

Mr. Serj. *Jeff.* Would the Priſoner at the Bar aſk him any Queſtions ?

Capt. *Walcot.* My Lord, I don't remember any ſuch thing. If you pleaſe, my Lord, to aſk him, whether I call'd him *Culing*, or ſaid any thing more or leſs to him.

Mr. *Keeling.* I don't ſay you did, but you were by, that I ſay.

Mr. Serj. *Jeff.* I think, Mr. *Keeling*, you were the Perſon that made the Diſcovery ; give an Account of it for the Satisfaction of the World.

L. C. J. Upon what Occaſion did you reveal this ?

Mr. *Keeling.* If your Lordſhip pleaſe, I will give you an Account. There was ſomething happened before that time. Some time before this thing was diſcovered, *Goodenough* came down to my Houſe, and I went with him to drink a Diſh of Coffee, and there was in Company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by ourſelves, he pulls out ſome Papers out of his Pocket, and gave me one. I aſked him what he meant. He told me he had divided the City and Suburbs into twenty Parts, and there were three Diviſions: And, ſays he, you know the Perſons better than I, and who you can truſt with it. One is for yourſelf, and I would have you take to your Aſſiſtance nine or ten Men, more or leſs, that you may communicate it ſafely to; and they were to go to ſeveral Perſons, and aſk them, Suppoſing that the Papiſts ſhould riſe, or that there ſhould be a general Inſurrection, or a *French* Invaſion, are you in a Poſture of Defence? This was all we were to communicate of the Matter to them, and this was to feel them, and ſee how many Men they could raiſe. And he told me there was a Deſign to kill the King, and the Duke, which was deſigned to be done at the Bull-feaſt; for Mr. *Weſt* had told me it was to be done between *Windſor* and *Hampton-Court.* I aſked him, If that Deſign went on; and he ſaid No; for the Duke of *York* ſeldom came with the King from *Windſor* to *Hampton-Court*, but it was to be at the Bull-feaſt. And ſays he, theſe Men are to be in a Readineſs, and it's deſign'd, that the thing ſhould be laid upon the Papiſts as a Branch of the Popiſh-plot. He alſo told me, there was one drawing a Declaration which would relieve poor People of that which ſeemed moſt burdenſome to them, which was the Chimney-money: and then the common People would fall in with them more readily.

Mr. Att. Gen. How came you to diſcover it?

Mr. *Keeling.* I will tell you, Sir: I was troubled in my Mind about it, and do declare that was the only Reaſon. I thought I did very ill in not diſcovering it, and I had no Peace, nor Satisfaction, nor Content, nor did I mind my Buſineſs, nor could I take the Reſt that at other Times I did, and that was the moving Cauſe, and no other. I thought, if it were a Sin in *David* to cut off the Hem of *Saul*'s Garment, it was a Sin in me much more to kill my King.

L. C. J. Was there any Poſt in this Caſe aſſign'd to you? Was it requir'd of you to do any thing yourſelf, more than to raiſe thoſe Men, and know whether they were in Readineſs? Were you deſign'd to go down to *Rumbold*'s Houſe? Tell what Part you were to act.

Mr. *Keeling.* In the firſt place, I was to raiſe ſome Men; but I thought they looked upon me for one to go down myſelf with ſome Men I raiſed; but I remember not that I was aſk'd the Queſtion.

L. C. J. Were any of thoſe Men to go down?

Mr. *Keeling.* Thoſe three I named were to go down, *Burton*, *Thompſon*, and *Barber*.

Mr. Att. Gen. Call Mr. *Bourn.*

L. C. J. Tell us the Manner of your revealing and diſcovering this, who you diſcovered it to?—Mr. *Keeling.* I revealed it to one Mr. *Peckham.*

L. C. J. Who did he bring you to?

Mr. *Keeling.* To my Lord *Dartmouth.*

L. C. J. And ſo you did diſcover the whole Buſineſs to him?

Mr. *Keeling.* I had offered to diſcover it to another Man before, but I thought he was careleſs; ſo I did not tell him poſitively what I thought to tell him, becauſe I ſaw he ſlighted the Matter. He was a Miniſter of the Church of *England.* Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins.*

Mr. Att. Gen. Was there no Deſign to take off the Mayor or the Sheriffs in particular?

Mr. *Keeling.* I will tell you: *Goodenough* did tell me, That the Deſign was to ſecure the Lord Mayor, and the Sheriffs; and he told me, they had a Deſign to ſecure the *Tower.*

Mr. Att. Gen. Were you employ'd to arreſt my Lord Mayor?

Mr. *Keeling.* I did arreſt my Lord Mayor.

L. C. J. What are you? How come you to arreſt my Lord Mayor? What are you by Profeſſion?

Mr. *Keeling.* A White Salter, or Oyl-man.

L. C. J. How came you to arreſt my Lord Mayor?

Mr. *Keeling.* I was put upon it by *Goodenough* and thoſe Men.

L. C. J. As a ſpecial Bailiff?

Mr. Att. Gen. He was a ſpecial Bailiff.

Mr. *Keeling.* Under the Coroner?

Mr. Serj. *Jeff.* A ſpecial Bailiff under a Special Coroner.

Mr. Bar. *Street.* Was this Coroner at any time of your Meetings?

Mr. *Keeling.* No, my Lord.

Mr. Bar. *Street.* I am glad he was not.

L. C. J. What ſay you, Capt. *Walcot?*

Capt. *Walcot.* My Lord, I have nothing to ſay.

Mr. Sol. Gen. Call *Zachary Bourn.* [*Who was ſworn.*

Mr. Att. Gen. Pray will you recollect yourſelf, and tell what Knowledge you have of the Priſoner, what Meetings you had, and what was agreed?

L. C. J. Raiſe your Voice a little.

Mr. *Bourn.* The Occaſion of my knowing Capt. *Walcot*, was Mr. *Ferguſon*'s lodging at my Houſe. Capt. *Walcot* uſed to come thither, but it was ſome time before I changed any Words with him.

Mr. Att. Gen. Speak aloud, Mr. *Bourn.*

Mr. *Bourn.* Mr. *Wade* came preſently after I came to Town from the *Wells*, and ſaid I muſt needs meet in ſuch a Place, it was at the *Dragon* upon *Snow-hill*, where we met ſeveral others beſides Capt. *Walcot:* The Buſineſs was a Deſign to raiſe Men, and divide the City into twenty Diviſions, in order to the ſecuring of his Majeſty, and the Duke of *York*, and ſetting up the Duke of *Monmouth.*

L. C. J. Was it ſecuring, or killing?

Mr. *Bourn.* It was not killing, I think; we never expreſſed it killing at thoſe Meetings. I think, every time I met them, Capt. *Walcot* was there. Once I was at the *Salutation* in *Lombard-ſtreet.*

L. C. J. What was the Reſult of your Meetings?

Mr. *Bourn.* To make all Expedition imaginable.

L. C. J. Was it diſcours'd how, or in what manner, thoſe Perſons were to be raiſed? Don't refer yourſelf to the Evidence that went before, but tell it yourſelf.

Mr. *Bourn.* The City was to be divided into twenty Diviſions, and to raiſe as many Men as they could out of them; but they were not to tell the direct Buſineſs, but if there ſhould be Occaſion, or the Papiſts ſhould riſe, they might know their Strength, and what they were able to do.

Mr. Att. Gen. This was their Pretence, becauſe it ſhould not be told thoſe Men.

L. C. J. Did Mr. *Goodenough* bring any Account of it?

Mr. *Bourn.* Mr. *Goodenough* brought an Account of about four thouſand; three, I think it was, or very near, out of thoſe Diviſions he had an Account of.

L. C. J. Was Capt. *Walcot* there at that Time?

Mr. *Bourn.* Yes.

Mr. Serj. *Jeff.* When the Diſcourſe was about ſecuring the King, and the Duke, was Captain *Walcot* there?

Mr. *Bourn.* Yes.

L. C. J. Did you hear what Parties were deſign'd to be in this Act?

Mr. *Bourn.* They were not come to that.

L. C. J. Did you break off from them before that?

Mr. *Bourn.* No, the Diſcovery prevented it.

L. C. J. When was your firſt Meeting? About what Time?

Mr. *Bourn.* About ten Days before the Diſcovery was made.

L. C. J. Was Mr. *Weſt* at any of your Conſults?

Mr. *Bourn.* Yes, at ſome of them, and Captain *Walcot* was at three of them, if not at all, I think.

L. C. J. What was to be done?

Mr. *Bourn.* They were to have ſeized my Lord Mayor, and the two Sheriffs, and ſome of the Aldermen, and the chief Miniſters of State about Town.

Mr. Bar. *Street.* Was there any body deſigned for that particular Buſineſs?

Mr. *Bourn.* No, not then, it was not come to that.

Mr. Att. Gen. Was there any thing about my Lord Keeper?

Mr. *Bourn.* Yes, Mr. *Weſt* did ſay to me, it ſhould be my Buſineſs to ſecure my Lord Keeper. I told him, I did not care to meddle with any of my Neighbours. He ſaid he would call him to Account with all his Heart, he would put him in mind of *Colledge.*

Mr. Att. Gen. Pray were you imployed to ſpeak with any of the Nonconformiſt Miniſters about it?

Mr. *Bourn.* I would have ſpoke to two of them, and Mr. *Weſt* was unwilling; for he ſaid, the Miniſters had deſtroyed all Deſigns, ever ſince *Conſtantine*'s time, and he would have nothing to do with them now.

Mr. Att. Gen. When was your laſt Meeting, before the Diſcovery, that you were at?

Mr. *Bourn.* The *Saturday* before the Diſcovery we met at Captain *Tracy*'s, and that Evening we had ſome Intimation that there was a Diſcovery made. And I went again on *Monday* Morning.

Mr. Att. Gen. Who was there?

Mr. *Bourn.* Captain *Walcot*, Mr. *Ferguſon*, Mr. *Goodenough*, Mr. *Weſt*, Mr. *Norton*, and myſelf; one Captain *Pottle* came in, but he did not ſtay.

Mr. Att. Gen. Colonel *Rumſey* was there too, was not he?

Mr. *Bourn.* Yes, Sir.

L. C. J. And what did you reſolve upon then?

Mr. *Bourn.* Truly they reſolved upon nothing; I left them upon the Debate of killing Mr. *Keeling.*

Mr. Att. Gen. Why would they kill him? Was that debated among them?

Mr. *Bourn.* Yes; becauſe he made the Diſcovery.

Mr. Att. Gen. Did you hear them talk of ſtanding to it with Swords in their Hands?

Mr. *Bourn.* Yes, rather than be hang'd, they thought that was the better way, and to have *Keeling* diſpatched out of the World.

L. C. J. Look you, Sir, did any of them talk of ſecuring themſelves?

Mr. *Bourn.* The next Morning I went again, and they were all gone but Mr. *Weſt*, they had all ſecured themſelves.

L. C. J. Was the Priſoner at the Bar there at that time, when they conſulted about killing Mr. *Keeling?* Was he there at that Meeting on *Monday* Morning?

Mr. *Bourn.* He was there at Captain *Tracy*'s; he was there, I think, all the while, while I was there; for I was not there all the time.

L. C. J. (To *Walcot.*) Now, Sir, what Queſtion would you have?

Capt. *Walcot.* My Lord, if you pleaſe, I would aſk whether he ever heard me ſay any thing, more or leſs, of aſſaſſinating the King?

L. C. J. In the firſt place, did you hear any thing in general of aſſaſſinating the King?

Mr. *Bourn.* I did hear of it, my Lord, when the thing was over. And as to his Queſtion, I did never hear him diſcourſe of that Matter. I underſtood the Deſign was prevented.

L. C. J. Who did you underſtand that from?

Mr. *Bourn.* From one Mr. *Row*, and Mr. *Ferguſon.*

Mr. Att. Gen. Pray, in all your Meetings, was there no Diſcourſe of killing the King and the Duke?

Mr. *Bourn.* Very little,

Mr. Serj. *Jeff.* The Diſcourſe was about ſecuring the King, while *Walcot* was there?

Mr. *Bourn.* There was ſuch Diſcourſe in ſeveral Meetings. It was ſaid, it would be well if they were off, and the Diſcourſe was about Lopping.

Mr. Att. Gen. Pray tell my Lord, what Diſcourſe you had of Lopping, and the general Point.

Mr. *Bourn.* They ſaid, there was no way like Lopping them.

Mr. Att. Gen. What was underſtood by that?

Mr. *Bourn.* The taking off the King, and the Duke of *York.*

L. C. J. Was that the uſual Phraſe among you to ſignify that?

Mr. *Bourn.* Yes, my Lord.

L. C. J. Was he there?

Mr. *Bourn.* I have heard it ſeveral times, and I ſuppoſe he was at the hearing of it.

L. C. J. (To *Walcot.*) Look you Sir, he ſpeaks of the time of Diſcourſe of ſecuring the King, and ſays you were there then.

Capt. *Walcot.* I had no hand in it.

Mr. Att. Gen. We will nail it home upon you; we will call Mr. *Weſt.* [*Who was ſworn.*

Mr. Serj. *Jeff.* Come, Mr. *Weſt*, do you tell my Lord and the Jury the whole Story.

Mr. *Weſt.* My Lord, I came acquainted with the Priſoner at the Bar laſt Summer Vacation, by the Knowledge of one *Wilcocks*, who, I ſuppoſe, return'd his Money out of *Ireland.* I heard a very fair Character of him, and he, I ſuppoſe, met with ſuch an one of me; which did incline us both to an Intimacy, and to talk freely with one another. About the Middle of *October*, I obſerv'd a general Diſcontent in the City, and was afraid there was ſome Deſign in hand, and was very inquiſitive to know it: I was unwilling to be involved and ſurpriſed into a ſudden Ruin, and ſo thought fit to inquire of them that were moſt likely to be concerned. I took Capt. *Walcot* for one, being inform'd that my Lord *Shafteſbury* had ſent for him out of *Ireland*; and Capt. *Walcot* told me, that my Lord was alſo ſending for ſome *Scotiſh* Gentlemen, on occaſion of *Carolina*; but that he was very cool in *Carolina* Buſineſs, and that that was but a Pretence. My Lord, one Morning Capt. *Walcot* came to my Chamber, and we diſcours'd concerning the Election of Sheriffs carried on in the City, contrary, as we thought, to the Juſtice of it: Says he, Will the People do nothing to ſecure themſelves? With that he told me a Secret, and ſaid there was a Deſign of an Inſurrection to be made within three Weeks or a Month, that would make us free, or worſe. I told him, I thought it was a certain way to bring us in a worſe Condition, and that it was very full of Hazards. He told me then, he did not know whether he ſhould be concerned: But a little while after he told me, my Lord *Shafteſbury* was engag'd in ſuch a Deſign, and he had engag'd him in it, and he told me, he had an Expectation of being a Colonel of Horſe, and aſk'd me, If I would have any Command under him? I told him, I knew ſome Gentlemen of the *Temple* that I might engage in it; but told him, I had not a Conſtitution to bear the Toils of War. My Lord, he told me then, That my Lord *Shafteſbury*, to the beſt of my Remembrance, had another Deſign upon the King and the Duke, as they came from *Newmarket* in *October* laſt; but he told me he abhorr'd any ſuch thing, it was ungenerous, and he would not be concern'd in it, but only in a general Inſurrection. But this he did tell me, I think, before the thing was to be executed. I imparted it to nobody, till after the Time of both was paſt: But in the Diſcourſe of the Inſurrection, he told me, I ſhould lend him a Suit of Silk Armour, which I bought about four or five Years ago, when the Popiſh Plot broke out; and he would have had me kept that, and uſed it myſelf, which I did decline. Then he told me he had very good Swords in *Ireland*, but he wanted them here. Says he, I am a Man that am obſerved, becauſe I have a Correſpondence with my Lord *Shafteſbury*; and aſked me, If I would provide him a good ſtiff Tuck. I told him I would, and I did beſpeak one; but before it was done, the Deſign was laid aſide, and the Tuck was left upon my Hands. I came to underſtand, that the Deſign was put off by means of Mr. *Trenchard*, who had diſcours'd about a Fortnight before of great Forces he could raiſe in the *Weſt*; and the Duke of *Monmouth* ſent for him, but his Heart fail'd him, and he could not raiſe any Men; upon which, my Lord *Grey* called him Coxcomb. This was about the 19th of *November.*

Mr. Att. Gen. What Time of *November?*——Mr. *Weſt.* The 19th.

Mr. Att. Gen. But upon what Day?

Mr. *Weſt.* Queen *Elizabeth*'s Day.

Mr. Att. Gen. No, Sir, that is the 17th.

Mr. *Weſt* Now after this I underſtood by Capt. *Walcot*, that Mr. *Ferguſon* had the Management and Conduct of the Aſſaſſination in *October*, and that he likewiſe was acquainted with the Inſurrection, and was a great Man in it. I met with Mr. *Ferguſon*, and fell into Diſcourſe with him, and he treated me, as he always did, with a long Story of the Miſeries of *Scotland*, and that the People were all in Slavery and Bondage, and would be ſo here, if they did not free themſelves: And, ſays he, there are two ways thought upon for it; one is by a general Inſurrection, and that is gone off; the other is a much more compendious way, by killing the King, and the Duke of *York.* My Lord, I told him, I thought the firſt way was a very dangerous way, that the People were in no ſort of Capacity to carry it on, that the Government had the Navy and the Militia, and this would at the beſt entail a long War. He told me he thought the other was the beſt way, and we went to a Tavern, where Col. *Rumſey*, and one *Row*, and he and I, went divers times. They propoſed to meet at my Chamber as a Place of Privacy, and little Obſervation. My Lord, when they came to my Chamber, Mr. *Ferguſon* propoſed ſeveral ways of doing it. One way was, as the King and Duke had their private Viſits in *St. James*'s, where it was an eaſy thing for Sword-men to kill them. There is one thing I have omitted, and that was after the Deſign of *October* had miſcarried, I think, to the beſt of my Remembrance, Capt. *Walcot* told me, there was another Deſign of attacking the King and the Duke at my Lord Mayor's Feaſt in the Hall, or in their Return home, in *Paul*'s *Church-yard*, or at *Ludgate*; and Mr. *Ferguſon* did likewiſe tell me the ſame thing, but the King not dining there, the thing was wholly diſappointed. Another way that he propoſed was, that they ſhould do it as the King and the Duke went down the River, they ſhould lie behind ſome ſmall Ships within a Hoy, or ſome ſuch thing, and ſo over-run their Barge; and if that fail'd, they ſhould break a Plank with their Blunderbuſſes, and ſo ſink them. Another way was at the *Play-houſe*, and that was to be done in this manner; there ſhould be 40 or 50 Men got into the Pit with Pocket-blunderbuſſes, or Hand-blunderbuſſes, and Piſtols and Swords; and when the Muſic ſtruck up between the Acts, they ſhould fire upon the Box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon *Covent-Garden* under *Bedford-Garden* Wall, becauſe there was a Conveniency for a great many Men to walk in the *Piazza*, and there might be another Parcel of Men planted at *Covent-Garden* Church-Porch, and within the Rails, where Horſes could not come; and while the Men within the Rails fired, the Men in the *Piazza* might engage the Guards, and they in the Church-porch to come down, and ſecure them from eſcaping.

Mr. Sol. Gen. When was this Time?

Mr. *Weſt.* I think it was before Mr. *Ferguſon* went for *Holland.* And, my Lord, there was another thing propos'd: I think it was Colonel *Rumſey* did ſay, He wondered that the Lords and great Men, that were ſo fond of the thing, did not raiſe a Purſe, and buy ſomebody an Office, who ſhould rail againſt the Duke of *Monmouth*, and the *Whigs*, and by that means get himſelf an Opportunity of Acceſs to the King's Perſon. My Lord, after theſe Diſcourſes, when my Lord *Shafteſbury* retir'd to *Holland*, Mr. *Ferguſon* thought fit to do ſo too: He was afraid of a Book that he had printed, and away he went, and Captain *Walcot* with him. In the mean time I met Col. *Rumſey* ſeveral times, and ſeveral things were offer'd but nothing reſolv'd upon. A little after *Chriſtmas* we met at the *Salutation* Tavern in *Lombard-ſtreet*, and there it was agreed we ſhould ſend for Mr. *Ferguſon*; and there I writ a canting Letter, that he would come over for his Health; for he was the only Man that could manage the Affair. When he came over, there was one Meeting at the *Five-Bells*, but I came juſt as they were coming away, and cannot ſay what paſs'd there. After that, they came ſeveral times to my Chamber; and there Mr. *Ferguſon*, Mr. *Goodenough*, and Mr. *Rumbold*, undertook to provide the Men.

L. C. J. The Men, for what?

Mr. *Weſt.* The Men for the Aſſaſſination: That I was not concern'd in, either in Perſon or Purſe, or to procure any body for it. And they did agree to do it in the going to or from *Newmarket*, and thereupon were ſeveral Debates, whether it ſhould be done at their going, or coming back. Againſt doing it going down, it was objected, That the Guards were left here and there, and they went together; but very often they returned apart, and therefore it was not the ſafeſt way going down; and nothing alſo being prepared, ſo it was reſolved to be done coming back. Then it was conſider'd what Arms ſhould be provided: Mr. *Rumbold* was the Man to manage that Matter, and was to procure ſome Blunderbuſſes, ſome Carbines, and ſome Piſtols; but there was nothing to be prepared, as I know of, by other Perſons, but every Man was to provide himſelf. Several Meetings there were, they brought their Notes, and conferr'd together about the Men; but I remember no Names, but *Keeling*, and *Burton*; and Mr. *Goodenough* ſaid, he had ſpoke to one *Hone* a Joyner; and, I think, he ſpake of one *Manning*, and theſe are all the Names I can remember. After they had conferr'd their Notes, I aſk'd Mr. *Ferguſon*, what Proviſions of Money he had made. Says he, I ſhall have Money when the Men are provided, but not till then: For, ſaid he, the laſt time there was ſome Money rais'd, and put into a Man's Hand, who never returned it; but ſince I underſtand it was paid to Mr. *Goodenough.* And Mr. *Ferguſon* ſaid, Mr. *Goodenough* call'd him Fool, for returning ſome Money he had, and not keeping it for his own Uſe; and my Lord *Shafteſbury* had often complain'd of that Injuſtice done him: The Colonel ſaid, Mr. *Charlton* ſhould pay the Money. There was a further Debate, how theſe Arms would be got down to Mr. *Rumbold*'s: It was propoſed, to ſend them down by *Smithfield* Carts in Cheſts: Others, to ſend them down by truſty Watermen, who were to cover them with Oyſters: Others, that the Men ſhould carry them; but no Reſolution taken: Then it was conſider'd, how they ſhould get off. The next thing was, how they ſhould execute this; and it was propos'd, That one Party was to fall upon the Coach-horſes, a ſecond upon the Coach, a third upon the Guards: Captain *Walcot* would not undertake any thing but the Guards.

Capt. *Walcot.* What do you ſay, Sir?

Mr. *Weſt.* Sir, I do ſay, you were at my Chamber, and did ſay, you were to command that Party of Horſe that were to attack the Guards. It was to be done at *Rumbold*'s Houſe; they were to lie there *Perdue*, till the King juſt came down upon them.

Mr. Serj. *Jeff.* At the Time of the Aſſaſſination?

Mr. *Weſt.* Yes, Sir.

Mr. Att. Gen. Where were theſe Arms to be carried?

Mr. *Weſt.* To *Rumbold*'s Houſe. I did not ſee it: But he ſaid he could keep them all private, where nobody could ſee them till the Time of the Execution; and that there was a Gate they were to paſs through, that he could ſhut upon the Horſe-Guards, that they ſhould not be able to come in for their Relief. Mr. *Rumbold* ſaid, he would bring them off; and ſaid, he thought it dangerous for them to go the Road-way; but he would bring them over the Meadows, and come in by *Hackney-marſh*: But the way which the Priſoner did moſt approve of, was, That they ſhould retire within his Wall, there keep till Night, being a Place they could defend againſt any Force for a Day's time.

Mr. Att. Gen. Where was this Reſolution taken?

Mr. *Weſt.* This Reſolution was taken at my Chamber: My Lord, as to the Attempt, when they deſigned to make it upon the King's coming from the *Play-houſe*, one Mr. *Row* ſaid, he had diſcours'd with one *Gibbons*, that was the Duke of *Monmouth*'s Servant, about it, and aſk'd him, If any of their Family knew of it? Yes, ſays he, they all know of it, but they will not be ſeen in't; and ſaid, that he ſhewed him the Place. My Lord, in one of the Diſcourſes I had before Mr. *Ferguſon* went for *Holland*, I had a mind to be rid of the thing, but I did not know how; ſo I created Difficulties, and ſaid, I ſuppoſe the Duke of *Monmouth* is to get moſt by it: What Security will you have, you ſhall not be hang'd when the thing is done? He is bound, ſaid I, in Honour to hang us all, and make Inquiſition for this Blood, otherwiſe they will ſay he is a Party. Says he, What if I get it under his Hand? But, ſaid I, Engage his Servants, and that will ſtick upon him. There is one thing I have omitted, which was in the firſt Diſcourſe with Captain *Walcot* about the Inſurrection of *November*; he told me, that my Lord *Shafteſbury* was preparing a Declaration to be publiſhed, in caſe of an Aſſaſſination or Inſurrection; and he aſk'd me, if I would undertake to do one too? For, ſays he, I would have ſeveral People draw it, to pick one good one out of all. And he told me he had made ſome Collections towards it, and ſhew'd me a Paper, which was a Collection of all the Paſſages in the Three King's Reigns, King *James*, *Charles* I. and this King's, that he call'd Attempts to introduce arbitrary Government and Popery; and concluded, taxing them with ſome perſonal Vices, and that the Government was diſſolved, and they were free to ſettle another Government: Theſe I perceiv'd, were the Topicks my Lord *Shafteſbury* laid Weight upon. I told him that this did require an exact knowledge of the hiſtory of thoſe times, and I would not undertake a thing to which I was not competent; and ſo he deſired me to burn the Paper, which I did; But for any other Declaration, my Lord *Shafteſbury* kept his Paper to himſelf; and I never did ſee it, tho' I deſir'd it.

Mr. Serj. *Jeff.* Can you remember in whoſe Name the Declaration was to run?

Mr. *Weſt.* No, I do not remember that.

Mr. Att. Gen. After the Diſappointment, what Meetings had you?

Mr. *Weſt.* Sir, I will tell you: When the News of the Fire came, they adjourned to my Chamber, and there conſidered what they ſhould do: they were in no Readineſs, nor had any Horſes; nay, I believe the thing could not have been effected, if the Fire had not happened; and I was very glad it could not; but for that, I am in the Charity of the Court. They did endeavour to put Things in a Poſture, to ſee if it could be done another Day; I think they met on *Thurſday* Night, and *Friday* Night; but they ſaid, the King would be at home the next Day, and the thing was laid aſide. My Lord, a Day, I think, or two after, I went into the City, and went to the *Dolphin* Tavern, where I met with Colonel *Rumſey*, and this Mr. *Keeling* came in, he was there talking of Blunderbuſſes and Piſtols in downright *Engliſh*: I told him, it was a fooliſh thing to talk ſo before Drawers, and that was the Occaſion of calling them by the Names of *Swan-quills*, *Gooſe-quills*, and *Crow-quills*. After this thing we met the next Week, not at my Chamber, Colonel *Rumſey* was miſtaken in that, but at the *George and Vultur*. There was Capt. *Walcot*, Mr. *Goodenough*, Mr. *Ferguſon*, one *Norton*, and one *Ayliff*: They diſcours'd of the late Diſappointment; and that one Reaſon was, they had not Arms in Readineſs. Then they agreed, that Arms ſhould be bought, and the Number was ten Blunderbuſſes, that ſhould be twenty or two-and-twenty Inches in the Barrel: Thirty Carbines, eighteen Inches: And thirty Caſes of Piſtols, to be fourteen Inches. My Lord, it was put upon me to provide them, for this Reaſon, becauſe I was ſerviceable to them no other way, and could have a Pretence for buying them, becauſe I had a Plantation in *America*; but Mr. *Ferguſon* was to pay the Money. My Lord, I did beſpeak the Arms, and paid for them with my own Money, and was not paid again a great while; Mr. *Ferguſon* diſappointed me; but at laſt told me, if I would ſend to Major *Wildman*, he would pay me. But he told me before that, one Mr. *Charlton*, when he came to Town, would pay me, but I had none of him. So I told him, I bought thoſe Arms upon a Pretence I intended to uſe them, and had ſpoke to a Sea-Captain to carry them off to a Plantation where I had a Concern myſelf. After that, Mr. *Ferguſon* ſent to me to take my Money: So I came to him; and found with him Mr. *Charlton*, and another Gentleman, whom I could not diſtinguiſh, becauſe it was duſkiſh. Mr. *Charlton* went down, and then ſays Mr. *Ferguſon*, I have your Money for you; and he paid me in fourſcore and thirteen Guineas, which was ſomething more than the Arms coſt; and ſaid, He had not the Money above half an Hour in his Hands; by which I did gueſs, it was Mr. *Charlton*'s Money. Another thing was, at laſt meeting with Mr. *Ferguſon*, he did ſay, There was a Man employ'd to ſee what Conveniency there would be for an Aſſaſſination between *Windſor* and *Hampton-Court*; but that was never reported, and ſo laid aſide. This is all I can ſay concerning the Aſſaſſination; but I believe they did intend to carry it on; for Colonel *Rumſey* did tell me, He ſaw the Hearts of all the great Men were upon it; and it would be convenient to have an Army to back it. But in caſe this Aſſaſſination had gone on, theſe things were to be done. It was deſign'd, the Lord Mayor and the Sheriffs ſhould be kill'd, and as many of the Lieutenancy as they could get; and the principal Miniſters of State, my Lord *Halifax*, and my Lord *Rocheſter* that now is, and my Lord Keeper; for which they gave this Reaſon, becauſe he had the Great Seal; and my Lord *Rocheſter*, as like to ſtand by the Duke's Intereſt; and my Lord *Halifax*, as being one that had profeſs'd himſelf of the Party before, and turn'd from the right Side, and had put the Court upon that which otherwiſe they never would have acted, nor had the Courage to have done. As for my Lord Keeper, They ſaid they would hang him for the Murder of *Colledge*, and upon the ſame Poſt *Colledge* had hung. Sir *John Moore* was to be kill'd, and to be hung up in *Guild-hall*, as a Betrayer of the Rights and Liberties of the City: And your Lordſhips to be flay'd and ſtuff'd, and hung up in *Weſtminſter-hall*, and a great many of the Penſional Parliament hang'd up, as Betrayers of the Rights of the People.

L. C. J. How was this to be done? to flay them and ſtuff them?

Mr. *Weſt.* Yes, I underſtood it ſo.

Mr. Att. Gen. At theſe Diſcourſes was this Gentleman preſent?

Mr. *Weſt.* He was not at my Chamber ſo often as the reſt; he came not there till towards the latter End; but he was there ſometimes when theſe things were diſcours'd of.

L. C. J. But you ſay he did at laſt undertake to fight the Guards?

Mr. *Weſt.* Yes; Upon the News of the Fire, ſays he, I believe God ſhews his Diſapprobation of the thing. Says Mr. *Ferguſon*, I believe he reſerves them for worſe Puniſhment. Mr. *Walcot* ſaid, He deſired to have his Name conceal'd. Why, ſays *Ferguſon*, why ſhould you be aſham'd? It is a glorious Action, and ſuch an Action as I hope to ſee publickly gratified by the Parliament; and queſtion not, but you will be famed for it, and Statues erected for you, with the Title of *Liberatores Patriæ*.

Mr. Serj. *Jeff.* What was this *Ferguſon*?

Mr. *Weſt.* He is an Independent Parſon.

Mr. Serj. *Jeff.* He preached excellent Goſpel.

Mr. *Weſt.* Says he, I have told ſome Nonconformiſts, and they deſired me to forbear; but ſays he, they are ſilly People, that do not know how to diſtinguiſh between killing a Prince for Difference in Opinion about Religion, and deſtroying a Tyrant, for Preſervation of the Rights and Liberties of the People. He ſaid, it was an Action that would make all the Princes in the World tremble, and teach them to uſe their Subjects kindly. My Lord, they did deſign, at the ſame time when the Mayor and the Sheriffs were to be kill'd, that Mr. *Papillon* and Mr. *Dubois*, ſhould be forced to take the Office of Sheriffs upon them; and if they would not take it, they would uſe them as they did the other: And that Sir *Thomas Gold*, or Sir *John Shorter*, or Alderman *Corniſh*, ſhould be ſet up for Lord Mayor; but rather Alderman *Corniſh*, as the fitter Perſon. I aſked them further, What they would do with the King's Natural Sons? Says he, They are good luſty Lads; I think we had as good keep them for Porters and Watermen; and for my Lady *Anne*, they had as good marry her to ſome Country Gentleman for a Breed to keep out Foreign Pretences.

Mr. Serj. *Jeff.* I perceive they left nothing unconſidered.

Mr. Att. Gen. Mr. *Weſt*, To repeat all their Paſſages would fill a Volume; but as to the Continuation of the Riſing, and whether it was continued?

Mr. *Weſt.* I have a great many Particulars, but have them not in Method.

Mr. Sol. Gen. Anſwer Queſtions then.

Mr. *Weſt.* When Mr. *Rumbold* came to Town, he ſaid, he ſaw the King come by but with ſix Guards, and believed he could have done it with ſix Men, if he had been provided with Arms. This is all I can ſay, except ſome little Diſcourſe, which I have not time to reduce into Method. About *Chriſtmas*, Colonel *Rumſey* told me, there was a Deſign carrying on among the Lords, and great Men, by whom I always underſtood the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, Lord *Howard*, Colonel *Sidney*, Major *Wildman*, Mr. *Hambden*, for an Inſurrection; and that this was deſigned to be done about *March*. Colonel *Rumſey* and I were diſcourſing of it; and Colonel *Rumſey* thought it fit to draw up ſome things, that we ſhould require of them to do for the People; and a Paper was drawn up, but my Lord *Ruſſel* ſaid, they were rejected, and all ſhould be left to the Parliament. And Colonel *Rumſey* ſaid, The Duke was inclin'd to gratify the Parliament; but the Lords about him were for great Places, and they would ſuffer him to do nothing.

Mr. Serj. *Jeff.* Now tell us about *Culing*.

Mr. *Weſt.* I dined at a Tavern with Colonel *Rumſey*, Mr. *Wade*, Mr. *Nelthrop*, Mr. *Goodenough*, Capt. *Walcot*, and Mr. *Norton*.

Mr. Serj. *Jeff.* What was your Diſcourſe there about?

Mr. *Weſt.* There was no Diſcourſe that had any particular Point.

Mr. Solicitor. Was there nothing of Diviſion of the City?

Mr. *Weſt.* Sir, *Goodenough* gave ſome general Account, but nothing was done upon it. While we were there, in came Mr. *Keeling*, to ſpeak with Mr. *Goodenough*, and Mr. *Nelthrop*; and in the *Gazette* that Day was an Account of the Inſurrection at *Collen*; and Mr. *Nelthrop*, when he came in, called this Man, *Culing*. What is that? what do you mean? ſays he. I was then writing a Letter, and told him, *Culing* in *Dutch* was the ſame as *Keeling* in *Engliſh*. Mr. *Nelthrop* took me aſide, ſays he, What will you ſay, if I, and ſome Friends of mine, deliver the City, and ſave the Charter, and nobody ſhall know of it till it be done? But, ſays he, ſhall not I be hang'd for it? Said I, Take heed what you do; nobody will be hanged for any good thing. As to the Delivering of the City, there was a Treaty between the *Scots*, and our Perſons of Quality here; and Col. *Sidney* and Major *Wildman* had the Management of it, as I underſtood. At laſt, they came down to ſome Terms: They would have had 10,000*l.* to buy Arms, and came down at laſt to 5000*l.* and the Earl of *Argyle* was to head them: But when Mr. *Ferguſon* paid me for the Arms, he told me, The *Scots* Buſineſs was quite off, and *Wildman* and *Sidney* had done ill with the *Scots*; for after they had kept them, and treated with them two or three Months, they broke off, becauſe the *Scots* would not declare for a Common-wealth the firſt Hour, and extirpating of Monarchy, and the Family of the *Stuarts*: and that the *Scots* Anſwer was, That would be to deſtroy all their Intereſt among the Lords, and Providence might order it ſo, as to bring it to a Common-wealth: but that was a Buſineſs of Time. When this broke off, Mr. *Ferguſon* told me, That the Duke of *Monmouth* was willing to ſpeak with me, and *Goodenough*, and ſome others. I told him, I never had, nor was willing to ſpeak with him. Then he ſaid, Sir *Thomas Armſtrong* would. I told him, I was not willing to ſpeak with him neither. Mr. *Goodenough*, I believe, did ſpeak with Sir *Thomas Armſtrong*. We met at *Richard*'s Coffee-Houſe, and adjourn'd to the *Young Devil-Tavern*; there was Capt. *Walcot*, Col. *Rumſey*. Mr. *Wade*, Mr. *Goodenough*, and myſelf, and one *Holloway* a Merchant at *Briſtol*. Mr. *Holloway* did propoſe, ſince the *Scotch* Buſineſs was broke off, that they ſhould try what Forces they could raiſe here. And Mr. *Ferguſon* did ſay, if three thouſand Men could be had, he believed the Duke of *Monmouth*, and my Lord *Ruſſel*, would appear at the Head of them. They were to divide the City into 20 Parts, each 20th Part into 14ths and 15ths, and to divide it into Streets and Lanes; one principal Man was to have a 20th Part, and to have Men under him; and that they ſhould not interfere one with another, they bought a great Map of the City of *London*. My Lord, I did not read one Line in it, but Mr. *Goodenough*, being a Man of publick Acquaintance, by reaſon of his Office did undertake it. I think he did propoſe Mr. *Bourn* for one, and one Mr. *Grains* for another, and ſaid he would ſpeak with Mr. *Keeling*. We had ſeveral Meetings after this, and Mr. *Goodenough* did report, that there were 1300 Men out of two of the Hamlets. My Lord, I ſtood here while Mr. *Bourn* gave his Evidence; but I ſuppoſe he hath a little forgot himſelf; for he told me he had ſpoken to one Parſon *Lobb*, and he ſaid to him, he would try what his Congregation could do; that he had two in *New-priſon*, and he would ſet them out to ſee what they could do; that they were poor Men, but zealous in their way. I think Mr. *Bourn* hath forgot himſelf; for he did mention, that he had ſpoken to Parſon *Lobb*.

Mr. Serj. *Jeff.* Then Parſon *Lobb* was in; there was another Parſon in.

Mr. *Weſt.* Yes, and he mentioned *Lobb*'s Pound.

Mr. Att. Gen. The Priſoner was at thoſe ſeveral Meetings, was he not?

Mr. *Weſt.* Yes, and did ſhew himſelf ready to act his Part. About a Fortnight before the Diſcovery brake out, Mr. *Rumbold* told me they had a great Jealouſy Mr. *Keeling* would diſcover all the Buſineſs; that Mr. *Keeling*'s Wife and Mother cried mightily, and charged him for neglecting his Buſineſs, and ſaid they were afraid he would do a great deal of Miſchief to honeſt People; for he had replied to them, he would not want Money, and he would be hang'd for nobody. Upon which *Rumbold* told me, If I were ſure of this, ſays he, I would diſpatch him; I would get him into the Country, and kill him; but, ſays he, I will not kill an innocent Man: If I thought the thing was not ſo, I would not kill him for all the World. Mr. *Keeling* told him he had an Overture from one *Shoot*, of fourſcore Pounds a Year.

Mr. Att. Gen. After you had notice of the Diſcovery, did you meet?

Mr. *Weſt.* The *Saturday* before the Diſcovery I dined with Mr. *Rumbold*, and he took Mr. *Keeling* along with him. Says he, We won't diſcourage him too much; it may be, 'tis not ſo. Mr. *Keeling* told him he never wanted Money ſo much in his Life. Mr. *Rumbold*, and one *Gale*, that was to be one of the Aſſaſſinates, contrived to help *Keeling* to Money, and lent him 100*l.* Upon the *Sunday* I had notice the Thing was diſcovered, and that *Keeling* had accuſed me, and Mr. *Goodenough*, and Mr. *Nelthorp.* On the *Monday* Morning early I thought fit to retire; but we did agree to meet at Captain *Walcot*'s Lodging. My Lord, I came thither pretty early, and all the People came afterwards, that had agreed to come thither, but they deſigned to go beyond Sea. I had no mind to go. They had hired a Boat, and gave 5*l.* in Earneſt; but the next Morning it was ſaid the Meſſengers were abroad, and that it was believed the River was beſet, and there was no getting away. Then every Man ſhifted for himſelf, and I ſhifted by the means of Mr. *Bourn*, who, I thank him, helped me to a Conveniency for two or three Days. When we were all retired, they got Mr. *Keeling* in the City, and *Rumbold* diſcourſed him in the Preſence of ſeveral People, where he wiſhed a great many Imprecations upon himſelf, if he had diſcovered. I told them I did not underſtand him; for if he had made a Diſcovery, it was a fine way to catch People in. Then there was a Diſcourſe of killing him. They propoſed to him to go out of Town. He refuſed them, but ſaid, he would go in a few Days. That Night they followed him, and upon tracing of him they found he had called out his Brother, and that he and his Brother were gone to the Secretary's; and then it was taken for granted, that Diſcovery was made, and every Man muſt ſhift for himſelf. Had not *Keeling* deceived them at that Meeting at the Tavern, by the Proteſtations he made, ſomebody had killed him there. Then Mr. *Wade* ſaid, If the Duke of *Monmouth* would go into the *Weſt*, we might try a puſh for it; and the Priſoner at the Bar ſaid, I am ſatisfied God will deliver the Nation, though he does not approve of the preſent Inſtruments.

L. C. J. Have you done as to this Gentleman at the Bar?

Capt. *Walcot.* When was it that I ſhould ſay theſe Words? Then I deſire your Lordſhip would aſk him, how many Months ago it was he ſays I gave him the Paper?

Mr. *Weſt.* It was in *October.*

Capt. *Walcot.* Then whether I did not then lie ill of the *Gout?*

Mr. *Weſt.* Not at that time, my Lord. This that I ſay of the Paper, was given me at my Chamber, and then I think he was pretty well.

Capt. *Walcot.* My Lord, I am not ſo natural a Fool to think, for me to charge the Guards, when another Man kills the King, but I am as guilty as he that kills him.

L. C J. No doubt of it.

Mr. *Weſt.* Capt. *Walcot*, I would not take away your Life to ſave my own; but I do take it upon me, that you did agree to command, or be one of thoſe that were to fight the Guards.

L. C. J. What was the Reaſon he would not kill the King?

Mr. *Weſt.* He ſaid it was a baſe thing that way, being a naked Perſon, and he would not do it.

L. C. J. So the Point is the ſame; but only you diſtinguiſhed in the Point of your miſtaken Honour, and thought to kill the King was not ſo honourable a Point as to fight his Guards.

Capt. *Walcot.* There is no Difference between the one and the other; to do one and the other is the ſame thing.

L. C. J. Your Judgment is now rectified; but what ſay you to the Matter? For now you hear what is faſtened upon you, that is, ſeveral Conſults about the ſecuring or killing the King; and your Advice was to kill him, and you did go down to *Rumbold*'s Houſe, to view the Place where it might be done the more ſecurely; and you did undertake, as ſeveral Witneſſes ſay, not only Mr. *Weſt*, but Col. *Rumſey*, and another of them, (*Bourn* I think it was) That you would fight the Guards, if you might have a conſiderable Number of Men.

Capt. *Walcot.* My Lord, if ever I was at Mr. *Rumbold*'s Houſe, unleſs it was when I travelled from *York* by *Norwich*, and came to *London*; if ever I was there ſince, then I am guilty of all the Roguery imaginable.

Mr. *Weſt.* I never heard, my Lord, Mr. *Rumbold* ſay he was there, but Col. *Rumſey* told me ſo.

Col. *Rumſey.* My Lord, he bought an Horſe, and he ſaid, he did intend to go down; and indeed, to the beſt of my Remembrance, he did ſay he was down; but I am not certain: But he did buy an Horſe that coſt him, I think, Twenty Pounds.

L. C. J. For that Purpoſe?

Col. *Rumſey.* Yes.

L. C. J. Now you hear, this is a little more particular than the other; Colonel *Rumſey* did ſay before, that you did agree to go down, and, as he believes, you did go down.

Col. *Rumſey.* I believe Mr. *Weſt* may remember he bought an Horſe for that Purpoſe.

Mr. *Weſt.* I remember he bought an Horſe for Service, but I can't ſay it was to go down thither.

L. C. J. It does import you tell us upon what Account you met ſo often, and what was your Meaning in hearing theſe Things, and conſulting of them, and what your raiſing of Men was for, and the Declaration written for the People, to pleaſe the People when this Aſſaſſination was over?

Capt. *Walcot.* The Declaration, Mr. *Weſt* ſays, was in *October* laſt.

Mr. *Weſt.* I take it to be ſo, my Lord, to the beſt of my Remembrance; there was this Paſſage: Says he, I believe in a Month or three Weeks you will be better or worſe; ſo that I meaſure it by that.

Capt. *Walcot.* My Lord, Mr. *Weſt* does tell your Lordſhip a very long Story, and ſometimes he names one Gentleman, and ſometimes another. I am very fearful the *Jury* will be very apt to apply all to me, who was the Man leaſt concerned; for I had the *Gout* for ſeveral Weeks together, and Mr. *Weſt* came ſeveral times to my own Lodging to ſee me: And for that of aſſaſſinating the King, it never entered into my Thoughts more or leſs; but here are four Gentlemen, who, by their own Confeſſion, are ſufficiently culpable; they, to wipe off their own Stains, are reſolved to ſwear me out of Life.

L. C. J. What made you among them?

Mr. *Weſt.* I do take it upon me, he was there three or four times.

Capt. *Walcot.* I did not ſtir for three Weeks or a Month. I came to Town on *Aſh-Wedneſday*, and then fell ill of the *Gout*, and that continued for divers Weeks. For a Month's Time that the King was at *New-market*, I am confident, I was not out of my Chamber, unleſs I made a Shift to ſcramble to *Stepney*, and dipped my Foot in every Well of Water I came by.

Mr. *Weſt.* My Lord, I do remember this Paſſage, That he was afraid he ſhould not be able to draw on his Boot, becauſe he had the *Gout.*

Capt. *Walcot.* I deſire to know, my Lord, When is the Time Mr. *Weſt* ſpeaks of, that I gave an Account of killing the King at my Lord Mayor's Feaſt.

Mr. *Weſt.* I do not charge you poſitively with it: but I had it from you or Mr. *Ferguſon*; but I muſt do the Priſoner Juſtice, he ſaid, he would be no way concerned in it.

Mr. Att. Gen. Pray ſwear Mr. *Blaithwait.* [*Which was done.*

Mr. *Blaithwait*, Pray tell my Lord, and the Jury, whether Captain *Walcot* owned that to be his Hand.

A Letter being then produced from Capt. Walcot *to Mr. Secretary* Jenkins.

Mr. *Blaithwait.* My Lord, I remember, when Captain *Walcot* was examined before the King, he did own this to be his Hand.

Mr. Serj. *Jeff.* Give it in.

Cl. of the Cr. Honoured Sir, *July* 5th. 83.—

L. C. J. Who is it directed to?

Cl. of the Cr. There is no Direction.

Mr. *Blaithwait.* It was directed to Mr. Secretary *Jenkins*, as I find by the Minutes I then took of it.

L. C. J. Here is the Cover, it ſeems.

Cl. of the Cr. To the Right Honourable Sir *Leoline Jenkins*, &c.

‘ *Honoured Sir*,

‘ I BEING in the Country, and to my great Trouble ſeeing myſelf in his Majeſty's Proclamation, I came laſt Night to Town, reſolving to lay myſelf at his Majeſty's Feet, let him do with me what he pleaſeth: This is the firſt Crime I have been guilty of ſince his Majeſty's Reſtauration, and too ſoon by much now. If his Majeſty thinks my Death will do him more good than my Life, God's Will and his be done. Until I ſent your Honour this Letter, my Life was in my own Power, but now it is in the King's, to whom I do moſt humbly propoſe, That, if his Majeſty deſires it, I will diſcover to him all that I know relating to *England*, *Scotland* or *Ireland*, which I ſuppoſe may be ſomething more than the original Diſcoverer was able to acquaint his Majeſty with, eſpecially as to *Ireland:* There is not any thing his Majeſty ſhall think fit to aſk me but I will anſwer him the Truth as pertinently and as fully as I can. My Intimacy with a *Scotch* Miniſter, through whoſe Hands much of the Buſineſs went, I judge occaſion'd my knowing very much. And I do further humbly propoſe, That if his Majeſty thinks it adviſeable, I will follow thoſe Lords and Gentlemen that are fled into *Holland*, as if I had fled thither, and had made my Eſcape alſo; and will acquaint the King, if I can find it out, what Meaſures they reſolve of taking next: I do aſſure his Majeſty, the Buſineſs is laid very broad, or I am miſinform'd. And I am ſure as to that Particular, if my being with his Majeſty and your Honour be not diſcovered, I ſhall be ten times abler to ſerve him than either Mr. *Freeman* or Mr. *Carr*, for they will truſt neither of them. There's ſcarce any thing done at Court, but is immediately talk'd all the Town over: Therefore if his Majeſty thinks what I have preſumed to propoſe adviſable, I do then further moſt humbly propoſe, That my waiting uponh isMajeſty may be ſome time within Night; that your Honour will acquaint me the Time and Place where I may wait upon you, in order to it, that it may be within Night alſo, and that nobody may be by, but his Majeſty and your Honour: And if his Majeſty pleaſeth to pardon my Offences for the Time paſt, he ſhall find I will approve myſelf very loyal for the future; if not, I reſolve to give his Majeſty no further Trouble, but to lye at his Mercy, let him do with me what he pleaſeth. I purpoſe to ſpend much of the Day in *Weſtminſter-Hall*, at leaſt from Two of the Clock to Four. I beg your Pardon I ſend your Honour this by a Porter: I aſſure your Honour, it was for no other Reaſon, but becauſe I would not have a third Perſon privy to it; and that I might have the better Opportunity to make good my Word to his Majeſty, and to approve myſelf

‘ *Your Honour's moſt humble Servant*,

‘ THOMAS WALCOT.’

Mr. Att. Gen. Swear Captain *Richardſon.* [*Which was done.*

Capt. *Richardſon.* My Lord, On *Sunday* at Night Mr. *Walcot* deſired to ſpeak with me, and he ſeemed very deſirous to wait upon his Majeſty, and unboſom himſelf to the King: Mr. *Attorney* ſaid, I ſhould give him Notice to prepare for his Trial, which I did, and told him, he ſhould want nothing to prepare himſelf for his Trial. Yeſterday Morning his Son came, and I ſent my Clerk to ſtand between them, and he had prepared this little Paper tied cloſe with a Thread, which my Man told me he did intend to give his Son; and he deſired me, ſince I had diſcovered it, I would make no Uſe of it. The Letter was to Capt. *Tracey*, that was his Landlord, to ſpeak to Col. *Rumſey*, that he would be tender of him, and tell him, he had Ground enough to ſerve the King upon other Men; and alſo to ſpeak to Mrs. *Weſt*, to deſire the ſame thing of her Huſband. The laſt Words in the Note were, *If you cannot be private, leave the Iſſue to God.*

L. C. J. Mr. *Walcot*, have you any thing to ſay for yourſelf, againſt this plain Evidence?

Capt. *Walcot.* My Lord, They have taken a great deal of Pains, and made long Speeches, tho' very little of them relating to me, tho' too much. Col. *Rumſey* tells your Lordſhip of a Deſign they had to aſſaſſinate the King, and carry on a War, or ſomething like it, when I was out of the Kingdom: That at Mr. *Shepherd*'s Houſe they drew up a Declaration; and that upon Mr. *Trenchard*'s ſaying, Things were not ready. This was before I came into *England*, and he ſays this was agreed at Mr. *Weſt*'s Chamber before I came out of *Holland*, that Mr. *Rumbold* undertook it. Then he ſays, that after I came over, I undertook to charge the Guards while the King was killing. My Lord, that was a very improbable thing; for I look upon it, there is no Difference between killing the King, and ſecuring his Guards. Theſe Gentlemen, by what they have ſaid, do ſufficiently convince the Court, and all that hear them, that they are ſufficiently dipp'd themſelves. Here they combine to take away my Life to ſave their own. Then they tell you, that Mr *Goodenough* and Mr. *Rumbold* brought Notes about Men that were to aſſaſſinate the King; but they do not tell your Lordſhip I was privy to any of theſe Notes, nor that I knew any of them. 'Tis in itſelf very improbable, that I would engage in ſo deſperate an Undertaking with Men I never ſaw nor heard of in my Life. Then he tells you, that Mr. *Ferguſon* had been at a Place where I was, and there inquired what Mr. *Goodenough* had done; and withal, they told you, they met at my Lodging: Now that their meeting at my Lodging was by Col. *Rumſey*'s Appointment, I knew nothing of it. Moſt of theſe Meetings were by Col. *Rumſey*'s Appointment, or Mr. *Weſt*'s: I accidentally came amongſt them ſometimes, but all my Buſineſs was only to hear News; nothing was agitated concerning killing the King, or levying of War, more or leſs, as I know of. I muſt confeſs, I did hear that there was a Deſign by a great many Lords and Gentlemen, and others, for aſſerting of their Liberties and Properties; but I was never in any Conſultation with them, or any Meſſage to them, nor I never ſaw one of theſe Lords, that I know of, that are ſaid to be concerned. Therefore, I ſay, 'tis very improbable I ſhould be ſo far concerned as they ſeem to repreſent it. They met at the *Five-Bells*; they allow themſelves I was not at that Meeting. For Mr. *Keeling*, he does not at all charge me. What I ſaid to Mr. *Weſt* relating to the Buſineſs he talks of in *October* laſt, that, my Lord, is out of Doors, in point of Time. I pray God forgive him for what he has ſaid. I can't ſay more than I have.

L. C. J. Pray where do you live? Where is your Habitation?

Capt. *Walcot* My Habitation is in *Ireland*, my Lord.

L. C. J. Pray what do you do here?

Capt. *Walcot.* I was invited by my Lord *Shafteſbury* to go Governor to *Carolina*.

L. C. J. That Deſign was a great while ago fruſtrated.

Capt. *Walcot.* My Lord, it was ſome while before I came over, and ſo my Lord gave his Commiſſion to another. But being in *England*, my Lord *Shafteſbury* invited me to go to *Holland* with him, which I did; and when he died, I came to *London*; I had not been here a Fortnight but I fell ill of the *Gout*, and that continued three Months: Another thing was, my Son was here, and I deſign'd to marry him, and make Proviſion for my younger Children: My Lord, I have a competent Eſtate; I hope it is no great Crime for a Man of an Eſtate to be here.

L. C. J. You confeſs, you heard ſome Diſcourſe of theſe things; what made you to frequent their Company, when you heard theſe things?

Capt. *Walcot.* It was my Folly to do it.

L. C. J. Ay, but you are to underſtand, that Folly in theſe Caſes is Treaſon.

Capt. *Walcot.* I conceive, my Lord, 'tis only Miſpriſion of Treaſon. I did hear of a great deal that theſe Gentlemen have ſaid, and that there would be an Inſurrection; but I had no Hand, directly or indirectly, in it; nor did it enter into my Thoughts, either directly or indirectly, the Death of the King. When ſome Gentlemen have talked to me about it, I abominated it, and told them, it was a ſcandalous thing, a Reproach to the Proteſtant Religion: For my Part, I had Children would bear the Reproach of it, and I would have no hand in it.

L. C J. Look you, Captain *Walcot*, that you did deny to do the Fact, to aſſaſſinate the King, that is very true; they ſay ſo, that you did always deny it; for you ſtood upon this Point of Gallantry, a naked Man you would not aſſaſſinate. And then you talk of Miſpriſion of Treaſon: For a Man to hear of Treaſon accidentally, or occaſionally, and conceal it, is but Miſpriſion; but if a Man will be at a Conſult where Treaſon is hatched, and will then conceal it, he is guilty of Treaſon therein; therefore do not miſtake your Caſe. So that your Point of Law fails you, and every thing fails you in this Caſe. It appears plainly by them, that you were not only privy to the Conſult as an Auditor, but as an Actor; you choſe your Poſt, and upon this Point of Gallantry you would venture yourſelf, not upon a naked Man, but upon Perſons that would oppoſe you.

Capt. *Walcot.* Certainly no Man that knows me, would take me for ſuch a very Fool, that I would kill the King's Guards; as if I were not ſenſible, that was equal Treaſon with the other.

Mr. Att. Gen. Ill Men are always Fools.

Capt. *Walcot.* 'Tis clear they have laid their Heads together, they have contrived to take away my Life, to ſave their own; 'tis plain enough.

L. C. J. There is nothing more reaſonable, nothing more juſt in the World, than to make uſe of ſome Traitors to diſcover and convict the others, elſe would Treaſon be hatched ſecurely. There's nobody capable (where Treaſon does not take Effect) of making an Evidence in ſuch a Caſe, but ſome of you that are Conſpirators. You do not publiſh it at the *Market-Croſs*. And if you could gain but this Point, that none that are concerned with you in the Conſpiracy ſhould be Witneſſes, it would be the ſecureſt thing in the World to hatch Treaſon. For you would be upon this Point; either it ſhall take Effect, and then tis too late, or if it do not, and the Conſpirators are not to be believed, then I am ſecure, nobody in the World can convict me.

Juror. We deſire he may be aſked what he ſays to the Letter.

L. C. J. Well, what ſay you to it? You have made Propoſals you will diſcover others, and you will give Intimation to the King of the Meaſures the reſt of the Conſpirators were taking in *Ireland*, and other Places; upon what Deſign did you write that? And what induced you to it?

Capt. *Walcot.* My Lord, I have told your Lordſhip, that I have heard a great many Diſcourſes relating to that thing, and heard it moſtly by Mr. *Ferguſon*, with whom I had a very great Intimacy, and I did according to my Promiſe give that Account of it; but if his Majeſty would not believe me, I can't help it; but the King was not pleaſed with me, becauſe I could not deſcend to particulars; and I could not, becauſe I never had been in their Company, nor knew nothing but what I had once by a private Hand. I dealt ingenuouſly and truly with the King, and told him what I knew.

L. C. J. Pray obſerve the Contents of your Letter. You made this Propoſal, That you being in the Proclamation, you were one of the fitteſt Men to underſtand and ſmell out the Meaſures of the other Perſons, By this it is plain, you took yourſelf to have an Intimacy, and ſome Intrigue, with the other Perſons that you thought were impeached: Your Letter does import, that you had ſuch an Intereſt with thoſe Perſons, that they would have communicated their Counſels to you.

Capt. *Walcot.* My Lord, I never ſpake but with Mr. *Ferguſon*, who was a Man they did much confide in; and I knew very well, that by my Intereſt in Mr. *Ferguſon*, I ſhould have an Intereſt in the reſt. But truly, whether the Duke of *Monmouth* be there, or not, I know not. I do not know him if I meet him. I was never at any Conſult, never at any of theſe Debates.

L. C. J. What did you mean by this, that this was your firſt Crime? You knew what you was charged with; it was for High Treaſon.

Capt. *Walcot.* My Lord, 'Tis my firſt Crime. My Lord, I have heard there was an Inſurrection intended, I have heard of the Perſons that were to carry it on; I did look upon this as a Miſpriſion of Treaſon; but that I ever acted in it, or intended it, I utterly deny.

L. C. J. The laſt Queſtion is, Whether you have any Witneſſes?

Capt. *Walcot.* I have only a young Man or two, if he be here, to prove the Time that I was ill of the *Gout*, and therefore 'tis improbable I ſhould be ſo far concerned.

L. C. J. I muſt tell you before-hand, that an Argument from the Topic of Probability, will do you but little Service, when there is poſitive Evidence againſt you. This it will import you to make a little Anſwer to, if you can, What you meant by your Application to Colonel *Rumſey*, deſiring Captain *Tracey* to ſpeak to him and Mr. *Weſt*; what do you mean by that?

Capt. *Walcot.* My Lord, would not any Man in my Circumſtances deſire a Man to deal tenderly with him?

L. C. J. Well, is this young Man come in? Come, Sir, what have you to ſay on the Behalf of the Priſoner at the Bar? Or will you aſk him any Queſtions?

Capt. *Walcot.* Only about what Time I fell ill of the *Gout*, and how long I continued ſo?

L. C. J. Do you know about what Time he fell ill of the *Gout*, and how long it continued?

Wit. My Lord, I can't remember certainly the Time, but I believe it was about three Months; I can't tell certainly when it began.

Capt. *Walcot.* My Lord, it is very improbable, that when I was not able to put a Shoe on, nor wear a Boot, I ſhould engage in ſo hazardous and deſperate an Undertaking.

L. C. J. Have you done, Sir?

Capt. *Walcot.* Yes, my Lord.

Mr. Sol. Gen. May it pleaſe your Lordſhip——

Capt. *Walcot.* The Jury will take notice, here are four Men, to ſave their own Lives, ſwear me out of mine.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Evidence you have heard has been very long, and I obſerve that Capt. *Walcot* has complained of it; it has been delivered moſtly in general Terms; and is afraid you ſhould not apprehend it aright, to ſee thoſe Parts wherein he is concerned, but miſtake what is ſaid in general to be ſpoken againſt him. I will therefore do him the Juſtice as to recapitulate that Part of the Evidence that does immediately concern himſelf. It has been very full, and given by every one of the four Witneſſes that have been produced againſt him, beſides the Letter under his own Hand, which is twice as many more.

The firſt Witneſs I ſhall remind you of is Mr. *Weſt*, tho' not produced firſt, yet becauſe his Evidence goes further backward; his Acquaintance began with him in laſt Summer Vacation, he became ſoon intimate with him, and Captain *Walcot* did unboſom himſelf, and tell him, that there was a Deſign to make an Inſurrection; that it was my Lord *Shaftesbury*'s Deſign that he was to be an Officer, I think he ſaid a Colonel of Horſe; he invited Mr. *Weſt* to partake with him in that Deſign, and did propoſe to him the Advantage of a Command in the Army; but he not being qualified declined it. He tells you further, that he did acquaint him there was a Deſign to aſſaſſinate the King; and 'tis eaſy enough to be believed, if there was one deſigned, the other was too. And you ſee all along the only Diſpute was, whether the Aſſaſſination ſhould be firſt, or follow; for to raiſe Arms againſt the King is directly to aſſaſſinate the King; for it cannot end any other way with Security to thoſe that raiſed it. He told Mr. *Weſt* he would not be concerned directly in the Aſſaſſination, but in the Inſurrection he would; he was perſuaded to come in. This was, laſt *October*, diſcourſed with Mr. *Weſt*; they were to riſe in *November*. Then Col. *Rumſey* comes in, and he tells you, that there was a Deſign to riſe in *November*. The Lord *Shaftesbury* ſent him to Perſons concerned in the Conſpiracy, to know in what Readineſs it was; but they being diſappointed of Men, whom they expected to riſe in the Country, they did defer it at that Time; at which my Lord *Shafteſbury* being concerned, went into *Holland*, and I think the Priſoner himſelf hath told you he went with him. The Deſign was not then laid aſide, but ſtill carried on; the moſt material Man, Mr. *Ferguſon*, being in *Holland*, there was ſome little Stop put to it, that is, to the ſwift Progreſs of it; and therefore he was ſent for over to manage it, as being the only Man in whom all Perſons had Confidence. When he comes over, he brings

Captain *Walcot* along with him. Mr. *Ferguſon* meets at Mr. *Weſt*'s Chamber; this Mr. *Weſt* and Col. *Rumſey* give an Account of, they both ſwear it. Several Meetings there were in which Capt. *Walcot* was not, and poſſibly at thoſe times he might be ſick of the *Gout*, and that might occaſion his not being there. But afterwards both tell you, that Capt. *Walcot* did meet at Mr. *Weſt*'s Chamber, and there was debated particularly the Aſſaſſination of the King; and it was agreed to be at *Rumbold*'s Houſe called the *Rye*, looking upon it as a very convenient Place, as thoſe that know it ſay; there being a narrow Paſſage that it was eaſy to aſſault, and hard for Perſons to eſcape; and with 40 or 50 Men, thereabouts, it was a Deſign very likely to have ſucceeded. Capt. *Walcot*'s Share in this was not directly the Aſſaſſination of the King, that he would not be concerned in, being a Soldier, it was beneath him to do that; but his Part was to fight the Guards, he looked upon that as the more honourable Employment; Men that were armed to engage them. This is proved both by Mr. *Weſt* and Col. *Rumſey*.

In the next Place, Gentlemen, when this did not ſucceed, but was prevented by the great Providence of God Almighty, as you have heard, they carry on the Deſign ſtill, and take it into their Councils, and reſolved to carry it on, either at *Windſor*, or in his Paſſage from *Windſor* to *Hampton-Court*; but no Place was certainly fixed upon; and I think the latter Reſolution was, that it ſhould be done at the *Bull-Feaſt*, an Entertainment that was deſigned here in the Fields. Now, Gentlemen, while this was carrying on, it was neceſſary to carry on the other Part too, that is, the Inſurrection; and that Capt. *Walcot* is all along concerned in. He is preſent at the Meetings in the Taverns, where they diſcourſed concerning Men to ſecure the King. This is Mr. *Bourn*'s Evidence, That at the *Dragon-Tavern* on *Snow-hill*, there they met to conſult to ſecure the King and the Duke. That he was preſent at the Meeting in *London*, this is ſworn by all, by Col. *Rumſey*, Mr. *Weſt* and Mr. *Bourn*, where *Goodenough* was to give an Account what Succeſs he had in the Liſt made of dividing the City in ſeveral Parts, and raiſing Men out of every Diviſion, and Capt. *Walcot* met for to know what Progreſs they had made in it. Gentlemen, every one of theſe are overt Acts, to declare his Intention to kill the King, and are all High Treaſon.

The Gentleman at the Bar cannot attempt to mitigate his Offence, by ſaying he would not directly aſſaſſinate the King, but would be the Man to aſſiſt in raiſing Arms; this makes him equally guilty. To conſpire to raiſe Arms againſt the King, certainly that is as great a Declaration of his Imagination of his Heart to kill the King, as any thing in the World: And this being proved upon him, there is no room for any Objections for him to make; ſome he hath made, not worth the Mention; but becauſe they are thoſe he thinks to put his Life upon, I will take notice of them to you.

He ſays, the Witneſſes are not to be credited, becauſe they have been concerned in the ſame Conſpiracy.

Gentlemen, becauſe they have been concerned, therefore they are to be believed; for who ſhould know this but thoſe that were ſo concerned? I think, Gentlemen, there is no good Man, no honeſt Man, would deſire a better Evidence; for better Evidence could not have been had, unleſs the thing had taken Succeſs; and I am ſure that is far from the Heart of any Man, that has the Heart of a Chriſtian, to wiſh. Does he pretend to intrap theſe Witneſſes in any Contradictions? Does he pretend to ſay theſe Witneſſes have conſulted together to make up this Story to accuſe him for his Life? There is nothing pretended of it, but on the contrary he owns he met theſe Men; but the End of his going there was only to hear News. I thought that had not been the proper Place to hear News in; certainly no Man that comes there would have been admitted merely for Curioſity; certainly he muſt bring a Mind to accompany them in all their Villainy: but his own Confeſſion you have for that. I think he hath hardly Confidence to deny, but he was at ſeveral Conſults for raiſing Arms at Mr. *Weſt*'s Chamber. You were, when *Goodenough* gave an Account, at the *Green-Dragon Tavern*. You were where Diſcourſes were of raiſing Arms to ſecure the King; and nothing he has ſaid, Gentlemen, to clear himſelf.

Gentlemen, here is that above all Evidence; here is almoſt the Confeſſion of the Priſoner, the Letter of his own Hand. That Letter (when he ſees his Name in the Proclamation) acknowledges it is his firſt Crime, he ſays: What was that Crime? He was proclaimed as a Traitor. He ſays in his Letter, that his Life was at the King's Mercy; that if his Death would do the King more Service than his Life, God's Will be done; that if his Majeſty would admit him to come in, and uſe Mercy, he would tell all he knew concerning *England*, *Scotland* and *Ireland*, which he thought would be more material than any thing that another Diſcoverer could tell. This ſhews he hath a deeper Hand than any of theſe Men that have given this Evidence. You ſee they accuſe themſelves; they confeſs this, and 'tis a great Mercy they have ſo done; for all your Lives and Liberties in the Perſon of the King are preſerved; and God be thanked, that you are here this Day to ſit in Judgment upon him that would have deprived you of them.

L. C. J. Look you, Gentlemen of the Jury, here is the Priſoner at the Bar indicted of High Treaſon, and 'tis for conſpiring the Death of the King, and for endeavouring to raiſe Arms within his Kingdom againſt him. You hear he denies himſelf to be guilty; you have heard the Evidence, and this does plainly appear upon what you have heard, that there was a dangerous and deſperate Plot upon the King, to have deſtroyed him, that is moſt certainly plain, the Priſoner himſelf confeſſed it; that there were ſeveral Conſults and Meetings concerning it; and that this had a great Progreſs from time to time, for near half a Year, is very plain; that he was at many Conſults, is very certain; that there was a Deſign to raiſe an Inſurrection and War within this Nation, is as plain by them all; it was deſign'd the laſt Winter to have done it. The Witneſſes (who are certainly the Perſons moſt capable of giving Evidence) tell you there were ſeveral times appointed, and ſtill they were by one Providence or another diſappointed. All of them tell you, there was a Deſign to kill the King and Duke at the *Rye* in *Hertfordſhire*, as they came from *Newmarket*: This is very plain too, that this Gentleman at the Bar knew of this; this he himſelf confeſſes, that he was at ſeveral of the Conſults; and this he excuſes it by, that that was Miſpriſion of Treaſon, if he did not undertake to do any thing. As to that, Gentlemen, we do tell you, the Law is, that thoſe that are at a Conſult for the killing the King, or doing of a traiterous Act, that is in them High Treaſon, his being at the conſulting of it. 'Tis true, it would excuſe and mitigate the Fact, if they ſhould come afterwards and diſcover it, it might intitle them to the King's Mercy; but to be at a Conſult upon a treaſonable Deſign, to meet for that Purpoſe to hear the Plot laid, and a Deſign to take away the King's Life, or to raiſe Arms againſt him, and to ſay nothing of this, this is downright Treaſon, and 'tis not Miſpriſion of Treaſon; his Law that he relies upon, fails him there. 'Tis very plain by his own Words, he heard of this Conſpiracy, and he kept it ſecret, and ſays nothing of it; and this he ſays is his Crime that he mentioned to the King; ſo he would mitigate it by ſaying, 'tis but Miſpriſion of Treaſon. But without doubt, the Meeting at ſeveral Times upon this Deſign, if he had promiſed and undertaken nothing in it, his keeping of it private, as he has done, makes him guilty of High Treaſon; ſo that out of his own Words 'tis plain that he is Guilty.

But then, conſider what two Witneſſes poſitively prove upon him: They prove, that he did there deny to be any of them that ſhould aſſaſſinate the King; thus ſays Col. *Rumſey*, and thus ſays Mr. *Weſt*; but he would be one of them that ſhould fight the Guards, and he did undertake to fight the Guards, as both of them poſitively ſwear. This is done with Circumſtances of overt Acts too, as the providing of Horſes, and a Tuck was to be prepared in order to it, and a Tuck he did prepare: Whether he did go down, that is a little dark, but he did agree to go down.

Gentlemen, 'Tis plain by what Mr. *Weſt* ſaid of him, that he had a Deſign formerly in my Lord *Shafteſbury*'s Time to have raiſed War; he had undertaken to be a Colonel of Horſe under my Lord *Shafteſbury*, and he offered Mr. *Weſt* to be one of his Officers under him. This is a Deſign to raiſe War againſt the King, and declares it ſufficiently. That which makes the Evidence further plainly and greatly clear, is a Letter whereby he does ſubmit to the King's Mercy, but propoſes that himſelf is abler to inſtruct the King in theſe Matters, than any of thoſe that had made former Diſcoveries; and therefore if his Majeſty ſhould think fit, he would make him a full Diſcovery, not only of things in this Kingdom, but of the Tranſactions with other Kingdoms, that is, *Scotland* and *Ireland*, in which he takes himſelf to be more capable of diſcovering to the King than any body elſe, becauſe he was concerned with the Agents there; which ſhews this Plot hath gone a great Way: This Deſign hath gone into other of the King's Dominions, and it is to be feared 'tis larger than the King knows. 'Tis Time to nip theſe Treaſons when they are gone ſo far; certainly a more barbarous Deſign was never thought of by Mankind. We have had certainly as many Engagements to the King, as any Subjects ever had to any Prince whatſoever; he has done as many Acts of Grace; we have lived as peaceably as any People under a Prince can ever expect to do; he hath ſhewed himſelf with as much Kindneſs, with as much Lenity, even to his very Enemies, as any Prince that ever we read of; the Preſervation of our Religion, and the Laws of the Kingdom; our Laws and Liberties, and all our Happineſs, depend as much upon his Life, as they ever did upon the Life of any Prince, or ever can do; ſo that we ought all to be concerned, even to the laſt Drop of our Blood, to preſerve him: But how this miſchievous Deſign ſhould enter into the Hearts of Men, to undertake to kill him in ſuch villainous and barbarous a Manner as this, may juſtly make us aſtoniſhed.

Gentlemen, You hear your Evidence, you have a very ſtrong Evidence in this Caſe, and ſtronger, I think, than could be expected in the Caſe of Treaſon.

The Jury went out for about Half a Quarter of an Hour, and returned, and brought the Priſoner in Guilty.

CXVIII. *The Trial of* WILLIAM HONE *, *at the* Old Bailey, *for* High Treaſon, July 12. 1683. 35 Car. II.

WILLIAM HONE being brought to the Bar, and having held up his Hand, the Indictment was read, as follows:

‘ London. The Jurors for our Sovereign Lord the King,
‘ upon their Oaths, preſent, that *William Hone*, late of *London*, La-
‘ bourer, with other falſe Traitors, as a falſe Traitor againſt the moſt
‘ Illuſtrious and Excellent Prince, our Sovereign Lord *Charles* II. by the
‘ Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, his natural
‘ Lord; not having the Fear of God in his Heart; nor weighing the Duty
‘ of his Allegiance, but being moved and ſeduced by the Inſtigation of the
‘ Devil; and the true Duty, and natural Obedience, which true and
‘ faithful Subjects of our Sovereign Lord the King, towards him our ſaid
‘ Lord the King do bear, and of Right ought to bear, wholly withdraw-

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* *Burnet*'s Hiſtory of his Own Times, *Vol.* I. *p.* 559.

‘ ing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up, and the Government of our ſaid Lord the King within this Kingdom of *England* to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of *England* to put down and deprive, and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of *March*, in the Year of the Reign of our Sovereign Lord *Charles* II. King of *England*, *&c.* the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of *St. Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, aforeſaid, maliciouſly and traiterouſly, with divers other Traitors, to the Jurors aforeſaid unknown, he did conſpire, compaſs, imagine and intend our ſaid Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of *England* to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of *England* to change, alter and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through the whole Kingdom of *England* to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, and ſtir up, within this Kingdom of *England*; and to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Compaſſings, Imaginations, and Purpoſes aforeſaid, he the ſaid *William Hone*, and many other Traitors, as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, maliciouſly, traiterouſly and adviſedly, he did aſſemble, meet together, and conſult with divers other evil-diſpoſed and diſcontented Subjects of our ſaid Lord the King, to the Jurors as yet unknown, and had Diſcourſe, and did treat, of and for the executing and fulfilling their Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and that the ſaid *William Hone*, (together with many other Traitors) as a falſe Traitor, maliciouſly, traiterouſly, and adviſedly, then and there, and divers other Days and Times, as well before as after, did take upon himſelf, and promiſe to be aiding and aſſiſting in the executing of the Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and in providing of Arms, and men armed, to fulfil and perfect the ſaid Treaſons, traiterous Compaſſings, Imaginations and Purpoſes aforeſaid. And to fulfil, and bring to paſs, the ſaid moſt horrid Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, he the ſaid *William Hone* (with many other falſe Traitors) as a falſe Traitor, maliciouſly, traiterouſly and adviſedly, then and there, did procure and prepare Arms, to wit, Blunderbuſſes, Carbines, and Piſtols, againſt the Duty of his Allegiance, againſt the Peace of our Sovereign Lord the King, *&c.* and againſt the Form of the Statutes, *&c.*

Cl. of the Cr. How ſayeſt thou, *William Hone?* Art thou Guilty of this High Treaſon, whereof thou ſtandeſt indicted, or Not guilty?

Hone. In ſome meaſure I am guilty.

Capt. *Richardſon.* You muſt ſay, Guilty, or Not guilty.

Sir *Francis Pemberton.* *L. C. J.* You muſt plead to this; and the Way is, to confeſs all, or deny all.

Hone. I know nothing of the Arms.

L. C. J. Are you guilty of the Treaſon, in conſpiring the Death of the King, and providing Arms for that Purpoſe?

Hone. I never provided Arms; I am guilty of the Conſpiracy.

L. C. J. We can take notice of none of theſe odd kind of Words you talk of, but either plainly Guilty, or Not guilty.

Hone. My Lord, I can truly ſay, I am Not guilty, for I know nothing of it.

L. C. J. If you ſay ſo, you ſay as much as is required of you at preſent.

Hone. In that underſtanding of it, I am Not guilty.

L. C. J. Well, he ſays he is Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Hone. By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Friday, July *the* 13*th in the Morning, the Court being ſet, and Proclamation made.*

Sir *Robert Sayer.* *Mr. Att. Gen.* Set *William Hone* to the Bar.

Cl. of Cr. You the Priſoner at the Bar, hold up your Hand.

Hone. I deſire I may retract my Plea: I would plead Guilty.

L. C. J. Do you confeſs the Indictment?—*Hone.* Yes, my Lord.

L. C. J. That is, That you did conſpire the Death of the King, and in order to that, that you did provide yourſelf with Arms to do this wicked Act.

Hone. I never did that, my Lord, I never provided any Arms.

L. C. J. What were you to have done?

Hone. That Depoſition I gave before Sir *William Turner* is true.

L. C. J. Tell us what you were to have done in this bloody Matter.

Hone. I was aſked by one Mr. *Richard Goodenough* to go along with him, and I aſked him whither, and he would not tell me; but I underſtood it was to kill the King and Duke of *York*, but he did not tell me the Place.

Mr. Serj. *Jeff.* He does not confeſs fully; we deſire to try him.

L. C. J. Look you, you have pleaded Not guilty to this Indictment: The King is willing, that if you be Not guilty, you ſhall not be condemned; and therefore he does deſire and command the Evidence againſt you ſhould be publickly given, that all Perſons may ſee, that you are not without Cauſe brought to Trial. Therefore ſwear the Jury.

The Priſoner challenged none; but the Jury that were ſworn were,

Jurors.

Nicolas Charlton,
Chriſtopher Pitts,
Robert Beddingfield,
John Pelling,
William Windbury,
Thomas Seaton,
William Rutland,
Thomas Short,
Theophilus Man,
John Genew,
John Short,
Thomas Nicholas.

Then Proclamation for Information, and for thoſe that were bound by Recognizance to appear, was made.

Cl. of Cr. William Hone, hold up thy Hand. (*Which he did.*) You Gentlemen of the Jury that are ſworn, look upon the Priſoner, and hearken to his Cauſe; he ſtands indicted by the Name of *William Hone*, &c. *prout antea*, in the Indictment, *mutatis mutandis*; upon this Indictment he hath been arraigned, and hath thereunto pleaded Not guilty; and for his Trial, *&c.*

Mr. *Jones.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Priſoner ſtands indicted for the moſt horrid Treaſon that ever was endeavoured to be committed in this Kingdom, for traiterouſly conſpiring to kill the King, and conſulting how and in what Manner it ſhould be done, and for preparing Arms for the doing of it. We ſhall prove this to you, and then I hope you will find him Guilty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Part the Priſoner at the Bar was to act in this Treaſon, was the killing of the King; he was one of the Perſons that were to be aſſiſting in aſſaſſinating the King's Perſon. We will not trouble you with the large Evidence of the Riſing, as we did Yeſterday; but we will prove theſe things upon him, that he undertook to do it, that he was concerned with the reſt of the Confederates: We ſhall ſhew you this is not a new Thing, but he hath been an old Rebel; for this hath not been a new Project, but hath been acting ſeveral Years. Five Years ago, when the King attended my Lord Mayor's Show, he undertook to kill him off of *Bow* Church. We ſhall call our Witneſſes, and prove it fully upon him. Mr. *Keeling*, and Mr. *Weſt*.

Mr. Joſias Keeling *ſworn.*

Mr. Att. Gen. Do you tell my Lord and the Jury, what you know of this Priſoner at the Bar.

Mr. *Keeling.* The firſt Time I ſaw him was at the *Dolphin* Tavern, when the Arms were agreed upon, he was there then.

Mr. Att. Gen. Who was there then?

Mr. *Keeling.* Mr. *Weſt*, Mr. *Goodenough*, and him I remember particularly, and ſome others, whom I do not at preſent remember, and ſince that he hath taken notice of me.

Mr. Att. Gen. Was Mr. *Rumbold* there at that Time?--Mr. *Keeling.* Yes.

Mr. Att. Gen. Pray at that Meeting tell the Jury what Diſcourſe you had; for many of theſe Gentlemen are not the ſame that were on the Jury Yeſterday.

Mr. *Keeling.* It was diſcourſed then of the King's coming home from *New-market* the *Saturday* after the Fire. Mr. *Weſt* told Mr. *Rumbold*, he heard the King would come home that Day; But, ſays he, I don't believe it. Says *Rumbold*, I hear he will come home on Says Mr. *Weſt*, I hear ſo too. They ſaid, they hoped they would not come home on *Monday*. Says Mr. *Weſt* to Mr. *Rumbold* then, How many *Swan-quills*, *Gooſe-quills* and *Crow-quills*, and how much Sand and Ink, muſt we have? I think the Priſoner at the Bar muſt needs remember it as well as I. It was agreed by Mr. *Rumbold.* I think I am exact in the Number, and he was by and heard all the Diſcourſe.

Mr. Att. Gen. What did they mean by this?

Mr. *Keeling.* By *Swan-quills* they meant Blunderbuſſes; by *Gooſe-quills*, Muſkets; and by *Crow-quills*, Piſtols; and by *Sand* and *Ink*, Powder and Bullet. He took Acquaintance with me after that Meeting, (for I never ſaw him, as I know of, before) and after ſome time he told me, he was one of them that was to go down to the *Rye* to aſſaſſinate the King. And ſince that, at a Coffee-houſe in *Swithin's-Alley*, he told me, It would never be well till the Blackbird and the Goldfinch were knocked on the Head. They being Terms I did not underſtand, I aſked him what he meant; he ſaid the King and Duke of *York*.

Mr. Serj. *Jeff.* You are ſure that is the Man?

Mr. *Keeling.* I am ſure that is the Man, *William Hone.*

Mr. Serj. *Jeff.* What, is that the Man that talked of the Blackbird and Goldfinch?

Mr. *Keeling.* I am ſure that is the Man.

Mr. Att. Gen. Now ſwear Mr. *Weſt.*

Mr. Serj. *Jeff.* If Mr. *Hone* has a mind to aſk him any Queſtions, he may.

Hone. My Lord, this I deny: As to the Blackbird, I own it; as to the Goldfinch, I never heard a Word of it till this time.

Mr. Serj. *Jeff.* You had only a Deſign upon the Blackbird then?

Mr. Weſt *ſworn.*

Mr. Att. Gen. Tell the Court what you know of the Meeting at the *Dolphin* Tavern.

Mr. *Weſt.* I was there, and Mr. *Keeling* came in. There were ſeveral things ſaid of *Swan-quills*, *Gooſe-quills*, and *Crow-quills*, but this Man did not come in till this Diſcourſe was over, and I am ſure I did not ſpeak of any thing of this Nature before this Man in my Life. But Mr. *Goodenough* did undertake to provide the Men, and Mr. *Goodenough* ſaid, he would try him, if he would make an Attempt upon the Duke without the King. And I aſked him, whether he had ſeen Mr. *Goodenough.* He told me he had. Says he, he ſpoke to me about a little Jobb for the Duke. Mr. *Goodenough* ſaid, he had ſpoke to him fully about the thing. And I ſaw him often in the Company of *Mannius*, that was deſign'd to be another of the Aſſaſſinates. He was at my Chamber once; ſays he, Maſter, ſhall we do nothing? I think he uſed theſe Words, That if the Duke of *Monmouth* would be true, and appear, he could bring fifty or ſixty honeſt Men of t'other Side the Water, to do the Buſineſs. I aſked him, What Buſineſs? Says he, Either a briſk Puſh (that I took for an Inſurrection) for the two Brothers: Says I, what Brothers do you mean? Says he, the Captain and Lieutenant; thoſe were the two Terms they uſed ſince the *Van-herring* was printed. I think he was a pretty honeſt Fellow before this Time; he was deluded by *Goodenough*, I think, in the thing.

L. C. J. (to Mr. Weſt.) Do you come to juſtify theſe things?

Mr. *Weſt.* My Lord, he hath been deluded baſely, and I am ſorry for the poor Fellow.

L. C. J. It is a very unuſual thing, for one in your Condition to uſe ſuch Expreſſions in ſuch a Caſe.

Mr. Serj. *Jeff.* Mr. *Weſt*, You have been deluded.

Mr. Att. Gen. Captain *Richardſon* and Sir *Nicolas Butler.*

Mr. Serj. *Jefferies.* I find he is not worthy of the Mercy the King hath ſhewed him.

Mr. *Weſt.* It was a Word I put from me unawares.

Mr. Serj. *Jefferies.* My Lord, we will give you an Account of a Deſign this Man had long ago to kill the King.

Sir Nicolas Butler *ſworn.*

Sir *Nicolas Butler.* My Lord, I know the Priſoner at the Bar very well. I have known him many Years: I have always known him guilty of Plotting and Contriving, and ready upon all Occaſions to embrace any thing for theſe Purpoſes laid to his Charge; particularly, when Sir *Francis Chaplain* was Lord Mayor, his Majeſty and the Duke ſtood at Mr. *Waldoe*'s Houſe, by reaſon of the *Angel* Houſe being ſhaken: And he came to my Houſe, and told me, he would diſcourſe me upon ſome private Matter; I called him into a Cloſet, and he told me, they had a fair Opportunity to take off the King and the Duke at once: I told him, that would do very well, but how will you do it? Says he, We will do it with Croſs-bows; we are to be half a Dozen, and we will go into the Steeple, where there is a Window juſt oppoſite to the Balcony: And a great deal of Diſcourſe we had to this Purpoſe. My Intent was to divert them from this Deſign, and told him how impoſſible it was they ſhould eſcape the Foot Guards and Horſe Guards, and Multitude of People: And if he did not do the Buſineſs effectually, he would be undone, and all the Party. I reſted ſatisfied he would have deſiſted upon this. But I knew the Principles of theſe Fifth-Monarchy-Men, and their Aſſociates, and thought it not ſafe to truſt to his bare Say-ſo, that he would deſiſt; but I went to the King and the Duke of *York*, into my Lord Chamberlain's Chamber, where they came to me, and I gave them this Account, and deſired them to ſet ſome to watch the Place, and to ſearch if any were got into the Steeple before they came; and there was one *Horſal* appointed, that did accordingly watch them, but none came: Upon which ſome Good-willers to it have reported, that it was a Sham-buſineſs; but I think that was not well done. But the thing was real, and when he was examined before the King in the Secretary's Office, he did confeſs all theſe things that I charged him with.

Mr. Att. Gen. Sir *Nicolas Butler*, Had you any Diſcourſe of killing the King at this time?

Sir *Nicolas Butler.* No: At laſt they did underſtand I kept a Correſpondence at Court, and then they would tell me no more.

Mr. Att. Gen. Since he was taken, what did he ſay about this Matter?

Sir *Nicolas Butler.* About this Matter he did acquaint divers; he was one that was to kill the King and the Duke.

Captain Richardſon *ſworn.*

Capt. *Richardſon.* Sir *Nicolas Butler* aſked him in my Preſence (I went along with Sir *Nicolas* when he examined him) as to this thing, how he was concerned? He ſaid, Mr. *Goodenough* came to him, and told him he wanted Labourers; he aſked him, for what? At laſt he did confeſs, that Mr. *Goodenough* did tell him, it was to kill the King, and the Duke of *York*; he did confeſs, that he did agree to it, and that he would be one of them. He did likewiſe ſay, that after, at another Meeting, he was for killing the King and ſaving the Duke; but *Goodenough* was for both.

Sir *Nicolas Butler.* He ſaid he was to have 20 *l.*

Capt. *Richardſon.* He ſaid, he did not deſire to ſtir, and *Goodenough* told him he ſhould have 20 *l.* to buy him Horſe and Armour: And told us the Buſineſs of the *Rye*, the Place he did not know, but ſaid, it was the Place where the King was to be murdered. This is the Subſtance of the Examination taken.

Mr. Serj. *Jefferies.* Tho' the Priſoner at the Bar did partly make a Confeſſion; yet for the Satisfaction of the World, my Lord gave us leave to call our Witneſſes.

Capt. *Richardſon.* That which Sir *Nicolas* ſays about the Croſs-bows he did own, but——

L. C. J. What ſay you to this treaſonable Deſign of your's, in undertaking to kill the King, in hiring yourſelf out to be one of the Perſons, that ſhould have executed this traiterous Deſign, this horrid Murder, to have killed the King at the *Rye?*

Hone. I ſay, I did not know the Place where, nor when, at the time it was propoſed about the *Rye.*

L. C. J. But what do you ſay as to the undertaking to kill the King? The other is but a Circumſtance, this is the material Point.

Hone. My Lord, I was drawn into it by Mr. *Richard Goodenough.*

L. C. J. You hear what Sir *Nicolas Butler* ſays of the Croſs-bows you deſigned to kill the King with, what ſay you to that?

Hone. I ſay, there was a Perſon told me of ſuch a thing; and I told Sir *Nicolas* immediately of it. The Perſon that told me was a Shop-keeper, and I don't know him.

Sir *Nicolas Butler.* You named three Perſons to the King that were Confederates with you, but you came to me of yourſelf.

L. C. J. Look you, yourſelf was one of the wicked Undertakers in that traiterous Deſign.

Hone. No, I did never deſign it, but I was told it.

L. C. J. Ay, that yourſelf and ſome other good Fellows were engaged in the Deſign.

Hone. I was not engaged, only as I was told by a Fellow, that there was a Shop-keeper lived hard by that would do ſuch a thing, and I immediately told Sir *Nicolas Butler.*

L. C. J. Come, 'tis in vain for you to mince the Matter, for here is a full Evidence againſt you: The beſt you can do for your Advantage now, is to conſider well with yourſelf, and repent of this wicked Deſign. What Religion do you profeſs?

Hone. Religion, my Lord?

L. C. J. Ay, any or none?

Hone. My Lord, I hear ſeveral ſort of Men, ſometimes Baptiſts, ſometimes Independents, and ſometimes the Preſbyterians.

L. C. J. But regard none. Look you, Gentlemen of the Jury, you hear a plain Caſe of a barbarous Murder deſigned upon the King, one of the horrideſt Treaſons that hath been heard of in the World, to have ſhot the King and the Duke of *York* in their Coaches, as they were coming upon the Road. You have had full Evidence of this Man's being one of them; and therefore I am of Opinion, that you muſt find him guilty.

So the Jury brought the Priſoner in Guilty, without going out of Court.

CXIX. *The Trial of Lord* WILLIAM RUSSEL [*], *at the* Old Bailey, *for* High Treaſon, July 13. 1683. 35 Car. II.

THE Lord *Ruſſel* was ſet to the Bar, and placed within the Bar.

Cl. of Cr. William Ruſſel [†], hold up thy Hand (*Which he did*). Then the Indictment was read, as followeth:

‘ *London.* The Jurors of our Sovereign Lord the King, upon their Oaths, preſent, That *William Ruſſel*, late of *London*, Eſq; together with other falſe Traitors, as a falſe Traitor againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil; and the true Duty, and natural Obedience, which true and faithful Subjects of our Sovereign Lord the King, towards him our ſaid Lord the King do bear, and of Right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up, and the Government of our ſaid Lord the King within this Kingdom of *England* to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of *England* to put down and deprive, and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of *November*, in the Year of the Reign of our Sovereign Lord *Charles* II. King of *England*, &c. the Four-and-thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of *St. Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, aforeſaid, maliciouſly and traiterouſly, with divers other Traitors, to the Jurors aforeſaid unknown, he did conſpire, compaſs, imagine and intend our ſaid Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of *England* to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of *England* to change, alter and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through his whole Kingdom of *England* to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, procure and ſtir up, within this Kingdom of *England*; and to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, he the ſaid *William Ruſſel*, together with other falſe Traitors, as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, maliciouſly, traiterouſly and adviſedly, between themſelves, and with divers other Traitors, to the Jurors aforeſaid unknown, they did meet together, conſult, agree and conclude, and every of them, then and there, did conſult agree, and conclude, Inſurrection and Rebellion againſt our Sovereign Lord the King, within this Kingdom of *England*, to move and ſtir up, and the Guards for the Preſervation of the Perſon of our ſaid Lord the King, to ſeize and deſtroy, againſt the Duty of his Allegiance, againſt the Peace *&c.* and alſo againſt the Form of the Statutes, *&c.*’

Cl. of Cr. How ſayeſt thou? Art thou Guilty, or Not guilty?

Lord *Ruſſel.* My Lord, May I not have a Copy of the Matter of Fact laid againſt me, that I may know what to anſwer to it?

L. C. J. My Lord, we can grant you nothing till you have pleaded. Therefore that which is put to you now is, Whether you ſay you are Guilty, or Not guilty?

Sir *Francis Pemberton.*

L. *Ruſſel.* My Lord, I am Not guilty.

Cl of Cr. Culprit, how wilt thou be tried?

L. *Ruſſel.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

L. *Ruſſel.* My Lord, I thought a Priſoner had never been arraigned and tried at the ſame time. I have been a cloſe Priſoner.

L. C. J. For Crimes of this Nature, my Lord, we do it continually.

L. *Ruſſel.* It is hard, my Lord.

Mr. Att. Gen. My Lord hath no Reaſon to complain for want of Notice; for ſince *Monday* ſeven-night he had Notice of his Trial, and the Matters alledged againſt him he had Notice of; for Queſtions were put to him about this Matter: He hath been very fairly dealt with, he hath had the Liberty of Counſel to adviſe him; there hath been no ſort of Liberty denied him, which becomes any Subject to have in this Condition.

Sir *Robert Sawyer.*

L. C. J. My Lord, I do not know whether you hear Mr. *Attorney:* He ſays, your Lordſhip hath had a great deal of Favour ſhewn you already, in that you have been acquainted with the Crimes for which you are now indicted, that you have had a great deal of Warning given you, that you have had the Liberty of Counſel, which hath not been known granted to any under your Lordſhip's Circumſtances. He ſays, he doubts not but your Lordſhip is prepared for your Defence, becauſe you have had ſo much

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[*] *Burnet*'s Hiſtory of his Own Times, *Vol.* I. *p.* 553——558. 560——562.

[†] He was Lord only by Courtſey, being eldeſt Son to the Earl of *Bedford.*

Knowledge, and Warning of the Time and Matter for which you were to be called in Queſtion.

L. *Ruſſel.* My Lord, I am much to ſeek; I only heard ſome general Queſtions, and I have Witneſſes that I believe are not yet in Town, nor will be, I believe, till Night. I think it very hard I can't have one Day more.

Mr. Att. Gen. Monday ſe'ennight your Lordſhip had Notice.

L. *Ruſſel.* I did not know the Matter I was charged with.

Mr. Att. Gen. Yes, certainly; for I was with you myſelf, my Lord; and thoſe Queſtions you were examined upon, were a Favour to you, that you might know what the Matter was you were accuſed of.

L. C. J. My Lord, without the King's Conſent, we can't put off the Trial: If the King's Counſel think not fit to put it off, we can't grant your Lordſhip's Requeſt in this Caſe.

L. *Ruſſel.* I would deſire a Copy of the Panel of the Jury, that I might conſider of it; for how elſe can I make any juſt Challenge? I thought the Law had been very favourable to Men upon their Lives; and therefore it had allowed People to have ſome little Notice.

L. C. J. Hath not your Lordſhip had a Copy of the Panel? I think your Lordſhip was allowed one. We gave Order your Lordſhip ſhould have a Copy of the Panel.

Mr. Att. Gen. We did indulge him ſo far, that he might have a Note of all the Men returned.

L. *Ruſſel.* I never had a Copy of the Panel.

L. C. J. It was the Fault of your Lordſhip's Servants then; for I gave Order for it myſelf. 'Tis ſuch a Favour, that in regard a Man's Life lies at Stake, we never did deny it [*], to my Knowledge. And therefore in this Caſe I gave Order to the Secondary to deliver a Copy. I know the King did not deſign to be hard upon my Lord in his Trial, but that he ſhould have as fair a Trial as ever any noble Perſon had.

L. *Ruſſel.* I pray I may have a Copy then.

Mr. Serj. *Jefferies.* If my Lord had ſent his Agents, and it had been refuſed, there had been ſomething in it.

Mr. Att. Gen. Secondary *Normanſel* was with me, and I gave him my Allowance, tho' it was not his Right.

L. C. J. That my Lord may not be ſurpriſed, what think you of giving my Lord Time till the Afternoon, and try ſome of the reſt in the mean time?

Mr. Att. Gen. Truly, my Lord, if I could imagine it were poſſible for my Lord to have any Witneſſes, I ſhould not be againſt it.

L. *Ruſſel.* 'Tis very hard.

Mr. Att. Gen. Do not ſay ſo; the King does not deal hardly with you; but I am afraid it will appear you would have dealt more hardly with the King: You would not have given the King an Hour's Notice for ſaving his Life.

Secondary *Trotman.* I gave my Brother *Normanſel* a Copy of the Panel on my Side, and hear that my Brother *Normanſel* hath ſaid that he delivered a Copy.

Then Secondary Normanſel *was ſent for, and the Court ſtaid for him ſome time.*

Mr. *Atwood.* My Lord, a Gentleman told me, he did not know whether it was fit, till he had conſulted the *Attorney General*; afterwards I had a Copy as it ſtood then, not as it is now.

Mr. Att. Gen. I deſire my Lord may be aſked, who he ſent for it?

L. *Ruſſel.* I did not ſend for it; I inquired, and they ſaid it would be refuſed.

Mr. *Atwood.* No, the Gentleman had it with the fair Periwig.

L. C. J. It was delivered to your Servant or Agent. What did you do with it?—L. *Ruſſel*'s *Gent.* Sir, The Gentleman gave me out of a Book ſome Names.

Mr. Serj. *Jefferies.* What did you do with them?—L. *Ruſſel*'s *Gent.* I writ them down; they were not perfect; I did not know what they were.

L. C. J. Sir, you were to blame not to deliver it to my Lord.

L. *Ruſſel*'s *Gent.* I was not bound to deliver an imperfect thing to my Lord.

L. C. J. Sir, you ſhould have conſulted your Lord's Advantage, ſo as to have delivered any thing for his Good.

L. *Ruſſel*'s *Gent.* My Lord was in the *Tower*, I was not admitted to my Lord.

Mr. Att. Gen. Did you give it to my Lady?

L. *Ruſſel*'s *Gent.* Yes, thoſe Names I had, my Lady had.

Mr. Serj. *Jefferies.* How long ago was it?

Mr. *Atwood. Tueſday* or *Wedneſday* laſt.

L. C. J. (*to Lord* Ruſſel'*s Servant.*) Look you, Sir, when had you this?

L. *Ruſſel.* I had no Panel, I will aſſure you, delivered me; I had ſome Names of People that they ſaid were uſually on Juries.

L. C. J. They were the Names of the Jury.

L. *Ruſſel.* They were only the Names of them that were like to be of the Jury; no other Panel came to me.

L. C. J. My Lord, there can be no other Copy given, but the ſame that was delivered; for your Lordſhip does know in this Caſe, any Perſon accuſed, as your Lordſhip is, may challenge Thirty five; and therefore there is a Return generally of Three or Fourſcore, and theſe are returned in caſe of your Lordſhip's Challenge. When you have challenged ſo many as you pleaſe, then the twelve Men that ſtand after your Challenge are to be of the Jury. And therefore this is not like a Panel made up by the Sheriff, in ordinary Cauſes, between Man and Man; there they make a formal Panel, from which they cannot depart, when that is once returned; but here in criminal Caſes, becauſe of the Challenge, they return either Sixty or Eighty: And I preſume your Lordſhip was attended with the Names delivered.

Mr. Serj. *Jefferies.* How many Names were delivered?

Mr. *Atwood.* Above a Hundred.

L. *Ruſſel.* I had nothing of a Panel delivered to me, but ſome Names.

L. C. J. There was never any formal Panel delivered to any Perſon accuſed: The Copy of it is in Paper always.

L. *Ruſſel.* How can I know who to challenge?

L. C. J. My Lord, the Copy of it is in your Hands; your Lordſhip hath been deceived in this, by not underſtanding the true Nature of theſe Things. If we were to give you a new one, we could give you but ſuch an one.

L. *Ruſſel.* I had no Paper from the true Officer.

L. C. J. No, but from your Servant.

Mr. Att. Gen. My Lord, you will have Cauſe to complain, if they are not the ſame Men we now ſhall call.

L. C. J. My Lord, that Paper will guide your Lordſhip in your Challenges.

L. *Ruſſel.* My Lord, I did not mind it: I put it away. My Lord, with your Favour, I muſt needs inſiſt upon having a Panel, and that you will put it off till the Afternoon; I have a Witneſs that is not in Town. My Counſel told me it was never done, or very ſeldom, arraigning and trying at the ſame Time, except in caſe of common Malefactors.

L. C. J. Mr. *Attorney*, Why may not this Trial be reſpited till the Afternoon?

Mr. Att. Gen. Pray call the Jury.

L. C. J. My Lord, the King's Counſel think it not reaſonable to put off the Trial longer, and we can't put it off without their Conſent in this Caſe.

L. *Ruſſel.* My Lord, 'tis hard: I thought the Law had allowed a pretty deal of Favour to a Man when he came upon his Life. How can I know to except againſt Men that I never heard or ſaw one of them?

Cl. of Cr. You the Priſoner at the Bar, Thoſe good Men that have been now called, and here appear, are to paſs between you and our Sovereign Lord the King, upon your Life or Death; if you challenge any of them, you muſt ſpeak as they come to the Book to be ſworn, before they are ſworn.

L. *Ruſſel.* My Lord, May I not have the Uſe of Pen, Ink and Paper?

Court. Yes, my Lord.

L. *Ruſſel.* My Lord, may I not make uſe of any Papers I have?

L. C. J. Yes, by all means.

L. *Ruſſel.* May I have ſomebody write to help my Memory?

Mr. Att. Gen. Yes, a Servant.

L. C. J. Any of your Servants ſhall aſſiſt you in writing any thing you pleaſe for you.

L. *Ruſſel.* My Wife is here, my Lord, to do it.

L. C. J. If my Lady pleaſe to give herſelf the Trouble.

Mr. Att. Gen. My Lord, you may have two Perſons to write for you, if you pleaſe.

L. *Ruſſel.* My Lord, here hath been a Name read, that I never ſaw in the Liſt of the Jury I had: I heard Sir *Andrew Foſter* called.

L. C. J. He is not called to be of the Jury.

Cl. of Cr. Call *John Martin.* [*He appears.*

L. *Ruſſel.* Are you a Freeholder of 40*s.* a Year? I hope none are allowed in the Panel, but thoſe that have Freeholds.

L. C. J. There is no Panel made in *London* by Freeholders; we have very few Freeholders capable of being impanell'd, becauſe the Eſtates of the City belong much to the Nobility and Gentlemen that live abroad, and to Corporations: Therefore in the City of *London* [†] the Challenge of Freeholders is excepted.

L. *Ruſſel.* My Lord, I thought it had been always ſo, and the Law had been clear in that Caſe throughout *England*, that no Man ought to be tried for his Life, but by thoſe that have Freeholds. My Lord, I remember I read a Statute of 2 *H.* 5. where 'tis poſitive, that no Perſons ſhall be judged in caſe of Life and Death, but by thoſe that have 40 *s.* a Year.

L. C. J. My Lord, that Statute extends not to this Caſe. Read the Statute.

Cl. of Cr. Whereas Perjury is much uſed in the City of London, *upon Perſons*, &c.

L. C. J. Is this the Statute your Lordſhip has read?

L. *Ruſſel.* This is not in the Caſe of Life and Death.

L. C. J. It is not, my Lord.

L. *Ruſſel.* That that I read is poſitive. And if your Lordſhip will not allow of it, I deſire my Counſel may come and argue it; for 'tis a Matter of Law, and I can't argue it, Whether the Jury are not to be Freeholders?

Mr. Serj. *Jefferies.* There is nothing mentioned in that Statute with relation to the City of *London* indeed; but the Neceſſity of the Thing requires it.

Mr. Att. Gen. It will not be material; 'tis a collateral Point; for moſt of the Jury have Freeholds.

L. C. J. Do you allow the Exception?

Mr. Att. Gen. No, my Lord.

L. C. J. Therefore we muſt, if my Lord ſtand upon it, hear his Counſel. My Lord, we will hear your Counſel: What Counſel do you deſire, my Lord?—L. *Ruſſel.* The Counſel that were allotted me.

L. C. J. No, you muſt have Counſel aſſign'd by us. The Counſel that was aſſign'd elſewhere ſignifies nothing.

L. *Ruſſel.* Mr. *Pollexfen*, Mr. *Holt*, and Mr. *Ward.*

The ſaid Perſons were called, and came into Court.

L. C. J. (*To the Counſel.*) Gentlemen, my Lord here deſires Counſel; you are here aſſigned as Counſel for my Lord *Ruſſel* that is at the Bar, 'tis concerning a thing wherein he doubts the Law; he would except to the Jury upon this account, to the Poll, becauſe they have not Freehold within the City of *London*; and he deſires you may be aſſign'd his Counſel to make it out, that this is a Cauſe of Challenge.

Mr. Att. Gen. 'Tis a Caſe of Treaſon, Mr. *Pollexfen.*

Mr. *Ward.* We take it ſo.

Mr. *Pollex.* My Lord, perhaps if we had more Conſideration of it, we ſhould ſpeak more; but if your Lordſhip pleaſes to hear us what we can ſay: Firſt, we take it, with Submiſſion, at Common Law, a Freehold was neceſſary to make a Man a Jury-man. But that which falls out in this Caſe, is the Statute of 2 *H.* 5. c. 3. which Statute, I ſuppoſe, is here in Court. That Statute ſays this, (if you pleaſe, I will quote the Subſtance of it) That none ſhall be admitted to paſs upon any Inqueſt upon the Trial of the Death of a Man, except he have Lands and Tenements of the yearly Value of 40*s.* Now we are here, I think, within the Words of the Statute, and I take it to be no Queſtion at all, were we not in a City and County. I think this would be no Queſtion upon any Trial in any County at large. The Statute does not make any Exception or Diſtinguiſhment between Cities and Counties at large; but the Words are general, as I have opened them. My Lord, the Statute does alſo provide in Caſes of Freehold or Forty Marks. Now, my Lord, to prove this Statute extends to *London*, tho' a City and County, there are other Statutes that have been made ſubſequent, make it plain that it does ſo extend. But before I ſpeak to them, there is 1 *Inſt. Fo.* 157. that takes Notice of this Statute, and ſpeaks it generally, that the Freehold ought to be in the ſame County, nor do I remember to have ſeen any Book that diſtinguiſhes between Counties at large, and Cities and Counties But Statutes that have been made concerning Cities and Counties are a plain Declaration, that this is meant of Juries both in Cities and Counties. I will mention the Statute 7. *H.* 7. c. 5. The Subſtance of the Statute is this: It takes Notice, that there were Challenges in *London*, for that they had not 40 *s. per Ann.* and that this Challenge was to be made in the Wards, which are the ſame with Hundreds in the Counties; ſo this Statute is made to take away the Challenge of 40*s.* Freehold. This Statute of 7 *H.* 7. that takes away the Challenge in *London*, for not having 40*s.* is, with Submiſſion, a ſtrong Evidence and Authority that it was before that Time a good Challenge; for otherwiſe to what End ſhould they make a Statute to take away the Challenge, unleſs it were before a good Cauſe of Challenge? In the next place, 4 *H.* 8. c. 3. that extends to Civil Cauſes in *London*, and ſays, That the *London* Jurors ſhall (but provides only for *London* in Civil Cauſes) be admitted in Civil Cauſes, that have Goods to the Value of 100 Marks. My Lord, if that firſt Statute, or the Common Law, had not extended to require Freeholds in *London*, then there would have been no need of this Statute that was made to enable Men to be Jurors that had Goods to the Value of 100 Marks. So that we take it to be good Authority, that by the Common Law Freehold was required in all Civil Cauſes. Then there is another Statute 23 *H.* 8. c. 13. and that will be a ſtrong Evidence to ſhew what the Law is: For the Statute ſays, in Cities and Boroughs, in Trials of Murder and Felony, if a Freeman of the City of *London* is to be tried, the Freemen ſhall be upon the Jury, though they have not Freehold; and then there is a *Proviſo*, that for Knights and Eſquires that are out of the Borough, though they are arraigned in the Borough, that extends not to them, though in Caſes of Murder and Felony. As for this Statute, we take this Senſe of it, firſt, That it does not extend to Treaſons; for when it only names Murders and Felonies, that makes no Alteration as to Treaſon, therefore that ſtands as before: But if there be any Alteration, that extends only to Freemen and Burgeſſes that are to be tried, but not to Knights and Eſquires; ſo that if we were in a Caſe of Felony and Murder, I think we are not concerned in this Statute; for we are no Freeman nor Burgeſs, but we are an Eſquire, and therefore ought to be tried by Freeholders: So that for the Law we rely upon theſe Statutes, that we have looked upon as ſtrong Evidence, that there ought to be in the Trial of the Life of a Man, eſpecially for Treaſon, Freeholders. Firſt, If it were in Civil Cauſes, if this Qualification be not in Jury-men, then an Attaint would lie. The Penalty in an Attaint is, that their Houſes ſhould be pulled down, *&c.* This is provided by the Law, to the Intent the Jury may be careful to go according to their Evidence. 'Tis true, no Attaint does lie in Criminal Cauſes; but if ſo be in Civil Cauſes there be required Freeholders, and an Attaint lies, if there be not, 'tis not reaſonable to think but there ſhould be as great Regard to the Life of a Man as to his Eſtate. Next, my Lord, I do not know any Law that ſets any kind of Qualification but this of Freehold; ſo that be the Perſons of what Condition or Nature ſoever, (ſuppoſing they be not outlawed) yet theſe Perſons, if this Law be not in Effect, may then ſerve and be put upon the Life of a Man. Theſe are the Reaſons, my Lord, for which we apprehend they ought to be Freeholders.

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[*] But it had been deny'd in *Colledge*'s Caſe; and was afterwards deny'd to Mr. *Corniſh*, till the Time of his Trial, when it could be of no Service to him.

[†] But the Reſolution of the Court extended to all Trials, even in a County at large, and was ſo cited and followed in Colonel *Sidney*'s Caſe, p. 736.

Mr. *Holt.* My Lord, I would deſire one Word of the ſame Side; We inſiſt in this Caſe upon theſe two Things: Firſt, We conceive by the Common Law, every Jury-man ought to have a Freehold; we have good Authority for it, *Coke*'s *Firſt Inſtitutes*; but if that were not ſo, I think the Statute Mr. *Pollexfen* hath firſt mentioned, 2 *H.* 5. c. 3. to be expreſs in this Point. My Lord, the Statute in the Preamble does recite all the Miſchiefs; it ſays, great Miſchiefs enſued by Juries that were made up of Perſons that had not Eſtates ſufficient. In what? As well in the Caſe of the Death of a Man, as in the Caſe of Freehold between Party and Party: The Statute reciting this Miſchief does in expreſs Words provide two Remedies for the ſame in theſe Caſes: Firſt on the Life and Death of a Man, the Jury or Inqueſt to be taken, ſhall have 40*s. per Ann.* and ſo between Party and Party 40 Marks; ſo that this being the Trial of the Death of a Man, it is interpreted by *Stamford*, 162 *a.* that is, in all Caſes where a Man is arraigned for his Life, that is within the expreſs Words of the Statute. Beſides this Expoſition that hath been put upon the Statute, my Lord, it does ſeem, that the Judgment of ſeveral Parliaments hath been accordingly in ſeveral Times and Ages. My Lord, to inſtance in one Statute that hath not been mentioned, and that is the 33 of *H.* 8. c. 23. that does give the King Power to award Commiſſions of *Oyer* and *Terminer*, for Trials in any County of *England:* And that (ſays the Statute) in ſuch Caſes no Challenge to the Shire or Hundred ſhall be allowed; that is, you ſhall not challenge the Jury in ſuch a Caſe, becauſe they have not Freehold, are not of the County where the Treaſon was committed; but that, upon the Trial, Challenge, for lack of Freehold of 40*s.* a Year, ſhall be allowed, though it alters the manner of trying Treaſon by the Common Law: So that, my Lord, here is the Opinion of every Parliament, that though it took away the uſual Method of Trials, yet it ſaves the Priſoner's Challenge for want of Freehold. Now, indeed, that Statute is repealed; but I mention it as to the *Proviſo*, that it ſhews the Judgment of that Parliament at that Time. My Lord, thoſe other Statutes that have been made to regulate Cities and Towns Corporate, why were they made? 33 *H.* 8. That no Freehold ſhould be allowed, that ſhews that 2 *H.* 5. did extend to theſe Caſes. But, my Lord, theſe Statutes that ſhew the Judgment of the Parliament ſufficient for our Purpoſe, do not extend to this Caſe; the Statute goes only to Murders and Felonies, but not to Treaſons: And we are in the Caſe of a Penal Statute, and concerning the Life and Death of a Man, which ought to be taken ſtrictly, it ouſts the Priſoner of a Benefit; and by Parity of Reaſon, if Treaſon be not mentioned, your Lordſhip can't by Equity extend it to it, when it only mentions inferior Offences, and takes away the Benefit in lower Caſes: Like the Caſe of the Biſhop of *Wincheſter*, where the Statute ſet down Dean and Chapters, and other Eccleſiaſtical Perſons, it ſhall not extend to Biſhops, becauſe it begins with Perſons of an inferior Nature: No more ſhall Murder and Felony extend to Treaſon. But further, the Statute only concerns Freemen; for there is an expreſs Proviſo in the Caſe: For in caſe any Knight or Eſquire come to be tried in the Place, he has his Benefit as before. My Lord, we are in this Caſe, as in the Caſe not mentioned in the Statute, we are not a Freeman of *London*. My Lord, there is another thing, 7 *H.* 7. *c.* 5. why there was not only requiſite at the Common Law, that the Jurors had ſufficient Freehold, but it was required it ſhould be in the Hundred; and Freehold in the Wards in the City is the ſame with Freehold in the Hundreds in the Country: So that the Want of Freehold in the Hundred was a good Cauſe of Challenge. So that I think it will hardly be denied, but that a Jury that paſſes upon the Life of a Man ought, by the Law, by the Statute, and by the Judgment of the Parliament, to have Freehold. Where is there then any Statute whatſoever that makes a Difference in this Caſe, between *London* and other Counties? We are in the Caſe of Treaſon, we have taken our Exceptions, and on Behalf of the Priſoner at the Bar we pray the Challenge may be allowed.

Mr. *Ward.* My Lord, I ſhall be ſhort, becauſe Mr. *Pollexfen* has obſerved theſe things ſo particularly already. I obſerve the Statute of *H.* 5. is a general Statute, and extends throughout the Realm: Now when the thing is thus general, there is no room to except Particulars. And in this Caſe 'tis within the very Words of the Law; if the Words be ſo generally penned in the Negative, then we conceive there is no Conſtruction to be made upon them, unleſs ſome ſubſequent Parliament alter it. *Coke*'s *Inſtitutes*, 157. where 'tis ſaid in Treaſon as well as any thing elſe, upon *H* 5. there ſhall be Freeholds; if they have provided in Civil and other Criminal Cauſes it were ſtrange that this ſhould be *Caſus omiſſus*; but there is no Conſtruction againſt a Negative Law: For the Parliament taking care of the City of *London*, (as the ſubſequent Statutes ſay) that he that hath a hundred Marks ſhall paſs in Civil Cauſes, and then it ſays in Murders and Felonies, and that only confined to the Freemen of the Place, does ſufficiently explain the Law, where 'tis not altered by any ſubſequent Act; therefore I deſire the Challenge may be admitted.

Mr. Att. Gen. My Lord, Theſe Gentlemen's Foundation is not good; for they prove it not by any Books, that at Common Law it was requiſite for a Jury-man to have Freehold. My Lord, I deny their Foundation; there is no ſuch Law; and at this Day, in all Criminal Caſes, where the Statute does not direct it, as for Riots and other Informations for Miſdemeanour, there is no Law reſtrains them, and they may be tried by any Man they have no Exception againſt. Then 2 *H.* 5. ſays, None ſhall be admitted to paſs upon the Death of a Man, (I take it to extend to all Capital Matters, though it is pretty oddly expreſſed; for when a Man is accuſed of other Felonies and High Treaſons, 'tis of the Death of a Man) unleſs he have Lands or Tenements of the yearly Value of 40*s.* But I will take it as theſe Gentlemen do at this Time, it not being ſo at Common Law, nor in other Criminal Caſes, but what are provided for by the Statute: As to other Matters of Felony and Murder, no doubt there theſe Challenges are to be taken upon the Statute, but not for Treaſon, becauſe the Statute of Queen *Mary* does expreſly repeal that Statute; and no Statute ſince takes away the Force of that of Queen *Mary*; that all Trials for Treaſon ſhall be as at the Common Law; and according to this the conſtant Practice, in all Cities (not only *London*) where Perſons have been indicted for High Treaſon, hath been. There was never any ſuch thing pretended: Moſt of theſe Gentlemen have Freeholds, but we would not have this Point loſt to the City of *London*; ſo that the Statute they ſpeak of, and the Interpretations of the ſeveral other Statutes too, are to no Purpoſe; for we ſay by Common Law, all Cauſes might be tried by any Perſons, againſt whom there is not ſufficient Cauſe of Challenge; and the Common Law is by that Statute reſtored in this Point.

Mr. Sol. Gen. My Lord, I have little to ſay; Mr. Attorney hath given a true Anſwer to it; the Foundation does fail them. It was not neceſſary at Common Law for a Jury-man to have Freehold: But then they muſt ſhew you, my Lord, it is altered and made neceſſary. The Statute of *H.* 5. does not ſeem to extend to Treaſon; but if it did, 'tis now out of Doors, by that of Queen *Mary*, whereby all Trials of Treaſons are reduced to the Common Law. This is that we anſwer, they fail in their Foundation, they do not make it out, that it was neceſſary for a Jury-man at Common Law to have Freehold.

Mr. *Finch.*

Mr. Serj. *Jefferies.* My Lord, I confeſs they have cited ſeveral Acts of Parliament, and upon them lay their Foundation, and draw Inferences from them: But they will find, that in ſeveral Acts of Parliament, which they have quoted, there is a particular Regard had for the Preſervation of the conſtant Uſage and Cuſtoms for Trials within the City of *London.* That notwithſtanding ſeveral Acts of Parliament have in other Places aſcertained the Value of Jurors; yet they had ſtill an Eye, that the City of *London* ſhould continue in its Uſages. I think it will be neceſſary to put you in mind of the Caſe of the City of *Worceſter.* It would be very hard, ſay they, becauſe an Attaint does not lie in Criminal Matters; if you intend by that to have People of Ability, 'tis well known, that the ableſt People in the City of *London* have ſcarce any Freehold in it; for that moſt of the Inheritances of the City of *London* remain in the Nobility and in Corporations. Now, in the Caſe of my Lord *Ruſſel*, he hath a peremptory Challenge to 35; and I think I may adventure to ſay, there can ſcarce be 35 more that can call themſelves Freeholders in *London:* Conſider the Conſequence then; Treaſon ſhould be committed in the City of *London*, and there would not be enow in the

City of *London* to try it. In the Caſe of the *Quo Warranto* brought againſt the City of *Worceſter*, to know by what Warrant ſeveral took upon them the Offices of Aldermen, the Gentlemen at the Bar objected, that it was reaſonable, that no Freehold ſhould be determined but by Freeholders. But the Judges of the *King's Bench* (the Court being full) for the Neceſſity of the thing, leſt there might not be ſufficient Freeholders in that City, having ſent one of the Judges of that Court to your Lordſhips of the *Common Pleas*, for that Reaſon did agree the Challenge was not good. I know theſe Gentlemen will pleaſe to remember the Caſe; ſo that I ſay, as in one Caſe we ought to be tender of the Life of the Priſoner, ſo we ought ſurely to be tender of the Life of the King; otherwiſe it may ſo happen, that the King's Life may be encompaſſed, and Treaſon committed in the City, and there would be no way in the World to try it: Therefore we pray for the King the Challenge may be over-ruled.

Mr. *North.* My Lord, It is the Practice to make the *Venire facias*, without mentioning Freehold; for it does not command, that they return ſo many Men that have Freehold, but *probos & legales homines de vicineto*; therefore at the Common Law, thoſe were good Inqueſts to try any Man, that were not excommunicated, nor under any Out-law. 'Tis true, there are Satutes that ſay, all Jurymen ſhall have Freehold; but we ſay, theſe Statutes do not extend to the City of *London*, but that it is governed by its own Cuſtoms; and we ſay it is the Cuſtom, that Citizens of Ability have been returned that have no Freehold. But granting what we do not, by way of Suppoſal, my Lord, it does not extend to this Caſe, becauſe Trials are to be according to the Uſe at Common Law, by the Statute of Queen *Mary*, which does ſet them at large again; and that is the Reaſon the Priſoner, in this Caſe, hath his Challenge for 35, and is in other Caſes reſtrained to 20; ſo that we ſay, theſe Men of Ability are good, and there is no Statute affects them.

L. C. J. Mr. *Pollexfen*, Do you find any Judgment that in Caſes of Treaſon, by Common Law, they might except for want of Freehold? Have you any Reſolution in the Caſe?

Mr. *Pollexfen.* I think there are Books that ſay, at Common Law there muſt be Freehold.

L. C. J. What, in Treaſon?

Mr. *Pollexfen.* No, my Lord.

L. C. J. Unleſs you ſpeak of Treaſon, you do not ſpeak *ad idem*: For I do take it, that in Caſes of Treaſon, or in Caſes of Felony, at the Common Law, they had no Liberty to except to Jurors, that they had not any Freehold; but that at the Common Law any good and lawful Men might paſs. Then take as introductive of a new Law the Statute of *H.* 5. I am of the mind, that this Statute of *H.* 5. peradventure, may extend to Treaſons and Felonies; but when the Statute of Queen *Mary* comes and ſays, all Trials ſhall be by ſuch Evidence, and in ſuch Manner, as by Common Law they ought to have been, I do not ſee how it is poſſible to make an Objection afterwards of this Nature. For, admitting this Act of Parliament of *H.* 5. had altered the Common Law, and given a Challenge, why then when the Statute of Queen *Mary* comes and ſets all Trials at large in the Caſe of Treaſons, then certainly the Challenge is gone again; and I doubt you will not find one Exception in this Caſe, ever ſince that Statute concerning the Jury's Freehold in Caſes of Treaſon, but it hath generally paſſed otherwiſe, and there hath not been any ever excepted. I doubt it will be a very hard thing to maintain ſuch a Challenge now. Here my Lords and Brothers will be pleaſed to deliver their Opinions. It is a Buſineſs of great Conſequence, not only for this noble Perſon at the Bar, but for all other Perſons.

William Montague, Eſq;

L. C. Bar. I agree with your Lorſhip perfectly; but if the Counſel had laid a right Foundation, that it had been ſo at Common Law, there had been much ſaid; but I take it at Common Law there was no Challenge for want of Freehold, and I am induced to think ſo; for otherwiſe what needed the Statute of *H.* 5. been made? But whether it extend to Treaſon or no, I am not ſo clear. And if it did, 'tis wiped off again by that of Queen *Mary*, which reduces all to the Common Law Trial.

Mr. *J. Windham.* I am of the ſame Opinion: I conceive at Common Law, lack of Freehold no good Cauſe of Challenge. 'Tis true, that Challenge is given in ſome Caſes by Act of Parliament, yet I doubt whether it extend to a thing of ſo high a Nature as Treaſon; for other Statutes have not mentioned any thing of Treaſon. But ſuppoſe 2 *H.* 5. did extend to it, yet it is very plain, the Statute of 1 and 2 Queen *Mary* hath ſet all at large again, they are to be good and lawful Men; and I do not find that any thing of the Lawfulneſs muſt be the Freehold. And therefore I conceive this is no juſt Exception in this Caſe.

Mr. *J. Jones.* My Lord, I am of the ſame Opinion. I am of Opinion, that the Common Law did not require Freehold to be a good Cauſe of Challenge in the Caſe of Treaſon, and the rather, becauſe at the Common Law, a Man that was indicted of High Treaſon had Liberty to challenge, peremptorily, to the Number of 35 Perſons. My Lord, if the Common Law be altered by the Statute of *H.* 5. yet I take it, that the Statute of 1 and 2 *Ph.* and *M.* does reſtore the Common Law in this particular Point. For whereas there was a Statute *H.* 8. to reſtrain the Priſoner to the Number of 20 for his Challenge, now the Satute reſtoring it to Common Law, the Priſoner hath his Challenge to 35, as he had before that Statute of *H.* 8. So I take it the King ſhall have his Privilege alſo to try a Priſoner for Treaſon, by Perſons that have not Freehold.

Mr. *J. Charlton.* I am of the ſame Opinion: And truly the rather, becauſe no Precedent hath been offered of any ſuch Challenge before, and many Men have ſuffered, and ſure, if it could have been, many would have made uſe of it.

Mr. *J. Levins.* I am of Opinion, 'tis not to be allowed. I do not think myſelf driven to the Neceſſity to determine now, whether Freehold was a good Challenge at Common Law in point of Treaſon. I think the Statute of *Ph.* and *M.* hath reſtored the Trials to the Common Law. What was the Common Law? The Common Law is the Cuſtom of *England*, which is other in Cities than in Counties, and the Cuſtom of *London* is Part of that Common Law. So, tho' it be a Cauſe of Challenge in a County at large, yet it is not a Cauſe of Challenge in Cities, where Freeholders are not to be found. Now that which ſatisfies me is, That this Cuſtom is reſtored by the Statute of *Ph.* and *Mary*; becauſe never ſuch a Challenge hath been. And it is known when 20 were tried for Treaſon together in this very Place, and one of them a notable cunning Lawyer, and if ſuch a Challenge were to have been allowed, no doubt he would have made uſe of it; but the Challenge was not taken, and if he had made ſuch a Challenge, and it had been allowed, perhaps he could not have been tried: That was *Cook.* I have heard ſeveral Perſons tried for Treaſon myſelf, and never heard it taken. Therefore I am of Opinion, that before any Statute was made in this Caſe, it was the Cuſtom in *London* to try without Freeholds, and ſince by the Statute of Queen *Mary* 'tis reſtored.

Mr. *Bar. Street.* I think there was no ſuch Challenge at Common Law. The Jury were only to be *probos & legales homines*, and no more, till the Statute made it ſo; but there is a particular Reſervation to Corporations. And certainly, if this ſhould be admitted to be a good Challenge, tho' it were between Party and Party, there would be in ſome Corporations a perfect Failure of Juſtice. So that, without doubt, at Common Law there was no ſuch Challenge. As for the Statute of *H.* 5. 'tis gone by that of Queen *Mary*. If this were admitted within *London*, nothing would be more miſchievous to this Corporation. Methinks we have been very nice in this Matter, when the Life of the King is at Stake, and all the Cuſtoms and Privileges of the City of *London* ſeem to be levelled at in this Point. I am of the Opinion with the reſt of the Judges, that this Challenge ought to be over-ruled.

J. Withins. I am of the ſame Opinion.

L. C. J. My Lord, The Court is of Opinion, upon hearing your Counſel, and the King's, that it is no good Challenge to a Jury in a Caſe of Treaſon, that he has not Freehold within the City: But I muſt tell your Lordſhip withal, that your Lordſhip has nothing of Hardſhip in this Caſe; for, notwithſtanding that, I muſt tell you, you will have as good a Jury, and better than you ſhould have had in a County, of 4*l.* or 40*s.* a Year Freeholders. The Reaſon of the Law for Freeholds is, That no ſlight Perſons ſhould be put upon a Jury, where the Life of a Man, or his Eſtate, comes in Queſtion; but in the City, the Perſons that are impanelled are Men of Quality and Subſtance, Men that have a great deal to loſe. And therefore your Lordſhip hath the ſame in Subſtance, as if a Challenge was allowed of Freehold. It will be no kind of Prejudice to your Lordſhip in this Caſe. Therefore, if you pleaſe, apply yourſelf as the Jury is called, and make your Exceptions, if you ſhall make any.

L. C. J. Mr. *Pollexfen*, You ſhall have Liberty to ſtay any-where here, if you pleaſe.

Counſel. Here is ſuch a great Croud, my Lord, we have no Room.

Then the Jurymen were called, and after the Lord Ruſſel *had challenged One-and-thirty of them, the Jury ſworn were as follows:*

Jurors.

John Martin,
William Rouſe,
Jervas Seaton,
William Faſhion,
Thomas Short,
George Torriano.
William Butler,
James Pickering,
Thomas Jeve,
Hugh Noden,
Robert Brough,
Thomas Oneby.

Then was made Proclamation for Information.

Cl. of Cr. William Ruſſel, Eſq; hold up thy Hand. (*Which he did*). You of the Jury, look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted by the Name of———*prout* before in the Indictment. Upon this Indictment he hath been arraigned, and thereunto pleaded Not guilty, and for his Trial hath put himſelf upon his Country, which Country you are: Your Charge is to inquire whether he be Guilty of this High Treaſon whereof he ſtands indicted, or Not guilty: If you find him Guilty, you ſhall inquire, *&c.*

Mr. *North.* May it pleaſe your Lordſhip, and you that are ſworn, The Priſoner at the Bar ſtands charged in this Indictment with no leſs than the conſpiring the Death of the King's Majeſty; and that, in order to the ſame, he did, with other Traitors named in the Indictment, and others not known, *November* 2. in the 34th Year of this King, in the Pariſh of *Baſſiſhaw*, within the City of *London*, meet and conſpire together to bring our Sovereign Lord the King to Death, to raiſe War and Rebellion againſt him, and to maſſacre his Subjects: And in order to compaſs theſe wicked Deſigns, there being aſſembled, did conclude to ſeize the King's Guards, and his Majeſty's Perſon. This is the Charge: The Defendant ſays he is not Guilty; if we prove it upon him, it will be your Duty to find it.

Mr. Att. Gen. My Lord, and you, Gentlemen of the Jury, Moſt of our Evidence againſt this Honourable Perſon at the Bar is to this Purpoſe: This Perſon, the Duke of *Monmouth*, my Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, they were the Council of State, as I may call them, to give forth Directions for the general Riſing that hath appeared was to have been within this Kingdom. The Riſing was of great Concern and Expence, and muſt be managed by Perſons of Intereſt, Prudence, and great Secrecy. Theſe Gentlemen had frequent Meetings in *October* and *November* laſt, (for then, you may refreſh your Memories again, was the general Riſing to be) and there they did conſult how to manage the Riſing they conſulted how to ſeize the King's Guards; and this Noble Perſon being mixed with theſe others, eſpecially with *Ferguſon*, who with others of an inferior Rank was alſo engaged in a Cabal for managing worſe Things, (tho' this is bad enough) at ſeveral Meetings they receive Meſſages from my Lord *Shafteſbury* touching the Riſing; they being looked upon as the Perſons that were to conclude and ſettle the Time, and all Circumſtances about it.

We ſhall make it appear to you in the Courſe of our Evidence, that thoſe Underlings (for this was the great Conſult, and moved all the other Wheels) who managed the Aſſaſſination, did take Notice, that theſe Lords and Gentlemen of Quality were to manage and clear the whole Buſineſs of the Riſing. It ſeems theſe Gentlemen could not give the Earl of *Shafteſbury* Satisfaction to his Mind; for he preſſed them to keep their Day, which was the 17th of *November* laſt; but the Honourable Perſon at the Bar, and the reſt, made him this Anſwer, That Mr. *Trenchard* had failed them; for that he had promiſed to have 1000 Foot, and 2 or 300 Horſe, at four Hours Warning; but now it was come to paſs, he could not perform it; that ſome Perſons in the *Weſt* would not join with them, and therefore at this Time they could not proceed; and therefore they muſt defer the Day. And at a Council, they ſent my Lord *Shafteſbury* Word, he muſt be contented, they had otherwiſe reſolved, and thereupon my Lord *Shaftesbury* went away, and Mr. *Ferguſon* with him.

To carry on this Practice, they took others into their Council, Sir *Thomas Armſtrong* was left out; and there falling that ſcandalous Report upon my Lord *Grey*, he was to be left out, and then there was to be a new Council of Six, whereas the inferior Council to manage the Aſſaſſination was Seven. At this Council there was this honourble Perſon at the Bar, the Duke of *Monmouth*, my Lord *Howard*, and another Honourable Perſon, who I am ſorry to name upon this Account, who hath, this Morning, prevented the Hand of Juſtice upon himſelf, my Lord of *Eſſex* and Col. *Sidney*, and Mr. *Hambden*: Theſe ſix had their frequent Conſults at this Honourable Perſon's Houſe; for they had excluded Sir *Thomas Armſtrong*, and my Lord *Grey*; for theſe Gentlemen would have the Face of Religion; and my Lord *Grey* was in their Eſteem ſo ſcandalous, that they thought that would not prevail with the People, if he was of the Council. There they debated how they ſhould make this Riſing; after ſeveral Conſultations they came to this Reſolution: That before they did fall upon this Riſing, they ſhould have an exact Account both of the Time and Method of the *Scotch* Riſing, and thereupon a Meſſenger was ſent on purpoſe by Colonel *Sidney*, viz. *Aaron Smith*, to invite *Scotch* Commiſſioners to treat with theſe Noble Lords. Purſuant to this, juſt before the Plot brake out, ſeveral from *Scotland* came to treat with them how to manage the Work; 30,000 *l.* was demanded by the *Scots*, in order that they ſhould be ready in *Scotland*; then they fell to 10,000, and at laſt, (for the *Scots* love Money) they fell to 5000, which they would take and run all Hazards; but they not coming to their Terms, that broke off that Week the Plot was diſcovered.

Gentlemen, if we prove all theſe Inſtances, beſides, we ſhall call ſome to ſhew you, that all the inferior Party ſtill looked upon theſe to be the Heads; and tho' they kept it ſecret, God hath ſuffered it to come to Light, with as plain an Evidence as ever was heard.

Mr. Serj. *Jeff.* I will not take up any of your Lordſhip's Time; we will call our Witneſſes to prove the Fact Mr. Attorney hath opened. Swear Col. *Rumſey* (*which was done*). Pray, Colonel *Rumſey*, will you give my Lord and the Jury an Account, from the Beginning to the End, of the ſeveral Meetings that were, and what were the Debates of thoſe Meetings?

Col. *Rumſey*. My Lord, I was at my Lord *Shafteſbury*'s Lodging, where he lay, down by *Wapping*, about the latter End of *October*, or the Beginning of *November*; and he told me, there was met at one Mr. *Sheppard*'s Houſe, the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*; and he deſired me to ſpeak to them, to know what Reſolution they were come to about the Riſing of *Taunton*: I did go there accordingly, and call for Mr. *Sheppard*, and he carried me up where they were, and the Anſwer that was there made me was, that Mr. *Trenchard* had failed them, and there would no more be done in the Matter at that Time.

Mr. Att. Gen. Tell the whole Paſſage.

Col. *Rumſey*. I did ſay my Lord *Shaftesbury* had ſent me to know what Reſolution they had taken about the Riſing of *Taunton*. They made me this Anſwer, That Mr. *Trenchard* had failed them, that he had promiſed 1000 Foot and 300 Horſe; but when he came to perform it, he could not. He thought the People would not meddle, unleſs they had ſome Time to make Proviſion for their Families.

L. C. J. Who had you this Meſſage from?

Col. *Rumſey*. Mr. *Ferguſon* did ſpeak moſt of it.

L. C. J. Who ſent this Meſſage back?

Col. *Rumſey*. Mr. *Ferguſon* made the Anſwer, my Lord *Ruſſel* and the Duke of *Monmouth* were preſent, and I think my Lord *Grey* did ſay ſomething to the ſame Purpoſe.

Mr. Att. Gen. Pray, how often were you with them at that Houſe?

Col. *Rumſey*. I do not know: I was there more than once, I was there either another Time, or elſe I heard Mr. *Ferguſon* make a Report of another Meeting to my Lord *Shaftesbury*.

Mr. Serj. *Jeff.* Was my Lord *Ruſſel* in the Room when this Debate was?

Col. *Rumſey*. Yes, my Lord.

Mr. Att. Gen. What did they ſay further?

Col. *Rumſey*. That was all at that Time, that I remember.

Mr. Att. Gen. Was there nothing of my Lord *Shaftesbury* to be contented?

Col. *Rumſey*. Yes, that my Lord *Shaftesbury* muſt be contented; and upon that he took his Reſolution to be gone.

L. C. J. Did you hear any ſuch Reſolution from him?

Col. *Rumſey*. Yes, my Lord.

Mr. Att. Gen. Did you know of their meeting there, or was it by my Lord *Shaftesbury*'s Direction?

Col. *Rumſey*. No, but my Lord told me, I ſhould find ſuch Perſons, and accordingly I found them; and this Anſwer was given.

Mr. Att. Gen. What Time did you ſtay?

Col. *Rumſey*. I think I was not there above a quarter of an Hour.

Mr. Att. Gen. Was there any Diſcourſe happened while you were there about a Declaration?

Col. *Rumſey*. I am not certain whether I did hear ſomething about a Declaration there, or that Mr. *Ferguſon* did report it to my Lord *Shaftesbury*, that they had debated it.

Mr. Serj. *Jeff.* To what Purpoſe was the Declaration?

L. C. J. We muſt do the Priſoner that Right; he ſays he can't tell whether he had it from him or Mr. *Ferguſon*.

Mr. Att. Gen. Did you hear no Diſcourſe to what it tended?

Col. *Rumſey*. My Lord, there was ſome Diſcourſe about ſeeing what Poſture the Guards were in.

One of the Jury. By whom, Sir?

Col. *Rumſey*. By all the Company that was there.

L. C. J. What was that Diſcourſe?

Col. *Rumſey*. To ſee what Poſture they were in, that they might know who to ſurpriſe them.

L. C. J. The Guards?

Col. *Rumſey*. Yes, that were at the *Savoy* and the *Mews*.

L. C. J. Whoſe were the Words? Tell the Words as near as you can.

Col. *Rumſey*. My Lord the Diſcourſe was, that ſome ſhould—

L. C. J. Who made that Diſcourſe?

Col. *Rumſey*. My Lord, I think Sir *Thomas Armſtrong* began it, and Mr. *Ferguſon*.

Mr. Att. Gen. Was it diſcourſed among all the Company?

Col. *Rumſey*. All the Company did debate it. Afterwards they thought it neceſſary to ſee with what Care and Vigilance they did guard themſelves at the *Savoy* and *Mews*, whether they might be ſurpriſed or not.

Mr. Att. Gen. Were there any undertook to go and ſee there?

Col. *Rumſey*. There were ſome Perſons.

Mr. Serj. *Jeff.* Name them.

Col. *Rumſey*. I think the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong*.

Mr. Serj. *Jeff.* Was my Lord *Ruſſel*, the Priſoner, there, when they undertook to take the View?

Col. *Rumſey*. Yes, Sir.

Mr. Att. Gen. To what Purpoſe was the View?

Col. *Rumſey*. To ſurpriſe them, if the Riſing had gone on.

Mr. Serj. *Jeff.* Did you obſerve by the Debates that happened, that they did take Notice there was a Riſing intended?

Col. *Rumſey*. Yes.

Mr. Serj. *Jeff.* And that Direction was given to take a View of the Guards, if the Riſing had gone on?

Col. *Rumſey*. Yes.

L. C. J. Pray, Sir, declare juſtly the Diſcourſe.

Col. *Rumſey*. I went to them from my Lord *Shafteſbury*: And I did tell them, that my Lord did pray they would come to ſome Reſolution; and they told me, Mr. *Trenchard* they depended upon for *Taunton* had failed them, who when he came up to Town firſt at the Term, had aſſured them, that in three or four Hours Time he could have *One Thouſand* Foot, and *Three hundred* Horſe: But now it came to be tried, he anſwered, it was not poſſible for him to undertake it; for People would not ruſh into it of a ſudden, but have ſome Time to prepare for their Families.

Mr. Att. Gen. Was it pretended there ſhould be a Riſing at that Time?

Col. *Rumſey*. Yes, the 19th of *November* was appointed for the Riſing.

L. C. J. Was it before that Time you went to preſs them from my Lord *Shaftesbury*?

Col. *Rumſey*. Yes, I think it was a matter of a Fortnight before, or ſomething more. For I think it was concluded *Sunday* Fortnight after my Lord *Grey* met.

Mr. Att. Gen. But you ſay, beſides what you heard there, you underſtood there was to be a Riſing at that Time: Was you to be engaged in this?

Col. *Rumſey*. Yes, I was.

L. C. J. You muſt ſpeak ſo, that what you deliver may be ſenſible; for if you ſpeak, I apprehend ſo and ſo, that will be doubtful.

Col. *Rumſey*. No, my Lord, the Riſing was determined, and I was to have gone to *Briſtol*.

Mr. Att. Gen. In what Capacity, as *Colonel*, or *Captain*?

Col. *Rumſey*: There was no Determination of that, no Quality.

L. C. J. By whoſe Appointment was that?

Col. *Rumſey*. My Lord *Shaftesbury* ſpake that to me.

Mr. Serj. *Jeff.* But pray, Col. *Rumſey*, this you are very able to know, what the Debates were, and need not be pumped with ſo many Queſtions: Pray, was there any Debate when you came with the Meſſage from my Lord *Shaftesbury*'s, was there a Debate about the Riſing?

Col. *Rumſey*. There was no Debate of it, becauſe they made Anſwer, Mr. *Trenchard* had failed them.

Mr. Serj. *Jeff.* But did not they take Notice of the Riſing? Give an Account of it.

Col. *Rumſey*. I have done it twice.

Jury. We deſire to know the Meſſage from the Lord *Shaftesbury*.

L. C. J. Direct yourſelf to the Court: Some of the Gentlemen have not heard it, they deſire you would, with a little more loud Voice, repeat the Meſſage you were ſent of from my Lord *Shaftesbury*.

Col. *Rumſey*. I was ſent by my Lord, to know the Reſolution of the Riſing in *Taunton*; they anſwered Mr. *Trenchard*, whom they depended upon for the Men, had failed them, and that it muſt fall at that time, and my Lord muſt be contented.

Mr. Att. Gen. Was the Priſoner at the Bar preſent at that Debate?

Col. *Rumſey*. Yes.

Mr. Serj. *Jeff.* Did you find him averſe to it, or agreeing to it?

Col. *Rumſey*. Agreeing to it.

Baron *Street*. What ſaid my Lord *Shaftesbury*?

Col. *Rumſey*. Upon my Return he ſaid, he would be gone, and accordingly did go.

Mr. Serj. *Jeff.* If my Lord *Ruſſel* pleaſes to aſk him any Queſtions, he may.

L. *Ruſſel*. Muſt I aſk him now?

L. C. J. Yes, my Lord, propoſe your Queſtions to me.

L. *Ruſſel*. I have very few Queſtions to aſk him, for I know little of the Matter; for it was the greateſt Accident in the World I was there, and when I ſaw that Company was there, I would have been gone again. I came there accidentally to ſpeak with Mr. *Sheppard*; I was juſt come to Town, but there was no Diſcourſe of ſurpriſing the Guards, nor no undertaking of raiſing an Army.

L. C. J. We will hear you to any thing by-and-by, but that which we now deſire of your Lordſhip is, as the Witneſſes come, to know if you would have any particular Queſtions aſked of them.

L. *Ruſſel*. I deſire to know, if I gave any Anſwer to any Meſſage about the Riſing: I was up and down; I do not know what they might ſay when I was in the Room; I was taſting of Wine.

L. C. J. Did you obſerve, that my Lord *Ruſſel* ſaid any thing there, and what?

Col. *Rumſey*. Yes, my Lord *Ruſſel* did ſpeak.

L. C. J. About what?

Col. *Rumſey*. About the Riſing of *Taunton*.

L. *Ruſſel*. It was Sir *Tho. Armſtrong* that converſed with Mr. *Trenchard*.

L. C. J. What did you obſerve my Lord *Ruſſel* to ſay?

Col. *Rumſey.* My Lord *Ruſſel* did diſcourſe of the Riſing.

L. *Ruſſel.* How ſhould I diſcourſe of the Riſing at *Taunton*, that knew not the Place, nor had Knowledge of *Trenchard?*

Mr. Att. Gen. Now, my Lord, we will give you an Account, that my Lord *Ruſſel* appointed this Place, and came in the dark without his Coach.

L. *Ruſſel.* My Lord, I think the Witneſs was aſked, if I gave my Conſent.

L. C. J. What ſay you, did my Lord give any Conſent to the Riſing?

Col. *Rumſey.* Yes, my Lord, he did.

Mr. Att. Gen. Pray, ſwear Mr. *Sheppard.* [*Which was done.* Pray, will you ſpeak aloud, and give an Account to my Lord and the Jury, of the Meetings at your Houſe, and what was done?

Mr. *Sheppard.* In the Month of *October* laſt, as I remember, Mr. *Ferguſon* came to me in the Duke of *Monmouth*'s Name, and deſired the Conveniency of my Houſe, for him and ſome other Perſons of Quality to meet there. And as ſoon as I had granted it, in the Evening the Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Col. *Rumſey*, and Mr. *Ferguſon* came. Sir *Thomas Armſtrong* deſired me, that none of my Servants might come up, but they might be private; ſo what they wanted I went down for, a Bottle of Wine or ſo. The Subſtance of their Diſcourſe was, how to ſurpriſe the King's Guards: And in order to that, the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong*, as I remember, went one Night to the *Mews*, or thereabout, to ſee the King's Guards: And the next time they came to my Houſe, I heard Sir *Thomas Armſtrong* ſay, The Guards were very remiſs in their Places, and not like Soldiers, and the thing was feaſible, if they had Strength to do it.

Mr. Att. Gen. How many Meetings had you there?

Mr. *Sheppard.* I remember but *twice*, Sir.

Mr. Att. Gen. Did they meet by Chance, or had you Notice they would be there that Night?—Mr. *Sheppard.* Yes, I did hear it before.

Mr. Sol. Gen. Who had you Notice would be there?

Mr. *Sheppard.* The Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Col. *Rumſey*, and Mr. *Ferguſon.*

Mr. Att. Gen. Did they come with their Coaches, or a-foot, in the Night-time, and in the dark?

Mr. *Sheppard.* I cannot tell; it was in the Evening, I did not let them in.

Mr. Att. Gen. Were there any Coaches at the Door?

Mr. *Sheppard.* None that I heard, or ſaw, they came not altogether, but immediately one after another.

Mr. Serj. *Jeff.* Had they any Debate before they went into the Room?

Mr. *Sheppard.* No, they went readily into the Room.

Mr. Serj. *Jeff.* Was my Lord *Ruſſel* both times there?

Mr. *Sheppard.* Yes, Sir, as I remember.

Mr. Serj. *Jeff.* Had you any particular Buſineſs with my Lord *Ruſſel*, or he with you?

Mr. *Sheppard.* No, not at that time, but ſince I have had, about the Affairs of my Lord *Shafteſbury.*

Mr. Serj. *Jeff.* Do you remember Col. *Rumſey*, at the firſt Time, had any Diſcourſe about any private Buſineſs relating to my Lord *Ruſſel?*

Mr. *Sheppard.* No, I do not remember it.

Mr. Att. Gen. Beſides the ſeizing of the Guards, did they diſcourſe about Riſing?

Mr. *Sheppard.* I do not remember any further Diſcourſe, for I went ſeveral times down to fetch Wine, and Sugar, and Nutmeg, and I do not know what was ſaid in my Abſence.

Mr. Serj. *Jeff.* Do you remember any Writings or Papers read at that time?———Mr. *Sheppard.* None that I ſaw.

Mr. Serj. *Jeff.* Or that you heard of?

Mr. *Sheppard.* Yes, now I recollect myſelf, I do remember one Paper was read.

Mr. Serj. *Jeff.* To what Purpoſe was it?

Mr. *Sheppard.* It was ſomewhat in the nature of a Declaration; it was read by Mr. *Ferguſon*; who was preſent at the Reading, I cannot ſay, whether they were all preſent or not. The Purport of it was ſetting forth the Grievances of the Nation, but truly what Particulars I can't tell: It was a pretty large Paper.

Mr. Att. Gen. But can you tell the Effect of it, When was that to be ſet out?

Mr. *Sheppard.* It was not diſcourſed, it was ſhewn only, I ſuppoſe, for Approbation.

Mr. Att. Gen. Who was it ſhew'd to?

Mr. *Sheppard.* Sir *Thomas Armſtrong.*

Mr. Serj. *Jeff.* Who elſe?

Mr. *Sheppard.* As I remember, the Duke was preſent, and I think Col. *Rumſey.*

Col. *Rumſey.* No, I was not; it was done before I came.

Mr. Serj. *Jeff.* What was the Deſign of that Paper? Recollect yourſelf, What was the Deſign?

Mr. *Sheppard.* The Deſign of that Paper was in the Nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing, I ſuppoſe by the Purport of the Paper; but cannot remember the particular Words of it.

Foreman of the Jury. Can you ſay my Lord *Ruſſel* was there, when that Declaration was read, as you call it?

Mr. *Sheppard.* I can't ſay that.

Mr. Att. Gen. But he was there, when he talked of ſeizing the Guards?

Mr. *Sheppard.* Yes, my Lord was there then.

L. *Ruſſel.* Pray, Mr. *Sheppard*, do you remember the time when theſe Meetings were?

Mr. *Sheppard.* I can't be poſitive as to the Time. I remember it was at the Time my Lord *Shafteſbury* was abſent from his own Houſe, and he abſented himſelf from his own Houſe about *Michaelmas-day*; but I cannot be poſitive as to the Time.

L. *Ruſſel.* I never was but once at your Houſe, and there was no ſuch Deſign as I heard of. I deſire that Mr. *Sheppard* may recollect himſelf.

Mr. *Sheppard.* Indeed, my Lord, I can't be poſitive in the Times. My Lord, I am ſure, was at one Meeting.

L. C. J. But was he at both?

Mr. *Sheppard.* I think ſo; but it was eight or nine Months ago, and I can't be poſitive.

L. *Ruſſel.* I can prove I was then in the Country. Col. *Rumſey* ſaid there was but one Meeting.

Col. *Rumſey.* I do not remember I was at two; if I was not, I heard Mr. *Ferguſon* relate the Debates of the other Meeting to my Lord *Shafteſbury.*

L. *Ruſſel.* Is it uſual for the Witneſſes to hear one another?

L. C. J. I think your Lordſhip need not concern yourſelf about that; for I ſee the Witneſſes are brought in one after another.

L *Ruſſel.* There was no Deſign.

Mr. Serj. *Jeff.* He hath ſworn it.

Mr. Att. Gen. Swear my Lord *Howard.* [*Which was done.* Pray, will your Lordſhip give an Account to the Court, what you know of a Riſing deſigned before my Lord *Shafteſbury* went away, and afterwards how it was continued on?

L. *Howard.* My Lord, I appear with ſome Confuſion. Let no Man wonder, that it is troubleſome to me. My Lord, as to the Queſtion Mr. *Attorney* puts to me, this is the Account I have to give: 'Tis very well known to every one, how great a Ferment was made in the City, upon occaſion of the long Diſpute about the Election of Sheriffs: And this ſoon produced a greater Freedom and Liberty of Speech one with another, than perhaps had been uſed formerly, though not without ſome previous Preparations and Diſpoſitions made to the ſame thing. Upon this Occaſion, among others, I was acquainted with Captain *Walcot*, a Perſon that had been ſome Months in *England*, being returned out of *Ireland*, and who indeed I had not ſeen for Eleven Years before. But he came to me as ſoon as he came out of *Ireland*, and when theſe unhappy Diviſions came, he made very frequent Applications to me; and tho' he was unknown himſelf, yet being brought by me, he ſoon gained a Confidence with my Lord *Shafteſbury*, and from him derived it to others. When this unhappy Rent and Diviſion of Mind was, he having before got himſelf acquainted with many Perſons of the City, had entered into ſuch Counſels with them, as afterwards had the Effect, which in the enſuing Narrative I ſhall relate to your Lordſhip. He came to me, and told me, that they were now ſenſible all they had was going, that this Force put upon them——

L. C. J. Pray, my Lord, raiſe your Voice, elſe your Evidence will paſs for nothing.

One of the Jury. We cannot hear, my Lord.

L. *Howard.* There is an unhappy Accident happen'd that hath ſunk my Voice: I was but juſt now acquainted with the Fate of my Lord of *Eſſex.*—My Lord, I ſay, he came to me, and did acquaint me, that the People were now ſo ſenſible that all their Intereſt was going, by that Violence offer'd to the City in their Elections, that they were reſolved to take ſome Courſe to put a Stop to it, if it were poſſible: He told me there were ſeveral Conſults and Meetings of Perſons about it, and ſeveral Perſons had begun to put themſelves into a Diſpoſition and Preparation to act; that ſome had furniſhed themſelves with very good Horſes, and kept them in the moſt ſecret and blind Stables they could; That divers had intended it, and for his own part, he was reſolved to imbark himſelf in it. And having an Eſtate in *Ireland*, he thought to diſpatch his Son thither (for he had a good real Eſtate, and a great Stock, how he diſpoſed of his real Eſtate I know not); but he ordered his Son to turn his Stock into Money to furniſh him for the Occaſion: This I take to be about *Auguſt*, His Son was ſent away. Soon after this, the Son not being yet returned, and I having ſeveral Accounts from him, wherein I found the Fermentation grew higher and higher, and every Day a nearer Approach to Action, I told him I had a Neceſſity to go into *Eſſex* to attend the Concerns of my own Eſtate; but told him, how he might by another Name convey Letters to me, and gave him a little Cant, by which he might blind and diſguiſe the Matter he wrote about, when I was in the Country. I received two or three Letters from him, that gave me an Account in that diſguiſed Style, but ſuch as I underſtood, that the Negotiation which he had with my Correſpondents was going on, and in good Condition; and it was earneſtly deſired I would come to Town; this was the Middle of *September*. I, notwithſtanding, was willing to ſee the Reſult of that great Affair, upon which all Men's Eyes were fixed, which was the Determination of the Shrivalty about that time. So I ordered it to fall into Town, and went to my own Houſe on *Saturday* Night, which was *Michaelmas-day*. On *Sunday* he came to me, and dined with me, and told me, (after a general Account given me of the Affairs of the Times) that my Lord *Shafteſbury* was ſecreted and withdrawn from his own Houſe in *Alderſgate-ſtreet*; and that though he had a Family ſettled, and had abſconded himſelf from them, and divers others of his Friends and Confidents; yet he did deſire to ſpeak with me, and for that Purpoſe ſent him to ſhew me the Way to his Lodging: He brought me to a Houſe at the lower End of *Wood-ſtreet*, one *Watſon*'s Houſe, and there my Lord was alone. He told me he could not but be ſenſible, how innocent ſoever he was, both he and all honeſt Men were unſafe, ſo long as the Adminiſtration of Juſtice was in ſuch Hands as would accommodate all Things to the Humour of the Court: That in the Senſe of this he thought it but reaſonable to provide for his own Safety, by withdrawing himſelf from his own Houſe into that Retirement: That now he had ripen'd Affairs to that Head, and had Things in that Preparation, that he did not doubt but he ſhould be able, by thoſe Men that would be in Readineſs in *London*, to turn the Tide, and put a Stop to the Torrent that was ready to overflow. But he did complain to me, that his Deſign, and the Deſign of the Publick, was very much obſtructed by the unhandſome Deportment of the Duke of *Monmouth*, and my Lord *Ruſſel*, who had withdrawn themſelves not only from his Aſſiſtance, but from their own Engagements and Appointments: For when he had got ſuch a formed Force as he had in *London*, and expected to have it anſwered by them in the Country, they did recede from it, and told him they were not in a Condition or Preparation, in the Country, to be concurrent with him at that Time. This he looked upon but as an artificial Excuſe, and as an Inſtance of their Intentions wholly to deſert him; but notwithſtanding there was ſuch Preparation made in *London*, that if they were willing to loſe the Honour of being concurrent with him, he was able to do it himſelf, and did intend ſpeedily to put it into Execution. I aſked him, What Forces he had? He ſaid he had enough. Says I, What are you aſſured of? Says he, There is above *Ten thouſand* briſk Boys are ready to follow me, whenever I hold up my Finger. Says I, How have you methoded this, that they ſhould not be cruſhed ? for there will be a great Force to oppoſe you. Yes, he anſwered, but they would poſſeſs themſelves of the Gates ; and theſe *Ten thouſand* Men, in twenty-four Hours, would be multiplied into five times the Number, and be able to make a Sally out, and poſſeſs themſelves of *Whitehall*, by beating the Guards. I told him, this was a fair Story, and I had Reaſon to think, a Man of his Figure would not undertake a thing that might prove ſo fatal, unleſs it were laid on a Foundation that might give a prudent Man Ground to hope it would be ſucceſsful. He ſaid he was certain of it, but confeſſed it was a great Diſappointment that theſe Lords had failed him. I told him, I was not provided with an Anſwer at that time ; that he well knew me, and knew the general Frame and Bent of my Spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weighed and conſider'd of; and did not think it a thing fit to be enter'd upon, without the Concurrence of thoſe Lords : And therefore deſired, before I diſcover'd my own Inclination, to diſcourſe with thoſe Lords. He did conſent, with much ado ; but, ſays he, you will find they will waive it, and give doubtful and deferring Anſwers, but you will find this a Truth. I went to *Moor-Park* the next Day, where the Duke of *Monmouth* was, and told him the great Complaint my Lord *Shafteſbury* had made, that he failed him. Says he, I think he is mad : I was ſo far from giving him any Encouragement, that I did tell him from the Beginning, and ſo did my Lord *Ruſſel*, there was nothing to be done by us in the Country at that time. I did not then own I had ſeen my Lord, but ſpake as if this were brought me by a third Perſon, becauſe he had not given me Liberty to tell them where his Lodging was. Says I, my Lord, I ſhall be able to give a better Account of this in a Day or two : Shall I convey it to my Lord, that you are willing to give a Meeting ? Yes, ſays he, with all my Heart. This was the ſecond, third or fourth of *October*. I came to Town on *Saturday*, and was carried to him on *Monday* ; and I ſuppoſe this was *Tueſday* the ſecond of *October :* On *Wedneſday*, I think, I went to him again, (but 'tis not very material) and told him I had been with the Duke of *Monmouth*, and given him a punctual Account of what I had from him ; and the Duke did abſolutely diſown any ſuch thing ; and told me, he never did give him any Encouragement to proceed that way, becauſe the Countries were not in a Diſpoſition for Action, nor could be put in Readineſs at that Time. Says my Lord *Shafteſbury*, 'Tis falſe ; they are afraid to own it. And, ſays he, I have Reaſon to believe, there is ſome artificial Bargain between his Father and him, to ſave one another : For when I have brought him to Action, I could never get him to put on, and therefore I ſuſpect him : And, ſays he, ſeveral honeſt Men in the City have puzzled me, in aſking how the Duke of *Monmouth* lived : Says he, They puzzled me, and I could not anſwer the Queſtion ; for I know he muſt have his Living from the King ; and, ſays he, we have different Proſpects : We are for a *Commonwealth*, and he hath no other Deſign but his own perſonal Intereſt, and that will not go down with my People now, ſo he called them) they are all for a *Commonwealth :* And then, ſays he, 'Tis to no purpoſe for me to ſee him ; it will but widen the Breach, and I dare not truſt him to come hither. Says I, my Lord, that's a good one indeed ! Dare not you truſt him, and yet do you ſend me to him on this Errand ? Nay, ſays he, 'tis becauſe we have had ſome Miſunderſtanding of late ; but I believe he is true enough to the Intereſt. Says I, 'Tis a great Unhappineſs to take this Time to fall out ; and I think 'tis ſo great a Deſign, that it ought to be undertaken with the greateſt Strength and Coalition in the Kingdom. Says he, My Friends are now gone ſo far, that they can't pull their Foot back again without going further ; for, ſays he, it hath been communicated to ſo many, that 'tis impoſſible to keep it from taking Air, and it muſt go on. Says he, We are not ſo unprovided as you think for ; there are ſo many Men, that you will find as briſk Men as any in *England*. Beſides, we are to have 1000 or 1500 Horſe, that are to be drawn by inſenſible Parties into Town, that when the Inſurrection is, ſhall be able to ſcour the Streets, and hinder them from forming their Forces againſt us. My Lord, after great Inlargement upon this Head, and Heads of the like Nature, I told him I would not leave him thus, and that nothing ſhould ſatisfy me, but an Interview between him and the Lords. No, I could not obtain it : But if I would go and tell them what a forwardneſs he was in, and that, if they would do themſelves Right, by putting themſelves upon correſpondent Action in their reſpective Places, and where their Intereſt lay, well ; otherwiſe he would go away without them. So I went again to the Duke of *Monmouth*, I ſpake to him only (I never ſpake to my Lord *Ruſſel* then, only we were together, but I had never come to any cloſe Conjunction of Counſels in my Life with him at that time). Says I, to the Duke, This Man is mad, and his Madneſs will prove fatal to us all ; he hath been in a Fright by being in the *Tower*, and carries thoſe Fears about him that cloud his Underſtanding ; I think his Judgment hath deſerted him, when he goes about with thoſe ſtrange ſanguine Hopes, that I can't ſee what ſhould ſupport him in the Ground of them. Therefore, ſays I, Pray will you give him a Meeting. God-ſo, ſays the Duke, with all my Heart, and I deſire nothing more. Now, I told him, I had been with my Lord *Shafteſbury*, with other Inlargements that I need not trouble your Lordſhip with : Well, ſays he, Pray go to him, and try if it be poſſible to get a Meeting : So I went to him, and told him. Says I, This is a great Unhappineſs, and it ſeems to be a great Abſurdity, that you are ſo forward to act alone in ſuch a thing as this. Pray, ſays I, without any more to do, ſince you have this Confidence to ſend for me, let me prevail with you to meet them, and give them an Interview, or elſe you and I muſt break. I will no longer hold any Correſpondence, unleſs it be ſo. Says he, I tell you they will betray me. In ſhort, he did with much Importunity yield, that he would come out the next Night in a Diſguiſe. By this time it was *Saturday*, I take it to be the ſixth of *October* ; an Almanack will ſettle that : So the next Night being *Sunday*, and the Shops ſhut, he would come out in a Concealment, be carried in a Coach, and brought to his own Houſe, which he thought then was ſafeſt. I came and gave the Duke of *Monmouth* an Account of it ; the Duke, I ſuppoſe, conveyed the ſame Underſtanding to my Lord *Ruſſel* ; and, I ſuppoſe, both would have been there accordingly, to have given the Meeting ; but next Morning I found Colonel *Rumſey* had left a Note at my Houſe, that the Meeting could not be that Day. Then I went to the Duke of *Monmouth*, and he had had the Account before, that my Lord *Shafteſbury* did apprehend himſelf to be in ſome Danger in that Houſe, and that the Apprehenſion had occaſioned him to remove ; but we ſhould be ſure to hear from him in two or three Days. We took it as a Waiver, and thought he did from thence intend to abſcond himſelf from us, and it proved ſo to me, for from that time I never ſaw him. But Captain *Walcot* came to me, and told me, that he was withdrawn, but it was for fear his Lodging might be diſcovered, but he did not doubt but in a Week he would let me know where his Lodging was : But told me within ſuch a time, which I think was eight or ten Days, there would be a Riſing ; and I told the Duke of *Monmouth*, and I believe he told my Lord *Ruſſel* ; and we believed his Frenzy was now grown to that Height, that he would riſe immediately, and put his Deſign in Execution ; ſo we endeavour'd to prevent it. Upon which my Lord *Ruſſel* (I was told) and the Duke of *Monmouth*, did force their way to my Lord *Shafteſbury*'s, and did perſuade him to put off the Day of his Rendezvous. I had not this from my Lord *Ruſſel*, for I had not ſpoke a Word to him ; but the Duke told me, my Lord *Ruſſel* had been with him (I had indeed an Intimation, that he had been with him) ; but the Duke told me, ſays he, I have not been with him, but my Lord *Ruſſel* was, having been convey'd by Colonel *Rumſey*. After this Day was put off, it ſeems it was put off with this Condition, That thoſe Lords, and divers others, ſhould be in a Readineſs to raiſe the Country about that Day Fortnight, or thereabouts ; for there was not above a Fortnight's time given : And, ſays the Duke of *Monmouth*, we have put it off, but now we muſt be in Action, for there's no holding it off any longer. And ſays he, I have been at *Wapping* all Night, and I never ſaw a Company of bolder and briſker Fellows in my Life : And, ſays he, I have been round the *Tower*, and ſeen the Avenues of it ; and I do not think it will be hard, in a little time, to poſſeſs ourſelves of it : But, ſays he, they are in the wrong way, yet we are engaged to be ready for them in a Fortnight, and therefore, ſays he, now we muſt apply ourſelves to it as well as we can. And thereupon I believe they did ſend into the Country ; and the Duke of *Monmouth* told me, he ſpake to Mr. *Trenchard*, who was to take particular Care of *Somerſetſhire*, with this Circumſtance : Says he, I thought Mr. *Trenchard* had been a briſker Fellow ; for when I told him of it, he looked ſo pale, I thought he would have ſwooned, when I brought him to the Brink of Action ; and ſaid, I pray go and do what you can among your Acquaintance ; and truly, I thought it would have come then to Action. But I went the next Day to him, and he ſaid it was impoſſible ; they could not get the Gentlemen of the Country to ſtir yet.

L. *Ruſſel.* My Lord, I think I have very hard Meaſure, here is a great deal of Evidence by Hear-ſay.

L. C. J. This is nothing againſt you, I declare it to the Jury.

Mr. Att. Gen. If you pleaſe, my Lord, go on in the Method of Time. This is nothing againſt you, but it's coming to you, if your Lordſhip will have Patience, I aſſure you.

L. *Howard.* This is juſt in the Order it was done. When this was put off, then they were in a great Hurry ; and Captain *Walcot* had been ſeveral times with me, and diſcourſed of it. But upon this Diſappointment they ſaid, it ſhould be the Diſhonour of the Lords, that they were backward to perform their Parts ; but ſtill they were reſolved to go on. And this had carried it to the latter end of *October*. About the 17th or 18th Captain *Walcot* came to me, and told me, now they were reſolv'd poſitively to riſe, and did believe, that a ſmart Party might perhaps meet with ſome great Men. Thereupon I told the Duke of it ; I met him in the Street, and went out of my own Coach into his, and told him, That there was ſome dark Intimation, as if there might be ſome Attempt upon the King's Perſon ; with that he ſtruck his Breaſt with a great Emotion of Spirit, and ſaid, God-ſo, kill the King ! I will never ſuffer that. Then he went to the *Play-houſe* to find Sir *Thomas Armſtrong*, and ſend him up and down the City to put it off, as they did formerly ; and it was done with that Succeſs, that we were all quieted in our Minds, that at that time nothing would be done : But upon the Day the King came from *Newmarket*, we din'd together ; the Duke of *Monmouth* was one, and there we had a Notion conveyed among us, that ſome bold Action ſhould be done that Day ; which comparing it with the King's coming, we concluded i twas deſign'd upon the King. And I remember my Lord *Grey*, ſays he, By God, if they do attempt any ſuch thing, it can't fail. We were in great Anxiety of Mind, till we heard the King's Coach was come in, and Sir *Thomas Armſtrong* not being there, we apprehended that he was to be one of the Party (for he was not there). This failing, (it was then next determined which was the laſt Alarum and News I had of it) to be done upon the 17th of *November*, the Anniverſary of Queen *Elizabeth* ; and I remember it by this Remark I made myſelf, that I fear'd it had been diſcovered, becauſe I ſaw a Proclamation a little before, forbidding publick Bonefires without leave of my Lord Mayor. It made ſome Impreſſions upon me, that I thought they had got an Intimation of our Intention, and had therefore forbid that Meeting. This therefore of the 17th of *November* being alſo diſappointed, and my Lord *Shafteſbury*, being told things were not ripe in the Country, took Shipping and got away ; and from that time I heard no more of him till I heard he was dead. Now, Sir, after this we all began to lie under the ſame Senſe and Apprehenſions that my Lord *Shafteſbubry* did, that we had gone ſo far, and communicated it to ſo many, that it was unſafe to make a Retreat ; and this being conſidered, it was alſo conſidered, that ſo great an Affair as that was, conſiſting of ſuch infinite Particulars, to be managed with ſo much Fineneſs, and to have ſo many Parts, it would be neceſſary, that there ſhould be ſome general Council, that ſhould take upon them the Care of the Whole. Upon theſe Thoughts we reſolved to erect a little *Cabal* among ourſelves, which did conſiſt of ſix Perſons ; and the Perſons were, The Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Ruſſel*, Mr. *Hambden*, Jun. *Algernoone Sidney*, and myſelf.

Mr. Att. Gen. About what time was this, when you ſettled this Council ?

L. *Howard.* It would have been proper for me in the next Place to tell you that, and I was coming to it. This was about the Middle of *Jan.* laſt (as near as I can remember); for about that time we did meet at Mr. *Hambden*'s Houſe.

Mr. Att. Gen. Name thoſe that met.

L. *Howard.* All the Perſons I named before; that was the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Ruſſel*, Col. *Sidney*, Mr. *Hambden*, jun. and myſelf. When we met there, it was preſently agreed what their proper Province was, which was to have a care of the whole: And therefore it was neceſſary ſome general Things ſhould fall under our Care and Conduct, which could not poſſibly be conducted by individual Perſons. The Things that did principally challenge this Care, we thought were theſe: Whether the Inſurrection was moſt proper to be begun in *London*, or in the *Country*, or both at one Inſtant. This ſtood upon ſeveral different Reaſons: It was ſaid in the *Country*; and I remember the Duke of *Monmouth* inſiſted upon it, that it was impoſſible to oppoſe a formed, well-methodiz'd, and govern'd Force, with a Rabble haſtily got together; and therefore whatever Numbers could be gathered in the City, would be ſuppreſſed quickly, before they could form themſelves: Therefore it would be better to begin it at ſuch a Diſtance from the Town, where they might have an Opportunity of forming themſelves, and would not be ſubject to the like panick Fear, as in the Town, where half an Hour would convey the News to thoſe Forces that in another half Hour would be ready to ſuppreſs them.

Mr. Att. Gen. Was this determined among you all?

L. *Howard.* In this Manner that I tell you, why it was neceſſary to be done at ſome reaſonable Diſtance from the Town. And from thence it was likewiſe conſidered, that the being ſo remote from the Town, it would put the King upon this *Dilemma*, that either the King would ſend his Forces to ſubdue them, or not; if he did, he muſt leave the City naked, who being *Proxim' Diſpoſitioni* to Action, it would give them Occaſion to riſe, and come upon the Back of the King's Forces; if he did not ſend, it would give them Time to form their Number, and be better ordered.

Mr. Att. Gen. My Lord, we do not deſire all your Diſcourſe and Debates: What was your other general Thing?

L. *Howard.* The other was, What Countries and Towns were the fitteſt and moſt diſpoſed to Action: And the *Third*, what Arms were neceſſary to be got, and how to be diſpoſed: And a *Fourth*, (which ſhould have been indeed firſt in Conſideration) propounded by the Duke of *Monmouth*, That it would be abſolutely neceſſary to have ſome common Bank of 25 or 30,000*l.* to anſwer the Occaſions of ſuch an Undertaking. Nothing was done, but theſe Things were offered then to our Conſideration, and we were to bring in our united Advice concerning them. But the laſt and greateſt was, how he might ſo order it, as to draw *Scotland* into a Conſent with us; for we thought it neceſſary that all the Diverſion ſhould be given. This was the laſt.

Mr. Att. Gen. Had you any other Meetings?

L. *Howard.* We had, about ten Days after this, at my Lord *Ruſſel*'s.

Mr. Att. Gen. The ſame Perſons?

L. *Howard.* Every one of the ſame Perſons then meeting.

Mr. Att. Gen What Debate had you there?

L. *Howard.* Then it was ſo far, as we came to a Reſolution, That ſome Perſons ſhould be ſent to my Lord *Argyle*, to ſettle an Underſtanding with him; and that ſome Meſſengers ſhould be diſpatched into *Scotland*, that ſhould invite ſome Perſons hither, that were judged moſt able to underſtand the Eſtate of *Scotland*, and give an Account of it. The Perſons agreed on were Sir *John Cockram*, my Lord *Melvile*, and another whoſe Name I have ſince been told upon my Deſcription, Sir —— *Cambel.* For this Puropoſe we did order a Perſon ſhould be thought on that was fit—

Mr. Att. Gen. Do you know who was ſent, and what was done upon this Reſolution?

L. *Howard.* I have heard (I never ſaw him in ſix Months before) that *Aaron Smith* was ſent.

Mr. Att Gen. Who was intruſted to take Care of that Buſineſs?

L. *Howard.* Col. *Sidney.* We in Diſcourſe did agree to refer it to Colonel *Sidney* to have the Care of ſending a Perſon.

Mr. Att. Gen. Who acquainted you *Aaron Smith* was ſent?

L *Howard.* Col. *Sidney* told me he had ſent him, and given him ſixty Guineas for his Journey.

Mr. Att. Gen. What more Meetings had you?

L. *Howard.* We did then conſider that theſe Meetings might have occaſioned ſome Obſervation upon us, and agreed not to meet again till the Return of that Meſſenger. He was gone, I believe, near a Month before we heard any thing of him, which we wonder'd at and fear'd ſome Miſcarriage; but if his Letter had miſcarried, it could have done no great Hurt, for it carried only a kind of Cant in it; it was under the Diſguiſe of a Plantation in *Carolina.*

Mr. Att. Gen. You are ſure my Lord *Ruſſel* was there?

L. *Howard.* Yes, Sir: I wiſh I could ſay he was not.

Mr. Att. Gen. Did he ſit there as a Cypher? What did my Lord ſay?

L. *Howard.* Every one knows my Lord *Ruſſel* is a Perſon of great Judgment, and not very laviſh in Diſcourſe.

Mr. Serj. *Jeff.* But he did conſent?

L. *Howard.* We did not put it to the Vote, but it went without Contradiction, and I took it, that all there gave their Conſent.

Mr. Sol. Gen. The raiſing of Money you ſpeak of, was that put into any way?

L. *Howard.* No, but every Man was to put themſelves upon thinking of ſuch a way, that Money might be collected without adminiſtring Jealouſy.

Mr. Att. Gen. Were there no Perſons to undertake for a Fund?

L. *Howard.* No, I think not. However, it was but Opinion, the thing that was ſaid was jocoſely, rather than any thing elſe, that my Lord of *Eſſex* had dealing in Money, and therefore he was thought the moſt proper Perſon to take care of thoſe things; but this was ſaid rather by way of Mirth, than otherwiſe.

Mr. Att. Gen. What do you know elſe, my Lord?

L. *Howard.* I was going to tell you, I am now at a full Stop. For it was ſix Weeks or more before *Smith*'s Return, and then drew on the Time, that it was neceſſary for me to go into *Eſſex*, where I had a ſmall Concern; there I ſtaid about three Weeks; when I came back, I was informed that he was returned, and Sir *John Cockram* was alſo come to Town.

L. C. J. Did you meet after this?

L. *Howard.* No, my Lord, I tell you, that I was forced to go three Weeks upon the Account of my Eſtate, and afterwards I was neceſſitated to go to the *Bath*, where I ſpent five Weeks; and the time of coming from the *Bath* to this time, is five Weeks more; ſo that all this time hath been a perfect Parentheſis to me, and more than this I know not.

L. C. J. My Lord *Ruſſel*, Now, if your Lordſhip pleaſes, is the time for you to aſk him any Queſtions.

L. *Ruſſel.* The moſt he hath ſaid of me, my Lord, is only Hear-ſay; the two times we met, it was upon no formed Deſign, only to talk of News, and talk of things in general.

L. C. J. But I will tell you what it is he teſtifies, that comes neareſt your Lordſhip, that ſo you may conſider of it, if you will aſk any Queſtions. He ſays, after my Lord *Shafteſbury* went off (all before is but Inducement, as to any thing that concerns your Lordſhip, and does not particularly touch you; after his going away, he ſays) the Party concerned with my Lord *Shafteſbury* did think fit to make Choice of ſix Perſons to carry on the Deſign of an Inſurrection or Riſing, as he calls it, in the Kingdom; and that to that Purpoſe, Choice was made of the Duke of *Monmouth*, my Lord of *Eſſex*, your Lordſhip, my Lord *Howard*, Colonel *Sidney*, and Mr. *Hambden.*

L. *Ruſſel.* Pray, my Lord, not to interrupt you, by what Party (I know no Party) were they choſen?

L. *Howard.* 'Tis very true, we were not choſen by Community, but did erect ourſelves by mutual Agreement, one with another, into this Society.

L. *Ruſſel.* We were People that did meet very often.

L. C. J. Will your Lordſhip pleaſe to have any other Queſtions aſked of my Lord *Howard?*

L. *Ruſſel.* He ſays, it was a formed Deſign, when we met about no ſuch thing.

L. C. J. He ſays, that you did conſult among yourſelves, about the Raiſing of Men, and where the Riſing ſhould be firſt, whether in the City of *London*, or in more foreign Parts, that you had ſeveral Debates concerning it; he does make mention of ſome of the Duke of *Monmouth*'s Arguments for its being formed in Places from the City; he ſays, you did all agree, not to do any thing further in it, till you had conſider'd how to raiſe Money and Arms: And to engage the Kingdom of *Scotland* in this Buſineſs with you, that it was agreed among you that a Meſſenger ſhould be ſent into the Kingdom of *Scotland.* Thus far he goes upon his own Knowledge, as he ſaith; what he ſays after, of ſending a Meſſenger, is by Report only.

Mr. Att. Gen. I beg your Pardon, my Lord.

L. C. J. 'Tis ſo, that which he heard concerning the ſending of *Aaron Smith.*

Mr. Att. Gen. Will you aſk him any Queſtions?

L. *Ruſſel.* We met, but there was no Debate of any ſuch thing, nor putting any thing in Method. But my Lord *Howard* is a Man hath a voluble Tongue, talks very well, and is full of Diſcourſe, and we were delighted to hear him.

Mr. Att. Gen. I think your Lordſhip did mention the *Cambells?*

L. *Howard.* I did ſtammer it out, but not without a Parentheſis, it was a Perſon of the Alliance, and I thought of the Name of the *Argyles.*

L. *Ruſſel.* I deſire your Lordſhip to take notice, that none of theſe Men I ever ſaw; my Lord *Melvile* I have ſeen, but not upon this Account.

Mr. Atterbury *ſworn.*

Mr. Att. Gen. *Aaron Smith* did go, and *Cambell* he went for, is here taken. This is the Meſſenger. Pray, what do you know of the Apprehending of the *Cambells?*

Mr. *Atterbury.* If it pleaſe your Lordſhip, I did not apprehend Sir *Hugh Cambell* myſelf, but he is now in my Cuſtody; he was making his Eſcape out of a Woodmonger's Houſe, both he and his Son.

Mr. Att. Gen. How long did he own he had been at *London?*

Mr. *Atterbury.* Four Days, and that in that Time he had been at their Lodgings; and that he and his Son, and one *Bailey*, came to Town together.

Mr. Att. Gen. My Lord, we ſhall beſides this (now we have fixed this upon my Lord) give you an Account, that theſe Perſons, that were to riſe, always took them as their Pay-maſters, and expected their Aſſiſtance. Mr. *Weſt*, Mr. *Keeling*, and Mr. *Leigh.*

Mr. Weſt *ſworn.*

Mr. Att. Gen. That which I call you to, is to know whether or no, in your Managery of this Plot, you underſtood any of the Lords were concerned, and which?

Mr. *Weſt.* My Lord, as to my Lord *Ruſſel*, I never had any Converſation with him at all, but that I have heard this, That in the Inſurrection in *November*, Mr. *Ferguſon*, and Colonel *Rumſey*, did tell me, that my Lord *Ruſſel* intended to go down and take his Poſt in the *Weſt*, when Mr. *Trenchard* had failed them.

L. C. J. What is this?

Mr. Att. Gen. We have proved my Lord privy to the Conſults; now we go about to prove the Under-actors did know it.

Mr. *Weſt.* They always ſaid, my Lord *Ruſſel* was the Man they moſt depended upon, becauſe he was a Perſon looked upon as of great Sobriety.

L. *Ruſſel.* Can I hinder People from making uſe of my Name? To have this brought to influence the Gentlemen of the Jury, and inflame them againſt me, is hard.

L. C. J. As to this, the giving Evidence by Hear-ſay, will not be Evidence; what Colonel *Rumſey* or Mr. *Ferguſon* told Mr. *Weſt*, is no Evidence.

Mr. Att. Gen. 'Tis not Evidence to convict a Man, if there were not plain Evidence before; but it plainly confirms what the other ſwears: But I think we need no more.

Mr. Serj. *Jefferies.* We have Evidence without it, and will not uſe any thing of Garniture; we will leave it as 'tis, we won't trouble your Lordſhip any further. I think, Mr. *Attorney*, we have done with our Evidence.

L. C. J. My Lord *Ruſſel*, the King's Counſel do think to reſt upon this Evidence that they have given againſt your Lordſhip. I would put your Lordſhip in mind of thoſe things that are material in this Caſe, and proved againſt your Lordſhip. Here is Colonel *Rumſey* does prove againſt your Lordſhip this, That he was ſent upon an Errand, which in Truth was traiterous; it was a traiterous Errand ſent from my Lord *Shafteſbury* by him to that Meeting. He does ſwear your Lordſhip was at that Meeting; and he delivered his Errand to them, which was to know, what Account could be given concerning the Deſign of the Inſurrection at *Taunton*; and he ſays, your Lordſhip being there, this Return was made, that Mr. *Trenchard* had failed them in his Undertaking in the Buſineſs, and therefore my Lord *Shafteſbury* muſt be contented, and ſit down ſatisfied as to that time. Mr. *Sheppard* does likewiſe ſpeak of the ſame Time, that your Lordſhip was there with the reſt of the Perſons, the Duke and others; that there was a Diſcourſe concerning an Inſurrection to have been made (though he is not ſo particular, as to the very Notion of it, as Colonel *Rumſey* is); as to the Time they do agree.

L. *Ruſſel.* Col. *Rumſey* is not poſitive that I ſaid or heard any thing.

L. C. J. My Lord, if you will have a little Patience to hear me, I will tell you what it is preſſes you; there is this which I have mentioned; and Mr. *Sheppard* does ſay, there was a Paper purporting a Declaration then read among the Company there, which was to be printed upon the Riſing, ſetting forth the Oppreſſions and Grievances of the Nation; and then my Lord *Howard* (after a great Diſcourſe concerning the many Deſigns of my Lord *Shafteſbury*) comes particularly to your Lordſhip, and ſays, that Six of you, as a choſen Council among yourſelves, (not that you were actually choſen, but as a choſen Council among yourſelves) did undertake to manage the great Matter of the Inſurrection, and raiſing of Men, in order to ſurpriſe the King's Guards, and for to riſe (which is a Rebellion in the Nation). He ſays, that you had ſeveral Conſults concerning it. I told you the ſeveral Particulars of thoſe Conſults he mentioned: Now it is fit for your Lordſhip, and 'tis your Time, to give ſome Anſwer to theſe things.

L. *Ruſſel.* My Lord, I cannot but think myſelf mighty unfortunate, to ſtand here charged with ſo high and heinous a Crime, and that intricated and intermixed with the Treaſons and horrid Practices and Speeches of other People, the King's Counſel taking all Advantages, and improving and heightening things againſt me. I am no Lawyer, a very unready Speaker, and altogether a Stranger to things of this Nature, and alone, and without Counſel. Truly, my Lord, I am very ſenſible, I am not ſo provided to make my juſt Defence, as otherwiſe I ſhould do. But, my Lord, you are equal, and the Gentlemen of the Jury, I think, are Men of Conſciences; they are Strangers to me, and I hope they value innocent Blood, and will conſider the Witneſſes that ſwear againſt me, ſwear to ſave their own Lives; for howſoever legal Witneſſes they may be accounted, they can't be credible. And for Col. *Rumſey*, who 'tis notoriouſly known hath been ſo highly obliged by the King, and the Duke, for him to be capable of ſuch a Deſign of murdering the King, I think nobody will wonder, if to ſave his own Life, he will endeavour to take away mine; neither does he ſwear enough to do it; and then if he did, the Time, by the 13th of this King, is elapſed, it muſt be, as I underſtand by the Law, proſecuted within ſix Months; and by the 25 *E.* 3. a Deſign of levying War is no Treaſon, unleſs by ſome Overt-Act it appear. And, my Lord, I deſire to know, what Statute I am to be tried upon; for Generals, I think, are not to be gone upon in theſe Caſes.

L. C. J. (To the *Attorney General.*) Mr. *Attorney*, you hear what it is my Lord objects to this Evidence; he ſays, that as to thoſe Witneſſes that teſtify any thing concerning him, above ſix Months before he was proſecuted, he conceives the Act of Parliament, upon which he takes himſelf to be indicted, does not extend to it; for that ſays, that within ſix Months there ought to have been a Proſecution; and my Lord tells you, that he is adviſed, that a Deſign of levying War, without actual levying of War, was not Treaſon before that Statute.

Mr. Att. Gen. To ſatisfy my Lord he is not indicted upon that Statute, we go upon the 25. *E.* 3. But then for the next Objection, ſurely my Lord is informed wrong. To raiſe a Rebellion, or a Conſpiracy, within the Kingdom, is not that which is called levying of War in that Statute, but to raiſe a Number of Men, to break Priſons, &c. which is not ſo directly tending againſt the Life of the King. To prepare Forces to fight againſt the King, that is a Deſign, within that Statute, to kill the King; and to deſign to depoſe the King, to impriſon the King, to raiſe the Subjects againſt the King, theſe have been ſettled by ſeveral Reſolutions to be within that Statute, and Evidences of a Deſign of killing the King.

L. *Ruſſel.* My Lord, this is a Matter of Law; neither was there but one Meeting at Mr. *Sheppard*'s Houſe.

Mr. Att. Gen. My Lord, if you admit the Fact, and will reſt upon the Point of Law, I am ready to argue it with any of your Counſel. I will acquaint your Lordſhip how the Evidence ſtands. There is one Evidence ſince *Chriſtmas* laſt.

L. *Ruſſel.* That's not to the Buſineſs of *Sheppard*'s Houſe. My Lord, one Witneſs will not convict a Man of Treaſon.

Mr. Att. Gen. If there be one Witneſs of one Act of Treaſon, and another of a ſecond, another of a third, that manifeſt the ſame Treaſon to depoſe or deſtroy the King, that will be ſufficient.

L. C. J. My Lord, that has been reſolved: The two Witneſſes the Statute requires are not to the ſame individual Act, but to the ſame Treaſon; if they be ſeveral Acts declaring the ſame Treaſon, and one Witneſs to each of them, they have been reckoned two Witneſſes within the Statute of *Edw.* 3.

Mr. Serj. *Jefferies.* If my Lord will call his Witneſs——

L. *Ruſſel.* This is tacking of two Treaſons together; here is one in *November* by one Witneſs, and then you bring on another with a Diſcourſe of my Lord *Howard*, and he ſays the Diſcourſe paſſed for Pleaſure.

L C. J. If your Lordſhip do doubt whether the Fact proved againſt your Lordſhip be Treaſon or not within the Statute of *E.* 3. and you are contented that the Fact be taken as proved againſt your Lordſhip, and ſo deſire Counſel barely upon that, that is Matter of Law, you ſhall have it granted.

L. *Ruſſel.* I am not knowing in the Law. I think 'tis not proved; and if it was, I think it's not puniſhable by that Act. I deſire Counſel may be admitted upon ſo nice a Point. My Life lies at Stake; here's but one Witneſs that ſpeaks of a Meſſage.

Mr. Serj. *Jefferies.* The Fact muſt be left to the Jury; therefore if my Lord *Ruſſel* hath any Witneſſes to call in Oppoſition to theſe Matters, let him.

L. C. J. My Lord, there can be no Matter of Law, but upon a Fact admitted and ſtated.

L. *Ruſſel.* My Lord, I do not think it proved; I hope you will be of Counſel for me; it's very hard for me, that my Counſel may not ſpeak for me in a Point of Law.

L. C. J. My Lord, to hear your Counſel concerning this Fact, that we cannot do, it was never done, nor will be done: If your Lordſhip doubts whether this Fact is Treaſon or not, and deſires your Counſel may be heard to that, I will do it.

L. *Ruſſel.* I doubt in Law, and do not ſee the Fact is proved upon me.

Mr. Sol. Gen. Will your Lordſhip pleaſe to call any Witneſs to the Matter of Fact?

L. *Ruſſel.* 'Tis very hard a Man muſt loſe his Life upon Hear-ſay. Colonel *Rumſey* ſays he brought a Meſſage, which I will ſwear I never heard nor knew of. He does not ſay he ſpake to me, or I gave him any Anſwer. Mr. *Sheppard* remembers no ſuch thing: He was gone to and again. Here is but one Witneſs, and ſeven Months ago.

Mr. Att. Gen. My Lord, if there be any thing that is Law, you ſhall have it.

L. *Ruſſel.* My Lord, Colonel *Rumſey*, the other Day before the King, could not ſay, that I heard it, I was in the Room, but I came in late, they had been there a good while; I did not ſtay above a Quarter of an Hour taſting *Sherry* with Mr. *Sheppard*.

L. C. J. Read the Statute of 25 *E.* 3. *c.* 2. My Brothers deſire to have it read.

Cl. of Cr. **Whereas divers Opinions have been before this Time, in what Caſe Treaſon ſhall be ſaid, and in what not: The King, at the Requeſt of the Lords, and of the Commons, hath made a Declaration in the manner as hereafter followeth; that is to ſay, When a Man doth compaſs or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldeſt Son and Heir; or if a Man do violate the King's Compagnion, or the King's eldeſt Daughter unmarried, or the Wife of the King's eldeſt Son and Heir; or if a Man do levy War againſt our Lord the King, in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm, or elſewhere, and thereof be provable attainted of open Deed by People of their Condition: And if a Man counterfeit the King's Great or Privy Seal, or his Money: And if a Man bring falſe Money into this Realm, counterfeit to the Money of** England, **as the Money called** Luſhburgh, **or other like to the ſaid Money of** England, **knowing the Money to be falſe, to Merchandiſe, or make Payment in deſecit of our ſaid Lord the King, and of his People: And if a Man ſlea the Chancellor, Treaſurer, or the King's Juſtices of the one Bench or the other, Juſtices in Eyre, or Juſtices of Aſsiſe, and all other Juſtices deſigned to hear and determin, being in their Places during their Offices. And it is to be underſtood, that in the Caſes above rehearſed, that ought to be judged Treaſon, which extends to our Lord the King, and his Royal Majeſty.**

L. C. J. My Lord, that which is urged againſt you by the King's Counſel, is this, You are accuſed by the Indictment of compaſſing and deſigning the King's Death, and of endeavouring to raiſe an Inſurrection in order to it; that that they do ſay is, that theſe Counſels that your Lordſhip hath taken, are Evidences of your compaſſing the King's Death, and are Overt-acts declaring the ſame; and upon that it is they inſiſt your Lordſhip to be guilty within that Statute.

L. *Ruſſel.* It is in a Point of Law, and I deſire Counſel.

Mr. Att. Gen. Admit your Conſultations, and we will hear them.

L. C. J. I would ſet your Lordſhip right, for probably you may not apprehend the Law in this Caſe; if your Counſel be heard, they muſt be heard to this, That taking it, that my Lord *Ruſſel* has conſulted in this Manner, for the raiſing of Forces within this Kingdom, and making an Inſurrection within this Kingdom, as Colonel *Rumſey* and my Lord *Howard* have depoſed, whether then this be Treaſon, we can hear your Counſel to nothing elſe.

L. *Ruſſel.* I do not know how to anſwer to it. The Point methinks muſt be quite otherwiſe, that there ſhould be two Witneſſes to one Thing at the ſame Time.

Mr. Att. Gen. Your Lordſhip remembers, in my Lord *Stafford*'s Caſe, there was but one Witneſs to one Act in *England*, and another to another in *France*.

L. *Ruſſel.* It was to the ſame Point.

Mr. Att. Gen. To the general Point, the lopping Point.

Mr. Serj. *Jefferies.* There was not ſo much Evidence againſt him, as there is againſt your Lordſhip.

L. C. J. My Lord, if your Lordſhip will ſay any thing, or call any Witneſſes to diſprove what either of theſe Gentlemen have ſaid, we will hear your Lordſhip what they ſay: But if you can't contradict them by Teſtimony, it will be taken to be a Proof. And the Way you have to diſprove them, is to call Witneſſes, or by aſking Queſtions, whereby it may appear to be untrue.

Mr. Sol. Gen. If you have any Witneſſes, call them, my Lord.

L. *Ruſſel.* I do not think they have proved it. But then it appears by the Statute, that levying War is Treaſon, but a Conſpiracy to levy War is no Treaſon; if nothing be done, 'tis not levying War within the Statute. There muſt be manifeſt Proof of the Matter of Fact, not by Inference.

Mr. Att. Gen. I ſee that is taken out of my Lord *Coko.* Levying War is a diſtinct Branch of the Statute; and my Lord *Coke* explains himſelf afterwards, and ſays, 'tis an Aſſuming of Royal Power, to Raiſe for particular Purpoſes.

Juſt. Withins. Unleſs Matter of Fact be agreed, we can never come to argue the Law.

L. *Ruſſel.* I came in late.

Mr. Sol. Gen. Pray, my Lord, has your Lordſhip any Witneſſes to call as to this Matter of Fact?

L. *Ruſſel.* I can prove I was out of Town when one of the Meetings was; but Mr. *Sheppard* can't recollect the Day, for I was out of Town all that Time. I never was but once at Mr. *Sheppard*'s, and there was nothing undertaken of viewing the Guards while I was there. Colonel *Rumſey*, can you ſwear poſitively, that I heard the Meſſage, and gave any Anſwer to it?

L. C. J. (*To Colonel* Rumſey) Sir, did my Lord *Ruſſel* hear you when you deliver'd the Meſſage to the Company? Were they at the Table, or where were they?

Col. *Rumſey.* When I came in they were ſtanding at the Fire-ſide; but they all came from the Fire-ſide to hear what I ſaid.

L. *Ruſſel.* Colonel *Rumſey* was there when I came in.

Col. *Rumſey.* No, my Lord. The Duke of *Monmouth*, and my Lord *Ruſſel*, went away together; and my Lord *Grey*, and Sir *Thomas Armſtrong.*

L. *Ruſſel.* The Duke of *Monmouth* and I came together, and you were ſtanding at the Chimney when I came in; you were there before me. My Lord *Howard* hath made a long Narrative here of what he knew. I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and proteſt to ſeveral People, that he knew nothing againſt me, nor of any Plot I could in the leaſt be queſtioned for.

L. C. J. If you will have any Witneſſes called to that, you ſhall, my Lord.

L *Ruſſel.* My Lord *Angleſey*, and Mr. *Edward Howard.*

My Lord Angleſey *ſtood up.*

L. C. J. My Lord *Ruſſel*, What do you aſk my Lord *Angleſey?*

L. *Ruſſel.* To declare what my Lord *Howard* told him about me, ſince I was confined.

L. *Angleſey.* My Lord, I chanced to be in Town the laſt Week; and hearing my Lord of *Bedford* was in ſome Diſtreſs and Trouble concerning the Affliction of his Son, I went to give him a Viſit, being my old Acquaintance, of ſome 53 Years ſtanding, I believe; for my Lord and I were bred together at *Maudlin-College* in *Oxon*; I had not been there but a very little while, and was ready to go away again, after I had done the good Office I came about; but my Lord *Howard* came in, I don't know whether he be here.

L. *Howard.* Yes, here I am to ſerve your Lordſhip.

L. *Angleſey.* And ſat down on the other Side of my Lord of *Bedford*, and he began to comfort my Lord; and the Arguments he uſed for his Comfort, were, My Lord, you are happy in having a wiſe Son, and a worthy Perſon, one that can never ſure be in ſuch a Plot as this, or ſuſpected for it, and that may give your Lordſhip Reaſon to expect a very good Iſſue concerning him. I know nothing againſt him, or any body elſe, of ſuch a barbarous Deſign, and therefore your Lordſhip may be comforted in it. I did not hear this only from my Lord *Howard*'s Mouth, but at my own Home upon the *Monday* after, for I uſe to go to *Totteridge* for freſh Air; I went down on *Saturday*, this happen'd to be on *Friday* (my Lord being here, I am glad, for he can't forget this Diſcourſe); and when I came to Town on *Monday*, I underſtood that my Lord *Howard* upon that very *Sunday* had been at Church with my Lady *Chaworth.* My Lady has a Chaplain, it ſeems, that preaches there, and does the Offices of the Church; but my Lady came to me in the Evening. This I have from my Lady——

L. C. J. My Lord, what you have from my Lady is no kind of Evidence at all.

L. *Angleſey.* I don't know what my Lord is, I am acquainted with none of the Evidence, nor what hath been done: But my Lady *Chaworth* came to me, and acquainted me, there was ſome Suſpicion————

Mr. Serj. *Jefferies.* I don't think it fit for me to interrupt a Perſon of your Honour, my Lord, but your Lordſhip knows in what Place we ſtand here: What you can ſay of any thing you heard of my Lord *Howard* we are willing to hear, but the other is not Evidence. As the Court will not let us offer Hearſays, ſo neither muſt we that are for the King permit it*.

L. *Angleſey.* I have told you what happened in my Hearing.

Then Mr. Howard *ſtood up.*

L. C. J. Come, Mr. *Howard*, what do you know?

Mr. *Howard.* I muſt deſire to ſay ſomething of myſelf and my Family firſt: My Lord and I have been very intimate, not only as Relations, but as dear Friends. My Lord, I have been of a Family known to have great Reſpect and Duty for the King; and I think there is no Family in the Nation ſo numerous, that hath expreſſed greater Loyalty; upon which Account I improved my Intereſt in my Lord *Howard*; I endeavoured, upon the great Miſunderſtanding of the Nation, (if he be here, he knows it) to perſuade him to apply himſelf to the King, to ſerve him in that great Difficulty of State, which is known to all the World. I ſometimes found my Lord very forward, and ſometimes I ſoften'd him; upon which Parly, and upon his Permiſſion, and more upon my own Inclination of Duty, I made ſeveral Applications to Miniſters of State, (and I can name them) that my Lord *Howard* had a great Deſire of ſerving the King in the beſt way of Satisfaction, and particularly in the great Buſineſs of his Brother. I wonder'd there ſhould be ſo much Sharpneſs for a Matter of Opinion, and I told my Lord ſo, and we had ſeveral Diſputes about it. My Lord, I do ſay this before I come to the thing. After this I did partly by his Permiſſion, and partly by my own Inclination to ſerve the King, becauſe I thought my Lord *Howard* to be a Man of Parts, and ſaw him a Man that had Intereſt in the Nation, tell my Lord *Feverſham*, that I had prevailed with a Relation of mine, that may be he might think oppoſite, that perhaps might ſerve the King in this great Difficulty that is emergent, and particularly that of his Brother. My Lord *Feverſham* did receive it very kindly, and I wrote a Letter to him to let him know how I had ſoften'd my Lord, and that it was my Deſire he ſhould ſpeak with my Lord at *Oxon.* My Lord *Feverſham* gave me a very kind Account when he came again, but he told me——

L. C. J. Pray apply yourſelf to the Matter you are called for.

Mr. *Howard.* This it may be is to the Matter, when you have heard me; for I think I know where I am, and what I am to ſay.

L. C. J. We muſt deſire you not to go on thus.

Mr. *Howard.* I muſt ſatisfy the World, as well as I can, as to myſelf, and my Family, and pray do not interrupt me. After this, my Lord, there never paſſed a Day for almoſt——

L. C. J. Pray ſpeak to this Matter.

Mr. *Howard.* Sir, I am coming to it.

L. C. J. Pray, Sir, be directed by the Court.

Mr. *Howard.* Then now, Sir, I will come to the Thing. Upon this ground I had of my Lord's Kindneſs, I applied myſelf to my Lord in this preſent Iſſue, on the breaking out of this Plot. My Lord, I thought certainly, as near as I could diſcern him, (for he took it upon his Honour, his Faith, and as much as if he had taken an Oath before a Magiſtrate) that he knew nothing of any Man concerned in this Buſineſs, and particularly of my Lord *Ruſſel*, whom he vindicated with all the Honour in the World. My Lord, it is true, was afraid of his own Perſon, and as a Friend and a Relation, I concealed him in my Houſe, and I did not think it was for ſuch a Conſpiracy, but I thought he was unwilling to go to the Tower for nothing again: So that if my Lord *Howard* has the ſame Soul on *Monday*, that he had on *Sunday*, this can't be true, that he ſwears againſt my Lord *Ruſſel.* This I ſay upon my Reputation, and Honour; and ſomething I could ſay more, he added, he thought my Lord *Ruſſel* did not only unjuſtly ſuffer, but he took God and Men to witneſs, he thought him the worthieſt Perſon in the World. I am very ſorry to hear any Man of my Name ſhould be guilty of theſe things.

L. *Ruſſel.* Call Dr. *Burnet.* Pray, Dr. *Burnet*, did you hear any thing from my Lord *Howard*, ſince the Plot was diſcover'd, concerning me?

Dr. *Burnet.* My Lord *Howard* was with me the Night after the Plot broke out, and he did then, as he had done before, with Hands and Eyes lifted up to Heaven, ſay he knew nothing of any Plot, nor believed any; and treated it with Scorn and Contempt.

L. *Howard.* My Lord, may I ſpeak for myſelf?

Mr. Serj. *Jefferies.* No, no, my Lord, we don't call you.

L. C. J. Will you pleaſe to have any other Witneſſes called?

L. *Ruſſel.* There are ſome Perſons of Quality, that I have been very well acquainted and converſed with, I deſire to know of them, if there was any thing in my former Carriage, to make them think me like to be guilty of this? My Lord *Cavendiſh.*

L. *Cavendiſh.* I had the Honour to be acquainted with my Lord *Ruſſel* a long Time. I always thought him a Man of great Honour, and too prudent and wary a Man to be concerned in ſo vile and deſperate a Deſign as this, and from which he would receive ſo little Advantage: I can ſay nothing more, but that two or three Days ſince the Diſcovery of this Plot, upon Diſcourſe about Colonel *Rumſey*, my Lord *Ruſſel* did expreſs ſomething, as if he had a very ill Opinion of the Man, and therefore it is not likely he would entruſt him with ſuch a Secret.

L. *Ruſſel.* Dr. *Tillotſon.* [*He appears.*

L. C. J. What Queſtions would you aſk him, my Lord?

L. *Ruſſel.* He and I happened to be very converſant. To know whether he did ever find any thing tending to this in my Diſcourſe.

L. C. J. My Lord calls you as to his Life, and Converſation, and Reputation.

Dr. *Tillotſon.* My Lord, I have been many Years laſt paſt acquainted with my Lord *Ruſſel*, I always judged him a Perſon of great Virtue and Integrity, and by all the Converſation and Diſcourſe I ever had with him, I always took him to be a Perſon very far from any ſuch wicked Deſign he ſtands charged with.

L. *Ruſſel.* Dr. *Burnet*, if you pleaſe to give ſome Account of my Converſation.

Dr. *Burnet.* My Lord, I have had the Honour to be known to my Lord *Ruſſel* ſeveral Years, and he hath declared himſelf with much Confidence to me, and he always upon all Occaſions expreſſed himſelf againſt all Riſings; and when he ſpoke of ſome People that would provoke to it, he expreſſed himſelf ſo determined againſt that Matter, I think no Man could do more.

L. C. J. Will your Lordſhip call any other Witneſſes?

L. *Ruſſel.* Dr. *Cox.*

Dr. Thomas Cox *ſtood up.*

Dr. *Cox.* My Lord, I did not expect to have been ſpoken to upon this Account. Having been very much with my Lord of late, that is, for a Month or ſix Weeks before this Plot came out, I have had Occaſion to ſpeak with my Lord in private, about theſe publick Matters: But I have always found that my Lord was againſt all kind of Riſings, and thought it the greateſt Folly and Madneſs, till things ſhould come in a parliamentary Way. I have had Occaſion often to ſpeak with my Lord *Ruſſel* in private, and having myſelf been againſt all kind of Riſings, or any thing that tended to the Diſorder of the Publick, I have heard him profeſs ſolemnly, he thought it would ruin the beſt Cauſe in the World to take any of theſe irregular ways for the preſerving of it; and particularly my Lord hath expreſſed himſelf occaſionally of theſe two Perſons, my Lord *Howard* and Colonel *Rumſey:* One of them, Colonel *Rumſey*, I ſaw once at my Lord's Houſe, and he offered to ſpeak a little privately. But my Lord told me he knew him but a little: I told him he was a valiant Man, and acted his Part valiantly in *Portugal.* He ſaid he knew him little, and that he had nothing to do with him, but in my Lord *Shafteſbury*'s Buſineſs: He ſaid, for my Lord *Howard*, he was a Man of excellent Parts, of luxuriant Parts, but he had the Luck not to be much truſted by any Party. And I never heard him ſay one Word of Indecency or Immodeſty towards the King.

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* But the Court did let them offer Hearſays; for Lord *Howard* went on with Hearſay Evidence, even after Lord *Ruſſel* complained of it. *p.* 718.

L. *Ruſſel.* I would pray the Duke of *Somerſet* to ſpeak what he knows of me.

D. of Som. I have known my Lord *Ruſſel* for about two Years, and have had much Converſation with him, and been often in his Company, and never heard any thing from him, but what was very honourable, loyal, and juſt.

L. C. J. My Lord does ſay, that he has known my Lord *Ruſſel* for about two Years, and hath had much Converſation with him, and been much in his Company, and never heard any thing from him, but what was honourable, and loyal, and juſt in his Life.

Foreman of the Jury. The Gentlemen of the Jury deſire to aſk my Lord *Howard* ſomething upon the Point my Lord *Angleſey* teſtified, and to know what Anſwer he makes to my Lord *Angleſey.*

L. C. Bar. My Lord, what ſay you to it, that you told his Father he was a diſcreet Man, and he needed not to fear his Engagement in any ſuch thing?

L. *Howard.* My Lord, if I took it right, my Lord *Angleſey*'s Teſtimony did branch itſelf into two Parts, one of his own Knowledge, and the other by Hearſay; as to what he ſaid of his own Knowledge, when I waited upon my Lord of *Bedford*, and endeavoured to comfort him, concerning his Son, I believe I ſaid the Words my Lord *Angleſey* has given an Account of, as near as I can remember, that I looked upon his Lordſhip, as a Man of that Honour, that I hoped he might be ſecure, that he had not entangled himſelf in any thing of that Nature. My Lord, I can hardly be provoked to make my own Defence, leſt this noble Lord ſhould ſuffer, ſo willing I am to ſerve my Lord, who knows I can't want Affection for him. My Lord, I do confeſs I did ſay it; for your Lordſhip well knows under what Circumſtances we were: I was at that Time to outface the thing, both for myſelf and my Party, and I did not intend to come into this Place, and act this Part. God knows how it is brought upon me, and with what Unwillingneſs I do ſuſtain it; but my Duty to God, the King, and my Country, requires it; but I muſt confeſs I am very ſorry to carry it on thus far. My Lord, I do confeſs I did ſay ſo; and if I had been to viſit my Lord *Pemberton*, I ſhould have ſaid ſo. There is none of thoſe that know my Lord *Ruſſel*, but would ſpeak of my Lord *Ruſſel*, from thoſe Topicks of Honour, Modeſty, and Integrity, his whole Life deſerves it. And I muſt confeſs, I did frequently ſay, there was nothing of Truth in this, and I wiſh this may be for my Lord's Advantage. My Lord, will you ſpare me one thing more, becauſe that leans hard upon my Reputation? and if the Jury believe that I ought not to be believed, for I do think the Religion of an Oath is not tied to a Place, but receives its Obligation from the Appeal we therein make to God, and, I think, if I called God and Angels to witneſs to a Falſhood, I ought not to be believed now: But I will tell you as to that; your Lordſhip knows, that very Man that was committed, was committed for a Deſign of murdering the King; now I did lay hold on that Part, for I was to carry my Knife cloſe between the Paring and the Apple; and I did ſay, that if I were an Enemy to my Lord *Ruſſel*, and to the Duke of *Monmouth*, and were called to be a Witneſs, I muſt have declared in the Preſence of God and Man, that I did not believe either of them had any Deſign to murder the King. I have ſaid this, becauſe I would not walk under the Character of a Perſon, that would be perjured at the Expence of ſo noble a Perſon's Life, and my own Soul.

L. *Ruſſel.* My Lord *Clifford.*

L. C. J. What do you pleaſe to aſk my Lord *Clifford?*

L. *Ruſſel.* He hath known my Converſation for many Years.

L. *Clifford.* I always took my Lord to be a very worthy honeſt Man; I never ſaw any thing in his Converſation to make me believe otherwiſe.

L. *Ruſſel.* Mr. *Gore.*

Mr. *Luton Gore.* I have been acquainted with my Lord ſeveral Years, and converſed much with him; in all the Diſcourſe I had with him, I never heard him let any thing fall, that tended in the leaſt to any Riſing, or any thing like it: I took him to be one of the beſt Sons, one of the beſt Fathers, and one of the beſt Maſters, one of the beſt Huſbands, one of the beſt Friends, and one of the beſt Chriſtians we had. I know of no Diſcourſe concerning this Matter.

L. *Ruſſel.* Mr. *Spencer*, and Dr. *Fitz-Williams.*

Mr. *Spencer.* My Lord, I have known my Lord *Ruſſel* many Years, I have been many Months with him in his Houſe; I never ſaw any thing by him, but that he was a moſt virtuous and prudent Gentleman, and he had Prayers conſtantly twice a Day in his Houſe.

L. C. J. What, as to the general Converſation of his Life? My Lord aſks you, whether it hath been ſober?

Mr. *Spencer.* I never ſaw any thing but very good, very prudent, and very virtuous.

L. *Ruſſel.* What Company did you ſee uſed to come to me?

Mr. *Spencer.* I never ſaw any but his near Relations, or his own Family. I have the Honour to be related to the Family.

Then Dr. Fitz-Williams *ſtood up.*

L. *Ruſſel.* If it pleaſe you, Doctor, you have been at my Houſe ſeveral Times, give an Account of what you know of me.

Dr. *Fitz-Williams.* I have had the Knowledge of my Lord theſe fourteen Years, from the Time he was married to his preſent Lady, to whoſe Father, eminent for Loyalty, I had a Relation by Service; I have had Acquaintance with him both at *Stratton*, and *Southampton-Buildings*; and by all the Converſation I had with him, I eſteemed him a Man of that Virtue, that he could not be guilty of ſuch a Crime as the Conſpiracy he ſtands charged with.

L. C. J. My Lord, does your Lordſhip call any more Witneſſes?

L. *Ruſſel.* No, my Lord, I will be very ſhort. I ſhall declare to your Lordſhip, that I am one that have always had a Heart ſincerely loyal and affectionate to the King, and the Government, the beſt Government in the World. I pray as ſincerely for the King's happy and long Life as any Man alive; and for me to go about to raiſe a Rebellion, which I looked upon as ſo wicked and unpracticable, is unlikely. Beſides, if I had been inclined to it, by all the Obſervation I made in the Country, there was no Tendency to it. What ſome hot-headed People have done there, is another thing. A Rebellion can't be made now as it has been in former Times; we have few great Men. I was always for the Government, I never deſired any thing to be redreſſed, but in a parliamentary and legal Way. I have been always againſt Innovations, and all Irregularities whatſoever; and ſhall be as long as I live, whether it be ſooner or later. Gentlemen, I am now in your Hands eternally, my Honour, my Life, and all; and I hope the Heats and Animoſities that are amongſt you will not ſo bias you, as to make you in the leaſt inclined to find an innocent Man guilty. I call to witneſs Heaven and Earth, I never had a Deſign againſt the King's Life in my Life, nor never ſhall have. I think there is nothing proved againſt me at all. I am in your Hands. God direct you.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for High Treaſon, in conſpiring the Death of the King. The Overt-act that is laid to prove that Conſpiracy and Imagination by, is the aſſembling in Council to raiſe Arms againſt the King, and raiſe a Rebellion here. We have proved that to you by three Witneſſes. I ſhall endeavour as clearly as I can, to ſtate the Subſtance of the Evidence to you, of every one of them, as they have delivered it.

The firſt Witneſs, Colonel *Rumſey*, comes, and he tells you of a Meſſage he was ſent of to Mr. *Sheppard*'s Houſe to my Lord *Ruſſel*, with ſeveral other Perſons, who he was told would be there aſſembled together: And the Meſſage was to know what Readineſs they were in, what Reſolutions they were come to concerning the Riſing at *Taunton?* By this you do perceive, that this Conſpiracy had made ſome Progreſs, and was ripe to be put in Action. My Lord *Shafteſbury*, that had been a great Contriver in it, he had purſued it ſo far, as to be ready to riſe. This occaſioned the Meſſage from my Lord *Shafteſbury* to my Lord *Ruſſel*, and thoſe noble Perſons that were met at Mr *Sheppard*'s Houſe, to know what the Reſolution was concerning the Buſineſs of *Taunton*, which you have heard explained by an Undertaking of Mr. *Trenchard*'s: That the Anſwer was, they were diſappointed there, and they could not then be ready, and that my Lord *Shafteſbury* muſt be content. This Meſſage was delivered in Preſence of my Lord *Ruſſel*; the Meſſenger had notice my Lord *Ruſſel* was there; the Anſwer was given as from them all, That at preſent they could not be ready, becauſe of that Diſappointment. Colonel *Rumſey* went farther, and he ſwears there was a Diſcourſe concerning the ſurpriſing of the Guards; and the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong*, went to ſee what Poſture they were in, whether it were feaſible to ſurpriſe them, and they found them very remiſs; and that Account they brought back, as is proved to you by Mr. *Sheppard*, the other Witneſs, that it was a thing very feaſible. But to conclude with the Subſtance of Colonel *Rumſey*'s Evidence, he ſays, my Lord was privy to it, that he had Diſcourſe among the reſt of it, though my Lord was not a Man of ſo great Diſcourſe as the reſt, and did talk of a Riſing. He told you there was a Riſing determined to be on the 19th of *November* laſt, which is the Subſtance of Colonel *Rumſey*'s Evidence.

Gentlemen, the next Witneſs is Mr. *Sheppard*, and his Evidence was this: He ſwears that about *October* laſt, Mr. *Ferguſon* came to him of a Meſſage from the Duke of *Monmouth*, to let him know, that he and ſome other Perſons of Quality would be there that Night; that accordingly they did meet, and my Lord *Ruſſel* was there likewiſe; that they did deſire to be private, and his Servants were ſent away; and that he was the Man that did attend them. He ſwears there was a Diſcourſe concerning the Way and Method to ſeize the Guards; he goes ſo far, as to give an Account of the Return of the Errand the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armſtrong*, went upon, that it was feaſible, if they had Strength to do it. Then he went a little farther, and he told you there was a Paper read, that in his Evidence does not come up to my Lord *Ruſſel*; for he did not ſay my Lord *Ruſſel* was by, and I would willingly repeat nothing but what concerns the Priſoner. This therefore Colonel *Rumſey*, and Mr. *Sheppard*, agree in, that there was a Debate among them how to ſurpriſe the Guards, and whether that was feaſible; and Mr. *Sheppard* is poſitive as to the Return made upon the View.

The next Witneſs was my Lord *Howard:* He gives you an Account of many things, and many things that he tells you are by Hear-ſay. But I cannot but obſerve to you, that all this Hearſay is confirmed by theſe two poſitive Witneſſes, and their Oaths agree with him in it; for my Lord *Shafteſbury* told him of the Diſappointment he had met with from theſe noble Perſons that would not join with him; and then he went from my Lord *Shafteſbury* to the Duke of *Monmouth*, to expoſtulate with him about it, (for my Lord *Shafteſbury* then was ready to be in Action) and that the Duke ſaid he always told him he would not engage at that Time: This thing is confirmed to you by theſe two Witneſſes. Colonel *Rumſey* ſays, when he brought the Meſſage from my Lord *Shafteſbury*, the Anſwer was, They were not ready, my Lord muſt be contented.

Next he goes on with a Diſcourſe concerning my Lord *Shafteſbury*, (that does not immediately come up to the Priſoner at the Bar, but it manifeſts there was a Deſign at that Time) he had 10,000 briſk Boys (as he called them) ready to follow him upon the holding up his Finger: But it was thought not ſo prudent to begin it, unleſs they could join all their Forces: So you hear in this they were diſappointed; and partly by another Accident too, my Lord *Howard* had an Apprehenſion it might be diſcovered; that was upon the Proclamation that came out forbidding Bonfires, to prevent the ordinary Tumults that uſed to be upon thoſe Occaſions. Then my Lord *Howard* goes on, and comes particularly to my

Lord *Ruſſel*; for upon this Diſappointment, you find, my Lord *Shafteſbury* thought fit to be gone. But after that, the Deſign was not laid aſide; for you hear, they only told him all along, they could not be ready at that Time, but the Deſign went on ſtill to raiſe Arms, and then they took upon themſelves to conſult of the Methods of it; and for the carrying it on with the greater Secrecy, they choſe a ſelect Council of Six, which were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, Mr. *Hambden*, and Colonel *Sidney*. That accordingly they met at Mr. *Hambden*'s, (there was their firſt Meeting) and their Conſultation there was, how the Inſurrection ſhould be made, whether firſt in *London*, or whether firſt in the Country, or whether both in *London* and in the Country at one Time. They had ſome Debates among themſelves, that it was fitteſt firſt to be in the Country; for if the King ſhould ſend his Guards down to ſuppreſs them, then the City, that was then as well diſpoſed to riſe, would be without a Guard, and eaſily effect their Deſigns here.

Their next Meeting was at my Lord *Ruſſel*'s own Houſe, and there their Debates were ſtill about the ſame Matter, how to get in *Scotland* to their Aſſiſtance; and in order to that, they did intruſt Col. *Sidney*, one of their Council, to ſend a Meſſenger into *Scotland* for ſome Perſons to come hither, my Lord *Melvile*, Sir *Hugh Cambell*, and Sir *John Cockram*. Accordingly Col. *Sidney* ſends *Aaron Smith* (but this is only what Col. *Sidney* told my Lord afterwards, that he had done it); but you ſee the Fruit of it. Accordingly they are come to Town, and Sir *Hugh Cambell* is taken by a Meſſenger upon his Arrival; and he had been but four Days in Town, and he had changed his Lodging three times.

Now, Gentlemen, this is the Subſtance of the Evidence that hath been produced againſt my Lord *Ruſſel*. My Lord *Ruſſel* hath made ſeveral Objections, That he was accidentally at this Meeting at Mr. *Sheppard*'s Houſe, and came about other Buſineſs; but I muſt obſerve to you, that my Lord *Ruſſel* owned, that he came along with the Duke of *Monmouth*, and, I think, he ſaid, he went away with him too. You obſerve what Mr. *Sheppard*'s Evidence was: Mr. *Ferguſon* came to tell him the Duke of *Monmouth* would come; and accordingly the Duke of *Monmouth* did come, and brought his Companion along with him, which was my Lord *Ruſſel*; and certainly they that met upon ſo ſecret an Affair, would never have brought one that had not been concerned. Gentlemen, there are other Objections my Lord hath made, and thoſe are in Point of Law; but before I come to them, I would obſerve what he ſays to the ſecond Meeting. My Lord does not deny, but that he did meet both at Mr. *Hambden*'s Houſe, and my Lord's own: I think my Lord ſaid they did meet only to diſcourſe of News; and my Lord *Howard* being a Man of excellent Diſcourſe, they met for his Converſation. Gentlemen, you can't believe that this deſigned Meeting was for nothing; in this cloſe ſecret Meeting, that they had no Contrivance among them. You have heard the Witneſs, he ſwears poſitively what the Converſation was, and you ſee the Fruit of it, Sir *Hugh Cambell*'s coming to Town, and abſconding when it is diſcovered. Now my Lord *Ruſſel* inſiſts upon it, that admitting theſe Facts be proved upon him, they amount to no more than to a Conſpiracy to levy War, and that that is not Treaſon within the Statute of 25 *E.* 3. and if it be only within the Statute of the 13. of this King, then 'tis out of Time, that directs the Proſecution to be within ſix Months: The Law is plainly otherwiſe. The Statute of the 13th of this King I will not now inſiſt upon, though I believe if that be ſtrictly looked into, the Clauſe that ſays the Proſecution ſhall be within ſix Months, does not refer to Treaſon, but only to the other Offences that are highly puniſhable by that Statute. For the Proviſo runs thus:

13 Car. 2. **Provided always, that no Perſon be proſecuted for any of the Offences in this Act mentioned, other than ſuch as are made and declared to be High Treaſon, unleſs it be by Order of the King's Majeſty, his Heirs or Succeſſors, under his or their Sign Manual, or by Order of the Council Table of his Majeſty, his Heirs or Succeſſors, directed unto the Attorney General for the Time being, or ſome other Council learned to his Majeſty, his Heirs or Succeſſors, for the Time being: Nor ſhall any Perſon or Perſons, by virtue of this preſent Act, incur any the Penalties herein before mentioned, unleſs he or they be proſecuted within ſix Months next after the Offence committed, and indicted thereupon within three Months after ſuch Proſecution; any thing herein contained to the contrary notwithſtanding.**

This Word (Nor) is a Continuation of the former Sentence, and the Exception of High Treaſon will go through all, and except that out of the temporary Limitation of Treaſon: But this is High Treaſon within 25 *E.* 3. To conſpire to levy War, is an Overt-act to teſtify the Deſign of the Death of the King. And the Error of my Lord *Coke* hath poſſibly led my Lord into this Miſtake. But this, Gentlemen, hath been determined; it was reſolved by all the Judges in the Caſe of my Lord *Cobham*, 1 *Jac.* A Conſpiracy to levy War againſt the King's Perſon, (as this was a Conſpiracy to ſeize the Guards) what does that tend to but to ſeize the King? And that always hath been taken to be High Treaſon. But there are ſome things called levying of War in Law, that are not ſo directly againſt the King, as if a Number of Men go about to levy Men to overthrow all Incloſures, this by the generality of the Intent, and becauſe of the Conſequences, is accounted levying War againſt the King. A Conſpiracy therefore to levy ſuch a War, which by Conſtruction only is againſt the King, perhaps that may not be ſuch an Overt-act, as to teſtify the Imagination of the Death of the King; but other Conſpiracies to raiſe War againſt the King have always ſo been taken. 'Tis the Reſolution of all the Judges in my Lord *Dyer*'s Reports, the Caſe of Dr. *Story*: A Conſpiracy to invite a foreign Prince to make an Invaſion, tho' no Invaſion follow, is an Overt-act to prove the conſpiring the Death of the King; and as it has been ſo taken, ſo it hath been practiſed but of late Days. In the King's Bench I take it the Indictment againſt *Plunket* that was hanged, he was indicted for conſpiring againſt the Life of the King, and his Charge went no farther than for raiſing of Arms, and inviting the *French* King in, and he ſuffered. This is acknowledged by my Lord *Coke*; for he himſelf ſaid in the Paragraph before that out of which this Advice to my Lord *Ruſſel* is extracted, that a Conſpiracy to invite a foreign Prince to invade the Kingdom, is a Conſpiracy againſt the Life of the King. And in the next Paragraph, he ſays an Overt-Act of one Treaſon cannot be an Overt-Act of another Treaſon. But conſtant Practice is againſt him in that: For what is more common than to indict a Man for imagining the Death of the King, and to aſſign the Overt-Act in a Conſpiracy to raiſe Arms againſt the King? And ſometimes they go on and ſay, Did levy War againſt the King. Now by my Lord *Coke*'s Rule, levying War, unleſs the Indictment be particular for that, is not an Overt-Act for the compaſſing the Death of the King; but the contrary hath been reſolved by all the Judges, in the Caſe of Sir *Henry Vane*, and it is the conſtant Practice to lay it ſo in Indictments. It would be a ſtrange Conſtruction, if this ſhould not be High Treaſon. 'Tis agreed by every body, to take the King Priſoner, to ſeize the King, that is a compaſſing of the Death of the King; and to ſit in Council to conſpire to effect that, that is an Overt-Act of the Imagination of the Death of the King: Now no Man can diſtinguiſh this Caſe from that: And this Conſultation amounted to all this, for plainly thither it tended. The Conſultation was to ſeize upon the King's Guards; that could have no other Stop but to ſeize upon the King's Perſon, and bring him into their Power. As to the killing of the King, I am apt to think that was below the Honour of the Priſoner at the Bar; but this is equal Treaſon: If they deſigned only to bring the King into their Power, till he had conſented to ſuch things as ſhould be moved in Parliament, 'tis equally Treaſon as if they had agreed directly to aſſaſſinate him. Therefore I think there is nothing for you to conſider, but to ſee that the Fact be fully proved; and I ſee nothing that hath been ſaid by my Lord *Ruſſel*, that does invalidate our Evidence. He hath produced ſeveral Witneſſes, Perſons of Honour; my Lord *Angleſey* he tells you of a Diſcourſe my Lord *Howard* had with my Lord of *Bedford*; that he told my Lord of *Bedford* that he needed not to fear, for he had a wiſe and underſtanding Son, and could not think he ſhould be guilty of any ſuch thing as was laid to his Charge. This is brought to invalidate my Lord *Howard*'s Teſtimony. Gentlemen, do but obſerve, my Lord *Howard* was as deep in as any of them, and was not then diſcovered: Is it likely, that my Lord *Howard*, that lay hid, ſhould diſcover to my Lord of *Bedford*, that there was a Conſpiracy to raiſe Arms, and that he was in it? This would have been an Aſperſion upon my Lord of *Bedford*, that any ſuch thing ſhould have been ſaid.

Mr. *Edward Howard* is the next, and he proves, That my Lord *Howard* uſed ſolemn Proteſtations, that he knew nothing of this Conſpiracy. I did obſerve that worthy Gentleman in the Beginning of his Diſcourſe (for it was pretty long) ſaid firſt, that he had been ſeveral times tempting my Lord *Howard* to come over and be ſerviceable to the King; and if he knew any thing, that he would come and confeſs it. Why, Gentlemen, Mr. *Howard*, that had come to him upon theſe Errands formerly, and had thought he had gained him, I conceive you do not wonder if my Lord *Howard* did not reveal himſelf to him, who preſently would have diſcovered it, for for that Errand he came. But if my Lord had had a Deſign to have come in and ſaved his Life, he would have made his Submiſſion voluntarily, and made his Diſcovery: But my Lord tells nothing till he is pinched in his Conſcience, and confounded with the Guilt, (being then in Cuſtody) and then he tells the whole Truth, that which you have heard this Day.

Gentlemen, this hath been all that hath been objected againſt the Witneſſes, except what is ſaid by Dr. *Burnet*; and, he ſays, that my Lord *Howard* declared to him, that he believed there was no Plot, and laughed at it. Why, Gentlemen, the Dr. would take it ill to be thought a Perſon fit to be intruſted with the Diſcovery of this; therefore what he ſaid to him ſignifies nothing, for 'tis no more than this, that he did not diſcover it to the Doctor.

But the laſt Objection (which I ſee there has been a great many Perſons of Honour and Quality called to) is, that 'tis not likely my Lord *Ruſſel* ſhould be guilty of any thing of this kind, being a Man of that Honour, Virtue, and ſo little blameable in his whole Converſation. I do confeſs, Gentlemen, this is a thing that hath Weight in it. But conſider, on the other hand, my Lord *Ruſſel* is but a Man, and hath his human Frailties about him. Men fall by ſeveral Temptations; ſome out of Revenge, ſome by Malice, fall into ſuch Offences as theſe are: My Lord *Ruſſel* is not of that Temper, and therefore may-be theſe are not the Ingredients here. But, Gentlemen, there is another great and dangerous Temptation that attends People in his Circumſtances, whether it be Pride or Ambition, or the cruel Snare of Popularity, being cried up as a Patron of Liberty. This hath been a dangerous Temptation to many, and many Perſons of Virtue have fallen into it, and 'tis the only way to tempt Perſons of Virtue, and the Devil knew it; for he that tempted the Pattern of Virtue, ſhewed him all the Kingdoms of the World, and ſaid, *All theſe will I give thee, if thou wilt fall down, and worſhip me.* Tho' he be a Perſon of Virtue, yet it does not follow, but his Virtue may have ſome weak Part in him; and I am afraid, theſe Temptations have prevailed upon my Lord: For I cannot give myſelf any Colour of Objection, to diſbelieve all theſe Witneſſes who give in their Teſtimony. I ſee no Contradiction, no Correſpondence, no Contrivance at all between them. You have plain Oaths before you, and I hope you will conſider the Weight of them, and the great Conſequence that did attend this Caſe, the Overthrow of the beſt Government in the World, and the beſt and moſt unſpotted Religion, which muſt needs have ſuffered; the greateſt Liberty, and the greateſt Security for Property, that ever was in any Nation, bounded every way by the Rules of Law, and thoſe kept ſacred. I hope you will conſider the Weight of this Evidence, and conſider the Conſequences ſuch a Conſpiracy, if it had taken Effect, might have had. And ſo I leave it to your Conſideration upon the Evidence you have heard.

Mr. Serj. *Jefferies.* My Lord, and you Gentlemen of the Jury, This Cauſe hath detained your Lordſhip a long time, by reaſon of ſo many Witneſſes being called, and the Length of the Defence made by the Priſoner at the Bar; and if it had not been for the Length, I would not have injured your Patience by ſaying any thing, Mr Solicitor having taken ſo much Pains in it. It is a Duty incumbent upon me, under the Circumſtances I now ſtand, to ſee if any thing hath been omitted, that hath not been obſerved to you; and I ſhall detain you with very few Words.

Gentlemen, you muſt give me Leave to tell you, 'tis a Caſe of great Conſequence, of great Conſequence to that noble Perſon, that now is at the Bar, as well as to the King; for it is not deſired by the King, nor by his Counſel, to have you influenced in this Matter by any thing but by the Truth, and what Evidence you have received. You are not to be moved by Compaſſion or Pity; the Oath you have taken is to go according to your Evidence; and you are not to be moved by any Inſinuations that are offered by us for the King, nor by any Inſinuations by the Priſoner at the Bar; but the Truth, according to the Teſtimony given, muſt be your Guide. How far the Law will affect this Queſtion, that we are not to apply to you; for that we are to apply ourſelves to the Court, (they are the Judges in point of Law) who will take ſo much Care in their Directions to you, that you may be very well ſatisfied you will not eaſily be led into Error. For the Inſtances that have been put, I could put ſeveral others; but I will take Notice only of one thing, that that noble Perſon at the Bar ſeems to object. Gentlemen, it is not neceſſary there ſhould be two Witneſſes to the ſelf-ſame Fact at the ſelf-ſame Time; but if there be two Witneſſes tending to the ſelf-ſame Fact, tho' it was at ſeveral Times, and upon ſeveral Occaſions, they will be in point of Law two Witneſſes, which are neceſſary to convict a Man for High Treaſon. Gentlemen, I make no Doubt this thing is known to you all, not only by the Judgment of all the Judges in *England*, but the Judgment of the Lords in Parliament, when I doubt not the Priſoner at the Bar did attend in the Caſe of my Lord *Stafford*, wherein one Witneſs gave an Account of a Conſpiracy in *England*, *Turbervile* of another in *France*; and by the Opinion of all my Lords the Judges approved in Parliament, that was enough, and he was convicted.

The Queſtion is, Whether we have ſufficiently proved this Matter? Gentlemen, I muſt tell you, we rake no Gaols, nor bring any profligate Perſons, Perſons that wanted Faith or Credit before this Time. I muſt tell you, that notwithſtanding the fair Notice that hath been given to the Priſoner at the Bar, (that you ſee he hath taken an Advantage of it, he hath given an Account of a private Converſation, which my Lord *Howard* had before that noble Perſon that was Witneſs, ſince he was taken) he has not given you in any Proof hitherto; nay, I ſay, he has not pretended any thing in the World: Wherefore you, Gentlemen, that are upon your Oaths, ſhould take it upon your Conſciences, that two Men, againſt whom there is no Objection, ſhould come to damn their own Souls to take away the Life of this Gentleman, when there is no Quarrel, no Temptation, wherefore theſe Gentlemen ſhould come in the Face of a Court of Juſtice, in the Face of ſuch an Auditory, without Reſpect to that infinite Being, to whom they appeal for Confirmation of the Truth of their Teſtimony: And if they had the Faith of Men or Chriſtians, they muſt neceſſarily conclude, that if they did ſwear to take away a Man's Life that was innocent, God would ſink them down preſently into Hell.

Gentlemen, in the next Place, I muſt acquaint you, that the firſt Witneſs, Colonel *Rumſey*, it is apparent, that he was taken Notice of by the Priſoner as a Man fit to be truſted; he was engaged by my Lord *Shafteſbury*: But, ſays he, would any Man believe, that that Man that had received ſo many Marks of the King's Favour, both in Advantage to his Eſtate, his Honour, and Perſon, could be ever contriving ſuch an helliſh Deſign as this? Gentlemen, if you will argue from ſuch uncertain Conjectures, then all Criminals will come off. Who ſhould think that my Lord of *Eſſex*, who had been advanced ſo much in his Eſtate and Honour, ſhould be guilty of ſuch deſperate Things! which had he not been conſcious of, he would ſcarcely have brought himſelf to that untimely End, to avoid the Methods of publick Juſtice. Colonel *Rumſey* tells you, my Lord *Shafteſbury* was concerned in this Conſpiracy. I am ſorry to find, that there have been ſo many of the Nobility of this Land, that have lived ſo happily under the benign Influence of a gracious Prince, ſhould make ſo ill Returns. Gentlemen, I muſt appeal to you, Whether in your Obſervation you found Colonel *Rumſey* to be over-haſty, and an over-zealous Witneſs? He did not come as if he came in Spite to the Priſoner at the Bar; you found how we were forced to pump out every thing; but after he had been preſſed over and over again, then he came to it: So that I obſerve to you, that he was an unwilling Witneſs.

Gentlemen, give me Leave to obſerve to you, the Priſoner at the Bar, before ſuch time as Mr. *Sheppard* came up and gave Evidence againſt him, ſays he, I came only by Accident, only to taſte a Parcel of Wine. Mr. *Sheppard*, when he comes up, he tells you, there was no ſuch Deſign. *Ferguſon*, that was the Perſon he kept Company with; the Reverend Dean, and the reſt of the Clergy of the Church of *England*, they were not fit to be truſted with it; but this Independent Parſon, *Ferguſon*, he gives Notice of the Coming of theſe Perſons; and in purſuance of this Notice, they all come, they come late in the Evening, not in the Poſture and Quality they uſed to go; for you find they had not ſo much as a Coach. Is it probable they came to taſte Wine? Wherefore did they go up into a Room? Wherefore did they order Mr. *Sheppard*, that none of the Boys ſhould come up, but that the Maſter muſt fetch the Sugar and Wine himſelf? Wherefore you may perceive the Action they were upon; there were only to be ſuch Perſons as had an Affection for ſuch a Cauſe. You find, purſuant to what Colonel *Rumſey* ſays, that there was a Direction to take a View of the Guards, that Sir *Thomas Armſtrong* comes back, and makes this Report: Says he, I have taken Notice, they are in ſuch an idle careleſs Poſture, that it is not impoſſible to ſurpriſe them. This Mr. *Sheppard* he does not come, nor does he appear to you to come here out of any vindictive Humour, to do the Priſoner at the Bar any Hurt.

In the next place, we have my Lord *Howard*; he comes and poſitively tells you, after he had given an Account, (for you obſerve there were two Parts to be acted in this horrid Tragedy; there was firſt the ſcoundrel Sort of People were to be concerned to take away the Life of the King and the Duke, the great Perſons were to head the Party in the Riſing) they put themſelves in proper Poſtures, each of them conſenting to ſomething of the Surprize, inaſmuch as you obſerve, that Sir *Thomas Armſtrong*, and ſome other Perſons, might not be truſted. They come and reſolve themſelves out of a general Council, and they meet in a particular Council of ſix, looking upon themſelves as the Heads of the Party: And I muſt tell you, many of them, (we live not in an Age of ſuch Obſcurity, but we know them) how fond have they been of the Applauſe of the People! As that Perſon encouraged himſelf Yeſterday, they were *Liberatores Patriæ*, that could murder the King and the Duke.

My Lord, I muſt take Notice, that this noble Lord is known to have an Intimacy with him; you obſerve with how much Tenderneſs he is pleaſed to deliver himſelf, how carefully he reports the Debates of the particular Conſults of the Perſons to be intruſted in the Management; he tells you, that noble Lord, the Priſoner at the Bar, was pitched upon, and *Algernon Sidney*, a Man famous about the Town; for what? To call in Parties from ſome of his Majeſty's other Dominions, Perſons we know ripe enough for Rebellion, to aſſiſt. Purſuant to this, you find Perſons ſent of a Meſſage for ſome to come over, whereof ſome are in hold: So that for all dark and obſcure ſort of Matters, nothing can be brought better to Light, than this, of taking all Matters together, with the concurring Circumſtances of Time and Place.

Gentlemen, I muſt confeſs this noble Lord hath given an Account by ſeveral honourable Perſons of his Converſation, which is a very eaſy Matter. Do you think, if any Man had a Deſign to raiſe a Rebellion againſt the Crown, that he would talk of it to the Reverend Divines, and the noble Lords, that are known to be of Integrity to the Crown? Do you think the Gentleman at the Bar would have ſo little Concern for his own Life, to make this Diſcourſe his ordinary Converſation? No, it muſt be a particular Conſult of ſix, that muſt be entruſted with this. I tell you, 'tis not the Divines of the Church of *England*, but an Independent Divine, that is to be concerned in this; they muſt be Perſons of their own Complexion and Humour: For Men will apply themſelves to proper Inſtruments.

Gentlemen, I would not labour in this Caſe; for far be it from any Man to endeavour to take away the Life of the Innocent! And whereas that noble Lord ſays, he hath a virtuous good Lady, he hath many Children, he hath Virtue and Honour he puts into the Scale; Gentlemen, I muſt tell you, on the other Side, you have Conſciences, Religion; you have a Prince, and a merciful one too; conſider the Life of your Prince, the Life of his Poſterity, the Conſequences that would have attended, if this Villainy had taken Effect. What would have become of your Lives and Religion? What would have become of that Religion we have been ſo fond of preſerving? Gentlemen, I muſt put theſe things home upon your Conſciences. I know you will remember the horrid Murder of the moſt pious Prince the Martyr, King *Charles* the Firſt. How far the Practices of thoſe Perſons have influenced the ſeveral Puniſhments ſince, is too great a Secret for me to examine. But now I ſay, you have the Life of a merciful King, you have a Religion, that every honeſt Man ought to ſtand by, and I am ſure every loyal Man will venture his Life and Fortune for. You have your Wives and Children. Let not the Greatneſs of any Man corrupt you; but diſcharge your Conſciences both to God and the King, and to your Poſterity.

L. C. J. Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted before you of High-Treaſon, in compaſſing and deſigning the Death of the King, and in declaring of it by Overt-acts, endeavouring to raiſe Inſurrections, and popular Commotions, in the Kingdom here. To this he hath pleaded, Not guilty. You have heard the Evidence, that hath been againſt him; it hath been at large repeated by the King's Counſel, which will take off a great deal of my Trouble in repeating it to you again. I know you cannot but take Notice of it, and remember it, it having been ſtated twice by two of the King's Counſel to you; 'tis long, and you ſee what the Parties here have proved. There is firſt of all Colonel *Rumſey*, he does atteſt a Meeting at Mr. *Sheppard*'s Houſe, and you hear to what Purpoſe he ſays it was; the Meſſage that he brought, and the Return he had; it was to enquire concerning a Riſing at *Taunton*; and that he had in Return to my Lord *Shafteſbury* was, that Mr. *Trenchard* had failed them, and my Lord muſt be contented; for it could not be that time. You hear, that he does ſay, that they did deſign a Riſing; he ſaith there was a Riſing deſigned in *November*, I think he ſaith the ſeventeenth, upon the Day of Queen *Elizabeth*'s Birth. You hear he does ſay, there was at that Meeting ſome Diſcourſe concerning inſpecting the King's Guards, and ſeeing how they kept themſelves, and whether they might be ſurpriſed; and this, he ſays, was all in order to a Riſing. He ſays, that at this my Lord *Ruſſel* was preſent. Mr. *Sheppard* does ſay, that my Lord *Ruſſel* was there; that he came into this Meeting with the Duke of *Monmoath*, and he did go away with the Duke of *Monmouth* as he believes. He ſays, there was ſome Diſcourſe of a Riſing or Inſurrection, that was to be procured within the Kingdom; but he does not tell you the Particulars of any thing, he himſelf does not. My Lord *Howard* afterwards does come and tell you of a great Diſcourſe he had with my Lord *Shaftesbury*, in order to a Riſing in the City of *London*; and my Lord *Shaftesbury* did value himſelf mightily upon 10,000 Men he hoped to raiſe; and a great deal of Diſcourſe he had with my Lord *Shaftesbury*. This he does, by way of Inducement, to what he ſays concerning my Lord *Ruſſel*. The Evidence againſt him is ſome Conſults, that there were by ſix of them, who took upon them, as he ſays, to be a Council for the Management of the Inſurrection, that was to be procured in this Kingdom. He inſtances in two, that were for this Purpoſe, the one of them at Mr. *Hambden*'s Houſe, the other at my Lord *Ruſſel*'s Houſe. And he tells you at theſe Meetings, there was ſome Diſcourſe of providing

Treaſure, and of providing Arms; but they came to no Reſult in theſe Things. He tells you, that there was a Deſign to ſend for ſome of the Kingdom of *Scotland*, that might join with them in this thing. And this is, upon the Matter, the Subſtance of the Evidence, that hath been at large declared to you by the King's Counſel, and what you have heard. Now, Gentlemen, I muſt tell you, ſome things it lies upon us to direct you in.

My Lord excepts to theſe Witneſſes, becauſe they are concerned, by their own ſhewing, in this Deſign: If there were any, I did direct (ſome of you might hear me) Yeſterday, that that was no ſufficient Exception againſt a Man's being an Evidence in the Caſe of Treaſon, that he himſelf was concerned in it; they are the moſt proper Perſons to be Evidence, none being able to detect ſuch Counſels but them. You have heard my Lord *Ruſſel*'s Witneſſes, that he hath brought concerning them, and concerning his own Integrity and Courſe of Life, how it has been ſober and civil, with a great Reſpect to Religion, as theſe Gentlemen do all teſtify. Now the Queſtion before you will be, Whether upon this whole Matter you do believe my Lord *Ruſſel* had any Deſign upon the King's life, to deſtroy the King, or take away his Life; for that is the material Part here. 'Tis uſed and given you (by the King's Counſel) as an Evidence of this, that he did conſpire to raiſe an Inſurrection, and to cauſe a Riſing of the People, to make as it were a Rebellion within the Nation, and to ſurpriſe the King's Guards, which, ſay they, can have no other End, but to ſeize and deſtroy the King; and 'tis a great Evidence (if my Lord *Ruſſel* did deſign to ſeize the King's Guards, and make an Inſurrection in the Kingdom) of a Deſign to ſurpriſe the King's Perſon. It muſt be left to you upon the whole Matter: You have not Evidence in this Caſe as there was in the other Matter, that was tried in the Morning, or Yeſterday, againſt the Conſpirators to kill the King at the *Rye*. There was a direct Evidence of a Conſult to kill the King, that is not given you in this Caſe: This is an Act of contriving Rebellion, and an Inſurrection within the Kingdom, and to ſeize his Guards, which is urged an Evidence, and ſurely is in itſelf an Evidence, to ſeize and deſtroy the King.

Upon this whole Matter, this is left to you. If you believe the Priſoner at the Bar to have conſpired the Death of the King, and in order to that, to have had theſe Conſults, that theſe Witneſſes ſpeak of, then you muſt find him Guilty of this Treaſon that is laid to his Charge.

Then the Court adjourned till Four o'Clock in the Afternoon, when the Jury brought the ſaid Lord Ruſſel *in Guilty of the ſaid High Treaſon.*

CXX. *The Trial of* JOHN ROUSE *, *at the* Old Baily, *for* High Treaſon, July 13. 1683.

JOHN ROUSE, and *William Blague*, being ſet to the Bar, and having held up their Hands, the Indictment was read, as follows:

London. The Jurors for our Sovereign Lord the King, upon their ‘ Oaths, preſent, That *John Rouſe*, late of *London*, Gent. and *William Blague*, late of *London*, Gent. as falſe Traitors, againſt the moſt Illuſtrious and Excellent Prince, our Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, their natural Lord; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil; and the true Duty, and natural Obedience, which true and faithful Subjects of our Sovereign Lord the King, towards him our ſaid Lord the King, do bear, and of Right ought to bear, wholly withdrawing; and with their whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb, and War and Rebellion againſt our ſaid Lord the King to move and ſtir up, and the Government of our ſaid Lord the King within this Kingdom of *England* to ſubvert, and our ſaid Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of *England* to put down and deprive, and our ſaid Lord the King to Death and final Deſtruction to bring and put, the ſecond Day of *March*, in the Year of the Reign of our Sovereign Lord *Charles* II. King of *England*, &c. the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Pariſh of *St. Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, maliciouſly and traiterouſly, with divers other Traitors, to the Jurors aforeſaid unknown, did conſpire, compaſs, imagine and intend our ſaid Lord the King their Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of *England* to deprive and throw down; but alſo our ſaid Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of *England* to change, alter, and wholly to ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid Lord the King through his whole Kingdom of *England* to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid Lord the King to move, and ſtir up within this Kingdom of *England*; and to fulfil and perfect the ſaid moſt horrible Treaſons, and traiterous Conſpiracies, Imaginations and Purpoſes aforeſaid, the ſaid *John Rouſe*, and *William Blague*, then and there, and divers other Days and Times, as well before as after, as falſe Traitors, maliciouſly, traiterouſly and adviſedly, they did aſſemble, meet together, and conſult between themſelves, and with the ſaid other Traitors, to the Jurors aforeſaid unknown, and with them did treat of the taking and ſeizing the Tower of *London*, and of and for the executing and perfecting their Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid: And that they the ſaid *John Rouſe*, and *William Blague*, as falſe Traitors, maliciouſly traiterouſly and adviſedly, then and there, and divers other Days and Times, as well before as after, they and either of them did undertake, and to the ſaid other Traitors did promiſe for themſelves to be aiding and aſſiſting in the Execution of the Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and in providing Arms and armed Men to fulfil and perfect the ſaid Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid. And the ſaid moſt wicked Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, to fulfil and bring to paſs, they the ſaid *John Rouſe*, and *William Blague*, as falſe Traitors, maliciouſly, traiterouſly and adviſedly, then and there did procure and prepare Arms, to wit, Blunderbuſſes, Carbines and Piſtols, againſt the Duty of their Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statutes in that Caſe made and provided, *&c.*’

Cl. of Cr. What ſayeſt thou, *John Rouſe?* Art thou guilty of this High Treaſon, whereof thou ſtandeſt indicted, or Not guilty?

Rouſe. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Rouſe. By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance. What ſayeſt thou, *William Blague?* Art thou guilty of this High Treaſon, whereof thou ſtandeſt indicted, or Not guilty?

Capt. *Blague.* Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Capt. *Blague.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Friday, July 13. *in the Afternoon, the Court being met, and Proclamation made,*

Cl. of Cr. Set *John Rouſe*, and *William Bague*, to the Bar. You the Priſoners at the Bar, theſe good Men, that you hear called, are to paſs between our Sovereign Lord the King upon Trial of your ſeveral Lives and Deaths; if you will challenge them, or any of them, your Time is, as they come to the Book to be ſworn, before they are ſworn. *Nicolas Charlton.*

Capt. *Blague.* I hope I ſhall only ſpeak for myſelf.

L. C. J. Yes, you ſhall be heard.

Sir *Francis Pemberton.*

Rouſe. My Lord, I have had no Liberty ſo much as ſending for my Wife. *Monday* Morning they gave me Notice of Trial; but I have had no Advantage of that Notice: I preſumed it is meant we ſhould have the Liberty of Subjects: But though Notice was then given, yet I had not the Liberty of ſending for any body till *Wedneſday*: It was eight or nine of the Clock on *Wedneſday* Night, that one came and told me, I ſhould have no Liberty of Counſel, unleſs I had it from the Court; and Yeſterday Morning I found, that Captain *Blague* and I were joined in one Indictment, which alters the Caſe, with Submiſſion to the Court. What Time I have had for Trial has been ſo ſhort, I have not been able to get my Witneſſes ready. I deſire nothing but as an *Engliſhman.*

L. C. J. As an *Engliſhman!* You can demand no Time to prepare for Trial; for thoſe that will commit Crimes, they muſt be ready to anſwer for them, and defend themſelves. 'Tis Matter of Fact you are charged with; you knew long ago what you were to be tried for; for you were taken up, and charged with High Treaſon. You might then reaſonably conſider what kind of Evidence would be againſt you: If you be an innocent Perſon, you may defend yourſelf without Queſtion: But if you have done an ill thing, the Law does not deſign to give you Time to ſhelter yourſelf under any Subterfuge, or make any Excuſe, or to prepare any Witneſſes to teſtify an untrue thing for you.

Rouſe. My Lord, I only beg a little Time, I don't deſign to make any Evaſion. That I am innocent, I thank God I am.

L. C. J. We can't give you any farther Time, unleſs the King pleaſes; we are bound to try thoſe he brings before us.

Mr. Serj. *Jeff.* Becauſe Captain *Blague* does not deſire to be joined to the other; we that are for the King are contented, that *Rouſe* be tried firſt.

Then Captain Blague *was taken away, and after ſeveral Perſons challenged by* Rouſe, *the Jury that were ſworn, were,*

Jurors.

Robert Beddingfield,
John Pelling,
William Windbury,
Theophilus Man,
John Short, ſenior,
Thomas Nicholas,
Richard Hoare,
Thomas Barnes,
Henry Robbins,
Henry Kempe,
Edward Raddiſh,
Edward Kempe.

Cl. of Cr. John Rouſe, Hold up thy Hand. You of the Jury, look upon the Priſoner, and hearken to his Cauſe; he ſtands indicted,—*Prout antea* to his Indictment *Mutatis mutandis*; upon this Indictment, he hath been arraigned, and thereunto pleaded *Not guilty*; and for his Trial, put himſelf upon his Country, which Country you are; your Charge is to inquire, *&c.*

Mr. *Jones.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for High Treaſon, in conſpiring the Death of the King; and in order thereunto, conſulting how to ſeize the Tower; and in providing of Arms, in order to deſtroy the King, and ſubvert the Government: If we prove it upon him, you are to find him guilty.

Mr. Serj. *Jeff.* The Priſoner at the Bar was (as you have been acquainted) in that horrid Conſpiracy, whereof ſeveral of the Conſpirators have been brought to Trial, and received a Verdict ſurely according to Evidence. The Priſoner at the Bar did bear a Proportion among the reſt. It does occur to your Memories, there were ſeveral Undertakers, that undertook ſeveral Stations; ſome whereof were to undertake the blackeſt Part of this horrid Villainy, by the taking off the King and his Royal Highneſs his Brother; others (in order to the ſame Deſign) were to ſeize upon the King's Guards, and ſo to deprive him of all manner of Defence whatſoever; and to prevent all Perſons to make any Defence againſt them, as you heard, there was another Part to be acted; therefore the Town was to be divided into ſeveral Diviſions; I think there were twenty; but the moſt numerous and beneficial Parts were thought to be about *Wapping*. A particular Part of the Evidence was, That the Tower was to be ſeized, and the King's Arms there; I know you obſerved, that they took Notice of a particular Place of the Tower, that was moſt capable of Acceſs. This *Rouſe* is a Gentleman very well known, 'tis not the firſt time he hath been at this Bar: He was here at a time when the common Juſtice of the Nation could not be obtained in this Place, inſomuch that the Judges who came to execute Juſtice, had more Reaſon to fear being executed upon the Bench, than the Priſoner at the Bar. It may eaſily appear how far Mr. *Rouſe* was concerned, (I don't love to aggravate Matters, he has Crimes enough) he was reckoned Paymaſter to this Rabble, he was to take care to manage thoſe Perſons that were to ſeize upon the Tower. He is a Man of great Skill in that Subject, a Doctrine wherein he was well tutored under a Lord you heard mentioned this Morning; but he is in his Grave, and ſo I ſhall ſay no more of him. We ſhall give you an Account of a Deſign he had how to compaſs this Buſineſs. *Black-heath* was looked upon as a very convenient Place, where there was to be a Golden Ball; for which the Seamen were to play in great Numbers, and he that won the Prize was to have the Golden Ball; but his Eye was upon the Tower all this while. He thought to allure theſe ſilly Seamen by the Advantage of the honourable winning of this Ball; and when they were freighted with the Succeſs of this Meeting, then it was proper to attack the Tower. We ſhall prove the other Priſoner, that was at the Bar, engaged with this Priſoner at the Bar. We ſhall not only prove this, but that Mr. *Rouſe* hath been always of an Inclination againſt the Government. We ſhall call you Witneſſes, that he hath undertaken to diſpute by what Authority the King comes to govern in *England*; that he hath ſaid, *he had forfeited his Government*; that he told an ordinary Miſcreant, one of his Levellers, *that he had as much Right to the Crown as he had*. My Lord, if we prove this Matter to your Lordſhip, and the Gentlemen of the Jury, it will be high time for us to endeavour to preſerve the Crown upon that Royal Head, upon which all loyal Men deſire it ſhould flouriſh as long as the Sun and Moon endure.

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* Burnet's Hiſt. of his Own Times, *Vol.* I. *p.* 559.

Mr. *Burton*. Call *Thomas Leigh*. [*Who was ſworn.*

Mr. *Jones*. Pray give us an Account what you know concerning Mr. *Rouſe*.

Mr. *North*. Of any Deſign againſt the King, and providing Arms.

Rouſe. If you pleaſe, my Lord, one Word before he ſpeaks; I have an Exception againſt him. I wonder with what Confidence you can look in my Face at this time?

King's Counſel. Nay, nay, ſpeak to the Court.

Rouſe. My Lord, he is a Perſon, that before he was taken up, was ſwore by two Perſons to have a Hand in the Plot; one was Mr. *Keeling*, the other Mr. *How* of *Old-ſtreet*; and then being taken up, and conſcious to himſelf, that he was guilty of ſuch notorious Crimes, and knowing I was pretty well acquainted with him, he was deadly afraid I ſhould come and ſwear againſt him, and thereupon he took the Boldneſs to ſwear againſt me firſt.

Mr. *North*. My Lord, he hath offered nothing of Objection.

Rouſe. I ſuppoſe, with Submiſſion to the Court, without he have his Pardon, he is no Evidence in this Caſe.

Mr. Serj. *Jeff*. Come, tell us all you know.

Mr. *Leigh*. If it pleaſe you, my Lord, I have been concerned in this Conſpiracy, I know ſomething of it; but I believe Mr. *Rouſe* knows a great deal more. Mr. *Rouſe* takes me to the *King's-head* Tavern in *Swithin*'s *Alley*, where after ſome time, Mr. *Goodenough* came, where there was a Club of Men that were in the Conſpiracy. I had ſeen Mr. *Goodenough* before; he acquainted me, that there was an Apprehenſion our *Rights* and *Privileges* were invaded, and it was time to look to ourſelves; for Popery was deſigned, and *Arbitrary Power*; and therefore he deſired to know, Whether I would engage in that Affair to prevent it? And withal he told me, the City of *London* and *Middleſex* was divided in twenty Parts; and he aſked me to engage in one Part. I told him, my Acquaintance did not lie where I lived; but I would get a Part where my Acquaintance was. I acquainted Mr. *Rouſe* and Mr. *Goodenough* what Men I had ſpoke to. Mr. *Goodenough* told me, the Deſign was to ſet up the Duke of *Monmouth*, and kill the King and the Duke of *York*; but that all Parties muſt not know of it: But that we muſt tell ſome People, here was like to be a foreign Invaſion, and aſk them, What Readineſs they were in? And if we found they were like to be compliant in that, then we might diſcourſe with them about the other Matter. I diſcourſed with ſeveral Men about this Affair: And he told me, the Lord Mayor and Aldermen were to be killed immediately, (eſpecially the preſent Lord Mayor, Sir *John Moore*) and their Houſes plundered, and there would be Riches enough, and that would help to maintain the Army; and we went on further in this Diſcourſe. Then I acquainted Mr. *Rouſe* with this Buſineſs, but he knew of it before; and he did tell me, he could provide Arms for an hundred Men, and ſaid, Nothing was to be done unleſs the King was ſeized; ſaying, We remember ſince *Forty-One* the King went and ſet up his Standard; therefore (ſays he) we will ſeize them, that they ſhall not ſet up their Standard. But (ſays he) I am for ſeizing them, but not for ſhedding their Blood. Mr. *Rouſe* went off with that Diſcourſe; ſays he, I muſt ſpeak with Mr. *Goodenough*, and ſome of thoſe that are principally concerned. Mr. *Rouſe* acquainted me, that it was a very convenient thing to have a Ball played upon *Black-Heath*, and to that End we muſt ſpeak to ſome Sea Captains; and (ſays he) I will engage Ten, and they ſhall manage that Affair, and he that wins the Ball take it. But when they have ſo done, every Captain ſhall take his Party, and tell them, they have other Work; and then go with Long-boats and Arms, and ſeize the Tower. I acquainted Mr. *Goodenough* with this, and Mr. *Goodenough* aſked me the Charge of the Golden Ball. Mr. *Rouſe* had told me, it would be Ten or a Dozen Pounds. Mr. *Goodenough* ſaid, if it was Forty Pounds he would be at the Charge of it all. Several ſuch Diſcourſes Mr. *Rouſe* hath, in my Hearing, ſpoke to ſeveral Men at the *King*'s-*Head* Tavern. I underſtood I was ſworn againſt; I heard of it at the *King*'s-*Head* Tavern, in his Company and Mr. *Goodenough*'s. Mr. *Rouſe* directed me to go to the *Sun* Tavern near *Moregate*, and he would come to me; and there Mr. *Rouſe* and Mr. *Goodenough* came to me; and Mr. *Rouſe* told me, I ſhould lie at his Houſe. Mr. *Rouſe* cut off my Hair, and went to Mr. *Bateman*'s and fetch'd me a Perriwig; Mr. *Rouſe* and I went ſeveral times to view the Tower, and took Mate *Lee* along with us. So Mate *Lee* directed us to *Traitor*'s-*Bridge*; and he ſaid, that was an eaſy Place, and he would undertake to do it with an hundred Men, ſo they had but Hand-granadoes. We had, ſome time before that, appointed to meet at *Wapping* to ſpeak with the Sea Captains. Mr. *Rouſe* met the firſt Day in order to this Buſineſs at the *Amſterdam* Coffee-houſe, and there Mr. *Rouſe* met with two Sea Captains (as he told me) that were to officiate in this Buſineſs, and the two Captains he took to the *Angel and Crown* in *Threadneedle-ſtreet*. A ſmall time after, about an Hour and a Half, or thereabouts, Mr. *Rouſe* came, (I am not poſitive whether Mr. *Goodenough* was there or no) and told me, he had ſpoke to both the Sea Captains, and they were willing; but one was going to *New Jerſey*, and therefore the Work muſt be done before he went, or he could not aſſiſt. Another time he appointed Mate *Lee* to meet at the *Anchor* in *Wapping*. I did ſpeak to Mr. *Goodenough*, but he did not meet us, ſo that we could not go down that Day; but Mr. *Rouſe* always undertook that Buſineſs to get ten Sea Captains, and get Arms for an hundred Men. After I was ſworn againſt, and went to Mr. *Rouſe*'s Houſe, the next Day Mr. *Nelthrop* and Mr. *Goodenough* came to me to Mr. *Rouſe*'s; ſays Mr. *Rouſe*, Be not diſcouraged, let the Buſineſs go on. I was directed by Mr. *Nelthrop* and Mr. *Goodenough*, whenever I was taken into Cuſtody, I ſhould *deny all*, and it could not *touch my Life*. I thank him for his Kindneſs; I lay well, and eat well, at his Houſe, my Lord; but however I will tell the Truth. We met afterwards ſeveral times, and went to Captain *Blague*'s, and the reſt of the Company, but at different Places. We had an Account, that Mr. *Goodenough* was in the North raiſing Men, and that the Duke of *Monmouth* was thereabouts, and that a Deliverance ſhould be wrought for all this.

L. C. J. About what time was this?

Mr. *Leigh*. In laſt *June*. The Deſign was ſo laid, that I was told it was to be done in a Fortnight. They never agreed on a Way or Method of killing the King; but they told me, they had a thouſand Horſe ready in the Country, and that there was five hundred Horſe, or thereabouts, ready in the Town; and that the King ſhould be killed coming from *Windſor*. Now they were contriving how to ſend Arms, that they might not be ſuſpected, to ſome private Place; they were to be ſent in Trunks to ſome private Houſe, and there they were to arm themſelves in the Night; and ſome Brickmen were to go to *Windſor* to know when the King came, and give Information; and ſo they were ſetupon to him in ſome convenient Place, and both were to be taken off together, the King and the Duke; and Mr. *Rouſe* ſaid, Take them off, and then no Man can have Commiſſion to fight for them.

Mr. Serj. *Jeff*. He is a Politician every Inch of him.

Mr. *Jones*. What did he employ you to do?

Mr. *Leigh*. I was employ'd by Mr *Goodenough* to make all the Friends I could in this Engagement. I went into *Spital-fields*, and engaged ſome Weavers and other People. They promiſed me a Gratuity, but I never had any thing.

Mr. Serj. *Jeff*. If Mr. *Rouſe* has a mind to aſk him any Queſtions.

Rouſe. I will, my Lord.

L. C. J. Propoſe your Queſtions to the Court.

Rouſe. I aſk him, by the Oath he has taken, Whether ever I ſpake with him of any Deſign againſt the King and Government? I aſk you, Whether you did not begin with me?

L. C. J. You hear his Queſtion; anſwer it.

Mr. *Leigh*. For that I anſwer, That Mr. *Rouſe* was the firſt Man that ever I heard propoſe, that the King and the Duke ſhould be ſecured; and there is another thing come into my Mind; Mr. *Rouſe* hath been a Traveller, he did preſume to ſay, and has ſaid to me, and in Company, that the King was *ſworn* in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in ſo many Years, and therefore it was no Sin to take him off; and he told me, he had it under his own Hand.

Rouſe. It was impoſſible, my Lord.

Mr. Serj. *Jeff*. I do believe it. I do not believe he thought thee fit to be a Secretary.

L. C. J. Look you, If you would have any thing aſked him, propoſe it to me.

Rouſe. What Place was it I began to ſpeak of any thing of this Deſign?

Mr. *Leigh*. The *King*'s-*Head*.

Rouſe. Who was with us?

Mr. *Leigh*. Mr. *Goodenough* and ſeveral others.

Rouſe. Was it diſcourſed of before them?

Mr. *Leigh*. No, You never diſcourſed of it before them?

Rouſe. You diſcourſed of going an Hay-making in the Country; ſays you, I will truſt them one alone; but ſays you, I am under an Oath of Secrecy, not to communicate it but to one at a time, but I make bold to acquaint you with it: I give you an Account what I heard from his own Mouth.

L. C. J. Look you, what you heard from him will ſignify nothing, unleſs you are able to make Proof of it by other Witneſſes: If you will aſk him any Queſtions, you ſhall. We will hear what you can ſay for yourſelf at laſt: But you muſt not evade the King's Evidence with any Diſcourſe at random.

Rouſe. Did I ever put you upon any thing of this Nature? Did you not tell me there was a Deſign to overturn the Government, but you would not ſhed Blood?

Mr. *Leigh*. I will anſwer: I can't be poſitive, whether I came to Mr. *Rouſe*, or he to me. I had been in his Company ſeveral times before, and whether he diſcourſed it firſt to me, or I to him, I cannot tell; but when that Point was diſcourſed, he was very zealous to get ten Captains, and that the Ball might be play'd, and the *Tower* taken.

Rouſe. Did ever Mr. *Goodenough*, and you and I, meet upon ſuch an Account?

Mr. *Leigh.* Yes, at the *King's-head* Tavern.

Rouſe. I can take my Oath, I never ſaw Mr. *Goodenough* but twice in your Company, and I never knew you till *May* laſt.

Mr. Serj. *Jeff.* You came to a very ſtrict Alliance by that time it came to *June.*

Mate Lee *ſworn.*

Mr. Serj. *Jeff.* Tell my Lord and the Jury what you know, the whole Truth and nothing but the Truth.

Lee. The whole Truth I will tell. About a Week before *Midſummer*, or thereabouts, I met Mr. *Rouſe*, I think it was in *Pope's-head Alley*, going to look after Captain *Blague:* Says Mr. *Rouſe*, I have ſomething to ſay to you, but he did forbear ſpeaking it then; ſo I went to the *King's-Head* Tavern by the *Exchange*; we went into a little Room. Says he, There is ſomething I would have you do. What's that? ſays I. Says he, Can't you get ſome Seamen fitting to make Commanders of Ships? I did not underſtand Mr. *Rouſe*'s Meaning in it; but I thought Mr. *Rouſe* being in Employment, might put me in, being deſtitute of Employment, as well as other Men. So after we did appoint to meet at *Wapping*, at the Sign of the *Blue Anchor* in *Wapping* Dock. Says Mr. *Rouſe*, If I come not at Ten of the Clock, do not look for me. Says he, Can you get no Men that are fit to make Commanders of Ships? Says I, I have no Acquaintance with any; I do not know but two or three: But, ſays I, I will ſee what I can do. I waited for Mr. *Rouſe* and Mr. *Leigh* next Day (both were to come). The next Day I aſked him, What he intended by the Commanders of the Ships? Where would he have thoſe Ships? He anſwered, ſome of the King's Men of War, that lay at *Deptford* and *Woolwich* to make Guard-ſhips. Says I, What will you do, if you have no Powder and Shot? If you could take the *Tower*, then you might provide them with every thing fitting. Says Mr. *Rouſe*, We muſt ſecure the *Tower* and *Whitehall* both, or we can do nothing. Says I, Mr. *Rouſe*, where is your Oath of Allegiance then, that is to the King? Says he, We will ſecure the King, that he ſhall come to no Damage, and he ſhall remain King ſtill. If Mr. *Rouſe* hath any thing to object againſt what I ſay, I deſire to hear it: I ſpeak nothing but the Truth.

Mr. Serj. *Jeff.* Did you meet with him at any other time?

Lee. This was the firſt time he put out any ſuch thing to me, concerning any ſuch Contrivance.

Mr. Serj. *Jeff.* Did you meet with him afterwards?

Lee. Yes, we had ſome Diſcourſe, it was to the ſame Effect; but it ſignifies nothing; and my Memory being ſhallow, I do not exactly remember it. I know I muſt give an Account of this, before a greater Court than this.

Mr. *Burton.* Mr. *Corbin.*

Mr. Serj. *Jeff.* I did acquaint you, my Lord, that there was Occaſion to make uſe of Evidence againſt the Priſoner at the Bar; I gave you an Account how that Evidence was not received. Now I deſire to give you Proof, that the continual Inclination of this Man's Heart was the *Killing* of the King, and *Deſtruction* of the Government.

Mr. Thomas Corbin *ſworn.*

Mr. Serj. *Jeff.* Pray, Sir, tell my Lord, and the Gentlemen of the Jury, what Meetings you had heretofore with the Priſoner about the Year *Eighty-one* or thereabouts. See whether you know him.

Mr. *Corbin.* What I have to ſay againſt Mr. *Rouſe*, is only what I gave in Evidence to the Court before.

Rouſe. When was that?

Mr. *Corbin.* In *Eighty-one.*

L. C. J. Pray, what do you know of him? Don't tell us what you gave in Evidence; but you are on your Oath to ſpeak Truth, not what you ſaid then.

Mr. *Corbin.* My Lord, ſome few Days before the Members for the City of *London* went for *Oxford*, I happened to appoint a Gentleman (one Mr. *Wyat*) to meet me at Mr. *Leech*'s in *Cornhill.* Mr. *Rouſe* came by, I knew him very well; he was concerned in the Commiſſion for diſbanding the Army as well as I. He came in, and ſaluted not only me, but the Maſter of the Shop, with, *How do you do?* He enter'd into Diſcourſe, and ſaid, he intended to go for *Oxford*, and that he had agreed with the Coffee-men about Town, to furniſh them with News: Says he, There are ſeveral Gentlemen reſorting to your Shop; it would do well, if you had it. Says Mr. *Leech*, What ſhall I give you? Says he, If you will go to the Tavern, we will agree it over a Glaſs of Wine. But Mr. *Rouſe* told me he had a Kindneſs to beg of me; and (ſays he) I would have you engage ſome of your Friends to deliver them ſpeedily to ſuch a Perſon I ſhall appoint, *de die in diem*; for, ſays he, if they be delivered by the ordinary Letter-carrier, they won't turn to Account, nor give Satisfaction. By-and-by Mr. *Wyat* came in (that I was to meet at the *Stationers*): Mr. *Wyat* aſked me, What I thought of the Seſſions? Mr. *Rouſe* made Anſwer, he did foreſee it would be a very ſhort Seſſions. Says he, Theſe frequent Prorogations and Diſſolutions of the Parliament won't avail him; for whatever the King has, the Parliament gave him, and they may *take it away* when they pleaſe. One bid him have a care what he ſaid; and he reply'd, *The King had forfeited his Crown, and had no more Right to it than he had.*

L. C. J. Mr. *Rouſe*, if you would aſk him any Queſtions, pray direct yourſelf to us, and we will aſk them.

Rouſe. I deſire he may be aſked, What was ſaid before and after?

L. C. J. Can you tell him? Do you know there was any previous or ſubſequent Diſcourſe to this, that might any way alter it?

Rouſe. It was the ſame Queſtion propounded in *Eighty-one.*

Mr. Juſt. *Withins.* Pray, did he ſay the King had *forfeited* his Crown?

Mr. *Corbin.* Yes, and when he was rebuked for it, he reiterated it.

Mr. Serj. *Jeff.* We will trouble your Lordſhip but with one Piece of Evidence more; only to give you an Account Mr. *Rouſe* is a Man very well known in the City of *London*; yet when there were Officers came to ſeize him, he had forgot his Name of *Rouſe*, and did not remember it. Swear *William Richardſon, (which was done).* Pray, tell my Lord and the Jury, Whether you were at the taking of this Mr. *Rouſe*, and what Name he went by?

Mr. *Richardſon.* I was upon the Fourth of *July* Inſtant, to ſearch for one *Armiger*, and coming to Widow *Hay*'s Coffee-houſe, (I think they call it) the Widow told me, there was no Man in the Houſe: I went down the Street, and came back again, and one ſaid, he ſaw a Man go into the Garden: Says he, do you ſtay here, and I will go and ſee: He ſaw this Gentleman: Says he, What is your Name? He ſaid, *Johnſon:* I aſked him, and he ſaid, *Johnſon.* I told him, We muſt have an Account of him. Some ſaid, they did not know him. We went to the *Half-Moon* Tavern, in *Alderſgate-ſtreet*; he ſent for other Men; they ſaid, they did know him; but they could ſay nothing in his Behalf.

Mr. Serj. *Jeff.* Is that the Man, *Johnſon?*

Mr. *Richardſon.* That is the Man, that ſaid his Name was *Johnſon.*

L. C. J. Look you now, Mr. *Rouſe*, this is your Time to ſpeak for yourſelf: What have you to ſay to this that is charged upon you? You hear the firſt Witneſs does ſay, That you would have engaged him in a Deſign of *raiſing of Men*; and you told him, you deſigned to *ſurpriſe the Tower*; and to that Purpoſe he ſurvey'd it with you; and you told him what your Deſign was you met Mr. *Goodenough* about; it was to raiſe Men. *Goodenough* was for *killing* the King; you, it ſeems, at firſt, was but for *ſecuring* the King, and making him *do what you pleaſe*; but afterwards, it was come to an higher Matter; and then you had found out a way to engage ſome Captains to ſeize the *Tower*, and others were to ſeize *Whitehall*; both were to be done at once. What ſay you to this, (here are three Witneſſes that teſtify very ſtrongly againſt you) and the Device you had to get Men to *Blackheath* to ſecure the *Tower?*

Rouſe. My Lord, I ſtand here for my Life; it never enter'd into my Heart, nor came out of my Mouth; but he came to me ſeveral times about it, and I oppoſed it. At laſt he dogg'd me ſo often, that he gave me Occaſion to aſk him the Meaning of it. The firſt Place I ſaw him in, was the *King's-Head* (as he ſaith truly) in *Swithin's-Alley.* There were ſeveral Perſons, (as they met there every Day upon their private Occaſions) that is true. He aſked me a ſtrange Queſtion, (that was the firſt Time that I heard of it) Whether I was willing to oppoſe a foreign Invaſion, that was like to be made ſpeedily? And, Whether I would engage in the Defence of it? And this he did two or three times afterwards. To which I replied, Sir, I and every honeſt Man are bound (as we are Subjects, and have taken the Oaths of *Supremacy* and *Allegiance)* to engage in ſuch a Thing you put me upon, that was, to engage againſt a foreign Invaſion. The next time, he aſked me, How far I would aſſiſt, if ſuch a thing ſhould fall out as a foreign Invaſion. I wonder'd to hear it ſo often repeated; I anſwer'd, I never had but one Sword for ſeveral Years, tho' I have had Occaſion for many in other Countries; but I make no Queſtion but by the Aſſiſtance of my Friends, *to raiſe an hundred Arms*, that was my very Expreſſion: But withal I demanded, What he meant by Invaſion? And that I inſiſted upon ſeveral times: For, ſays I, I know of none, and I hope there is none like to be. I took an Account of this in Characters, and have acquainted his Majeſty and the Council with it. He replied to me: Says he, I wonder you are a Stranger to ſuch a Thing. 'Tis true, ſays he, that is the *Word* goes up and down: But, ſays he, there is another Kind of Invaſion meant by ſome Men. I aſked him, What other Invaſion do you mean? He anſwered preſently, Don't you know? Are you a Stranger in *England?* In *Iſrael?* Says he, there is an Invaſion upon our *Rights* and *Liberties*, and *all we have:* Whereupon I was a little ſtartled. This was at the *King's-Head* Tavern. Another time I deſired him to explain his Meaning, being a Stranger to it, when I expreſſed my Readineſs to ſerve the King upon ſuch an Occaſion, in thoſe Words. They that know me, know that I am not in the Capacity of raiſing an hundred Arms; but I intended it, as God knows, in Oppoſition to a foreign Invaſion: But, I thank God, I took Characters Day by Day, and with a Reſolution Day by Day to diſcover it: But he has got the Start of me, for fear I ſhould ſwear againſt him. He inſiſted ſtill upon it, That our Rights and Liberties were invaded; and that was the Invaſion all along intended; and that was the way to hook in Perſons, only upon that Pretence of a foreign Invaſion. I aſked him, In *what Manner* he meant Invaſion? Says he, What with their Doctrines on one hand, and Oppreſſion on the other, they lie ſo heavy, that we *can't bear it no longer.* Says I, What do you mean by this? What Courſe do you think of? What can you propound to yourſelf to extricate yourſelf out of theſe Troubles you ſo much complain of? To which he anſwered, You are a Stranger to what is a-foot, and hath been a-foot, a great while. Do you not know the Perſons that are engaged in the Deſign? (I was a little inquiſitive to know what was meant by the Perſons) No, (ſays I) poſitively, I know not what you mean; I am a perfect Stranger to theſe Perſons, and this Deſign; and I wiſhed him, and all others, (as they were Men and Chriſtians) that they would take care of *oppoſing the Government they lived under*, that was my very Words. Says he, that we have conſidered very well, and how to ſecure the *Two Things*; and, ſays he, you ſhall ſee we will do it dexterouſly, without ſhedding a drop of Blood: Nay, ſays he, not the Blood of the Duke of *York*, though he be the verieſt Dog in *England.* I deſired him to explain himſelf. He anſwered, The Miſchief of it is, we can't agree among ourſelves; for it was *Us* and *We* at every Word; ſo I concluded he was of the Cabal and Club, that met together on this Deſign (that hath come before your Lordſhip); and I am pretty confident there was ſuch a helliſh Deſign, though I thank God, I had no Hand in it. Said I, who are the Perſons? Pray declare the Bottom of this Story you come to me about, one Day after another. With much ado, he told me, Mr. *Goodenough* was one. After this Diſcourſe, I never ſaw Mr. *Goodenough* but twice; once was at the *King's-Head* Tavern, where I believe was twenty; the ſecond time, was a Day or two after I ſaw the Proclamation, and his Name in it. So much I ſpeak of Mr. *Goodenough.* I aſked him the Names of the other Perſons, that were engaged in this Deſign; and ſays he, I muſt conceal them, for I am under an Obligation: But the firſt time I ſaw the Proclamation againſt Colonel *Rumſey* and the others, ſays he, I was deadly afraid I was in the Proclamation; but (ſays he) all theſe Perſons are concerned, and ſeveral others. Thereupon he told me, that when they met they came to this Reſolution of ſeizing the *Tower*, the Aldermen, and taking of *London.* Says I, Pray what Money have you to carry on this? Money? Oh, ſays he, we don't want Money; ſays he, Mr. *Goodenough* hath aſſured me there is 40,000*l.*

L. C. J. Look you, you invert all his Diſcourſe: He hath ſworn it againſt you. Have you any Evidence in the World? You are not in a Capacity to ſwear againſt him.

Rouſe. My Lord, he hath turned it upon me, he ſpake to me always in private.

L. C. J. Look you, you have fixed but upon one Perſon, here was Mate *Lee*, that gives a very ſhrewd Evidence againſt you; Did he come and teach you? Did he uſe theſe Words?

Rouſe. My Lord, I have nothing to ſay againſt Mate *Lee*, I hope he is an honeſt Man. But I having a Deſign to diſcover this whole Thing, and having ſo much out of *Leigh* the Dyer——

L. C. J. What did you uſe theſe Words to him for then?

Rouſe. To ſatisfy the Gentlemen that put me upon it, that I might come to the Bottom of the Deſign.

Mr. Juſt. *With.* You ſay you know a great deal more: How came it to paſs you never told the King one Word of this till after you was taken?

Rouſe. I have told it ſince I was taken.

Mr. *Finch.* *Mr. Sol. Gen.* Pray, when you had got to the Bottom of all this (as you call it) why did you deny your Name?

Rouſe. I did not deny my Name.

Mr. Serj. *Jeff.* He hath as many Names as he has Deſigns, and they are abundance.

Rouſe. I did not know they were Officers: I did not think there was any Obligation upon me to tell every Man my Name.

L. C. J. You hear what Evidence is given againſt you concerning your Diſcourſe in *Eighty-One*; which tho' it be not the Thing for which you are directly called in Queſtion, yet if you could clear yourſelf of it, it would import you much, for that does ſhew your Spirit, and that you have had a long while a Deſign againſt the King's Life, if that be true; therefore it would be very fitting that you purged yourſelf of it, and that you could ſome way or other give an Anſwer to what you ſaid, *That the King had forfeited his Crown, and had no more Right to it, than one of thoſe ſorry Perſons you ſpoke to:* And to ſay the Parliament might *take away the King's Authority.* Theſe are ſtrange Treaſonable Expreſſions.

Rouſe. My Lord, tho' this Thing be revived, which was out of Doors two Years ſince, and I ſuppoſe it is well known to your Lordſhip, who was then upon the Bench. As I was told, there was a Word in the Indictment called *Colloquium*: He was aſked what Diſcourſe paſſed before: But if Mr. *Corbin* would remember himſelf, I do confeſs I did ſay theſe Words; but the Words that followed before.

Mr. *Juſt. With.* What do you mean, the Cart before the Horſe?

Rouſe. Mr. *Wyat* was urging of ſeveral Diſcourſes, the Popiſh Grandeur in depoſing Kings; and I gave this Anſwer in theſe Words: *Sir*, (ſays I) *if it were in the Power of any Pope to depoſe the King, then he might as well take away the Crown off the King's Head*; *but he hath no ſuch Power*; *if he had that Power*, ſays I, *then the Crown of* England *is your's as much as his.*

Mr. Sol. Gen. What was the *Colloquium*, when you ſaid the Parliament might *take it away?*——*Rouſe.* I never ſaid that.

L. C. J. I have heard a great deal of your Diſcourſe: If you think you can make any of it good by Witneſſes to your Advantage, call them.

Rouſe. My Lord, I have not had Time to collect my Witneſſes. How can it be ſuppoſed I ſhould call Witneſſes? I don't know whether they are here. Here are Witneſſes called to prove a Matter, whereof upon a Trial two Years paſt I was acquitted.

Mr. *Juſt. With.* Pray do not go away with that, here are two Witneſſes ſince.

L. C. J. You were told, *that* was not the Thing laid to your Charge now, that does only ſhew the Temper of your Spirit, and how your Inclinations have been all along. Look you, this you are now charged with, is a Deſign to *Seize and Kill the King*, and to that Purpoſe to have enter'd into a Conſpiracy with *Goodenough* and others, for the *raiſing of Men*, and the making of a *Rebellion* and *Inſurrection* here in the Kingdom; whereby you might have ſeized not only the *King*, but his Fort here, the *Tower*, and made yourſelves Maſters of his Ships, and ſo enter'd into a perfect War with him in his own Kingdom, to the Deſtruction of himſelf and the Government. You hear what the Witneſſes ſay againſt you.

Rouſe. I do declare, in the Preſence of God Almighty, before whom I muſt ſtand, it never enter'd into my Heart.

Mr. *Jones.* If that would do, we ſhould have none hanged.

Rouſe. I appeal to your Lordſhip, and this Honourable Court, whether 'tis likely for me, who am ſuch a ſilly Perſon, to engage in ſuch a deviliſh Deſign, eſpecially being concerned with no Perſon in the World about it; for I declare, if I was upon ten thouſand Oaths, I never had any Diſcourſe with any Perſon in the World about it. In the next Place, I never was in any Meeting, though I have heard of ſeveral darkly that they met in *London*, and in ſeveral Clubs, but I could never find out the Places. I deſire to aſk him, whether he knows with whom I did concern myſelf.

L. C. J. Look you, did you never meet him with any Company concerning any of theſe Treaſonable Deſigns that you have ſpoken of?

Mr. *Leigh.* I will give your Lordſhip and the Jury an Account. Mr. *Rouſe* acquainted me he could make ten Sea-Captains; I acquainted Mr. *Goodenough* with it. He told me he would have a Golden Ball, and told me the Charge. We went to the *Angel and Crown* Tavern, from thence he came to meet Mr. *Goodenough*, to tell him what he had ſaid to theſe Captains. The next Day he met Mr. *Goodenough*; and Mr. *Goodenough*, Mr. *Rouſe*, Mr. *Pachin*, and I, went from *Joſeph*'s Coffee-houſe in *Exchange-Alley*, and he diſcourſed about getting of theſe Captains.

Rouſe. Who was preſent?

Mr. *Leigh.* We never diſcourſed the Matter jointly, but ſingly with one Man. Mr. *Rouſe* and Mr. *Goodenough* went into a Room apart above Stairs, and diſcourſed this Matter (as I believe) half an Hour.

Rouſe. How do you know what Diſcourſe I had with Mr. *Goodenough* when you was not preſent?

Mr. *Leigh.* Mr. *Goodenough* thanked me for bringing him acquainted with you.

L. C. J. How do you know what Diſcourſe they had?

Mr. *Leigh.* I know only what Mr. *Rouſe* told me; Mr. *Rouſe* told me, that he would engage ten Sea-Captains, that a Ball ſhould be play'd, and every Man take his Dividend.

L. C. J. Did he tell you he had diſcourſed this with Mr. *Goodenough?*

Rouſe. Did I tell you ſo?——Mr. *Leigh.* Yes, Sir.

L. C. J. You ſpeak of ſeveral in Company, one *Pachin* and others.

Mr. *Leigh.* We went from the *King's-head* Tavern, for there was Company we did not like, tho' we diſcourſed there but of *Hay-making*, and getting Men to help the Country People.

L. C. J. What did you mean by that?

Mr. *Leigh.* That was to get Men for this Buſineſs.

L. C. J. What did he ſay the Intention was of raiſing theſe Men?

Mr. *Leigh.* Mr. *Rouſe* hath frequently and often acquainted me, that the King had taken an Oath in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in ſo many Years, and that he had not done it, made the *Popiſh* Party angry, but that he would do it.

L. C. J. Well, what Deſign was there in raiſing of Men, and ſeizing the *Tower?*

Mr. *Leigh.* He told me all things muſt be done together. The King and the Duke muſt be ſeized, for that was the principal Work.

Rouſe. It never enter'd into my Heart. Be pleaſed to aſk him if he was not arreſted by one *Keeling*, and what was the Account of it?

Mr. *Leigh.* No.

Rouſe. I mean ſworn againſt.

Mr. *Leigh.* I will give your Lordſhip an Account of it. Mr. *Goodenough*, Mr. *Rouſe*, Mr. *Pachin*, and I, had been at the *King's-head* Tavern; a Man came and told me, a Man had been at my Houſe, and that one ſwore againſt me, and it would be dangerous to go home. A while after comes one *Armiger*, and he told me, Mr. *Bateman* was gone one Way, and he another, to ſeek for me, and deſir'd me to have a Care of myſelf. With that Mr. *Rouſe*, Mr. *Goodenough*, and Mr. *Pachin*, came out to me. Mr. *Rouſe* directed me to go to the *Sun* Tavern at *Moorgate*, and I went; Mr. *Rouſe*, Mr. *Goodenough*, and Mr. *Pachin* came to me. I told them I would meet my Wife, but they would not let me go on by any means, but ſent one Mr. *Thomas*, a Coffee-man, for my Wife. She came and told me, Mr. *Goodenough* had ſworn againſt ſeveral People, or he was ſworn againſt. I went to Mr. *Rouſe*'s Houſe, where Mr. *Goodenough* came to me. Mr. *Rouſe* would have had Mr. *Goodenough* ſtaid there all Night: Mr. *Goodenough* ſent for his Wife, to know if his Brother had ſworn; ſhe acquainted him, he had not ſworn: Mr. *Rouſe* invited him to lie with me. He ſhewed me, behind the Bed, a Window to go into another Man's Room, to make my Eſcape, if any Man ſhould come to ſearch the Houſe. I lay there on *Saturday.* Mr. *Goodenough* and Mr. *Nelthrop* came to me; Mr. *Goodenough* told me, he had lain at Mr. *Nelthrop*'s all Night, but he had ſeen his Brother, and he had not ſworn againſt me: I heard that Mr. *Keeling* had ſworn againſt me, and did ſay, in Diſcourſe, if I did light of *Keeling*, I would kill him.

Rouſe. I deſire to aſk him another Queſtion: When he was told he was ſworn againſt, what did he ſay?

L. C. J. He tells you before-hand, that he ſaid he would kill *Keeling*, if he could meet him.

Rouſe. He ſays Mr. *Goodenough* and *Nelthrop* came to my Houſe; aſk him if I was in the Houſe, or ſaw Mr. *Goodenough?*

Mr. *Leigh.* I am not poſitive whether he ſaw them together, but that he ſaw Mr. *Goodenough* there the *Friday* Night, for he invited him to lie with me.

L. C. J. Pray, what was your Reaſon in putting Mate *Lee* upon the inquiring out Men to make Maſters of Ships?

Rouſe. To ſatisfy the Gentleman, becauſe he told me, there was ſuch a Deſign in hand, to get to the Bottom of that Deſign, that ſo his Majeſty might come to no Damage. Pray, my Lord, How could I acquaint the King, or any Juſtice of Peace, what he meant by it, unleſs I underſtood it?

L. C. J. Have you any thing more to aſk? Or would you have any Witneſſes called?

Rouſe. My Lord, 'tis my Unhappineſs I have no Witneſſes.

Mr. Serj. *Jeff.* He hath confeſſed the Treaſon enough.

L. C. J. Look you, Gentlemen of the Jury. You hear that this Perſon at the Bar is indicted for High Treaſon, in conſpiring the King's Death, and declaring this by Overt-acts, that is, endeavouring to raiſe Men here for to ſeize the *Tower*, and to make an Inſurrection here, and a Rebellion within the Kingdom: You hear two poſitive Witneſſes of what they have heard from him: He did endeavour, ſays *Lee*, to bring him into it, and he told him the whole Deſign, he did declare to him the Manner how they intended to ſeize the King, and the Duke of *York*: Mr. *Goodenough* was one of the Perſons that confederated with him, one of them, but ſeveral others they had. They had covert Terms to diſguiſe this, by getting the Country People in their Harveſt. He told them of a Deſign he had to get the Seamen, a Thouſand of them together, to ſeize the *Tower* and *Whitehall*, both at a Time. And you hear that Mate *Lee* had the ſame Diſcourſe in Subſtance with him, of endeavouring to ſeize the *Tower*, and get Arms for to ſeize the King's Ships, to raiſe a thouſand Perſons for the effecting of this. All theſe things you have heard proved againſt him; he gives no Anſwer to any of them, but only tells you, that in Truth he did not ſay theſe Things to them; but they, that is the firſt, *Lee*, ſaid theſe Things to him. He hath no Evidence at all of it. You hear likewiſe (which does agree with this Caſe) the Teſtimony by the other Perſon concerning his Diſcourſe in *Eighty-one*: How he ſaid, The King had forfeited his Crown, and had no Right to it; but the Parliament gave him his Authority, and might take it away. All theſe Diſcourſes they ſavour of a wicked Spirit as can be in the whole World. I muſt leave it to you, whether you believe him guilty.

The Jury preſently gave their Verdict that he was guilty.

CXXI. *The Trial of* William Blague, *at the* Old Bailey, *for* High Treaſon, July 13, 1683. 35 Car. II.

WILLIAM BLAGUE having been arraigned on *Thurſday, July* 12. pleaded Not guilty, and put himſelf upon his Country, was brought to the Bar again, *Friday July* 13. He made no Challenges, and the former Jury was ſworn.

JURORS.

Robert Beddingfield,	*John Short,* Sen.	*Henry Robbins,*
John Pelling,	*Thomas Nicholas,*	*Henry Kempe,*
William Windbury,	*Richard Hoare,*	*Edward Raddiſh,*
Theophilus Man,	*Thomas Barnes,*	*Edward Kempe.*

Clerk. Gentlemen of the Jury, look upon the Priſoner, and hearken to his Charge. He ſtands indicted by the Name of *William Blague,* late of *London,* Gent. that he, together with *John Rouſe,* &c.

Mr. *North.* Gentlemen, you that are ſworn; the Priſoner at the Bar is charged with compaſſing the Death of the King, and conſpiring to raiſe War and Rebellion, to deſtroy the Government, and take Poſſeſſion of it; that he did conſpire with on *Rouſe,* and ſeveral others not yet known, to bring theſe Things to paſs, and being join'd together, to ſeize the *Tower,* and to provide ſeveral Arms: To this he hath pleaded Not guilty, &c.

Mr. Serj. *Jeff.* My Lord, and you Gentlemen of the Jury, we ſhall not need to trouble you much with the Priſoner at the Bar, for this Priſoner, with him that went before, were to undertake that Part of this horrid Conſpiracy relating to the ſeizing the *Tower,* becauſe the ſame Witneſſes that were againſt the former, are againſt the Priſoner at the Bar. We ſhall not need to trouble you with the Hiſtory, we will cauſe our Witneſſes to prove it.—Do you hear, *Leigh?* You muſt tell my Lord and the Jury what the Priſoner at the Bar was concerned in.

L. C. J. What do you know of any treaſonable Practices of his?

Mr. *Leigh.* I will acquaint your Lordſhip, and the Gentlemen of the Jury, that Capt. *Blague* and Mr. *Rouſe* were frequently at the Tavern. I preſume many times they came in about Buſineſs, and ſometimes there were Diſcourſes to carry on this Conſpiracy. Mr. *Rouſe* told me, he had acquainted Capt. *Blague* with it, about getting ten Sea Captains; Captain *Blague* told him, they had better engage one or two Ships to ſhoot Mortar-pieces into the *Tower,* which would preſently deſtroy it; and diſcourſing with Captain *Blague* about the Affair, he told me he would be ready in a Fortnight or three Weeks.

Capt. *Blague.* My Lord, Will you pleaſe to aſk what Time that was?

L. C. J. You ſhall have any Queſtion aſked by-and-by.

Capt. *Blague.* Very well.

Mr. *Leigh.* Capt. *Blague* told me, he would be ready in a Fortnight or ſomething more, and he had an Intention to lay in about fourteen Guns in his own Ship that he had bought, he would have twenty-four in it, and lay it on *Southwark* Side, againſt the *Tower.* He would venture his Ship, but they muſt ſee they were provided with Money for the Seamen. I acquainted Mr. *Goodenough* with this, and Mr. *Goodenough* deſired to ſpeak with Capt. *Blague;* I told Capt. *Blague* of it, and we took Coach at *Stocks-market,* and went to the *King's-head* in *Chancery-Lane,* where we met with Mr. *Richard Goodenough,* and Mr. *Francis Goodenough.* Capt. *Blague* aſked, what Money they had provided; they ſaid, about 40,000*l.* ſays Capt. *Blague,* the Seamen will ſwallow that up immediately.

L. C. J. What did Capt. *Blague* ſay?

Mr. *Leigh.* Mr. *Goodenough* and Capt. *Blague* diſcours'd about the Matter at the *King's-head* Tavern at *Chancery-Lane* End, and the Diſcourſe about the Matter was, how to ſeize the *Tower;* he then told them again, the only Way was to do it with Mortar-pieces, that he would venture his own Ship, and provide two hundred Men.

L. C. J. What did he ſay about Money?

Mr. *Leigh.* He aſked what Money was provided, he ſaid, there was about 40,000*l.* then he ſaid, that would be eaſily ſwallowed. Mr. *Goodenough* ſaid, that there would be more provided at any time. Captain *Blague* and Mr. *Goodenough,* both of them, drank a Glaſs or two of Wine together, and ſo at that time we parted. I met with Captain *Blague* again, and he bid me, for God's ſake, don't diſcourſe before my Mate ſuch a one, but my Mate *Lee* is a very honeſt Fellow: Said he, I will undertake, once in twenty times, to diſmount them ſix Guns that face towards *Surry* Side, which I underſtood to be about *Traitor's-Bridge,* he would undertake to diſmount them. What Diſcourſe Captain *Blague* and Mr. *Goodenough* had apart I can't tell, but Mr. *Goodenough* told me, he would get ſome other Captains to engage in that Affair. That Buſineſs was left to him and I, and I was deſired to be frequently with Captain *Blague,* for the managing this Affair of the *Tower;* and, ſays he, I have had a Commiſſion, tho' not in *England,* by Land as well as by Sea.

L. C. J. Will you aſk him any thing, Sir? Now he ſhall be aſked any thing that you will propoſe. Firſt, you do propoſe to him, about what Time this Meeting was. What ſay you to that?

Mr. *Leigh.* If it pleaſe your Lordſhip, I believe it was towards the latter End of *May,* or the Beginning of *June.*

Capt. *Blague.* If you pleaſe, my Lord, I will give you a Journal or Narrative of all my Proceedings.

L. C. J. Will you aſk him any more than that?

Capt. *Blague.* No, my Lord.

Mr. Serj. *Jeff.* We will call Mate *Lee.* This Mate *Lee* was the Man that might not be truſted.——Mate *Lee,* Tell my Lord, and the Gentlemen of the Jury, what Diſcourſe you have had with the Priſoner at the Bar, Captain *Blague,* about ſeizing the *Tower.*

Mate *Lee.* I ſhall, Sir. The firſt Diſcourſe that ever I underſtood, was one Time he and I was riding in a Coach, ſays Capt. *Blague,* One of theſe Days we ſhall have a Ball to toſs. I did not know the Meaning of this Ball, till afterwards Mr. *Rouſe,* and Mr. *Leigh* and I came together, and he told me of toſſing a Ball upon *Black-heath.* Then I began to underſtand it. And after this, I can't tell whether it was before that Captain *Blague* and I walked before the *Tower,* and diſcourſing of this, my Way was to ſcale the *Tower,* and take it that way; ſays Captain *Blague,* the beſt Way is to ſhoot Mortar-pieces on *Southwark* Side; this was all the Diſcourſe.

Mr. Serj. *Jeff.* Can you ſay any thing about the Ship?

Mate *Lee.* Nothing about the Ship, but about Mortar-pieces on *Southwark* Side.

Mr. Serj. *Jeff.* What Time was that?

Mate *Lee.* I cannot be poſitive, about ſix Weeks ago, or leſs.

Mr. Serj. *Jeff.* The firſt Time was in the Coach?

Mate *Lee.* That was about the Ball, I did not underſtand it, only toſſing up a Ball; I did not underſtand the Meaning of it, till afterwards Mr. *Rouſe* and Mr. *Leigh* and I came together.

L. C. J. How came you to diſcourſe with him concerning the beſt Way of taking the *Tower?*

Mate *Lee.* Mr. *Rouſe* and Mr. *Leigh* and I, and Captain *Blague* had been together. We diſcours'd about taking the *Tower.* And we had this Diſcourſe among ourſelves, which was the beſt Way to take the *Tower?* My Approbation was Scaling-ladders, and Hand-granadoes, that was the beſt Way; Captain *Blague's* Way was with Mortar-pieces on *Southwark* Side.

L. C. J. To what Intent was this Diſcourſe, had you had any former Diſcourſe with any Perſons?

Mate *Lee.* Not at all, if it pleaſe your Lordſhip. The firſt Diſcourſe I had was with Mr. *Rouſe* and Mr. *Leigh.*

L. C. J. And was that about taking the *Tower?*

Mate *Lee.* To ſurpriſe the *Tower,* and Mr. *Leigh* and Mr. *Rouſe* and I went down to view the *Tower.*

L. C. J. Then afterwards Captain *Blague* came in about the Way to take it?

Mate *Lee.* This Diſcourſe with Captain *Blague,* about the *Tower,* was between him and I. I don't remember it in any other Company.

L. C. J. What was your Buſineſs with Captain *Blague?*

Mate *Lee.* My Buſineſs was with Capt. *Blague,* to be his Mate, and I was converſant with him at the *Exchange,* the *Coffee-houſe,* and the *King's-head* Tavern. And we had Diſcourſe about theſe Things.

L. C. J. Come, Captain *Blague,* would you have him aſked any Queſtion?

Capt. *Blague.* My Lord, otherwiſe I had gone to Sea ſoon after I came home; but ſo it was, that I had an Occaſion for *Pennſylvania* and *New-York,* and coming one Day to the *Exchange,* I met Mr. *Rouſe,* whom I had not ſeen in ſixteen or ſeventeen Years before, for Mr. *Rouſe* made a Voyage to *Virginia* with me about twenty Years ago. Now, my Lord, meeting with Mr. *Rouſe,* I had an Occaſion then to take up two or three hundred Pounds, and knowing Mr. *Rouſe* was a Broker, I did employ him to procure it me, but he did not; however, daily I came to him to diſpatch that Affair; and Mr. *Rouſe* being a Man for a Tavern, I went to the *King's-head* Tavern, and the *Sun* Tavern, if he was not at one Place I found him at another, in order to perfect this Buſineſs. So, my Lord, when I came into his Company, ſeveral People uſed to be with him that I never ſaw in my Life, and Mr. *Rouſe* would ſay, Sit down a little, and I will go with you preſently; ſo I would ſit down, and drink a Glaſs of Wine, and go to the Places where the Affair was to be managed; after I had done thus ſeveral Days, and to no Purpoſe, I did it myſelf. Now, my Lord, Mr. *Rouſe* in that Time brought me acquainted with *Goodenough,* becauſe *Goodenough* was in his Company, and Mr. *Leigh,* not that I ever ſaw Mr. *Goodenough* in my Life before, and not as Mr. *Leigh* ſays, that I ever was with him at the *Dragon.*

Mr. *Leigh.* The *King's Head* Tavern in *Chancery-Lane.*

Capt. *Blague.* I was juſt coming home when Mr. *Leigh* was going to meet with Mr. *Goodenough,* and I went in there, and took a Glaſs of Wine, and bid him farewell, and ſo went home. When I was with Mr. *Rouſe,* I was aſking, what People they were that were in his Company, he ſaid, very honeſt Men, drank a Glaſs of Wine and went away, and ſtill I found them together. I was ſaying to this Mr. *Leigh* here, if you will go along with me, you ſhall give me as much for your Paſſage as any of the reſt of the Paſſengers do. Now, at this Time, my Ship was not in my Poſſeſſion; this very Day three Weeks I had it in my Poſſeſſion, and now at this very Day ſhe is in the Carpenter's Hands, who is here now, I ſuppoſe.

L. C. J. Well, go on.

Capt. *Blague.* Now, Sir, whereas Mr. *Leigh* reports, that I diſcours'd with Mr. *Goodenough* concerning any publick Affairs, or any thing tending to the Diſturbance of the Peace, then am I not a Chriſtian. Beſides, Sir, I did not ſpeak twenty Words, or ten Words at the Time, but Your Servant, Sir, or Here's to you, in a Glaſs of Wine; and this I do ſpeak in the Preſence of God Almighty. And when I came into a Room, I never ſtaid longer than Mr. *Rouſe,* for my Buſineſs was with him, and ſo went about my own Affairs. As for Mr. *Goodenough,* I believe, I was three times in his Company before I could remember his Name; I would aſk *Rouſe* ſeveral times, What do you call that Man? But in reference to the *Tower,* that Mr. *Leigh* ſpeaks of, that muſt be touched at. I do remember very well, I ſhall by no means palliate it, if I were preſently to die; coming up from the Ship, we were coming by Water, indeed I ſhould have had Poſſeſſion of the Ship a Fortnight before, if they had done me Juſtice; I had two or three hundred Pounds for them before; but coming from the Ship, we were coming up by Water by the *Tower,* I don't know how it was, I ſpake it to the Waterman, This Place is not well fortified, and if any Occaſion ſhould happen, this Place lies in more Peril and Jeopardy than any Place of the *Tower,* and ſo it does. It is an eaſy Matter for any to give their Sentiments whether they be accepted of or no. This is the very Thing I ſaid, and then they were talking of a *French War*, and the like. Then I ſaid, You ſilly Fools, if they ſhould take it, it is but going over a t'other Side, and throwing half a dozen Bombo's to them, and ſet them out again. But, however, Mate *Lee*, if he remember, I told him the ſame Thing at that ſame Time; and I told Mr. *Leigh*, it was a Pity, a thouſand times, that Place was not better fortified. But as to what Mr. *Leigh* ſays, to have two hundred Men in a poor Pink, I have refuſed ſeveral in that very Ship, becauſe I could not ſtow an hundred Men, Women and Children, and that I ſhould preſs two hundred Men in that Ship, that will not hold. And beſides, it is a Pink, let any one look upon her, and ſee whether that Ship be fit or no to take in two hundred Men. But whereas they ſay I had Arms, and ſuch Things, I bought the Ship and Arms together, I had four Blunderbuſſes, two Javelins, and Half-pikes, that is all.

L. C. J. You forget to anſwer ſeveral things; you had Diſcourſe about a Bank of Money.

Capt. *Blague.* A Bank of Money, my Lord, I never diſcours'd of. And as to the Ball that my Mate ſpeaks of, my Lord, I know no more what it means to this very Day, than one that never ſaw a Ball.

L. C. J. Look you, Sir, you were with Mr. *Leigh*, this Mr. *Leigh* has ſworn; he ſays, you told him, that you would undertake to get two hundred Men, and you had bought fourteen Pieces of Ordnance already, and that you would within a Fortnight's Time, do you remember, bring your Ship to *Southwark*, and be ready to beat down that Part of the *Tower*.

Capt. *Blague.* My Lord, I have told you already, the Ship was not mine to bring till this Day three Weeks.

L. C. J. That was within Compaſs, for they tell you this Diſcourſe was about a Month ago.

Capt. *Blague.* It was in *May*, my Lord, they talk of.

L. C. J. No, they ſpeak of about a Month ago, you were to have them in a Fortnight's Time——What ſays the firſt *Leigh*, what Time does he ſpeak of?

Mr. *Leigh.* If it pleaſe your Lordſhip, he ſaid, his Ship would be ready in a Fortnight's Time, or thereabouts.

L. C. J. How long was that ago?

Mr. *Leigh.* About a Month or five Weeks.

L. C. J. To what Purpoſe did you meet Mr. *Goodenough* ſo often, to diſcourſe about this Matter of the *Tower?*

Capt. *Blague.* My Lord, I never met with him at all, but when I came to Mr. *Rouſe* about this Buſineſs of the two hundred Pounds.

L. C. J. Mr. *Leigh*, what ſay you concerning his Inquiry for Money?

Mr. *Leigh.* If it pleaſe your Lordſhip, Mr. *Goodenough* and the Captain met at the *King*'s-*head* Tavern, they met ſeveral times apart, out of Company, and diſcours'd of the Buſineſs apart. Mr. *Goodenough* aſked me for the Captain many times; I told him what the Captain ſaid to me. Mr. *Goodenough* took the Captain out, and diſcours'd him about this Affair. Mr. *Goodenough* hath told me ſeveral times, the Captain would be very ſerviceable. The Captain aſked, what Money there was; I told him about 40,000*l.* and he ſaid, that would be quickly gone. I enquired of Mr. *Goodenough* again, and Mr. *Goodenough* told me, there was more Money in *Holland*.

L. C. J. What Money was he to have?

Mr. *Leigh.* Two hundred Men—The Captain ſays, I named him before the King and Council to be at a Meeting at the *Green-Dragon* Tavern. It is true, I did acquaint the King and Council, that Mr. *Rouſe* had Buſineſs at the *Green-Dragon* Tavern. But this was at the Time of my abſconding, I could not tell where to meet him again.

L. C. J. What Guns did he ſay he had provided?

Mr. *Leigh.* If it pleaſe your Lordſhip, he ſaid, he had fourteen Guns in the Ship, and would make them up twenty-four: He would undertake in twenty Shot, to diſmount them Guns.

L. C. J. Where was this Diſcourſe you had with him about this two hundred Pounds?

Mr. *Leigh.* If it pleaſe your Lordſhip, it was at ſeveral times, one was with Mr. *Goodenough* at the *King*'s-*head* at the Corner of *Chancery-Lane.*

L. C. J. Look you, Sir, by the Oath you have taken, did he undertake to raiſe Men, and to aſſiſt with his Ship in taking the *Tower?*

Mr. *Leigh.* If it pleaſe your Lordſhip, he told me he would ſo do it. He told me, he would have twenty-four Guns.

Jury. Did the Captain tell you ſo?

Mr. *Leigh.* Captain *Blague* that is here.

Capt. *Blague.* My Lord, in reference to the two hundred Men, this is the Thing that I would anſwer, I could not ſtow one hundred Men, Women and Children.

L. C. J. Two hundred Men, he ſays, for this Service.

Capt. *Blague.* Yes, my Lord, I mean ſo. Who can you have to ſay ſo beſides yourſelf?

Mr. *Leigh.* If it pleaſe your Lordſhip, this Diſcourſe was only with Mr. *Rouſe*, Mr. *Goodenough*, Capt. *Blague* and I.

Capt. *Blague.* My Lord, Mr. *Leigh* ſaid before the King and Council, that he was never along with me but once, and of what I ſaid then, he could tell only he was there when I went to look for Mr. *Rouſe*. How can theſe nly Expreſſions go together?

Mr. *Leigh.* My Lord, as to that before the King and Council, I did ſay, I was not apart with Capt. *Blague* and Mr. *Goodenough*, at the *King*'s-*head* Tavern, but Capt. *Blague* and Mr. *Goodenough* were there ſeveral times, and they were apart by themſelves; and that I had Diſcourſe with Captain *Blague* and Mr. *Goodenough*, and came with them once to the *King*'s-*Head* Tavern.

L. C. J. What did Captain *Blague* tell you of what Diſcourſe he had with Mr. *Goodenough?*

Mr. *Leigh.* Capt. *Blague* did tell me, that we muſt have a great Care, or elſe we ſhould be all ruined, and that his Ship ſhould be ready, and always encouraged me. And, ſays he, when I have done the Buſineſs, I have been a Captain aſhore in another Country, I have been in Commiſſion in another Country aſhore, and can tell how to manage Men aſhore as well as aboard. Another Thing was, after all this, ſome time, when I underſtood I was ſworn againſt, I was indeed, the Captain ſays right, to have gone with him a Paſſenger, and was with him ſeveral times, I gave him a Report how the *Tower* might be taken by Ladders and Granadoes, and he told me, that *Nelthrop*'s Brother came to ſee him, and did inform me, that neither Mr. *Goodenough* nor his Brother was taken, and that the Duke of *Monmouth* was in the Country, and quickly would come.

L. C. J. Who told you this?---.-Mr. *Leigh.* Captain *Blague.*

Mr. Serj. *Jeff.* This is a pretty Matter to ſmirk at, Captain.

Capt. *Blague.* I will aſſure you, Sir, there is no Truth in it.

Mr. Serj. *Jeff.* Would you ſmile the Witneſſes out of their Oaths?

L. C. J. Look you, Mate *Lee*, What ſay you to this? In your Judgment and your Thoughts, was the Diſcourſe concerning taking the *Tower* in a jeſting way?

Mate *Lee.* No, an't ſhall pleaſe your Lordſhip, I was in earneſt in diſcourſing of it; my Way was, as I told your Lordſhip before, Scaling-ladders and Hand-granadoes.

L. C. J. Had you any Talk before of ſurprizing the *Tower?*

Mate *Lee.* No, my Lord, by nobody but Mr. *Rouſe* and *Leigh.*

L. C. J. What had they ſpoken to you concerning ſurpriſing the *Tower?*

Mate *Lee.* Mr. *Rouſe* ſpoke to me of getting ſome Seamen, that might be fit to make Maſters of Ships; and I aſked him, what he would do with thoſe Seamen to make Commanders of Ships? He ſaid, to put them aboard the King's Men of War, and make Guard-Ships of them: I ſaid, what can you do with them to make Guard-ſhips, when there is neither Powder, Shot, nor Ammunition? But, ſaid I, if you can take the *Tower*, you may do well enough: So that our Diſcourſe was about taking the *Tower*.

L. C. J. Was Capt. *Blague* with you then?

Mate *Lee.* What Diſcourſe we had about taking the *Tower* was between ourſelves.

L. C. J. How came you to diſcourſe concerning this?

Mate *Lee.* This was our common Diſcourſe. I ſuppoſe the Inſtigation might be by Mr. *Rouſe*. I was acquainted with Mr. *Rouſe*, by going with Captain *Blague*; this was my firſt Diſcourſe with Mr. *Rouſe* and Mr. *Leigh* together.

L. C. J. Who was with you when you diſcours'd it firſt?

Mate *Lee.* There was only Mr. *Rouſe* and Mr. *Leigh*; I can be poſitive that Captain *Blague* was not: But this Captain *Blague* did ſay, when I gave my way of taking the *Tower* by Scaling-ladders, and Hand-granadoes; No, ſays Captain *Blague*, it is a better Way to have Mortar-pieces over the Water, and ſhoot into the *Tower*.

Mr. Serj. *Jeff.* Hark you, Friend, did *Leigh* or *Rouſe* tell you, that *Blague* was made privy to it?

Mate *Lee.* I underſtood nothing of it, but what we diſcours'd together; for I was acquainted with none of the Cabal, but Mr. *Rouſe* and Mr. *Leigh.*

L. C. J. What did you diſcourſe about?

Mate *Lee.* About taking the *Tower.* I won't mince it, I am upon my Oath.

L. C. J. Therefore we would have the Truth out of you.

Mate *Lee.* I did gather from Mr. *Rouſe* and Mr. *Leigh*, that the Intention was to take the *Tower.*

L. C. J. Give ſome Account how you and *Blague* came to diſcourſe of ſuch a thing as this is, and in order to what Deſign.

Mate *Lee.* The Deſign was to take the *Tower.*

L. C. J. Did *Blague* and you diſcourſe it to this Purpoſe?

Mate *Lee.* Captain *Blague* and I diſcourſed it to that Purpoſe of taking the *Tower.*

Mr. Sol. Gen. Did you diſcourſe of it as a thing that might be done, or that was intended to be done?

Mate *Lee.* We did diſcourſe of it as a thing that might be done, or was intended to be done.

L. C. J. Now Captain *Blague*, if you have any thing to aſk him, you may.

Capt. *Blague.* Aſk him, whether there were any Projections or Proviſions made for the taking of it; and whether or no there was any Reſolution taken that the *Tower* ſhould be taken.

Mate *Lee.* An't ſhall pleaſe your Lordſhip, the King's Majeſty aſked me, when I ſaid what Captain *Blague* ſaid, about taking the *Tower* with Mortar-pieces; If it pleaſe your Majeſty, ſaid I, I don't know whether there was any ſuch thing diſcours'd, that I did not hear.

L. C. J. Well, was there any thing provided or deſigned in order to it?

Mate *Lee.* An't pleaſe your Lordſhip, there was nothing of Men or Guns provided, that I did know or hear of.

Mr. Serj. *Jeff.* How many times did you talk with Captain *Blague* about this?

Mate *Lee.* Several times.

L. C. J. Had you any Order from any other Perſons for to diſcourſe Captain *Blague* in order to this?

Mate *Lee.* No, an't ſhall pleaſe your Lordſhip, to the beſt of my Knowledge I had no Order; for they were commonly together, Captain *Blague*, Mr. *Rouſe*, and Mr. *Leigh*, and I came to them when I had Buſineſs with Captain *Blague.*

L. C. J. Did you ever diſcourſe this thing with Captain *Blague* before them?

Mate *Lee.* I cannot be poſitive in that.

Mr. Sol. Gen. Did thoſe other Perſons, that you ſaid you diſcourſed with, engage you?

Mate *Lee.* Mr. *Rouſe*, and Mr. *Leigh*, and I went out to view the *Tower*, how it might be taken.

Mr. Sol. Gen. Did they engage you?

Mate *Lee.* Yes, they did engage dme.

Jury. My Lord, we deſire to have the Witneſs aſked, Whether the Captain knew he went to view the *Tower?*

L. C. J. Had he any Intimation you went to view the *Tower?*

Mate *Lee.* My Lord, I can't be poſitive in that: Some time after we met the Captain, and did tell the Captain, we had view'd the *Tower*; but I don't remember what Obſervations we made.

Mr. Serj. *Jeff.* Nor what he ſaid to you?

Mate *Lee.* No, nor what he ſaid to me upon it.

L. C. J. Look you, Mr. *Lee*, Mate *Lee*, the Captain told you of this Ball that was to be thrown upon *Blackheath*: How long ago was it?

Mate *Lee.* An't pleaſe your Lordſhip, I cannot be poſitive, it was five or ſix Weeks ago, I think it was the laſt time I rid along with him to the *King*'s-*head* Tavern. I went to *Chancery-Lane*, and you gave me Coach-hire for nothing, and then you ſpoke of toſſing up the Ball.

L. C. J. What was it he ſaid?

Mate *Lee*. This was all. I did not know his Meaning, neither did he expreſs his Meaning. He was ſaying, to the beſt of my Remembrance, We ſhall ſee a Ball toſs'd up. I don't remember he ſaid upon *Blackheath*; the Confirmation of it was by Mr. *Rouſe* and Mr. *Leigh*; then I came to underſtand what the Ball did mean.

Sir *James Butler*. With his Lordſhip's Leave, did you ſpeak firſt to the Captain about the *Tower*, or did he ſpeak to you? Was it your Motion to him, or his to you?

Mate *Lee*. I don't know but it might be my Motion to him.

Sir *James Butler*. Then, my Lord, give me Leave to aſk another. How were theſe Mortar-pieces to be brought up, to be planted on *Southwark* Side, to play upon the Wall of the *Tower?*

Mr. Serj. *Jeff*. That was t'other Man, Sir *James*.

L. C. J. Is there any thing more that you would have aſked of any of theſe Witneſſes? or have you any Witneſſes of your own?

Capt. *Blague*. My Lord, the Witneſſes that I have, in reference to the Number of Men, are here. I deſire, my Lord, you will be pleaſed to order them to come in, to know upon what Account I ſhipped them.

Jury. My Lord, pray let us aſk t'other *Leigh* one Queſtion.

L. C. J. The firſt *Leigh*.

Jury. We deſire to know, whether he heard any thing of the Ball, or toſſing it?

L. C. J. He hath told you a long Story of it.

Mr. *Leigh*. The Story of *Blackheath* I acquainted you with it, about Mr. *Rouſe*. There was a golden Ball to be play'd upon *Blackheath*, a thouſand Sea-men to be at the playing of this Ball, ten Sea Captains to manage theſe thouſand Sea-men, and after the Play was over, every Captain to take his Diviſion apart, and treat them with Punch, and after that was done, to tell them they had other Work to do, and to have Long-boats and Arms ready, to go and ſeize the *Tower*.

Jury. Did Captain *Blague* acquaint you with this?

Mr. *Leigh*. Mr. *Rouſe* told me, Captain *Blague* was acquainted with it: I never diſcourſed with Captain *Blague* about it. Captain *Blague* told me, the beſt way was to ſet a Ship on t'other Side, and ſhoot Mortar-pieces into the *Tower*.

L. C. J. What would you have Mr. *Wright* aſked?

Capt. *Blague*. My Lord, pleaſe to aſk him upon what Account he was ſhipped.

L. C. J. Was you ſhipped upon the Captain's Ship, and upon what Account?

Mr. *Wright*. An't ſhall pleaſe your Honour, I was ſhipped upon him almoſt four Months and three Weeks ago.

L. C. J. Upon what Account?

Mr. *Wright*. I was ſhipped upon him upon the Account of *New York*, *England* and *Holland*.

L. C. J. Well, what Uſe do you make of this Evidence?

Capt. *Blague*. Only, my Lord, if you pleaſe to aſk the reſt, whether I have ſhipped any more men, or ſpoke with any more than theſe are?

Mr. *Wright*. An't like your Honour, I have waited upon the Captain ever ſince I have been ſhipped: I have waited upon him in *London*, at the Coffee-houſe, about Buſineſs: Since I have belonged to him, I was in Pay, altho' we had not a Ship in Poſſeſſion: Sometimes at the Mayor's Court Office, Mr. *Briggs*, ſometimes with Mr. *Rouſe*, who had ſomething to do for Captain *Blague*. I kept at the Coffee-houſe commonly every Day from eight or nine a-Clock in the Morning. Sufficient Perſons know me in *London*. I have kept at the Coffee-houſe from nine or ten a-Clock in the Morning till four or five in the Afternoon, and ſo I have ſatisfied him about what People have inquired after him.

Capt. *Blague*. Call *Robert Chappel*.

L. C. J. Captain *Blague*, What would you have him aſked?

Capt. *Blague*. Carpenter, declare to my Lord how long you have been with me, and upon what Account I ſhipped you?

Chappel. Four Months and an half.

L. C. J. What beſides?

Chappel. We were to go to *New-York*. I have been ſhipped four Months and an half to go to *New York*. We came to the Coffee-houſe in *Birchin-Lane*.

L. C. J. Well.

Chappel. We have had the Ship a Month in our Hands next *Monday*.

L. C. J. Is ſhe fitted?----*Chappel*. No, ſhe is not fitted.

L. C. J. Was ſhe in a Condition to have done any Service upon the Water?

Capt. *Blague*. Carpenter, do you hear what my Lord ſays?

Chappel. The Ship is a ſmall Veſſel, about an hundred and fifty Tun, between that and an hundred.

Capt. *Blague*. My Lord aſks you, if ſhe be in a Condition to do Service.

L. C. J. Was ſhe capable to do any Service upon the Water?

Chappel. No Service at all upon the Water ſhe could do three Weeks ago.

Mr. Serj. *Jeff*. A Ship of one hundred and fifty or two hundred Tun, would hold a great many People; ſhe was to lie ſtill, that was the Miſchief.

Chappel. We haled her down to the Carpenter's Yard; ſhe is now in a Condition to work.

L. C. J. Have you any more Men?

Capt. *Blague*. Doctor, upon what Account were you ſhipped?

Bellinger. For *New York*, *England* and *Holland*.

Capt. *Blague*. When were you ſhipped?—*Bellinger*. Seven Weeks ago.

L. C. J. When were you to begin your Voyage?

Bellinger. I belonged to the Captain before he had a Ship.

L. C. J. But when did you reckon to begin your Voyage?

Bellinger. That I cannot tell.

Capt. *Blague*. My Bill upon the Exchange doth ſpecify it, Sir.

Jury. Pray, my Lord, will you aſk if he have any Guns aboard, and how many?

L. C. J. What ſay you? What Guns are there about the Ship?

Bellinger. Fourteen, Sir, and four wooden ones.

L. C. J. What are they?

Bellinger. Six above Deck, four in the Hold.

Capt. *Blague*. They are Saker Guns.

L. C. J. Saker?

Capt. *Blague*. Yes, Sir------*Richard Clarke*, What Voyage had we?

Clarke. *New York*.

L. C. J. Surely it doth appear, that theſe Men were ſhipped a great while ago.

Capt. *Blague*. Some of them have had a Dependence upon me a great while, one hath depended upon me I believe ſeven Months.

L. C. J. Have you any thing more to ſay?

Capt. *Blague*. No, my Lord.

L. C. J. Look you, Gentlemen, you that are of this Jury; this Gentleman is indicted for conſpiring the Death of the King, and doing ſome Acts in order to it, that is, endeavouring to ſurpriſe the *Tower*, and raiſing of Men, and preparing of Shipping and Guns, and this on purpoſe to ſurpriſe the *Tower*. That there was an evil Deſign, a very wicked notorious Deſign of ſeizing the King's Perſon, and killing the King, that is moſt certain, you have heard it by a great many Witneſſes, and it is a thing, I think, not to be doubted of by any. The Queſtion is, Whether this Man be guilty of it, and hath undertaken any thing in relation to it? Look you, you ought to have in ſuch Caſes of High Treaſon, as you have been told, you ought to have two Witneſſes againſt a Perſon. Here are two Witneſſes produced, one of them does ſpeak very ſhrewdly to the Caſe, and tells you, he had it from this Perſon himſelf; that he had ſpoken with *Goodenough* about this Matter, about ſurpriſing the *Tower*, and that he told him it was an eaſy thing to ſurpriſe the *Tower*, and that he could do it; that he had a Ship ready, and he would undertake that 200 Men ſhould be ready with Mortar-pieces from *Southwark* Side, to throw them and beat down the *Tower*, ſo that it might have preſently been down. Firſt, Mr. *Leigh* doth ſay, that the Captain there at the Bar, that he was oftentimes with Mr. *Goodenough*, and Mr. *Rouſe*, and others, who it is plain were in that Deſign, both *Rouſe* and *Goodenough* was, and that he heard *Goodenough* ſay, that the Captain had undertaken it; and he ſays that the Captain had Diſcourſe with *Goodenough* about it. He ſays, the Captain aſked him, in order to this, what Money could be raiſed, and he told him there was 40,000*l.* and the Captain told him, that was but a ſmall Matter, the Sea-men would eat up that; and *Goodenough* told him, there was a greater Bank in *Holland*, that would be brought over. So that this Evidence goes a great way. But then, Gentlemen, you muſt conſider whether you have another Evidence or not. There's a Perſon that you call *Mate*; the *Mate* doth give a dark kind of an Evidence: He does ſay here, that he and the Captain had Diſcourſe about the Way of taking the *Tower*, and he believes it was in order to take the *Tower*; but he does ſay, when he heard it, nobody was preſent but himſelf, and he was of one Opinion how the *Tower* might be taken, that is, by Scaling-ladders and Hand-granadoes; and that the Captain was of another Opinion, whether it might be the better taken by Mortar-pieces, thrown from *Southwark* Side; but whether the Captain had any Notice of this Deſign of taking it, he cannot tell, or whether he had any Acquaintance concerning it. So that this Evidence does ſeem to be ſomewhat dark. Whether this were ſportive, or a Trial of their Skill, or whether it was a Deſign to have Counſel and Advice one of another, which way to take it, I muſt leave it to you; whether it was done with an Intent and Deſign, for to find out the beſt way in order to the taking of it. But if it were only a Diſcourſe at large between them, and Endeavour to try their Judgments one with another, and ſpeaking their Minds one with another in that Caſe, then this Evidence doth not come home to make him guilty of the Plot of taking the *Tower*, or taking away the King's Life. He tells you, he did ſpeak of a Ball to be thrown up; but whether he ever heard of the other Deſign that *Leigh* ſpeaks of, the firſt *Leigh*, *Thomas Leigh*, of throwing up a Ball by Sea-men, in order to the taking of the *Tower*, he knows not. *Leigh* ſays, the firſt Witneſs, he does not know any thing whether this Man at the Bar was ever acquainted with the Ball or not. If upon what you have heard, you believe there are two Witneſſes to prove this Gentleman at the Bar guilty of this Deſign of ſurpriſing the *Tower*, and killing the King, and taking the *Tower* in order to it in this manner; then you ought to find him guilty: But if you have not two Witneſſes, that do teſtify the thing, then, Gentlemen, under two Witneſſes a Man cannot be guilty.

After which the Jury withdrawing to conſider of their Verdict, in a ſhort Time returned, and brought him in Not Guilty.

Saturday 14th July, *Lord* Ruſſel *was brought to the Bar.*

Cl. of Cr. William *Ruſſel*, Eſq; hold up thy Hand *(which he did)*. Thou haſt been indicted for High Treaſon againſt our Sovereign Lord the King, and thereupon haſt pleaded Not Guilty, and for thy Trial haſt put thyſelf upon the Country, which Country has found thee guilty. What canſt thou ſay for thyſelf why Judgment of Death ſhould not paſs upon thee according to Law?

L. *Ruſſel*. Mr. *Recorder*, I ſhould be very glad to hear the Indictment read.——*Mr. Att. Gen.* You may read it.

Cl. of Cr. Will you have it read in *Latin* or in *Engliſh?*

L. *Ruſſel*. In *Engliſh*.

The Clerk read to the Words, Of Conſpiring the Death of the King.

L. *Ruſſel*. Hold, I thought I had not been charged in the Indictment as it is, of compaſſing and conſpiring the Death of the King.

Mr. Att. Gen. Yes, my Lord.

L. *Ruſſel*. But Mr. *Recorder*, if all that the Witneſſes ſwore againſt me be true, I appeal to you and to the Court, I appeal to you, whether I am guilty within the Statute of 25 *E.* 3. they having ſworn a Conſpiracy to levy War, but no Intention of killing the King: And therefore I think truly Judgment ought not to paſs upon me for Conſpiring the Death of the King, of which there was no Proof by any one Witneſs.

Mr. Att. Gen. That is no Exception.

Mr. *Recorder*. My Lord, that was an Exception proper (and as I think you did make it) before the Verdict; whether the Evidence does amount to prove the Charge, that is proper to be obſerved to the Jury; for if the Evidence come ſhort of the Indictment, they can't find it to be a true Charge: But when the Jury has found it, their Verdict does paſs for Truth. We are bound by the Verdict as well as your Lordſhip, we are to go by what the Jury have found, not their Evidence.

L. *Ruſſel.* Without any Proof?

Mr. Recorder. The Jury muſt be governed by their Evidence.

L. *Ruſſel.* I think it very hard I muſt be condemned upon a Point that there was not one thing of it ſworn; and therefore I think I may very legally demand Arreſt of Judgment.

Mr. Recorder. I hope your Lordſhip will conſider, 'tis not the Court can give a Verdict, it muſt be the Jury. I believe there is nobody in the Court does delight in giving ſuch Judgments, eſpecially againſt your Lordſhip. The Verdict is found, and the King's Attorney General on Behalf of the King does demand it.

Mr. Att. Gen. I do demand Judgment of the Court againſt the Priſoner.

Proclamation made for Silence, whilſt Judgment was given.

Sir *George Treby.* Mr. *Recorder*, My Lord *Ruſſel*, your Lordſhip hath been indicted, and tried, and found guilty of High Treaſon, the greateſt of Crimes: Your Quality is great, and your Crime is great: And I hope and expect, that your Behaviour and Preparation in this Condition will be proportionable. My Lord, it is the Duty of the Witneſſes to give Evidence according to Truth; it is the Duty of the Jury to proceed according to Evidence; and it is the Duty of the Court to give Judgment according to the Verdict. It is the King's Pleaſure ſignified by his Attorney General, to demand Judgment againſt your Lordſhip according to this Verdict, and therefore, my Lord, I ſhall not delay it with any farther Circumlocution. The Judgment the Law hath provided, and is the Duty of the Court to give, is,

That you be carried back again to the Place from whence you came, and from thence be drawn upon an Hurdle to the Place of Execution, where you ſhall be hang'd up by the Neck, but cut down alive, your Entrails and Privy Members cut off from your Body, and burnt in your Sight, your Head to be ſevered from your Body, and your Body divided into four Parts, and diſpoſed at the King's Pleaſure. And the Lord have Mercy upon your Soul.

Mr. Att. Gen. Set up the other now.

Cl. of Cr. Set Captain *Walcot* to the Bar, *Rouſe* and *Hone.*

Which was done, and they bid ſeverally to hold up their Hands, which they did; and Captain Walcot *being aſked, What he could ſay why Judgement of Death ſhould not be paſſed upon him, ſaid,*

Capt. *Walcot.* I have nothing to ſay; only I have one Favour to beg of the Court; whether it be proper to beg it now or no, I can't tell.

Mr. Recorder. What is it?

Capt. *Walcot.* I would beg the Favour, that the Youth my Son might come and ſee me, and ſome of my Friends.

Mr. Recorder. Capt. *Richardſon* does not deny it to any Man after he is condemned. That is a Piece of Humanity you need not aſk: I never knew it denied.

Then Hone *was aſked what he could ſay againſt Judgment.*

Hone. I beg the ſame Favour.

Mr. Recorder. Ay, ay, God forbid! You had beſt aſk for ſome Divine to come to you.

Then Rouſe *was aſked the ſame Queſtion.*

Rouſe. I would ſpeak of the Diſadvantages I had when I came upon my Trial. When I was put upon my Trial, you know very well, I begged the Favour of ſome things: One was a Copy of the Indictment, when I ſaw a Perſon come before me, who in his own Conſcience knew was the Author of all theſe Things. I have nothing to ſay againſt the Judgment or Verdict. I always had a great Veneration for the Conſtitutions of the Kingdom. I pray God forgive them that came againſt me. I wiſh I had no more Weight upon my Legs, than I have in my own Conſcience. I prayed a Copy of my Indictment. Theſe Things unexpectedly came upon my Trial, that I had not Opportunity to ſpeak what I ſhould.

Mr. Recorder. We are content to hear you. But obſerve, you are to anſwer the Queſtion that is aſked, Why Judgment ſhould not paſs upon you? You ſay you won't ſpeak againſt the Jury, we muſt not hear you, nor againſt the Verdict.

Rouſe. I have one Word more, and that is, the vaſt Difference between the Indictment and their Oaths. The Indictment was, That ſuch and ſuch Words and Diſcourſes paſſed the ſecond of *March.* The Oaths ſworn were, That the Words were not ſpoken then, but the laſt of *June*, which was three Months Difference; but however the Jury have pleaſed to find it. I muſt throw myſelf at his Majeſty's Feet: I have nothing more to ſay.

Then Silence was proclaim'd, and Judgment given againſt Walcot, Hone, *and* Rouſe, *in like manner as upon the Lord* Ruſſel.

The Execution of Captain WALCOT, JOHN ROUSE, *and* WILLIAM HONE, *on* Friday July 20. 1683.

CAptain *Thomas Walcot* being drawn to *Tyburn* in one Hurdle, *John Rouſe* and *William Hone* in another, and there put into a Cart, the Reverend Dr. *Thomas Cartwright*, Dean of *Rippon*, and one of his Majeſty's Chaplains in Ordinary, with Mr. *Smith*, the Ordinary of *Newgate*, acquainted Captain *Walcot*, That this was the laſt Time he had to ſpend in the World, and therefore deſired him to make a good Uſe of it, telling him, *That as Death leaves him, ſo Judgment will find him*; and earneſtly exhorted him to make an ingenuous Diſcovery and Confeſſion of what he knew touching the Conſpiracy and Treaſons, of which he had been found guilty, and received Sentence to die.

To this Capt. *Walcot* replied, That he had ſome Papers in his Pocket, of what he had prepared to ſay, in Writing, becauſe his Memory was bad; therefore he deſired they might be pulled out, and he would read them.

Then Dr. *Cartwright* and the Ordinary ſpake to *Hone* and *Rouſe* to the Effect before-mentioned, earneſtly deſiring them to confeſs the Whole of what they knew; inſtancing ſome Places of Scripture to them, as *Joſhua*'s Advice to *Achan*, &c. *My Son, confeſs, and give Glory to God, whom you have diſhonoured*, &c. telling them, they would have imbrued their Hands in the Blood of a merciful and good Prince, who had often pardoned, and gave many Acts of Oblivion and indemnity to his Subjects; and whoſe Reign hath preſerved the Purity of the Proteſtant Religion amongſt us; That we cannot enjoy more than we do enjoy: With other good Admonitions for them to make clear Diſcoveries of the Truth of what they knew.

Captain *Walcot*, in the mean while, was preparing to read his Speech.

Dr. *Cartwright* aſk'd him, if he could diſcover any more than he had done already?

Walcot. I've not in the General. I told the King the thing was laid very deep: There was a Gentleman with me laſt Night. I told him what I told the King, and that was all: I told him, I thought an Act of Indulgence would be very neceſſary, becauſe he had a great many Men to take Judgment of. I know not the Particulars of the Deſign; but the King hath the Lord *Howard*, Mr. *Weſt*, and others, that know more than I. I was never in Council with them, nor never with them above four, five, or half a dozen times.

Then looking upon his Paper, he began his Speech as follows:

This great Concourſe of People do not only come here to ſee me die, but alſo to hear what I ſhall ſay; but becauſe I would not be reproached, and thought to be an Atheiſt when I am gone, I have two or three Words to ſpeak for my Religion. I do believe in Three Perſons, and One God, and I expect and hope to be ſaved by the Merits and Righteouſneſs of his Son *Chriſt Jeſus*, without the Hope of an Advantage by any Merits or Righteouſneſs of my own. And I believe, that the Scriptures of the Old and New Teſtament are the Word of God; that *they were not written according to the Will of Man, but holy Men of God writ them as they were inſpired by the Holy Ghoſt.*

I believe that theſe Scriptures ought to be the Rule of our Faith, and the Method of our worſhipping of God: I believe that as Chriſt is the Head of his Church, ſo he is their Lawgiver; that it is not in the Power of any Council or Conclave of Cardinals, or Power upon Earth whatſoever, to ſet up the Precepts and Traditions of Men, and to make them of equal Validity with the Word of God. I believe it was not becauſe the *Jews* rejected and crucified *Chriſt*, that he rejected them, but becauſe they rejected his Word; which appears by the Three thouſand that God by one Sermon of *Peter*'s converted; they being *pricked in their Hearts, and touched in their Conſciences*, cried out, *Men and Brethren, what ſhall we do?* And they were *that Day added to the Church.* It was certainly becauſe the *Jews* rejected the Word and Goſpel of *Chriſt*, that *the Things were hid from their Eyes which belonged to their Peace.* It is a dreadful thing to reject the Word of God; and it is a dreadful thing to live in a ſinful Courſe of Life, till God withdraws his Spirit from us: For it is ſaid, *It ſhall not always ſtrive with Man. Death is the Wages of Sin.* I believe, had not *Adam* ſinned, he and we, his Poſterity, had not died. Death is ſaid to be the *King of Terrors*; but it is only ſo to thoſe that are terrified with a terrifying Conſcience, that have the Arrows of the Almighty ſticking in them, from Convictions of great Guilt, and ſee no Hopes of Mercy, have no Aſſurance of Pardon; but thoſe that are *Chriſt*'s, he takes away the Terror, and Horror, and Sting of Death; he enables them to ſay with *Paul*, *To me to live is* Chriſt, *and to die is Gain*: He enables not only to get unto *Chriſt*, but into *Chriſt*, and ſo they have *Communion and Fellowſhip with the Father and the Son.* It is no hard matter to get the Notions of the Promiſes of the Goſpel into our Heads; but unleſs the Lord is pleaſed to apply them to our Hearts, we cannot believe; except we be *in* Chriſt *as Branches in the Vine*, we are not Chriſtians indeed. It was the Caſe of poor *Francis Spira*: He was certainly a knowing Man, but notwithſtanding he had not Faith to apply the Promiſes. *Chriſt* hath ſaid, *That he that believes in him, tho' he were dead, yet ſhall he live*; *and he that lives and believes in him ſhall never die.* So if we be able to apply the Promiſes by the Spirit of God, we may have Comfort thro' Faith: But then *Faith is the Gift of God*, and *Faith comes by hearing* the Word of God, and receiving it in the Love of God.

I ſhall not be tedious, Mr. Sheriff; I ſhall be very ſhort.

Mr. Sheriff. Take your own Time.

Walcot. As to the preſent Occaſion of my Death, I do neither blame the Judges, nor the Jury, nor the King's Council; I only blame ſome Men, that in Reality and in Truth were deeper concern'd, and more engag'd than I, that came in as Witneſſes againſt me, who ſwore me out of my Life to ſave their own; and who, for fear they ſhould not do it effectually, contriv'd that, which I will appeal to you all, whether there be a Probability in it or not; for they ſaid, that I made it a Scruple of Conſcience to have a Hand in killing the King, or to embrue my Hands in his Blood, but was ſo generous as to undertake the charging his Guards whilſt others did it, and to the end another might do it. Truly I will appeal to all that know me, whether they believe me ſo much an Ideot, that I ſhould not underſtand it was the ſame thing to engage the King's Guards, whilſt another kill'd him, as to kill him with my own Hands. But, however, by their ſwearing againſt me, they have ſecur'd their own Lives and Eſtates, and made my Blood the Price of theirs. I confeſs I was ſo unfortunate and unhappy, as to be invited by Colonel *Rumſey* (one of the Witneſſes againſt me) to ſome Meetings, where ſome Things were diſcours'd of, in order to the aſſerting our Liberties and Properties, which we looked upon to be violated and invaded. But it was he, and Mr. *Weſt*, and ſome Gentlemen that are fled, who were the great Promoters of thoſe Meetings. I was near a Quarter of a Year ill of the Gout, and, during that time, Mr. *Weſt* often viſited me, and ſtill his Diſcourſe would be concerning *Lopping the two Sparks*; that was the Word he us'd, meaning the King and the Duke; and propos'd it might be done at a Play. This was his frequent Diſcourſe; for he ſaid, then they would die in their Calling; it was his very Expreſſion. He bought Arms to do it with, without any Direction of mine; I never ſaw the Arms, nor I never ſaw the Men that were to do it; though they ſaid they had Fifty employed to that End. I told ſeveral of them, that the killing the King would carry ſuch a Blemiſh and Stain with it, as would deſcend to Poſterity; that I had eight Children, that I was loth ſhould be blemiſh'd with it; and withal I was confident the Duke of *Monmouth* would revenge his Father's Blood, if it were but to vindicate himſelf from having any Hand in it. Mr. *Weſt* preſently told me, that the Duke of *Monmouth* did not refuſe to give an Engagement, that he would not puniſh thoſe that ſhould kill the King.

And now I deſire to forgive all the World from the very Bottom of my Heart; and I pray God of his Mercy from my Heart to forgive them, even Mr. *Sheppard*, who delivered me up, who promiſed to carry me into *Holland*; but inſtead of that, he brought me into the Condition wherein I now am. I do deſire with all my Heart to forgive the Witneſſes, and withal, do earneſtly beg, that they may be obſerv'd, that ſome Remarks may be ſet upon them, whether *their End be Peace*, and that *they die the common Death of all Men*. Certainly, though it be the Law of the Land I ought to die, and the King may juſtly and reaſonably put me to Death for being in thoſe Meetings where a War was debated; yet I think theſe Men are guilty of my Blood, that were as deep in as I, and have betray'd me, and taken it away. Then in the next Place, I beg Leave, Mr. *Sheriff*, to ſpeak one ſhort Word of Advice to my Friends, that hath been often given to me, though I was not ſo fortunate and ſo happy as to take it; and that is, that they would neither hear any Man ſpeak, nor ſpeak themſelves, that which they would not have repeated; for there is no ſuch thing as Faith in Man to Man, whatever there is in Man to God: Either the Tears of a Wife, or a Family of little helpleſs Children, ſomething or other, will tempt and provoke Men to betray one another. When God hath a Work to do, he will not want Inſtruments, for he can make them; nor will he want a way to do it, for he can contrive it, and bring it to paſs. And I do moſt heartily deſire, and my earneſt Prayer to the Almighty is, That this may be the laſt Blood ſpilt upon this Account. I know, Acts of Indulgence and Mercy in the King would make him much eaſier in his Government, and would make his People ſit much eaſier under it; and that the Lord may incline his Heart to Mercy, ought to be the Prayer of every good Man. What hath happen'd, and what hath been the preſent Occaſion of our Calamity, I ſuppoſe every Man knows; what Provocations have been on the one Hand, Fears and Neceſſities, Jealouſies and Sufferings of the other, I will not intermeddle with, reſolving to uſe my utmoſt Endeavour to make that Peace and Reconciliation with my God, which is impoſſible for me to make with Man; and to make it my hearty Prayer to the great God, before whom I am in a little Time to appear, that he would ſtaunch this Iſſue of Blood, and find out ſome other way to preſerve theſe Kingdoms in Unity and Peace, to the Honour and Glory of his great Name, and the eternal Comfort of his People.

One Word, Mr. *Sheriff*, I deſire Leave to ſpeak as to *Ireland*, becauſe the King preſs'd it hard upon me, and ſeveral People have been with me about *Ireland*, how far *Ireland* was concern'd in this Matter. I am very inclinable to believe, could I have charg'd any body there, with being engag'd in the Matter for which I ſuffer, I might have had my Life; but by the Bleſſing of God I will charge no Man wrongfully, no not to ſave my own Life; and theſe being ſome of the laſt Words I am to ſpeak, I do aver here, as in the Preſence of God, before whom I am now going to appear, that I do not know an *Engliſhman* nor Proteſtant in *Ireland* engaged in it. What I did know, was only of one *Scotiſh* Gentleman in the North; and the King knows it, but he ſays he does not believe it. For they that were concerned, I was never in any of their Councils: I never ſaw any of thoſe Lords but the Duke of *Monmouth*, and that was, I believe, above ſix Months ago. I never ſaw nor ſpoke with one Lord, only my Lord *Howard*. I heard my Lord *Howard* ſay, That they did not value *Ireland*; for it muſt follow *England*.

I have no more to ſay, Mr. *Sheriff*; but truly you will do an Act of a great deal of Charity if you will prevail with the King for an Act of Indulgence and Liberty to his People: I think ſo: And ſo the Lord have Mercy upon me.

Dr. *Cartwright*. You blame them for that which is their Virtue, and not their Crime; that they have been Witneſſes for the King.

Walcot. I was not for contriving the Death of the King, if you'll believe me.

Dr. *Cartwright*. You blame them for betraying of you in contriving the War, upon which the Death of the King muſt have follow'd, if your Treaſon had gone forward, for elſe you could not have defended yourſelf from that Juſtice to which he hath brought you; and therefore for you to lay that as a Crime upon your Witneſſes, is indeed very ſtrange.

Walcot. Sir, I think it was but reaſonable, that I ſhould ſuffer that is due from Juſtice, and reaſonable by the Law; but theſe Men, they did not come in againſt me, till they did it to ſave themſelves.

Dr. *Cartwright*. Better late than never: A Man had better ſave his Soul and Body too, than die, as now you do, for Crimes that ought to make every good Man's Heart relent; and therefore for your blaming them, it was for that which was their Duty to do; they have not committed a Crime in that, but a very meritorious Act.

Walcot. They have reveal'd it with that aggravating Circumſtance, which I think no rational Man will be guilty of.

Dr. *Cartwright*. That Circumſtance which you call aggravating, is no Aggravation at all; that is rather a Mitigation of your Crime, to make them believe that you were tenderer of the King's Perſon, than to ſhoot him when he was not armed. But you confeſs you were conſulting this Crime.

Walcot. I was not to have a Hand in the King's Death.

Dr. *Cartwright*. But it was propos'd when you were there.

Walcot. It was ſo.

Dr. *Cartwright*. And it was agreed to be done.

Walcot. Truly I do not know how far it was agreed; I was there many Meetings.

Dr. *Cartwright*. Theſe many Meetings you could not but be ſenſible of,

Walcot. There were ſeveral Meetings, wherein the Buſineſs of the King's Life was never ſpoke of.

Dr. *Cartwright*. That was agreed in thoſe Meetings; but you had a tenderer Conſcience.

Walcot. I ſay, they were for aſſerting our Liberties and Properties.

Dr. *Cartwright*. I would fain have you explain that.

Walcot. Truly, Sir, ſince you preſs me to ſpeak, we were under general Apprehenſions, and ſo were thoſe Lords that are likely to ſuffer, as I have heard; they were under general Apprehenſions of Popery and Slavery coming in.

Dr. *Cartwright*. What Sign was there of it? You had no Perſecution at all; you were allowed by Law to meet five in a Houſe, beſides thoſe of the Family. It is true, the Conventicles have been diſturb'd of late, and I would have you look upon it as a Judgment of God to bring you to this for forſaking the Church of *England*: You have forſaken Communion with that Church in that Way you were inſtructed from your Youth.

Walcot. I do not come here to diſpute of Religion, but I come here to die religiouſly, if it pleaſe God to enable me.

Dr. *Cartwright*. I pray God enable you: But I would not have you charge that as a Crime upon the Witneſſes, which was their Duty.

Walcot. I can't tell how to excuſe my Witneſſes for aggravating things againſt me, and making them worſe than really they were.

Dr. Cartwright *going to reply.*

Walcot. Pray Sir, give me Leave; for a Man to invite a Man to a Meeting, to importune him to this Meeting, to be perpetually ſoliciting him, and then deliver him up to be hang'd, as they have done me——

Dr. *Cartwright*. It was a Crime to ſolicit you to thoſe Meeting; but when you were in, it was a Duty in you and in them to reveal it: If God had given you the Grace to reveal them, the Turn had been theirs, which now is yours. And whereas you ſay you cannot excuſe them, that is uncharitable.

Walcot. I do forgive them, and I deſire with all my Heart God would forgive them.

Dr. *Cartwright*. You confeſs you were guilty enough to take away your Life?

Walcot. I was ſo. The ſame Meaſure we mete to another, that Meaſure God will mete to us: Then, Sir, I do leave it to God.

Dr. *Cartwright*. Then you pray this may be the laſt Blood ſpilt upon this Account?-----*Walcot*. I do ſo.

Dr. *Cartwright*. Would you not have Traitors brought to their End? You talk of ſpilling Blood, as if it were innocent Blood now ſpilt, when you do confeſs and own the Guilt. But I will give you no further Diſturbance, but my Prayers to Almighty God for you, that God would give you Mercy. *And then turning to* Hone,

Dr. *Cartwright*. Mr. *Hone*, give Glory to God, and unburden your Conſcience; for you have but a ſhort time to ſtay here.

Hone. I have nothing further to ſay, but that I have been guilty of the Crime.

Dr. *Cartwright*. You are ſo.

Hone. Yes, I am guilty of this Crime according to the Law of the Land.

Dr. *Cartwright*. Ay, and according to the Law of God.—*Hone*. Yes.

Dr. *Cartwright*. You ſay, according to the Law of the Land, a Man may be ſworn out of his Life by falſe Witneſſes; but you were guilty of conſpiring the Death of the King, and raiſing an Inſurrection.

Hone. Truly I muſt ſay, as the Captain well minded, I was drawn in. *Thou ſaweſt a Thief, and thou conſentedſt with him*: So I ſay, that I was drawn in: I ſaw the Thief, and conſented; I have looked upon myſelf ſince to be the more guilty of Blood, and my Circumſtance was to be drawn in, and enſnared; for I never was at any of their Meetings, none of their Cabals, but in a public Coffee-houſe or Tavern, where they diſcours'd the Matter of Fact; and I was to meet the King and the Duke of *York*, but I did not know at that time when, or where, nor what was my Buſineſs.

Dr. *Cartwright*. But you were to aſſiſt?

Hone. Yes, I promiſed that, to aſſiſt.

Dr. *Cartwright*. Do you beg God and the King's Forgiveneſs for it from the Bottom of your Heart, that you have been guilty of this? *For if the Blind lead the Blind, both ſhall fall into the Ditch*; as well he that leads, as he that is led, altho' he that leads may fall deeper. There are Circumſtances make one Man's Crime greater than another; the Greatneſs of theirs does not leſſen yours.

Hone. I believ'd that then I was very near another Snare: I was reſolv'd to go down into the Country, and not meddle in the Thing at all; and had been in the Country, but meeting with *Keeling*, (I freely forgive him for whatſoever is done) he call'd me; and diſcourſing with him, I did ſay I was for killing the King, and ſaving the Duke of *York*.

Dr. *Cartwright*. Why was you for ſaving the Duke of *York*?

Hone. I do not know what to ſay as to that: There was no Reaſon.

Dr. *Cartwright*. What was your own private Reaſon for killing the King, and ſaving the Duke of *York*?

Hone. As to that, I think this: That the Duke of *York* did openly profeſs himſelf to be a *Roman Catholick*, and I did ſay, I had rather diſpoſe of the King than the Duke of *York*.

Dr. *Cartwright* Had you rather a Papiſt ſhould reign over us, as you take him to be, than the King?

Hone. I do not know what to ſay to that.

Dr. *Cartwright*. That does deſerve a Reaſon, Mr. *Hone*; you ought to give ſome Reaſon of that; you cannot but have ſome Reaſon. If you had a Deſign to kill the Duke, and ſave the King, then it might be to prevent Popery; but you ſay the quite contrary. God in Heaven forgive you for your murderous Deſign!

Hone. I know as little of this as any poor ſilly Man in the World; I was fain to gather it; I had it not ſo downright; I was drawn into it; however, I am now to die: As for the Witneſſes, I deſire the Lord to forgive them.

Dr. *Cartwright*. They have not wrong'd you, they have done their Duty.

Dr. *Cartwright*. *Rouſe*. What ſay you?

Rouſe. As a Man, and a Chriſtian, in the firſt Place, as God hath made me a Chriſtian through his Grace, that the World may underſtand, that I do not die, as Captain *Walcot* ſays, an Atheiſt; I do here declare, in the Preſence of God, and this vaſt Number of People, what Faith I die in: In that very Faith which was once deliver'd, and in the Belief of that Doctrine which the Church of *England* makes Profeſſion of, and is agreeable to the Word of God, being founded upon the Doctrine of the Prophets and Apoſtles, whereof *Jeſus Chriſt* is the Corner-Stone. There have been very various Opinions concerning me, upon the Account of the various Employments that I have been exerciſed in, both here and beyond Sea: It has been my Lot to fall under ſuch Circumſtances, and to fall under ſuch Miſrepreſentations and Cenſures, upon the Account of ſome publick Employments that I have been in for the King, and after I return'd from *Flanders*, upon the Account of Disbanding; it was almoſt morally impoſſible for ſuch a one in my Capacity to ſtand right in the Affections and Opinions of all People. When I was employ'd in *Flanders* in the Payment of that Army, I was then between two Rocks; I will leave it to the Judgment of all Sorts of People. You know the Country, I need not particularize, nor reflect upon Opinions, and the like. But I having been bred up in *England*, and had that Education it pleas'd God to give me, I was not fond of, nor carried off with, that Debauchery in thoſe Times; and ſometimes, more than once or twice, it was my Lot, that I was like to have been murder'd for pleading for, and juſtifying the Actions of the King of *England*. Since my Return, and being employ'd under Sir *Thomas Player*, and ſome others, about disbanding, there it came to my Lot, becauſe I could not humour ſome Gentlemen, who neither fear'd God, nor honour'd the King, (I will not ſay ſo of all; for I know ſome were very worthy Gentlemen, that ſcorn'd any of thoſe Actions, which ſome would attempt. There is one worthy Gentleman I can ſpeak very honourably of) that ſo they might have their Pockets full of Money, did not value how the Accounts were ſtated; and at the very ſame Time I was under many Temptations of Handfuls of Guineas in my Hand to do ſo and ſo, to cheat the King; and becauſe I would not do that, I was look'd upon as a Jeſuit. I did waive all theſe Things under thoſe Circumſtances. It hath been my Lot likewiſe, being employ'd by Sir *T. P.* and the reſt of the Commiſſioners, to fall into thoſe Companies and Places, where my Lord *Shafteſbury* and others have been; and have had ſome kind of Diſcourſe, which was not Treaſon, but rather a thing that I ever abhorr'd and declar'd a Deteſtation of. Since theſe Hurly-burlies, concerning Parliaments going off and coming on, did diſcontent the People upon one Account or another, I confeſs I have been a Hearer, and have underſtood too much of ſome kind of Meetings, which I pray God forgive them for, and eſpecially thoſe that call themſelves Proteſtants, being ten thouſand times worſe than any others. That there have been ſuch kind of Deſigns, and Meetings, and Clubs, I have not been ignorant of; God forgive me that I have not been as careful and as diligent, and as ready and forward, to diſcover it a great while ſince! That I ever had a Hand in it, or the leaſt Thought, or Reſolution, or Intention, to appear in it; but rather, on the contrary, have declar'd my Opinion againſt it, both in the Sight of God and Man, as a Breach of the Laws of God, and the Laws of the Land, and contrary to our Duty, who are bound to pray for the King, and all that are in Authority; I do declare, in the Preſence of God, I am a perfect Stranger, and I thank God my Conſcience is clear. I have acquainted his Majeſty in Counſel, and I have had the Honour to be admitted into his Majeſty's Preſence in private almoſt half an Hour, on *Saturday* was ſev'nnight, where I was as clear and above-board, and as faithful to his Majeſty, as I could be, in an humble manner, according to my Duty; where I offered to have ſome Time and Place allotted, that I might give him a whole Scheme of the Buſineſs; for there were a great many Gentlemen that had a Reſpect for me. It was their Opinions, that I had a general Knowledge of all the Clubs, and all the Deſigns, that ever were ſince the King came in; but they were under a Miſtake. I gave his Majeſty an Account to the beſt of my Knowledge; and when I had done, his Majeſty ſeem'd to be pleaſed, and to thank me for it; but before I had Power to put it in Writing, and wait upon his Majeſty, the Providence of God did ſo order it, the Council thought it fit, that I ſhould be committed to Priſon, where I was ſome Days. I have had more Kindneſs among *Heathens* and *Indians*. I pray God to forgive them for it: I had not Liberty to ſend to my Wife, big with Child, in two Days, where I was.

Sir, I ſhall not hold you in Suſpenſe, and multiply Words, but what is moſt proper to this Occaſion. What I have given to his Majeſty in Council, and what I have ſpoken to his Majeſty in private, is nothing but the naked Truth to clear my own Conſcience, that I may not go out of the World with any thing upon me: I wiſh thoſe that call themſelves Proteſtants would diſcharge their Duty better to God and the King, than either I or the beſt Subject ever did. I have look'd upon it as an Obligation, ever ſince I knew what it was to be a Man, to carry myſelf obedient to thoſe that God has ſet over me, eſpecially the King, and thoſe that are in Authority; and I have made it my Practice to pray for the King, as for my own Soul. That it has been my Lot to be acquainted with thoſe Vanities of Clubs, and Perſons, no rational Man will wonder, conſidering the Circumſtances and Places I was call'd to. There is one particular Gentleman, Mr. *Sheriff*, I muſt deſire the Favour to clear myſelf by ſomething that I took Occaſion to ſpeak of Yeſterday. I did acquaint you, Mr. *Sheriff*, with what I had ſpoken to the King, how I was interrupted in the further Diſcovery of what I had a Mind to ſay. What was further ſaid Yeſterday, it was nothing but the naked Truth; In the firſt Place, as to what was afterwards diſcours'd of, as to ſome particular Perſons, namely and particularly Sir *Thomas Player*, I muſt do Juſtice to all the World. That he hath been acquainted with the Lord *Shafteſbury* none here will wonder; but that he hath been very ſhy of his Company ſince he came out of the *Tower*: For he told me many times he never was in his Company but once; for he did not like ſome Things, and ſaw ſome Deſigns, that he was afraid were going on; and thereupon Sir *Thomas Player* was ſo ingenuous and honeſt to the King, as to break off. I always look'd upon him as a very loyal Subject, and I muſt declare in the Preſence of God, and all theſe People, I never heard him ſpeak one diſhonourable Word of the King; what he may have had with others, is beſt known to himſelf. I have been in ſeveral Clubs eating and drinking, where it has been diſcours'd to accommodate the King's Son, the Duke of *Monmouth*. That there was a Deſign to ſet up the Duke of *Monmouth*, I will not ſay, while the King reigns; tho' ſome extravagant hot-headed Men have taken upon 'em to diſcourſe theſe Things, but not any worthy Man; I know thoſe that were worthy to be call'd by that Name, have declar'd in my Hearing, that in Oppoſition to the Duke of *York*, if the King be ſeiz'd, they ſhould ſtand by the Duke of *Monmouth*. There are others, (I will not give Nick-names to any; you are wiſe Men, and know what I mean by ſpeaking in the general) that were for a Commonwealth; and ſome there were, two or three Perſons, (I ſhall be as plain as I can, and I hope you will bear with me, ſince it came to my Lot to come to the Knowledge of it; ſome were) for the Duke of *Monmouth*, ſome for a Commonwealth, and ſome, but very few, not worth naming, were for the Duke of *Bucks*: But that I think fell at laſt between theſe two, being the greater Part, as far as I did apprehend by diſcourſing here and there in the City, which I did very frequently do. But the way of theſe Gentlemen's diſcourſing theſe Things was only one at a time, eſpecially a very induſtrious Gentleman, that hath made it his Practice a long time, (for it hath been my Lot to be acquainted but two Months, and that too long) which is the Witneſs that comes againſt me; and I pray God to forgive him, and I blame him not for diſcovering me, but for the Words he ſpake himſelf, by way of inſtigating me to enter into a Deſign againſt the King; they were his own Words, and not mine. I blame him not for diſcovering any thing whereby the King may be ſerved. He did tell me ſeveral times there were Clubs in *London*, but I could never get out of him the Places were the Clubs were. Yet I endeavoured what poſſibly I could to come to the Bottom of that Deſign; for my Intent was to make a faithful and true Diſcovery, that I might not go to *Whitehall*, or a Juſtice of Peace, with an idle Story, or a Sham; But at laſt I got out of him, that *Rich. Goodenough* was chiefly inſtrumental: This was a very few Days before Notice was given, that this certain Perſon, *Thomas Leigh* the *Dyer*, was ſworn againſt by one *How*: I aſk'd him the Meaning: He told me, that *How* was a very Raſcal. I aſked *Leigh*, Sir, What Courſe ſhall be taken? For, what by the *Doctors-Commons* of the one Hand, and what by the Perſecutions of the other, we muſt think of a Way how to relieve it. There is ſome Deſign in Hand, ſays *Leigh*; don't you know? No, ſaid I, I would be glad to hear, there is an Invaſion, ſaid he, going on, a Deſign againſt the King and the Government; but that was only a Fallacy; but he diſcover'd afterwards to me, that there was a Reſolution, and a certain Number of People about the City and the Nation, to make an Attack upon the *Tower* of *London*, upon the City of *London*, upon *Whitehall*, and upon *St. James*'s: I ſaid, What do you deſign then? Have a Care that you don't ſhed more innocent Blood; for the Land is ſtained with Blood too much already. No, ſaith he, the Reſolution, as Mr. *Goodenough* ſaith, is not to ſpill a Drop of Blood, but only to ſecure the King's Perſon, that the Papiſts do not kill him; and then, ſaith he, we will deal with the Duke of *York* as we pleaſe. They were his own Words, to the beſt of my Remembrance. Afterwards this Gentleman was ſworn againſt by one Mr. *Keeling* in *Eaſt-Smithfield*; ſaith he, He's a Rogue and a Dog, and I have ſeen him but once theſe nine Months, and I had no Diſcourſe, but only drank a Glaſs of Drink; which proves ſince to the contrary. Being then in Company at the *King's-head* Tavern in *Swithin's-Alley*, near the *Exchange*. News was brought, he was ſworn againſt; he did not know what to do, but found out a Place near *London-Wall*, and deſired me to go to one or two about the Matter; he knew not how to obſcure himſelf, this Houſe was beſet, Meſſengers after him, and likewiſe a kind of Judgment or Execution; how to put both Ends together, he knew not. I told him, if he would, I had a Bed; he might go to my Houſe. I never heard a Word from *Rich. Goodenough*, one way nor another, of any Deſign againſt the King and the Government, whom I have known this ſeven Years; only this *Lee* told me, his Hand was as deep as any other. It's true, this Gentleman comes and ſwears againſt me, that I ſhould be the only Perſon to engage in taking the *Tower* of *London*. Sir *John*———you know very well in what Capacity I have been, and how very uncapable I was in my Perſon to take the *Tower* of *London*. I ſpeak in the Preſence of God, before whom I am to appear in a few Minutes, I never had any ſuch Thought, never had any ſuch Deſire, never conſulted with any Perſons of Quality, never diſcourſed of any Arms in order to it; but only this I was ſaying. This Fellow being ſet on, (and I think a more proper Perſon than any Man in the World) for that he was a little low in the World, he was under a Temptation of being thrown out by an *Anabaptiſtical Church*, for ſome kind of Failings; he was under a Temptation to make himſelf Somebody; therefore he did cloſe with Mr. *Goodenough*, and ſome others; and when the firſt Proclamation came forth, he himſelf told me, (I never knew it before) that *Rumſey*, Capt. *Walcot*, *Nelthrop*, and *Goodenough*, and *Weſt*, were concerned in this Deſign; he was the Man told me: And when the ſecond Proclamation came out, then he could tell me of thoſe too; I told him he was a Wretch he had not diſcover'd it betimes. As to his ſwearing againſt me, for which God forgive him, that I had a Hand in taking the *Tower* of *London*; the Thing is this: He knew I was intimately acquainted with a certain Captain, one *Blague*, who was my Servant twenty-one Yeats ago in *Virginia*; he hath been a very faithful and honeſt Servant, I believe, to his Majeſty for theſe fifteen Years, and particularly five Years, in three of his Majeſty's Men of War. I know very well the Man is of ſuch a Principle, that he abhors to engage in any wicked Deſign. But only *Leigh* diſcourſing at random about taking the *Tower*, Captain *Blague* gave this Anſwer (for he is a very jocular Man:) If I were of a Mind to take it, were it for the Service of the King, if there were an Enemy coming in, ſaith he, I would with ſix Ships well mann'd, and arm'd with Guns, undertake to take the *Tower*. Upon what Account he ſaid it, I don't know; but I believe in my Conſcience he had no more Deſign to put ſuch a thing in Practice, than I have to cut my own Throat at preſent. Captain *Blague* had heard theſe Diſcourſes *pro* and *con*.

ſaith he, two or three hundred Men would do it: It's weak in ſuch a Place; I wonder his Majeſty does not make it ſtronger. Now, when he came to ſwear, as ſoon as he was taken up, he took Occaſion to ſwear againſt me, all the Diſcourſe he uſed in preſſing me to undertake this Deſign.

Mr. Sheriff *Rich.* Pray, if you have any thing that was not told in Court, diſcover it, but you need not go over that which was in Court.

Rouſe. Mr. Sheriff, I have nothing at all to ſay, either to blame the Judges, or the Jury, or the Witneſſes themſelves, the greateſt of all. I thank God, I was not any way to have had any Hand in it: But the very Words themſelves, that came out of his Mouth, he makes me the Author of; But I freely forgive him, as I deſire God would forgive me: Though he did tell me poſitively there were five hundred Arms to be brought out of the Country. I heard of ſuch a thing, I confeſs, here and there; but could never know the Authors of it, nor the Clubs were it was diſcourſed: It was lately that he told me, *Goodenough* told him, that the King was to be taken off as he came from *Windſor*; that there were ſeveral things to be done in order to it; that they wanted a Place of Meeting: and ſome thought of *Saliſbury-Plain*, and ſome of *Black-heath*, but the moſt convenient Place pitch'd upon was *Black-heath.* They were diſcourſing how to gather the People together; ſome were for communicating it privately, others for a Ball. They aſked my Thoughts: Said I, The beſt Way will be, if you throw up a Silver Ball, to get the People together: For my Deſign was to get what I could out of them. Thereupon he went to Mr. *Goodenough*, and diſcours'd him, and told him, That my Opinion was, to throw up a Silver Ball, and declare, All thoſe that will come and drink a Bowl of Punch ſhall be welcome; and that by this means they would have gathered thirty or forty thouſand Men in two or three Days Time, which otherwiſe would have been a Fortnight a-doing: But for himſelf, I will not blame him, nor lay any thing to his Charge of which he is not guilty. I muſt needs give him his Due. I do not remember, that ever he inſiſted upon ſhedding of Blood; but that he hath diſcourſed in very opprobrious Terms, and baſe Language, of the Duke of *York*, by calling him Rogue and Dog, and ſuch Things. And that *We will do his Work*: That is true. And, that after the King's Deceaſe, the Duke of *Monmouth*, having a Vogue with the People, muſt of Neceſſity ſucceed. I cannot tell what I can ſay more as to that; that is the chief Thing I have to ſay, if I have not forgot any Thing.

Mr. Sheriff *Rich.* Mr. *Rouſe*, you would do well to name thoſe Perſons that were with you in that Conſultation.

Rouſe. There was no Conſultation at all, Sir. That I had was from this *Thomas Lee*'s Mouth himſelf, That there were five hundred Arms to be brought in: That he had it from *Richard Goodenough*, and *Nelthrop*, and Mr. *Weſt*; and that Mr. *Weſt* particularly knew from whom theſe Arms were to come; for he gave me a Hint, that Part of the Arms were bought by Mr. *Weſt.*

Mr. Sheriff *Rich.* Who propos'd the Way of the Ball?

Rouſe. Sir, he was ſaying, there were ſeveral Propoſitions made in the Club where *Goodenough* was, and ſome thought of one Way, and ſome another; but they could not find out a proper Way. Saith he, What do you think? Said I, If the People meet together, they may throw up a Ball; juſt in that careleſs way I ſaid ſo. So he came to me afterwards, and ſaid, that he had diſcourſed with Mr. *Goodenough*, and Mr. *Goodenough* told him, that there were forty thouſand Pounds in Bank, and if ſuch a Ball coſt thirty or forty Pounds, it mattered not, to carry on ſuch a Deſign as that was.

Here Captain Walcot *ſpake.*

Capt. *Walcot.* Sir, I deſire you to take Notice of this, among other things, that ſo far as I ever heard of this Buſineſs, it is of no longer a Date than *Auguſt* or *September* laſt: I would not have this Conſequence of it, ſo as to ſtifle the Popiſh Plot.

Mr. Sheriff. Do you know any thing of the Popiſh Plot, that hath not yet been diſcovered?

Capt. *Walcot.* No, Sir.

Hone. I had but the Knowledge in *March* laſt of this Buſineſs.

Capt. *Walcot.* I do not know, nor ever heard, that it was older than *Auguſt* or *September* laſt.

Mr. Sheriff. Ordinary, do your Office.

Ordinary to *Walcot.* Have you fully diſcharged your Conſcience?

Capt. *Walcot.* I have.

But it being ſaid, that Rouſe *was interrupted.*

Mr. Sheriff *North.* If you have any thing to ſay, Mr. *Rouſe*, go on, but do not make Repetitions.

Who pull'd his Paper out of his Pocket, and look'd on it.

Rouſe. He declar'd further, Mr. Sheriff, that when once the thing came ſo far, that the *Tower* and City were taken, and ſo many Men gathered together, they would quickly increaſe; and the Method was to go to *Whitehall* with Swords in their Hands, and to demand Privileges and Liberties, not to take away the King's Life, but only let the Duke of *York* look to it; for he was reſolv'd upon it, that he ſhould not ſucceed the King. Then he delivers another Paper, being his Petition to the King, and ſome more Notes in Short-hand.

Ordinary. Have you fully ſatisfied your Conſcience?

Rouſe. I have, Sir, a Word or two to ſpeak to the People. I have diſcharg'd my Conſcience, as to any thing as to what I was acquainted with. It had been happy for me, if I had not heard of it; but that I had a Hand in it, I thank God, I am free.

Dr. *C.* You had a Hand in the concealing?

Rouſe. That I had.

Dr. *C.* And in maintaining the Correſpondency without diſcovering it, and you do diminiſh your Crime.

Rouſe. No, Sir, I don't deſire it. Mr. Sheriff, I do freely acknowledge and confeſs, that it is juſt in God in the firſt Place, and righteous and juſt in the King, that I die; and that I die juſtly for concealing it. I would lay no Blame upon the King, nor any other Perſon in the World. I did not conceal it upon any Account to his Majeſty's Prejudice, nor any Man in the Nation; and I hope God will give more Grace to thoſe Perſons that do ſucceed. I beg a Word or two; I had almoſt forgot, as a Man, and as a Chriſtian, That it is a thing of ſuch evil Conſequence, I have found it by bitter Experience now, for ſuch and ſuch publick Places to be viſited, eſpecially by thoſe that are Profeſſors of the Proteſtant Religion, and particularly Coffee-houſes, where it is very well known too much Time is ſpent, and Families, and Wives, and Children, ſuffer too much: I pray God the People may take Notice of it, and lay it to Heart, that ſpend their Time ſo, thinking it is but a Penny and a Penny, and ſo diſcourſe of State Affairs, as if ſo be they were God's Counſellors in the Government of the World, running from the Coffee-houſe to the Tavern, and from the Tavern to the Coffee-houſe, which hath been the Debauchery of this Age; and ſo bring them into this *Dilemma*, to diſcourſe of thoſe Things neither pleaſing to God, nor the King, nor themſelves, but their Prejudice. The Profanation of the *Sabbath-day* is commonly diſcours'd of in this Place. God forgive me for not obſerving it as I ſhould! I pray God thoſe that follow me may be more careful of their Duty to God and Man, for the Good of themſelves, their Souls, aud their Families; thoſe that are young eſpecially, and coming up, that they may chiefly mind their Concerns for Eternity, and that they would pay their Duty and Homage to the King, and thoſe that God has ſet over them; and not neglect that great Command, to pray for the King, and all that are in Authority.

Being aſk'd if they had any thing more to ſay, they ſaid, No. Mr. Ordinary then pray'd with them, and ſung a Pſalm, and then they deſir'd to pray themſelves; which was granted.

Having ended their reſpective Speeches and Prayers, the Executioner did his Office.

The Attainder of Captain *Walcot* was afterwards in *Trin.* 7 *Will.* 3. reverſed in the *King's-Bench* for Error in the Entry of the Judgment. Judgment was, *Quod interiora extra ventrem capiantur, & in ignem ponantur, & ibidem comburantur*; the Words *ipſo vivente*, or *in ejus conſpectu*, being omitted, which Words were held to be a neceſſary Part of the Sentence. 2 *Salk.* 632. 4 *Modern Reports*, 395.

A Writ of Error was afterwards brought in Parliament upon this Reverſal, and the Reverſal was affirmed. *Show. Caſes in Parl.* 127---137.

The next Day was appointed for the Execution of Lord *Ruſſel.*

About Nine in the Morning the Sheriffs went to *Newgate*, to ſee if my Lord *Ruſſel* was ready; and in a little time his Lordſhip came out, and went into his Coach, taking his Farewel of his Lady, the Lord *Cavendiſh*, and ſeveral other of his Friends at *Newgate.* In the Coach were Dr. *Tillotſon* and Doctor *Burnet*, who accompanied him to the Scaffold built in *Lincoln's-Inn-Fields*, which was cover'd all over with Mourning. Being come upon the Scaffold, his Lordſhip bow'd to the Perſons preſent, and turning to the Sheriff, made this following Speech:

Mr. Sheriff,

I expected the Noiſe would be ſuch, that I ſhould not be very well heard. I was never fond of much ſpeaking, much leſs now; therefore I have ſet down in this Paper all that I think fit to leave behind me. God knows how far I was always from Deſigns againſt the King's Perſon, or of altering the Government. And I ſtill Pray for the Preſervation of both, and of the Proteſtant Religion. Mr. *Sheriff*, I am told, that Capt. *Walcot* yeſterday ſaid ſome Things concerning my Knowledge of the Plot: I know not whether the Report is true or not.

Mr. Sheriff. I did not hear him name your Lordſhip.

Writer. No, my Lord, your Lordſhip was not nam'd by any of them.

L. *Ruſſel.* I hope it is not; for, to my Knowledge, I never ſaw him, nor ſpake with him in my whole Life; and in the Words of a dying Man, I profeſs I know of no Plot, either againſt the King's Life, or the Government. But I have now done with this World, and am going to a better: I forgive all the World heartily, and I thank God I die in Charity with all Men; and I wiſh all ſincere Proteſtants may love one another, and not make way for Popery by their Animoſities. I pray God forgive them, and continue the Proteſtant Religion amongſt them, that it may flouriſh ſo long as the Sun and Moon endure. I am now more ſatisfied to die than ever I have been.

Then kneeling down, his Lordſhip pray'd to himſelf; after which Dr. *Tillotſon* kneel'd down and pray'd with him; which being done, his Lordſhip kneel'd down, and pray'd a ſecond time to himſelf; then pull'd off his Peruke, put on his Cap, took off his Cravat and Coat, and bidding the Executioner, after he had laid down a ſmall Moment, do his Office without a Sign, he gave him ſome Gold; then embracing Dr. *Tillotſon* and Dr. *Burnet*, he laid him down with his Neck upon the Block, and it was cut off at two Strokes.

The Executioner held up the Head to the People, as is uſual in Caſes of Treaſon, *&c.* which being done, Mr. Sheriff order'd his Lordſhip's Friends or Servants to take the Body, and diſpoſe of it as they pleaſed, being given them by his Majeſty's Favour.

The Paper deliver'd to the Sheriff by my Lord Ruſſel.

I thank God I find myſelf ſo compoſed and prepared for Death, and my Thoughts ſo fixed on another World, that I hope in God I am now quite wean'd from ſetting my Heart on this. Yet I cannot forbear ſpending ſome time now, in ſetting down in Writing a fuller Account of my Condition to be left behind me, than I'll venture to ſay at the Place of Execution, in the Noiſe and clutter that is like to be there. I bleſs God heartily for thoſe many Bleſſings, which he in his infinite Mercy hath beſtow'd upon me through the whole Courſe of my Life; that I was born of worthy good Parents, and had the Advantage of a religious Education, which I have often thank'd God very heartily for, and look'd upon as an invaluable Bleſſing; for even when I minded it leaſt, it ſtill hung about me, and gave me Checks; and hath now for many Years ſo influenced and poſſeſs'd me, that I feel the happy Effects of it in this my Extremity, in which I have been ſo wonderfully (I thank God) ſupported, that neither my Impriſonment, nor the Fear of Death, have been able to diſcompoſe me to any Degree; but, on the contrary, I have found the Aſſurances of the Love and Mercy of God, in and through my bleſſed Redeemer, in whom only I truſt; and I do not queſtion, but that I am going to partake of that Fulneſs of Joy which is in his Preſence; the Hope whereof does ſo wonderfully delight me, that I reckon this as the happieſt Time of my Life, though others may look upon it as the ſaddeſt.

I have liv'd, and now die, of the Reform'd Religion, a true and ſincere Proteſtant, and in the Communion of the Church of *England*, though I could never yet comply with, or riſe up to, all the Heights of ſome People. I wiſh, with all my Soul, all our unhappy Differences were remov'd, and that all ſincere Proteſtants would ſo far conſider the Danger of Popery, as to lay aſide their Heats, and agree againſt the common Enemy; and that the Churchmen would be leſs ſevere, and the Diſſenters leſs ſcrupulous; for I think Bitterneſs and Perſecution are at all times bad, but much more now.

For Popery, I look on it as an idolatrous and bloody Religion, and therefore thought myſelf bound, in my Station, to do all I could againſt it. And by that I foreſaw I ſhould procure ſuch great Enemies to myſelf, and ſo powerful ones, that I have been now for ſome time expecting the worſt. And, bleſſed be God, I fall by the Ax, and not by the fiery Trial. Yet, whatever Apprehenſions I had of Popery, and of my own ſevere and heavy Share I was like to have under it, when it ſhould prevail, I never had a Thought of doing any thing againſt it baſely or inhumanly, but what could well conſiſt with the Chriſtian Religion, and the Laws and Liberties of this Kingdom. And, I thank God, I have examined all my Actings in that Matter with ſo great Care, that I can appeal to God Almighty, who knows my Heart, that I went on ſincerely, without being moved, either by Paſſion, By-end, or ill Deſign. I have always loved my Country much more than my Life, and never had any Deſign of changing the Government, which I value, and look upon as one of the beſt Governments in the World, and would always have been ready to venture my Life for the preſerving of it, and would have ſuffered any Extremity, rather than have conſented to any Deſign to take away the King's Life: Neither ever had Man the Impudence to propoſe ſo baſe and barbarous a thing to me. And I look upon it as a very unhappy and uneaſy Part of my preſent Condition, that in my Indictment there ſhould be ſo much as Mention of ſo vile a Fact; tho' nothing in the leaſt was ſaid to prove any ſuch Matter; but the contrary, by the Lord *Howard.* Neither does any body, I am confident, believe the leaſt of it. So that I need not, I think, ſay more.

For the King, I do ſincerely pray for him, and wiſh well to him, and to the Nation, that they may be happy in one another; that he may be, indeed, the Defender of the Faith: that the Proteſtant Religion, and the Peace and Safety of the Kingdom, may be preſerved, and flouriſh under his Government; and that he in his Perſon may be happy, both here and hereafter.

As for the Share I had in the Proſecution of the Popiſh Plot, I take God to Witneſs, that I proceeded in it in the Sincerity of my Heart, being then really convinced (as I am ſtill) that there was a Conſpiracy againſt the King, the Nation, and the Proteſtant Religion: And I likewiſe profeſs, that I never knew any thing, either directly or indirectly, of any Practice with the Witneſſes, which I looked upon as ſo horrid a thing, that I could never have endur'd it. For, I thank God, Falſhood and Cruelty were never in my Nature, but always the fartheſt from it imaginable. I did believe, and do ſtill, that Popery is breaking in upon the Nation; and that thoſe who advance it will ſtop at nothing, to carry on their Deſign: I am heartily ſorry, that ſo many Proteſtants give their helping Hand to it. But I hope God will preſerve the Proteſtant Religion, and this Nation: Though I am afraid it will fall under very great Trials, and very ſharp Sufferings. And indeed the Impiety and Profaneneſs that abounds and appears ſo ſcandalouſly barefaced every-where, gives too juſt Reaſon to fear the worſt Things which can befal a People. I pray God prevent it, and give thoſe who have ſhew'd Concern for the publick Good, and who have appear'd hearty for the true Intereſt of the Nation, and the Proteſtant Religion, Grace to live ſo, that they may not caſt a Reproach on that which they endeavour to advance; which (God knows) hath often given me many ſad Thoughts. And I hope ſuch of my Friends as may think they are touch'd by this, will not take what I ſay in ill part, but endeavour to amend their Ways, and live ſuitable to the Rules of the true Reform'd Religion; which is the only thing can adminiſter true Comfort at the latter End, and revive a Man when he comes to die.

As for my preſent Condition, I bleſs God, I have no Repining in my Heart at it. I know for my Sins, I have deſerved much worſe at the Hands of God: So that I chearfully ſubmit to ſo ſmall a Puniſhment, as the being taken off a few Years ſooner, and the being made a Spectacle to the World. I do freely forgive all the World, particularly thoſe concerned in taking away my Life: And I deſire and conjure my Friends to think of no Revenge, but to ſubmit to the holy Will of God, into whoſe Hands I reſign myſelf intirely.

But to look back a little; I cannot but give ſome Touch about the Bill of Excluſion, and ſhew the Reaſon of my appearing in that Buſineſs; which in ſhort is this: That I thought the Nation was in ſuch Danger of Popery, and that the Expectation of a Popiſh Succeſſor (as I have ſaid in Parliament) put the King's Life likewiſe in ſuch Danger, that I ſaw no way ſo effectual to ſecure both as ſuch a Bill. As to the Limitations which were propos'd, if they were ſincerely offer'd, and had paſs'd into a Law, the Duke then would have been excluded from the Power of a King, and the Government quite alter'd, and little more than the Name of a King left. So I could not ſee either Sin or Fault in the one, when all People were willing to admit of t'other; but thought it better to have a King with his Prerogative, and the Nation eaſy and ſafe under him, than a King without it; which muſt have bred perpetual Jealouſies, and a continual Struggle. All this I ſay, only to juſtify myſelf, and not to inflame others: Tho' I cannot but think my Earneſtneſs in that Matter has had no ſmall Influence in my preſent Sufferings. But I have now done with this World, and am going to a Kingdom that cannot be mov'd.

And to the conſpiring to ſeize the Guards, which is the Crime for which I am condemned, and which was made a conſtructive Treaſon for taking away the King's Life, to bring it within the Statute of *Edward* III. I ſhall give this true and clear Account: I never was at Mr. *Sheppard*'s with that Company but once, and there was no undertaking then of ſecuring or ſeizing the Guards, nor none appointed to view or examine them: Some Diſcourſe there was about the Feaſibleneſs of it; and ſeveral times, by Accident, in general Diſcourſe elſewhere, I have heard it mention'd, as a thing might eaſily be done, but never conſented to as fit to be done. And I remember particularly at my Lord *Shafteſbury*'s, there being ſome general Diſcourſe of this Kind, I immediately flew out, and exclaim'd againſt it, and aſk'd, If the thing ſucceeded, what muſt be done next, but maſſacring the Guards, and killing them in cold Blood? Which I looked upon as ſo deteſtable a Thing, and ſo like a Popiſh Practice, that I could not but abhor it. And at the ſame time the Duke of *Monmouth* took me by the Hand, and told me very kindly; My Lord, I ſee you and I are of a Temper; did you ever hear ſo horrid a Thing? and I muſt needs do him that Juſtice to declare, that I never obſerv'd in him but an Abhorrence to all baſe Things.

As to my going to Mr. *Sheppard*'s, I went with an Intention to taſte Sherry; for he had promis'd me to reſerve for me the next very good Piece he met with, when I went out of Town; and if he recollects, he may remember I aſk'd him about it, and he went and fetch'd a Bottle; but when I taſted it, I ſaid it was hot in the Mouth; and deſir'd that whenever he met with a choice Piece, he would keep it for me: Which he promis'd. I inlarge the more upon this, becauſe Sir *George Jefferies* inſinuated to the Jury, as if I had made a Story about going thither; but I never ſaid that was the only Reaſon: And I will now truly and plainly add the reſt.

I was, the Day before this Meeting, come to Town for two or three Days, as I had done once or twice before; having a very near and dear Relation lying in a very languiſhing and deſperate Condition; and the Duke of *Monmouth* came to me, and told me, he was extremely glad I was come to Town; for my Lord *Shafteſbury* and ſome hot Men would undo us all, if great Care be not taken; and therefore for God's ſake uſe your Endeavours with your Friends, to prevent any thing of this Kind. He told me, there would be Company at Mr. *Sheppard*'s that Night, and deſir'd me to be at Home in the Evening, and he would call me; which he did: And when I came into the Room, I ſaw Mr. *Rumſey* by the Chimney, altho' he ſwears he came in after; and there were things ſaid by ſome with much more Heat than Judgment, which I did ſufficiently diſapprove, and yet for theſe things I ſtand condemn'd: But I thank God, my Part was ſincere, and well meant. It is, I know, inferred from hence, and was preſſed to me, that I was acquainted with theſe Heats and ill Deſigns, and did not diſcover them; but this is but Miſpriſion of Treaſon at moſt. So I die innocent of the Crime I ſtand condemn'd for, and I hope nobody will imagine, that ſo mean a Thought could enter into me, as to go about to ſave myſelf by accuſing others; the Part that ſome have acted lately of that kind has not been ſuch as to invite me to love Life at ſuch a Rate.

As for the Sentence of Death paſſed upon me, I cannot but think it a very hard one; for nothing was ſworn againſt me (whether true or falſe, I will not now examine) but ſome Diſcourſes about making ſome Stirs. And this is not levying War againſt the King, which is Treaſon by the Statute of *Edward* III. and not the conſulting and diſcourſing about it, which was all that was witneſſed againſt me. But, by a ſtrange Fetch, the Deſign of ſeizing the Guards was conſtrued a Deſign of killing the King, and ſo I was in that caſt.

And now I have truly and ſincerely told what my Part was in that, which cannot be more than a bare Miſpriſion; and yet I am condemn'd as guilty of a Deſign of killing the King. I pray God lay not this to the Charge, neither of the King's Coun nor Judges, nor Sheriffs, nor Jury: And for the Witneſſes, I pity them, and wiſh them well. I ſhall not reckon up the Particulars wherein they did me Wrong, I had rather their own Conſciences ſhould do that, to which, and the Mercies of God, I leave them. Only I ſtill aver, that what I ſaid of my not hearing Colonel *Rumſey* deliver his Meſſage from my Lord *Shafteſbury*, was true; for I always deteſted Lying, tho' never ſo much to my Advantage. And I hope none will be ſo unjuſt and uncharitable, as to think I would venture on it in theſe my laſt Words, for which I am ſo ſoon to give an Account to the Great God, the Searcher of Hearts, and Judge of all Things.

From the time of chuſing Sheriffs I concluded the Heat in that Matter would produce ſomething of this kind; and I am not much ſurpris'd to find it fall upon me. And I wiſh what is done to me may put a Stop, and ſatiate ſome People's Revenge, and that no more innocent Blood may be ſhed; for I muſt and do ſtill look upon mine as ſuch, ſince I know I was guilty of no Treaſon; and therefore I would not betray my Innocence by Flight, of which I do not (I thank God) yet repent, (though much preſſed to it) how fatal ſoever it may have ſeemed to have proved to me; for I look upon my Death in this manner (I thank God) with other Eyes than the World does. I know I ſaid but little at the Trial, and I ſuppoſe it looks more like Innocence than Guilt. I was alſo adviſed not to confeſs Matter of Fact plainly, ſince that muſt certainly have brought me within the Guilt of Miſpriſion. And being thus reſtrain'd from dealing frankly and openly, I choſe rather to ſay little, than to depart from Ingenuity, that by the Grace of God I had carried along with me in the former Parts of my Life; and ſo could eaſier be ſilent, and leave the whole Matter to the Conſcience of the Jury, than to make the laſt and ſolemneſt Part of my Life ſo different from the Courſe of it, as the uſing little Tricks and Evaſions muſt have been. Nor did I ever pretend to a great Readineſs in ſpeaking: I wiſh thoſe Gentlemen of the Law who have it, would make more Conſcience in the Uſe of it, and not run Men down by Strains and Fetches, impoſe on eaſy and willing Juries, to the Ruin of innocent Men: For to kill by Forms and Subtilties of Law, is the worſt Sort of Murder: But I wiſh the Rage of hot Men, and the Partialities of Juries, may be ſtopt with my Blood, which I would offer up with ſo much the more Joy, if I thought I ſhould be the laſt were to ſuffer in ſuch a Way.

Since my Sentence, I have had few Thoughts but preparatory ones for Death; yet the Importunity of my Friends, and particularly of the beſt and deareſt Wife in the World, prevailed with me to ſign Petitions, and make Addreſſes for my Life: To which I was very averſe: For (I thank God) tho' in all reſpects I have liv'd one of the happieſt and contented'ſt Men in the World, (for now near fourteen Years) yet I am ſo willing to leave all, that it was not without Difficulty that I did any thing for the ſaving my Life that was begging. But I was willing to let my Friends ſee what Power they had over me, and that I was not obſtinate nor ſullen, but would do any thing that an honeſt Man could do for their Satisfaction, which was the only Motive that ſway'd, or had any Weight with me.

And now, to ſum up all, as I never had any Deſign againſt the King's Life, or the Life of any Man whatſoever; ſo I never was in any Contrivance of altering the Government. What the Heats, Wickedneſſes, Paſſions, and Vanities of other Men have occaſion'd, I ought not to be anſwerable for; nor could I repreſs them, tho' I now ſuffer for them. But the Will of the Lord be done, into whoſe Hands I commend my Spirit; and truſt that thou, O merciful Father! haſt forgiven me all my Tranſgreſſions, the Sins of my Youth, and all the Errors of my paſt Life, and that thou wilt not lay my ſecret Sins to my Charge; but wilt graciouſly ſupport me, during that ſmall Part of my Life now before me, and aſſiſt me in my laſt Moments, and not leave me then to be diſorder'd by Fear, or any other Temptation; but make the Light of thy Countenance to ſhine upon me; for thou art my Sun and my Shield: And as Thou ſupporteſt me by thy Grace, ſo I hope thou wilt hereafter crown me with Glory, and receive me into the Fellowſhip of Angels and Saints, in that bleſſed Inheritance, purchaſed for me by my moſt merciful Redeemer, who is, I truſt, at thy Right-hand, preparing a Place for me; into whoſe Hands I commend my Spirit.

Signed, WILLLIAM RUSSEL.

The Attainder was afterwards reverſed by Act of Parliament, 1 *William* and *Mary*. *Vide State Trials, Vol. VIII. p.* 517.

A Defence of the late Lord RUSSEL'*s Innocency. To which are prefix'd two Letters upon the Subject of his Lordſhip's Trial. By Sir* ROBERT ATKYNS, *Knight of the* Bath.

Firſt LETTER *concerning my Lord* RUSSEL'*s* TRIAL.

‘SIR,

‘I AM not without the Apprehenſions of Danger that may ariſe by adviſing in, or ſo much as diſcourſing of publick Affairs; yet no Fear of Danger ſhall hinder me from performing that Duty we owe to one another, to counſel thoſe that need our Advice, how to make their juſt Defence when they are called in Queſtion for their Lives; eſpecially if they are Perſons that have by their general Carriage and Converſation appear'd to be Men of Worth, and Lovers of their King and Country, and of the Religion eſtabliſh'd among us. I will follow the Method you uſe, and anſwer what you aſk, in the Order I find in your own Letters.

‘I cannot ſee any Diſadvantage or Hazard by pleading the general Plea of *Not guilty*: If it fall out upon the Proofs that the Crime is only Miſpriſion of Treaſon, and not the very Crime of Treaſon, the Jury muſt then find the Priſoner not guilty of Treaſon, and cannot upon an Indictment of Treaſon find the Party guilty of Miſpriſion, becauſe he is not indicted for the Offence of Miſpriſion, and Treaſon and Miſpriſion of Treaſon are Offences that the Law hath diſtinguiſh'd the one from the other, and the one is not included in the other; and therefore if the Proofs reach no farther than to prove a Miſpriſion, and amount not to Treaſon, the Priſoner may urge it for himſelf, and ſay, that the Proofs do not reach to the Crime charged in the Indictment: And if the Truth be ſo, the Court ought ſo to direct the Jury, not to find it.

‘Now, being preſent in Company with others, where thoſe others do conſult and conſpire to do ſome treaſonable Act, does not make a Man guilty of Treaſon, unleſs by ſome Words and Actions he ſignifies his Conſent to it, and Approbation of it: But his being privy to it, and not diſcovering it, makes him guilty of Miſpriſion of Treaſon, which conſiſts in the concealing it, but it makes him not guilty of Treaſon. And if the ſame Perſon be preſent a ſecond time, or oftener, this neither does not make him guilty of Treaſon; only it raiſes a ſtrong Suſpicion, that he likes it, and conſents to it, and approves of it, or elſe he would have forborn after his having been once amongſt them. But the ſtrongeſt Suſpicion does not ſufficiently prove a Guilt in Treaſon, nor can it go for any Evidence; and that upon two Accounts:

‘*Firſt*, The Proofs in caſe of Treaſon muſt be plain, and clear and poſitive, and not by Inference, or Argument, or the ſtrongeſt Suſpicion imaginable: Thus ſays Sir *Edward Coke* in many Places in his Third Inſtitutes, in the Chapter of High Treaſon.

‘*Secondly*, In an Indictment of High Treaſon, there muſt not only be a general Charge of Treaſon, nor is it enough to ſet forth of what Sort or Species the Treaſon is, as killing the King, or levying War againſt him, or coining Money, or the like; but the Law requires that in the Indictment there muſt be alſo ſet forth ſome *Overt* or *Open Act*, as the Statute of the 25th of *Edw.* the 3d calls it, or ſome Inſtance given by the Party or Offender, whereby it may appear he did conſent to it, and conſult it, and approve of it. And if the bare being preſent ſhould be taken and conſtrued to be a ſufficient *Overt* or *Open Act*, or Inſtance, then there is no Difference between Treaſon and Miſpriſion of Treaſon; for the being preſent without conſenting makes no more than Miſpriſion; therefore there muſt be ſomething more than being barely preſent, to make a Man guilty of Treaſon, eſpecially ſince the Law requires an *Overt* or *Open Act* to be proved againſt the Priſoner accuſed. See Sir *Edward Coke*'s Third Inſtitutes, *fol.* 12. upon thoſe Words of the Statute, (*per overt fact*) and that there ought to be direct and manifeſt Proofs, and not bare Suſpicions and Preſumptions, be they never ſo ſtrong and violent: See the ſame *folio*, in the upper Part of it, upon the Word (*Proveablement*). And the Statute of the 5th of *Edw.* 6. *cap.* 11. requires that there ſhould be but two Witneſſes to prove the Crime: So that if there be but one Witneſs, let him be never ſo credible a Perſon, and never ſo poſitive; yet if there be no other Proof, the Party ought to be found *Not guilty*: And thoſe two Witneſſes muſt prove the Perſon guilty of the ſame Sort or Species of Treaſon. As for Example, if the Indictment be for that Species of Treaſon of conſpiring the King's Death, both Witneſſes muſt prove ſome Fact or Words tending to that very Sort of Treaſon: But if there be two Witneſſes, and one proves the Priſoner conſpired the Death of the King, and the other Witneſs proves the conſpiring to do ſome other ſort of Treaſon, this comes not home to prove the Priſoner guilty upon that Indictment: For the Law will not take away a Man's Life in Treaſon upon the Teſtimony and Credit of one Witneſs, it is ſo tender of a Man's Life, the Crime and the Forfeitures are ſo great and heavy.

‘And as there muſt be two Witneſſes, ſo by the Statute made in the 13th Year of his now Majeſty, *chap.* the 1ſt, (intituled, *For the Safety of his Majeſty's Perſon*) thoſe two Witneſſes muſt not only be lawful, but alſo credible Perſons: *See that Statute in the 5th Paragraph.* And the Priſoner muſt be allowed to object againſt the Credit of all, or any of the Witneſſes; and if there be but one Witneſs of clear and good Credit, and the reſt not credible, then the Teſtimony of thoſe that are not credible muſt go for nothing, by the Words and Meaning of this Statute; *See the Statute.* Now were I a Jury-man, I ſhould think no ſuch Witneſs a credible Witneſs, as ſhould appear either by his own Teſtimony, or upon Proofs made by others againſt him, to have been *Particeps Criminis*; for that proves him to be a bad, and conſequently not ſo credible a Man; eſpecially if it can appear the Witneſs has trepann'd the Priſoner into the committing of the Crime: Then the Witneſs will appear to be guilty of a far higher Crime than the Priſoner, and therefore ought not to be believed as a credible Witneſs againſt the Priſoner; for he is a credible Witneſs that had the Credit of being a good and honeſt Man, which a Trepanner cannot have; and this Trepanning proves withal, that the Trepanner did bear a Spite and Malice againſt the Perſon trepanned, and intended to do him a Miſchief, and deſigned to take away his Life. Shall ſuch a one be a credible Witneſs, and be believed againſt him? God forbid!

‘Then again; it cannot but be believed, that ſuch Perſons as have been guilty of the ſame Crime, will out of a natural Self-love be very forward and willing to ſwear heartily and to the Purpoſe, in order to the convicting of others, that they may by this Service merit their Pardon, and ſave their own Lives: And for this Reaſon are not ſo credible Witneſſes, ſuch as the Statute of the 13th of *Car.* 2. does require. Read over the whole Chapters of Sir *Edward Coke* of High Treaſon, and of Petty Treaſon; for in this latter of Petty Treaſon there is much Matter that concerns High Treaſon.

‘I wiſh with all my Soul, and I humbly and heartily pray to Almighty God, that theſe Gentlemen that have given ſo great Proof of their Love to the true Religion, and of the juſt Rights and Liberties of their Country, and of their Zeal againſt Popery, may upon their Trial appear innocent. I am ſo ſatisfied of their great Worth, that I cannot eaſily believe them guilty of ſo horrid a Crime. I pray God to ſtand by them in the Time of their Diſtreſs.

‘I wiſh I might have the Liberty fairly to give them the beſt Aſſiſtance I could, in that wherein I might be any way capable of doing it. I beſeech Almighty God to heal our Diviſions, and eſtabliſh us upon the ſure Foundations of Peace and Righteouſneſs. I thank you for the Favour you have done me, by imparting ſome publick Affairs, which might perhaps have been unknown to me, or not known till after a long time, for I keep no Correſpondence.

‘When there is an Occaſion, pray oblige me by a farther Account, eſpecially what concerns theſe Gentlemen: And tho' I have written nothing here but what is innocent and juſtifiable, yet that I may be the ſurer againſt any Diſadvantage or Miſconſtruction, pray take the Pains to tranſcribe what Notes you think fit out of this large Paper; but ſend me this Paper back again incloſed in another, by the ſame Hand that brings it.

‘There is, nor ought to be, no ſuch thing as conſtructive Treaſon; this defeats the very Scope and Deſign of the Statute of the 25th of *Edw.* 3. which is to make a plain Declaration, what ſhall be adjudged Treaſon by the ordinary Courts of Juſtice: The conſpiring any thing againſt the King's Perſon is moſt juſtly taken to be to conſpire againſt his Life.

‘But conſpiring to levy War, or to ſeize the Guards, is not conſpiring againſt the King's Life. For theſe are Treaſons of a different Species.'

Your faithful Friend and Servant, R. A.

The Second LETTER.

‘SIR,

‘I Thank you for the unexpected Account you gave me by your firſt Letter; but this exact Narrative you have now ſent me of the Trial of that Honourable Excellent Perſon, my Lord *Ruſſel*, hath exceedingly obliged me. It was a thing I much deſired, but I knew not from what Hand to gain it; for I was a little impatient to hear what could be prov'd of ſo foul a Nature as High Treaſon againſt a Perſon of whom I had ever entertain'd a very high Eſteem. And tho' I had a very ſmall and ſhort Acquaintance with him, yet no Man that has known any thing of the public Affairs, or of our late Tranſactions, could be a mere Stranger to his great Worth. He had as great a Name for a true and honeſt *Engliſh* Gentleman, and for good Temper, and Prudence, and Moderation, as ever I knew any Man have, and was generally belov'd by all that love our Religion and Country. I preſume your Relation of the Proofs at his Trial is certainly true in every Part, and in the very Words; and it is a thing that might be had by many Hands, the Proceedings being ſo public, and I ſuppoſe deliberate: Preſuming it

‘ to be true, this I will affirm, that upon this Evidence, both that againſt him, and for him, (might I have been permitted to have made his Defence for him at his Trial after the Evidence given) I could eaſily have ſatisfied any equal and underſtanding judicious Man, that my Lord ought to have been acquitted; and had I been one of the Jury that tried him, I make no Doubt I could clearly have convinced all my Fellows, (if they were honeſt and indifferent) that they ought not to have found him Guilty. This Species, or Sort of High Treaſon that the Witneſſes inclin'd to prove againſt him, was a Conſpiracy with others to levy War againſt the King.

‘ The two firſt Witneſſes, *viz. Rumſey* and *Sheppard*, tho' what they ſay may raiſe a ſtrong Suſpicion upon my Lord, and make it probable that he was guilty, yet neither of them do come home and cloſe to the Perſon of my Lord *Ruſſel*; as they do (I confeſs) againſt the Earl of *Shafteſbury*, Sir *Thomas Armſtrong*, and *Ferguſon*.

‘ The firſt does not affirm, that the Lord *Ruſſel* did join in the Diſcourſe, or agree to any thing in the Conſult; but only ſays, he was preſent; which extends no farther than to make a Miſpriſion of Treaſon, and this too not directly and poſitively, as legal Proof ought to be to convict a Man of Treaſon; The latter, (*Sheppard*) when he applies what he ſwore to the Perſon of the Lord *Ruſſel*, only ſays, *He believes* the Lord *Ruſſel* was there at that Time when the Diſcourſe he ſpeaks of was uſed; which is a very imperfect uncertain Proof, and not poſitive enough: ſo that neither of theſe were full Wineſſes. As to the Evidence given by the Lord *Howard* againſt my Lord *Ruſſel*, it is ſtrange to me, (as the Evidence is ſtated) that any Credit ſhould be given to it; that he ſhould be believ'd againſt thoſe Execrations, that (it ſeems) he had ſo ſolemnly, and ſo lately, uſed to the contrary of his Evidence; eſpecially when by giving this Evidence he muſt merit his own Pardon, and ſave his own Life, which extremely takes off from the Credit and Weight of his Evidence.

‘ What Mr. *Weſt* ſays in reference to my Lord *Ruſſel*, was but bare Opinion and Hearſay, and is no Proof at all in Law; ſo that inſtead of two plain, direct, manfeſt and poſitive, and two credible Witneſſes, as the Law requires in Treaſon, here is not, in my Opinion, ſo much as one poſitive credible Witneſs. The Lord *Howard* (as your Caſe and Narrative ſtates it) is not credible, tho' direct and poſitive; none of the other three are poſitive, tho' more credible. In the Statue of the 25th of *Edward* the Third, of Treaſons, the Word *Proveablement*, (as Sir *Edward Coke* obſerves upon it, in his *Third Inſtitutes*, fol. 12) imports direct and manifeſt Proofs, not Preſumptions and Conjectures, and (as may be added) not Probabilities: And ſo the Words *(per Overt Fact)* do (as he obſerves) ſtrengthen that Senſe of the Word *Proveablement*; and the Act of Treaſons made ſince this King's Time, requires there ſhould be two credible Witneſſes. Now, tho' the Lord *Howard* was not, by the Evidence offer'd againſt him by the Lord *Ruſſel*, utterly diſabled from being a Witneſs; yet I will be bold to ſay, it made him no credible Witneſs in this Caſe. That the Lord *Ruſſel* made no uſe of theſe Things in his Defence, tho' a Man of Parts, is no wonder to me; the ableſt Man under that Terror, and upon ſo ſpeedy a Proceeding, and where it is impoſſible to be ſo compoſed and free from Diſtraction, may eaſily paſs by many juſt Advantages, which a Stander-by, with leſs Abilities, might quickly have apprehended. I am far from reflecting upon the Court that try'd him; this Matter that I obſerved, reſted principally upon the Jury. And he is found guilty and condemn'd, and it may be before this comes to your Hand, put to Death too: If it hath ſo happen'd, (as poſſibly it may) that the Earl of *Bedford*, and his other great Relations, have prevail'd with the King for a Reſpite of the Execution, I wiſh, and heartily beg of Almighty God, that theſe Conſiderations may yet be made uſe of to the King, (with whom it then reſts) as *Tabula poſt Naufragium*, to ſave the Life of this Noble Lord. Much more than this may be ſaid, were there ſuch an Opportunity, before the King (and I ſo intend it, and no otherwiſe); and if I might be any ways ſerviceable in it, I would come up to *London* barefoot, rather than neglect ſo good an Office. And I ever thought it a Severity in our Law, that a Priſoner for his Life is not allow'd the Aſſiſtance of a grave and prudent Lawyer, or ſome other Friend, to make his Defence for him, even as to Matter of Fact, as well as to Law. I know, 'tis ſaid, the Court is of Counſel for the Priſoner; but for my part I ſhould never deſire to depend upon that only. I know what this is by Experience. If the Caſe be in any Part of it miſtaken, I have loſt all my Obſervations, and beg your Pardon for all this Trouble; it is out of the great Honour and Zeal I have for that good Lord: But the Narrative you give is very ably and well compoſed, and in very good Method; and, I think, could not have been better done, which inclines me to think it very true alſo. I could be contented the Earl of *Bedford* (to whom I am known) might have the View of this Letter, if it come not too late, and may be thought of any Uſe. I heartily thank you for your Favour, which obliges me to be

Your faithful Friend and Servant,

July 21, 1683. R. A.

A Defence of the late Lord RUSSEL'*s Innocency: By way of Anſwer or Confutation of a Libellous Pamphlet, intituled*, An Antidote againſt Poiſon *.

1. THE Pamphlet ſtyles itſelf, *An Antidote againſt Poiſon*; but it is ſo far from deſerving that Title, that it may be truly ſaid, *That the Antidote itſelf, is the rankeſt Poiſon.*

We read in Hiſtory that the noble Emperor called *Henry* of *Luxemburgh*, was poiſoned in the Sacrament; and Pope *Victor* was poiſoned in receiving the Chalice. Who could have ſuſpected ſuch horrid Villainy in the Adminiſtration of ſuch ſacred and ſolemn Rites? Who could with-Horror and Amazement contrive the mingling of a deadly Poiſon with the Bread and Water of Life? To make thoſe conſecrated Elements (which ought to be the Savour of Life unto Life) to be the dreadful Meſſengers of ſudden Death? Surely had thoſe outward Signs been changed into the very Body and Blood of the Lord of Life, (as they that acted in thoſe execrable Villainies profeſs'd to believe) there muſt needs have been a Miracle wrought in altering likewiſe the Subſtance and malignant Nature of thoſe Poiſons, that they ſhould not have wrought thoſe direful Effects; which yet they did. There appears the like wicked Policy in the Author of this Pamphlet; who, under Pretence of preſcribing an Antidote againſt Poiſon, under the Viſard and Diſguiſe of preventing Miſchief, does moſt deceitfully infuſe the worſt of Poiſons, and labours to intoxicate a whole Nation. This Author would have the World believe, that the noble Lord, in the compoſing of his Speech, was wholly govern'd by his *Confeſſor*; and that the Compiler of it was infected with thoſe Doctrines, that the Northern Climate has of late furniſh'd us with. The very Language and Spirit of *Coleman!* Sure the Soul of *Coleman* is by Tranſmigration enter'd into this Author: It is eaſy to gueſs at his Religion. He ſuppoſes all that were preſent at my Lord's Trial, muſt needs be ſurpris'd to find the Truth of the Caſe ſo truly and unfaithfully ſet down in my Lord's Speech.

But whoever will take the Pains to read the Trials, publiſh'd by Authority, (which no Man will ſuſpect of Partiality toward the Perſon tried) will receive abundant Satisfaction in the Truth of what was ſaid by the Lord *Ruſſel*, and diſcover the ſhameleſs Impudence of this malicious Author.

The Indictment (as we find it printed at large in the Trial, *fol.* 706.) charges the Priſoner, *That he, intending* to diſturb the Peace of the Kingdom, and *to move War and Rebellion* againſt the King, and to ſubvert the Government, and *to depoſe, or put down, and deprive the King* from his Title and Kingly Name of the Imperial Crown of his Kingdom of *England*, and *ſo bring and put the King to Death and Deſtruction*, 2 *Nov.* 34 *Car.* 2. and at other Times, maliciouſly and traiterouſly, with divers others, did conſpire, compaſs, imagine and intend;

1. To deprive the King of his Title and Government.
2. And to kill the King, and to ſubvert the Government.
3. And to move Inſurrection and Rebellion againſt the King.

And fulfil and perfect theſe Treaſons and traiterous Compaſſings and Imaginations, the ſaid *William Ruſſel* did meet, together with divers other Traitors, and conſult, agree and conclude,

1. To move and ſtir up Inſurrection and Rebellion. And,
2. To ſeize and deſtroy the King's Guards.

The operative and emphatical Words of this Indictment, are the *intending, conſpiring, and concluding.*

The Things intended and conſpired were,

1. *To move and ſtir up War and Rebellion againſt the King.*
2. *To depoſe the King.*
3. *To kill the King.* And in order to the accompliſhing of theſe horrid Crimes,

The Things *concluded* on were,

1. To move *and ſtir up Inſurrection* and Rebellion.
2. To *ſeize and deſtroy the Guards.* This is the very Sum and true Method of the Indictment, if it be truly printed in the Trials.

Note, Here is no *Open Act* or *Deed* charged to be done by the Lord *Ruſſel*, unleſs his meeting together with others be meant to be an *Open Act* or *Deed:* But then again, that Act of Meeting terminates merely in conſulting, agreeing, and concluding. They met only to conſult, agree, and conclude; but they acted nothing in purſuance of that conſulting, agreeing and concluding, for any thing that appears in the Indictment: So that the Meeting properly hath not the Nature of an Acting or Action, or of a Thing done. But the Effect of the Indictment is, that the Lord *Ruſſel* and others did conſult, agree, and conclude to do ſomething, but the Indictment ſtops there, and goes no farther, for it ſets not forth any thing done at all. So that here is no *Overt-Act* or *Deed*, and the Indictment is void; for there is no Act charged but Meeting, and that was merely in order to conſult and agree: And they did agree upon a Thing to be done, but it is not ſaid they did it, or did any thing towards it. I repeat this the oftner, that it may be the better underſtood and minded, being very material. Read the Inictment.

The Indictment is grounded upon the Stat. of 25 *Edw.* 3, *cap.* 2. (the old Statute of *Treaſons*) So the Attorney General declares himſelf, *fol.* 721, of the Trial,

Now let us ſee how far this Charge in the Indictment will make my Lord guilty of any Treaſon within that Statute.

The Body of that Stat. of 25 *Ed.* 3. of *Treaſons*, is printed together with the Trial, (*See the Trial, fol.* 722.) ſo that it need not be repeated here, tho' there are ſome other Clauſes in that Statute not printed in the Trial.

The Occaſion of making that Statute appears to be the Variety of Opinions that then were, what ſhould be accounted Treaſon, and what not; which was very miſchievous to the Subjects, and gave too great a Liberty to the Judges of the ordinary Courts.

To cure this mighty Miſchief, and to prevent that arbitrary Power of Judges, this excellent Statute makes a *Declaration* what ſhall be adjudged Treaſon by the ordinary Courts of Juſtice. Not but that there might be like Caſes, or other Facts amounting to Treaſon, beſides thoſe there enumerated; but thoſe other Facts or Treaſons muſt not be adjudged by thoſe ordinary ſtanding Courts (ſuch as the Gaol-Delivery of *Newgate*, and the Court of the *King*'s-*Bench* at *Weſtminſter* itſelf are): But in ſuch Caſes thoſe Courts muſt forbear proceeding, and the Caſe muſt be reſerved for the Determination of the King and Parliament. *See that Statute in the printed Statutes at Large.*

So that the Court of Gaol-Delivery at *Newgate* muſt judge only and proceed upon no other Treaſons but what are there enumerated and ſpecified.

Now the Treaſons in that Statute enumerated and ſpecified (for the Word *Specified* is the very Word uſed by that Statute) are theſe:

1. Compaſſing or imagining the Death of the King, Queen, or Prince.
2. Violating, or carnally knowing, the Queen, King's eldeſt Daughter unmarried, Prince's Wife.

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* See *The Antidote againſt Poiſon*, in State Trials, Vol. VIII. p. 448.

3. Levying War againſt the King. Not a compaſſing or imagining to levy War, but an actual levying War; it muſt be a War begun. And ſeveral other Sorts of Treaſons are there ſpecified, not to our Purpoſe to be recited.

The Statute further requires, That the Perſon indicted be *probably* attainted of ſome one of theſe Treaſons by *Overt Deed*, that is, ſome open manifeſt Act or Deed done, which muſt of Neceſſity alſo be expreſly ſet down in the Indictment, and fully and clearly proved at the Trial by two Witneſſes.

See Sir *Edward Coke*'s Third *Inſtitutes*, in his Chapter of *High Treaſon*, *fol.* 12. in his Expoſition of the Words of that Statute, *(per Overt Fait)* and there, *fol.* 5. upon the Words *(Fait Compaſſer)* he tells you the Nature of that *Open Deed* that the Statute intends. It muſt be a Deed, and not mere Words: It muſt be a Deed tending to the Execution of the Treaſon imagined. That Deed muſt be an *Open Deed*, that is, *it muſt be fully* proved, and made open and manifeſt at the Trial by clear Proof.

So that if the Indictment fail of ſetting forth *one of thoſe Treaſons* that are there enumerated, it is not a good Indictment upon that Statute.

If it do ſet forth one of thoſe Treaſons, yet if it do not ſet forth ſome *Open Deed* done by the Party indicted, that is, ſuch a Deed as does properly and naturally tend to Execution of that ſort of Treaſon ſet forth in that Indictment; in ſuch Caſe alſo the Indictment is not good.

If both theſe, *viz.* the Treaſon intended, and a proper, ſuitable open Deed, be well ſet forth in the Indictment, (which make a good Indictment) yet if that very ſort of Treaſon intended, and that open Deed or Fact, ſo ſet forth in the Indictment, be not alſo fully, clearly, and *manifeſtly proved* upon the Trial againſt the Priſoner, he ought to be acquitted.

It will not ſuffice either to prove it by one Witneſs, or to prove any other ſort of Treaſon, (not charged in the Indictment, nor any other *Overt Deed)* other than what is ſo ſet forth in that Indictment, though it be by never ſo full a Proof; but upon that Indictment the Priſoner ought to be acquitted, if that ſpecial *Treaſon*, and that ſpecial *Overt* or *Open Deed*, ſet forth and expreſſed in that very Indictment, be not fully proved.

Now let us examine the Indictment in this Caſe againſt the Lord *Ruſſel*, and the Proofs againſt him, as they are publiſh'd by Authority, and obſerve how they agree with the Statute, and how the Indictment and Proofs agree the one with the other.

It may be admitted, that here is in the Indictment againſt the Lord *Ruſſel*, a Treaſon ſufficiently charged and ſet forth, *viz.* one of the Treaſons ſpecified in that Stat. of 25 *Edw.* 3. namely, that the Lord *Ruſſel* did compaſs and imagine the Death of the King. This is not denied, but it is duly charged in the Indictment. For thoſe other Charges in the Indictment, *viz.* his intending *to depoſe the* King, and his intending *to move or levy War and Rebellion* againſt the King; theſe are inſerted into the Indictment as Aggravations of that horrid Crime of intending to kill the King, or as open Acts of the other; but of themſelves alone, they are no diſtinct ſubſtantial Charges, nor are they any of the Treaſons ſpecified in this Act, upon which Act this Indictment is ſolely grounded. For tho' by the Act of 13 of this King that now is, *cap.* 1. intituled, *An Act for the Safety* and *Preſervation of the King's Perſon*, it is made High Treaſon (during the now King's Life only) to compaſs or imagine to depoſe the King, or to compaſs or imagine to levy War againſt the King, if ſuch Compaſſing or Imagination be expreſſed by Speaking or Writing, (altho' without any open Deed) yet the Lord *Ruſſel* was not indicted upon that Statute, (as the Attorney-General himſelf acknowledged openly at the Trial) but only upon the old Statute of 25 *Edw.* 3. ſo that thoſe late-made Treaſons are not to our Purpoſe.

So that the only Treaſon charged in the Indictment, as a ſubſtantial Charge, is that of *imagining to kill the King*. And ſo the Lord Chief Juſtice agrees in his Direction to the Jury. *See the Trial*, fol. 61.

But where is that other Requiſite, that other moſt material Part of the Indictment, of *the Open Act or Deed?* without which the reſt ſerves for nothing: For it is not enough by this Statute to make a Man guilty of conſpiring or imagining the Death of the King, unleſs the Party indicted have expreſſed that Imagination by ſome *Open Deed*; and that muſt be plainly ſet down in the Indictment too, or elſe the Indictment (as was ſaid before) is no good Indictment. And it muſt appear to the Court upon the Indictment not only to be an *Open Deed*, but ſuch a Deed as has a natural Aptitude and Tendency to the Execution of that very Treaſon ſo imagined. And there is no ſuch ſet forth in this Indictment, and therefore the Indictment itſelf was inſufficient and void.

And that which ſeems to have a Colour of an *Overt Fact*, or *Open Deed*, ſet forth in this Indictment, was not fully and ſufficiently proved neither: And then, though the Indictment had been ſufficient, yet for want of due Proof, the Party indicted ought to have been acquitted.

To theſe two Points or Matters ſhall the enſuing Diſcourſe confine itſelf, And if this Undertaking be made good, the *Antidote* will appear to be a rank Poiſon, the Lord *Ruſſel*'s Speech juſtified, and his Innocency and Loyalty cleared, and his Honour vindicated.

The *Overt Fait*, or *Open Deed*, ſet forth in the Indictment, (if there be any) are the Things ſaid to be conſulted of, agreed and concluded on, *viz.* 1. To *move and ſtir up Inſurrection and Rebellion.* 2. To *ſeize and deſtroy the Guards.* (*Peruſe the Indictment carefully*).

Now neither of theſe are *Open Deeds*, in the Nature of them.

The firſt, which is to ſtir up Inſurrection and Rebellion: This is a diſtinct Species of Treaſon itſelf: it is the ſame with a levying of War (ſpecified in this Stat. of 25 *Edw.* 3. which is the only Statute we have to do with in this Caſe of my Lord *Ruſſel*); and if it had been ſet forth in the Indictment as a Deed done, or Thing acted, that is, if it had been laid in the Indictment that the War was actually levied, or the Inſurrection or Rebellion actually raiſed or ſtirred up, (as it is not, for it is only mentioned as a Thing agreed and concluded on, and not done) yet it had not been a ſufficient proper *Overt Fait*, or *Open Act*, to make it a good Indictment: Becauſe (as is ſaid before) levying of War is a diſtinct Species from that of compaſſing to kill the King; and therefore cannot be made an *Overt Fait*, or *Open Deed*, to manifeſt an Imagination of killing the King: For that one Species of Treaſon cannot be a proper open Act to another Species of Treaſon, as will be proved hereafter.

Sir *Edward Coke* in his Third *Inſtitutes*, *fol.* 14. in the third Clauſe Paragraph of that *Folio*, tells us, that the Connexion of the Words is to be obſerv'd, *viz.* [*thereof be attainted by Overt or Open Deed.*] This, ſays Sir *Edward Coke*, relateth to the ſeveral and diſtinct Treaſons before expreſſed; whereof that of imagining to kill the King, and that of levying War againſt the King, are two diſtinct Species of High Treaſon. And therefore, ſays Sir *Edward Coke*, the one of them cannot be an *Overt Act* for another, that is, levying of War cannot be an *Overt Act* for that ſort of Treaſon in imagining to kill the King, much leſs when the Indictment does not charge it as a War actually levied, but only an Agreement or Concluſion for levying a War. Such Agreement can be no open Deed to manifeſt an Intent or Imagination of killing the King. This is the main Queſtion between us.

The other only Colour or Pretence to an *Overt Fait*, or *Open Deed*, muſt be that of ſeizing or deſtroying the King's Guard: For no other but theſe two are ſet forth in the Indictment, or look any thing like *Overt* or *Open Acts*.

And this latter is nothing like to an *Overt Fait*, or *Open Deed*, in the Nature of it; for it is not ſaid to be done, but only agreed on, and concluded on to be done. If it had been but alledged in the Indictment, That in purſuance of this Agreement or Concluſion of the Conſpirators, a View was accordingly taken of thoſe Guards, and reported to the reſt, (whereof the Lord *Ruſſel* was one) that it was feaſible, (whereof there is ſome Colour or Proof againſt ſome of them) this had been more to the Purpoſe: But being laid ſo imperfectly as it is, the Indictmeut itſelf muſt needs be inſufficient, for the Reaſons before given.

But, alas! the noble Lord is gone; and he is gone from whence he would not be recalled, a Place of infinite Bliſs and Glory, out of a ſpiteful malicious World: It is we, it is the King and Kingdom, it is the whole Proteſtant Part of the World, that ſuffers the ineſtimable Loſs of him: Not to ſpeak of the unſpeakable Grief of his dear and diſconſolate Widow, and other noble Relations. *Factum infectum fieri nequit.* So that we may ſeem to labour in vain, and it comes too late. But ſomething may be done for the Benefit of his hopeful Poſterity, and ſome ſmall Satisfaction may be made to his noble Family, by a Writ of Error for reverſing of this Attainder, and the avoiding of the Record; for the Stat. of 29 *Eliz. cap.* 2. extends only to ſuch Attainders for High Treaſon as then had been before the making of that Statute, and does not hinder a Writ of Error in this Caſe, if the King will ſign a Petition for it.

But to examine this laſt *Overt Fait*, or *Open Deed*, a little farther;

Viz. To ſeize and deſtroy the King's Guards.

The Guards! What Guards? What or whom does the Law underſtand or allow to be the King's Guards, for the Preſervation of his Perſon? Whom ſhall the Court that tried this noble Lord, whom ſhall the Judges of the Law that were then preſent, and upon their Oaths, whom ſhall they judge or legally underſtand by theſe Guards? They never read of them in all their Law-Books: There is not any Statute-Law that makes the leaſt Mention of any Guards. The Law of *England* takes no Notice of any ſuch Guards; and therefore the Indictment is uncertain and void.

The King is guarded by the ſpecial Protection of Almighty God, by whom he reigns, and whoſe Vicegerent he is: He has an inviſible Guard, a Guard of glorious Angels.

Non eget Mauri jaculis nec arcu;
Nec venenatis gravida ſagittis,
Crede, pharetra.

The King is guarded by the Love of his Subjects:

The next under God, *and the ſureſt Guard.*

He is guarded by the Law and Courts of Juſtice.

The *Militia* and the *Trained Bands* are his legal Guard, and the whole Kingdom's Guard.

The very Judges that tried this noble Lord were the King's Guards, and the Kingdom's Guard, and this Lord *Ruſſel*'s Guard againſt all erroneous and imperfect Indictments, from all falſe Evidence and Proof, from all Strains of Wit and Oratory miſapplied and abuſed by Counſel.

What other Guards are there? We know of no Law for more. King *Henry* VII. of this Kingdom (as Hiſtory tells us) was the firſt that ſet up the Band of Penſioners. Since this the Yeomen of the Guard; ſince them certain arm'd Bands, commonly now-a-days (after the *French* Mode) called the King's Life-guard, ride about and appear with naked Swords, to the Terror of the Nation: But where is the Law? Where is the Authority for them?

It had been fit for the Court that tried this noble Lord on this Indictment to have ſatisfy'd themſelves, from the King's Council, what was meant by theſe Guards; for the alledging and ſetting forth an *Overt Fait*, or *Open Deed*, in an Indictment of Treaſon, muſt be of ſomething that is intelligible by Law, whereof Judges may take notice by Law. And herein too the Indictment fails, and is imperfect.

But admit the ſeizing and deſtroying of thoſe who are now called the King's Life-guard, had been the Guard intended within this *Overt Fait*, or *Open Deed*; yet the Indictment ſhould have ſet forth, that *de facto* the King had choſen a certain Number of Men to attend upon and guard his Perſon, and ſet forth where they did attend, as at *Whitehall*, or the *Meuſe*, or the *Savoy*, *&c.* and that theſe were the Guards intended, by the Indictment, to be ſeized and deſtroyed: That by this ſetting forth the Court might have taken notice judicially what and who were meant. But to ſeize and deſtroy the King's Guards, and not ſhew who and what is meant, makes the Indictment very inſufficient.

So much as to the *Indictment* itſelf.

In the next place, let us look into the *Proofs*, as they are at large ſet forth and owned in the printed Trial; and let us conſider how far thoſe Proofs do make out the Charge of the Indictment, *viz.* the compaſſing and imagining the Death of the King; and how far they make out that *Overt Fait*, or *Open Deed*, (ſuch as it is) of ſeizing or deſtroying the King's Guards, in order to the effecting of that compaſſing and imagining the Death of the King. And it muſt appear by Proof to be in Truth, ſo intended by the Conſpirators, and levelled to that End; for if it were done, yet if it were done quite to another Intent and Purpoſe, and not to that of compaſſing the King's Death, it does not come home to this Indictment.

There are but three Witneſſes that can be thought to bring the Matter home, and to fix any thing upon the Lord *Ruſſel*; Colonel *Rumſey*, Mr. *Sheppard*, and the Lord *Howard.*

It is true, two of the three, that is Col. *Rumſey*, and the Lord *Howard*, poſitively prove a traiterous Deſign, or Diſcourſe at leaſt, by ſome of the Company, of making an Inſurrection or Rebellion, or (to ſpeak it in the Language and Phraſe of this Stat. of 25 *Edw.* 3.) of levying War againſt the King, (for all theſe ſignify one and the ſame thing) and they prove the Lord *Ruſſel* was ſometimes preſent at thoſe Meetings: But is that enough? Admit he were preſent, and heard the Debate of it, (which yet is not fully and directly proved) yet if he did not join in the Debate, and expreſs, and ſome way ſignify his Approbation of it, and conſent to it, it makes him not at all criminous. It is true, his after-concealing of it might have made him guilty of Miſpriſion of Treaſon; but that is a Crime of another Nature, and is another diſtinct *Genus* of Crimes, of which he was not indicted,

Col. *Rumſey*, as to the *Overt-fait*, (as they would make it) ſays, *There was ſome Diſcourſe about ſeeing what Poſture the Guards were in:* And being aſked by one of the Jury, by whom the Diſcourſe was? he anſwers, *By all the Company that was there* (whereof, as he ſaid before, the Lord *Ruſſel* was one). So that my Lord *Ruſſel* may (I agree) be underſtood to be one that diſcourſed about ſeeing what Poſture the Guards were in: Nay, the Colonel ſays, *All the Company did debate it:* And he ſays further, *The Lord* Ruſſel *was there when ſome of the Company undertook to take the View of thoſe Guards.* And being aſked by the Attorney General, to what Purpoſe the View was to be? The Colonel anſwers, *It was to ſurpriſe our Guards, if the Riſing had gone on.*

The Chief Juſtice obſerving to the Witneſs that he ought not to deliver a doubtful Evidence, and to ſpeak it with Limitations, that made it not ſo poſitive; as by ſaying, *I apprehend ſo and ſo:* then the Colonel grows more poſitive, and ſays further, *That a Riſing was intended*; but afterwards he ſays, *There was no Debate of the Riſing.* At laſt the Witneſs being aſked by Sir *George Jefferies*, whether the Priſoner were preſent at the Debate concerning the Meſſage from the Lord *Shafteſbury* to the Company then met, and the Anſwer return'd to it; he flatly ſays, *The Priſoner was preſent at that Debate* (which Debate did indeed concern the Riſing). Being aſked by the ſame Perſon, whether my Lord was averſe to it, or agreeing to it; he anſwers like an Echo, *Agreeing to it.* Nay, then he ſays, my Lord *Ruſſel* did ſpeak, and that *about the Riſing at* Taunton, and *that he did diſcourſe of the Riſing:* But what were his Words? Being queſtion'd again by the Chief Juſtice, whether *my Lord did give any Conſent to the Riſing*, he anſwers ſtill like an Echo, *My Lord, he did.* And this laſt Anſwer is the weighty Part of his Evidence, if there be any Weight at all.

Now mind the Defect of the Witneſs's Memory in ſome other moſt material Paſſages. He *thinks* the Lord *Grey* did ſay ſomething to the ſame Purpoſe, with the Anſwer deliver'd by *Ferguſon* to Lord *Shafteſbury*'s Meſſage.

He does *not know* (ſays he) how often he himſelf (the Witneſs) was at Mr. *Sheppard*'s Houſe where this Debate was. He ſays he was there more than once, *or elſe* I heard, ſays he, Mr. *Ferguſon* make a Report of another Meeting to the Lord *Shafteſbury.* And then he ſays, *That this was all at that Time that he remember'd*; and before this he had ſaid no more againſt the Lord *Ruſſel*, but that he was preſent; and after this, upon much interrogating of him, he proceeds to tell a great deal more, indeed all the reſt that has been before obſerved to proceed from him. And after all, he ſays, he thinks he was not there above a Quarter of an Hour. He ſays, he was *not certain* whether he did hear ſomething about a *Declaration* there, or whether Mr. *Ferguſon* did report it to my Lord *Shafteſbury*, that they had debated it. And the Witneſs ſpeaking of a View to be taken of the Guards, to ſurpriſe them; the Lord Chief Juſtice ſeems to be ſurpriſed at that Word: The *Guards!* he never met it in all his Books. What Guards? Why you know it is mention'd in the Indictment; but he might yet very well aſk what Guards: And the Colonel anſwers, the Guards at the *Savoy* and the *Meuſe.*

The Colonel ſays, *He thinks* the Duke of *Monmouth*, and the Lord *Grey*, and Sir *Thomas Armſtrong*, were the Perſons that undertook to view the Guards. And *he thinks*, Sir *Thomas Armſtrong* began it, and Mr. *Ferguſon.* And he ſays, further Direction was given to take a View of the Guards, *if the Riſing had gone on* (as it never did); and then he mentions the very Day that had been appointed for the Riſing, *viz.* the 19th of *November*; and that the Meſſage from the Lord *Shafteſbury* was, *he thinks*, a matter of a Fortnight before that Day, or ſomething more; for *he thinks* it was concluded *Sunday* Fortnight after my Lord *Grey* met. The Mention of my Lord *Ruſſel*'s Conſent to this Riſing, comes in at the laſt, and after many Queſtions aſk'd him, and not till that very particular Queſtion was put to him; and he anſwers in the very ſame Words as the Queſtion was aſk'd. The Chief Juſtice aſk'd him in theſe Words: Did my Lord give any Conſent to the Riſing? The Colonel's Anſwer was, *Yes, my Lord, he did.* But how did my Lord *Ruſſel* ſignify that Conſent? What Words did he uſe that may clearly expreſs it? For this is the pinching Proof. If it had been certain and clear'd by remembering the Manner of his conſenting, or how it did appear; why was not this put home to the Witneſs? This is the material Part of his Evidence, without which the reſt had not come home to the Priſoner: And why did not the Witneſs deliver this of himſelf? And before his giving this home Evidence, he had ſaid, *That was all at that Time that he remembered:* And this was at the ſame Time with that of the Meſſage, and of the Diſcourſe about viewing the Guards. He afterwards *doubts* whether he was any more than once there with that Company, or *whether he heard* Mr. *Ferguſon* report things to the Lord *Shafteſbury*; which ſhews a wild kind of Memory in a Witneſs, and the Colonel is no Fool, nor Baby; ſo that there is but one Time poſitively ſpoken of by this Witneſs. How ſtrangely uncertain is he in the Matter of the Declaration, to which he was examined! A moſt noted thing! And he cannot tell whether he heard any thing of it there, or whether Mr. *Ferguſon* told him of it. It is to be ſuſpected too, that what he has delivered poſitively at laſt ſo late in his Evidence, and after ſo much interrogating of him, was but mere Hearſay too, and then it would not have been any Evidence. He has not, it ſeems, a good diſtinguiſhing Head or Memory, as a Witneſs ought to have in caſe of Life, and a Life of ſo high a Value as this of that noble Lord.

And many other material Paſſages this Witneſs delivers under that Limitation, as *he thinks.*

The Riſing was intended, but never took Effect; and the View was no more than appointed and undertaken; but the ſeizing of the Guards, as this Witneſs ſays, was not to be *unleſs the Riſing had gone on*, which it never did. He ſpeaks nothing of any View made of the Guards, or any Report upon it: But he ſwears my Lord *Ruſſel* conſented to the Riſing. That is his ſtabbing Evidence; but by what Words, or how he ſignified his Conſent, not a Word, though mighty material.

But what is this Conſpiracy for a Riſing? And a Conſpiracy to ſeize the Guards? (in caſe the Riſing had gone on) What are theſe to the Crime charged in the Indictment againſt the Lord *Ruſſel*, for conſpiring the Death of the King?

Here is not a Word of any ſuch Matter, nor of ſeizing the Guards in order to it, no not one Word.

And that is the only material Part of the Indictment (as ſhall appear more plainly hereafter.)

The ſecond Witneſs, Mr. *Sheppard*, mentions the meeting (at his Houſe) of the Duke of *Monmouth*, and among the reſt, the Lord *Ruſſel*, and they diſcours'd of *ſurpriſing the Guards*; and that the Duke, the Lord *Grey*, and Sir *Thomas Armſtrong* (*as he remembers*) went one Night to view the Guards; and the next Day at his Houſe they ſaid it was very feaſible, if they had Strength to do it: And then he ſays, there was two Meetings there, and, *as he remembers*, my Lord *Ruſſel* was both times there. Being aſk'd by the Attorney General, beſides the ſeizing of the Guards, if there were any Diſcourſe of Riſing; he anſwers, *He did not remember any further Diſcourſe*, for he was often gone out of the Room: And this is the Effect of that he ſays.

If any thing of this comes near my Lord *Ruſſel*, it is thoſe Words, firſt giving an Account of who they were that were met, and that my Lord *Ruſſel* was one of them; he ſays the Subſtance of their Diſcourſe was how to ſurpriſe the King's Guards: This may be true, if one or two of the Company only diſcourſes it; for it does not neceſſarily affirm, that every one did ſpeak in that Diſcourſe, he does not mention one Word ſpoken by my Lord *Ruſſel*, nor that he approv'd of, or conſented to any thing. At the worſt, for any thing that he ſays, it can be but Miſpriſion: He can ſay nothing *as to the intended Riſing.* Now Colonel *Rumſey*'s Evidence is altogether of that Riſing, and the ſeizing of the Guards was to have been, if the Riſing had gone on; and this was at the ſame Time that Mr *Sheppard* ſpeaks to: And yet Mr. *Sheppard* being aſked if there was any Diſcourſe of Riſing, he anſwers, he did not remember any further Diſcourſe.

Nor does Colonel *Rumſey certainly remember* any thing of a Declaration read amongſt them, whether he heard it there, or whether by Mr. *Ferguſon*'s Report of it to my Lord *Shafteſbury*; which is one of the principal things that Mr. *Sheppard* ſpeaks to (beſides that of ſeizing the Guards). And as to the Declaration, Mr. *Sheppard* ſays, he cannot ſay my Lord *Ruſſel* was there when that Declaration was read.

So they agree in nothing but in the Diſcourſe of ſeizing the Guards, and that my Lord *Ruſſel* was then preſent.

So that as yet the Sum of the Proof by Colonel *Rumſey* is, that my Lord *Ruſſel* conſented to the Riſing, which is too general; and the Sum of the Proof by Mr. *Sheppard* is, that my Lord *Ruſſel* was preſent in Company when the Company diſcours'd of ſeizing the Guards, but he knows nothing of the Riſing.

The third Witneſs (the Lord *Howard*) diſcourſes much about a Conſpiracy to riſe, but he ſpeaks moſt (of what he ſays) by Report from the Earl of *Shafteſbury*, and from the Duke; ſo it goes for no Evidence againſt my Lord *Ruſſel*; and the Chief Juſtice did the Priſoner that Right, as to declare as much to the Jury: And the Lord *Howard* clears the Duke from any ſuch horrid Act as the killing the King, the Duke ſaid he would not ſuffer it; and if the Duke be innocent in that, it is probable that my Lord *Ruſſel*, and the reſt of the Company that met, had no Diſcourſe about killing the King, nor any Thought that way; which yet is the great and only ſubſtantial Charge of this Indictment, which muſt ſtill be minded and obſerv'd.

My Lord *Howard* does indeed prove two ſeveral Conſults, one at Mr. *Hambden* the younger's, the other at my Lord *Ruſſel*'s about the Middle of *January* laſt, and after, and that my Lord *Ruſſel* was at both; and theſe Conſults were of an Inſurrection, and where to begin it, and of providing Arms and Money, and of ſending into *Scotland* to ſettle an Underſtanding with the Lord of *Argyle.* And being aſked what my Lord did ſay, he anſwers thus, *viz. Every one* (ſays he) *knows my Lord* Ruſſel *is a Perſon of great Judgment, and not very laviſh in Diſcourſe.* But did he conſent? was a Queſtion aſk'd by Sir *George Jefferies.* The Lord *Howard* anſwered, We did not put it to the Vote, but it went without Contradiction, and *I took it* that all there gave their Conſent: That Lord *Ruſſel* join'd in the Council of Six, that he approved of his being choſen for one, that he ſaid one Word in theſe two Conſults, there is not any Proof by the Lord *Howard*; only he ſays, *He took it that all there conſented.* Is that enough? O ſtrange Evidence!

I will not here take notice, or examine, how far the Lord *Howard* is a credible Witneſs in this Caſe, but refer the Reader to the Teſtimony of my Lord of *Angleſey*, Mr. *Howard*, and Dr. *Burnet*; or how far any of the three Witneſſes are to be believed, having all three upon their own Teſtimony been *Participes Criminis*, and it is ſuppos'd have their Pardons, or are promis'd Pardons: Not that this is offer'd to diſable them quite from being Witneſſes, but ſurely, all things conſidered, it much leſſens their Credit in this Caſe; nor does it make them the more credible, becauſe no other Witneſſes can be had. But then conſider that moſt excellent Character given of the Priſoner by Perſons of Honour, and of the higheſt Eſteem for Ability and Integrity, and ſuch as contradicts, and is inconſiſtent with the Charge of the Indictment, and whatever is of Weight in the

Evidence againſt him; and eſpecially if you give any Credit to the Lord *Howard* himſelf, who upon his Oath does declare, as in the Preſence of God and Man, that he did not believe that either the Duke of *Monmouth*, or my Lord *Ruſſel*, had any Deſign to murder the King; which is the only effectual Charge of this Indictment. Theſe things conſider'd, it ſeems very ſtrange to me, how the Lord *Ruſſel* could be found guilty of a compaſſing and imagining the Death of the King, for ſo is the Verdict.

This anſwers moſt of the Obſervations made by the Author of the *Antidote* upon my Lord *Ruſſel*'s Speech, reſtraining the Expreſſion, as he ſays, of his Innocency to the Deſign upon the King's Life, and to killing of the King, and of his omitting to mention the general Riſing; which, as this Author boldly affirms, was fully proved upon him; and that my Lord's Profeſſions of his Innocency, as to any Plot upon the King's Life, or to kill the King, or his knowing any thing thereof, theſe (ſays the Author) are no plain Declarations of his Innocency, as to the Crime charged and proved upon him, of conſpiring and conſulting to raiſe an Inſurrection. Nor was there any Need of my Lord's anſwering that, for it was little material.

How uncertain, how diſagreeing, how unapplicable to the Charge of the Indictment thoſe Proofs are, has been fully obſerv'd already; and the Author groſly miſtakes in his Judgment, when he takes the conſpiring and conſulting to raiſe an Inſurrection to be the Crime charged in the Indictment; for (as was obſerv'd before) the Charge of the Indictment is, the *compaſſing and imagining to kill the King*; and that of a Conſpiracy to raiſe an Inſurrection, or to levy War, is none of the Crimes or Treaſons enumerated or ſpecified in the Act of 25 *Edw.* 3. and therefore could not be the Crime charged in the Indictment, which is grounded only upon that Act of 25 *Edw.* 3. (as the Attorney General acknowledges) for it is an actual levying of War, and not a conſpiring only to levy War, or raiſe an Inſurrection, that is the Treaſon ſpecified in that Act of 25 *Edw.* 3. And therefore the Mention of other things are but by way of Aggravation, for the more ample ſetting forth of the Crime charged, which is of compaſſing the King's Death: And that the conſpiring to make an Inſurrection, cannot be an open Deed to prove a compaſſing the King's Death, has been already ſpoken to, and ſhall yet be more fully.

Nor is the Author more miſtaken in his Obſervations upon the Matter of Fact, and his unwarranted Concluſions and Inferences raiſed from thence, than he is in his Determinations of Matters in Law ariſing from that Fact.

The Death of the King (ſays the Author) in *that Law of* 25 *Edw.* 3. is not reſtrained to killing of his natural Perſon, but extends as well to his civil Death as natural: As to conſpire *to depoſe* the King, *to impriſon* him, or *laying any Force* or Reſtraint upon him; theſe (ſays the Author) are all High Treaſon, for compaſſing his Death, natural or civil: If ſo, why then we are at never the more Certainty for this excellent Law of 25 *Ed.* 3.

I agree, that conſpiring to depoſe the King, to impriſon him, are Treaſons; but it is not ſo plain that they are Treaſons within this Law of 25 *E.* 3. upon which this Indictment is grounded. It is true, they are made Treaſon by the late Act of 13 of the now King, and have by ſeveral temporary Acts (ſuch as this of 13 *Car.* 2. is) been made Treaſon: But this proves, that they were not judged by thoſe Parliaments, that paſs'd thoſe temporary Acts, to be Treaſons within the Statute of 25 *Edw.* 3. For why then were theſe temporary Acts made? What need was there of them? Sir *Edward Coke*, 3 *Inſt. fol.* 9. in the laſt Paragraph but one of that *fol.* ſays, A Conſpiracy to levy War is no Treaſon; he means within the Act of 25 *Edw.* 3. But it has been made Treaſon ſince Sir *Edward Coke*'s time, *viz.* by 13 *Car.* 2. And let it be remembered, that the great End of making this excellent Law of 25 *Edw.* 3. (as appears by the Preamble) was to avoid Uncertainty, and Variety of Opinions, and to prevent the Arbitrarineſs of Judges, in the ordinary Courts; and the Act takes care, that doubtful Caſes, ſuch as are not plainly within the Enumeration of the Act, are to be reſerv'd for the Judgment of the King and Parliament. And herein conſiſts the Excellency of this Law: *Quod fieri poſſit, quam plurima Legibus ipſis definiantur: Quam pauciſſima Judicis arbitrio relinquantur.* And as the learned Lord *Bacon*, in his *Advancement of Learning*, fol. 447. ſays, That is the beſt Law, which gives leaſt Liberty to the Judge; he the beſt Judge, that takes leaſt Liberty to himſelf: *Miſera eſt ſervitus, ubi Jus eſt vagum.* And this Law is a Declaration of Law, and therefore ought not to be extended to like Caſes in the Conſtruction of it: And it is made in the Puniſhment of the greateſt Offences, and is as penal as a Law can be; and therefore ought not to be expounded by Equity, that is, to be extended to like Caſes.

It is true, the Opinion of the Judges hath been, That conſpiring to depoſe or impriſon the King, is a compaſſing or imagining the Death of the King. And if a Man declares *by Overt-act*, that he will depoſe or impriſon the King; this, ſays Sir *Edward Coke*, 3 *Inſtit. fol.* 6. upon the Word (*Mort*) is a ſufficient Overt-act, for the Intent of killing the King. Mind him well; he does not ſay, that *conſpiring* to depoſe or to impriſon the King is an Overt-act, to prove the conſpiring the King's Death; which is the Opinion the *Antidoter* maintains, and for which he cites all his Caſes afterwards cited. But Sir *Edward Coke* ſays, That conſpiring to depoſe or impriſon the King *being declared by Overt-act*, this Overt-act is alſo a ſufficient Overt-act for the Intent of killing the King.

It is one thing to conſpire to depoſe the King, and another thing to declare that conſpiring by ſome open Act: They differ as much as thinking does from acting. Now in this Caſe of the Lord *Ruſſel*, the Author of this *Antidote*, and ſome others, (as appears by the printed Trials) would have us believe that very conſpiring to levy War is an Overt-act to prove the compaſſing and imagining the King's Death: For which there is not the leaſt Ground from Sir *Edward Coke*. Firſt they are different Species, as Sir *Edward Coke* obſerves in his third *Inſtitutes*, *fol.* 14. the third Paragraph; and therefore (ſays he) the one of them cannot be an Overt-act for another; that is, conſpiring to levy War, nay the actual levying of War too, which is one Species of Treaſon, cannot be an Overt-act for the compaſſing the Death of the King, which is another Species of Treaſon. But this is that the *Antidoter* labours; only, ſays Sir *Edward Coke*, the *Overt-act* of the one, may be an Overt-act for another ſort or Species of Treaſon.

And I agree it, if the Overt-act in the one ſort of Treaſon, may as fitly and as properly in its own Nature, and as equally, be alſo an Overt-act in the other ſort, and had a Tendency to the Execution of that other ſort. And it alſo does appear by the Proofs, to be ſo intended by the Conſpirators. As for Example: Actual ſeizing of the King's Guards (not a Conſpiring to ſeize the King's Guards, and ſuch Guards as are not plainly ſet forth in the Indictment what they are) may in its Nature be an Overt-act, to make manifeſt the compaſſing of the King's Death, and is an Act proper enough, and has in its Nature a Tendency towards the Execution of the Conſpiracy to kill the King: But then it muſt be proved to be ſo intended and deſigned, that is, in order to the killing of the King. But if it appear otherwiſe upon the Proof, (as here it did) that it was not ſo intended, but deſign'd merely in order to a Rebellion, and levying of War, (for which alſo it is as apt and proper in its Nature, and has as great a Tendency that way) then it cannot be applied nor made uſe of as an Overt-act, to prove the compaſſing the King's Death (as in this Caſe of my Lord *Ruſſel*'s it was): For this (as Sir *Edward Coke* well ſays, *fol.* 14. the latter Part of the third Paragraph of that *Folio*) would be to confound the ſeveral Claſſes or Species of Treaſon: And the Confuſion of Species is abominable in Nature.

And where Sir *Edward Coke* ſeems to comply with the Opinion and Practice of ſome Judges, that the *Overt-act of depoſing* may be a good *Overt-act of killing*, (which, with the Diſtinction that I have offered, is juſt enough) yet he has ſome Heſitation; for he concludes that Opinion of his with theſe Words, *fol.* 6. in his third *Inſtitutes*, upon the Word [*Mort*]. But, ſays he, peruſe adviſedly the Statutes of 13 *Eliz. cap.* 1. And why thoſe Statutes? Becauſe by thoſe Statutes, conſpiring to depoſe the Queen is made Treaſon; which needed not (as has been obſerved already) if it was Treaſon within that Clauſe of compaſſing the King's Death, within the Statute of 25 *Ed.* 3. The like may be obſerved in many other ſuch temporary Laws, as that of 25 *H.* 8. *cap.* 22. 26 *H.* 8. *cap.* 13. 28 *H.* 8. *cap.* 7. 1 *Ed.* 6. *cap.* 12. and 5 & 6 *Ed.* 6. *cap.* 11.

And it is worthy Obſervation, tho' by way of a ſhort Digreſſion, that in many, if not in every one of theſe temporary Laws of Treaſon, there is an expreſs Clauſe and Proviſion ſtill, that Concealment, or keeping ſecret of any High Treaſon, ſhould be adjudged Miſpriſion of Treaſon: As if there were great Need of that Caution, leſt the Judges might judge concealing of Treaſon for High Treaſon.

Now to ſhew the Tenderneſs that the Judges heretofore ſhewed in the expounding of this Statute of Treaſons of 25 *Edw* 3. and how cautious they were in extending it beyond the ſtrict Senſe and Letter of the Statute, read the Caſe in *Mich.* 19 *Hen.* 6. *fol.* 47. *Caſe* 102. A Man was indicted in the *King's-Bench* of Petty Treaſon (which is declared too by the ſame Statute of 25 *Edw.* 3. *cap.* 2.) for killing his Miſtreſs, whom he ſerved. And becauſe the Words of this Stat. of 25 *Edw.* 3. declare it Petty Treaſon where the Servant kills the *Maſter*, they were in doubt whether it ought to be extended to the *Miſtreſs*, or not. And there the Judges of the *King's-Bench* (before whom the Caſe was) ſent to the Judges of the Court of *Common-Pleas* then ſitting, and to the Serjeants there, to know their Opinion of the Caſe. And by Advice of all the Judges of both Courts, it was adjudged Petty Treaſon for the Servant to kill the Miſtreſs, not only within the Meaning, but within the very Words of that Statute; for *Maſter* and *Miſtreſs* are in Effect but one and the ſame Word, they differing only in Gender.

Sir *Edward Coke* ſays, 3 *Inſtit. fol.* 20 & 22. The Judges ſhall not judge *à ſimili*, or by Equity, by Argument, or by Inference of any Treaſon; but new or like Caſes were to have been referred to the Determination of the next Parliament: *Ubi terminatæ ſunt dubitationes Judiciorum*, ſays *Bracton.*

Let us in the next Place examine the Authorities in Law, and Book-caſes, cited by this Author of the *Antidote*, and ſee how far they make good his Opinion, that meeting and conſulting to make an Inſurrection againſt the King, or raiſe a Rebellion, (which is the ſame with levying War, within the Words of 25 *Edw.* 3.) tho' the Rebellion be not actually raiſed, is High Treaſon within this Law of 25 *Edw.* 3. For ſo he propoſes the Queſtion, *fol.* 5. of his Book. And if he does not confine his Argument to that Statute, he ſays nothing to the Lord *Ruſſel*'s Caſe.

To prove the meeting and conſulting to make an Inſurrection againſt the King, or raiſe a Rebellion within the Kingdom, (tho' the Rebellion is not actually raiſed) is High Treaſon within the Statute of 25 *Edw.* 3. *cap.* 2. (which, put all together, is the Poſition the *Antidote* maintains): He cites the Caſe of *Conſtable*, mentioned in *Calvin*'s Caſe, Sir *Edward Coke*'s 7th *Rep. fol.* 10. *b.* and thence infers, that whatſoever tended to the depoſing of Queen *Mary* was adjudged Treaſon for compaſſing her Death.

And this no Man denies; and it agrees with the Judgment of Sir *Edward Coke*, in this Chapter of Treaſon, *fol.* 6. upon the Word [*Mort*], where he ſays, He that declareth by Overt-act to depoſe the King, does an Overt-act of compaſſing and imagining the Death of the King: And ſo ſays Sir *Matthew Hale's Pleas of the Crown*, *fol.* 11. towards the latter End. But what is this to the Point in Hand, which merely concerns a Meeting and Conſulting to make an Inſurrection, or raiſing a Rebellion, which is the ſame Thing with conſpiring to levy War? Conſpiring to depoſe the King, and conſpiring to levy War, are different things; as conſpiring to levy War is clearly held to be a diſtinct Treaſon from conſpiring the Death of the King. And therefore the former of theſe (as hath been before obſerved) cannot by Law be an Overt-act of the latter, as appears by the ſaid Treatiſe of the *Pleas of the Crown*, *fol.* 13. towards the latter End. Nor was conſpiring to levy War, without an actual levying of it, any Treaſon within the Statute of 25 *Ed.* 3. upon which Statute only the Indictment of the Lord *Ruſſel* is grounded, as is acknowledged by the Attorney-General. And therefore to ſupply that Defect, the Statute of 13 *Car.* 2. does expreſly make it to be Treaſon. But the Lord *Ruſſel* was not indicted upon that Statute of 13 *Car.* 2. and for this Reaſon he ought to have been acquitted upon this Indictment grounded only upon the Statute of 25 *Edw.* 3.

And if practiſing with a foreign Prince to make an Invaſion, (when no Invaſion followed, as the Caſe of Dr. *Story* was) *Dyer* 298. be all one with conſpiring to levy War, when indeed no war is raiſed; it is out of all Difpute, that ſuch Practiſing, and ſuch Conſpiring, cannot be Treaſon within the Statute of 25 *Edw.* 3. though it be Treaſon within the Statute of 13 *Car.* 2.

In the Caſe of the Lord *Cobham*, 1 *Jacobi*, there was more in the Caſe than conſpiring to make an Inſurrection (which is all that the Author of the *Antidote* takes notice of): There was alſo an actual Rebellion raiſed, as appears by the ſaid little Treatiſe, ſtyled, *The Pleas of the Crown*, *fol.* 13. for the People were there aſſembled to take the King into their Power, as that Book puts the Caſe of the Lord *Cobham.*

And ſo it is in the Caſe of the Lord *Grey:* For there they had not only conſpired to make an Inſurrection, but farther, to ſeize the King, and get him into their Power; which is a direct conſpiring againſt his Perſon, which naturally tends to the Deſtruction of his Perſon, and is the ſame with conſpiring his Death, as hath been uſually expounded: But 'tis otherwiſe merely to conſpire to make an Inſurrection, which can be no more than conſpiring to levy War. The Caſe of Sir *Henry Vane*, and *Plunket*, had many other Ingredients to mount them up to Treaſon, which differents them from my Lord *Ruſſel*'s Caſe.

As to the Point of Miſpriſion of Treaſon, with which the Author of the *Antidote* concludes, I have fully declared my Opinion already in the former Part of this Diſcourſe; and, I think, plainly evinced, that tho' the noble Lord might be preſent while others might between themſelves privately debate Matters, and conclude upon them, yet it did not clearly appear by any Proofs, that this noble Lord ever gave the leaſt Conſent to what was ſo concluded; without which Conſent it could not amount to Treaſon, but at the moſt be a Miſpriſion only. Nor muſt any Man's Life be taken from him upon Preſumption or probable Arguments, but by plain, direct, and manifeſt downright Proofs. But a more ſtrong, and indeed a violent Preſumption lay quite the other way, that this noble, prudent, and pious Lord could never be guilty of ſuch a Crime, as to conſpire the Death of King *Charles* the Second: It was extremely againſt his Intereſt ſo to do; for the Life of that King, ſo long as it continued, by the Bleſſing of God, was the great Security, both he and all good Proteſtants had againſt the greater Danger that might happen by the Change ariſing by the Death of that King, of loſing our Religion, and all our Civil and Religious Rights, as the Experience we have lately had, hath ſadly taught us. And if any thing were conſulted between this excellent Lord and thoſe with whom he met, as is more than probable, it was how to ſecure themſelves againſt thoſe Dangers they ſaw ſo near approaching, if the Life of King *Charles* the Second ſhould fail; there was ſo great a Cauſe to fear them, conſidering who was like to ſucceed in the Throne.

The Magiſtracy and Government of England *Vindicated.* In Three Parts. *Containing*, I. *A Juſtification of the* Engliſh *Method of Proceedings againſt Criminals*, &c. II. *An Anſwer to ſeveral Replies*, &c. III. *Several Reaſons for a general Act of Indemnity.* *By Sir* Bartholomew Shower.

IN the preſent Age, when the Variety and Multiplicity of new Prints is ſuch, that the Money and Time required for their Purchaſe and Peruſal, is more than an ordinary Gentleman can reaſonably allow; it may deſervedly be thought a Nuiſance to the Publick to have their Numbers increaſed; eſpecially ſince the Complaint of the ingenious Author of the *Trimmer's Character*, that for this very Cauſe, he could almoſt have wiſhed himſelf unable to read; but yet the Support of Magiſtracy and Government is a noble Theme, ſo uſeful to the Publick, and ſo generally agreeable to the Humour of Mankind, that the mere Subject will (I preſume) be an Excuſe for this Publication, if any thing can be ſo.

At this time of Day none would have thought that a Neceſſity ſhould happen of writing upon ſuch a Topick, when every *Engliſh* Proteſtant was entertaining himſelf with the pleaſing Proſpect of impartial, due, and indifferent Adminiſtrations, when Authority was becoming amiable and eaſy to the People, when the People were inclining to a Zeal and Affection for the Honour of Magiſtrates; in ſhort, when the Law was recovering its clouded Credit: In this Conjuncture none expected to ſee all the Pillars and Poſts in the Town daubed with plentiful Title-pages, (like ſo many Hiſtriomaſtixes of *William Prynn*'s) directing their Spectators to Books of Obloquy and Reproach, not only on the Perſons and Opinions, but the Authority of Judges; when neither of the three are corrigible, or ſo much as cenſurable any otherwiſe than in and by a Parliament: much leſs was it expected, that Gentlemen of the long Robe would appear in Print to ridicule their own Profeſſion, and expoſe our Law even to the Scorn of Foreigners. It would not have been ſo very ſtrange to have ſeen a Doctor of the Commons exerciſing his Wit and Raillery on the Common Law Proceedings, when he ſaw his deareſt *Diana*, I mean his Excommunication Proceſs, in Danger of becoming uſeleſs, and a fair Occaſion given him for ſuch an Eſſay from the Diſguſt of the People againſt *Weſtminſter-Hall.*

But none imagin'd, that Satires and Invectives upon paſt Proceedings ſhould be writ by Lawyers, who expect a farther Benefit from their Profeſſion by the Grace and Favour of the Government; which if they happen to acquire, according to their Expectations, I would only remember them, that Mocking is Catching in the Proverb. There was once upon a Time a certain Maſter of Arts, who, whilſt at *Cambridge*, did ridicule and expoſe the Clergy of the *Engliſh* Church, by writing the pretended Cauſes of their Contempt; but the *Templars* ſaid, that he, whilſt at *London*, did give an Occaſion for a third Part to the ſame Tune, or at leaſt a new Edition of the Book, with Additions by the Author himſelf, even of his own dull——as proper for the like Uſe. In petty Corporations they who have moſt complained of other Hardſhips have frequently outdone their Predeceſſors, when once they have got their Places. A whining, complaining Servant doth often prove a peeviſh, imperious Maſter; and I am ſure in the Inns of Court, the moſt noiſy, troubleſome and mutinous Students and Barriſters make the ſtiffeſt and moſt magiſterial Benchers. I make no Application, but I leave the Reader to what he pleaſeth. Better things are to be hoped of all concerned in publick Government.

Since the Preſs ſeems open, and Lawyers Books are publiſhed without a Licence, another may aſſume the ſame Liberty with equal Authority, and with more Reaſon, when his Province is only to correct the Miſrepreſentations of Things, Actions and Perſons, tho' made by Authors of Age, Experience, Figure, and Learning, (I will not ſay Candour or Honeſty) eſpecially ſince they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally expoſed to the Cenſure or Applauſe of every Reader. Beſides, 'tis generally preſumed, that an Author expects a publick Animadverſion, or otherwiſe he would never have become ſuch. He preſumes his Arguments irrefragable, and then an Anſwer does him no Miſchief; and if they are otherwiſe, he deſerves it. And ſurely he ſtands as liable to be corrected by others, as others were to be cenſured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, that it can be either candid or genteel to arraign or expoſe them; eſpecially, ſince to do ſo, is, and muſt needs be, miſchievous to paſt, preſent, and future Governments, as Experience will unqueſtionably teach us; but the other is, and will be, of Service to future Adminiſtrations, by maintaining the Reputation and Credit of judiciary Proceedings.

It is well known, that the Lord *Ruſſel* being ſo unfortunate as to fall under the Accuſation of Treaſon, was the moſt pitied of any under thoſe Circumſtances, by all who knew either his Family or perſonal Character; great Expectations were then had of the Iſſue of that Trial, the Event gave great Occaſion for Diſcourſe afterwards, and almoſt ever ſince; the printing of his laſt Speech, with the ſeveral Anſwers to it, did much augment the Talk. It cannot but be remember'd how various and different the Sentiments of moſt were upon that Subject; the Debates concerning it generally concluded in a Pity to his Perſon and Relations, as a great Misfortune upon both, and in Truth upon the Nation, that a Gentleman of ſuch Qualifications ſhould be guilty of ſo much Inadvertency, (to ſay no worſe) as to engage ſo frequently in ſuch Conſults as he unhappily did. Some blamed the Jury, moſt cenſured the Witneſſes, but very few arraigned either Counſel or Court; and in Truth, the Fairneſs and Indifferency of that Trial was ſuch, that his own Relations were pleaſed, and his Enemies angry, with thoſe that then ſat upon the Bench; and thus it continued till the preſent Revolution.

Then the Memory of that unfortunate Gentleman was revived by the Publication of a Defence of his Innocency. The Name ſubſcribed to the Title-page is ſo great, that I ſhould be afraid to proceed, but that I am reſolved not to be known; and therefore if any thing falls from my Pen indecent or diſreſpectful, he muſt excuſe it, as a Privilege claimed by Authors, eſpecially of Books that have no Name to them.

To begin at the End; For what Purpoſe was that Pamphlet printed?

It could not be for the Good of the Nation, as a Means for Conſumption of Paper; for, as I have been told, that's a *French* Commodity.

It could not be for the Bookſeller's Profit, only, for a Reaſon to be gueſſed at.

It could not be for the ſake of that Lord's Memory, or any of his ſurviving Relatives; for no Man will think it a Service to them, to renew the Thoughts of that unhappy Accident in ſo noble, antient, and worthy a Family. In Truth, the whole Treatiſe is nothing but a painting to the Life the too deep Concern of that Branch on't in a weak as well as criminal Enterprize; for what elſe doth ſignify the Expreſſion, *pag.* 4. that being preſent at a Conſult of Traitors a ſecond Time, or oftener, raiſes a ſtrong Suſpicion, that the Party who does ſo, likes it, conſents to it, and approves it; or elſe he would have forborn after his having been once amongſt them? And many other ſuch Expreſſions there are with the like Reflections, as *pag.* 7. that *Rumſey* and *Sheppard*, the two firſt Witneſſes, *&c.* raiſe a ſtrong Suſpicion upon my Lord, and make it probable that he was guilty. And in the ſame Page the Author ſeems to agree him guilty of Miſpriſion. And *pag.* 17. he republiſhes the Evidence of *Rumſey*, that there was a Conſent, and this the Author agrees to be High Treaſon; but he then endeavours to invalidate the Credibility of that Evidence, by ſhewing the Wildneſs of his own Memory. Now how this could ſerve the Reputation of the Deceaſed, or cure the Reſentment of his Relations upon that Account, I confeſs myſelf utterly unable to imagine. Nor can any Reader ſuppoſe the Title verified by the Book, viz. *A Defence of Innocence*, when there's not one Word to be read of it but in the Frontiſpiece. Surely there's no Thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this Effect: *My Client, I muſt confeſs, is a Wag, but not ſo great a Wag as the Counſel of the other Side would repreſent him*; *their Proof is very ſtrong, but not ſo ſtrong as they would boaſt it to be*; *our Defence is but dark and weak, but not ſo weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unleſs a Conceſſion of Guilt can be called a *Vindication of Innocence.*

It could not be for the ſake of the Government: For it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate Methods are more adviſable; and if every thing ſhould be republiſhed which hath given Diſguſt to the People, few would eſcape the Laſh, the Righteous themſelves would ſcarcely be ſaved; for Abundance of them have tript either in their publick or private Converſation, and ſome in both, and that notoriouſly too: I name nobody. Beſides, the Government muſt of Neceſſity never allow the Doctrines divulged in this Pamphlet, unleſs 'tis intended that its Being and Continuance ſhall be as precarious as a *Beneplacito* Judgeſhip, and as dependent upon the People's

Humour, as that is upon the King's: Nor can any Government countenance and encourage the Arraignment of a conſiderable Number of wealthy worthy Citizens, with the printed Cenſure and Inſinuation of their being a Parcel of corrupt, ignorant, injudicious, diſhoneſt, and partial Fellows; and this is done to the full, when ſaid, that the contrary would have ſworn to a Not Guilty, or at leaſtwiſe they ſhould, if the Author had been there But moſt of his Readers are of another Opinion, notwithſtanding the ſecond Letter, *pag.* 7.

It could not be for the ſake of popular Applauſe; for it's thought, that the Treatiſe will never deſerve or procure it, eſpecially if you take it in Pieces, and conſider them apart, and with ſober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and the Name of the Author was firſt publiſhed, Mankind was full with a pregnant Expectation of ſome rare, abſtruſe, uncommon Learning upon the Point of Treaſons, with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadverſion upon that Trial, eſpecially from ſuch an Author. But there's nothing ſtrange under the Sun.

The Preface is an Encomium upon the Author himſelf, declaratory of his Readineſs for publick Services, and ſeems to be calculated for a Cooler, or a Defence againſt the Heats and Rigours of an harſh and oppreſſive Government, for an Help to ſuch as may poſſibly hereafter fall into the like Danger and Trouble: And to teach the People the Fear and Jealouſy of a Poſſibility of ſuch Occurrences again, can never be thought a publick Service. As to part of the Preface, it is ſo dark, that a ſlender Underſtanding can never reach the Senſe of it, I mean that long Paragraph, *The Copies of*, &c.

The firſt Letter begins with a ſeeming Shew of a bold Reſolution in the Author to perform the Duty of a friendly Counſel, maugre all the Inconveniencies that might happen to himſelf thereby. But it concludes with an extraordinary Caution and Care to prevent all Danger, even to ſuch a Degree as much diminiſhes the Credit of that invincible and heroick Reſolution at firſt boaſted of. And if his Courage had been ſo ſtrong, why were not theſe Letters publiſhed formerly, and in Times, when, in the Author's Judgment, there was more Occaſion for their Uſe, than the preſent can poſſibly afford? But rather it may be again aſked, why they are printed at all, the Obſervations contained in them having been printed not above 500 Times already, and perhaps with as much Advantage? Was it a Secret to the World, that a Variance between the Indictment and the Evidence might be alledged on the general Iſſue? Did no Man in Town know that Treaſon and the Miſpriſion of it are different Crimes? Is the Diſtinction between them ſuch a new Invention, and ſo very uſeful, as to be an Equivalent for the want of Counſel in capital Trials, as the *Preface* and *Letter* do inſinuate, if they do any thing? Who ever doubted, but that Proofs of Treaſon muſt not be by Hearſay or Argument only? Was it ever a Queſtion, for this hundred Years, but that every Indictment of Treaſon muſt contain an Overt-act? Or that leſs than two Witneſſes was allowable for Proof of that Crime? Or did any Man ever ſcruple but that *Keble*'s Statute-book contains a true Copy of the 13 *Car.* 2. *cap.* 1. which requires Witneſſes credible? Now if theſe Queſtions muſt be anſwered in the Negative, how can the Advice of theſe Letters be aſſiſtant to a better Defence than was known long ſince?

The Book itſelf begins with Stories of Tranſubſtantiation of Bodies, and Tranſmigration of Souls, as much to the Purpoſe, as the Parſon's Text was to his Doctrine, who preach'd upon the Certainty of the Day of Judgment from that Verſe in *Geneſis*, *And Adam knew Eve, and ſhe conceived*, &c. But perhaps the Author intended all that firſt Page for a Flouriſh, and to entice his Reader into a patient Peruſal of what follows, and prejudice him againſt the Sheet he pretends to anſwer. He is very frank in ſtyling it a libellous Pamphlet, and the Author ſome rank bigotted Papiſt; but to what Purpoſe no Man can divine, unleſs it were to expoſe him to the Rage of the Mobile; but his Name was never poſted, and ſo he is ſafe from that Danger.

The Aſſertions are two, that there was neither Charge nor Proof; that the Indictment and Evidence were both inſufficient.

I muſt confeſs, that it would be a mighty Addition to the Liberty of the Subject, to have the Law eſtabliſhed and declared to be what the late Judge doth argue it is; for then there would be a Freedom for Malecontents to endeavour their own Satisfaction by Conſpiracies and Conſults, and that with Impunity. But as the Law was, and always hath been taken to be, an *Engliſh* Subject hath very little Colour for his Pretence to ſuch a Privilege as that Doctrine gives.

The Indictment is, That at ſuch a Place and Time *he did compaſs and imagine not only to deprive the King of his Government and Royal State, but to kill and put him to Death, and to procure a miſerable Slaughter amongſt the King's Subjects*; *and to ſubvert the Government of* England, *and to raiſe a Rebellion againſt the King*. Then follows, *That to fulfil and perfect theſe Treaſons and traiterous Imaginations, he, together with other Traitors, did then and there with them traiterouſly conſult, conſpire, conclude and agree to raiſe a Rebellion, and to ſeize and deſtroy the Guards of the King's Perſon*, contra, &c. Now whether theſe laſt Acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was ſufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the Accuſed was guilty of that Fact in the Indictment, and then anſwer the Objections ſtarted againſt it.

Firſt, There's a ſufficient Treaſon alledged. And ſecondly, Here's a ſufficient Overt-act. Both theſe I'll agree are neceſſary; and if either were wanting, the Indictment was naught. Now it muſt be agreed to me, that the firſt is clear and plain; for by the Law, to compaſs or imagine the Death of the King, Queen, or their eldeſt Son, is High Treaſon. It is true, by the ſame Law, ſome open Act of which human Juſtice can take a Conuſance, is requiſite to be proved; the very Words of the Statute do expreſly require it; and in Truth it is no more than what muſt have been, had no ſuch Words been uſed: For Thoughts are ſecret, and can never be arraigned, proved, or cenſured, any otherwiſe than as they are diſcovered by ſome Overt-act; ſo that the Clauſe requiring an Appearance of the Compaſſing and Imagination by ſome Overt-act or open Deed, is no more than would have been impliedly requiſite, had the Clauſe been omitted. 'Tis the Imagination and Compaſſing which is the Treaſon, that alone is the *Crimen læſæ Majeſtatis*, which is prohibited and condemned; the Overt-act is not the Treaſon, that's only a neceſſary Circumſtance, without which no Court can ever take Conuſance of the other. And it is neceſſary to alledge ſome ſuch Deed, *a neceſſitate rei*, without reſpect to the Words of that Statute. I inſiſt the longer upon this, becauſe it is uſed as an Objection, that the Clauſe of *proveably attaint by, &c.* is reſtrictive, whereas it is not ſo; for it is only to make that firſt ſpecified Treaſon of Imagination and Compaſſing to be a thing intelligible and triable: And farther to prove this, it is conſiderable, that this Requiſite of the Overt-act is of Uſe and Neceſſity barely, and only in the Caſe of that which is firſt mentioned, *viz. Compaſſing*. For the other ſorts of Treaſon are Acts themſelves whereof Notice may be had, as levying of War, violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themſelves, as that there was a War levied, there was a carnal Knowledge had, and the like. And this farther appears from the very Form of Indictments uſed ever ſince that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt-act without an expreſs Allegation of the Compaſſing.

Then the Matter reſults ſolely into this Queſtion, Whether the Fact here laid be naturally and neceſſarily declaratory of the Party's Imagination to deſtroy the King; for if ſo, the Indictment is undoubtedly good; and it can never be called a conſtructive Treaſon, or a thing deviſed by the Judges Interpretation of the Statute; for they adjudge no more Treaſon, than what the Statute declares, and that is an Imagination of the King's Death. Now whatſoever is ſignificative of a Man's Intention or Imagination, is a ſufficient Overt-deed to demonſtrate, that that Man had ſuch Intention or Imagination; and whatſoever is expreſſive or ſignificative of a Man's intending, compaſſing, or imagining of the King's Death, is a ſufficient Overt-act to prove and make ſuch a Man a Traitor within this Law. Now that a Conſult about, and an Agreement and Concluſion actually to ſeize the King's Guards, and raiſe a Rebellion, are a natural and genuine Declaration, that the Perſon who did ſo conſult, agree, and conclude, did compaſs and imagine the Death of the King, is ſurely plain enough: For a Rebellion, if ſucceſsful, can determine in nothing else but the King's Death, either natural or civil, which is all one within this Law. Now he that deſigns and intends the neceſſary Means naturally conducing to a particular End, that Man may certainly be ſaid to intend and deſign that End, *Cauſa Cauſæ eſt Cauſa Cauſati.* If the Deed tend and conclude to the Execution of the Treaſon, that's a ſufficient Overt-act, ſays *Coke*, 3 *Inſt.* 12. And in the ſame Book, *fol.* 6. he hath theſe Words, *That he who declareth by Overt-act to depoſe the King, is a ſufficient Overt-act to prove, that he compaſſeth and imagineth the Death of the King*; and ſo it is to impriſon the King, to get him into his Power; and to manifeſt the ſame by ſome Overt-act, this is alſo a ſufficient Overt-act for the Intent aforeſaid.

In 3 *Inſt. p.* 12. 'tis held, That a *Preparation* by ſome Overt-act to depoſe the King, or take the King by Force and ſtrong Hand, or to impriſon him till he hath yielded to certain Demands, that is a ſufficient Overt-act to prove the Compaſſing and Imagination of the King's Death; for that this, upon the Matter, is to make the King a Subject, and to deſpoil him of his Regal Office; and ſo he ſays it was reſolved by all the Judges of *England*, *Hil.* 1. *Jac.* 1. in the Caſe of the Lord *Cobham*, Lord *Grey*, *Watſon* and *Clark*, Seminary Prieſts; and ſo he tells us in the ſame Place, that it had been reſolved by the Juſtices in the Caſe of the Earls *E.* and *S.* Now if we conſider the Reaſon why theſe were Overt-acts of Treaſon, it will appear to be only becauſe of their natural Tendency to the Accompliſhment of that particular Treaſon of Compaſſing, which holds the ſame in the Author's Caſe, as well as in thoſe there mentioned.

A Conſpiracy with a foreign Prince is agreed by my Lord *Coke*, *ib.* 14. to be Treaſon, if it be to invade the Realm; and an Overt-act of ſuch Practice to be a ſufficient Overt-act of a compaſſing the King's Death; and the Reaſon is, becauſe ſuch Actions cannot be thought to be intended for any other Purpoſe; and yet that particular Act may be accompliſhed; and it may ſo happen as that the King's Death may not follow, and yet they are Overt-acts of that treaſonable Imagination, becauſe of their Conduciveneſs and Tendency thereto. The Caſe of Cardinal *Pole* was, writing a Book of the Pope's Supremacy, in which were contained Incitements of *Charles* the Emperor to an Invaſion of this Realm; and that was held an Overt-act of imagining the King's Death. In the Lord *Cobham*'s and Sir *Walter Raleigh*'s Caſe, a Conſpiracy, Conſult and Agreement to promote an Inſurrection, and procure an Invaſion, was held an Overt-act, 1 *Jac.* 1. and their meeting, conſulting and agreeing, was laid as an Overt-act, though diſcovered before the Thing took Effect. Dr. *Story*'s Caſe, which is mentioned by the Lords *Dyer* and *Coke*, was no more than a Practice or Perſuaſion to promote an Inſurrection and Invaſion; and the Overt-act that was alledged, was the writing of Letters for that Purpoſe, which is no more influential towards it, not ſo much as frequently meeting, conſulting and conſpiring, and at laſt concluding and agreeing to make an Inſurrection. The Caſe of Mr. *Coleman* was no other; for whatſoever the Indictment laid, the Evidence was only of Letters to the like Effect (as to this Point) with thoſe of Dr. *Story*; and the Caſe of Dr. *Story* was before the 13 *Eliz.* which made a new Treaſon during her Life; for the Trial was in *Hilary* Term, and the Parliament did not begin till *April* following. A Machination or Agreement to raiſe a Rebellion naturally tends to the Deſtruction both of King and People, and an Advice to it hath been adjudged ſo. As in the Reign of *Hen.* 4. one *Balſhal* going from *London*, found one *Bernard* at Plough in the Pariſh of *Oſley* in the County of *Hertford*; *Balſhal* told him, that King *Rich.* 2. was alive in *Scotland*, (which was falſe, for he was then dead) and adviſed him to get Men, and go to King *Richard*; in *Mich.* 3 *Hen.* 4. *Rot.* 4. you'll find this adjudged Treaſon. *Throgmorton*'s Caſe is as plain, for his was only a Conſpiracy to levy War within this Realm; he did not join in the Execution, and the Conſpiracy alone was declared to be a ſufficient overt Act by the Judges. 'Tis no Anſwer to it to ſay, that a War was afterwards levied, for *quoad* him 'twas a bare Conſult; his Offence was no more than that. In Sir *Henry Vane*'s Caſe, Meeting and Conſulting were alledged and held to be overt Acts. The Caſe of *Conſtable*, mention'd in *Calvin*'s Caſe, was only an Act tending to depoſing the Queen, as diſperſing Bills in the Night, that *Ed.* 6. was alive and in *France*, and held an overt Act declarative of his compaſſing her Death, and he was executed for it. And in the Report of *Calvin*'s Caſe you have ſeveral other Caſes mentioned, where Endeavours to draw Subjects from their Allegiance have been adjudged overt Acts of this Species of Treaſon, the Compaſſing, *&c.*

The Word *Compaſs* in the Statute is of a larger Extent than only to mean an actual Aſſault on the King's Perſon, and an Endeavour to cut his Throat; it moſt certainly implies any Conſult or Practice of another thing directly which may produce that Effect, as the diſſuading People from their Fidelity: Such was *Owen*'s Caſe in K. *Ja.* I. his Time, in the 13th Year of that Reign. This Advice was to this Effect: That King *James*, being excommunicated by the Pope, might be killed by any Man, and that ſo to do was no Murder; for being convicted by the Pope's Sentence, he might be ſlaughter'd without a Fault, as an Executioner hangs a Criminal condemned by Law; and for this he was hang'd as a Traitor. He that denies the Title to the Crown, and endeavours to ſet it upon another's Head, may do this without a direct and immediate deſiring the Death of him that wears it (ſo ſaid *Saint John* in his Argument againſt the Earl of *Strafford*); and yet this is Treaſon, as was adjudged in the Caſe of *Burton*, and in the Duke of *Norfolk*'s Caſe, 13 *Eliz.* This denying of the Title, with Motives, tho' but impliedly, of Action againſt it, hath been adjudged an overt Act of compaſſing the King's Death, as it was in *John Sparhawke*'s Caſe, *Paſch.* 3 *Hen.* 4. *Rot.* 12. The like was the Caſe of *John Awater*, who was indicted for a Treaſon of that Nature in *Kent*, and the Indictment removed into *B. R. Trin.* 18 *Edw.* 4. ſee *Rot.* 17. and he was thereupon afterwards outlawed as a Traitor; and ſo was *Tho. Heber* at the ſame time; and Words ſignificative of an actual Intention have been held ſo, as are the Opinions of *Yelver.* 107. 197. *Arthur Crohagan*'s Caſe, *Cro. Car.* 332. and abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them; for that their Authority in ſome of them is very ſlender, and may be ill uſed, to the ſtraining of raſh unadviſed Words into a Signification of a Man's compaſſing, when perhaps the Man never thought as he ſpoke: However all of them do evince, that adviſed and deliberate Preparations moving to a Danger to the King's Perſon, have all along been held overt Acts of a compaſſing his Death: and ſome of them prove, that Preparatives and Motives to the levying of a War have been held Treaſon, as was Sir *William Aſhton* of *Suffolk*, 31 *Hen.* 6. mentioned in *Cro. Car.* 119. for making Ballads reflecting upon the King, and writing Letters to the Men of *Kent*, exciting them to riſe to aid the then Duke of *York*, &c. *ad guerram levandam*, and no mention of any War actually levied. *Germain* and *Taylor*'s Indictment hath very little more in it mentioned, than the like Preparations and Incitements to a Rebellion; and yet the Treaſon there laid was a compaſſing of the King's Death, *anno* 2 *Ed.* 4. The Caſe of *Thomas Burdett*, in 17 *Ed.* 4. as at large it appears in the ſame Report of *Cro. Car.* amounts to no more than the Indictment in Queſtion, *viz.* that he compaſſed the King's Death; and to accompliſh that Intention, he did diſperſe diverſe Writings, *&c. ad intentionem* that the People ſhould riſe and levy War, *&c.* the Judgment in that Caſe, Drawing, Hanging and Quartering. The like in *Collingbourne*'s Caſe, 2 *Rich.* 3. in the ſame Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Inſurrection and War, and he incurred the like Judgment; which Caſes are infinitely ſhort of this in queſtion: And it cannot but be wonder'd, that any Man, who has read them, ſhould queſtion, whether a conſulting and conſpiring about Riſing, and an actual Agreement and Determination to riſe, be an overt Act of compaſſing the King's Death. In the very Trial of the Lord *Stafford* it is affirmed by Sir *William Jones*, (who was certainly of great Authority with the Author) that the meeting and conſulting together is an overt Act, tho' the Thing agreed on be never put in Execution; and 'tis there reſolved by the Judges, that the ſame Treaſon may be proved by two Witneſſes to ſeveral overt Acts, tho' one ſpeak of Words or Actions that were ſpoken or done at one Time and Place, and another ſpeak of Words and Actions at another Time and Place, which argues, that Words, much more a Conſult and Agreement, may make an overt Act. Even in the Caſe of *Stephen Colledge*, in which though the Trial had been cenſured, yet the Indictment never was, and in that Indictment the Treaſon is laid as in this Caſe, that he traitorouſly imagined and compaſſed the King to depoſe, kill and deſtroy; the overt Acts are, that he armed himſelf, and adviſed others to arm, and ſpoke ſeveral Words, *&c.* Here was no War levied, only a Preparation, and yet that was allowed an overt Act: And as for the Words, if they are allowed to be one, with much more Reaſon may meeting, conſulting, concluding, and agreeing to do.

As to the Objection, ſurely there is no Weight in the firſt, which is *Page* 10. that criticizes upon the Word *fait* Act, and that 'tis only a Meeting to agree, and an Agreement to do, but 'twas not done. Suppoſe they had concluded and agreed to poiſon or ſtab, *&c.* according to the Opinion in that Page, this was no Treaſon; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth in *Page* 13. argue, that this can never be an overt Act of compaſſing the King's Death, becauſe levying War is a diſtinct Species of Treaſon, and a conſpiring to levy War is not a levying War; and even levying War itſelf cannot be aſſign'd as an overt Act of Compaſſing, unleſs the Indictment were particularly for that; but ſurely another ſort of Act that ſavours of another Species of Treaſon, if it naturally conduce to the accompliſhing of the firſt Species, *viz.* that of Compaſſing, it may be aſſigned as an overt Act of it; and Sir *Henry Vane*'s Caſe is quite otherwiſe; for there a levying War was the overt Act alledged of the Compaſſing, and allowed by all the Judges; and all the Indictments in the *Weſt* upon *Monmouth*'s Rebellion were ſo, and yet drawn by very good Advice; Beſides, what Anſwer can be given to the Caſes which I have cited, where Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motives and Preparatives to an Inſurrection, have been held overt Acts of an Imagination of the King's Death, tho' no War was levied, tho' no Inſurrection was made?

'Tis apparent from what was ſaid before, that to take the King Priſoner, or to ſeize his Perſon, is a compaſſing of his Death; and if ſo, then to ſit in Council to conſpire the effecting of that, is an overt Act of compaſſing the King's Death; and this Caſe amounts to that: Here was a Conſultation to ſeize upon the King's Guards, which could tend to nothing but the ſeizing of his Perſon; and then the Conſequence is plain. The Author ſays, *Page* 14. If it had but been alledged in the Indictment, that in purſuance of the Conſult and Agreement, there had been a View of the Guards, and a Report made, that the thing was feaſible, this would have been more to the Purpoſe. How much more, no Man can tell; for every Objection in the Book would have been as good againſt that as this. The great Objection he ſeems to rely on, is, That the Law takes no Notice of them: For once I will ſuppoſe that it doth not, and then let us obſerve if any Argument can be drawn from thence: Perhaps the thing was not uſed or known when the 25 *Ed.* 3. was made. Can nothing be Treaſon, if the Plot laid to accompliſh it be concerning a thing not *in eſſe* at the Time of the Statute? Certainly it may. If ſeveral Malcontents ſhould conſult, and agree, and prepare (in order to an Inſurrection) to ſeize the *Tower*, *Portſmouth*, *Hull*, and *Plymouth* Fort, would not this be an overt Act of Treaſon? And yet our Law takes no Notice of any Garriſons there or any where elſe; they have no relation to the Militia, nor were there any Arms in thoſe Places in *Ed.* 3. his Time, that we read of in our Law-Books: If this be otherwiſe, why did not the Author find Fault with *Rouſe*'s Indictment, which was tried much at the ſame time with this in queſtion? Suppoſe all the Gentlemen Penſioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the Doors in *Whitehall* broken up, and all the Swords, Muſkets and Piſtols were taken away, and yet it happen'd that the King's Perſon was left untouch'd; would this be an Act of Burglary and Murder only? We have no Law-Books that take notice of Arms at *Whitehall*, or ſuch Names as thoſe Servants go by; and ſuppoſe, at the ſame time, upon the Conſult, that the Conſpirators did move, diſcourſe, debate, and conclude of an Inſurrection, would it not then be Treaſon? If not, nothing can be ſo, unleſs the King's Perſon be murdered or ſeized; and the Statute ſhould not have ſaid Compaſs or Imagine, but Seize or Kill, *&c.* It ſuffices then, that the Guards are in common Underſtanding known to be uſed and employed for the Attendance upon, and Preſervation of his Perſon. If common Senſe and Reaſon be Judge, no Man can think but that he who intended to move an Inſurrection, and ſeize the Guards, had a further Deſign upon the King's Perſon: and then this is Treaſon; if otherwiſe, the King of *England* is in a worſe Condition than the worſt and meaneſt of his Subjects; for a King muſt not, cannot, in or by our Law, aſſault, ſtrike, ſeize, attack, or impriſon in Perſon, and conſequently cannot defend himſelf; and ſhall not his Servants, Guards and Attendants, (which are all of the ſame Nature) wear a Sword, or carry a Muſket, before him? If they do ſo, is it not then known that they do it? If it be commonly known to be ſo, doth not he that ſeizes and deſtroys thoſe Attendants, endanger the King's Perſon? And if that be ſo, the Inference is eaſy. It can never be, it will never be allowed for Law, that a Seizing all the King's Guards is only a Breach of the Peace, unleſs we renounce the Law, and will judge more by Inclinations and Partyſhips than by Reaſon and Precedents. As to the Diſtinctions between an actual ſeizing them, and a Conſult and Agreement to ſeize them, what I have urged before overthrows it, and what the Author ſays doth not maintain it; for both have a Tendency to the Execution of the Treaſon intended.

I will not take the Pains to remark upon all the Inconſiſtencies of the Conceſſions and Denials in the Book; they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, ſomewhat of the *French* Growth, I hope the King will always preſerve them for his own perſonal Preſervation, notwithſtanding the Author's Opinion. As to his temporary Laws, which declare Words Treaſon, moſt Part of them were affirmative of the old Law, and were made only in Compliment to a new-crown'd Head, when they prohibited nothing but what was before ſo; and for the reſt, no Concluſion could be made from them for the Maintainance of his Aſſertion, if he had repeated them; which ſince he does not, nor will I.

As to the Caſes cited by the Author of the Antidote, (which I have mentioned) he agrees to *Conſtable*'s Caſe, but does not diſtinguiſh it in its Reaſon from that in Diſpute. He denies the Authority and Law of Dr. *Story*'s Caſe, which nobody ever denied before him. He ſays, that in the Lord *Cobham*'s Caſe there were People aſſembled, but gives not any Anſwer to what the Antidote affirmed, *viz.* That the overt Act taken notice of in the little Book, called, *The Pleas of the Crown*, was only the conſpiring to make an Inſurrection. He doth confeſs, that in the Lord *Grey*'s Caſe there was only a Conſpiracy: He ſays, that in Sir *Henry Vane*'s and *Plunket*'s Caſe, there were ſeveral other Ingredients to mount them to Treaſon; but what they were, nobody muſt learn, at leaſt not from the Author, for he names none of them.

He conſumes half a Page in an Encomium upon the Judiciouſneſs of that Court, which made a conſcientious legal Scruple, Whether the Murder of a Miſtreſs by her Servant were Petit Treaſon, by reaſon of the Difference of her Gender? But at laſt he tells us, that the Judges of the *Common Pleas* did upon much Deliberation ſatisfy thoſe of the *King's-Bench*, that Maſter and Miſtreſs were in Effect but one.

In the Concluſion of the firſt Letter, he ſays, that conſpiring againſt the King's Perſon, is moſt juſtly taken to be to conſpire againſt the King's Life; but in the Book he will not allow a conſpiring and agreeing to ſeize (*i. e.* beat and deſtroy) the Guards, which are ordinarily and commonly known to attend the King's Perſon, to be a conſpiring againſt his Perſon; which whether it be or not, the next Trial of this Nature will determine. Now, after all, what can be a greater Reflection upon the Learning, Judgment and Integrity of the King's Counſel, Judges and Recorder, than to declare and publiſh in Print, that the firſt proſecuted, the ſecond tried, and the laſt condemned, a Gentleman as a Traitor, when the Charge had nothing in't of that Nature: If true, the bare printing it is unbecoming the——But as for their Reputations, let them juſtify themſelves. The Reaſon of my undertaking to explode ſuch a Reflection, was my own and every Man's Duty to the preſent Government, (the King and Queen's Majeſties being both concerned, and eminently too, in the Conſequence of ſuch Doctrines) and a Love to my Countrymen, that they may not preſume upon the Authority of ſuch a Defence; for if they do, they may find their Miſtake, when nooſed through the Power of Truth, the contrary Opinion.

As to the Proof, I will not rake into it, ſince the Author hath repreſented too much of its Strength, and *De mortuis nil niſi bonum*; it can never be thought a grateful Province to debate or convince of Guilt; but yet I may ſay ſo much, that there was Evidence enough to juſtify all concerned in the Proſecution and Trial, though for ſeveral Reaſons the Attainder is fit to be reverſed; but hardly for thoſe which this Author mentions.

Since the Writing of this Sheet, there came to my Hands a Treatiſe, calling itſelf, *The Lord* Ruſſel'*s Caſe*, which ſavours more of Policy than Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Stateſman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he inſiſts on is neither ſafe nor allowable without Doors. I ſhall make but three Remarks on what he ſays: Firſt, He may aſſure himſelf, that that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, The King's Solicitor (whom he reflects on) twittered more Reaſon and Law than yet hath been or ever will be anſwered: And thirdly, The Indictment contained no new conſtructive Treaſon, but only that which was plainly and directly declared in and by the 25 *Edw.* 3. if the Letters of it make Words, and the Words Senſe, and one Man may be allowed able to read them as well as another.

Since the writing of the *laſt Paragraph*, there came to my Hands another Pamphlet, written by a new Obſervator; but I ſuppoſe the Judges that ſhall be, will correct that ſort of Licentiouſneſs which he aſſumes in his Remarks; which if they do not, they'll have fine eaſy Places on't, as well as their Predeceſſors, and much good may it do them!

Ætas parentum pejor avis tulit
Nos nequiores, mox daturos
Progeniem vitioſiorem. Horat.

A Second Vindication of the Magiſtracy and Government of England, *by way of Anſwer to the ſeveral Replies*, &c.

IT is very obſervable, that ſince the late Revolution, nothing hath more diſturbed our Peace than the Liberty of the Preſs; and amongſt all our new Prints, the moſt malignant and miſchievous Libels on the preſent Government have been written by thoſe Lawyers who pretend themſelves the greateſt Zealots for its Honour and Service; which may be ſuſpected as falſe, unleſs it be withal conſidered, that ſome modern Royaliſts have nothing recommendatory of themſelves, but the Miſcarriages of others; and others of them have ſuch great ones of their own, that an Extenuation or Excuſe is impoſſible; and therefore to cloud their own Deformities, they would blacken other Men's Reputations; and, in order to it, they have cenſured Innocence, and arraigned Laws; and where a Slip or Fault hath been, though ſo ſmall as ſcarcely to deſerve the Name of one, they have magnified it into an execrable Villainy: And for a Colour of ſuch their Calumny and Slander, they have vented new Goſpel and Law both; nay they have broached ſuch Notions to the World, as as are directly fatal to that Crown of which they boaſt themſelves the Makers and Supporters; and yet, in doing ſo, they pretend to merit——

It is ſtrange, but true; for the Fact is plain, and the Conſequence too: Upon the preſent Change, the Republicans of both Gowns did deem it their Policy and Intereſt to beſpatter and reproach other Men's Actions, and, like baſe and mean Spirits, gave ill Names and Words to every thing in which themſelves had not been concerned, and made Reviling ſo cuſtomary, that it is become the modiſh Sin of the Age. It is moſt certain, the old *Engliſh* Honour, Frankneſs, Ingenuity and Good-nature is quite abandoned from ſome Companies and Places in the Town, and inſtead of Folly, we have aſſumed Vice in our common Converſation; inſtead of Drollery and Banter, the new-faſhioned Wit at ----'*s* allows nothing as acceptable but Lying and Slander; nay, the very Spark of a Courtier hath changed his Note; whereas fulſome, groſs and falſe Flattery was wont to be his Talent, he is now got to the other Extreme, *i e.* revengeful, weak and falſe Characters, both of Perſons and Actions: Which is the worſt is difficult to determine, but Falſhood is the moſt predominant Humour in both; and that Age is ſurely unhappy, which is plagued with a a Surfeit of either, eſpecially when the Exceſs is ſo great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Proteſtant, no Lawyer an honeſt *Engliſhman*, no Courtier a faithful Servant, unleſs he can and do rail, and ſnarl, and ſcold, and that at Things that were juſtly uſed in former Times, and muſt neceſſarily be uſed in theſe Times, and will be ſo in all Times whatſoever, even *in Secula Seculorum*: Theſe little ſtinging Animals do value themſelves upon their Honeſty, becauſe they find Faults, but it is in Caſes where no Eye can ſpy them but their own; they value themſelves upon their Wit, becauſe their Cenſures are ſharp and biting; but that is ſo eaſy, ſo very eaſy a Province, that Nature teaches even the rudeſt of her Breed to be ſatirical, and the Natural oftentimes outdoes the pretended Scholar in Ribaldry, and hath perhaps a better Faculty that way, than Fancy for Picquancy of Reflection.

Now as the Fact is thus criminal and ridiculous both, ſo muſt the Conſequence prove fatal to the Government, which they would be thought (but intend not) to ſupport; for when once reſolved to arraign all paſt Proceedings, they are forced, for the Maintenance of ſuch their Reflections, to vent thoſe Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (ſave one) been juſtly exploded, as deſtructive to the Honour and Being of the then Poſſeſſors of the Crown; and can conduce to no other End than the utter Subverſion of this, and every other Government, that doth but ſmell of a Monarchy.

It cannot be denied, but in moſt Reigns there have been ſome Occaſions given for Diſguſt to the People, that Kings have borne too hard upon their Subjects, that the Subjects have worthily complained of ſome Warps from the Law; but no Man ever with Senſe pretended, that this is a Reaſon to induce a Belief, that every Act of State, and every Judgment of Law in former times, was arbitrary and unwarrantable: No ſurely, the Publiſhers of ſuch Reflections are of another Thought themſelves; and ſome Folks imagine, they who formerly were engaged in ſeditious Practices againſt the Crown, would now, upon the preſent Occaſion, explode that Law, which doth condemn ſuch Practices, that they may with Impunity repeat them, whenſoever the King or his Miniſters ſhall chance to diſoblige them, and that this is the true Reaſon of half the new Libels and Invectives upon paſt Proceedings.

It is now apparent to all Mankind, that every Line, or at leaſt Page, of ſome Men's Works, are deſigned only as a Courtſhip to the Mob, by bridling the Sovereignty, and clipping the Prerogative, even to ſuch a Degree, as doth abſolutely deprive it of thoſe Rights, Powers, and Authorities, which the ancient Law, continued Uſage, and our preſent Repreſentatives, conſent to allow it.

To check this growing Itch of pamphleting the Nation into another Change, and to vindicate the Rights of the Crown, and juſtify the Magiſtracy of *England*, from the Obloquy which was induſtriouſly thrown on it in one Particular, there was, three Months ſince, a Sheet printed and publiſhed, at which ſome Men took Offence; but others were of Opinion, that its Publication was ſeaſonable and well-timed; that its Reflections on the trifling Defence, which it aſſumed to anſwer, were juſt and ſmooth, and very ſoft, conſidering the Occaſion given for a more ſatirical Style, from the Fondneſs and Incoherence of the Defender's Expreſſions and Inferences; and that the Mode of managing his Argument was modeſt and tender, with a decent and due Regard to the Memory of the unfortunate Deceaſed, which had ſuffered more than enough of Injury by that pretended Juſtification.

A cholerick and ſedulous Inquiry hath been made after the Author's Name; but the Inquiſitor is ſtill at a Loſs, notwithſtanding his Confidence of a certain Knowledge who it was, that came behind and ſtruck him, *&c.* But to give him ſome Satisfaction, after all his Fatigue in ſearching, I will aſcertain who it was not; he may aſſure himſelf, that none concerned in that Trial were concerned or privy to its Vindication; and when it was compoſed and writ, the Party intended it chiefly for his own and the World's Diverſion, from the ungrateful Neceſſity of reading always on one Side, by the Interpoſal of a few Lines on the other; that our Humours might not be quite ſoured, and our Genius turn too peeviſh, through the Influence of Satire and Libel, with which the World hath too much abounded of late Years; nor had there been one Word more publiſhed upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the Word of a Prieſt ſays, that it needs one; both ſhall have an Anſwer preſently.

But, firſt, it is remarkable, that this new Reply hath got a Licence, when none of his other elaborate Works could procure one; however, it is poſſible, that the Licenſer may hereafter renounce or retract his Allowance in this Caſe, as he hath done in ſeveral others already, when his Superiors are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be ſuppoſed, that Miniſters of State will ever be ſo incurious of their Maſter's Honour, and the Rights of his Crown, as to approve their Diminution, when once they perceive it.

The ſingle Point which the Advocate for Magiſtracy aſſumed to maintain, was, that the Indictment in queſtion was legal and good, ſufficient both for Matter and Form, and did warrant the Judgment which was pronounced upon the Verdict, that affirmed its Truth; this ſeems the principal Aſſertion in that Paper, which, whether his Precedents and Authorities, Arguments and Reaſons, are ſufficient to prove, the Reader muſt judge; that the Caſes he cites, are truly reported for ſo much as he uſes them, none can deny; and that the Law is with them upon the whole Matter, ſhall be farther evinced.

But ſince that Sheet hath made ſome Noiſe amongſt angry Men, (which was little expected by him that wrote it) it will not, I hope, be thought impertinent to ſpend a few *Paragraphs* upon the boiſterous and bluſtering Invectives and Remarks made againſt its Author, in a pretended Reply. In his Vindication, therefore, I ſhall obſerve the Temper, the Wit, the Gueſs, the Reaſon, the Religion, and laſtly, the Law, of that Replication.

As to the Temper, it ſeems to be writ under ſome Diſappointment; for the Author doth in every Sentence declare his Paſſion, and plainly tells us, that he was then diſcompoſed; but whether his Diſpleaſure were conceived at a paſt or preſent Chief, is not ſo eaſy to determine: To expoſe his Fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Preſumptuous, Baſe, Ingenerous, Inſolent, *&c.* and all this deſpiſed by his reputed Author, and ſmiled at by the real one. He is pleaſed to call the Sentence and Execution a plain Murder; which if ſo, ſure I am, that he is bound in Conſcience to proſecute an Indictment againſt the Judges, the Recorder, the Grand and Petit Jury, the Witneſſes, the Clerks, the Solicitors, the Gaoler, the Sheriffs, and the Executioner; for they were all concerned either as Acceſſories, or Principals, and demerit a Halter, if the Repliant's Opinion be Law: But it is obſerved amongſt *Honeſt Men*, that none of theſe Parties ſhew any Fear on't; and the Reaſon they give for it is, becauſe the Indictment was as good as their Juriſdiction, and the Concurrence of thoſe two makes them as ſafe as an Act of Indemnity can do; but all this was Paſſion.

As to the Wit on't, moſt of his Readers are at a Loſs where to find it, unleſs it be in his *Engliſh* Verſes, which do ſo hit the Senſe of the Original, and contain ſuch ſtrong and pregnant Flights of *Engliſh* Poetry, that ſome of his Readers have compared them even with *Sternhold* and *Hopkins*; and others are of Opinion, that they do not come ſhort of the Eſſays of the two *Gray*'s-*Inn* Poets, one of which tranſlated *Grotius*, *de Veritate Chriſtianæ Religionis*, and the other *Coke* upon *Littleton*, into Rhyme; but the Generality do declare, that for Height of Fancy, Propriety of *Engliſh*, and Exactneſs of Rhyme, he hath much out-done all thoſe: But for my part, I believe, that laſt Rhapſody was added, not ſo much for the Ingeny ſake, as to menace the Anſwerer with a Deſign to ſacrifice him whenſoever an Occaſion ſhould offer itſelf, and conſequently to do what the whole Book complains of; but that Advocate is not ſo much a Coward as to be afraid on't.

As for the Gueſs, it is very cunning, and argues more Figure-knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech or Writing; for he will have the Author of that Sheet to be the Author of the *Antidote*, tho' he never ſaw it till he had the Misfortune to have read the *Defence*; and his particular Idioms are as different from thoſe of the *Antidote*, as they are from thoſe of the *Defence*; but this is all Gueſs. He will have it one of the Counſel of that Trial, becauſe he hath put *Counſel* before *Court*: A cunning Man would have gueſs'd the contrary, as ſuppoſing it done *fallendi gratia*, for the ſake of Diſguiſe; but he may be aſſured it was mere Accident, that occaſioned that Fault. He will have it to be the then Solicitor, becauſe of his Reputation, which is ſuppoſed to be touched in that Defence: But his Readers think, that that Gentleman's Figure for Learning, Honour, and Virtue, is ſo far above the Reach of a little *Pamphlet*, that all the virulent Reproaches of the *Reply* cannot ſully it, nor is it in the Power of his Tongue or Pen to prejudice his Character in the World; but however, it is prudent to ſuppoſe to myſelf an eminent Adverſary, that if a Foil be my Fortune, it may be the eaſier.

But ſince we are at gueſſing; the World gueſſes, that he who wrote the *Reply*, did write the Half-ſheet called the *Juſtification*; and it is really ſportive to read the *Juſtifier* commending the *Defender* for a learned worthy Perſon; and the *Repliant* doing the ſame good Office for the *Juſtifier*, and almoſt in the ſame Words commended him: Nay, he ſpends a whole Page in the fulſome Praiſes upon that *Small Bulk Author*, and rejoices that the Work was done this Hands, which is a very pretty Jeſt. However, it is at moſt but *R.* for *A.* and *A.* for *R.* and *R. A.* ſtill, which is much better than the contrary Practice, of which ſome Authors have been guilty.

As to the reaſoning Part, the Reader muſt excuſe my Brevity; for in Truth there is very little in it of that Nature; however, a few Remarks may quicken and revive that Faculty againſt the next Turn. The Advocate owns it to be writ in Anſwer to his Defence, *ergo* it reflects upon the Nation's Wiſdom. He expreſſes a Reſentment at my Lord *Ruſſel*'s engaging in ſuch a weak and criminal Enterprize, *ergo* he reflects upon the Nation's Juſtice. He names the Lord *Ruſſel*, (though with the moſt tender Appellations that could be uſed) *ergo* he reflects on that Lord's Memory. He vindicates the Indictment as good, *ergo* he juſtifies all the Proceedings in that Caſe. He argues, that the Sentence was legal upon ſuch a Verdict, *ergo* is againſt the Reverſal. He puts a Caſe, offers a Point, and makes a Proof on't, *ergo* he is tranſcendently impudent. Theſe and ſuch-like, are the Inferences, and do demerit a Laugh.

As to Religion, I ſee none in it, unleſs it be in the Mention of the deviliſh Powder Plot, which is ſtill as much to the Purpoſe of his *Reply*, as the Story of Tranſmigration of Souls was to that of his *Defence*; only Meekneſs is tranſparent in his Style, Humility in the Title-Page, and true Chriſtian Charity in his Menaces of an Exception out of the Act of Indemnity, which he repeats three or four times at leaſt, as if his whole Intereſt were deſigned to promote it. The Gentleman's Danger is from publick and ſcandalous Actings in the Eye of the World; which were (ſays he) labouring to *ſupport the Government*, every Man knows what Sort; laſhing the Innocent with a *bitter* and *ſharp Tongue*, and *inveigling* of *Juries* with rhetorical Flouriſhes. Now to examine a little theſe three monſtrous Tranſgreſſions, let us go backwards. As to the laſt, a Duty can never be a Crime; every Servant owes Truth to his Maſter, while ſuch; Every Advocate is to do his utmoſt, and a Failure in it had deſerved both the worſt of Names and Puniſhment, which the *Repliant* could invent, or his Intereſt procure. For all Mankind muſt agree, that the now Servants of the preſent Crown are obliged to do the like upon the like Occaſion; if otherwiſe the *Jacobite*'s Side will be the ſafeſt. I will not reflect on the Weakneſs of the Juries that were thus inveigled, if any ſuch there were; but rather ſuppoſe, that the Oaths of Witneſſes, not the Pleading of Counſel, did govern their Conſciences. As to the ſecond, that is falſe, and needs no other Anſwer. As to the firſt, that Gentleman's Honour and Merit afterwards is as remarkable as his Fault at firſt, if it were any; but however he is likely to have abundance of Company, in Deſert at leaſt, if not in Cenſure; for a Duke of *York*'s Creature is certainly as culpable as a King *James*'s Servant. And *Andrew Marvel*'s Characters in his *Growth of Popery*, will be as true a Directory to decypher Criminals, as the Four Volumes of noted Trials. And perhaps, if the Ordinance of *May* 10, 1650, ſhould chance to be revived, Danger and Fear may ſeize other Men, as well as thoſe that ſerved paſt Governments; it is therefore thought adviſable for all to ſit down quiet, and forgive and forget what is paſt, but ſerve God and their Majeſties for the future, and not belabour the excepting one another; for if any ſhould be ſuch Fools, the Knaves will get the better of it, and the Righteous ſcarcely be ſaved. So much for Religion.

Now for the Law, if we can find it: But becauſe the *Defender* ſeems ſomewhat diſpleaſed at the Repetition of that unhappy Lord's Name, whoſe Caſe gives Occaſion for the preſent Queſtion; let us therefore put it like Mooters: *John a Styles* was indicted, for that he, at ſuch a Time and Place, did compaſs to deprive his natural Lord and King, that then was, of his Regal State, and to deſtroy his Life, and to ſubvert the Government, and raiſe a Rebellion; and to fulfil that Imagination, he, together with others, did then and there conſult and agree to raiſe a Rebellion againſt the ſaid King, and to ſeize and deſtroy the Guards of the ſaid King's Perſon, contrary to, *&c.* The Queſtion was not, Whether *J. S.* was Not guilty, nor if the Witneſſes ſwore falſe, whether his Attainder were fit to be reverſed; but the Diſpute was, Whether that Indictment was legal; whether, ſuppoſing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treaſon againſt him ought to have arreſted ſuch Judgment on the Motion of *J. S.* that the Indictment was inſufficient. The Sheet argues, that the Indictment was good, and conſequently the Sentence purſuant thereto was warrantable by the Laws of this Land. The Argument ſeems founded both upon the Reaſon of Things, and the Authority of Precedents.

Firſt, The Reaſon alledged was, That the laſt Part, which in Lawyers Terms is called an Overt Act, was a natural and genuine Senſe or Declaration, or overt Signification of the firſt Part, which is an internal ſecret Thought, *i. e.* the Imagination and Compaſſing, which is the Treaſon prohibited and condemned. That the latter directly and conſequentially tending and conducing, in the common Senſe and Reaſon of all Mankind, (excepting the *Defender*, and two or three more) to the Accompliſhment of the former, makes a good and ſufficient Charge within the Statute *Edw.* 3. A Repetition is tedious, and an Abridgment is ſcarcely poſſible, the whole Sheet being but a Breviate; I ſhall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the ſame Nature, from which the Legality of this may be juſtly concluded: The Subſtance of them on the whole Matter is, That overt Acts to depoſe the King, or deſpoil him of his Regal Office, or take him by Force or ſtrong Hand, or to impriſon his Perſon 'till he yields to the Demands of thoſe who practiſe ſuch Endeavours, are ſufficient overt Acts to prove the Compaſſing and Imagination of his Death: That levying War, cauſing an Inſurrection, promoting an Invaſion, nay, that Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motions and Preparations to an Inſurrection or Invaſion, tho' none ſucceed, have been held overt Acts of imagining the King's Death. I will not repeat the Caſes, but as Occaſion offers from the other Side.

The Objections there mentioned and anſwered from the Penning of the Statute are too trivial to deſerve a Remembrance, nor would they have ever been thought otherwiſe, but that *J. S.* was a noble Perſon, and the *Defender* a great Man, and the Prefacer thought ſo too, either by himſelf or others. Theſe and ſuch-like Ingredients, have made ſome Semblance of Difficulty: And in truth, had there been a real Doubt in the Caſe, the Author of the *Remarks* on that Trial, who wanted neither Senſe nor Will to cenſure it, had his Opinion ſo inclined, I ſay, he would certainly have fallen foul on it in thoſe invidious Obſervations of his upon the late Times. He quarrels with the Legality of the Jurors, the *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two firſt, but agrees with them in the laſt, that Teſtimony delivered for Fear of Life, or Hopes of Pardon, or other Reward, is hardly creditable; but that is not the Point; Let us ſee if the *Replication* doth overthrow the Charge as inſufficient, and for my Part I cannot find a Line of Argument in it, but only It is naught, becauſe it is naught. The conſulting and concluding to make an Inſurrection and Rebellion, and ſeize the King's Guards, is not a Declaration of the Party's compaſſing the King's Depoſal or Death; and why? Becauſe conſpiring to levy War is not a levying War, and levying War is a diſtinct Treaſon; that is the Subſtance of the tenth Page, if I can read: The Sheet ſaid truly, That levying War itſelf might be alledged as an overt Act of Compaſſing, and hath been ſo frequently, and meeting and agreeing to rebel and ſeize the Guards, hath a direct Tendency to promote a Demiſe of the King either Natural or Civil, and therefore might as well be alledged an overt Act as moſt Things whatſoever.

I had almoſt forgot one Clauſe, and that is the Unneceſſarineſs of making 13 *Car.* 2. if it ſhould be as the Advocate argues; I ſuppoſe he means the firſt Paragraph, for the ſecond is agreed to be introductive of a new Law, *&c.* but the firſt is only a Paraphraſe upon the 25 *Edw.* 3. It is thus, That if any Perſon or Perſons whatſoever ſhall, within the Realm or without, compaſs, imagine, invent, deviſe, or intend Death or Deſtruction, or any bodily Harm, tending to Death or Deſtruction, Maim or Wounding, Impriſonment or Reſtraint of the Perſon of our Sovereign Lord the King, or to deprive or depoſe him from the Style, Honour or kingly Name of the Imperial Crown of this Realm, or of any other his Majeſty's Dominions or Countries, or to levy War againſt his Majeſty, within this Realm or without, or to move or ſtir any Foreigner or Stranger with Force to invade this Realm, or any other his Majeſty's Dominions and Countries being under his Obeyſance; and ſuch Compaſſings, Imaginations, Inventions, Devices or Intentions, or any of them, ſhall expreſs, utter or declare by any Printing, Writing, Preaching, or malicious adviſed Speaking, being legally convicted thereof by the Oaths of two lawful and credible Witneſſes upon Trial, or otherwiſe convicted or attainted by due Courſe of Law; then every ſuch, &c. ſhall, &c. Now what is this but a Confirmation of the old Statute in Words at Length; which was agreed to be ſo in the *Houſe of Commons*, 1 *Jac.* 2? When a Motion was made to renew that Law, the Lawyers Anſwer was, That the 25 *Edw.* 3. did the ſame Thing; and a Man may boldly ſay it, that here's nothing declared Treaſon, but what had been adjudg'd ſo before, and Attainders and Executions had purſuant to it: The Sheet mentions Caſes enough, and to the Purpoſe, though ſome think otherwiſe; but I'll not repeat them.

In the eleventh Page the Reader is referr'd to the Juſtification in the Half-ſheet; and therefore let's examine that a little: A third Part of it is ſpent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication. As to the reſt, the Force of it, if any, ſeems only to be fouuded on his firſt Aſſertion, The Conſpiring to do a Thing is not the doing a Thing; and he quotes two great Men's Names for it: for I would agree that, tho' he had ſpared the Authority to juſtify it; but this is ſufficiently anſwered in the Sheet: He offers an Argument from the late Statutes declaring Treaſons, becauſe they were temporary; but I anſwer, as the Sheet doth, they were in Affirmance of the old Law, and I can ſhew him three or four temporary, and an hundred other Acts of Parliament that are ſo, and therefore that is no Argument at all; but I am, as the Party I juſtify was, confin'd to a Sheet, and therefore cannot inlarge.

He lays down a Rule for Conſtruction of Statutes, that a Thing particularized in one Part is not to be conſtrued within the general Words of another Part; but that Rule hath near fourſcore Exceptions in the Books; beſides it comes not to this Caſe; for here's compaſſing the King's Death made Treaſon, and declar'd by overt Act; then levying War is made Treaſon: Now, ſays the Repliant, nothing can be an overt Act of, and conduce to promote and accompliſh the firſt, that doth any ways concern the latter: I ſay it is a *non ſequitur*; for there are ſeveral Inſtances mentioned in the Sheet, which reſpect the levying War, and yet are a genuine Evidence of the Intention and Compaſſing; and if ſo, the Judges who have ruled ſuch Indictments to be good, did neither aſſume an arbitrary Power, nor tranſgreſs any Rule of Law, as the Half Sheet inſinuates.

Then the Lord *Cobham*'s Caſe is endeavoured to be anſwered, by a Wonder, that Sir *Edward Coke*, late Lord Chief Juſtice, and then Sheriff, ſhould differ from Mr. Attorney *Cook*; for we know his Thoughts in Sir *Walter Raleigh*'s Time, and his Speeches in *Car.* 1. his Time; they are as different each from other as the Times were, and in this Particular that Gentleman hath had more Followers than Precedents; but the Query is, What is Law?

Then Sir *Henry Vane*'s Caſe is endeavoured to be anſwered by this, that *Syderfin* mentions not the overt Act in the Indictment, but he doth ſay, the Treaſon alledged was a Compaſſing the King's Death; and every Man knows what Sir *Henry Vane* did to accompliſh that: He neither ſign'd the Warrant to execute that Murder, nor was he actually concerned in it. The Juſtifier ſays, he does not remember it printed any-where but in *Syderfin*'s Report: For the Refreſhment of his Memory, I'll tell him of another Book where it is, and that is *Keble*'s firſt Volume of Reports, 304. and there the Indictment is ſaid to be for Compaſſing the King's Death, and endeavouring to accompliſh the Treaſon, by changing and uſurping the Government, and levying War; which Caſe doth directly overthrow all the Defender's, Juſtifier's, and Repliant's Arguments, from the Diſtinctneſs or Difference of the Sort of Treaſon.

Then for Dr. *Story*'s Caſe, he ſays, 'tis hard to juſtify it for Law; whereas there are above forty Places in our printed Law-Books, where 'tis cited and agreed to be Law: Now, 'tis pretty odd, that a Caſe ſo reſolved, and ſo ratified, ſhould one hundred and eighteen Years after be arraigned in Print; for 'twas *Hil.* 13 *Eliz.* If any thing be Law, that is ſo, and not diſtinguiſhable from this Caſe in queſtion, but that the Evidence was different, which the Juſtifier would make a Reaſon to invalidate this Indictment; the Logick of it paſſeth all Underſtanding: Beſides, 'tis obſervable, that the Benches were filled both with Learning and Integrity in 1571 and 1662; neither of thoſe Times were *Tory* or *Popiſh*; and in *Dyer*, 298. the Reaſon given was, that it could not tend but to the great Peril of the King's Perſon, and therefore an Attempt to promote ſuch Invaſion, tho' none followed, was adjudged as aforeſaid. In 2 *Anderſon*, *pl.* 2. *fol.* 5. *Grant*'s Caſe, 'twas held, That when any Perſon intendeth or contriveth to levy War, for a Thing which the Queen by her Law or Juſtice ought or may do in Government as Queen, 'tis not material whether they intend any Hurt to her Perſon; but if they intend to levy War againſt the Office and Authority of the Queen, that's enough; and that Reſolution overthrows the Juſtifier's Notion, that *J. S.* his Deſign was only to defend the Laws, though the 13 *Eliz.* alſo was then in Force; 'tis a good Argument to anſwer that Pretence.

Now I have repeated and obſerved all the Replication or Juſtification offers in Anſwer to my Friend's Sheet, the Reader may perhaps expect ſome new Matter, not ſo much for Confirmation, as to give Occaſion for a farther Defence. In Sir *Fr. Moor's Rep. fol.* 621. *pl.* 849. on the Trials of the Earls of *Eſſex* and *Southampton*, before the then High Steward, the Juſtices did there reſolve, that when the Queen ſent to the Earl of *Eſſex* the Keeper of her Great Seal, and others, with a Command to him to diſperſe the Perſons armed which he had in his Houſe, and to come to her, and he did refuſe to do ſo, and continued the Armour and armed Perſons in his Houſe, that this was Treaſon; and they did alſo reſolve, that when he went with a Troop of Captains and others, from his Houſe to the City of *London*, and there prayed Aid of the Citizens to aſſiſt him in Defence of his Life, and to go with him to Court, that he might get into the Queen's Preſence, that he might be ſufficiently powerful to remove from her his Enemies, who were then attendant, that this was High Treaſon, becauſe it tended to a Force on the Queen, *&c.* I make no Inference; let the Reader do that; 'tis plain, that an actual mental Intention of Hurt is not material in the one Caſe or other. As the Duke of *Norfolk*'s Caſe is related by *Camden* in his Hiſtory of Q. *Elizabeth*, 163. the Treaſon which the Duke confeſſed, was a Plot to ſeize upon the *Tower* of *London*, and deliver the Queen of *Scots*, and that's all.

There's nothing remains in doubt, but the Legality or Illegality of the King's keeping Guards for the Preſervation of his Perſon; they ſay the Law takes care of him, and therefore he is to take none of himſelf; and that the Judges are his Guards, and therefore he needs no other; that *Henry* VII. was the firſt that had any other. But let us reaſon a little: Can it be ſuppoſed, that he ſhould be ſo ſacred in his Perſon, ſo great in his Power, and of ſuch Authority as to make War or Peace abroad, and raiſe Forces and ſuppreſs them at home, as the Danger or Defence of his Realm ſhould require, and not be able to provide for his own perſonal Safety *de præſenti?* Can he only puniſh by his Judges afterwards, or prohibit by Proclamation before, but not defend himſelf for the preſent? Is it Senſe to ſuppoſe it? The Kings of *England* might have, and actually had, Soldiers or Guards (call them what you will) even in Times of Peace, and long before *Hen.* VII. as well as continually ſince; I may be ſo bold as to defy any Man to ſhew me the Year, the Month, the Week, or the Day, ſince the Conqueſt by *William* I. that *England* was without armed Men, actually upon Duty in ſome Part or other of the Nation. This Sheet is not intended for a ſtudied Argument on this Subject; and perhaps it would be difficult to juſtify a ſtanding Army as warrantable, when there's no Occaſion for it; but to ſay he can't by Force, even by Force provide for his own perſonal Safety, when he apprehends it in Danger, as every *Engliſh* King hath continual Reaſon to do, eſpecially if ſome Men's Doctrine prevail, it may be modeſtly affirmed unreaſonable: Hath not every Subject Power to keep Arms, as well as Servants, in his Houſe, for Defence of his Perſon? Is not his Manſion called his Caſtle? And yet the Law protects him too by Prohibitions *à parte ante*, and Puniſhments *ex parte poſt*: There are many Tenements in *England*, which oblige to the annual Payment of certain Sums towards Soldier's Wages, for defence of the King and Kingdom; there are others obliged to the annual finding certain Quantities of Grain in Kind, for the ſupplying the King's Caſtles and Garriſons, as well as Houſhold; which being annual, do demonſtrate the Lawfulneſs of their Continuance, even in Times of Peace; and their being immemorial, do conclude a Common Law Right in the Kings of *England* to have thoſe Occaſions, as they do conclude him a Right to have them ſupplied by ſuch-like Services: Nay, Grand Sergeantry is either by Services of Attendance on the King's Perſon in Time of Peace, or for Military Aids in Time of War. The Crown may raiſe Forces by Commiſſion, or the Militia, to ſuppreſs Inſurrections, in caſe the Civil Power of the Sheriff is not ſufficient or ineffectual. The Kings of *England* have the ſole Power and Force of the Nation: Complaints have been in Parliament againſt billeting Soldiers contrary to the Will of the Hoſts, but never for maintaining a Guard for their own Perſon at their own Charge; Complaints have been made of a ſtanding Army, but never of a ſelect Company for his perſonal Preſervation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Beſides, for a competent Power in Arms he always may have Occaſion, when his Subjects know nothing on't; 'tis his Province to foreſee and prevent, as well as ſuppreſs and puniſh, domeſtick Tumults; and the Buſineſs of War is ſeparately his Office, and that excluſive of his Subjects, any otherwiſe than as they are bound to obey and fight, or deſired to aſſiſt with Aids and Subſidies; and for this, to avoid a numerous Volumn of Citations, I'll name one notable Roll or two in Parliament, 6 *Ric.* 2. *Mem.* 9. the Manner and Way of the Proſecution of the War being given in Charge to the Commons to adviſe upon, they anſwered, That this *nec doit nec·ſtayt* appertain *al eux*, *mes al Roy*; and ſo they did, 31 *Edw.* 3. *Parte prim. n.* 11. and 2 *Ed.* 3. *n.* 5. 'Tis true, in 5 *Ed.* 2. *n.* 4. Ordinances were made, that the King without the Aſſent of his Barons could not make War; but thoſe that were repealed and dampned, 15 *Edw.* 2. *Parl. Rot. M.* 13. becauſe prejudicial to the Royal Power of a King; and this is ſufficiently affirmed by the Act concerning the Militia, in *Car.* 2. his Time. It is well known in what Time *Bryan* Chief Juſtice ſaid, that if all the Subjects of *England* ſhould war with the Subjects of another Kingdom, that this is no War unleſs the King denounces it: It ſuffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himſelf judges his Perſon or People to be in Danger, or ſtand in need of them: And that he may, when Reaſons of State will not admit their Publication to the World. But however, ſome ſtanding Force the Crown ever had, and ever will have, though not always to ſuch a Degree as ſhall be burthenſome or oppreſſive; and our old Law-Books ſay, that Arms as well as Laws are neceſſary for the Prince, not only in, but againſt the Times of Neceſſity, I mean War or Tumult: Beſides, in *Bracton*, *lib.* 2. *cap.* 3. *de Corona*, 'tis ſaid that *Crimen læſæ Majeſtatis* is the greateſt Crime, becauſe of the Greatneſs of the Perſon againſt whom 'tis committed; his Deſcription of it is, *Preſumptio contra perſonam ipſius Regis*; then when he particularizes the ſeveral Sorts of Treaſon, the firſt which he names is, *Si quis auſu temerario machinatus ſit in* (*i. e.* towards) *mortem domini Regis*, *vel aliquid egerit vel agi procuraverit ad ſeditionem domini Regis vel exercitus ſui*, *licet id*, *quod in voluntate habuerit*, *non perduxerit ad effectum.* I'll make no Inference, there needs no Paraphraſe, the Words are plain; an Act tending to the Deſtruction of the King's *Hoſt* is High Treaſon againſt his *Perſon*: *Agere ad ſeditionem exercitus Regis eſt præſumptio contra perſonam Regis*, *& præſumptio contra perſonam Regis eſt crimen læſæ Majeſtatis*: Now can *Bracton* be thought to ſpeak only of Treaſons in Time of War? *Glanvil*, *lib.* 14. *cap.* 1. *Crimen læſæ Majeſtatis dicitur de ſeditione domini Regis*, *vel regni*, *vel exercitus*; and *Fleta*, *lib.* 1. *cap.* 20. *De ſeductione exercitus ſui*: *& cap.* 21. the ſame Words, *Seductionem ejus*, *vel exercitus ſui*; this was the Senſe of the old Law, and is very appoſitely applicable to the Caſe in queſtion, as I could eaſily ſhew, would my Paper bear it. There is one Thing which I had quite forgot, and that is, that the Inſtrument of Grievances which the Prudence of the preſent Parliament hath provided, complains of a *Standing Army*; the Anſwer is eaſy, 'tis not of *perſonal Guards*: And the wiſe Inquiry of the *Houſe of Commons*, into the *Quantum* requiſite to maintain ſuch and ſuch Forces during the preſent Occaſion, and of the Expences of the Crown in Houſhold, Courts, Guards, *&c.* afterwards do plainly ſhew, that that was not the intended Grievance. Now, to ſum up what is not anſwered at all, or endeavoured to be ſo by the Defender, nothing is ſaid to the Reaſon of the Thing, or the Neceſſity and Nature of an overt Act, to the Opinion of *Coke* in the Places cited, to the Caſe of Sir *Walter Raleigh*, the Caſe of the Cardinal, the Caſe of Mr. *Coleman*, the Caſe of *Conſtable*, the Caſe of *Owen*, the Caſe of *Burton*, the Caſes of *Sparhawke*, *Awater* and *Heber*, the Indictment againſt Sir *William Aſhton*, *Germain* and *Taylor*, and *Thomas Burdett*, *Collingbourne* and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford's* Caſe, as if 'twere all Impertinent; but the Reader is Judge if it be ſo.

Now for the Prefacer, I'll be as ſhort upon him as he was upon my Friend; he ſaid that the Sheet needed a Vindication, and I have given it one; and if this needs another, I hope the Crown will find a Friend to write ſome Third. He ſeems ſo us'd to the Word *Libel*, that he cannot forbear calling it an *infamous* one; he ſays, it has not one true material Word in it: I'll remember him of one, that Mocking is Catching in the Proverb, that is *A Grumbletonian in the Stirrup generally proves a Tyrant——in the Saddle*; that's enough for him to remember: If he wants any more Truth, and that he may not ſay, this hath none in't, Treaſons are eaſier committed than diſtinguiſhed, by ſome Men eſpecially; and the Reaſon why I ſay this is, becauſe of his *Octavo* Preface, where he is grumbling ſtill, for I always thought that he had ſmarted too much for libelling on Miniſters of State, and Male-Adminiſtrations, to venture again; but when a Prieſt meddles with Law, he is like an Apothecary at Politicks, he generally runs himſelf into a Nooſe; for he'll never leave off 'till he's advanced one way or another. To conclude, the Deſign of the Sheet was to juſtify the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either ſhould have any, and from thence flames the Paſſion; nay, rather than it ſhould be allowed, they'll attempt another Change, from which good Lord deliver us, *Prov.* xxviii. 2.

During the Compoſure of the Premiſes, News was brought me, that another Pen had been procured to attack the Vindication, *viz.* The Author that runs a-muck at all Mankind, except his own Patrons: A deſerved and full Remark upon ſo voluminous a Book, is not here to be expected; however, this *Appendix* may ſerve for an Advertiſement to the World, that the new Repliant is in ſeveral Particulars obliged to Solicitor *Coke*, and the other Regicides Defence on their Trials for much of his Materials. Time is wanting to ſhew the Parallel; at preſent 'tis fit to be obſerved, that his blind Side is alſo apparent, conſequently capable of a ſufficient Anſwer; and to give my Reader a Specimen thereof, I'll take Notice of a few (amongſt many) Miſtakes, both in Fact and Law, which he hath wilfully committed. In the firſt Page he ſays, that to juſtify what hath been taken ill, accuſes the preſent Government of Injuſtice; which is falſe. In *pag.* 2. he ſays, That the Vindication ventures on a Point of Law, which it pretends is the Reſult of the Evidence given; there's no ſuch Pretence in the whole Paper, the only Debate was upon the Indictment. He ſays, in the ſame Paper, that it's ſaid his Relations were pleaſed with the Juſtneſs of the Trial; it only ſays, his Relations were pleaſed, and his Enemies were angry with thoſe who then ſat upon the Bench, and that's true; for ſome of his Relations cannot deny it, the Fact is ſo well known. The laſt Line of *page* 3. and firſt of the next are alſo falſe; for 'twas neither written, peruſ'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is juſt like his wonted Poſitiveneſs in his Remarks; where, for Inſtance, he ſays, that one of the Judgments he cavils at, was the firſt that was ever given without Argument or Reaſons delivered in Court, which is alſo falſe; for in *Plowden*'s Comment, 459. in Sir *T. Worth*'s Caſe, the Author takes expreſs Notice, that the Reaſons of the Judgment were not diſcloſed when the ſame was pronounced; and fifty other Caſes I could name him of the ſame, but one Inſtance is enough to falſify a general indefinite Poſition, though there are ſeveral more even in that very Book.

But to run over his Volume, *pag.* 2. is only a farther ſcurrilous Reflection to vindicate his own Remarks, and an impertinent Bombaſt of Words on the Phraſe of *Engliſh* Proceedings: The third Page aſſigns four Reaſons of Printing, the two laſt are applicable to himſelf only, and he thinks ſo of the fourth, or elſe his Story is fooliſh like——In the fourth Page he bolſters himſelf in his Raillery, by reſorting to his Refuge of the Parliament's Authority that reverſed the Judgment, which all Men agree to be juſt, but it was not becauſe the Recorder did not arreſt the Judgment on that trivial Exception to the Indictment, but becauſe the Proſecution was ſuppoſed malicious, and the Evidence ſuppoſed falſe or deficient, or both.

The fifth, ſixth, eighth, ninth and tenth Pages are all impertinent to the Point in Queſtion, and contain nothing but a Vindication of his juſtly condemned Clamour in his former Book; concerning which, I'll boldly ſay it, in ſeventeen Points of twenty he is out in his Law; if 'twere convenient to publiſh the Proof on't, I could make it plain. His Deſign is to ſhew in thoſe Pages his Wit and Fancy, more than Candour or Law: For my part I am of his Friend's Mind, that he comes not ſhort of the old Obſervator for managing a Dialogue: But all this is not to the Purpoſe, he is not come at it yet, the twelfth Page ſavours of the ſame Kidney, and the thirteenth and fourteenth are no better: There he vents his Gall, and that in Ribaldry; no ſofter a Name than Tools can be afforded to Men of Worth and Honour: If himſelf be one, as ſome ſuppoſe him, I am ſure it is not to the preſent Government; for he plainly condemns it, and declares the People, *i. e*, his ſort of them, unſatisfied with it, for its Sparingneſs in Vengeance; and it is becauſe others are not puniſhed for maintaining the Law, and themſelves not preferred for arraigning it: Some Men know my Meaning. He ſays, he is only for mumbling of Judges and Council, *Cauſa patet.*

But I muſt tell him two things, 1. The Inclinations of *Engliſhmen*, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His ſuppoſed Criminals do not depend on their Number, but the Law, which ought and will juſtify them; if it doth not pleaſe, let it be changed by Parliament; or if the Author thinks that a tedious way, let us burn all our Law-Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reaſon, and himſelf the greateſt and only Lawyer in the Realm; but till then he muſt give others leave to know, and to ſay, that they know he is miſtaken: For Reſolutions, and Opinions, purſuant and agreeable to the Opinions and Rules of former Ages, I mean frequent and repeated Precedents, approved by the Lawyers of the Age that uſed them; I ſay, theſe will be the Law to the End of the World, unleſs altered by new Statutes.

And now we are come to debate the Queſtion, all that is paſt is upon the Times, and not the Point. In *p.* 18. is his Reaſoning part, which is no more than was ſaid before in, *&c.* To redargue him I muſt repeat; if therefore he will obſerve what is ſaid by the Sheet, *p.* 22. I will ſay no more on't, but ſubmit to the Judgment of the Reader; he ſays, the Inferences are ridiculous; I ſay, they are rational and genuine: The ſingle Iſſue is, if his or my Friend's Arguments are the moſt logical and natural, let the Reader judge.

Now for Authority, let us ſee if he urges any on his Side, or anſwers that on the other. He admires (*p.* 24.) at the Aſſurance of the Sheet-Author, and others admire at his. He ſays, the Parliament had often adjudged it; but none can ſhew any Judgment in the Houſe of Lords, or Vote of the Commons Houſe to that purpoſe. I have ſhewn the Senſe of the preſent Parliament in the Point of Guards, and his temporary Laws are already anſwered; nor would any Man but he, and one more, pretend that they are Judgments in the Caſe. Surely it will not be pretended, that his Caſe of the Earl of *Northumberland*, in *Hen.* IVth's Time, is any thing to the Purpoſe: Nor is it any Argument to ſay, no King of *England* was ever killed for want of Guards.

Now for Caſes, *p.* 26. He ſaith, that in the Earl of *Eſſex*'s Caſe, there was an actual War levied, and that, as I ſaid before, deſtroys the Argument from the different Sorts of Treaſon. As to Cardinal *Pool*'s Caſe, he only ſays, there was another Statute in force then, but no Record or Hiſtory ſays, that he was indicted on any other than the 25 *Edw.* 3. As to Dr. *Story*'s Caſe, he tells a long Tale out of *Camden* about the Fact, but anſwers not one Word to the Indictment; whatſoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His Anſwer to *Coleman*'s Caſe is that, that things happening afterwards proved more, but the Evidence was no more than what my Friend alledges. As to Sir *Henry Vane*'s Caſe, his Anſwer is his own Hear-ſay of what was proved, but the Indictment he never peruſed, *argued like a Lawyer!* As to *Conſtable*'s Caſe, and the reſt, he gives no Anſwer, but only that Repetition of a Number of Caſes makes a Mutter and a Noiſe, and ſo it does when they govern and rule the Matter in queſtion, and are not anſwered. *Owen*'s Caſe, he ſays, the Author preſſes it ſtrangely, and that is all. He ſays, the Caſes of *Burton*, Duke of *Norfolk*, *Awater*, *Heber*, and *Crohagan*, are not to the Purpoſe, let the Reader judge if they are not pertinent. As to the Opinion of the Judges in the Lord *Stafford*'s Caſe, he does not mention it, but ſays, the reviving that Caſe might have been ſpared, and that is all; a pretty Anſwer! As to *Colledge*'s Caſe, he talks of a Proof of a Self-defence, but nothing to the Point it was urged for. As to the Caſes of Lord *Cobham*, *Grey*, and *Rawleigh*, in 32, 33, 31, 35 *Pag.* ſetting aſide his ſcandalous Invectives and Reflections upon thoſe Times, Miniſters, and Governments, he no ways attempts to anſwer the Argument drawn from them, *viz.* That the Charge was the ſame as in the Caſe in diſpute.

Now I appeal to any Man of Senſe and Reaſon, that will read and think cloſely, if the *Repliant* hath offered any one Argument more than the Lord *Ruſſel*'s Caſe, Defence and Juſtification had alledged. If he hath ſhewn any one Judgment where ſuch Indictment was reſolved naught; if he hath given Anſwer to Dr. *Story*'s, *Collingborn*'s, Sir *William Aſhton*'s *Burdett*'s, and Sir *Henry Vane*'s Indictment; in ſhort, if he hath anſwered any two of the Caſes cited; or if he hath done any thing but reflect on paſt and late Times, and if the Indictment remain not good, both for Matter and Form, notwithſtanding all theſe pretended *Replies.* Upon the whole, I deſire the Reader to peruſe the Book cited; and to judge if there be not Precedents enough unanſwerable to juſtify the Indictment in queſtion, and that the Recorder gave a good Judgment upon the Verdict that affirmed its Truth; *quod fuit probandum.*

To conclude, Since the *Repliant* is in love with *Horace*, I would adviſe him to conſider one Hint of his,

> ——*Forum, putealque Libonis*
> *Mandabo ſiccis*———Hor.

The third and laſt Part of the Magiſtracy and Government of England *vindicated, with Reaſons for a general Act of Indemnity*, &c.

IT hath been the obſerved Misfortune of moſt mix'd Governments, particularly of our own, never long to enjoy the intire Friendſhip of all it's individual Subjects; the lowermoſt Side hath too frequently acquired the greateſt Share of the People's Love, or at leaſt Pity: It's then no Point of Wonder, that the Servants of former Crowns ſhould have incurred their Proportion of Envy, Hatred and Reproach; and amongſt all thoſe none more obnoxious to it, than the Miniſters, Officers, and Inſtruments of Juſtice; for ſuch are the vitiated Sentiments of Perſons intereſted in all Suits, that the Vanquiſh'd is certainly injured, or thought or ſaid to be ſo, which is all one, by the Perſons themſelves, their Friends, or Relatives, their Patrons or Creatures. In Truth there's ſcarce a Trial on the Plea or Crown Side, but one Party, and ſometimes both, do leave the Court with a ſwinging Curſe or two on Judge, Counſel, Jury, Witneſſes, and perhaps all concerned; upon which Account, it can never be deemed a juſtifiable, much leſs a commendable and meritorious Employment, for Lawyers to note and report, and afterwards publiſh to the World, the Clamours of ſuch Malecontents, with the Addition of Sarcaſm inſtead of Argument, and bluſhleſs Lyes inſtead of Law and Precedents, and all this under the Pretence of ſerving their Majeſties and the Government; but 'tis a mere Pretence; for firſt, it's not their Province; theſe Publications are made by them, not as Legiſlators or Judges, but as private Perſons; and one of their *Libels* ſeems calculated only for private Lucre, as either the Hopes of a Place, or Increaſe of Practice, by telling the Town, in the firſt and laſt Pages, where the Author lives, of what Profeſſion, and how long ſtanding; an Art learn'd from ſome of thoſe exquiſite Doctors inhabiting towards the Fields, whoſe Knowledge and Converſation is pretended to be in Heaven: Another writes for Bread, and ſcribbles that he may eat, *&c.* A third, or rather the firſt and prime is inſpired with Venom and Revenge, even the pure Spirit on't; as one balk'd, he is angry at all; and becauſe ſome were not his true Friends, he's reſolv'd to make Enemies of thoſe who deſpiſe him, and of them the Number is great. But ſecondly,

It's of no uſe to the preſent Government, for Truth only can be a ſure *Baſis* of Reſpect to that; and in caſe of Slander, the Filth rebounds, and the Dirt thrown moſt ſurely turns on, and dawbs their own Faces, eſpecially when they arraign thoſe as ignorant, whoſe Learning, Knowledge,

and Judgment are ſo clear and acknowledged, as to render the Cenſors
unworthy even of being their Bag-bearers; the like when they cenſure
thoſe as corrupt, who have always boldly done their Duty, even in Defiance
of a Court Cabal, or a popular Faction; who have always adhered to an old
Engliſh Law, and their juſt Opinions in it, tho' Frowns from *Whitehall*,
or Clamours from *Wapping*, tho' Lampoons from *Grub-ſtreet*, or a worſe
Uſage from an *Obſervator*, tho' a *Superſedeas* or a *Take him*, &c. were the
only Reward they could expect for ſuch their (formerly called Puritani-
cal, now Arbitrary) Juſtice: Gentlemen who never poll the Law (which
the great and good Sir *Mat. Hale* did truly call robbing the Poor of Juſ-
tice) for the acquiring a Farm or an Office, or a lumping Sum for Sale
of it; who never begg'd an Executorſhip for to gain a Fortune; Gentle-
men who never gave ſtrain'd Opinions concerning the Revenue, when
made for their Clients the Farmers, but clamour'd at the ſame, when uſed
by their King with more Moderation; Gentlemen who parted with their
Places, tho' of Honour and Profit, rather than comply with a Court-opi-
nion or a Club-notion, when others (I name nobody) offered entire and
everlaſting Service, if they could have preceded or ſucceeded them, (Teſte,
. . . *apud St. James*'s, and the City of *Glouceſter*) but miſſing their Aim
then, as now they do, their Gall muſt have a Vent, and ſo it hath with a
Vengeance, when a true and bold Juſtice is made the Subject on't: The
Reaſon is plain, thoſe Men's Repute is too great for Truth, Probity, and
Uſefulneſs: An Eclipſe is neceſſary, if poſſible; for if otherwiſe, the De-
fender will never be *Keeper*, the Remarker *Solicitor*, nor the *Gray*'s-*Inn*
Poet wear Scarlet in *Wales*; their Hopes are but ſmall, unleſs they can
Poſtpone all their Betters by Death, Commitments, or that which is but
little worſe, Reproach and Slander; but ſome think their Sting grows
weak, for 'tis apparent that there are a ſort of Men, who tho' they might
and did love his Majeſty when as Prince, yet do not, will not, cannot love
him, or any Man elſe, as King; and this is now pretty plain. But
thirdly,

The Libels are criminal, and injurious to common Juſtice, for they
create a Diſreſpect and Contempt upon all Juſticiary Proceedings: To
arraign all paſt is to excite a Suſpicion of all preſent and future Admini-
ſtrations; whereas *Plowden* ſaith, *fol.* 38. *It's a good and ſure Way to be-*
lieve the laſt Judgment; and if ſo, 'tis plain what Name the contrary Prac-
tice deſerves; beſides, were it otherwiſe, the Inſtitution of Judges and
Courts are vain, and our State, as *Engliſhmen*, the moſt unfortunate; for
we have no Rule but *ex ore Judicium*, or from particular Statutes, and of
them they are the Expoſitors. Now let's inquire which is Law, the De-
fender's Fancy in his Argument *inter S.* and *B.* or the Judgment in the
Exchequer-Chamber, affirmed by the Lords. If the judicial Reſolution
be ſo, then the Publication of his Argument was injudicious, and I am
not to follow him as my Guide; but perhaps he'll tell me, That manifeſt
Reaſons and good Lawyers ought to govern me; if ſo, then I aſk him,
Who ſhall I follow in the E. of *D*'s Caſe of a *Capias pro ſine puis Judg-*
ment, &c. whether the Eleven beſt Lawyers, or the Vote of the Houſe?
If the latter, why not ſo in the former Caſe? and if otherwiſe, then his
Judgment was miſtaken; ſo that *quacunque via data*, there's no Infallibi-
lity in this World, and conſequently no Excuſe for private Cenſures of
publick Proceedings in Courts of Juſtice: Beſides, the Books are pretty
clear, that ſuch things are puniſhable; but I leave the Reader to peruſe
them at Leiſure. Then let us conſider the Confuſion that muſt enſue
upon the publick countenancing ſuch a Practice as theſe Scriblers have
introduced; for if allowed on a Diſbanded Judge, 'tis ſo on a Sitting one,
for the Caſe is the ſame in reſpect of private Lawyers, who pretend to
think their Judgments erroneous or corrupt; but ſurely both are unlaw-
ful. Beſides all this, in the preſent Caſe,

They have palpably wreſted the Law in divers Inſtances: I need name
no more than the Indictment in queſtion, which that it was legal and
good, moſt Men do now agree, eſpecially ſince the Dint of the Oppoſal
ſeems current only on the Evidence, with a Waiver of the other, and
more ſince that Guards are proved lawful, and the Obſervator concedes
it the moſt legal Part of the Procedure; and the Juſtice of Parliaments,
&c. ſuppoſed written by the Defender, ſtrains all its Forces on the Evi-
dence and the Times: And their Follower, the Poet, in his new *Noncon-*
formiſt, pag. 10. runs the ſame way too: Only,

There remains one Objection to the firſt Vindication, which is, that it
affirms, Words may be Treaſon within the twenty-fifth of *Edw.* 3. and
the Remarker challenges a Proof of it, and aſks where it may be found;
and the *Nonconformiſt* quarrels at the Lawyer that did aſſert it, and ſome
others have done the ſame *ore tenus*.

I confeſs, that the firſt Sheet did publiſh the Aſſertion, but waived its
Eviction, for fear of a ſtrained Uſe of ſuch Opinion to ill Purpoſes, for
the ſerving a Turn upon particular Occaſions; nor had there been any
more ſaid on it, but that their Confidence and Malice ſeems ſo exorbi-
tant as to extort a Check; for the Regulator is grown ſo confident of his
own Knowledge, as to undervalue the greateſt of Judgments; whereas
his Common-place-book affords us no Titles but thoſe of Colluſion and
Malice prepenſe; and his Practice hath been much of the ſame Stamp, on-
ly that ſometimes he hath added a little of the Lunatick, as appears by
his *Rhymes*, *Prophecies*, *Dreams*, *Politicks*, and other *Religionary Works*.

To prove the Aſſertion, I depend not on the Authority of the Senſe
of the Commons Houſe, 1 *Jac.* 2. (tho' let the Cryer for Juſtice, or who
elſe pleaſes contradict it) it was in Fact then affirmed and agreed unto,
and upon that the then King's Council and Courtiers deſiſted the Motion
and Proſecution of a Bill to make Words, &c. But that's a ſupernume-
rary Argument, there's more than enough beſides.

I am not to maintain, that all rank, malicious and groſs Words againſt
the King or Queen's Perſon are ſuch, nor that whoſoever drinks an Health
to our Sovereign Lord the People, or to the late King *James*, is a Trai-
tor: But that Words ſignificative and expreſſive of a preſent Intention to
do an Act to the King's Deſtruction, ſuch Words deliberately, malici-
ouſly, and adviſedly ſpoken, on purpoſe to accompliſh the Demiſe of the
King, as by Promiſe of Money, with Importunity to commit the Fact,
may be an *Overt-fait* to prove the Imagination within 25 *Edw.* 3.

To evince this, let us think a little——and 'twill be plain.

The Words of this Statute are clear, and of an eaſy Conſtruction, if we will allow thoſe dull old Times to ſpeak Senſe. They are to this Effect: That if it ſhall compaſs or imagine the Death, &c. and *de ceo provablement ſoit attaint per overt fait*: Now the Objection is this, That Words are not Deeds within that Clauſe: to this the Anſwer is very clear; for by all the grammatical and other Rules for Interpretation of the Senſe of Words, the latter Part of a Sentence is to be conſtrued (if uſed by way of Oppoſition) as oppoſite to the thing mentioned and intended in the foregoing Part, and not as oppoſed to every thing which it may *ex vi termini* exclude in other Caſes; and this is an agreed Difference, both amongſt Divines in Expoſition of Sentences in Scripture, and Grammarians in almoſt all Caſes whatſoever. Now to apply this:

Overt-fait is uſed not in Oppoſition to Words, for there's no ſuch thing mentioned; but it is added in Contradiſtinction to that which was before ſpecified, *viz.* Thoughts, and ſuch are Imagination and Compaſſing; and therefore *Overt-fait* muſt mean any open, manifeſt thing as can truly diſcover thoſe Thoughts, as may proveably attaint the Traitor of ſuch his Imagination; and it is a moſt natural and proper Mode of Speech, if they did intend, as moſt undoubtedly they did, that the Thought ſhould be the thing prohibited, then 'tis as plain they intended by the Word *Fait* any Diſcovery of ſuch Thought by Words or Actions: and ſo ſaid *Newton* in 19 *H.* 6. That to imagine the Death of the King is Treaſon, tho' he do no Act towards it, if ſuch Imagination be diſcloſed, that it can be tried if he did ſo think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in Oppoſition, then the laſt will exclude both the former; but here, when uſed only in Contradiſtinction with Thoughts, it ſeems plainly otherwiſe. That Deed, when uſed in Oppoſition to Thought, doth include both Words and Acts, none can deny; a thouſand Inſtances might be given of it; and in the exacteſt propriety of Speech, Words are Deeds when and as contradiſtinguiſh'd from Thoughts; for the Soul thinks, even as abſtractedly conſidered from the Body, but Man never ſpeaks without Action and Motion: The Difference is plain, and needs no Explication. But farther:

I would fain know, What is a Conſult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his traiterous Imagination by Words, and ſo of an Agreement to commit the actual Murder, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now ſuppoſe one Man thinks and intends to deſtroy the King, and by Words doth willingly, deliberately, and adviſedly declare this to another that is not of his Mind, tho' by Miſtake is thought to be ſuch, is not this the ſame thing? If a Man traiterouſly offers and promiſes to another a thouſand Pounds to perpetrate the villainous Act; if he accept it, and a parole Agreement is made between them accordingly, ſurely the Apologiſts for Treaſon will agree that to be an Overt Thing, and both guilty, if it can be proved by two Witneſſes of Credit. Suppoſe then the Party offered and promiſed doth abhor and refuſe, will that make a Diſtinction? If it does, 'tis without a Difference: Perhaps the Word *Conſult* will be called a new Cant; we know whoſe Coin it is, and who gave it the firſt Stamp; 'twas no leſs a Man than Sir *William Jones*, who at the time of ſuch his Invention was no Prerogative Lawyer, tho' conſiderably ſo in Times then lately paſt: Nor is it imaginable what is the Meaning of a Conſpiracy or Plot to take away the King's Life, but a Communication by Words between ſeveral Traitors concerning ſuch Act, and the Method of its Accompliſhment, and a Declaration by Words of each Man's being fixed in that Purpoſe; which, if it be proved by ſufficient Teſtimony, will undoubtedly be an Evidence of a Compaſſing, &c. which is the Treaſon prohibited and puniſhable; nor can the Meeting make it more ſo; for they could not diſcourſe unleſs they met; and therefore 'tis the Words only that are the manifeſt *Overt-Fait*. Nor doth *Hugh Pyne*'s Caſe or the Reſolution of the Judges therein, contradict this, notwithſtanding the Confidence of the Remarker, that it did; they only ſay, that the Words in that Caſe were not Treaſon, that thoſe Words were not an Evidence of Compaſſing, that for thoſe Words he could not be indicted upon that Statute; but their Opinion doth plainly imply, that had the Words been Evidence of a Compaſſing, &c. as they were only ſlanderous and reflective, it had been otherwiſe; and the Inſtances therein mentioned are full to this, as *John Quick*'s Indictment was only for Words to King *Henry*, unleſs ſtanding up and ſpeaking will alter the Caſe: *Thomas Koiver*'s, *John Clipſham*'s, and *John Mirfield*'s, are all for Words, and ſome others there ſpecified. Beſides it's obſervable, that in moſt Indictments on this Statute, ſome Words have been alledged in them as an *Over-fait*, to demonſtrate the Imagination, which would be impertinent, if the Law were thought otherwiſe. I will not inſiſt on *Colledge*'s, becauſe the Caſe hath been cavilled at, tho' with no Colour as to the Indictment: Part of *Patrick Harding's* Indictment was *loquendo publicavit*; but I'll not dwell on that, becauſe fooliſhly drawn; but *Arthur Croghagun*'s Caſe in *Cro. Car.* is pretty full, and for Words; and the Words of the Book are, That the traiterous Intent and Imagination of his Heart was declared by his Words, and therefore held High Treaſon within the expreſs Proviſion of 25 *Edw.* 3. and upon his coming into *England* he was arreſted, &c. Now no Anſwer can be to this, but that he came into *England*; but the Words only ſhewed his Intent, and by that Book the Words are alledged as the *Overt-fait*; beſides the Caſe of *Blanchflower* and *Atwood*, *Mich.* 5 *Jac.* 1. *B. R.* in *Yelverton*'s Reports 107. *per curiam*, reſolved that Words may be Treaſon, and that is an expreſs Reſolution; for there was then no temporary Law in Being concerning Parole Treaſons, that I know of. The Caſe of *Beriſford* and *Preſſe*, *Hill.* 8 *Jac.* 1. *B. R. Yelvert.* 197. adjudged, That Treaſon may be committed by Speech as well as by Act, for any thing which diſcovers the Mind of a Man to be traiterous to his Sovereign, is capital to the Party: *Hitcham ad Brook Paſch.* 1 *Car.* 1. *Hutt.* 75. held *per cur.* that the ſpeaking of Treaſon was Treaſon, and that *ſermo eſt index animi*, as well as Preaching or Writing; and no Man can doubt but thoſe are Acts, and Speech is as much ſo.

Beſides, if the Conſequence of the contrary Doctrine be well conſider'd 'twill appear to be a plain Evaſion of the Statute of 25 *Edw.* 3. as is manifeſt upon the Reading it : And the common Books are full of this ; for otherwiſe no Action could lie for ſaying a Man hath ſpoke Treaſon. But here's enough ſaid to anſwer the Challenge, Where's the Authority for ſuch an Aſſertion ? Tho' infinitely more might be ſaid for it ; nay, 'tis as eaſy to dumb-found the contrary, as 'tis to tranſcribe Law Caſes. If this doth not give them Satisfaction, they ſhall remain unſatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown Law, leſt I ſhould provoke our new Scriblers to double the Plague by their Replies : If they attempt an Anſwer, I'll leave the Tobacconiſt and Grocer to confute them : And unleſs a Trunk or Band-box chance to bring them to my View, I'll never be tempted to read them ; and of this they may aſſure themſelves, I ſay it to compliment the Reader with Patience to peruſe the reſt of the Sheet, being aſcertained never to hear more on't, at leaſt not from this Hand.

Some perhaps may wonder at the Reaſon of the Publication of theſe Sheets, and conceive them the Product of Malice on one Side, as thoſe virulent Pamphlets are on the other : To ſolve that Scruple, I need only repeat the Reaſons alledged in the firſt; but a Repetition is damnably dull, as well as tedious and irkſome : I'll therefore add a new one, and that's to ſhew the Reaſonableneſs as well as the Neceſſity of a general, indefinite, ſpeedy Act of Oblivion ; for though the Blood-hounds fret, and huff, and bounce, as if all their Madneſs and Rage were founded on a true Baſis ; yet 'tis apparent from the Premiſes, that their Foundation is falſe, and the Law is direct and plain in their Teeth, and doth and will juſtify in moſt of the Particulars, at which they foam their Curſes and Execrations. Reaſon therefore, as well as Neceſſity, injoins a Silence as to what is paſt, for otherwiſe the Kingdom can never have its deſired Satisfaction : For in Points juſtifiable, or at leaſt doubtful, the Juſtice of inflicting Puniſhments can never be vindicated. Did I call them Puniſhments ? I beg the Reader's Pardon for the Impropriety ; however I'll not name their proper Term, but with Calmneſs endeavour to evince three Things.

1. That it would be grateful to the Nation in general, and every good Man in particular. 2. Conducing to the Settlement and Intereſt of the preſent Government. And laſtly, That 'tis conſiſtent with, and promotive of, the higheſt and trueſt Juſtice.

Firſt, The Nation did and doth expect it, for Revenge is never natural but when freſhly purſued, and Time wears off the Senſe of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this Purpoſe : The Horror of any Crime, or at leaſt the Deteſtation of the Criminal, grows faint and languid upon the Removal of the Object, eſpecially if Time interpoſes with the Acceſſion of preſent Fears, which at preſent do more affect us than greater, if more diſtant. It can never therefore be thought the Deſire of the People of *England*, to have their Neighbours or Acquaintance harraſs'd and perſecuted by Fines, Confiſcations, Impriſonments, Marks of Diſgrace, or the like, for Actions done in the laſt or former Reigns, about which the World hath been ſo much divided, if lawful or not : Beſides, that this was the general Expectation of the Kingdom on the new Settlement, or at leaſt the Coronation, of which Nature there never was an Inſtance before this without an Act of Grace ; and it is moſt plain, that none are Adverſaries to it, but the *Republicans* and the *Jacobites*, not for that they need it not, as I ſhall ſhew anon, but for different Ends ; each drives at and wiſhes a Change, it matters not to what ; for if to the latter, the other hopes a Commonwealth will be the more deſirable : If the *Republican* ſucceeds, then the other believes a Reſtoration the more eaſy ; but both diſlike the preſent, and therefore dread a Settlement, and conſequently dread the People's Satisfaction and Quiet under their Majeſties, and conſequently dread an Act of Indemnity : 'Tis true, the Cry for Vengeance is loud, but 'tis only from theſe two Corners ; which leads to the ſecond Particular, That

It will eſtabliſh and promote the Intereſt of the preſent Government : While the popular Bully is full of Damme's and Menaces, there's certainly Danger, and where there's Danger, there's Fear ; now Fear cauſes an Averſion, and Averſion begets Hatred ; and the Object of it is that from whence the ſuppoſed Danger ariſes, which is from the Government irritated by the Venom and Fury of thoſe hot-headed Animals : Whatſoever hath Power and Will to hurt me, muſt and will be abhor'd ; and though none are immediate actual Patients, yet the being poſſibly obnoxious to it, and the want of Security for the contrary, doth of Neceſſity cool their Reſpect to the preſent Power, under which they are not ſafe ; and this tempts them and their Friends upon Contrivances and Attempts of Danger, both to themſelves and the Publick ; and Danger by the Attempt is no Diſcouragement where the like Danger attends their Forbearance : And this is of Weight, unleſs *Cromwell*'s Politicks be thought Chriſtian, to cheriſh and promote a Plot, as of Advantage to Settlement, if reaſonably diſcovered, and ſubtilly managed ; but however 'tis as true, that Enemies who are deſperate, ought never to be thought inconſiderable ; for they may ſhake and batter what they can't deſtroy, they may do Miſchief, though they can't work Ruin, to their Adverſaries ; upon which Account, the Temptation of continual impending Danger is fit to be removed. Beſides,

The Want of Security, and the Fear of Danger, making Men uneaſy in their Thoughts, repleniſhes them with Complaints and Murmurs at every aukward Action, or ſuppoſed Miſcarriage, of the Government feared ; it makes them Mutineers at publick Taxes and Impoſitions, partly becauſe they think it ſtrengthens and increaſes the Power of hurting them, and partly becauſe it ſponges and bleeds them of that, which they fear an Occaſion of themſelves to bribe Black-rods, Serjeants at Arms, and other Gaolers with ; and in a Conjuncture when extraordinary Aids are indiſpenſably requiſite, no Temptation to Complaint is deſerving of Countenance ; beſides, that it cramps Trade, and diſcourages Projects for publick Good, &c. But farther, it's the living, not the dead, the happy, contented, and chearful, and free, not the oppreſſed, miſerable, forlorn, or impriſoned Subject, that doth Service to the Crown and the Publick.

It hinders all ſuch as are thought to be ſo obnoxious from any bold Eſſays for the Uſe of the preſent Government ; for that if ſucceſs be the Attendant of ſuch their Attempt, they continue unſafe notwithſtanding ; for no Man will adventure an Hazard to ſecure that Authority, which he is not ſure will make him ſafe, if he doth undertake the preſent Adventure, and eſcapes that Danger, and performs the Service ; ſo that Self-preſervation renders it their Policy to unhinge themſelves from, or to be ſhy of the preſent Power ; of which a conſiderable Number might prove uſeful Friends, which are now Neuters at leaſt, if not Enemies.

It's obſervable in all foreign Policies, either to work a total Extirpation of the whole Party, or an univerſal Indemnity, after ſo grand a Revolution as this was ; the former is not to be practis'd here, for two Reaſons : 1. Becauſe we want People : 2. Many of our Friends muſt be baniſhed too, for divers of the ſuppoſed Criminals were inſtrumental to the preſent Change, &c. *Ergo* the latter only is, and can be moſt adviſeable ; for once I'll ſuppoſe their Numbers but ſmall, in Compariſon to the Saints and Innocents (if any ſuch there are in the Nation) ; yet under our preſent Circumſtances, all are to be obliged as Friends that poſſibly may ; but if the thirteen Heads, with the Surrenderers Clauſe, and all its and their Subdiviſions had been reduced into a Law, in the deſigned Act of Attainder, one third at leaſt of the Nation had been involved, who, with their diſobliged Relatives and Dependants, is not ſo contemptible a Flock, though but of Sheep for the Slaughter. Beſides,

It's impolitick, as well as unjuſt, to deny or delay it to thoſe who have ſubmitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full, and general Pardon both in *Scotland* and *Ireland*, to all that took up Arms, for all their Sins then paſt and preſent : It provokes the former to repent their Non-concurrence with the latter, for 'twas but reſuming their Quiet and Submiſſion at pleaſure, and then they were ſafe, which now they are not, but under continued Menaces and Dangers of both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or ſpeak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the Humour of the *Engliſh* Commoner, like Rage, Inſolence, and Cruelty in their Fellow-Subjects, when made Superiors, and ſuch is raking into old Sores thought to be ; it matters not whether juſtly or no as to this Purpoſe, the Effect is generally ſuch : The Star-chamber in *Car.* 1. his Time, the Major-generals in *Cromwell's* : The Tophamizing of Abhorrers in *Car.* 2. his Time : The Weſtern Campaign, and the other criminal Proſecutions in the Beginning of *Jac.* 2. I ſay, all the Violences uſed in theſe ſeveral Periods (and yet they have their reſpective Provocations) did moſt notoriouſly alter the Kidney of the Commons, and made even their once beloved firſt dreadful and terrible, then odious and loathſome ; they produced conſiderable Changes in their ſeveral Conſequences : I could come nearer Home, even to the teazing of *Moor* and *North*, and other Citizens of *London*, which firſt turn'd the Stomach of that City, as is now apparent ; but *Sat verbûm*, &c. But farther,

The want of this renders both the Policy and Honour of the great Bellowers for Vengeance to be juſtly ſuſpected : 1. Their Honour in taking Care of their own Servants, for all their Exceſſes upon the Revolution, and oppoſing the Indemnity of all others, as by the Act appears. 2. Their Policy ; for that it's obſervable in Story, that the Aſſociation in Queen *Eliz.* Time, was under a Proteſtant Prince for the Proteſtant Religion, and no ill Succeſs attended it, yet thoſe wiſe Anceſtors of ours thought fit to ſecure themſelves, by turning the Aſſociation into a Law, and a general Act of Indemnity ; I do not ſay they needed it, but the Aſſociators in that Reign thought it needful ; and 'tis very conſiderable, that in no Reign was there more Peace and Quiet than in Her's, and in none were there ever more free and general Pardons : and in truth the latter was the Occaſion of the former ; for when Men are once ſafe and quiet, no ſmall Temptations will provoke any more Adventurers, though they like another better, yet Men being eaſy are generally contented. There was one free and general Pardon of the Queen's at firſt confirmed, 5 *Eliz. cap.* 11. another 8 *Eliz. cap.* 18. 13 *Eliz. cap.* 28. 18 *Eliz. cap.* 24. 23 *Eliz. cap.* 16. 27 *Eliz. cap.* 30. 29 *Eliz. cap.* 9. 31 *Eliz. cap.* 16. 35 *Eliz. cap.* 14. 39 *Eliz. cap.* 28. 43 *Eliz. cap.* 19. Eleven in Number, and never five Years without a Parliament-Pardon, and this made Parliaments and Crowns the Darlings and Deſire of the People. Beſides, it's the Intereſt of each Party amongſt us, though ſome don't ſee it ; the *Whig* ought to promote it for two Reaſons : 1. Leſt being the leſſer Part he chance to feel the Want of it, and for that he hath given ſome Provocation. 2. That if it be the greater, the Memory of his Vengeance and Fury may be forgotten, and himſelf reſtored to the good Opinion of the reſt of Mankind, by one Act at leaſt of good Nature : The *Tory* ought to purſue the ſame Meaſures, and much for the ſame Reaſons, for his Top-gallantry hath been, and if re-practiſed will be again as odious and loathſome to the moderate and good, as ever it was, or as the others could be. Temper therefore is now the Game, and a Veil over all that's paſt is certainly the moſt Politick, eſpecially conſidering the Multitude of the ſuppoſed Criminals, and the Juſtice of their ſeveral Excuſes, which comes next. For,

Laſtly, It's conſiſtent with, and promotive of the true and higheſt Juſtice ; for in moſt of the Caſes the Law was doubtful, and to puniſh Opinion in Matter of Law is as unjuſt, as to perſecute Miſtakes in Matters of Religion is unchriſtian ; and new Laws for Government *de futuro* are more agreeable to natural Equity, than a retroſpective Fury ; that it was doubtful, is plain, the modern Scriblers have ſufficiently proved it. In two of the Caſes cited they differ themſelves ; for Dr. *Story*'s Caſe, the Defender cries, 'tis not Law, the Remarker agrees 'tis, and that he was well hanged ; for *Plunket*'s Caſe, the Defender cries, he was well hanged, for there was Treaſon enough in his Charge, the Remarker inſinuates as if he ſuffered hardly ; now, what ſhall a little Lawyer believe between theſe two great Bodies of Learning ? The like may be ſaid of *Soame*'s Caſe, and the other above-mentioned. But what is more : In the voluminous Argument againſt the *Diſpenſing Power*, owned by Sir *R. A.* he doth concede, that there are ſome Prerogatives ſo perſonally and inſeparably inherent in the Crown, that no Act of Parliament can cramp or diminiſh, or at leaſt take away ; and that being granted, I'm ſure all that the reſt of the Book ſays can never make that a plain Caſe, and in truth his own Argument ſhews and leaves it a diſputable Point; and if that were doubtful, every particular elſe may well be buried in Oblivion; beſides, in Caſes of Conſtruction, the Nature of the thing admits of no Doubt, and then there's no Colour for Puniſhment. Beſides,

In reſpect of inferior Perſons, by our Conſtitution, they are obliged to ſubmit to and follow *Weſtminſter-hall*, which is the *Lex loquens Angliæ*, and when all theſe Things are duly conſidered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle ſome, aggrieve others, and terrify none; for that will be the Conſequence; for that's the Caſe of all Violence, where the Juſtice of the Thing is not clear and undoubted. Then for Exceptions;

Let us think a little: Is it reaſonable that ſome ſhould ſuffer for not being afraid of Puniſhments never declared or promulgated, and others ſhould eſcape, becauſe their Countenances are more fawning, or that by Conſent their Relations have play'd on the other Side, or that their ſwinging Fortunes enable them to ſcatter Mice for their perſonal Indemnity, or that they have had the lucky Principle of being faithful to all Changes, and true to nothing elſe, or that they have been forward to ſubvert their old Maſter, after their Fire and Folly had ruined him, and endangered themſelves? Theſe and ſuch-like are no Pleas for Juſtice, and yet this is the Caſe. Farther,

The Drift is to magnify and aggrandize Puniſhments by Bill, which by the ſtanding Laws and common Juſtice of the Realm could not be inflicted; and they urge two Reaſons for it: 1. Their particular Pardons will otherwiſe excuſe them. To that I anſwer, Either they are valid in Law, or not; if not, there's no need of Bills; if they are valid in Law, the ſame Law and Juſtice of the Land injoin their Allowance; even the ſame Law by which the Country-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator ſits in the Houſe; and by the ſame Reaſon that theſe enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a Right accrued by the Law, as well as the other. 2. The common Channel is too ſmooth; Severity is ſometimes neceſſary, and that now, if ever; and therefore the legiſlative Authority ought to exert its Power, and puniſh according to Demerit. To anſwer that, I ſay, either they are no Offences by Law, and there needs a Bill to make them ſuch, and inflict Evils upon them as ſuch; or elſe they are Offences, but deſerve a greater Puniſhment than a common Court may pronounce: Now, if the firſt be the Caſe, then I'm ſure 'tis rank, palpable, tyrannical Injuſtice, and that's the Plague of living under an arbitrary Power, for none can know what's not criminal: If they mean the latter, as I ſuppoſe they do, then I aſk, to what End were Puniſhments invented in Societies, but to reſtrain Men from doing particular Actions, through the Power and Influence of Fear? And how could that Conſequence be expected, when the Penalty was never known before 'tis inflicted? And to inflict an Evil afterwards, which was not known before, is to make a Man ſuffer that which he could not fear, becauſe he could not know it, and this becauſe he did not fear it: And the Juſtice of that is plain too.

I agree with the Satiriſts, that there are ſome Precedents of this laſt Method of proceeding, but moſt of them are repealed; I'll name two that are ſo, the Earl of *Strafford*'s, which the very Law itſelf did injoin Poſterity not to obſerve, or follow, or do the like. I can't forget one Expreſſion of his, to this Effect, upon the Trial: If there be an Error in a Judge, ſo that he give a Sentence otherwiſe than a Man of better Underſtanding conceives Reaſon for, there's no Cauſe the Offence ſhould be heightened, becauſe he was not ſo wiſe a Man as he might have been, nor ſo underſtanding as another; which if allowed, will make it more eligible to follow a Plow than ſerve a Government, to dig in a Ditch than bear an Office; for all Men ſtand obnoxious to the Conſtructions and Paſſions of ſucceeding Times. There's one Inſtance more, and that was Sir *Tho. Haxey*'s, who was attainted for Treaſon, for bringing in a Bill into the Commons Houſe againſt the Prerogative, though while and as a Member: I ſuppoſe the Sparks will not much applaud the Juſtice of that Procedure for their own ſakes; but, as I ſaid before, that, and moſt others of their Precedents, were repealed, when a cooler Aſſembly met upon the next Seſſion, and ſo was *Haxey*'s, in 1 *Hen.* 4. *Cott. abr. rec.* 362, 363.

But if Vengeance be requiſite, it ought to be without reſpect of Perſons, the *Juſtice* of it ought to be *impartial*, *true*, and *Catholick*: And then come in the Penſioners and Surrenderers, the Regulators and Promiſers, the old High Commiſſioners, and the new Creed-makers, *&c.* and, God knows, *quis non*, *&c.* To conclude, our Saviour's Rule, if obſerved, will be the moſt infallible Indemnity that can be contrived, and that is, *John* viii. 7. *Let him that is without Sin amongſt you, caſt the firſt Stone.* And in truth a Cenſor of the Manners of others ought himſelf to be pure, clean, and innocent, *in omni re quacunque*; and if there be no Danger but from ſuch, I am ſure there's no Danger at all, and that it ſhould be ſo, is the trueſt Juſtice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was diſſolved, every thing reduced into its primitive State of Nature, all Power devolved into Individuals, and the Particulars only to provide for themſelves by a new Contract; for if ſo, there's yet no new Conſent for Puniſhment of Acts done before the Diſſolution, and conſequently Revenge, for that is at an End; Indemnity therefore ought to be promoted by thoſe who made that Vote, for otherwiſe their Truth may be ſuſpected, *&c.*

The Lord Ruſſel'*s Innocency further defended*; *in anſwer to the Magiſtracy and Government of* England *vindicated.*

THERE is a Pamphlet very lately publiſhed, which ſtyles itſelf, *The Magiſtracy and Government of* England *vindicated.*

It appears by the following Part of the Title, to be no leſs than a *Juſtification of the Proceedings againſt Criminals*; impudently declaring, in plain and expreſs Words, as alſo by all his ſubſequent Diſcourſe, That by the *Criminal* he means the late Lord *Ruſſel*, *Pag.* 2. *Column* 2. in the middle of it.

And the Author does profeſſedly own, That the Book is written by way of Anſwer to a ſmall Diſcourſe or Argument lately printed, which bears the Title of *A Defence of the late Lord* Ruſſel'*s Innocency.*

It argues a tranſcendant Boldneſs in this Anſwerer to call this Noble Lord a *Criminal*, and to juſtify thoſe Proceedings againſt him, which all honeſt Men ever accounted no leſs than Murder, under a Pretence and Colour of a legal Proceeding, and to preſume to publiſh ſuch a Diſcourſe as this, after the King and the Two Houſes of Parliament have, by the moſt ſolemn Judgment that can be given, pronounced that Noble Lord to have been innocent; and thereby have done ſo great Right to his Memory, and that with ſo high a Zeal, and ſo mighty a Concernment for him, as the like cannot be ſhewn in former Precedents.

It is moſt evident, that the Author was compoſing this ſcandalous Libel even when he very well knew the Bill was brought down from the Lords to the Commons, for reverſing this Noble Lord's Attainder; and the Author could not but obſerve with what Zeal and Affection the Bill was entertained at its firſt Entrance into that Houſe.

The Author, by endeavouring to conceal himſelf, is from thence, as he plainly profeſſes, encouraged to take the more Liberty to lay about him in the dark, (as he fancies) and thinks to eſcape unſeen; and not only ſtrikes at the Author of the Lord *Ruſſel*'s Defence, but, as far as in him lies, wounds that Noble Lord in his Honour, whoſe Juſtification and Defence was ſo undertaken, and labours to overthrow that Right and Juſtice that hath been done by the ſupreme Authority of the Nation.

This is no way agreeable to a noble and generous Soul, to come behind a Man and ſtrike him; it rather follows the Example of that deviliſh *Powder-Plot*, to deſtroy and blow up the King, and both Houſes, and to do it in ſuch a cloſe and clandeſtine way, *as it ſhould not be known who hurt them*: for he was too much a Coward to ſet his Name to it.

But it is very eaſy to tell you what are the firſt Letters of this Author's Name, without caſting of a Figure. His Argument in Law plainly ſpeaks his Profeſſion, and what Robe he wears; and his Style and Phraſe of ſpeaking having appear'd in ſo many noted Trials, as do in ſo many viſible and legible Characters diſcloſe the Author; Sir *R. S.* does under his Hand readily and utterly diſclaim it, and is heartily believ'd in what he ſays.

This ſlanderous Author acknowledges, that upon the Lord *Ruſſel*'s Trial, ſome blamed the Jury, moſt cenſured the Witneſſes, but very few are araigned the *Counſel* or Court. Here it evidently appears how our Author is concerned, firſt for the Counſel, and then the Court; and *Self* hath the Preference, tho' it be here with a Breach of good Manners to name the Counſel before the Court.

Page 1. He takes it heinouſly, that any Gentleman of the *Long Robe* ſhould appear in Print to ridicule their own Profeſſion; this groſly ſpeaks our Author one that was of Counſel in the Trial. *Et tu Brute?*

If it had been an open Enemy, a Doctor of the Commons exerciſing his Wit and Raillery on the Common Law Proceedings, then (as he expreſſes himſelf) this Author could have borne it; but he did not imagine that Satires and Invectives upon paſt proceedings ſhould be writ by Lawyers.

In Reply to which it may be juſtly ſaid, That when Lawyers will make uſe of their Wit and Rhetorick, as this Anſwerer has done, to bolſter up an unjuſt and revengeful Proceeding, and out of ambitious Deſigns, to get or continue in Favour, and to gain greater Preferment, or ſhew their Parts, will engage in Cauſes of Blood, and help to deſtroy the Innocent, and be inſtrumental in ſubverting the Laws and Government, it is every Lawyer's Duty, as far as in him lies, to vindicate the Profeſſion, by utterly diſclaiming and abhorring all ſuch Practices: And the Defender can appeal to all that have known his Converſation for above theſe forty Years and under, whether ever he uſed any ſuch pitiful, mean and ungenerous Arts and Methods, better becoming the Stage than a Court of Juſtice; and whether he did not, when it was in his Power, conſtantly reſtrain and condemn that ſcandalous and diſgraceful Way of Practice. And he can as freely appeal to all that will be at the Pains to read his printed Argument, (which this concealed Author ſo unjuſtly cenſures) whether any ſuch bitter reviling and revengeful Humour appears in any Part of what he ſo publiſh'd, or the leaſt reflecting on any particular Perſon, but only in the general, and no further than the mere Juſtice of the Cauſe did extort from him; ſo far was he from this Author's ſcurrilous and rude Courſe of reflecting upon any Perſon's private Converſation; but ſome Men's Faculties lie this Way, and they are very well known, tho' after ſuch manifeſt and groſs Provocations, that have been given by this Author, and ſuch publick and ſcandalous Actings of his in the Eye of the World, it might juſtly be ſaid with the Poet:

Difficile eſt Satiras non ſcribere.

The Author of this Anſwer, in his firſt Paragraph, would have the World believe, that he writes upon no other Deſign than to *ſupport Magiſtracy*, and the *Government*; *a noble Theme!* (as he terms it). Every Man knows what ſort of Government he labour'd to ſupport but the other Day, and how far he was inſtrumental in it; but it is rather thought fit to leave him to a general Act of Indemnity and Oblivion, than take any Revenge upon him.

He ſeems to allow the Lord *Ruſſel*'s Defender, in his fourth Paragraph, to be an Author of Age, Experience, Figure, and Learning (but he will not ſay Candour or Honeſty). Thus he writes.

The Lord *Ruſſel*'s Defender is very glad he hath ſo little of this Adverſary's Commendation, for it would gain but ſmall Eſteem amongſt Men of true Worth, to be commended by him. It might be ſaid to him, with the Philoſopher upon the like Occaſion, being commended by an infamous Perſon, *What Ill have I done, that thou ſhouldeſt thus commend me?* Yet that Candour and Honeſty, which he covertly refuſes to allow, is that which the Lord *Ruſſel*'s Defender prefers before all this *Anſwerer*'s mercenary Wit and Rhetorick.

In his fifth Paragraph he judges the Lord *Ruſſel* very unfortunate to fall under the Accuſation of Treaſon; and ſays, that noble Lord was moſt pitied of any under thoſe Circumſtances.

Reply. That noble Lord's Misfortune (among other Things) was his falling under the Laſh of ſo bitter and ſharp a Tongue as your's, who, however, you ſeem now to mention that Lord with Pity, had then no Pity for him, but uſed him with Severity, as may appear by your own printed Narrative of that Trial, and your Rhetorical Flouriſhes in a Caſe of innocent Blood, which contributed in a high Degree to inveigle the Jury, and bring that noble Lord to the Scaffold.

He confidently ſays in the ſame Paragraph, that *in Truth the Fairneſs and Indifferency of that Trial was ſuch, that his own Relations were pleaſed.*

Reply. How untrue this is, in both the Parts of it, that the Trial was very fair and indifferent, and that his neareſt Relations were highly exaſparated and offended, ſhall appear before we part.

In the ſixth Paragraph of his Sheet, he complains, that *the Memory of that unfortunate Gentleman was received by the Publication of the Defence of his Innocency.*

Why, what Hurt in the reviving of his Memory? His Memory is precious, he died a Martyr for his Religion, and for the Rights and Liberties of his Country, and fell a Sacrifice under cruel and mercileſs Hands.

It is indeed this *Anſwerer*'s Conſcience that flies in his Face; the reviving of this noble Lord's Memory ſpeaks Terror and Amazement to the *Anſwerer*. Thus did bloody *Herod*, when he heard of the Fame of *Jeſus*, he preſently cries out, *This is* John *whom I beheaded.*

He does prepare himſelf to make uſe of *indecent or diſreſpectful Language*, (as himſelf expreſſes it) and comforts himſelf with the Thought, that his Name ſhall not be known. A pitiful and unmanly Dealing, not becoming a Perſon pretending to Ingenuity. The Lord *Ruſſel*'s Defender dealt otherwiſe, and owns his Name, and will let the World know what this *Anſwerer* is.

In the four next enſuing Paragraphs, he is much to ſeek for what End and Purpoſe the Lord *Ruſſel*'s Defence was printed in that Pamphlet (as his wonted Rhetorick thinks fit to call it).

It could not be (as he moſt contemptuouſly ſays) for Conſumption of Paper.

Nor for the Bookſeller's Profit, for a Reaſon to be gueſs'd at.

Forbear, for Shame, to uſe theſe ſly and ſilly Intimations; they are fitter for School-boys, or the Mountebank's Stage, or for *Billingſgate*, than for a Man of your Figure; one may be aſhamed to have any Diſpute with ſuch an Empirick, or rather a jeſting and jeering Merry Andrew. Pray keep this Sport for the next *Bartholomew Fair*, and learn more Gravity and Civility.

It could not be (as he farther proceeds upon the ſame Inquiry) for the ſake of the Lord *Ruſſel*'s Memory, or any of his ſurviving Relations; for what was written in the Lord *Ruſſel*'s Defence, is (ſays he) but a painting to the Life the too deep Concern of that noble Lord, in a weak as well as criminal Enterprize.

This is wonderful Boldneſs and Daring in this *Anſwerer*, ſtill to pronounce him a Criminal, (that noble Lord) whom the ſupreme Power of the Nation, and the higheſt Judicature and Authority, have adjudged innocent And yet he has the Impudence to intitle his undutiful Pamphlet, *The Magiſtracy and Government of* England *vindicated:* And to publiſh this, after he, as well as any Man, knew that the Act of Parliament had paſs'd, aſſerting the Innocency of that noble Lord, and the Barbarity and Injuſtice of the Proceedings againſt him; wherein this *Anſwerer* had ſo great an Hand, and ſo bitter and ſharp a Tongue.

One would think, that an ordinary Wit might have ſerved to put him in Mind, that as yet there is no Act of general Pardon and Indemnity paſs'd: And who knows upon whom the great Exception may light?

But he gives a very juſt Occaſion to the Lord *Ruſſel*'s Defender, to let the World know for what End and Purpoſe he long ſince writ, and ſo lately printed, ſo deſpiſed a Pamphlet; by which, even his Adverſary may be convinced, it was not merely for Conſumption of Paper, or for the Bookſeller's Profit, but truly for the ſake of that Lord's Memory, in aſſerting his Innocency, and at the Deſire, and for the ſake of his ſurviving Relations. And for the Truth of what is thus affirm'd, he does appeal to thoſe noble Relations of his who are yet alive.

While that noble Lord was upon his Trial, or very ſoon after, there came a Letter to his Defender's Hand, who was then in the Country, near eighty Miles from *London*, and this from a Perſon of great Honour, and one of the neareſt Relations to that noble Lord, requeſting the Author of his Defence to afford the beſt Advice he could; and accordingly he heartily and freely gave it: Much of which does appear by what is printed by him.

This was not the only *Letter* he received from that Lord's great Relations upon that ſad Occaſion: But after that Bloody Stroke had been given, a Paper was publiſhed, as the Speech intended by that dying Lord.

In Anſwer to which, the now *Anſwerer* and Adverſary (as is too evident) did publiſh his firſt Pamphlet, intiled, *An Antidote againſt Poiſon*, compoſed (to uſe his own Words) of ſome Remarks upon the Paper printed by the Direction of the Lady *Ruſſel*, and mentioned to have been deliver'd by the Lord *Ruſſel* to the Sheriffs at the Place of the Execution. Thus far of the Title of that pretended *Antidote*.

In the latter End of his ſecond *Page*, that which is mentioned in the Diſcourſe out of his Pamphlet called the *Antidote*, and which is barely repeated in order to be anſwered and confuted, he groſsly miſtakes in this latter Pamphlet, and falſely affirms, it is admitted to be true; and from thence endeavours to have the Lord *Ruſſel*'s Defender underſtood as arguing againſt the Lord *Ruſſel*, and acknowledging his Guilt: Which is a very unworthy way of dealing by this pretended *Anſwerer*, but eaſily diſcern'd by any wary and intelligent Reader. Nay, this *Anſwerer* himſelf immediately after, before he is aware, clears the Lord *Ruſſel*'s Defender again from the Imputation, by taking Notice, that the Defender of the Lord *Ruſſel* endeavours to invalidate the Credibility of the Evidence given againſt the Lord *Ruſſel*.

This Reply declines the taking Notice of many of this *Anſwerer*'s Paragraphs, that are ſpent merely in vilifying the Lord *Ruſſel*'s Defender, it being obvious, that they were intended only to render mean and contemptible the Perſon he undertakes to anſwer; it being beneath this *Reply* to repeat them, and to follow the *Anſwerer* in his rude and ſcurrilous way of writing.

It was indeed no Secret to the Learned, that a Variance between the Indictment and the Evidence might be alledged on the *General Iſſue*; nor that *Treaſon*, and the *Miſpriſion* of it, are different Crimes; nor that Proofs of Treaſon muſt not be by Hearſay nor Argument only; nor that leſs than two Witneſſes are not to be allow'd for Proof of that Crime; nor that the Witneſſes ought to be credible: But theſe are not ſo generally known to ſuch as are not profeſs'd Lawyers, and may be uſefully remember'd to ſuch as are brought upon their Trials for their Lives, and are denied the help of Council when they moſt need it, and are apt to be more under a Conſternation, when they are beſet with ſuch ſad Apprehenſions of their Danger, and baited at by a Multitude of crafty Wits, and ſuch as abuſe their Parts and Eloquence to deſtroy the Innocent, and the Court (it may be) not always ſo indifferent as they ſhould be. And theſe uſeful and well-intended Aſſiſtances, as are ordinary and uſeleſs, as the pretended *Anſwerer* would repreſent them, were very thankfully entertain'd, and made uſe of by ſeveral Perſons of great Abilities, and of the beſt Quality, who afterwards fell under the like cruel and malicious Proſecution; but they were no profeſs'd Lawyers. And moſt of theſe are ſtill living, and will and do teſtify the Truth hereof.

The *Anſwerer*, in his fourth Page, falls to argue the Points in Law upon the great Head and Title of Treaſon.

This *Reply* forbears to repeat what the *Anſwerer* ſays upon this Subject, or to repeat what this *Repliant* has formerly printed, but therein refers himſelf to what is ſo printed.

Only finds it neceſſary to ſtate the Point in Queſtion in as few and plain Words as he can, and leave it to any impartial Reader to judge of it.

The great Statute of Treaſon, *viz.* that of the 25th of *Edw.* 3. was the only Statute upon which the Lord *Ruſſel* was indicted; and this is acknowledg'd and profeſs'd by the Attorney-General, as appears by the printed Narrative of the Trial, and he could beſt know his own Meaning.

They could not proceed againſt the Lord *Ruſſel* upon the late Statute of Treaſons, made in the 13th of *Car.* 2. for that Statute limits the Proſecution to a certain Time after the Treaſon committed, which was elaps'd in the Lord *Ruſſel*'s Caſe.

Now the Statute of 25 *Edw.* 3. does ſpecify and enumerate the ſeveral and particular Heads, and Sorts or Species of Treaſon, that might be proceeded upon, and tried and adjudged, in the ordinary Courts, *viz.* in the *King's-Bench*, or Judges of *Oyer* and *Terminer*, or Gaol-Delivery: Such as that of *Newgate*, or the Seſſions for Gaol Delivery at the *Old-Bailey*, where the noble Lord *Ruſſel* was brought to his Trial.

The Scope and Drift of that Statute of 25 *Edw.* 3. (as appears by the Preamble) was to confine thoſe arbitrary Courts, and the ordinary Judges, to plain manifeſt Rules, what they ſhould adjudge Treaſon, and what not, it being of ſo great concernment to the Lives of Men; and not to allow the Judges or Lawyers a Latitude or Liberty to make what they thought fit to be Treaſon; or to exerciſe the Tongues and unruly Noiſes of Lawyers in a Matter of that Moment. And that Statute of 25 *Edw.* 3. being in its Nature a confining, reſtraining an explanatory *Law*, ought therefore not to be largely extended or improved, and ſtretched beyond the plain Words, and apparent Senſe of them.

Now among other ſeveral Species, or Heads, or Sorts of Treaſon, particularly enumerated by that Statute, there are theſe two, pertinent to our Caſe; *viz.*

1. Compaſſing or imagining the Death of the King.
2. Levying War againſt the King.

Whereupon the common Reader (for whoſe Satisfaction this is written) may eaſily obſerve this Diſtinction, that the firſt of theſe is Treaſon, (in the very Imagining or Conſpiring) tho' the King's Death do not enſue.

But the latter is not Treaſon in the conſpiring and imagining, but the Treaſon muſt be in the actual levying of War.

So that barely to conſult, conſpire, or imagine to levy War, tho' there be never ſo plain nor ſo open or overt an Act of ſuch conſulting, or conſpiring, or imagining of it, will not amount to this Species or Sort of Treaſon, upon this Statute of 25 *Edw.* 3. which is the only Statute upon which the Lord *Ruſſel* was concern'd.

For that Statute of 25 *Edw.* 3. did not intend to make it Treaſon, to conſult or conſpire to levy War, without the actual levying of War.

This will not be denied nor diſputed by the Lord *Ruſſel*'s Adverſaries, nor by this *Anſwerer*.

But, perfectly to evade this Statute, and the manifeſt Intent and Meaning of it, they inſiſt,

That tho' conſpiring to levy War be not Treaſon within the Statute of 25 *Edw.* 3. yet to conſpire, conſult, agree, or conclude, to ſtir up, or raiſe, or move Inſurrection, and Rebellion againſt the King, and to conſult or conſpire to ſeize the King's Guards, (which ſignify one and the ſame thing with conſulting or conſpiring to levy War) theſe (ſay they) may be an *Open* or *Overt Act*, to prove a conſulting or conſpiring to kill the King. What is this but to confound the ſeveral and diſtinct Sorts and Species of Treaſon, which the Statute of 25 *Edw.* 3. doth ſo carefully and induſtriouſly labour to diſtinguiſh?

And what is this, but to make a bare conſpiring and conſulting to levy War, without any actual levying of it, to be Treaſon within this

Statute of *Edw.* 3. which plainly this Statute would not have to be ſo taken? And ſo the good Deſign and Scope of the Statute, the Security of Men's Lives, is wholly overthrown by this Artifice; and what ſhall be taken to be Treaſon, and what not, will be ſtill as uncertain as it was before the making of that *Act* of 25 *Edw.* 3.

And it was then a needleſs idle Thing in thoſe that made the Statute of 13 *Car.* 2. and ſo of former Statutes, to make the conſpiring to levy War to be Treaſon; for by this Practice and Conſtruction it is already made ſo to their Hands, by 25 *Edw.* 3.

Now the Lord *Ruſſel* was indicted for conſpiring to kill King *Charles* II. and the Overt or Open Act, alledged to ſhew and ſignify it, is nothing but his conſulting and conſpiring to raiſe and ſtir up Inſurrection and Rebellion, and conſulting to ſeize the King's Guards, (tho' they were not actually done) which are juſt the ſame Thing with conſpiring to levy War; which plainly is no Treaſon within the Statute of 25 *Edw.* 3. and therefore moſt clearly the Lord *Ruſſel* was not guilty within that Statute, upon that Indictment and Evidence.

Since the Lord *Ruſſel*'s Defender has compoſed this ſhort State of his Caſe, upon this great Point, there hath come to his Hands a printed Half-ſheet, which has excellently well done the ſame Work, which, had it been but a few Hours ſooner, had ſaved the Labour of this Part of the preſent Diſcourſe and Argument: This Half-ſheet is juſtly intituled, *A Juſtification of the late Act of Parliament, for the reverſing the Judgment againſt the Lord* Ruſſel.

There is but one Point more to ſpeak to, and then the Lord *Ruſſel*'s Defender will bid his *Anſwerer* and *Reader* adieu: And it is that Point which the *Anſwerer*'s firſt Print, *viz.* his *Antidote againſt Poiſon*, did not mention, and ſo no Occaſion was given them to conſider of it; but it is largely debated by Court and Council, at the Lord *Ruſſel*'s Trial; yet being then but ſuddenly ſtarted, tho' it were well argued by the Lord *Ruſſel*'s Council aſſigned, no Authorities however were then cited (tho' called for by the Court) to juſtify and make good the Arguments and Reaſons urged by the Council; and it is a Point in *Law*, which the Act of Reverſing the Judgment againſt the Lord *Ruſſel* is principally, and in the firſt place, grounded upon, *viz.* That there had been an undue and illegal Return of Jurors to try that noble Lord, (too often practiſed of late) and that the noble Lord was refuſed this lawful Challenge to them for want of Freehold. The Truth of this, as to Matter of Fact, doth evidently appear by the large Narrative of the Trial, printed by that Lord's Adverſaries; and this is not in the leaſt touched upon by the printed Half-ſheet, ſtyled, *A Juſtification of the Act for Reverſal of the Judgment againſt that Lord.*

That Point in *Law* now only remains to be ſpoken to, *viz.* That in all Caſes of the Trial of a Man, eſpecially in a Trial for his Life, the Jurors ought to be Freeholders, even at the *Common Law*, and before the Statute of 2 *H.* 5. *cap.* 3. and that not only in Trials within the City of *London* (as the Lord *Ruſſel*'s was) but in all other Cities or Towns Corporate, where there was a Juriſdiction of trying for Life in Caſes criminal.

It was not material at the *Common Law*, how much, or of what yearly Value, that Freehold was, or is to be; but ſome Freehold (tho' never ſo ſmall) the Jurors ought to have, or elſe it was a juſt Cauſe of Challenge.

It was indeed the Statute of 2 *H.* 5. *c.* 3. that firſt fixed the yearly Value of the Freehold, and required it ſhould be of 40*s. per Annum*, which 40*s. per Annum* was then in that King's Reign (being ſo long ſince) equivalent to a much higher Value now.

And therefore the Books and Authorities that ſpeak of Freeholds of a leſs Value than 40*s. per Annum*, muſt of Neceſſity be underſtood not to ſpeak of Caſes within that Statute, but of Caſes at the *Common Law*.

3 *H.* 4. *fol.* 4. *b.* *Rolle*'s Abridgment, Title-trial, *fol.* 648. It is there held, that Freehold of any Value was ſufficient for a Juror. This proves that Freehold is requiſite, and that it was ſo before the Statute of 2 *H.* 5. it being in the Reign of King *Henry* V's Father; and with this agrees *Kelloway*, *fol.* 46. towards the End.

Some other Caſes, after the Time of King *Henry* 5. prove the ſame, as 16 *Edw.* 4. *fol.* 8. Half an Acre of Land, ſo it be within the Hundred, ſays that Book, is ſufficient; and it is well known, that as to this Qualification of having Freehold, the ſame Rule governs in the reſt of the Jurors, as in thoſe of the Hundred, 10 *H.* 6. *Brooke*'s Abridgment, *Challenge* 192. Hale'*s Pleas of the Crown*, 260.

Nor do theſe Authorities diſtinguiſh, at all, betweeen Caſes Criminal and Civil, nor in Caſes Criminal between that of Treaſon and in Caſes leſs criminal.

This being ſo at the *Common Law*, and the Statute of 2 *H.* 5. *c.* 3. only adding the yearly Value, *viz.* 40*s. per Annum* Freehold, which before at the *Common Law* might be of any lower Value: Now, though that Statute of 2 *H.* 5. be repealed, as to Trials in Treaſon, as in Truth it is, by the latter Statute of 2 and 3 of *Philip* and *Mary*, *cap.* 10. which enacts that all Trials in Treaſon ſhall be according to the Courſe of the *Common Law*; the Reſult is, that ſtill there muſt be Freeholders to try, tho' they may be Freeholders, as at the *Common Law*, of any yearly value whatſoever.

That the Statue of 2 *H.* 5. (while it was in Force) did extend to Caſes of Treaſon, though Treaſon was not expreſsly mentioned in it, and the Statute ſpeaks very ambiguouſly and obſcurely) appears by the Authorities following, *viz.* *Stamford*'s *Pleas of the Crown*, 161; and *Poulton de Pace Regis & Regni*, 187; and by the Statute of 33 *H.* 8. *c.* 23. in the Proviſo, that reſerves to the Party the Challenge, for want of 40*s.* Freehold, even in caſe of Treaſon, tho' it makes the Treaſon triable in any County.

See Sir *Chriſtopher Blunt*'s Caſe, Juſtice *Croke*, 37 *Eliz.* *fol.* 413. In an Information of Intruſion, by the Queen; a Juror was challenged for want of Freehold, and upon Examination of the Juror, it appeared he had Freehold of 15*s. per Annum* Value, and that was adjudged ſufficient; which admits it had been a good Cauſe of Challenge, had there been no Freehold at all; and it neceſſarily implies, that it was required by the *Common Law*, for no Statute interpoſed as to any lower Value than 40*s. per Annum.* Nor does this Caſe diſtinguiſh between the Caſe of Intruſion upon the Queen, and any other Caſe.

But it may reaſonably be argued, if Freehold be neceſſary in a Juror, who is to try a Caſe of Intruſion only *à fortiori*, it is requiſite in a Caſe of High Treaſon; but in that Caſe of Sir *Chriſtopher Blunt*, another Juror was challenged that had no Freehold, and he was therefore ſet aſide.

Now that the Challenge, for want of Freehold, extends to the City of *London*, and other Cities and Boroughs, as well as to the Counties, is abundantly proved by the Statutes of 11 *H.* 6. *c.* 1. 7 *H.* 7. *c.* 5. and 23 *H.* 8. *c.* 13. to which the Reader, for Brevity's ſake, is referred.

It is no-where maintained, that an Agreement to poiſon or ſtab, *&c.* is no Treaſon, if the very Act do not enſue, as the *Anſwerer* very falſly alledges in the ſecond Column of his ſixth Page, toward the lower End; for thoſe have a manifeſt Tendency towards killing, nor are they any diſtinct Species or Sorts, or Kinds of Treaſon from the killing the King, as that of levying of War, and ſeizing the King's Guards, (eſpecially not ſhewing what Guards) are a diſtinct Species from that of killing the King, and need not neceſſarily be underſtood to terminate and conclude in a killing the King. Taking the King Priſoner, or ſeizing his Perſon, may more reaſonably be thought to aim at a killing of the King, or have a Tendency towards it.

And the Indictment ought ſurely to have declared and expreſſed clearly and plainly what Guards were meant, there being Variety of Guards; for every Indictment ought to contain Certainty.

Herein the very Indictment was faulty.

The bold *Anſwerer* hopes the King will always preſerve thoſe Guards, tho' the Parliament have declared their Senſe to the contrary, when the preſent extraordinarry Occaſion ſhall be over.

This daring preſumptuous *Anſwerer*, in Defiance of the Act for Reverſal of the Lord *Ruſſel*'s Attainder, the Trial having been partial, unjuſt, and illegal, as the Act affirms it, yet dares to aver in his *laſt* Page, that there was Evidence enough to juſtify all concerned in the Proſecution and Trial.

The *Anſwerer*, towards his Cloſe, takes great Care, and is much concerned, to juſtify the King's Solicitor that then was.

And this would incline one to think, that the then King's Solicitor was not the *Author* of that *Antidote againſt Poiſon*, nor of this laſt Print intituled, *The Magiſtracy and Government vindicated*; which are ſo much alike in their Style and Strain. And, in Truth, that late King's Solicitor doth utterly deny, that he had any Hand in either of them. And Sir *George Jefferies*, the laſt Lord Chancellor, could not compoſe this laſt. This being ſo, it may eaſily be judged where it muſt fix: For this, look into the printed Trial.

I now refer the *Anſwerer* to juſtify himſelf at Law, if he happen to be in Danger of an Exception out of an Act of General Pardon and Indemnity, where he may have a fairer Opportunity to defend himſelf in his own more immediate Concern, for endeavouring to ſubvert the Law, which ever proves too hard for all its Oppoſers. And I will ſo far follow his Humour and Vein, as to conclude with Verſes too.

Rode, Caper, Vitem; tamen hic cum ſtabis ad Aras,
In tua quod fundi cornua poſſit, erit.

Which I thus Engliſh:

Go, ſpiteful Satire, browze that Sacred Vine
(*The* LAW); *but know there ſhall not want for Wine*
To pour upon thy Head, which may ſuffice
To render Thee a perfect Sacrifice.

The Caſe of William *Lord* Ruſſel, *tried for High Treaſon*, July 13, 1683.

THE Indictment is very long: But for Subſtance it is, *for conſpiring the Death of the King, and intending to levy War, and to that End to ſeize the Guards:* For the Indictment concludes, *And the Guards for the Preſervation of the Perſon of our ſaid Lord the King to ſeize and deſtroy, againſt the Duty of his Allegiance, againſt the Peace*, &c. *and alſo againſt the Form of the Statutes*, &c.

Thoſe that gave their Evidence againſt the Priſoner, were *Rumſey*, *Sheppard*, and my Lord *Howard.*

The *Overt Act* of *conſpiring the Death of the King*, is *conſulting to levy War, and to that Intent to ſeize the Guards*: So that the Deſign to ſeize the Guards, is the *Overt Act* aſſigned of conſpiring the King's Death.

The *Quære* then is, Whether my Lord *Ruſſel* was guilty of High Treaſon within the Statute of 25 *Ed.* 3. (for upon that Statute he was tried) and I conceive he was not; and therefore his *Attainder* ought to be reverſed.

But before I ſpeak to the Matter of Law, on which I ſhall chiefly inſiſt, I muſt deſire you to obſerve ſome Inconſiſtencies and Contradictions in the Evidence.

Firſt, That none of theſe Perſons had their Pardons; which was otherwiſe in the Popiſh Plot: For no Perſon gave Evidence before he had his Pardon. Therefore, being unpardoned, though they might be *legal*, yet not *credible Witneſſes:* Both which are required by the Statute. For whilſt the Fear of Death attends a Man, he is thinking how he may ſave his Life, rather than to ſpeak nothing but the Truth; and he that is ſo baſe to purchaſe his own Life at the Price of another Man's, will be ſure not to ſpeak leſs than the Truth.

Next, I obſerve how the King's Council, by the Queſtions they put to the Witneſſes, did lead, if not, in a manner, dictate to them what to ſay.

And I take Notice, that my Lord *Howard*, who muſt be ſuppoſed to have a full Knowledge of the Plot, yet never ſays a Word of their Intent to ſeize the Guards, which was the principal Thing in the Evidence of *Rumſey* and *Sheppard:* For, had there been any ſuch Intent, it is ſtrange, that my Lord *Howard*, who had brought in ſo many other Things by Head and Shoulders, ſhould forget ſo remarkable a Piece of Evidence, and ſo home as that.

This is only in general: But, in particular, do but obſerve *Rumſey*'s Evidence.

He ſays, he was not there above a Quarter of an Hour; and whilſt he was there, two Things were debated and reſolved, and a third Thing diſcourſed. Surely they were Things which they did not much value; or elſe they were Men of wonderful Diſpatch, that could receive and debate the Meſſage which he brought from my Lord *Shafteſbury*, then debate the Matter of the Guards, and come to a Reſolution in both; and afterwards diſcourſe about the Declaration; and all this in a Quarter of an Hour, or elſe *Rumſey* is perjured.

In the next Place, it is very remarkable, where he ſays, *He was not certain whether he was at another Meeting, or elſe heard Mr.* Throgmorton *make a Report of another Meeting to my Lord* Shafteſbury. And again he ſays, that *he was not certain, whether he did hear ſomething about a Declaration, when he was at that Meeting; or that Mr.* Ferguſon *did report it to my Lord* Shafteſbury, *that they had debated it.* To ſay no more of it, it is very ſtrange, that a Man cannot be certain, whether he knows a Thing of his own Knowledge, or by Hearſay: And if in ſo plain Matters as thoſe he ſpoke on uncertain Knowledge, it is not unreaſonable to ſuppoſe, that he might as eaſily be miſtaken in the reſt of his Evidence.

Then as to *Sheppard*; he firſt ſwears, point blank, that my Lord *Ruſſel* was at two Meetings at his Houſe. But, being preſſed by my Lord *Ruſſel*, he can remember but one; and when that was, he could not recollect himſelf, tho' not above eight or nine Months before, as he confeſſes. It's ſtrange that a Man ſhould be ſo much in a Wood about ſo remarkable a Thing. But ſurely it muſt be hard upon the Priſoner, that the Time could not be fixed: For if Witneſſes may give Evidence at that rate, it will be much ado for any Priſoner to make his Defence.

As to my Lord *Howard*; his Evidence is ſo notorious, that I need ſay nothing of it, but refer you to the printed Trial for your Satisfaction: Only I will take Notice of one thing which he ſays, to reconcile what he ſaid to my Lord of *Bedford*, my Lord *Angleſey* being preſent, and what he afterwards ſwore againſt my Lord *Ruſſel* at his Trial. Says he, *Your Lordſhip knows, that every Man that was committed, was committed for a Deſign of murdering the King. Now I laid hold on that Part: For I was to carry my Knife cloſe between the Paring and the Apple; and I did ſay, that if I were an Enemy to my Lord* Ruſſel, *and to the Duke of* Monmouth, *and were called to be a Witneſs, I muſt have declared, in the Preſence of God and Man, that I did not believe either of them had any Deſign to murder the King.*

As to the firſt, what he ſaid to my Lord of *Bedford*, was as to the Plot in general; and if to any particular Part of it, it muſt be as to the *Inſurrection*; for there was to be my Lord *Ruſſel*'s Province.

Secondly, My Lord *Howard* knew, that all that were committed, their Commitments run as well *for levying of War*, as *for conſpiring the King's Death.* So that his Lordſhip muſt find out ſomething that will reconcile himſelf to himſelf, better than his *Knife betwixt the Apple and the Paring*; or elſe it will follow, that he ſolemnly ſaid one thing, and ſwore another.

I have but only touched theſe Things; becauſe I haſten on to the Matter of Law. For tho' it were without Contradiction, that every thing ſworn againſt my Lord *Ruſſel* were true, yet it did not amount to *High Treaſon.*

Firſt, Becauſe a *Conſpiracy to levy War* is not an *Overt Act of imagining the Death of the King.*

In arguing of this, I will not meddle at all with the Original of *Allegiance*, nor the true Nature of it; neither make any Diſcourſe, that heretofore it was a leſs Offence to plot againſt the King's Life, than againſt the Government; but I will leave thoſe ſore Places, and endeavour to prove my Point, by conſidering theſe five Things:

Firſt, Whether any Court, the Parliament excepted, can try a Man upon an Indictment for High Treaſon, that is grounded upon the Common Law.

Secondly, To what End and Intent the Statute of 25 *Edw.* 3. *cap.* 2. was Enacted.

Thirdly, Whether [*Conſpiring the Death of the King*,] and [*Levying of War*,] are diſtinct Species of Treaſon.

Fourthly, Whether every Law is not to be conſtrued, moſt ſtrictly to reſtrain the Miſchief againſt which it was Enacted.

Fifthly, What is the true Meaning and Signification of being *provably attainted by Overt Deed.*

1. As to the firſt, it ſeems to be out of doubt: At this Day there can be no ſuch Thing as an Indictment at Common Law for High Treaſon; tho' for other Things there may: Becauſe there is no Precedent of it, ſince the Statute of 25 *Edw.* 3. For nothing is more common than for every Priſoner that is arraigned for High Treaſon, to demand upon what Statute he is indicted, and the Court, or King's Counſel, to tell him the particular Statute. Beſides, every Impeachment before the Lords in Parliament, is grounded upon ſome Statute: And if ſo, *à fortiori*, no inferior Court can try a Priſoner upon an Indictment for High Treaſon, grounded upon the Common Law. For the Law, which greatly delights in Certainty, eſpecially in caſe of Life, will not allow of an Indictment at Common Law: Becauſe no Iſſue can be joined upon it, by reaſon of the Uncertainty.

As to the ſecond, *viz.* To what End or Intent the Statute of 25 *Edw.* 3. was made? I thus anſwer:

Edward III. was a victorious Captain, and potent Prince, whereby he became very renowned; but that which made his Name the greater, and his Fame the more laſting, was thoſe good and wholeſome Laws which were enacted in his Time; by which he reſtored and beautified the Government, that had been defaced, and almoſt deſtroyed, by the illegal Proceedings during his Father's irregular Reign. And of all the Oppreſſions under which the Nation groan'd, there was none that lay heavier upon the People, than the extravagant Licence which the Judges took in the Interpretation of Treaſon. And this appears by the particular and univerſal Joy expreſſed by the whole Land, at the making of the ſaid Statute; for tho' he called Parliaments very frequently, and none of them proved abortive of good Laws, yet that Parliament which was held in the 25th Year, did more than any of the reſt: And of all the beneficial Laws that were then enacted, the ſecond Statute, whereby *Treaſon* was reduced to Certainty, gave the People the greateſt Cauſe to lift up their Heart and Voice in Thankfulneſs to God, and the King; becauſe the Jaws of their devouring Monſter were broken, which had torn in pieces ſo many Families, and threatened Deſtruction to the reſt. So that this Statute was made to reſtrain and limit Judges from calling any thing *Treaſon*, that might be ſo by Inference or Implication, and only to judge upon that which is literally ſo within that Statute. For it is there provided, that if any ſuch-like Treaſons ſhall come before any of the Juſtices, that they muſt ſtay, without going to Judgment, till the Cauſe be declared before the King and his Parliament. And all ſubſequent Statutes of *Treaſon* are all as ſo many Confirmations of this Statute: For they had been needleſs, if the Judges could have called any thing Treaſon, but what is literally ſuch within that Statute. And the Statute itſelf had been made to no purpoſe, if it had not ſtrictly reſtrained the Judges. And my Lord Chancellor *Nottingham* was of Opinion, that even the Lords in Parliament could not proceed upon an Indictment for *High Treaſon*, unleſs the Fact therein alledged were firſt declared by ſome Statute to be Treaſon.

3. As to the third Thing, it never was, nor ever will be denied, That *Compaſſing the Death of the King*, and *Levying of War*, are two diſtinct Species of *Treaſon*, unleſs all *Treaſons* are of the ſame Kind. But if there are ſeveral Sorts of *Treaſons*, then it will follow, that theſe are alſo diſtinct: Becauſe in every Statute of *Treaſon*, which mentions *Conſpiring the Death of the King*, and *Levying of War*, they are named diſtinctly. Beſides, they are different in the manner of Proof: For that which is neceſſary to prove the one, does in no Sort prove the other. And furthermore, the one may be effected, and the other never ſo much as intended or deſigned. As for Example, the King may be murdered, and no War levied nor intended. And moreover, in the one Caſe it is Treaſon, as well to intend as to execute it, without tacking it to any other Thing: But it is not ſo in the other; for it is in itſelf, and abſtractly from every thing elſe, *Treaſon*, as well to *compaſs* the *King's Death*, as to *kill* him. But an Intention to levy War, and doing all Things in order to it, is not Treaſon, unleſs the War be levied, except by Implication or Inference. And I am perſuaded, that the want of obſerving, that theſe are diſtinct Species of Treaſon, has been the Occaſion of that Miſtake of calling a *Conſpiracy to levy War, an Overt Act of conſpiring the King's Death.*

4. As to the Fourth, no doubt, every Statute is to be conſtrued moſt ſtrictly to reſtrain the Miſchiefs againſt which it was enacted. For the uninterrupted Courſe of all Judgments and Reſolutions hath been accordingly; and nothing can more directly thwart common Senſe, than to make it otherwiſe. And therefore, if the Statute be abſolute, the more forcibly it is conſtrued to reſtrain that Miſchief, the more truly is the Intent of that Statute purſued. For how ſhall any Evil be ſupppeſſed, if the Remedy muſt be applied but by Halves? The Law then would be rather a Mockery, than a Means to redreſs the Evil, if it ſhall not be taken moſt ſtrongly againſt it. Either it is, or it is not, a Reſtraint of the Grievance complained of. If it is not, why was it made? If it is, why muſt it not be underſtood in that Senſe, whereby the Miſchief or Evil may be more effectually ſuppreſſed and prevented?.

5. As to the Fifth, the Anſwer will be beſt underſtood by conſidering, firſt, the Signification of the two Words apart, *viz. Provably* and *Overt.*

Provably, ſignifies to prove, or make good by Evidence, Argument, Reaſon, or Teſtimony.

Overt has all theſe Significations, *open*, *clear*, *plain*, *apparent*, *manifeſt*, *notorious*, *evident*, *publick*, *known*, *undoubted*, *certain*, *perſpicuous.*

Theſe then being the Significations of thoſe Words, what can follow more naturally, than that to *be provably attainted by Overt Deed*, is, that the Fact muſt not only be direct, apparent, and notorious to the Point, but it muſt alſo be proved clearly, evidently, plainly, and perſpicuouſly, void of all Doubt or Obſcurity? And thoſe two Words being taken together, do the better expound each other, and ſeem to be choice Words, and Words of Art, cull'd out by the Penners of that Statute, as the moſt expreſſive, to exclude all Implications or Inference, that might be made in caſe of *Treaſon.*

Theſe Things being premiſed, which are as eaſily proved as alledged, there will remain very little, beſides Shifts and Evaſions, to prove, that a *Conſpiracy to levy War* is an *Overt Act of Compaſſing the King's Death.*

The Things that are chiefly and commonly urged to maintain that Opinion, are theſe two:

Firſt, It would be of dangerous Conſequence, if a *Conſpiracy to levy War* may not be interpreted an *Overt Act of compaſſing the King's Death:* Becauſe there is no means left to prevent it, and the Miſchief attending it, when the War is levied.

Secondly, If a War be levied, the Death of the King muſt needs be intended, and will certainly enſue, if the Rebels prevail.

In Anſwer to theſe it may be replied, That the one of them is but a bare Objection, and the other no ſubſtantial Argument; becauſe it begs the Queſtion, which is ſurely a feeble way of arguing.

But I will give a more particular Anſwer to them. And it will be more proper to begin with the ſecond; becauſe in ſpeaking to it, the other will in great meaſure receive an Anſwer.

Now as to the ſecond, it may be obſerved, that the Death of the King is made ſo certain and neceſſary a Conſequence of *Levying a War*, that by reaſon of that *Certainty a Conſpiracy to levy War* is an *Overt Act of Compaſſing the King's Death.* If therefore the *Certainty* will not hold, but that many Caſes may be put, and Inſtances produced, wherein the King's Death is not intended, nor did enſue upon the Prevailing of the Party, then is the whole Weight and Strength of the Argument of no Effect.

The *Huguenots* in *France* have heretofore aſſembled in Arms; and tho' they repeated it ſeveral times, yet on which of thoſe Occaſions does it appear, either by the Cauſe of their coming together in that manner, or by the Effect of it, that it was levell'd at the King's Life? No, the Cauſe of their Riſing in Arms was for the Aſſerting of their Religion and juſt Rights. For as ſoon as their reaſonable Demands were ſatisfied, they laid down their Arms more willingly than they took them up; neither did they attempt any thing againſt the King's Life, when he was in their Power; but after they were anſwered in thoſe Things to which they had Right, both by the Laws of Nature and the Government, immediately they returned home in Peace, and upon all other Occaſions proved the moſt firm and loyalleſt Subjects of all other in that King's Dominions; and ſo this preſent King of *France* muſt teſtify for them, if he will do them Right.

If the Proteſtants in *France* ſhould at this Time riſe in Arms, upon ſo juſt a Provocation as now they have, it would be ſenſeleſs to ſuppoſe, that they levied the War with a principal Deſign to murder the King, and not for the Defence of themſelves and juſt Rights, which are ſo inhumanly, and againſt all Law and Juſtice, at this Time, invaded and raviſhed from them. Story is full of like Caſes and Inſtances to this. But to ſpeak more particularly to *England:* What was the Baron's War? The Anſwer to which muſt be, That they took up Arms to aſſert their Rights and Liberties, which the King, contrary to his Oath, with-held from them: and tho' it laſted near forty Years, yet the King's Death was never intended, nor his Life in any Danger: For as ſoon as their juſt Demands were anſwered, they put up their Swords, and every Man returned home, and pray'd for the Life of the King. And out of *Engliſh* Story, what one Inſtance can be produced, where the Cauſe of War was declared to be againſt the King's Life; or if the Party prevailed, the King was to be put to Death by their general Conſent and Approbation? For tho' it be true, that there are ſome inſtances, where they have been murdered after the War; yet it is alſo as true, that it was by private Aſſaſſination, and not by the Conſent and Privity of thoſe who levied the War: For all thoſe who were concerned in the Murder, were afterwards condemned and executed for it, as Traitors: As in the Caſe of *Edw.* 2. and *Ric.* 2.

As for that of *Charles* the Firſt, which is ſo much preſs'd and urged, tho' the Cauſe of War had been expreſsly againſt his Life; yet as one Swallow does not make a Summer, ſo neither does one Precedent prove the Point. But beſides, in that Caſe of *Charles* the Firſt, to infer from thence, that the King's Death is principally intended by levying of War, is altogether as weak an Argument, as to ſay, becauſe a Thing falls out by Accident, therefore that very Thing was the principal Deſign and Aim of the whole Action. For in that War, thoſe who firſt took up Arms, did it to oppoſe the King's arbitrary Practices; and though he was afterwards put to Death, yet it was altogether againſt their Conſent or Deſire; and moſt of the Army was againſt it, and would have prevented it, but that they were at that time ſo broken into Factions and Parties, that they durſt not truſt one another. For after that Tragedy was acted, thoſe who firſt took up Arms, immediately upon it laid them down, and were afterwards the chief Inſtruments of the late King's Reſtoration.

But if the King's Death be the principal Thing intended by levying of War, to what Purpoſe is the War levied? Cannot the King be taken off more eaſily by Poiſon, or a private Aſſaſſination? To the effecting of which, Opportunity cannot be wanting; and ſo with more Certainty the End is obtained, and a leſs Hazard run in the Execution, than could be done by a War; except thoſe who levy the War to kill the King, are not content with the Murder of him, unleſs they cut the Throats of all thoſe that would defend him. Indeed to do it by an open War, rather than by Poiſon, or a private Aſſaſſination, is the more generous Way; for they give him fair Warning to look to himſelf, like a noble Enemy, that ſcorns to kill his Adverſary baſely. 'Tis indeed to go round about, for the neareſt Way. Therefore a War, when levied, muſt be for ſome other Intent, than to take away the King's Life: Since *Engliſhmen*, if they enjoy their Properties, no Prince is ſo great and happy in the Heads, Hearts, Hands and Purſes of his Subjects, as an *Engliſh* King.

But yet, allowing that upon every War levied the Death of the King would certainly enſue if the Rebels prevail; yet this Queſtion does naturally ariſe, *viz.* Where is that Statute which does in expreſs Terms ſay, That *a Conſpiracy to levy War is Treaſon?* For if it be not ſo expreſsly and literally within ſome Statute, then it is a conſtructive Treaſon, and conſequently no ſuch Treaſon, as upon which the Judges may proceed, if the Statute of 25 *Edw.* 3. was made to any Purpoſe: For that the Statute reſtrains *all conſtructive Treaſon, or none.* But if the Judges may, in any one Caſe, make a conſtructive Treaſon, they may do it in all; and ſo we are left in the ſame Uncertainty about Treaſon, as we were before that Stat. 25 *Edw.* 3. was made.

If the Judges might judge upon *conſtructive Treaſon*, yet it ſeems to be a far-fetched *Conſtruction* to make *Conſpiracy to levy War*, an *Overt Act of compaſſing the King's Death:* For this is not to be *probably attainted by Overt Deed.*

Firſt, Becauſe the *conſpiring the Death of the King*, and *levying of War*, are Two diſtinct Species of Treaſon; and therefore, it would be very unnatural, and too much forced, to join theſe together, and, as it were, to make them one and the ſame Thing, that are ſo different and divers, not only in the Manner and Matter of Proof, but alſo in themſelves.

For then, *Secondly*, a Conſpiracy to commit any other Treaſon, may alſo be called an *Overt Act of imagining the King's Death:* Which was never yet pretended.

Thirdly, A conſpiring of any one Treaſon may then be an Overt Act of any other Treaſon.

Fourthly, Any other criminal Act may then as well be called *an Overt Act of conſpiring the King's Death.*

Fifthly, This is to make *a Conſpiracy to levy War*, Treaſon in itſelf. For there is very little Difference between calling a Thing Treaſon in itſelf, and to make it an *Overt Act* of ſome Treaſon within the Statute.

Sixthly, Becauſe *a Conſpiracy to levy War*, was not Treaſon at Common Law.

Seventhly, The Statutes of 23 *Eliz.* and the 1 and 3 *Jac.* 4. which make it High Treaſon *to reconcile any to the Church or See of Rome*; or to be ſo reconciled, were enacted to no Purpoſe, if *a Conſpiracy to levy War* is an *Overt Act of the Compaſſing the King's Death.* For what can tend more plainly and directly to *levy War*, than to perſuade the People to renounce their Allegiance to the King, and to promiſe Faith and Obedience to ſome other Power? So that theſe, and all other Statutes concerning Treaſon, which have been made ſince the Statute of 25 *Edw.* 3. are as ſo many Confirmations of it; and conſequently prove, that the Judges can call nothing Treaſon, but what is literally ſuch, within that, or ſome other Statute.

Eighthly, My Lord *Coke* ſays, That *Conſpiracy to levy War* is not Treaſon, unleſs the *War be levied in fact.* And queſtionleſs his Opinion is very good Law; becauſe in many Caſes it is not Treaſon to levy War; *& a fortiori*, a Conſpiracy cannot For look into the Statute of 12 Q. *Mary*, and there you will find ſeveral Things provided againſt, which are plainly and directly a *levying of War*, and yet they are declared to be but *Felony.*

But it may be objected, That by Stat. 3 and 4 *Edw.* 6 the Offences mention'd in 1 Queen *Mary* were made Treaſon. It is very true; yet it does not alter the Caſe, but rather proves the Point. For, *Firſt*, They being made Treaſon by Statute, proves that it was not ſo in itſelf. *Secondly*, Becauſe in the two next ſucceeding Reigns it is declared to be but Felony. For the Statute of Queen *Mary* is confirmed by 1 *Eliz.* 16. And thereupon the Argument is the ſtronger; becauſe thoſe two Queens were of different Religions. *Thirdly*, Becauſe when a Thing is declared an Offence by Act of Parliament, and is afterwards made a leſs Offence by Statute, it proves that it was not ſo great in itſelf; but that the neceſſary Circumſtances of Time and Affairs requir'd it ſhould then be ſuch.

But the Caſe is yet ſtronger, becauſe in ſome Caſes it may be but a Treſpaſs to *levy War*; as it was in the Caſe of my Lord *Northumberland*, 5 *Hen.* 4. He did actually raiſe Forces, and ſuch as were taken to be a *levying of War:* For which he was queſtion'd before the Lords, and tried for High Treaſon. But though the Lords did find the Fact, yet they adjudged it but a Treſpaſs; becauſe the Powers raiſed were not againſt the King, but againſt ſome Subjects. This Precedent ſeems to carry great Weight in it: *Firſt*, Becauſe it is a Judgment given in the higheſt Court of Judicature: *Secondly*, Becauſe it was given ſo ſoon after the making the Statute of 25 *Edw.* 3. who muſt be ſuppoſed to underſtand the Intent and Meaning of that Statute full as well as ſucceeding Ages.

The Caſe of thoſe who aided Sir *John Oldcaſtle* might alſo be urged; who were acquitted, becauſe in their Defence it did appear, that by reaſon of Fear, and to ſave themſelves, they were conſtrained to what they did. Which is Ground for another Argument, if there were Occaſion; becauſe it proves that the Maxim in Law, *Actus non ſit reus, niſi Mens ſit rea*, holds in Caſe of Treaſon, as well as in all other Caſes. But I think there is no need of it: For if War may be levied, which is neither *Treaſon* nor *Felony*, it muſt be a very unnatural Conſtruction of a Conſpiracy to levy War, to make it an *Overt-Act of compaſſing the King's Death.*

Thus the *ſecond* Thing objected has received a full Anſwer, and likewiſe the *firſt*, in a great meaſure. Yet I will add a few Words, that no Doubt may remain.

If the Conſequence on all Hands be duly conſidered, the Danger will be found to lie on the other Hand: Yet be it as great as can be pretended; it muſt be remembered, that the Law has ſettled the Point; and ſo it muſt ſtand, till by the ſame Authority it be altered. For the Rule in Law is not to be forgotten, *Nemo Legibus Sapientior.* It is pretended, that out of a tender Regard which the Law, and all Subjects, ought to have for the King's Life, a *Conſpiracy to levy War* is taken to be an *Overt-Act of compaſſing the King's Death:* To this it may be anſwered by way of Queſtion, How comes it about, that this Age ſhould have a greater Care of the King's Life than our Forefathers had? Can it be imagined, that they did not underſtand the Nature of the Government as well as we do? Nor did know of what Conſequence to the Publick the Preſervation of the King's Life is? Can it be thought, that they did not impartially weigh and conſider the Conſequence on all Hands? Yet however, let the Defects be never ſo many, ſeeing it is ſettled by Law, it cannot be altered but by the ſame Power: For if it may, then let the Conſequences be ſeriouſly debated; of leaving it in the Breaſt of the Judges to rectify the Miſtakes, or Defects, be they fictitious or real. For then, when a Turn is to be ſerved, the Law will be ſure to be defective; and ſo in Effect they ſhall *Legem dare.* Treaſon will then be reduced to a Certainty; that is, if the Judges pleaſe; otherwiſe not: There will be then no need of Parliaments: For the Judges ſhall both declare and make Law. What will all our Laws ſignify, though made and penn'd with all the Wiſdom and Caution that a Parliament is capable of, if the Judges are not tied up and bound by thoſe Laws? It renders Parliaments uſeleſs, and ſets the Judges above that great Council. They can undo what the other has done. The Parliament chains up ſome unruly Evil, and the Judges let it looſe again. But beſides, where is this dangerous Conſequence, as is objected? Indeed there had been ſome Weight in the Objection, had a *Conſpiracy to levy War* been wholly unpuniſhable. But the Law has provided a Puniſhment commenſurate to the Offence; which though it does not extend to Life, yet is ſufficient to deter Men from the Commiſſion of it. Yet if a *Conſpiracy to levy War* is to be puniſh'd in as high a Degree as a *War when levy'd*, this would be to puniſh Thoughts as highly as Deeds; which if it be juſt, yet is *ſummum jus.*

Mr. Solicitor *Finch* twitter'd out two or three imperfect Precedents, *viz.* that of my Lord *Cobham*, Dr. *Story*, and *Plunket.* Theſe, as they are not altogether to the Purpoſe, ſo they are ſo very modern, that no great Regard is to be had to them; and they rather prove the Ignorance or Boldneſs of thoſe Judges, than that a *Conſpiracy to levy War is an Overt-Act of compaſſing the King's Death:* Becauſe the Statute of 25 *Edw.* 3. has provided, That if any ſuch-like Treaſons come before the Juſtices, they muſt tarry without going to Judgment, till the Cauſe be ſhewed before the King and his Parliament: And therefore for thoſe Judges to take upon them to judge upon that which was doubtful, and not literally nor expreſly a *Treaſon*, was to aſſume the Part which the King and Parliament had reſerved to themſelves. And therefore, upon what has been ſaid, this Concluſion will follow, that no Man can (before the Judges) be convicted of *Treaſon*, unleſs the Fact be expreſly and literally *Treaſon* within ſome Statute, and he be thereof provably attainted by ſome *Overt Deed*; and conſequently a *Conſpiracy to levy War* is not an *Overt-Act of Compaſſing the King's Death*, but a Treſpaſs, or *High Miſdemeanour:* And therefore, the Judgment againſt my Lord *Ruſſel* was manifeſtly unjuſt; and ſo, of courſe, it ought to be reverſed.

If a *Conſpiracy to Levy War* were *Treaſon* of itſelf, or an *Overt Act of imagining the King's Death*, yet my Lord *Ruſſel* was not guilty of *High-Treaſon* within the Stat. of 25 *Edw.* 3. becauſe the Overt Act aſſigned againſt him, was *his being of a Counſel of ſix to manage an Inſurrection*, and in order to it to ſeize the Guards, for had he actually ſeiz'd the Guards, yet it could not be *Treaſon* within the Statute 25 *Edw.* 3.

Firſt, Becauſe the *Guards* are not ſettled by Act of Parliament, and conſequently they have no legal Force: For the Law has pronounced, that all ſtanding Force other than the *Militia* is in *terrorem populi*, Illegal, and a Grievance; and the Reaſon of it is clear; becauſe the Law does never protect or countenance any thing that is, or may be burdenſome, or that is uſeleſs: And it is ſo evident, that in the *Penſionary Parliament*, this Vote, paſs'd in the Houſe of *Commons*, *Nemine Contradicente:* That all ſtanding Force other than the *Militia is Illegal, and a Grievance:* And though they have the King's Commiſſion, as may be objected; yet his Commiſſion cannot make that lawful that is illegal, no more than he can tolerate a Riot, or pardon a common *Nuiſance:* For if ſeveral Perſons were try'd for a Riot, and it manifeſtly appear upon the Evidence to be ſuch, would their producing the King's Commiſſion keep them out of the Compaſs of the Law? Or ſhould thoſe who did aſſemble together to ſuppreſs them, be guilty of *Levying War*, becauſe thoſe other Perſons had the King's Commiſſion? Therefore if my Lord *Ruſſel* had aſſembled a Force ſufficient to ſeize the *Guards*, the moſt that could have been made of it, was to bring it within the Statute of the 1 *Qu. Mary* 12. which makes it but Felony. And this being duly compared with the Precedents urg'd by Mr. *Attorney*, and Mr. *Solicitor*, will retort them ſtrongly upon themſelves.

Secondly, It could not be Treaſon within the ſtatute 25 *Ed.* 3. becauſe at the Time of making that Statute, there was no ſuch thing as the Guards: For the firſt Thing of that Sort was the Band of Penſioners which *Hen.* 7. ſet up, in Imitation of what he had ſeen, and learned in *France:* For in *Ed.* the 3*d*'s Time, though he was the Third that without Interruption had ſucceeded to the Crown; yet Succeſſion had not then obtained ſo ſacred a Reputation, as not to ſtand in need of the People to uphold them in the Throne; and therefore Kings were then too wiſe to do any thing that would be ſo apparent a diſtruſting of the People, as to call in Guards to their Aid. And beſides, the conſtant Wars, either with *France* or *Scotland*, made them ſtand continually in need of the People's Supplies; and therefore they would be ſure cautiouſly to avoid all Things, that might give the Nation occaſion of Offence: And nothing could be more diſtaſteful to the People than to be noſed by a ſtanding Force, which the Law had adjudged to be Illegal and a Grievance. And therefore, as there were no ſuch Things as Guards at the making of that Statute 25 *Ed.* 3. ſo that Statute cannot be ſuppoſed to take notice of them.

Thirdly, If the Guards were Eſtabliſhed by Act of Parliament, yet if they were ſo Eſtabliſhed ſince the 25 of *Ed.* 3. my Lord *Ruſſel* was not within that Statute, becauſe it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an Offence to ſeize the *Guards*, my Lord *Ruſſel* ought to have been Indicted upon that Statute which did ſo make it an Offence. For if a Priſoner is Indicted upon a wrong Statute, and the Evidence proves nothing of the Statute on which he is Indicted, but comes very home, and point blank to the Statute on which he ought to have been Indicted, he may plead ſpecially to it, and the Court muſt direct the Jury to bring him in *Not Guilty*.

Fourthly, My Lord *Ruſſel* was not within the Statute of 25 *Ed.* 3. Becauſe the Indictment concluded falſly; and more falſly than any Indictment that I ever ſaw or heard of. For it ſays, [*And the Guards for the Preſervation of the Perſon of our ſaid Lord the King to ſeize and deſtroy, againſt the Duty of his Allegiance, againſt the Peace and alſo againſt the Form of the Statutes.*] This Concluſion contains in it four Parts, and none of them is true. *Firſt*, That the Guards are for *Preſervation of the King's Perſon.* It will be an eaſier Matter to find a World in the Moon than that the Law has made the *Guards* a lawful Force, or any Statute that has Eſtabliſhed any Force, particularly for the Guard of the King's Perſon. And though the Law had Eſtabliſhed any ſuch Force; yet it was not done by the 25 *Ed.* 3. and therefore in this the Indictment concluded falſly.

The *Second* Thing is this, That to ſeize and deſtroy the *Guards* was againſt the *Duty* of his *Allegiance*. To ſpeak fully to the Nature of *Allegiance* would require a long Diſcourſe. But a few Words will lay this upon its Back. It cannot be deny'd, that Nature and the Law did nothing in vain: And if ſo, can it be imagin'd that the Law would eſtabliſh ſuch a Thing as the *Guards*, which had made ſo much a better Proviſion for the Preſervation of the King's Perſon, even the Duty and Intereſt of every one of his ſubjects? In the next Place, *Subjection* and *Protection* are Convertible Terms, and therefore if the Subjects do not receive Protection by the *Guards*, it is not againſt their *Allegiance* to ſeize and deſtroy them: Whereas to ſeize the *Militia* is againſt their *Allegiance*; becauſe they receive *Protection* by them. Beſides no Man becomes an Offender, till the Law has been promulged ſo as that no Man can reaſonably be ſuppoſed to be ignorant of it. Now then, though the King by his Commiſſion might make the *Guards* ſuch a lawful Force; yet *non conſtat* that they are ſo Commiſſion'd by him. For it has not been publiſh'd in that due manner and form, as that the Nation can regularly take Notice of it. And beſides, there is no Record enter'd, or remaining of it in any Court, or any other Place, whereby the People may come to a certain knowledge of it, Which is alſo a forceable Argument againſt the *Legality* of ſuch a Commiſſion. So that tho' in other Caſes *Ignorantia Juris* is not allowed; yet in this Caſe it is a very good Plea, That it was not againſt my Lord *Ruſſel*'s *Allegiance* to ſeize the Guards, though the King's Commiſſion did make them a lawful Force.

The *Third* thing is, *That it was againſt the Peace*, which is an untrue Concluſion. For it is not againſt the Peace to ſeize any Force that is not countenanced by Law. And a Needle may ſooner be found in a Cart-load of Hay, than any Statute that hath Eſtabliſhed the *Guards*. And if the King's Commiſſion can make a Force a lawful Force, then it's hard to ſay, whether the Rebellion in *Ireland* did not act upon ſufficient Authority, ſince no clear Anſwer has yet been made to the Commiſſion under the Broad Seal, which the Rebels produced to juſtify their Proceedings. In the next place, every Treaſon is againſt the Peace. But to conclude, becauſe it is againſt the Peace, therefore it is Treaſon, is neither Law nor Reaſon. For every Offence is againſt the Peace; but every Offence is not Treaſon. Furthermore, the King's lawful Commiſſion is not to be oppoſed in any Caſe; and the Indictment upon it will run, that it is *againſt the King's Crown and Dignity, and againſt the Peace.* Therefore to conclude, that it is Treaſon, is a *non ſequitur:* For it is not Treaſon in many Caſes, to ſeize and deſtroy thoſe that Act by the King's lawful Commiſſion.

The *Fourth* thing is that it was *againſt the Form of the Statutes.* The Statutes thus mention'd muſt be thoſe Statutes, or at leaſt muſt comprehend ſome Statute that ſettles the Guards for the Preſervation of the King's Perſon: For the *Seizing of the Guards is the Overt Act* aſſigned of *Compaſſing the King's Death.* Now if there be no ſuch Statute, then is this Part of the Concluſion of the Indictment alſo falſe. And conſequently the Judgment againſt my Lord *Ruſſel* ought to be revers'd.

CXXII. *The Trial of Colonel* ALGERNON SIDNEY[*], *at the* King's-Bench *for* High-Treaſon, *Novemb.* 21, 1683. Mic. 35. Car. II.

ON *November* the 7th *Algernon Sidney*, Eſq. was by *Habeas Corpus*[†] brought up to the Bar of the Court of *King's-Bench*, and the Clerk of the Crown having read the Return, Mr. *Attorney General* informed the Court there was an Indictment againſt the Priſoner, and prayed he might be charged with it.

Cl. of Cr. Algernon Sidney, Hold up thy Hand. [*Which he did.*]

Midd. ſſ. ‘The Jurors for our Lord the King, upon their Oaths do preſent, That *Algernon Sidney*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Eſq. as a falſe Traitor againſt the moſt illuſtrious, moſt excellent Prince, our Lord *Charles* II. by the Grace of God, King of *England*, *Scotland*, *France* and *Ireland*, and his Natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and ſeduced by the Inſtigation of the Devil, utterly withdrawing the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our ſaid Lord the King ſhould bear towards him the ſaid Lord the King, and of Right is bound to bear; contriving, and with all his Strength intending, to diſturb the Peace and common Tranquillity of this Kingdom of *England*, and to ſtir up and move War and Rebellion againſt the ſaid Lord the King, and to ſubvert the Government of the ſaid Lord the King, in this Kingdom of *England*, and to depoſe and deprive the ſaid Lord the King, from the Title, Honour and Regal Name of the Imperial Crown of his Kingdom of *England*, and to bring and put the ſaid Lord the King to Death, and final Deſtruction, the thirtieth Day of *June*, in the five and thirtieth Year of the Reign of our Lord King *Charles* II. now King of *England*, &c. and divers other Days and Times, as well before as after, at the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, maliciouſly and traiterouſly, with divers others Traitors to the Jurors aforeſaid unknown, did conſpire, compaſs, imagine and intend to deprive and caſt down the ſaid Lord the King, his ſupreme natural Lord, not only from the regal State, Title, Power and Rule of his Kingdom of *England*; but alſo to kill, and bring and put to Death the ſame Lord the King, and to change, alter and utterly ſubvert the ancient Government of this his Kingdom of *England*, and to cauſe and procure a miſerable Slaughter among the Subjects of the ſaid Lord the King through his whole Kingdom of *England*, and to move and ſtir up an Inſurrection and Rebellion againſt the ſaid Lord the King, within this Kingdom of *England*. And to fulfil and perfect thoſe his moſt horrid, wicked and diabolical Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes, the ſame *Algernon Sidney*, as a falſe Traitor, then and there, and divers other Days and Times, as well before as after, maliciouſly, traiterouſly and adviſedly, did aſſemble himſelf, meet and conſult with the aforeſaid other Traitors to the Jurors aforeſaid unknown, and with the ſame Traitors did treat of, and for thoſe his Treaſons and traiterous Compaſſings, Imaginations and Purpoſes, to be executed and fulfilled. And that the aforeſaid *Algernon Sidney*, as a falſe Traitor, maliciouſly, traiterouſly and adviſedly, then and there, and divers other Days and Times, as well before as after, upon himſelf, did aſſume, and to the aforeſaid other Traitors did promiſe that he would be aiding and aſſiſting in the Execution of their Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, and to fulfil, perfect and reduce to Effect thoſe their moſt horrid Treaſons and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid, the ſame *Algernon Sidney*, as a falſe Traitor, then and there, falſly, maliciouſly, adviſedly and traiterouſly did ſend one *Aaron Smith* into *Scotland* to invite, procure, and incite divers evil-diſpoſed Subjects of our ſaid Lord the King, of his Kingdom of *Scotland*, to come into this Kingdom of *England*, to adviſe and conſult with the aforeſaid *Algernon Sidney*, and the aforeſaid other unknown Traitors in this Kingdom of *England*, of Aid and Aſſiſtance to be expected and ſupplied from the Kingdom of *Scotland* to fulfil, perfect, and to reduce to Effect thoſe their moſt wicked, horrid and traiterous Treaſons aforeſaid. And that the aforeſaid *Algernon Sidney* to fulfil and perfect thoſe moſt wicked, horrid and deviliſh Treaſons, and traiterous Compaſſings, Imaginations and Purpoſes aforeſaid; and to perſuade the Subjects of the ſaid Lord the King of this Kingdom of *England*, That it is lawful to make and ſtir up an Inſurrection and Rebellion againſt the ſaid Lord the King that now is, the ſaid thirtieth Day of *June*, in the five and thirtieth Year of the Reign of the ſaid Lord the King that now is, at the Pariſh of St. *Giles in the Field*, in the County of *Middleſex*, falſly, unlawfully, wickedly, ſeditiouſly and traiterouſly, did make, compoſe and write, and cauſed to be made, compoſed and written, a certain falſe, ſeditious and traiterous Libel, in which ſaid falſe, ſeditious and traiterous Libel, among other Things, is contained as followeth in theſe *Engliſh* words, *viz. The Power originally in the People of* England *is delegated unto the Parliament, he (the moſt ſerene Lord,* Charles *II. now King of* England, *meaning) is ſubject unto the Law of God, as he is a Man to the People, that makes him a King, inaſmuch as he is a*

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[*] *Burnet's* hiſtory of his Own Times, *Vol.* I. *p.* 570.

[†] *Note.* This *Habeas Corpus* was granted the Day before, which was before the Indictment was found by the Grand Jury, for it was not preſented to them till after he was brought to the Hall.

‘ *King, the Law ſets a Meaſure unto that Subjection, and the Parliament judges ‘ of the particular Caſes thereupon ariſing, he muſt be content to ſubmit his Intereſt ‘ unto theirs, ſince he is no more than any one of them in any other reſpect than ‘ that he is, by the Conſent of all, raiſed above any other; if he doth not like ‘ this Condition, he may renounce the Crown; but if he receive it upon that ‘ Condition (as all Magiſtrates do the Power they receive) and ſwear to perform ‘ it, he muſt expect that the Performance will be exacted, or Revenge taken by ‘ thoſe that he hath betrayed. And that in another Place in the ſaid falſe, ſedi- ‘ tious and traiterous Libel, among other Things, theſe falſe, ſeditious, and ‘ traiterous* Engliſh *Sentences are contained (that is to ſay), We may therefore ‘ change or take away Kings, without breaking any Yoke, or that is made a Yoke ‘ which ought not to be one, the Injury is therefore in making or impoſing, and ‘ there can be none in breaking it,* Againſt the Duty of his Allegiance, againſt ‘ the Peace of the ſaid now Lord the King, His Crown and Dignity, *&c.* ‘ And againſt the Form of the Statutes in this Caſe made and provided, *&c.*’

How ſay’ſt thou? Art thou Guilty of this High Treaſon whereof thou ſtandeſt indicted, or not Guilty?

Col. *Sidney.* My Lord, I find here an Heap of Crimes put together, diſtinct in Nature one from another, and diſtinguiſhed by Law; and I do conceive, my Lord, That the Indictment itſelf is thereupon void, and I cannot be impeached upon it.

Sir *George. Jefferies.*

L. C. J. We are not to admit of any Diſcourſes, till you anſwer the Queſtion, Whether you be Guilty or not Guilty.

Sir *Robert Sawyer.*

Mr. Att. Gen. If he will demur, my Lord, we will give him Leave.

Col. *Sidney.* I preſume your Lordſhip will direct me, for I am an ignorant Man in Matters of this Kind, I may eaſily be ſurprized in it, I never was at a Trial in my Life of any Body, and never read a Law-Book.

L. C. J. Becauſe no Priſoner under your Circumſtances is to have Counſel, but in ſpecial Caſes to be aſſigned in Matters of Law, the Court is bound by their Oaths and Duty of their Places, that they ſhall not ſee any Wrong done to you: But the Buſineſs that we are to tell you now is, you are to plead Guilty, or not Guilty, or Demur, which is a Confeſſion in Point of Law.

Col. *Sidney.* Under favour, my Lord, There may be Indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be anſwered to.

Mr. Juſt. *Withins.* If you pleaſe to demur to it you ſhall have Liberty to make any Exceptions.

Col. *Sidney.* I don’t demur, ’tis only Exceptions. I think in Matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am ſure in Sir *Henry Vane*’s Caſe, the Court ſaid it, and offered him to do it; that which, under Favour, I hope to do.

L. C. J. You muſt plead or demur.

Col. *Sidney.* My Lord, if I put in Exceptions to the Bill, I don’t plead ’till thoſe Exceptions are over-ruled. This was in the Caſe of Sir *Henry Vane.*

L. C. J. Sir, I muſt tell you, you muſt either plead or demur.

Col. *Sidney.* My Lord, there are in this Indictment ſome Treaſons, or reputed Treaſons, that may come within the Statute of the 13th of this King, which is limited by Time, the Proſecution muſt be in ſix Months, and the Indictment within three. Now, my Lord, if that this Buſineſs that is mentioned, be above ſix Months before my Commitment, or above three before the Indictment, I think, under Favour, I ought not to anſwer to theſe Matters.

L. C. J. You are miſtaken in the Law. That will be ſaved when the Fact comes to appear. If they alledge the Thing to be at a Time, which, according to that Allegation would maintain the Indictment, if upon the Trial, it appear otherwiſe, the Court is bound to take notice of it when you come to your Trial, but we are not bound to examine that before you have pleaded.

Col. *Sidney.* My Lord, every body will acknowledge, that there have been, or may be, vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be indicted again. Bills of attainder have been upon Errors in original Indictments, as that of the Duke of *Somerſet.* Now if there be here ſeveral Things diſtinct in Nature, diſtinguiſhed by Law, that are put together, ’tis impoſſible to make a poſitive Anſwer to any one. If any one ſhould tell me, that I by myſelf, or by others, by Sword or by Piſtol conſpired to kill the King, I can ſay, I did it, or I did it not. If any one ſay, I have levied War, and by ſeveral Acts undertake to prove I have done it, I can ſay I have done it, or I have not. But here I don’t find any thing ſpecified, or can tell upon what Statute I am indicted. I pray I may ſee the Record.

L. C. J. That we can’t do. You ſhall hear it read again if you will, if you think it to be a void Indictment, Demur to it if you will.

Col. *Sidney.* My Lord, I deſire you to accept of this. [*Shewing a Parchment.*]

L. C. J. What is it? Put in what Plea you ſhall be adviſed; but if you put in a ſpecial Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you wave the Fact.

Col. *Sidney.* I can’t make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can aſſign any Matter of Law, do. But otherwiſe what a kind of thing would it be? All Criminals would ſay, in all Caſes, I doubt whether the Bill be good or bad. And after I have thus conſidered of it, I will plead. You are miſinformed, and this the Court tells you as a Duty incumbent on them.

Mr. Juſt. *Withins.* If you demur, and ſhew what your Cauſes are, we will aſſign you Counſel.

Col. *Sidney.* I deſire you would not try me, and make me to run on dark and ſlippery Places I don’t ſee my Way.

L. C. J. Don’t apprehend yourſelf to be ſo, as if the Court would run you on any Inconvenience. But they are bound to ſee the Methods of Juſtice preſerved, they are thoſe that you, and all the King’s Subjects are bound to conform to. If any one of us were in the ſame Condition, we muſt obſerve the ſame Methods of Law.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. *Sidney.* Then pray, my Lord, will you tell me this, Is it true, that a Man, how vitious ſoever an Indictment is, muſt anſwer or demur to it?

L. C. J. He muſt either anſwer or demur.

Col. *Sidney.* Are there no Exceptions to be admitted?

L. C. J. None: And if you don’t do the one, or the other, Judgment paſſes, as if you had pleaded Guilty.

Col. *Sidney.* Here is a Plea *.

Mr. Juſt. *Withins.* Will you ſtand by it? Conſider yourſelf, and your Life, if you put in that Plea, and Mr. Attorney demurs, if your Plea be not good, your Life is gone.

Col. *Sidney.* Pray, my Lord, give me a Day to conſider of it.

L. C. J. No, we muſt not introduce new Methods or Forms for any body. The ſame Caſe that is with you may be with other People.

Col. *Sidney.* My Lord, I do not pretend to any thing but what is Law, and due to every Man upon *Engliſh* Ground. I would be very ſorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You muſt do one or the other. Call him to it.

Col. *Sidney.* I deſire this may be read. [*Shewing the ſame Parchment.*]

L. C. J. It ſhall not be read unleſs you put it in as a Plea.

Mr. Sol. Gen. I muſt do my Duty. Mr. *Williams* exceeds his Liberty, he informs the Priſoner ſeveral Things

Mr. *Williams.* I only ſaid, if it was a Plea, put it in, Mr. *Attorney* can hear all I ſay. [*Whereupon Mr.* Williams *was reproved by the Lord Chief Juſtice.*]

Col. *Sidney.* I only give it as Exceptions to the Bill.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. *Sidney.* If any one ſhould aſk me any particular Thing, I could tell how to anſwer.

L. C. J. He aſks you a particular Thing. ’Tis the Duty of the Court to pronounce Judgment, if you do not plead.

Col. *Sidney,* Why then, if you drive me upon it, I muſt plead.

L. C. J. I am ſure there is no Gentleman of the long Robe would put any ſuch thing into your Head. There was never any ſuch thing done in Capital Matters.

Col. *Sidney.* My Lord, I am there indicted for Conſpiring the Death of the King; I have not Conſpired the Death of King: I am there indicted for Levying of War; I have not done that: I am indicted for having invited in others of another Nation; I have not done that neither: I am there indicted to have written a ſeditious Libel to ſtir up the Spirits of the People againſt the King; I have not written any thing to ſtir up the People againſt the King.———

L. C. J. We are not to hear all this, you muſt plead as other People, or elſe in plain *Engliſh* we will pronounce Sentence. We ought to give all Men Satisfaction that will be ſatisfied; but if they won’t be directed we can’t help that.

Col. *Sidney.* My Lord, if you put me upon this inevitable Neceſſity, it lies upon you; I muſt plead then.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. *Sidney.* Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Col. *Sidney.* By God and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

L. C. J. If you be not guilty, I pray God you may eſcape.

Mr. Att. Gen. My Lord, will you pleaſe to appoint a Day for his Trial, that he may take notice of it now?

L. C. J. What time would you have?

Mr. Att. Gen. A Week’s Time, do you think that will be enough?

Col. *Sidney.* No, pray, my Lord, give me a Fortnight’s Time.

Mr. Att. Gen. I won’t oppoſe it.

Col. *Sidney.* In the next Place I deſire a Copy of the Indictment.

L. C. J. We can’t grant it by Law.

Col. *Sidney.* I deſire you would pleaſe to give me Counſel.

L. C. J. We can’t do it; if you aſſign us any particular Point of Law, if the Court think it ſuch a Point as may be worth the debating, you ſhall have Counſel: But if you aſk for Counſel for no other Reaſon than becauſe you aſk it, we muſt not grant it. The Court is bound to ſee that nothing be done againſt you, but what is according to the Rules of Law. I would be very loth to draw the Guilt of any Man’s Blood upon me.

Col. *Sidney.* Has not every Body Counſel?---------*L. C. J.* No.

Col. *Sidney.* I have ſeveral Points of Law.

L. C. J. Tell us them.

Col. *Sidney.* My Lord, will you oblige me that am an ignorant Man, and confeſs myſelf ſo, upon hearing my Indictment for Things I know not of a long Time, preſently to raiſe a Point of Law?

L. C. J. ’Tis not we oblige you, Mr. *Sidney,* ’tis the Law obliges you. We are the Miniſters of the Law, ’tis the Law ſays we are not to allow you Counſel without making your Objections, that the Court may underſtand whether it be fit: ’Tis the Law ſays we may not allow you a Copy of the Indictment. Therefore don’t go away and ſay that we as Men ſitting here impoſe upon you, we ſit here only to adminiſter the Juſtice of the Nation.

Mr. Juſt. *Withins.* Sir, you will have a Fortnight’s Time to conſider of Objections in Law.

L. C. J. If you will have it read, you ſhall. Thoſe Things that you may have by Law, God forbid but you ſhould have the Benefit of them.

Col. *Sidney.* I deſire, my Lord, to hear it read again.

Mr. Att. Gen. Would you have it read in *Latin*?

Col. *Sidney.* Yes, if you pleaſe, I do underſtand a little *Latin.*

Then the Indictment was read in Latin.

Col. *Sidney.* What is that Statute;

L. C. J. When you come to your Trial, Mr. Attorney will tell you what Statute he goes upon. And he may give in Evidence any Act of Parliament that comprehends Treaſon.

Col. *Sidney.* Methinks he ſhould ſay what Satute he goes upon.

Mr. Juſt. *Withins.* Sir, would have a new Indictment for you?

L. C. J. He muſt take notice of his Trial this Day Fortnight. Lieutenant of the Tower, you may take the Priſoner back again.

Then the Lieutenant of the Tower took away his Priſoner.

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* See this Plea in the *Appendix.*

ON the 21ſt of *November*, *Algernon Sidney*, Eſq; was brought to the Bar of the Court of *King's-Bench* by *Habeas Corpus*, and Proclamation for Information being made, he deſired Pen, Ink and Paper, which were granted him. And he alſo deſired, that two perſons, (*viz*) Mr. *Wynn* and Mr. *Gibbs*, might write for him, which was alſo allowed by the Court.

Col. *Sidney*. My Lord, when I was laſt here before your Lordſhip, I did deſire a Copy of my Indictment, and I thought the Law did allow it me. But being in an hurry, carried firſt to a Tavern, then led through Soldiers, and ſurprized abſolutely, I could not give that Reaſon why I thought the Law allowed me a Copy. My Lord, I was denied a Copy, and thereby I was deprived of the Benefit of a ſpecial Plea I deſigned to have put in. This would have been a great Help to your Lordſhip, and to me; the Denial of which hath been a great Prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Teſtimony that 'tis ſo now upon the Statute of 46 *Edw.* III. wherein 'tis expreſſed, that *tout partes & tout gents*, that is, all People ſhall have a Copy of every Record; and it enumerates ſeveral Matters, as well that againſt the King as other People. This is a general Law ſtill in force: My Lord *Strafford*, had a Copy, and my Lord *Stafford*, and the Lords in the *Tower* had Copies of their Indictments. And, under favour, I think it was never more neceſſary than to me, there never having been, perhaps, a Charge ſo long and ſo confuſed. Now, my Lord, I have a Copy tranſcribed of this Statute. [*Shewing a Paper.*]

Sir *George Jefferies.*

L. C. J. We remember the Law very well. Mr. *Sidney* did move for a Copy of the Indictment, and the Court denied him then, and ſo ſhall now. And yet all this while we ſhall deny you nothing that is Law. You ſhall have the Right that becomes a Subject in your Condition. And we muſt tell you, that notwithſtanding all that Caſe we ought not to have given you ſo much Favour (perhaps in ſtrictneſs) as we did. And becauſe you did particularly take notice of the Caſe of Sir *Henry Vane* laſt Time, I will ſhew you the Court did indulge more to you than was done to that Perſon. In Sir *Henry Vane*'s Caſe, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they ſhew Matter of Law. But your Counſel, ſince you went away, moved for the Copy of the Indictment; and to ſatisfy them, I directed the Caſe that you took notice of to be read in the Court: And I thought they had been ſufficiently ſatisfy'd. You had the Indictment read to you in *Latin*, which was denied in the Caſe of Sir *Henry Vane*. And there is a later Caſe known to moſt Perſons here. By the Opinion of all the Judges of *England*, a Copy of the Indictment was denied to my Lord *Ruſſel*. Therefore arraign him upon the Indictment; we muſt not ſpend our Time in Diſcourſes to captivate the People.

Trial LIX.

Col. *Sidney*. Is not this a good Law, my Lord? [*Holding out the Paper.*

L. C. J. You have the Rule of the Court.

Mr. Juſt. *Withens.* Any thing the Law will allow you, you ſhall have; but I am ſure if you did adviſe with your Counſel, they muſt tell you the ſame Thing.

So the Clerk of the Crown called the Jury, and after ſeveral Challenges, the Names of the Jury were as follow,

John Amger,
Richard White,
William Linn,
Lawrence Wood,
Adam Andrews,
Emery Arguiſe,
Jur'
Joſias Clerke.
George Gliſby.
Nicholas Baxter,
William Reeves,
William Grove, and
John Burt.

L. C. J. Look you, Gentlemen of the Jury, there are ſome Gentlemen at the Bar, as we are informed, are apt to whiſper to the Jury; 'tis no part of their Duty; nay, 'tis againſt their Duty: And therefore, Gentlemen, if you hear any of them by you that offer to whiſper, or make Comments in this Cauſe, as you are upon your Oaths, and I doubt not but will do your Duty between the King and the Priſoner; ſo I expect if you hear the Counſel ſay any thing, you will inform the Court. Let us have no Remarks, but a fair Trial in God's Name.

Cl. of Cr. You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Algernon Sidney*, of, *&c.* (as in the Indictment) your Charge is to inquire, *&c.*

Then Proclamation for Evidence was made.

Mr. *Dolben.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, This is an Indictment of High-Treaſon preferred againſt *Algernon Sidney*, the Priſoner at the Bar. The Indictment ſets forth, That he, as a falſe Traitor againſt our moſt Illuſtrious Prince, *Charles* the Second, his natural Lord, not having the Fear of God in his Heart, *&c.* On the Thirtieth of *June*, in the Thirty Fifth Year of the King, and divers other Days and Times, as well before as after, in the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, traiterouſly, with divers Traitors unknown, did conſpire the Death of the King, and to levy War within the Kingdom. And, to complete theſe Traiterous Purpoſes, did then, and there maliciouſly, adviſedly and traiterouſly, ſend one *Aaron Smith* into *Scotland*, to excite ſome ill diſpoſed Perſons of that Kingdom to come into this, and to conſult with the ſaid *Algernon Sidney*, and other Traitors, of and upon Aſſiſtance from the Kingdom of *Scotland* to carry on thoſe Deſigns. And the Indictment ſets forth further, that to perſuade the People of *England* it was lawful to raiſe Rebellion, the ſaid *Algernon Sidney* did cauſe to be written a falſe ſeditious Libel, in which are contained theſe *Engliſh* Words, *The Power originally in the People of* England *is delegated unto the Parliament. The King is ſubject to the Law of God, as he is a Man to the People that makes him a King. In as much as he is a King, the Laws ſets a meaſure unto that Subjection*, &c. (as in the Indictment.) This is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. If we prove him Guilty, we doubt not but you will find it.

Sir *Robert Sawyer.*

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted of the higheſt Crimes, the conſpiring the Death of the King, and the Overthrow of the *Engliſh* Monarchy. Gentlemen, we ſhall uſe this Method in our Evidence. We ſhall ſhew by many Witneſſes, that there was a Deſign of raiſing and making a Rebellion within this Kingdom. For, Gentlemen, you muſt take notice, and I think there is no *Engliſhman* but does believe, that for ſeveral Years laſt paſt a Deſign was laid, and for that purpoſe ſeveral ſecret Inſinuations were made uſe of, and public Libels ſpread abroad to perſuade the People, that the King was introducing Arbitrary Power; that he ſubverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the World believe the King was a *Papiſt*. And when, Gentlemen, by ſuch Stratagems they had worked upon many incautelous Perſons, when they thought they had gotten a ſufficient Party, then there was a Deſign of an open Riſing, (for they thought all Things were ripened) and that was to be in ſeveral Parts of the Kingdom. Some Perſons, to effect this Deſign, were for a preſent Aſſaſſination of the King. Others would do it in a more fair and gentle way. They thought it below Perſons of that great Quality as the Priſoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we ſhall then come to ſhew you what Share and Part the Priſoner had in this Deſign. For certainly he was looked upon as a very eminent Perſon, whoſe Education abroad, and former Practices at home had rendered him fit for to adviſe and proceed in ſuch Affairs. We ſhall prove when theſe Matters were ripe, this Gentleman was of the Council of State, of the Six that were to manage this Matter of the Riſing. We ſhall ſhew the ſeveral Conſultations they held; one at Mr. *Hambden*'s Houſe, another at the Houſe of my Lord *Ruſſel*. There we ſhall acquaint you what Debates they had; for they acted like very ſubtile Men; and there they debated, whether the Riſing ſhould be firſt in the Country or City, or both together. They came to a Reſolution it ſhould be in both Places at once. Then, when they had aſſerted that Point, they come to conſider the Time of Riſing; and upon that they thought fit to call in Aid of *Scotland* firſt; and that was this Genleman's particular Province. For he, being a Man of great Secrecy, was to ſend an Emiſſary into that Kingdom, and invite ſome Perſons over to treat with them about it. We ſhall prove that an Emiſſary was ſent, and this Gentleman gave him a conſiderable Sum to bear his Charges. We ſhall prove that ſeveral *Scotch* Gentlemen, in Purſuance of this Reſolve, came here to treat with this great Council of State, about this Affair: And ſhall make it appear to you, that as ſoon as ever the leaſt Diſcovery of this Plot was, Theſe Perſons concealed themſelves and withdrew, as the reſt of the Plotters that have fled from Juſtice.

Gentlemen, this was not enough for this Gentleman to conſult on theſe ſeveral Paſſages, but to demonſtrate to the World, that his Head and Heart was entire in this Service, and that he might carry it on the more effectually, he was at this very time, when this Emiſſary was gone into *Scotland*, preparing a moſt Seditious and Traiterous Libel; we inſtance in ſome particular Words of it; but we ſhall ſhew you, that the whole Deſign of this Treatiſe is to perſuade the People of *England*, that it is lawful, nay, that they have a Right to ſet aſide their Prince, in caſe it appear to them, that he hath broken the Truſt laid upon him by the People. Gentlemen, he does uſe in that Treatiſe ſeveral Arguments drawn from the moſt Rebellious Times that ever were in *England*, from the late Rebellion (I muſt needs uſe that Word, notwithſtanding the Act of Oblivion, when a Gentleman ſhall now attempt to do thoſe Things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been proſperous againſt Princes. Then he falls to reaſoning, and uſes great Reaſon in the Caſe, that all the Power of the Prince is originally in the People, and applies that Diſcourſe, that the Power of the King was derived from the People upon Truſt, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might aſſume that original Power they had conferred. And he tells the King, that is no hard Condition; if he thinks it ſo, he ſhould lay down his Crown, if not, he threatens the Condition would be exacted, or otherwiſe ſhould be revenged by thoſe he had betrayed; and who but this Gentleman and his Confederates, that thought himſelf not only able to govern this Nation, but many Monarchies, ſhould call him to Account for it? For he lays down this Principle, that tho' all the People do riſe againſt their Prince, it is no Rebellion. The whole Book is an Argument for the People to riſe in Arms, and vindicate their Wrongs. He lays it down, *That the King has no Authority to diſſolve the Parliament; but 'tis apparent the King hath diſſolved many; therefore he hath broken his Truſt, and invaded our Rights.* And at laſt concludes with that Paſſage laid in the Indictment, *We may therefore ſhake off our Yoke; for 'tis not a Yoke we ſubmitted to, but a Yoke by Tyranny* (that muſt be the meaning of it) *they have impoſed on us.*

Gentlemen, if we prove all theſe Matters to you, I doubt not you will do right to the King and Kingdom, and ſhew your Abhorrence of thoſe Republican Principles; which, if put in Practice will not only deſtroy the King, but the beſt Monarchy in the World.

Mr. Sol. Gen. Pray call Mr. *Weſt.* Mr. *Finch.*

[*Who appeared.*]

Col. *Sidney*. I pray one Word, my Lord, before Mr. *Weſt* be ſworn: I have heard, my Lord, Mr. *Weſt* hath confeſſed many Treaſons, I deſire to know whether he is pardoned, or no?

L. C. J. I don't know that.

Col. *Sidney*. My Lord, how can he be a Witneſs then?

L. C. J. Swear him: For I know no Legal Objection againſt him. He was a good Witneſs in my Lord *Ruſſel*'s Trial.

Col. *Sidney*. My Lord, if another did not except againſt him, 'tis nothing to me.

Mr. *North.* Pray give an Account to the Court of what you know of a general Inſurrection intended in *England.*

Col. *Sidney*. What he knows concerning me.

L. C. J. We will take care of that, that no Evidence be given but what ought to be.

Col. *Sidney*. Is it ordinary that he ſhould ſay any thing, unleſs it be to me and my Indictment?

L. C. J. Mr. *Sidney*, You remember in all the Trials about the late *Popiſh* Plot, how there was firſt a general Account given of the Plot in *Cole-*

man's

man's Trial, and ſo in *Plunket*'s, and others: I don't doubt but you remember. And Sir *William Jones* againſt whoſe Judgment, I believe, you won't object, was Attorney at that time.

Mr. *North*. Mr. *Weſt*, What do you know of the general Inſurrection lately deſign'd?

Mr. *Weſt*. My Lord, I have had the Honour to know Colonel *Sidney* ſeveral Years; but I don't remember that I ever ſaw him from the time I came acquainted with any part of the Conſpiracy, till the Diſcovery that was at the Council.

Mr. *North*. Pray give an Account of what you know of the Plot in general.

Mr. *Weſt*. My Lord, in *October* laſt, Captain *Walcot* came to me, and told me that my Lord *Shafteſbury* had deſigned an Inſurrection in *November*; I uſed ſome Arguments to diſſuade him from it. But a little afterwards he came and told me, the Thing was wholly diſappointed, and then it went off, and my Lord *Shafteſbury* went for *Holland*. Colonel *Rumſey* afterwards, about *Chriſtmas*, ſaid there were ſome Lords and Gentlemen intended to make an Inſurrection; the Perſons were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, the Priſoner at the Bar, and Mr. *Hambden, jun*. After ſome time he told me they had altered their Meaſures, and were reſolved not to venture upon an Inſurrection in *England*, 'till they had a Concurrency in *Scotland*. Afterwards I was not privy to any thing elſe, but what I had the Report of from Mr. *Nelthrop* and Mr. *Ferguſon*. Mr. *Nelthrop* told me the Priſoner had ſaid——

Col. *Sidney*. My Lord, I am very unwilling to interrupt the Gentleman---

L. C. J. You muſt not interrupt the Witneſs. Go on, Sir.

Mr. *Weſt*. Mr. *Nelthrop* told me, the Priſoner at the Bar had ſent *Aaron Smith* into *Scotland*, and given him a Sum of Money to bear his Charges, and ſent Letters to ſome *Scotch* Gentlemen to invite them to Town. The Letter bore a Cant of ſettling ſome Buſineſs in *Carolina*; but the Buſineſs was coming up about the Inſurrection. After this Mr. *Smith* returned, and ſome *Scotch* Gentlemen with him; and ſoon after Mr. *Ferguſon* gave an Account of that Affair, and ſaid, the *Scotch* propoſed, if they might have Thirty Thouſand Pounds in ready Money, they would undertake to make an Inſurrection in *Scotland*, without the Concurrence of *England*. He ſaid this Propoſal was agreed to, and Money would be ſoon ready; and he ſaid that *Sheppard* would return the Money. That the Arms were ready bought, and my Lord of *Argyle* would go into *Scotland*, and head the *Scots*. He told me when Things were thus ſettled, ſome difference aroſe about raiſing the Money; and at laſt he told me, my Lord *Grey* did offer to raiſe ten thouſand Pounds out of his own Eſtate, if the reſt would pay their Proportion. Then the *Scots* came down to leſs, but that would not be complied with. The Places for the Riſing were *Briſtol*, *Taunton*, *York*, *Cheſter*, *Exeter*, *London*. That there had been ſome Debates, whether they ſhould begin at *London* or the other Places, and at laſt it was reſolved they ſhould begin at *London* with the reſt of the Places.

My Lord, This was the Account I had of the Matter in general of Mr. *Ferguſon*; but he ſaid they were diſappointed. Afterwards he told me the Priſoner at the Bar, and Major *Wildman*, were very inſtrumental in working of it off, becauſe they could not agree upon the Declaration to be made upon the Inſurrection. The *Engliſh* were for a Commonwealth: but the *Scotch* Gentlemen anſwered fairly, it might come to it in time, but the Noblemen there would not agree to it at preſent. As to the Priſoner in particular, I know nothing, and did never ſpeak with him 'till ſince the Diſcovery.

Mr. Att. Gen. Colonel *Rumſey*. [*Sworn.*]

Mr. *North*. Pray, Sir, will you give the Court an Account of what you know of any Inſurrection intended, and how they deſigned to carry it on?

Col. *Rumſey*. My Lord, the latter end of *October*, or the beginning of *November*, I was deſired by my Lord *Shafteſbury* to go to Mr. *Sheppard*'s to know of the Gentlemen that were met there, what was done about the Riſing intended at *Taunton*; and I had their Anſwer, that Mr. *Trenchard* had failed them, and that it muſt ceaſe for that time. That was all at that time.

Mr. Sol. Gen. What elſe do you know of any Inſurrection afterwards?

Col. *Rumſey*. After that we had ſeveral Meetings at Mr. *Weſt*'s Chamber, where we had divided the City into twenty Parts, and ſeven Parts Mr. *Goodenough* had brought an Account of; the other thirteen he ſaid nothing of; for he had not ſpoke with thoſe that were to tell him how many Men they would afford. There was there Captain *Walcot*, Mr. *Weſt*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade*, and myſelf.

L. C. J. What was the reſult of thoſe Debates?

Col. *Rumſey*. To ſee what Number of Men they could produce in the City for the Inſurrection.

L. C. J. Was there a Riſing deſigned?

Col. *Rumſey*. Yes.

L. C. J. And did theſe People meet?

Col. *Rumſey*. There was no time ſet.

Mr. Sol. Gen. When was the Meeting?

Col. *Rumſey*. There were ſeveral Meetings in *March*, and *April*, and *May*.

Mr. Sol. Gen. After the Meeting at *Sheppard*'s?

Col. *Rumſey*. Yes, a great while. It ceaſed, I think, ſix Weeks or three Months.

L. C. J. Who did you meet with at Mr. *Sheppard*'s?

Col. *Rumſey*. There was the Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Mr. *Ferguſon*, and Mr. *Sheppard*.

Mr. Sol. Gen. Who did you expect ſhould head this Army?

Col. *Rumſey*. That was never ſaid any thing of.

Mr. Att. Gen. Who were to manage the Riſing?

Col. *Rumſey*. We that met there.

Mr. Att. Gen. Had you no expectation of great Men?

Col. *Rumſey*. Mr. *Weſt* told me, and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Eſſex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Ruſſel*, there were Six.

L. C. J. What did he tell you of them Six?

Col. *Rumſey*. He told me they were managing a Buſineſs with *Scotland*.

L. C. J. A Buſineſs, pray ſpeak plain, tell all you know.

Col. *Rumſey*. For the Inſurrection.

L. C. J. Say ſo then, we know nothing of the Buſineſs you were about.

Col. *Rumſey*. My Lord, Mr. *Weſt* had that Diſcourſe with my Lord *Howard* I never had; he is more fit to ſpeak to that than me.

L. C. J. Speak your own Knowledge and no more.

Mr. *Jones*. After the Death of my Lord *Shafteſbury*, who were the Managers, and were to carry it on?

Col. *Rumſey*. I told you, Mr. *Weſt* and Mr. *Goodenough* did tell me the Duke of *Monmouth*, my Lord *Eſſex*——

Mr. Att. Gen. He told you ſo before. Do you know there was an Inſurrection then intended?

Col. *Rumſey*. Yes, becauſe we met towards the Management of it; the Company that met at Mr. *Weſt*'s Chamber, and other Places.

Mr. Att. Gen. What Diſcourſe had you with Mr. *Ferguſon* about it?

Col. *Rumſey*. Not about thoſe Gentlemen.

Mr. *North*. The next Thing we ſhall ſhew, ſhall be that the *Scotchmen* came to Town.

Col. *Sidney*. My Lord, I muſt ever put you in mind, whether it be ordinary to examine Men upon Indictments of Treaſon concerning me that I never ſaw, nor heard of in my Life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury ſo.

Col. *Sidney*.. But it prepoſſeſſes the Jury.

Mr. Keiling *called and ſworn.*

Mr. Att. Gen. I aſk you in general, what you know of the Riſing to have been laſt Spring?

Mr. *Keiling*. My Lord, It was ſome time laſt Summer, Mr. *Goodenough* came to me, and brought me *three* Papers numbered on the backſide; I aſked him to what end he delivered them me? He told me, One was for myſelf, and I was to deliver the other Two to whom I could truſt in the two Diviſions. I aſked him, what was the Deſign? He ſaid, to raiſe Men. Says I, Do you deſign a general Inſurrection? He ſaid, if he did not, if the King was taken off this would do well; for then People would know how to have recourſe to a formidable Body. And I have heard him ſay, that Colonel *Sidney*, whom I don't know, had a conſiderable Part in the Management of that Affair.

Mr. Att. Gen. We charge him with Conſpiring, and there muſt be Confederates in the Caſe, Now then we come to the Priſoner, we will call my Lord *Howard*, that was one of the Perſons that did conſult.

The Lord Howard *ſworn.*

Mr. Att. Gen. Pray acquaint my Lord and the Jury of your Knowledge, of what Tranſactions there have been with the Priſoner about this Affair of the general Riſing.

Lord *Howard*. Truly, my Lord, in the entering of the Evidence I am about to give, I cannot but obſerve, what a natural Uniformity there is in Truth. For the Gentlemen that have been before, have ſo exactly inſtanced, in every Particular, with what I have to ſay, that two Tallies could not more exactly fall into one another, though I confeſs I had not ſeen their Faces, 'till the Plot broke out, for ſome Months before.

My Lord, and Gentlemen of Jury, About the middle of *January* laſt, it was conſidered by ſome of us that met together, that it was very neceſſary and expedient to an Enterprize that had been long in Hand, and fallen flat then, that it ſhould be revived by ſome Conſult or Cabal, that ſhould be ſet up to give life to it, and Governance to the Motions of it. The firſt (for ought I know) Movers of this were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self: And there we did agree, that we ſhould bethink ourſelves of ſome few, we were willing it ſhould not exceed *Five*, at the moſt *Seven*. This Agreement being at firſt between us *Three*; I remember the Duke of *Monmouth* undertook to engage my Lord *Ruſſel*, and my Lord *Saliſbury*; and this Gentleman Colonel *Sidney* for my Lord of *Eſſex*, and Mr. *Hambden*; and theſe being put together, did preſently conſtitute a little Cabal, of as great a Number as was intended. This being ſettled among them, it was within a few Days after, I can't certainly tell when, but between the middle and latter end of *January* that I was told, that the Perſons had agreed to enter into this Conjunction of Councils; and in order to that, they had appointed a Meeting at Mr. *Hambden*'s Houſe, to which I was invited. This, in time, was between the middle and latter end of *January*, but I can't tell exactly. When we came there, there were all thoſe Gentlemen I before named, the Duke of *Monmouth*, my Lord *Eſſex*, my Lord *Ruſſel*, Colonel *Sidney*, Mr. *Hambden*, and my Self. It was at Mr. *Hambden*'s Houſe which ranges on the ſame Row with *Southampton* Houſe: And being met, Mr. *Hambden*, I ſuppoſe, did think it moſt properly belonged to him to take upon him the Part as it were to open the Seſſions, that was, to give us a little Account of the Reaſon, End, and Intention of that Meeting: In which Diſcourſe, he took Occaſion to recapitulate ſome Deſign, that had been before chiefly carried on by my Lord *Shafteſbury*, before this time Dead; and alſo took notice of the ready Diſpoſition and Inclination of the Minds of Men to go on with it; and did give one Inſtance of his Judgment of it, That it being a Deſign communicated to ſo many, it had not been ſo much as Revealed, or a Murmur or Whiſper gone about it: From whence he took occaſion to tell us, that it was abſolutely neceſſary for the future, there ſhould be ſome Council that ſhould be as a Spring, a little to guide and govern the Motions of the reſt, for that there were divers Things to be taken care of, which if not taken care of by particular Perſons, would all miſcarry. This was the Subſtance of the Prologue and Introduction he made. From hence he made a Tranſition to ſome particular Things, that he thought were moſt principally to be taken care of. And though it is impoſſible for me to remember the Order and Method in which we diſcourſed, or who ſaid this or that; but that which the Senſe of all reſulted to was this: That ſince we did not come prepared for it, we ſhould conſider what were the Things that would hereafter challenge our particular Care, that was, the Time when, the Places where, and the Perſons by whom theſe Things ſhould be carried on. This led into ſome particular Diſcourſe concerning ſome of theſe Heads: For the Time, that it ſhould be ſhortly, leſt the Minds of Men ſhould chill; and then as to the Place where, whether in City or Country, or both jointly. In all theſe, ſome Opinions were given, but not ſettled to any Reſolution, but they were committed to our Thoughts to be digeſted afterwards. But theſe being the Things that every one was to take upon his Thoughts, there was this Pre-requiſite to the Undertaking, and that was to conſider what *Magazines* were to be got; and that led to another Particular, which was, with what they ſhould be gotten, and that was Money; and thereupon was propounded a conſiderable Sum to be raiſed: and, as I remember, the Sum propounded by the Duke of *Monmouth* was *Twenty-Five Thouſand* Pounds, or *Thirty Thouſand* Pounds. And then it was conſidered, how it ſhould be raiſed without drawing Obſervation or Jealouſy. Theſe are only the Heads that were then agreed on, hereafter to be better conſidered. But the preſent Reſolution that was taken, was, that before any Procedure was made in any of theſe Things, or any Advance towards the Undertaking; the firſt thing to be conſidered was, How to make a Coalition of Councils between *Scotland*, and what we were doing here; and for that purpoſe, we ſhould bethink ourſelves of ſome fit Perſon to be ſent thither, to Unite us into one Senſe and Care. This is as much as occurs to my Memory upon that Meeting. About a Fortnight or three Weeks after, which I ſuppoſe carried it to the middle of *February* next, we had another Meeting, and that was at *Southampton*-Houſe at my Lord *Ruſſel*'s, and there were every one of the ſame Perſons; and when we came there, there happened to fall in a Diſcourſe which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unſeaſonable; and that I remember was by Mr. *Hambden*, who did tell us, That having now united ourſelves into ſuch an Undertaking as this was, it could not but be expected, that it would be a Queſtion put to many of us; To what end all this was? Where it was we intended to Terminate? Into what we intended to Reſolve? That theſe were Queſtions he met with; and it was probable, every one had or would meet with from thoſe Perſons whoſe Aſſiſtance we expected; and that if there was any thing of a Perſonal Intereſt deſigned or intended, that there were but very few of thoſe, whoſe Hearts were now with us, but would fall off: And therefore, ſince we were upon ſuch an Undertaking, we ſhould reſolve ourſelves into ſuch Principles, as ſhould put the Properties and Liberties of the People into ſuch Hands, as it ſhould not be eaſily invaded by any that were truſted with the Supreme Authority of the Land; and it was mentioned to Reſolve all into the Authority of the Parliament. This was moved by him, and had a little Harſhneſs to ſome that were there; but yet upon the whole Matter we generally conſented to it, That it was nothing but a Public Good that we all intended. But then after that, we fell to that which we charged ourſelves with at the firſt Meeting, and that was concerning ſending into *Scotland*, and of ſettling an Underſtanding with my Lord of *Argyle*: And in order to this, it was neceſſary to ſend a Meſſenger thither to ſome Perſons, whom we thought were the moſt leading Men of the Intereſt in *Scotland*: This led us to the inſiſting on ſome particular Perſons; the Gentlemen named, were my Lord *Melvin*, Sir *John Cockram*, and the *Campbels*; I am ſure it was ſome of the Alliance of my Lord of *Argyle*, and I think of the Name. As ſoon as this was propounded, it was offered by this Gentleman Colonel *Sidney*, that he would take the Care of the Perſon; and he had a Perſon in his Thoughts, that he thought a very fit Man to be intruſted; one or two, but one in ſpecial, and he named *Aaron Smith* to be the Man, who was known to ſome of us, to others not; I was one that did know him, and as many as knew him, thought him a proper Perſon. This is all that occurs to me that was at the ſecond Meeting, and they are the only Conſults that I was at.

Mr. Att. Gen. What was he to do?

Lord Howard. There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, becauſe he had a particular Dependence upon him, and I think ſome Relation to his Lady: But to Sir *John Cockram* there was a Letter to be ſent under the diſguiſe of carrying on ſome Buſineſs of the Plantation in *Carolina*. This Letter I ſuppoſe was writ by my Lord *Ruſſel* (tho' I know it not) for he was perſonally known to my Lord *Ruſſel*, and I don't know that he was known to any of us. About three Weeks after this, then he was diſpatched I ſuppoſe.

Mr. Att. Gen. To what purpoſe were theſe Gentlemen to come up?

Lord Howard. Theſe were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there were or might be of putting them into a Commotion, and how Men might be raiſed, and how they would fall under *Argyle*, and alſo to keep Time and Place with us. After this, I was with Colonel *Sidney*, when he was going into *London*, and he did take out ſeveral Guineas, I can't tell how much it was, I ſuppoſe they might be about ſixty, and put them into his Pocket (and ſet me down at my Lodging) which he ſaid were to give *Aaron Smith*; whether he gave it or no, I don't know; and after that he was ſent.

Mr. Att. Gen. Who told you ſo?

Lord Howard. Colonel *Sidney*. For I was inquiring of him; and he ſaid, he had not heard of him in three Weeks, or but once, when he was about *New-Caſtle*. After this, I had Occaſions that called me into the Country, and there I was. Some time after that I went to the *Bath*: And this is all the Account I can give.

Mr. Sol. Gen. Do you know that *Aaron Smith* did go?

Lord Howard. I know nothing but by hear-ſay. Colonel *Sidney* told me he was gone, and was upon the Road, and he heard from him about *Newcaſtle*.

L. C. J. Did you underſtand by the Diſcourſe after he was gone, that he went in purſuance of that Debate?

Lord Howard. Yes, my Lord, That was the whole end of his going.

Mr. Juſt. Withins. I think you ſay, that Gentleman [*ſpeaking of Col.* Sidney] undertook to ſend him.

Lord Howard. Yes, he did.

L. C. J. Will you aſk him any Queſtions?

Col. Sidney. I have no Queſtions to aſk him.

Mr. Att. Gen. Silence—You know the Proverb. The next Step is to ſhew you, my Lord, that theſe Perſons came up immediately after *Aaron Smith* went down thither; and according to that which was ſaid to be the ſhadow and pretence of their coming hither, they pretended they came about *Carolina* Buſineſs. Sir *Andrew Foſter* and Mr. *Blathwaite*.

Sir Andrew Foſter *ſworn.*

Mr. Att. Gen. Pray, Sir, give an Account what *Scotch* Gentlemen came up lately.

Sir Andrew Foſter. My Lord, about the End of the Spring, or Beginning of Summer, as I remember, theſe Gentlemen, Sir *John Cockram*, and Commiſſary *Monro*, and the two *Campbels*, Father and Son, came up hither. I did not ſee the Father at all, but I ſaw the Son the Day of the Lord *Ruſſel*'s Trial; but the other two, I think, I ſaw a little before the Diſcovery of the Plot.

Mr. Att. Gen. What did they pretend they came about?

Sir Andrew Foſter. They pretended they came to make a Purchaſe in *Carolina*, and I ſaw their Commiſſion from the Perſons ſaid to be concerned in that Deſign.

L. C. J. Who do you ſpeak of?

Sir Andrew Foſter. Sir *John Cockram* and Commiſſary *Monro*.

Mr. Att. Gen. As ſoon as the Rumour came of the *Plot*, What became of thoſe Gentlemen?

Sir Andrew Foſter. Sir *John Cockram* abſconded, but Commiſſary *Monro* never abſconded; and the *Campbels* I heard were ſeized changing their Lodging from Place to Place.

Mr. Atterbury *ſworn.*

Mr. Att. Gen. Mr. *Atterbury*, will you give my Lord and the Jury an Account what you know of theſe *Scotchmen*, their abſconding and lying hid.

Mr. Atterbury. My Lord, upon the latter End of *June*, or the Beginning of *July*; the Beginning of *July* it was, I was ſent for into *London* upon a Diſcovery of ſome *Scotch* Gentlemen that lay about *Black-Friers*; and when I came down there, there was the *Common Serjeant* and ſome others had been before me, and found them making an Eſcape into a Boat.

Mr. Att. Gen. Who were they?

Mr. Atterbury. Sir *Hugh Campbel*, and Sir *John Cockram*, and one that was committed to the *Gatehouſe* by the Council, as ſoon as brought thither.

Mr. Att. Gen. We ſhall end here, my Lord: How long had they been in Town?

Mr. Atterbury. They had been in Town ſome little time.

Mr. Att. Gen. We have done with this Piece of our Evidence. Now, to ſhew that while this Emiſſary was in *Scotland*, at the ſame time the Colonel (which will be another Overt-Act of the Treaſon) was writing a treaſonable Pamphlet. I will call you the Witneſſes. It is all of his own Writings. Sir *Philip Lloyd*.

Mr. Att. Gen. Sir *Philip Lloyd*, pray, will you look upon thoſe Papers, and give my Lord and the Jury an Account where you found them.

Sir Philip Lloyd. I had a Warrant, my Lord, from the Secretary by the King and Council, to ſeize Mr. *Algernon Sidney*'s Papers; and purſuant to it, I did go to his Houſe, and ſuch as I found there I put up. I found a great many upon the Table, amongſt which were theſe, I ſuppoſe it is where he uſually writes; I put them in a Pillow-bier I borrowed in the Houſe, and that in a Trunk; I deſired Col. *Sidney* would put his Seal upon them, that there ſhould be no Miſtake; he refuſed, ſo I took my Seal, and ſealed up the Trunk, and it was carried before me to Mr. Secretary *Jenkins*'s Office. When the Committee ſat, I was commanded to undo the Trunk, and I did ſo, and found my own Seal upon it. And I took the Papers out of the Bag I put them into before.

L. C. J. Was Colonel *Sidney* preſent when you ſeized theſe Papers?

Sir Phil. Lloyd. Yes.

Mr. Att. Gen. Are theſe ſome of thoſe Papers?

Sir Phil. Lloyd. Yes, I verily believe it.

Mr. Att. Gen. In the next Place, I think we have ſome Papers of his particular Affairs which will prove his Hand. Call Mr. *Sheppard*, Mr. *Cooke*, and Mr. *Cary*.

Mr. North. Sir *Philip Lloyd*, When were they ſeiz'd?

Sir Philip Lloyd. Towards the latter End of *June*, my Lord.

Juryman. Which *June?*——*Sir Philip Lloyd.* Laſt *June.*

Mr. Sheppard *ſworn.*

Mr. Att. Gen. Pray, will you look upon thoſe Writings. [*Shewing the Libel.*] Are you acquainted with Colonel *Sidney*'s Hand?

Mr. Sheppard. Yes, my Lord.

Mr. Att. Gen. Is that his Hand-writing?

Mr. Sheppard. Yes, Sir, I believe ſo. I believe all theſe Sheets to be his Hand.

Mr. Att. Gen. How come you to be acquainted with his Hand?

Mr. Sheppard. I have ſeen him write the Indorſement upon ſeveral Bills of Exchange.

Mr. Cary *ſworn.*

Col. Sidney. My Lord, I deſire you would pleaſe to conſider this, that Similitude of Hands can be no Evidence.

L. C. J. Reſerve yourſelf 'till anon, and make all the advantageous Remarks you can.

Mr. Att. Gen. Have you had any Dealing with him?

Mr. Cary. I never ſaw him write to my Knowledge, more than once in my Life, but I have ſeen his Indorſement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his Hand, as far as you can gueſs?

Mr. Cary. My Lord, it is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand?——*Mr. Cary.* Yes.

Mr. Cooke *ſworn, and the Papers ſhewn him.*

L. C. J. What ſay you, Mr. *Cooke?*

Mr. Cooke. My Lord, I did never ſee Colonel *Sidney* write, but I have ſeen ſeveral Notes that have come to me with Indorſement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for Miſpayment?

Mr. Cooke. No, my Lord.

Mr. Att. Gen. I pray it may be read. We will read as much as is neceſſary to prove the Indictment.

Col. Sidney. I pray it may be all read.

L. C. J. Mr. *Attorney* muſt have what Part he deſires read, and you ſhall have what Part you will have read afterwards.

Col. Sidney. I deſire it may all be read.

Mr. Att. Gen. Begin there. *Secondly*, There was no Abſurdity in this, becauſe it was their own Caſe.

Clerk Reads.

Secondly, There was no Abſurdity in this, tho' it was their own Caſe; but to the contrary, becauſe it was their own Caſe, that is, concerning themſelves only, and they had no Superior. They only were the competent Judges, they decided their Controverſies, as every Man in his own Family doth, ſuch as ariſe between him and his Children, and his Servants. This Power hath no other Reſtriction than what is put upon it by the Municipal Law of the Country, where any Man, and that hath no other Force, than as he is underſtood to have conſented unto it. Thus in *England* every Man (in a Degree) hath a Right of chaſtiſing them; and in many Places (even by the Law of God) the Maſter hath a Power of Life and Death over his Servant: It were a moſt abſurd Folly to ſay that a Man might not put away, or in ſome Places kill an adulterous Wife, a diſobedient Son, or an unlawful Servant, becauſe he is Party and Judge, for the Caſe doth admit of no other, unleſs he hath abridged his own Right by entering into a Society where other Rules are agreed upon, and a ſuperior Judge conſtituted, there being none ſuch between King and People: That People muſt needs be the Judge of Things happening between them and him whom they did not conſtitute, that they might be great, glorious, and rich; but that they might judge them, and fight their Battles; or otherwiſe do Good unto them, as they ſhould direct. In this Senſe, he that is *ſingulis Major*, and ought to be obliged by every Man, in his juſt and lawful Commands, tending to the public Good; and muſt be ſuffered to do nothing againſt it, nor in any Reſpect more than the Law doth allow.

For this Reaſon *Bracton* ſaith, that the King hath three Superiors, to wit, *Deum*, *Legem*, *&* *Parliament*, that is, the Power, originally in the People of *England*, is delegated unto the Parliament. He is ſubject unto the Law of God as he is a Man, to the People that makes him a King, in as much as he is a King: The Law ſets a Meaſure unto that Subjection, and the Parliament judges of the particular Caſes thereupon ariſing: He muſt be content to ſubmit his Intereſt unto theirs, ſince he is no more than any one of them, in any other reſpect, than that he is, by the Conſent of all, raiſed above any other.

If he doth not like this Condition he may renounce the Crown; but if he receive it upon that Condition, (as all Magiſtrates do the Power they receive) and ſwear to perform it, he muſt expect that the Performance will be exacted, or Revenge taken by thoſe that he hath betrayed.

If this be not ſo, I deſire to know of our Author, how one or more Men can come to be guilty of Treaſon againſt the King, as *Lex facit ut ſit Rea.* No Man can owe more unto him, than unto any other, or he unto every other Man by any Rule but the Law; and if he muſt not be Judge in his own Caſe, neither he nor any other by Power received from him, would ever try any Man for an Offence againſt him, or the Law.

If the King, or ſuch as he appoints, cannot judge him, he cannot be judged by the Ways ordinarily known amongſt us. If he, or other by Authority from him, may judge, he is a Judge in his own Caſe, and we fall under that which he accounts the utmoſt of all Abſurdities. If a Remedy be found for this, he muſt ſay that the King in his own Caſe may judge the People, but the People muſt not judge the King, becauſe it is theirs; that is to ſay, the Servant entertained by the Maſter may judge him, but the Maſter muſt not judge the Servant, whom he took only for his own Uſe. The Magiſtrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature, the Magiſtrate.

This ſeems to be the Ground of all our Author's Follies; he cannot comprehend that Magiſtrates are for or by the People, but makes this Concluſion, as if Nations were created by or for the Glory or Pleaſure of Magiſtrates, and affects ſuch a Piece of Nonſenſe; it ought not to be thought ſtrange, if he repreſent as an abſurd Thing, that the heedleſs Multitude may ſhake off the Yoke when they pleaſe. But I would know how the Multitude comes under the Yoke, it is a Badge of Slavery. He ſays, that the Power of Kings is for the Preſervation of Liberty and Property. We may therefore change or take away Kings without breaking any Yoke, or that made a Yoke which ought not to be one; the Injury is therefore in Making or Impoſing, and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the headleſs Multitude may ſhake off the Yoke, I know not why the Multitude ſhould be concluded to be headleſs; it is not always ſo. *Moſes* was Head of the Multitude that went out of *Egypt*; *Othniel* led them againſt the King of *Meſopotamia*, under the Conduct of *Phœbidas*; they obtained a Victory againſt the *Moabites*; they had the like Succeſs under *Shamger*, *Barak*, *Gideon*, *Jephthah*, *Samuel*, *Sampſon*, and others againſt the *Canaanites*, *Midianites*, *Philiſtines*, and others; the Multitude that oppoſed *Saul* and *Iſhboſheth* had *David* for its Head: and the ten Tribes that rejected *Rehoboam* choſe unto themſelves *Jeroboam*; the *Athenians* riſing againſt the thirty *Tyrants* had *Thraſybulus*; thoſe that drave ——— from *Thebes* were conducted by *Pelopidas*: When the *Romans* drave out the *Tarquins*, they choſe *Brutus* and *Publicola*, and they deſtroyed the *Decemviri* under *Horatius* and *Valerius*. All the Multitudes that afterwards revolted from them under *Mauritius*, *Telerius*, *Spartanus*, and others, were not headleſs; and we know of none that were, but all either found Heads, or made them. The *Germans* ſet up *Arminius*; the *Britons*, and others in later Times; the *Cartinians*, that roſe againſt *Peter the Cruel*, had the Lord *Detracta Mara*.

The *French*, when they grew weary of the corrupted Races of *Pharamond* and *Pepin*, and the ſame *Pepin* and *Hugh Capet*: The *Scots*, when they ſlew *James* III, had his Son to be their Head; and when they depoſed and impriſoned Queen *Mary*, the Earl of *Murray* and others ſupplied the want of Age that was in her Son: And in all the Revolutions we have had in *England*, the People have been headed by the Parliament, or the Nobility and Gentry that compoſed it; and when the Kings failed of their Duties, by their own Authority called it. The Multitude therefore is not ever headleſs, but doth either find or create Heads unto itſelf, as Occaſion doth require: and whether it be one Man, or a few or more, for a ſhort or a longer Time, we ſee nothing more regular than its Motions. But they may, ſaith our Author, ſhake off the Yoke; and why may they not, if it prove uneaſy or hurtful unto them? Why ſhould not the *Iſraelites* ſhake off the Yoke of *Pharaoh*, *Jabin*, *Siſera*, and others that oppreſſed them?

When Pride had changed *Nebuchadnezzar* into a Beaſt, what ſhould perſuade the *Aſſyrians* not to drive him out amongſt Beaſts, until God had reſtored unto him the Heart of a Man? When *Tarquin* had turned the Regal Monarchy of *Rome* into a moſt abominable Tyranny, why ſhould they not aboliſh it? And when the Proteſtants of the *Low Countries* were ſo grievouſly oppreſſed by the Power of *Spain*, under the proud, cruel, and ſavage Conduct of the Duke of *Alva*, why ſhould they not make uſe of all the Means that God had put into their Hands for their Deliverance? Let any Man, who ſees the preſent State of the Provinces that then united themſelves, judge whether it is better for them to be as they are, or in the Condition unto which his Fury would have reduced them, unleſs they had, to pleaſe him, renounced God and their Religion: Our Author may ſay, they ought to have ſuffered: The King of *Spain* by their Reſiſtance loſt thoſe Countries; and that they ought not to have been Judges in their own Caſe. To which I anſwer, That by reſiſting they laid the Foundation of many Churches, that have produced Multitudes of Men, eminent in Gifts and Graces; and eſtabliſhed a moſt glorious and happy Commonwealth, that hath been ſince its firſt Beginning, the ſtrongeſt Pillar of the Proteſtant Cauſe now in the World, and a Place or Refuge unto thoſe who in all Parts of *Europe* have been oppreſſed for the Name of *Chriſt*: Whereas they had ſlaviſhly, and, I think I may ſay, wickedly as well as fooliſhly ſuffered themſelves to be butchered, if they had left thoſe empty Provinces under the Power of *Antichriſt*, where the Name of God is no otherwiſe known than to be blaſphemed,

If the King of *Spain* deſired to keep his Subjects, he ſhould have governed them with more Juſtice and Mercy; when, contrary unto all Laws, both Human and Divine, he ſeeks to deſtroy thoſe he ought to have preſerved, he can blame none but himſelf, if they deliver themſelves from his Tyranny: And when the Matter is brought to that, that he muſt not reign, or they over whom he would reign, muſt periſh; the Matter is eaſily decided, as if the Queſtion had been aſked in the Time of *Nero* or *Domitian*, Whether they ſhould be left at Liberty to deſtroy the beſt Part of the World, as they endeavoured to do, or it ſhould be reſcued by their Deſtruction? And as for the People's being Judges in their own Caſe, it is plain, they ought to be the only Judges, becauſe it is their own, and only concerns themſelves.

Mr. Att. Gen. The latter end, the laſt Sheet of all, §. 35.

L. C. J. The Argument runs through the Book, fixing the Power in the People.

Cl. of Cr. The general Revolt of a Nation from its own Magiſtrates, can never be called Rebellion.

Mr. Att. Gen. §. 37.

Cl. of Cr. The Power of calling and diſſolving Parliament is not in the King.

Mr. Att. Gen. So much we ſhall make uſe of; if the Colonel pleaſe to have any other Part read to explain it, he may.

Then the Sheets were ſhewn to Col. Sidney.

Col. Sidney. I do not know what to make of it, I can read it.

L. C. J. Ay, no Doubt of it, better than any Man here. Fix on any Part you have a mind to have read.

Col. Sidney. I do not know what to ſay to it, to read it in Pieces thus.

L. C. J. I perceive you have diſpoſed them under certain Heads: To what Heads would you have read?

Col. Sidney. My Lord, let him give an Account of it that did it.

Mr. Att. Gen. My Lord, we will not delay Col. *Sidney* from entering on his Defence, only we have this Piece of Evidence to give further. One of his Accomplices was my Lord *Ruſſel*, we will give in Evidence his Conviction. We will only aſk my Lord *Howard*, Was your Lordſhip ſworn as a Witneſs at the Trial of my Lord *Ruſſel*?

Lord Howard. Yes.

Mr. Att. Gen. Whether or no, when you met, were there in thoſe Debates any Reflections upon the King, that he had broken his Duty?

Lord Howard. Not that I remember.

Mr. Att. Gen. Why would you riſe?

Lord Howard. If you mean upon the Miſgovernment, not perſonally upon the King?

Mr. Att. Gen. Ay.

Lord Howard. Yes, and principally and chiefly that, which we thought was the general Diſguſt of the Nation, the impoſing upon the City at that Time.

Mr. Juſt. Withins. That was complained of at that Time.

Lord Howard. Yes, my Lord, we took it all along to be the chief Grievance.

L. C. J. Have you any more Witneſſes?

Mr. Att. Gen. Only the Record.

Mr. Sol. Gen. I know there is no Time miſpent to make Things clear. If the Jury have a mind to have the Words read again ———

L. C. J. If they have a mind, let it.

Then Mr. Trinder *was ſworn, and teſtified it to be a true Copy of the Record, and ſaid he examined it at* Fiſhmongers-Hall *with Mr.* Tanner.

Then the Record of the Conviction of Lord Ruſſel *was read.*

L. C. J. What will you go to next, Mr. *Attorney*?

Mr. Sol. Gen. We have done, unleſs the Jury deſire to have the Words of the Libel read again. [*But they did not.*]

Col. Sidney. My Lord, I deſire to know upon what Statute I am indicted.

Mr. Att. Gen. My Lord, I will give as plain an Anſwer, You are indicted upon the old Statute of 25 *Edw.* 3.

Col. Sidney. Then I deſire to know upon what Branch of that Statute?

Mr. Att. Gen. Why, I will acquaint you, 'Tis upon the firſt Branch of that Statute, for conſpiring and compaſſing the Death of the King.

Col. Sidney. Then I conceive, what does not come within that, does not touch me.

Mr. Att. Gen. Make what Inferences you pleaſe, Colonel, we will anſwer you.

Col. Sidney. I deſire to know what the Witneſſes have ſworn againſt me upon that Point?

Mr. Att. Gen. Go on, you have heard the Witneſſes as well as we.

L. C. J. He ſays you are indicted upon the Statute of 25 *Edw.* 3. which Statute makes it High-Treaſon to conſpire the Death of the King; and the Overt-Act is ſufficiently ſet forth in the Indictment; now the Queſtion is, whether 'tis proved.

Col. Sidney. They have proved a Paper found in my Study of *Caligula* and *Nero.* That is Compaſſing the Death of the King, is it?

L. C. J. That I ſhall then tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact ſufficient, that is your Duty to conſider.

Col. Sidney. I ſay, my Lord, that ſince I am indicted upon that Statute, I am not to take Notice of any other. I am indicted for conſpiring the Death of the King, becauſe ſuch a Paper is found in my Houſe; under Favour, I think that can be nothing at all to me. For tho' Sir *Philip Lloyd* did aſk me, whether I would put my Seal to it, he did not aſk me 'till he had been in my Cloſet, and I knew not what he had put in, and ſo I told him I would not do it. Then came theſe Gentlemen upon Similitude of Hands. My Lord, we know what Similitude of Hands is in this Age. One told me within theſe two Days, that one came to him, and offered to counterfeit any Hand he ſhould ſhew him in Half an Hour. So then, my Lord, I have nothing to ſay to theſe Papers. Then for Point of Witneſs, I cannot be indicted, much leſs tried or condemned on 25 *Edw.* 3. for by that Act there muſt be two Witneſſes to that very Branch unto which the Treaſon does relate, which muſt be diſtinguiſhed. For the levying of War, and conſpiring the Death of the King are two diſtinct Things, diſtinct in Nature and Reaſon, and ſo diſtinguiſhed in the Statute. And therefore the conſpiring the Death of the King is Treaſon, and the other not. 1 *Edw.* 6. 12. 5 *Edw.* 6. 11. does expreſsly ſay, there muſt be two Witneſſes to either of theſe Acts. Now here is my Lord *Howard*, (I have enough to ſay of him by and by) 'tis he only who ſpeaks of ſix Men, whom he calls a ſelect Council, and yet ſelected by no Man in the World. I deſire to know who ſelected my Lord *Howard?* Who ſelected me? If they were ſelected by no body, 'tis a Bull to ſay they were a ſelect Council: If they were not ſelected, but erected themſelves into a Cabal then, they have either Confidence in one another, or find they are near equally able to aſſiſt in the Deſign. Here is nothing of all this,—Theſe ſix men were Strangers to one another. For my own Part, I never ſpake with the Duke of *Monmouth* above three Times in my Life. and one Time was when my Lord *Howard* brought him to my Houſe and cozened us both. He told the Duke I invited him, and he told me the Duke invited himſelf, and neither of them was true. Now that ſuch Men as theſe are, not hardly knowing one another, ſhould preſently fall into a great and intimate Friendſhip, and Truſt and Management of ſuch a Buſineſs as this is, is a Thing utterly improbable, unleſs they were mad. Now I do find in my Lord *Howard*'s Depoſition againſt my Lord *Ruſſel*, that they were in Proſecution of my Lord *Shaftſbury*'s Deſign; and yet he acknowledges the Duke of *Monmouth* ſaid he was mad, and he ſaid himſelf ſo too. Now that they ſhould join with four more in the Proſecution of the Deſign of a Mad-man, they muſt be mad too. Now whether my Lord *Howard* wonld have you think he was mad, becauſe a Mad-man cannot be guilty of Treaſon, I cannot tell. My Lord *Howard* in his laſt Depoſition at my Lord *Ruſſel*'s Trial, fixes the two Meetings, one about the Middle of *January*, the other ten Days after: Now he fixes one to be the latter End of *January*, the other the Middle of *February*. Then he makes it to be the Proſecution of my Lord *Shaftſbury*'s Deſign. I do not find that any one there had any thing to do with my Lord *Shaftſbury*, for my Part I had not. I had not ſeen his Face in two Years. Then, my Lord, that I go upon is, whatever my Lord *Howard* is, he is but one Witneſs. The Law of God and the Law of Man, underſtood and taken by all Men, does require two Witneſſes; *Moſes* ſays ſo, ſo the Apoſtles the ſame after him, and *Chriſt* ſays the ſame, That every Matter is to be eſtabliſhed by two Witneſſes. There ought to be two Witneſſes to the ſame Thing. Now for one to come and tell a Tale of a Tub, of an imaginary Counſel, and another of a Libel, a Paper written no body knows when, is ſuch a Thing you can never go over it. But if the Law of God be, that there muſt be two Witneſſes to the ſame Fact, there is an End of this Matter. And under the Judicial Law, the Penalty would be in this Caſe, to put a Man to Death. Now here there are but two Things, which if allowed of, no body will be ſafe for Perjury. The one is to ſuffer Men to give their Teſtimony, one to one Thing, and another to another, that the Fraud cannot be diſcovered; and the other is to take away the Puniſhment. Now the Puniſhment is taken away in ſome Meaſure: And do but take away the other Point, whereby the Fraud cannot be diſcovered; and then there is no Defence can be made. That both Witneſſes ſhould be to the ſame Point; ſee the Story of *Suſanna.* Two Elders teſtified they ſaw her in the Act of Adultery: They were carrying of her to Death; both of them ſaid the ſame Thing; until they were taken aſunder and examined, the Fraud was not diſcovered; and then one ſaid, ſhe was under a Tree of the right Hand, and the other, under the Tree on the left; and ſhe eſcaped and they were puniſhed. But now if you apply it to ſeveral Facts, my Lord *Howard* may ſay what he pleaſes, and if another ſhall come with a ſupplemental Proof, no Juſtice can be had. But, my Lord, I deſire this, if there be two Witneſſes to prove the Conſpiracy, and in that there were thoſe Matters done that are Treaſon, I muſt anſwer to it; but if there be not, I preſume I need ſay nothing to it. If you do not allow it me, I deſire Counſel to argue it.

L. C. J. That is a Point of Fact, whether there be two Witneſſes. I tell you before-hand, one Witneſs is not ſufficient.

Col. Sidney. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make thoſe Inferences; I will tell the Jury, if there be not two Witneſſes, as the Law requires in this Caſe, they ought to acquit you.

Col. Sidney. You confound me, I cannot ſtir. You talk of a Conſpiracy; what is a Conſpiracy to kill the King? Is there any more Witneſſes than one for levying of War?

L. C. J. Pray do not deceive yourſelf; you muſt not think the Court and you intend to enter into a Dialogue. Anſwer to the Fact; if there be not ſufficient Fact, the Jury will acquit you. Make what Anſwer you can to it.

Col. Sidney. Then I ſay there being but one Witneſs, I am not to anſwer to it at all.

L. C. J. If you rely upon that, we will direct the Jury preſently.

Col. Sidney. Then for levying War, what does any one ſay? My Lord *Howard*, let him, if he pleaſe, reconcile what he has ſaid now, with what he ſaid at my Lord *Ruſſel*'s Trial. There he ſaid, he ſaid all he could; and now he has got I do not know how many Things that were never ſpoken of there. I appeal to the Court, whether he did then ſpeak one Word of that, that he now ſays of Mr. *Hambden.* He ſets forth his Evidence very rhetorically, but it does not become a Witneſs, for he is only to tell what is done and ſaid, but he does not tell what was done and ſaid. He ſays, they took upon them to conſider, but does not ſay what one Man ſaid, or what one Man reſolved, much leſs what I did. My Lord, if theſe Things are not to be diſtinguiſhed, but ſhall be jumbled all up together, I confeſs I do not know what to ſay.

L. C. J. Take what Liberty you pleaſe. If you will make no Defence, then we will direct the Jury preſently. We will direct them in the Law, and recollect Matter of Fact as well as we can.

Col. Sidney. Why then, my Lord, I deſire the Law may be reſerved to me, I deſire I may have Counſel to that Point of there being but one Witneſs.

L. C. J. That is a Point of Fact. If you can give any Teſtimony to diſparage the Witneſs, do it.

Col. Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Col. Sidney. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the Statute; ſo this is nothing to me.

L. C. J. The Court will have Patience to hear you; but at the ſame Time I think it is my Duty to advertiſe you, that this is but miſpending of your Time. If you can anſwer the Fact, or if you have any Mind to put any Diſparagement upon the Witneſſes, that they are not Perſons to be believed, do it, but do not aſk us Queſtions this Way or t'other.

Col. Sidney. I have this to ſay concerning my Lord *Howard:* He hath accuſed himſelf of divers Treaſons, and I do not hear that he has his Pardon of any: He is under the Terror of thoſe Treaſons, and the Puniſhment for them: He hath ſhewn himſelf to be under that Terror: He hath ſaid, that he could not get his Pardon, until he had done ſome other Jobs, 'till he was paſt this Drudgery of Swearing: That is, my Lord, that he having incurred the Penalty of High-Treaſon, he would get his own Indemnity by deſtroying others. This by the Law of God and Man, I think, deſtroys a Man's Teſtimony. Beſides, my Lord, he is my Debtor, he owes me a conſiderable Sum of Money I lent him in Time of his great Neceſſity; he made ſome Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I ſhould take the Advantage the Law gives me, he finds out a Way to have me laid up in the *Tower:* He is a very ſubtle Man: At my Lord *Ruſſel*'s Trial; he carried his Knife, he ſaid, between the Paring and the Apple; and ſo this is a Point of great Nicety and Cunning, at one Time to get his own Pardon, and at the ſame Time to ſave his Money. Another Thing, my Lord, is, when I was Priſoner, he comes to my Houſe, and ſpeaks with my Servant, and ſays, how ſorry he was that I ſhould be brought in Danger upon this Account of the Plot, and there he did in the Preſence of God, with Hands and Eyes lifted up to Heaven, ſwear he did not believe any Plot, and that it was but a Sham; and that he was confident if I had known any thing, I would have told it him. He hath ſaid ſomewhat of this before, I have ſeveral Witneſſes to prove both. He was deſirous to go further, and he would not only pay my Debt by his Teſtimony againſt me, but he would have got my Plate and other Goods in my Hands into his Hands, and he deſired my Men, as a Place of Truſt, to put them into his Hands. And the next News was, that there was a Warrant againſt my Lord *Ruſſel* and me. But then, my Lord, he made other Affirmations in the ſame Preſence of God, that I was innocent in his Opinion, and he was confident of it; for if he had known any Thing of it, he would have told it. Now I know, in my Lord *Ruſſel*'s Caſe, there was Dr. *Burnet* ſaid ſomething like it. And when he came to anſwer it, he ſaid he was to face it out, and make the beſt of it he could. Now he did face it out bravely againſt God, but he was very timorous of Man. So that my Lord, he does ſay at the ſame Time, at my Lord *Ruſſel*'s Trial, upon his Oath, that he did believe that the Religious Obligation of an Oath, did not conſiſt in the Formality of applying it to the Place, *&c.* but in calling God to witneſs. So that when he did call God to witneſs before Dr. *Burnet* and my Servant, and others, and this is not conſiſtent with the Oath he has taken here, as the Gentleman ſaid at my Lord *Ruſſel*'s Trial, unleſs he has one Soul in Court, and had another at my Houſe, theſe Things are inconſiſtant, and cannot be true; and if he ſwear both under the Religion of an Oath, he ſwears himſelf perjured. Then, my Lord, he talks of *Aaron Smith*, what have I to do with *Aaron Smith?* He ſays, I ſent him; my Lord, there is nobody elſe ſpeaks a Word of it. Then by a ſtrange Kind of Conſtruction and Imagination, they will have it, that ſome Papers here, which are ſaid to be found in my Study, have Relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an Account of theſe Papers, I do not think they are before you, for there is nothing but the Similitude of Hands offered for Proof. There is the like Caſe of my Lady *Carr* ſome few Years ago: She was indicted of Perjury, and as Evidence againſt her, ſome Letters of hers were produced, that were contrary to what ſhe ſwore in *Chancery*, and her Hand was proved; that is to ſay, it was like it: But my Lord Chief Juſtice *Keiling* directs the Jury, that tho' in Civil Cauſes it is a Proof, yet it is the ſmalleſt and leaſt of Proofs; but in criminal Caſes it was none at all. So that my Lord *Howard*'s Teſtimony is ſingle; and what he talks of thoſe two Buſineſſes that he calls a Conſult, and *Aaron Smith*, is deſtroy'd by Want of Proof. What could ſix men do? Can my Lord *Howard* raiſe five Men by his Credit? By his Purſe? Let him ſay as much for me, with all my Heart; for my Part, I do not know where to raiſe five men. That ſuch Men as we are, that have no Followers, ſhould undertake ſo vaſt a Deſign is very unlikely: And this great Deſign that was carried on thus, it had neither Officers nor Soldiers, no Place, no Time, no Money for it. That which he ſaid laſt Time, which he forgot now, he talked of twenty five, or thirty thouand Pound, but no Man knew where it was to be had, but laſt Time he ſaid, it was ſpoken in Jeſt. Now this is a pretty Cabal, that ſix Men ſhould meet about a Buſineſs, and they neglect every one of the Points relating to the Thing they met about, make no Step about the Buſineſs, and if any one did ſpeak of it, it was but in Jeſt. This is a very deep maintaining of the Plot. Then, my Lord, as to theſe Papers, I do not think I am to give any Account of them, I would ſay nothing to the Diſparagement of Sir *Philip Lloyd*, I never ſaw him till he came to my Houſe, but yet I ſay he is the King's Officer, and when I am proſecuted at the King's Suit, I think he ought to be no Witneſs. The Government of *France* is violent and abſolute, but yet a few Years ago, a Miniſter of State had his Papers taken from him, and Abundance of them had dangerous Plots againſt the King in them ; but becauſe they were inventoried in his Officers Preſence, or thoſe deputed by him, there was no Uſe could be made of them, it was an irreparable Fault in the Proceſs, and that ſaved him. The Similitude of Hands is nothing : We know that Hands will be counterfeited, ſo that no Man ſhall know his own Hand. A Gentleman that is now dead, told me, that my Lord *Arlington* about five Years ago, deſired him to write a Letter, and ſeal it as well as he could ; he writ it with Care, and ſealed it with a Wafer and Wax upon it, and within a few Days, my Lord *Arlington* brought him five Letters, and he did not know which was his own. The Attorney ſhews theſe Papers to me, I do not know whether they are my own or no ; but theſe very Papers, ſuch as they are, do abhor, as much as any one can, ſuch a Deſign. Look upon them, you ſee they are all old Ink. Theſe Papers may be writ, perhaps, theſe twenty Years, the Ink is ſo old. But, my Lord, it is a polemical Diſcourſe, it ſeems to be an Anſwer to *Filmar*, which is not calculated for any particular Government in the World : It goes only upon theſe general Principles, that according to the univerſal Law of God and Nature, there is but one Government in the World, and that is intire and abſolute ; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and aboliſh them as he pleaſes : And this whether of Age or no, a Man, or a Child of Senſe, or out of his Senſe. Now, my Lord, what if any Man in his Cabinet ſhould have written this Book ? Then he has another Principle, he ſays, 'tis the ſame Thing whether a King come in by Election, by Donation, by Inheritance, or Uſurpation, or any other Way ; than which, I think, never was a Thing more deſperately ſaid. *Cromwell*, when one *White*, a Prieſt, wrote a Book, wherein he undertook to prove, *That Poſſeſſion was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did ſo every Day in his Life, and acted againſt him too) it would be ſo odious a Principle, he would not endure it, and he uſed him very ſlightly for it. Now this *Filmar*, that no Man muſt write againſt, is the Man that does aſſert it, that it is no Matter how they come by their Power, and gives the ſame Power to the worſt Uſurpers, as they that moſt rightly come to the Crown. By the ſame Argument, if the arranteſt Raſcal of *Iſrael* had killed *Moſes*, *David*, *&c.* and ſeized upon the Power, he had been poſſeſſed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is juſt and good, then I confeſs it may be dangerous for any Thing to be found in a Man's Houſe contrary to it ; but if a Commoner of *England* write his preſent Thoughts, and another Man looking on his Book writes his preſent Thoughts of it, what great Hurt is there in it ? And I aſk Mr. *Attorney* how many Years ago that was written.

L. C. J. I don't know what the Book was in anſwer to. We are not to ſpeak of any Book that Sir *Robert Filmar* wrote, but you are to make your Defence, touching a Book that was found in your Study, and ſpend not your Time, and the Court's Time, in that which ſerves to no other Purpoſe, than to gratify a luxuriant Way of talking that you have. We have nothing to do with his Book, you had as good tell me again, that there was a Parcel of People rambling about, pretending to my Lord *Ruſſel's* Ghoſt, and ſo we may anſwer all the Comedies in *England*. Anſwer to the Matter you are indicted for. Do you own that Paper ?

Col. Sidney. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertiſe you, that you ſpend not your Time to no Purpoſe, and do yourſelf an Injury.

Col. Sidney. I ſay firſt, 'tis not proved upon me ; And ſecondly, 'tis not a Crime if it be proved —

L. C. J. You began very materially in one Thing ; it is material for you to apply yourſelf to take off the Credibility of my Lord *Howard*, that is a Witneſs ; call your Witneſſes to that Purpoſe, or if you have any other Point to take away the Credibility of any other Witneſs.

Col. Sidney. My Lord, I have ſeven or eight Points of Law.

L. C. J. I hear not one yet.

Col. Sidney. Why, my Lord, Conſpiring to levy War is not Treaſon, and I deſire to have Counſel upon that.

L. C. J. 'Tis not a Queſtion. You had as good aſk me, whether the firſt Chapter in *Littleton* be Law.

Col. Sidney. My Lord, I have neither made War, nor conſpired to levy War.

L. C. J. You are ſtill in a Miſtake, you ſhall not think that we intend to dialogue with you, to let you know how far the Proof hath been given or not given, but when we come to direct the Jury, then we ſhall obſerve how far the Law requires there ſhould be two Witneſſes. But whether there be ſuch a Proof, that muſt be left to the Jury.

Mr. Juſt. Withins. If you agree the Conſpiracy, I will tell you my Mind of it ; I cannot give you my Opinion in Law, till the Fact be ſtated.

L. C. J. The Law always ariſes upon a Point of Fact ; there can be no Doubt in Point of Law, till there be a Settlement in Point of Fact.

Mr. Juſt. Holloway. My Lord has put you in a right Way : The Conſpiracy is proved but by one Witneſs, if you have any Thing to take off his Credibility, 'tis to the Purpoſe.

Col. Sidney. Truly, my Lord, I do as little intend to miſ-ſpend my own Spirit, and your Time, as ever any Man that came before you. Now, my Lord, if you will make a Concatenation of one Thing, a Suppoſition upon Suppoſition, I would take all this aſunder, and ſhew, if none of theſe Things are any Thing in themſelves, they can be nothing joined together.

L. C. J. Take your own Method, Mr. *Sidney* ; but I ſay, if you are a Man of low Spirits and weak Body, 'tis a Duty incumbent upon the Court, to exhort you not to ſpend your Time upon Things that are not material.

Col. Sidney. My Lord, I think 'tis very material, that a whimſical Imagination of a Conſpiracy ſhould not paſs for a real Conſpiracy of the Death of the King ; beſides, if theſe Papers were found in my Houſe, 'tis a Crime created ſince my Impriſonment, and that cannot come in, for they were found ſince. My Lord, if theſe Papers are right, it mentions 200 and odd Sheets, and theſe ſhew neither Beginning nor Ending ; and will you, My Lord, indict a Man for Treaſon for Scraps of Paper found in his Houſe, relating to an ancient Paper, intending as innocently as any thing in the World, and piece and patch this to my Lord *Howard's* Diſcourſe, to make this a Contrivance to kill the King ? Then, my Lord, I think 'tis a Right of Mankind, and 'tis exerciſed by all ſtudious Men, that they write in their own Cloſets what they pleaſe for their own Memory, and no Man can be anſwerable for it, unleſs they publiſh it.

L. C. J. Pray don't go away with that Right of Mankind, that it is lawful for me to write what I will in my own Cloſet, unleſs I publiſh it ; I have been told, Curſe not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the Duty of Mankind, to obſerve that.

Col. Sidney. I have lived under the Inquiſition ———

L. C. J. God be thanked we are governed by Law.

Col. Sidney. I have lived under the Inquiſition, and there is no Man in *Spain* can be tried for Hereſy ———

Mr. Juſt. Withins. Draw no Precedents from the Inquiſition here, I beſeech you, Sir.

L. C. J. We muſt not endure Men to talk, that by the Right of Nature every Man may contrive Miſchief in his own Chamber, and he is not to be puniſhed, 'till he thinks fit to be called to it.

Col. Sidney. My Lord, if you will take Scripture by Pieces, you will make all the Penmen of the Scripture blaſphemous ; you may accuſe *David* of ſaying, There is no God ; and accuſe the Evangeliſts of ſaying, Chriſt was a Blaſphemer and a Seducer ; and the Apoſtles, That they were drunk.

L. C. J. Look you, Mr. *Sidney*, if there be any Part of it that explains the Senſe of it, you ſhall have it read ; indeed we are trifled with a little. 'Tis true, in Scripture 'tis ſaid, there is no God, and you muſt not take that alone, but you muſt ſay, The Fool hath ſaid in his Heart, there is no God. Now here is a Thing imputed to you in the Libel ; if you can ſay, there is any Part that is in Excuſe of it, call for it. As for the Purpoſe, whoſoever does publiſh, that the King may be put in Chains or depoſed, is a Traitor ; but whoſoever ſays, that none but Traitors would put the King in Chains, or depoſe him, is an honeſt Man ; therefore apply *ad idem*, but don't let us make Excurſions.

Col. Sidney. If they will produce the whole, my Lord, then I can ſee whether one Part contradicts another.

L. C. J. Well, if you have any Witneſſes call them.

Col. Sidney. The Earl of *Angleſey*.

L. C. J. Ay, in God's Name, ſtay 'till To-morrow in Things that are pertinent.

Col. Sidney. I deſire to know of my Lord *Angleſey*, what my Lord *Howard* ſaid to him concerning the Plot that was broken out.

Lord Angleſey. Concerning this Plot you are now queſtioned for.

Col. Sidney. The Plot for which my Lord *Ruſſel* and I was in Priſon.

Lord Angleſey. The Queſtion I am aſked, is, What my Lord *Howard* ſaid before the Trial of my Lord *Ruſſel*, concerning the Plot ; I ſuppoſe, this goes as a Branch of that he was accuſed for. I was then in the Country when the Buſineſs was on Foot, and uſed to come to Town a Day or two in the Week, living near in *Hertfordſhire*, and I underſtanding the Affliction my Lord of *Bedford* was in, I went to give my Lord a Viſit, we having been Acquaintance of above fifty Years ſtanding, and bred together in *Maudlin* College in *Oxford*. When I came to my Lord of *Bedford*, and had adminiſtred that Comfort that was fit for one Chriſtian to give another in that Diſtreſs, I was ready to leave him, and my Lord *Howard* came in. It was upon the *Friday* before my Lord *Howard* was taken, he was taken (as I take it) upon *Sunday* or *Monday*, my Lord *Howard* fell into the ſame Chriſtian Office that I had been juſt diſcharging, to compaſſionate my Lord's Affliction, to uſe Arguments to comfort and ſupport him under it, and told him he was not to be troubled, for he had a diſcreet, a wiſe and a virtuous Son, and he could not be in any ſuch Plot (I think that was the Word he uſed at firſt, though he gave another Name to it afterward) and his Lordſhip might therefore well expect a good Iſſue of that Buſineſs, and he might believe his Son ſecure, for he believed he was neither guilty, nor ſo much as to be ſuſpected. My Lord proceeded further, and did ſay, that he knew of no ſuch barbarous Deſign (I think he called it ſo in the ſecond place) and could not charge my Lord *Ruſſel* with it, nor any body elſe. This was the effect of what my Lord *Howard* ſaid at that Time, and I have nothing to ſay of my own Knowledge more than this ; but to obſerve, that I was preſent when the Jury did put my Lord *Howard* particularly to it ; What have you to ſay to what my Lord *Angleſey* teſtifies againſt you ? My Lord, I think, did in three ſeveral Places give a ſhort Account of himſelf, and ſaid it was very true, and gave them ſome further Account why he ſaid it, and ſaid, he ſhould be very glad it might have been advantageous to my Lord *Ruſſel*.

Col. Sidney. My Lord of *Clare*. I deſire to know of my Lord of *Clare*, what my Lord *Howard* ſaid concerning this Plot and me.

Lord Clare. My Lord, A little after Colonel *Sidney* was taken, ſpeaking of the Times, he ſaid, that if ever he was queſtioned again, he would never plead, the quickeſt Diſpatch was the beſt, he was ſure they would have his Life, though he were ever ſo innocent, and diſcourſing of the late Primate of *Armagh's* Prophecy ; for my Part, ſays he, I think the Perſecution is begun, and I believe it will be very ſharp, but I hope it will be ſhort, and I ſaid, I hoped ſo too.

Mr. Att. Gen. What Anſwer did your Lordſhip give to it ?

Lord Clare. I have told you what I know, my Lord *is too full* of Diſcourſe

courſe for me to anſwer all he ſays; but for Col. *Sidney*, he did with great Aſſeverations aſſert, that he was as innocent as any Man breathing, and uſed great Encomiums in his Praiſe, and then he ſeemed to bemoan his Misfortune, which I thought real; for never was any Man more engaged to another, than he was to Colonel *Sidney*, I believe. Then I told, they talked of Papers that were found; I am ſure, ſays he, they can make nothing of any Papers of his.

Mr. Att. Gen. When was this?

Lord *Clare* This was at my Houſe the beginning of *July*.

Mr. Att. Gen. How long before my Lord *Howard* was taken?

Lord *Clare*. About a Week before.

Mr. Att. Gen. I would aſk you, my Lord, upon your Honour, would not any Man have ſaid as much, that had been in the Plot?

Lord *Clare*. I can't tell, I know of no Plot.

Col. *Sidney*. Mr. *Philip Howard*.

Mr. Juſt. *Withins*. What do you aſk him?

Col. *Sidney*. What you heard my Lord *Howard* ſay concerning this pretended Plot, or my being in it?

Mr. *Phil Howard*. My Lord, when the Plot firſt brake out, I uſed to meet my Lord *Howard* very often at my Brother's Houſe, and coming one Day from *Whitehall*, he aſked me, what News? I told him, my Lord, ſays I, there are abundance of People that have confeſſed the horrid Deſign of murdering the King, and the Duke. How, ſays he, is ſuch a thing poſſible? Says I, 'tis ſo, they have all confeſſed it. Says he, do you know any of their Names? Yes, ſays I, I have heard their Names. What are their Names, ſays he? Why, ſays I, Col. *Rumſey*, and Mr. *Weſt*, and one *Walcot* and others that are in the Proclamation; (I can't tell whether *Walcot* was in Hold) ſays he, 'tis impoſſible ſuch a thing can be; ſays he, there are in all Countries People that wiſh ill to the Government, and ſays he, I believe there are ſome here; but ſays he, for any Man of Honour, Intereſt, or Eſtate to go about it, is wholly impoſſible. Says I, my Lord, ſo it is, and I believe it. Says I, my Lord, do you know any of theſe People? No, ſays he, none of them, only one day, ſays he, paſſing thro' the *Exchange*, a Man ſaluted me, with a Blemiſh upon his Eye, and he embraced me, and wiſh'd me all Happineſs: ſays he, I could not call to mind who this Man was; but afterwards I recollected myſelf that I met him at my Lord *Shafteſbury*'s, and heard afterwards, and concluded his Name to be -----, his at whoſe Houſe the King was to be aſſaſſinated———

Mr. Att. Gen. Rumbold?

Mr. *Howard*. Ay, *Rumbold*. My Lord, may I aſk if my Lord *Howard* be here?

L. C. J. He is there behind you.

Mr. *Howard*. Then he will hear me. My Lord, ſays I, what does your Lordſhip think of this Buſineſs? Says he, I am in a Maze. ſays I, if you will be ruled by me, you have a good Opportunity to addreſs to the King, and all the diſcontented Lords, as they are called; and to ſhew your Deteſtation and Abhorrence of this thing; for, ſays I, this will be a good means to reconcile all things. Says he, You have put one of the beſt Notions in my Head that ever was put. Says I, You are a very good Penman, draw up the firſt Addreſs (and I believe I was the firſt that mentioned an Addreſs, you have had many an one ſince, God ſend them good Succeſs). Says he, I am ſorry my Lord of *Eſſex* is out of Town, he ſhould preſent it. But, ſays I, here is my Lord *Ruſſel*, my Lord of *Bedford*, my Lord of *Clare*, all of you that are diſaffected, and ſo accounted, go about this Buſineſs, and make the Nation happy, and King happy. Says he, Will you ſtay till I come back? Ay, ſays I, if you will come in any time; but he never came back while I was there. The next Day, I think, my Lord *Ruſſel* was taken, and I came and found him at my Brother's Houſe again (for there he was Day and Night); ſays he, Couſin, What News? Says I my Lord *Ruſſel* is ſent to the *Tower*. We are all undone then, ſays he. Pray, ſays he, go to my Lord Privy-Seal, and ſee if you can find I am to be taken up; ſays he, I doubt 'tis a Sham-Plot; if it was a true Plot, I ſhould fear nothing; ſays I, What do you put me to go to my Lord Privy-Seal for? He is one of the King's Cabinet Council, do you think he will tell me? I won't go; but, ſays I, if you are not guilty, why would you have me to go to enquire? Why, ſays he, becauſe I fear 'tis not a true Plot, but a Plot made upon us, and therefore, ſays he, there is no Man free. My Lord, I can ſay no more as to that time (and there is no Man that ſits here, that wiſhes the King better than I do). The next thing I come to is this, I came the third Day, and he was mighty ſad and melancholy, that was when Col. *Sidney* was taken; ſays I, Why are you melancholy, becauſe Col. *Sidney* is taken? Says I, Col. *Sidney* was a Man talked of before, why were you not troubled for my Lord *Ruſſel*, that is of your Blood? Says he, I have that particular Obligation from Col. *Sidney*, that no one Man had from another. I have one thing to ſay farther, I pray I may be rightly underſtood in what I have ſaid.

L. C. J. What, would you have us undertake for all the People that hear you? I think you have ſpoken very materially, and I will obſerve it by and by to the Jury.

Col. *Sidney*. Pray call Dr. *Burnet*.

Mr. Juſt. *Walcot*. What do you aſk Dr. *Burnet?*

Col. *Sidney*. I have only to aſk Dr. *Burnet*, whether after the News of this pretended Plot, my Lord *Howard* came to him, and what he ſaid to him.

Dr. *Burnet*. My Lord, the Day after this Plot brake out, my Lord *Howard* came to ſee me, and upon ſome Diſcourſe of the Plot, with Hands and Eyes lifted up to Heaven, he proteſted he knew nothing of any Plot, and believed nothing of it, and ſaid, that he looked upon it as a ridiculous thing.

My Lord Paget *was ſent for at the Priſoner's Requeſt, being in the Hall.*

Col. *Sidney*. My Lord, I deſire *Joſeph Ducas* may be called. [*Who appeared, being a* Frenchman.]

Col. *Sidney*. I deſire to know whether he was not in my Houſe when my Lord *Howard* came thither, a little after I was made a Priſoner, and what he ſaid upon it?

Ducas. Yes, my Lord, my Lord *Howard* came the Day after Colonel *Sidney* was taken, and he aſked me, where was the Colonel *Sidney?* And I ſaid, he was taken by an Order of the King, and he ſaid, Oh Lord! What is that for? I ſaid, They have taken Papers; he ſaid, are ſome Papers left? Yes. Have they taken ſomething more? No. Well, you muſt take all the Things out of the Houſe, and carry them to ſome you can truſt: I dare truſt no body, ſays he; I will lend my Coach and Coachman ſaid I, if the Colonel *Sidney* will ſave his Goods; he ſave them, if not, 'tis no matter. A little after the Lord *Howard* came in the Houſe of Col. *Sidney* about eleven o' Clock at Night, When he was in, I told them, What is this? They talk of a Plot to kill the King and the Duke, and I told him, they ſpake of one general Inſurrection; and I told him more, that I underſtood that Col. *Sidney* was ſent into *Scotland:* When my Lord *Howard* underſtood that, he ſaid God knows, I know nothing of this, and I am ſure if the Colonel *Sidney* was concerned in the matter, he would tell me ſomething, but I know nothing. Well, my Lord, I told him, I believe you are not ſafe in this Houſe, there is more Danger here than in another Place. Says he, I have been a Priſoner, and I had rather do any thing in the World than be a Priſoner again.

Then my Lord Paget *came into the Court.*

Col *Sidney*. Pray, my Lord, be pleaſed to tell the Court, if my Lord *Howard* has ſaid any thing to you concerning this late pretended Plot, or my being any Party in it.

Lord *Paget*. My Lord, I was *ſubpœna'd* to come hither, and did not know upon what Account; I am oblig'd to ſay, my Lord *Howard* was with me preſently after the breaking out of this Plot, and before his appearing in that Part which he now acts, he came to me; and I told him, That I was glad to ſee him abroad, and that he was not concerned in this Diſorder. He ſaid, he had Joy from ſeveral concerning it, and he took it as an Injury to him, for that it looked as if he were Guilty. He ſaid, he knew nothing of himſelf, nor any Body elſe. And tho' he was free in Diſcourſe, and free to go into any Company indifferently; yet he ſaid, he had not ſeen any Body that could ſay any thing of him, or give him occaſion to ſay any thing of any Body elſe.

Col. *Sidney*. Mr. *Edward Howard*.

Mr. *Ed. Howard*. Mr. *Sidney*, What have you to ſay to me?

Col. *Sidney*. My Lord, I deſire you would aſk Mr. *Ed. Howard* the ſame Thing, what Diſcourſe he had with my Lord *Howard* about this Plot?

L. C. J. Mr. *Howard*, Mr. *Sidney* deſires you to tell what Diſcourſe you had with my Lord *Howard* about this Plot.

Mr. *Edward Howard*. My Lord, I have been for ſome time very intimate with my Lord, not only upon the Account of our Alliance, but upon a ſtrict Intimacy and Correſpondence of Friendſhip, and I think I was as much his as he could expect from that Alliance. I did move him during this time, to ſerve the King upon the moſt honourable Account I could, but that proved ineffectual: I paſs that, and come to the Buſineſs here. As ſoon as the Plot brake out, my Lord having a great Intimacy with me, expreſſed a great Deteſtation and Surprizing in himſelf to hear of it, wherein my Lord *Howard* aſſured me under very great Aſſeverations, that he could neither accuſe himſelf, nor any Man living. He told me moreover, that there were certain Perſons of Quality, whom he was very much concerned for, that they ſhould be ſo much reflected upon or troubled, and he condoled very much their Condition, both before and after they were taken. My Lord, I believe in my Conſcience he did this without any mental Reſervation, or Equivocation, for he had no Reaſon to do it with me. I add moreover, if I have any Senſe of my Lord's Diſpoſition, I think if he had known any ſuch thing, he would not have ſtood his being taken, or made his Application to the King in this manner, I am afraid not ſo ſuitable to his Quality.

L. C. J. No Reflections upon any Body.

Mr. *Howard*. My Lord, I reflect upon no Body. I underſtand where I am, and have a Reſpect for the Place; but ſince your Lordſhip has given me this Occaſion, I muſt needs ſay, that that Reproof that was accidentally given me at the Trial of my Lord *Ruſſel*, by reaſon of a weak Memory, made me omit ſome Particulars I will ſpeak now, which are theſe, and I think they are material: My Lord, upon the Diſcourſe of this Plot, did further aſſure me, that it was certainly a Sham, even to his Knowledge: How, my Lord, ſays I, do you mean a Sham? Why, ſays he, ſuch an one, Couſin, as is too black for any Miniſter of publick Employment to have deviſed; but, ſays he, it was forged by People in the dark, ſuch as Jeſuits and Papiſts; and, ſays he, this is my Conſcience. Says I, my Lord, if you are ſure of this Thing, then pray, my Lord, do that honourable Thing that becomes your Quality, that is, give the King Satisfaction as becomes you; pray make an Addreſs under your Hand to the King, whereby you expreſs your Deteſtation and Abhorrence of this Thing. Says he, I thank you for your Counſel: To what Miniſter, ſays he, ſhall I apply myſelf? I pitch'd upon my Lord *Hallifax*, and I told him of my Lord's Deſire, and I remember my Lord *Howard* named the Duke of *Monmouth*, my Lord of *Bedford*, the Earl of *Clare*, and he ſaid he was ſure they would do it; that he was ſure of their Innocence, and would be glad of the Occaſion: And I went to my Lord *Hallifax*, and told him that my Lord was willing to ſet it under his Hand, his Deteſtation of this Plot, and that there was no ſuch thing to his Knowledge. My Lord *Hallifax* very worthily received me; ſays he, I will introduce it; but my Lord *Ruſſel* being taken, this was laid aſide, and my Lord gave this Reaſon. For, ſays he, there will be ſo many People taken, they will be hinder'd. I muſt needs add from my Conſcience, and from my Heart, before God and Man, that if my Lord had ſpoken before the King, ſitting upon his Throne, abating for the Solemnity of the Preſence, I could not have more believed him, from that Aſſurance he had in me. And I am ſure from what I have ſaid, if I had the Honour to be of this Gentleman's Jury I would not believe him.

L. C. J. That muſt not be ſuffered.

Mr. Att. Gen. You ought to be bound to your good Behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

Mr. *Howard*. May I go, my Lord?

Mr. Att. Gen. My Lord *Howard* deſires he may ſtay, we ſhall make uſe of him

Col. *Sidney*. My Lord, I ſpake of a Mortgage that I had of my Lord *Howard*, I don't know whether it is needful to be proved; but it is ſo.

Lord *Howard*. I confeſs it.

Col. *Sidney*. Then, my Lord, here is the other Point; he is under the Fear, that he dare not but ſay what he thinks will conduce towards the gaining his Pardon; and that he hath expreſſed, that he could not have his Pardon, but he muſt firſt do this Drudgery of Swearing. I need not ſay, that his Son ſhould ſay, That he was ſorry his Father could not get his Pardon unleſs he did ſwear againſt ſome others.

Col. *Sidney*. Call Mr. *Blake*. [*Who appeared.*] My Lord, I deſire he may be aſked, Whether my Lord *Howard* did not tell him that he could not get his Pardon yet, and he could aſcribe it to nothing, but that the Drudgery of Swearing muſt be over firſt.

Then my Lord Chief Juſtice asked the Queſtion.

Mr. *Blake*. My Lord, I am very ſorry I ſhould be called to give a publick Account of a private Converſation, how it comes about I don't know. My Lord ſent for me about ſix Weeks ago, to come and ſee him. I went, and we talked of News; I told him, I heard no body had their Pardon, but he that firſt diſcovered the Plot; he told me, no; but he had his Warrant for it: And, ſays he, I have their Word and Honour for it; but ſays he, I will do nothing in it till I have farther Order; and ſays he, I hear nothing of it, and I can aſcribe it to no other Reaſon, but I muſt not have my Pardon till the Drudgery of Swearing is over. Theſe Words my Lord ſaid, I believe my Lord won't deny it.

Then Col. Sidney *called Mr.* Hunt *and* Burroughs, *but they did not appear.*

Col. *Sidney*. 'Tis a hard Caſe they don't appear. One of them was to prove that my Lord *Howard* ſaid he could not have his Pardon till he had done ſome other Jobs.

L. C. J. I can't help it; If you had come for Aſſiſtance from the Court, I would willingly have done what I could.

Then Col. Sidney *mentioned the Duke of* Buckingham, *but he was informed he was not ſubpœna'd.*

Col. *Sidney*. Call *Grace Tracy* and *Elizabeth Penwick*. [*Who appear'd.*] I aſk you only, what my Lord *Howard* ſaid to you at my Houſe concerning the Plot, and my being in it?

Tracy. Sir, he ſaid, that he knew nothing of a Plot he proteſted, and he was ſure Col. *Sidney* knew nothing of it. And he ſaid, if you knew any thing of it, he muſt needs know of it, for he knew as much of your Concerns as any one in the World.

Col *Sidney*. Did he take God to Witneſs upon it?

Tracy. Yes.

Col. *Sidney*. Did he deſire my Plate at my Houſe?

Tracy. I can't tell that, he ſaid the Goods might be ſent to his Houſe.

Col. *Sidney*. *Penwick*, What did my Lord *Howard* ſay in your Hearing concerning the pretended Plot, or my Plate carrying away?

Penwick. When he came, he aſked for your Honour, and they ſaid your Honour was taken away by a Man to the *Tower* for the Plot, and then he took God to Witneſs he knew nothing of it, and believed your Honour did not neither. He ſaid, he was in the *Tower* two Years ago, and your Honour, he believed, ſaved his Life.

Col. *Sidney*. Did he deſire the Plate?

Penwick. Yes, and ſaid it ſhould be ſent to his Houſe to be ſecured. He ſaid it was only Malice.

Mr. Wharton *ſtood up.*

Mr. *Wharton*. 'Tis only this I have to ſay, That if your Lordſhip pleaſes to ſhew me any of theſe Sheets of Paper, I will undertake to imitate them in a little Time, that you ſhan't know which is which. 'Tis the eaſieſt Hand that ever I ſaw in my Life.

Mr. Att. Gen. You did not write theſe, Mr. *Wharton*?

Mr. *Wharton*. No; but I will do this in a very little time, if you pleaſe.

L. C. J. Have you any more Witneſſes?

Col. *Sidney*. No, my Lord.

L. C. J. Then apply yourſelf to the Jury.

Col. *Sidney*. Then this is that I have to ſay. Here is a huge Complication of Crimes laid to my Charge: I did not know at firſt under what Statute they were, now I find 'tis the Statute of 25 *Edw.* 3. This Statute hath two Branches; one relating to War, the other to the Perſon of the King. That relating to the Perſon of the King, makes the conſpiring, imagining and compaſſing his Death, criminal. That concerning War is not, unleſs it be levied. Now, my Lord, I cannot imagine to which of theſe they refer my Crime, and I did deſire your Lordſhip to explain it. For to ſay that a Man did meet to conſpire the King's Death, and he that gives you the Account of the Buſineſs does not ſpeak one Word of it, ſeems extravagant; for Conſpiracies have ever their Denomination from that Point to which they tend; as a Conſpiracy to make falſe Coin infers Inſtruments and the like. A Conſpiracy to take away a Woman, to kill or rob, are all directed to that End. So conſpiring to kill the King, muſt immediately aim at killing the King. The King hath two Capacities, Natural and Politick, that which is the Politick can't be within the Statute, in that Senſe he never dies, and 'tis abſurd to ſay it ſhould be a Fault to kill the King that can't die: So then it muſt be the natural Senſe it muſt be underſtood in, which muſt be done by Sword, by Piſtol, or any other way. Now if there be not one Word of this, then that is utterly at an End, tho' the Witneſs had been good. The next Point is concerning levying of War. Levying of War is made Treaſon there, ſo it be proved by Overt-Act; but an Overt-Act of that never was, or can be pretended here. If the War be not levied, 'tis not within the Act, for conſpiring to levy War is not in the Act. My Lord, there is no Man thinks that I would kill the King that knows me, I am not a Man to have ſuch a Deſign, perhaps I may ſay I have ſaved his Life once. So that it muſt be by Implication, that is, it is firſt imagined that I intended to raiſe a War, and then 'tis imagined that War ſhould tend to the Deſtruction of the King. Now I know that may follow, but that is not natural or neceſſary, and being not natural or neceſſary, it can't be ſo underſtood by the Law. That it is not, is plain; for many Wars have been made, and the Death of the King has not followed. *David* made War upon *Saul*, yet no body will ſay he ſought his Death, he had him under his Power and did not kill him; *David* made War upon *Iſhboſheth*, yet did not deſign his Death: And ſo in *England* and *France* Kings have been taken Priſoners, but they did not kill them. King *Stephen* was taken Priſoner, but they did not kill him. So that 'tis two diſtinct Things, to make War and to endeavour to kill the King. Now as there is no manner of Pretence that I ſhould endeavour to kill the King directly, ſo it can't be by Inference, becauſe 'tis Treaſon under another Species: I confeſs I am not fit to argue theſe Points, I think I ought to have Counſel, but if you won't allow it me, I can't help it; but theſe Things are impoſſible to be jumbled up together. Now I ſay this, if I am not under the firſt Branch, if not directly, I can't be by Implication; tho' I did make War, I can't be ſaid to conſpire the Death of the King, becauſe 'tis a diſtinct Species of Treaſon; and my Lord *Coke* ſays, 'tis the Overthrow of all Juſtice to confound *Membra dividentia*. Now if the making of War can't be underſtood to be a conſpiring the Death of the King, then I am not guilty of this Indictment; but here, my Lord, is neither conſpiring the Death of the King, nor making War, nor conſpiring to make War. Beſides, I ſay, 'tis not the beſt Man's Evidence here would be good in this Caſe, becauſe the Law requires two. The next thing is the Buſineſs of *Aaron Smith*, which my Lord tells ſo imperfectly, and ſo merely conjectural, that there is nothing in it but his Rhetorick in ſetting it out. He tells you of a Letter ſent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no; ſo that I think we may lay that aſide as the other, as Things nothing in them at all. Then ſays Mr. *Attorney*, Theſe *Scotch* Gentlemen are come to Town, I profeſs I never heard the Names of one of them till he named them to me in the *Tower*. I have not ſent myſelf, nor writ a Letter into *Scotland* never ſince the Year 59, nor do I know one Man in *Scotland* to whom I can write, or from whom I ever received one. I returned into *England* in the Year 77, and ſince that time have not writ nor received a Letter from *Scotland*. Then ſome Gentlemen came hither, What is that to me? I never ſaw one of the *Campbell*'s in my Life, nor *Monro*; if any one can prove I have had any Communication with them, I will be glad to ſuffer. Then here are Papers, if any thing is to be made of them, you muſt produce the whole, for 'tis impoſſible to make any thing of a part of them. You aſk me, what other Paſſage I would have read, I don't know a Paſſage in them, I can't tell whether it be good or bad. But if there are any Papers found, 'tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but tho' that be admitted, that they were found in my Houſe, the Hand is ſuch, that it ſhews they have been writ very many Years. Then that which ſeems to be an Account of the Sections and Chapters, that is but a Scrap, and what if any body had, my Lord, either in my own Hand or another's, found Papers that are not well juſtifiable, is this Treaſon? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can ſay I ever printed a Sheet in my Life, I will ſubmit to any Puniſhment. Many others, my Lord, they write, and they write what comes into their Heads. I believe there is a Brother of mine here has forty Quires of Paper written by my Father, and never one Sheet of them was publiſhed; but he writ his own Mind to ſee what he could think of it another time, and blot it out again, may be. And I myſelf, I believe, have burned more Papers of my own writing than a Horſe can carry. So that for theſe Papers I can't anſwer for them. There is nothing in it, and what Concatenation can this have with the other Deſign that is in itſelf nothing, with my Lord's ſelect Council ſelected by no body to purſue the Deſign of my Lord *Shafteſbury*? And this Council that he pretends to be ſet up for ſo great a Buſineſs, was to be adjuſted with ſo much *fineſſe* ſo as to bring Things together, What was this *fineſſe* to do? (taking it for granted, which I don't) This was nothing (if he was a credible Witneſs) but a few Men talking at large of what might be or not be, what was like to fall out without any manner of Intention, or doing any thing; they did not ſo much as enquire, whether there were Men in the Country, Arms, or Ammunition. A War to be made by five or ſix Men, not knowing one another, not truſting one another. What ſaid Dr. *Coxe* in his Evidence at my Lord *Ruſſel*'s Trial, of my Lord *Ruſſel*'s truſting my Lord *Howard*? He might ſay the ſame of ſome others. So that, my Lord, I ſay, theſe Papers have no manner of Coherence, no Dependence upon any ſuch Deſign. You muſt go upon Conjecture upon Conjecture; and after all, you find nothing but only Papers, never perfect, only Scraps, written many Years ago, and that could not be calculated for the raiſing of the People. Now, pray what Imagination can be more vain than that? And what Man can be ſafe, if the King's Counſel may make ſuch (whimſical I won't ſay, but) groundleſs Conſtructions? Mr. *Attorney* ſays, the Plot was broken to the *Scots*, (God knows we were neither broken nor joined) and that the *Campbells* came to Town about that Time I was taken; and in the mean time my Lord *Howard*, the great Contriver of all this Plot, who was moſt active, and adviſed the Buſineſs that conſiſted of ſo much *fineſſe*, he goes there and agrees of nothing, and then goes into *Eſſex* upon great important Buſineſs, greater than the War of *England* and *Scotland*, to what Purpoſe? To look after a little pimping Manor, and what then? Why then it muſt be laid aſide, and he muſt be idle five Weeks at the *Bath*, and there is no enquiring after it. Now, I deſire your Lordſhip to conſider, whether there be a Poſſiblility for any Men, that have the Senſe of Porters and Grooms, to do ſuch Things as he would put upon us. I would only ſay this; If Mr. *Attorney* be in the right, there was a Combination with the *Scots*, and then this Paper was writ; for thoſe that ſay I did it, ſay I was doing of it then; and by the Notes, there is Work enough for four or five Years, to make out what is mentioned in thoſe Scraps of Paper, and this muſt be to kill the King. And I ſay this, my Lord, that under Favour, for all conſtructive Treaſons you are to make none, but to go according to plain Proof, and that theſe conſtructive Treaſons belong only to Parliament, and by the immediate Proviſo in that Act. Now, my Lord, I leave it to your Lordſhip, to ſee whether there is in this any thing that you can ſay is an Overt-Act of Treaſon mentioned in 25 *Edw.* 3. If it be not plainly under one of the two Branches, that I have endeavoured to kill the King, or levied War, then 'tis matter of Conſtruction, and that belongs to no Court but the Parliament. Then, my Lord, this hath been adjudged already in *Throgmorton*'s Caſe. There are twenty Judgments of Parliament, the Act of 13 *Eliz.* that ſays——I ſhould have ſomebody to ſpeak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. Juſt. *Withins.* If you acknowledge the Matter of Fact, you ſay well.

Col. *Sidney.* I ſay there are ſeveral Judgments of Parliament, that do ſhew whatever is conſtructive Treaſon does not belong to any private Court. That of 1 *Mary*, 1 *Edw.* 6. 1 *Eliz.* 5 *Eliz.* 18. another 13 *Car.* ſhews this. Now, my Lord, I ſay that the Buſineſs concerning the Papers, 'tis only a Similitude of Hands, which is juſt nothing. In my Lady *Carr*'s Caſe, it was reſolved to extend to no criminal Cauſe; if not to any, then not to the greateſt, the moſt capital. So that I have only this to ſay, that I think 'tis impoſſible for the Jury to find this Matter; for the firſt Point you proved by my Lord *Howard*, that I think is no body, and the laſt concerning the Papers, is only Imagination from the Similitude of Hands. If I had publiſhed it, I muſt have anſwered for it; or if the Thing had been whole and mine, I muſt have anſwered for it; but for theſe Scraps never ſhewed any body, that I think does not at all concern me. And I ſay, if the Jury ſhould find it (which is impoſſible they can) I deſire to have the Law reſerved unto me.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The Crime the Priſoner ſtands accuſed for, is compaſſing and imagining the Death of the King. That which we go about to prove, that compaſſing and imagining by, is by his meeting, and conſulting how to raiſe Arms againſt the King, and by plain Matter in writing under his own Hand, where he does affirm, it is lawful to take away and deſtroy the King. Gentlemen, I will begin with the firſt Part of it, the Meeting and Conſultation to raiſe Arms againſt the King. The Priſoner, Gentlemen, hath endeavoured to avoid the whole Force of this Evidence, by ſaying, that this in Point of Law can't affect him, if it were all proved; for this does not amount to a Proof of his compaſſing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you of 25 *Edw.* 3. and dividing of it into ſeveral Members or Branches of Treaſon; and does inſiſt upon it, that tho' this ſhould be an Offence within one Branch of that Statute, yet that is not a Proof of the other, which is the Branch he is proceeding upon, that is the firſt Clauſe againſt the compaſſing and imagining the Death of the King. And, ſays he, conſpiring to levy War is not ſo much as one Branch of that Statute, but it muſt be War actually levied. This is a Matter he is wholly miſtaken in, in Point of Law. It hath been adjudged over and over again, That an Act which is in one Branch of that Statute, may be an Overt-Act to prove a Man guilty of another Branch of it. A levying War is an Overt-Act to prove a Man guilty of conſpiring the Death of the King. And this was adjudged in the Caſe of Sir *Henry Vane*, ſo is meeting and conſulting to raiſe Arms; and Reaſon does plainly ſpeak it to be ſo; for they that conſpire to raiſe War againſt the King, can't be preſumed to ſtop any where, till they have dethroned or murdered the King. Gentlemen, I won't be long in citing Authorities, it hath been ſettled lately by all the Judges of *England*, in the Caſe of my Lord *Ruſſel*, who hath ſuffer'd for this Conſpiracy. Therefore that Point of Law will be very plain againſt the Priſoner. He hath mentioned ſome other Things, as that there muſt be two Witneſſes to every particular Fact, and one Witneſs to one Fact, and another to another, is not ſufficient; it hath been very often objected, and as often over-ruled: It was over-ruled ſolemnly in the Caſe of my Lord *Stafford.* Therefore if we have one Witneſs to one Overt-Act, and another to another, they will be two Witneſſes in Law to convict this Priſoner. In the firſt Part of our Evidence, we give you an Account of the general Deſign of an Inſurrection that was to have been, that this was contrived firſt, when my Lord *Shafteſbury* was in *England*, that after my Lord *Shafteſbury* was gone, the Buſineſs did not fall, but they thought fit to revive it again, and that they might carry it on the more ſteadily, they did contrive a Council among themſelves of Six, whereof the Priſoner at the Bar was one. They were the Duke of *Monmouth*, my Lord of *Eſſex*, my Lord *Howard*, my Lord *Ruſſel*, the Priſoner at the Bar, and Mr. *Hambden.* This Council they contrived to manage this Affair, and to carry on that Deſign, that ſeemed to fall by the Death of my Lord of *Shafteſbury*, and they met; this we give you an Account of, firſt by Witneſſes, that gave you an Account in general of it. And tho' they were not privy to it yet they heard of this Council, and that Colonel *Sidney* was to be one of this Council. This, Gentlemen, if it had ſtood alone by itſelf, had been nothing to affect the Priſoner at all. But this will ſhew you, that it was diſcourſed among them that were in this Conſpiracy. Then my Lord *Howard* gives you an Account, that firſt the Duke of *Monmouth*, and he and Colonel *Sidney* met, and it was agreed to be neceſſary to have a Council that ſhould conſiſt of ſix or ſeven, and they were to carry it on. That the Duke of *Monmouth* undertook to diſpoſe my Lord *Ruſſel* to it, and Colonel *Sidney* to diſpoſe the Earl of *Eſſex*, and Mr. *Hambden*; that theſe Gentlemen did meet accordingly, and the Subſtance of their Diſcourſe was, taking notice how the Deſign had fallen upon the Death of my Lord *Shafteſbury*, that it was fit to carry it on before Men's Inclinations were cool, for they found they were ready to it, and had great Reaſon to believe it, becauſe this being a Buſineſs communicated to ſo many, yet for all that it was kept very ſecret, and no body had made any mention of it, which they looked upon as a certain Argument that Men were ready to engage in it. This encouraged them to go on in this Conſpiracy. Then when the Six met at Mr. *Hambden*'s Houſe, they debated concerning the Place of Riſing, and the Time; the Time they conceived muſt be ſuddenly, before Men's Minds were cool, for now they thought they were ready and very much diſpoſed to it; and for Place they had in Debate, whether they ſhould riſe firſt in the Town, or in the Country, or both together. And for the Perſons, they thought it abſolutely neceſſary for them to have the united Councils of *Scotland* to join with them, and therefore they did refer this Matter to be better conſidered of another time, and they met afterwards at my Lord *Ruſſel*'s Houſe in *February*, and there they had Diſcourſe to the ſame Purpoſe. But there they began to conſider with themſelves, being they were to deſtroy this Government, what they ſhould ſet up in the Room of it, to what Purpoſe they engaged. For they did very wiſely conſider, if this be only to ſerve a Turn, and to make one Man great, this will be a great Hinderance in their Affair, therefore they thought it was neceſſary to engage upon a publick Account, and to reſolve all into the Authority of Parliament, which ſurely they either thought to force the King to call, or otherwiſe that the People might call a Parliament, if the King refuſed, and ſo they to chooſe their own Heads. But ſtill they were upon this Point, that it was neceſſary for their Friends in *Scotland* to have their Councils united with them, and in order to that, it was neceſſary to contrive ſome Way to ſend a Meſſenger into *Scotland*, to bring ſome Men here to treat and conſult about it, and Colonel *Sidney* is the Man that does engage to ſend this Meſſenger, and he had a Man very fit for his Turn, that is, *Aaron Smith*, whom he could confide in, and him he undertook to ſend into *Scotland.* This Meſſenger was to fetch my Lord *Melvin*, the two *Campbell*'s, and Sir *John Cockram*; Colonel *Sidney* as he engaged to do this, ſo afterwards he did ſhew to my Lord *Howard* Money, which he affirmed was for that Buſineſs; he ſays it was of a Sum about ſixty Guineas, and he believes he gave it him, for that Colonel *Sidney* told him, *Aaron Smith*, was gone into *Scotland*; that the Pretence was not barefaced to invite them over, to conſult of a Rebellion, but to conſult about the Buſineſs of *Carolina*, being a Plantation for the perſecuted Brethren, as they pretended in *Scotland.* Gentlemen, theſe *Scotchmen* that were thus ſent for over, they came accordingly, that is, the two *Campbel's*, and Sir *John Cockram*, and the Diſcourſe with Sir *Andrew Foſter* was according to this Cant that was agreed on beforehand, concerning a Plantation in *Carolina*. This was that that was pretended for their coming hither; but the true Errand was, the Buſineſs of the Inſurrection intended, Gentlemen, that they came upon ſuch a Deſign, is evident from the Circumſtances; they came about the Time the Buſineſs brake out, and in that Time ſuſpiciouſly changing their Lodging, they were taken making their Eſcape, and this at a Time before it was probable to be known abroad that theſe Men were named as part of the Conſpirators. Theſe things do very much verify the Evidence my Lord *Howard* hath given, and there is nothing has been ſaid, does at all invalidate it. The ſending of *Aaron Smith* into *Scotland*, and his going, and the coming of theſe Men, and their endeavouring to make their Eſcape, are mighty concurrent Evidences with the whole Evidence my Lord *Howard* has given. Now, what Objections are made againſt this Evidence? Truly none at all. Here are Perſons of great Quality have given their Teſtimony, and they do not impeach my Lord *Howard* in the leaſt; but ſome do extremely confirm the Truth of my Lord *Howard.* My Lord *Angleſey* gives you an Account of a Diſcourſe at my Lord of *Bedford*'s, that my Lord *Howard* came in, and that my Lord *Howard* ſhould there comfort my Lord of *Bedford*, and enlarge in the Commendations of his Son, and ſay he was confident he knew nothing of the Deſign, and he muſt be innocent. Gentlemen, This is the Nature of the moſt part of the Evidence. My Lord of *Clare*, his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord *Howard* under a Guilt of High-Treaſon; for he was one of thoſe Conſpirators not yet diſcovered, nor no Evidence of any Diſcourſe leading to any thing that ſhould give Occaſion to him to proteſt his Innocency: And ſays he, I know nothing of the Plot. You would have wondered if he ſhould have been talking in all Places his Knowledge, and declaring himſelf: His denying of it under the Guilt, when he was not accuſed, is nothing to his Confeſſion when he comes to be apprehended and taken for it. Here Mr. *Philip Howard* ſays, he had ſeveral Diſcourſes with him about this Buſineſs, upon the breaking out of the Plot, and that he adviſed him to make an Addreſs, and that this was a Thing that would be very acceptable, and very much for their Vindication; and my Lord *Howard* (he ſays) thanked him for his very good Advice, and ſaid, he would follow it: And preſently after, when my Lord *Ruſſel* was apprehended, Mr. *Howard* tells him the News, that my Lord *Ruſſel* was apprehended; this was ſudden to him. And what ſays he? We are all undone. When my Lord *Ruſſel* that was one of this Council, that was a ſecret Council, and could not be traced but by ſome of themſelves, when He is apprehended, then he falls out into this Expreſſion, *We are all undone.* This is an Argument my Lord *Howard* had Guilt upon him. For, why were they all undone, that my Lord *Ruſſel* was apprehended, any more than upon the apprehending the reſt? Yes, becauſe my Lord was one of the Six, and now 'twas come to the knowing of that Part of the Conſpiracy. It was traced to the Council of Six, which in all likelihood would break the Neck of the Deſign. Now though he put it off afterwards, ſaying, *I believe it a Sham Plot*, yet this was but a trivial Put-off. And then, when Colonel *Sidney* is taken, the ſame Witneſs Mr. *Howard* tells you, my Lord was very ſad and melancholy; for then he had greater Reaſon to lie under an Apprehenſion of being detected. Therefore, Gentlemen, this will rather confirm the Truth of the Evidence, than any way impeach it. Then (for I would repeat it all, tho' I think it had no great Weight in it) Dr. *Burnet* ſays, that after the Plot, my Lord *Howard* pretended he knew of no Plot. This is no more than was teſtified by the other Lords before; and all it imports, is, that my Lord did not diſcover himſelf to Dr. *Burnet.* But I would fain know, if my Lord had told Dr. *Burnet*, had it not argued that he had great Confidence in him, that he thought him a Man fit to be intruſted with ſuch a Secret? And unleſs the Doctor deſires to be thought ſuch a Man, himſelf muſt own 'tis no Objection, that my Lord *Howard* did not tell him. *Ducas*'s Teſtimony is no more neither, that he proteſted he was innocent, and believed Colonel *Sidney* was innocent, and this was before my Lord *Howard* diſcovered any thing of this Plot. Then Colonel *Sidney* objects, This is by Malice, my Lord *Howard* owes him Money, and ſeeks to pay his Debts by taking away his Life; and in further Proſecution of this Malice, would have ſeized upon his Goods. But the Evidence does not receive ſuch Conſtruction, for my Lord *Howard* only offered Colonel *Sidney* the Civility of his Houſe to protect his Plate and Goods. Now, Gentlemen, there were two other Witneſſes, my Lord *Paget* and Mr. *Edward Howard*; but they ſay no more than the reſt of them, that he did proteſt his Innocency; and Mr. *Howard* ſays, he adviſed him to make an Addreſs to the King. This, Gentlemen, I repeat, not that it is material, but for no other Reaſon, than becauſe Colonel *Sidney* had produced it; and ſo we are to think, he intended to make ſome uſe of it; but

I can't ſee any Inference to be drawn from it. There is one Witneſs more, and that is Mr. *Blake*, to the Credit of my Lord *Howard*, who comes here, and ſays, that when he diſcourſed about a Pardon, my Lord ſhould ſay, That he had a Warrant for his Pardon, but that he had not yet paſs-e'd it, and could not yet; and he apprehended the Reaſon was, becauſe the Drudgery of Swearing was not over. But this is but what my Lord *Howard* had conjectured: Firſt, It does not appear, that there is any Promiſe of Pardon at all to my Lord *Howard*, on any Terms impoſed on him. In the next place, Whatever Expectation he has of a Pardon, he can't reaſonably hope for it without making a clear Diſcovery of all he knows: For to ſtifle the Evidence he has given, is not a way to deſerve a Pardon of his Prince. Therefore, Gentlemen, whatever Expreſſions were uſed, tho' he called it the Drudgery of Swearing, however unwilling he is to come to it, and tho' he gives it very many hard Names, and might think it very harſh to come and own himſelf to be one of the Conſpirators, it might be irkſome, and very irkſome; yet none of them tell you, that my Lord *Howard* ſhould ſay, that what he had ſaid was not true. Now he has come and given his Evidence, and you have heard all theſe Objections againſt it, and not one of them touch it in the leaſt.

I come in the next place to the other Part of the Evidence, the Papers found in Colonel *Sidney*'s Houſe. And in the firſt place he objects, They can't affect him; for, ſays he, there is no Proof they were found in my Houſe, no Proof they were written by me; for Compariſon of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpoſe; they are an Anſwer to a Polemical Diſcourſe wherewith he entertained himſelf privately in his Study. Why, you have obſerved, I know, that Sir *Philip Lloyd* in the firſt place ſwears, that by Warrant from the Secretary he ſearched his Houſe, and he found the Papers lying upon Colonel *Sidney*'s Table in his Study, when he came in there; and there is no Ground nor Colour for you to ſuſpect otherwiſe than that they were there, and he found them there. For the Surmiſe of the Priſoner at the Bar, that they might be laid there, 'tis ſo foreign and without Ground, that by and by you will think there is nothing at all in it. In the next place, we prove Col. *Sidney*'s Hand, and that by as much Proof as the Thing is capable of; ſuch a Proof as in all Caſes hath been allowed; and that is, for Men to come that know and are acquainted with the Hand-writing, and ſwear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. *Sheppard*, a Man that uſed to tranſact Buſineſs for him, pay Money for him; and Mr. *Cook* and Mr. *Cary*, Men of known Credit in the City of *London*, that have had the like Dealings with Col. *Sidney*, and they ſwear this is his Hand-writing, as they verily believe. So that, Gentlemen, this Proof to you of Col. *Sidney*'s Hand-writing does verify Sir *Philip Lloyd*, that theſe Papers muſt be found there, if Col. *Sidney* writ them; and then this being found that they were writ by him, the next Thing will be, How far this will be an Evidence to prove his Compaſſing and Imagining the Death of the King. Compaſſing and Imagining the Death of the King is the Act of the Mind, and is Treaſon whilſt it remains ſecret in the Heart, tho' no ſuch Treaſon can be puniſh'd, becauſe there is no way to prove it; but when once there is an Overt-Act, that is, any thing that does manifeſt and declare ſuch Intention, then the Law takes hold of it, and puniſhes it as High-Treaſon.

Now after this Evidence, I think no Man will doubt, whether it was in the Heart of the Priſoner at the Bar to deſtroy the King. But firſt he objects, that this is a Part of a Book, and unleſs you take the whole, nothing can be made of it: As it is in wreſting of Texts of Scripture, ſays, he, you may as well ſay, that *David* ſays, there is no God, becauſe *David* hath ſaid, *The fool hath ſaid in his heart, there is no God.* But, Gentlemen, the Application won't hold; for you ſee a long Diſcourſe hath been read to you, a continued Thread of Argument; 'tis not one Propoſition, but an whole Series of Argument: Theſe are the Poſitions, 'That the King derives all his Power from the People; That 'tis originally in the People, and that the Meaſure of Subjection muſt be adjudged by the Parliament; and if the King does fall from doing his Duty, he muſt expect the People will exact it.' And this he has laid down as no way prejudicial to him; for, ſays he, the King may refuſe the Crown, if he does not like it upon theſe Terms. But, ſays he, if he does accept it, he muſt expect the Performance will be exacted, or Revenge taken by thoſe he hath betray'd. Then next, he ſets up an Objection, and then argues againſt it: Ay, but ſhall the People be Judge in their own Cauſe? And thus he anſwers it, It muſt be ſo; for is not the King a Judge in his own Cauſe? How can any Man elſe be tried, or convicted of any Offence, if the King may not be Judge in his own Cauſe? For to adjudge by a Man's ſelf or by his Deputy, is the ſame Thing; and ſo a Crime againſt the King can't be puniſhed. And then he takes notice of it as a very abſurd Poſition, 'That the King ſhall judge in his own Cauſe, and not the People.' That would be to ſay, The Servant entertained by the Maſter ſhall judge the Maſter, but the Maſter ſhall not judge the Servant. Gentlemen, after this ſort of Argument he comes to this ſettled Poſition, 'We may therefore, ſays he, change or take away Kings, (without breaking any Yoke, or that is made a Yoke;) the Injury is therefore in impoſing the Yoke, and there can be none at all in breaking of it.' But he goes on in his Book, and that is by way of Anſwer to an Objection, That if there be no Injury, yet there may be Inconvenience, if the headleſs Multitude ſhould ſhake off the Yoke. But, ſays he, I would fain know how the Multitude comes to be headleſs; and there he gives you many Inſtances in Story, and from foreign Nations he comes home to the *Engliſh*, and tells you how all Rebellions in later Ages have been headed: and tells you the Parliament is the Head, or the Nobility and Gentry that compoſe it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never headleſs, but they either find or create an Head, ſo that here is a plain and avowed Principle of Rebellion eſtabliſhed upon the ſtrongeſt Reaſon he has to back it. Gentlemen, This with the other Evidence that has been given, will be ſufficient to prove his compaſſing the Death of the King. You ſee the Affirmations he makes; when Kings do break their Truſt they may be called to Account by the People. This is the Doctrine he broaches and argues for: He ſays in his Book, in another Part, that the Calling and Diſſolving of Parliaments is not in the King's Power. Gentlemen, you all know how many Parliaments the King hath Called and Diſſolved; if it be not in his Power, he hath done that that was not in his Power, and ſo contrary to his Truſt. Gentlemen, at the Entrance into this Conſpiracy, they were under an Apprehenſion that their Liberties were invaded, as you heard in the Evidence from my Lord *Howard*, that they were juſt making the Inſurrection upon that tumultuous Oppoſition of electing of Sheriffs in *London*. They enter into a Conſultation to raiſe Arms againſt the King; and it is proved by my Lord *Howard*, that the Priſoner at the Bar was one. Gentlemen, Words ſpoken upon a Suppoſition will be High-Treaſon, as was held in King *James*'s Time, in the Caſe of *Collins* in *Roll*'s Reports, *The King being excommunicate may be depoſed and murdered*, without affirming he was excommunicated; and this was enough to convict him of High-Treaſon. Now according to that Caſe, to ſay the King having broken his Truſt may be depoſed by his People, would be High-Treaſon; but here he does as good as affirm the King had broke his Truſt. When every one ſees the King hath diſſolved Parliaments; this reduces it to an Affirmation. And tho' this Book be not brought to that Council to be peruſed, and there debated, yet it will be another, and more than two Witneſſes againſt the Priſoner: For I would aſk any Man, ſuppoſe a Man was in a Room, and there were two Men, and he talks with both apart, and he comes to one, and endeavours to perſuade him that it is lawful to riſe in Arms againſt the King, if ſo be he break his Truſt; and he ſhould go to another Man, and tell him the King hath broken his Truſt, and we muſt ſeek ſome way to redreſs ourſelves, and perſuade the People to riſe; theſe two Witneſſes do ſo tack this Treaſon together, that they will be two Witneſſes to prove him Guilty of High-Treaſon. And you have heard one Witneſs prove it poſitively to you, That he conſulted to riſe in Arms againſt the King, and here is his own Book ſays, it is lawful for a Man to riſe in Arms againſt the King, if he break his Truſt, and in effect he hath ſaid, the King hath broken his Truſt: Therefore this will be a ſufficient Demonſtration what the Imagination of the Heart of this Man was, that it was nothing but the Deſtruction of the King and the Government, and indeed of all Governments. There can be no ſuch Thing as Government if the People ſhall be Judge in the Caſe: For what ſo uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a ſufficient Evidence of his conſulting the Death of the King. You have here the Priſoner at the Bar that is very deep in it. Indeed ſome Men may by Paſſion be tranſported into ſuch an Offence, and tho' the Offence be never the leſs, whatever the Motives are, yet in ſome it is leſs dangerous; for thoſe that venture upon Paſſion to raiſe Commotions and Rebellion, are not always ſo much upon their Guard, but that they may make ſome falſe Steps to entrap themſelves. But this Gentleman proceeds upon a ſurer Foundation, it is his Reaſon, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the ſteady Courſe of his Life. A Man convinced of theſe Principles, and that walks accordingly, what won't he do to accompliſh his Deſigns? How wary will he be in all his Actions? Still reaſoning with himſelf, which Way to bring it moſt ſecurely about. Gentlemen, This is the more dangerous Conſpiracy in this Man, by how much the more it is rooted in him; and how deep it is, you hear, when a Man ſhall write as his Principle, that it is lawful for to depoſe Kings, they breaking their Truſt, and that the Revolt of the whole Nation cannot be called Rebellion. It will be a very ſad Caſe when People act this according to their Conſciences, and do all this for the Good of the People, as they would have it thought; but this is the Principle of this Man. Gentlemen, we think we have plainly made it out to you, and proved it ſufficiently, that it was the Imagination of his Heart to deſtroy the King, and made ſufficient Proof of High-Treaſon.

Col. *Sidney*. Give me leave, my Lord, to ſay a very few Words. I deſire Mr. *Sollicitor* would not think it his Duty to take away Men's Lives any how: Firſt, We have had a long Story——

L. C. J. Nay, Mr. *Sidney*, we muſt not have vying and revying, I aſked you before what you had to ſay; the Courſe of Evidence is, after the King's Counſel have concluded, we never admit the Priſoner to ſay any thing.

Col. *Sidney*. My Lord, it was a wiſe Man ſaid, There never could be too much Delay in the Life of a Man: I know the King's Counſel may conclude, if they pleaſe. Mr. *Sollicitor*, I would not have him think that it is enough by one way or another to bring a Man to Death: My Lord, this Matter of Sir *Henry Vane* is utterly miſrepreſented.———

L. C. J. I muſt tell you, Gentlemen of the Jury, that what the Priſoner ſays, that is not proved, and what the King's Counſel have ſaid, of which there is no Proof to make it out, muſt not be taken into any Conſideration.

Col. *Sidney*. Then, my Lord, here is a Place or two in old *Hale*'s [*turning over my Lord* Hale's *Book*] for the Overt-Act of one Treaſon, not being an Overt-Act of another, your Lordſhip knows *Coke* and *Hales* were both againſt it. [*He reads.*] Compaſſing by bare Words is not an Overt-Act, conſpiring to levy War is no Overt-Act.

Mr. Sol. Gen. I deſire but one Word more for my own ſake as well as the Priſoner's, and that is, that if I have ſaid any thing that is not Law, or miſrepeated, or miſapplied the Evidence which hath been given, I do make it my humble Requeſt to your Lordſhip to rectify thoſe Miſtakes, as well in Point of Fact as Point of Law; for God forbid the Priſoner ſhould ſuffer by any Miſtake.

L. C J. Gentlemen, the Evidence has been long, and it is a Cauſe of great Concernment, and it is far from the Thoughts of the King, or from the Thoughts, or Deſire of any of his Judges here to be inſtrumental to take away the Life of any Man, that by Law his Life ought not to be taken away. For I had rather many guilty Men ſhould eſcape, than one innocent Man ſuffer. The Queſtion is, Whether upon all the Evidence you have heard againſt the Priſoner, and the Evidence on his Behalf, there is Evidence ſufficient to convict the Priſoner of the High-Treaſon he ſtands charged with. And as you muſt not be moved by the Denial of the Priſoner further than as it is backed with Proof; ſo you are not to be inveigled by any Inſinuations made againſt the Priſoner at the Bar, further or otherwiſe than as the Proof is made out to you. But it is uſual, and it is a Duty incumbent on the King's Counſel, to urge againſt all ſuch Criminals, whatſoever they obſerve in the Evidence againſt them, and likewiſe

wiſe to endeavour to give Anſwers to the Objections that are made on their Behalf. And, therefore, ſince we have been kept ſo long in this Cauſe, it won't be amiſs for me (and my Brothers, as they ſhall think fit,) to help your Memory in the Fact, and diſcharge that Duty that is incumbent upon the Court as to the Points of Law. This Indictment is for High-Treaſon, and is grounded upon the Statute of 25 *Edw.* 3. By which Statute, the Compaſſing and Imagining the Death of the King, and declaring the ſame by an Overt-Act is made High-Treaſon. The Reaſon of that Law was, becauſe at Common-Law there was great Doubt what was Treaſon; wherefore to reduce that high Crime to a Certainty was that Law made, that thoſe that were guilty might know what to expect. And there are ſeveral Acts of Parliament made between the Time of *Edward* 3. and that of 1 *M.* but by that Statute all Treaſons that are not enumerated by After-Acts of Parliament remain as they were declared by that Statute of 25 *Edw.* 3. And ſo are Challenges and other Matters, inſiſted upon by the Priſoner, left as they were at the Time of that Act: I am alſo to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that ſat before us, and the Opinion of all the Judges of *England*, and within the Memory of many of you, that tho' there be two Witneſſes required to prove a Man guilty of High-Treaſon, yet it is not neceſſary there ſhould be two Witneſſes to the ſame Thing at one Time. But if two Witneſſes prove two ſeveral Facts, that have a Tendency to the ſame Treaſon, they are two Witneſſes ſufficient to convict any Man of High-Treaſon. In the Caſe of my Lord *Stafford* in Parliament, all the Judges aſſiſting, it is notoriouſly known, that one Witneſs to a Conſpiracy in *England*, and another to a Conſpiracy in *France*, were held two Witneſſes ſufficient to convict him of High-Treaſon. In the next Place, I am to tell you, that tho' ſome Judges have been of Opinion that Words of themſelves were not an Overt-Act: but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever queſtioned but that a Letter would be an Overt-Act, ſufficient to prove a Man guilty of High-Treaſon; for *ſcribere eſt agere.* Mr. *Sidney* ſays, the King is a politick Perſon; but you muſt deſtroy him in his Natural Capacity, or it is not Treaſon; but I muſt tell you, if any Man compaſs to impriſon the King, it is High-Treaſon; ſo was the Caſe of my Lord *Cobham.* And my Lord *Coke*, when he ſays, If a Man do attempt to make the King do any thing by Force and Compulſion, otherwiſe than he ought to do, that it is High-Treaſon within that Act of 25 *Eliz.* 3. But if it were an Indictment only for the levying of War, there muſt be an actual War levied; but this is an Indictment for Compaſſing the Death of the King; and the other Treaſon, mentioned in that Act of Parliament for the levying War, may be given in Evidence to prove the Conſpiracy of the King's Death: For 'tis rightly told you by the King's Counſel, that the Imagination of a Man's Heart is not to be diſcerned; but if I declare ſuch my Imagination by an Overt-Act, which Overt-Act does naturally evince, that the King muſt be depoſed, deſtroy'd, impriſon'd, or the like, it will be ſufficient Evidence of Treaſon within that Act. In the next Place, having told you what the Law is; for, Gentlemen, 'tis our Duty upon our Oaths, to declare the Law to you, and you are bound to receive our Declaration of the Law, and upon this Declaration, to inquire whether there be a Fact, ſufficiently proved, to find the Priſoner guilty of the High-Treaſon of which he ſtands indicted: And for that I muſt tell you, whatever happens to be hear-ſay from others, it is not to be applied immediately to the Priſoner; but however thoſe Matters that are remote at firſt may ſerve for this Purpoſe, to prove there was generally a conſpiracy to deſtroy the King and Government: And for that Matter, you all remember it was the conſtant Rule and Method obſerved about the Popiſh Plot, firſt to produce the Evidence of the Plot in general: This was done in that famous Caſe of my Lord *Stafford* in Parliament. Gentlemen, I am alſo to tell you, this alone does not at all affect the Priſoner at the Bar, but is made uſe of as a Circumſtance to ſupport the Credibility of the Witneſſes; and is thus far applicable to the Buſineſs before you, that 'tis plain, by Perſons that don't touch the Priſoner at the Bar, (and I am ſorry any Man makes a doubt of it at this time of day) that there was a Conſpiracy to kill the King; for after ſo full a Proof in this Place, and in others, and the Execution and Confeſſion of ſeveral of the Offenders, I am ſurprized to obſerve that the Priſoner at the Bar, and ſome others preſent, ſeem not to believe it.

But, Gentlemen, you hear the firſt Witneſs; I ſpeak of *Weſt*: He tells you he had the Honour to be acquainted with Mr. *Sidney*, and that he had Diſcourſe with *Walcot*, a Perſon Convicted and Executed for this horrid Conſpiracy Why, ſays he, he told me at my Chamber, That they were not the only Perſons concerned, but that there were other Perſons of great Quality that had their Meetings for the carrying on the Buſineſs in other Places. And *Ferguſon*, that was the Ring-leader in this Conſpiracy, told him there was a Deſign of a general Inſurrection; it was once laid down, but it is now taken up again. There are other Counſellors of great Importance; and he names among the reſt, the Priſoner at the Bar. Mr. *Weſt* goes a little further, and he tells you this: Says he, He did not only tell me ſo, but that there was a Deſign to conciliate a Correſpondence with ſome Perſons in *Scotland*, and they were to do it under the Cant of having Buſineſs in *Carolina.* There is Mr. *Keeling*, he tells you too, There was a Deſign for a general and public Inſurrection; That he was preſent with the *Goodenoughs*, one and t'other, and that they had taken upon them to divide, and did divide the City into ſuch and ſuch Diſtricts: And what was the Buſineſs? It was, that there might be a general Inſurrection; might be an Inſurrection, not only to Deſtroy the King and the Duke, but to Deſtroy all the King's Loyal Subjects; and in taking away their Lives, to take away the Life of Monarchy itſelf, and to ſubvert the Religion Eſtabliſhed by Law. Then comes in Col. *Rumſey*, and he gives you an Account that he had heard of ſuch things in Mr. *Weſt*'s Chamber; and tells you he had received ſuch Intelligence. And all theſe give you an Account, that there was ſuch a Deſign to kill the King: And this is the Subſtance of the general Evidence produced to prove the Conſpiracy. Then to make this Matter come home to the Priſoner at the Bar, firſt my Lord *Howard* gives you an Account, and does directly ſwear, That about the middle or latter end of *January* laſt, he happened to meet with Colonel *Sidney*, the Priſoner at the Bar, and the Duke of *Monmouth* (they were the Perſons firſt began to have Diſcourſe about this Matter) and how they met with a Diſappointment; the thing had ſlept a great while, and that it was fit it ſhould be revived again; and that Perſons of Quality were mentioned, who were to have an immediate Care in the carrying on of the Buſineſs, and that it ſhould not be divulged to too many; accordingly there was my Lord *Ruſſel*, my Lord of *Eſſex*, my Lord of *Saliſbury*, and Mr. *Hambden* named. He tells you, the Priſoner at the Bar undertook for my Lord of *Eſſex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Ruſſel*, and the reſt; and that this was the Reſult of one Meeting: He goes yet further, That purſuant to this it was communicated to thoſe Perſons ſo to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambden*'s Houſe; but is not ſo poſitive to the Time, but only to the Place and Perſons. He ſays, all theſe Perſons met, and he gives you an Account, That Mr. *Hambden* (becauſe it was neceſſary for ſome Perſon to break ſilence) gave ſome ſhort Account of the Deſign of their Meeting, and made ſome Reflexions upon the Miſchiefs that attended the Government, and what Apprehenſions many people had upon the late Choice of Sheriffs, and that there had been a Male-Adminiſtration of Publick Juſtice; That it was fit ſome means ſhould be uſed to redreſs theſe Grievances. He can't tell you poſitively, what this Man, or that Man, ſaid there; but ſays, that all did unanimouſly conſent to what was then debated about an Inſurrection; and in order to it, they diſcourſed about the Time when it ſhould be, and that they thought fit it ſhould be done ſuddenly, while Men's Minds were wound up to that height, as they then were; and as the firſt Witneſs tells you, There was a Conſideration, whether it ſhould be at one Place, or at ſeveral Places together: He ſays, then it was taken into Conſideration, that this could not be carried on, but there muſt be Arms and Ammunition provided. The next Step is, about a neceſſary Concern, the Concern of Money, and therefore our Law calls Money, *The Sinews of War.* My Lord *Howard* tells you, That the Duke of *Monmouth* propoſed 25 or 30,000*l.* That my Lord *Grey* was to advance 10,000*l.* out of his own Eſtate; but then they thought to make their Party more ſtrong by the Aſſiſtance of a Diſcontented People in *Scotland*, my Lord of *Argyle*, and Sir *John Cockram*, and ſeveral other People there to join with them. That purſuant to this, they all after met at my Lord *Ruſſel*'s, and the ſame Debate is re-aſſumed, and among the reſt, this particular thing of conciliating a Friendſhip with the *Scotch*; the *Campbells*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mention'd. That Colonel *Sidney* took upon himſelf to find out a Meſſenger, but it was my Lord *Ruſſel*'s Part to write the Letter; One of the Meſſengers named to convey the ſame was *Aaron Smith*, he was known, ſays my Lord *Howard*, to ſome of us; and then we all agreed, that *Aaron Smith* was the moſt proper Man: Upon this they brake up that very Time. Afterwards comes my Lord *Howard* to Col. *Sidney* at ſome diſtance of time, and he comes to him, and ſhews him threeſcore Guineas, and told him he was going into the City, and that they were to be given to *Aaron Smith.* He tells you after this, That he had ſome other Diſcourſe about a Fortnight or three Weeks after, with Col. *Sidney*; and that Colonel *Sidney* did take notice, that he had ſent him, and that he had an Account of him, as far as *Newcaſtle.* So that 'tis very plain, That it was not ſudden and raſh Thoughts, it is a little more than, according to the Language we meet with in ſome Pamphlets of late, more than Heats and Stirs. Gentlemen, Then I muſt tell you, here are Circumſtances proved in purſuance of this Deſign, for Sir *Andrew Foſter* informs you, how that Sir *John Cockram* and the *Campbells*, and one *Monro*, as I take it, came to town, and that he had Diſcourſe with ſome of them about their Buſineſs of coming out of *Scotland*; and he ſays, they pretended it was about ſome Buſineſs of ſome Trade to *Carolina*, which does ſtill corroborate the Evidence. He tells you likewiſe, that there being a Noiſe of Diſcovering the Plot, they began to hide; Sir *John Cockram* began to hide, and ſculk from place to place; they come firſt with that Cant in their Mouths, about *Carolina*; the Meſſenger *Atterbury* tells you, When they came to take theſe Men, how they ſhuffled from place to place. So, Gentlemen, I muſt tell you, That if in caſe there be but one Witneſs to prove a direct Treaſon, and another Witneſs to a Circumſtance that contributes to that Treaſon, that will make two Witneſſes to prove the Treaſon: Becauſe I would explain my Mind, Not long ago all the Judges of *England* were commanded to meet together, and one that is the *Senior* of the King's Counſel was pleaſed to put this Caſe: If I buy a Knife of *J. S.* to kill the King, and it be proved by one Witneſs I bought a Knife for this purpoſe, and another comes and proves, I bought ſuch a Knife of *J. S.* they are two Witneſſes ſufficient to prove a Man guilty of High-Treaſon; and ſo it was held by all the Judges of *England* then preſent, in the Preſence of all the King's Counſel. And therefore Mr. *Sidney* is mightily miſtaken in the Law: For in caſe of any Treaſon (except the Treaſon at the Bar) or in Treaſon for Clipping and Coining, one Witneſs is ſufficient at this Day. Now, Gentlemen, ſuppoſing all this ſhould not be ſufficient, here is a Libel, and it is a moſt Traiterous and Seditious Libel. If you believe, that that was Colonel *Sidney*'s Book, writ by him, no Man can doubt but it is a ſufficient Evidence, that he is guilty of Compaſſing and Imagining the Death of the King; and let us conſider, what Proof can be greater, than what has been given of it. Mr. *Sheppard*, an intimate Acquaintance of his, that has ſeen him write, he looks upon the Hand, and ſays, He is extremely acquainted with the Hand, and ſays he, I believe in my Conſcience, this Book is Colonel *Sidney*'s Hand. Gentlemen, Do you expect Mr. *Sidney* would call a Witneſs to be by to ſee him write that Book?

In the next Place, you have two Tradeſmen, *Coke* and *Cary*, and they tell you, one had ſeen him write once, the other had ſeen his Hand-writing, and they both believe it his Hand-writing; and they have good Reaſon, for they have paid ſeveral Sums of Money, upon Notes which they took, as well as this, to be his Hand-writing. Gentlemen, Beſides that, give me leave to tell you, here is another thing, that makes it more plain. This very Book is found in Col. *Sidney's* Houſe, on the Table in his Study, where he uſed to write, by a Gentleman, againſt whom Colonel *Sidney* can't make the leaſt Objection; and that there was that Fairneſs offered by the Gentleman, *Pray, Colonel, put your Seal upon it, that you may ſee, that no Injury be done you*; but Mr. *Sidney* would not do it. Therefore he ſeals them with his own Seal, and carries them to *Whitehall*, where they were broken open, and ſwears that thoſe Papers were found in his Cloſet, whereof this was one. Another thing which I muſt take notice of to you in this Caſe, is, to mind you, how this Book contains all the Malice, and Revenge, and Treaſon, that Mankind can be guilty of: It fixes the ſole Power in the Parliament and the People; ſo that he carries on the Deſign ſtill, for their Debates at their Meetings were to that purpoſe. And ſuch Doctrines as theſe ſuit with their Debates; for there, a general Inſurrection was deſigned, and that was diſcourſed of in this Book, and encouraged: They muſt not give it an ill Name: It muſt not be called a Rebellion, it being the general Act of the People. The King, it ſays, is reſponſible to them, the King is but their Truſtee; That he had betrayed his Truſt, he had miſgoverned, and now he is to give it up, that they may be all Kings themſelves. Gentlemen, I muſt tell you, I think I ought more than ordinarily to preſs this upon you, becauſe I know the Misfortune of the late unhappy Rebellion, and the bringing the late bleſſed King to the Scaffold was firſt begun by ſuch kind of Principles: They cried, He had betrayed the Truſt that was delegated to him from the People. Gentlemen, in the next Place, becauſe he is afraid their Power alone won't do it, he endeavours to Poiſon Men's Judgments; and the way he makes uſe of, he colours it with Religion, and quotes Scripture for it too: and you know how far that went in the late Times; How we were for binding our King in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewiſe made uſe of by him to ſtir up the People to Rebellion. Gentlemen, if in caſe the Priſoner did deſign the Depoſing the King, the removing the King, and in order thereunto he be guilty of Conſpiring to Levy War; or as to the Letter writ by my Lord *Ruſſel*, if he was privy to it, theſe will be Evidences againſt him. So that 'tis not upon two, but 'tis upon greater Evidence than 22, if you believe this Book was writ by him. Next I muſt tell you, Gentlemen, upon, I think a leſs Teſtimony, an Indictment was preferred againſt the late Lord *Ruſſel*, and he was thereupon Convicted and Executed; of which they have brought the Record. Theſe are the Evidences for the King.

For the Priſoner, he hath made ſeveral Objections; As that there was no War levied: For that, Gentlemen, at the beginning of the Cauſe I told you what I took the Law to be, and I take it to be ſo very plainly. But, Gentlemen, as to the Credibility of my Lord *Howard*, he offers you ſeveral Circumſtances. Firſt, he offers you a Noble Lord, my Lord *Angleſey*, who ſays, that he attended my Lord of *Bedford*, upon the Misfortune of the Impriſonment of his Son; after he had done, my Lord *Howard* came to ſecond that Part of a Chriſtian's Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him; and as to the Plot, he knew nothing of it. Another Noble Lord, my Lord *Clare*, tells you, That he had ſome Diſcouſe with my Lord *Howard*, and he ſaid, that if he were accuſed, he thought they would but tell Noſes, and his Buſineſs was done. Then Mr. *Philip Howard*, he tells you, how he was not ſo intimate with him as others, but he often came to his Brother's; and that he ſhould ſay, he knew nothing of a Plot, nor did he believe any; but at the ſame time, he ſaid he believed there were a ſham Plot; and then he preſſed him about the Buſineſs of the Addreſs; but that now my Lord of *Eſſex* was out of Town, and ſo it went off. Another Thing Mr. *Sidney* took notice of, ſays he, 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (beſides by his Allegation) does not appear.

Col. *Sidney*. My Lord, he hath confeſſed it.

L. C. J. Admit it; yet in caſe Colonel *Sidney* ſhould be Convicted of this Treaſon, the Debt accrues to the King, and he cannot be a Farthing the better for it. But how does it look like Revenge? I find my Lord *Howard*, when he ſpeaks of Colonel *Sidney*, ſays, he was more beholden to him than any body, and was more ſorry for him; ſo ſays my Lord *Clare*. Gentlemen, You have it likewiſe offered, that he came to Colonel *Sidney's* Houſe, and there he was deſirous to have the Plate and Goods removed to his Houſe, and that he would aſſiſt them with his Coach and Coachman to carry them thither; and did affirm, that he knew nothing of the Plot; and did not believe Colonel *Sidney* knew any thing: And this is likewiſe proved by a couple of Maid-Servants, as well as the *Frenchman*. You have likewiſe ſomething to the ſame purpoſe ſaid by my Lord *Paget*, and this is offered to take off the Credibility of my Lord *Howard*. Do you believe, becauſe my Lord *Howard* did not tell them, I am in a Conſpiracy to kill the King, therefore he knew nothing of it? He knew theſe Perſons were Men of Honour and would not be concerned in any ſuch thing. But do you think becauſe a Man goes about and denies his being in a Plot, therefore he was not in it? Nay, it ſeems ſo far from being an Evidence of his Innocence, that it is an Evidence of his Guilt. What ſhould provoke a Man to diſcourſe after this manner, if he had not apprehenſions of Guilt within himſelf? This is the Teſtimony offered againſt my Lord *Howard* in diſparagement of his Evidence. Ay, but farther 'tis objected, he is in Expectation of a Pardon: And he did ſay, he thought he ſhould not have the King's Pardon till ſuch time as the Drudgery of ſwearing was over. Why, Gentlemen, I take notice, before this diſcourſe happened, he ſwore the ſame thing at my Lord *Ruſſel's* Trial. And I muſt tell you, though it is the Duty of every Man to diſcover all Treaſons; yet I tell you for a Man to come and Swear himſelf over and and over guilty, in the Face of a Court of Juſtice, may ſeem irkſome and provoke a Man to give it ſuch an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witneſs: But, Gentlemen, conſider, if theſe things ſhould have been allowed to take away the Credibility of a Witneſs, what would have become of the Teſtimonies that have been given of late Days? What would become of the Evidence of all thoſe that have been ſo profligate in their Lives? Would you have the King's Counſel to call none but Men that were not concerned in this Plot, to prove that they were Plotting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Priſoner's Hand, but be Counterfeited; and for that, there is a Gentleman, who tells you what a dextrous Man he is. He ſays, he believes he could Counterfeit any Hand in Half an Hour; 'tis an ugly temptation, but I hope he hath more Honour than to make uſe of that Art he ſo much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir *Philip Lloyd*, through the Bag Sealed up, did it? Or who elſe, can you imagine, ſhould, or, does the Priſoner pretend, did write this Book? So that as on one Side, God forbid but we ſhould be careful of Men's Lives, ſo on the other Side, God forbid, that Flouriſhes and Varniſh ſhould come to endanger the Life of the King, and the Deſtruction of the Government. But, Gentlemen, We are not to anticipate you in point of Fact, I have, according to my Memory, recapitulated the Matters given in Evidence. It remains purely in you now, whether you do believe upon the whole Matter, that the Priſoner is guilty of the High-Treaſon where of he is Indicted.

Mr. Juſt. *Withins*. Gentlemen, 'Tis fit you ſhould have our Opinions; in all the Points of Law we concur with my Lord Chief Juſtice: Says Colonel *Sidney*, here is a mighty Conſpiracy, but there is nothing comes of it, who muſt we thank for that? None but the Almighty Providence: One of themſelves was troubled in Conſcience, and comes and diſcovers it; had not *Keeling* diſcovered it, God knows whether we might have been alive at this Day.

Then the Jury withdrew, and in about half an Hour's time returned, and brought the Priſoner in, Guilty.

And then the Lieutenant of the Tower *took away his Priſoner.*

M*Onday Nov.* 26, 1683. *Algernon Sidney*, Eſq; was brought up to the Bar of the Court of *King's-Bench*, to receive his Sentence.

L. C. J. Mr. Attorney, will you move any thing?

Mr. Att. Gen. My Lord, the Priſoner at the Bar is convicted of High-Treaſon, I demand Judgment againſt him.

Cl. of Cr. Algernon Sidney, Hold up thy Hand. [*Which he did.*] Thou haſt been indicted of High-Treaſon, and thereupon arraigned, and thereunto pleaded not Guilty, and for thy Trial put thyſelf upon God and thy Country, which Country has found thee Guilty, what can'ſt thou ſay for thyſelf, why Judgment of Death ſhould not be given againſt thee, and Execution awarded according to Law?

Col. *Sidney*. My Lord, I humbly conceive, I have had no Trial; I was to be tried by my Country, I do not find my Country in the Jury that did try me, there were ſome of them that were not Freeholders, I think, my Lord, there is neither Law nor Preſident of any Man that has been tried by a Jury, upon an Indictment laid in a County, that were not Freeholders. So I do humbly conceive, That I have had no Trial at all, and if I have had no Trial, there can be no Judgment.

L. C. J. Mr. *Sidney*, You had the Opinion of the Court in that Matter before: We were unanimous in it, for it was the Opinion of all the Judges of *England*, in the Caſe * next preceeding your's, tho' that was a Caſe relating to Corporations, but they were of Opinion, That by the Statute of Queen *Mary*, the Trial of Treaſon was put as it was at Common Law, and that there was no ſuch Challenge at Common Law.

Col. *Sidney*. Under favour, my Lord, I preſume in ſuch a Caſe as this, of Life, and for what I know concerns every Man in *England*, you will give me a Day and Counſel to argue it.

L. C. J. 'Tis not in the Power of the Court to do it.

Col. *Sidney*. My Lord, I deſire the Indictment againſt me may be read.

L. C. J. To what purpoſe?

Col. *Sidney*. I have ſomewhat to ſay to it.

L. C. J. Well, read the Indictment.

Then the Clerk of the Crown read the Indictment.

Col. *Sidney*. Pray Sir, will you give me leave to ſee it, if it pleaſe you.

L. C. J. No, that we cannot do.

Col *Sidney*. My Lord, there is one thing then that makes this abſolutely void, it deprives the King of his Title, which is Treaſon by Law, *Defenſor Fidei*. There is no ſuch thing there, if I heard right.

L. C. J. In that you would deprive the King of his Life, that is in very full I think.

Col. *Sidney*. If no body would deprive the King no more than I, he would be in no danger. Under favour theſe are Things not to be overruled in Point of Life ſo eaſily.

L. C. J. Mr. *Sidney*, We very well underſtand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law; and if you make Objections that are immaterial, we muſt over-rule them. Don't think that we over-rule in your Caſe, that we would not over-rule in all Men's Caſes in your Condition. The Treaſon is ſufficiently laid.

Col. *Sidney*. My Lord, I conceive this too, that thoſe Words, that are ſaid to be written in the Paper, that there is nothing of Treaſon in them: Beſides, that there was nothing at all proved of them, only by ſimilitude of hands, which upon the Caſe I alledge to your Lordſhip was not to be admitted in a Criminal Caſe. Now 'tis eaſy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put myſelf upon it, that there is no Treaſon in it.

L. C. J There is not a Line in the Book ſcarce but what is Treaſon.

Mr. Juſt. *Withins*. I believe you don't believe it Treaſon.

L. C. J. That is the worſt part of your Caſe; When Men are riveted in Opinion, that Kings may be depoſed, that they are accountable to their People, that a general Inſurrection is no Rebellion, and juſtify it, 'tis high time, upon my Word, to call them to Account.

Col. *Sidney*. My Lord, the other Day I had a Book, wherein I had King *James's* Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603, and there is nothing in theſe Papers, which is called a Book, though it never appeared, for if it were true, it was only Papers found in a private Man's Study, never ſhewed to any body; and Mr. *Attorney* takes this to bring it to a Crime, in order to ſome other Counſel, and this was to come out ſuch a time, when the Inſurrection brake out. My Lord, There is one Perſon I did not know where to find then, but every body knows where to find now, that is the Duke of *Monmouth*, if there had been any thing in Conſultation, by this means to bring any thing about, he muſt have known of it, for it muſt be taken to be in Proſecution of thoſe Deſigns of his: And if he will ſay there ever was any ſuch thing, or knew any thing of it, I will acknowledge whatever you pleaſe.

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* Lord *Ruſſel's* Caſe. p. 718.

L. C. J. That is over; you were Tried for this Fact: We muſt not ſend for the Duke of *Monmouth*.

Col. *Sidney*. I humbly think I ought, and deſire to be heard upon it.

L. C. J. Upon what?

Col. *Sidney*. If you will call it a Trial——

L. C. J. I do. The Law calls it ſo.

Mr. Juſt. *Withins*. We muſt not hear ſuch Diſcourſes, after you have been Tried here, and the *Jury* have given their Verdict; as if you had not Juſtice done you.

Mr. Juſt. *Holloway*. I think it was a very fair Trial.

Col. *Sidney*. My Lord, I deſire that you would hear my Reaſons; why I ſhould be brought to a new Trial.

L. C. J. That can't be.

Col *Sidney*. Be the Trial what it will?

Cl. of Cr. Crier, make an O yes.

Col. *Sidney*. Can't I be heard, my Lord?

L. C. J. Yes, If you will ſpeak that which is proper; 'tis a ſtrange thing, You ſeem to appeal as if you had ſome great Hardſhip upon you. I am ſure, I can as well appeal as you. I am ſure you had all the Favour ſhewed you, that ever any Priſoner had. The Court heard you with Patience, when you ſpake what was proper; but if you begin to arraign the Juſtice of the Nation, it concerns the Juſtice of the Nation to prevent you: We are bound by our Conſciences and our Oaths to ſee Right done to you; and though we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth; and we act according to our Conſciences, though we don't act according to your Opinion.

Col. *Sidney*. My Lord, I ſay, In the firſt place I was brought to *Weſtminſter* by *Habeas Corpus*, the 7th of this Month, granted the Day before I was to be Arraigned, when yet no Bill was exhibited againſt me; and my Proſecutors could not know it would be found, unleſs they had a Correſpondence with the Grand Jury, which under Favour ought not to have been had.

L. C. J. We know nothing of it: You had as good tell us of ſome body's Ghoſt, as you did at the Trial.

Col. *Sidney*. I told you of two infamous Perſons that had acted my Lord *Ruſſel*'s Ghoſt.

L. C. J. Go on, if you have any thing elſe.

Col. *Sidney*. I prayed a Copy of the Indictment, making my Objections againſt it, and putting in a ſpecial Plea, which the Law, I humbly conceive, allowed me: The help of Counſel to frame it was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Caſe you cited. This Favour ſhewed you to-day was denied at any time to Sir *Henry Vane*, that is, to have the Indictment read in *Latin*. Don't ſay on the other Side, we refuſed your Plea. I told you, have a care of putting it in. If the Plea was ſuch as Mr. Attorney did demur to it: I told you, you were anſwerable for the Conſequences of it.

Mr. Juſt. *Withins*. We told you, you might put it in, but you muſt put it in at your Peril.

Col. *Sidney*. My Lord, I would have put it in.

L. C. J. I did advertiſe you: If you put in a Plea, upon your Peril be it. I told you, We are bound by Law to give you that fair Advertiſement of the great Danger you would fall under, if it were not a good Plea.

Col. *Sidney*. My Lord, my Plea was that could never hurt me.

L. C. J. We do not know that.

Col. *Sidney*. I deſire, my Lord, this, that it may be conſidered, That, being brought here to my Trial, I did deſire a Copy of my Indictment, upon the Statute of 46 *Edw.* 3. which does allow it to all Men in all Caſes.

L. C. J. I tell you the Law is otherwiſe, and told you ſo then, and tell you ſo now.

Col. *Sidney*. Your Lordſhip did not tell me, That was not a Law.

L. C. J. Unleſs there be a Law particular for Col. *Sidney*. If you have any more to ſay——

Col. *Sidney*. I am probably informed, and if your Lordſhip will give me time, ſhall be able to prove it, That the Jury was not ſummoned, as it ought to be; My Lord, if this Jury was not ſummoned by the Bailiff, according to the ordinary way, but they were agreed upon by the Under-Sheriffs, *Graham* and *Burton*, I deſire to know whether that be a good Jury.

L. C. J. We can take notice of nothing, but what is upon the Record: Here is a Return by the Sheriff; if there had been any indirect means uſed with the Sheriff, or any elſe, you ſhould have mentioned it before they were ſworn.

Col. *Sidney*. Is there any Thing in the World more irregular than that?

L. C. J. I know nothing of it. That time is paſt.

Col. *Sidney*. Now, my Lord, all Men are admitted on the Jury.

L. C. J. Why, You did not like Gentlemen, and now you don't like thoſe that you had. In plain *Engliſh*, if any Jury had found you Guilty it had been the ſame thing. It had been a good Summons, if they had acquitted you.

Col. *Sidney*. When the Jury thus compoſed, was ſworn, four Witneſſes, of whom three were under the Terror of Death for Treaſons, were produc'd againſt me. And they confeſſed themſelves guilty of Crimes of which I had no Knowledge, and told Stories by hear-ſay. And your Lordſhip did promiſe, in ſumming up the Evidence, that the Jury ſhould be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as poſſibly I could be.

Col. *Sidney*. My Lord *Howard* being the only Witneſs, that ſaid any thing againſt me, Papers, which were ſaid to be found in my Houſe, were produced as another Witneſs, and no other Teſtimony given concerning them, but that the Hand was like unto mine. No Man can ſay, I read them, or ſhewed them to any Man. None knew when they were written; The Ink ſhewed they had been done many, and perhaps 20 or 30 Years. Yea, ſome Paſſages were read out of them, without examining what went before and after; when I deſired the whole might be read, it was refuſed, unleſs I ſpecified the Paſſage, which I could not do, knowing not one Word in them. When I alledged, that in Criminal Caſes Similitude of Hands could not be taken for Evidence, propoſed my Points of Law concerning Conſtructive Treaſon, *&c.* And I did conceive that no Court under the Parliament could be Judges of it, and did deſire the Statute, which did ſo enact it, might be read, it could not be obtained: And I cited many Judgments in Parliament.

L. C. J. Mr. *Sidney*, If you arraign the Juſtice of the Nation ſo, as tho' we had denied you the Methods of Juſtice, I muſt tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you leſs, I think we had done more our Duty. What Points of Law do you mean?

Col. *Sidney*. That of Conſtructive Treaſon, my Lord.

L. C. J. We do not go upon Conſtructive Treaſon, 'tis plain Treaſon within 25 *Edw.* 3.

Col. *Sidney*. Is Writing an Act?

L. C. J. Yes, 'tis *agere*.

Proclamation made for Silence.

Mr. *Bamfield*. Sir, I pray you to hear me one word as *Amicus Curiæ*; I humbly ſuppoſe that your Lordſhip will not give Judgment if there be a material Defect in the Indictment, as the Clerk did read it, he left out *Defenſor fidei*, which is part of the Stile of his Majeſty.

L. C. J. We have heard of it already, we thank you for your Friendſhip, and are ſatisfied. Mr. *Sidney*, there remains nothing for the Court, but to diſcharge their Duty in pronouncing that Judgment the Law requires to be pronounced againſt all Perſons Convicted of High-Treaſon; and I muſt tell you, that though you ſeem to arraign the Juſtice of the Court, and the Proceeding——

Col. *Sidney*. I muſt appeal to God and the World, I am not heard.

L. C. J. Appeal to whom you will. I could wiſh with all my Heart, inſtead of Appealing to the World, as tho' you had received ſomething extreme hard in your Caſe, that you would appeal to the Great God of Heaven, and conſider the Guilt you have contracted by the great Offence you have committed. I wiſh with all my Heart, you would conſider your Condition, but if your own Ingenuity will not provoke you, nothing I can ſay will prevail with you to do it; if the King's General Pardon, in which you had ſo great a ſhare of the King's Mercy, will not, I could wiſh, that, as a Gentleman and as a Chriſtian, you would conſider under what particular Obligations you lie to that Gracious King, that hath done ſo much for you. I ſhould have thought it would have wrought in you ſuch a Temper of Mind, as to have turned the reſt of your Life into a generous Acknowledgment of his Bounty and Mercy, and not into a State of conſtant Combining and Writing, not only to deſtroy Him, but to ſubvert the Government; and I am ſorry to ſee you ſo earneſt in the Juſtification of the Book, in which there is ſcarce a Line, but what contains the rankeſt Treaſon, ſuch as Depoſing the King: It not only encourages, but juſtifies all Rebellion. Mr. *Sidney*, you are a Gentleman of Quality, and need no Counſel from me: If I could give you any, my Charity to your Immortal Soul would provoke me to it. I pray God ſeaſon this Affliction to you. There remains nothing with the Court, but to pronounce that Judgment that is expected, and the Law requires, and therefore the Judgment of the Court is,

> *That you be carried hence to the Place from whence you came, and from thence you ſhall be drawn upon an Hurdle to the Place of Execution, where you ſhall be hanged by the Neck, and, being alive, cut down, your Privy-Members ſhall be cut off, and burned before your Face, your Head ſevered from your Body, and your Body divided into four Quarters, and they to be diſpoſed at the Pleaſure of the King. And the God of infinite Mercy have Mercy upon your Soul.*

Col. *Sidney*. Then, O God! O God! I beſeech thee to ſanctify theſe Sufferings unto me, and impute not my Blood to the Country, nor the City, thro' which I am to be drawn; Let no Inquiſition be made for it, but if any, and the ſhedding of Blood that is innocent, muſt be revenged, Let the Weight of it fall only upon thoſe, that maliciouſly perſecute me for Righteouſneſs ſake.

L. C. J. I pray God work in you a Temper fit to go unto the other World, for I ſee you are not fit for this.

Col. *Sidney*. My Lord, feel my Pulſe, [*holding out his Hand*] and ſee if I am diſordered; I bleſs God, I never was in better Temper than I am now.

Then the Lieutenant of the Tower carried back his Priſoner.

The Priſoner afterwards preſented a Petition to the King, which ſee in *State-Trials*. Vol. VIII. p. 453.

The Execution of Algernon Sidney, *Eſq*; *on* Friday December 7, 1683.

ON the 7th of *December* (his Majeſty having been pleaſed to remit [*] all the Sentence but Beheading) he was brought to a Scaffold erected for that purpoſe on *Tower-hill*, where, having deliver'd the following Paper to the Sheriff, his Head was ſever'd from his Body.

Men, Brethren, and Fathers; Friends, Countrymen, and Strangers.

It may be expected that I ſhould now ſay ſome great Matters unto you; but the Rigour of the Seaſon, and the Infirmities of my Age, increaſed by a cloſe Impriſonment of above five Months, do not permit me.

Moreover, we live in an Age that maketh Truth paſs for Treaſon: I dare not ſay any thing contrary unto it, and the Ears of thoſe that are about me will probably be found too tender to hear it. My Trial and Condemnation do ſufficiently evidence this.

Weſt, *Rumſey* and *Keeling*, who were brought to prove the Plot, ſaid no more of me, than that they knew me not; and ſome others, equally unknown unto me, had uſed my Name, and that of ſome others, to give a little Reputation unto their Deſigns. The Lord *Howard* is too infamous by his Life, and the many Perjuries not to be denied, or rather ſworn by himſelf, to deſerve Mention; and being a ſingle Witneſs would be of no Value, tho' he had been of unblemiſh'd Credit, or had not ſeen and confeſſed that the Crimes committed by him would be pardon'd only for committing more; and even the Pardon promiſed could not be obtain'd till the Drudgery of Swearing was over.

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[*] *This was becauſe of his Family, he being Brother to the Earl of* Leiceſter.

This being laid aſide, the whole Matter is reduced to the Papers ſaid to be found in my Cloſet by the King's Officers, without any other Proof of their being written by me, than what is taken from Suppoſitions upon the Similitude of an Hand that is eaſily counterfeited, and which hath been lately declared in the Lady *Carr*'s Caſe to be no lawful Evidence in criminal Cauſes.

But if I had been ſeen to write them, the Matter would not be much alter'd. They plainly appear to relate unto a large Treatiſe written long ſince, in Anſwer to *Filmer*'s Book, which, by all intelligent Men, is thought to be grounded upon wicked Principles, equally pernicious unto Magiſtrates and People.

If he might publiſh unto the World his Opinion, that all Men are born under a Neceſſity derived from the Laws of God and Nature, to ſubmit unto an abſolute Kingly Government, which could be reſtrained by no Law or Oath; and that he that hath the Power, whether he came unto it by Creation, Election, Inheritance, Uſurpation, or any other way, had the Right; and none muſt oppoſe his Will, but the Perſons and Eſtates of his Subjects muſt be indiſpenſibly ſubject unto it; I know not why I might not have publiſhed my Opinion to the contrary, without the Breach of any Law I have yet known.

I might, as freely as he, publickly have declared my Thoughts, and the Reaſons upon which they were grounded, and I am perſuaded to believe, that God had left Nations unto the Liberty of ſetting up ſuch Governments as beſt pleaſed themſelves.

That Magiſtrates were ſet up for the good of Nations, not Nations for the Honour or Glory of Magiſtrates.

That the Right and Power of Magiſtrates in every Country, was that which the Laws of that Country made it to be.

That thoſe Laws were to be obſerved, and the Oaths taken by them, having the Force of a Contract between Magiſtrates and People, could not be violated without Danger of diſſolving the whole Fabrick.

That Uſurpation could give no Right, and the moſt dangerous of all Enemies unto Kings were they, who, raiſing their Power to an exorbitant Height, allowed unto Uſurpers all the Rights belonging unto it.

That ſuch Uſurpations being ſeldom compaſs'd without the Slaughter of the reigning Perſon, or Family, the worſt of all Villanies was thereby rewarded with the moſt glorious Privileges.

That if ſuch Doctrines were received, they would ſtir up Men to the Deſtruction of Princes with more Violence, than all the Paſſions that have hitherto raged in the Hearts of the moſt unruly.

That none could be ſafe, if ſuch a Reward were propoſed unto any that could deſtroy them.

That few would be ſo gentle as to ſpare even the beſt, if by their Deſtruction a wild Uſurper could become God's Anointed; and by the moſt execrable Wickedneſs inveſt himſelf with that divine Character.

This is the Scope of the whole Treatiſe; the Writer gives ſuch Reaſons as at preſent did occur unto him, to prove it. This ſeems to agree with the Doctrines of the moſt reverenced Authors of all Times, Nations and Religions. The beſt and wiſeſt of Kings have ever acknowledged it. The preſent King of *France* hath declared, that Kings have that happy want of Power, that they can do nothing contrary to the Laws of their Country, and grounds his Quarrel with the King of *Spain*, *Anno* 1667, upon that Principle. King *James*, in his Speech to the Parliament, *An.* 1603, doth in the higheſt degree aſſert it: the Scripture ſeems to declare it. If nevertheleſs the Writer was miſtaken, he might have been refuted by Law, Reaſon, and Scripture; and no Man, for ſuch Matters, was ever otherwiſe puniſhed, than by being made to ſee his Error; and it hath not (as I think) been ever known that they had been referr'd to the Judgment of a Jury, compoſed of Men utterly unable to comprehend them.

But there was little of this in my Caſe; the Extravagance of my Proſecutors goes higher: The above-mention'd Treatiſe was never finiſh'd, nor could be in many Years, and moſt probably would never have been. So much as is of it was written long ſince, never reviewed nor ſhewn unto any Man; and the fiftieth part of it was produced, and not the tenth of that offered to be read. That which was never known unto thoſe who are ſaid to have conſpired with me, was ſaid to be intended to ſtir up the People in Proſecution of the Deſigns of thoſe Conſpirators.

When nothing of particular Application unto Time, Place, or Perſon, could be found in it (as hath ever been done by thoſe who endeavour'd to raiſe Inſurrections) all was ſupplied by *Innuendo's*.

Whatſoever is ſaid of the Expulſion of *Tarquin*; the inſurrection againſt *Nero*; the Slaughter of *Caligula*, or *Domitian*; the Tranſlation of the Crown of *France* from *Merovens*'s Race unto *Pepin*; and from his Deſcendants unto *Hugh Capit*, and the like, applied by *Innuendo* unto the King.

They have not conſidered, that if ſuch Acts of State be not good, there is not a King in the World that has any Title to the Crown he bears; nor can have any, unleſs he could deduce his Pedigree from the eldeſt Son of *Noah*, and ſhew that the Succeſſion had ſtill continued in the eldeſt of the eldeſt Line, and been ſo deduced to him.

Every one may ſee what Advantage this would be to all the Kings of the World, and whether, that failing, it were not better for them to acknowledge they had received their Crowns by the Conſent of willing Nations; or to have no better Title unto them than Uſurpation and Violence, which, by the ſame ways, may be taken from them.

But I was not long ſince told that I muſt die, or the Plot muſt die.

Leſt the Means of deſtroying the beſt Proteſtants in *England* ſhould fail, the Bench muſt be filled with ſuch as had been Blemiſhes to the Bar.

None but ſuch as theſe would have adviſed with the King's Counſel of the Means of bringing a Man to Death, ſuffer'd a Jury to be pack'd by the King's Solicitors and the under Sheriff, admit of Jurymen who were not Freeholders, receive ſuch Evidence as is above-mention'd, refuſe a Copy of an Indictment, or to ſuffer the Statute of 46 *Edw.* III. to be read, that doth expreſly enact it ſhould in no Caſe be denied unto any Man, upon any Occaſion whatſoever, over-rule the moſt important Points of Law without hearing. And whereas the Statute 25 *Edw.* III. upon which they ſaid I ſhould be tried, doth reſerve unto the Parliament all Conſtructions to be made in Points of Treaſon, they could aſſume unto themſelves not only a Power to make Conſtructions, but ſuch Conſtructions as neither agree with Law, Reaſon, or common Senſe.

By theſe Means I am brought to this Place. The Lord forgive theſe Practices, and avert the Evils that threaten the Nation from them. The Lord ſanctify theſe my Sufferings unto me; and though I fall as a Sacrifice unto Idols, ſuffer not Idolatry to be eſtabliſhed in this Land. Bleſs thy People and ſave them. Defend thy own Cauſe and defend thoſe that defend it. Stir up ſuch as are faint, direct thoſe that are willing, confirm thoſe that waver, give Wiſdom and Integrity unto All. Order all Things ſo as may moſt redound unto thine own Glory. Grant that I may die glorifying thee for all thy Mercies, and that at the laſt thou haſt permitted me to be ſingled out as a Witneſs of thy Truth; and even by the Confeſſion of my Oppoſers, for that *Old Cauſe* in which I was from my Youth engag'd, and for which thou haſt often and wonderfully declared thyſelf.

His Attainder was reverſed in Parliament, the firſt of *Will.* and *Mary*. See *State Trials*, Vol. VIII. p. 517.

CXXIII. *The Trial of* JOHN HAMPDEN[*], *Eſq*; *at the* King's-Bench *for an* High Miſdemeanour, Feb. 6, 1683. Hil. 36 Car. II.

J*Ohn Hampden*, Eſq; being brought up by Writ of *Habeas Corpus*, from the *Tower* of *London* on the 28th of *November*, and there being an Indictment preferred againſt him for Miſdemeanour, His Majeſty's Attorney-General prayed, that he might be Arraigned upon it, which was done in this Manner.

Cl. of Cr. John Hampden, *You ſtand here Indicted by the Name of* John Hampden, *late of the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *Gent. for that you being a pernicious and ſeditious Man, and a Perſon of a wicked Mind, and of an impious, unquiet, and turbulent Diſpoſition, and contriving, practiſing, and falſly, unlawfully, unjuſtly, maliciouſly, turbulently, and ſeditiouſly intending the Peace of our Sovereign Lord King* Charles *that now is, and the common Tranquility of this Kingdom of* England *to diſquiet, moleſt, and diſturb, and, as much as in you lay, Sedition within this Kingdom of* England *to incite, ſtir up, and procure, and the Government of our ſaid Lord the King in this Kingdom of* England *into Danger to bring: And that you the ſaid* John Hampden, *your moſt impious wicked, and ſeditious Intentions aforeſaid to fulfil and perfect, and bring to effect, the laſt Day of* June, *in the Five and thirtieth Year of the Reign of our ſaid Sovereign Lord the King that now is; and divers other Days and Times as well before as after, with Force, and Arms,* &c. *At the Pariſh of St.* Giles in the Fields, *in the County of* Middleſex, *unlawfully, unjuſtly, maliciouſly, and ſeditiouſly did aſſemble yourſelf, meet, conſult, conſpire, and confederate with divers evil-diſpoſed Subjects of our ſaid Lord the King to the Jurors unknown, and with the ſaid Perſons did treat concerning your ſaid moſt wicked and ſeditious Compaſſings, Imaginations, and Purpoſes aforeſaid, to be executed, fulfilled, and brought to effect; and further that you the ſaid* John Hampden, *your moſt wicked, impious, and ſeditious Contrivances, Practices and Intentions aforeſaid to fulfil, perfect, and reduce to effect, then and there,* viz. *the laſt Day of* June *in the 35th Year aforeſaid, and divers other Days and Times, as well before as after, at the Pariſh aforeſaid, in the County aforeſaid, with Force and Arms,* &c. *falſly, unlawfully, unjuſtly, maliciouſly, and ſeditiouſly did conſult, conſent, conſpire and confederate of an Inſurrection within this Kingdom of* England *to be made, and of procuring and providing Arms and armed Men to be prepared in divers Places within this Kingdom of* England *your ſame moſt wicked, impious and ſeditious Intentions and Compaſſings aforeſaid to fulfil and perfect: And that you the ſaid* John Hampden, *your moſt wicked, impious, and ſeditious Intentions aforeſaid to fulfil and perfect, and bring to effect afterwards,* viz. *the laſt Day of* June, *in the 35th Year aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, with Force and Arms,* &c. *falſly, unlawfully, unjuſtly, wickedly, maliciouſly, and ſeditiouſly did conſult, agree, and conſent that a certain Perſon to the Jurors aforeſaid unknown, ſhould be ſent into* Scotland *to invite and incite divers evil-diſpoſed Subjects of our ſaid Lord the King, of his Kingdom of* Scotland, *to come into this Kingdom of* England *to adviſe and conſult with you the ſaid* John Hampden, *and others the aforeſaid evil-diſpoſed Subjects of our ſaid Lord the King in this Kingdom of* England, *concerning Aid and Aſſiſtance to be expected and ſupplied out of the ſaid Kingdom of* Scotland, *your ſaid moſt wicked, impious, and ſeditious Intentions and Compaſſings aforeſaid to fulfil, effect, and promote, in manifeſt Contempt of the Laws of this Kingdom of* England, *to the evil and moſt pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity.*

Cl. of Cr. How ſay'ſt thou, Art thou Guilty of this High Miſdemeanour whereof thou ſtandeſt indicted, and haſt been now arraigned, or not Guilty?

Mr. Hampden. Not Guilty.

Upon which Plea Iſſue was joined between His Majeſty's Attorney-General, on behalf of the King and Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

H*Illary* Term 35 and 36 *Car. 2di Reg.* In the Beginning of the Term, Sir *Thomas Jenner*, Knight, His Majeſty's Serjeant at Law, and Recorder of the City of *London*, moved for a Trial at the Bar, in the Caſe between the King and Mr. *Hampden*, which was by the Court appointed to be on *Wedneſday* the 6th of *February* in the ſame Term, when the Court proceeded to the Trial as follows.

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[*] *Burnet*'s Hiſtory of hisOwn Times, Vol. I. p. 576.

Cl. of Cr. Call the Defendant *John Hampden.*

Mr. *Williams.* He appears.

Cl. of. Cr. Gardez votres Challenges. Call Sir *Charles Gerard.*

Crier. *You ſhall well and truly try the Iſſue between our Sovereign Lord the King and* John Hampden, *Gent. and a true Verdict give according to your Evidence.* So help you God.

Sir *Charles Gerard*, Jur'

Cl. of Cr.

Roger Jennings, Eſq; Jur'
Henry Hodges, Eſq; Jur'
Joſhua Galliard, Eſq;

Mr. *Williams.* We challenge him for the Defendant.

L. C. J. What is your Cauſe of Challenge?

Sir *George Jefferies.*

Mr. *Williams.* If your Lordſhip pleaſe to let him go through the Pannel, we will ſhew Cauſe if there be not enough left without him.

L. C. J. No, ſhew your Cauſe now, it being againſt the King.

Mr. *Williams.* He has an Employment under the King, he has an Office in the Foreſt, and that we ſay is our Cauſe of Challenge.

L. C. J. What then if he have?—Mr. *Williams.* My Lord, we ſuppoſe then he is not an indifferent Perſon to try this Cauſe.

L. C. J. Ay, let me hear that now proved and defended by any Gentleman of the long Robe, that that is a good Cauſe of Challenge. Shew me what Law there is for it.

Mr. *Williams.* To be of the King's Robe, or Pay, or Salary, is an Exception in any Caſe wherein the King is concerned.

L. C. J. Shew me any Law for that if you can, Mr. *Williams*, I know you are a Lawyer.

Mr. *Wallop.* It is the Opinion of my Lord *Coke* in his *Inſtitutes*, that it is a good Cauſe of Challenge.

L. C. J. But there is the Opinion of all the Judges in *Henry* the Sixth's Time againſt it.

Mr. *Wallop.* It is, my Lord, *fol.* 156.

L. C. J. But I can cite you three or four Books, and you have them all together in *Roll's* Abridgment, *Title Challenge*, where he ſets down four Books one after another, that it is no Cauſe of Challenge, even to be the King's Tenant, and there is a great deal of Reaſon for it. For if that were a good Cauſe of Challenge, mark the Conſequence, then all Perſons that hold Lands in *England*, hold them mediately or immediately of the King, and ſo the King could have no Freeholders to be Jurymen in his Cauſe.

Mr. *Williams.* This is a more ſpecial Cauſe of Challenge than that.

L. C. J. What can be greater than that of being the King's Tenant?

Sir *Robert Sawyer.*

Mr. Att. Gen. Eſpecially when all the Land of *England* was held of the Crown, as originally it was.

Mr. *Trevor.* My Lord, in 2d *Rolls* 646. *Tit. Trials*, There is the expreſs Opinion of my Lord *Rolls*, that to be of the Livery, or a menial Servant of the Crown, is a good Cauſe of Challenge.

L. C. J. And look you but in the firſt Caſe in the firſt Part of the Abridgment, *Title Challenges*, where he mentions three or four Books to the ſame Purpoſe, and 'tis quite otherwiſe.

Mr. *Williams.* My Lord, in that of firſt *Rolls*, he only cites ſome Books, but the other is his own Opinion.

L. C. J. Well, make out your Fact if you have a mind to it; but it is well known, that neither Mr. Serjeant *Rolls*, nor my Lord *Coke*, when he delivered that Opinion, are to be reckoned ſuch Authorities in Crown matters.

Mr. *Williams.* We will aſk him, my Lord, if you pleaſe, I ſuppoſe he will not deny it.

L. C. J. No, make out your Fact if you will have any Benefit by it, 'tis only a Challenge to the Favour which ought not to be in the King's Caſe. I am very glad that we are now to debate this Matter with Men of the Robe, becauſe we have had a ſtrange ſort of Notions and Reflections ſpread abroad of late, as tho' the Judges now-a-days gave ſtrange ſort of Opinions, and as tho' Perſons that had been Blemiſhes at the Bar, were preferred to do ſtrange Things when they came upon the Bench; but truly I wonder to hear that it ſhould be a Doubt, when at the ſame Time that which we gave as our Opinion about one particular Challenge, that is as to Freeholders, it was the Judgment of all the Judges, that that was no Challenge, and all the Counſel that were concerned in that Caſe know it was the Opinion of all the Judges. But now if we meet with Lawyers, I ſhall be glad to have the Matter fairly argued and debated, and pray ſhew me what Law or Reaſon is for it.

Mr. *Wallop.* Certainly, my Lord, there is a great Difference betwixt the general Allegiance of all Men, and ſo of a general Tenure, and the Dependence of any particular Perſon who is a menial Servant and receives Wages of the King.

L. C. J. I would deſire to know of you, Mr. *Wallop*, which is the greater Challenge, to ſay ſuch a one is a Tenant, or ſuch a one is immediate Servant to *J. S.*

Mr. *Wallop.* There is a great Difference, my Lord, I think, between an immediate Tenant, and the general Tenure of all Subjects.

L. C. J. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were Party to the Suit, it would be a good Challenge, but the being Tenant to the King is no good Challenge in the King's Caſe.

Mr. *Williams.* My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries hath altered the Law as to that Matter of Tenure; for now we hold in Socage, and that other Tenure is deſtroyed that was between the King and his Subjects.

L. C. J. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good Cauſe of Challenge? If it does, ſhew it. I tell you the old Books are againſt it.

Mr. *Williams.* I ſpeak, my Lord, to the Tenure, that that is nothing at all now to be objected, becauſe all is now in Socage.

L. C. J. I would not have Mr. Attorney inſiſt upon a Juryman, but yet withal I would not have it gone away with as Law, that it is a good Cauſe of Challenge.

Mr. *Wallop.* My Lord, we finding in ſome Caſes that are in our Books, that it is held to be a good Cauſe of Challenge, lay it before the Court.

Mr. Att. Gen. How many hundred Errors do you find in my Lord *Coke*, notwithſtanding all his Learning?

L. C. J. I ſay, if I was Mr. Attorney, I would not conteſt for any particular Man to be a Juryman, I ſpeak that as my Advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. *Jones.* If all that receive Salary, or Wages from the King, are not to be Jurymen in the King's Cauſes, then all the Deputy Lieutenants and Militia Officers, which generally are the moſt ſubſtantially Freeholders, are excluded from being Jurymen.

Mr. Juſt. *Withins.* Who will ſay ſo, Mr. *Jones*? No Lawyer in *England* ſurely will ſay ſo.

Mr. *Williams.* Offices where there is no Profit, will not be the ſame Exception.

Mr. Att. Gen. But he is no menial Servant of the King's.

Mr. *Williams.* What is he then?—Mr. *Wallop.* We hear that he is Keeper of one of the King's Foreſts, and has a Fee for it.

Mr. *Williams.* Well, we will aſk him upon a *voyer dire.*

Mr. Att. Gen. My Lord, the Fact is quite otherwiſe, and I deſire they may make it out.

L. C. J. Truly, I think 'tis not *tanti* to inſiſt upon any particular Man, but I find we are in an Age that is ſo full of Cavils, that if we act but according to the Precedents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predeceſſors. And I ſay there was no ſuch Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the beſt Authorities extant.

Mr. *Jones.* I deſire them to ſhew me any ſuch Precedent, that any Man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we muſt do unprecedented Things, or elſe there will be no ſatisfying of ſome Men.

Mr. Att. Gen. I would fain know, what one Opinion in a ſtraggling Book is againſt the Current of all our Law?

Mr. *Williams.* Which do you call a ſtraggling Book, Mr. Attorney? My Lord *Coke's Inſtitutes*, or my Lord *Roll's Abridgement*?

L. C. J. I ſay the better Opinion of the Books is on the other Side, and the greater Number too.

Mr. Att. Gen. Firſt of all, I do know of my own Knowledge, he is no menial Servant.

L. C. J. Mr. Attorney, I do debate it for Learning ſake, truly I know not the Man, nor whether he be the King's Servant, or not, but I ſpeak againſt allowing the Challenge, that if he be ſet aſide, it may not be taken as a Precedent, and ſo paſs for Law that the King's Servants can't be Jurymen. I would have you quit the Man by Conſent, but not as a Force-put, as tho' the Law were ſo, for the Law, I think, is otherwiſe.

Mr. Att. Gen. He is none, my Lord, they miſtake.

L. C. J. Nay, I know nothing of the Man, I tell you only what I think.

Mr. *Wallop.* He receives Wages, or a Fee from the King for his Office.

Mr. Juſt. *Withins.* I would never, for my part, while I live, nor never did, while I was a Practiſer, ſtand upon any particular Juryman.

Mr. Att. Gen. He may be a Juryman by Law ſure.

L. C. J. There is no doubt of it, Mr. *Attorney.*

Mr. Att. Gen. My Lord, if your Lordſhips have given your Opinion, I deſire he may ſtand by.

L. C. J. Well, Mr. Attorney waves him, let him ſtand by.

Mr. Att. Gen. But for no Reaſon that has been offered.

L. C. J. No, no, I don't hear any thing of Reaſon offered for it.

Cl. of Cr. Mr. *Galliard*, you may go down.

Thomas Harriot, Eſq; Jur' *John Sharp*, Eſq; Jur'
Thomas Earſby, Eſq; Jur' *Richard Shoreditch.*
William Avery, Eſq; Jur'

Mr. *Williams.* We challenge him for the Defendant.

L. C. J. What is your Cauſe of Challenge?

Mr. *Williams.* There is the ſame Exception to him.

L. C. J. If Mr. Attorney will conſent, with all my Heart.

Mr. Att. Gen. No, we humour'd you in one, we won't humour you any more.

Mr. *Williams.* Nay, here is ſomething more clear for us, he is a Serjeant at Arms attending his Majeſty.

Mr. Juſt. *Withins.* You know our Opinions already, Mr. *Williams*, unleſs Mr. Attorney conſent, we can't do it.

Mr. *Williams.* We only acquaint Mr. Attorney with it, we muſt ſubmit to your Rule, he is certainly Serjeant at Arms, he came in the Place of *Dereham* that let my Lord *Grey* eſcape.

Mr. Att. Gen. Pray prove it, I don't know it for my Share.

Mr. *Williams.* Will you aſk him the Queſtion?

Mr. Att. Gen. Pray prove it. Are we to gratify your Client? Pray let him better inſtruct his Counſel.

L. C. J. If Mr. Attorney conſent not, then he muſt be ſworn.

Mr. Att. Gen. If there be enough without him that do appear, let him ſtand by.

Cl. of Cr. Stand down, Mr. *Shoreditch.*

Charles Good, Eſq; Jur'

Mr. Att. Gen. That it may appear how fair Things were carried, they would not ſtrike out one of theſe Men when they came before the Prothonotary, as they might have done.

Mr. Juſt. *Withins.* Truly that was not well done, to trouble the Court when you might make your Exceptions there.

Mr. *Williams.* We did not know it then, now we do, we offer it to the Court.

Cl. of Cr.

Samuel Rouſe, Eſq; Jur' *Nehemiah Arnold*, Eſq; Jur'
Hugh Squire, Eſq; Jur' *John Bifeild*, Eſq; Jur'

Then the Jury were number'd, and the Twelve ſworn were theſe.

JURY.

Sir *Charles Gerard*, Bar.
Roger Jennings, Eſq;
Henry Hodges, Eſq;
Thomas Harriott, Eſq;
Thomas Earſby, Eſq;
William Avery, Eſq;
John Sharp, Eſq;
Charles Good, Eſq;
Samuel Rouſe, Eſq;
Hugh Squire, Eſq;
Neh. Arnold, Eſq;
John Bifeild, Eſq;

Cl. of Cr. Gentlemen of the Jury, You that are ſworn, hearken to your Charge. The Defendant *John Hampden* ſtands indicted by the Name of *John Hampden*, of the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, Gent. *(Prout* in the Indictment, *mutatis mutandis)*—To this Indictment he has pleaded not Guilty, and for his Trial puts himſelf upon the Country, and the King's Attorney General likewiſe, which Country you are; your Charge is to enquire whether the Defendant be guilty of the great Miſdemeanour whereof he ſtands indicted, or not guilty; if you find him guilty, you are to ſay ſo; and if you find him not guilty, you are to ſay ſo, and no more; and hear your Evidence.

Then Proclamation was made for Evidence in uſual Form.

Mr. *Holloway.* May it pleaſe your Lordſhip, and Gentlemen, you that are ſworn, I am of Counſel for the King upon this Indictment. Gentlemen, the Indictment ſets forth, that the Defendant being a ſeditious, malicious, evil-diſpoſed Perſon, and ſeditiouſly and maliciouſly intending to diſturb the Peace of the Kingdom, the laſt Day of *June*, in the 35th Year of his now Majeſty's Reign, and divers other Days and Times, at the Pariſh of St. *Giles in the Fields*, in your County, did unlawfully aſſemble, and confederate himſelf with divers evil-diſpoſed Perſons, Subjects of our Lord the King, and then and there, with thoſe other Perſons did falſly, maliciouſly, and ſeditiouſly conſult and conſpire to make an Inſurrection in the Kingdom of *England*, and to provide Arms and armed Men in divers Places of the ſaid Kingdom. And the better to compleat his evil Intentions, the ſaid laſt Day of *June*, did conſult and agree to ſend certain Perſons, to the Jurors unknown, into *Scotland*, to invite ſeveral evil-diſpoſed Perſons there to join in this Conſpiracy. This is the Subſtance of the Charge, and to this he ſays, he is not guilty; if we prove him ſo, we do not queſtion but you will find it.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of this Jury, Mr. *Hampden* ſtands indicted of an high Miſdemeanour, for conſpiring, with ſeveral others, to raiſe Rebellion within the Kingdom, and to crave the Aſſiſtance of the Brotherhood of *Scotland*. Upon the Face of the Indictment, Gentlemen, it appears to be a very high Crime, and the Matter of this indeed has been formerly in Examination in other Trials, and yet the Party, you may obſerve, do not acquieſce in thoſe Trials, but think the Perſons accuſed lay under very great Hardſhips, and that to a very great Degree, as not having the Advantage of Counſel, nor to have their Witneſſes examined upon Oath; and therefore, Gentlemen, the King is pleaſed to go leſs in this Caſe than in the others, That this Gentleman, who is now before the Court, may clear his Innocence, if he has any Witneſſes to do it. And if there be any Advantage that the having of Counſel can contribute to his Cauſe he has that allowed him too.

The Courſe of our Evidence, Gentlemen, will be this.

We ſhall prove to you that Mr. *Hampden*, with five other Perſons, (I ſhall name them) the Duke of *Monmouth*, my Lord *Ruſſel*, Mr. *Sidney*, my Lord of *Eſſex*, and my Lord *Howard*, they met ſeveral times, (the Particulars we ſhall give you an Account of) one was at Mr. *Hampden*'s Houſe, another was at my Lord *Ruſſel*'s, where they did contrive together, and took upon them to be a Juncto, or a Council of Six, collected out of the wiſeſt Men of the Kingdom, to conſider how they might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way poſſible otherwiſe of doing it, but by their joint Councils to carry on a Riſing. And that they might do it the better, they reſolved to crave the Aſſiſtance of *Scotland*. Gentlemen, we ſhall give you an Account of their Conſults and Debates, and ſhall ſhew you, that at length they came to a Reſolution, that the Riſing was to be carried on jointly in *London*, and the ſeveral Parts of the Kingdom, in ſeveral Countries at once. Then they came to think, and conſider whether it were not beſt to ſend into *Scotland*, to draw them in too. And thereupon it was agreed by this Juncto, that they would ſend thither, and the Management of it was committed to Mr. *Sidney*, to ſend ſome fit Perſon into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joint Deſign, ſome of them were to come up to *London*. And they were to have a Pretence to treat about going to *Carolina*, and the purchaſing ſome Shares in the Plantation there, of which my Lord *Shafteſbury* was a chief Governour. We ſhall prove to you, Gentlemen, beſides all that I have opened, that the Perſon to whom that Truſt was committed, Mr. *Sidney*, according to the Duty that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for ſuch Counſellors, and a fit Inſtrument for ſuch a Conſpiracy. We ſhall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we ſhall prove that thoſe Gentlemen that were ſent to, and were the Perſons named in their Conſults to be treated with, came here ſoon after to Town, and as ſoon as ever this Plot was diſcovered, they fled and abſconded themſelves. Gentlemen, if we ſhall prove all this Matter to you, I think it will be without any Queſtion clear, that this Gentleman is notoriouſly guilty of this High Miſdemeanour. And indeed, if you obſerve it, one of the Perſons has given Judgment againſt himſelf, the Earl of *Eſſex*. But the Party have been ſo diligent and officious as to fling that upon the Government; but that Matter we ſhall have before the Court in Judgment to-morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleaſed to take them into his Mercy; the one is my Lord *Howard*, who is ſummon'd to appear here to day; the other is the Duke of *Monmouth*, who has confeſſed all this Matter, and has taken his Pardon, and we have ſummon'd him alſo to be here this Day; that the World, if they will have their Eyes opened (I mean the diſcontented World) may ſee there is nothing ſought, but the Peace and Quieting of the Kingdom.

Gentlemen, if we prove all this Matter to you, I ſhall be glad to hear the Defence of the Counſel, and the Defence made by Witneſſes upon Oath.

Mr. *Finch.* *Mr. Sol. Gen.* My Lord, we will call our Witneſſes, and firſt we begin with the Duke of *Monmouth*.

Mr. Att. Gen. Call *James* Duke of *Moumouth*.

Crier. *James* Duke of *Monmouth*.

Mr. Att. Gen. Call him again.

Crier. *James* Duke of *Monmouth*.

L. C. J. Was he ſerved with a *Subpœna?*

Mr. Att. Gen. My Lord, we will prove we have ſerved him in all Places where he was like to be met with; that we left *Subpœna*'s with his Servants, who promiſed to deliver them to him.

L. C. J. Prove it.

Mr. Att. Gen. Where is Mr. *Atterbury?* Swear him. [*Which was done.*] Pray will you give the Court an Account, whether you did ſerve the Duke of *Monmouth* with any *Subpœna?* In what Places you were to ſerve him, and who you left it with?

Mr. *Atterbury.* My Lord, on *Friday* laſt was Seven-night, I was commanded by Mr. Attorney-General, to carry a *Subpœna* to ſerve upon the Duke of *Monmouth*, and to go to his Houſe at *Moor-Park*, where it was generally diſcourſed he was. I did go and take a *Subpœna* from Mr. *Burton*, by Mr. Attorney's Order, and went to the Duke's Houſe at *Moor-Park*. When I came there, the outward Gate was locked, and I went to an Houſe where the Keys are kept, and having got the Keys, I went down to the Houſe, and I ſaw there one of his Servants fothering of Cattle; and coming up to him, I aſked him if the Duke of *Monmouth* was in the Houſe. He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he ſaw the Calaſh, and five or ſix Horſemen with it, and they ſaid in the Houſe, that it was the Duke that was gone to *London*. I aſked if there were any Servants that were nearer to his Grace in the Houſe, that I might ſpeak with; they ſaid, Yes, there was the Houſe-keeper or Steward, one Mr. *Rawkins*, that attended upon the Duke. I deſired to ſpeak with him, and he came out to me; I aſked him if the Duke was there? He ſeemed to be unwilling to give me an Anſwer. I aſked him the ſecond Time; but he did not ſay he was, or he was not. I told him then, I had a *Subpœna*, which I brought with me by Mr. *Attorney General*'s Order, to ſerve upon his Grace, which was to require him to attend here this Day, to teſtify his Knowledge, in a Caſe between the King and Mr. *Hampden*. He told me, Sir, ſaid he, give me your *Subpœna*, and I will take care the Duke ſhall have it. He took it of me, and I came back to *London* preſently. As ſoon as I came to Town, I had a ſecond *Subpœna* given me to ſerve upon his Grace, with which I went to the Duke's Houſe at the *Cockpit*. When I came there, I ſpake with the Porter, I think his Name is *Johnſon* (but the Porter he is, and I remember him a Servant there many Years). I aſked him, if the Duke were there? He told me he did not lodge there. I told him I had a *Subpœna* to ſerve upon his Grace to appear as this Day, the ſame as I ſaid at *Moor-Park*. Says he, Mr. *Atterbury*, I will take care the Duke have it to Night, or to morrow Morning early.

L. C. J. When was this?

Mr. *Atterbury.* It was of the ſame Day, *Friday* was ſeven-night laſt. I was told afterwards by one that I met with, that the Duke did lodge at Mr. *Row*'s Houſe, who is a Servant to the Duke, one of his Gentlemen. He lives in the *Pall-Mall*, 'tis either his Houſe or his Lodging, but they call it his Houſe. I had a third *Subpœna* given me to the ſame Effect. And when I came there, I aſked for the Duke, and a Woman came to the Door, Mrs. *Manley* (I think they call her), ſhe ſeemed to make little Anſwer to what I ſaid. Said I, Pray will you give this *Subpœna to* the Duke, or to Mr. *Row* to give it the Duke. She took it of me, and ſaid, ſhe would give it Mr. *Row* certainly to give to the Duke. And Yeſterday, or the Day before, I met Mr. *Row* at *Whitehall*, and ſays he to me, Mr. *Atterbury*, you brought a *Subpœna* to my Houſe a little while ago. Yes, Sir, ſaid I, I did, had you it? Yes I had the *Subpœna*, ſays he. Then ſays I, I hope you gave the Duke it? To that he made me no Anſwer, but nodded his Head, and ſmiled, and went away.

L. C. J. Now call his Grace again.

Crier. *James* Duke of *Monmouth*. [*But he did not appear.*]

Mr. Att. Gen. Call *William* Lord *Howard*. [*Who was in the Court.*] Pray ſwear my Lord *Howard*. [*Which was done.*

Mr. Att. Gen. My Lord *Howard*, Pray will you be pleaſed to give the Court and the Jury an Account what you know of any Meeting by the Gentleman that is now accuſed, and the Duke of *Monmouth*, my Lord *Ruſſel*, yourſelf and others, and when; Tell what you know.

Lord *Howard.* My Lord, in *January* laſt was Twelve-month, about the midſt of *January* I was called out by Colonel *Sidney*, being then in my Lodgings in *Southampton-ſtreet*, and carried by him to Mr. *Hampden*'s Houſe, I do not know what they call the Street, but the ſame Side of the Way with the fine Houſe that is in *Bloomſbury*————

Mr. *Jones.* By my Lord *Montague*'s Houſe that now is, you mean?

Lord *Howard.* Yes, of the ſame ſide of the way. When I came there, there was my Lord *Ruſſel*, and the Duke of *Monmouth*, Colonel *Sidney* and I went together, Mr. *Hampden* was then in the Room where they were. Afterwards came in my Lord of *Eſſex*, this made up Six. When they were there, we fell into Diſcourſes———

Mr. Att. Gen. Pray, my Lord, before you come to tell the particular Diſcourſes, give an Account how, and upon what Grounds you came to have this Juncto of Six?

L. C. J. If you pleaſe, my Lord, Pray give an Account of the Preliminary Paſſages.

Lord *Howard.* My Lord, after the Diſappointment given to an Undertaking that was begun by my Lord *Shafteſbury*, which was in *October* or *November* before, in *November* he died. After that, truly I cannot ſay, but that Colonel *Sidney* and myſelf might be, and were the two firſt that did give the Riſe to it. For being in Diſcourſe, we ſaid it was abſolutely neceſſary that there ſhould be ſome Council erected to give ſome Steadineſs to the Motions————

L. C. J. My Lord, I would not willingly interrupt you. But you ſeem to ſpeak of a Diſappointment given to an Undertaking by my Lord *Shafteſbury*. Pray what was that Undertaking?—Lord *Howard.* Your Lordſhip has heard of that before, and know it very well.

L. C. J. Though we know it, the Jury do not. They have not heard it judicially at leaſt.

Lord *Howard.* Becauſe it has been in the printed Books, every body I ſuppoſe knows it.

L. C. J. But that they cannot judicially take notice of.

Lord *Howard.* That is ſomething a long Hiſtory, my Lord.

L. C. J. Though it be, we muſt hear it.

Mr. Att. Gen. Pray make it as ſhort as you can, my Lord.

Lord *Howard.* So much as I can give account of is this. It was about the Day after *Michael's* Day that I came to my own Houſe, having been before in *Eſſex*, and that I think was *Saturday.* The *Monday* following Captain *Walcot* came to me and dined with me, and after Dinner told me, my Lord of *Shafteſbury* had left his Houſe, and had betaken himſelf to a private Lodging, and had hid himſelf from the reſt of his Friends; but had a great Kindneſs for me, (which Kindneſs truly I wiſh he had ſpared) and deſired to ſee me. I took time to conſider of it; but I bid him go back to my Lord *Shafteſbury*, and tell him, if he had any thing of an extraordinary Nature to acquaint me with, I would come and aſſiſt him all I could. He came the next Day again, and ſhewed me to my Lord *Shafteſbury*'s Lodging: He lodged then at one *Watſon*'s Houſe, a Citizen, I know not what Street they call it; but it was in a little Street down by *Woodſtreet.* And when I came to him, I found my Lord *Shafteſbury* very much differing from what he uſed to be, which was more cautious; and preſently he fell to tell me, that he was forced to withdraw himſelf from his own Houſe, for fear of being attacked again by Sham-Charges and Plots, and falſe Evidence, as he had before: For now he ſaid, He ſaw they had the Poſſeſſion of all Juries, by having thoſe Sheriffs which were impoſed upon the City, as he ſaid, and he could not think his own Life or any Man's Life ſafe; for to be accuſed was ſufficient to bring his Life into very great Danger, and for that Reaſon he had withdrawn himſelf to that private Retirement; and being there he was reſolved to make ſome ſpeedy Puſh, for recovering of the Liberties of *England*; that there was Preparation made in the City of ſeveral Thouſands of Men, that were all in readineſs to riſe, and that for his Part, he was reſolved to be ſet on Horſeback; for get on Horſeback he could not; and that there were great numbers that were ready, when he did but hold up his Finger, to be drawn together at any time: That divers had been drawn out of the Country to join with them by inſenſible Parties of Horſe, I think he named about Fourſcore or an Hundred. Which ſince I found were to be headed by Colonel *Rumſey*, upon the Day of making and declaring the Sheriffs; but finding there was nothing done, he withdrew himſelf and his Man thither; but there was ſuch a general Preparation in the City, that if ſome Lords did not unhandſomely deſert them they ſhould be in readineſs for Action quickly. I aſked him who he meant? He told me, the Duke of *Monmouth* and my Lord *Ruſſel* had very unhandſomely deſerted him; for they had promiſed and undertaken to be in readineſs with Men out of ſeveral Countries in which they had an Intereſt, he named *Somerſetſhire*, *Devonſhire*, and *Cheſhire*, I think, and that my Lord *Grey* ſhould be diſpoſed of into *Eſſex* to do the ſame there, and if they had held on this Reſolution, it had been ſuch a ſure Game, that it could not have failed: But ſays he, they are ſtarted, and ſay they cannot be in a readineſs to do it. My Lord, I very much wonder that thoſe Perſons you named ſhould engage in any Deſign, and fail of performing what they promiſed! Says he, I'll aſſure you 'tis ſo. And ſo he proceeded to ſpeak ſeveral ſharp Things of the Duke of *Monmouth*, upon the account of his Ambition, that he thought to have all under his Command: Which was a ſecret lurking Ambition in him, that he ſaid, he always ſuſpected the Duke to be guilty of. And now he found his Suſpicions true. That unleſs he might command all, he would do nothing. But for his part, ſince he found the Matter ſo, he was reſolved to go on alone, rather than fail in his Deſign. Said I, my Lord, I ſhould be very forward to concur with you in any thing; but I wonder your Lordſhip ſhould ſtep into an Action of ſuch Danger, thus divided from thoſe that are moſt likely to aſſiſt you in it. I cannot help it, ſaid he, I have left my Houſe, and muſt go on. My Lord, ſaid I, pray give me leave to go to the Duke of *Monmouth*, and expoſtulate the Matter with him, and I will come and give you an Account again. Says he, 'tis to no purpoſe, I dare ſay. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promiſe you this, I will not tell him I came from you, but as from myſelf diſcourſe it with the Duke. Well, ſaid he, if you will you may. This was upon *Tueſday*, I think the 3*d* of *October*, the 3*d* or 4*th.* So I went to the Duke of *Monmouth* the next Day, which was *Wedneſday*, and finding him not at home at his Houſe in *Soho*, and being told he was at *Moor-Park*, I took an occaſion to go to *Moor-Park*, and I came there a little after Dinner, and took him aſide, and told him all this that I now have ſpoken about my Lord *Shafteſbury.* Says he, I think the Man is mad, what does he mean? We did undertake to do this, 'tis true; but not by that time he ſpeaks of, and things are not ready, I know not what his own Fears make him do, but he does act ſo prepoſterouſly that he will undo us all. Said I, my Lord, all that I ſhall deſire is, that there may be an Interview betwixt you, and diſcourſe the thing with one another, or elſe it may be a thing of very fatal Conſequence for him to ſtep into an Action of this Danger and Concern while you are thus divided. With all my Heart, ſays the Duke, I would have nothing more, I deſire to ſpeak with him. This made me recoil back again to my Lord of *Shafteſbury* the next Day, and I told him all this, and deſired he would give a Meeting; ſays he, I ſee they are falſe then to ſay they did not engage; they were engaged, and that againſt this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I ſhall run out into Paſſion and Anger, and therefore 'tis better omitted. Said I, my Lord, I muſt poſitively inſiſt upon it. I muſt have an interview between you, for 'tis a Madneſs for you to go on thus divided in ſo great a Buſineſs. I could not prevail, he would not; but he told me if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third Hand, and not from my Lord himſelf,) and if they would be in a readineſs with what they promiſed from the Country, he would aſk nothing from the City, he would take that Place upon himſelf, if they would perform their Engagement for other Parts; but he reſolved to go on. So I went to the Duke of *Monmouth* again, and told him, what he ſaid, That I could not by any means get him to an Interview. Says the Duke, he is a ſtrange Man, I know not what to do with him, we will all be in a readineſs as ſoon as we can; but it is impoſſible to do it ſo ſoon. I went to my Lord of *Shafteſbury* again on the *Saturday*, and did then poſitively engage him that he would give a Meeting to me, and the Duke of *Monmouth*, and ſome others: And we appointed Time and Place; he appointed to come out in a Parſon's Habit, and a black Periwig to his own Houſe, which he thought the ſafeſt Place, becauſe he would not diſcover his Lodging to any of them, for fear it ſhould come to be known. With theſe Inſtructions I came to the Duke of *Monmouth* to prepare about it, and proffered him to be ready the next Day at Evening with my Lord *Ruſſel* to go to him. All this while I had not ſpoken to my Lord *Ruſſel*, but only to the Duke of *Monmouth.* And the next Day when I came from Church to my own Houſe, there met me a Meſſage from Colonel *Rumſey*, who I underſtood by my Servants had been there, and left his Name, with this Meſſage, that he came to tell me, the Gentleman that was to meet could not meet. This was ſo confuſed a Matter, that I was impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of *Monmouth*'s again, and he told me, Colonel *Rumſey* had been with him, and told him, my Lord of *Shafteſbury* was apprehenſive there were a great many *Tories* about his Houſe, and he feared being diſcovered, and therefore had removed his Lodging, and ſo could not meet; but we ſhould hear from him in two or three Days. So that was the laſt time that I ſaw my Lord of *Shafteſbury*, or indeed, in a direct Line, did hear from him; collaterally by *Walcot* I did afterwards hear; but by this means we were at a loſs. After this the Duke of *Monmouth* did tell me (for he did not own to me that he ſaw him, but indeed ſwore to me that he did not ſee him; but I find ſince he did.) That he would do what he could to prevent an untimely, dangerous Undertaking. But after this it ſeems they had a Meeting at Mr. *Sheppard*'s Houſe, where my Lord *Shafteſbury* ſent a Meſſage to him and my Lord *Ruſſel*; but the Duke of *Monmouth* only told me, that my Lord *Ruſſel* had met with him, and ſeen him; but he never owned that he had met him himſelf or ſeen him. About four or five Days after, Captain *Walcot* came to me, and told me, ſuch a Day was ſet for the Riſing. Upon which being ſtartled, I had nothing to do, but recoil back to the Duke of *Monmouth*, and endeavour to ſtop any raſh Proceedings; and it was ſtopped as I thought, and ſo it continued for two or three Days, and at that time, which was in *October*, there was a Rumour up and down whiſpered, as if ſomething would be attempted; but what it was we did not know, but thus it went on for two or three Days, and then it meeting with a Diſappointment upon the Conſultation at Mr. *Sheppard*'s, my Lord *Shafteſbury* took up his Reſolution to be gone, and went away to *Holland*, and died in *Holland.* This is the Subſtance of that Account which I can give of thoſe former Tranſactions.

Mr. Att. Gen. Now give an Account of what was ſubſequent to this.

Lord *Howard.* This was in *November.* After this there being frequent Conferences between Colonel *Sidney* and me; for Colonel *Sidney* by the way knew nothing of all this, and I was cautioned by my Lord *Shafteſbury*, that I ſhould not tell my Friend *Sidney* any thing of it; and aſking him the reaſon why I ſhould not, Says he, I can't well tell; but you will wonder when I tell you, that his own Friend Major *Wildman* has barred him and would not let him know it. The Gentleman is now dead; but I will aſſure you he did know nothing of this for a Month after; for he was gone into the Country; but after my Lord *Shafteſbury* was dead, I told him the Hiſtory of all theſe Tranſactions, which he was before a Stranger to. After this, when I had acquainted him with what had been intended in *London*, and what Preparations had been made, and how what was intended had been ſuppreſſed, and in what Poſture Affairs then ſtood; We then took up a Reſolution to form a Council, that might for the time to come give ſuch Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Perſons who they ſhould be. He undertook to ſpeak to my Lord of *Eſſex*, and Mr. *Hampden*, and I was to bring the Duke of *Monmouth* to a right Underſtanding with him in it. So I went to the Duke of *Monmouth*, and told him Colonel *Sidney* did preſent his Service to him, and would willingly wait on him, but that he thought it would do him hurt, becauſe he was a Perſon of ſuch Note, and thereupon ſo obnoxious that it might prejudice him to have him ſeen to come to him; and therefore if his Grace would pleaſe to appoint any third Place, he ſhould be very glad to kiſs his Hand. Says the Duke, I do not know any where truly to appoint. Why then, ſaid I, I will tell you a Place: Let us e'en go to his Houſe (having before prepared Colonel *Sidney* for it) and take him by Surpriſe and dine with him, and then there will be the leſs Suſpicion; But, ſaid I, you muſt not expect to be treated as the Duke of *Monmouth*, becauſe he does not expect you; but take him as a Philoſopher, and dine with him as he uſes to dine at his own Table. Says the Duke of *Monmouth*, I care not for Entertainment; I will go with you: And there at that time did the Duke of *Monmouth* undertake to bring in my Lord *Ruſſel* and my Lord of *Saliſbury.* This was the only Diſcourſe preparatory to it that ever I knew of. Within a Fortnight or three Weeks after, nay, I think it was leſs than Ten Days after, Colonel *Sidney* came to me, and told me, my Lord of *Eſſex* was very forward in it. The Duke of *Monmouth* would prepare my Lord *Ruſſel*, and my Lord *Saliſbury*; and he himſelf did not doubt, but Mr. *Hampden* was very willing to be in it too; and they had appointed a Meeting at Mr. *Hampden*'s Houſe, and he would carry me thither to the Houſe; and this was the firſt Meeting that I knew of; and there we met all Six.

Mr. Att. Gen. About what time was that?

Lord *Howard.* It was about the middle of *January*; and truly I think I could reduce it to a certain Day or two by the Perſons where I lodged.

Mr. Att. Gen. What was debated there?

Lord *Howard.* When we came there every one diſcourſed what he would. There was a Diſcourſe of the Time and Places where to riſe; but among other Things it was reſolved as a Principal Point, that there ſhould be a Preparation made for the Deſign, by a Treaty with thoſe of *Scotland*, and an Underſtanding ſettled with *Argyle*, and a Meſſenger ſent to my Lord *Argyle*, and others. And before this was done, we could not be ripe for any Reſolution: But this muſt be ſpeedily done.

L. C. J. Pray, my Lord, give me your Favour, I would not interrupt you; but to make Things clear as we go, I deſire to aſk you, when you came firſt to Mr. *Hampden*'s Houſe, who ſpake firſt, when you were all met together?

Lord *Howard.* Every body diſcourſed what they pleaſed.

L. C. J. But who gave an Account of the Reaſon of the Meeting? Will you pleaſe to recollect, and tell what you know, who began the Diſcourſe?

Lord *Howard.* Something introductive to it was ſaid by Mr. *Hampden*, we being at his Houſe, as 'tis natural to conceive for any Gentleman at whoſe Houſe People are met, to ſay, Pray let us ſit down and talk of our Buſineſs. Something leading and introductive was ſaid by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to diſcourſe of? Did he ſeem to take any Notice, or have any Knowledge of your Meeting, and other Things before?

Lord *Howard.* It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to conſult and adviſe one with another, how to put Things into a better Method and Poſture than formerly: And he deſired that we would ſit down and diſcourſe of theſe Things. My Lord, I would not charge myſelf with Particulars poſitively.

Mr. Att. Gen. Upon what Queſtions did you debate and conſult, my Lord?

Lord *Howard.* Thoſe were ſtarted ſeverally. Some would ſpeak of the Time when it ſhould be, whether it were not convenient now, or when. Others offered ſomething concerning the Places, whether it ſhould'be begun in the City or in the Country, or both together. Others took it into Conſideration, what Perſons were to be prepared in the ſeveral Countries to be aſſiſting in it, that were probable to carry it on. And then ſome diſcourſed concerning the raiſing of Money, and then what Sum ſhould be raiſed, and I think that was ſtarted by the Duke of *Monmouth*; but I am ſure the Sum that he named was 20 or 30000 *l.* The laſt Thing that was talked of, but which was concluded to be the Thing principally to be taken care of, was the ſettling ſuch a Concurrence and Correſpondence with *Scotland*, that they might chime in at the ſame time, that ſo we might give as many Diverſions both from home and abroad as could be at one and the ſame time.

Mr. Att. Gen. My L. *Howard*, Did Mr. *Hampden* diſcourſe of this Matter?

Lord *Howard.* I cannot ſpeak to the Diſcourſe of any one in particular; for I cannot ſay it was put to the Vote as we formerly expreſs'd it, but it may be ſaid we were all conſenting and concurring.

L. C. J. Did any of you diſſent from the Riſing?

Lord *Howard.* No, no, my Lord.

Mr. Att. Gen. Did any of you oppoſe it at all?

Lord *Howard.* No, no, That was diſcourſed of as a thing reſolved.

L. C. J. I aſk you this Queſtion, my Lord *Howard*, Was there any ſort of Complaint made of the Government, that it was uneaſy and that occaſioned you to enter into theſe Debates?

Lord *Howard.* There was, I cannot ſay a Complaint, becauſe there was no Perſon to complain to; but it was ſpoken of as a Matter of great Grievance, that ſuch a Force and Violence ſhould be put upon the City in their Election of Officers, and the tendency of that as to all Juries, tho' I cannot diſtinctly remember the particular things.

L. C. J. You ſay you were talking of a Meſſenger to be ſent into *Scotland* to my Lord of *Argyle*, and others to chime in with you in this Matter, as you ſay, pray did you come to any reſolution about that, and what did you reſolve upon?

Lord *Howard.* That there ſhould be one only at that time. And afterwards it was the matter of the Debate at the next Meeting, which was that Meeting at my Lord *Ruſſel*'s, which was about this time twelve-month, in *February* ſome time.

Mr. Att. Gen. How long after the firſt Meeting at Mr. *Hampden*'s was that?—Lord *Howard.* My Lord, I think it was about a Fortnight.

Mr. Att. Gen. Who was there?

Lord *Howard.* The ſame Perſons that met before. But then there was little ſpoken of but the Buſineſs of *Scotland.*

L. C. J. Was Mr. *Hampden* there at the ſecond Meeting?

Lord *Howard.* He was there.

L. C. J. At my Lord *Ruſſel*'s you ſay it was?—Lord *Howard.* Yes.

Mr. Att. Gen. What Reſolution did you come to then?

Lord *Howard.* Then we came to a Reſolution that ſome body ſhould be ſent, and we began to diſcourſe who was fit, and Colonel *Sidney* he propounded *Aaron Smith*, to ſome of the Company he was known, to others not; but thoſe that did know him did approve of him as a fit Perſon.

Mr. Att. Gen. To whoſe Province was that committed of ſending this Perſon into *Scotland?*—Lord *Howard.* Col. *Sidney* undertook it himſelf.

Mr. Att. Gen. Did the reſt conſent to it?

Lord *Howard.* Yes, No body did oppoſe it, but left it to him.

L. C. J. Did you name the Perſon then that was to go?

Lord *Howard.* He was not ſo named as to be with any ſolemnity approved or diſproved; but it was left to Col. *Sidney* to manage it, and he naming *Smith* as a fit Perſon, (he told us that by the by not to put it to the Queſtion for our Approbation) and ſome of us knew the Perſon, others did not. I was one that did know him, and did think him a very fit Man to ſend.

L. C. J. Pray, my Lord, who was the Perſon? Be pleaſed to tell the Jury ſo as they may know it.

Lord *Howard* *Aaron Smith.*

Mr. Juſt. *Withins.* Had you any diſcourſe with Col. *Sidney*, my Lord, afterwards that he was ſent?—Lord *Howard.* Yes, my Lord.

L. C. J. Pray give an account of that.

Lord *Howard.* About three or four Days after this Meeting at my Lord *Ruſſel*'s, I went to viſit Col. *Sidney* at his Houſe, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there were five or ſix hundred Pounds in Gold as I could gueſs, he took a good many Pieces, I do not know directly how many; but he took out ſo many as he ſaid were threeſcore Guineas that he was going to carry to *Aaron Smith*; I went not in my own Coach, and therefore went away with him in his Coach, and he ſet me down at *Southampton-ſtreet* at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your Meeting at my Lord *Ruſſel*'s, where you ſay you intruſted Col. *Sidney* to ſend one into *Scotland?*

Lord *Howard.* I think it may be leſs than a Week, four or five Days, that I ſaw him carry the Money. After this, he ſaid, he had given him this Money, and was gone: And when he was diſpatched, in a Week after I was making Inquiries after him, and Col. *Sidney* ſaid, he had not heard of him ſince he went away; but about a Fortnight or three Weeks Col. *Sidney* ſaid he had heard of him, that he was at *Newcaſtle* and ſtaid there; but he wondered he could hear no more of him. I then went into *Eſſex*, and when I came back from thence, he told me, he was come, but I had never ſeen him, not to this Day; indeed I had once appointed a Meeting with him at Mr. *Weſt*'s Chamber; but ſomething or other happened, we did not meet.

Mr. Att. Gen. We have done with my Lord *Howard*; if they will aſk him any Queſtions, they may.

L. C. J. They know their time, when the King's Attorney has done with any Witneſs, then they may examine him if they pleaſe. If they will not, call your other Witneſſes.

Mr. Att. Gen. Will you aſk him any Queſtions?

Mr. *Jones.* No, no, by Advice they are to aſk him nothing.

Mr. Att. Gen. We ſhall give your Lordſhip and the Jury an Account in the next place, that we have traced *Aaron Smith* into *Scotland.* And for that we ſhall call ſome Witneſſes which indeed we did not produce before at any Trial, becauſe we had not then diſcovered ſo much. We ſhall bring you the Perſon at whoſe Houſe he lay at *Newcaſtle*, and the very Meſſenger that was ſent with him to conduct him a By-way into *Scotland.* Call *Sheriffe* and *Bell.*

L. C. J. Look ye, Gentlemen, You that are at the Bar there, you muſt let the Jury ſtand by themſelves. I ſee there are a great many others intermingled with them, and you, Gentlemen of the Jury, if any Whiſperer talk to you, we expect that you ſhould tell us who they are; for we will ſuffer no Remarks to be made but what are openly made to the Court, and the Jury, by the Counſel of both ſides.

Mr. Att. Gen. Swear *Sheriffe* and *Bell.* [*Which was done.*

Mr. *Williams.* What is this Man's Name, Mr. *Attorney?* Friend, What is your Name?—*Witneſs.* My Name is *Sheriffe.*

Mr. Att. Gen. Pray give my Lord and the Jury an Account what you know of any Perſon that lay at your Houſe ſome time ſince, and whether you have ſeen him ſince? My Lord, this Gentleman did not know *Aaron Smith* before, and therefore I deſire Mr. *Atterbury* may be called and examined again. Mr. *Atterbury*, do you know *Aaron Smith?*

Mr. *Atterbury.* Yes, I know him very well.

Mr. Att. Gen. Had this Gentleman a View of *Aaron Smith?*

Mr. *Atterbury.* Yes, he had. He was brought where *Aaron Smith* was, and this other Perſon was by before him too, and I was by when they had a View of him.

Mr. Att. Gen. Now, pray give an Account what you know of the Man you ſaw.

Mr. Sol. Gen. Where is *Aaron Smith?*

Mr. *Atterbury.* He is in the *King*'s-*Bench* Priſon, and he was brought by *Habeas Corpus* to *Whitehall* before the King, where theſe two Perſons were brought likewiſe, and there this Man, *Sheriffe*, did own that *Aaron Smith* was the Man that was at his Houſe; and the other *Bell*, owned that he travelled towards *Scotland* with him, and that he was hired to ſhew him the Way into *Scotland.*

Mr. Att. Gen. Did *Aaron Smith* ſay any thing?

Mr. *Atterbury.* He would not anſwer any thing at all, nor ſay a Word.

Mr. Att. Gen. Pray give an Account, Mr. *Sheriffe*, who it was that lay at your Houſe, and when it was, and what he ſaid was his Buſineſs, and by what Name he went.

Mr. *Sheriffe.* Indeed his Buſineſs I did not know; but he was at our Houſe about the middle of *February*, it was thereabouts.

L. C. J. When was it? What *February?*

Mr. *Sheriffe.* The laſt *February.*

Mr. Att. Gen. You ſay he was at your Houſe laſt *February*, pray tell the Court where that is?—Mr. *Sheriffe.* At *Newcaſtle.*

Mr. Att. Gen. Do you keep any Inn there?—Mr. *Sheriffe.* Yes.

Mr. Att. Gen. What Sign?

Mr. *Sheriffe.* The Sign of the *Black-Spread-Eagle.*

Mr. Att. Gen. And what did he do there?

Mr. *Sheriffe.* He ſtaid there one Night and went away, and returned again in twelve Days or thereabouts, and came to my Houſe again.

Mr. Att. Gen. Whither did he go from you?

Mr. *Sheriffe.* He went *Southward* as I ſuppoſe, I know no farther.

Mr. Att. Gen. But when he firſt came to your Houſe, which way went he?

Mr. *Sheriffe.* He went *Northward* towards *Scotland*, as he himſelf ſaid, and deſired to have one to ſhew him the way: And I ſent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he firſt came to your Houſe about the middle of *February* was twelve-month, whither was he bound then, *Northward* or *Southward?*

Mr. *Sheriffe.* He was going to *Scotland*, that is *Northward.*

L. C. J. And you ſay, after he came back again, and lay another Night at your Houſe.

Mr. *Sheriffe.* Yes, ten or twelve Days after he did.

L. C. J. And which way went he then?

Mr. *Sheriffe.* Then he came *Southwards* towards *London.*

L. C. J. Did you take exact Notice of the Man?

Mr. *Sheriffe.* Yes, I ſaw him before his Majeſty and the Council.

L. C. J. And upon your Oath, that ſame Man you ſaw there was the ſame Man that lodged at your Houſe in *February* was twelve-month?

Mr. *Sheriffe.* Yes, it is.

Mr. Att. Gen. What Name did he go by at your Houſe?—Mr. *Sheriffe.* He went under the Name of Mr. *Clerk*, but what his Sirname was I can't tell.

L. C. J. Had he a Servant with him?—Mr. *Sheriffe.* He had a Man with him that ſtaid at our Houſe during the Time of his going *Northward.*

Mr. Att. Gen. What did he call his Name?

Mr. *Sheriffe.* *William Langſton.*

Mr. Att. Gen. Did he deſire you to furniſh him with a Guide?

Mr. *Sheriffe.* He told me his Servant did not know the Way, and his Horſe was a little lamiſh, and deſired me to get a Guide for him. For after he had dined at our Houſe, it happened to be a rainy Day, and he could not go farther that Night, and therefore deſired me to get him a Man that knew that Country, and I ſent for this ſame Man, and he hired him; and he went along with him next Morning, My Lord.

Mr. Att. Gen. Whither was he to go?—Mr. *Sheriffe.* Truly I did not know; but he told me he did not know the Way into *Scotland*, and I directed him to a Gentleman's Houſe at *Jadbrough* in the way.

L. C. J. Is that the Road to *Scotland?*

Mr. *Sheriffe.* Yes, the High Road to one Part of *Scotland.*

L. C. J. Did he tell you to what Part or Place of *Scotland* he was to go?

Mr. *Sheriffe.* He named the Weſt of *Scotland*, I think he named *Douglas*, but I do not know what Place he certainly deſigned for.

Mr. Att. Gen. Then where is *Bell?*——*Bell.* Here.

Mr. Att. Gen. Had you a view of this Man they call *Aaron Smith?*

Bell. Yes, I had.

Mr. Att. Gen. Give an Account, whether you ſaw him in the North, and when, and where?

Bell. This Man, Mr. *Sheriffe*, ſent for me. I live at *Newcaſtle*, and there I keep Hackney-Horſes to ſerve any Gentlemen, or be a Guide to them as there is occaſion; and Mr. *Sheriffe* ſent for me, and when I came, he told me the Gentleman wanted a Guide into *Scotland.* We immediately agreed, it was upon *Thurſday* Night before that we call *Eaſter-Eve.*

L. C. J. When was it, ſay you?

Bell. It was the *Thurſday* before *Eaſter-Even*, ſo they call it with us, that is, *Shrove-Tueſday.*

L. C. J. Ay, they call it ſo in thoſe Places, becauſe 'tis the Even of the Faſt of *Aſh-Wedneſday*, the Beginning of *Lent*-------Well, go on.

Bell. We went away on *Friday* the next Morning on our Journey towards *Jadbrough*, and the ſecond Day, which was *Saturday*, in the Afternoon, my Horſe tired, whereupon he left me with my Horſe, and took the Man's Man of the Houſe where he left me, to guide him, for my Horſe would not ride up with him, being tired, and he reſolving to go on, and he bid me follow him on the *Sunday* Morning to *Jadbrough* Town, which I did, and we ſtaid there all *Sunday.* And on *Monday* Morning I ſaw him take Horſe, and another Man that was his Guide, and away they went, as I think, he ſaid towards *Douglas* he was going. And he paid me, and I returned again from him to *Newcaſtle*, and left him.

L. C. J. Pray, how far was this? you ſay you went with him to *Jadbrough*, how far diſtant is that from *Newcaſtle?*

Bell. To *Jadbrough*, my Lord?——*L. C. J.* Yes.

Bell. 'Tis forty Miles, my Lord.

L. C. J. How near *Scotland* is it?

Bell. 'Tis within ſome ſix Miles of the *Engliſh* border.

L. C. J. Did you ſee him at any time after that?

Bell. I ſaw him at his coming back again; being at *Sheriffe*'s Houſe, his Wife aſked me, if I would go up and ſee the Gentleman that I went with towards *Scotland:* So I went up, and he made me eat and drink at the Table with him.

Mr. Att. Gen. What name did he go by?

Bell. He went by the Name of *Clerk.*

Mr. Att. Gen. Was there any Servant with him,

Bell. There was a Man that came with him as a Servant there, and was all that time at *Newcaſtle*, that he was gone towards *Scotland*, 'till he came back again.

L. C. J. Mr. *Attorney*, Did this Man ſee *Smith* at the time the other ſaw him?———*Bell.* Yes, I did.

L. C. J. And is that the Man that went by the Name of *Clerk* at *Newcaſtle*, and that you went with towards *Scotland?*——*Bell.* Yes, it is.

Mr. *Atterbury.* And when they charged him with it, *Aaron Smith* did not deny it.

Mr. Att. Gen. Did you go any By-road to get into *Scotland?*

Bell. No, 'tis the Road Gentlemen uſually go to *Jadbrough*, and ſo on; becauſe 'tis ſomething the nearer Way to that Part of *Scotland*, as we judge it to be, therefore Gentlemen uſe it.

Mr. Att. Gen. Is it an high open Road?

Bell. Yes, 'tis the high open Way to that Part of the Country.

Mr. Att. Gen. My Lord *Howard*, Pray, were the Names of any of the *Scotchmen* mentioned at your Meeting that were to be ſent for?

Lord *Howard.* Yes; there was my Lord *Melvin*, Sir *John Cockram*, and one *Campbell.*

Mr. Att. Gen. Now, my Lord, we will give you an Account, That as *Smith* went into *Scotland*, ſo theſe Perſons ſoon after came into *England.*

Juryman. My Lord, we deſire that my Lord *Howard* would name thoſe *Scotchmen* that were to come.

Lord *Howard.* There was my Lord *Melvin*, Sir *John Cockram*, and one *Campbell*, one that was of my Lord *Argyle*'s Name and Family; and there was another Name, but I can't remember what that Name was.

Mr. Att. Gen. We ſhall give you an Account, my Lord, that they came immediately after this to Town; and at the breaking out of the Plot they abſconded.

L. C. J. Mr. *Attorney*, Has my Lord *Howard* his Pardon?

Mr. Att. Gen. Yes, my Lord, he has.

L. C. J. Then your Lordſhip may be cover'd.

Lord *Howard.* I can't tell but they may aſk me ſome Queſtions.

Mr. Att. Gen. Then you may be uncover'd when they aſk them, in the mean time your Lordſhip may be covered. Swear Sir *Andrew Foſter.* [*Which was done.*] Pray, Sir, will you tell my Lord and the Jury what you know about the *Campbells*, and Sir *John Cockram*'s being in Town. Or any other *Scotchman* that you know of.

Sir *Andrew Foſter.* My Lord, I did ſee thoſe Gentlemen in the Beginning of laſt Summer. Sir *John Cockram*, and Mr. *Monroe* and *Campbell* the Son, I did ſee, but the Father I did not, but I do know he was in Town, tho' I ſaw him not.

Mr. Att. Gen. How do you know it?

Sir *Andrew Foſter.* I had Meſſages from them.

L. C. J. Sir *Andrew*, you ſay, you ſaw Sir *John Cockram* and *Monroe?*

Sir *Andrew Foſter.* Yes.

L. C. J. Did you ſee any body elſe?

Sir *Andrew Foſter.* I ſaw Sir *George Campbell* the Son.

Mr. Att. Gen. What became of them upon the Diſcovery of the Plot?

Sir *Andrew Foſter.* Sir *John Cockram* did abſcond, and Mr. *Monroe* was taken into Cuſtody.

Mr. Att. Gen. What became of the others?

Sir *Andrew Foſter.* The *Campbells* were both in Cuſtody.

Mr. Att. Gen. Did you ſee any Commiſſion they had?

Sir *Andrew Foſter.* I did ſee a Commiſſion that Sir *John Cockram* had.

Mr. Att. Gen. What was it for?

Sir *Andrew Foſter.* To make a Purchaſe of ſome Plantations beyond Sea, I think it was *Carolina.*

L. C. J. Ay, where my Lord *Shafteſbury* had an Intereſt.

Sir *Andrew Foſter.* It was ſome of the *Weſt-Indies.*

Lord *Howard.* I did omit that Paſſage, my Lord-----

Mr. Att. Gen. Pray, was it diſcourſed then, what ſhould be the Blind for theſe Gentlemen that were notorious Diſſenters, that they ſhould come to Town from *Scotland* about?

Lord *Howard.* It was to carry on a Plantation in *Carolina.* The *Scotch* Gentlemen were perſonally known to my Lord *Ruſſel* only; and my Lord *Ruſſel* was to write the Letter to them, 'and, I ſuppoſe, did.

Mr. Att. Gen. Mr. *Atterbury*, What do you know of theſe *Scotchmen* coming to Town; and what became of them afterwards?

Mr *Atterbury.* My Lord, about the Beginning of *July*, 4th, 5th or 6th, or thereabouts, I had ſome Information, That there were ſome *Scotch* Gentlemen that had been ſhifting up and down, and at that Time were about *Black-Friars*, lodged there ſecretly. I immediately went with the King's Proclamation, and ſome Warrants that I had to apprehend ſome Traitors that were fled: And when I came, I found that Mr *Common Serjeant* having notice of them, had beat up their Quarters, and they were endeavouring to eſcape by Water; but there they were catched. There was Sir *Hugh Campbell*, and *Bayley*, and Sir *George Campbell*, and ſome others, I know not the Names of them all; truly I can't tell whether *Monroe* was not another, but Sir *Hugh Campbell* I had in my Cuſtody, and *Bayley* was immediately committed to the *Gatehouſe*; and the reſt of the Gentlemen I afterwards took in a cunning Hole by *Moor-Fields*, in a back Houſe. And when I came there, I found them lying on the Bed in the Middle of the Day; and had them Priſoners in my Cuſtody two or three Months; and then they were all ſent out of my Hands into *Scotland*, Priſoners. Six of them there were, my Lord, that I ſaw.

Mr. Att. Gen. We have done, my Lord, only we deſire that a Word of Record may be read.

Mr. *Williams.* What Record is it, Sir?

Mr. Att. Gen. Of Colonel *Sidney*'s Attainder.

Mr. *Williams.* My Lord, we ſhall deſire your Judgment, whether that Record ought to be read againſt Mr. *Hampden*; I perceive by Mr. *Attorney*, that is a Record of the Conviction of Mr. *Sidney*, which ought not to be given in Evidence againſt Mr *Hampden* upon this Indictment.

Mr. Att. Gen. We make uſe of it to ſhew how upon former Trials upon this Evidence, Verdicts have gone.

Mr. *Williams.* We are in your Judgment, my Lord, if by Law it may be given in Evidence againſt Mr. *Hampden*, who is neither Party nor privy to it, nor indicted for the ſame Offence.

Mr. Att. Gen. Let it alone then.

L. C. J. Well, Mr. *Attorney* does not preſs it. What ſay you to it, Gentlemen, for the Defendant?

Mr. *Williams.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for Mr. *Hampden* the Defendant, upon this Indictment here before you. This Indictment is a ſevere Indictment: It is a very high Crime of which my Client is accuſed. How far the Evidence tends to reach it, you have heard; and I ſhall, with the Patience of the Court, particularly obſerve it to you. But I ſhall firſt ſpeak to the Indictment itſelf: It ſays, that Mr. *Hampden* being a Perſon of a turbulent Diſpoſition, and ſeditiouſly intending to diſturb and diſquiet the King's Peace, and to ſtir Sedition, and to bring the Government into Danger, did conſpire, *&c.* As to this Matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Diſpoſition of the Perſon accuſed; nor that he had any other Deſign, than what my Lord *Howard* hath now ſworn. Then it ſays further, that Mr. *Hampden* did conſult and conſpire with divers Perſons to execute theſe Purpoſes; and particularly for the making and raiſing an Inſurrection in the Kingdom. This is laid as the particular Fact; And for this purpoſe he did further conſpire with ſeveral Perſons to provide Arms and armed Men: And for their fulfilling of this, he did further conſult with ſeveral Perſons, that ſome Perſons ſhould be ſent into *Scotland* to ſtir up the King's Subjects in *Scotland*, to a Concurrence and Conjunction with ſome People in *England*, about this his evil Deſign. How far this Indictment is proved upon the Defendant, Gentlemen, is the Queſtion before you. He has pleaded Not Guilty, and hopes to ſatisfy you he is not. Gentlemen, as to what Evidence has been given you ſo far as 'tis Poſitive and Affirmative, I mean the Teſtimony of my Lord *Howard*; in that Part, it is impoſſible for us that are of Counſel for the Defendant directly to contradict him with Proof, or to give a direct poſitive Proof in anſwer to it; I ſay, 'tis impoſſible for us to contradict him, who gives ſuch a poſitive Evidence of Fact. By the Evidence of my Lord *Howard* he tells us, there were ſix Perſons in this Council, as he is pleaſed to call them. By this Evidence, three of the ſix are dead, my Lord *Ruſſel*, Col. *Sidney*, and the Earl of *Eſſex*; He himſelf is the Fourth, the Defendants the Fifth, who cannot give Evidence for himſelf; and the Duke of *Monmouth*, who is the Sixth, being away, there is not any Perſon in being, that ſhould contradict my Lord *Howard*'s Affirmative in this Part of his Evidence but the Duke of *Monmouth*, whom we cannot have here, ſince it appears by the Evidence, Mr. Attorney-General could not prevail to have him at this Trial; therefore Proof of that Nature cannot be reaſonably expected from my Client to acquit himſelf by a poſitive Contradiction of what my Lord *Howard* has ſworn. Then, in this Caſe we muſt, as in all Caſes where a Perſon does ſwear directly againſt a Defendant, endeavour to ſatisfy and perſuade your Lordſhip and the Jury, upon Circumſtances ariſing out of this Fact, and further Circumſtances attending the Fact, and by probable Arguments and reaſonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the firſt Place, we ſhall obſerve upon the Teſtimony of my Lord *Howard*, that as to ſome Things he is very poſitive and particular: He has an incomparable Memory, and ſpeaks particularly to Perſons, particularly to Places, particularly to Times. But, Gentlemen, as to that which is the principal Part of his Evidence, and which moſt affects the Defendant, and wherein it concerns us to contradict or diſprove him, he is wanting as to that Circumſtance of Time. He that is ſo exact in his Memory as to other Circumſtances, is not poſitive, nor any thing like poſitive, as to the Times of the Meeting. For they would imagine, that the firſt Meeting the Defendant was concerned in, was at his own Houſe. He deſcribes the Houſe and the Place very exactly, but as for the Time, he only ſays it was about the middle of *January:* He carries other Things in his Memory poſitively; and whether it might not be expected in a Caſe ſo remarkable as this, and which ſo nearly and highly concerned himſelf, that he ſhould be as particular in the Time, as he is in other Things, you may rationally judge. His Lordſhip ſometimes is very particular as to Time: He tells you in his Relation about my Lord *Shafteſbury*, that his going to him was on the *Saturday* after *Michaelmas-Day*; and then he purſues it to the ſecond and third of *October*. He is poſitive to many ſeveral Days; upon which I would obſerve, that he being particular to a Day, as to other Things, may well be expected to be ready (if it be true) to be as particular as to the Time of this Meeting: But therein he is to ſeek; he is doubtful as to that. And you muſt give us leave, Gentlemen, to make this Obſervation, that ſince he will not be particular to that Time, we do apprehend that he gives himſelf a little Looſe; that we may not meet with him to contradict him in that Circumſtance: For if he ſhould be poſitive therein, as he is in the other Matters that concern not the Defendant, we might perhaps by clear pregnant Circumſtances contradict, if not diſprove his Lordſhip, that it is not probable (if poſſible) it ſhould be true what he affirms. But, Gentlemen, we muſt anſwer it as well as we can; and ſince he is ſo cautious, we muſt meet him by Arguments in another way. Another Thing we ſhould obſerve upon my Lord's Evidence, is this; that my Lord, tho' he be particular as to many Facts and Things relating to my Lord *Shafteſbury*, where he names other particular Perſons, I think Col. *Rumſey* and *Walcot*, and names the particular Diſcourſes, particularly inſtancing in them, between him and my Lord of *Shafteſbury*, between him and *Walcot*, and between him and other Perſons; yet he has not made uſe of any one Circumſtance of Fact in this Caſe of the Defendant's now before you, that does juſtify what he hath ſaid, ſave only that of *Aaron Smith*; not any one Circumſtance of Fact. So that there is no more than the bare Saying of what my Lord *Howard* is pleaſed to deliver, no more than his Oath, nay, no more than his Obſervation and Inference of much of what paſſed in the Company of ſeveral Perſons, without any concurring Circumſtances in Fact to juſtify or confirm his Teſtimony. It might have been an eaſy Matter, if all that my Lord *Howard* ſays was true, that there was ſuch a Meeting at Mr. *Hampden*'s Houſe by ſuch and ſuch Perſons, to prove that ſuch Perſons, or ſome of them met there. But that there ſhould be no Perſon to prove, that theſe Gentlemen, or any one of them, were there; nor any other Fact or Circumſtance in the World, to go along with my Lord *Howard* to juſtify his Aſſeveration, is very wonderful, and may well make it doubtful that it ſhould not be true: And the rather, Gentlemen, (if it be true, as my Lord *Howard* would have it) becauſe there was a ſecond Meeting of all theſe Perſons at my Lord *Ruſſel*'s, which was ſo publick and open a Place, and yet no Man to concur or go along with my Lord *Howard* in any one thing; no particular Fact aſſigned to juſtify his Teſtimony as to this Meeting, is ſtrange, if it be true.

So then, Gentlemen, there is no more than what my Lord *Howard* has ſworn, without any one Circumſtance to back it, to prove the Defendant guilty. My Lord, taking this upon the main of my Lord *Howard*'s Evidence, it will be pretty hard too upon the Nature of the Fact, that he is pleaſed to prove againſt this Gentleman, to make an Anſwer to it: And truly, I think as hard for you to believe it. Gentlemen, he would imagine, that there ſhould be Men raiſed, Men armed, a Diſcourſe of Money, and this done as he would have it, about the middle of *January*; and yet nothing at all done, though there appears no manner of Diſcovery of this very Contrivance, till about *July*. Neither is there any thing done in order to the raiſing of Men, the arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatſoever, that goes along with what my Lord *Howard* has ſaid.

My Lord, and Gentlemen, another Thing we would deſire to obſerve, is this, and here we ſhall begin with what we have to ſay, as to our own Arguments and Circumſtances, that we have to take off from the Teſtimony of my Lord *Howard* in this Caſe: In the firſt Place, it appears by the Evidence of my Lord *Howard*, that he was very deep in a Conſpiracy againſt the Government, and to make a Diſturbance in the Kingdom, long before this that he now ſpeaks of againſt the Defendant, that is plain enough, for he tells you, that my Lord *Shafteſbury* and He, at *Michaelmas*, were contriving of Projects to overturn the Government, and raiſe a Rebellion. It appears plainly by his Evidence, that my Lord *Shafteſbury*, when he left his Houſe, was reſolved upon it, and my Lord *Howard* was very ſolicitous to carry on the ſame Deſign; nay, he was ſo active in it, that he tells you, that he did create Meſſages between my Lord of *Shafteſbury*, and the Duke of *Monmouth*, and would needs go by a falſe Inſinuation of his own, to draw in the Duke of *Monmouth*, by telling his Grace, his Information he had from *Walcot*, and not ſaying he came from my Lord *Shafteſbury*, with whom he ſays he had been diſcourſing; but he would put it under ſome ſort of Diſguiſe, the better to prevail. So that it appears my Lord was very criminal, and guilty, in this Caſe. Why then, Gentlemen, my Lord being ſo highly criminal, and there being a Diſcovery of this Conſpiracy by *Keeling* and *Rumſey*, and *Weſt*, having made a more manifeſt Diſcovery, and this happening in *July*; Then it was high Time my Lord *Howard* might conceive for him to ſecure himſelf, and ſave one, he being thus Guilty, as he declares: It is but reaſonable to conjecture, he then began to place his Security in a Pardon; and that there were no other Means to ſave his Life, and that the way to it, muſt be by ſome farther Diſcovery of a Conſpiracy againſt his Majeſty and the Government: And having ſince obtained a Pardon, it is agreeable, that whatſoever my Lord *Howard* has done in this Caſe, he has done for his own ſake, to purchaſe his own Pardon for a Treaſon he was ſo deep in, and to out-do all the Witneſſes that went before him, by freſh Teſtimony againſt the Defendant and others: This might incline him to go an Inch or two, or more, beyond the Diſcovery of *Keeling*, *Weſt*, and *Rumſey*; to have but ſaid the ſame Thing that was proved by three or four Witneſſes before him, might not perhaps have availed him: May not the indifferent believe it in this Caſe, to be the Intereſt and Security of my Lord *Howard*, by theſe Means to merit his Pardon? May it not be believable, that what he hath ſaid, he hath ſaid only for his own ſake, and that he has, by expoſing this Gentleman, and the Blood of others, procured himſelf a Pardon?

L. C. J. What do you mean by that, Mr. *Williams*?

Mr. *Williams*. By being a Witneſs againſt the Defendant and others, he has procured his own Pardon.

L. C. J. That is a little harſh Expreſſion——

Mr. *Williams*. My Lord, I explain myſelf thus—

L. C. J. 'Tis an harſh Word and too roundly expreſſed; you had need to explain yourſelf; 'tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. *Williams*. My Lord, I intend nothing of hardſhip or amiſs, but to ſpeak according to my Inſtructions, and to make the beſt Obſervations I can, out of the Evidence of my Client: I will expreſs myſelf as well as I can, that my Lord *Howard* being a Witneſs againſt Men in a Caſe of this high Nature; and there being other Witneſſes before, and beſides himſelf to the Diſcovery of the late Conſpiracy againſt the Government, it concerned him to give an home Evidence in the Caſe, or elſe he could not have any Expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witneſſes beſides, and they had got the Start in the Diſcovery, his Diſcovery had been in vain; and therefore he was concerned perhaps to ſtrain, that he might make ſuch a Diſcovery as might anſwer his End; and this will ariſe naturally, I ſuppoſe, out of what has happened in this Caſe: For it ſeems, though it was ſomething long before he got his Pardon, now he has it. My Lord, another Thing is this, How far my Lord *Howard* will be credited in this Matter, we ſhall leave his Credit to you, Gentlemen, upon what we ſhall prove. For we ſhall make it out by Perſons of great Honour, and Perſons of great Integrity, that upon Diſcourſe concerning this Conſpiracy, my Lord *Howard* did declare, that he knew of no Perſons that were guilty of having any Hand in it; he declared it upon his Honour, he declared it upon his Religion, and he uſed all the Aſſeverations that were poſſible for a Man to offer to make himſelf believed.

My Lord, it may be objected, as it has been ſometimes, that that was to out-face the Conſpiracy, and ſo ſtop the Proſecution of what he knew himſelf to be guilty of: But however, thus far we may make uſe of it for the Defendant, that if my Lord *Howard* would in the Face of Heaven, pawn his Honour, his Truſt, his Conſcience, and his Religion, to aſſert that which was not true, and under all thoſe Vows and Engagements affirm an Untruth; a Man that would deal ſo, and ſpeak an Untruth with that Solemnity, I think, is not a Perſon of the ſame Credit, as a Perſon of certain known Truth and Veracity. For if a Man will ſay one Thing one Time, and that with ſolemn Vows and Aſſeverations, and ſwear another Thing quite the contrary another Time, he does not ſtand ſo fair for Credit, I think, as he that always maintains, and avows the Truth. So far we may make uſe of it very ſafely, I think, as to my Lord's Credit.

My Lord, another Matter that we have to urge, is, that ſince the Trial of my Lord *Ruſſel*, and ſince the Trial of Colonel *Sidney*, my Lord *Howard* has in Diſcourſe owned, that my Lord *Ruſſel* died innocent. If that be true, it will have a great Weight ſure with you, Gentlemen, to diſcredit my Lord's Teſtimony: For then he hath contradicted what he hath ſworn. For if my Lord ſwore, that my Lord *Ruſſel* was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, ſhall have ſaid he died Innocent, he has contradicted his own Evidence, and his own Oath; and ſure is not to be believed as to what he ſwears now againſt the Defendant. My Lord, it did not reſt there; but ſince the Trial of Colonel *Sidney*, it will be proved by Witneſſes; that my Lord *Howard* did declare that Colonel *Sidney* had hard Meaſure. This will be proved by Witneſſes; and 'tis rather to be preſumed, he meant hard Meaſure as to his own Teſtimony, which he was beſt knowing of, than of any thing elſe as to his Trial. Now, how this Perſon of great Honour can ſolve this, and how it can ſtand with his Oath, and his Honour; I will leave it to you, Gentlemen, to judge of it. My Lord, I have another Matter to ſay, that with me ſeems to have very great Weight: *My Lord Howard*, upon ſome Occaſions has ſaid, being in Diſcourſe with a very great Intimate of his, and the Man being ſpeaking of the World to come, ſpeaking of Eternity, ſpeaking of the Immortality of the Soul, ſpeaking of the Rewards and Puniſhments of another Life; my Lord *Howard* ſhould ſay to him, *How long wilt thou perſiſt in this Folly? How long wilt thou be ſo fooliſhly prevailed upon, as to believe the World was ever made, or will ever have an End?* My Lord, if a Perſon be of that Opinion, (and a Man's Judgment in ſuch Things will diſcover itſelf in his Words) how far the Teſtimony of a Man of that Perſuaſion ſhall influence a Jury when he ſtands ſingle, when there is no fact to juſtify him, in Point of probable Circumſtance, will be eaſily obſervable, and I muſt leave it to the Gentlemen of the Jury to conſider.

My Lord, we have another Saying of my Lord *Howard*'s, which we ſhall give you an Account of in the Proofs, and that was in relation to his Pardon. Being free in Diſcourſe, as my Lord is a Man very liberal that way, and his Friend enquiring whether he had his Pardon: *No*, ſays he, *nor I cannot have it, till the Drudgery of Swearing be over.* Truly 'tis a very odd Thing, that a Man ſhould call that Drudgery, that is his Duty. To teſtify the Truth, is as much the Duty of every honeſt Man, as any thing elſe. Men have died for the Truth, and we look upon thoſe as Martyrs, and the beſt of Martyrs that die for the Truth. Now, that this noble Lord, or that any Man ſhould call this a Drudgery, which is ſo manifeſt a Duty, by giving a true Teſtimony to preſerve the King's Life, and ſupport the Government againſt the Contrivance and Conſpiracies of evil Men, is but an odd Inſinuation, and truly I think is rather to be taken in this Senſe, as to my Lord, that he did ſtrain a little to make his Diſcovery the more profitable to him; and ſo did ſay more (ſo far I may ſafely go) than any one elſe did ſay. And, my Lord, This is that that I would obſerve upon the firſt part of the Evidence.

As for that Part that concerns *Aaron Smith*, the Evidence given by *Sheriffe* and *Bell*, I ſubmit that to your Lordſhip, how far that can any way affect Mr. *Hampden* the Defendant. It is introduced to fortify the Teſtimony of my Lord *Howard*, and it is introduced by himſelf thus: That at their Meeting at Mr. *Hampden*'s Houſe, there was a Diſcourſe of ſome Aſſiſtance to be had from *Scotland*; but ſays he, at the ſecond Meeting at my Lord *Ruſſel*'s, then it came to a further Diſcourſe, and Colonel *Sidney* did undertake to name a Perſon to ſend thither; and a Perſon was named; he does not ſay Mr. *Hampden* was concerned in it, or that Mr. *Hampden* named the Man, or any thing particular as to Mr. *Hampden*, more than that he was in the Company. Mr. *Hampden* had no Hand in the Undertaking, or ſending him into *Scotland*; that was altogether the Part of Mr. *Sidney*, ſave this, that he ſays my Lord *Ruſſel* writ the Letter that was to go by him. It does not appear Mr. *Hampden* was at all concerned in it, but only was there.

L. C. J. And conſented to it.

Mr. *Williams.* I would not ſtrain any thing, my Lord, further than the Evidence is.

L. C. J. Nor do not miſrepeat it neither.

Mr. *Williams.* I deſign not any ſuch Thing, my Lord.

L. C. J. But you do though; for he ſwears it, every one of them conſented.

Mr. *Williams.* By Silence it muſt be then. For he does not ſay, that he ſaid any thing. He ſwears only Colonel *Sidney* undertook to manage it, to ſend a Perſon; and my Lord *Ruſſel* to write the Letter.

L. C. J. And all the reſt conſented to it.

Mr. *Williams.* What is meant by Conſent, when nothing was ſaid, I muſt leave to the Jury. I muſt agree, the Lord *Howard* did ſwear, that my Client was in their Company, but how far he did, or did not conſent, does not at all appear, and how far this will charge my Client, I muſt leave to you, Gentlemen. But the Proof, as to this Matter, ſtands thus; that *Aaron Smith* was at *Newcaſtle* in *February* laſt, that he went publickly. Now, my Lord *Howard* ſays, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and thoſe in *England*. Now it is ſtrange, that a Man that was to agitate ſuch a Concern, ſhould go publickly with a Servant to *Newcaſtle*; ſo publickly as to be known again; and of his own accord tell them he was going to ſuch a Place in *Scotland*. And be it ſo in Fact, will any Man apply this to any thing was done before? (as my Lord *Howard* ſays about a Conſultation to join in Rebellion.) Will any man think, that he ſhould talk at that kind of Rate, if that were his Employment, and tell whither he were going? But I rely upon this, in Point of Evidence. 'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within ſix Miles of the Borders of *Scotland*, is proved; but it is not proved he was in *Scotland*, or did agitate any Conſpiracy there; or did any thing more than go within ſix Miles of the Borders of *Scotland*. But then they would preſs it further, and they ſay, that there were ſome *Scotch* Gentlemen, that in the Summer came here into *England*, and that they hid themſelves when the Plot was diſcovered. It does not appear my Client had any Converſation with theſe *Scotch* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote Inference to bring any thing of this to affect my Client in this high Charge.

My Lord, we ſhall add one Thing more to diſprove that Part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hampden*; and which alſo will ſhew the Improbabilily of his being concerned in any thing of this Nature. We ſhall prove him to be a Perſon of a ſober Converſation, of a retired Life, and ſtudious Diſpoſition; and as an Evidence for the Defendant, we ſhall prove, that he in *October* 1680, left *England* for his Health's ſake, and went into *France* for the Recovery of his Health. He continued there till about *Michaelmas* was Twelve-month, then he returned. 'Tis true, he continued in *England* from *Michaelmas* to the Time they ſpeak of; but we ſhall make it plain, that in *February*, my Client, and my Lord *Montague* had adjuſted Matters between themſelves, to go the Beginning of Summer again into *France*, there to continue and abide ſome Time for their Healths. Here is a ſtrange kind of Imagination, that this Contrivance between my Lord *Howard* and my Lord *Shafteſbury*, that was going on before this Time, and that was diſappointed, and my Lord *Shafteſbury* went away, and afterwards died in *Holland*, was taken up by my Client, and thoſe other Perſons, when my Client, as we ſhall prove, never intended to ſtay in *England*. My Lord, he was a Parliament-man in both the laſt Parliaments, but appeared in neither of them, being all the while in *France* for the Recovery of his Health. We ſhall prove him to be one ſtudiouſly inclined, that he lived a retired Life, and kept very little or no Company; and you will hear from Perſons of very great Honour and Quality, that he is, as to his Perſon, and as to his Opinion; and then we ſhall ſubmit it to you, Gentlemen of the Jury, whether you can believe him guilty of this he is charged with, which is your Iſſue. You are to try, whether he be Guilty, or Not Guilty, of the Crime charged in the Indictment.

Mr. *Wallop.* My Lord, and Gentlemen of the Jury, I deſire to make one Obſervation before we call our Witneſſes.

L. C. J. Pray do not take up our Time altogether in Speeches, but go on to your Evidence.

Mr. *Wallop.* I deſire to obſerve but one Thing, my Lord.

L. C. J. Make your Obſervations at laſt, but ſpend not our Time in Speeches. I know you will expect to be heard at laſt, and ſo you ſhall, whatever you will ſay.

Mr. *Williams.* Call the Earl of *Angleſey*, the Lord of *Clare*, and Lord *Paget*, Mr. *Ducas.* [*Who appearing was ſworn.*] Now we have him here we muſt begin with him, my Lord. Mr. *Ducas*, pray what did you hear my Lord *Howard* ſay at any time concerning this Conſpiracy, and who were concerned in it, and who were not?

Mr. *Ducas.* My Lord *Howard* came once to the Houſe of Colonel *Sidney*, I believe it was about eight Days after the Impriſonment of Colonel *Sidney*; and when he was in the Houſe, I aſked him, What is the Matter, my Lord? He did anſwer me, he was told there was a Plot againſt the King and the Duke, and one general Inſurrection to be made, and that Colonel *Sidney* ſent a Man into *Scotland*, to which thing my Lord *Howard* ſware, laying his Hand on his Breaſt, ſaying, *God knows all Things, and God knows I know nothing of that*; *and I am ſure if Colonel* Sidney *had known any thing, he would tell me*; and I ſaid, what is the Matter, my Lord? Are you afraid? And he made Anſwer to me, *No honeſt Man is ſafe in his own Houſe, I pray you lend me a Bed to lie in.* And he aſked me about the Goods of Colonel *Sidney*, becauſe of the Plot and ſuch Things, and he deſired to have them removed to his Houſe; and he ſaid, rather than go to the *Tower* he would do any thing.

Mr. *Williams.* Speak again to the Jury that did not hear you, what ſaid my Lord *Howard* to you?

Mr. *Ducas.* He ſaid, rather than to be a Priſoner again he would do any thing.

Mr. *Williams.* Who to be a Priſoner again?—Mr. *Ducas.* My Lord *Howard.*

Mr. Att. Gen. What Things were ſpoken of?

Mr. *Ducas.* He ſaid he would do any thing.

Mr. *Williams.* Were you ſpeaking of the Conſpiracy? Of the Plot?

Mr. *Ducas.* He ſpake of the Plot, and ſaid he knew nothing of it.

Mr. *Williams.* What did he ſay, Sir?

Mr. *Ducas.* He ſaid to me and ſwore, he knew nothing of it, and called God to witneſs.

Mr. *Williams.* Pray, did he then ſay he would do any thing rather than go to the *Tower*, when you were talking of the Plot and Conſpiracy?

Mr. *Ducas.* Yes, he would do any thing rather than be a Priſoner again.

Mr. Att. Gen. Pray, what did he ſay?

Mr. *Ducas.* He raiſed up his Hands on high, and ſaid, he knew nothing of the Plot, or of the Inſurrection, or that Colonel *Sidney* had ſent any Man into *Scotland.*

Mr. *Williams.* When was this?

Mr. *Ducas.* I believe it was 8 or 9 Days after the Impriſonment of Colonel *Sidney.*

Mr. Att. Gen. What Day of the Month, and what Month was it?

Mr. *Ducas.* He was Impriſoned about the End of *June.*

Lord *Howard.* My Lord, it would be neceſſary that I ſhould make an Anſwer to this, and I know not whether I ſhould make a particular Anſwer to every one; for here is a whole Set of Witneſſes, I ſee.

L. C. J. No, let them alone. You muſt not interrupt them, they muſt go on with their Evidence; and when it is a fit Time for you to anſwer them, the Counſel for the King will call you.

Mr. *Williams.* Pray ſwear Mr. *Howard.* [*Which was done.*] Pray, Sir, will you pleaſe to acquaint my Lord and the Jury what you know of what my Lord *Howard* has ſaid of the Plot, and who were concerned in it?

Mr. *Howard.* My Lord, what I have ſaid is in the Paper of Mr. *Sidney*'s Trial, and truly I can ſay no more than what I ſaid there.

Mr. *Williams.* Pray ſpeak out, Sir, and tell it again to this Jury.

Mr. *Howard.* I was told I ſpake it very loud then.

L. C. J. Pray, Sir, ſpeak as you pleaſe, we don't direct you in what Key you ſhall ſpeak; ſpeak in what Key you will.

Mr. *Howard.* Then if you will have me ſpeak it, I will ſpeak it as loud again. My Lord, is Mr. *Hampden* here?

L. G. J. Yes, there he is.

Mr. *Howard.* In the firſt Place I do not know Mr. *Hampden*, My Lord, I cannot promiſe to ſpeak the very Words that I ſpake the laſt time: I cannot make them ſo fit as one Tally fits another.

Mr. Att. Gen. Conſider, Sir, you were not Sworn then, you are Sworn now, that is the Difference, and therefore pray conſider of it.

Mr. *Howard.* My Lord, As near as I can, I will repeat the ſame Words again, I had litttle Acquaintance with my Lord *Howard*; but meeting him often at my Brother's Houſe (and being he was extraordinary pleaſant Company, I muſt needs ſay that he was ſo, and a Man of great Wit) and I coming from *Whitehall*, he aſked me what News of the Plot? I told him there were ſome People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except *Rumbold*, I think; and by chance I met him paſſing through the *Old-Exchange*, and he ſaluted me very kindly. After this my Lord *Ruſſel* was taken, and when my Lord *Howard* heard that, ſays he, then we are all undone. And I very much fear it is a Sham Plot, ſince they have ſeized upon my Lord, and I doubt he is a loſt Man. After that, I think, as near as I can remember—The next Thing was this——If you look upon the Book, you will ſee what I ſaid there.

L. C. J. We are not to look upon the Book, Man. You muſt give your Evidence yourſelf. Mr. *Howard*, I hope you do not Swear by Book? Let the Truth come out in God's Name, whatever it be.

Mr. *Williams.* Ay, my Lord, we deſire to have Truth come out.

L. C. J. Ay, whether it be of the one Side, or the other, God forbid but Truth ſhould be ſpoken. Mr. *Howard*, go on.

Mr. *Howard.* Then, my Lord, Colonel *Sidney* was taken, and, ſays my Lord, I am extremely troubled for Colonel *Sidney*, for he is my very good Friend; ſaid I, why are not you concerned for my Lord *Ruſſel*? He is of your Blood, ſays he, he is a Man without Exceptions. There is no Man of ſuch Honour as he, but I am concerned for Colonel *Sidney*, as that particular Man that has obliged me above all the World, but I never heard my Lord *Howard* name Mr. *Hampden* in all my Life.

Lord *Howard.* I'll give you Reaſon for it, my Lord, if you pleaſe, why I ſaid ſo.

L. C. J. My Lord, this is Evidence for the Defendant. If the King's Counſel will call you afterwards to make Anſwer to any of theſe things, then is your time to ſpeak. We will not let them interrupt you when you come to ſpeak, nor muſt you interrupt them now. We are bound to hear both Sides, and ſo by the Grace of God we will do.

Lord *Howard.* My Lord, I deſire both he and his Brother may ſtay in Court, for I have ſomething to ſay to them.

Mr. *Williams.* Pray, what did you hear my Lord *Howard* ſay concerning the Plot?

Mr. *Howard.* He did deny it poſitively, and ſaid, they acted nothing but what was Legal, and he ſaid it 500 times over.

Mr. *Williams.* Did he deny it?—Mr. *Howard.* Yes, he did.

L. C. J. But when he ſaid they acted nothing but legally, what did he mean? Was this Plot legal?

Mr. *Howard.* I had former Diſcourſes with my Lord *Howard* at other times, and I aſked him, My Lord, what tends all this to? Your going up into the City and making theſe Meetings? Says he, we intended nothing but what is legal. There is not one Man in the Company, that I know of, intends any thing elſe.

Mr. *Williams.* What was my Lord's Opinion of the Plot in *June* or *July*, or *Auguſt*?

Mr. *Howard.* He ſaid he knew nothing of it, nor could he believe there was any ſuch thing. When thoſe Perſons were named that were to kill the King, *Lord bleſs me*, ſaid he, *can there be ſuch a thing in Nature? That any Men ſhould be ſo wicked. But that there is one Man of Honour or Eſtate, or Conſcience, that ever had any ſuch Thought, it can never enter into my Head, I can never believe it.*

Mr. *Williams.* When was this?

Mr. *Howard.* When *Rumbold* and thoſe other People were put into the Proclamation.

Mr. Att. Gen. Mr. *Howard*, Then I will aſk you your Opinion, whether in your Judgment, every Man that was in the Plot could not have ſaid ſo much?

Mr. *Howard.* I ſuppoſe every Man in the Plot would have defended himſelf as well as he could, but I cannot tell what way.

Mr. *Thompſon.* Sir, Did he barely affirm it, or with Aſſeverations and Imprecations?

Mr. *Howard.* My Lord was not put upon his Oath before me.

Mr. Att. Gen. Mr. *Howard*, Don't you believe a great many that were concerned in this Plot would deny it?

Mr. *Howard.* I am to give my Opinion only for myſelf, not for other People.

L. C. J. Have you done with him?——Mr. *Williams.* Yes, my Lord.

L. C. J. Then go over, Sir.

Mr. *Howard.* My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I deſire I may have leave to be gone.

L. C. J. You may go if you pleaſe.

Mr. *Williams.* Call Mr. *Edward Howard.* [*But he did not appear.*] Then ſwear my Lord of *Clare* and my Lord *Paget.* [*Which was done.*]

L. C. J. Well, What do you aſk my Lord of *Clare?*

Mr. *Williams.* My Lord of *Clare*, Will your Lordſhip pleaſe to acquaint the Court and the Jury, what you heard my Lord *Howard* ſay concerning the late Conſpiracy?

Earl of Clare. My Lord, Some Indiſpoſition I have had of late, together with the great Rigour of the Seaſon, has confined me to my Houſe theſe ſix Weeks, ſo that I ſhould not come here but upon this Summons of a *Subpœna*, which I thought I ought not to refuſe. I ſuppoſe I need not repeat much of what was ſaid at Col. *Sidney*'s Trial.

L. C. J. My Lord, You muſt give what Evidence you have to give now.

Mr. *Williams.* My Lord, The Gentlemen of this Jury have not heard it, therefore you muſt ſay it all over again to them.

Earl of Clare. Sometime after Mr. *Sidney* was taken, my Lord *Howard* came to ſee me, and complaining of the Times, ſaid, That all things were very ſad and dangerous, and if ever he was queſtioned again, he would not Plead, but deſire them only to count Noſes, for the quickeſt Diſpatch he thought was beſt: I replied, ſure his Lordſhip was in jeſt. He ſaid, No, he was in earneſt, for he was confident if he came to Trial, they would have his Life, let him appear never ſo innocent. I ſaid, I hoped not ſo, it was only his Lordſhip's Fear, and becauſe of that, I thought it might be preſumed he would venture much, rather than be tried. And diſcourſing of the late Primate of *Armagh*'s Prophecy; he ſaid, for his part, he thought the Perſecution was already begun, and he did believe it would be very ſharp, but withal, he hoped it would be but ſhort; and then he began to wiſh himſelf beyond Sea till the Troubles were over; and in compliance with his Lordſhip I did wiſh ſo too. But as to *Sidney*, He did with great Aſſeverations very much aſſert his Innocency. He ſaid, he thought he was not guilty of any of the things laid to his Charge; and ſpoke with large Encomiums in his Praiſe, as he had Obligation to do, and ſeemed to bemoan his Misfortunes; which I ſaid I had then reaſon to believe he was real in, for I believe never any Man was more engaged to another than he to Colonel *Sidney*. I told him there was a Diſcourſe of ſome Writings of Mr. *Sidney*'s that were taken; he ſaid he was confident they would make nothing of any Writing of his; I told him, I ſuppoſed he meant, legally they could not do it. This was the moſt he ſaid; as to Mr. *Hampden*, he mentioned nothing that I know of.

Mr. *Williams.* Did he ſeem to declare any Opinion about the Plot or Conſpiracy in general, that there was any ſuch thing or not?

Earl of Clare. I do not remember it.

Mr. Att. Gen. My Lord of *Clare*, Did you never hear my Lord *Howard* before this complain of the Government, that it was amiſs, and was to be rectified?

Earl of Clare. Yes, he often did complain. Every body knows my Lord's way of Diſcourſe.

Lord Howard. Pray, will you aſk him, if my Lord of *Clare* uſed to fall out with me upon thoſe Diſcourſes.

Earl of Clare. My Lord was always good Company.

Mr. Att. Gen. You mean *à propos*, my Lord.

Earl of Clare. I underſtand what you mean by *à propos*, you are a learned Man, I know.

Mr. Sol. Gen. My Lord of *Clare*, if I apprehend your Lordſhip aright, my Lord *Howard* was diſcourſing of the Primate of *Armagh*'s Prophecy, and ſaid he thought the Perſecution was already begun, and would be ſharp, though he hoped it would be ſhort, and he wiſhed himſelf beyond Sea till the Troubles were over, and your Lordſhip wiſhed yourſelf ſo too?

Earl of Clare. No; I ſaid in compliance with his Lordſhip, ſince he wiſhed himſelf beyond Sea till the Troubles were over, I wiſhed he were there too.

L. C. J. But I perceive all theſe Diſcourſes concerning the Government are reckoned but Jeſts and Matter of Laughter, but 'tis a very rank way of jeſting, I aſſure you.

Mr. *Williams.* My Lord, We call our Witneſſes ſeriouſly, they are the King's Counſel that jeſt.

Mr. Att. Gen. Was this before my Lord *Howard* was taken?

Earl of Clare. Yes, but after Mr. *Sidney* was taken.

L. C. J. Well, who do you call next?

Mr. *Williams.* My Lord *Paget*, Pray what have you heard my Lord *Howard* ſay concerning the Plot, and when?

Lord Paget. My Lord ſits there, and I believe he may remember it was about the 7th of *July*, the *Saturday* before my Lord went into the Country, to the beſt of my Memory, which was, I take it, the 9th of *July*: upon *Saturday* the 7th at Night my Lord came to ſee me; I told him I was glad to ſee him Abroad, and not concerned in the Diſorders that were then ſo general; my Lord told me he had been wiſhed Joy by ſeveral, and he took it ill, becauſe it looked as if he were guilty. 'Tis true, my Lord was a Man of great Fineſſe and Readineſs in Diſcourſe, and came eaſily into all Company; my Lord ſaid that was true, but he had ſo carefully behaved himſelf, but he was ſure they could not touch him with any thing, nor did he know any thing of any body elſe that he could charge them withal.

Mr. *Williams.* When was this my Lord?

Lord Paget. This was the 7th of *July*.

Mr. Att. Gen. Pray, good my Lord, Why did you joy my Lord *Howard?* Had you any Reaſon to miſtruſt my Lord?

Lord Paget. No other Reaſon than becauſe I knew he was a Man of great Freedom in Diſcourſe, and might be concerned upon that Account.

Mr. Att. Gen. And he would frequently diſcourſe againſt the Government I ſuppoſe?

Lord Paget. No, I never heard my Lord diſcourſe againſt the Government in my Life.

Mr. *Williams.* Swear Dr. *Burnet.* [*Which was done.*] Pray will you, Doctor, acquaint the Court, what you have heard my Lord *Howard* ſay concerning the late Plot, and when?

Dr. *Burnet.* My Lord *Howard* came to ſee me the Day after the Diſcourſe of the Plot broke out, *Thurſday* I think it was, on *Wedneſday* it began to be talked of. The thing was little underſtood then, but in general a Plot was diſcovered, and my Lord, with a great many Proteſtations, lifting up his Hands and Eyes to Heaven, proteſted he knew of none, and believed there was none, and ſpake of the whole thing as a Contrivance.

Mr. *Williams.* This was the Day after the Diſcovery broke out?

Dr. *Burnet.* Yes, the Day after that I firſt heard of it.

Mr. *Williams.* Had you any other Diſcourſe with my Lord about it?

Dr. *Burnet.* I had not ſeen my Lord before of ſome Months. And then he ſpake a great deal to me. He told me he had been in *Eſſex*, and after that he went to the *Bath*, and went ſo early and came away before the Company came, becauſe he would avoid all Danger. And he expreſſed great Appprehenſions of Fear of Sham-Plots, and ſpake of Falſe Witneſſes and former Deſigns of that Nature. The Truth of it was, one had poſſeſſed me with a Belief of the Thing, it being then but a ſecret, but he ſtrove to diſpoſſeſs me of that Belief, and his whole Diſcourſe ran upon that for an whole Hour, and expreſſed, as I ſaid, great Fear of ſome Sham-Contrivance, and ſpake much of Falſe Witneſſes, wiſhing that he were beyond Sea.

L. C. J. What, he ſpake as if there were like to be great Heats and Stirs, I ſuppoſe?

Dr. *Burnet.* No, the Talk was about the Diſcovery, which he ſaid he believed was a Contrivance.

Mr. *Williams.* Did my Lord *Howard* uſe to come to you ſometimes?

Dr. *Burnet.* Yes, he uſed to come frequently to ſee me.

Mr. Att. Gen. Dr. *Burnet*, Pray let me aſk you one Queſtion; you ſpeak of ſolemn Declarations and Proteſtations made by my Lord *Howard*, what gave the occaſion to ſuch a Solemnity?

Dr. *Burnet.* I will tell you the occaſion truly, tho' it was never aſked me before. It was thus: I being poſſeſſed with the Belief of the thing by one that aſſured me it was true, and would ſoon appear to be ſo, I argued upon that Belief to convince my Lord *Howard*, that it was true; and he argued a great deal to diſpoſſeſs me of that Belief. And I ſaid, if there be any ſuch thing, I pray God forgive them that are concerned, but certainly it is one of the monſtrouſeſt ill things that ever was done; for hereby they have done all that could be done to ruin the Proteſtant Religion. He was ſmoking a Pipe of *Tobacco*, and he laid down his Pipe, and lifted up his Hands and Eyes to Heaven, and proteſted to me, he neither knew of any ſuch thing, nor believed it, but it was all a Contrivance.

Mr. Att. Gen. By his Diſcourſe, you poſſibly might underſtand what he meant; did he mean being privy to the Murder of the King, or the Raiſing of Rebellion?

Dr. *Burnet.* There was not a Word then of the Aſſaſſination, but it was all of the Plot in general.

Mr. Sol. Gen. Did he make no diſtinction?

Dr. *Burnet.* We talked of nothing but Plot in general. For the Particulars were not then known. It was only about the general Notion of a Plot.

Mr. Att. Gen. Pray, What was the reaſon you had to believe it?

Dr. *Burnett.* There was a Gentleman from *Whitehall* that came to ſee me, and he did aſſure me it was true, as being one that had it from a Privy Counſellor. This was on the *Wedneſday*, when the Council ſat long about it; and nothing of Particulars was then let out, but only a Diſcourſe in general of ſuch a thing, and he ſaid it would be found to be a certain Truth.

Mr. Att. Gen. But, Doctor, did not you a little wonder at the Carriage of my Lord *Howard?* That a Man that was not accuſed, that you heard of, ſhould make ſuch ſolemn Proteſtations?

Dr. *Burnet.* My Lord, he ſaid juſt in this manner as I have told you, when I ſaid, *Pray God forgive them, if any have been concerned in ſuch a thing*; he laid down his Pipe, and lift up his Hands and Eyes. Whether he thought I ſuſpected him, or no, I can't tell, he beſt knows his own Thoughts.

Mr. Att. Gen. Did he ſay a Word of Mr. *Hampden?*

Dr. *Burnet.* No, there was not any particular Perſon named.

Mr. Recorder. Doctor, he would not make you his Confeſſor.

Dr. *Burnet.* His whole Hour's Diſcourſe was to diſpoſſeſs me of the Opinion and Belief I had entertained of the Plot.

Mr. Juſt. *Holloway.* This was about *July*, you ſay?

Dr. *Burnet.* I cannot remember the very Day of the Month, I believe it was the latter end of *June*, but I am ſure it was before any body was committed, that we heard of.

Mr. Recorder. Dr. *Burnet*, you ſay you did believe there was a Plot then?

Dr. *Burnet.* Yes, I did ſo, and he labour'd to diſpoſſeſs me of that Belief.

Mr. Recorder. Pray do you believe it now?

Mr. *Williams.* What a Queſtion is that, Mr. *Serjeant?*

Dr. *Burnet.* I make no Doubt of it, Sir, as to the Aſſaſſination.

Mr. Att. Gen. My Lord *Newport*, Why do you lift up your Hands? You don't do well; for it is a very proper Queſtion.

L. C. J. Well, call your next Witneſs, Gentlemen.

Mr. *Thompſon.* Swear Mr. *Giſborne.* [*Which was done.*]

Mr. *Williams.* Pray, Sir, will you acquaint the Court and the Jury, what you have heard my Lord *Howard* ſay about the late Conſpiracy?

Mr. *Giſborne.* My Lord only ſaid he knew nothing of the Plot; that is all I can ſay.

Mr. *Williams.* When was this?

Mr. *Giſborne.* The *Saturday* before he was taken into Cuſtody; then it was that your Honour did ſay ſo, my Lord.

Mr. Att. Gen. Ay, and a 100 more, I believe, would ſay ſo, that might be concerned in it for all that.

Mr. *Williams.* Swear Mr. *Blake.* [*Which was done.*] Pray acquaint my Lord and the Jury, what Diſcourſe you had with my Lord *Howard* about his Pardon, and what he ſaid to you?

Mr. *Blake.* My Lord, about the Month of *October* laſt my Lord *Howard* ſent to me to know how I did, and deſired me to come and make him a Viſit. The next Day I went and waited upon my Lord at his Lodgings at *Whitehall*, and after the Compliments paſſed, my Lord began a Diſcourſe of the Plot, and I told him, That I heard none of the Witneſſes had their Pardons, but only *Keeling*, the firſt Diſcoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he pluck'd it out and ſhewed it me, and I read it. And then I told him I thought it was of no Avail, without he had his Pardon actually under his Seal; he ſaid no, but he had their Word and Honour: But, ſaid he, when I firſt received the Warrant, they ſaid I ſhould not meddle in it till I heard from them again, which I have not yet; and I aſcribe it to no other Reaſon but only this, That I muſt not have it till the Drudgery of Swearing is over.

Mr. *Williams.* When was this?

Mr. *Blake.* In *October* laſt ſome time. So I then took my Leave of my Lord, and my Lord deſir'd me to come and ſee him at Night about ſix o'clock in the Evening, for he had a great many come to him, but then he ſhould be at Leiſure, and had many Things to ſay to me.

Mr. Att. Gen. At that Time did my Lord expreſs himſelf as diſcontented, and that it was irkſome to him to be brought as a Witneſs?

Mr. *Blake.* He only ſaid thoſe Words that I have told you, and looked up and turned up his Eyes towards Heaven when he ſaid ſo.

Mr. *Williams.* Pray, where is Mr. *Benjamin Mercer?* Swear him. [*Who was ſworn.*

L. C. J. What do you aſk him?

Mr. *Williams.* We bring him to prove that my Lord *Angleſey* was ſerved with a *Subpœna*, but is ſo ill of the Gout he can't come.

L. C. J. If that be all, there is no Queſtion of it, but that he was *ſubpœna'd.*

Mr. *Williams.* If your Lordſhip pleaſe, we will prove in what Condition my Lord *Angleſey* is, and then we hope your Lordſhip will give us Leave to prove what my Lord has ſaid concerning my Lord *Howard*'s Diſcourſes with him.

L. C. J. No certainly, Mr. *Williams*, and I am ſure you aſk it not as expecting it ſhould be granted.

Mr. *Williams.* I lay it before your Lordſhip and the Court.

L. C. J. Ay, You lay it before us, but you are a Lawyer, do you yourſelf think fit it ſhould be done?

Mr. *Williams.* My Lord, I muſt ſubmit it to you.

L. C. J. Come, Will you conſent that what the Duke of *Monmouth* has ſaid, ſhall be given in Evidence, and then I preſume the King's Counſel will conſent to your Requeſt?

Mr. *Williams.* I conſent? Here is my Client, my Lord, in Court, I can conſent to nothing.

L. C. J. But if ſo be there be Leave given on one Side to tell what another Perſon has ſaid, why ſhould it not be conſented to on the other Side, that it be proved what a third Perſon that is abſent has ſaid for them?

Mr. Recorder. Ay, Will you conſent that we prove what the Duke of *Monmouth* has ſaid?

Mr. *Williams.* We don't know what the Duke of *Monmouth* has ſaid.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you aſk.

Mr. *Jones.* You know that 'tis not for your Purpoſe what he has ſaid.

Mr. *Williams.* My Lord, We muſt go according to our Inſtructions.

L. C. J. But you know the Law, why ſhould you offer any ſuch thing? Your offering it will make the *Lay gens* that know not the Law think that the Court puts Hardſhips upon People, in denying things which you that underſtand the Law know can't be granted.

Mr. *Williams.* I do not preſs it, my Lord, but leave it with you.

L. C. J. Why do you ſpend our time in urging things that are nothing to the purpoſe, and cannot be allowed?

Mr. *Williams.* Now, my Lord, We will go on to another Part of our Defence, and that is, to call Witneſſes to the Reputation of Mr. *Hampden*, and his Behaviour, to ſatisfy you, that he cannot be ſuch a Perſon as the Indictment ſays, and as he muſt be if it be true what this Gentleman, my Lord *Howard*, has ſworn.

Mr. *Thompſon.* We will firſt examine my Lord *Paget.* [*Who ſtood up.*

Mr. *Williams.* My Lord, We aſk you to that Queſtion. Have you known this Gentleman Mr. *Hampden*, and what ſort of a Man is he?

Lord *Paget.* I have good reaſon to know him. I have known him a great while, and have always believed him an honeſt and a prudent Man, a Man of Honour, and Virtue, and Integrity, my Lord; and I have had no Reaſon to have other Opinion of him. I know he has been always, ever ſince he came abroad into the World, a Man that hath loved his Study, and Books, and a contemplative Life. And therefore I ſhould not be apt to believe, That he could apply himſelf to a Thing ſo contrary to his own Nature, and to that Way that he delighted in, and had always hitherto applied himſelf unto, I mean to engage in a Deſign of ſo much Malice and Wickedneſs.

Mr. *Williams.* My Lord, You have had a long Converſation with the Knowledge of Mr. *Hampden*, you ſay. What ſay you as to his Diſpoſition; becauſe this Indictment ſays he is a Perſon of a turbulent, factious, ſeditious Spirit?

Lord *Paget.* I have always known him a quiet peaceable Man, not meddling in Buſineſs, very friendly, free from all Turbulency, not of much Acquaintance, nor deſirous to make much.

Mr. Att. Gen. Pray, my Lord *Paget*, upon the ſame Oath you have taken, have you not at any Time heard him expreſs Diſſatisfaction as to the Male-adminiſtration of the Government?

Lord *Paget.* No, Never to me in the leaſt.

Mr. Att. Gen. Not at the Time of the laſt *Weſtminſter* Parliament?

Lord *Paget.* No, I never heard him then, nor at any Time elſe.

Mr. *Williams.* Mr. *Hampden* was then in *France*, and not in that Parliament, though he was a Member. Where is Mr. *Pelham?*

L. C. J. Here he is. He ſits down here. [*Pointing to the Table.*] What would you aſk him? [*He was ſworn.*

Mr. *Williams.* Sir, will you pleaſe to acquaint the Court, what Acquaintance you have had with Mr. *Hampden*, and how long? And what you know of him?

L. C. J. You hear the Queſtion, Sir, how long have you been acquainted with Mr. *Hampden?*

Mr. *Pelham.* I have been aquainted with Mr. *Hampden* about five or ſix Years living near him, and all that I could obſerve from him was, that he was a Man much addicted to his Studies, kept much at home, and I never obſerved that he had much Acquaintance; but as to the Buſineſs before you, I know nothing of it, nor ever heard him ſpeak any thing relating to it.

Mr. *Williams.* As to his Spirit and Diſpoſition, is he a turbulent Man?

Mr. *Pelham.* No, I never found him any thing like it. We never talked together of Matters of that Nature.

Mr. Att. Gen. Were you ever in his Company at any time when he diſcourſed about Government?

Mr. *Pelham.* No, I was never with him at any time when he diſcourſed of any ſuch thing.

Mr. *Williams.* Sir *Henry Hobart.*

Mr. Att. Gen. My Lord, we oppoſe his being a Witneſs. He is one of his Bail.

Mr. *Williams.* That was upon the *Habeas Corpus* Act, not upon this Indictment.

Mr. Att. Gen. If he be Bail for the Defendant, my Lord, he cannot be a Witneſs.

Mr. *Williams.* I appeal to the Rule of Court, whether he was not Bail upon the *Habeas Corpus* Act only?

Mr. Att. Gen. Appeal where you will, the Bail cannot be a Witneſs.

Mr. *Williams.* We moved for an *Habeas Corpus* the Beginning of laſt Term upon the late Act for *Habeas Corpus's.* And then at the laſt Day of the Term upon *Habeas Corpus* he was brought up thither, and was bailed upon that Writ.

Mr. Att. Gen. Are not you one of the Bail, Sir *Henry Hobart?*

Sir *Hen. Hobart.* I was one of his Bail, I think it was for his Appearance.

L. C. J. If he be one of his Bail that he ſhall appear in this Cour the firſt Day of this Term, and ſo from Day to Day, till he ſhall be diſcharged, and remains under that Recognizance, then in any Caſe againſt him he cannot be a Witneſs for him.

Mr. Att. Gen. But they miſtake the Matter, he was then charged with this Indictment: He then pleaded to it, and was bailed to anſwer the Indictment; and ſurely in that Caſe he can never be a Witneſs.

L. C. J. That is certainly very true, and you know the Law ſo well, Mr. *Williams*, that I wonder you will inſiſt of it; in every ordinary Caſe, it is every Day's Practice to deny the Bail to be Witneſſes.

Mr. Att. Gen. Here is the Perſon principal, will they render him in Cuſtody?

L. C. J. Ay, what ſay you, will you render him in Cuſtody? Then we will diſcharge the Bail.

Mr. *Williams.* My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Anſwer my Queſtion, Will you render him in Cuſtody?

Mr. *Will.* We will change the Bail, my Lord, and find ſome other ſufficient Perſon to ſtand in Sir *Henry Hobart*'s Place, rather than loſe our Witneſs.

L. C. J. With all my Heart.

Mr. *Williams.* Here is Mr. *Aſhhurſt*, my Lord, a Gentleman of very good Value.

L. C. J. But you muſt render him firſt, and change the whole Bail. They muſt enter into new Recognizances.

Mr. *Williams.* I can't tell whether we can do that ſo very well, becauſe the others, I am afraid, are not all here. He is a mighty material Witneſs, I am ſure.

Mr. Att. Gen. My Lord, Mr. *Williams* ſays he is a material Witneſs, let him be ſworn, I am ſo fair, I'll conſent to it: Let us hear what he can ſay. [*Which was done.*

Mr. *Williams.* We thank you, Mr. Attorney. I'm afraid you won't live long, you are ſo good-natur'd.

L. C. J. But you are like to live for your Good-nature, Mr. *Williams.*

Mr. *Thompſon.* Sir *Henry Hobart*, How long have you been acquainted with this Gentleman, Mr. *Hampden?*

Sir *H. Hobart.* I have known him any time theſe ten Years.

Mr. *Williams.* How has he been, Sir, as to his Diſpoſition and Spirit? Did you ever find him to be of a turbulent Temper?

Sir *H. Hobart.* Very far from it always.

Mr. *Williams.* Have you had any intimate Converſation with him?

Sir *H. Hobart.* I have known him all along, I ſay, theſe ten Years, but of late I have had more Converſe with him ſome few Years in Travel.

Mr. *Williams.* Had you much Converſation, Sir?

Sir *H. Hobart.* I was with him continualy at *Paris*, and abroad.

Mr. *Williams.* What ſay you as to his Loyalty and Principles? Was he a factious, ſeditious Perſon?

Sir *H. Hobart.* Sir, he always expreſſed a great Eſteem for the Government, and great Reſpect and Duty to the King.

Mr. *Will.* Pray, Sir, when went Mr. *Hampden* abroad to go into *France?*

Sir *H. Hobart.* He went into *France* for his Health about *November*, (80.) I think it was.

Mr. *Williams.* How long did he continue abroad, Sir *Henry?*

Sir *H. Hobart.* I found him in *Paris* the *May* after.

Mr. *Williams.* How long did you tarry there, Sir, yourſelf?

Sir *H. Hobart.* I went from *Paris* in *June*, and came back again to *Paris* about *October* or *November*, the ſame Year, and I found him in *France* ſtill.

Mr. *Williams.* And when do you take it he returned into *England?*

Sir *H. Hobart.* I was with him till he came over, which was about *September* (82.) I think.

Mr. *Thompſon.* What do you know, Sir, of his Intentions to go again beyond Sea?

Sir *H. Hobart.* When, Sir, do you mean?

Mr. *Thompſon.* Since that time he came over, you ſay in *September* (82.)

Sir *H. Hobart.* He told me of it often, I think it was about *March*, more particularly once at his own Houſe.

Mr. *Thompſon.* What *March*, Sir?---Sir *H. Hobart.* *March* (83).

Mr. *Thompſon.* That is laſt *March.*

Sir *H. Hobart.* Yes, laſt *March*, he talked of it ſeveral times, particularly once I went about ſome Buſineſs of my own, and then he diſcourſed a great deal of his going over with my Lord *Mountague* that now is; for he told me his Health was not yet eſtabliſhed, for he came over out of an hot Country in *Autumn*, and had been all the Winter in this colder Country, and the Air he found had impaired his Health again. And it was not only what he told me, but I had a Letter from a Friend of mine in *France*, to whom I had ſent to deſire him to come over; but he writ me Word, no; Mr. *Hampden* was coming over again, and he would not come back again yet.

Mr. Att. Gen. Did he tell you when he intended to go over, Sir *Henry?*

Sir *H. Hobart.* As ſoon as Mr. *Mountague*, my Lord *Mountague* that now is, could get ready, who was to carry his Lady over with him.

Mr. *Williams.* Sir, do you know of any Preparation made by Mr. *Hampden* for it?

Sir *H. Hobart.* He had reſolved to take his Lady with him, becauſe Mr. *Mountague*'s Lady went, and ſo I believe did prepare accordingly.

Mr. Att. Gen. Did Mr. *Mountague* go over?

Sir *H. Hobart.* He did not go then, but ſince he is gone.

Mr. Att. Gen. Were you in *France* then at this Time?

Sir *H. Hobart.* This was in *England*, at his own Houſe.

Mr Williams. Pray, Sir, what is his Diſpoſition?

Sir *H. Hobart*, He was always inclined to a ſtudious Life, and kept very little Company.

Mr. Att. Gen. Was this in *March*, 83?

Sir *H. Hobart.* Yes, he came over in *September* before. I always obſerved him to be of a retired Temper

Mr. Att. Gen. You ſay in 1680 he went into *France*, and (82) he came over again?——Sir *H. Hobart.* Yes.

Mr. Att. Gen. Pray, Sir *Henry*, ſince you converſed ſo much with him, have you heard him ſince the laſt Parliament at *Weſtminſter*, or at any time have you been by when he hath diſcourſed his Opinion about Government?

Sir *H. Hobart.* Truly, Sir, I don't take myſelf to be capable of diſcourſing with him about any ſuch Matters.

Mr. Att. Gen. Have you heard him at any time complain of the Male-Adminiſtration of the Government?——Sir *H. Hobart.* No, Sir.

Mr. Att. Gen. Have you never heard any ſuch Thing from him?

Sir *H. Hobart.* No, never.

Mr. *Williams.* Swear Dr. *Lupee*---My Lord, we muſt deſire an Interpreter, for the Doctor ſpeaks *French* only.

L. C. J. Swear an Interpreter.

Mr. *Williams.* Dr. *Burnet*, or if he be gone, call Sir *Henry Hobart* again. We muſt beg the Favour of you, Sir *Henry*, to be an interpreter, you underſtand the *French* Tongue very well.

Sir *H. Hobart.* I will do it with all my Heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Doctor was ſworn, and the Oath repeated to him by Sir Henry Hobart *in* French.

Crier. You ſhall well and truly interpret between the Court and the Witneſs, and the Witneſs and the Court, according to the beſt of your Skill and Knowledge: So help you God.

Mr. *Thomſon.* Sir *Henry*, will you pleaſe to repeat what Queſtions we ſhall aſk, and what Anſwers he makes?

Sir *H. Hobart.* Yes, Sir, as well as I can, I will.

Mr. *Williams.* Pray, Sir, aſk the Doctor this Queſtion, If he be acquainted with Mr. *Hampden?*

Sir *H. Hobart.* Yes, he ſays very well. He lived near two Years with him.

Mr. *Thompſon.* How long is it ſince?

Sir *H. Hobart.* Four Years ſince, he ſays.

Mr. *Williams.* Pray, in that time, What was his Diſpoſition? Was he a ſeditious and turbulent Man? Or was he a ſtudious retired Man, or what?

Sir *H. Hobart.* He ſays the two Years he lived with Mr. *Hampden*, he kept him Company in his Studies, and all that time he found he had no other Inclinations but for Study and Knowledge, and his Inclinations were very virtuous. He always obſerved in his Diſcourſe a great Submiſſion and Reſpect that he had for the Laws of his Nation, and his Prince, and to that Degree he was a faithful Subject to the King; that once he told him, in diſcourſing with him of the late Popiſh Plot, that he was ready to ſacrifice his Life and Fortune for the King's Service.

Mr. *Thompſon.* Aſk him what Diſcourſe he had with him of the Plot ſince it brake out.

L. C. J. Will that be any Evidence do you think, Mr. *Thompſon?* Will Mr. *Hampden*'s Declaration be any Evidence, he being a Perſon accuſed? Do you think he would tell the Doctor, or any body elſe that he was guilty, when he was like to be queſtioned? That would have been a wiſe Buſineſs indeed. You ſay he was a very ſtudious Man, and a learned Man, truly if he had done that, he had beſtowed his Time in Learning to very good Purpoſe.

Mr. *Williams.* My Lord, That that we would aſk him is this; This Perſon, the Doctor, being diſcourſing with Mr. *Hampden* upon the Diſcovery of the late Conſpiracy, and of the dangerouſneſs of the time, he would have adviſed Mr. *Hampden* to have gone; no, he ſaid, he would not, for he was an innocent Man, and would not ſtir,

L. C. J. Well, aſk him what you will, but his Declaration of his own Innocence cannot be taken for Evidence.

Sir *H. Hobart.* He ſays, ſince this Plot was diſcovered, he was going one Day to viſit Mr. *Hampden*, and going through *Long-Acre*, he met a *French* Miniſter, a *Savoyard* Miniſter -----But, my Lord, he ſpeaks ſo faſt and goes on with ſo much at a time, that I cannot remember it all.

Mr. *Williams.* Well, what ſaid that Miniſter to him?

Sir *H. Hobart.* He ſays this Miniſter aſked him if Mr. *Hampden* was not concerned in the Plot, and upon that he went and told him what the Miniſter had ſaid to him---He ſays, he told Mr. *Hampden*, that the Duke of *Monmouth*, and my Lord *Grey* were hid---He ſays, upon that Mr. *Hampden* ſaid to him, I will never fly, nor conceal myſelf, for my Conſcience reproaches me in nothing.

L. C. J. Aſk him why does he think the *French* Miniſter, the *Savoyard*, as he calls him, ſhould aſk whether Mr. *Hampden* were in the Plot?

Sir *H. Hobart.* He ſays, Mr. *Hampden* ſaid he would rather die innocent than fly with the imputation of Guilt upon him.

L. C. J. But aſk him the Queſtion I put, why ſhould that *Savoyard* Parſon ſay ſo? What reaſon had he to think Mr. *Hampden* was in the Plot?

Sir *H. Hobart.* He ſays the Miniſter did aſk him, but he can't tell what Reaſon he had to think ſo.

Mr. Att. Gen. Pray, Sir *Henry*, aſk him this Queſtion; how long ago it was ſince he left him?---Sir *H. Hobart.* Four Years, he ſays.

Mr. Att. Gen. Where was it, in *England* or *France?*

Sir *H. Hobart.* Whilſt he lived in *Bloomſbury*, he ſays.

Mr. *Williams.* Call Dr. *Needham* and Monſieur *Juſtell.* [*Who appeared.*] And Monſieur *Juſtell* was ſworn. Pray Sir *H. Hobart*, will you aſk Monſieur *Juſtell*, who ſpeaks *French* too, if he know any thing of Mr. *Hampden*'s Reſolution to travel with Mr. *Mountague* into *France?*

Sir *H. Hobart.* He ſays, Yes. He did tell him he was going into *France*, and he offered to carry ſome Books for him along with him.

Mr. *Williams.* What Company was he to go in, and what time?

Sir *H. Hobart.* He ſays, Sir, he can't be exact to the Month when Mr. *Hampden* ſpake of going over, but he ſays, it was a great while before this Plot came to be diſcovered.

Mr. *Williams.* Was it ſome Months before?

Sir *H. Hobart.* It was a Month before it was known, he ſays.

Mr. *Williams.* In what Company was he to go?

Sir *H. Hobart.* He ſaid he was to go with Mr. *Mountague.*

Mr. *Conyers.* Pray, Sir, will you aſk him, was he employ'd to get any *French* Servants to be with him?------Sir *H. Hobart.* Yes, he ſays.

L. C. J. Ay, but what was the Queſtion? For there is ſuch a Crowd of People before the Counſel, that the Court cannot hear Mr. *Conyers*'s Queſtion.

Mr. *Conyers.* My Lord, I aſked him, whether he was employed to get any *French* Servants to be with Mr. *Hampden.*

Sir *H. Hobart.* Yes, he ſays.

L. C. J. Well there is Dr. *Needham*, what do you aſk him?

Then Doctor Needham *was ſworn.*

Mr. *Williams.* We call Dr. *Needham* for this Purpoſe, my Lord, to prove that theſe Gentlemen that are accuſed, Mr. *Hampden*, and my Lord of *Eſſex*, and the others, had very little Eſteem, and mean Opinion of my Lord *Howard.* And how one, they ſo little eſteemed, ſhould be let into ſo great a Secret, will be very ſtrange to imagine. Dr. *Needham*, Pray, what can you ſay of any of theſe Gentlemen's Opinions of my Lord *Howard?* What Opinion had my Lord of *Eſſex* of him?

L. C. J. Is my Lord of *Eſſex* now before us? What is that to this Caſe, Mr. *Williams?* Let my Lord of *Eſſex* have what Opinion he would of him; how does that concern the Defendant?

Mr. *Williams.* I tell you why I offer it, my Lord------

L. C. J. But pray, offer what is Evidence, and keep to the Buſineſs before you.

Mr. *Williams.* *Falſus in uno, falſus in omnibus.* If we can prove that what he hath ſaid of my Lord of *Eſſex* is falſe, he is not to be believed againſt the Defendant.

Mr. Att. Gen. Ay, but upon the Evidence of my Lord *Howard*, all the reſt were convicted.

Mr. *Williams.* I offer it only upon what is here to Day before you. He ſays, my Client, and my Lord of *Eſſex* were confederate with him upon ſuch a Deſign. Now if my Lord of *Eſſex* was not there, then he is falſe in that, and that he was not, we offer this as Evidence-----

L. C. J. But 'tis not a proper Evidence in this Caſe.

Mr. *Williams.* 'Tis a ſort of Evidence----

L. C. J. Ay, 'tis a ſort of Evidence, but 'tis not to be allowed. If you will prove Mr. *Hampden*'s Opinion, you may, but you muſt not for him bring Proof of what my Lord of *Eſſex*, a third Perſon, thought of my Lord *Howard.*

Mr. *Williams.* I only offer it thus-------

L. C. J. Offer what is Evidence, Man! You are a Practiſer, and know what is Evidence, but you have offered two or three things to Day, that I know you do at the ſame time know is not Evidence, and I ſpeak it that it may not be thought we deny you, or your Client any thing that is according to the courſe of Law. You that know the Law, know 'tis ſo as we ſay. Mr. Attorney has gratified you in waving three or four Things already, but nothing will ſatisfy, unleſs we break the courſe of other Trials.

Mr. *Williams.* My Lord, What I take not to be Evidence I do not offer, and where the Court over-rules me, I have not inſiſted upon it.

L. C. J. No?

Mr. *Williams.* No, my Lord.

L. C. J. But you would have inſiſted upon it, if Mr. Attorney would not have been ſo eaſy as to conſent, and the Court would have let you. Pray keep to the Buſineſs, and the Methods of Law; you know the Law very well.

Mr. *Williams.* My Lord, I humbly apprehend this may be Evidence, and I lay it before you. My Lord *Howard* has proved that my Lord of *Eſſex* and Five more, of which Mr. *Hampden* was one, met and conſulted about ſuch Matters. We may, I hope, be addmitted to prove, That my Lord of *Eſſex* was not there; for if we can take off his poſitive Proof, as to any one of the Circumſtances, we take off from the Truth of the Fact. If all the Perſons were not there; then my Lord *Howard* is miſtaken in that, and accordingly muſt not be believed in the reſt; therefore, my Lord, I preſs it no otherwiſe: He hath proved theſe ſix Perſons were there. I offer this as ſome Evidence, That it is unlikely it ſhould be ſo, becauſe my Lord of *Eſſex* had ſo little Opinion of my Lord *Howard*, that he would never conſult with him about any matter.

L. C. J. Then certainly my Lord *Howard* is to be believed, to all Intents and Purpoſes, for here is a Record of the Conviction of my Lord *Ruſſel*, and of Colonel *Sidney*, and all upon the Teſtimony of this Gentleman, my Lord *Howard*; and is not that more to ſupport his Credit, than a flying Report of a third Perſon's Opinion of him. And yet after all we ſay, 'tis no Evidence againſt Mr. *Hampden*, and has been waved by Mr. Attorney.

Mr. *Williams.* Then I will not preſs it, my Lord.

Mr. Juſt. *With.* It is no Evidence, certainly, Mr. *Williams.*

L. C. J. It ſeems my Lord *Eſſex* had ſuch an Opinion of my Lord *Howard*'s Evidence, That he thought fit to cut his own Throat, rather than abide the Trial.

Mr. *Williams.* Call Mr. *Murray.*

L C. J. Suppoſe my Lord of *Eſſex* had ſaid, That he was out of the Plot, and Mr. *Hampden*, was in, would that have been good Evidence againſt Mr. *Hampden*, do you think? Pray mind what is the Buſineſs before you?

Mr. Williams. Swear Mr. *Murray.* [*which was done.*]

L. C. J. Well, what do you aſk this Man?

Mr. *Williams.* My Lord, we call him as to what I opened of my Lord *Howard*'s Opinion of the World to come, and Rewards and Puniſhments there.

L. C. J. Mr. *Williams*, Pray take notice of this: Private Diſcourſes that People can't come to make Anſwer unto, becauſe they can't imagine to have them objected, are a very odd ſort of Evidence.

Mr. *Williams.* Therefore I opened it warily and tenderly; my Lord, the Witneſs will tell you the Story better than I.

L. C. J. I cannot tell what Mr. *Williams* has ſaid, or I have ſaid in heat of Talk or Vanity. God knows how often all of us have taken the great Name of God in vain: Or have ſaid more than becomes us, and talked of Things we ſhould not do.

Mr. Att. Gen. My Lord, how can my Lord *Howard* be prepared to give any Anſwer to this?

L. *Howard.* My Lord, this preſſes hard upon my Reputation, my Lord. I profeſs before God I do not know this Fellow, I never ſaw him in my Life before as I know: But a Company of impudent Fellows take the liberty of ſaying what they pleaſe.

L. C. J. To rake into the whole courſe of a Man's Life is very hard.

L. *Howard.* I would fain have theſe Fellows dare to ſay this any where elſe of me.

Mr. *Williams.* Well, my Lord, we will wave it,

L. C. J. They do not think it a fit Thing to preſs it,

L. *Howard.* But, my Lord, it concerns me in my Reputation; who is this Raſcal they bring here? God's Life, who is he?

L. C. J. We muſt be tender of Men's Reputation, and not let every Thing come as Evidence when 'tis not fit to be Evidence, to put Slurs and Scandals upon Men that they can't be prepared to wipe off. Is he convicted of any Crime? If he is, you ſay ſomething, ſhew the Record of it.

Mr. Juſt. *Withins.* Mr. *Williams.* You know the Caſe adjudged lately in this Court, a Perſon was indicted of Forgery, we would not let them give Evidence of any other Forgeries, but that for which he was indicted, becauſe we would not ſuffer any raking into Men's Courſe of Life, to pick up Evidence that they can't be prepared to anſwer to.

Mr. *Williams.* We have that Reſpect for my Lord's Honour too, as not to preſs it, only we had it in our Briefs, and we muſt go according to our Inſtructions.

L. *Howard.* I deſire to know who that Raſcal is? What is he? Where does he live? I will make him an Example.

L. C. J. Pray compoſe yourſelf, my Lord, there is nothing of this preſſed.

L. *Howard.* To ſay I am an Atheiſt, my Lord? What can be a greater Reflection?

L. C. J. He has not told us any ſuch thing as yet. And we will take care that nothing ſhall be offered but what is fitting.

L. *Howard.* I vow to God, my Lord, I do not know the Man.

L. C. J. My Lord, do you think that every thing that a Man ſpeaks at the Bar for his Client, and his Fee, is therefore to be believed, becauſe he ſaid it? No, the Jury are to take nothing here for Evidence to guide them of what the Counſel ſay, but what is approved. They are to judge *ſecundum allegata & probata*, that is their Duty.

L. *Howard.* Does that Fellow look like a Man of that Figure, that I ſhould ſay any thing, or have any Converſation with him?

L. C. J. My Lord, I don't know what he is. Go on, Gentlemen.

Mr. *Williams.* My Lord, we have done with our Evidence. If Mr. *Attorney* will leave it here, we will.

Mr. Att. Gen. My Lord, we won't miſtruſt the Evidence, nor the Court,

Mr. *Hampden.* My Lord, I deſire to ſpeak a Word myſelf, if you pleaſe.

L. C. J. Ay, in God's Name. You, or your Counſel, I will hear all you will ſay, and as long as you will ſpeak, provided you ſpeak within the Bounds of Decency.

Mr. *Williams.* My Lord, I think it beſt to leave it to the Court: We hope we make it clear that our Client is innocent.

L. C. J. Would to God you were innocent, that is the worſt Wiſh I wiſh you, but we will either hear him or you ſpeak, ſpeak as long as you will.

Mr. *Wallop.* My Lord, I deſire to make but one Obſervation.

L. C. J. Ay, in God's Name make what Obſervations you will, Mr. *Wallop*, I hindered you from making your Obſervations at firſt, becauſe I knew it would be deſired after the Evidence was over.

Mr. Att. Gen. Then my Lord, I expect to be heard too. If Mr. *Hampden* makes a Speech, I will reply, or if his Counſel do it, I expect the laſt Word, for I will have neither the Party, nor the Counſel to ſpeak after I have ſumm'd up the Evidence for the King. Mr. *Hampden*, and his Counſel are all one.

Mr. *Wallop.* I have but one ſhort Obſervation to make.

L. C. J. Go on then, Mr. *Wallop*, and ſay what you will.

Mr. Juſt. *Withins.* I think 'tis very fit you ſhould do it of both Sides; 'tis a Cauſe of great Concernment.

Mr. *Williams.* My Lord, we will leave it here, I think.

L. C. J. Take your own Courſe, do not ſay we hinder you of ſaying what you will for your Client.

Mr. Att. Gen. Let them do what they will.

L. C. J. I'll ſit ſtill, make Speeches every one of you as long as you will.

Mr. Juſt. *Walcot.* 'Tis fit they ſhould ſpeak what they can for the Advantage of their Client.

Mr. *Williams.* My Lord, we leave it to the Court.

L. C. J. Gentlemen of the Jury, the Evidence has been ſomething long, and the Counſel both for the King, and for Mr. *Hampden*, againſt whom this Indictment has already been found by the Grand Jury, having left it to the Court to ſum up all, I ſhall do it as well as I can: And the Queſtion before you, Gentlemen, is, Whether the Defendant be guilty of the Offence charged in the Indictment, or not Guilty, and there having been ſo long an Evidence on the one Side, and on the other, it will be fit for me, according to the beſt of my Remembrance, to help your Memories, by recollecting what has been ſaid on both ſides, which I ſhall do as near as I can, and if my Brethren will pleaſe to ſupply any thing that ſhall be omitted by me, nay, if the Counſel for the King, or for the Priſoner, will put us in mind of any thing that has been ſpoken, and proved either againſt, or for the Party indicted, in God's Name let them have Liberty to ſpeak it: For it is fit the Queſtion ſhould be left before you with all Fairneſs; and according to the beſt of my Obſervation and Memory, thus it ſtands.

The firſt thing, Gentlemen, that is conſiderable to you, is, that there is ſuch an Indictment, as has been already opened unto you, that is preferred againſt Mr. *Hampden*, that does ſet forth, that Mr. *Hampden* is a ſeditious Perſon, and a Man, according to the Language of the Indictment (which were Words of Courſe and Form in an Indictment of this Nature) of an evil Diſpoſition, deſigning to diſturb and diſtract the Government, and that he, with ſeveral other Perſons, did conſpire to bring in Troubles, and Perplexities upon the Government; and in order to that, that there were ſome Meetings between him and ſeveral other Perſons, and that there was a Deſign to conciliate ſome Perſons of another Nation to go along with them in their Deſign, particularly ſome in the Kingdom of *Scotland*. This is the Purport in the Indictment, to which the Defendant has pleaded Not Guilty.

Gentlemen, the Evidence for the King has been of this Sort, They did at the beginning, which yet I muſt tell you by the way, is not any thing of Evidence, but the King's Counſel would make ſome Overtures to preſs on their Side, as the Defendant, and thoſe that are of Counſel for Mr. *Hampden*, have made ſome little Hints to preſs on their Side, that ſome Witneſſes the one and the others would have had here, were *ſubpœna'd*, but could not be here. It ſeems by the Proof, here was a Meeting, as it was between Six ſeveral Perſons, and they name them, the Duke of *Monmouth* was one, the Lord *Howard* another, the Lord *Ruſſel* a third, the Earl of *Eſſex* a fourth, *Algernon Sidney* a fifth, and Mr. *Hampden* the ſixth. As for my Lord of *Eſſex* he is gone to his long Home, my Lord *Ruſſel* and Mr. *Sidney* have received Sentence, and been executed. So there remains three ſurviving, and ſay they that are for the King: We produce my Lord *Howard*, and we have taken care to ſummon the Duke of *Monmouth*, by leaving *Subpœna*'s where it could be thought he was to be met with, with Promiſes of his Servants to deliver them to him in order to have the Duke to be a Witneſs for the King this Day. I preſume the meaning is, they would infer from that, that they would give an Account of the Fairneſs of this Proceeding, though it has been a Matter that has obtained a ſort of Belief in the World, as though the Duke of *Monmouth* had denied that there was any ſuch thing as this Confederacy and Conſpiracy: And that has given People occaſion to be of very different Opinions and Perſuaſions about the Matter; but, ſay they, to ſhew we are not afraid to have the Truth come out, we have done as much as in us lay to get this Perſon hither; Therefore we have left *Subpœna*'s at his Houſes, at his Lodging with his Servants, and they have promiſed to take care they ſhould be delivered to him, and he is not come. Againſt this, on the other Side, ſay they for the Defendant, we have taken all the care we could to bring my Lord *Angleſey*, who was to have been a Witneſs for the Advantage of the Perſon indicted; but my Lord *Angleſey* is at preſent afflicted with a Fit of the Gout, and for that very Reaſon we can't have him here. And ſo they ſhew, that they have been very zealous to get Witneſſes on their Side to vindicate their Reputation, but they did not meet with that Effect that they deſired. Theſe two Things, Gentlemen, are Matters that are uſed both againſt him one way, and for him another.

But now to come home to the Evidence upon which this Matter is to turn, and here you are to conſider, that whatſoever has been ſaid or offered by the King's Counſel on the one Side, or the Counſel for the Defendant on the other Side, (I call him ſo, for 'tis but a Treſpaſs tho' a great one) You muſt not take into your Conſideration at all any further than as their Allegations are ſupported by the Teſtimony that has been given: And whatſoever the Witneſſes have ſaid either for or againſt him, and out of that Teſtimony as near as I can remember I will give you the Objections, and their Anſwers, with the Obſervations that have been made, or do naturally ariſe out of the Facts in Proof.

My Lord *Howard*, in the firſt Place, gives an Account of this Matter, and, Gentlemen, the Times will be wonderful material, and therefore I beg you would take a Pen and Ink, and mark theſe material Circumſtances as you go. For in all Matters of Fact poſitively proved, which alſo have their Credit ſupported by Circumſtances which do accompany them, the Teſtimones given of ſuch Facts are to be valued according as thoſe Circumſtances keep touch with, and humour, as I may ſo ſay, the Fact that they are to evidence the Truth of.

My Lord *Howard* does therefore in the firſt place acquaint you, that about *Michaelmas* there was a Diſcourſe between him and my Lord of *Shafteſbury*, and that was concerning a Riſing intended to be had, and he tells you how that my Lord *Shafteſbury* was fully reſolved upon it; That Things at length came to that paſs, that he was forced, to go from his own Houſe, as he ſaid, being diſappointed by the Duke of *Monmouth* and others who had promiſed to join with him, and was retired to the Houſe of one *Watſon* in or near *Woodſtreet*. But he underſtanding where he was, my Lord *Howard* went to him, (I think, he ſays, my Lord *Shafteſbury* ſent to him) when he came my Lord *Shafteſbury* told him, that although there had been ſuch a Diſappointment by thoſe Perſons he named, yet that did not take off his Edge, but he was reſolved to go on himſelf, nay, tho' his Body was infirm, yet he would be ſet on Horſeback, tho' he was lifted up, to appear in the Head of a Party that he had prepared, and were ready when he would call them. And he began then to reflect upon the Diſappointment of the Duke of *Monmouth*, and as tho' the Duke of *Monmouth* had only a Proſpect to advance himſelf, and had only an eye upon his own particular Intereſt. That he ſo managed matters, as if he deſign'd to have the ſole Diſpoſition of all Things whatſoever, and began to be uneaſy with the Duke of *Monmouth*. My Lord *Howard* did endeavour to have prevailed with my Lord of *Shafteſbury* for a Reconciliation between the Duke of *Monmouth* and him, it being a matter that required ſo much Safety and Security, and did deſire him that he would have ſome Intercourſe with the Duke of *Monmouth*, in order to conciliate a Friendſhip between them, that they might go hand in hand. You find he was under ſome Difficulties about this matter, he was not able to bring the Thing about; for after he had ſpake with the Duke of *Monmouth*, and prevailed with him, my Lord of *Shafteſbury* was peeviſh, and talked at a Diſtance, and when he had appointed a Meeting one Time, it was prevented; my Lord *Shafteſbury* went away into *Holland*, and there died in *Holland*. This is the Subſtance of what my Lord *Howard* ſays as to that Matter.

But, Gentlemen, this is material, and I'll tell you why I think it material; becauſe the Counſel for the Defendant have made it an Objection particularly to my Lord *Howard*'s Teſtimony, That my Lord *Howard* is particular as to the Day after *Michaelmas-Day*, but he is not ſo particular when he comes to ſpeak of other Times upon which the true Queſtion before you depends. For now he ſpeaks more generally as to the Meetings at the Defendant's, and my Lord *Ruſſel*'s, that they were about the Middle of *January* and the Beginning of *February*, and is not particular as to the Day. I ſpeak of this becauſe that has been made uſe of as an Objection againſt my Lord *Howard*'s Teſtimony. And I will tell you as near as I can, all the Objections that have been made againſt this Teſtimony after ſuch Time as I have ſettled it, and laid before you what the whole of it amounts to.

Then comes my Lord *Howard* and ſays, that meeting with the Duke of *Monmouth* ſome time after this they began to talk together, and they thought that tho' the Buſineſs had failed in the Managery of my Lord of *Shafteſbury*, yet it was fit there ſhould be a reaſſuming of the Buſineſs again; but in order to ſettle matters that things may not go inconſiderately on, it was thought fit that they ſhould reſolve themſelves into a certain Number that were confident one of another, in order to ſteer and tranſact theſe matters the better among themſelves. And they muſt be Perſons fit to be truſted, and for whom there ſhould be an Undertaking among them for their Faithfulneſs and Integrity; for all Perſons are not fit to be truſted, but only ſuch as they agreed upon. The Duke of *Monmouth* he undertook for my Lord of *Eſſex* and my Lord *Ruſſel*, thoſe were the Perſons for whom he would engage, as likewiſe for my Lord *Saliſbury*. And then they began to talk of ſome more, particularly of Mr. *Sidney*, but he was a Cynical Man, and a Philſopher, and they were firſt to come to him, and to treat with him in another manner than the reſt. He was not to appear as the Duke of *Monmouth*, but to take him in his Retirement and Privacies, and then they might be the better able to break the matter to him. And he ſays accordingly there was a Time deſigned on purpoſe; and at that ſame Time the Duke of *Monmouth* and my Lord *Howard* did go and attack Mr. *Sidney*; they found him on a private Day, and dined with him; and upon that Dinner the whole Matter was broke up, and put into ſome Method; then was the whole Deſign contrived as to the Perſons that were to be engaged in this Matter; and he ſays, they agreed upon Six. The Duke of *Monmouth* undertook for my Lord of *Eſſex*, and my Lord *Ruſſel* and Colonel *Sidney* undertook for Mr. *Hampden*. He ſpeaks of my Lord of *Saliſbury*; but my Lord of *Saliſbury* was never there among them, and ſo I put him out of the Caſe, I quit him from being of their Number, becauſe there were but Six in all, my Lord of *Eſſex*, and my Lord *Ruſſel*, who were undertaken for by the Duke of *Monmouth*, Mr. *Hampden* undertaken for by Mr. *Sidney*, and my Lord *Howard*; for by that time Mr. *Hampden* was come into the Matter upon Colonel *Sidney*'s Undertaking.

Now we are got, Gentlemen, by theſe Steps till we come about the middle of *January*; but, ſays my Lord *Howard*, I cannot poſitively ſay, it was this Day, or that Day of the Month; but being about the middle of *January*, I conjecture it was about the 14th, but he is not poſitive to the Day. He ſays, accordingly they went to Mr. *Hampden*'s Houſe, which was the Place firſt deſign'd for them to meet in. He ſays, there accordingly they did all Six meet; and that it being Mr. *Hampden*'s Houſe, they thought it moſt proper for him who was Maſter of the Houſe, who uſually bids his Gueſts welcome, to break Silence, and to impart the Buſineſs of the Deſign they met about. He ſays, accordingly Mr. *Hampden*, after the firſt Compliments of Entertainment, did give an Account of the Buſineſs they were come about, and that it was in order to have a Riſing. This, he ſays, was propoſed by Mr. *Hampden*. He tells you, then they fell into Debate about the Time when, concerning Men, and Arms, and Money; and likewiſe concerning the Places. He tells you the Places wherein the Riſing was deſign'd to be, were *Devonſhire*, *Cheſhire*, *Somerſetſhire*, and other Places, that is, as to the Circumſtance of the Place. Then he tells you concerning the Time; it was debated, Whether it ſhould be all at one Time, or at ſeveral Times; whether they ſhould only begin here, and the Country fall in, or all at once: That likewiſe they had in Conſideration the Buſineſs of Money, and that his Grace the Duke of *Monmouth* did ſpeak of 30 or 35 Thouſand Pounds, or ſome ſuch Sum at that Time. But then, as was natural for Men of Deliberation and Conſideration to conſult about, they took into Debate that they might not go headlong, to endeavour to conciliate another Party to chime in, as he ſays, along with them, in the Buſineſs they were going about; and accordingly it was thought fit and propoſed, That there ſhould be an Endeavour to conciliate a Friendſhip with ſome Perſons in *Scotland*, to fall in with them; and then he tells you who the Perſons were that were named: Some of the Names he remembers, and others he has forgot; he ſpeaks particularly of the *Campbells*, Sir *John Cockram*, and my Lord *Melvin*: And he ſays, other Perſons were mentioned, but he can't remember their Names; and my Lord *Ruſſel* knew ſome of theſe Perſons, and the Duke of *Monmouth* knew ſome others of them, becauſe of his near Relation to the Earl of *Argyle*, the Perſon that you know was proſcrib'd for Treaſon in the Kingdom of *Scotland*. He ſays, that ſo far the Debate of this matter went, that they thought fit a Meſſenger ſhould be provided, a truſty Man to be ſent ino *Scotland* to treat with theſe Gentlemen about this matter; and my Lord *Ruſſel* I think he ſays, undertook to write a Letter to be carried by this Meſſenger to theſe *Scotch* Gentlemen.

He ſays, purſuant to this Conſultation at Mr. *Hampden*'s, a Fortnight after, or thereabouts, which brings it up to the Beginning of *February*, then was the Meeting at my Lord *Ruſſel*'s Houſe, and there they debated theſe matters over again, and the whole Managery of ſending a Meſſenger into *Scotland* was left to the Diſcretion of Colonel *Sidney*, and he undertook that Work, that was his Poſt that he was to manage; and he does ſay, that he does very well remember, that *Aaron Smith* was the Perſon propoſed then; and tho' he was unknown to ſome of the Company, yet he was well known to others; and by reaſon of that Knowledge that others had of him, they looked upon him as a Perſon very fit, and every way qualified for it.

So that, Gentlemen, here is proved a Conſultation in order to the Raiſing of Men to infeſt the Government; a Diſcourſe concerning Money and Arms for this End, and the Places where, and the Time when; and of conciliating a Friendſhip with ſome diſcontented Perſons in *Scotland*, to join, and chime in with theſe Conſpirators in *England*.

And then there is yet another Circumſtance very remarkable, becauſe tho' my Lord ſpake it not at the ſame Time that he delivered his Teſtimony; yet upon the Queſtion aſked, he gives you a plain Account of it; and it has a plain Dependance upon what went before. Said they among themſelves, 'Tis proper for us, as near as we can, to ſhut the Door againſt any Exceptions about theſe Men's coming to treat with us; but how ſhall we get them hither without Suſpicion? We muſt have ſome Shams, or Cant or other, to be a Pretence for theſe People to come into *England*; and that was agreed to be about ſome Plantation in *Carolina*.

This, he ſays, was the Reſult of that Meeting; and that when the Meeting was broke up, about three or four Days afterwards (mind the Circumſtance of Time, Gentlemen, for 'tis very material), Col. *Sidney* and he met together, they went to Col. *Sidney*'s Houſe, and there he ſaw him take Money out of a Till, where there were ſeveral Hundreds of Guineas, or Pieces of Gold; and as he believes, he ſays, he took threeſcore Guineas, or ſome ſuch Sum; and told him it was to give to *Aaron Smith* in order to his Journey into *Scotland*: That he went out with him in his Coach, but Mr. *Sidney* ſet him down by the way, and he himſelf went into *London*, telling him, he went to that purpoſe, to give *Aaron Smith* the Money. Some time after, about a Week, or a Fortnight, or ten Days after that, he ſays, he met with Mr. *Sidney* again; and he ſays, Mr. *Sidney* gave him an Account, that he had heard *Aaron Smith* had been at *Newcaſtle*, but he had not heard of him ſince that Time, and that is another Circumſtance in Point of Time, Gentlemen; ſo that you have here a poſitive Oath made by my Lord *Howard*, that Mr. *Hampden* was privy, and conſenting to all theſe Debates, as to the Raiſing of Men, and the Levying of Money, and about the conciliating a Friendſhip with theſe Men of *Scotland*, and about ſending a Meſſenger into *Scotland* to that Purpoſe. And if my Lord *Howard* do ſwear true, no Man living can doubt but that Mr. *Hampden* is guilty of this Indictment. The firſt Meeting was at his Houſe, and there he did take notice of what had been formerly done, and propoſed the Things, breaking the Silence, and entering into the Debate; which ſhews that he had been diſcourſing about it before, and had it in his Thoughts before, or elſe he could not have propounded it as the End of their Meeting.

Now this, Gentlemen, here is a poſitive Fact; and as Mr. *Williams* ſays true, no Man living can give any Anſwer to a poſitive Fact, but by ſome other Things that may be Circumſtances to oppoſe that Fact. Now he ſays, there are no Circumſtances that have been proved, that will give any Credibility to what has been depoſed, beſides the poſitive Oath of my Lord *Howard*. So that, ſays he, your Fact, tho' it be poſitively ſworn, is not ſupported by any Circumſtances of the Fact, that may give Credibility to it. And he objects, very materially; for if it be not ſupported by credible Circumſtances, then indeed it would be leſs material; yet I cannot ſay, it would not be at all material; it is material, and you are to determine, whether you have ſufficient Evidence given you, to induce you to believe, that my Lord *Howard* is at this Time guilty of wilful and malicious Perjury, for it is Perjury, and that in the higheſt Degree, if it be not true that he ſays; and God deliver all Mankind from being guilty of any ſuch Thing. I leave that to your Conſciences, Gentlemen, who are the Judges of it.

But, ſays the King's Counſel, Here are Circumſtances that do ſupport our Fact, and the Credibility of it. For, firſt, here is the Circumſtance of *Aaron Smith*, who was ſent into *Scotland* by Mr. *Sidney* in purſuance of this Deſign, and this Circumſtance my Lord *Howard* does ſubjoin to what he has poſitively affirmed againſt the Defendant. And this Circumſtance is a thing that may be helped by other Proof; and what is this Circumſtance? Say they, that *Aaron Smith* was ſent into *Scotland*; and in order to prove that, they have called one *Sheriffe*, who is a Man that keeps an Inn at the Poſt-houſe in *Newcaſtle*, from whence Col. *Sidney* told my Lord *Howard* he had notice of his Arrival at *Newcaſtle*, but had heard no more of him after that. And this *Sheriffe* ſwears directly, I ſaw that Man they call *Aaron Smith*, when he was ſhewn to me before the King and the Council; and Mr. *Atterbury* ſwears he ſhew'd *Aaron Smith* to him, and then *Sheriffe* ſwears, that man you ſhew'd to me was the Man I ſaw at my Houſe at *Newcaſtle*, that chimes in with the Circumſtance of Fact that Mr. *Sidney* heard from him at *Newcaſtle*. And then there is the Circumſtance of Time when he ſaw him there; ſays he, I ſaw him the *Friday* before *Shrove-Tueſday*, which they in the North call *Eaſter*'s *Even*. He came to my Houſe on *Thurſday* Night, and went away the next Day, *Friday*; and he went with his Guide, the other Man, *Northward*, in order to his Journey into *Scotland*, as he himſelf ſaid. Says he, I remember the Time very particularly, it was the *Friday* before *Shrove-Tueſday* laſt, this *February* was Twelve-month; and he went yet further, ſays he, I did not only ſee him when he went away, but when he came back again, for he left his Man at my Houſe all the Time, and he tells you what his Name was; for he ſays, *Smith* went under the diſguiſed Name of one *Clerk*, and he did then talk of going to the Weſtern Parts of *Scotland*, he named *Douglas* as he thinks, tho' he is not poſitive in that, but he is in the Perſon, that was the Man. And, ſays he, I ſent for this Perſon, the other Fellow *Bell*, and he was the Guide he had along with him. And upon *Bell*'s Examination, What ſays he? Says he, I remember that Man came thither at that Time to the other Man's Houſe: I take it upon my Oath that is the Man, and he went by the Name of *Clerk*, he hired me to be his Guide; I went out with him on *Friday* Morning, and I went along with him all that Day; but upon *Saturday*, which was the next Day, going *Northward* with him, my Horſe tired, and failed me: Thereupon I was forced to be left behind, but I overtook him on *Sunday* Night following; I overtook him at ſuch a Place, and ſaw him within ſix Miles of the Borders of *Scotland*. I take it upon my Oath, this is the Man that was there under the Name of *Clerk*; and at his returning back again I took notice of him, I went up to him, I drank with him, and we had Diſcourſe of our Journey. He told me at firſt, he was to go to the Weſt of *Scotland*, and ſo he went Northward. After that, which was about ten or twelve Days, he came back again, and ſo went Southward towards *London*. This he doth ſwear directly to be at that Time.

Now, Gentlemen, the Time is wonderful material in that Caſe, becauſe that very Time twelvemonth that they talk of, is the Beginning of *February*. If you look upon your old *Almanack* of the laſt Year (I happen'd to have one in my Pocket, and look'd upon it, when the Men gave their Teſtimony) and there you will find, that the *Monday* before *Shrove-Tueſday*, when he ſays, he left him within ſix Miles of the Borders of *Scotland*, falls out to be the 19th of *February*; I will look upon it again, leſt I ſhould miſtake; 'tis juſt ſo, and that humours the Time that my Lord *Howard* ſpeaks of, which was about the Middle of *February*; a few Days after that, he ſays the Money was given by Mr. *Sidney*; and then for the Time for *Aaron Smith* to get to *Newcaſtle*, there is a fit ſpace of Time, for it falls out that the *Thurſday* that he arrived at *Newcaſtle*, is the 15th Day of *February*, and ſo it falls in well with my Lord *Howard*'s Teſtimony, and ſo the *Monday* that he parted with him at the Borders of *Scotland* was the 19th, which alſo juſt humours the Time that he ſpeaks of. So that here is a Circumſtance of Fact to confirm his Teſtimony, both as to the ſending the Meſſenger, and the Circumſtance of Time. That he is the ſame Man is proved by theſe two Witneſſes, who agree in this, that he was there about ſuch a Time; and it does likewiſe humour that other Circumſtance of Place, that Mr. *Sidney* ſaid he had heard from him from *Newcaſtle*, but not ſince; and then there is the other Circumſtance which backs and confirms all, There was not only a ſending for theſe Perſons, but there is Notice taken that theſe *Campbells*, who were to be aſſiſting in this Matter, were to come about the Sham, and under the Diſguiſe of purchaſing Plantations in *Carolina*. About the Beginning of *June* they came to Town, the two *Campbells*, Sir *John Cockram*, and Mr. *Monroe*. Sir *Andrew Foſter* he tells you he met with ſome of the Men, and they told him, they came about the Buſineſs of *Carolina*; and ſo the Cant of *Carolina* is made good in this Circumſtance that way; but when the Plot brake out, theſe Men ſculk, one flies one way, another another; ſome were taken as they were eſcaping away by Water; others of them were taken upon the bed at Noon-day in *Moorfields*: Had the Buſineſs they came over into *England* about been a fair, and a lawful, and honeſt Buſineſs, why ſhould they hide themſelves? Why ſhould any Man ſneak and ſculk, and be aſhamed to own an honeſt and lawful Buſineſs? But this does humour and touch the Thing exactly, as to that Circumſtance, that *Carolina* was only a Cant for to diſguiſe their coming over. Theſe are the only two Circumſtances that ſeem to be pretty ſtrong for them, to prove and ſupport the Credibility of what their Witneſs has ſworn.

For, Gentlemen, what a wonderful ſort of Expectation would it be, That we ſhall never convict a Man of High-Treaſon, unleſs you can bring a Man to be a Witneſs that is not concern'd? For then all theſe Perſons muſt have been acquitted, for they intruſted none, it ſeems, but theſe Six; they took care they would keep it amongſt themſelves. Do you think they called their Servants to be Witneſſes of what they were about? That is a vain and idle Imagination. In the *Popiſh Plot*, what Witneſſes of it had you there? Were they Strangers to the *Plot?* No, you cannot expect any Witneſſes but ſuch as the Nature of the Caſe will bear.

This is the Meaning of the Evidence that has been given for the King, and it carries a great Weight in it. But they have made an Objection, which indeed is not remote, but may concern the queſtion very much. Say they, if we prove my Lord of *Eſſex* was not there, or ſuch a one was not there, would it not diſcredit the Evidence of my Lord *Howard?* Yes, certainly, it would wholly diſcredit it, and he were not to be believed at all; nay, which is yet nearer to the Queſtion, if Mr. *Hampden*, that had notice all along of the Times fixed wherein this Tranſaction was, to wit, about the Middle of *January*, and Beginning of *February*. For becauſe they talk of the Prints, Mr. *Hampden* had from them ſufficient Notice and Intimation of the Time. If Mr. *Hampden*, that hath had all this Notice, could have proved before you, that he was in *France*, or any other Place at that Time, that had been wonderful material. But all the Circumſtances that are any way ſignificant to ſupport the Credit of this Matter are very well proved; and ſo the Teſtimony of my Lord *Howard* is, by theſe concurrent Circumſtances of Fact, ſufficiently ſupported.

Now, Gentlemen, I muſt tell you, This being the Subſtance of the Evidence for the King; I will now, as near as I can, give you an Account of the Evidence for the Defendant; it was opened by Mr. *Williams* very ingeniouſly for the Advantage of his *Client*, as every Man is bound to ſay what he can for his *Client*. He made a great many Objections againſt my Lord *Howard*; ſo if he could but ſhake the Teſtimony of my Lord *Howard*, then he might eaſily bring off his *Client*; and if you, upon any thing that has been offered, either in Evidence, or by way of Obſervation fairly made from the Evidence, do believe my Lord *Howard* has forſworn himſelf, you muſt find Mr. *Hampden*, the Defendant, Not Guilty; but if you believe he has not forſworn himſelf, you muſt find him Guilty. So all our Matter is reduced into a very narrow Compaſs; and therefore I muſt repeat it again what I ſaid at the Beginning, if my Memory do not ſerve me to recollect all right, the Counſel for the Defendant ſhall have free Liberty to inform the Court of what has been omitted.

Firſt, ſays Mr. *Williams*, My Lord *Howard* was a Man very deep in a Conſpiracy with my Lord *Shafteſbury*, by his own Acknowldgment, endeavouring to conciliate a Friendſhip between the Duke of *Monmouth* and my Lord *Shafteſbury*: and ſo he had a great Hand in the *Plot*; and what he might do on purpoſe to get himſelf out of danger from that *Plot*, and procure his Pardon, is not known.

It is a very ſtrange Thing, that it ſhould be an Objection before he had his Pardon, that he did it for Fear, and to get his Pardon; and when he has it, now the Objection is, becauſe he has his Pardon; and he got it, ſay they, by this Means. It ſeems, whether he had his Pardon or no, it muſt be an Objection againſt him: Before he had it, he was under the Fear of not obtaining it 'till the Drudgery of Swearing was over; but now he has his Pardon, What now? Why he does it on purpoſe to accuſe other People. Why, he ſays no more now than what he has ſaid before he was pardoned; and if after he is pardoned, when he is under no Dread or Fear becauſe of his Guilt, he ſays the ſame Things that he did when he might be in Fear. How can that be an Objection to him? He cannot be thought he does it to ſave his own Life, for that is as ſafe now by his Pardon, as it can any way be; and 'tis, and muſt be a great Satisfaction to his Mind, and will be ſo to any other reaſonable Man's Mind: And is a plain Anſwer to the Objection of his Fear, (for tis a captious Age we live in, that will make ſome ſpecious objection or other, tho' it be not of any great Weight.) But how can it be thought a Man would come and ſwear too much, or too far, for fear he ſhould not ſave himſelf; or, as they call it, ſwear himſelf into a Pardon, when he has his Pardon? It might be an Objection before; but as long as he is under no ſuch Terrors now, but ſtands right, both by the Laws of God and Man to be heard as a Witneſs, I think it would be hard for any one to come, and ſay, *This Man would forſwear himſelf.* What ſhould provoke him to come and forſwear himſelf, when he is under no Danger as to his own Particular? There might be an Umbrage, I ſay, of an Objection before he had his Pardon, tho' it was, indeed, no Objection before; not a rational weighty one, to ſet aſide his Teſtimony. But no body knows which way in the World to ſatisfy the Minds of ſome ſort of People.

In the next Place, Gentlemen, ſays Mr. *Williams*, You are not poſitive as to the Time; you ſay, it was about the Middle of *January*, or the Beginning of *February*, and that is too general and wide; but you remember particularly to a Day the Buſineſs between you and my Lord of *Shafteſbury*, That that was the Day after *Michaelmas-Day:* How can you be ſo particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. *Williams*, when he made the Objection, muſt needs think of the Anſwer that would be given to *it*. It is notoriouſly known, that the Preſſures theſe Gentlemen thought they lay under, were what my Lord of *Shafteſbury* ſaid, *Now they have got the Juries into their own Power, and no Man is ſafe*; *they will find me or any man Guilty, as they pleaſe*; Why, how came they to get Juries into their own Hands, but by having the Sheriffs as they would have them? Now the Sheriffs that are to return Juries are, as all Men know that know any thing, ſworn the Day before *Michaelmas-Day*; therefore he might very well, and had good reaſon to remember that Day; when ſuch a notorious Thing happens to fall out at ſuch a notorious Time, 'tis eaſier for a Man to remember that Time, than to ſpeak to the particular Time of an Action, done about the Middle of a Month, where there is not ſuch a notorious Circumſtance. Why, I can tell you very well where I was upon the Day before *Michaelmas-Day*; upon that Day, and the Day after; for that very Reaſon, becauſe it was a notorious Day about the Swearing of Sheriffs in *London*. But if you aſk me, where I was the Middle of *January*, or the Middle of *February*, I cannot ſo well remember that. But there is Credit to be given to a Man that ſpeaks to a notorious Circumſtance, and thereby proves the Probability of what he ſays, though he ſhould not he ſo particular in a Thing that admits not of ſuch a notorious Circumſtance.

Gentlemen, I make the Objections as they are ſtated on the one Side, and on the other Side; and the Anſwers that naturally flow to prove the Matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater Credit with you, you are to take notice of.

He does ſay, in the next Place, Here was a Diſcourſe of arms and armed Men, and a great Sum of Money ſpoken of, but there breaks out nothing of this Matter 'till *July* following; but this Debate was in *January* and *February* before. For that Matter, the Anſwer that is given, and it ſeems to be a plain one, is, That they were to conciliate a Correſpondence with People that were Abroad, and that they could not go on 'till they had effected that, and 'till theſe People came to join with them, which could not be without ſome Time. And you hear the *Cockrams* and the *Campbells* came not to the Town 'till *June* or *July*; ſo that it was not probable it ſhould break out 'till then, becauſe it was to be agitated upon their coming here. And ſo that Objection is anſwered, they did not apprehend any ſuch Neceſſity for preſent engaging in it. For my Lord *Howard*, becauſe he thought it would be a Work of Time to ſettle the Correſpondence, and get theſe People to Town, went down to his Country-Houſe in *Eſſex*, and from thence to *Bath*, for he did apprehend ſome conſiderable Time muſt be ſpent ere theſe People could come; and therefore he thought it convenient to take his Retirement in the mean time.

Ay, but 'tis ſtrange, ſays Mr. *Williams*, and he makes that another Objection; he would have my Lord *Howard* to draw in this Accuſation of Mr. *Hampden*, to procure his Pardon, by going further than the other Diſcoverers had gone. It ſeems, ſay they, Mr. *Hampden* was not thought of at firſt; but becauſe *Weſt* and *Keeling* had diſcovered a Plot, my Lord *Howard* to ſecure himſelf, muſt go a Step further than they, and (as the Defendant's Counſel would have it) than the Truth; and that is the Streſs of the Objection. But the Weight of the Proof is quite different; for all Men know, in the Plot there were ſeveral Parts. There was the Buſineſs of *Keeling* and *Weſt*, and that was the Aſſaſſination of the King and the Duke; but the Duke of *Monmouth*, my Lord *Howard*, and thoſe other Gentlemen, were for the Buſineſs of the Riſing, tho' that might be in order to that other Purpoſe; but they kept not Company with thoſe that were engaged in that Part of the Deſign. They were the Underlings, the Scoundrel Plotters, that were concerned in the Aſſaſſination. But theſe Gentlemen looked upon themſelves to be Privy-Counſellors, not to be the Executioners; they were to be only Adviſers, what was to be done after the other Buſineſs was over; and their Conſultations were for raiſing of Men for an Inſurrection, not the Buſineſs of the Aſſaſſination of the King, that was not their Province. Can it be an Objection againſt my Lord *Howard*, becauſe he gives a Teſtimony *Weſt* and *Keeling* could not give? Could they go further than the killing of the King, which was their Buſineſs: If any Man ſhould have aſked my Lord *Howard* about that Matter, he would have made Anſwer, it was not for that Purpoſe that we met together at Mr. *Hambden*'s, and my Lord *Ruſſel*'s; no, that was upon a particular Buſineſs, and to a particular End and Purpoſe.

Then he ſays too, that though my Lord *Howard* comes here upon his Oath, and declares theſe ſeveral Matters that he hath depoſed; yet he has given a different Account of things elſewhere, and he has called ſeveral Witneſſes to that purpoſe. To whom my Lord *Howard* ſeveral times upon his Honour, upon his Word, with Eyes lifted up, and Hands elevated to Heaven, and many extraordinary Proteſtations, declared, that he knew nothing of the Plot; and ſay they, if a Man will at one time pawn his Honour, and his Reputation for the Truth of a Thing, and after that, will come again to ſwear againſt all that Matter, that is an Argument that does ſink the Credit and Reputation of that Witneſs; and thereupon they call you ſeveral Witneſſes, ſome whereof are Perſons of great Honour and Quality. I think they begin firſt with *Ducas*, Servant to Colonel *Sidney*, and he tells you, after his Maſter was taken, my Lord *Howard* came thither, and deſired he might lie there; and deſired the Uſe of ſome Plate and Goods of Colonel *Sidney*'s; and then aſked, what was become of his Maſter? And when *Ducas* told him what he heard of the Plot, that ſomething was talked of about the Aſſaſſination of the King and the Duke, my Lord *Howard* lifed up his Eyes and his Hands to Heaven, and declared he knew nothing of it, but he believed Colonel *Sidney* was a very honeſt Man, and knew nothing at all of any ſuch Matter; and as for himſelf, rather than he would be taken or confined again, he would do any thing. This was the Evidence they gave as to him. Then they come with Mr. *Howard* their ſecond Witneſs; for I would take them in order as they were produced, and he gives you an Account, that he met with my Lord *Howard*, and my Lord *Howard* told him, he knew nothing at all of any Plot, and did believe that Colonel *Sidney* was innocent, and he did believe likewiſe that my Lord *Ruſſel* was innocent, and for his Part he knew nothing of any ſuch thing as a Plot; but he ſays, when he began to talk to him, why did he make ſuch a Buſtle, and go ſo often into the City and concern himſelf about the making of Sheriffs? He anſwered, I do nothing but what is in a legal way; and he juſtified all that was done to be only in a legal way.

When once People come to believe, that the raiſing of Tumults, and making Seditions, Stirs and Noiſes, is a legal way to obtain their Ends, as we know it is the Tenet and Principle of great many People, what will they not do under that Pretence, that all they do is according to Law? They think it is lawful by the Religion they profeſs, to reſiſt, and oppoſe the Government, and the *Old Cauſe* is a *good Cauſe* to this Day in ſome Men's Opinion, and they can die in it, and thank God for being concerned in it. And there are ſome People that ſay, the raiſing of Arms by the King's Authority againſt his Perſon is lawful by the Religion they profeſs, and they call themſelves *Proteſtants* (how juſtly you may imagine); and if Men will make Inſurrections to difficult the Government, it is Rebellion, and no Man can juſtify it, let him pretend Conſcience, or what he will, 'tis rank Treaſon, it is not ſaying I am thus perſuaded in my Conſcience, that will excuſe the Man; if I ſteer myſelf by the Dictates of a good and regular Conſcience, it can never be thought that I ſhall commit Treaſon, but it is the effect of evil Principles.

Was it not under the Shape of *Religion*, that that bleſſed Martyr King *Charles* I. of ever bleſſed Memory, came to the Block: Nay, and I have heard of ſome Men in the late Times that were engaged on that Side, who finding that the King did prevail at the beginning of the War, becauſe he had Gentlemen of Quality and Spirit to appear for him, were at a loſs to know which way in the World they ſhould put a Spirit in the common People to oppoſe the King; and ſome among them bid them to be ſure to put *Religion* to be but the Pretence, and that would make them run headlong to what they would have them. Whoſe Opinion that was, is not ſtrange to any that know any thing of the Hiſtory of thoſe Times. So that when once People take it to be the Principle of their Religion to oppoſe and reſiſt all that are not of their Perſuaſion, and for Religion ſake to reſiſt Authority, then they think all is lawful they can do to preſerve their Religion as long as they are wound up to that Opinion.

The next Witneſs, Gentlemen, is my Lord of *Clare*, and he gives you an Account of his Diſcourſe with my Lord *Howard*. And by the way I muſt obſerve, what I am very ſorry for with all my Heart, to hear, that among Gentlemen of Quality and Honour, Diſcourſes of the Government, and the Male-Adminiſtration of it, as they think, ſhould be only Matter of Jeſt fit for their Recreation, and Laughter, only merry Table-talk, as though Government, ſo ſacred a Thing, were as mean as any trivial Concern whatſoever. I am ſorry to hear and ſee, that Perſons of great Honour and Quality ſhould eſteem it ſo. And I muſt be pardoned if I take notice of it: For Matters of Government, and yielding Obedience to Superiors, is a Matter of Religion, 'tis a ſerious Matter, and every Man ought to make Conſcience of it; to talk of Government with Reverence, as well as pay Duty and Obedience to it. And when I find it made a Jeſt, I muſt be permitted to ſay that is not ſo well done, and whoever it is that makes it ſo, ought very much to be blamed.

My Lord of *Clare* comes and teſtifies, that my Lord *Howard* told him, he did not believe my Lord *Ruſſel* was guilty of what he was accuſed of, much leſs did he believe it of Colonel *Sidney*, and when he began to talk about Writings found in *Sidney*'s Cloſet, he ſaid, there can be nothing of his Writings found, that can do him or any Man elſe any hurt. This is the Subſtance of what that Noble Lord has ſaid.

Then there is my Lord *Paget*, and he likewiſe gives you an Account, that he had ſome Diſcourſe with my Lord *Howard* about the Plot; and he told him too, that he did not believe any thing of this Plot, or that my Lord *Ruſſel* and others accuſed had any Hand in it. But I would obſerve this one thing upon my Lord *Paget*'s Teſtimony, that ſtill my Lord *Howard* was wiſhed Joy by every body, and I am glad to ſee your Heels at liberty, and the like. So that there was ſome Jealouſy of his being concerned; ſomething or other there was in it. Says my Lord *Howard*, I look upon myſelf as affronted, that any body ſhould talk ſo of me. He was concerned that they ſhould ſuſpect him. But ſomething there was at the bottom. Says my Lord *Paget*, I am glad to hear you are out of it. For he began to imagine there muſt be ſome Fire for all this Smoke. That, Gentlemen, was the Diſcourſe he had with him. But he ſays, that with my Lord *Paget* there were Diſcourſes of his going beyond Sea, but he did not go.

Then comes Dr. *Burnet*, and he tells you, that there were Proteſtations made to him, and he has got the ſame Words as the *Frenchman* had, that he did it with lifted up Eyes and Hands, he profeſſed ſolemnly he was altogether a Stranger to any ſuch Thing. The Doctor ſays, he had heard there was a Plot, and was perſuaded of the Truth of it, but he was a little ſhaken by what my Lord *Howard* ſaid to him. But now he is ſufficiently ſatisfied there is a Plot, and I am glad he is, for I think it ſcarce does remain a Doubt, with any Men that have any Value for the Religion and Government we live under. And I know not how they could be better ſatisfied, than by the Evidence that has been given of it, a main Part of which was given by my Lord *Howard*. All this before my Lord *Howard* was taken.

Then comes in one Mr. *Giſborne*, and he tells you the ſame Story, that a great while ago my Lord *Howard* told him he knew nothing of the Plot.

The next to him is Mr. *Blake*, and he tells you, that after ſuch a time as the Plot was diſcovered, and after my Lord *Ruſſel* was tried, and after my Lord *Howard* had given Evidence at the *Old-Baily*, he ſhewed him the Warrant for his Pardon, and *Blake* telling him that was not ſufficient without an actual Pardon; he replied, I think in my Conſcience I ſhall not have a Pardon till the Drudgery of Swearing is over. But is that any Argument? Here is a Man under the Drudgery of Swearing; therefore he did not know any ſuch thing as he ſwears. It carries thus much along with it, that it was uneaſy to him, and there is a kind of a force put upon him to ſwear, as they ſay, in order to his Pardon.

But now, Gentlemen, that will admit of this Anſwer, and a plain one certainly it is, When a Man comes over and over again to tell the World ſuch a Story, and gives ſuch an Account of himſelf, it muſt a little grate upon him, though it be his Duty to tell the Truth, and though, as Mr. *Williams* ſays, he is the beſt Martyr that is a Martyr for Truth; even ſo ſay I on the other Side, he is the beſt Penitent that is a Penitent for Truth, and he is the beſt Witneſs that is a Witneſs for Truth's ſake, and he gives the beſt Teſtimony of his Repentance, that by his Teſtimony declares the Truth, though it be harſh and uneaſy to him; for if I have any Ingenuity, and have lived in good Credit in the World, it muſt be a drudgery and irkſome thing to call myſelf a Traitor ſo often in a Court of Juſtice. It is true he might have given it a more moderate Term, and yet withal upon theſe Circumſtances, he might have reaſon to call it in ſome ſenſe a Drudgery. But now, Gentlemen, as he did ſwear it, before he had his Pardon from time to time upon all Occaſions when he was called as a Witneſs: So now the Pardon is come, which they would have to be the Reaſon of the continuance of his Drudgery, he ſwears the ſame thing. He has his Pardon under the King's Seal, and tho' it might be thought they would keep him within the compaſs of his Tether till he had done his Evidence; now he has got that he deſired, he ſwears the ſame Thing. And now his Pardon does not at all influence his Teſtimony, he is not under any fear, but is as free as any Subject the King has, and now he is upon his Oath, he gives you the Account you have had, and he did ſay all the ſame Things, before ſuch time as Colonel *Sidney*, and my Lord *Ruſſel* were tried, that he ſays now.

Then, Gentlemen, you have in the next Place Witneſſes called, ſeveral of them to give you an Account of the Converſation and Diſpoſition of Mr. *Hampden*; for ſays Mr. *Williams*, for a Man to be guilty of a Crime of this nature, there muſt be ſome kind of evil Diſpoſition to it, and ſo Mr. *Williams* would argue and make this Inference. You ſee he is not a Man of a turbulent, ſeditious and fractious Spirit and Temper, he is a ſtudious Perſon, very retired, that has been beyond Sea much, and came not Home till ſuch a Time. And if there were Interlocutions between my Lord *Howard* and my Lord *Shafteſbury* it was before he came into *England*, and ſo he was not concerned in them. He ſays, That *March* laſt he was to go again, he had a mind to return again to *France* for his Health; and what reaſon have we to imagine he ſhould concern himſelf in the Plot, when he was ſo ſtudious a Man, lived ſo retired a Life, and intended to go Abroad ſo ſuddenly? And for this you have my Lord *Paget*, Mr. *Pelham*, Sir *Henry Hobart*, Dr. *Lupee*, Monſieur *Juſtel*, and one *Murray*.

Mr. *Williams*. *Murray*, my Lord, we did not examine.

L. C. J. 'Tis true, I beg your Pardon. Well then, theſe others tell you, they have been Perſons very intimately converſant with him, they never knew he concerned himſelf with any thing about Government, but was of a quiet, peaceable Demeanour, and was ſo far from that which the Indictment talks of Turbulency and Sedition, that they never had any Diſcourſe with him about any ſuch Thing at all, ſave what Dr. *Lupee* ſays, who it ſeems lived with him about two Years, and kept him Company in his Studies; and that once having ſome diſcourſe about the *Popiſh* Plot, He ſaid he would venture his Life, and any thing he had to preſerve the King and Government againſt this Plot, he did very well, and if he had ſince declared, he would have ventured his Life to have ſecured the King and Government againſt this Plot, I ſhould have been glad to find him of that Mind, I pray God you may find him to be ſo. But from the Evidence, even of that *Frenchman*, it ſeems there was ſome Jealouſy in the World, and that he lay under hard Cenſures as well as other People. For ſpeaking of the Plot, the Advice given him was this: My Lord *Grey* is gone, and the Duke of *Monmouth* is gone, why won't you go? Why ſhould that Advice be given, if there were no Suſpicion of his being concerned? That he ſaid, *I will not go*, and ſo they would make his ſtaying here to be an Inſtance and Proof of his Innocence; Why, Gentlemen, if that ſhould be ſo, then there was the ſame Innocency in my Lord *Ruſſel*, and Colonel *Sidney*, and all of them: For all the Council of Six, every one of them ſtay'd, except the Duke of *Monmouth*, and he indeed did abſcond. And the ſame Evidence that made the Duke of *Monmouth* fly, and my Lord *Eſſex* cut his own Throat, convicted my Lord *Ruſſel* and Colonel *Sidney*, and is now brought againſt the Defendant, and has from time to time been given againſt the reſt. We know no reaſon that they had to ſtay more than *Weſt* or *Rumſey* had to ſtay and be taken, and yet that is not uſed by them as an Argument of their Innocency.

Theſe are the Evidences that have been given on the Defendant's Part; and I tell you as I go along what Anſwers were given to it on the Part of the King. As to what is ſpoken of his Intention to go again into *France*, if he deſigned to go, why did he not go before all this Miſchief broke out? He came here at *Michaelmas*, and I may ſay he came, it may be at an unlucky time, when the City and its Neighbourhood was in a Diſtemper, and ſome Men were blown with Fears and Jealouſies. Theſe might animate him, and inſpirit him as they did other People, and put them into a Ferment; but you find him attending in Town conſtantly here 'till the Matter was diſcovered, whatſoever his Intentions were, 'tis much he did not put them into Action, 'tis ſtrange he did not go all this while, it had been much for his Advantage that he had never come out of *France*, or that he had returned thither much ſooner.

Againſt all this that has been urged for the Defendant about my Lord *Howard*, I will tell you what is the Anſwer to it; and truly firſt I ſay, I am apt to believe my Lord *Howard* did tell theſe Gentlemen what they here teſtify; but was it ever thought, that any Man that was guilty of High Treaſon would preſently proclaim his own Guilt? Is it reaſonable to imagine, my Lord *Howard* would tell Dr. *Burnet* I am in a Plot, and Colonel *Sidney* is in a Plot, and Mr. *Hampden* is in a Plot, and make it his common Talk? Nay, it is ſo far from being an Argument of his Innocency, that more naturally it may be turned upon them as an Argument of his Guilt. For if a Man had not been concerned in the Buſineſs at all, but were an honeſt Man, and free from Suſpicion, what need I talk or concern myſelf to proclaim my own Innocency, not being accuſed? Why muſt I tell Colonel *Sidney*'s Footman, this Man, the other Man, that I know nothing of the Plot, and neither I nor any other Man I am ſure is concerned in it? But that ſhews there was a Dread and Apprehenſion upon him of ſomething that he was conſcious of, and that lying within muſt have ſome Vent, and this Over-caution is an Intimation that there was ſomething more than ordinary in the Matter. We take notice of it as a great Evidence againſt a Man that is accuſed for an Highway-man, if he comes to ſuch an Ale-houſe or Inn, and bids the People take notice I am here at ſuch a Time of the Day, and that is a Circumſtance of Time that will ſerve to anſwer a Proof, it may be, that may be brought againſt him of a Robbery done at ſuch a Time; but we always look upon that Induſtry of their's, as a Piece of Artifice deſigned to patch up a Teſtimony to evade a Proof. So that the Argument will turn the other way: and 'tis more for the Advantage of theſe worthy Gentlemen, that it ſhould be turned the otherway, for otherwiſe they would be thought to be Perſons ill affected to the Government; that is, Dr. *Burnet*, my Lord *Paget*, my Lord *Clare*, and the reſt. And if they have a Mind to be thought otherwiſe, they muſt let the Argument run that way as I ſay, and in Charity we ought to believe the beſt of all Mankind, 'till we find otherwiſe by them. We ſay then in Charity, we ſuppoſe he thought it not fit to intruſt you with his Confeſſions; for you are all loyal Men, I know 'tis the beſt Anſwer that can be given, and that which they ought to value themſelves upon for their own Credit and Reputation, and not to make it an Argument againſt my Lord *Howard*, or againſt the Credibility of his Teſtimony in the Matter.

I don't know, truly, Gentlemen, that I have omitted any one Thing that is material, on the one Side or on the other, of which there hath been any Proof; but I muſt only repeat to you this, Here is a Matter of great Concern and Conſequence, a Matter wherein the Peace of the Government and the Kingdom is concerned in a very high degree; a Matter, that if there were another Witneſs as poſitive againſt the Defendant as my Lord *Howard*, would amount to no leſs than High-Treaſon. But as there is but one Witneſs, backed with theſe Circumſtances to corroborate his Teſtimony, 'tis but only a Treſpaſs; but I tell you it treads very nigh upon High-Treaſon, and the Tendency of it was to bring us all into Confuſion; and what would be the Conſequence of that, but to lay us open to the ſame Miſchiefs that we were under in the Times of the late Rebellion? For tho' Men pretend never ſo fair, and veil it under the Names of the *Security of the Government and the Proteſtant Religion*; yet they would have done well to have tarried 'till they had a legal Authority to call them to conſult of theſe high Matters that they pretend to ſecure; that had been well. What had theſe Gentlemen to do to take upon themſelves this Power without Authority?

Gentlemen, you have heard the Evidence, and you ſee what it is. And I muſt ſay, the late Evidences you have had concerning another Buſineſs of this Nature, I wiſh that might be ſaid to preſerve and ſupport the Credit of ſome Perſons upon whoſe Teſtimonies Lives have been taken away, as as has been ſaid, and is evident for the Advantage of my Lord *Howard*: I do not find that he has been guilty of Perjury, as being concerned in taking Oaths one way, and then giving Evidence another. I mean, firſt taking Oaths of Secrecy, and then revealing; not but that notwithſtanding all this, they may be believed, and God forbid but they ſhould be believed according to Truth. But I ſay, if Objections of this Nature are to prevail, we muſt never expect any great Crime to be puniſhed, becauſe we muſt ſtay 'till Perſons that are Strangers to the Guilt of the Fact come to give Evidence of it, which is impoſſible to be done.

Therefore, Gentlemen, I muſt reſolve it all into one Head; You have the Caſe of a Gentleman of Quality on the one Side, and the Peace and Preſervation of the Government on the other Side. You hear what is proved againſt him, the Evidence given on this behalf, the Objections that have been made by the Counſel, which all of them, as near as I can remember, I have repeated to you, and I aſk your Pardon and their's if I have omitted any thing, and I deſire to be minded of it. You hear the Anſwers that have been given. And becauſe the Counſel were unwilling to give the Court trouble, or themſelves to make long Speeches and Obſervations, therefore I have been neceſſitated to do it as well as I can.

Upon the whole matter, my Lord *Howard* has thus poſitively ſworn the Matter of Fact charged in the Indictment againſt the Defendant; he has been ſupported by the Witneſſes that confirm the Circumſtances of *Smith*'s going into *Scotland*, the *Scotchmen*'s being here in *June*, and the Sham and Cant of *Carolina*. All which you have heard, and I make no Queſtion obſerved, and is not contradicted by any thing I hear that carries any Probability of an Anſwer. Therefore, Gentlemen, I leave it to you, whether upon this Evidence you will take it upon your Conſciences and Oaths, that my Lord *Howard* is guilty of wilful and corrupt Perjury, then you muſt find the Defendant not Guilty; but if you think he has proved the Matter fully, and his Teſtimony is ſupported by thoſe four Witneſſes, *Atterbury*, Sir *Andrew Foſter*, *Sheriffe*, and *Bell*, then, Gentlemen, you muſt find the Defendant Guilty.

Juryman. My Lord, we deſire to aſk one Queſtion. At the Meeting at Mr. *Hampden*'s Houſe, I think my Lord *Howard* ſays they went to Dinner.

Mr. Juſt. *Holloway.* No, it was at Col. *Sidney*'s they went to Dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Col. *Sidney*'s they dined, not at Mr. *Hampden*'s.

Then the Jury withdrew from the Bar, and within half an Hour the Jury returned, and being called over anſwered to their Names, and gave in their Verdict thus.

Cl. of Cr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who ſhall ſay for you?

Omnes Foreman.

Cl. of Cr. How ſay you? Is the Defendant Guilty of the Treſpaſs and Miſdemeanour whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being Recorded, the Court roſe.

Martis 12. *Februarii*, *An.* 1683. *B. R.*

L. C. J. MR. *Attorney*, Have you any thing to move?

Mr. Att. Gen. I pray your Judgment againſt Mr. *Hampden*, my Lord, who was convicted the other Day of a great Miſdemeanour.

L. C. J. Let Mr. *Hampden* come into the Court then. [*Which he did.*

Mr. Att. Gen. My Lord, I need not aggravate the Heinouſneſs of the Offence; for it appears both by the Information, and upon the Evidence to be beyond all Aggravation, wherefore I ſhall only pray your Judgment for the King, that you would pleaſe to ſet a good Fine upon him, and that he find Sureties for his good Behaviour during his Life.

Mr. *Williams.* May it pleaſe your Lordſhip, I am of Counſel for Mr. *Hampden.*

L. C. J. Are the Rules out in this Cauſe?

Mr. *Williams.* Yes, my Lord, they are out.

L. C. J. Well then, what ſay you for Mr. *Hampden*?

Mr. *Williams.* Mr. *Hampden* does attend here according to the Condition of his Recognizance, and ſince Mr. Attorney hath prayed your Judgment, I ſhall not ſtir any thing as to the Indictment or the Verdict, but all I have to ſay for him is this, Mr. *Hampden* is but Heir apparent, his Father is alive; and ſo tho' he has the Proſpect of a good Eſtate, yet he has but little at preſent in Poſſeſſion; your Lordſhip knows what *Magna Charta* ſays, that there ſhould be a *Salvo Contenemento* in all Fines, and how far that may be an Ingredient into your Lordſhip's Judgment, I leave to your Conſideration.

L. C. J. For that matter, I cannot tell what Eſtate his is, I have no Knowledge of him, nor of his Eſtate, whether it be great or ſmall; but Mr. *Williams* knows very well that the Crime, in conſcience as well as Law, in caſe it had been proved by two Witneſſes, would not only have wrought a Forfeiture of all his Eſtate, but a Forfeiture of his Life too, and all his Reputation, would have baſtardized his Children, would have attainted and corrupted his Blood. So that there is no ſort of Imagination but that the Crime was high enough of Conſcience; and certainly deſerves, if we can impoſe it adequate to its Deſert, a very great Puniſhment. Mr. *Hampden* nor his Counſel can't deny but that they had a fair and a full Hearing, they had the Liberty to ſay and prove all that they could, and you cannot but ſay, Mr. Attorney was very fair in making ſeveral Conceſſions that he might very lawfully and rightfully have inſiſted upon. So that there can be no Exception of that kind. I am ſorry that Mr. *Hampden*, a Gentleman of good Quality as he is by Birth, tho' he be a Perſon I never ſaw before he came here the laſt Day of the laſt Term upon his *Habeas Corpus*, that I know of. I ſay, I am ſorry one of his Quality and Education, a ſtudious Perſon, as it ſeems, by his own natural Inclination, and a learned Man, ſhould be ſo unhappily engaged in a Deſign of this horridly evil Nature. But on the one Side as well as we muſt take care of the Subject, ſo on the other we muſt take care of the Government. Here was a Deſign of deſtroying the King, and ſubverting the Government, and bringing all into Confuſion. Of this Deſign the Defendant is convicted, and we muſt take care to proportion the Puniſhment, and according to our Conſciences and Oaths, and as we ought to have regard to the Offender, ſo alſo we are to have regard to the Government that he has offended.

Mr. Juſt. *Withens.* Mr. *Williams*, it was Amercements that were ſpoken of there in *Magna Charta*.

L. C. J. Ay, it was never meant of Fines for great Offences.

Then the Judges conſulted together.

Mr. Juſt. *Withins.* Mr. *Hampden*, you know you are convicted of a very great Offence, as great an Offence as can be I think committed, unleſs it were High-Treaſon. For the Matter of it would have made you Guilty, if there had been two Witneſſes. It was for conſpiring to levy War againſt his Majeſty, and for conſpiring to raiſe an Inſurrection and Rebellion within the Kingdom, a Conſpiracy, of which ſome other Perſons being lawfully convicted, they have ſuffered Death for it. You are a Perſon of an extraordinary good Family, and I am ſorry one of your Family, that has flouriſhed ſo long, and through ſo many Generations in great Honour and Reputation, and great Proſperity under the Monarchy of *England*, ſhould come to conſpire to deprive that King of his Government, whoſe Anceſtors have protected and defended your Family, and to ſpoil that Monarchy that has been the Fountain of ſo much Proſperity and Honour to it. I am ſorry it comes to my turn to pronounce the Sentence of the Court upon you, Mr. *Hampden*. I have not any perſonal Knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good Education, and the Report of a learned and ingenious Perſon, which makes me yet wonder the more that you ſhould engage in ſuch a horrid Deſign as this was. Indeed, Mr. *Hampden*, I am ſatisfied no Fine can be too great, if any can be great enough for ſuch an Offence. We cannot take Cognizance what your Eſtate is, 'tis reported there is a great Eſtate in your Family, it has been always repreſented to be ſo.

Mr. *Hampden.* I have nothing but for Life, and that is but little neither.

Mr. Juſt. *Withens.* I know not what it is truly, Sir. But it was always reported to me to be a very great Eſtate; but whatſoever it is, we are to look after the proportioning the Puniſhment as near as we can to the Offence.

My Lord, and the Court have conſidered of the Matter, and they think fit to give this Judgment upon you.

They ſet the Fine of Forty Thouſand Pounds upon you, to be paid to the King, and you muſt be committed till you pay it.

L. C. J. And that you find Sureties for your good Behaviour during your Life.

Mr. Att. Gen. I pray he may be committed for his Fine.

L. C. J. Let it be ſo. Mr. *Hampden*, if you will apply yourſelf to the King, you may, and there perhaps you may find Mercy; we muſt, according to the Duty of our Places and Oaths, give ſuch Judgment as the Law requires.

Mr. Juſt. *Withins.* Ay, in God's Name. You are in the King's Hands, and he may do what he pleaſes in it.

L. C. J. If a Crime of this Nature ſhould have a little Puniſhment, it might encourage Offenders, and if we were to judge according to ſome Verdicts that have been given here for leſs Offences, where Gentlemen have given very much greater Damages than this Fine amounts to, this would be thought a moderate Fine. I am ſorry any Man ſhould bring himſelf into theſe Circumſtances: The King, as he is the Fountain of Juſtice, ſo he is alſo of Mercy, and you and all the reſt of his Subjects have Cauſe to bleſs God that you live under a Monarch that is very merciful. No doubt if you give an Account of your Contrition and Sorrow for your great Offence, and decently apply yourſelf to the King, he will think of ſhewing Mercy to you; but Juſtice is our Work that are Judges; and according to the Methods of Juſtice we think we cannot inflict leſs than we have done.

Mr. *Williams.* My Lord, I pray his Bail may be diſcharged.

L. C. J. Ay, his Bail is diſcharged, he being committed.

Mr. *Williams.* And for the High-Treaſon, he is diſcharged by the *Habeas Corpus* Act.

L. C. J. Yes, he is ſo, for there is no Proſecution.

Then Mr. Hampden *was carried by the Marſhal away Priſoner.*

CXXIV. *The Trial of* Laurence Braddon* *and* Hugh Speke *at the* King's-Bench *for a* Miſdemeanour, *in ſuborning Witneſſes to prove the Earl of* Eſſex † *was murdered by his Keepers, Feb.* 7, 1683. Hill. 36 Car. II.

THE Defendants, who had pleaded *Not Guilty* to an Information filed laſt Term, were now brought to Trial.

Cl. of Cr. Crier, Call the Defendants, *Laurence Braddon*, and *Hugh Speke*.

Crier. Laurence Braddon and *Hugh Speke*, come forth, or elſe this Inqueſt ſhall be taken by your Default.

Mr. *Wallop.* They appear.

Cl. of Cr. Gardez votrez Challenges. Swear Sir *Hugh Middleton.* [*Which was done.*] And there being no Challenges, the twelve Gentlemen ſworn to try this Cauſe, were theſe.

Sir *Hugh Middleton*,	Jur'	*Samuel Rouſe*,
Thomas Harriott,		*Hugh Squire*,
Thomas Earſby,		*Nehemiah Arnold*,
Joſhua Galliard,		*John Bifield*,
Richard Shoreditch,		*William Waite*, and
Charles Good,		*James Supple.*

Who being counted, Proclamation was made in uſual Form for Information.

Cl. of. Cr. Gentlemen, you of the Jury hearken to the Record. His Majeſty's Attorney-General in this Court has exhibited an Information againſt the Defendants by the Names of *Laurence Braddon* of the *Middle-Temple*, Gentleman, and *Hugh Speke* of *Lincoln's-Inn*, Gentleman.

And the Information ſets forth,

‘ That whereas *Arthur* Earl of *Eſſex*, the 12th of *July*, in the 35th Year of the Reign of our Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* was committed to the Priſon of our Lord the King, in the *Tower* of London, for certain High-Treaſons by him ſuppoſed to be committed. And the ſaid *Arthur* Earl of *Eſſex* being a Priſoner in the *Tower* of *London* aforeſaid, for the High-Treaſon aforeſaid, the 13th Day of *July*, in the aforeſaid 35th Year of the Reign of our ſaid Sovereign Lord the King, that now is; not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil at the *Tower* of *London* aforeſaid, in the County of *Middleſex* aforeſaid, himſelf feloniouſly, and as a Felon of himſelf, did kill and murder, as by an Inquiſition taken at the *Tower* of *London* aforeſaid, in the County of *Middleſex* aforeſaid, the 14th Day of *July*, in the Year aforeſaid, before *Edward Fernham*, Eſq. then Coroner of our Lord the King, of the Liberty of the *Tower* of *London* aforeſaid, upon the view of the Body of the ſaid *Arthur* Earl of *Eſſex*; and now in this Court remaining of Record more plainly does appear. They the ſaid *Laurence Braddon* and *Hugh Speke* not being ignorant of the Premiſes, but contriving, and maliciouſly and ſeditiouſly intending the Government of our ſaid Lord the King of this Kingdom of *England*, into Hatred, Diſgrace and Contempt to bring the 15th Day of *Auguſt*, in the aforeſaid 35th Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, with Force and Arms, *&c.* falſly, unlawfully, maliciouſly and ſeditiouſly did conſpire, and endeavour to make the Subjects of our ſaid Lord the King of this Kingdom of *England*, to believe that the Inquiſition aforeſaid was unduly taken, and that the ſaid *Arthur* Earl of *Eſſex*, by certain Perſons unknown, in whoſe Cuſtody he was, was killed and murdered. And to perfect and bring to effect their malicious and ſeditious Contrivances aforeſaid; they the ſaid *Laurence Braddon* and *Hugh Speke* at the Pariſh of St. *Clement Danes* in the County of *Middleſex* aforeſaid, the 15th Day of *Auguſt*, in the 35th Year aforeſaid, falſly, unlawfully, unjuſtly, maliciouſly and ſeditiouſly did conſpire to procure certain falſe Witneſſes to prove, that the ſaid *Arthur* Earl of *Eſſex*, was not a Felon of himſelf, but that the ſaid Earl of *Eſſex*, by the ſaid Perſons unknown was killed and murdered: And to perſuade other Subjects of our ſaid Lord the King to believe this to be true, they, the ſaid *Laurence Braddon* and *Hugh Speke*, falſly, maliciouſly, and ſeditiouſly, then and there in Writing did declare, and cauſe to be declared, the ſaid *Laurence Braddon* to be a Perſon that would proſecute the Murder of the ſaid Earl of *Eſſex*; to the great Scandal and Contempt of the Government of our Lord the King of this Kingdom of *England*, to the evil Example of all other in the like Caſe offending, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Information the Defendants have ſeverally pleaded Not Guilty, and for their Trial have put themſelves upon the Country, and His Majeſty's Attorney-General likewiſe, which Country you are: Your Charge is to enquire, whether the Defendants, or either of them, are Guilty of this great Miſdemeanour whereof they are impeached, or Not Guilty? If you find them, or either of them Guilty, you are to ſay ſo; if you find them or either of them Not Guilty, you are to ſay ſo, and no more, and hear your Evidence.’

Then Proclamation was made for Evidence.

Mr. *Dolb.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn: This is an Information preferred by Mr. Attorney-General, againſt the Defendants *Laurence Braddon* and *Hugh Speke*, and the Information does ſet forth, that whereas *Arthur* late Earl of *Eſſex*, the 12th of *July* laſt, was committed to the *Tower* of *London* for certain Treaſons ſuppoſed to have been by him done: And the ſaid Earl being ſo committed Priſoner to the *Tower* for Treaſon, not having the Fear of God before his Eyes, feloniouſly and as a Felon did kill and murder himſelf, as by an Inquiſition taken before the Coroner of the *Tower* Liberty may more fully appear; yet the Defendants *Laurence Braddon* and *Hugh Speke* not being ignorant of the Premiſes, but deſigning to bring the Government into Hatred and Contempt, the 15th Day of *Auguſt* laſt, in the Pariſh of St. *Clement Danes* in this County, with Force and Arms, falſly, unlawfully, maliciouſly and ſeditiouſly did conſpire together to make the King's Subjects believe, that the Inquiſition aforeſaid was unduly taken, and that the ſaid Earl of *Eſſex* did not murder himſelf, but was by certain Perſons unknown, in whoſe Cuſtody he was, murdered. And it further ſets forth, that theſe Defendants, *Laurence Braddon* and *Hugh Speke*, deſigned to diſturb and diſquiet the Minds of the King's Subjects, and to ſpread falſe Reports, did Conſpire to procure certain falſe Witneſſes to prove that the ſaid Earl of *Eſſex* was not a Felon of himſelf, but was by ſome Perſons unknown killed and murdered: And to perſuade other Subjects of our Sovereign Lord the King to believe the ſaid Report, they did falſly, maliciouſly, unlawfully and ſeditiouſly cauſe to be declared in Writing, that the ſaid *Laurence Braddon* was the Perſon that did proſecute the ſaid Earl's Murder. And this was to the great Scandal of the Government, to the evil Example of all Perſons in like Caſe offending, and againſt the Peace of the King, his Crown and Dignity. To this the Defendants have pleaded Not Guilty; if we prove it upon them, we make no queſtion you will find it.

Sir *Robert Sawyer.*

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Mr. *Speke* and Mr. *Braddon*, theſe two Gentlemen, are accuſed of as High Conſpiracy as ever has or could well happen in our Days, of throwing the Murder of a Perſon that killed himſelf upon the Government. And I muſt acquaint you, their Deſign was of an higher nature than barely that; for this Gentleman, my Lord of *Eſſex*, was committed to the *Tower* for the late Plot, and being ſo committed, when he had killed himſelf there, that was more than a thouſand Witneſſes to open the Eyes of the People, and confirm the Belief of the Conſpiracy: And one would have thought, after that there had been an end of the Deſign, that theſe Proteſtant Gentlemen, as they call themſelves, were carrying on; when the Earl of *Eſſex*, a Perſon of that Quality and Worth, ſhould go to murder himſelf upon the ſenſe of what he was Guilty of. So that the Deſign, Gentlemen, was to ſtifle the Plot, and at the ſame time they muſt throw this ill thing that the Earl had committed upon himſelf, upon the Government: That, Gentlemen, was the main Diſgrace, in order to ſtifle that great Evidence of the Plot. And Mr. *Braddon* muſt of his own Head, not being put on by any of the Friends of the Earl of *Eſſex*, who were all very ſenſible the Earl had done this Fact, committed this Murder upon himſelf; but I ſay, he out of a true Principle to manage the Proteſtant Cauſe, as they call it, but indeed it was the Plot, he becomes the Proſecutor of this Buſineſs, and you will find him by the Proofs in the Caſe, a Man of many like Projects. For you will find him value himſelf upon theſe Titles, that he is the Proſecutor of the Earl of *Eſſex*'s Murder, and the Inventor of the Proteſtants Flails, an Inſtrument, I ſuppoſe Gentlemen you have all heard of.

Now, Gentlemen, To make this appear to the World, Letters are ſent into all parts of *England* of this Bruit and Report. He himſelf goes about to find Evidence: for it was ſo great a Truth, and there was ſuch a plain Proof that the Earl of *Eſſex* had killed himſelf, that he muſt labour it to get Evidence. And he goes about it accordingly, and at length he meets with a little Child of twelve Years of Age, and he prepares for him, all with his own Hand-writing, a Diſpoſition, which is a feigned Story all of it, and in every part of it will appear to be falſe, and there he mightily ſolicites this young Boy to ſign it. He comes to his Father's Houſe, carries him in a Coach, forces him away, and forces him to ſign this Paper that he had thus prepared for him, all of his own Invention and Writing; and with the like Confidence as he appears here, (for ſo he does appear with very great Confidence, as you may obſerve) he atteſts it himſelf. And, Gentlemen, we ſhall ſhew you, that here up and down the Town he makes it his common Diſcourſe what he was in hand with, and makes his boaſt of himſelf to be the Proſecutor of the Earl of *Eſſex*'s

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* *Burnet's* hiſtory of his Own Times, *Vol.* I. *p.* 569.

† *Ibid* 552, 553.

Murder, and he had as good a Confederate as himſelf, Mr. *Speke*, and he having an Intereſt in the Country, whither the News muſt be ſent all abroad, and Mr. *Braddon* muſt go to pick up Evidence, I know not where a great way off, of a Murder committed in the *Tower*. We ſhall prove to you, he had Letters Miſſive and Recommendatory from Mr. *Speke* to a Gentleman with whom Mr. *Braddon* was to adviſe; for they looked upon it to be as dangerous an Enterprize almoſt as the Plot itſelf, as indeed it was; therefore they muſt be wary, and Mr. *Braddon* is adviſed to go by a wrong Name; ſo this Mr. *Speke* and *Braddon* were to carry on and make up this Tragi-Comedy, for I can call it nothing elſe, for the Ridiculouſneſs as well as the Dangerouſneſs of the Deſign. The Report was to be, that this Murder of the Earl of *Eſſex* was committed by the Officers that attended my Lord, and to fall out in time when His Majeſty was in the *Tower*, as if the King himſelf had a hand in it. We ſhall trace it in all Parts of it by ſeveral Witneſſes, and hope you will make them an Example, firſt by finding them Guilty, and the Court afterwards by a ſevere Puniſhment for ſuch a villainous Practice, to ſcandalize the Government with the Murder of a noble Peer. We ſhall begin with ſhewing you the Inquiſition, or rather firſt with the Convictment of the Earl of *Eſſex* for High-Treaſon, becauſe it is ſaid in the Record by way of Inducement. Call Mr. *Reynolds*. [*Who was ſworn.*] Have you the Warrant of Commitment of my Lord of *Eſſex*?

Mr. *Reynolds*. Yes.

Mr. Att. Gen. Shew it the Court. Let the Clerk read it.

Mr. *Reynolds*. This is the Commitment that was delivered the Lieutenant of the *Tower*, together with my Lord of *Eſſex*.

Cl. of Cr. This is directed to *Thomas Check*, Eſq; Lieutenant of his Majeſty's *Tower* of *London*. Subſcribed *Leolin Jenkins*, and dated——

Sir *Leolin Jenkins* Knight, of His Majeſty's moſt Honourable Privy-Council, and Principal Secretary of State.

‘ THESE are in His Majeſty's Name to will and require you to re-
‘ ceive into your Cuſtody the Perſon of *Arthur* Earl of *Eſſex* here-
‘ with ſent you, being committed for High-Treaſon, in Compaſſing the
‘ Death of the King (whom God preſerve), and Conſpiring to Levy War
‘ againſt His Majeſty. And him the ſaid Earl of *Eſſex* to keep in ſafe
‘ Cuſtody, until he ſhall be delivered by due Courſe of Law. And for
‘ ſo doing this ſhall be your Warrant. Given under my Hand and Seal
‘ at *Whitehall*, the 10th Day of *July*, 1683.

To *Thomas Check*, Eſquire,
Lieutenant of His Majeſty's
Tower of *London*.

‘ *L. Jenkins.*’

Mr. Att. Gen. My Lord, we will then read the Inquiſition, that the Earl, being thus in the *Tower*, killed himſelf.

Mr. *Finch*.

Mr. Sol. Gen. Shew the Inquiſition. Where is Mr. *Farnham*?

Mr. *Farnham*. Here I am. The Inquiſition is returned here, and is upon Record.

Cl. of Cr. Here it is, Number 11. [*He reads.*]

‘ *London ſſ.* An Inquiſition indented, taken at the *Tower* of *London*
‘ aforeſaid, in the County of *Middleſex*, the 14th Day of *July*, in the
’ Year of the Reign of our Sovereign Lord *Charles* II. by the Grace of
‘ God of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the
‘ Faith, *&c.* the 35th, before *Edward Farnham*, Eſq; Coroner of our
‘ ſaid Lord the King, of the Liberty of the *Tower* of *London*, aforeſaid,
‘ upon View of the Body of *Arthur* Earl of *Eſſex*, then and there lying
‘ dead; by the Oaths of *Samuel Colwal*, Eſq; *William Fiſher*,
‘ *Thomas Godſel*, Eſq: *Thomas Hunt*, *Nathaniel Mountney*, Eſq;
‘ *Thomas Potter*, *William How*, *Robert Burgoine*, *Eleazer Wickins*, *Tho-*
‘ *mas Hogsfleſh*, *Henry Cripps*, *Richard Rudder*, *William Knipes*, *John*
‘ *Hudſon*, *John Kettlebeter*, *Lancelot Coleſon*, *Morgan Cowarn*, *Thomas*
‘ *Bryan*, *William Thackſton*, *Richard Cliffe*, *Zebediah Pritchard*, *William*
‘ *Baſord* and *Theophilus Carter*, good and lawful Men of the Liberty of
‘ the *Tower* of *London* aforeſaid, who being charged and ſworn to enquire
‘ for our ſaid Lord the King, when, by what means, and how, the ſaid
‘ *Arthur* Earl of *Eſſex* came to his Death, upon their Oaths do ſay, that
‘ the ſaid *Arthur* Earl of *Eſſex*, the 13th Day of *July*, in the Thirty
‘ fifth Year of the Reign of our ſaid Sovereign Lord the King aforeſaid,
‘ at the *Tower* of *London* aforeſaid, in the County of *Middleſex* aforeſaid,
‘ about the Hour of nine in the Forenoon of the ſame Day, not having
‘ the Fear of God before his Eyes, but being ſeduced and moved by the
‘ Inſtigation of the Devil of his Malice aforethought, at the *Tower* of
‘ *London* aforeſaid, in the County aforeſaid, then and there being alone
‘ in his Chamber, with a Razor of the Value of One Shilling, volunta-
‘ rily and feloniouſly did cut his Throat, giving unto himſelf one mortal
‘ Wound, cut from one Jugular to the other, and by the Aſpera Ar-
‘ teria, and the Windpipe, to the Vertebres of the Neck, both the Ju-
‘ gulars being thoroughly divided, of which ſaid mortal Wound the ſaid
‘ *Arthur* Earl of *Eſſex* inſtantly died; and ſo the Jurors aforeſaid, ſay
‘ upon their Oaths, that the ſaid *Arthur* Earl of *Eſſex*, in Manner and
‘ Form aforeſaid, then and there, voluntarily and feloniouſly, as a Felon
‘ of himſelf, did kill and murder himſelf, againſt the Peace of our So-
‘ vereign Lord the King, his Crown and Dignity. In Witneſs where-
‘ of, as well I the *Coroner* aforeſaid, as the *Jurors* aforeſaid, to this Inqui-
‘ ſition, have interchangeably put our Seals, the Day and Year aboveſaid.’

Mr. Att. Gen. Call Mr. *Evans* and Mr. *Edwards*. After this, my Lord, we ſhall ſhew you, that Mr. *Braddon* went about the Town, and declared the Earl was murdered, and he was the Proſecutor. There is Mr. *Evans*, ſwear him. [*Which was done.*] Pray will you give an Account to my Lord and the Jury, what you know of Mr. *Braddon*'s going about and declaring he was the Proſecutor of my Lord of *Eſſex*'s Murder?

Mr. *Evans*. My Lord, all that I know of this Matter, is this. About the 17th of *July laſt*——

Sir *George Jefferies*.

L. C. J. When is the Inquiſition?

Cl. of Cr. It is the 14th of *July*.

L. C. J. Well, go on.

Mr. *Evans*. The 17th of *July* laſt I was at the Cuſtom-houſe Key ſhipping off ſome Lead, and the Perſon that brought me the Warrant, I told him I could not execute it without one of the Commiſſioners Officers; and I bid him go to Mr. *Edwards*, who was the next Officer adjoining to the *Key*, and he went to his Houſe, and told him I was at the Water-ſide, and had a Warrant, which I deſired him to be preſent while I executed it; Mr. *Braddon* it ſeems was then preſent in the Place with Mr. *Edwards* when this was told him, and hearing my Name, Mr. *Braddon* came down with Mr. *Edwards*, and found me then at *Smith*'s Coffee-houſe, and Mr. *Edwards* told me Mr. *Braddon* had been with him examining his Son, in relation to a Matter of a Razor that was thrown out of my Lord of *Eſſex*'s Window; and I preſently replied, I deſired they would not ſpeak of any ſuch Matter to me, for I had ſeen the *Coroner*'s Inquiſition upon Oath, where it was declared, the Thing was ſo and ſo, and two Perſons had ſworn what ſeemed to be contrary to this; and therefore I deſired they would forbear any ſuch Diſcourſe to me.

L. C. J. Who they?

Mr. *Evans*. *Bradd n* and he were together.

L. C. J. Who he? Man.

Mr. *Evans*. Mr. *Edwards*. And withal I made my Application to Mr. *Braddon*, and I deſired him he would not meddle with ſuch a Matter, for I thought it might be prejudicial to him and Mr. *Edwards* too. Mr. *Braddon* made me no Anſwer, but went directly out of the Room.

L. C. J. What do you mean by ſo and ſo, and a Razor thrown out of a Window? We do not underſtand your ſo and ſo.

Mr. *Evans*. Relating to a Matter of a Razor.

L. C. J. Pr'ythee, we don't know what that Matter of a Razor is?

Mr. *Evans*. A Razor that was ſaid to be thrown out of my Lord of *Eſſex*'s Window.

L. C. J. Tell us what the Story was, Man.

Mr. *Evans*. Mr. *Edwards* told me, that Mr. *Braddon* was with him to examine his Son, relating to a Matter of throwing a Razor out of my Lord of *Eſſex*'s Window: This is that he ſaid, to the beſt of my Remembrance.

Mr. Sol. Gen. Was *Braddon* preſent there?

Mr. *Evans*. Yes, Mr. *Braddon* and Mr. *Edwards* were both preſent.

L. C. J. Well, What was the Diſcourſe between you? Tell us plainly.

Mr. *Evans*. Says Mr. *Edwards* to me, Mr. *Braddon* has been to examine my Son about ſuch a Matter, ſo I deſired he would not diſcourſe any thing of that Matter to me, and I told him, I adviſe you not to proceed; for I told him, it would be prejudicial both to him and Mr. *Edwards* too.

L. C. J. What is meant by this Matter? He examined my Son about a Matter, and I deſired him he would not diſcourſe of this Matter; What is all that Matter?

Mr. Juſt. *Holloway*. What did you apprehend by it?

Mr. *Evans*. I apprehend that Mr. *Braddon* had been to examine Mr. *Edwards*'s Son about ſuch a Matter.

L. C. J. What Matter, Man?

Mr. *Evans*. His diſperſing of any ſuch Report.

L. C. J. What Report?

Mr. *Evans*. A Report of throwing a Razor out of my Lord of *Eſſex*'s Window.

L. C. J. Here is a Razor thrown out of a Window, and a Matter of I know not what.

Mr. Juſt. *Withins*. Suppoſe a Man ſhould throw a Razor out of a Window, what ſignifies that?

L. C. J. Where heard he of that Matter?

Mr. *Evans*. This is all I heard, my Lord, I am upon my Oath.

L. C. J. But I wiſh thou wouldſt let us know what it is thou didſt hear?

Mr. *Jones*. Was there no Talk of a bloody Razor?

Mr. *Evans*. No, not a Word of it.

L. C. J. How came you to be frighted then, and to be unwilling to hear of that Matter, and to tell him, you thought it might be prejudicial to him and Mr. *Edwards*?

Mr. *Evans*. I told him I had ſeen the Coroner's Inqueſt, where it was proved, that the Razor lay in ſuch a Place; therefore I deſired they would not ſpeak to me of any ſuch Matter, and I deſired Mr. *Braddon* not to proceed in it, for you may do yourſelf and Mr. *Edwards* too ſome Prejudice.

Mr. Att. Gen. Look you, Mr. *Evans*, what did you underſtand by the throwing the Razor out of the Window, and giving him Caution not to proceed? The Razor might be found there, what was the Meaning of it?

Mr. *Evans*. May it pleaſe your Lordſhip, there was a Report at the Cuſtom-houſe that very Morning the Earl of *Eſſex* cut his Throat, that there was a Razor thrown out of the Window.

Mr. *Jones*. You did adviſe *Braddon*, you ſay, not to proceed in it?

Mr. *Evans* Yes.

Mr. *Jones*. How came you to adviſe him ſo?

Mr. *Evans*. Becauſe it might be prejudicial to him and Mr. *Edwards* too.

Mr. Att. Gen. Was there no Talk between Mr. *Edwards*, Mr. *Braddon* and you, that Mr. *Braddon* would be a Proſecutor of the Murder of the Earl of *Eſſex*, upon your Oath?

Mr. *Evans*. Not one Word or Syllable. For Mr. *Braddon* ſpake not one Word, good or bad: I gave an Account to Secretary *Jenkins* of every Word that paſſed.

Mr. Att. Gen. Did not you adviſe him not to proſecute the Buſineſs?

Mr. *Evans*. I did adviſe him not to diſperſe ſuch a Report.

L. C. J. What Report?

Mr. *Evans*. Of a Razor being thrown out of my Lord of *Eſſex*'s Window.

Mr. Att. Gen. Why, ſuppoſe there had been a Razor thrown out of the Window, What then?

Mr. *Evans*. Then it was contrary to the Information and Evidence given before the Coroner.

L. C. J. Why ſo? Why might it not be thrown out after it was found in the Place where the Inquiſition ſays? Thou art a wonderful cautelous Man; Where is the Danger of the Report of a Razor being thrown out of a Window? There muſt be ſomething more in it, if we could but get it out of him.

Mr. *Evans*. Will your Lordſhip be pleaſed to hear me?

L. C. J. Ay, I do hear thee, but I do not underſtand thee.

Mr. *Evans*. May it pleaſe your Lordſhip, I will read the Words *verbatim* that I gave to the Secretary.

L. C. J. Why, I believe you can read, and I make no doubt you can write too, or you are not fit to be a Cuſtom-houſe Officer.

Mr. *Evans*. I put in this Paper to the Secretary, and will repeat what I ſaid then, as near as I can, upon my Oath.

L. C. J. I care not a Farthing what you delivered to the Secretary; tell us what thou haſt to ſay plainly?

Mr. *Evans.* May it pleaſe your Lordſhip, I will read it what it is.

Mr. Sol. Gen. You may look upon your Paper to refreſh your Memory, but you muſt not read it here.

Mr. *Evans.* If it pleaſe you, I will tell you the Reaſon and Occaſion I had to go to the Secretary.

L. C. J. I know not what Occaſion thou hadſt to go to the Secretary, nor do I care what thou didſt when thou cameſt there, it may be thou madeſt three Legs, it may be never a one; what is that to us? What canſt thou ſay to the Matter here before us?

Mr. *Evans.* That is all I can ſay, my Lord, It was an Accident that they came into my Company. And to tell you the Manner and the Occaſion, That Perſon that brought me the Warrant, ſaying to Mr. *Edwards* that I was below, Mr. *Braddon* hearing my Name named, comes down with Mr. *Edwards*, for he had told Mr. *Edwards* I was related to him, and they both came to the Coffee-Houſe, and there they began to diſcourſe about this Matter.

Mr. Juſt. *Withins.* Who began to diſcourſe?

Mr. *Evans.* Mr. *Edwards.*

L. C. J. Well, what was it he ſaid to thee?

Mr. *Evans.* Mr. *Edwards* began thus: Says he, Mr. *Evans*, this Gentleman has been at my Houſe to examine my Son concerning a Report that is ſpread abroad concerning a Razor that was thrown out of the Window of the Earl of *Eſſex*'s Lodgings that Morning he cut his Throat. I hearing of that, ſaid I, Gentlemen, I have read the Coroner's Inqueſt that is in print, and it is otherwiſe declared there: And therefore let there be no Diſcourſe of any ſuch Matter, for I believe no ſuch Thing. And, ſaid I to that Gentleman, Mr. *Braddon*, pray forbear meddling in any ſuch Thing, for Mr. *Edwards* is a poor Man, and has divers Children, he may be ruined, and you likewiſe may be ruined yourſelf, if you proceed any farther in it.

Mr. Att. Gen. We ſhall interpret this Matter by our other Witneſſes.

L. C. J. Ay, ſo you had need, for there is nothing to be made of this Fellow's Evidence.

Mr. *North.* Pray, by the Oath you have taken, when you gave that Advice, did Mr. *Braddon* make you no Anſwer?

Mr. *Evans.* No, none at all.

Mr. *Braddon.* [*Lifting up his Hands in an unuſual manner.*]

Mr. *Evans.* Pray, will you anſwer one Thing?

L. C. J. Pray, Sir, let us have no Elevation of Hands. Your Confidence does not ſo well become you in a Court of Juſtice, this is not a Cauſe wherein you need uſe ſo much Confidence.

Mr. *Braddon.* Sir, pray anſwer, did not I——

L. C. J. What is it you would aſk him?

Mr. *Braddon.* My Lord, I deſire he may be aſked, whether I, with a Brother of his, did not come to his Country-Houſe, on the *Monday* immediately after my Lord of *Eſſex*'s Death, and whether at his Table there was not a Report then of a Razor being ſeen to be thrown out of my Lord of *Eſſex*'s Window?

L. C. J. Pray aſk by your Counſel, they are moſt proper to aſk Queſtions for you. Tell them what you would have aſked, and don't make long Stories yourſelf.

Mr. *Wallop.* Were you not in Company with Mr. *Braddon*, the *Monday* after my Lord of *Eſſex*'s Death?

Mr. *Freke.* What was the Report, Sir, at your Table, upon the *Monday* next after my Lord of *Eſſex*'s Death?

Mr. *Evans.* My Lord, if your Lordſhip pleaſe——

L. C. J. Pray, Sir, make a ſhort and plain Anſwer to what Queſtions are aſked you, and let us have none of your Circumlocutions, and your Diſcourſes of the Matter; but let us underſtand what you ſay.

Mr. *Evans.* I will, my Lord.

L. C. J. What is your Queſtion?

Mr. *Braddon.* Whether I was not upon the *Monday* after the Earl of *Eſſex*'s Death at his Table, where there was a Diſcourſe of a Report that a Razor was thrown out of the Window, before Murder was cried out, and concerning a Boy which went to take it up?

L. C. J. What a Story is here! Pray aſk him a fair and ſhort Queſtion, if he can remember what was ſaid at his Houſe? We are got quite to the Cuſtom-houſe and the Coffee-houſe again, and I know not where.

Mr. *Freke.* What Diſcourſe was there at your Table, Sir, the immediate *Monday* after the Earl of *Eſſex*'s Death, concerning a Razor thrown out of a Window?

Mr. *Evans.* My Lord, this, to the beſt of my Remembrance, is what I have to ſay, and remember of the thing, that a Gentleman being with him——

L. C. J. Who?----Mr. *Evans.* Mr. *Braddon.*

Mr. *Wallop.* Where was this?-----Mr. *Evans.* In the Country.

Mr. *Wallop.* Where, in what Country?----Mr. *Evans.* In *Eſſex.*

Mr. *Wallop.* What was the Place's Name?

Mr. *Evans.* At *Wanſted*, my Lord; and being there, and he plucking out a Paper.

L. C. J. He, who?

Mr. *Evans.* A Brother of mine, that that Gentleman came down with to ſee me.

L. C. J. What is his Name?

Mr. *Evans.* His Name is Mr. *William Hatſell.*

L. C. J. With whom did he come?

Mr *Evans.* With this Perſon.

L. C. J. With this Perſon, who is this Perſon?---Mr. *Evans.* Mr. *Braddon.*

L. C. J. Why can'ſt thou not name him, without this wire-drawing? Thou art a moſt exact Cuſtom-houſe Officer, I'll warrant thee, thou can'ſt not make a plain Anſwer to a plain Queſtion.

Mr. *Evans.* My Lord, I beg your Pardon, I do not know the Methods of the Court.

L. C. J. Pry'thee, I care not for thy Methods, nor thy Matter; but deal plainly with us.

Mr. *Evans.* My Brother, Mr. *Hatſell*, came down along with Mr. *Braddon* to my Houſe at *Wanſted* in *Eſſex*, on the *Monday* after my Lord of *Eſſex*'s Death, and coming down, my Brother, Mr. *Hatſell*, pulled out the Coroner's Inqueſt upon Oath that was printed, and ſhewing of it to me, I read it; and as ſoon as ever I had read it, ſaid I, Mr. *Edwards*, that was at the Cuſtom-houſe, that very Morning when the Earl of *Eſſex*'s Throat was cut, did declare to me upon the Cuſtom-houſe *Key*, That his Son did declare that the Razor was thrown out of the Window, which ſeems to contradict this Paper, that ſays, it was found lying by him.

Mr. *Freke.* Was this before Mr. *Braddon* was with Mr. *Edwards*?

Mr. *Evans.* I can't tell that.

Mr. *Freke.* Was it before Mr. *Braddon* and Mr. *Edwards* came to you to the Coffee-houſe?-----Mr. *Evans.* Yes, I believe it was.

Mr. Att Gen. You ſay Mr. *Braddon* came with Mr. *Hatſell* to your Houſe at *Wanſted*?-----Mr. *Evans.* Yes.

Mr. Att. Gen. Who was the Perſon that told you this Story?

Mr. *Evans.* He brought down the printed Paper with him, and upon plucking out that Paper, and reading of it, the Story was told.

Mr. Att. Gen. Pray, who was the Perſon that told him it was ſo reported at the Cuſtom-houſe?

Mr. *Evans.* I made that Anſwer myſelf, immediately upon reading the Paper; for I obſerved what the Coroner's Inqueſt had returned, and upon that I made this Obſervation, That it ſeemed to contradict what was declared at the Cuſtom-houſe that Morning my Lord of *Eſſex* cut his Throat.

Mr. Att. Gen. Pray, who declared there that the Razor was thrown out of the Window?

Mr. *Evans.* It was Mr. *Edwards* told me.

L. C. J. Why conſider with yourſelf now, You ſay firſt of all *Edwards* and *Braddon* came to me to the Coffee-houſe.

Mr. *Evans.* That was at another Day.

L. C. J. I am ſure you ſwore ſo at firſt.

Mr. *Evans.* With your Lordſhip's Favour----

L. C. J. And with your Favour too, Sir. Pray will you hear me? I have heard you a great while I am ſure to no Purpoſe. But conſider with yourſelf, and pray be pleaſed to reconcile what you ſay now with what you ſaid at firſt, if you can. You ſay firſt of all *Edwards* and *Braddon* came to me to the Cuſtom-houſe, and found me out at the Coffee-houſe, and that *Edwards* ſhould ſay, Somebody had been with his Son, in order to examine him about a Razor that was thrown out of my Lord of *Eſſex*'s Window, and that you immediately cried out, Have a care of that, for that contradicts the Inquiſition that I have ſeen in Print, which declares as though the Razor was found in the Room. And after that you ſay, it was that you ſaw the Inquiſition when *Hatſell* came down from *Braddon*, and you told him of the Report at the Cuſtom-houſe. How came you, if you had not ſeen the Inquiſition till then, to give out ſuch Words at the Cuſtom-houſe? Have a care of meddling with that, becauſe it contradicts the Inquiſition?

Mr. *Evans.* My Lord, this was ſeveral Days before that.

Mr. Att. Gen. Yes, my Lord, this Diſcourſe at *Wanſted* was before that at the Cuſtom-houſe.

Mr. *Wallop.* This that he now ſpeaks of is an Anſwer to Mr. *Braddon*'s Queſtion, which was about a Diſcourſe that has paſſed before this other at the Cuſtom-houſe. This that he ſpeaks of, the Diſcourſe at a Coffee-Houſe, was afterward, but indeed he firſt ſpake of it; but theſe were two diſtinct Matters at ſeveral Times. This laſt of the Cuſtom-houſe was, when he had made the Examination of the Boy, as that Witneſs ſays.

L. C. J. Therefore I think it was fit to explain it, for it looked very inconſiſtent before, what thou ſaidſt at firſt, and what thou ſay'ſt now; but if thou telleſt me thy *Eſſex*-matter was before thy Coffee-houſe matter it is well, otherwiſe the Matter, I aſſure you, looked very ill.

Mr. *Evans.* This is the Truth, my Lord, and I can tell no more.

Mr. Att. Gen. Take the Times, my Lord, and you will ſee he does ſpeak very notably. The 13th of *July* my Lord of *Eſſex* murder'd himſelf, the 14th of *July* the Inquiſition was taken before the Coroner; pray, what was the Day that *Hatſell* and this Gentleman came down to you to *Eſſex*?

Mr. *Evans.* I can't tell that, Sir, truly; but it was before this Matter of the Examination of the Boy.

L. C. J. But pray let me aſk you one Queſtion, if your Matter about the Inquiſition in the Country was before the Matter of your cautious Diſcourſe at the Cuſtom-houſe, how came you to tell them, I heard this Report of a Razor thrown out of the Window that Morning the Earl of *Eſſex* cut his own Throat?

Mr. *Evans.* Mr. *Edwards* reported this ſame Thing that very ſame Morning to me and ſeveral others at the Cuſtom-houſe Key.

L. C. J. Why did you not tell us this before?

Mr. *Evans.* I beg your Pardon, my Lord, I do not underſtand the Methods of the Court.

Mr. *Wallop.* Mr. *Hatſell* gave the Occaſion by pulling out the Inquiſition.

L. C. J. Pray, Sir, make your Obſervations anon, let the King's Counſel go on with their Evidence.

Mr. Att. Gen. What Diſcourſe had Mr. *Braddon* with you then at that Time, when *Hatſell* came down with him to your Houſe you ſay, and pulling out the Inquiſition you read it, and made Anſwer, you heard at the Cuſtom-houſe Key ſuch a Report that very Morning the Earl murdered himſelf?

Mr. *Evans.* Mr. *Braddon* was walking up and down the Room, I did not ſpeak it to him, but I ſpake it to Mr. *Hatſell*; but I believe *Braddon* over-heard and took notice of it.

Mr. Juſt. *Withins.* Did he concern himſelf about it?

Mr. *Evans.* No, not much, I did not hear him ſay any thing, but he walked up and down the Room.

L. C. J. Now after all this Diſcourſe of the Matter, for aught I can underſtand, the Matter is but this: He ſays, *Edwards* before the Meetings either at his Houſe in *Eſſex*, or at the Coffee-houſe by the Cuſtom-houſe, reported to him, as though the Earl of *Eſſex* had not murdered himſelf, but ſomebody elſe had done it for him. And this was reported at the Cuſtom-houſe that Morning the Earl of *Eſſex* cut his own Throat, and he hearing this Report at the Cuſtom-houſe at that Time, afterwards comes *Braddon* and *Hatſell* to his Houſe into *Eſſex*, and after *Hatſell* had ſhew'd him the Paper of the Inquiſition in Print, he ſaid, I heard ſome Diſcourſe from Mr. *Edwards* at the Cuſtom-houſe of a quite other Nature; and then he ſays, *Braddon* and *Edwards* came to the Coffee-houſe, and there it was he deſired them not to talk of that Matter; for, ſaid he, that contradicts the Inquiſition I ſaw before. This is the Subſtance of what he ſaid.

Mr. Att. Gen. And hereby it does appear, that *Braddon*, and *Evans* and *Edwards*, and *Hatſell*, are all of a Gang.

L. C. J. Have you the Information he gave in to the Secretary, Mr. Attorney-General, that that was given before the Council?

Mr. Att. Gen. Yes, 'tis much the ſame with what he hath ſaid now.

Mr. *Evans*. Yes, my Lord, 'tis *verbatim* as I have declared now.

Mr. Att. Gen. Only this other part of *Hatſell* and the Meeting in *Eſſex* was ſpoken of ſince, that was not declared before.

Mr. *Evans*. No, my Lord, that I did not ſpeak of, becauſe I was not examined about it.

Mr. Att. Gen. That was part of the Secret.

Mr. *Evans*. No, it was common Diſcourſe with me. And I did not think any thing of it; what Mr. *Edwards* ſaid at the Cuſtom-houſe, was ſpoken to a great many others as well as me, and the People ſeemed to be ſurprized with an account of the thing at the firſt News of my Lord of *Eſſex*'s Death. And if I had thought it material, I could have brought a great many that were by then; but Mr. *Edwards* is here brought himſelf, I ſuppoſe he will not deny it.

Mr. Sol. Gen. Look you, Sir, you ſay that very Morning my Lord of *Eſſex* killed himſelf, Mr. *Edwards* diſcourſed, and made this Report to you at the Cuſtom-houſe, pray tell what the Diſcourſe was; what he ſaid to you; and then tell us what time of Day it was?

Mr. *Evans*. To the beſt of my Remembrance it was about Eleven o'Clock; there were ſeveral Perſons ſtanding together, among the reſt Captain *Goodland*, and ſome of the Searchers, and Mr. *Edwards* was there; and ſaid he, I am informed from Home, That my Boy has been at Home, and given an Account to my Wife, that being in the *Tower*, he ſaw a Hand throw a Razor out of a Window, and he named my Lord of *Eſſex*'s Window; and this Mr. *Edwards* did not only tell me, but to a whole Coffee-houſe of People, this Matter of Fact.

Mr. Juſt. *Holloway*. Did not Mr. *Edwards* tell you, That ſomebody had been examining his Boy about that Report?

Mr. *Evans*. That was the ſecond time, when Mr. *Braddon* and Mr. *Edwards* came together.

Mr. Juſt. *Holloway*. Who was it had been examining his Boy did he ſay?

Mr. *Evans*. Mr. *Braddon*, he ſaid, had been to examine his Son.

Mr. Juſt. *Holloway*. That was after the Diſcourſe at *Eſſex*, that *Braddon* came to examine his Son concerning the Razor.

Mr. *Wallop*. Yes, it was after the Diſcourſe at *Eſſex*, where *Hatſell* plucking out the Paper, *Evans* told Mr. *Braddon* firſt of this Razor.

L. C. J. Well, make your Defence by and by, Mr. *Wallop*: Do not make your Remarks now.

Mr. Att. Gen. Come, Mr *Edwards*. Crier ſwear him [*Which was done.*]

L. C. Gen. What do you aſk him, Mr. Attorney?

Mr. Att. Gen. Mr. *Edwards*, Pray, will you give the Court an Account of this Buſineſs; for I don't know whether you heard what that Gentleman that went out laſt ſaid, he ſays, you raiſed this Story, Pray give an Account what you know of it?

Mr. Sol. Gen. Pray tell what you know of Mr. *Braddon*'s coming to your Son, and what Diſcourſe he or you had about the Murder of the Earl of *Eſſex*?

Mr. *Edwards*. The Report that Mr. *Braddon* came to enquire after, was with us ſome three Days before; it was in our Family three Days before, and upon the 17th of *July*———

L. C. J. What was the Report, Mr. *Edwards*, before Mr. *Braddon* came to you?

Mr. *Edwards*. The Report I have already declared before the Council.

L. C. J. But you muſt tell us too what it was.

Mr. *Edwards*. The Report of the Boy the 13th of *July*, about 10 o'Clock, as I was informed by my Family, and by the Boy afterwards by Word of Mouth, was this, He comes in about ten o'Clock, ſays he, I have been at the *Tower* (to one of his Siſters), and I have ſeen His Majeſty and the Duke of *York*, and the Earl of *Eſſex* has cut his Throat, and I ſee an Hand throw a Razor out of the Window, and one came out of the Houſe, a Maid, or a Woman in a White Hood and a Stuff Coat, and took it up, and went in again, and then I heard a Noiſe as of Murder cried out. This was the Boy's Report, and more than as his Report I cannot ſpeak to it.

L. C. J. This was your Son, was it not?

Mr. *Edwards*. Yes, the younger of them. The two Boys were that Morning going to *Merchant-Taylor*'s School together as they uſed to do, and by the way hearing the King was in the *Tower*, this younger Boy that was well acquainted with the *Tower*, gave his elder Brother the ſlip and went into the *Tower*, and rambled about from Place to Place.

Mr. Att. Gen. Did not you examine him?

Mr. *Edwards*. Ay, I did examine him.

Mr. Att. Gen. Did not you find that he denied it again?

Mr. *Edwards*. No, I did examine him, and I found no denial of any thing at all that he had reported, till Mr. *Braddon* came to make Enquiry. As ſoon as he came to make the Enquiry, and I underſtood what Mr. *Braddon*'s Buſineſs was, I begged of him that he would not inſiſt upon it by no means, I begged of him as if I had begged for my Life, but he was ſo zealous in the Buſineſs, that nothing would ſatisfy him. And after I had told Mr. *Braddon* that which I could not deny, which was the Boy's Report, I left him and went down to the Cuſtom-houſe, and ſome of my Family diſcourſed the Boy at that rate, that he began to deny it, and in leſs than half an Hour's time recollected himſelf, and began to own it again; and ſo the Boy was off and on till the time he was before the Council; and to this Day he ſeems to ſtand in the Denial, whether he will do it now or no I can't tell.

Mr. Att. Gen. Did you acquaint Mr. *Braddon*, That you had found this Boy to be a lying Boy, and detected him in Lies ſeveral times?

Mr. *Edwards*. May it pleaſe you, Sir, I acquainted him with thus much: Said I, Mr. *Braddon*, As I have dealt ingenuouſly with you, to let you know what the Boy's Report was, ſo I muſt likewiſe tell you, that I cannot, nor will undertake to aſſert the truth of it; and preſently upon that my Daughter told me, the Boy had many times excuſed his playing Truant by falſe Stories.

Mr. Att. Gen. Did you acquaint Mr. *Braddon*, thet your Boy was a lying Boy at that time?

Mr. *Edwards*. I think I did not at that inſtant of time.

L. C. J. How old is this Boy you talk of?

Mr. *Edwards*. About 13 Years of Age, my Lord.

Mr. Att. Gen. What do you know of Mr. *Braddon*'s forcing your Boy to ſign any thing that he had prepared after this?

Mr. Sol. Gen. When you told him your Boy had deny'd it, what did he ſay? Was he pleaſed and ſatisfied?

Mr. *Edwards*. He was not told it by me, but ſome of my Family.

Mr. Sol. Gen. How did he behave himſelf?

Mr. *Edwards*. At the ſame time they told him he denied it, at the ſame time they told him he owned it again.

Mr. Sol. Gen. How did Mr. *Braddon* behave himſelf?

Mr. *Edwards*. Like a civil Gentleman. I ſaw nothing elſe by him, but that he was very zealous in the Buſineſs, that is the truth of it, nothing could perſuade him to deſiſt.

Mr. Juſt. *Holloway*. Pray did you aſk Mr. *Braddon*, or did he tell you, what was the reaſon that he was ſo inquiſitive about this Razor, and the Report of the Boy?

Mr. *Edwards*. As to that he told me, he would let me know the reaſon of it, which was out of Conſcience.

Mr. *Jones*. Did not Mr. *Braddon* carry your Son before ſeveral Juſtices of Peace?

Mr. *Edwards*. Before none as I know of, not one truly to my Knowledge.

Mr. Att. Gen. Did you underſtand he had taken your Boy from your Houſe in a Coach?

Mr. *Edwards*. Never till he carried him into his Majeſty's Preſence before the Council, and I knew not that till the Boy came Home.

Mr. *Thompſon*. Mr. Attorney, Have you done with him? May I aſk him a Queſtion?

Mr. Att. Gen. Ay, aſk him what you will.

Mr. *Thompſon*. If I underſtand you right, Sir, this Report of the Boy's was that Morning that the Earl of *Eſſex* was murdered—

L. C. J. Was murdered, murdered himſelf, Man.

Mr. *Thompſon*. My Lord, I mean the Day of his Death. Now I would aſk you, Sir, when that was?

Mr. *Edwards*. The Boy's Report was this, Sir,—

Mr. *Thompſon*. I aſk you not what his Report was, but when? What Day it was?

Mr. *Edwards*. The 13th of *July*. That Day the Earl of *Eſſex* cut his Throat.

Mr. *Thompſon*. How many Days after that was it when Mr. *Braddon* came to you?

Mr. *Edwards*. It was not till the 17th of July.

Mr. *Thompſon*. Had you diſcourſed of the Report of your Boy at the Cuſtom-houſe, or any where elſe, that ſame Day he came to you?

Mr. *Edwards*. I cannot ſay that.

Mr. *Thompſon*. Had you diſcourſed it before Mr. *Braddon* ſpake to you, upon your Oath?----Mr. *Edwards*. Yes, I believe I had.

Mr. Sol. Gen. Had you diſcourſed it before your Boy told you?

Mr. *Edwards*. I ſhould then indeed have been the Contriver of the Story.

Mr. Att. Gen. So it is like enough you were.

Mr. Sol. Gen. Had you diſcourſed it to any body before you went home to your own Houſe, upon your Oath, Sir?

Mr. *Edwards*. Upon my Oath then I diſcourſed nothing of that Nature, not a Tittle of it, nor knew nothing of it, till I had it from my own Family.

Mr. Sol. Gen. Did you not diſcourſe of it before you went home?

Mr. *Edwards*. No, when I came Home they told me of it.

L. C. J. I aſk you again, Sir, Did not you tell it before you came Home?

Mr. *Edwards*. About ten o' Clock, I having heard the News of the Earl of *Eſſex*'s cutting his Throat, at the Cuſtom-houſe, I ſtepped Home, being very near to my own Houſe, and as ſoon as I came in at the Door, the Family began to give me an Account what News the Boy brought in.

L. C. J. That was the firſt time you heard of it?

Mr. *Edwards*. Yes, that was the firſt time I heard of it.

L. C. J. And did you not diſcourſe of it till after that?

Mr. *Edwards*. No.

L. C. J. Call Mr. *Evans*, let him come in again.

Mr. Att. Gen. Let Mr. *Evans* come in again.

L. C. J. Mr. *Evans*, I would aſk you this Queſtion, There were three times that you ſay, I think, that you had Diſcourſe with *Edwards* about the Matter, as you call it, once at *Eſſex*, and twice at the Cuſtom-houſe?

Mr. Sol. Gen. No, not in *Eſſex*, it was *Hatſell* and *Braddon*, my Lord, that came to him there, *Edwards* was not there.

L. C. J. When you firſt had a Diſcourſe with *Edwards* about this Matter, what was it that *Edwards* did ſay to you?

Mr. *Evans*. Being upon Cuſtom-houſe Key, and Captain *Goodland* and ſeveral others ſtanding upon the Key, that very Morning my Lord of *Eſſex*'s Throat was cut, about eleven o' Clock Mr. *Edwards* came to us, being ſtanding upon the Key, and told us, That he was informed his Boy had been at the *Tower*, and came Home and told his Mother, he ſaw a Hand throw a Razor out of a Window, and that he went to take it up, and a Maid or a Woman came and took it up, and went in again.

L. C. J. *Evans*, Did he tell you this as if he had been at Home?

Mr. *Evans*. No, I think it was that he had it from Home by ſome Hand or other.

Mr. *Edwards*. I was at Home.

Mr. *Evans*. My Lord, At two o' Clock in the Afternoon, when he came again to the Cuſtom-Houſe, he did tell us he had been at Home, and his Boy did tell him the ſame Story.

L. C. J. But when he had told you before he had dined, did he ſay, he had been at Home?

Mr. *Edwards*. My Family can teſtify I was at Home between ten and eleven o' Clock.

Mr. *Evans*. To the beſt of my remembrance he told me he heard ſo from Home.

L. C. J. Before he went Home, you ſay, he told you of this, and that was 10 o'Clock in the Morning, and about two o'Clock in the Afternoon, he ſaid, he had been at Home, and it was true.

Mr. *Evans*. Yes, my Lord.

Mr. *Edwards*. My Lord, I was at Home.

L. C. J. Mr. *Edwards*, Did you tell him ſo, or did you not?

Mr. *Edwards*. It is like I might ſay ſo about 10 o'Clock, but not before I had received the Report at Home.

Mr. *Evans*. I underſtood it ſo, my Lord, That he had heard from Home.

L. C. J. I aſk you this upon your Oath, mind the Queſtion, and anſwer me plainly, Did you ſpeak to him, that you had ſuch a Report from Home, or did you not?

Mr. *Edwards*. When I told it him, I had it from home, for I brought it from Home.

L. C. J. Nay, Did you tell him you had ſuch a Report from Home at 10 o'Clock, or no?

Mr. *Edwards*. I told him that I had met with ſuch a Report.

L. C. J. From whom?

Mr. *Edwards*. From my Family at Home, for the Boy came not to me to tell it.

L. C. J. Then did you ſee Mr. *Evans* about two o'Clock that afternoon?

Mr. *Edwards*. 'Tis probable I did.

L. C. J. Did you, or did you not?

Mr. *Edwards*. Yes, I believe I might, I beſeech your Lordſhip give me leave to ſpeak. Mr. *Evans* and I am converſant Forenoon and Afternoon every Day, we have buſineſs together.

Mr. *Evans*. We have Buſineſs, my Lord, about ſhipping of Goods.

Mr. *Edwards*. But, my Lord, if you pleaſe, I will tell you, that is the Occaſion of our being together.

L. C. J. Anſwer me my Queſtion, Did you, or did you not tell him ſo?

Mr. *Edwards*. I did not acquaint him with it before I had been at Home, and received it from my own Family.

L. C. J. Look you, Sir, Don't you go about to evade the Queſtion, to trifle with the Court, you muſt anſwer me my Queſtion directly, and upon your Oath, Did you tell him you had Notice from Home of ſuch a Report, or no?

Mr. *Edwards*. I did not receive Notice from Home, but I brought it from Home.

L. C. J. Did you tell him you had it from Home.

Mr. *Edwards*. I told him I had it from my Family; who told me the Boy had made ſuch a Report.

L. C. J. Did you tell him you had it from your Boy, or received Notice from Home about it?

Mr. *Edwards*. I did not tell him any thing before I had been at Home.

L. C. J. Well, then, anſwer me this Queſtion. Did you tell *him* in the Afternoon at two o'Clock; Now I have been at Home and examined my Boy, and find it ſo as I told you?

Mr. *Edwards*. I examined my Boy at Dinner, and I found the Boy agreed with the Report of my Daughter, and confirmed it.

L. C. J. I aſk you what you told Mr. *Evans*, not what your Boy or your Daughter told you?

Mr. *Edwards*. It is probable I might tell Mr. *Evans* the ſame Story after Dinner at two o'Clock, that I did before.

L. C. J. Now tell us the Paſſage again, Mr. *Evans*, as you heard it.

Mr. *Evans*. To the beſt of my remembrance, at two o'Clock in the Afternoon, Mr. *Edwards* came and told us, he had examined the Boy, and ſays he, the Boy has confirmed all that I told you.

L. C. J. But before that in the Morning what did he ſay?

Mr. *Evans*. I cannot ſay exactly the Time, but I think it was about ten o'Clock. There were four or five more beſides myſelf ſtanding at Cuſtom-houſe Key, and Mr. *Edwards* came to us, and told us, ſays he, I am informed from Home, as I underſtood it, not that he had been at Home, but that he heard it from Home, that his Boy had been at the *Tower*, had ſeen an Hand throw a Razor out of a Window.

L. C. J. What ſaid he at two of the Clock?

Mr. *Evans*. He ſaid he had examined his Boy, and he ſaid the ſame thing, that he told us he had heard in the Morning.

Mr. Att. Gen. My Lord, we are now but upon the Entrance of our Evidence, to ſhew upon what ſlender Grounds, how ſlight a Foundation there was for this Gentleman to undertake this Proſecution.

Mr. Sol. Gen. Mr. *Edwards*, Pray let me aſk you a Queſtion, Did Mr. *Braddon* tender any Paper to your Son to ſign?

Mr. *Edwards*. I was informed he did do it afterwards, but I ſaw him not do any ſuch Thing.

Mr. Sol. Gen. Did you never ſay that Mr. *Braddon* had tendered a Paper to your Son to ſign?

Mr. *Edwards*. I do not believe I ever did ſay ſo, I do not remember any ſuch Thing.

Mr. Sol. Gen. Pray recollect your Memory, and tell us whether you did, or did not?

Mr. *Edwards*. I thank God, Sir, that he has given me my Memory and my Underſtanding, I bleſs him for it.

Mr. Att. Gen. But it were well if thou hadſt any Honeſty too.

Mr. *Edwards*. And Honeſty too, Sir: I have not lived theſe 39 Years at the Cuſtom-houſe without Honeſty. I never had my Honeſty queſtioned to this Day. I am ſure no body can tax me with Diſhoneſty.

Mr. Sol. Gen. Pray Mr. *Edwards* let your Anger alone for a while, and anſwer the Queſtion that I ſhall aſk you: Did your Son refuſe to ſign that Paper?

Mr. *Edwards*. He did ſign it at laſt.

Mr. Sol. Gen. Did he refuſe to ſign it?

Mr. *Edwards*. I do not know whether he refuſed it or no.

Mr. Juſt. *Withens*. Did you hear that your Son refuſed it?

Mr. *Edwards*. I did hear that he had ſigned it.

Mr. Juſt. *Withens*. But did you hear that he refuſed to ſign it?

Mr. *Edwards*. The Boy did not tell me he had refuſed to ſign it. I did not hear him refuſe it.

L. C. J. Thou doſt prevaricate very ſtrangely, I muſt tell thee that, notwithſtanding thy Reputation of 39 Years of Honeſty: Prithee, anſwer plainly, Did you hear at any time, that your Son had refuſed to ſign it?

Mr. *Edwards*. No, my Lord, I did not, to the beſt of my remembrance.

L. C. J. That is a plain Anſwer, Man; but thou doſt ſo ſhuffle up and down, one can't tell what to make of what thou ſayeſt.

Mr. *Thompſon*. Sir, I deſire to aſk you one Queſtion, Whether ever Mr. *Braddon* and you had any former Acquaintance?

Mr. Sol. Gen. Pray, ſtay, Sir, and if you pleaſe, ſpare your Queſtion a little, for we have not yet done with Mr. *Edwards*. Mr. *Edwards*, pray anſwer me, Did Mr. *Braddon* ever tell you, that he had other Informations to confirm this Report of your Son from others?

Mr. *Edwards*. Truly, I do not remember he ſaid any ſuch Thing.

Mr. Sol. Gen. Did you ever ſay he told you ſo? Conſider of it, and remember your former Examination.

Mr. *Edwards*. 'Tis like ſince he may have ſaid ſo, but not at his firſt coming.

Mr. Sol. Gen. At his firſt coming did your Son ſign his Paper then?

Mr. *Edwards*. No, he did not, as I am informed, I ſaw it not.

Mr. Sol. Gen. But afterwards you ſay, Mr. *Braddon* did tell you, he had other Evidence to confirm it.

Mr. *Edwards*. It may be he might, I can't ſay it poſitively.

Mr. Att. Gen. You ſay he did not ſign the Paper at his firſt coming?

Mr. *Edwards*. No, I am informed he did not.

Mr. Sol. Gen. How do you know he did ſign it at laſt?

Mr. *Edwards*. My Wife and Daughters Information.

L. C. J. But how then can you ſay, That you never heard he did refuſe it?

Mr. *Edwards*. My Lord, he did not tender a Paper to him to ſign, till he had been two or three times there, as I have heard, it was not tender'd the firſt time he came.

L. C. J. I wonder how thou haſt eſcaped 39 Years with ſuch a Reputation.

Mr. *Edwards*. My Lord, I never was thought otherwiſe, nor I hope never gave any occaſion for ſuch a Thought.

L. C. J. I aſſure thee, I do not, nor can take thee for one.

Mr. *Edwards*. I hope I have done nothing to make your Lordſhip think the contrary.

L. C. J. Yes, thou haſt. Thou didſt nothing but ſhuffle up and down, thou art to conſider thou art upon thy Oath, and muſt anſwer Queſtions plainly.

Mr. *Edwards*. My Lord, I do anſwer as truly as I can.

Mr. Att. Gen. Hark you then, Mr. *Edwards*, anſwer me.

L. C. J. Speak the Truth, and nothing but the Truth, that is all that is required of thee; no Court of Juſtice ought to be afraid to hear Truth. Let Truth come out of God's Name.

Mr. Att. Gen. Did Mr. *Braddon* ever tell you, That he had other Evidence beſides your Son?

Mr. *Edwards*. I do not remember he ſaid any ſuch thing at his firſt coming.

L. C. J. How thou doſt ſhuffle again. Anſwer plainly.

Mr. Att. Gen. I aſk you, Whether ever he did ſay it?

Mr. *Edwards*. Yes, he did ſay ſo afterwards.

Mr. Sol. Gen. I muſt aſk you one Queſtion more, (for I ſee 'tis very difficult to get it out of you) Pray did he tell you that he had other Evidence beſides your Son, before he ſigned the Paper, or after?

Mr. *Edwards*. It was before, as I take it. I ſpeak to the beſt of my Knowledge, my Lord, I can ſay no more.

L. C. J. If thou haſt a mind to continue the Reputation thou haſt got, as thou ſayeſt, the way is to anſwer Queſtions, and ſpeak the Truth plainly, let it concern whom it will.

Mr. *Edwards*. I labour to do it, my Lord, to the beſt of my Underſtanding and Capacity.

L. C. J. I would not have thee ſay a Tittle more than the Truth, but let the Truth come out.

Mr. *Freke*. Now, Sir, I would aſk you, if they have done with you, Did you ever know Mr. *Braddon* before the 17th of *July?* Or did you ever ſee him before?

Mr. *Edwards*. No, I never had any Knowledge of him, nor ever heard a Word of him.

Mr. *Wallop*. Mr. *Edwards*, the Queſtion was aſked of you, Whether Mr. *Braddon* did ſay, There was other Evidence beſides your Son; Pray when was that?

Mr. *Edwards*. He did not at the firſt time, but afterwards he did.

Mr. *Wallop*. That was a good while after, he had been with the Boy firſt?

L. C. J. Make your Obſervations by and by, Mr. *Wallop*. This is not a Time for them.

Mr. Att. Gen. Then where is *Edwards*, the Boy?

[*Who was brought forthwith into Court.*]

Mr. *Edwards*. I charge you in the Preſence of Almighty God, ſpeak Truth, Child.

Mr. Sol. Gen. And ſo ſhould you too.

Mr. *Edwards*. Be ſure to ſay nothing but the Truth.

L. C. J. And Child, turn about, and ſay, Father, be ſure you ſay nothing but the Truth.

Mr. Att. Gen. My Lord, This is the Boy, he is very little and very young, will your Lordſhip have him ſworn? What Age are you of?

William Edwards. I am 13, my Lord.

Mr. Att. Gen. Do you know what an Oath is?---*William Edwards*. No.

L. C. J. Suppoſe you ſhould tell a Lye, do you know who is the Father of Liars?——*William Edwards*. Yes.

L. C. J. Who is it?-----*William Edwards*. The Devil.

L. C. J. And if you ſhould tell a Lye, do you know what will become of you?----*William Edwards*. Yes.

L. C. J. What if you ſhould ſwear to a Lye? If you ſhould call God to witneſs to a Lye, what would become of you then?

William Edwards. I ſhould go to Hell-fire.

L. C. J. That is a terrible Thing. And therefore, Child, if you take an Oath, be ſure you ſay nothing but what is Truth, for no Party, nor Side, nor any thing in the World; for that God, that you ſay will call you to an Account, and caſt you into Hell-fire, if you tell a Lye, and witneſs to a Falſhood, knows and ſees all you do, therefore have a care, the Truth you muſt ſay, and nothing but the Truth.

Crier. Pull off your Glove, and hearken to your Oath.

[*Then he was ſworn.*]

Mr. Sol. Gen. And now remember you call God to witneſs to the Truth of what you ſay.

Mr. Att. Gen. Young Man, look upon that Paper, is that your Hand?

William Edwards. Yes.

Mr. Att. Gen. Did you ſign that?———*William Edwards.* Yes.

Mr. Att. Gen. Prithee tell the Court, how thou cameſt to ſign it?

L. C. J. Ay, Child, be not afraid. Tell the Truth, for if thou telleſt the Truth, thou needeſt not be afraid, but if thou telleſt a Lye, thou haſt need to be afraid; let no body, whatever has been ſaid to thee, affright thee from telling the Truth.

Mr. Sol. Gen. Don't be afraid of thy Father, or any body, but tell plainly what thou knoweſt, and ſpeak only the Truth.

Mr. Att. Gen. How came you to ſign that Paper?

William Edwards. Mr. *Braddon* bid me ſign it when he had writ it.

L. C. J. Hark thee, Child, Did he take it from thee what he writ, or did he write it from himſelf? Come hither, Child, be not afraid, no body here will do thee any hurt.

Then the Boy was lifted up upon the Table before the Judges.

L. C. J. Look upon that Paper, didſt thou put thy Name to that Paper, Child?———*William Edwards.* Yes.

L. C. J. Whoſe Hand-writing is that Paper, beſides thy Name?

William Edwards. Mr. *Braddon*'s.

L. C. J. Did he bring it ready written?

William Edwards. He writ in our Parlour.

L. C. J. How came he to write it?

William Edwards. He ſaid it was for the Earl of *Eſſex*, to give to his Wife.

L. C. J. And what did he aſk thee before he writ that?

William Edwards. He aſked me, whether I ſaw any thing at the *Tower*, and ſo I told him, yes.

L. C. J. Ay, tell us what you told him, and be not afraid, Child, but tell the Truth.———*William Edwards.* I told him, I was in the *Tower*, and ſaw a Razor thrown out of a Window.

L. C. J. You told him ſo, and then what ſaid he to you?

William Edwards. He bid me ſpeak the Truth.

L. C. J. Was that all the Words you had?

William Edwards. I afterwards went with my Brother into the *Tower*, and I ſhewed my Brother the Place, and then afterwards Mr. *Braddon* writ this, and he ſaid it was to give to the Counteſs of *Eſſex*.

Mr. Juſt. *Holloway.* Did he read it to you after he had writ it?

William Edwards. Yes.

Mr. Juſt. *Holloway.* And did he aſk thee, whether it were true?

William Edwards. Yes.

L. C. J. And didſt thou tell him it was true?

William Edwards. Yes.

L. C. J. And didſt thou tell him all that was in that Paper was true?

William Edwards. Yes.

L. C. J. Did you tell him all that was writ in that Paper before he writ it down.———*William Edwards.* Yes.

L. C. J. Prithee mind the Queſtion, and ſpeak Truth, Didſt thou tell him all that was in that Paper before he writ it down?

William Edwards. Yes, I told him, and ſo he writ it down.

Mr. Juſt. *Holloway.* You heard it all read to you, you ſay?

William Edwards. Yes.

L. C. J. Then I aſk you again, Did you tell him all that was in that Paper was read to you, before he writ it down?

William Edwards. Yes.

L. C. J. And after you had told him, he writ it down?

William Edwards. I told him as he writ it down.

L. C. J. And after ſuch time as he had writ it down, did he read it to you?----------*William Edwards.* Yes.

L. C. J. And then you put your Name to it?

William Edwards. Yes.

Mr. Att. Gen. I pray, my Lord, he may be aſked this Queſtion, Whether or no, when he firſt brought it in, the Boy did not deny to ſign it?

L. C. J. Did he bring the Paper thither before thou ſignedſt it?

William Edwards. It was upon the Table.

L. C. J. Didſt not thou refuſe to put thy Name to it?

William Edwards. Yes.

L. C. J. Why?----------*William Edwards.* I was afraid.

L. C. J. Why?

William Edwards. For fear of coming into Danger.

L. C. J. Why, what Danger could there be? There was no Danger if it was Truth.-----------*William Edwards.* That was not the Truth.

L. C. J. Which was not the Truth? Was not the Paper that he had written Truth?-----------*William Edwards.* No.

L. C. J. How ſo, Child? Was not that thou toldeſt him the Truth?

William Edwards. No.

L. C. J. Tell the Truth now then.

William Edwards. So I do.

Mr. Sol. Gen. Then he offered it firſt to you, and bid you ſign it, and you denied to put your Hand to it, becauſe it was not true?

William Edwards. Yes.

L. C. J. And how long after did he offer it to you again?

William Edwards. A little while after.

L. C. J. But did you tell Mr. *Braddon* it was not true, when you refuſed to ſign it?---------*William Edwards.* No, I did not.

L. C. J. Why didſt thou refuſe to ſign it then?

William Edwards. I was afraid, becauſe it was not true.

L. C. J. Didſt not thou tell Mr. *Braddon* it was not true?

William Edwards. I did not tell Mr. *Braddon* it was not true.

L. C. J. Why then waſt thou afraid to ſign it becauſe it was not true at one time, and yet did ſign it, though it was not true at another time?

Mr. Sol. Gen. Child, Didſt thou give Mr. *Braddon* any Reaſon, why thou didſt not ſign it at that time?----------*William Edwards.* No, Sir.

Mr. Sol. Gen. How didſt thou come to ſign it? Did any body ſpeak to thee between that firſt Time thou refuſedſt to ſign it, and the ſecond Time thou didſt ſign it?

William Edwards. He would fain have got my Aunt to have ſigned it.

L. C. J. Thou ſayeſt, thou didſt firſt refuſe it, becauſe it was not true?

William Edwards. Yes.

L. C. J. And then afterwards thou didſt ſign it?

William Edwards. Yes.

L. C. J. Then I aſk thee, who perſuaded thee to ſign it after that time that thou ſtill refuſedſt it?

William Edwards. My Mother was afraid to have me ſign it.

L. C. J. Who perſuaded you to ſign it?---------*William Edwards.* Mr. *Braddon* ſaid there was no Harm in it, ſo I did it.

L. C. J. Did Mr. *Braddon* then perſuade you to ſign it?

William Edwards. He ſaid there was no Harm in it, that was all.

L. C. J. Did you do it at his Deſire?———*William Edwards.* Yes.

L. C. J. And you refuſed it at firſt when he deſired it?

William Edwards. Yes.

L. C. J. What, becauſe it was falſe?———*William Edwards.* Yes.

L. C. J. Why then wouldſt thou ſign it afterwards, if ſome body did not perſuade thee to it?

William Edwards. He told me there was nothing of Harm in it.

Mr. Att. Gen. Hadſt thou any Money offered thee by Mr. *Braddon*?

William Edwards. No

Mr. Att. Gen. Hadſt thou any Money promiſed thee?

William Edwards. No.

Mr. Att. Gen. Hadſt thou any thing elſe offered or promiſed thee?

William Edwards. No, nothing at all.

L. C. J. You have heard what he has ſaid, Gentlemen?

Jury. No, my Lord, we have not heard a Word.

L. C. J. Then I will tell you what he has ſaid exactly. He ſays, that Mr. *Braddon* writ it from him; that he writ it in the Room while he was there; that after ſuch time as he had writ it, Mr. *Braddon* read it to him: He ſays, that he had carried his Brother to ſhew him the Place where he aſſigned that the Razor was found in the *Tower*; he ſays, that after ſuch time as the Writing was finiſhed, Mr. *Braddon* offered it him to ſign, and he refuſed to ſign it, and I aſked him the Reaſon why, and he ſays, becauſe it was falſe; he ſays, ſome ſhort time afterwards Mr. *Braddon* came to him again.

William Edwards. No, Sir, it was the ſame time.

L. C. J. Well, the ſame time *Braddon* was at him again, and told him there was no harm in it, and therefore deſired him to ſign it, and becauſe he would not, he would have his Aunt to have ſigned it; and he ſays, that *Braddon* telling him there was no Harm in it, he did ſign it.

Mr. Sol. Gen. But withal he ſays, that it is falſe.

L. C. J. Ay, he ſwears now 'tis all falſe.

Mr. *Freke.* Did you tell Mr. *Braddon* it was falſe?

L. C. J. No, he ſays he did not.

Mr. *Freke.* Did your Siſter at all diſcourſe with you after you had dictated to Mr. *Braddon*? Pray what Diſcourſe had you with her after Mr. *Braddon* writ that Paper, before you refuſed to ſign it?

L. C. J. Do not aſk any leading Queſtion, Sir, but propoſe a fair plain Queſtion.

Mr. *Freke.* Did you diſcourſe with your Siſter at all, after Mr. *Braddon* had been at your Houſe?

William Edwards. Yes, I had been at School, and when I came home, they ſaid that a Gentleman that came from the Earl of *Eſſex*'s Brother, had been to inquire of the Truth of the Report I had raiſed.

Mr. *Freke.* What did your Siſter ſay to you?

William Edwards. That was all.

Mr. Sol. Gen. Did ſhe name the Gentleman, and did you ſee him afterwards?

William Edwards. Yes.

Mr. Sol. Gen. Who was it?

William Edwards. That Gentleman, Mr. *Braddon.*

Jury. My Lord, We don't hear a Word he ſays.

L. C. J. He ſays, he had been at School, and when he came home, they told him a Gentleman came from the Earl's Brother, to inquire of the Truth of what he had reported: It was aſked him who the Gentleman was, and he ſays, it was that Gentleman, Mr. *Braddon.*

Mr *Thompſon.* Before ſuch time as Mr. *Braddon* came to you, what did you tell your Father about this Razor, and when?

William Edwards. Sir, I told him the King and Duke of *York* were at the *Tower*, and while I was there, I ſaid, I ſaw a Hand caſt out a bloody Razor, and a Maid come out and take it up, and go in again.

Mr. *Thompſon.* Did you ſee any ſuch thing as a bloody Razor caſt out?

William Edwards. No.

L. C. J. What a Duſt has ſuch a trivial Report made in the World! Admit the boy had ſaid any ſuch thing, what an Age do we live in, that the Report of every Child ſhall blow us up after this rate? It would make a body tremble to think what ſort of People we live among: To what an Heat does Zeal tranſport ſome People, beyond all Reaſon and Sobriety? If ſuch a little Boy had ſaid ſo, 'tis not an Half-penny matter, but preſently all the Government is to be libelled for a Boy, which, whether he ſpeaks true or falſe, is of no great Weight, and he ſwears 'tis all falſe.

Mr. Sol. Gen. My Lord, We ſhall next call Dr. *Hawkins*'s Son of the *Tower*. Where is *Thomas Hawkins*? [*Who was ſworn.*

Mr. Att. Gen. My Lord, Agreeable to what the Boy has now ſaid, to ſhew you that what Mr. *Braddon* got him to ſign was all falſe, here is the young Man that truanted with him the ſame Morning, that was with him all the Time, the whole Morning, that ſays, there was no ſuch Thing, and he ſaw no ſuch thing; and how could it enter into the Boy's Head ſuch a malicious Lye, if it had not been dictated? Pray Mr. *Hawkins*, will you acquaint my Lord, and the Jury, whether you play'd Truant that Morning with this other Boy, and where you were?

L. C. J. Ay, tell the Truth in God's Name, young Man, be it one way or t'other, let the Truth come out.

Hawkins. In the Morning, Sir, I met with him at the *Tower*, going round with the King, and we walked round the *Tower* as long as the King walked, and then the King going into the Conſtable's Houſe, we and ſome more Boys were playing——

L. C. J. Prithee ſpeak out, as tho' thou wert at play at Chuck-Farthing.

Hawkins. After we had been at play, I went Home, and after I had been there a little while, News was brought to my Father that the Earl of *Eſſex* had killed himſelf. My Father went down, and I followed him, and after I had been there a little while, *William Edwards* came Home, and there we ſtood looking up at the Window an Hour or two at leaſt, and after we had tarried there a great while, I went out of the *Tower* Gate a little after Eleven.

Mr. Att. Gen. Was there no Razor thrown out of the Window?

Hawkins. No, there was no Razor thrown out.

L. C. J. Didſt not thou ſee a Razor thrown out of the Window? and a Maid come and take it up?

Hawkins. No, there was no ſuch Thing.

L. C. J. Were you there before *Edwards* came?——*Hawkins.* Yes.

L. C. J. And you went out with him?——*Hawkins.* Yes.

L. C. J. Did you and *Edwards* go away together?——*Hawkins.* Yes.

Mr. *Thompſon.* Did he tell you of any ſuch Thing?——*Hawkins.* No.

Mr. Sol. Gen. What time of the Day was it that you went out of the *Tower?*——*Hawkins.* Almoſt Eleven o'Clock.

Mr. *Wallop.* The Boy does ſay, he did tell his Father and Mother, and all the Family of it. And 'tis plain by the Father, that it was known in the Family by Ten of the Clock.

Mr. Sol. Gen. Was this young Man with you, all the Time that you was there, *Edwards?*——*William Edwards.* Yes.

Mr. Att. Gen. Did not you tell your Father of this Story when you came from the *Tower?*——*William Edwards.* Yes.

Mr. Att. Gen. And that was the ſame time you came out of the *Tower* with *Hawkins*

William Edwards. Yes.

Mr. Att. Gen. And you, *Hawkins*, was this young Man with you all the time you were at my Lord *Eſſex*'s Window?

Hawkins. He came thither while I ſtood there.

Mr. Att. Gen. My Lord, this is but the beginning of our Evidence, your Lordſhip ſees what a fine Caſe it is, and how all this Noiſe and Buſtle has come to be made in the World. The Rumour did firſt ariſe in a Fanatick Family, and was propagated by that Party.

Mr. *Jones.* Ay, 'tis eaſily known whence it came.

L. C. J. Gentlemen, Pray will you go on with your Evidence, and make no Deſcants.

Mr. *Freke.* You, *Hawkins*, when you came from your Father's Houſe, did you find that Boy in *Tower?*

Hawkins. Yes, Sir, a going round with the King.

L. C. J. That was before this Thing happened.

Mr. *Freke.* Were you with him all the while he was in the *Tower?*

Hawkins. Juſt before my Lord *Eſſex* cut his Throat I went Home.

Mr. *Freke.* Were you with him all the time or no? And how long were you with him?

Hawkins. I went with him round the *Tower* with the King. And after we were at play, and then I went Home, and then when I had been at Home a little time, the Rumour and Noiſe came, that the Earl of *Eſſex* had killed himſelf, ſo I went with my Father, and ſtood before the Window, and I tarried there a while before he came Home, and I ſtayed with him looking at the Window a great while, and we went out of the *Tower* together.

Mr. *Freke.* You little Boy, *Edwards*, was this Mr. *Hawkins* with you all the Time that you were in the *Tower?*

William Edwards. Yes, but only a little while that I was at the Mills.

Mr. Att. Gen. My Lord, we had not laid ſo much Weight upon Mr. *Braddon* for this Matter, but that he could not be quiet, but muſt inform the King of it, and this Matter was all examined before the King, the Boy was ſent for, and before his Face the Boy declared it was a Lye. And after he knew this, and after the Boy had twice in the Preſence of the King denied it, yet notwithſtanding all this, then was the Project between him and *Speke.* We ſhall firſt prove the Examination of this Matter before the Council, and how he was acquainted with it. Pray call Mr. *Blathwaite* and Mr. *Monſtevens.*

Mr. Blathwaite *was Sworn.*

Mr. Att. Gen. Pray Mr. *Blathwaite* will you give an Account whether you were preſent at the Council, when Mr. *Braddon* brought this Information, and how the Matter was Examined there, and what was done.

Mr. *Blathwaite.* My Lord, it was on the 20th of *July*, that Mr. *Braddon* came to *Whitehall*, he may remember I was there, for he could not but ſee me attending on the King. This little Boy was brought before his Majeſty, and was aſked what Information he had given Mr. *Braddon?* And whether the matter of the Information was true? The Boy ſaid it was a Lye, and that upon his Faith it was not true. Mr. *Braddon* knew all this, for he was called in and informed of it; and I believe Mr. *Braddon* will remember, that he heard the Boy deny it. The whole Examination could not but ſhew that it was an Invention of his, as he ſaid, it was to excuſe himſelf for having play'd Truant that Day, and that becauſe he was afraid to go Home he invented that Lye. After this Mr. *Braddon*, as it appears, did nevertheleſs purſue this Buſineſs.

L. C. J. Pray only tell what you know of your own Knowledge, both before and after.

Mr. *Blathwaite.* I know, my Lord, that Mr. *Braddon* (having been in the Country) came afterwards before the King, and was again Examined upon this matter, by which it appear'd, that he did continue in his Purſuit, though he was always informed of the Denial the Boy made, and that it was underſtood to be a *Lye* by the whole Family of the *Edwards*'s, as well as from the Denial of the little Boy; for they did confeſs, that the Boy uſed to tell Lies, and one of the Siſters ſaid he had denied it at firſt, but afterwards was brought to ſay it. And if I remember right, the Words of one of the Siſters were, *BRADDON* COMPELLED THE BOY TO SIGN IT. Thoſe are the Words in the Minutes that I took at the Examination; therefore I believe it was ſo, that the Boy had denied before to ſign it. But this I only mention as what the Siſter ſaid.

L. C. J. Have you any more Queſtions to aſk Mr. *Blathwaite*, Gentlemen?

Mr. *North.* Becauſe we will not trouble Mr. *Blathwaite* to call him again, pray produce the Letter.

Mr. Att. Gen. Pray, Sir, will you look upon that Letter, and tell the Court what you know of it, and whoſe Hand it is.

Mr. *Blathwaite.* My Lord, This is a Letter that was produced before the King, when Mr. *Speke* attended there. It was then put into my Hands; and I do well remember, and likewiſe I have written upon it, That Mr. *Speke* owned it to be his Letter.

L. C. J. Did he own it to be his Letter, Sir?

Mr. *Blathwaite.* Yes, he did own it to be his Letter.

Mr. Att. Gen. That is all we have to trouble you with at preſent, Sir: We will now call Mr. *Monſtevens.*

[*Who ſtanding up by the Crier was ſworn.*]

And we call him to prove, That Mr. *Braddon* had Notice the Boy had diſowned this Matter.

Mr. Sol. Gen. You hear the Queſtion, Sir, pray acquaint my Lord and the Jury, what you know of this Boy's Examination before the Council, and this Gentleman's having Notice the Boy diſowned the Thing.

Mr. *Monſtevens.* My Lord, About 5 or 6 Days after my Lord of *Eſſex* had murdered himſelf in the *Tower*, I ſaw Mr. *Braddon* at the Secretary's Lodgings, my Lord *Sunderland*'s Lodgings at *Whitehall*, with a young Woman, and a Boy about 12 or 13 Years old. The Boy was juſt now in Court, I ſaw him there. He came to me, and told me, he had earneſt Buſineſs to ſpeak with my Lord *Sunderland*, That he came from Sir *Henry Capell*, and he told me, he came with an Information that the Boy had given relating to the Earl of *Eſſex*'s Death. (The Information I believe is in Court.) He gave me the Information, and I read it, and I remember there was ſomething in the Information of a Razor thrown out of a Window, a bloody Razor thrown out of my Lord *Eſſex*'s Window; and after I had read the Information, I told Mr. *Braddon*, I wonder Sir *Henry Capell* had not appeared himſelf in a Matter of that Moment, wherein the Reputation of his Family was ſo much concerned; and I took the liberty to tell him, That I believed if Sir *Henry Capell* had thought that to be true, that was contained in that Paper, he would doubtleſs have come to my Lord *Sunderland* himſelf. Thereupon he told me, That Sir *Henry Capell* had not been well, and did not ſtir abroad. Then I told Mr. *Braddon* again, as I very well remember, That I was confident he had been abroad lately, and had been to wait upon the King, ſince the Death of my Lord of *Eſſex*. Then, my Lord, he had little or nothing to ſay to that; but he ſaid, what he did he was obliged to do in Conſcience, and out of the Duty he owed to the Memory of my Lord of *Eſſex.* Upon that, my Lord *Sunderland* came by, and I went with him to my Lord *Sunderland*, and he gave him that Paper, as I ſuppoſe, which I read, and my Lord *Sunderland* took the Information, and afterwards Mr. *Braddon* was committed in Cuſtody, and then the thing was brought before the King, and the Lords of the Council, which Mr. *Blathwaite* has given you an account of.

Mr. Att. Gen. My Lord, I pray that a Word of the Information may be read, we will firſt prove the Information taken by him, and then call Sir *Henry Capell*, who will prove that he never had any Order from him, as he ſaid he had, but it was only his own buſy Inclinations.

Cl. of Cr. This is ſubſcribed, *William Edwards.*

L. C. J. Call the Boy in again.

Mr. *Braddon.* May I aſk Mr. *Monſtevens* a Queſtion, my Lord?

L. C. J. Ay, aſk him what you will.

Mr. *Braddon.* Sir, Did not I come to you the *Thurſday* Evening, and waited at the Dutcheſs of *Portſmouth*'s Lodgings, before I brought the Boy and the Girl to *Whitehall?*

Mr. *Monſtevens.* No, I did not ſee you there.

Mr. *Braddon.* You are poſitive in that, Sir?

Mr. *Monſtevens.* Yes, I will take my Oath again of it, if you will.

Mr. *Braddon.* Then I will prove I was, and that I ſaw you at Ten of the Clock that Morning.

Mr. *Monſtevens.* I remember, my Lord, very well, That I was ſurpriſed to ſee him at the Lodgings at *Whitehall.* I never ſaw him, to the beſt of my Remembrance, but once in my Life.

Mr. *Braddon.* What time was it, pray, you firſt ſaw me?

Mr. *Monſtevens.* It was in the Afternoon, as I remember.

L. C. J. Hark you, young Man, do you know my Lord *Gerard?*

William Edwards. Yes.

L. C. J. Which Lord *Gerard* do you know?

William Edwards. My Lord *Brandon Gerard.*

L. C. J. How came you to know him?

William Edwards. By ſight I know him.

L. C. J. Do you know where he lodged in the *Tower?*

William Edwards. Yes.

L. C. J. Where?-----*William Edwards.* At one Mr. *Sam*'s.

L. C. J. Was you ever in his Lodging?------*William Edwards.* No.

L. C. J. Never at all?——*William Edwards.* No.

L. C. J. Did you ever tell any body you were in my Lord *Brandon Gerard*'s Lodgings?

William Edwards. Never in my Life.

L. C. J. Did you never tell *Braddon*, that you went to ſee his Lodgings?

Williams Edwards. Into the Houſe I never went.

L. C. J. Did you never tell *Braddon*, That you went to ſee my Lord *Brandon Gerard*'s Lodgings? Never in your life?

William Edwards. No, Sir.

L. C. J. Now read it.

Cl. of Cr. [*Reads.*]-----------The Information of *William Edwards*, ſecond Son to *Thomas Edwards*, of the Pariſh of *All-hallows Barkin, London*, taken the 18th Day of *July*, in the 35th Year of the Reign of our Sovereign Lord King *Charles* II. *Anno* 1683, ſays: *That this Informant on* Friday *the 13th of this inſtant* July, *as he was going to School, with his Brother*

ther Edward, *he heard that His Majeſty, and his Royal Highneſs the Duke of* York, *were going to the* Tower. *Whereupon this Informant left his Brother, and went to the* Tower *to ſee His Majeſty, and His Royal Highneſs. And when this Informant had ſeen His Majeſty and his Royal Highneſs, this Informant about nine of the Clock in the Morning of the ſame Day, went to ſee my Lord* Brandon Gerard's *Lodgings; and as this Informant was ſtanding almoſt over againſt my Lord* Gerard's *Lodgings, between the Lord* Gerard's *and the late Lord of* Eſſex's *Lodgings, this Informant ſaw a Hand caſt out a bloody Razor out of the ſaid Earl of* Eſſex's *Lodgings. And this Informant was going to take up the ſaid Razor, which he ſaw on the Ground to be bloody; but before this Informant came to the Razor, there came a Maid running out of Captain* Hawley's *Houſe, where the ſaid Lord of* Eſſex *lodged, and took up the ſaid Razor, which ſhe carried into the ſaid Captain* Hawley's *Houſe. And this Informant believes that it was the ſaid Maid, who he firſt heard cry out Murder. And this Informant further ſaith, That he heard the ſaid Maid ſay to ſome which were about the Door, after the Murder was cry'd, That ſhe did hear the ſaid Lord of* Eſſex *to groan three times that Morning. The Father, three Siſters, and Brother will ſwear, That the ſaid* William Edwards *did declare the Subſtance of this Information to them on* Friday *the* 13*th Inſtant, and never in the leaſt denied it till* Tueſday *after, when being chid and threatened by the eldeſt Siſter, he did deny it; but ſoon after confeſſed it, and ſigned it in the Preſence of five or ſix Witneſſes.*

Mr. Juſt. *Withins.* Thus you ſee, he perſuaded him to tell a fine Story of going to ſee my Lord *Brandon Gerard*'s Lodgings, but the Boy never told any ſuch thing.

L. C. J. No, he never told him a Word of it, he Swears.

Mr. Att. Gen. My Lord, Your Lordſhip has heard from Mr. *Monſtevens*, That this Gentleman, Mr. *Braddon*, made uſe of the Name of an honourable Perſon, Sir *Henry Capell*, and ſo at the Secretary's and at *Edwards*'s Houſe made uſe of the name of my Lady *Eſſex*. We ſhall now call Sir *Henry Capell*. [*Who was ſworn.*] Sir *Henry Capell*, Will you pleaſe to give an account, whether ever you employed this Gentleman, Mr. *Braddon*, about any ſuch Buſineſs as he has here undertaken?

Sir *H. Capell.* I hope you will give me as ſhort a Diſpatch as you can, Sir, for 'tis very uneaſy for me to be here in this Crowd.

Mr. Sol. Gen. We give you ſome trouble, Sir *Henry*, but indeed 'tis not we, but this Gentleman, that has been pleaſed to uſe your Name, has neceſſitated it.

Mr. Att. Gen. We aſk you a ſhort Queſtion, Whether you employed Mr. *Braddon* to go to Mr. *Edwards*'s Houſe, or to the Secretary's, or any where elſe to proſecute this matter of your Brother's Death?

Sir *H. Capell.* My Lord, I know very little of Mr. *Braddon*. He was to ſpeak with me twice. The firſt time he took me in very great Diſorder, both as to the Circumſtance of Time and Place, which are ſo tender with me, that truly I cannot expreſs, nor do I very well know what I did ſay, or what he ſaid to me; but the ſecond time he came to me, I do very well remember what I did ſay. And that which I did ſay the ſecond time is the moſt material Thing I have to ſay in the matter. He came to me and ſpake of ſuch a Buſineſs as the Court is well apprized of already, (I hope you will pardon me if I do not repeat it,) I made Anſwer to him, Mr. *Braddon*, I am under great Grief and under a great Burden of Buſineſs in my private Family, whatſoever you have to ſay in the matter, I deſire you would go to a Secretary of State and acquaint him with it. This is the moſt material thing that was ſaid that I remember.

Mr. Att. Gen. But you never employed him to go about to proſecute any ſuch thing?

Mr. Juſt. *Withins.* Sir *Henry*, Pray anſwer me, Did you deſire him to go to *Edwards*'s Houſe and aſk him any Queſtions about it?

Sir *H. Capell.* I know nothing of *Edwards*, nor his Houſe at all.

Mr. *Braddon.* Sir *Henry Capell*, Will you pleaſe to let me aſk you one Queſtion? Do you not remember I came to *Eſſex*-Houſe on the *Monday* Night, and that I came and told you of ſuch a Report, and that I had not been with the Father of the Boy as yet, but if you would then ſend one with me I would go, and in his Preſence examine the Boy, and you, Sir, promiſed me that you would; and whether you did not appoint me to tarry at ſuch a Place, where you promiſed to ſend one to go along with me?

Sir *H. Capell.* My Lord, I have a groſs Idea of that which he ſpeaks of concerning his having one to meet him, and that I told him ſuch an one ſhould meet him, and the Perſon did deſire to be excuſed, and I did excuſe him, and ſo he did not go; upon which this Gentleman Mr. *Braddon* came to me the ſecond time, which was after Dinner, and I directed him to go to a Secretary of State and acquaint him with what he had to ſay in the Buſineſs.

Mr. *Braddon.* Did not you promiſe, Sir, to ſend one to me to go with me, and deſired me to meet at ſuch a Place?

Sir *H. Capel.* I remember no more but what I have ſaid.

Mr. *Braddon.* Upon the Oath you have taken, Sir *Henry Capell*, I deſire you would recollect your Memory, whether you did not promiſe me in the Morning to meet at ſuch a Place, and was not I twice with you that Day?

Sir *H. Capell.* Sir, I know no more.

Mr. Juſt. *Withins.* Do you think Sir *Henry Capell* would forſwear himſelf, Mr. *Braddon?*

Mr. *Braddon.* My Lord, I only deſire him to recollect his Memory.

Sir *H. Capell.* Only I do farther remember, he ſeemed to be very willing to go to the Secretary of State.

Mr. Att. Gen. And if he had acquieſced there he had done very well, and there had been no farther Trouble.

Mr. *Jones.* But that was not the Way he intended, that would not do his Work.

Mr. Sol. Gen. Pray, Mr. *Blathwaite*, do you give my Lord and the Jury an account whether this Information was ever carried before any Juſtice of Peace in order to have it ſworn before him, and the Circumſtance of it.

Mr. *Blathwaite.* My Lord, I do very well remember, when this Information was before the King, and was ſhew'd to Mr. *Braddon*, he there confeſs'd, That he had gone about to find ſome Juſtice of Peace to take it upon Oath. He named Sir *Robert Clayton*, and Sir *John Lawrence*. And I do very well remember, and 'tis upon my Minutes, That he confeſſed that Sir *Robert Clayton*, being aſked by him to take the Information in private, alone without Company, being by Sir *Robert Clayton* refuſed to take it, unleſs he might take it more publickly, and Sir *Robert Clayton* refuſing to take it alone, in private, he would not let him to take it at all, but went away with it. I remember this for Sir *Robert Clayton*, and it may be Mr. *Braddon* may remember the ſame of Sir *John Lawrence*; but I can't tell that.

Mr. Att Gen. My Lord, now we are come to the 20th of *July*, when this Buſineſs was heard before his Majeſty, and the Boy declared it was a Lye, and then he had full notice it was a Lye. But after this Mr. *Speke* and he conſult together, and he muſt be ſent as an Emiſſary into the Country to pick up Informations and Evidences, and with this, and ſome other Informations in his Pocket, to poſſeſs the People, that the Government had murdered my Lord of *Eſſex*. And he muſt be ſent I know not how far, as if the farther he went from *London* the better Intelligence he was like to have of a thing done at the *Tower*. The Juſtice of Peace that took him was ſummoned, but is ſince dead. But we will call the Perſons that were preſent when he was taken, where is Mr. *Beech?* [*He was ſworn.*] Mr. *Beech*, Will you acquaint the Court and the Jury with the manner of apprehending this Gentleman, and what Papers were found about him?

Mr. *Beech.* My Lord, I was preſent when Mr. *Braddon* was apprehended in *Wiltſhire*, and ſeveral Papers were found upon him, and upon Examination he was committed to the County Goal, and from thence removed by *Habeas Corpus* hither up to *London*. I have Copies of all the Papers that were taken about him, which I examined with the Originals. The one was the Copy of a Letter ſent by one *Speke* to Sir *Robert Atkyns*, and there were other Papers in the nature of Informations; another was a Letter to one *Cumpten*, Poſt-maſter at *Frome*. Mr. *Braddon* upon his Examination ſaid, his Buſineſs was to inquire after the Murder of the Earl of *Eſſex*, and that one Mr. *Burgis* had ſent him a Letter to this purpoſe, That it was reported at *Frome* that very Day the Earl of *Eſſex* cut his own Throat, that he had ſo done; the News of which could not ſo ſoon come down thither.

Mr. Att. Gen. Pray ſpeak out, Sir, Tell us what his Buſineſs he ſaid was, and as to the Letters he had about him, tell us what he ſaid?

Mr. *Beech.* He told me, that he had a Letter from one Mr. *Burgis* of *Marlborough*, to go to one *Cumpten* at *Frome*, who is Poſt-maſter there, to inquire about a Report, that it was ſaid was reported in *Frome*, the 13th Day of *July*, the ſame Day the Earl of *Eſſex* murdered himſelf, that he was murdered. Mr. *Braddon* had that Letter about him. I went afterwards to that *Cumpten* at *Frome*, he ſaid, he never heard any thing of it, or that there was any Noiſe of the Earl of *Eſſex*'s Murder, until the *Sunday* following, which was two or three Days after. From thence I went to my Lord *Weymouth*, a Perſon of Quality that lives near *Frome*, and acquainted his Lordſhip with it, and he then ſaid that he had an Account on the *Sunday* of my Lord of *Eſſex*'s Murder, and he believed that was one of the firſt Letters of it that was in the Country.

Mr. Sol. Gen. Are theſe the Papers you found about him, Sir?

Mr. *Beech.* I examined theſe Copies with the Originals, and they were true Copies.

Mr. Att. Gen. Well, put them in.

Mr. *Beech.* Truly, Mr. *Braddon* gave a very ill account of his Journey to thoſe that did examine him.

Mr. Att. Gen. Pray look upon thoſe Papers that are the Originals.

Mr. *Beech.* One Colonel *Airs* was the Juſtice of Peace, before whom Mr. *Braddon* was examined, and by whom he was committed, he is ſince dead, but I do believe this was the Original Letter that was taken about Mr. *Braddon*.

L. C. J. Do you believe that was the Original?

Mr. *Beech.* I do, I have a true Copy of it.

Mr. Att. Gen. Beſides, We will prove it otherwiſe to be Mr. *Speke*'s Hand. It was proved by Mr. *Blathwaite* that Mr. *Speke* upon his Examination did own it; What ſay you, Mr. *Blathwaite?*

Mr. *Blathwaite.* He did own it, and ſaid in theſe Words, as I remember, he believed it to be his Hand.

Mr. Att. Gen. What, that Paper?

Mr. *Blathwaite.* Yes, and I have put my Hand upon it, that it was owned by him.

L. C. J. Read it.

Cl. of Cr. This is ſubſcribed by *Hugh Speke*, and dated *London*, *Lincoln*'s-*Inn*, *Auguſt* 15*th*, 1683, *Wedneſday* Night Ten o'Clock, and directed, *For the Ever Honoured Sir* Robert Atkyns, *Knight of the* Bath, *at his Houſe at* Netherſwell *near* Stow *on the* Old *in* Glouceſterſhire.

‘ *Honoured Sir*,

‘ THE Bearer hereof is one Mr. *Braddon*, a very honeſt Gentleman,
‘ whoſe Father has at leaſt Eight Hundred *per Ann.* in *Cornwall*; It
‘ ſeems it is his Fate to be the only Perſon that follows, and proſecutes
‘ the Murder of the Earl of *Eſſex*, and he has made a very conſiderable
‘ Diſcovery already of it, notwithſtanding the hard Stream he rows
‘ againſt, as things ſtand and are carried on at preſent. But indeed I
‘ think it could never have fallen on ſo fit a Man, for he has been a very
‘ hard Student, and is a Perſon of a very good Reputation, Life and Con-
‘ verſation, and has a great deal of Prudence, and has as much Courage
‘ as any one living whatſoever. He went away on a ſudden hence Poſt
‘ towards *Marlborough* to make ſome farther Diſcovery, and what he has
‘ diſcovered he will give you a full Account, and of all the Tranſactions
‘ hitherto about it. I lent him my man to go with him for fear he ſhould come
‘ to any Miſchief, for moſt here fear he will either be ſtabbed or knock'd on
‘ the head, if he do not take great care of himſelf; ſeeing he came into
‘ theſe Parts, I thought it not amiſs to go and adviſe with you how he had
‘ beſt to proceed in it, and I did charge him not to let any body know who

‘ he was, that it might not be known that he had been with you; for I would not for the World that you ſhould come to any Prejudice in the leaſt for your Kindneſs towards us. For we labour under many Difficulties as the Tide runs at preſent.

‘ Pray call Mr. *Braddon* by the Name of *Johnſon* when he is with you; I have given him the ſame Item. We hope we can bring on the Earl of *Eſſex*'s Murder on the Stage, before they can any of thoſe in the *Tower* to a Trial. He being in great haſte, I have not time to write more, but to aſſure that Mr. *Braddon* is a Perſon of that Integrity and Courage that no body needs fear to truſt him. I was very willing that he ſhould take your Advice in this Caſe which is of ſo great a Moment, ſeeing he came within twenty or thirty Miles or thereabouts of your Houſe. He will give you a full and clear Relation of every thing in that Affair, and how hard they have been upon him. Sir *Henry Capell* told him, that it was a thing too great for him, *&c.* All which Mr. *Braddon* (that you are to call *Johnſon* whilſt he is with you at your Houſe) will give you a true Relation of. Mr. *Braddon* hath been at a great Trouble and Charge already about it; I know few that would have ventured to have undertaken this Affair beſides himſelf, as Times go. I received yours this Day, with the great pains you took, and the Letter to the Lady *Ruſſel*, which finding unſealed, I ſealed, without looking into it, and carried it myſelf: She returns you ten thouſand Thanks, and ſays, ſhe knows not what Return to make you for your moſt extraordinary Kindneſs. I have not time to write any more at preſent, by reaſon that Mr. *Braddon*, alias *Johnſon*, ſtays only for this my Letter.

‘ *I am, Sir, Your moſt obliged Friend and moſt humble Servant,*
‘ Hugh Speke.’

I am writing a Letter to ſend to you by the Carrier.

Mr. Att. Gen. This Gentleman brings in Mr. *Speke* to be the Author of all this Contrivance. But we ſhall prove to you, That at the ſame time this Letter was taken about him, this Gentleman had others that were likewiſe taken. Theſe Examinations, which I deſire may be likewiſe read.

Mr. ——. My Lord, I came lately from Sir *Robert Atkyns*, He is an utter Stranger to all this, he is now in the Country, and knows nothing of it.

L. C. J. If they will uſe his Name, I can't help it.

Mr. ——. My Lord, I would not have any Reflexion upon him, for he knows nothing at all of this matter.

Mr. Sol. Gen. The Letter was never received by Sir *Robert Atkyns*, but taken before it came to him.

Mr. Att. Gen. All the matter is, 'tis an unhappy thing to be thought well of by ſuch ſort of People.

L. C. J. I ſee nothing of Sir *Robert Atkyns* in the Caſe, but only my Name is uſed, and notice is taken of the great Obligations ſome People have to him, for his great Kindneſs to his Friends.

Cl. of Cr. Here is an Information.

L. C. J. Was this found about him too?

Mr. *Beech.* Yes, I believe that is the very Paper, I have no Copy of that Paper, but I well remember the Contents of it.

Mr. Att. Gen. Did you ſign it or mark it?

L. C. J. He may believe it to be without ſigning.

Mr. *Beech.* I preſume Mr. *Braddon* will own it.

Cl. of Cr. the Information of Mrs. *Edwards*, Wife to *Thomas Edwards*, ſaith, ‘ That about 10 of the Clock in the Morning on *Friday* the 13th of this Inſtant *July*, this Informant's youngeſt Son *William Edwards*, aged about 13 Years, came trembling to this Informant, and in great Amazement and Horror told this Informant, that the Lord *Eſſex* had cut his Throat in the *Tower*, and further ſaid, That he the ſaid *William Edwards* in the Morning about nine of the Clock, did ſee a Hand caſt out a Razor out of the ſaid Lord of *Eſſex*'s Lodging Window, which Razor he ſaw on the Ground to be bloody. And the ſaid *William Edwards* was going to take up the ſaid Razor, but before he came to it, there came a Maid running out of Captain *Hawley's* Houſe, where the ſaid Earl of *Eſſex* lodged, and took up the Razor, which ſhe the ſaid Maid forthwith carried into the ſaid Captain *Hawley*'s Houſe, and ſoon after he the ſaid *William Edwards* heard her, as he the ſaid *William Edwards* did believe, cry out Murder. And this Informant further ſaith, That the Subſtance of which the ſaid *William Edwards* hath ſworn in this Information, he the ſaid *William Edwards* on *Friday* laſt did declare to this Informant and her whole Family, ſeveral times atteſting it to be true, and ſeveral times ſince.”

Cl. of Cr. Here is the Information of *William Edwards* ſecond Son of *Thomas Edwards.*

Mr. Att. Gen. That is the ſame with what was read already.

L. C. J. Ay, that is the Boy's Information.

Cl. of Cr. Here is another, 'tis dated *Auguſt* the 8th, 1683. The Information of *Jane Lodeman*, aged about 13 Years, did in the Preſence of theſe, whoſe Names are here underwritten, declare as followeth, ‘ That the ſaid *Jane Lodeman* was in the *Tower* on *Friday* Morning, the 13th of *July* laſt, and ſtanding almoſt over-againſt the late Earl of *Eſſex*'s Lodging Window, ſhe ſaw a Hand caſt out a Razor out of my Lord's Window, and immediately upon that ſhe heard Shrieks, and that there was a Soldier by my Lord's Door, which cried out to thoſe within the Houſe, that ſomebody ſhould come and take up a Razor which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the Houſe, but who took up the Razor ſhe can't tell.”

This is ſubſcribed *John Boom*, and
William Smith.

Cl. of Cr. Here is another Paper *Auguſt* the 8th, 83. Mr. *William Glaſbrooke* does declare, That one *Jane Lodeman*, aged about 13 Years, inhabiting in the ſame Houſe where he the ſaid *William Glaſbrooke* lodged, did on *Friday* the 13th of *July* laſt paſt, between the Hours of 10 and 11 in the Morning, in the Preſence and Hearing of him the ſaid *William Glaſbrooke* declare to her Aunt, ‘ That the Earl of *Eſſex* had cut his Throat, upon which her Aunt was very angry with her, whereupon ſhe the ſaid Girl did declare, that ſhe was ſure of it, for ſhe ſaw him throw the Razor out of the Window, and that the Razor was bloody, and that ſhe heard two Groans or Shrieks (which of the two Words ſhe uſed, he the ſaid *William Glaſbrooke* is not certain); of this he the ſaid *William Glaſbrooke* is ready to make Oath.

‘ This is ſubſcribed *William Glaſbrooke,*
Margaret Smith.”

Mr. Att. Gen. He carried his Stuff about him, it ſeems, wherever he went.

L. C. J. 'Tis Stuff indeed. Good God, what an Age do we live in!

Mr. Att. Gen. It is not taken upon Oath before any Magiſtrate, but cooked up to amuſe the Country, as if they were formal Informations. Here is another Letter, Mr. *Beech*, was this Letter found about him?

Mr. *Beech.* Yes, this Letter was found about him.

Mr. Att. Gen. It is from one *Burgis*, a Man of the ſame Kidney.

Cl. of Cr. This is directed for Mr. *Cumpen*, at the *Dolphin* at *Frome*, and 'tis ſubſcribed *Jeremiah Burgis*, and dated *Marlb. Oct.* 21.

Mr. Cumpen,

M*Y kind Love to you. Theſe are to deſire you to call to mind, that I was in* Frome *the 6th of* July, *being* Friday, *where I heard the Report that the Earl of* Eſſex *had cut his own Throat; I would deſire you to inquire into it, to know who firſt reported it, and give this Gentleman the truth of it. And in ſo doing you will oblige me, who am your Friend,*

Jeremiah Burgis.

Mr. *Beech.* Under favour, my Lord, This Letter talks of a Report that was the 13th Day, the very Day the Earl of *Eſſex* murdered himſelf, I went directly to *Frome* and ſpake with this *Cumpen*, and he told me, he did not ſpeak with *Burgis* nor ſee him, nor was there any ſuch Report before the *Sunday* Morning. From thence I went to my Lord *Weymouth's*, as I told you.

Mr. Att. Gen. My Lord, We have gone through our Evidence for the preſent, to ſhew how this Man has endeavour'd to ſpread this Matter to the Scandal of the Government. We ſhall end here at preſent to ſee how he has improved his Confidence, by what Defence he will make to all this Proof. Afterwards, if there be Occaſion, we ſhall give an Account of the Earl's Death, how he murdered himſelf. And for that we have a Cloud of Witneſſes, though this Gentleman has taken upon him ſo much Confidence as to conteſt it.

L. C. J. That would be very fit, Mr. Attorney, becauſe they have raiſed a Doubt in ſome People's Mind about it.

Mr. Att. Gen. I thought it beſt to reſerve it till after I ſee what Defence he will make.

L. C. J. Take your time.

Mr. *Wallop.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for Mr. *Braddon* and Mr. *Speke*, the Defendants here. You ſee what the Iſſue is before you, Mr. *Speke* and Mr. *Braddon*, they are in the Information charged, That they did Conſpire together to make the People believe, That whereas the Earl of *Eſſex* murdered himſelf, and ſo it was found by the Inquiſition, yet they would have the People believe, that that Inquiſition was taken unduly, and that they did Conſpire to procure falſe Witneſſes to make theſe Things out. Now, Gentlemen, the only Point that you are to enquire of, is this, Whether theſe two Gentlemen did maliciouſly, factiouſly, and ſeditiouſly ſet theſe Things on Foot. This Report that the Earl was murdered, or whether there were ſuch Intimations offered to them accidentally and caſually, without Officiouſneſs, or any of their own ſeeking that might induce a good Man, or a wiſe Man to follow the Buſineſs upon ſuch Information given. For our Parts that are for the Defendants, we ſay this for our Clients, we are not ſo much to make any Men guilty of this Murder, that is not our Buſineſs, but to prove our own Innocency and fair dealing in this matter. Now, Gentlemen, if theſe two Perſons had no Inducement to lead them on to this, but did of their own heads, that is Criminal in them; but if they had that which might induce a wiſe and good Man, though they were much miſtaken, yet they are not to be found Guilty of this Offence that is charged on them. I ſhall leave it, Gentlemen, to you, who I queſtion not have obſerved the Evidence that has been given, and whoſe proper Work it is to make your Judgment upon it. But in our Defence, the Steps we go are theſe, and we deſire you would pleaſe to obſerve them. Firſt, we ſay, That the Report of this Murder was the Day before, two or three Days before, and that very Day, ſo many Miles diſtant from *London*, that hearing of ſuch a Report, we might very eaſily be induced to make ſome Inquiry after it; and of this four Inſtances we ſhall give in the Courſe of our Evidence, that this was a great many Miles off *London* talked of at the Day, and immediately after the Day, before the News could reach thoſe Places, after the Fact committed. Then we ſhall proceed to thoſe Paſſages concerning the Boy, and produce Evidence to ſet forth the true State of that matter, That this Boy, as he ſays himſelf, did tell the Family this Story, that very Day that my Lord murdered himſelf, immediately upon his coming home. Now this Original Story is impoſſible to be contrived by Mr. *Braddon*, be it true or be it falſe. Then Mr. *Braddon* coming into *Eſſex*, to Mr. *Evans*'s Houſe at *Wanſted*, there what was ſaid by the Boy was ſpoken of. Then Mr. *Braddon* finding this Information of the Boy, which he had given merely of himſelf, and which contradicted the Inquiſition, and put him upon this Inquiry. Now how far this Intimation has weight, and may be an Inducement to a good and a wiſe Man, as I ſay, that we muſt leave to you. But beſides that, there is a Girl, a Stranger to the Boy, that at the ſame time, upon the matter, and to this ſame Effect and ſubſtance, delivered ſuch an Evidence, as might very well ſerve to confirm us in our Inquiry, and this is the Courſe of our Evidence, in the Subſtance of it. And we ſhall apply ourſelves to your Lordſhip and the Jury after the Evidence given, and make our Obſervations upon it, and ſubmit it to you, Gentlemen.

Mr. *Williams.* Will your Lordſhip pleaſe to ſpare me one Word, that is an Objection that we would make from the Record itſelf. The Information that does recite, That the Earl of *Eſſex* was impriſoned in the *Tower*, and during his Impriſonment there cut his own Throat, and became *Felo de ſe*. And that there was an Inquiſition taken before ſuch an one, before *Edward Farnham*, Coroner of the Liberty of the *Tower*: My Lord, I was not here when the Inquiſition was read, if I had I ſhould have made the Objection then, but this is that I ſay, if we can falſify that part of the Record, if there be a Miſtake there, that is, if *Farnham* was not Coroner, then they fail in their Proof, and we muſt be found Not Guilty, for ſo it is in the Information.

L. C. J. It is ſaid to be before him as Coroner of the Liberty.

Mr. *Williams*. Yes, my Lord, They recite that he is Coroner, and that the Inquiſition was taken before him as Coroner, and Mr. *Braddon* knowing of it, did thus, and thus.

L. C. J. Why, Is he not Coroner?

Mr. *Williams*. My Lord, I deſire the Inquiſition may be looked into, I cannot go to contradict the Inquiſition, but my Inſtructions only are that he is Deputy-Coroner, and if it be ſo they are miſtaken in their Information.

Cl. of Cr. It is *Coram Edvardo Farnham Coronatore*.

Mr. *Williams*. Then we can't help it. But there are theſe Things that we ſay to it, One Part of the Information is, That we ſhould go about to perſuade the People, that this Inquiſition was not duly taken; another Part is, That we did procure falſe Witneſſes to prove it; now what Proof is offered as to the Matter of perſuading the People, I muſt ſubmit to you, whether it be ſuch as comes up to the Charge in the Information. There is ſome kind of Proof, but what it is, you ſee. Then for the other Matter, which is the procuring of falſe Witneſſes, that, under favour, I think I may affirm, That there is no Proof at all of, That Mr. *Braddon* or Mr. *Speke* did procure falſe Witneſſes. Gentlemen, we ſhall endeavour to acquit ourſelves of all, if we cannot of all, yet of Part, eſpecially that Part which ſeems to be the moſt Criminal. And I muſt needs ſay, I have not heard any Proof of procuring falſe Witneſſes, by either of the Defendants. Then there is a Third Thing charged, and indeed in the Evidence there is ſomething that looks towards it, That he ſhould go about by Papers, and otherwiſe to publiſh it, That he was a Perſon employed to proſecute the Murder of the Earl of *Eſſex*. Now as to this Matter, all I ſhall ſay for Mr. *Braddon* is this, If he have done ſomething more, it may be by a Tranſport of Zeal, than became him, that muſt be ſubmitted how far it is Criminal. If he did what did not become a mighty wiſe and diſcreet Man; yet if he did what became a rational Man of ordinary Capacity to do, if he had this Information, and ſo many other Informations, and he did ſearch innocently a little into it, if he did not do it Seditiouſly and Factiouſly with an ill Mind, we hope there is no ſuch great Harm done. And indeed, Gentlemen, his Mind is to be try'd in this matter. And 'tis an hard matter to try a Man's Mind, *quo animo*, a Man did ſuch an Action; that he did it, there is ſome Sort of Evidence, but if he did it not out of an ill Principle, and with an evil Intention, then, under Favour, we take it he is Not Guilty of this Information. And we ſhall endeavour to make it out thus, This Gentleman hearing of this Report of the Boy, makes his Application firſt to Sir *Henry Capell*, who was a Perſon well known, to be nearly related to this unfortunate Lord, the Earl of *Eſſex*, and he tells him what Information he had received. Sir *Henry Capell* puts him into an excellent Courſe, and deſires him to go and inform the Secretary of Sate, and he did ſo, and if he had gone only this way, all that he had done had been innocent. Then the matter is only this; He has gone a little out of the way, and has taken ſome Informations and Examinations in Writing: Why, though he has gone a Step or two awry, yet if it was with a Deſign to prepare the Matter the better for the Secretary, by laying theſe Papers before him, we hope there is no Crime; if we did it not Seditiouſly, but only with an Intention, That Mr. Secretary might receive a more clear and full Information; I hope the Jury will acquit us.

L. C. J. You ſay well. Come, prove your Mattter.

Mr. *Thompſon*. Call Mr. *Fielder*, and Mrs. *Mewx*, and Mr. *Lewes*.

Lewes appeared.

Crier. Lay your Hand on the Book.

Lewes. My Lord, I deſire my Charges may be paid, before I Swear.

L. C. J. Pr'ythee, what have I to do with thy Charges? I won't make Bargains beween you. If you have any Evidence to give, and will give it, do; if not, let it alone.

Lewes. My Lord, I ſhall not give any Evidence till I have my Charges.

L. C. J. Mr. *Braddon*, If you will have your Witneſſes ſwear, you muſt pay them their Charges.

Mr. *Braddon*. My Lord, I am ready to pay it, I never refuſed it; but what ſhall I give him?

L. C. J. Nay, I am not to make Bargains between you, agree as you can.

Mr. *Thompſon*. My Lord, we are willing to do what is reaſonable. You, *Lewes* What do you demand?

Lewes. He can't give me leſs than Six Shillings a Day.

L. C. J. Why, where doſt thou live?

Lewes. At *Marlborough*.

L. C. J. Why, canſt thou earn Six Shillings a Day by thy own Labour at *Marlborough*?

Lewes. My Lord, I am at Forty Shillings or Three Pound a Week Charge with my Family and Servants.

L. C. J. What Trade art thou?

Lewes. A Stapler.

L. C. J. And does your Trade ſtand ſtill while you are here in Town?

Lewes. Yes, to be ſure it can't go well on.

L. C. J. Well, I ſay that for you, you value your Labour High enough, I know not what your Evidence may be; but, Mr. *Braddon*, you muſt pay your Witneſs, if you will have him.

Mr. *Braddon*. I will, my Lord, very readily. What will you have? I have paid you ſomething already.

Lewes. Give me Twenty Shillings more then. You can't give me leſs.

Then Mr. Braddon *paid him Twenty Shillings, and he was Sworn.*

L. C. J. Well, what do you aſk him, Mr. *Thompſon*?

Mr. *Thompſon*. We aſk him, What Report he heard of the Earl of *Eſſex*'s Death, and when?

L. C. J. What is your Name, Friend?

Lewes. *Lewes*.

L. C. J. Well, what is it you ſay?

Lewes. My Lord, as I was riding up *Huſband*, within three or four Miles of *Andover*——

Mr. *Wallop*. How many Miles is that off of *London*?

Lewes. Fifty-two.

Mr. *Wallop*. Well, go on.

Lewes. Between the Hours of Three and Five, but it is ſo long ago that I cannot exactly tell the certain time; a Man aſked me what News I heard in the Country, I told him, I heard none. Says he, I hear the Earl of *Eſſex* has cut his Throat: It was upon a *Friday* in the Summer, I forget the Day of the Month, I can't tell what Month it was certainly.

Mr. *Thompſon*. What Day of the Week was it?

Lewes. I remember it was upon a *Friday*.

Mr. *Thompſon*. Can't you tell what Month it was?

Lewes. I can't tell what Month it was, it was in the Summer I know.

Mr. *Braddon*. My Lord, I deſire to aſk him a Queſtion.

L. C. J. Do, if you will: Aſk him what you will.

Mr. *Braddon*. Did not you go to *Marlborough* on the *Saturday*?

Lewes. I did go to *Marlborough* the next Day, which was *Saturday*.

Mr. *Braddon*. I deſire to know of him, whether he did meet with the News of it there then?

Lewes. My Lord, as to that, when I came Home, my Neighbours aſked me if I had heard any News? I told them, ſays I, I hear the Earl of *Eſſex* hath cut his Throat. Why when did you hear it, ſay they? I heard it Yeſterday, ſaid I. Said they, it was done but Yeſterday, how could you hear it ſo ſoon? That is all I have to ſay, my Lord.

Mr. *Williams*. By the beſt Conjecture you can make, was it that very Day the Earl of *Eſſex* cut his Throat?

Lewes. I do not know that ever any ſuch Man cut his Throat, but this I heard, and I tell you the Time as well as I can.

Mr. *Williams*. Then pray let us have our Money again.

L. C. J. Thou art well paid, I will ſay that for thee.

Mr. *Williams*. Where is Mr. *Fielder*? Swear him. [*Which was done.*] Pray, Sir, what did you hear, and when, of the Earl of *Eſſex*'s Death?

Mr. *Fielder*. The *Wedneſday* and the *Thurſday* of the ſame Week that the Earl of *Eſſex* cut his Throat, it was reported in our Town of *Andover*, that he had ſo done. The Women, as they came in and out of the Town, talked of it to one another.

L. C. J. What was talked of that *Wedneſday* and *Thurſday*?

Mr. *Fielder*. That my Lord of *Eſſex* cut his Throat in the *Tower*.

Mr. Juſt. *Withins*. What, before he had cut his Throat?

Mr *Fielder*. Yes.

Mr. Juſt. *Withins*. That is very ſtrange indeed.

L. C. J. Lord, what a Story is here!

Mr. *Williams*. My Lord, if you pleaſe, I will tell you what Uſe we would make of it.——

L. C. J. I know what Uſe you would make of it, the Uſe is juſt the ſame, as you make uſe of all ſorts of ridiculous and ſhamming Stories, to ſet us together by the Ears, and rake into all the Dunghills that can be, to pick up Matter to put us into Confuſion.

Mr. *Williams*. But, my Lord, if there was ſuch a Report ſo long before——

L. C. J. Mr. *Williams*, you were here in Town at that time, I am ſure.

Mr. *Williams*. My Lord, I heard it at Eleven o'Clock that Day, that is the ſooneſt I heard it.

L. C. J. What an Age do we live in! What Stuff is here picked up, on purpoſe to kindle the Fire, and ſet us all into a Flame!

Mr. Att. Gen. What Day of the Month was it, *Fielder*, upon your Oath?

Mr. *Fielder*. I did not mind the Day of the Month, I can't tell that.

Mr. Sol. Gen. How do you know it was that Week?

Mr. *Fielder*. Becauſe on the *Saturday* Night that Week, we had the certain News of it.

Mr. Sol. Gen. You ſay ſomebody told you then of it on *Saturday*?

Mr. *Fielder*. Yes, on *Saturday* we had certain News of it.

Mr. Sol. Gen. Who gave you the certain Intelligence?

Mr. *Fielder*. Some Clothiers.

Mr. *Williams*. Was *Gadbury* your Countryman?

L. C. J. Ay, pr'ythee aſk him that, whether *Gadbury* told it him, or *Erra Pater*, if you will.

Mr. Att. Gen. From what Market-People was it reported?

Mr. *Fielder*. Some Women.

Mr. Att. Gen. It was only Women's Stories then?

Mr. *Fielder*. Yes, they talked of it among themſelves.

Mr. Att. Gen. Was it the Forenoon or the Afternoon?

Mr. *Fielder*. The *Wedneſday* and *Thurſday* both, it was the common Talk of the Town all Day long.

Mr. Juſt. *Withins*. Name one that ſpake it to you.

Mr. Att. Gen. Ay, name one of any Credit, if you can.

Mr. *Fielder*. I cannot, it was the Women as they came in and out of my Shop, and as they went up and down the Town.

Mr. *Wallop*. My Lord, we leave it with your Lordſhip and the Jury. He ſwears he then heard ſuch a Report.

Mr. Juſt. *Withins*. Do you believe this, Mr. *Wallop*, yourſelf? You are a Man of Ingenuity, I appeal to you.

Mr. *Wallop*. I believe that Mr. *Braddon* in his Proſecution of this Matter, went upon the ground of this Report, for he had heard the like Evidence was given in my Lord *Stafford*'s Trial, about the News of Sir *Edmundbury Godfrey*'s being killed, before it was known here what was become of him, and that perhaps miſled him, if he be miſled.

Mr. Juſt. *Withins*. Do you believe that this Man can ſpeak Truth, when he ſays it was reported all about their Town, for two Days before it was done, and yet can't name one Perſon that ſpake it?

Mr. *Fielder*. I keep a publick Shop, and don't take notice of every one that comes in and out, to remember particularly.

Mr. Juſt. *Withins*. You heard it up and down the Town you ſay, ſurely you might remember ſomebody.

Mr. *Wallop*. He might hear it, and not take notice of one, but it was the common Fame at *Andover*.

Mr. *Williams*. Let it go as it will. Your Lordſhip and the Jury hear what he ſays——

L. C. J. But, under Favour, Mr. *Williams*, it ought not to paſs ſo eaſily; 'tis a Contrivance to deceive the King's Subjects, and ſhews a Deſign to pick up Evidence to amuſe the unwary, and fill their Heads with Fears and Jealouſies of I known not what.

Mr. *Wallop*. My Lord, I would excuſe my Client from Malice as well as ever I can, and therefore we produce theſe Witneſſes, to ſhew what grounds he had for what he did.

Mr. *Williams*. We will next call ſome Women that live near the *Tower*, that might give him ſome occaſion for his concerning himſelf in this Buſineſs, *Jane Lodeman*, and *Margaret Smith*. This Voice and Rumour in the Country, made him to go into the Country, but it ſhews he was no Contriver of the Report.

Mr. Att. Gen. I would fain know of *Fielder*, when he told Mr. *Braddon* of this?

Mr. *Braddon*. My Lord, I deſire the Family of the *Edwards* may be called.

L. C. J. Name them, Who are they? How can we tell who your Witneſſes are?

Mr. *Braddon*. Crier call them, Mrs. *Edwards* and her Daughter. Will your Lordſhip give me leave to make my own Defence?

L. C. J. Ay, if you will, but then take notice your Counſel are diſcharged from making any Defence for you.

Mr. *Braddon*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Theſe were the Inducements following, that put me upon engaging in this Matter.——

Mr. Att. Gen. Call your Witneſſes firſt, and then ſpeak.

Mr. *Braddon*. Mr. *Edwards*, and Mrs. *Edwards*. [*Who came into Court.*

Mr. Juſt *Withins*. Pray, Mr. *Braddon*, anſwer me this one Queſtion. What was the Matter that encouraged you to proceed after you knew the Boy had denied it, and ſaid it was all a Lye?

Mr. *Braddon*. I was bound to anſwer to an Information after I had been examined at the Council; I had not otherwiſe ſtirred in it again.

L. C. J. Well, What do yo aſk *Edwards?*

Mr. *Braddon*. What Day was the firſt Day I ſaw you, and had Diſcourſe with you, and what was the Diſcourſe I had with you?

Mr. *Edwards*. It was the Seventeenth of *July*.

Mr. *Braddon*. What did you tell me then that your Boy reported?

Mr. *Edwards*. I told you what I acquainted the Court withal before, that the Boy had brought Home ſuch a Report.

Mr. *Braddon*. Had the Boy ever denied it before I ſaw you?

Mr. *Edwards*. That Day you came to ſpeak with me about it, as I was informed by my Wife and my Daughter, the Boy did deny it.

Mr. *Braddon*. Was it before I came, or after I came that he denied it?

Mr. *Edwards*. It was after you came.

Mr. *Braddon*. What were the Inducements that made him to deny it.

L. C. J. He tells you himſelf, becauſe it was falſe.

Mr. *Braddon*. I deſire the elder Siſter *Sarah Edwards* may be called.

Mr. *Wallop*. It is apparent the Boy did affirm it———

L. C. J. I thought Mr. *Braddon* would have made his Defence himſelf, Mr. *Wallop*, but you will be breaking in upon him with your Rêmarks. Make your Remarks by and by, this is a Time for Evidence.

Mr. *Wallop*. My Lord, I only ſay this, 'Tis apparent the Boy did firſt affirm it, and we ſhall ſhew how he came to deny it.

L. C. J. 'Tis not proper for you to make Remarks, when you are examining your Witneſſes; but when you ſum up, You may take what Notes you will, and reſerve them 'till that time, but do not break in upon the Evidence.

Crier. Here is *Sarah Edwards* now. [*Who was ſworn.*

Mr. Att. Gen. This is not the Siſter, this is the Mother of the Boy.

L. C. J. Well, what do you aſk her?

Mr. *Braddon*. What Diſcourſe had you with your Boy about Ten of the Clock that *Friday* Morning I met you?

Mrs. *Edwards*. I had no Diſcourſe, but what my Child told me.

Mr. *Braddon*. What did your Child tell you?

Mrs. *Edwards*. I gave an Account to my Lord-Keeper, he had it in Writing, I gave him an Account in Writing.

Mr. *Braddon*. But you are now called upon your Oath, and are to ſpeak the Truth, and muſt give an Account to his Lordſhip and the Jury upon your Oath, what it was the Boy told you?

Mrs. *Edwards*. What was it, Sir, he came and told me? Why, the Boy told me, Mother, ſays he, I have been at the *Tower*, and ſeen the King's Majeſty, and his Hoyal Highneſs, and, ſays he, the Earl of *Eſſex* has cut his Throat; and Lord, Mother, ſays he, and wept. Lord, Child, ſaid I, I am afraid you are going to make ſome Excuſe to me, that I ſhould not beat you, being you have play'd Truant; no, Mother, ſays he, I did not. He continued in this for a little while, and then afterwards did deny it.

Mr. *Braddon*. What did he deny?

Mrs. *Edwards*. What he had ſaid to me.

Mr. *Braddon*. Did he deny that he had been at the *Tower?* Or that the Earl of *Eſſex* had cut his Throat?

Mrs. *Edwards*. No, he denied what he ſaid he ſaw.

Mr. *Braddon*. What was that?

Mrs. *Edwards*. He ſaid, He ſaw an Hand out of a Window, and a Razor fell down, and he went to take it up, and there came out a Woman, or a Maid, a ſhort fat Woman came out, and took it up, and went in again.

Mr. *Wallop*. And he ſaid this crying and weeping you ſay?

Mrs. *Edwards*. Yes, he did ſo.

Mr. *Braddon*. Did he deny it before ſuch time as I had been there?

Mrs. *Edwards*. No, you was once at my Houſe before, and ſpake to my Huſband, and then you came the ſame Day again.

Mr. *Braddon* Pray, what was the Diſcourſe your eldeſt Daughter had with the Boy between the time of my firſt coming, and the time of my ſecond coming?

L. C J. 'Tis impoſſible for her to anſwer any ſuch Queſtion, what Diſcourſe two other People had.

Mr. Att. Gen. Bring the Daughter herſelf, and let her tell.

L. C. J. Hark you, Mrs. *Edwards*, before you go. The Boy denied it, it ſeems, in two or three Days after he had given out ſuch a Report?

Mrs. *Edwards*. Yes, my Lord he did.

L. C. J. How came he to deny it?

Mrs. *Edwards*. I will tell you how, When this Gentleman came and acquainted my Huſband with his Buſineſs, it put us all into a great Damp; and my Huſband ſaid, Now both my Boys were gone to School, and ſays he, after the Gentleman was gone, to my Daughter *Sarah*, Don't you ſay any thing to your Brother when he comes in, but let him alone, and we will talk to him. So with that ſhe was ſo grievouſly affrighted, and ſo amazed, that as ſoon as he came in, ſhe ſaid, prythee, *Billy*, deal truly, and don't you tell any Lye to ſave your Breech, for here has been a Gentleman to inquire ſomething about what you ſaid; why, Siſter, ſays he, will any thing of Harm come? Truly, Child, ſays ſhe, I don't know; and upon that he did deny it.

L. C. J. Did you tell Mr. *Braddon* he had denied it?

Mrs. *Edwards*. He was told he had denied it.

L. C. J. Did you tell Mr. *Braddon*, before the Paper was ſigned, that he did deny it?

Mrs. *Edwards*. Yes, my Lord, he knew that before the Paper was ſigned.

Mr. *Braddon*. Mrs. *Edwards*, Did not the Boy come to you, and cry out, he ſhould be hang'd, and then did deny it?

Mrs. *Edwards*. Yes, that he did.

Mr. *Braddon*. From whence did he come, that he was in ſuch a Fright?

Mrs. *Edwards*. I can't tell that, Sir.

Mr. *Braddon*. Did not your eldeſt Daughter chide him and threaten him?

Mrs. *Edwards*. Yes, ſhe did bid him ſpeak the Truth.

Mr. Att. Gen. And then he denied it?——Mrs. *Edwards*. Yes.

L. C. J. Ay, ſays ſhe to him, *Billy*, do not, to ſave thy Breech, tell a Lye, but ſpeak the Truth; why then, ſays he, the Truth of it is, there was no ſuch Thing.

Mr. *Braddon*. My Lord, ſhe ſays it was after his Siſter had chid and threatned him.

Mr. Sol. Gen. You are a little too fierce upon the Woman, Mr. *Braddon*, you do not obſerve what ſhe ſays.

L. C. J. Yes, he is wonderful zealous, flouriſhing his Hands——

Mr. Sol. Gen. She ſays, the Daughter did tell the Son that he muſt ſpeak the Truth, and not tell a Lye to ſave his Breech, for there had been a Gentleman to inquire about it; Why, ſays the Boy, will there come any harm of it? I don't know, ſays his Siſter; Why then, ſays he, I tell you the Truth, there was no ſuch thing.

L. C. J. Ay, when ſhe engaged him to tell the Truth, and not tell a Lye to ſave his Breech, then the Truth comes out.

Mr. *Braddon*. Pray call *Sarah Edwards* the Daughter. My Lord, they told me in the Houſe that ſhe had frighted him into a Denial.

L. C. J. Pray, good Sir, how came you to be a Juſtice of Peace, and to turn Examiner? You live in the *Temple*, or belong to the *Temple*, how come you to take Examinations here in *London*, but that ſome People are ſo very zealous and officious in Matters that concern them not, on purpoſe to raiſe a Duſt?

Then Sarah Edwards *the Younger was ſworn.*

Mr. *Braddon*. Did not your Brother deny what he had ſaid by your means?

L. C. J. Pray, aſk a fair Queſtion.

Mr. *Braddon*. Miſtreſs, Pray tell your Knowledge of what the Boy declared?

L. C. J Ay, ay, Tell what you know, what your Brother ſaid concerning his ſeeing a Razor, and his denying of it afterwards. Tell all from the Beginning to the End, and tell Truth in God's Name, and nothing but the Truth. We deſire the Truth may come out, let it be of which Side it will.

Sarah Edwards. My Brother came home, and ſaid he had been at the *Tower*, and that he had ſeen His Majeſty and His Royal Highneſs, and the Earl of *Eſſex* had cut his Throat, and that he ſaw an Hand fling a Razor out of a Window, and that a Maid, or a Woman, came out and took it up, and went in again, and preſently after he heard a Noiſe of Murder cried; ſo I knowing he was very apt to tell Lies, I did not believe it.

Mr. *Braddon*. Pray, Miſtreſs, Did you prevail with him to deny it afterwards?

L. C. J. You are ſo wonderful full of Zeal and Heat in this Matter, you cannot let your own Witneſſes tell their own Story, but you muſt interrupt them. You have been bred to the Law, and you have been before here preſent, I ſuppoſe, at many Trials, and what Pretence can you have to be more indulged in an extraordinary way of Proceeding than others? 'Tis not for the Integrity of your Converſation, I am ſure, that you ought to have it, but only becauſe you have more Impudence.

Mr. *Braddon*. My Lord, I have nothing of Confidence, but what is grounded upon Innocence.

L. C. J. I tell you, you are too confident, and pray know where you are, and behave yourſelf as you ought.

Mr. *Braddon*. My Lord, I hope I do no otherwiſe.

L. C. J. We muſt give ſuch Liberty and Toleration becauſe of the Extravagance of his Confidence, as to let him break in upon all Rules and Methods. When you behave yourſelf as you ought to do, the Court will indulge you, and give you all juſt Liberty; but don't expect for your Zeal ſake, and the flinging of your Hands, to do what you liſt. Go on, Miſtreſs.

Sarah Edwards. So Sir, this Mr. *Braddon* came on *Tueſday* following, about one or two of the Clock, and aſked for my Father, and coming, my Siſter *Mary* went to the Door, and called my Father out to him. When my Father came to him, he told my Father he came from Sir *Henry Capell*, and the Counteſs of *Eſſex*, to know the Truth of my Brother's Report. So my Father told him the Boy had reported ſuch a thing, but he would not aſſert he Truth of it, for he had been informed by us that the Boy was apt to tell Lies to excuſe his playing Truant; ſo the Child was gone to School when Mr. *Braddon* came, and when he came home from School they went to the Child; ſaid I, *Billy*, will you be ſure to tell me the Truth of this Report; why Siſter, ſaid he, will any Harm come of it? Nay, ſaid I, I do not know, for there has been a Gentleman to enquire about it. So then the Child denied it.

L. C. J. Did he know this before he made the Boy ſign the Paper?

Sarah Edwards. Yes. This was on the *Tueſday* after Mr. *Braddon* had been firſt there. And I ſpake to him, ſaid I, *Billy*, ſay nothing but the Truth, be ſure, and don't tell a Lie to ſave your Breech. So, Sir, as ſoon as ever the Child denied it, Mr. *Braddon* came in again the ſame Day, and coming in found us, my Mother and all of us, daunted hearing the Boy deny it; but he aſked the Child and bid him ſpeak the Truth, and told him it was a dreadful thing to be Liar, and bid him read the 5th of the *Acts*, telling him he would find there two were ſtruck dead for telling of a Lye, and ſeveral other ſuch Expreſſions that I cannot remember. Upon *Wedneſday*, about Noon, he comes again, and then my Brother did own it again, and he writ down what the Boy owned, and went away, ſaying he would go to Sir *Henry Capell* and the Counteſs of *Eſſex*. And on *Thurſday*, he comes again and brings a Paper written over again, not the ſame he writ at our Houſe, and then the Child ſet his Hand to it. The Child was ſomething unwilling, ſo ſays he to him, It will be no harm to you, if any Danger does come of it, it will come to me and not to you.

L. C. J. The Child was unwilling to ſign it you ſay, but by his Perſuaſion?

Sarah Edwards. Yes, Mr. *Braddon* told him it would be no Harm to him, all the Harm would come to himſelf.

Mr. *Braddon.* When the Child had owned to me what he firſt ſaid, and upon your ſaying that he denied it, I aſked him the reaſon why he denied it? pray will you tell what Anſwer he made to that Queſtion. Pray tell the Truth, and nothing but the Truth.

Sarah Edwards. Upon my Word, Sir, I can't recollect that.

Mr. *Braddon.* Pray Miſtreſs, what Anſwer did he make?

Sarah Edwards. I have told you what I know, to the beſt of my Remembrance.

Mr. *Braddon.* Did not you hear your Brother run to his Mother, and cry out, I ſhall be hanged?

Sarah Edwards. Yes.

Mr. *Braddon.* What was the reaſon of his crying out ſo?

Sarah Edwards. Why, the Child had that Fear and Dread upon his Spirits, knowing it was a Lye, I ſuppoſe, he told.

Mr. *Braddon.* What was the Reaſon of his Fear?

L. C. J. She tells you, It was the Falſhood of the Story.

Mr. *Wallop.* Miſtreſs, Did not you tell him, that his Father would be in danger of loſing his Place?

Sarah Edwards. Yes, Sir, we did.

Mr. *Wallop.* Did you tell him, the King will hang your Father if you do not deny it?

L. C. J. Why have you a mind to have it believed that it was true, then, Mr. *Wallop*?

Mr. *Wallop.* My Lord, the Boy beſt knows that.

L. C. J. But do you believe that if it had been true, that the King would hang his Father, or turn him out of his Place if he did not deny it, as tho' the King would force People to deny the Truth?

Mr. *Wallop.* My Lord, I do not ſay nor believe any ſuch thing.

L. C. J. But your Queſtion ſeems to carry it ſo.

Mr. *Wallop.* My Lord, I aſk the Queſtion of her, whether ſhe did not ſay ſo to him. I aſk Queſtions according to my Inſtructions.

L. C. J. Nay, Mr. *Wallop*, be as angry as you will, you ſhan't hector the Court out of their Underſtandings. We ſee plainly enough whither that Queſtion tends. You that are Gentlemen of the Robe, ſhould carry yourſelves with greater Reſpect to the Government, and while you do ſo, the Court will carry themſelves as becomes them to you.

Mr. *Wallop.* I refer myſelf to all that hear me, if I attempted any ſuch thing as to hector the Court.

L. C. J. Refer yourſelf to all that hear you, refer yourſelf to the Court; 'tis a Reflection upon the Government, I tell you your Queſtion is, and you ſhan't do any ſuch thing while I ſit here, by the Grace of God, if I can help it.

Mr. *Wallop.* I am ſorry for that, I never intended any ſuch thing, my Lord.

L. C. J. Pray behave yourſelf as you ought, Mr. *Wallop*, you muſt not think to huff and ſwagger here.

Mr. Juſt. *Withins.* Mr. *Braddon*, You hear what the Reaſon was of his crying out ſo. She ſaid he was afraid becauſe he knew he had told a Lye.

Mr. *Wallop.* Pray, Miſtreſs, who told him the Family would be ruined by it?

Mr. Juſt. *Withins.* Mr. *Wallop*, I aſked this Gentlewoman, whether ſhe did ſay it, and ſhe ſaid ſhe could not tell.

Sarah Edwards. Indeed I cannot tell, my Lord.

Mrs. Edwards. She did indeed ſay ſo, my Lord.

Mr. *Wallop.* Pray let it go, my Lord, as it is, what was it ſhe ſaid? Did ſhe ſpeak about turning her Father out of his Place?

Mrs. *Edwards.* I cannot ſay that, but ſhe ſaid, when the Boy aſked whether there would be any harm by it, ſhe could not tell, but it may be her Father and Family might be ruined.

L. C. J. And is not this a Reflection upon the Government, to ſay the King would ruin any one if they did not tell a Lye?

Mr. *Wallop.* My Lord, for a falſe Report he might be ruined, but it ſeems upon this ſaying he did deny it.

Mr. Juſt. *Withins.* Was there a Word ſaid of his being turned out of his Place?

Mrs. *Edwards.* I cannot ſay there was.

L. C. J. No, not a Word, but only Mr. *Wallop* is ſo impetuous in the worſt of Cauſes.

Mr. *Wallop* I am in the Judgment of the Court, whether I do any thing but what becomes an Advocate for his Client, according to my Inſtructions.

L. C. J. Yes, you are ſo, and ſhall know that you are under the Correction of the Court too.

Mr. *Wallop.* My Lord, I know where I am.

L. C. J. Ay, you know well enough, but you would do well to carry yourſelf as you ſhould do.

Mr. *Wallop.* With humble Submiſſion, my Lord, I appeal to all that hear me.

L. C. J. Appeal to whom you will, I know the Buſineſs of the Bar is to appeal to the Court.

Mr. Juſt. *Withins.* What is the Matter with Mr. *Wallop*, that makes him ſo earneſt in this Cauſe?

L. C. J. There is ſuch an Heat in this Cauſe, I wonder whence it ſhould come, I am ſure 'tis not from the Honeſty of it.

Mr. *Braddon.* Young Mrs. *Edwards*, If I ſuffer any thing by reaſon of the falſity of your Teſtimony, it will return upon you.

Sarah Edwards. Sir, I do tell you all I know.

Mr. *Braddon.* Then I deſire you to anſwer me this Queſtion, Whether or no when the Boy did own what he firſt ſaid, and I aſked him the reaſon of his Denial whether the Falſity of the thing, or Fear cauſed him to deny it, did not he ſay it was Fear through your Diſcouragements and Threatenings?

Sarah Edwards No, he did not ſay it, did he, Mother?

L. C. J. Why, we are got into a way of appealing and appealing, here is appealing to the People, and appealing to the Witneſs; pray keep to the Buſineſs, and within the Bounds of Decency. Before ſuch time as the Boy denied it, did you deſire him to ſpeak Truth?

Sarah Edwards. Yes, I did.

Mr. *Thompſon.* And when Mr. *Braddon* examined him, did he deſire him to ſpeak Truth?

Sarah Edwards. Yes, he did.

L. C. J. But he knew before he examined him that he had denied it, did not he?

Sarah Edwards. Yes, the ſecond time before he came into the Houſe.

Mr. *Braddon.* I deſire the old Gentleman may be aſked this Queſtion.

Mr. *Thompſon.* Call Mr. *Edwards* again.

L. C. J. The Spirit of the Client was got into the Counſel I think juſt now, and now 'tis got into the Client again. 'Tis an hard matter to lay it, I perceive.

Mr. *Wallop.* My Lord, I am here of Counſel for Mr. *Braddon*, and I only aſk Queſtions as they are in my Breviate.

L. C. J. But, Sir, if you have any thing in your Breviate that reflects upon the Government, you ought not to vent it, nor ſhan't be permitted to vent it as long as I ſit here.

Mr. *Wallop.* My Lord, with Submiſſion, I hope I never did, nor never ſhall let any ſuch thing come from me.

L. C. J. Nay, be as angry, or as pleaſed as you will, 'tis all one to me, you ſhall not have liberty to broach your ſeditious Tenets here.

Mr. *Braddon.* Mr. *Edwards*, Pray will you anſwer this Queſtion? Did not your Son, when he was aſked why he denied it, ſay that it was Fear and Diſcouragement, through his Siſter's Threats, was the Cauſe? Pray ſpeak the Truth.

Mr. *Edwards.* I cannot tell whether the Child did ſay ſo, ſomething of that Nature he did ſay.

Mr. *Thompſon.* Call *Anne Burt.*

L. C. J. We have got ſuch ſtrange kind of Notions, now-a-days, that forſooth Men think they may ſay any thing becauſe they are Counſel. I tell you Mr. *Wallop*, your Queſtions did reflect upon the Government, as tho' the King had a mind to turn a Man out of his Employment, if he did not ſwear a Falſity. What can be a greater Reflection than that? But all the matter is, what has been done muſt be avouched and juſtified, though it be never ſo ill. But we plainly ſee through all. This was the Deſign from the beginning, the King and the Duke of *York* were in the *Tower* at that time, and it muſt be thought and believed that they had deſigned this Matter, and ſo then all People muſt be ruined in caſe they would not ſay the Earl murdered himſelf, tho' indeed others had done it.

Mr. *Wallop.* Mr. *Edward;* did not delight to have ſuch a Report, as might create Trouble, firſt come out of his Houſe.

Mr. *Braddon.* My Lord, As to the making ſuch an Inference, or any Reflection as your Lordſhip mentions, I am as far from it as any body here.

L. C. J. We muſt give a wonderful deal of Countenance to ſuch barbarous and horrid Practices, and I warrant you muſt ſuffer the Government to be reflected upon at the will and Pleaſure of every Man. No, let us hear the Truth, but not in the face of a Court permit Men to aſperſe the Government as they pleaſe by aſking ſuch Queſtions.

Mr. Att. Gen. And the Witneſſes ſay nothing to it neither.

L. C. J. No, nothing at all like it, but 'tis Aſperſion for Aſperſion ſake. And we muſt ſit ſtill and hear it.

Mr. *Wallop.* My Lord, I think 'tis for the Honour of the Government to have all things fairly enquired into.

L. C. J. And 'tis for the Honour of all Courts of Juſtice not to ſuffer Reflections upon the Government, let them be by whom they will. And in Gentlemen of the Bar 'tis worſe than others.

Mr. Juſt. *Withins.* Truly, I do not ſee where there is any countenance for aſking ſuch a Queſtion.

L. C. J. No, but ſome People are ſo wonderful zealous——

Mr. *Wallop.* My Lord, Zeal for the Truth is a good Zeal.

L. C. J. It is ſo, but Zeal for Faction and Sedition, I am ſure is a bad Zeal. I ſee nothing in all this Cauſe but Villany and Baſeneſs. And

I believe

believe no Man that has heard it, but will readily acknowledge that it appears to be an untoward malicious ugly thing, as bad as ever I heard ſince I was born, on purpoſe to caſt an Indignity upon the King and Government, and ſet us all in a Flame.

Then Anne Burt *appeared, and was ſworn.*

Mr. *Braddon*. Mrs. *Burt*, I deſire to know what Diſcourſe you had with Mrs. *Edwards*, and that Family?

Mr. Att. Gen. I beg your Pardon for that, here Mrs. *Edwards* is herſelf to tell what ſhe has ſaid.

Mr. *Braddon*. I deſire to know what Diſcourſe ſhe had with any of the Family?

Mrs. *Burt*. I went to make a Viſit to Mrs. *Edwards*, and I had not been there half an Hour but in comes this Gentlemen; now I had aſked no Queſtions about the Buſineſs, but in he comes and deſired to ſpeak with Mrs. *Edwards*; Mr. *Edwards* was called, and when he came in with Mr. *Edwards*, the Gentleman ſat down in the Room, and told Mr. *Edwards* he had heard a Report of ſomething his Son had ſpoken, but he deſired to have it from his Son's own Mouth, and the Boy was called in, (this is a real Truth, Sir, for I do not know whether I may ſtir from this Place where I am alive or no;) And when the Boy came in, the Gentleman ſaid to him, if it be true that you have reported, own it; if not, do not own it; for, ſaid he, it is a dreadful thing to be found in a Lye, I would have you read the 5th Chapter of the *Acts*, where a Man and a Woman were ſtruck dead for telling a Lye. Sir, ſaid the Boy, 'tis true, and what I ſaid I will ſpeak it before any Juſtice of Peace in the World. And then he aſked him what he had reported, and the Boy made a Repetition of what he had ſeen and ſaid before, that he went into the *Tower* and came to the firſt Row of Houſes that goes along. And at the firſt Houſe he ſaw nobody look out at the Window, nor at the ſecond Houſe, but he looked up at the third Houſe, and he took his Hand and ſhewed thus, ſaid he, I ſaw a Man's Hand he did not ſay, but an Hand throw a Razor out, of this faſhion, and he imitated it with his Hand. Said the Gentleman, was it not the wrong Window, or the wrong Houſe? I will not take the thing upon this Credit, take your other Brother down, that was a bigger Boy than this, and, ſays he, go down to the Houſe, and ſhew your Brother the Window where you ſaw this. The two Boys went down, and he ſhew'd his Brother the Place where he ſaw the Hand——

L. C. J. Were you preſent at his ſhewing?

Mrs. *Burt*. Will your Lordſhip pleaſe to give me leave——

L. C. J. And pray give me leave too. I aſk you, Were you preſent? For you tell it as if you knew it yourſelf.

Mrs. *Burt*. Both the Boys came up and ſaid ſo.

L. C. J. You ſhould have ſaid ſo then, that they told you it, for you are upon your Oath, and muſt affirm nothing but your own Knowledge.

Mrs. *Burt*. If I do miſplace my Words I cannot help that——

L. C. J. You miſplace your Evidence, Woman, you muſt not ſwear that to be true, that you don't know to be true.

Mrs. *Burt*. My Lord, I heard what I ſay with my own Ears.

L. C. J. But you talk of a thing you did not ſee with your own Eyes, as if you had ſeen it.

Mrs. *Burt*. I beg your Pardon, my Lord, I can't tell how to place my Words ſo exactly.

L. C. J. I care not how thou placeſt thy Words, tell thy own Knowledge.

Mrs. *Burt*. I tell what is Truth, what I heard and ſaw; for, ſaid Mr. *Braddon*, I believe it was not the right Window, when the Boy came up and ſaid he had ſhewed the Window. And this Gentleman, I cannot hit his Name right, (he is a Stranger to me) he and Mr. *Edwards* went down with the Boy, to ſee whether it were the right Window of the Houſe where my Lord died (which where it is I cannot tell any otherwiſe than has been reported, or whether there be one Room or two of a Floor I don't know;) and when he came up again he called for a Sheet of Paper, that he might write from the Boy's Mouth, and that he might not differ one Word from what the Boy had ſaid himſelf. And when I ſaw Mr. *Braddon* begin to write I went away, for I thought it may be the Gentleman might expect I ſhould ſet my Hand to it as a Witneſs, and I did not deſire any Trouble.

Mr. *Braddon*. I deſire this Queſtion may be aſked her, my Lord, Do not you remember it was ſaid the Boy denied it?

Mrs. *Burt*. Yes, it was ſaid, the Boy did deny it.

Mr. *Braddon*. What did his Siſter ſay was the reaſon of his denying it?

Mr. *Thompſon*. Ay, what did you hear the Siſter ſay?

L. C. J. I told you before, that was no Evidence what another body did ſay.

Mr. *Wallop*. Miſtreſs, The Boy denied it, for what Reaſon?

Mrs. *Burt*. Becauſe his Siſter, as his Mother told me, had been talking to him.

L. C. J. As his Mother told you, prithee, Woman, ſpeak your own Knowledge, and not what another body told thee.

Mrs. *Burt*. Pray, give me leave, my Lord—

L. C. J. I tell thee, I will not give the leave to ſay what thou ſhould'ſt not ſay.

Mrs. *Burt*. I heard his Siſter ſay—

L. C. J. It is not Evidence if thou didſt hear never ſo many People ſay it.

Mrs. *Burt*. My Lord, I ſpeak nothing but the Truth.

L. C. J. Shall we allow that in this Caſe for Evidence that we allow in no other Caſe, for what Reaſon, pray? I do not ſee it deſerves any ſuch extraordinary Favour.

M. Juſt. *Withins*. Mr. *Wallop*, we muſt not hear what another ſaid, that is no Party to this Cauſe. You know it is no Evidence, therefore do not preſs it.

Mrs. *Burt*. My Lord, I have done, if that will ſatisfy you.

L. C. J. Prithee, ſatisfy thyſelf, good Woman.

Mrs *Burt*. My Lord, I have done. I come here to ſpeak the Truth, and ſo I do.

L. C. J. Nay, prithee be not ſo full of Tattle, ſo full of Clack.

Then a little Girl came into Court.

L. C. J. What Age is this Girl of? How old art thou, Child?

Girl. I was 13 laſt *Saturday*.

L. C. J. Do you know the Danger of telling a Lye?

Girl. Yes.

L. C. J. Why, What will become of you if you tell a Lye?

Girl. The Devil will have me.

L. C. J. Give her her Oath. What is thy Name, Child?

Girl. Jane Lodeman.

Then ſhe was ſworn.

L. C. J. Child, do not be afraid of any thing in the World, but only of telling any thing but what is true; be ſure you do not tell a Lye, for if, as you ſay, you ſhall be in Danger of Hell-fire by telling a Lye, much more will you be in danger if you ſwear to a Lye. Now, what do you aſk her?

Mr. *Braddon*. What did you ſee in the *Tower* that Morning the Earl of *Eſſex* died?

Lodeman. I ſaw a Hand out of a Window, but I cannot tell what Window it was, but it was a Hand throw out a Razor.

Mr. *Braddon*. And what did you hear after that?

Lodeman. I can't well remember, but it was either two Shrieks or two Groans that I heard preſently after.

L. C. J. What time of the Day was it, Child?

Lodeman. It was between nine and ten of the Clock.

L. C. J. Who was with you beſides yourſelf there?

Lodeman. There were more beſides me, but they went away.

L. C. J. Who were they, Child?

Lodeman. A great many that I did not know.

L. C. J. And how came you to take notice of it?

Lodeman. And there was a Coach ſtood juſt at the Door.

L.C.J. Tell us ſome of them, Child, and that were there beſides thyſelf, ſpeak the Truth, be not afraid. Thou ſay'ſt a great many People were there, and all the People muſt neceſſarily ſee it.

Lodeman. They were People I did not know.

L. C. J. But they all ſaw it as well as you?

Lodeman. So I ſuppoſe they did.

L. C. J. And you heard a Shriek or two, you ſay?

Lodeman. Two Shrieks or two Groans, I can't well remember which.

L. C. J. How high was the Window?

Lodeman. Not above one pair of Stairs high.

L. C. J. How high from the Ground might it be?

Lodeman. Not above one Story.

Mr. *Thompſon*. Where-abouts in the *Tower* was it?

Lodeman Sir, it was as you go upon the Mount.

Mr. *Wallop*. Whoſe Lodging do you think it was?

Lodeman. I did not know whoſe it was, but Folks ſaid it was the Earl of *Eſſex*'s.

L. C. J., Who did you tell this to?

Lodeman. I told no body till I came to my Aunt, and I told her.

L. C. J. What is her Name?

Lodeman. *Margaret Smith.*

L. C. J. Did you ever tell this to that Man?

Lodeman. Yes, afterwards I did.

L. C. J. How came he to enquire of you about it?

Lodeman. He came and aſked me, and I could not deny it.

L. C. J. Ay, but how came he to aſk you?

Lodeman. There was a Gentlewoman that was at our Houſe, and ſhe heard of it, and ſpake of it at a Gentlewoman's at Dinner, and ſo he came to our Houſe to enquire about it.

L. C. J. Who is that Gentlewoman? What is her Name?

Lodeman. *Suſan Gibbons.*

L. C. J. Let me ſee the Information of this Girl, that Mr. *Braddon* had taken?

Cl. of Cr. Yes, my Lord, there it is.

L. C. J. Do you know my Lord of *Eſſex*'s Lodgings?

Lodeman. They ſaid it was his.

L. C. J. Did you know it of your own Knowledge?

Lodeman. No, Sir, I did not.

Mr. *Thompſon*. Pray what became of the Razor that was thrown out of the Window, after it was thrown out?

Lodeman. I ſaw a Woman in a white Hood come out, but I did not ſee her take it up.

Mr. Sol. Gen. Girl, you ſay, that when you were at this Place in the *Tower*, and ſaw this Matter, there were a great many People there beſides yourſelf?

Lodeman. Yes, Sir.

Mr. Sol. Gen. Did the Razor fall among the People that ſtood there, or did it fall out in the Street, or how?

Lodeman. Sir, it fell within the Pales.

Mr. Sol. Gen. And was the Paſſage eaſy into the Pales?

Lodeman. Yes.

Mr. Sol. Gen. What, they muſt climb over, muſt they?

Lodeman. No, you need not climb over, there is a Door to go in. And when People went in the Soldier opened the Door.

Mr. Sol. Gen. Who went in with the Soldier? Did you ſee any Body go in?

Lodeman. There was a Man went in, but I know not who he was.

Mr. Sol. Gen. Did the Soldier ſtand at the Door when this Razor was thrown out?

Lodeman. I cannot tell that, a Soldier uſed to be at the Door.

Mr. Sol. Gen. The Woman came out of the Lodging, did ſhe not?

Lodeman. Yes.

Mr. Sol. Gen. Did ſhe go in again?--*Lodeman*. I did not ſee her go in again.

Mr. Sol. Gen. Did ſhe go into the Pale?

Lodeman. I did not ſee her go into the Pales.

Mr. Sol. Gen. Did you ſee the Razor after it fell upon the Ground?

Lodeman. No.

Mr. Sol. Gen. Was it bloody?--*Lodeman*. Yes.

Mr. Sol. Gen. Very bloody?---*Lodeman*. Yes.

Mr. Sol. Gen. Did you ſee no body take it up?

Lodeman. No, I did not.

Mr. Sol. Gen. Come hither, Child; Are you ſure it was a Razor, or a Knife?

Lodeman. I am ſure it was a Razor.

Mr. Sol. Gen. Was it open or ſhut?——*Lodeman.* It was open.

Mr. Sol. Gen. What Colour was the Handle?

Lodeman. Sir, I can't tell, I ſee it but as it flew out.

Mr. Sol. Gen. Was it all over bloody?——*Lodeman.* No.

Mr. Sol. Gen. All but a little Speck?—*Lodeman.* It was very bloody.

L. C. J. Bleſſed God, What an Age do we live in! Girl, you ſay, you did not know it to be my Lord of *Eſſex*'s Window?

Lodeman. No, but as they told me.

L. C. J. Nor you did not ſee any body take up the Razor?—*Lodeman.* No.

L. C. J. But you are ſure you did not?—*Lodeman.* I am ſure I did not.

L. C. J. But, Child, recollect thyſelf, ſure thou didſt ſee ſomebody take it up?———*Lodeman.* No, I did not.

L. C. J. I aſk thee again, Didſt not thou know it to be my Lord of *Eſſex*'s Window?———*Lodeman.* No, but as they told me.

L. C. J. Did you hear no body ſpeak to the Maid that came out?

Lodeman. No body at all.

L. C. J. No, pr'ythee is that thy Hand, Child? Shew her the Paper, the uppermoſt Part of it.———*Lodeman.* Sir, I can't write.

L. C. J. Who put thy Name to it?

Lodeman. Sir, I don't know, no more than the Pope of *Rome*.

L. C. J. Whoſe Hand-writing is that?

Lodeman. I cannot tell, I never could write in my Life.

Mr. *Braddon.* Thoſe are the Names of ſuch as heard her ſay it.

Mr. Att. Gen. Yes, you have cooked it up bravely.

L. C. J. You ſhall ſee what a brave Managery you have made of this poor Child. Read the Information.

Cl. of Cr. Reads.———*The Eighth of* Auguſt, 1683, Jane Lodeman, *Aged about* 13 *Years, did in the Preſence of theſe whoſe Names are under-written, declare as follows, That the ſaid* Jane Lodeman *was in the* Tower *on* Friday *Morning, the* 13*th of* July *laſt, and ſtanding almoſt over-againſt the late Earl of* Eſſex's *Lodging-Window, ſhe ſaw a Hand caſt out a Razor out of my Lord's Window, and immediately upon that ſhe heard Shrieks; and that there was a Soldier by my Lord's Door, which cried out to thoſe within the Houſe, that ſomebody ſhould come and take up a Razor, which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the Houſe, but who took up the Razor ſhe cannot tell.*———

L. C. J. Here 'tis ſaid *the Soldier cried out*, but now ſhe ſays, the Soldier ſhe does not know was there, and ſhe heard no body ſpeak to the Maid.

Mr. *Braddon.* With Submiſſion, my Lord, I deſire to aſk her this Queſtion.

L. C. J. Pr'ythee aſk her what thou wilt. We hear what ſhe ſays.

Mr. *Braddon.* Did you hear the Soldier cry out, or did you not?

Lodeman. No, I did not.

Mr. *Braddon.* Did not you ſay, you heard him cry out?

Mr. Sol. Gen. My Lord, we cannot admit Mr. *Braddon* ſhould aſk ſuch Queſtions, they are leading Queſtions. Aſk her a general Queſtion, and you ſhall have an Anſwer, but you ſhall not give her Words to Swear to.

L. C. J. No, upon my Word, you have given her too many Words to Swear to already.

Mr. *Braddon.* My Lord, I only writ what ſhe declared.

Mr. Sol. Gen. Were you carried by Mr. *Braddon* before any Magiſtrate, or any Juſtice of Peace?——*Lodeman.* No.

Mr. Sol. Gen. Did he take the Examination himſelf?—*Lodeman.* Yes.

Mr. Att. Gen. Did not he deſire you to go before a Juſtice of Peace to be Sworn?———*Lodeman.* No, Sir.

Mr. Sol. Gen. Did he write it himſelf?

Mr. Att. Gen. Ay, he writ it, and took it, and this Woman that is coming here, is a Witneſs to it.

L. C. J. What is this Woman's Name?

Mr. *Braddon.* This is the Aunt, *Margaret Smith.* [*Who was Sworn.*

L. C. J. Well, what ſay you to her?

Mr. *Braddon.* I deſire to know, what this Girl ſaid to you, when ſhe returned from the *Tower* the 13th of *July*?

Mrs. *Smith.* She ſaid to that effect that ſhe ſpeaks now.

Mr. *Braddon.* What was that? Tell the Court.

Mrs. *Smith.* I chid her, becauſe ſhe had been playing: That is all I can ſay.

Mr. Juſt. *Withins.* Did ſhe tell you, the Soldier cried out for ſomebody to come and take up the Razor?—Mrs. *Smith.* I cannot ſay that.

Mr. Juſt. *Withins.* Did ſhe ſay, ſhe ſaw a Razor thrown out of my Lord of *Eſſex*'s Window.

Mrs. *Smith.* She ſaid, ſhe ſaw a Razor thrown out of a Window; I can't tell whether ſhe ſaid out of my Lord of *Eſſex*'s Window.

Mr. *Freke.* Did you ſet your hand to that Paper?

L. C. J. Were you a Witneſs to that Paper?

Mrs. *Smith.* There were others heard what the Girl ſaid, as well as I.

L. C. J. Who deſired you to ſign it?

Mr. *Freke* Who writ that Paper, Miſtreſs?

Mrs. *Smith.* Pray excuſe me, Sir, I do not know.

Mr. *Freke.* Did you ſee it writ?———Mrs. *Smith.* No.

L. C. J. No: It was one got ready drawn by Mr. *Braddon.*

Mr. Juſt. *Holloway.* Pray let the Boy's Information be read again, for I obſerve there is a Difference; ſhe ſays, the Razor fell within the Pales; the Boy ſays, it fell without.

L. C. J. Ay, ay, the one ſays it was the Inſide; the other, the Outſide of the Pales.

Then the Information was read.

L. C. J Go on now, and aſk your Queſtions.

Mr. *Braddon.* Did the Girl ſay, That after the Razor was thrown out, the Soldier cried to ſomebody to take it up?

Mrs. *Smith.* Sir, I can ſay no more than what I have ſaid.

Mr. *Braddon.* Did ſhe, or did ſhe not?

Mrs. *Smith.* Pray, Sir, excuſe me; I have ſpoken what I know.

Mr. Att. Gen. You may ſee how he has managed this Matter, my Lord, by his urging the Witneſſes with Queſtions they know nothing of.

L. C. J. Yes, yes, we ſee he would fain put Words into their Mouths.

Mr. Att. Gen. Miſtreſs, Did you ſend to Mr. *Braddon*, to inform him of what the Girl had ſaid? Or did he come to you?

Mrs. *Smith.* Sir, I never ſaw him before in my Days.

Mr. Att. Gen. He came firſt to you then?

Mrs. *Smith.* Yes: He hearing of it, came as a Stranger to me.

Mr. *Braddon.* Did I, directly or indirectly, offer you, or your Niece, any Thing?——Mrs. *Smith.* No, never in this World.

Mr. *Braddon.* Did I ever deſire her, or you, to ſay any thing but what was true?

Mrs. *Smith.* No, Sir: You ever encouraged the Girl to ſpeak Truth; and bid her ſpeak nothing but what was Truth.

Mr. Att. Gen. You need not pay dear for a Lye; you are like to pay dear enough before you have done.

Mr. *Braddon.* My Lord, as to perſonal Knowledge, I am as much a Stranger to this Matter, as any body here; and in all my Concern in it, I have done nothing but what was very fair.

L. C. J. Mind your Defence, Mr. *Braddon*, and leave commending yourſelf; or, if you will, rather commend yourſelf by your Actions, than your Expreſſions: One good Action is worth Twenty good Expreſſions.

Mr. *Braddon.* Swear *William Glaſbrooke.* [*Which was done.*

L. C. J. Well, what do you aſk him?

Mr. *Freke.* My Lord, we deſire to know of him, whether he was by on the 13th of *July*, when the Girl gave this Report?

Mr. *Glaſbrooke.* I was up two pair of Stairs when ſhe came in.

L. C. J. What is your Name, Sir?—Mr. *Glaſbrooke. William Glaſbrooke.*

Cl. of Cr. Ay, here is his Information, among thoſe that were taken about *Braddon.*

Mr. *Glaſbrooke.* She came in to her Aunt, that went out juſt now before me, and I heard her very loud with her Aunt, ſaying, the Earl of *Eſſex* had cut his Throat in the *Tower*. Her Aunt chid her upon it; and her Aunt chiding her, ſhe ſaid, ſhe was ſure it was true; for ſhe ſaw a bloody Razor, with a bloody Hand, thrown out of the Window.

Mr. *Freke.* Was this the Day of my Lord of *Eſſex*'s Death?

Mr. *Glaſbrooke.* It was the Day the King was in the *Tower*, and, as was reported, the Day he was killed.

Mr. *Braddon.* Were you preſent when I firſt diſcourſed the Girl?

Mr. *Glaſbrooke.* Yes.

Mr. *Braddon.* Had you ever ſeen me before, or no?

Mr. *Glaſbrooke.* No.

L. C. J. Did ſhe ſay, my Lord of *Eſſex* cut his Throat at that Time?

Mr. *Glaſbrooke.* Yes.

L. C. J. Are you a Witneſs to this Paper? Did you ſet your hand to this Paper?

Mr. *Glaſbrooke.* To the Paper Mr. *Braddon* writ, I did: I am a Witneſs to that.

L. C. J. Then read his Information.

Cl. of Cr. Reads.——*Mr.* William Glaſbrooke *does declare, That one* Jane Lodeman, *aged about Thirteen Years, inhabiting in the ſame Houſe where he, the ſaid* William Glaſbrooke, *lodged, did on* Friday, *the* 13*th of* July *laſt paſt, between Ten and Eleven in the Morning, in the Preſence and Hearing of him, the ſaid* William Glaſbrooke, *declare to her Aunt, That the Earl of* Eſſex *had cut his Throat; upon which her Aunt was very angry with her; whereupon ſhe, the ſaid Girl, did declare, That ſhe was ſure of it; for ſhe ſaw him throw the Razor out of the Window; and that the Razor was bloody; and that ſhe heard two Groans or Shrieks (which of the two Words ſhe uſed, he, the ſaid* William Glaſbrooke, *is not certain:) Of this, he, the ſaid* William Glaſbrooke, *is ready to make Oath.*

L. C. J. Now my Lord of *Eſſex* cut his own Throat, and after threw the Razor out of the Window.

Mr. *Glaſbrooke.* 'Tis what the Girl did declare.

Mr. Att. Gen. Does not this Girl uſually tell Lies?

Mr. *Glaſbrooke.* I have before that Time taken her in a Lye.

Mr. Att. Gen. Did you acquaint Mr. *Braddon* with that?

Mr. *Glaſbrooke.* I cannot tell that I did.

Mr. Att. Gen. Do you remember that you told Mr. *Braddon*, That ſhe was a Girl that told Truth?

Mr. *Glaſbrooke.* No, I never did that; for I was always of another Perſuaſion about her.

Mr. Sol. Gen. He never was of that Temper, to praiſe her; he was always of a contrary Perſuaſion.

L. C. J. I'll aſſure him, that I am of his Opinion too: I do believe ſhe is a lying Girl, and hath told us a company of Lies now.

Mr. *Braddon.* Theſe two Children told me, they never ſaw one another 'till they were examined at the Council.

L. C. J. Well, well: Go on with your Witneſſes.

Mr. *Braddon.* Where is *William Smith*? [*Who appeared, and was ſworn.* I deſire to know of you, Mr. *Smith*, what you heard the Girl ſay, when I was there?

Mr. *Smith.* I heard the Girl tell us, That ſhe ſaw a Hand caſt out a Razor, and either the Hand was bloody, or the Razor, I can't tell which; but ſhe ſaid it was out of the Window, where ſhe ſaid the Earl of *Eſſex* lodged.

L. C. J. Did ſhe ſay the Earl of *Eſſex* did it himſelf?

Mr. *Smith.* She ſaid, ſhe ſaw an Hand caſt out a Razor.

L. C. J. Did ſhe tell you, it was the Earl of *Eſſex*'s Lodging-Window?

Mr. *Smith.* She ſaid it was that Lodging.

L. C. J. Ay, but ſhe ſays now, ſhe does not know it to be his Lodging.

Mr. *Braddon.* My Lord, ſhe ſays ſhe was told it was his Lodging.

L. C. J. But you have made her to ſay poſitively, it was his Lodging, and that he threw out the Razor.

Mr. Sol. Gen. Pray, Sir, where did you firſt hear this Report of this Girl?

Mr. *Smith.* There, at the Houſe, where ſhe was.

Mr. Sol. Gen. Were you alone when you went to the Girl the firſt time?

Mr. *Smith.* No, I went with Mr. *Braddon.*

Mr. Sol. Gen. Did you hear any thing of it before? What did induce you to go along with Mr. *Braddon?* What were the Arguments that prevailed with you to go with him?

Mr. *Smith.* I did not know where he was going; Mr. *Braddon* called me at the Shop, as I ſtood at the Door, and aſked me if I was buſy, or would go with him? So I went with him to the Tavern.

Mr. Sol. Gen. You never heard one Word before of the Girl's Report?

Mr. *Smith.* No, I did not.

L. C. J. What elſe did the Girl tell you?

Mr. *Smith.* I can't ſay what elſe ſhe ſaid. This I remember, that I have told you.

L. C. J. Did ſhe name the Earl of *Eſſex*'s Lodgings?

Mr. *Smith.* I am ſure ſhe ſaid the Lodging where the Earl of *Eſſex* lay.

L. C. J. Did ſhe name the Earl of *Eſſex?*

Mr. *Smith.* She did name the Earl of *Eſſex*'s Lodgings?

L. C. J. Did ſhe in ſo many Words ſay, That it was the Earl of *Eſſex*'s Lodgings?

Mr. Att. Gen. Your Lordſhip ſees, they give one Evidence, and ſhe another.

Mr. *Smith.* I cannot ſay whether ſhe did in ſo many Words ſay ſo, or no; but ſhe ſaid, That ſhe ſaw a Hand toſs out a Razor, and either the Hand was bloody, or the Razor, and it was where my Lord of *Eſſex*'s Lodgings was.

L. C. J. But did ſhe name my Lord of *Eſſex*'s Lodgings?

Mr. *Smith.* Yes, ſhe did.

L. C. J. Well, what elſe did ſhe ſay? Tell us all ſhe ſaid.

Mr. *Smith.* She ſaid, There was a Man ſtood below, and ſhe heard two Shrieks, and the Man did ſay, Here is a Razor; and a Woman came out, or one in Woman's Clothes, with white Head-clothes. Mr. *Braddon* aſked if ſhe ſee any body take it up, and ſhe ſaid, no; but ſhe heard a Man ſay, here is the Razor, and ſhe ſaw a Woman come out.

L. C. J. You are ſure that is all you heard her ſay?

Mr. *Smith.* I think ſo.

L. C. J. Recollect yourſelf, pray good Mr. *Smith.*

Mr. *Smith.* I do not know that I heard any Thing elſe.

L. C. J. Pray read his Information.

Cl. of Cr. Here is *William Smith* ſubſcribed.

Mr. *Smith.* Mr. *Braddon* writ down what the Girl ſaid, and we did read it over all, and then ſet our Hands to it.

L. C. J. Well, Sir, Read the Information then.

Cl. of Cr. Reads the Information as before——

L. C. J. You hear what you have affirmed in this Paper, that the Girl ſaid; you have forgot in your Evidence now this long Buſineſs about the Soldier.

Mr. *Smith.* My Lord, I have told all I did remember.

L. C. J. Why, you have ſet your Hand to it.

Mr. *Smith.* I did read it over, and it was nothing but what the Girl ſaid, I am ſure.

L. C. J. Where do you live?—Mr. *Smith.* In *Throgmorton-ſtreet.*

L. C. J. What Trade?——Mr. *Smith.* A Barber.

L. C. J. A notable Shaver, upon my Word! a ſpecial Fellow, I'll warrant him!

Mr. *Braddon.* Call Mrs. *Mewx.*

[*Who appeared and was ſworn.*]

Pray what Day was it you went from *London* to *Berkſhire?*

Mrs. *Mewx.* The Day before my Lord *Ruſſel* was tried.

Mr. *Braddon.* What Expreſſion did you hear from a Gentleman in the Coach?

L. C. J. We muſt not ſuffer ſuch a Queſtion to be aſked, that is not Evidence.

Mr. *Braddon.* My Lord, I aſk the Queſtion in general Terms, what ſhe heard ſuch a Day?

L. C. J. Does ſhe know any Thing of her own Knowledge?

Mr. *Braddon.* She can tell what ſhe heard, my Lord.

L. C. J. 'Tis no Evidence.

Mr. *Braddon.* Will your Lordſhip pleaſe to hear what ſhe ſays?

L. C. J. No, I will not hear what I ſhould not hear; let her ſpeak what ſhe knows.

Mr. *Braddon.* She knows this, that a Woman told her———

L. C. J. Aſk your Counſel, whether that be Evidence. If you will not be ſatisfied with what I ſay, aſk them?

Mr. *Wallop.* She proves a Report.

L. C. J. I aſk it of you, Mr. *Wallop*; Is what another ſaid to her, Evidence in this Caſe?

Mr. *Wallop.* My Lord, if really there was ſuch a Report———

L. C. J. Is that Evidence?

Mr. *Wallop.* 'Tis Evidence there was ſuch a Talk, and that is Evidence of the Probability of the Thing.

L. C. J. I'll leave it to yourſelf, if you as a Lawyer ſay it is Evidence, we will hear it, becauſe you ſay ſo; but I believe you, nor no body elſe will offer to ſay any ſuch thing.

Mr. *Wallop.* My Lord, we lay it before the Court, as part of the Ground upon which we went, in our being concerned in this Buſineſs.

L. C. J. Is that a Juſtification of Mr. *Braddon?*

Mr. *Wallop.* Upon theſe Probabilities he engaged in this Matter, and to prove this Report, he brings this Gentlewoman to tell what ſhe heard.

L. C. J. Why, is what the Woman told her, Evidence; She reported a Report to me, can that be Evidence?

Mr. *Wallop.* My Lord, with Submiſſion, we think it juſtifies Mr. *Braddon*, that he went upon theſe grounds.

L. C. J. Where is the Woman that told her? Why is not ſhe brought?

Mr. *Wallop.* They ſay, ſhe is ſo big with Child ſhe can't come.

L. C. J. Why, if that Woman were here herſelf, if ſhe did ſay it, and would not Swear it, we could not hear her; how then can her ſaying be an Evidence before us? I wonder to hear any Man that wears a Gown, to make a doubt of it.

Mr. *Braddon.* I deſire *Jeremy Burgis* may be called.

[*Who appeared and was ſworn.*]

Mr. *Wallop.* What can you ſay about the Report in the Country?

Mr. *Burgis.* I was at *Frome* about my Buſineſs on a *Friday*———

L. C. J. Why, Gentlemen, what are we doing all this time? Do you think we ſit here for nothing? Is not this the firſt time that a Report was given as Evidence in *Weſtminſter-hall?*

Mr. *Freke.* My Lord, we are neceſſitated to uſe this Sort of Evidence.

L. C. J. I tell you, Sir, It is no Evidence, be neceſſitated what you will.

Mr. *Freke.* My Lord, They have produced this Man's Letter that was taken about Mr. *Braddon*, that is produced in Evidence againſt him: Now this Man comes to give an Account how he came to write that Letter.

L. C. J. But he ſhall not give an Account by a Report in the Country.

Mr. *Burgis.* It was written to the Landlord of the Houſe where I quartered, that he might give notice to Mr. *Braddon* of a Diſcourſe that paſſed in his Houſe that *Friday*, of a Report that was there concerning the Earl of *Eſſex*'s murdering himſelf.

Mr. Att. Gen. Had the Maſter of the Houſe told you any ſuch thing?

Mr. *Burgis.* No, he had not told me ſo; but I heard it in the Houſe.

L. C. J. Of whom did you hear it? Who told you ſo?

Mr. *Burgis.* Sir, I was a Stranger there.

L. C. J. They can never tell any of them, who it was firſt reported it, nor particularly who told it them; but it was reported by ſome body, we don't know who.

Mr. *Beech.* Under Favour, my Lord, I rode directly to the Poſtmaſter at *Frome*, whither this Letter was directed, and by the way, there is a Remark in the Letter of an Alteration of the Figure, 'tis interlined the 13th; it was not ſo before, to hit the Day exactly of the Murder of the Earl of *Eſſex*; and when I came thither, the Poſtmaſter told me, There was no ſuch Report in his Houſe, nor in the whole Town at that Time.

L. C. J. I deſire to know, upon your Oath, who told you that Report?

Mr. *Beech.* Sir, I do not know; I was a Stranger there.

L. C. J. Was it a Man or a Woman?

Mr. *Burgis.* He did not tell his Diſcourſe to me.

L. C. J. But thou could'ſt gueſs by the Habit, whether it was a Man or a Woman?——Mr. *Burgis.* It was a Man.

L. C. J. Who did he tell it to?

Mr. *Burgis.* The Company in the Houſe.

Mr. Att. Gen. Pray, let him tell how Mr. *Braddon* came to ſpeak to him about it?

L. C. J. Shew him that Letter. Look upon it, Friend; Is that your Hand?——Mr. *Burgis.* Yes, it is.

L. C. J. When did you put that Figure of 13 in? There was another Figure before, and that is blotted out.

Mr. *Burgis.* It was a miſtake in me, I miſtook the Day, and I corrected it.

L. C. J. When did you correct it? How ſoon did you correct it?

Mr. *Burgis.* Preſently.

L. C. J. What Day had you put in firſt?—Mr. *Burgis* The 6th Day.

L. C. J. Ay, but that was not the right Day, Man.

Mr. *Burgis.* It was a great while after, and I did not expect to be brought in queſtion for any ſuch thing.

L. C. J. How long after?—Mr. *Burgis.* Six Weeks.

L. C. J. How cameſt thou to recollect, to make it from the 6th to the 13th, ſix Weeks after?

Mr. *Burgis.* Mr. *Braddon* was there when I had writ it.

L. C. J. And he corrected it, did he?

Mr. *Burgis.* He ſaid, that that was not the Day of my Lord's Death.

L. C. J. You had written it the 6th, and he put you in mind of the 13th.——Mr. *Burgis.* Yes.

Mr. Att. Gen. And he was to be the Meſſenger that carried the Letter himſelf?——Mr. *Burgis.* Yes, he was.

Mr. Sol. Gen. That is very well. I ſuppoſe, Gentlemen, you hear what he ſays, He ſays, Mr. *Braddon* was there, and told him that was not the Day.

L. C. J. Ay, Mr. *Braddon* ſaid, You have miſtaken the time, that will not do it, it muſt be the 13th.

Mr. Att. Gen. Pray let me know one thing, Who recommended *Braddon* to you?——Mr. *Burgis.* Indeed I can't tell.

L. C. J. Who did he ſay he came to you from? Tell the Truth, upon your Oath.

Mr. *Burgis.* Sir, I was at work at my Buſineſs, and knew nothing of his Coming.

L. C. J. What Trade art thou?——Mr. *Burgis.* A Pinmaker.

L. C. J. Where do you live?—Mr. *Burgis.* At *Marlborough.*

L. C. J. How came Mr. *Braddon* and you acquainted?

Mr. *Burgis.* Sir, I will tell you; I was at work at my Trade, and there came came down a Gentleman that lives in our Town to me, and aſked me——

L. C. J. What is that Gentleman's Name?—Mr. *Burgis.* Mr. *Butcher.*

L. C. J. What is that *Butcher?*

Mr. *Burgis.* A Gentleman that lives in *Marlborough*, a Grazier by Trade. He came and told me, There was a Gentleman came from *London*, about the Buſineſs now in Diſpute——

L. C. J. Prithee, what was ſpoke of?

Mr. *Burgis.* It was concerning the Earl of *Eſſex*'s Death. And he deſired me to ſpeak what I heard at ſuch a time.

L. C. J. Who had you told what you heard firſt to? You muſt have told it to ſome body; who did you tell it to firſt?

Mr. *Burgis.* Indeed I can't directly ſay who I did tell it to.

L. C. J. Had you told that Gentleman of your Town, *Butcher*, as you call him?—Mr. *Burgis.* No, not that I know of.

L. C. J. Well, when he came to you, what then?

Mr. *Burgis.* He deſired me to go to Mr. *Braddon* to the *White-Hart.* And ſo I went up to the *White-Hart*; and when I came to Mr. *Braddon*, I told him what I had heard at *Frome.*

L. C. J. And what then?

Mr. *Burgis.* Then Mr. *Braddon* aſked me the ſame Night, Whether I would go down with him to *Frome*, and I could not; ſo then he deſired me to write a Letter to recommend him to the Houſe where I had heard it.

Mr. Sol. Gen. And you did write that Letter?—Mr. *Burgis.* Yes, I did ſo.

Mr. Att. Gen. Your Lordſhip obſerves, this Houſe was the Poſt-houſe, to be ſure, to have it ſpread in Publick Places.

Mr. Sol. Gen. Did you tell *Butcher* of your Knowledge, before he carried you to *Braddon*?—Mr. *Burgis.* Yes, Sir, I did.

Mr. Sol. Gen. When?——Mr. *Burgis.* Then, at that time.

Mr. Sol. Gen. Did he aſk you of your Knowledge, or did you tell him voluntarily?

Mr. *Burgis.* He aſked me if I remember'd any ſuch thing as I had ſpoken.

Mr. Sol. Gen. Why, had you ſpoke of it before?

Mr. *Burgis.* Yes, I had.

Mr. Sol. Gen. Did he tell you upon whoſe Recommendation he came to you?

Mr. *Burgis.* I do not know upon whoſe Recommendation he came.

L. C. J. When you writ this Letter, did he dictate it to you, or did you write it of yourſelf?—Mr. *Burgis.* I writ it of myſelf.

L. C. J. Did he tell you what you ſhould write?

Mr. *Burgis.* I ſhewed him what I had written.

L. C. J. And when you writ it, of yourſelf you put in the 6th Day?

Mr. *Burgis.* Yes, I did ſo.

L. C. J. What he did ſay then?

Mr. *Burgis.* Mr. *Braddon* ſaid, it was the 13th Day.

Mr. Sol. Gen. Why did you ſhew *Braddon* your Letter after you had written it?

Mr. *Burgis.* He came to my Houſe before I had ſealed it.

L. C. J. But why did you ſhew him the Letter?

Mr. *Burgis.* He deſired a Letter to recommend him to that Man at whoſe Houſe I heard it.

Mr. Sol. Gen. What was he to be recommended to him for?

Mr. *Burgis.* It was to deſire him to inquire, who brought the News firſt to Town.

Mr. Sol. Gen. You ſay, he deſired a Letter of Recommendation?

Mr. *Burgis.* Yes, it was to recommend him to that Man.

Mr. Sol. Gen. That you may not be in a Miſtake, pray recollect yourſelf; for there is not one Word of Recommendation in the Letter. Tell the true Reaſon, why you ſhewed him the Letter?

Mr. *Burgis.* I can't tell any other, but only he came before I had ſealed it.

Mr. Sol. Gen. Did he deſire to ſee it?

Mr. *Burgis.* No, but the Letter lay writ upon the Table.

Mr. Sol. Gen. Was the Maſter of the Poſt-houſe at *Frome* preſent, when that Report you talk of was made?

Mr. *Burgis.* I cannot rightly ſay, whether he was or no.

L. C. J. How comeſt thou to put it in thus? This bears Date a pretty while ago, *Marlborough*, *Aug.* 21. and that was a good diſtance of Time from that Report that thou talkeſt of: How comeſt thou then to ſay, *Theſe are to deſire you to call to mind, That I was at* Frome *ſuch a time, and heard ſuch a Report:* If he was not there, why ſhould he *call to mind?* What didſt thou mean by that *calling to mind?*

Mr. *Burgis.* I would have had him called to mind my being at his Houſe at that time.

L. C. J. But if he was not there, why didſt thou aſk him to call to mind that Report?

Mr. *Burgis.* He might hear of it from ſome other at that time, tho' he might not hear it in that Company where I was.

Mr. Sol. Gen. There is a Riddle in it, if we could but ſolve it.

L. C. J. No, no, Mr. Sollicitor, the Riddle is unfolded; 'tis a plain Contrivance.

Mr. Att. Gen. Pray, from whom did he tell you he was recommended?

Mr. Recorder. How came you to talk ſo to a Stranger, Sir, whom you never ſee before, about ſuch a Buſineſs?

Mr. *Burgis.* He was recommended to me by Mr. *Butcher*, as I told you, who carried me to him.

Mr. Att. Gen. But who, as *Braddon*, or *Butcher* told you, did recommend him firſt to come down thither to you?

L. C. J. Upon your Oath, Sir, Who did *Butcher* tell you he came from?——Mr. *Burgis.* I have forgotten, Sir; I do not remember.

Mr. Recorder. Was it not a Non-conformiſt Parſon, Sir, upon your Oath?—Mr. *Burgis.* Sir, I cannot remember.

Mr. Att. Gen. Mr. *Beech*, Do you know any particular Perſon that *Braddon* ſaid he came recommended from?

Mr. *Beech.* I can tell what Account *Braddon* gave of his Journey himſelf: He ſaid, he had a Letter that came particularly from this Man to *London*, to bring him down into the *Weſt:* Said I, when came you out of *London?* I came on *Thurſday*, ſaid he: Where did you lodge a *Thurſday* Night? At *Ockingham*. Said I, That is not your way to *Marlborough:* Where did you lie the next Night? He told me, at one *Venables*; and the next Night at *Saliſbury*, I think.

L. C. J. Did *Braddon* tell you he had a Letter from that Man?

Mr. *Beech.* He ſaid a Letter from that Man brought him down into the *Weſt*.

L. C. J. Burgis. Did you ſend him e'er a Letter?

Mr. *Burgis.* No, I did not.

Mr. *Beech.* He ſaid he came down purpoſely upon this Report.

Mr. Att. Gen. What ſaid the Poſtmaſter to you, Mr. *Beech?*

Mr. *Beech.* If you pleaſe to give me leave to ſpeak, I'll tell you: I did deſire, that Mr. *Braddon* might have no Pen and Ink, and preſently I rid away to *Frome*, to this Poſtmaſter's Houſe, and ſpake with the Poſtmaſter, and all his Family: We then examined them all, and there was no ſuch Report in that Town 'till the *Sunday* after.

Mr. Sol. Gen. He was perſuaded, ſure, all People would ſay juſt as he would have them.

Mr. *Thompſon.* Well, Mr. *Braddon*, Who do you call next?

Mr. Sol. Gen. Nay, I deſire this Man may go on; for methinks he mends every Step he goes.

Mr. *Braddon.* Mr. *Burgis*, Do you remember how it was that you came to recollect yourſelf, and to know it was the 13th, and not the 6th?

L. C. J. He ſays, you told him.

Mr. *Braddon.* Pray, Sir, remember yourſelf, whether you did not ſay yourſelf you remember'd the true time; for you came from *Frome* to *Marlborough* on the *Saturday* Night, and then you heard there the Earl of *Eſſex* had cut his Throat the Day before; and when they told you ſo, you cried out, How can that be? It muſt be done before; for Yeſterday I heard at *Frome* before Five of the Clock.

Mr. Juſt. *Withins.* Did not Mr. *Braddon* himſelf tell you, you had miſtaken the Day?

Mr. *Braddon.* Sir, It was from this, he told this whole Story that I juſt now repeated, that the *Saturday* Night he was told, that the Earl had cut his Throat, and replied to them, that he had heard at *Frome*, the Day before, that he was murdered, and then I ſaid, that muſt be the 13th.

L. C. J. How came you to tell that Man, you had a Letter from *Burgis?*

Mr. *Braddon.* No, my Lord, I did not tell him any ſuch Thing.

L. C. J. Mr. *Beech*, Did not he tell you he had a Letter from *Burgis?*

Mr. *Beech.* He told me he came down upon the Information of this *Burgis*.

L. C. J. And he ſwears he never ſaw him before, nor never writ to him.

Mr. *Braddon.* You aſk me, whether I had received any Letter from this *Burgis*. I told you, I had a Letter of Recommendation to Mr. *Butcher*, thinking he had been the Perſon that had reported it, and Mr. *Butcher* went to this Perſon and brought him to me, and he told me what he heard.

Mr. *Beech.* I never heard of the Name of *Butcher* 'till now he mentioned it.

Mr. *Braddon.* My Lord, I will call no more Witneſſes.

Mr. Att. Gen. Your Lordſhip and the Jury obſerve, I ſuppoſe, his confident Behaviour.

L. C. J. Ay, He is no more concerned at it, than if he had been doing the moſt juſtifiable thing in the World.

Mr. *Thompſon.* My Lord, I have but one Word to add on the Behalf of Mr. *Speke*, who is likewiſe joined in this Information. Truly, Mr. *Speke*, is a young Gentleman of ſome Quality, his Father is of very good Quality, Mr. *Braddon* was of his Acquaintance, and being his Acquaintance, and thus concerned, as you have heard in the Proſecution of this Buſineſs; he hearing of theſe Reports, and reſolving to go down into the Country about it, deſired Mr. *Speke* to lend him his Man and his Saddle, for he was going into the Country. Mr. *Speke* inquires what his Buſineſs was, whereupon he told him it was to inquire about ſome Perſons that had reported ſomething relating to the Earl of *Eſſex*'s Death. And being to go into the Country where Mr. *Speke*, who was that Country-man, had ſome Acquaintance, upon this he deſires him to write him a Letter, to recommend him to ſome Perſons of Credit. He did write that Letter, but was never concerned in this Buſineſs, either before or after; and this is the whole of the Caſe, as to this Mr. *Speke*.

Mr. *Speke.* My Lord, I deſire I may ſpeak one Word for myſelf.

L. C. J. Ay, ſay what you will.

Mr. *Speke.* My Lord, One Day, ſome time after Mr. *Braddon* had concerned himſelf in this Thing, I met him caſually and accidentally, and he was telling me ſomewhat of the Matter. And after this, one Night as I was going to Bed, between 10 and 11 at Night, ſomebody knocked hard at my Door. My Man went to the Door, and opened the Door, and Mr. *Braddon* comes in, and tells me, he deſired the Favour of me, that I would lend him my Man, and lend him my Saddle. He being my Acquaintance, and I knowing him, I was willing to do him that Kindneſs; and aſking him, whither he went? He told me he was going down to *Marlborough*, and he told me he had heard that my Lord of *Eſſex*'s Death was diſcourſed of there in the Country that Day it was done; beſides other Things of a Boy and of a Girl, that could prove ſuch and ſuch Things. Said I, This is a Thing of great Concernment, and I would have you take good Advice in it, before you proceed, becauſe otherwiſe it may be a Reflection upon the Government; therefore, ſaid I, I would not have you proceed to concern yourſelf further in this Thing, but take the Advice and Judgment of ſome prudent and diſcreet Perſon or other, that you may do nothing but what is according to Law. I was never at all concerned, nor knew any thing of the Buſineſs but what I heard from Mr. *Braddon* at firſt. And before he came into my Chamber, I knew nothing of his coming; and I writ this Letter, becauſe he ſhould not concern himſelf without the Advice of ſome Perſon that I thought was able to adviſe him, that he might do nothing that might bring him within the Danger of the Law, or reflect upon the Government.

Mr. Juſt. *Holloway.* And you adviſed him to go by the Name of *Johnſon*, not *Braddon*.

Mr. *Speke.* It was late at Night, and I had been at the Tavern drinking a Bottle of Wine or two with a Friend, and might not ſo well conſider what I did write.

L. C. J. But, Mr. *Speke*, You hear what you writ, *We* row againſt *Stream*, and we thank you for the Countenance you have given to *Us*. And here is a worthy Gentleman, Mr. *Braddon*, who is a very proper Man for the Deſign he has in hand, and none better than he, and when you are with him, you may diſcourſe freely; and he is a true Man, and a ſtout Man, and fit to be truſted; but he muſt not go by the Name of *Braddon*, but of *Johnſon*.

Mr. *Speke.* My Lord, the Reaſon was, becauſe he was not perſonally known to Sir *Robert Atkyns*; and for him to go down directly, and to have it reported, one of ſuch a Name came to Sir *Robert Atkyns*, who was a Man that had retired himſelf into the Country from all Publick Concern, I thought not ſo well.

L. C. J. Why did you trouble him, if he was ſo retired?

Mr. *Speke.* I had particular Concerns of my own, that Sir *Robert Atkyns* was pleaſed to concern himſelf for me, and I knew him a prudent Man, that would adviſe him nothing but according to Law.

L. C. J. You ſhould not have diſturbed him in his Privacies, Mr. *Speke*.

Mr. *Speke.* My Lord, I never was any other way concerned, I knew nothing of the matter.

L. C. J. You had done well if you had not concerned yourſelf about it at all.

Mr. Sol. Gen. Moſt here do fear, you ſay, *that he will be either ſtabbed or knocked on the Head*, and therefore you lent him your Man to guard him, I ſuppoſe.

Mr. *Speke.* He deſired me to lend him my Man, becauſe he did not know the way ſo well himſelf.

Mr. Sol. Gen. But why was there ſuch Fear about him?

Mr. *Speke.* I know nothing at all of the Matter, but what I had from Mr. *Braddon.*

L. C. J. Ay, we live in ſuch a ſtabbing Age, that ſuch an extraordinary Gentleman as Mr. *Braddon*, that is ſuch an extraordinary good Proteſtant, can't walk the Streets for fear of being murdered.

Mr. *Speke.* My Lord, I writ it at ſuch a time of the Night, after I had been at the Tavern, that I knew not well what I writ.

Mr. Juſt. *Withens.* Mr. *Speke*, You ſee what a Sort of a Man he is, upon the Evidence that hath been given.

Mr. *Speke.* Truly, my Lord, I never knew any thing, but what I had from him.

Mr. Sol. Gen. But to make the Country believe, that there were ſuch Endeavours here to ſtifle any Thing that might give light into the Murder of the Earl of *Eſſex*, there muſt be great Caution uſed to conceal his Name.

L. C. J. Yes, being ſuch a virtuous Man, as Mr. *Braddon*, there was great need of all Circumſpection and Care to preſerve him: Why did not he get his Life-guard to keep him from the Danger that was thought ſo near him?

Mr. Sol. Gen. They had not raiſed them as yet, but he was contented at preſent with Mr. *Speke*'s Man.

Mr. *Speke.* My Lord, I am wholly innocent in all this Matter.

L. C. J. Would to God you were Innocent, You are a Man of Quality, Mr. *Speke*, I know; I ſhould be glad you were innocent with all my Heart. But when Men forget their Studies and their own Buſineſs, and take upon them the Politicks without being called to it, That puts them into Frenzies, and then they take all Opportunities of ſhewing themſelves Men of Zeal.

Mr. Att. Gen. We need but read the Letter which Mr. *Speke* has owned, and you will ſay it is ten times worſe than what Mr. *Braddon* has done.

L. C. J. Nay, I will not have Mr. *Braddon* topped upon for all that, I aſſure you.

Mr. Att. Gen. My Lord, if you read it once again, you will find, that he therein owns it all, and pins the Baſket upon himſelf.

L. C. J. Indeed, Mr. *Attorney*, I will not have ſuch a Reflection put upon Mr. *Braddon*, That any Man ſhould be a greater Actor in the Buſineſs than he.

Mr. *Speke.* My Lord, I writ it at Night after a Bottle of Wine, and other People may be miſtaken as well as I.

L. C. J. If ſome of theſe Gentlemen, that now and then think themſelves better-headed than others, and that are ſo extraordinarily concerned to preſerve our Religion, but are generally much miſtaken, were, and I obſerve their Miſtakes are always on the wrong Side; I wiſh you could have gone and recollected yourſelf next Morning, Mr. *Speke*, and then the Miſtake had been more pardonable.

Mr. *Speke.* I writ nothing as to matter of Fact, but what he told me, and I could hardly recollect it next Morning, when he was gone away.

Mr. Recorder. My Lord, we ſhall prove he has bragged, that is, Mr. *Braddon*, That he was the only Inventor of the Proteſtant Flails, an Inſtrument you have heard of, Gentlemen, and for what Uſe deſigned.

L. C. J. But, Brother *Jenner*, that is nothing to the Purpoſe now, what he was before this Buſineſs, or what he was after. You are, Gentlemen, to Try him upon this Indictment only, and are not to mind any other Thing at all.

Then Mr. *Speke's Letter was read again.*

Mr. Att. Gen. You ſee, Gentlemen, in what Strain it runs, *We* and *We*; he makes himſelf a conſiderable Party in the Deſign.

L. C. J. Aye, *We* thank you for your Kindneſs towards *Us*, and *We* hope to bring on the Trial of the Earl of *Eſſex*, before they can any of thoſe in the *Tower*.

Mr. *Speke.* He told me, Sir *Henry Capell* ſaid it was a Thing too great for him to meddle with. And I knew nothing, but what I had from him.

L. C. J. He was a Man of Integrity, and could tell you nothing but what was true, Mr. *Speke.*

Mr. *Wallop.* My Lord, All I can ſay, for Mr. *Speke*, is this, He did believe Mr. *Braddon*'s Grounds, as he told him, were probable to go upon, but he knew nothing himſelf, and concerned himſelf no further. I hope the Jury will conſider of it, that there is no Contrivance proved againſt him.

L. C. J. Nay, Mr. *Wallop*, though we interrupted you in making Remarks upon every Witneſs, yet now make what Remarks upon what hath been ſaid that you will.

Mr. *Wallop.* My Lord, I ſhall leave it to your Lordſhip and the Jury, how far they think the Defendant guilty of this Information.

Mr. Att. Gen. My Lord, We have indeed given as great an Evidence as ever was given I think of any Offence. But to clear up the Matter, that it was impoſſible for any Man, unleſs the moſt maliciouſly and villainouſly inclined againſt the Government and Peace of the Kingdom, that can be, to imagine ſuch a Thing, much leſs ſpread ſuch a Report, we will call you two or three Witneſſes to prove, that the Earl of *Eſſex* murdered himſelf.

L. C. J. 'Tis neceſſary, Mr. *Attorney*, I think, for you ſo to do, to ſatisfy the World, though to a diſcerning Eye there is enough given from the Evidence this Day, to make it appear to be a moſt malicious and ſcandalous Contrivance, to hawk about for every idle Rumour, to pick up Children of ſuch tender Years, and make them Swear any thing to ſerve a Turn.

Mr. Att. Gen. My Lord, we do not call theſe Witneſſes, as if there were any Doubt of it in the World.

L. C. J. But we live in an Age, when Truth paſſes for nothing in the World, and Swearing and Forſwearing is taken for a Thing of Courſe. Had his Zeal been half ſo much for Truth as it was for falſhood, it had been a commendable Zeal. But when Men are ſo zealous and fierce for ſuch vile Things as theſe are, 'tis time of my Word, for the Government to interpoſe.

Mr. Att. Gen. 'Tis not to ſatisfy the Court nor the Jury, who I believe are all of them already ſufficiently ſatisfied, but 'tis to ſatisfy the World, that may have entertained ſome Prejudices from this Conſpiracy. Call Mr. *Bomeney* in.

Mr. Sol. Gen. Not as if there were any doubt, whether Mr. *Braddon* were the malicious Inventor of this Report at the beginning, and went down into the Country to ſpread it. The Evidence has been full, and by his own Management of his Defence, he has proved it himſelf, and ſeems by his Confidence to juſtify it. But we ſhall, to give the World ſome Satisfaction, call ſome that waited upon the Earl in the *Tower*, and others that ſaw him when dead, that will give a Confutation to any thing that could be ſuppoſed, as if my Lord of *Eſſex* had not murdered himſelf.

Then Bomeney *was Sworn.*

L. C. J. Did you wait upon this unfortunate Gentleman, my Lord of *Eſſex*?———Mr. *Bomeney.* Yes, my Lord.

L. C. J. Well, what do you know of his Death?

Mr. *Bomeney.* I went with him from *Whitehall*, and I ſtayed with him all the while he was in the *Tower.*

L. C. J. How came he by that unhappy End, pray?

Mr. *Bomeney.* When we were at his Lodging, my Lord uſed to call for a Pen-knife to cut his Nails of his Hands and Feet, and he then had long Nails, and ſaid he to me, give me your Pen-knife to cut my Nails; ſaid I, my Lord, I have none, I came in haſte, but I will ſend to Morrow for one; and therefore I ſent our Footman, one *William Turner*; to whom I gave a little Note for Proviſions, and among other Things which I writ Directions to the Steward to ſend, there was a little Line; *Pray ſend a Pen-knife for my Lord.* He brought ſome Proviſions, but he did not bring a Pen-knife on the *Thurſday*, becauſe he ſaid he had none, but he would ſend one the Morrow after; I ſent *William Turner*, the Morning after very early, and gave him another little Note for Proviſions; and, among other Things, I writ in the Note, *Do not forget the Pen-knife for my Lord.* He went, and when he was in the way, my Lord, ſent the Warder to me, to call me. I came to my Lord, and my Lord aſked, Is the Footman come? Has he brought the Pen-knife? No, my Lord, ſaid I, but I hope he will not ſtay long, becauſe I ſent him early. Then I was turning to come down from the Chamber, and I ſaw my Lord walking in the Room, and picking of his Nails with the Pen-knife-----

L. C. J. How? With a Pen-knife?

Mr. *Bomeney.* No, with the Razor that I gave him. For I went to my Lord, and when my Lord aſked me if I had gotten him a Pen-knife, I ſaid the Footman was not come, but I hoped it would come immediately, becauſe I ſent him early. And I was turning from the Chamber, thinking I had done with my Lord, and my Lord called me again, Hark you, *Bomeney*, ſaid he, I can do it with one of your Razors. My Lord, ſaid I, I will fetch one, ſo I went into my Cloſet and fetched one. And I went to my Lord, and when he had it, he did as if he picked his Nails with it, and was walking in the Chamber. I looked a little while upon him, and turning out of the Chamber into the Paſſage, where I talked with the Warder, *Ruſſel* his Name was, and when I looked out of the Window, his Majeſty was in the *Tower*, and there was a great Buſtle in the Street; and when I had talked a little while with the Warder, I went down into my Cloſet again, and at the ſame time that I was in my Cloſet, there came the Footman, and one with him that brought the Proviſions, and he gave me the Pen-knife, and gave me a little Note, that he had brought with the Proviſions, which, he ſaid, Mr. *Billingſly*, that was our Steward, bid me to ſhew that to my Lord. I took it, and went up to ſhew it to my Lord; I found no body in my Lord's Chamber, there was a Cloſet there, in which was a Cloſe-ſtool, and that I found ſhut, and thinking my Lord was there, I would not diſturb my Lord, but came down again, and ſtayed a little while, in ſo much as I thought my Lord by that time might have been come out. I went up again, and found no body in the Chamber, but the Cloſet-Door ſhut ſtill, I went againſt the Door, and knocked three times, and ſaid My Lord, my Lord, and no body anſwered: Then I looked through the Chink of the Door, between the Door and the Wall, and I could ſee Blood, and a little part of the Razor. Then I called to the Warder, and the People of the Houſe, and they came up and found him there.

Mr. Att. Gen. Had you much ado to open the Door, or could you open the Door eaſily?

Mr. *Bomeney.* No, the Door could not be opened eaſily, I know not how they opened the Door, but I think *Ruſſel* the Warder, when he came up, puſhed at the Door, but could not open it very far, becauſe my Lord's Foot was againſt the Door, and ſo they had much ado to open the Door.

Mr. Att. Gen. Which way does the Door open, out of the Room, or into the Room?-----Mr. *Bomeney.* Inward, into the Room.

L. C. J. And ſo his Feet being againſt it, it could not eaſily be opened.

Mr. Att. Gen. How big is the Cloſet?

Mr. *Bomeney.* A very little Cloſet, I believe no wider than that; and the length of a Man, and a Cloſe-ſtool at the upper end would fill it up. My Lord lay all along on his Side.

Mr. Att. Gen Did you obſerve your Lord melancholy, Mr. *Bomeney*?

Mr. *Bomeney.* Yes, he was melancholy. But we took no notice of it, for he was uſed to be ſo, and we had no reaſon to ſuſpect any thing more than ordinary.

Mr. Att. Gen. Did you find the Razor?

Mr. *Bomeney.* Yes, it lay by him.

Mr. Att. Gen. What became of the Razor?

Mr. *Bomeney.* The Coroner's Jury had it.

L. C. J. Was there any Window in that Room, where the Cloſe-ſtool was?

Mr. *Bomeney.* Yes, there was a Window.

L. C. J. Was there a Caſement to that Window?

Mr. *Bomeney.* Yes, I think there might.

Mr. Juſt. *Withens.* Which way does that Window look?

Mr. *Bomeney.* I can't very well remember, my Lord.

Mr. Juſt. *Withens.* Which way do you think?

Mr. *Bomeney.* I believe it is upon a Yard.

L. C. J. He ſays he does not well know. But, Mr. *Bomeney*, you ſaw Mr. *Ruſſel* the Warder in the ſame Place, as you came up again, that you left him in when you went down?

Mr. *Bomeney.* My Lord, I went down but a little while.

Mr. Sol. Gen. Where did you find *Ruſſel* the Warder, when you came up again?------Mr. *Bomeney.* At the Guard.

Mr. Sol. Gen. Did you find him in the ſame Poſture, when you went up again, that you left him when you went down?

Mr. *Bomeney*. Yes.

Mr. Sol. Gen. Did you hear of any body that went up elſe?

Mr. *Bomeney*. No, my Lord.

Mr. Sol. Gen. Then we will call Mr. *Ruſſel* the Warder he ſpeaks of. [*Who was ſworn.*

Mr. Att. Gen. Pray will you give my Lord an Account at that Time where you were, and what was done?

Mr. *Ruſſel*. I was in the Chamber, next oppoſite againſt my Lord's Chamber, there is but a little ſtep betwixt the Doors, the Stairs come up betwixt the two doors, no body could paſs backwards or forwards but I muſt ſee them; for I was then Waiter at that time, and ſtood upon the Guard; and my Lord aſked Mr. *Bomeney*, Whether the Pen-knife was come; and he told my Lord, No. Then ſays he, lend me your Razor, that will do it. And my Lord took the Razor in his Hand, and the Door was open, and he went two or three Turns in the Room, with the Razor ſo. This I ſaw, the Door being open, as I ſtood in the Paſſage. My Lord, by and by Mr. *Bomeney* goes down, and my Lord ſhut the Door to him, and Mr. *Bomeney* ſtaid below a little while, and afterwards comes up again. And my Lord was gone to the Cloſet to Stool, as he ſuppoſed. So away he comes down again, and ſtaid about a quarter of an Hour, or thereabouts. And this I ſee all myſelf, my Lord.

L. C. J. Had any Perſon been there, from the time *Bomeney* went down, to the time he came up again?

Mr. *Ruſſel*. No, my Lord, there was no body went up or down all the time, but *Bomeney*. He came up, and ſeeing my Lord was not come out of his Cloſet (this I did ſtand and hear) ſo he puts by the Hanging, and looks in, and ſees my Lord in his Blood, lying in the Cloſet; and he makes an Oration, a great Noiſe; with that I ſtepped two or three Steps, hearing him make ſuch an Oration, and I found the Key was on the outſide of the Door, and I opened the Door, and ſaw him lie in his Blood.

L. C. J. Could you open the Door with eaſe?

Mr. *Ruſſel*. Yes, I could put it a little way open, and there ſaw him.

L. C. J. But you could not put it quite open?

Mr. *Ruſſel*. No, for his Legs lay againſt the Door.

L. C. J. Was it a narrow Cloſet?—Mr. *Ruſſel*. Yes, a very narrow Cloſet.

L. C. J. In what Poſture did my Lord lie?

Mr. *Ruſſel*. He lay all along on one Side.

L. C. J. Where lay the Razor?

Mr. *Ruſſel*. By him. But I did not take ſo much notice of the Razor, for I was ſurprized with the Sight.

Mr. Juſt. *Holloway*. Was there any Window in the Cloſet?

Mr. *Ruſſel*. Yes, that looks into Captain *Hawley*'s Yard. And the Window is quite Northward.

L. C. J. Which way does that Window look?

Mr. *Ruſſel*. Quite the other way, into the back-yard.

L. C. J. Then there is no way out, Nor Light, nor Caſement out into the Fore-yard?

Mr. *Ruſſel*. No, my Lord, 'tis backward, and 'tis paled in, only into the Houſe there is a Door.

Mr. Att. Gen. Was there any Door out of the Street, that way?

Mr. *Ruſſel*. No, there is one Door that goes out from the Entry to go into the Yard.

L. C. J. Has any body elſe acceſs to come to the Yard, but what muſt come through *Hawley*'s Houſe?

Mr. *Ruſſel*. No, no body.

Mr. Sol. Gen. We will call Captain *Hawley* himſelf.

L. C. J. Warder do you remember there was any Coach that ſtood there?

Mr. *Ruſſel*. No, there was no ſuch thing.

L. C. J. I aſk you for this reaſon, becauſe here was a Girl that ſpake of a Coach, that came through the Houſe I ſuppoſe, and ſo through the Entry out of that Door into the Yard.

Mr. Att. Gen. Where is *Lloyd* the Soldier? For, my Lord, as there was a Warder above, ſo there was a Soldier that ſtood at the Door below. And while he ſtaid there, there could not any one come in, nor near, but he muſt obſerve them.

Mr. Sol. Gen. Pray, my Lord, be pleaſed to aſk Mr. *Bomeney*, how long he lived with my Lord?

L. C. J. How long had you lived with my Lord of *Eſſex*?

Mr. *Bomeney*. Six Years.

Mr. Juſt. *Withens*. You waited on him in his Chamber, I ſuppoſe?

Mr. *Bomeney*. Yes, in the Nature of his *Valet de Chambre*.

Then Lloyd *was ſworn.*

Mr. *Recorder*. Hark you, *Lloyd*, you were the Sentinel. Give an Account where you ſtood that Day that my Lord of *Eſſex* murdered himſelf?

Lloyd. At my Lord's Door.

Mr. Att. Gen. Which Door?——*Lloyd*. At my Lord of *Eſſex*'s Door.

Mr. Att. Gen. Were you above Stairs, or below at the Street Door?

Lloyd. Below at the Street Door.

Mr. Juſt. *Withins*. Did any body come into the Houſe that Morning?

Lloyd. No body came in, all the while I ſtood there, that I knew of.

Mr. Juſt. *Withins*. Were you there at that time when my Lord killed himſelf?

Lloyd. I was there when the Noiſe was made of it above Stairs.

L. C. J. Did you e'er ſee a Coach there?

Lloyd. Not to ſtand at the Door at all.

L. C. J. Didſt thou ſee e'er a Coach in Captain *Hawley*'s Back-yard?

Lloyd. No, no.

L. C. J. Why, could not the Coach go through the Door and the Entry into the Yard?

Mr. Sol. Gen. Had you ſeen my Lord of *Eſſex* that Morning?

Lloyd. Yes, he ſpake to me, and aſked me What o'Clock it was?

Mr. Sol. Gen. Where was he?——*Lloyd*. At the Caſement.

Mr. Sol. Gen. What did he ſay to you?

Lloyd. He ſaid, Centry, What o'Clock is it?

Mr. Att. Gen. Did you ſee him when my Lord *Ruſſel* went by?

Lloyd. Yes, I ſaw him then.

Mr. Att. Gen. How long after was the Cry of my Lord's having killed himſelf?

Lloyd. I believe, not half an Hour after.

Mr. Att. Gen. Did any Maid go out of the Houſe?

Lloyd. None at all.

L. C. J. What, not in a white Hood?——*Lloyd*. No.

L. C. J. Why, didſt not thou call to the Maid to come and take up the Razor, that was thrown out of the Window of Captain *Hawley*'s Houſe?

Lloyd. There was no Razor at all thrown out, that I ſaw.

L. C. J. Did not you open the Pales for her to go in, and take up the Razor?

Lloyd. No.

L. C. J. Was there any other Soldier there beſides you?—*Lloyd*. No.

L. C. J. Then you muſt be he that cried out, or no body?

Lloyd. I ſaw no Razor, nor did not cry out to any body.

Mr. Sol. Gen. Could you open the Pales? is there a Door to the Street-ſide, out of the Pales into the Yard?

Lloyd. 'Tis no Yard, but there is a Door that all paſs through that come to the Houſe.

Mr. Sol. Gen. What elſe did my Lord of *Eſſex* ſay to you?

Lloyd. He only examined me, what o'Clock it was? That was all.

Mr. Att. Gen. My Lord, We have here two Women, who were the only Women that were in the Houſe, they will tell you what they ſaw.

L. C. J. Pray Gentlemen, do not miſpend your Time unneceſſarily, becauſe I am to ſit this Afternoon at *London*.

Mr. Att. Gen. My Lord, We will then only call Captain *Hawley*. [*Who was Sworn.*

Mr. Sol. Gen. Pray, Captain, tell what you know of this Matter?

Capt. *Hawley*. My Lord, All the Account I can give, is, That about four or five o'Clock in the Morning, I went to open the Gates, that being the uſual Hour to open the Gates. And I was at the Gate then when a Warder came, and told me, my Lord of *Eſſex* had killed himſelf, and that was between nine and ten of the Clock. When I came into the Houſe, I went up Stairs, and ſaw no body in the Room, nor no blood; ſaid I, to the Warder, What, do you make a Fool of me? Here is nothing: Says one of the Warders, look into the Cloſet; I went to the Cloſet, and could not open the Door above this Wideneſs, and I looked in, and ſaw the Razor all in Blood, and my Lord lay on his Arm in this faſhion. I could not tell, whether he was dead or no, but I thought it was not my Buſineſs to ſtir him. Then my Lord Conſtable was ordered to come and Secure, and Examine all the Servants.

L. C. J. Pray, Captain *Hawley*, where does the Caſement look into?

Capt. *Hawley*. The Houſe, ever ſince I came to it, is juſt as it was; and the Houſe having ſettled, the Caſement won't open above thus far: And 'tis ſo low, and the Pales are nine or ten Foot high, that 'tis impoſſible for any one to throw any thing out of the Window three Foot hardly. It is one of the horrideſt Reports that ever was heard of, and the unlikelieſt Thing, they cannot throw any thing out of the Window to be ſeen.

Mr. Att. Gen. My Lord, I think it is not neceſſary to call any more Witneſſes.

L. C. J. Have they any thing to ſay further, on the other Side?

Mr. *Speke*. I deſire, my Lord, to call my Man.

L. C. J. Call your Man, for what Purpoſe?

Mr. *Speke*. My Lord, If your Lordſhip pleaſes, I will call my Man to prove, that I knew nothing of Mr. *Braddon*'s coming to me.

Then Mr. Speke's *Man was ſworn.*

L. C. J. Aſk him what you will.

Mr. *Speke*. Did you ever ſee Mr. *Braddon* with me?

Servant. Never but once, before that time he came to my Maſter's Chamber, which was the Night before he went out of Town; and when he came, after he had been there a little while, my Maſter ordered me to get me ready to go into the Country with him. And after I had been with him a little time, he got another to go with him, and ſent me Home again.

Mr. *Speke*. I was going to Bed, Was I not?——*Servant*. Yes, you was.

L. C. J. Have you done of both Sides;

Mr. *Speke*. Was it not a Surprize to me, when he came to me?

L. C. J. How does he know that?

Mr. *Speke*. I tell you why, my Lord, I aſk it: Becauſe when I go out of Town, I always tell him to prepare himſelf.

Servant. It was a Surprize to me; I knew nothing of it.

L. C. J. Well, have you done now? Have you a mind to ſay any thing to the Jury you that are of Counſel for the Defendants; or you, Mr. *Braddon*?

Mr. *Braddon*. No, I will ſay nothing.

L. C. J. Have you, Mr. *Speke*?

Mr. *Speke*. My Lord, I have proved it here, That I had no Hand in what I am accuſed of. It is put down in the Information, that I conſpired with Mr. *Braddon*, to endeavour to procure falſe Witneſſes. I have proved I never had any Hand at all in any Thing of it. It was an accidental Thing, his coming to me; and it was a great Surprize to me, when he came; and I never concerned myſelf in it more, than the writing of that Letter: And I had no ill Intent in it; I did it not deſignedly, for I knew nothing of his coming; and I had not writ the Letter if he had not come to me. And 'tis plain, it was a Surprize, for I always give my Man notice, when I go out of Town, before-hand to prepare himſelf. I thought nothing at all of ill in the Letter: I writ it late at Night, when I had been with ſome Company at the Tavern. And he made me believe that to be true, which was not; I hope the Gentlemen of the Jury will conſider that. I have nothing to ſay of the Thing, I did not concern myſelf in it any further at all, than writing the Letter, which I did not well know what I writ.

L. C. J. Well, have you any more to ſay, Mr. *Speke*?

Mr. *Speke*. No, my Lord.

L. C. J. Have you any more, Mr. *Braddon*?

Mr. *Braddon*. My Lord, I have only this to ſay for myſelf. It has not been proved directly, or indirectly, That I uſed any evil Arguments to perſuade theſe Witneſſes to teſtify what was falſe; but I dealt with them with all the Candor, that any Perſon in the World could uſe; and uſed all the Caution that I could, to hinder them from ſpeaking any thing that is falſe. There has been nothing proved of evil Practice uſed by me; and I deſire the Gentlemen of the Jury to take no other notice of any Thing that has been, or ſhall be ſpoken, but what has been proved.

L. C. J. Gentlemen of the Jury, The Evidence has been very long, that has been given both for and againſt the Perſons, againſt whom this Information is exhibited. 'Tis an Information exhibited by the King's Attorney-General, in His Majeſty's Name againſt *Lawrence Braddon* and *Hugh Speke.* And the Information does ſet forth, That the late Earl of *Eſſex* murdered himſelf in the *Tower*, and that thereupon there was an Inquiſition taken before the Coroner, that did find that he had ſo murdered himſelf, he being before that Time committed for High-Treaſon, in Conſpiring the Death of the King, and levying War to diſturb the Government. And theſe Perſons did render that Inquiſition, as tho' it had been fraudulently and irregularly obtained; and alſo to breed ill Blood, and ſpread falſe Rumours among the King's Subjects, by endeavouring to perſuade them to believe, That the Earl of *Eſſex* was murdered by ſome other Hand, and had not murdered himſelf, and had procured falſe Witneſſes to teſtify ſome ſuch Matter, in order to the ſpreading about that falſe Rumour. This is the Subſtance of the Information. To this Information they have both pleaded, Not Guilty; and the Evidence, as I was telling you, has been ſomewhat long; but according to the beſt of my Memory, and for the Aſſiſtance of yours, I will mind you of as many Things, as occur to me, that have been ſaid againſt them, and what has been ſaid on their Behalf, I mean ſo much of it as is Evidence. For I muſt tell you, all Hear-ſays, and common Diſcourſes of other Perſons are not Evidence, and I will give you that Reaſon, that is ſufficient to ſatisfy any Man that is unbiaſs'd, That if in caſe the Perſon that ſo told the Story had been here, if he had not told it upon Oath, you could not have believed that Perſon: Therefore, ſurely there is leſs Credit to be given to him, that tells a Tale out of another body's Mouth. And I tell you this, becauſe there have been great Allowances given, and ought to be when People are accuſed of ſuch great and weighty Crimes; for theſe are monſtrous Crimes that theſe Gentlemen are accuſed of; but 'tis you that are to try, whether they are guilty or not: Certainly there is ſcarce in Nature a greater Crime that can be committed, than this that is now before you; for I think Robbery or any other ſuch Felonies, are not ſuch monſtrous Crimes in their true real Weight, though in conſideration of Law, in reſpect of Puniſhment they are greater; yet in Point of Crime, they are ſurely leſs; for to ſpread falſe Reports, in order to raiſe Sedition, Ill-will, Heart-burnings, and Jealouſies in the King's Subjects againſt the Government, and to ſuborn Witneſſes to that evil Purpoſe, is ſurely a much greater Crime than robbing on the High-way. Now, Gentlemen, 'tis not unknown to moſt of you, what Endeavours have been of late made, to poſſeſs the Minds of the King's Subjects of great Injuries deſigned to be done them by the King, or His Authority: And in order to foment Differences and Miſapprehenſions between the King and his People, and among the People between one and another, all Arts have been uſed, to proſcribe People that they are minded to expoſe. Thoſe, they bear ill-will to, muſt be called Papiſts, or Papiſts in Maſquerade; but They and their Confederates are the Sober Party, the true Proteſtants, as if there were none Sober or true Proteſtants but ſuch as are Factious and Troubleſome in the Government. But by theſe Things they bring an Odium upon the Name of a Proteſtant, their Aim is by diſtinguiſhing to divide us; whereas if they were Proteſtants in Truth, the Church of *England* Proteſtants, they would have another Behaviour, they would learn to obey, and ſubmit to Authority, and not go buzzing from Houſe to Houſe, and ſpreading falſe Reports, *but ſtudy to be quiet, and do their own Buſineſs.* And though Mr. *Braddon* made uſe of the 5th *Chap.* of the *Acts*, to the Child, he would have done well to have taken notice of ſome other Parts of Scripture, that are as much Scripture as that, That injoin Obedience and Submiſſion to the Magiſtrate; and, being quiet and minding his own Buſineſs, it's odds, he had never come to that Trouble, he is now likely to meet with. But the Crime he is accuſed of, carries all the Venom and Baſeneſs, the greateſt Inveteracy againſt the Government that ever any Caſe did, that I have met with. For it's inſinuated, That becauſe the King and the Duke were walking in the *Tower*, that Day, and near that Time, when this unfortunate Thing happened, now it muſt be whiſpered, as though the King and the Duke had deſigned this Murder. How Baſe? How Deviliſh and Helliſh a Deſign is this? But yet, this muſt be ſpread about, and endeavoured to be diſtilled into the Minds of the King's Subjects. But beſides, Gentlemen, you are to conſider, as was opened by the King's Counſel, to what this Thing tended; for in as much as there was an horrid bloody Conſpiracy, to take away the Life of the King, and of his dear Brother, His Royal Highneſs the Duke of *York.* And foraſmuch as ſeveral Perſons have been duly executed for that Conſpiracy, who were concerned along with this unfortunate Lord; (I cannot help the naming of it, though I am ſorry for his Misfortune, for the Sake of that Honourable Family) but rather than he would abide his Trial, God knows what other Reaſon he had, but the probability of the Thing ſpeaks it, he being conſcious, the great Guilt he had contracted, in being concerned in ſuch a Conſpiracy, made him deſtroy himſelf. And 'tis eaſy to imagine, how far that might prevail upon him, it being done immediately after my Lord *Ruſſel*, who was one of the Conſpirators with him, was carried to his Trial. It cannot be thought, but it was to prevent the Methods of Juſtice in his own particular Caſe. And, Gentlemen, there was *Digitus Dei* in it, and it is enough to ſatisfy all the World of the Conſpiracy; though we live in an Age, wherein Men are apt to believe only on one Side; they can believe the greateſt Lye, if it makes for the Advantage of their Party, but not the greateſt Truth, if it thwarts their Intereſt.

But becauſe Mr. *Attorney* has produced his Proofs, to manifeſt, that this Lord murdered himſelf, I will take notice a little of it, becauſe it may have ſome good effect to undeceive ſome that have been impoſed upon. Not for my own Satisfaction, I thank God I am ſatisfied, and ſo I believe are moſt honeſt Men: But that ſilly People may not be impoſed upon by every buſy Fellow for the future, that takes the liberty to run about and ſpread falſe News, and that Men may be aware of ſuch Fellows, and may not be decoyed any more by ſuch falſe Pretences; it was therefore fit that Evidence ſhould be given of the Truth of the Fact, that that Gentleman did murder himſelf. And the Evidence is this.

Beſides the Inquiſition, which was taken upon the Oaths of ſeveral Perſons of Quality, (as you hear upon the reading their Names, ſeveral of them were Eſquires, and Men of Note) 'tis here alſo proved by the Teſtimony of his Servant that attended him, how he came to this untimely End. And, Gentlemen, I would obſerve, 'tis Sworn by his Servants, one that had lived ſix Years with him, not an upſtart, or a wandring Fellow, but one whoſe Integrity and Fidelity to my Lord was confirmed by ſix Years Experience of his Service. Then here is the Warder that was at the Door, here's the Soldier, here's the Maſter of the Houſe, who are all the Perſons that probably can give any Account of the Matter, and they tell you poſitively that no one did go up and down, but this *Frenchman*, who was his *Valet de Chambre.* And the Warder tells you, That he coming to the Door, and knocking at the Door, and hearing no one anſwer, did endeavour to open the Door, but it was ſo faſt by my Lord's Feet, that he could open it but a little, and looking in, diſcerned Blood, and that made him make Acclamations, as the Warder calls it, Orations, which brought all the People in the Houſe thither, and they gave the ſame Account that he does.

And 'tis likewiſe fit to be taken notice of, that the Window of this Cloſet looks into a private Yard, where no Strangers uſually come, and where no Coach could come; and that the Pales were ſo high, that in caſe a Man were deſirous to throw any thing out, it were impoſſible to caſt it above three Foot. And if there could no Coach at all come into the Yard, as it is plain there could not, (for there is no Door, ſave only a back Houſe-door) then this muſt needs be a Lye that was ſpread abroad. And 'tis beyond all peradventure true that my Lord of *Eſſex* did murder himſelf.

Now to have ſo great a Truth as this to be perverted, and to reproach the Government with Falſities, is the moſt malicious Thing in the World. If in caſe the Law has made it Penal for any Man to ſcandalize any one private Perſon as it has; and if it be by Law much more Penal to ſcandalize a Nobleman: How much more ought it to be, when the King and the whole Government is thus ſcandalized?

Now to come to the Fact, as near as I can recollect, I will give you an Account of what Evidence has been given of the one Side, and of the other. But this I thought fit to premiſe, becauſe there will ſome Circumſtances fall out fit to be taken notice of in the Evidence, eſpecially about the Window in Captain *Hawley*'s Yard and Houſe, which may be cleared this Way.

In the firſt Part of the Evidence for the King, they call a Witneſs to prove the Earl of *Eſſex*'s Commitment, which is Part of the Inducement in the Information.

But for the Information itſelf, there is this Evidence. Firſt, *Evans*, he comes and tells you, how that he had heard at the *Cuſtom-Houſe* from *Edwards*, the Father of this Boy, as though there had been a Report came to him from Home, at Ten o'Clock that Morning my Lord *Eſſex* cut his Throat, of a Razor thrown out of my Lord of *Eſſex*'s Window; That he came to him in the Afternoon again, and in the Afternoon told him he had examined the Matter further, and his Boy confirmed the Truth of it. He ſays, That after this, Mr. *Braddon* and another Man, one Mr. *Hatſell*, if I am not miſtaken in his Name, came to the Place where he was in *Eſſex*, and there they had ſome Diſcourſe about my Lord of *Eſſex*'s Death, and there *Hatſell* took out of his Pocket a printed Copy of the Inquiſition; and Mr. *Braddon* was then in the Room, but he ſays he thinks Mr. *Braddon* at that time took no manner of notice of it, but walked about the Room; but he ſays, the Inquiſition was read while he was in the Room, and *Evans* ſaid ſomething about the Report he had heard, which did ſeem to contradict that Inquiſition. But ſome time after, he ſays, That he being at the Coffee-houſe, *Braddon* and *Edwards* came to him into the Coffee-houſe, and there they began to talk; *Edwards* ſaid, That *Braddon* had been with his Child to examine him, to bear Teſtimony about flinging the Razor out at Window. He was very full of the Word [Matter] and toſſed that to and fro, but at length the Subſtance of his Matter was, that Report of the Boy's, and he adviſed them to forbear talking any farther to him about the Matter, for it might do *Edwards* and *Braddon* both an Injury; and he had read the Inquiſition which was quite contrary. That was all he could ſay.

Then comes *Edwards*, and the Subſtance of what he ſays, is this, That he firſt heard it from his Family, and afterwards the Boy confirmed the Truth of it; but then afterwards he heard he had denied it, which was after *Braddon* had been there to inquire about it. And then he ſays, *Braddon* came to him again, and then he had got a Note dictated by himſelf and not by the Boy, but at firſt he tendered it to the Boy, and the Boy refuſed to put his Hand to it; and Mr. *Braddon* came again another time, (though he was told the Boy had denied it as he heard) and then the Boy did ſet his Hand. This is the Subſtance of what *Edwards* ſays. He does ſay indeed, the Boy uſed to tell Lies very often, to make excuſes when he played Truant, and that his Family told him, the Boy was often guilty of telling of Lies.

Then the next Evidence is the Evidence of the Boy himſelf. He it ſeems is thirteen Years of Age: Certainly any Man that had been of an upright Mind and Conſcience, as Mr. *Braddon* pretends to be, and would have you, Gentlemen, think them ſo; would have it thought that he was full of Honeſty and Integrity to the Boy, when he baited his Hook with a Text of Scripture, about the Danger of telling a Lye, and, *Have a care, Child, of telling a Lye*; if he had done no more but given him this Advice, it had been worthy of Commendation: But when the Boy had refuſed to ſign it, for him to go and make ſuch a ſtir, without examining further into the Particulars, but only taking a ſlight Report from ſuch a Child, and to make ſuch a Diſturbance in the Nation, and ſuch a

Noiſe, not only here, but Abroad, as this has done, ſure argues neither Uprightneſs nor Conſcience. Had the Boy ſtood in it and perſevered in it, it had become him, in regard of the Tenderneſs of the Boy's Age, to have been more inquiſitive into Circumſtances, before he gave ſuch Credit to what he ſaid, as to make all this ado.

But what ſays the Boy when he comes here, he is now upon his Oath, and he tells you, He did tell his Mother ſo at firſt, and he did tell Mr. *Braddon* ſo at firſt; but afterwards when his Siſter ſpake to him, and bid him be ſure to tell nothing but what was Truth, then he ſaid truly, it was not Truth. He tells you, Mr. *Braddon* offered him the Paper to ſign, but he would not ſign it; and being aſked the Queſtion, Why he would not ſign it; He ſays, becauſe it was not true; and being aſked, Whether *Braddon* had notice of this? The Mother and Siſters, all tell you, He had notice the Boy had denied it.

How came Mr. *Braddon*, what Authority had he to take this Examination? He is no Juſtice of Peace, no Magiſtrate that had any Authority to take Examinations. What Concern had he in it more than other People? The Boy could tell him there were abundance of People there beſides himſelf, tho' it was a Lye he told then, and that the Girl told now. Why did not he ſtay to have it confirmed by ſome of thoſe People? Why did not he carry theſe Children before ſome Magiſtrate or Juſtice of Peace, ſome body that had Authority to take Examinations? There was a Spirit that prevailed with Mr. *Braddon* to engage and make a ſtir in this Buſineſs, and you may eaſily gueſs what a kind of Spirit it was which gave him this Authority that he had not before.

Gentlemen, another thing is this, 'Tis plain, and the Boy now ſwears it directly, That whereas he put it into his Information, How that he told him he was going to ſee my Lord *Brandon Gerard*'s Lodgings, but now he is upon his Oath, he ſwears directly he never told him any ſuch thing, and yet he hath put it into the Paper he made him ſign.

He tells you a ſecond time, Mr. *Braddon* came to him, which was after the Boy had refuſed and declared himſelf unwilling, and that then he was perſuaded by Mr. *Braddon*, who told him there was no Harm in it; if there be any Harm, it would be to him, and not to the Boy, and ſo by Virtue of that, he inſinuated himſelf, and got the Child to ſign that Paper, which is every Tittle of it falſe, as the Boy now ſwears directly. And he tells you, how he was impoſed upon by Mr. *Braddon*, pretending there was no Harm to him, all the Harm would come to himſelf, and by reaſon of theſe Inſinuations he was prevail'd upon to put his Name to that which was notoriouſly falſe.

The next Witneſs (to make it appear that it was notoriouſly falſe, not only by the Boy himſelf, but by other Circumſtances) is *Hawkins* the Miniſter's Son, Dr. *Hawkins*'s Son of the *Tower*. And he tells you, I play'd Truant as well as he that Day, and I ſaw the King and the Duke at the *Tower*, and when I had ſeen them I went about as they did, and afterwards I went home, and there came a Report, that my Lord of *Eſſex* had cut his Throat, which made me go back again to the *Tower*, and there was I a conſiderable time gaping among other People, and there did I ſee this Boy *Edwards*; when he came there, I was there, I was there all the time that he was there, and we went out of the *Tower* together, and there was no ſuch thing, nor any pretence or ground for ſuch a Story. And *Edwards* himſelf being aſked the Queſtion, upon his Oath, doth likewiſe ſay, *Hawkins* was with him all the time there. So that that ſhews not only by what the Boy ſays, that it was falſe, but it is alſo proved falſe by the Teſtimony of this other Witneſs *Hawkins*.

Then next comes Mr. *Blathwaite*, who was preſent when Mr. *Braddon* was before the King, and what does he ſay? He ſays, there was the Boy fetched, and the Girl fetched, and all Perſons examined there, and then 'tis told him, all the Boy had ſaid to him was falſe, and it was told him with all its Circumſtances. So that Notice ſufficient, if you will believe Mr. *Blathwaite*, was given to this Mr. *Braddon*, That the Boy had denied it then, as he had before to his Siſter: So he knew it was falſe.

But what does Mr. *Braddon* do now? He is ſo far from being ſatisfied in the matter, that inſtead of ſtopping there, his Zeal tranſported him to purſue it further: And ſo he tells you, that Mr. *Braddon* confeſſed he would have got ſome Juſtice of Peace to have the Boy examined; and he applied himſelf to Sir *Robert Clayton*, and Sir *John Lawrence*. There were many Juſtices of the Peace beſides them, in *London*, to whom he might have applied himſelf. But when he comes to Sir *Robert Clayton*, and acquaints him with the matter, he would not do it alone; it was thought a matter of that Importance. Then ſays Mr. *Braddon* you ſhan't do it at all. He muſt have the Kindneſs of having it done in private; to have it examined when any body was by, was not ſo well for his purpoſe; which ſhews you ſtill, Gentlemen, his Deſign was to contrive privately, to effect that which the Light ſhould not eaſily diſcover.

Then the next thing is the Evidence of Mr. *Monſtevens*, and he gives you an Account, That he came to him, and he read the Information, and gave him a Caution, that he wondered at him: Says he, Why do you concern yourſelf about this Buſineſs, there is Sir *Henry Capell*, he does not concern himſelf? Then he pretended to come in his Name; but at length, when Mr. *Monſtevens* began to diſpute it with him, why Sir *Henry* did not appear himſelf in it? then truly Sir *Henry Capell* was very ill, and could not poſſibly come himſelf, but I am to go to him, and give him Satisfaction about what I do, and ſo alſo to the Counteſs of *Eſſex*. No, ſays Mr. *Monſtevens*, that cannot be, for Sir *Henry Capell* is not ſo ill but that he has been with my Lord *Sunderland*, and with the King too, ſince the Death of my Lord of *Eſſex*. To which he made him no Anſwer. So that that was but an Excuſe and a Subterfuge; but yet notwithſtanding all this Caution, he continues on his Zeal in the thing: Whereupon Mr. *Monſtevens* brought him to my Lord *Sunderland*, and what Diſcourſe has paſt between them, he has given you an account of.

The next Evidence is Sir *Henry Capell*, who tells you, That *Braddon* comes officiouſly and tells him, he had ſome Diſcovery to make about the Death of the Earl of *Eſſex*, and you hear that poor Gentleman being related to this unfortunate noble Lord, was at the firſt time very much under Surprize, (being in ſuch great Affliction as one Brother muſt needs be for another, Nature obliges People to a great Concern for ſuch Accidents) and he ſays, he is not able to give an account what he ſaid or did at that time, or what *Braddon* did particularly ſay to him. But when he came the ſecond time to him, he was a little more ſedate and calm, and then (he does remember) he told him, If you have any thing of this nature to ſay, go to a *Secretary of State*, it is his Buſineſs to inquire into this Affair, and 'tis not the Buſineſs of every particular private Man, becauſe theſe are Matters that concern the Government. But *Braddon* pretended (forſooth) it was his Zeal and his great Conſcience that made him to be thus tranſported, and to be ſo eager for carrying on this Proſecution.

The next Witneſs, Gentlemen, that you hear of, is the Gentleman that ſeized upon Mr. *Braddon* in the Country; and that is Mr. *Beech*, who brought him before a Juſtice of Peace (one *Aires* that it ſeems is ſince dead,) and in his Pocket he found a Letter from the other Defendant *Speke*, which is the only thing indeed in the Evidence that does affect that Gentleman; and what that Letter is, you have heard it read, and for your better Satisfaction, becauſe the Language of the Letter is pretty extraordinary, if you have a mind to have it to peruſe while you are here in Court, you may have it with you I ſuppoſe you remember the Subſtance of it, commending the great Integrity, Courage, and Magnanimity of this Gentleman Mr. *Braddon*, thanking the Perſon to whom it was writ, for his great Kindneſs to him and his Friends, how they did hope to be able to get the Murder of my Lord of *Eſſex* tried before any in the *Tower* could come to their Trial; That the Tide ran ſtrong againſt them: And, pray, you muſt take notice, I have given him a hint he muſt go by another Name, by the Name of *Johnſon*, and not by the Name of *Braddon*? for alack-a-day he would be ſtabbed in theſe dangerous Times, or knocked on the Head, if he be known by his own Name. Mr. *Braddon* would be thought a Man ſo conſiderable in the World for his Zeal for Truth, and the *Proteſtant* Religion, that there was very great Hazard of his being murdered, we live in ſuch perilous Times.

Gentlemen, This is to amuſe and affright People, and to put odd Thoughts and Jealouſies and Fears into the Minds of the King's Subjects, which was the Beginning and Riſe of the late Rebellion, which we have all reaſon to remember with Horror; that Rebellion that in the Iſſue of it brought the late King of Bleſſed Memory to the Scaffold: And therefore we muſt have a great care of ſuch things growing upon us now.

And pray, Gentlemen, mind the Style of the Letter: *We* have many Thanks to give you, for your Care of *Us*, and Countenance you have given to *Us*, and *We* don't doubt *We* ſhall be able to carry on the Buſineſs of the Earl of *Eſſex*, notwithſtanding that the Tide runs ſtrong againſt *Us*; *We* hope this, and *We* hope that, and t'other, and ſo makes himſelf a Party. And he recommends him in particular to Sir *Robert Atkyns*, to whom the Letter was written, to adviſe him in the matter he went about (which by the way, you ſee, was to pick up falſe Evidence) to carry on this wicked Deſign. And I muſt tell you, Gentlemen, if Mr. *Speke* was given to believe a Lye, and did write that Letter, with a Deſign to have that Lye ſpread abroad, he makes himſelf a Party, and he is as guilty in every Circumſtance as the other, as to the Deſign in general laid in the Information, though not equally guilty about the Management of the Witneſſes: And it is the Letter only that particularly affects him. But I tell you, If in caſe you think he was ſurprized in the thing, or did it ignorantly or innocently, without any Concern, (though he ſeems to have a wonderful Concern in his Letter, and very zealous he ſeems to be in the Proſecution of this Buſineſs) you are to acquit him. But, if he did contribute to the Deſign of ſpreading this falſe Report, he is as guilty of that Part as Mr. *Braddon*, though he be not guilty of Suborning the Witneſſes. But the Evidence againſt *Braddon* goes farther; There is not only the Evidence of this Letter, which ſpeaks plain enough as to this Deſign, but you find alſo about him all the Informations that have been read. The Information of this Boy of 13 Years of Age; the Information of the Girl of 13 Years of Age: There was alſo taken in his Pocket a Letter from one *Burgis* a famous Pin-maker of *Marlborough*, written to one *Cumpen* a Poſtmaſter at *Frome*, in this manner: "Pray call to mind "ſuch a Buſineſs of hearing ſuch a Report of my Lord of *Eſſex*'s cutting "his Throat upon *Friday* the 13th of *July* laſt. Pray recollect ſuch a "thing, and impart it to this Gentleman the Bearer." This likewiſe was intruſted with Mr. *Braddon*: But it ſeems the Man had gone and writ this Letter, and had put in the 6th Day, which happened to be a Week too ſoon, and this muſt be rectified by Mr. *Braddon* himſelf, he being a great Companion of Mr. *Braddon*'s; for it ſeems he had ſuch a Confidence in him, that upon his Report, he came down from *London* to *Marlborough*, tho' now indeed they pretend they never knew one another before: But it is proved he confeſſed he had ſuch a Regard to his Report, that that brought him down from *London*. He had (as I was ſaying) put it down the 6th at his firſt writing; and I believe as to the thing itſelf, it was as true the 6th as any other time, and the 16th and the 26th is all one to ſuch People. And this Letter, he tells you himſelf, was written ſix Weeks after, but Mr. *Braddon* muſt correct it: No, ſays he, you miſtake, it muſt be the 13th, it muſt not be the 6th; the 6th would not do the Buſineſs, for the 13th was the Day that he was murder'd, and ſo he was forced to interline it, the 13th, to make it to humour the Story; for the Lye would not paſs ſo well if it had been put upon a Day ſo long before; but to make the Lye a correct Lye, and to humour the reſt of the Evidence, Mr. *Braddon* comes and informs him, it muſt be the 13th.

That was the next piece of Evidence that was given, and I think the Subſtance of the Evidence of the whole Matter given againſt the Defendants for the King, except it be ſome Remarks out of the Evidence that has been given on the other ſide, which it will be material for you to take notice of.

Firſt, They bring a Man, I think his Name was *Lewes*, to whom they gave the Money before he would give his Evidence. And he ſays, one Day he was going up a Hill, near *Andover*, and going up the Hill, he heard the News of my Lord of *Eſſex*'s cutting his Throat; but what Day, Week or Month it was he cannot tell, that he heard this. And, Gentlemen, Let me tell you, 'tis as bad as the Caſe itſelf, and worſe if poſſible, the endeavouring to pick up Witneſſes to put a Colour and Countenance upon ſo black a Villany as this is. Then the next Evidence is *Fielder*, and he tells you, That at their Town of *Andover*, the *Wedneſday* before my Lord murder'd himſelf, it was all the Talk about the Town, that he had cut his Throat; it was in every body's Mouth, the Market People, Men, Women, and Children, all over the Town had it, when the Earl of *Eſſex* did it not till the *Friday* following. We aſked him to name any one; no truly he could not, the Town was ſo full of People, and yet he cannot remember one, whence he had it: But, Gentlemen, here is the malicious Deſign of the Matter. 'Tis to make it believed it was a deſigned Buſineſs to murder my Lord, and caſt it upon himſelf, and they knew of the Deſign at *Andover*, two Days before the Fact was done; as though the Perſons that deſigned to murder him, would go to make it publick, as ſuch a Report was likely to do. But the Deſign of this, beſides the Falſhood and Baſeneſs of the thing itſelf, does ſpeak Malice and Sedition, and all the Diſtempers of a diſloyal Man's Heart, and to go about to get Witneſſes to ſupport the Credibility of a thing that is notoriouſly falſe, is ten times worſe than the ſpreading of ſuch a Report itſelf.

Then comes Mrs. *Edwards* the Mother, ſhe is the next Witneſs, and ſhe tells you at firſt, the Boy did tell this ſtrange Story, but afterwards denied it; but ſhe likewiſe tells you, how Mr. *Braddon* came, and how he dealt with the Boy. He is a buſy Man, you ſee, a great Reformer, that does mightily concern himſelf in the Reformation of the Government. I never knew that Mr. *Braddon* had any great ſhare in it: He has not ſuch a prodigious Eſtate I ſuppoſe, that for fear of loſing his great Eſtate he ſhould be ſo wondrous buſy and active in reforming the Government; but I have always obſerved it for a Rule, that your beggarly inconſiderable Fellows are the warmeſt People in the Buſineſs of Reformation, and for defending Liberty and Property as they call it; and then they put it under the Diſguiſe of Religion, when, alas, thoſe that have no Religion are generally the greateſt Pretenders of taking care of it; and thoſe that have no Eſtates nor Properties, are uſually the fulleſt of Noiſe about Liberty and Property. But the meaning of it is plain, if they can but exaſperate the People into a Rebellion, that is the way to get a Property: And if they can but have Liberty do what they pleaſe, that is all the Liberty they contend for. They are ſuch mean inconſiderable Fellows only that make all this ado among us: For no Perſons of any Intereſt or Quality will offer to engage in any ſuch thing. But I hope the Snare is ſeen, and we ſhall avoid it; for God be thanked we live under a regular Government, where the Laws are duly executed; we need not be afraid of wrong from the Government. The Courts of Juſtice are open where they may have Security; and the beſt Security to good Subjects, is that which the Law gives them.

Mrs. *Edwards*, ſhe tells you, When *Braddon* came to enquire about it, it made them all a little concerned; and the Daughter was affrighted, and ſhe comes to the Boy, and ſays, *Billy*, *Billy*, here has been a Man about ſuch a thing, pray ſpeak the Truth: Why, ſays he, will any harm come of it; Says ſhe, I can't tell, but tell you the Truth. And then when the Boy comes to tell Truth, he then ſays, all the Story was falſe. Beſides this, ſays ſhe, We told Mr. *Braddon*, before the Boy ſigned it, That he had ſaid it was falſe; and he was told it again before the King and Council, that it was falſe. But nothing would ſerve him but he muſt have a Horſe and a Man, and he muſt go his Circuit to pick up ridiculous Stories. Letters muſt be contrived from one to another to give a Colour to the Matter, and all this to ſpread about his malicious Reports and falſe News.

And by this means, Gentlemen, I muſt tell you, The Matter is fixed as to the ſecond part of the Information, which is the corrupting of Witneſſes; for tho' he did not get any Witneſſes ſworn, and ſo 'tis no Subornation of Perjury, ſtrictly, yet however 'tis a Miſdemeanour to labour any one, much more ſuch a Child, into a Falſity, as apparently he did; for as the Boy ſwears now, He never did make mention of going to my Lord *Gerard*'s Lodgings.

The next Evidence is young Mrs. *Edwards*, *Sarah* the Daughter, and ſhe comes and gives an account of the ſame. That the Boy did tell ſuch a Story at firſt, but, ſays ſhe, I knew him to be ſuch a lying Boy, and I had ſo often found him in Lies, that I did not mind what he ſaid. And he uſed to tell Lies when he had been playing Truant. Then comes Mr. *Braddon* to enquire about the Buſineſs, and when he began to proſecute it, the Girl began to be affrighted, and ſhe calls the Boy to her, and engaged him to tell her the Truth, and then immediately upon that, he did ſay it was all a Story, and Invention of his own.

And then 'tis very material to obſerve, That the Boy in that Paper of Information (which is all of Mr. *Braddon*'s Hand-writing) makes the Circumſtance of the Razor's falling down, to be caſt of the inſide of the Pales, and the Girl ſays, it was of the outſide, and there was a Coach, and abundance of People by, and a great many fine Circumſtances, and not one of them true.

The next piece of Evidence is, ſhe does ſay, That after he told her it was falſe, ſhe gave notice to *Braddon*, and being aſked, Whether ſhe did not frighten him by threatning his Father would be turned out of his Place? She ſwears, No. But all thoſe kind of Queſtions were by a Side-Wind, to make Reflections upon the Government; as tho' the King would turn Men out, becauſe they would not ſwear what was falſe. It carries, I tell you, a Sting towards the Government ſtill, and ſhews the Malice of the Deſign. But, Gentlemen, you hear what is ſaid about that, there was no ſuch thing ſaid; They did apprehend ſome Fear, but from whom their Fear came, that they can't tell. But ſhe poſitively ſwears, when the Boy had denied it, he had Notice of it; and when he refuſed to ſign it, yet he preſſed him, by telling him, there was no Harm in it like to come, but only to Mr. *Braddon* himſelf, and ſo he was perſuaded to ſign it.

The next Witneſs is Mrs. *Barton*; She comes and tells you, that ſhe was at Mr. *Edwards*'s Houſe, and what ſhe tells you of her own Knowledge, you are to take for Evidence, and nothing more. She ſays, *Braddon* did engage the Boy to tell Truth, and put him in mind of that Chapter in the *Acts*, of the great Diſpleaſure of God againſt the two Witneſſes that forſwore themſelves, and bid him ſpeak nothing but the Truth. And after he had talked thus awhile, ſhe obſerved he was going to take Pen, Ink, and Paper, and ſhe was afraid ſhe might be drawn in for a Witneſs, and ſo ſhe went out of the Room. But before that time, Mr. *Braddon* did go to ſee the Window, and the Place where the Boy ſaid the Razor was thrown out.

Then there is the Evidence of the little Girl, who is the next Witneſs, *Jane Lodeman*, I think her Name was, and that is likewiſe written by Mr. *Braddon*. Now you hear what that young Wench ſays. She comes and would give ſome ſort of Countenance to the thing, How ſhe was looking up at the Window of my Lord of *Eſſex*'s Lodgings, and that there was a bloody Razor thrown by a Hand out of the Window, but whether it was half bloody, or all over bloody, ſhe can't tell, but bloody it was; and it was, as ſhe ſays, thrown on the outſide, though the Boy ſaid, it was thrown of the inſide. But the Wench being aſked, Whether ſhe knew that was my Lord of *Eſſex*'s Lodging? She anſwered, No, ſhe did not, when they come and make her ſwear in her Information, that ſhe ſaw the Razor thrown out of my Lord of *Eſſex*'s Lodgings: And then ſhe ſays, ſhe heard no Soldier ſpeak a Word at all; but in the Information, it is ſet down, that the Soldier cried out to the People of the Houſe, Go fetch up the Razor. And this was all done in the open Day, and there were abundance of People, but ſhe could not tell any particular body. So that of one hundred People, which, if ſhe ſay true, were there, Mr. *Braddon* could not ſatisfy himſelf to enquire after ſome of them, but only he muſt pick up a Child of 13 Years of Age to practiſe upon in this villainous manner. And it carries the greater Venom, and Malice, and Virulency, and Baſeneſs, to endeavour to corrupt young People to that height, as to come and ſay, and ſwear thoſe things in the Face of a Court, that are impoſſible to be true. It is impoſſible to be true, that ſhe ſaw a Coach in the Yard; for you hear what Account Captain *Hawley* gives of his Houſe. It is impoſſible to be true, that there ſhould be a Crowd of People, becauſe that there was a Sentinel at the Door, who muſt ſee all that go out, and that come in; and there is no way to go into the Yard, but through the Back-door, and the Pales are ſo high, that nothing can be flung over, that could be eaſily diſcerned. So that the very Thoughts of ſuch a thing as this are ridiculous in themſelves, and not only the Falſity of the Story is apparent, but there is alſo apparent a great Villany, in endeavouring to get Witneſſes to prove that Falſity. For you ſee who Mr. *Braddon* employs; he gets a Barber to go along with him on purpoſe to teſtify what idle Reports he could pick up. But this Barber, and the other Witneſſes, when they come here, can't tell any thing. For the Barber, he ſays, ſhe ſaid, *There lay a Razor*; but the Information ſays, (to which he is a Witneſs) that the Soldier cried, *Take up the Razor*; and ſhe now upon her Oath denies any thing of that.

The next Evidence is the Aunt, and ſhe tells you, ſhe does not remember ſuch and ſuch Particulars, but ſomewhat to that purpoſe ſhe does; but whether ſhe named my Lord of *Eſſex*, or no, in particular, as to his Lodgings, ſhe cannot give an account.

Then you have *Glaſbrooke*, that comes to give an account concerning this Girl's Story, and he plainly is quite different from what the others had teſtified before; for his Evidence is, That the Girl had ſaid my Lord of *Eſſex* cut his own Throat, and afterwards flung the Razor out of a Window: After he had committed this horrid Murder upon himſelf, he got to life again, and threw away the Inſtrument he did it with; that is plainly his Teſtimony, that this Child ſhould ſay ſo. So that, as in the Caſe of *Suſanna*, which I heard cited here upon another occaſion, the wicked Elders were diſcovered by the different Circumſtances of Time and Place; ſo here you have Circumſtances of Time and Place, and of all things in the World that can contribute to prove the Falſity of this Report, and to prove the malicious Deſign of theſe People that were engaged in this Buſineſs.

The next Witneſs is one *Smith*, and he ſpeaks much to the ſelf-ſame purpoſe. He was the Barber that went with *Braddon* to examine this Girl.

Now, Gentlemen, you are to conſider of theſe Contrivances of *Braddon*, in buſying himſelf to ſollicite theſe Children to teſtify theſe Stories, after a Denial by the Boy to ſign the Paper, To tell him there was no Harm could come to him, to dictate what he ſhould ſay, and put Words into his Mouth, about going to ſee my Lord *Gerard*'s Lodgings, which he never ſpake of; for him to dictate to the other Witneſs the Pinmaker of *Marlborough*, what the right Day ſhould be, to ſet up ſuch a ſenſeleſs Story that he heard ſuch a thing at the Poſt-houſe, but he cannot tell from whom, or name any one that heard it or ſpake it beſides himſelf: It is ſtrange how he ſhould meet with this Man, for even the Man himſelf tells you, he knows not who he had diſcourſed of it to; and never ſaw *Braddon* till that time he writ the Letter. But you may obſerve, that to be ſure the Report might be ſpread, it was ſo contrived that the Scene ſhould be laid in the Poſt-houſe, and then it was like to run abroad quickly; for alas it was not their Buſineſs to make Truth of it, but to make the diſcontented Rabble believe it to be a Truth. And ſo they began to conſult with themſelves where it was beſt to lodge it, and upon Deliberation the Place muſt humour the Deſign as well as the Time, and that muſt be at the Poſt-maſter's Houſe, in order to diſperſe the Noiſe of it; and then Mr. *Braddon* takes his Circuit to *Saliſbury* unto Sir *Robert Atkyns* at *Stow* in the *Hold*, and to other People, filling the Country with his braded Ware; and 'tis time to look after ſuch Pedlars, for they vent the worſt of Ware.

Now, Gentlemen, for the Defendants they bring this Evidence:

Firſt,

Then, Gentlemen, you may obſerve this Fellow is eaſily perſuaded to ſwear any thing, for he gives no manner of Account how he came to hear what he ſpeaks of, or from whom, or how Mr. *Braddon* came to him: He had never ſeen him before that time, he ſays (tho' Mr. *Braddon* had ſuch a value for this worſhipful Pinmaker, whom he never ſaw, that he came from *London* upon the leaſt intimation of this Man, ſo zealous he was for the carrying on this weighty Affair, which I may call this impudent and intolerable Lye).

Gentlemen, I muſt tell you, if any Proof in the World be ſufficient to prove Malice, you have ſufficient Proof of it before you now. If it had been a thing of Indiſcretion only without Malice, if there had been nothing of Caution given to him about it as a thing that concerned not him, there might have been ſomething ſaid to alleviate it; but for him to come as if he had Authority from the Counteſs of *Eſſex*, and Sir *Henry Capell*, who denies it, ſhews the Malice of his Deſign.

Gentlemen, 'Tis a Concern of an High Nature, and if you do believe theſe Perſons that are Defendants, or either of them to be guilty; ſuch as you believe to be guilty, you muſt find guilty, and of ſo much as you believe them guilty. And if in caſe they ſhall by you be found guilty, the Court is to take care to inflict a Puniſhment, if it be poſſible, ſuitable to their Offence.

Then the Court aroſe, and the Jury afterwards gave in a private Verdict, which the next Morning was repeated in Court and recorded. And by that Verdict they found the Defendant Laurence Braddon *guilty of the whole Matter charged upon him in the Information, and the Defendant* Hugh Speke *guilty of all but the Conſpiring to procure falſe Witneſſes, and of that they found him Not Guilty.*

Lunæ 21 *Aprilis.*

Mr. Att. Gen. MY Lord, Here are two Perſons to receive your Judgment.

L. C. J. Who are they?

Mr. Att. Gen. Braddon and *Speke*. But it being late, I know not whether you will give it now, or appoint ſome other time.

L. C. J. No, no, let them come in. They will ſay we are afraid of giving Judgment elſe.

Then Mr. Braddon *and Mr.* Speke *came into Court.*

Mr. Att. Gen. My Lord, we pray your Judgment for the King, that you will ſet a good Fine.

Mr. *Williams.* We are retained to move in Arreſt of Judgment.

Mr. Att. Gen. Judgment is enter'd already, and there is nothing but a Fine in the Caſe.

Mr. *Williams.* My Lord, If it be entered, it is entered but this Term; and 'tis in the Breaſt of the Court, if they pleaſe, to admit us to ſpeak in Arreſt of Judgment.

L. C. J. When were the Rules out?

Mr. *Williams.* My Lord, It was put off by Conſent to this Day.

L. C. J. But when were the Rules out, I aſk?

Cl. of Cr. The Rules were out the laſt Day of the laſt Term, and then Judgment was entered.

L. C. J. Well then, Judgment is entered, what ſay you againſt a Fine?

Mr. *Williams.* We were retained to move in Arreſt of Judgment, I am ſure I was, and inſtructed to that purpoſe.

L. C. J. I cannot tell what you were retained to do, but now Judgment is entered, what ſay you as to the Fine?

Mr. *Williams.* We cannot ſay any thing as to that, we are not inſtructed; I am ſure I am not.

Mr. *Wallop.* My Lord, We took it, and I was told ſo, That it was put off by Conſent to this Day

L. C. J. I know nothing of your Conſent, nor what you conſented to. If you conſent among yourſelves at the Bar, that is nothing to the Court. Here we find Judgment entered, and we muſt proceed upon what is before us.

Mr. *Wallop.* Your Lordſhip will pleaſe to remember, what the Evidence was.

L. C. J. I do remember it very particularly.

Counſel. My Lord, Mr. *Speke* is found Guilty of nothing but writing that Letter.

Mr. Att. Gen. He is found Guilty of all but the Suborning.

L. C. J. We do very well know there is a difference between them.

Then the laſt Rule was read.

L. C. J. Well, Judgment is regularly entered, What ſay you to it for the Defendants?

Mr. *Wallop.* My Lord, we conceive we have very good Matter upon the Verdict, to move in Arreſt of Judgment.

L. C. J. Yes, no doubt what you have to ſay is extraordinary material, but you come too late, we cannot hear you. Sir *Samuel Aſtrey*, is Judgment entered according to the Courſe of the Court?

Cl. of Cr. Yes.

L. C. J. Then we muſt proceed to fine them.

Mr. *Braddon.* Pray, my Lord, Let Mr. *Ward* be aſked, whether they did not agree we ſhould move to Day?

Mr. *Ward.* That was only an Agreement on *Saturday*, that they might appear to Day, and I would not take them in Execution.

Mr. *Braddon.* This was the Day I was to move in, my Lord; Mr. *Burton* knows very well, he agreed to it.

Mr. *Burton.* I know nothing more of it, my Lord, but that indeed I did conſent on *Saturday*, that whatſoever they could move then, they ſhould move on *Monday*.

Mr. *Ward.* That was only that they ſhould appear to Day, inſtead of *Braddon*'s being taken up by a *Capias pro Fine.*

L. C. J. Well, well, I know nothing of your Agreements, here is Judgment entered regularly, as we find it; you had beſt bring your Action againſt Mr. *Burton*, if he have done you any wrong, but I did not know that Mr. *Burton* was the King's Attorney. But I find here is Judgment againſt you, and 'tis a very foul Offence, as notorious an Offence as any Perſon, under that which is Capital, could be guilty of; baſe Aſperſions of the Government, in order to promote Sedition and Faction; and for that End, made uſe of all villanous Means to corrupt Infants, and then juſtify that Villany with a brazen Face, to that degree of Impudence, as I never before ſaw, That all the Juſtice of the Nation muſt be affronted by ſuch audacious Fellows, for it ſeems his Confidence has not left him; but here he ſmiles, and ſeems as if he had done no Harm.

Mr. *Braddon.* My Lord, I know my own Innocency, and therefore have no reaſon to be troubled.

L. C. J. Your Innocence! Your Impudence, you mean. I tell you, had you been in any other Country but this, the Innocence you brag of, would have ſent you to the Gallies.

Mr. Juſt. *Withins.* Then you think, Mr. *Braddon*, you have done very well in what you have done?

L. C. J. Ay, I aſſure you, does he. And the Zeal of his Party has gone ſo far, that at *Wincheſter*, when I was there in the Circuit, I was told that his Doctrine had obtained ſo much in that Country, eſpecially about that Place, whence ſome of his Witneſſes came, I mean *Andover*, that there was a Woman that was here the other Day, Mrs. *Drake*, being at Conventicle, held forth, That my Lord of *Eſſex* was murdered while the King was in the *Tower*, and that God was the Avenger of Murder, and had found out a proper Perſon for the Proſecution of it, that was Mr. *Braddon*; and this ſnivelling Cant prevailed at the Conventicle. It is no ſuch ſmirking Matter as you make it, Mr. *Braddon*, I aſſure you.

Mr. *Braddon.* My Lord, if I did know myſelf to be under any Guilt, I would very readily and humbly acknowledge it.

L. C. J. Well, I ſee a great many of the Party about you, I can ſpy them out, though they think they are not ſeen; but they ſhall know we will not ſuffer ſuch Monſters as theſe to go without due Puniſhment.

Mr. Juſt. *Withins.* He ſtands upon it, he is innocent ſtill, notwithſtanding all that was proved, and the Jury's Verdict.

L. C. J. Yes, alack-a-day, he wipes his Mouth, and has not ſo much as eaten, I'll warrant you.

Mr. Juſt. *Withins.* I expected you would have been ſorry, Mr. *Braddon*, for what you had done, and expreſſed ſome Penitence, but it ſeems you are very innocent.

Mr. *Braddon.* I did not directly, nor indirectly, offer any thing to induce the Children to give their Teſtimony, nor was any ſuch thing proved: I know my own Innocency.

Mr. Att. Gen. The Jury have found it otherwiſe.

L. C. J. And that upon a fair, a full, and a convincing Evidence, and no Man in the World can make any doubt of the Truth of that Verdict; but he that had a ſhare in your Guilt, or in that it had a tendency towards, I mean that horrid Conſpiracy. And I aſſure you, Mr. *Braddon*, you tread upon the very Heels of it; ſmirk at it, and be as merry about it as you will.

Mr. *Braddon.* If I did not know my own Innocency, then I had reaſon to be troubled.

L. C. J. Your own Innocency? If you did not know your own Impudence, you mean; 'tis that only that makes you ſmirk and ſmile at ſuch Things as theſe.

Mr. Juſt. *Withins.* Mr. *Braddon*, when you were adviſed by Sir *Henry Capell* to take a prudent and a good Courſe, to go and leave it with a Secretary of State, you would not take that Advice, but you would go your own way, and you would turn Examiner, and Proſecutor yourſelf; when he that was the Earl's Brother, and was ſure more concerned than you, thought it fitter to go that way.

L. C. J. We remember what Sir *Samuel Barnardiſton*, in his Letter, ſpeaks of this Matter, Mr. *Braddon*, he was got off; why, they dare not meddle with Mr. *Braddon*, he is ſuch a dreadful Man, and his Party are ſo conſiderable, that we dare not meddle with them; and the *TORIES* are all caſt down. Alack-a-day! becauſe theſe Fellows can't caſt down the Government, therefore all honeſt Men muſt be caſt down, and not dare to meddle with them. But they ſhall ſee we are not ſo much caſt down, but we are able to reach the higheſt of them. What Condition is this Man in? I ſpeak in Point of Eſtate, for his other Conditions, we know what they are, his Trial will ſatisfy any Man of that.

Mr. Att. Gen. He is the eldeſt Son of a Father that has a good Eſtate.

Mr. *Williams.* He is then but Heir Apparent.

Mr. *Braddon.* No, I am a younger Brother.

Mr. *Williams.* It ſeems he is but the Second Son, and a young Gentleman.

Mr. *Braddon.* My Father has an elder Son alive.

L. C. J. I remember particularly 'tis ſaid in one of the Letters, that he was a Man of 7 or 800*l.* a Year.

Cl. of Cr. That was in Mr. *Speke*'s Letter. He ſays his Father had ſo much.

Mr. *Braddon.* That is in Mr. *Speke*'s Letter; but that is not true.

L. C. J. I don't know truly, that may be as falſe as any thing elſe you went about to have theſe Children Swear; but I'll undertake it, if thou hadſt told the little Girl that he had 800*l.* a Year, ſhe would have been as ready to have Sworn it as the other.

Mr. Juſt. *Withins.* 'Tis a wonderful Thing, Mr. *Braddon*, you could bring no body to come and teſtify theſe Things, but thoſe two little Children.

L. C. J. But oh! What a Happineſs it was for this Sort of People, that they had got Mr. *Braddon*, an honeſt Man, and a Man of Courage, ſays Mr. *Speke*, a Man *à propos*; and pray, ſays he to his Friend, give him the beſt Advice you can, for he is a Man very fit for the Purpoſe, and pray ſecure him under a ſham Name, for I'll undertake there are ſuch Deſigns upon pious Mr. *Braddon*, ſuch Contrivances to do him a Miſchief, that if he had not had his Proteſtant Flail about him, ſomebody or other would have knocked him on the Head, and he is ſuch a wonderful Man, that all the King's Courts of Juſtice muſt needs conſpire to do Mr. *Braddon* a Miſchief; a pretty ſort of a Man, upon my Word, and he muſt be uſed accordingly; Men that arrogate and aſſume to themſelves a Liberty to do ſuch kind of Things, muſt expect to fare accordingly.

Mr. Juſt. *Withins.* Mr. *Speke* is not found Guilty of the Subornation.

Mr. Att. Gen. He is found Guilty of all but the Subornation; he is found Guilty of Conſpiring to ſpread the Report. The Subornation will require another Sort of Puniſhment.

L. C. J. Ay, but there is a Difference between them. The Crime was very great in Mr. *Speke*, though not ſo great as in Mr. *Braddon*, and I am ſorry that Mr. *Speke* ſhould be concerned in it, and ſhould take ſuch care about ſuch a Buſineſs, with all that Piety and Zeal for Religion he expreſſes in his Letter to Sir *Robert Atkyns* (Mr. Juſtice *Atkyns* that was,) that he ſhould recommend him to have a wonderful Care of him, and then thank him for his Kindneſs ſhewed to *Our Party:* So he makes himſelf to be of the Party, and makes this the Buſineſs of the Party, and ſo makes himſelf to be a Sharer in the Buſineſs; for 'tis *We thank you for your Kindneſs to Us, and the Tide is ſtrong againſt Us, and We hope We ſhall be able to bring the Buſineſs of my Lord of* Eſſex *upon the Stage, before they do any of thoſe in the Tower.* So Mr. *Speke* makes himſelf a Party in the Buſineſs. And I am mighty ſorry that when he comes to be aſked the Queſtion, How he came to write this Letter? he ſhould tell us, He had been at the Tavern, and did not know what he writ, but does not ſay, he recollected afterwards. It ſeems he uſed to be often at the Tavern, and had been there when he writ this pious Letter, and ſo his Saintſhip broke out in a Fit of Drunkenneſs, for moſt of our Reformers of Religion now-a-days want common Morality. And yet they are wonderfully Zealous for Reformation and Religion. All the Villany that has been thought of, nay more than ever could enter before into the Imagination of Mankind, has been wrought by theſe Men, that pretend to be Reformers of Religion, and amongſt the reſt Mr. *Braddon*; and indeed I look upon *Braddon* to be the Daringeſt Fellow of the Party, he and his Brother *Smith.* If there were any Reluctancy, or any Senſe of any Guilt they had contracted, and would ſhew it by acknowledging their being ſurprized into it, and teſtified Repentance by a ſubmiſſive and dutiful Behaviour, that were ſomething to incline the Court to Commiſeration; but when we ſee, inſtead of that, they are more obdurate and ſteeled in their Oppoſition to the Government, they muſt be reclaimed by Correction, and kept within due Bounds by condign Puniſhment, otherwiſe it will be thought by the ignorant Sort of People, that all Courts of Juſtice are afraid of them.

Mr. Juſt. *Withins.* Nay, Mr. *Braddon*'s Zeal was very extraordinary in the Caſe, going on in this Buſineſs, not only without, but contrary to the Advice of Sir *Henry Capell*, who ſurely was moſt concerned about the Death of his Brother.

Then the Judges between themſelves conſulted about the Sentence, which Mr. Juſt. Withins *pronounced thus.*

Mr. Juſt. *Withins.* Mr. *Braddon*, You ſee what it is you are convicted of. It was for as foul an Offence, as any can be imagined, that is not Capital, wherein the King is very much concerned, for the Inſinuations were ſuch, as that the King was mightily concerned; for in as much as you ſay the Earl of *Eſſex* ſhould be murdered at that time the King was in the *Tower*, it was an implied Accuſation of the King, and an Inſinuation that the King ſhould deſign to take away an innocent Man's Blood, and ſo downright be guilty of murdering an innocent Perſon, which how great an Offence that is, let any Man that has any Loyalty, or Reverence for the King in him conſider, and you cannot ſay you are innocent, Mr. *Braddon.* Your Proſecution was moſt pertinacious, and you would proceed after the Boy had denied it, and proceed in ſuch a manner, when Sir *Henry Capell* had told you what you ſhould do: and what did you go upon? You had got a little Girl, a Child of 11 or 12 Years old, to tell a Story of I know not what, and nobody elſe knew any thing of it, and this muſt be a ground ſufficient for you to go up and down, and ſpread ſuch a Report, when Sir *Henry Capell* gave you Advice to go to a Secretary of State, and let him examine it; indeed you did go to him, but would not reſt ſatisfied with what the King and Council did; no, Mr. *Braddon*, you thought that would not gratify your own Paſſion, and Malice againſt the King and the Government, but you muſt take Ways of your own. This is to ſcandalize the whole Juſtice of the Nation, and not only make the King a Murderer, but you would have all the Plot hereby quite loſe its Credit; and you would make it, as Sir *Samuel Barnardiſton* would inſinuate, a Sham Plot, to take away innocent Proteſtants Lives. But as to the Plot, there has been freſh Proof of it beyond all Contradiction this Day; a Man here in the Face of the whole Court has owned the whole Thing; he would not take the Liberty of defending himſelf, that was offered him, if he would try it, but confeſſed that Conſpiracy, which you had a great mind to be an Inſtrument of making the World to believe, was nothing but a Sham. I ſhall not make any long Speech to you, The COURT, for this Offence,

> *Sets upon you, Mr.* Braddon, *the Fine of* 2000l. *and order that you find Sureties for your good Behaviour during your Life, and that you be Committed till this be Performed. And for you Mr.* Speke *(we have conſidered that you are not ſo highly Guilty as Mr.* Braddon, *you are Guilty of a great Offence, but not ſo Guilty as he, and therefore) we think fit to ſet upon you the Fine of* 1000l. *and that you find Sureties for your good Behaviour during your Life, and be Committed till you perform it.*

L. C. J. Marſhal, take them in Cuſtody, and uſe them as they ought to be uſed.

Counſel. My Lord, Mr. *Speke*'s Bail is diſcharged, I ſuppoſe?

L. C. J. Ay, they muſt be, as to this Matter, but nothing elſe but this.

Then they were carried away to the King's Bench-Priſon.

The Earl of ESSEX's *Innocency and Honour vindicated; in a Letter to a Friend: By* Laurence Braddon.

S I R,

YOURS of the 10th Inſtant came the laſt Night to my Hands; and I give you many Thanks for your kindneſs therein expreſſed; and more particularly, that you have ſo often endeavoured to reſcue me from the Slanders of ſuch, as without either knowing my Perſon or Offence, have given me thoſe uncharitable and unjuſt Terms, worſe than which, the greateſt Offenders can hardly deſerve. *Sir*, Your Country is not the only Place where I have been ſo traduced: But my Misfortunes having made my Name known where in Perſon I have never been, and my Adverſaries being as malicious as numerous, I have heard from other hands, That I have elſewhere met with the like treatment. But to do myſelf that Juſtice which I think is incumbent on me, in order to the clearing myſelf from thoſe undeſerved Calumnies with which I have been, and am daily ſlandered, I have herein ſent you a particular Account of *what*, and *how*, and *for what* I did ſo unjuſtly ſuffer under our late Male-Adminiſtration. And ſeeing the Honourable late Committee of Lords (appointed to examine into the Death of the Right Honourable *Arthur* (late) Earl of *Eſſex*) is diſſolved, by the laſt Diſſolution of Parliament, and moſt of the Depoſitions and Examinations taken before this Honourable Committee have been read before the Honourable Houſe of Lords, (and ſo no longer to be thought a Secret,) I do humbly conceive it's neither an Offence, or divulging a Secret, to publiſh what (ſince this happy Revolution) hath been proved for the clearing of *That Truth which* (when I firſt engaged) *to aſſert was the higheſt Offence.*

By the Proceedings before this Honourable Committee, you will in ſome meaſure perceive what great pains thoſe Honourable Perſons have been at, in the many Committees which have herein ſat, and the many Examinations taken before their Lordſhips: All which had long ſince been publiſhed to the World, had it not been for the Prorogations and Diſſolution which have happened, depending upon this Proſecution. But when the Honourable Houſe of Lords ſhall think fit to revive this Committee, and order this Report to be made, I hope I ſhall have an opportunity to vindicate myſelf in ſome other way than at preſent is proper.

Sir, Though this Letter may at firſt ſight ſeem much longer than you think the Subject-matter required; yet when you ſhall have read the whole, and obſerved the numerous Examinations and Depoſitions which herein have been made, what induſtrious and villainous oppoſitions it hath met with, not only in falſe Reports and ſly Inſinuations, but the many falſe Oaths which have been procured, to deſtroy the belief of this barbarous Murder; you will (I hope) not find this Diſcourſe ſo tedious in its peruſal, as at the firſt glance you may fear it will prove.

Sir, With leave of a late Author upon this Subject, I have freely borrow'd of that Diſcourſe: Yet in all parts not obſerved his Method; but according to your Command, ſhall begin with the Reaſons that moved me to this Proſecution: In order to which, I ſhall in the firſt Place give you a ſhort Relation of my Lord's Commitment to the *Tower*, with the Depoſitions taken before the Coroner upon my Lord's Body; for the reading thoſe Depoſitions proved the occaſion of my firſt engaging herein.

The Right Honourable *Arthur* (late) Earl of *Eſſex* was committed to the *Tower* the 10th of *July* 1683, by virtue of a Warrant from Secretary *Jenkins*; which Warrant ran as followeth:

Sir *Leoline Jenkins*, Knight, of His Majeſty's Moſt Honourable Privy-Council, and Principal Secretary of State.

‘THESE are in His Majeſty's Name to Will and Require you to
‘ receive into your Cuſtody the Perſon of *Arthur* Earl of *Eſſex*, here-
‘ with ſent you, being committed for High-Treaſon, in compaſſing the
‘ Death of the King, (whom God preſerve,) and conſpiring to levy War
‘ againſt His Majeſty: And him the ſaid Earl of *Eſſex* to keep in ſafe
‘ Cuſtody, until he ſhall be delivered by due Courſe of Law. And
‘ for ſo doing this ſhall be your Warrant. Given under my Hand and Seal
‘ at *Whitehall*, the 10th of *July*, 1683.

To *Thomas Cheek*, Eſq; Lieutenant of His Majeſty's *Tower* of *London*.

L. JENKINS.

The firſt Night his Lordſhip lay at Captain *Cheek*'s, the then Lieutenant of the *Tower*; but the next Day was removed to Major *Hawley*'s (then Gentleman-Porter of the *Tower*;) and the two Warders placed upon his Lordſhip, were *Nathanael Monday* and *Thomas Ruſſel*; one to ſtand at my Lord's Chamber-door, or in his Chamber; and the other at the Stairs-foot; and thus by turns. *Paul Bomeney*, my Lord's Servant, was permitted to be with his Lordſhip. At Major *Hawley*'s my Lord lay *Wedneſday* Night and *Thurſday* Night; but *Friday* Morning about nine of the Clock, his Lordſhip was found with his Throat cut through both Jugulars and Arteries, even to the Neck-bone, on both Sides the Neck. The next Day, being *Saturday*, the Jury ſat; and before them were ſworn the aforeſaid *Paul Bomeney*, *Thomas Ruſſel*, and two Chirurgeons; whoſe Informations are as followeth, according to the Print; but that (as I ſhall obſerve in its own proper place) varies in the Original from *Bomeney*'s Information.

The Information of *Paul Bomeney*, Servant to the late Earl of *Eſſex* for about three or four Years now laſt paſt, taken upon Oath the 14th day of *July* 1683, *Anno Regni* Caroli *ſecundi Dei Gratia* Angliæ, Scotiæ, Franciæ, & Hiberniæ *Regis*, *Fidei Defenſor'*, &c. *Triceſimo quinto. Annoque Domini*, 1683.

‘SAITH, That when my Lord came to Captain *Hawley's*, which was the 11th Inſtant, my Lord of *Eſſex* aſked him for a Penknife to pare his Nails, as he was wont to do; which this Informant anſwered, being come in haſte, he had not brought it; but he would ſend for one; and accordingly ſent the Footman with a Note for ſeveral things for my Lord, amongſt which the Penknife was inſerted; and the Footman went, and gave the Bill to my Lord's Steward, who ſent the Proviſions, but not the Penknife; and he told the Footman he would get one next Day. When the Footman was come, my Lord aſked if the Penknife were come? This Informant anſwered, *No*; *but he ſhould have it the next Day.* And accordingly on the 12th Inſtant in the Morning, before my Lord of *Eſſex* was up, this Informant ſent the Footman home with a Note to the Steward, in which, amongſt other things, he aſked for a Penknife for my Lord. When the Footman was gone, about, or a little after eight of the Clock, my Lord ſent one Mr. *Ruſſel*, his Warder, to this Informant; who came, and then he aſked him if the Penknife was come? This Informant ſaid, *No, my Lord*; *but I ſhall have it by and by.* To which my Lord ſaid, *That he ſhould bring him one of his Razors, it would do as well.* And then this Informant went and fetched one, and gave it my Lord, who then went to pare his Nails, and then the Informant went out of the Room into the Paſſage by the Door, [On Friday *the 13th Inſtant*] and began to talk with the Warder; and a little while after he went down Stairs; and ſoon after came the Footman with the Proviſions, and brought alſo a Penknife, which this Informant put upon his Bed, and thought my Lord had no more need of it, becauſe he thought he had pared his Nails; and then this Informant came up to my Lord's Chamber about eight or Nine in the Forenoon, [* on *Friday* the 13th Inſtant] with a little Note from the Steward [† *where there were three Lines writ*]. But not finding his Lord in the Chamber, went to the *Cloſe-ſtool-Cloſet-door*, and found it ſhut; and thinking his Lord was buſy there, went down, and ſtaid a little; and came up again, thinking his Lord had been come out of the Cloſet; and finding him not in the Chamber, he knocked at the Door with his Finger thrice, and ſaid, *My Lord!* But nobody anſwering, he took up the Hangings, and looking through the Chink, he ſaw Blood, and part of the Razor; whereupon he called the Warder *Ruſſel*, and went down to call for help; and the ſaid *Ruſſel* puſhed the Door open, and there they ſaw my Lord of *Eſſex* all along the Floor, without a Periwig, and all full of Blood, and the Razor by him. And this Deponent further depoſeth, That the Razor now ſhewed to him at the time of his Examination, is the ſame Razor which he did bring to my Lord, and which did lie on the Ground in the Cloſet by my Lord.’

Note.

This was not in the Original, but added by Authority.

* This interlined in the Coroner's hand.

† *Note*, This is in the Original, but left out in the Print.

Note.

The Information of *Thomas Ruſſel*, one of the Warders of the *Tower*, who had the Cuſtody of the Earl of *Eſſex*, taken the 14th day of *July*, *Anno Regni* Caroli *ſecundi Dei Gratia* Angliæ, Scotiæ, Franciæ, & Hiberniæ *Regis*, *Fidei Defenſoris*, &c. *Triceſimo quinto*, *Annoque Domini*, 1683.

‘SAITH, That on *Friday* the 13th Inſtant, about eight or nine of the Clock in the Forenoon, he was preſent, when he did hear the Lord of *Eſſex* call to his Man, Mr. *Bomeney*, for a Penknife to pare his Nails; and then for a Razor, which Mr. *Bomeney* brought him; and then my Lord walked up and down the Room, ſcraping his Nails with a Razor, and ſhut the outward Door. Mr. *Bomeney*, half a quarter of an Hour afterwards, not finding my Lord in his Bed-Chamber, went down Stairs again, believing that my Lord was private in his Cloſet. *Bomeney* came up about a quarter of an Hour afterwards, and knocked at the Door; then called, *My Lord*, *my Lord:* But he not anſwering, peeped through a Chink of the Door, and did ſee the Earl of *Eſſex* lying on the Ground in the Cloſet; whereupon he cried out, *That my Lord was fallen down ſick*; and then the Informant went to the Cloſet-door, and opened it, the Key being on the out-ſide, and then did ſee my Lord lie on the Ground in his Blood, and his Throat cut.

Note.

The Information of *Robert Sherwood* in *Fanchurch-ſtreet*, Chirurgeon, taken the 14th day of *July*, *Anno Regni* Caroli *ſecundi*, *Dei Gratia* Angliæ, Scotiæ, Franciæ, & Hiberniæ *Regis*, *Fidei Defenſoris*, &c. *Triceſimo quinto*, *Annoque Domini*, 1683.

‘SAITH, That he hath viewed the Throat of the Earl of *Eex*; and doth find, That there is a large Wound; and that the *Aſpera Arteria*, or Windpipe, and the Gullet, with the Jugular Arteries, are all divided; of which Wound he certainly died.

The Information of *Robert Andrews* of *Crouched-Friars*, Chirurgeon, taken upon Oath the 14th day of *July*, *Anno Regni* Caroli *ſecundi*, *nunc Regis* Angliæ, &c. *Triceſimo quinto*, *Annoque Domini*, 1683.

‘SAITH, That he hath viewed the Throat of the Lord of *Eſſex*; and doth find, That it was cut from the one Jugular to the other, and through the Windpipe and Gullet, into the *Vertebres* of the Neck, both Jugular Veins being alſo quite divided.

Upon theſe Informations, the Coroner's Jury found my Lord *Felo de ſe.* The Subſtance of theſe Informations in ſhort is this, *viz.*

‘That my Lord of *Eſſex* called for a Penknife to pare his Nails; but the Penknife not being ready, his Lordſhip required a Razor, which was delivered him; with which Razor his Lordſhip retired to his Cloſet, and locked himſelf in: But ſoon after, the Cloſet-door being opened, my Lord was found with his Throat cut through both Jugular and Arteries, to the Neck-bone, and the Razor (as before delivered) lying by him.’

Theſe Informations taken by the Coroner were publiſhed the next *Monday* after my Lord's Death; and I the 16th of *July* buying one of theſe, that very Morning (with one Mr. *William Hatſell*) went to *Wanſted*, to the Houſe of one Mr. *John Evans* (then an Officer of the Cuſtom-Houſe). Upon reading the laſt part of *Bomeney's* Information, which depoſed, *That when they opened my Lord's Cloſet-door, they found his Lordſhip on the Ground, with his Throat cut, AND THE RAZOR BY HIM*; Mr. *Evans* declared, That could not be true; for *Friday* Morning about Ten of the Clock, being upon the Cuſtom-houſe-Key with one Mr. *Edwards*, the ſaid Mr. *Edwards* told him (with ſeveral others,) “That his Son being in the *Tower* that Morning, juſt before the Death of the Earl of *Eſſex* was known, he was ſtanding juſt over-againſt the Earl's Chamber-Window, and ſaw a bloody Razor thrown out of that Window, which he went to take up; but a Maid came out of Captain *Hawley's* Houſe, and took it, and forthwith ran with it into my Lord's Lodgings, and up Stairs immediately, ſeveral times crying out *Murder!* and then coming down, pretended the Earl of *Eſſex* had cut his Throat.”

Upon hearing Mr. *Evans* give this Relation, I declared, If this was true, what was ſworn before the Coroner muſt be falſe; and I did not believe they had ſworn falſe for nothing; but muſt conclude my Lord was murdered. Hereupon I did deſire the ſaid Mr. *Evans* to inform me where this Mr. *Edwards* lived; for I proteſted, I would inquire into the Matter. Mr. *Evans* then told me, Mr. *Edwards* lived in *Mark-Lane*, by the *Tower*.

When I came to Town that Afternoon, about Six of the Clock, I did forthwith acquaint ſeveral of my Friends with my Deſign of making immediate inquiry into the Truth of this Story; which if I found Reaſon to believe, I thought it was proper to be taken upon Oath before ſome Juſtice of Peace, in order to a further inquiry. By moſt of my Acquaintance I was diſſuaded from it; they telling me, That if my Lord was indeed murdered, the Perſons and Intereſt concerned in the Murder were too Powerful for me to engage; and therefore I muſt expect nothing but Ruin by meddling in the Matter. To all which Diſſuaſions, I generally gave this Anſwer: That I would do nothing herein, but what I could juſtify to God and a good Conſcience. And the threatned Ruin I did not fear, or would thereby be deterred; for if my Lord was indeed barbarouſly murdered, the ſame Principles and Practices that murdered him, might take off many of thoſe Honourable Perſons they then had, or ſhould take into Cuſtody, and pretend, as they did in this Caſe, That this was done by the Priſoners themſelves, to avoid an Infamous Execution: So that God only knew in how many Men's Deſtruction ſuch treacherous Practices might determine. But if thoſe Bloody Men once found, that ſuch their Deſign was ſuſpected, and like to be detected, in all probability, they would deſiſt from the like villainous Practices; and ſeeing this would be more for the Intereſt of the Publick, than I could poſſibly be either in my Liberty, or otherwiſe, I was reſolved to ſacrifice that, and whatſoever elſe I had, to the Service of my Country.

My Friends finding me thus reſolved to engage, they adviſed me at firſt to inform my Lord's Honourable Family herewith, and to obſerve ſuch Directions as from them I ſhould receive; wherefore that very *Monday* Evening, I went to St. *James's-Square* to my Lord's Houſe, where I found Sir *Henry Capell* under great Diſorder, by Reaſon of that deplorable Accident. I did inform Sir *Henry* of what I had heard, but told him, That I had not then ſpoken either with the Boy, or his Father, who (as I was informed) lived in *Mark-Lane* by the *Tower*; and if Sir *Henry* thought fit, I would the next Morning go with any whom he ſhould appoint, to Diſcourſe the Father and Him: Sir *Henry* thanked me for my Information, but ſaid he was then under ſuch a Concern for ſo great a Misfortune, as had herein befallen his Family, that he hardly knew what he did or ſaid, *&c.* The next Morning I went to Mr. *Edwards*, to whom, as ſoon as I had told the Cauſe of my coming, the old Man ſeemed much ſurprized and concerned, and in Tears told me he was Ruined; to which I anſwered, That I did ſuppoſe he was not ignorant what great Things the Father of this Unfortunate Lord had done, and ſuffered for His Majeſty's Intereſt, and how this very Lord himſelf had been highly in His Majeſty's Favour, having been employed in Places of the greateſt Honour and Truſt; and therefore, if his Lordſhip fell by treacherous Hands, none (in Reaſon) could be ſuppoſed ſo zealous for a Diſcovery as his Majeſty would, who could protect him from whatſoever Danger might ſeem to threaten him: beſides, if there were any Danger, I ſtood principally ſubject to it; but the Danger I did not fear, conſidering of what Conſequence this might prove, by being inquired into: At length Mr. *Edwards* gave me the ſame Information (in Subſtance) I had the Day before received from Mr. *Evans*. I then deſired to ſee his Son, who being then at School, I could not ſpeak with him; but that Afternoon about Two of the Clock I went again, and was then told, That the Boy had denied all, which denial was occaſioned by his Siſter's telling him, *He ſhould be Hang'd for what he had herein declared:* this the Siſter could not deny; but as ſoon as the Boy was called into the Parlour, where I with ſeveral others were, before I queſtioned him about it, I diſcourſed him concerning the Danger of a Lye; and after I had ſolemnly injoined him to tell me the very Truth, he Boy then declared to me, as he did at firſt to his Father and Siſters, and told me, *That his Siſter's Threats had frightned him into a Denial.* Upon this, I took in Writing the Subſtance of what the Boy declared, and the next Day drew it into a formal Information, which followeth:

The Information of *William Edwards*, Second Son to *Thomas Edwards*, of the Pariſh of *All-hallows Barking*, *London*, taken the 18th Day of *July*, in the Thirty Fifth Year of the Reign of our Sovereign Lord King *Charles* the Second, *Anno* 1683.

‘SAYS, That this Informant on *Friday* the 13th of this Inſtant *July*, as he was going to School, with his Brother *Edward*, he heard that His Majeſty, and His Royal Highneſs the Duke of *York*, were going to the *Tower*;

‘ *Tower*; whereupon this Informant left his Brother, and went to the *Tower* to ſee his Majeſty and His Royal Highneſs. And when this Informant had ſeen His Majeſty, and his Royal Highneſs, this Informant about Nine of the Clock in the Morning of the ſame Day, went to ſee my Lord *Brandon Gerard*'s Lodgings; and as this Informant was ſtanding almoſt over-againſt my Lord *Brandon Gerard*'s Lodgings, between the Lord *Gerard*'s and the late Lord of *Eſſex*'s Lodgings, this Informant ſaw a Hand caſt out a bloody Razor out of the ſaid Earl of *Eſſex*'s Lodgings: And this Informant was going to take up the ſaid Razor, which he ſaw on the Ground to be bloody; but before this Informant came to the Razor, there came a Maid running out of Captain *Hawley*'s Houſe, where the ſaid Lord of *Eſſex* lodged, and took up the ſaid Razor, which ſhe carried into the ſaid Captain *Hawley*'s Houſe: And this Informant believes, that it was the ſaid Maid, whom he firſt heard cry out Murder: And this Informant further ſaith, That he heard the ſaid Maid ſay to ſome which were about the Door, after the Murder was cry'd, That ſhe did hear the ſaid Lord of *Eſſex* to groan three times that Morning.’

The Information of Mrs. *Edwards*, Wife to *Thomas Edwards*.

‘ SAITH, That about Ten of the Clock in the Morning, on *Friday* the 13th of this Inſtant *July*, This Informant's youngeſt Son *William Edwards*, aged about Thirteen Years, came trembling to this Informant, and in great Amazement and Horror, told this Informant, That the Lord of *Eſſex* had cut his Throat in the *Tower*; and further ſaid, That he the ſaid *William Edwards* in the Morning about Nine of the Clock, did ſee a Hand caſt out a Razor out of the ſaid Lord of *Eſſex*'s Lodging Window, which Razor he ſaw on the Ground to be Bloody, and the ſaid *William Edwards* was going to take up the ſaid Razor, but before he came to it, there came a Maid running out of Captain *Hawley*'s Houſe, where the ſaid Earl of *Eſſex* lodged, and took up the Razor, which ſhe the ſaid Maid forthwith carried into the ſaid Captain *Hawley*'s Houſe; and ſoon after, he the ſaid *William Edwards* heard her, as he the ſaid *William Edwards* did believe, cry out, Murder. And this Informant further ſaith, That the Subſtance of what the ſaid *William Edwards* hath ſworn in his Information, he the ſaid *William Edwards* on *Friday* laſt did declare to this Informant, and her whole Family, ſeveral times, atteſting it to be true, and ſeveral times ſince.’

This the Boy declared he was ready to atteſt; but finding ſeveral Juſtices of the Peace very ſhy, I thought it proper to carry theſe Informations to the Secretary of State, and know his Pleaſure therein: accordingly, *Thurſday* the 18th of *July*, about Four of the Clock, I delivered theſe Informations of the Boy and his Mother, to whom the Boy had diſcovered it, as ſoon as he came from the *Tower*. My Lord *Sunderland* ſeemed much ſurprized, and after ſome Pauſe, told me, That I ſhould bring the Perſons (who were not then with me) the next Morning, *and if it were proper, he would take their Depoſitions.*——The next Morning about Nine or Ten of the Clock, I went with the Boy and his Siſter, (the Mother not being well) to whom the Boy had likewiſe, as ſoon as he came from the *Tower*, revealed what he had as before ſeen. As ſoon as I came to the Secretary's Office, I ſent his Lordſhip word, that according to his Lordſhip's Order, I did attend. Immediately upon which (before myſelf, or either of the Informants were examined) Mr. *Atterbury* the Meſſenger came to the Office and took me into Cuſtody; (the only Inſtance where ſuch as came to give Information on the Behalf of the King, were ſo treated before any Accuſation againſt them,) and ſome ſhort time after, thus in Cuſtody, I was called in before the then King and Council.

Note.

The firſt Queſtion (to my Remembrance) aſked, was, What made me engage in that Matter? To which I anſwered, That I was altogether unrelated to, and unacquainted with, that honourable Family; ſo that there lay no more perſonal Obligation upon me firſt to move, than upon any Man whatever, who might have met with the like Information; but it was my love to Truth and Juſtice firſt engaged me in it; and through the Grace of God, my Duty therein I would do, though Death ſtared me in the Face every Step I made. I can't but here obſerve the Carriage of the then Duke of *York*, who with a concerned Countenance, leaning his Elbow upon the Board, covered his Face with his Hand, upon which I did immediately imagine, that ſomewhat within did more trouble him, than all the trouble from without did me; for though I ſtood as the ſuppoſed Criminal, I had reaſon to gueſs-----*ſomebody elſe* was the real one. I did then obſerve to his Majeſty the Incoherence and Contradictions ſworn before the Coroner by *Bomeney* and *Ruſſel*, who were the Perſons that pretended to prove the Self-Murder before the Coroner; upon which his Highneſs called for thoſe Informations, but ſaid nothing in Anſwer. His Majeſty then took them, and ſaid as little; but the then Lord Keeper *North* having read them, went about to reconcile thoſe Incoherences and Contradictions; upon which I did object againſt what his Lordſhip ſaid, as inſufficient, and further urged the Objections I had before made. His Lordſhip ſeemed very angry that I made thoſe Reflections; but, with Submiſſion, I think, by printing the Coroner's Depoſitions, every Man was in ſome ſort appealed to, whether what was ſo ſworn, and printed, was not ſufficient to induce every impartial Perſon (for ſuch the Coroner and Jury ought to have been) that the Earl of *Eſſex* did indeed cut his own Throat; and the printing thoſe great Incoherences, and contradictory Depoſitions, argued as great Impolicy in the Authority that publiſhed them, as the depoſing them did Villany in the Informants, or the believing them want of Underſtanding (not to ſay Honeſty, Integrity and Impartiality) in the Coroner, and moſt of the Jury. After ſome time ſpent in the Examination, I was ordered to withdraw into the Secretary's Office, and repeated Orders given by the then King, that I ſhould be kept cloſe (perhaps that I might not hear the Boy or his Siſter examined); the Boy was then called in, and at firſt (as I was afterwards informed) did not deny the Truth of his Information; but being not then paſt Thirteen, and frighted by being before ſo great Authority, he wept; upon which his then Majeſty ſtroked him upon the Head, and ſaid, *Did you not invent this to excuſe your truanting?* To which the Boy trembling, anſwered, *Yes* (this the Boy declared at Home after his Examination). Then the Siſter was called, who declared how the Boy, upon his firſt coming from the *Tower*, had informed her as before ſet forth; and tho' after threatened to be whipt, never retracted till the *Tueſday*, when I having been there, his Siſter had frighted him into a denial, which as ſoon as I came the ſecond time, he retracted, and ſtood to his firſt Information, ſaying his Siſter had frighted him, and told him he ſhould be hanged, and his Father would be undone; the Fear of which made him deny it: She further declared, that ſhe did verily believe they never knew nor heard of me till the *Tueſday* after my Lord's Death, and that I never did give, or offer her Brother one Farthing, but ſtill enjoined him to ſpeak nothing but the Truth (this the Siſter did after declare was the Subſtance of her Examination). After the Siſter's Examination was over, I was the ſecond Time called for, and told by my Lord Keeper, that I would have ſuborned the Boy; to which I anſwered, that I was well ſatisfied of my Innocency in, and Abhorrences of all ſuch Practice, which in this caſe appeared impoſſible, ſeeing that the Relation of the Boy was ſeveral Days before I ever ſaw or heard of the Boy; nevertheleſs I was ready to give what Bail his Lordſhip ſhould be pleas'd to command; upon which I was ordered to give Bonds with Two Securities in Two Thouſand Pound a-piece; this I did that very Afternoon; but the Omiſſion of the Under-Secretary, in the Form of theſe Bonds, was very advantageous to me, and my Security; for whereas the Conditions of all Council-Bonds were to conclude, *and in the mean time to be of the good Behaviour*; this Clauſe in mine was left out, by which my Friends were ſaved from that, which otherwiſe would (as you will afterwards find) have ruined them. Standing thus under Two Thouſand Pound to anſwer to an Information of Subornation, I thought I was in Self-Juſtice bound to make what further Inquiry I could, to ſtrengthen the Boy's Evidence. To which my Lord Keeper (without the leaſt Colour) ſuggeſted, I did endeavour to ſuborn the Boy to ſwear. In this Inquiry I was daily hurried up and down, and found moſt People afraid to diſcover what they herein knew; and which was more, few of my Acquaintance could I prevail with to go with me upon theſe Inquiries; for my Misfortunes, with the Danger that from the Corruption of the then Times naturally threatened Men, deterred all from engaging any way herein. But at length I met with a Gentleman, who readily went with me upon all Occaſions. In a conſtant ſearch after many Particulars (which would be too tedious here to repeat) I was likewiſe informed of a Girl that had alſo ſeen the bloody Razor, as before, thrown out of my Lord's Chamber-Window; upon which I went to St. *Catharine*s', where the Girl lived, and ſeveral Perſons being preſent, I took in Writing what ſhe could ſay herein, and what her Aunt and Mr. *Glaſbrooke*, to whom ſhe related it as ſhe came from the *Tower*, could teſtify; which Relation was as followeth:

Mr. Cragg.

Auguſt the 8th, 1683. The Information of *Jane Lodeman*, aged about 13 Years, who did in the Preſence of theſe whoſe Names are here under-written, declare as followeth:

‘ THAT the ſaid *Jane Lodeman* was in the *Tower* on *Friday* Morning, the 13th of *July* laſt, and ſtanding almoſt over-againſt the late Earl of *Eſſex*'s Lodging Window, ſhe ſaw a Hand caſt out a Razor out of my Lord's Window, and immediately upon that ſhe heard Shrieks; and that there was a Soldier by my Lord's Door, which cried out to thoſe within the Houſe, that ſomebody ſhould come and take up a Razor, which was thrown out of the Window; whereupon there came a Maid with a White Hood out of the Houſe; but who took up the Razor ſhe cannot tell.

John Broom and
William Smith.’

Auguſt the 8th, 1683, Mr. *William Glaſbrooke* doth declare:

‘ THAT one *Jane Lodeman*, Aged about 13 Years, inhabiting in the ſame Houſe where he the ſaid *William Glaſbrooke* lodged, did on *Friday* the 13th of *July* laſt paſt, between the Hours of Ten and Eleven in the Morning, in the preſence and hearing of him the ſaid *William Glaſbrooke*, declare to her Aunt, That the Earl of *Eſſex* had cut his Throat; upon which her Aunt was very angry with her; whereupon ſhe the ſaid Girl did declare, that ſhe was ſure of it. For ſhe ſaw him throw the Razor out of the Window, and that the Razor was bloody, and that ſhe heard two Groans or Shrieks (which of the two Words ſhe uſed, he the ſaid *William Glaſbrooke* is not certain.) Of this he the ſaid *Glaſbrooke* is ready to make Oath.

William Glaſbrooke.
Lodeman's Aunt, *Margaret Smith*.’

About this time I was informed, That the Report of the Earl of *Eſſex*'s Death was at *Tunbridge* about Nine of the Clock that very Morning he died, whenas my Lord's Death was not known in the *Tower* till about Nine; whereupon I rid to *Tunbridge*, but I found the Perſon very ſhy, and unwilling to appear in the Matter. I had no ſooner returned to *London*, but I was told, the ſame Report was at *Marlborough* in *Wiltſhire*, (about 70 Miles from *London*) the very Morning of the Earl's Death; whereupon I rid to *Marlborough*, reſolving to trace the Report as near as I could to the Author. When I came to *Marlborough*, I met with one *Jeremiah Burgis*, whom before this I never to my remembrance ſaw or heard of; who declared, That the very Morning my Lord died, he was at *Frome* in *Somerſetſhire* (about 30 Miles diſtant from *Marlborough*, and an hundred Miles from *London*,) and being there at the *Dolphin*, he was informed that the Earl of *Eſſex* had cut his Throat in the *Tower*. I did deſire *Burgis* to write me a Letter to the Maſter of the Houſe at *Frome*, to inform me (if he could remember) who it was that reported this at his Houſe. I did at *Marlborough* likewiſe ſpeak with one *Lewis*, who did alſo inform me, “That about Two of the Clock the “Day the Earl died, as he was riding up *Huſband*'s-*Hill*, (not far “from *Andover*) he overtook a Gentleman, riding a very eaſy Traveller's

“ pace; and as they were diſcourſing of the News in the Country, the Gentleman ſaid, He had heard a Report of the Earl of *Eſſex*, that he cut his Throat in the *Tower:* But the Gentleman was altogether a Stranger to him, and therefore he could not inform me *how* or *where* to find him.” With *Burgis* his Letter I was riding to *Frome*; but when I came within about ſix Miles of the Place, at a Town called *Bradford*, I ſtopt at an Inn-Door to drink a Glaſs of Cyder; upon which, one *Beech* an Attorney, (notorious in his Country and Generation) informed a Juſtice of Peace then there, That I looked like a diſaffected Perſon, by wearing Band and Cuffs, and therefore in that dangerous Time I ought to be examined; upon which, the Juſtice came out to examine me, and there came with him one who knew me, ſo that the Juſtice ſeemed well ſatisfied: But *Beech* taking the Juſtice aſide, tells him, That he ought to be more ſtrict, and ſearch me; for by my wearing Band and Cuffs, it was plain I was diſaffected to the Government, (of this I have been often told by ſome then there;) upon which the Juſtice told me, He muſt ſearch me. When I perceived this, I thought it proper to give the Juſtice a particular Account of the Occaſion of my being in the Country, as alſo, what Papers I had about me; which Papers being read, after ſome Debate, and adviſing with *Beech*, he made a Warrant for my Commitment; the Form whereof, in the Concluſion, was the moſt illegal I ever ſaw.

The Warrant ran in theſe Words, *viz.*

‘ *Wilts ſſ.* TO the Keeper of His Majeſty's Goal of *Fiſherton-Anger*, in this County, or his ſufficient Deputy, Theſe. I ſend you herewithal the Body of *Laurence Braddon*, apprehended in the Town of *Bradford*, in the County aforeſaid, this preſent Two and twentieth Day of *Auguſt*, taken upon Suſpicion of being a dangerous and ill-affected Perſon to the Government, and for refuſing to give an account of his Buſineſs in theſe Parts, and for having Letters of dangerous Conſequence about him. Theſe are therefore in the King's Majeſty's Name to will and Require you, That upon ſight hereof, You receive him, the ſaid *Laurence Braddon*, into your Goal, and him there ſafely keep, (not permitting him to have Pen, Ink, or Paper, or Perſon to converſe or ſpeak with him) until you ſhall receive further Orders from His Majeſty and Privy-Council. Hereof you are not to fail at your Peril. Given under my Hand and Seal at *Bradford*, this 22d Day of *Auguſt* aforeſaid, *Anno Regni Caroli Secundi*, *Angl. &c.* 35 *Anno Dom.* 1683.’

31 *Car.* 2.

It was long before I could prevail with the Juſtice to let me hear my Warrant read; but when I told him by the Statute I would have a Copy of it within ſix Hours after I was brought to Goal, he read it to me; finding the Concluſion to be ſo Arbitrary, I told him he could not juſtify his Warrant; which ſhould the Jailor obey, I might be kept a cloſe Priſoner during Life. For I was not to be admitted to Pen, Ink or Paper, or converſe, till the Jailor heard from the King and Council, without which I muſt periſh in Priſon without Conviction or Trial: I told him, That all ſuch Warrants of Commitment ought to conclude, *till he be diſcharged by due Courſe of Law*; but the Juſtice told me he would maintain the Legality of his Warrant. By Virtue of this Warrant I was carried to *Wiltſhire* Goal (about 30 Miles diſtant from *Bradford*,) where I found the Keeper of more Senſe or Honeſty than either his Worſhip, or his Cabal; for there were ſeveral Attorneys in the Inn when I was examined; (with whom Mr. Juſtice adviſed) for the Goaler told me, that notwithſtanding the ſtrictneſs of my Commitment, I ſhould diſcourſe with whom I would, himſelf being by; and write to whom I would whilſt he was preſent and ſaw it. Thanking my Keeper for this Civility, I did immediately demand a Copy of my Commitment, and writ to *London* for my *Habeas Corpus* thereupon, which within ſome ſhort time I received, and was brought to *London* to be bailed; but all the Judges being out of Town, I was, according as the Statute herein directs, to be carried before my Lord-Keeper *(North)*; but his Lordſhip ordered the Goaler to bring me before him at the Council that Afternoon; as ſoon as I appeared before his Lordſhip, my Lord ſeemed well pleaſed at a ſuppoſed, but miſtaken Advantage he thought to have had againſt my Bail; for his Lordſhip ſmiling, told me, notwithſtanding he did not expect that I ſhould have had much regard to myſelf, yet he did believe I would have had that juſt reſpect to my Bail, as not to ruin them by thoſe new Matters then to be laid to my Charge. To which I anſwered, I knew not wherein I had prejudiced my Bail, of whom the only thing required was my Appearance the then next Term, which (if God permit) I would do, and thereby indemnify them: No, replied his Lordſhip (ſmiling), the good Behaviour was likewiſe required; a notorious Breach whereof appears in theſe Matters you ſtand afreſh charged with. I did humbly appeal to the Bonds themſelves, and in the Condition there appeared the Omiſſion before obſerved. For which his Lordſhip was very angry with Secretary *Jenkins*, who immediately transferred the Blame thereof to his Under-Secretary. When his Lordſhip found, that by his neglect my Bail was ſlipt from his Hands, his Lordſhip was reſolved to hold me faſt enough; and therefore demanded Bonds with Sureties in Twelve Thouſand Pounds, for my Appearance, and as much more Security for the good Behaviour. I did hereupon deſire his Lordſhip, That he would conſider the Statute upon which I then came to be Bailed; and, as that Statute required, his Lordſhip would conſider my Quality, and the nature of my Offence: As for the firſt, I was a younger Brother, and my Father living; and as to the ſecond, the pretended Crime, it was of the very ſame nature with that under which I ſtood bound with Sureties in Two Thouſand Pound for my Appearance. My Lord Keeper replied, That according to the Statute, he did conſider both my *Condition* and the *Offence*, and regulated his Demands accordingly; for had I been an Alderman of *London*, my Quality anſwerable to the Crime, for every Six Thouſand Pound his Lordſhip would have demanded Twenty; ſo that then I muſt have given Eighty Thouſand Pound Bonds in Bail and Suretiſhip; which (to the beſt of my remembrance) is twice as much as I ever yet heard demanded of any Nobleman in *England*, though under a Commitment of High-Treaſon. Whilſt I was before the Council, I deſired his Lordſhip, that ſome of thoſe Witneſſes might be ſent for out of the Country where the Report was of the Earl's having cut his own Throat in the *Tower*, before his Lordſhip was dead. Upon which, one of the Lords of the Council (to the beſt of my remembrance, the now Marquiſs of *Hallifax)* ſaid, *This is juſt as it was in the Caſe of Sir* Edmundbury Godfrey. But the Lord-Keeper, I found, would not ſend for Witneſſes to *prove* what his Buſineſs was induſtriouſly and oppreſſively to *ſtifle.* Not being able to comply with theſe hard Terms, I was remanded to *Wiltſhire* Goal: But that Night lying in Town, I read the Statute, and adviſed with ſome of my Friends, who found that the Good Behaviour could not be demanded, but that Bail to anſwer the Cauſe of Commitment, was all the Statute did require. I did therefore the next Morning deſire my Keeper to carry me to his Lordſhip's Houſe in *Great-Queen-Street*; and for the Reaſons before obſerved, I did hope his Lordſhip would not inſiſt either upon the Good Behaviour, or yet upon ſo great Bail. My Keeper accordingly carried me: But before his Lordſhip that time ſaw me, my Keeper did acquaint his Lordſhip with the Occaſion of his bringing me once more before his Lordſhip. Upon which, the Lord-Keeper ſent for me, and told me, That the Good Behaviour he neither did or could require; and if I would give Bail to anſwer my Commitment, I might have my Liberty. To which I replied, That in ſo large a Sum as was demanded, I could not; but in all would give Ten Thouſand Pound Bail, which I hoped his Lordſhip would judge ſufficient. His Lordſhip ſaid, What was agreed upon at the Council, he could not there change: but my Keeper ſhould bring me down that Afternoon to the Council; and if there it could be complied with, I ſhould be bailed. That Afternoon I did accordingly attend the Council, where I found his Lordſhip's Mind changed, and returned to his firſt Demand, Twelve Thouſand Pound for my Appearance, and Twelve Thouſand Pound more for my Good Behaviour; notwithſtanding that very Morning he had (as before) declared he could not by Law require it.

His Lordſhip did repreſent my Offence ſuch as deſerved the greateſt Puniſhment, and told me, Such Practices might ſhorten my Days (or Words to that effect). I replied, That I was not conſcious of my having done any thing which deſerved a *Priſon*, much leſs *Death*; but the manner of Death I did not fear; and if in the way of my Duty I met it, I could as chearfully die at *Tyburn* in a *Halter*, as in my *Bed* of a *Fever*.

Having thus ſuffered in the defect of this Act, I cannot but here take notice of one great Omiſſion in this Statute. This Act inflicts a Penalty of One Hundred Pound upon the Gaoler that denies the Priſoner, or any on his behalf, a Copy of his Warrant; and Five Hundred Pound Penalty on every Judge that refuſes to grant an *Habeas Corpus* upon the Statute, for the removal of ſuch Priſoners; but inflicts no certain Penalty upon the refuſal to bail the Priſoner that ſhall upon this Act be brought before them; ſo that if the Judge either demand Ten times more than the Quality of the Priſoner, or the Nature of the Offence requires, or refuſeth to take any Bail whatſoever, there can no Action of Five Hundred Pound for this refuſal be brought, for no Penalty in this Caſe is enacted. It's very ſtrange, that the Statute ſhould lay ſo great Penalties upon the denial of the means of Bail, *(viz.)* the Copy of the Warrant, and *Habeas Corpus*; and yet not enact an expreſs Penalty for refuſal of the end, *(viz.)* Bailing the Priſoner; for what ſignifies either a Copy of the Commitment, or an *Habeas Corpus* thereupon, if Bail be not procured? This is the putting the Priſoner to a very fruitleſs Expence.

I muſt confeſs, ſeeing the Statute requires the Judge ſhall Bail the Priſoner, taking Recognizance with one or more Sureties, according to the Quality of the Perſon and Nature of the Offence, a Special Action of the Caſe lies againſt ſuch Judge upon his refuſal: But if there be little Damages ſuſtained, as it may happen; for though one Judge refuſe, another may grant the Priſoner his Liberty upon Bail, and conſequently ſo proved, the Jury being ſworn to go according to Evidence, as well in the Damages, as in the Matter directly in Iſſue, muſt go according to Proof unleſs they think the extravagant Verdicts of late Times, (which found One Hundred Thouſand Pounds, where not one Farthing was proved) will excuſe them, in giving Fifty times more than was ſworn to be ſuſtained. Few Words more in the Statute would, I humbly conceive, have ſufficiently provided in this Caſe; for in the Statute, wherein it is ſaid, That *if the Judges ſhall deny any Writ of* Habeas Corpus, *by this Act required to be granted, being moved for as aforeſaid*, (it had been added, *or ſhall refuſe ſuch Bail as the Quality of the Priſoner, and Nature of the Offence requires,) they ſhall ſeverally forfeit to the Priſoner or Party grieved the Sum of Five Hundred Pound, to be recovered in manner aforeſaid:* Theſe few Words would have given the Five Hundred Pound for refuſal of Bail, as well as denying the *Habeas Corpus*; whereas without the like Clauſe, the Statute may (in effect) be daily evaded.———To return.

But now, inſtead of being ſent back to *Wiltſhire*, I was turned over to Mr. *Atterbury* the Meſſenger, where upwards of Five Weeks, I lay at no leſs Charge than 4*l.* and odd Money *per* Week directly, beſides other collateral Expences; this being too great for my Fortune to comply with, I was adviſed to remove myſelf to the *King's-Bench*; but before-hand, to agree with the Marſhal, upon Security, to have the Liberty of the Rules; this I did by a Friend, who told me, That upon giving the Marſhal 2000*l.* Security for my faithful Impriſonment, and 5*s.* 3*d.* *per* Week Chamber-Rent, he had promiſed to allow me the Liberty of the Rules. Whereupon (after ſome Oppoſition) I removed myſelf; but the Marſhal I found falſe to his Promiſe, for he having got me into his Cuſtody, demanded Two Men for my Security in 10,000*l.* a-piece, and 10*s.* 3*d.* *per* Week, Chamber-Rent, and then aſſured me, I ſhould have the Liberty of the Rules. To theſe Terms (ſo much above our firſt Agreement) I ſubmitted. But the Marſhal the ſecond time unjuſtly diſappointed me; for under this Security and Chamber-Rent, I was ordered to be kept cloſe Priſoner at no leſs Charge, than 2*l.* 5*s.* 3*d.* *per* Week; and under this ſtrict Confinement, the Marſhal refuſed to give me back my Security-

Bonds, which at laſt I was forced with Guineas to redeem. For this ſevere and unjuſt Uſage, the Marſhal pretended the ſpecial Order of the then Lord Chief Juſtice *Jeffreys*, before whom at the *Kings-Bench-Bar*, I was the then next Term bailed; after which, with all poſſible Induſtry and Diligence, I renewed my former Inquiries. But about the 12th of that *November*, I was taken up by the City-Marſhal, by Virtue of a Warrant of the Lord-Mayor, or Court of Aldermen, as illegal in the Cauſe, as the other was in the Concluſion of the Commitment: for the only Cauſe (if it can properly be ſo called) in the Warrant, was, *My being ſuſpected to be Diſaffected to the Government*; finding the Words ſo general, and not one particular Inſtance to juſtify that Suſpicion of Diſaffection, I could at firſt give no probable gueſs at the Information. By the City-Marſhal I was carried before Sir *James Edwards*, and after that, the then Lord-Mayor, before whom I refuſed to anſwer ſuch general Queſtions as were aſked, without ſeeing my Accuſer, and hearing my Accuſation; but I ſoon found what was the Pretence of my Commitment, which I had grounds to ſuſpect, was deſigned to be ſtretched to the higheſt Offence, nothing leſs than Treaſon; for I was charged with beſpeaking ſeveral Hundreds of the *Proteſtant-Flails*, with a Deſign therewith to maſſacre the King's (then called) Loyal Subjects. Refuſing to anſwer the Lord-Mayor's Queſtions, I was committed to Captain *Richardſon*, who was ordered forthwith to carry me before the King and Counſel; as ſoon as I came there, my old Friend, the Lord Keeper *North*, began to interrogate me in ſeveral Particulars; but I refuſed to anſwer any, till I ſaw my Accuſer, and heard my Accuſation; his Lordſhip told me, my not anſwering that Honourable Board was a Contempt, for which I might be proſecuted. To which I replied with Submiſſion, ‘I did not underſtand I was obliged, in ſtrictneſs of Law, to anſwer to any Accuſation, till I came judicially to be tried, where I ſhould both ſee the Accuſer, and hear my Accuſation.’ At length the King ordered my Accuſer to be called in, whoſe Charge (in Subſtance) was this, (viz.) *That ſuch a time, about four Years and a half before, I came to his Shop, and beſpoke a* Pocket-Flail; *which by Deſcription, I did order him to make; the next Day after I beſpake three more, which I was to fetch the third Day.* And did likewiſe declare, *He ſhould make me ſeveral Hundreds, but I came not according to my Promiſe for either of the three, or did he make any of that Number I pretended to beſpeak.* ‘That I did beſpeak one, and the next Day three, I did confeſs to be true, and likewiſe fetched one of the three the third Day; but theſe not being made according to Direction, I would not have the other two. As for the Five Hundred, or any ſuch Number I ſhould beſpeak, I did declare, (as the Truth was) that Part of the Charge was very Malicious and Falſe.’ Major *Richardſon* being then there, as fooliſhly as maliciouſly endeavoured to fruſtrate my Defence; for he told His Majeſty, the true Cauſe I came not according to my Promiſe for any of that great Number I had beſpoke, he would give His Majeſty. For Captain *Richardſon* declared, ‘That almoſt three Years before, he had been in that Turner's Shop, where ſeeing one of thoſe Inſtruments (it being the firſt that he ever ſaw) he demanded of the Turner what he called them; who anſwered, A *Pocket-Flail*;’ And then further told him, ‘That the Gentleman for whom he made the firſt above a Year before, pretended he would then have ſeveral Hundreds made, and beſpoke three Flails after the firſt, but came not for either of the three, or any of that Number which he pretended he did want.’ Captain *Richardſon* declared upon this, ‘He did believe there was a general Deſign againſt the Government, and therefore he did Charge the Turner, That if the Gentleman came according to his Promiſe, he ſhould endeavour to ſecure him; which Caution he did ſuppoſe I had heard of, and therefore came not according to my Promiſe.’ Of this moſt ridiculous Suggeſtion, I took immediate Advantage, and told his Majeſty what the Captain alledged, could not poſſibly be true, even by his own Suggeſtion. For he confeſſed, That the Turner told him when he firſt ſaw the Flail, that I had beſpoke a great Number above a Year before, and was forthwith to have fetched one of them, but came not according to my Appointment; and yet the Captain alledges, That his Caution ſo long after given, did influence my not coming a Year and a half before. Immediately upon this, the King ſaw this Charge mixt with ſuch Folly and Falſhood, that His Majeſty thought fit to order my immediate Diſcharge. As ſoon as I came into the Room next the Council, Captain *Richardſon* took me by the Hand, and proteſted he was extremely glad I was diſcharged; but conſidering his good Service, in juſt before endeavouring to prevent it, I gave little Credit to this Aſſurance. Being once more at Liberty, I continued, as before, my Enquiries, in which I was daily hurried up and down; for having made it my Buſineſs to get the Names of moſt of the Soldiers upon Duty that Day my Lord was murdered, I was in a conſtant Enquiry after ſome of them; for I had Reaſon by ſome Information I had received, to believe that not a few could ſpeak not only to the throwing out of the Bloody Razor, but to that which was more material, the ſending in the Ruffians to my Lord, and from whom thoſe Villains went commiſſioned. But as I ſpoke with any of thoſe Soldiers, I perceived them very ſhy, and denied to me, what they had before freely confeſſed to their intimate Acquaintance; and afterwards told their Friends, they would not be brought into Trouble, by teſtifying their Knowledge therein, which they knew would moſt certainly prove their Ruin.

Whilſt I was Priſoner in the *King's Bench*, I (with the reſt of the King's Priſoners) was ſeveral times ſearch'd; but having ſtill notice ſome ſhort time before ſuch Search, I conveyed away ſuch Papers, as being ſeized, might have tended to my Prejudice. But in ſuch hurries, I loſt a Liſt of ſuch Names that could have declared that which was not a little material to this Diſcovery.

In *Hillary* Term 83, Mr. *Speke* and myſelf were tried upon an Information; the Subſtance whereof was, ‘That whereas *Arthur* late Earl of *Eſſex*, the 13th of *July*, (being Priſoner in the *Tower* for High-Treaſon) himſelf feloniouſly, and as a Felon of himſelf, did Kill and Murder, and the Day after, was by the Coroner's Inqueſt ſo found; The ſaid *Lawrence Braddon* and *Hugh Speke*, well knowing hereof, but contriving, and maliciouſly the Government of our ſaid Lord the King, of this Kingdom of *England*, into hatred, diſgrace and contempt to bring, *&c.* did falſly, unlawfully, maliciouſly, and ſeditiouſly *Conſpire*, and endeavour to make the King's Subjects believe, that the ſaid Coroner's Inquiſition was unduly taken, and that the ſaid *Arthur* Earl of *Eſſex*, by certain Perſons unknown, *IN WHOSE CUSTODY HE WAS*, was killed and murdered; in order to which they the ſaid *Lawrence Braddon* and *Hugh Speke*, did falſly, unlawfully, unjuſtly, maliciouſly, and ſeditiouſly *Conſpire* to procure certain falſe Witneſſes to prove, that the ſaid *Arthur* Earl of *Eſſex*, by the ſaid Perſons unknown, was killed and murdered.’

Obſerve, The Information doth not Charge us, or either of us, with conſpiring, or endeavouring to *Suborn* falſe Witneſſes; becauſe to prove that, ſome Money, or other Conſideration muſt have been prov'd offered, or promiſed; which they being not able to prove, the Information ſaith we did *Conſpire* to procure falſe Witneſſes. And yet, becauſe Subornation would repreſent the Matter moſt odious, in the Title Page of the Trial, it was expreſſed, *Upon an Information of High Miſdemeanour*, Subornation, *and ſpreading falſe News.*

This Information charges Mr. *Speke* and myſelf with falſly, unlawfully, maliciouſly and ſeditiouſly endeavouring to procure falſe Witneſſes to prove, That (the Right Honourable) *Arthur*, late Earl of *Eſſex*, was killed and murdered by Perſons unknown, *in whoſe Cuſtody he was*; but to deſtroy this conſpired Charge of Mr. *Speke*, and myſelf, againſt *thoſe in whoſe Cuſtody my Lord was (at the time of his Death)*, the then Attorney-General tells the Court, That they would give an Account of the Earl's Death, *how he murdered himſelf, and for that they had a CLOUD OF WITNESSES.* But when this *Cloud* appear'd, it conſiſted in Major *Hawley* (at whoſe Houſe my Lord was murdered,) *Ruſſel* the Warder (who then kept the Chamber-door,) *Bomeney* my Lord's Servant (then attending on his Lordſhip,) and *Lloyd* the Sentinel (who kept the outward-door whilſt my Lord was murdered.) Here are Three (*Monday* being the 4th) of *the* Men *in whoſe Cuſtody my Lord was*, and conſequently (according to the Information), the *very Men* Mr. *Speke*, and myſelf had conſpired to charge with my Lord's Murder; *and theſe very Men, in whoſe Cuſtody my Lord was*, were like *a Cloud of Witneſſes* brought to prove, *that thoſe Men, in whoſe Cuſtody my Lord was, did not murder his Lordſhip, but that the Earl himſelf, feloniouſly, and as a Felon of himſelf, did kill and murder.*

How very ridiculous would it have looked, ſhould the then Court, or King's Counſel, have thus ſpoke to thoſe Three Witneſſes, *(viz.) Gentlemen,* YOU *(being three of the Men in whoſe Cuſtody my Lord was at the time of his Death) are deſigned to be charged by the Defendants* Speke *and* Braddon, *with the Murder of my Lord; but* WE *have thought it* convenient *and* JUST *by* YOU *to prove, that* YOURSELVES *did* not *murder this unfortunate Lord, but that this Lord himſelf feloniouſly, and as a Felon of himſelf, did kill and murder, as* UPON ONLY SOME OF* YOUR DEPOSITIONS *he hath been already found by the Coroner's Inquiſition. Do* YOU *therefore upon Oath but* purge YOURSELVES, *and lay this Murder to my Lord's own Door, and* WE *will inflict exemplary Puniſhment upon theſe Defendants, whoſe Conſpiracy tended to the charging* YOU *as Actors in it, or Privy thereunto.*

* *Bomeney*'s and *Ruſſel*'s Information before the Coroner, which are at large herein before printed.

I do humbly conceive, That all this was virtually included in the Examination of thoſe Witneſſes, *whoſe Oaths* were not only admitted to *purge themſelves*, but to render ſuch as Criminals as ſhould endeavour to charge them. Should the like be practiſed in *protection* of all *accuſed* (I am well ſatisfied) no Man will turn *Accuſer*.

If any ſhall ſay, *THESE* (being *the Men* attending on my Lord at the time of his Death, and his Lordſhip then a cloſe Priſoner) are *the Perſons* to be preſumed privy to what was *done BY his Lordſhip* juſt before his Death, and therefore *the Parties* which as to that could be ſworn.

I anſwer, As they were *THE MEN* which were to be preſumed privy to what was done *BY* his Lordſhip juſt before his Death, becauſe they were *the Perſons* whoſe Stations were ſo near his *Lordſhip*, for *this very Reaſon* they were *THE PARTIES* which were likewiſe to be ſuppoſed privy to what was done *TO HIS LORDSHIP* juſt before his Death; and therefore admitting that his Lordſhip fell by Treachery and Violence, theſe were *THE MEN* muſt be preſumed conuſant thereof. Wherefore *theſe Men*'s Teſtimony being in effect a *Self-diſcharge*, ought not here to have been admitted.

With all Submiſſion to that great Juſtice, Judgment and Policy, which drew and managed this Information againſt Mr. *Speke*, and myſelf, I think herein the Managers of this Proſecution extremely failed in their Proof; for Mr. *Speke* and myſelf, being accuſed with falſly, *&c.* conſpiring *to charge thoſe in whoſe Cuſtody my Lord was*, with murdering my Lord; The Duty incumbent on the then King's (or rather *DUKE's*) Counſel was to prove, That we, or one of us, did uſe indirect Means, by Bribes, Threats, or the like, to procure thoſe Falſe Witneſſes; and this (or whatever elſe was brought to prove this Information) ought to have been depoſed not by ſuch as *appeared in Court* (in effect) *with Halters about their Necks to ſwear for their OWN Lives*; *being virtually told, This do, and you ſhall live*; *but in the Day ye fail thereof, ye ſhall ſurely die:* But this Information ought to have been teſtified by Men who ſtood *recti in Curia*, which were neither themſelves to be hanged for murdering my Lord, provided they would not (by conſequence) prove he did murder himſelf; or to be not only ſaved, but well rewarded in caſe they did (though contradictorily) confirm the ſame.

As for all thoſe Witneſſes which were produced againſt us, to prove any Bribes, or the like, I do ſuppoſe Prejudice itſelf will not pretend to ſay, That by the Trial (which none can believe Sir *George*

Jefferies would order partially in our favour, to be printed) the leaſt colour of Proof is given by any.

That Nation is happy whoſe Government anſwers the true end of Governors, (viz. *To be Terrors to Evil-doers, and a Praiſe to thoſe that do well*; but when once this end is inverted, and Juſtice (or rather that which a Corrupt Court falſly calls ſo) becomes a *SCREEN* to Malefactors, and Puniſhment inflicted on thoſe who would puniſh them, then is that Kingdom in a much worſe Condition than it could be by the ſtate of Nature. For Juſtice thus corrupted, would prove as fatal to the Body Politick, as the poiſoning all Drugs, Simples, *&c.* would to the Body Natural.

This by the perverſion of all Law and Juſtice would probably have proved our general Fate, had not God (in Mercy) by our preſent Sovereign, removed the Source hereof.-----But to return ;

Upon my Trial, I did expect all that the moſt inveterate and malicious Rage could utter, and therefore was not ſurprized with all that Fury and unjuſt Inveteracy that appeared in the Court ; eſpecially the MOUTH thereof ; for in the midſt of his Rage, when I was falſly repreſented under the moſt odious Character, worſe than a Common Robber, or Burglar, (for theſe Men's Crimes tended only to a private Miſchief, but mine to a general Confuſion ;) I could not forbear ſmiling upon the then remembrance of this Story. A Neighbour of mine, whom long ſince I knew in the Country, an illiterate plain Country Farmer, who had a Wife of as violent Spirit as liv'd ; and one Day ſhe came into the Room where her Huſband was (with ſeveral Neighbours) ; as ſoon as ſhe came, tho' there was not, or it ſeems had been, the leaſt colour for Provocation, for he ſtill carried himſelf well towards her, ſhe flies into the greateſt Rage imaginable, calling him all the Names that Malice could invent, or Rage could utter ; and had ſhe not been prevailed upon might have done him ſome Miſchief. The Huſband in the midſt of this great Storm, well knowing all to be falſe with which the Fury of his Wife had charged him, ſtood as a Man altogether unconcern'd, and appeared rather pleaſant than diſpleaſed. One of his Neighbours then aſk'd him, How it was poſſible for him, ſo to receive the ſcurrilous and bitter Railing of that furious Woman ? To which the Huſband ſmiling, calmly replied, That his Wife talked of a Man he did not know ; and therefore, what Reaſon had he to be concern'd, when he was not the Perſon ſhe ſpoke of, *&c ?* I did aſk my Conſcience, an Infallible Evidence, according to the Truth, to condemn or acquit, whether I was this profligate Villain his Lordſhip did ſo infamouſly characterize ; and I found that impartial Judge (by whoſe Sentence at the laſt Day I ſhall ſtand or fall) did acquit me from that Crime, which his Lordſhip's Corruption againſt his Belief unjuſtly charged me with ; and therefore I thought I might well ſay to myſelf, as that honeſt Country-Fellow did to his Neighbours, *I am not the Man thus railed at* ; but his Lordſhip reviled a Man I was not acquainted with, or knew, and therefore ſtood very much unconcerned at whatſoever his Lordſhip's corrupt virulence falſly and maliciouſly (in ſubſerviency to that bloody Deſign that committed the Murder), without the leaſt colour of Crime applied to me, who was as innocent of the Offence, as of the far-fetcht ſtrained and groundleſs Aggravations. Let any impartial Man read the Trial, and well obſerve what is ſworn, if in the Evidence he find the leaſt appearance of an Offence, I dare ſuffer what I have already undergone ; but if Men will take the malicious and groundleſs Inſinuations of a Time-ſerving, Mercenary Counſel, *&c.* or the corrupt Charge of as corrupt a Judge for Evidence, they will find me painted in the worſt of Colours. I did not expect that my Innocence would prove my Protection againſt theſe unjuſt and violent Proceedings, and therefore I might have ſaved myſelf, and Friends the trouble of a Defence ; and with that *Welchman*, who ſleeping at the Bar, whilſt the Evidence in a Capital Crime was ſwearing againſt him ; and being awaked by his Friends, and adviſed to prepare for his Defence, ſtarts up, and rubs his Eyes, ſaying, *If they have a mind to hang hur, they will hang hur whether hur make hur defence or no.*----But deſiring in ſome meaſure to ſatisfy the World that there were ſtrong grounds to believe this unfortunate Lord was treacherouſly butchered, I thought it proper to produce ſome Witneſſes in order thereunto ; but when I found that ſome of theſe ſo produced, were ſo browbeaten by the King's Counſel, and ſaw that they were afraid to teſtify the Truth, and upon Oath denied what I knew to be true, I thought it convenient not to produce many of theſe whom I had ſubpœna'd, becauſe they ſhould not be baffled, and ſpoiled by the Court ; for ſhould any of theſe Witneſſes upon Oath (through fear) have denied what they knew to be true, and afterwards (when Truth in this Caſe became not Criminal, which I did ſtill believe I ſhould live to ſee) teſtify the very Truth, their former Denial would be produced to invalidate their after Teſtimony, and ſo their Credit be deſtroyed.

As ſoon as the great Counſel againſt me came into Court that Morning I was tried, before ever the Information was read, he told me *he would do my Buſineſs* ; upon which I deſired he would have the patience to tarry till the Jury had done it to his Hands ; to which he replied, *he did not doubt them* ; and I found by woful experience he had no reaſon ; for the Jury, without the leaſt Proof, found me guilty of the whole Matter charged upon me in the Information, and the Defendant *Hugh Speke*, guilty of all but the conſpiring to procure Falſe Witneſſes, and of that they found him Not guilty.

In this Verdict I ſtand only guilty (could ſuch a thing be poſſible) of a *Conſpiracy* to procure Falſe Witneſſes. It was never before known that *one only* could commit a *Conſpiracy*. For the Notion of a Conſpiracy I take to be the combining together of two or more to do that which is ill. But when Falſhoods are to paſs for Truths, Contradictions muſt be admitted for Senſe ; *& quod fieri non debet factum valet.* Upon this Verdict Mr. *Speke* was fined 1000*l.* and becauſe (the Court ſaid I) was the greateſt Criminal, my Fine was 2000*l.* and both ordered to give Security during Life.

But Mr. Attorney-General at the Trial was pleaſed otherwiſe to expreſs it ; for Sir *Robert Sawyer* tells the Court, They need but read Mr. *Speke*'s Letter, and they would find it ten Times worſe than what Mr. *Braddon* had done. For which his Lordſhip ſeemed very angry with the Attorney-General, and told him, None ſhould appear ſo great an Actor in the Buſineſs as myſelf.

His Lordſhip's Behaviour at this Trial was ſo very remarkable, that (as I have been informed by ſeveral) he was ſcarce ever ſeen more paſſionately to expreſs himſelf. And though my Trial ſhews great Bitterneſs of Expreſſion, yet it is not printed in all its Parts as it was ſpoke, but ſome of the *Billingſgate* Railing left out ; yet ſuch as it is, by his Lordſhip's Authority publiſhed (I do humbly conceive) there have few, if any, Trials being ſtuff'd with ſuch foul-mouth'd Invectives. But his Lordſhip in this was to act *counter* to his Title ; for though the Duty of his Place required his greateſt Encouragement to the Detection of Blood, and the Puniſhment of ſuch vile Offenders, at this Trial *his Buſineſs* was quite different : For (as I have been long ſince informed) one Day, not long after my Trial, his Lordſhip having drank very freely, upon ſome Diſcourſe with relation to the Earl's Death, a Gentleman took then an Occaſion to tell his Lordſhip, That my Trial was excellently well managed by his Lordſhip and the whole Court. To which his Lordſhip made anſwer to this effect, *(viz.) That though he was well ſatisfied the Earl of* Eſſex *was murdered, his Buſineſs was to ſtifle it.* This Gentleman is altogether averſe from betraying the common Rules of Converſation, by appearing as an Informer or Evidence, in judicially expoſing what paſſed over a Glaſs of Wine ; Whether the effects of Wine in this verified the Proverb (*In vino veritas,)* I knew not : But it appeared notorious to Perſons unprejudiced, that there was juſt ground to believe his Lordſhip's Corruption did herein endeavour to ſtifle what his Love (had he any) to Juſtice in the Duty of his Place, ſhould have zealouſly ſtrove to detect.

Under this Fine I lay Priſoner for about five Years : But about *Auguſt* 1687, *Graham* and *Burton* came over to the *King's-Bench* to treat with ſeveral of the King's Priſoners, in order to their Diſcharge ; and they brought with them a Liſt of ſuch Priſoners ; in which Liſt perceiving my Name the ONLY Name croſſed, I did enquire how my Name became ſo marked ; To which I was anſwered, That as ſoon as His (then) Majeſty had ſeen my Name, he called for a Pen and Ink, and with his own Hand croſſed it ; by which I perceived I was deſigned for *Judgment* not *Mercy* ; and upon Application was ſo told ; for I was informed, that no Man was more obnoxious to His Majeſty than myſelf, who was the only Perſon that ever caſt Blood in his Face : But if his own Conſcience by a juſt Application threw it there, I could not help that ; I am ſure they that ſaid it, talked without Book ; for nothing at my Trial, or at any time after proved againſt me, made any ſuch thing appear. I muſt confeſs, ſeveral Witneſſes at my Trial *ſubpœna'd*, could have mentioned ſomewhat with Relation to his (then) Highneſs's Guilt in this Matter ; but I found it was a Truth too hot, which that Court would not hear, and therefore thought it not proper to call them, but left them till ſuch a Seaſon, wherein *Truth* in this Matter ſhould not be proſecuted as the higheſt *Offence.*

And this brings me to the Proofs that have in this Caſe been taken before the late Right Honourable Committee of Lords. But before I do begin with the Evidence, it may not be amiſs to give ſome ſhort Account how this Caſe came before that Right Honourable Houſe, where it was occaſionally brought, upon the Motion of the Right Honourable the Lord *Lucas*, then Governor of the *Tower.*

For the Day before the Convention ſat, (*viz.*) the 21ſt of *February* 1688, having a Warrant againſt ſeveral as ſuſpected privy to, or concerned in the Murder of this Honourable Patriot ; and amongſt the reſt, againſt Major *Hawley*, at whoſe Houſe my Lord was murdered, and *Ruſſel* the Warder before-mentioned ; both which belonged to the *Tower :* I deſired a Friend of mine to acquaint the honourable Governor therewith, ſo that theſe Perſons might be ſecured. As ſoon as the Lord *Lucas* ſaw the Warrant againſt theſe two, he did order them both to be ſecured ; and the next Day there were ſeveral Depoſitions, with relation to my Lord's Murder, taken before Juſtice *Robins*, who that very Day carried Copies of them to my Lord *Lucas* ; upon which his Lordſhip the very next Day moved the Houſe of Lords for their Lordſhip's Directions as to the diſpoſal of *Hawley* and *Ruſſel*, and thereupon produced theſe Informations Mr. *Robins* had before brought him. Upon reading of theſe, the Houſe entered into a Debate of the Matter, and then called me before their Lordſhips, before whom I gave a ſhort Account of what is as before moſt materially mentioned. After which, their Lordſhips conſtituted a more general Committee.

This Committee having ſeveral times met, there was a cloſe Committee appointed ; the Order for which followeth :

The Order for the Cloſe Committee.

Die Martis, 5 *Februarii* 168$\frac{8}{9}$.

' LORDS Committees appointed by the Houſe to be a Cloſe Com-
' mittee to examine and take Informations concerning the Death
' of the late Earl of *Eſſex*, and have Power to ſend for and examine what
' Perſons they pleaſe, and ſuch Affidavits, as have been already made in
' this Buſineſs ; as alſo for what other they pleaſe, in order to give their
' Lordſhips further Light therein, whoſe Lordſhips are to make a Report
' thereof to the Houſe.

' *E. Bedford.*
' *E. Devonſhire.*
' *L. Viſc Mordant.*
' *L. Delamere.*'

' Whoſe Lordſhips are to meet when, and where, and as often as they
' pleaſe.'

Before this Right Honourable Committee, there have been above 60 Perſons examined of which moſt were examined upon Oath, and many of theſe ſeveral times before this Committee, which in all have ſat above 30 times, and ſeveral times, adjourn'd when other extraordinary Occaſions hinder'd their Lordſhips from taking the Depoſitions of ſuch as then attended to be examined.

mined. In *May* laſt, three of the four Lords of this Committee, *(viz.)* the Earl of *Devon*, the Earl of *Monmouth*, and the Lord *Delamere*, being commanded by His Majeſty into the Country, the Earl of *Devon* (being Chairman of this Honourable Committee), the 22d of *May* brought ſuch Depoſitions and Examinations as in this Caſe had been taken, into the Houſe: But the Houſe not having time that Day to read them, it was deferred till the then next Day. Upon the reading of them (it appearing that the Earl of *Devon*, the Earl of *Monmouth*, and the Lord *Delamere* were abſent in His Majeſty's Service, for the Earl of *Devon* that very Morning went into the Country,) their Lordſhips thought fit to ſuſpend the full Examination of the Matter, till theſe three Lords returned. This appears by the Order following.

Die Jovis, 23 *Maii*, 1689.

'AFTER reading ſeveral Papers and Depoſitions relating to the Death of the late Earl of *Eſſex*, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Conſiderations of this Buſineſs ſhall be ſuſpended, until the return of the Lord Steward, the Earl of *Monmouth*, and the Lord *Delamere*, who were of the Committee before whom they were made, and who are now in the Country in His Majeſty's Service. And it is further Ordered, That the ſaid Depoſitions and Papers ſhall be ſealed up, and kept by the Clerk of the Parliament in the mean time.

'*John Browne*,
Cleric' Parliamentor'.'

Theſe Depoſitions lay ſealed up with the Clerk of the Parliament till the 26th Day of *October*, when their Lordſhips of the firſt Committee moved for reviving the Committee; which the Houſe revived by this Order.

Die Sabbati, 26 *Octobris* 1689.

'ORDERED by the Lords Spiritual and Temporal in Parliament aſſembled, That the Committee appointed on the 5th Day of *February*, to take Informations concerning the Death of the late Earl of *Eſſex*, be, and is hereby revived, to continue and ſit as before.

John Browne,
Cleric' Parliamentor'.'

Several other Perſons were now examined before their Lordſhips, who having finiſhed their Examinations, they began to reduce thoſe Depoſitions and Examinations into ſuch order, as to their Lordſhips ſhould ſeem moſt meet; but this was hardly finiſhed before the 27th Day of *January*, when the laſt Parliament was prorogued, and the 6th of *February* diſſolved, and conſequently all Proceedings hereupon ſtopt till their Lordſhips ſhall think fit to revive the Committee in order to bring in their Report.

The Subſtance of what hath been depoſed before the Honourable Lords of the late Committee, and ſome Juſtices of the Peace, I ſhall, in as ſhort an Abſtract as I can well reduce it, here give you; in which I ſhall obſerve, for the moſt part, as it falls in order of time; and *firſt*, what paſſed before my Lord's Murder; *ſecondly*, the Day of his Death; *thirdly*, after the Day of his Death.

As to the *firſt*, before my Lord's Murder; it is depoſed by *Dorothy Smith* to this effect: "That about nine Days before my Lord's Death, being Servant with one *Holmes* in *Baldwins-Gardens*, and ſtanding upon the Kitchen-Stairs, ſhe heard ſeveral Papiſts diſcourſing (in the Parlour of the ſaid Mr. *Holmes*'s Houſe) concerning the taking of the Earl of *Eſſex*; and it was then and there declared, *That they had been with his Highneſs, and His Highneſs was firſt for poiſoning the ſaid Earl; but that manner of Death being objected againſt, it was propoſed to his Highneſs, That the Earl ſhould be ſtabbed; but this manner likewiſe not being thought proper, His Highneſs had concluded and ordered his Throat to be cut; and his Highneſs had promiſed to be there when it was done.* About three Days after this, *(viz.)* about ſix Days before the Earl's Death, ſome of the aforeſaid Perſons met again at her ſaid Maſter's Houſe, where ſhe heard them declare to this effect, *That they had reſolved the Earl's Throat ſhould be cut; but they would give it out, That he had done it himſelf; and if any ſhould deny it, they would take them up, and puniſh them for it.* This Informant being hereupon much troubled in her Mind, and willing to prevent (if poſſible) this intended Miſchief, did hereupon adviſe with one Mr. *Billinger*, who before that time had been her Maſter; but the ſaid Mr. *Billinger* told her to this effect: That if ſhe valued her Life, ſhe ſhould not diſcover it to any; for the Papiſts then carrying all before them, ſhe was ruined if ſhe did. Wherefore ſhe did not before my Lord's Death (to her Remembrance) diſcover it to any other, unleſs ſhe might to Mrs. *Billinger*, in which ſhe can't be poſitive: But the Day of my Lord's Death, about Two or Three of the Clock the ſame Day, ſome of the aforeſaid Conſult coming to her ſaid Maſter *Holmes*'s Houſe, one leap'd about the Room as extremely over-joy'd, and ſtrikes the ſaid Mr. *Holmes* on the Back, and cried, *The Feat was done*, or, *we have done the Feat*; And further ſaid, *He could not but laugh to think how like a Fool the Earl of* Eſſex *look'd when they came to cut his Throat.* She further ſaith, That about five Years ſince, living with Mr. *Rowdon* of the *Old-Exchange*, ſhe was willing to diſcover what ſhe had as before heard, to her ſaid Maſter and Miſtreſs, and Daughter; but her ſaid Maſter *Rowden* was not free to hear all ſhe could ſay with relation hereunto, but adviſed her to hold her Peace; for by ſuch her Diſcourſe ſhe might ruin Him and all his Family." This is further confirmed by the Oath of Mr. *Rowden*, Mrs. *Rowden*, and Mrs. *Mary Rowden*: And Mrs. *Rowden* doth further depoſe to this effect; *(viz.)* "That the ſaid *Dorothy Smith* hath ſome Years ſince with great Concern declared, that ſhe did hope to live to ſee the Day wherein ſhe might fully teſtify her Knowledge herein; and this ſhe would do, when ſhe might without Danger." Mr. *Adams* and his Wife have depoſed to this effect: "That *November* laſt was two Years, this *Dorothy* lived with them as their Servant; and in Tears hath often declared her over-hearing the Papiſts conſult of my Lord of *Eſſex*'s Murder ſeveral Days before his Death, and by whoſe Order the Earl was to be murdered: But theſe Informants knowing the Danger of ſuch Diſcourſe (the late King *James* being then in ſo great Power) did adviſe her, for her own Safety, and the Safety of thoſe ſhe lived with, not thus to diſcourſe: But the ſaid *Dorothy* in Tears did uſually anſwer, That it lay upon her Mind Night and Day; and ſhe could not be quiet in her Thoughts, that the Earl of *Eſſex* ſhould be falſly charged with cutting his own Throat, when ſhe had heard the Papiſts Reſolution to cut it themſelves, and after own they *had* done it. And if ever ſhe might with Safety teſtify the Truth herein, ſhe would; and did hope thoſe Men that did it, might ſuffer for it."

Richard May depoſeth to this Effect: "That (to the beſt of this Informant's Remembrance) before the Death of King *Charles* the Second, obſerving *Dorothy Smith* to be very melancholy, he deſired to know the Cauſe; upon which ſhe ſaid, *That ſomewhat which ſhe knew, with relation to the Death of the late Earl of* Eſſex, *was the Cauſe of her Trouble; and it was not ſafe for her to reveal it to any.* Upon which this Informant adviſed her then to be ſilent in the Matter. But about the Beginning of *February*, after our now King's coming, finding it ſafe for the ſaid *Dorothy Smith* herein to declare her Knowledge, this Informant went to the ſaid *Dorothy Smith*, and told her, She might now ſafely ſpeak what ſhe knew as to my Lord's Death; upon which, the ſaid *Dorothy Smith* told this Informant, How ſhe had heard the Papiſts ſeveral Days before my Lord's Death, declare How the Earl's Throat was to be cut, and by Whom ordered, (with ſeveral Particulars in relation thereunto;) upon which, this Informant diſcovered this to Mr. *William Tournay*, who thereupon told this Informant he would reveal this to Mr. *Braddon*, then upon the Proſecution of my Lord's Murder; and ſome ſhort time after, Mr. *Tournay* told this Informant, That he had therewith acquainted Mr. *Braddon*, and deſired this Informant, with the ſaid *Dorothy Smith*, to meet the ſaid Mr. *Braddon*, and the ſaid Mr. *Tournay*, ſuch a time, at the *Croſs-Keys* in *Watling-ſtreet*, where they met accordingly: But when Mr. *Braddon* had been particularly informed herein by the ſaid *Dorothy Smith*, the ſaid Mr. *Braddon* declared, That unleſs the ſaid *Dorothy* could make it appear, That ſhe had long ſince revealed this, he would eſteem it as a new-made Story and a Lye. Upon which, the ſaid *Dorothy* mentioned the Names of ſeveral to whom ſhe declared ſhe had long ſince revealed it; but by all was enjoined to Secrecy."

Mr. *William Tournay* hath likewiſe depoſed what herein relates to him. And I am ready to depoſe, That I never heard of this *Dorothy Smith*, till Mr. *Tournay*, about *February* laſt was Twelve Month, informed me of her; and I never, to my Remembrance, ſaw the ſaid *Dorothy Smith*, till the ſaid Mr. *May* had, as before, brought her to the *Croſs-Keys* in *Watling-ſtreet*, where I firſt diſcourſed her in the Preſence of Mr. *May*, Mr. *Tournay*, and another. Here are five or ſix Witneſſes prove the very Subſtance of this Evidence, revealed ſome Years ſince, when it was little leſs than Death to diſcourſe it, which clearly proves it is not a new-made Story, and ſtrongly argues the Truth of the Relation; for it can hardly be ſuppoſed, that this Woman ſhould often, under the greateſt Concern and Danger imaginable, declare any thing of this Nature, unleſs the Relation was really true; Becauſe ſhe could (rationally) then propoſe no Advantage by this Invention; but was ſtill told, and convinced of the Danger. Wherefore it is rational to ſuppoſe, that only the Power of Truth moved her to declare what ſhe ſo often in Tears related. But as a further Argument of the Truth of this Depoſition, I ſhall briefly relate what Informations have been taken in Contradiction to this Relation, and how theſe Informations have been detected as falſe in every Particular, which corroborates the Truth of the Accuſation: *For as a true Defence detects and fruſtrates a falſe Charge; ſo a falſe Defence (being diſcovered to be ſuch) as ſtrongly ſtrengthens a true one.* The Depoſitions in oppoſition to *Smith*'s Evidence, were,

Dorothy Hewit's, a moſt violent Papiſt, who the 9th of *April* 1689, before Mr. Juſtice *Dolben*, depoſed, "That in *April* before my Lord of *Eſſex*'s Death, the ſaid *Dorothy Smith* was turned away from Mr. *Holmes*'s upon Suſpicion of having ſtolen a Silver Spoon; and that from *April* 1683, to nine Months next after, one *Elizabeth Chriſtopher*, then *Elizabeth Cadman*, was Servant to the ſaid Mr. *Holmes*, and no other Maid-Servant in all that mean time."

Elizabeth Chriſtopher (of a very looſe Character), who in this particular upon Oath, the 9th Day of *April* 1689, before Mr. Juſtice *Dolben*, confirms *Hewit*'s Teſtimony; but that theſe two are Forſworn, appears by many Depoſitions. For,

It's proved by *Robert Bond*, that *Dorothy Smith* did not go to Mr. *Holmes*'s Service, till the beginning of *June* 1683, and that Green Beans were fit to be eat, before ſhe left that Service in which ſhe lived, juſt before ſhe went to *Holmes*'s Houſe.

It's further proved by five Witneſſes, that *Dorothy Smith* was Servant at this *Holmes*'s, when Green-Peaſe were very plenty and cheap, (which is naturally evident it muſt be the latter end of *June*, or ſometime in *July*, which is about two Months after *Hewit* ſwore *Dorothy Smith* was turned away); and it's poſitively ſworn by one, that *Dorothy Smith* was Servant in *Holmes*'s Houſe in *July* 1683, after the Death of the late Earl of *Eſſex*; and this Informant remembers the time, by a very remarkable Particular. So that here are five or ſix Depoſitions in Contradiction to *Hewit*'s and *Chriſtopher*'s Evidence, which was deſigned to deſtroy the Credit of *Dorothy Smith*'s Teſtimony; but this Oppoſition, thus detected, adds Strength to what it was deſigned to prejudice. But it was further ſworn by *Hewit*, that the 6th of *July* 1683, (which was the *Friday* in the Week before my Lord's Death) ſhe went with the ſaid Mr. *Holmes* into the Country, and the firſt Night lay at *Wickham* in *Buckinghamſhire*, the next Night at *Oxford*, and continued there till the 9th; and the 9th, this Informant went with the ſaid Mr. *Holmes* to *Alderminſter* in the County of *Worceſter*, to the Houſe of one Mr. *Nathanael Swan*, Miniſter of the ſaid Town, and continued there till the 23d of the ſaid Month of *July*, and then returned, &c.

Eliz. Morris, Anne Dupine, Catharine Coldham, Sarah Douthwait, and *Robert Bond.*

Nathanael Swan, Clerk, depoſeth before Mr. Juſtice *Dolben* the 9th of *April* 1689, "That *about* the 9th of *July* 1683, *Hewit* and *Holmes* came to his Houſe in *Alderminſter*, and continued there till about the 23d.

This laſt Information is of little force (tho' the Parſon deſigned well) for it ſwears, *about* ſuch a time *Holmes* came to his Houſe, and *about* ſuch a time went away; but *about* makes the time very uncertain.

This was deſigned to deſtroy that part of *Dorothy Smith*'s Teſtimony, which declares *Holmes* in Town the Day my Lord was murdered.

When I found Mr. *Holmes* endeavoured to prove (as before ſworn by *Hewit)* himſelf out of Town, from the 6th of *July* 1683, to the 26th or 27th of the ſame Month; I did endeavour to inquire out of all ſuch, as either Mr. *Holmes*, or Mrs. *Hewit* were well known to, or traded with; and therefore I made inquiry after thoſe with whom (in that Month and Year) they Bought of, or Sold to, all Shopkeepers, Taylors, Butchers, Fiſhmongers, Shoemakers, Hatters, *&c.* and ſuch as upon inquiry I received ſuch Characters of, as I might expect fair Satisfaction from, I did deſire to ſee their Books in that Month of *July*, to ſee whether any Goods were bought in Town by the ſaid Mr. *Holmes*, or Mrs. *Hewit*, (for proving *Hewit* in Town, proves *Holmes* likewiſe in Town, becauſe it's ſworn, and can be proved, they both went out of Town together) or any Money paid between the 6th and 26th of *July*, by either of theſe. After a very long and tedious Inquiry (all thoſe Tradeſmen being altogether ſtrangers to me), I providentially met with one Mr. *Welſtead*, who very readily ſhewed his Book, wherein is entred according to his Information, which followeth:

John Welſtead of St. *Dunſtan*'s in the *Weſt*, *London*, declareth, and is ready to depoſe, "That in *July* 1683, he lived in *Poppin's-Alley*, nigh *Fleet-ſtreet*, very near Mrs. *Dorothy Hewit*, and often wrought for the ſaid Mrs. *Hewit*; and between *Monday* the 9th of *July* 1683, and *Monday* the 16th Day of the ſame Month and Year, this Informant made, or cauſed to be made, a Duſt-Gown for the ſaid Mrs. *Hewit*, as appears by this Informant's Book, ready to be produced; and the very ſame Week, *(viz.)* between *Monday* the 9th of *July* 1683, and *Monday* the 16th of the ſame Month and Year (but in the very Day this Informant is not certain,) this Informant carried the ſaid Gown to the ſaid Mrs. *Hewit*, who did then pretend ſhe was about going into the Country; but how long after the Duſt-Gown ſo delivered, the ſaid Mrs. *Hewit* did go into the Country, this Informant knoweth not."

This Book hath not been of any uſe to Mr. *Welſtead* for almoſt five Years, and it was a very great Providence this had not been torn out, ſeeing the Book for ſome Years had been uſed as waſte Paper, and the very next Leaf to this torn out, and loſt. As ſoon as Mrs. *Hewit* underſtood ſuch a Taylor's Entry was againſt her Oath, ſhe, with Mr. *Holmes*'s Wife, went to this Taylor, and deſired to ſee his Book; which being ſhewed, *Hewit* firſt pretended that this Entry was forged, and new; but Mr. *Welſtead* declared he could ſafely, and would depoſe, That the Entry was real; it was then pretended, that the Gown was ſent into the Country after Mrs. *Hewit*; but when, in anſwer to that, Mr. *Welſtead* declared he could depoſe, That Mrs. *Hewit* was in Town when the Duſt-Gown was made and delivered, and that ſhe then pretended ſhe was about going into the Country; (but how many Days after ſhe did go he could not tell) Mrs. *Hewit* told him, if he did ſwear that, he would take off her Brother's Life, and *Holmes*'s Blood would be upon his head.

Some time after my Lord's Murder, this *Holmes* abuſing his Wife, ſhe told him, *He was a murderous Rogue, and he well knew ſhe could hang him when ſhe pleaſed.* To which *Holmes* anſwered, *That he little thought ſhe would have ſpoken of it, who of all the World had the leaſt Reaſon:* For ſaid this ſcurrilous Fellow, *You Bitch, you Whore, Don't you remember I bought you a good Sattin Gown and Petticoat, and therefore you above all the World ought not to prate.* But ſhe replied, *He was a murderous Rogue for all that.*

I have been the more large and particular in this Evidence, as well becauſe it hath met with ſuch villainous Oppoſition by falſe Oaths, as for that it alone proves by what Party, and by whoſe Order this Unfortunate Lord was treacherouſly murdered.

The next thing previous to my Lord's Murder, are the ſeveral Reports in many Places in *England* (before my Lord's Death, or before it could be known) that the Earl of *Eſſex* had cut his Throat in the *Tower*. This is proved by Eight Witneſſes. It is as to this ſworn "That at *Frome* (which is about 100 Miles from *London)* it was reported the very next Morning after my Lord's Commitment to the *Tower (viz.)* the 11th of *July* 1683, that the Earl of *Eſſex* had cut his Throat in the *Tower*:" And this Informant, the Week after my Lord's Death, meeting the Gentleman which had before given him this Information, and deſiring to know how before my Lord's Death he could declare it; the other replied, That all Men concluded my Lord would either cut his Throat or turn Evidence againſt his Friend my Lord *Ruſſel*; but it was generally believed that my Lord would rather deſtroy himſelf, than be made a Witneſs.

Mr. *Hubland*, Merch.
Mrs. *Hubland*.
Mrs. *Meux*.
Treberne.
Jer. Burgis.
Tho. Feilder.
—— *Savage*.
Mr. *Butler*.

This Report ſo far off the very next Morning after my Lord's Commitment, proves the *Tower* to be the Place (before my Lord's Commitment) pitched upon as the moſt proper for this perfidious Tragedy.

But the very next Day *(viz.)* the *Wedneſday* after my Lord's Commitment, was it reported about 60 Miles off, that the Earl of *Eſſex* had cut his Throat in the *Tower* for this Reaſon, *(viz.) The King and Duke coming into the* Tower *to view the* Tower, *the Earl of* Eſſex *was afraid the King would have come up into his Chamber, and ſeen him; but his Guilt and Shame was ſuch, that he could not bear the Thoughts of it, and therefore cut his Throat to avoid it.*

Obſerve in this previous Report ſixty Miles from *London*, the next Day after my Lord's Commitment, the very pretended Reaſon for the Self-murder is given; which Reaſon carries in it an Accident that could never be before reported, or indeed expected, but by thoſe which were the moſt ſecret in this Treacherous Cruelty; for herein is it ſaid, the *Wedneſday* before the King and Duke went to the *Tower*, that the King and Duke were in the *Tower* whan the Earl cut his Throat, *&c.* It is notorious that the King and Duke did not go till *Friday* Morning, and their then going was a Surprize to their very Guards, for it ſeems they had not been there together above once ſince the Reſtauration. In ſhort, The ſeveral Reports proved by Eight Witneſſes, all agree in the *manner how*, and *place where*; and one more particularly ſets forth *the pretended Reaſon wherefore.* I do therefore humbly ſubmit to every impartial Reader, whether theſe very Reports do not ſtrongly prove, *That the manner, place, and pretended reaſon*, were all agreed upon before this barbarous complicated Tragedy was acted. For otherwiſe, how could it poſſibly be ſo particularly related ſo far off, and ſo long before it was done?

I ſhall in the 2d Place obſerve what paſſed in the Day of my Lord's Murder, which proves his Death to be ſuch.

Bomeney and *Ruſſel* before-mention'd, did before the Coroner's Jury upon Oath deny, that any Men were let into my Lord that Morning my Lord died. The like did *John Lloyd*, the Soldier that kept the outward Door, depoſe at my Trial.

Nathanael Monday, who was my Lord's other Warder, and likewiſe *Ruſſel*, before the Lords, have denied that any Men were that Morning let into my Lord. But that there were ſome Ruffians a little before my Lord's Death let in to Murder him, plainly appears by the Proofs following.

Mr. *Samuel Story* depoſed to the the effect following, *(viz.)* "The 21ſt of *January* 1688, being the Day before the Convention ſat, *John Lloyd* (Sentinel upon the late Earl of *Eſſex* at the time of his Death) was taken up as ſuſpected privy to the ſaid Earl's Murder; and being therefore in Cuſtody, the ſaid *Lloyd*, with Tears in his Eyes, wrung this Informant by the Hand, and declared, That by ſpecial Order of Major *Hawley*, or one of my Lord's Warders, he did let in two or three Men into the Earl's Lodgings juſt before his Death, and he was very ſure, and could ſafely ſwear that Major *Webſter* (then there in Cuſtody, ſuſpected as one of the Ruffians that murdered my Lord) was one; and that as ſoon as he ſo let them in, he heard a Noiſe in my Lord's Chamber, and ſomewhat thrown down like the Fall of a Man; ſoon after which it was ſaid, The Earl of *Eſſex* had cut his Throat."

This *Lloyd* the ſame Day before the Juſtice did confeſs the letting in ſome Men a little before the Earl's Death, as appears by his Examination following.

The Examination of *John Lloyd* of *Goodman's-Yard* in *Aldgate* Pariſh Without, in *London*, Cloth-worker, taken before *Jo n Robins*, Eſq. one of the Juſtices of the Peace for the County of *Middleſex*, the 22d Day of *January*, 1689.

THIS *Examinant ſaith, on the Day whereon the Right Honourable the late Earl of* Eſſex *was found dead, upon the ſuſpicion of having been murdered in his Lodgings in the* Tower *of* London; *he then being a Soldier, was ſtanding Sentinel at the Door of the ſaid Earl's Lodgings, and had order to let no body up Stairs to the ſaid Lodgings without leave from Major* Hawley, *or the Warder then in waiting on the ſaid Earl; and that about half an Hour after Eight of the Clock in the Morning of the ſaid Day, two Men (to this Examinant unknown) knocked at the Hatch-Door belonging to the ſaid Lodgings, and by Permiſſion of the ſaid Warder, entered the ſaid Lodgings; but when they came out, he can give no account; and that about Nine o'clock he heard a ſtruggling on the ſaid Morning, and a little time after heard a Crying,* My Lord is dead.

After *Lloyd* had lain ſome time cloſe Priſoner in *Newgate*, he did deſire to ſee one Mr. *Tempeſt*, a Neighbour of his, who having permiſſion of the Secret Committee to diſcourſe *Lloyd*, thereupon went to *Newgate*, where he found the ſaid *Lloyd* very melancholy; when Mr. *Tempeſt* firſt came, *Lloyd* told him, that he did hope, as he was his Neighbour, he would be his Friend, *and true to him*; to which the other anſwered, that he would, if the ſaid *Lloyd* was ingenuous in his Diſcovery; whereupon the ſaid *Lloyd* (after often preſſing the ſaid Mr. *Tempeſt* to be true to him) told him, that when he was firſt ſeized, he did confeſs to a Gentleman, who was altogether a Stranger to him, the letting in ſome Men into my Lord of *Eſſex* juſt before his Death; and this Confeſſion did lie upon his Conſcience, and troubled him Night and Day; upon which the ſaid Mr. *Tempeſt* replied, That the like he had confeſſed to ſeveral the ſame Day he was taken; and he declared the ſame before a Juſtice of Peace; but if it was falſe, he ought to retract it, and be ſorry for having ſaid it; whereupon the ſaid *Lloyd* renewing his Requeſt, that the ſaid Mr. *Tempeſt* would be true to him, *ſaid*, *it was indeed* very true, but it was what he *ſhould not have confeſſed.*

Lloyd did then farther declare, "That upon the letting in thoſe Men, there was ſo great a Buſtle in my Lord's Chamber, that the ſaid *Lloyd* would have forced in after them, but the Warder had made faſt the outward Door, ſo that he could not; and that upon the Buſtle he did hear ſomewhat thrown down like the Fall of a Man, which he did ſuppoſe was my Lord's Body; and ſoon after, it was cry'd out that my Lord of *Eſſex* had cut his Throat." This is the Subſtance of what Mr. *Tempeſt* hath depoſed before the Lords.

By this it appears more than probable, not only that my Lord was murdered, but that there was ſome villainous Oath of Secrecy entred into by thoſe concern'd therein, not to diſcover what they knew with relation thereunto; for what other as likely reaſon can be aſſigned for *Lloyd*'s being troubled in Conſcience (as he pretended) for having confeſſed, what at the ſame time, under repeated Injunctions of Secrecy he confirmed to be true, though he ſaid he ſhould not have confeſſed it?

But to put this Matter beyond all doubt, that ſome Men were buſtling with his Lordſhip juſt before his pretended Self-murder diſcovered, evidently appears by this Information following.

Martha Baſcomb declareth, and before the Lords in ſubſtance hath depos'd, "That a little before the Death of the late Earl of *Eſſex* was diſcovered, this Informant was walking up before the Earl's Chamber-Window, and hearing a very great Trampling and Buſtle in

“ my Lord's Chamber, this Informant ſtood ſtill, and looking to the Window of the ſaid Chamber, ſaw three or four Heads move cloſe together, and heard one in the Chamber (which ſeemed to be one in this Buſtle) cry out very loud, and very dolefully, *Murder*, *Murder*, *Murder*; this Informant not then knowing it to be my Lord's Lodging, nor thinking any other of this Cry, than what might be occaſioned by ſome accidental Quarrel, walked up towards the Chapel, but not out of ſight of the Lodgings, and about a quarter of an Hour after (or leſs) it was firſt cried out in the Houſe, that the Earl of *Eſſex* had cut his Throat; upon which this Informant went down to the Houſe, and being ſhewed the Chamber where the Earl lay, ſhe found that was the Chamber where ſhe ſaw the Men, and heard the Buſtle, and Murder cried out, as before related.” This Informant further ſaith, “ That ſome few Days after this, telling Mr. *Perkins* and his Wife (whom ſhe then kept in her Lying-in) of what ſhe had ſeen and heard, as before declared; the ſaid *Perkins* adviſed her not to ſpeak of it, for her divulging it, in all probability, would prove her Ruin.”

Mr. *Perkins* hath upon Oath confirmed the latter part of *Martha Baſcomb*'s Information, which clearly proves this not a newly-invented Story.

I think this Proof is little leſs than ocular Evidence of the Murder; for my Lord was a cloſe Priſoner, to whom (as was pretended, and ſworn by ſuch as kept the Chamber-Door) none was admitted that Morning, but his Lordſhip cut his Throat in all ſilence; whereas it is here depoſed, that ſeveral were buſtling together in my Lord's Chamber before his Death, (and this part agrees with the Confeſſion of the Sentinel who let in the Ruffians) and one in this Buſtle (which can be preſumed to be no other than my Lord) cried out ſeveral times very loud, and very dolefully, *Murder*, *Murder*, *Murder*.

And as a farther Confirmation of theſe Men being (and by whom) ſent to murder my Lord, *Elizabeth Gladwin* and *Sarah Hughes* declare, (and before the Lords in ſubſtance have depoſed) “ That the Day of the Death of the late Earl of *Eſſex*, (*viz.*) the 13th of *July* 1683, about Eleven of the Clock the ſame Day, one *Ruddle*, in the hearing of theſe Informants, did declare, That he was in the *Tower* that Morning, where it was reported that the Earl of *Eſſex* had cut his Throat, but he was ſure he was murdered, and that by the Order of his ROYAL HIGHNESS; for the ſaid *Ruddle* then declared, That he did obſerve His Majeſty and Royal Highneſs part a little from thoſe that attended them, and diſcourſed (to the beſt of theſe Informants remembrance) The ſaid *Ruddle* declared it was in *French*, concerning the Priſoners then in the *Tower*; and his HIGHNESS declared, That of all the Priſoners then there, the Earl of *Eſſex* ought to be taken off; but His Majeſty ſaid he was reſolved to ſpare him for what his Father had ſuffered; upon which his HIGHNESS ſeemed very diſſatisfied; and a little before the Death of the ſaid Earl, his HIGHNESS parted a little way from his Majeſty, and then two Men were ſent into the Earl's Lodgings to murder him.”——So far before their Lordſhips.

The ſaid *Ruddle* declared this with great Earneſtneſs and Paſſion, and proteſted he thought no Man ſafe who was againſt the Popiſh Intereſt, if once they began thus barefaced to cut Throats. And he proteſted his Blood did ſo boil againſt his Royal Highneſs, that if he could have got a Party that would have ſtood by him, he would have ſhot his Highneſs dead upon the ſpot, for ſo barefaced a Murder had before ſcarce ever been committed under a Civil Government.

John Bampton and his Wife both declare, and in ſubſtance before the Lords have depoſed, “ That about One of the Clock, the very Day the late Earl of *Eſſex* died in the *Tower*, one *Robert Meake* that Morning (a Soldier in the *Tower*) came to theſe Informants Houſe, and theſe Informants deſired the ſaid *Meake* to give them the beſt Account he could how the Earl of *Eſſex* cut his own Throat; to which the ſaid *Meake* (with ſome earneſtneſs and paſſion) anſwered, That the ſaid Earl did not cut his own Throat, but was barbarouſly murdered by two Men ſent for that purpoſe by his ROYAL HIGHNESS to the Earl's Lodgings juſt before his Death.”

What *Robert Meake* did further declare, and what was ſince his Fate, you will hear in its proper order.

I do expect it will be objected, That theſe four are but Hear-ſay Evidence. To which I ſhall anſwer almoſt in the very Words of a late Diſcourſe on this Subject, *viz. Seeing there is Reaſon to believe that the ſtifling the firſt Murder occaſioned the Addition of theſe two Soldiers Blood (as you will hereafter have ſome Grounds to ſuppoſe) I think ſuch Informations ought not to be ſlighted; for after that rate 'tis but taking off ſuch as knew any thing with relation to a Murder, and you are very ſecure from any Diſcovery, though never ſo many upon Oath gave an Account of what thoſe Men (whoſe Mouths have been by Murder ſtopt from giving their own Relation) have declared in the Matter.* Theſe two Soldiers related the ſame as to the ſending the Men into my Lord's Lodgings in two Houſes as far diſtant as *Duke's-Place* and *Baldwin's-Gardens*; and I am verily perſuaded that neither *Hughes* nor *Gladwin* ever ſpoke to *Bampton* and his Wife in their Lives, for neither two remember to have ſeen or heard of the other Informants. And who could imagine that two Soldiers ſhould declare with ſuch concern and earneſtneſs that which was ſo very dangerous to be ſpoken, if their Love to Truth, and Hatred of ſuch a treacherous and bloody Murder had not even forced it from them, to the hazard of almoſt their Lives by ſuch their Relation?

'Tis true, no Man ought to ſuffer barely upon Hear-ſay Evidence, but ſuch Teſtimony hath been uſed to corroborate what elſe may be ſworn, and of itſelf may (in ſome caſes) be enough to give Satisfaction in the general, of the Truth of a Matter, and no farther is it here uſed: And I would have all Men conſider the many ſuch Teſtimonies heretofore produced, amongſt which I ſhall only mention one which had an immediate relation to myſelf. Mr. *Blathwaite* (Clerk of the Council in 1683, and as I think ſtill in that Poſt) being ſworn on the behalf of the King, againſt Mr. *Speke* and myſelf, in his Relation of what the Young *Edwards*'s Siſter ſhould declare to the Council-Board, *viz. That* Braddon *compelled the Boy to ſign it* (the Paper the young *Edwards* ſigned). This you find to be *Hear-ſay-Evidence*, and the *Author* (the Siſter) then in Court, but teſtified no ſuch thing; therefore this *Hear-ſay-Evidence* ought (if any ought) to have been rejected: And yet this *Hear-ſay-Evidence* (though not confirmed by the Author then upon Oath) was not only admitted, but ordered to be printed in the Trial in large Capital Letters. How much ſooner ought the Evidence of *Bampton* and his Wife (as to what *Meake* declared) and of *Hughes* and *Gladwin*, as to *Ruddle*'s Account, be particularly remarked, ſeeing *Meake* and *Ruddle* we cannot now produce in Court, (as that Author was) they (eſpecially the firſt) being ſuppoſed to be murdered by way of Prevention, by that bloody Party that murdered my Lord.

But the next Account of theſe two Men being ſent, as before, by his Highneſs, ſhall be from the firſt Hand. Mr. *Peter Eſſington* declareth, (and before the Lords in ſubſtance hath depoſed) ‘ That he this Informant was in the *Tower* that Morning the late Earl of *Eſſex* died; and about a quarter of an Hour before the ſaid Earl's Death was diſcovered, this Informant obſerved His Highneſs to part a little way from his Majeſty, and then beck'ned to two Gentlemen to come to him, who came accordingly; and this Informant did obſerve his Highneſs to ſend them towards the Earl's Lodgings; and leſs than a Quarter of an Hour after, this Informant did obſerve theſe very two Men to return to His Highneſs, and as they came they ſmiled, and (to the beſt of this Informant's Hearing and Remembrance) ſaid, *The Buſineſs is done*; upon which, His Highneſs ſeemed very well pleaſed, and immediately thereupon his Highneſs went to his Majeſty; ſoon after which, News was brought to the King, *That the Earl of* Eſſex *had cut his Throat*.'

I do expect that will be objected to this, which heretofore hath been, (*viz.*) That it cannot be thought the late Duke of *York* (admit he was ſo bad as to give Order for ſuch a Fact) would be ſo impolitick as to ſend the *Ruffians*, ſo that any People might ſee their Miſſion, and their Return. But I deſire ſuch would conſider this Murder in all its Circumſtances, and then tell me, Whether thoſe bloody Varlets had not all the Reaſon in the World to have all the Security could be expected or deſired? You well know, that my Lord of *Eſſex* was deſervedly very popular; and therefore a Parliament that ſhould have had the leaſt Information of this treacherous and bloody Murder, would have proſecuted the Matter with all the Diligence and Vigour ſuch a Piece of Barbarity deſerved. Now, ſhould they, in ſuch their Inquiſitions, have detected thoſe treacherous Villains, theſe bloody Men without a full Diſcovery, muſt have expected no Mercy; and ſhould the Duke have employed them in his Cloſet only, and they could not by any Circumſtance have given Satisfaction that they were his hired Journeymen in this piece of great Service, their Evidence againſt him had not been the tenth part ſo credible as it would have been, could they have proved that they were ſent by His Highneſs towards the Earl's Lodgings juſt before His Death, and ſoon after returned to His Highneſs, before others knew that this cruel Tragedy was finiſhed. This Circumſtance, I ſay, would have ſo corroborated their Evidence againſt their Maſter, that none could in the leaſt have doubted of the Truth of their being ſo employed, that were once ſatisfied they were, as before, ſent by, and returned to His Highneſs. This then obliged His Highneſs, under no leſs Obligation than Self-Preſervation, to ſkreen thoſe his faithful and ready Servants from any Proſecution, well knowing that his own Intereſt (and Indeed Life) was wrapt up in their's.

Wherefore I think this Matter was very cunningly managed (as to the Security of theſe Cut-throats from the Hands of Juſtice, either in their Puniſhments or Proſecution.) And it could not poſſibly have been done with greater Safety to the Perſons of thoſe that did it.

The Sentinel *Lloyd* declared, He could not be poſitive whether Major *Hawley* or the Warder let the Men into the outward Door; But Major *Hawley* pretends, He could not; for he (as he ſaith) went out of his Houſe at Five o'Clock in the Morning, and did not go nigh his own Houſe till News of my Lord's Death was brought him by *Monday* the Warder; and therefore he could not open the Door to any that went in juſt before my Lord's Death. This Reaſon of Major *Hawley* is equally true with what elſe he ſaith in his Defence, as appears by this Information.

RIchard Nicolſon, *in the Ward of* Queenhithe, *Corn-Factor, depoſeth, That the Day of the Earl of* Eſſex *his Death, this Deponent was a Warder in the* Tower, *and ſtood Warder at the* Inner-Tower-Gate *that Morning the Earl dy'd, (before the Earl's Death) and by Major* Hawley *(then Gentleman-Porter of the* Tower) *ordered to let no Man into the* Tower, *or out of the* Tower. *This Deponent further depoſeth, That about Eight of the Clock, or a little before, whilſt this Deponent was Warder at the Gate as aforeſaid, he did obſerve the ſaid Major* Hawley *five or ſix times turn up towards his own Houſe through the Gate (over-againſt the* Traytors-Gate) *leading towards his own Houſe; and about Eight of the Clock the ſame Morning, this Deponent was deſired by a Stranger to let him into the* Tower, *for which the ſaid Stranger gave this Deponent a Shilling: This Deponent let him through the Gate; the ſaid Major* Hawley *thereupon came to this Deponent in great Fury, and check'd this Deponent for letting in the ſaid Stranger into the* Tower. *This Deponent further depoſeth, That Major* Hawley *ordered this Deponent (with ſeveral others) to go Warder with the Lord* Ruſſel *to the* Old-Bailey; *and as this Deponent was going with the Lord* Ruſſel *to the* Old-Bailey, (viz.) *about Eight of the Clock, he paſſed before Major* Hawley's *Houſe*, and did obſerve Major *Hawley* then to go into his own Houſe.

Jurat' 9no die *Aug.*
1689, coram me,
Tho. Pilkington, Mayor.

Richard Nicolſon.

That Major *Hawley* was in the Houſe when my Lord was murdered, ſeems farther probable from the Relation of *Mary Johnſon*, then at work in Major *Hawley*'s Houſe at the time of my Lord's Death; and what Account ſhe hath hereof given, appears by theſe two Informations.

The Information of *Philip Johnſon* of *White*'s *Alley* in *Coleman-Street*, in *London*, Free-Maſon, taken the 22d Day of *January* 168$\frac{8}{9}$, before *John Robins*, Eſq; a Juſtice of the Peace for the County of *Middleſex*.

'THIS Informant maketh Oath, and ſaith, That *Mary Johnſon*, his Wife, (ſince deceaſed) being a labouring Woman to Major *Hawley*, in whoſe Houſe the late Earl of *Eſſex* was found dead, That the Morning on which he died, as ſhe was at Work, ſhe heard a Noiſe; and deſigning to go up Stairs, ſhe met Major *Hawley* coming down, who told her, *My Lord was dead*; upon which, ſhe went up Stairs, and found the ſaid Earl dead in his Cloſet, as ſhe gave her Huſband, this Informant, an Account; and that by Order of the ſaid Major *Hawley*, ſhe helped and aſſiſted a Man (to the beſt of his Memory his Name is Major *Webſter*) to ſtrip the ſaid Earl from his Clothes; and at the further Command of the ſaid Major *Hawley*, ſhe waſhed the ſaid Earl's Body, and alſo waſhed the ſaid Chamber and Cloſet belonging to the ſaid Earl; for the ſaid Major *Hawley* gave her 10s. and that the Neck of the Cravat that ſhe took off the ſaid Earl's Neck, was cut in three Pieces.

The Mark of *Philip Johnſon*.'

The Information of *Miriam Tovey*, of *Red-Lion-Street*, in *Whitechapel*-Pariſh, in *Middleſex*, Widow, taken the Day aforeſaid, before *John Robins*, aforeſaid.

'THIS Informant maketh Oath, and ſaith, That ſhe ſeveral times heard *Mary Johnſon*, aboveſaid, declare the Subſtance of the preceding Information; and further ſweareth, The ſaid *Mary Johnſon* told her, That Major *Webſter* was the Perſon who helped her to ſtrip the ſaid Earl of his Clothes; which ſhe was very unwilling to do, ſaying, She ſhould bring herſelf into Trouble and Hazard of her Life, by intermeddling with the Body before the Coroner had ſat upon it; and that Major *Hawley told her*, She muſt do it, and ſhould come to no Trouble by it.

Miriam Tovey.'

But it ſeems Major *Hawley*'s Principles were ever averſe to thoſe brave True *Engliſh* Champions that oppoſed the late Court-Arbitrary Deſigns and could afford thoſe Honourable Lords, and Truly-worthy Knights and Gentlemen, no better Titles than *Rogues*. This appears by what he declared the very Day that a great Number of Honourable Lords (amongſt which this unfortunate Lord, I hear, was one) and Worthy Knights, Gentlemen and Citizens, dined together at *Mile-End-Green*; for ſome time that Afternoon *Hawley* told Mr. *Bunch*, then a Warder, That above Two hundred Rogues that Day dined together at *Mile-End-Green*; but he did wiſh that he had Forty of the biggeſt of them there in the *Tower*, that they might be made ſhorter by the Head; for till then the Land would never be at quiet. This in Subſtance is depoſed by the ſaid Mr. *Bunch*, who with one Mr. —— are ready likewiſe to depoſe, That ſome time ſince diſcourſing with one —— a Servant-Maid in the *Tower* at the time of my Lord's Murder, but ſince turned out, they told her, That it was ſuppoſed to be Major *Hawley* that occaſioned her being turned out of the *Tower*; but ſhe replied, 'It could not be the Major, for he was the beſt Friend ſhe had in the World, upon the Account of ſomewhat which ſhe knew with relation to the Death of the late Earl of *Eſſex*.'

I have ſome Grounds to believe, that not a few in the *Tower*, that Morning my Lord was murdered, could diſcover ſeveral Things very material in order to a farther Detection; and particularly, as to the coming out of the Ruffians after they had perpetrated this not-to-be-parallel'd treacherous Cruelty; for I have been informed by ſome, who that very Morning my Lord was murdered were in *Leaden-Hall-Market*, That there came a Servant-Maid (who then lived, as ſhe ſaid, in the *Tower*) to that Market the very ſame Morning; and wringing her Hands, ſhe wept, and cried out, 'The Earl of *Eſſex* was murdered;' upon which the People gathering about her, adviſed her to Silence, telling her ſhe would bring herſelf into Trouble by ſuch Expreſſions; the Maid thereupon declared, 'She was ſure it was true, for ſhe ſaw the Men that murdered him, juſt as they came from his Lodgings.'

I have uſed all Diligence poſſible to find this Maid out: but neither of thoſe I have met with could tell me her Name, or the Name of the Perſon in the *Tower* with whom ſhe lived, Not long after my Lord's Death, I was likewiſe informed of the Name of one who declared he ſaw the Ruffians juſt as they came out of my Lord's Lodgings, and did obſerve ſome Blood upon the Clothes of one of them: But having been obliged in a Hurry often to convey away my Papers, this Name I have loſt. I do wiſh I could find Men as free, as their Duty obliges them in this Matter, to declare what they knew.

I have reaſon to ſuppoſe many Men would be then examined; and whoſoever there is that can diſcover any Thing material with relation to this Murder, and in ſilence ſtifles it, by ſuch his ſilence he conſents to the Blood of my Lord; and though our Law may not reach his Offence, yet He who knows it, will one Day lay it to his Charge; for if God requires that all Governments ſhould make diligent Inquiſition for Blood, in defect whereof he will require the Blood of the Slain at the Hands of ſuch Magiſtrates on whom this Neglect is chargeable: then on thoſe more eſpecially will the greateſt Guilt lie, who refuſe or neglect to give Infortion to thoſe ordained for ſuch Inquiſition.

But, to return:

Bomeney and *Ruſſel*, you find, have before depoſed, That there was a Razor delivered to my Lord wherewith to pare his Nails; which his Lordſhip having done, he retired into his Cloſet, and there cut his Throat. The Cloſet-Door being opened, *Bomeney* and *Ruſſel* have declared they ſaw the Body there lie in its Blood, and the Razor lying by him.

This is, in ſhort, the Subſtance of theſe Men's Relations, whoſe Intereſt it is to prove the Self-Murder. That this Story is falſe in every Part, I doubt not but to convince every unprejudic'd Perſon, and hope to ſatisfy all who are not blinded with prejudice.

Firſt, That his Lordſhip did not pare his Nails that Morning he died, as all theſe have ſworn or declared; nor was there any Razor delivered to my Lord for that Purpoſe that Morning he died.

Secondly, That his Lordſhip's Body was not locked into the Cloſet, when firſt found.

Thirdly, That there was no Razor lying by the Body when theſe Three firſt ſaw the Body; but the Razor laid there after my Lord was murdered, to colour the pretended Self-murder.

That my Lord's Nails were not par'd, *John Kittlebeater* hath depoſed, That he being of the Coroner's Jury did very narrowly obſerve my Lord's Nails on his Fingers and Feet, and could not diſcern either of them par'd or ſcrap'd.

I ſhall now prove *Bomeney*'s Relation to be falſe, by what *Ruſſel* ſwore; and *Ruſſel*'s Depoſition forged by what *Monday* declared the very Day, and ſome time after my Lord was murdered: and *Monday*'s Account in every material part is a Fiction, by the Depoſitions of the two former: In order to which, I ſhall give you *Bomeney*'s firſt Information, taken in the Coroner's own Hand, which is as followeth:

'THE Information of *Paul Bomeney* ſaith, That the Earl of *Eſſex* on the 11th Inſtant did ſpeak to this Informant to bring him a Penknife to pare his Nails; but this Informant could not then get one. The Earl of *Eſſex* called to him again on *Friday* the 13th Inſtant, about Eight of the Clock in the Forenoon, did again ſpeak to this Informant to bring him a Penknife to pare his Nails: But this Deponent telling him that he had not one, his Lord commanded him to bring him a Razor, which he did accordingly; and then his Lordſhip walked up and down the Room, ſcraping his Nails with it: and this Informant then left him; and coming about half an Hour afterwards up into the Bed-Chamber, found his Cloſet-Door faſt; whereupon this Informant knocked at the Door, and called *My Lord*, *My Lord*; but he not anſwering, puſhed the Door a little open, where he did ſee his Lord lying all at Length on the Ground in his Blood, with the Razor near him on the Ground. And further depoſeth, That he hath not any Papers of his Lord's, nor doth know where any of his Papers or Writings are. And alſo, *That on* Thurſday-*Night laſt was very merry at Supper, and did not ſeem to be diſcontented the next Morning*.'

This Information is *verbatim* as the Coroner took it from *Bomeney*'s own Mouth: But the Coroner proceeding to aſk further Queſtions, *Bomeney* began extremely to heſitate, and thereupon deſired he might write his own Information; which being granted, he retired from the Coroner and Jury into the next Room; where having been ſome conſiderable time, he brought the Information firſt mentioned, according as it is there obſerved to be in the Original.'

James Whitechurch declareth, (and in Subſtance before the Lords hath depoſed) 'That the very Day the Earl of *Eſſex* died, he went with one *George Jones* to the *Tower*, to diſcourſe *Nathanael Monday* concerning the Death of the ſaid Earl; and when they came to the *Tower*, meeting with the ſaid *Monday*, he gave them this Account: That as ſoon as the Gentleman-Goaler had opened my Lord's Chamber-Door, that very Morning he the ſaid *Monday* (by Order) went into my Lord's Chamber, and tarried there, becauſe their Orders were, That one of the Warders ſhould be in his Lordſhip's Chamber, and the other at the Stairs-Foot; and that they had this farther Order, Not to ſuffer his Lordſhip to have a Knife, or any thing like it, but whilſt he uſed it in cutting his Meat; and that being done, all Knives and ſuch like were to be taken from him; with which Orders having acquainted my Lord, his Lordſhip anſwered, He ſhould take nothing ill from them in obſerving their Orders.

'This Informant further ſaith, That the ſaid *Monday* did then declare, That he tarried with my Lord in his Chamber two Hours or better that very Morning; and that whilſt he was with my Lord in his Chamber, he did obſerve his Lordſhip pared his Nails with the Heel of a Razor. This Informant further ſaith, That the ſaid *Monday* did further declare, Before he left his Lordſhip, and went down Stairs to ſtand below, he called up *Ruſſel*, his Fellow-Warder, to ſtand in his Chamber; and as he went down Stairs, he lighted his Pipe, and ſat at the Stairs-Foot; but before he had half-ſmoked his Pipe, he heard it cried above Stairs, *That my Lord had cut his Throat*; whereupon he the ſaid *Monday* ran up Stairs, and puſhed the Cloſet-Door open, and there found my Lord dead. This Informant further ſaith, That the ſaid *Monday* did further declare, That when he came up Stairs, he aſked Mr. *Bomeney* and *Ruſſel*, Where they were whilſt my Lord was in the Cloſet? The ſaid *Bomeney* anſwered, He was ſitting upon the Bed in my Lord's Chamber; and the ſaid *Ruſſel* declared, He ſtood at my Lord's Chamber-Door, juſt without the Door: Whereupon he the ſaid *Monday* (as the ſaid *Monday* declared) checked the ſaid *Ruſſel* for not keeping in the Chamber according to Order.'

Richard Jordan declareth, 'That on the Day Mr. *Braddon* was tried, in *Hillary*-Term, 1683, (upon the Account of the late Earl of *Eſſex*) this Informant heard *Nathanael Monday* declare, That the very Morning the late Earl of *Eſſex* died, as ſoon as the Gentleman-Goaler opened the Chamber-Door, which was about Seven of the Clock, the ſaid *Monday* ſtood as Warder above Stairs upon the ſaid Earl; and at the firſt opening the Door, did obſerve the ſaid Earl to have a Razor in his Hand, paring or ſcraping his Nails with it; and this the ſaid *Monday* declared he ſaw a long time before *Ruſſel* ſtood Warder above Stairs upon the ſaid Earl.'

By theſe two Informations, you may perceive what *Monday* declared; 'My Lord had this Razor in his Hand about Seven o'Clock in the Morning, long before *Ruſſel* came up Stairs to ſtand Warder upon my Lord; and that my Lord pared his Nails with the Heel of the Razor.'

By the Way, I cannot but here take notice of what *Monday* would have inſinuated, *(viz.)* That the Government was jealous my Lord would deſtroy himſelf; for otherwiſe, how ſhould there be Orders given not to ſuffer his Lordſhip to have a Knife, *&c.?* This was ſaid, the more eaſily to induce People to believe that my Lord did indeed cut his own Throat: but *Monday* will not now pretend ſuch Orders were given him. And obſerve how inconſiſtent *Monday*'s Relation is! for he pretended that they had Orders not to ſuffer his Lordſhip to have a Penknife or Razor, *&c.* and yet at the ſame time confeſſed he left this Razor with his Lordſhip.

Ruſſel the Warder hath before depoſed, and now declares, That this Razor he ſaw *Bomeney* deliver to my Lord, whilſt he ſtood Warder at my Lord's Chamber-Door, after *Monday* was gone down Stairs.

Let us now compare theſe three Men's Relations as to the Time of Delivery of the Razor; by doing which, it will plainly appear that no Razor at all was delivered to his Lordſhip. For the clearer underſtanding hereof, I ſuppoſe *Bomeney* under Examination with the Jury, and anſwering according to what he hath ſworn:

Jury. Did you deliver this Razor to my Lord?

Bomeney. Yes.

Jury. When did you deliver this Razor to my Lord?

Bomeney. About Eight of the Clock that Morning my Lord died.

This is according to what he firſt ſwore; but he then withdraws to write his own Information, which point-black contradicts this his Oath in that particular; for he is then examined, and anſwereth as followeth:

Jury. Do you remember the very time that you delivered the Razor to my Lord?

Bomeney. Yes.

Jury. When did you deliver this Razor to my Lord?

Bomeney. About Eight of the Clock on *Thurſday* Morning, being the Day before my Lord's Death.

This, as you obſerve, he ſwears in the Information himſelf writ, and brought to the Coroner.

Bomeney then to withdraw, and let *Ruſſel* anſwer to this particular.

Jury. Mr. *Ruſſel*, do you know when this Razor was delivered to my Lord?

Ruſſel. Very well; for I ſaw it delivered to my Lord by *Bomeney*.

Jury. When did you ſee this Razor delivered?

Ruſſel. Leſs than a Quarter of an Hour before we found my Lord dead. I ſtood Warder at my Lord's Door; and I heard his Lordſhip aſk for his Penknife to pare his Nails; and *Bomeney* ſaid, It was not brought; upon which my Lord required a Razor, ſaying, It would do as well; and I ſaw *Bomeney* give my Lord the Razor, it being then about Nine o'Clock.

Jury. Who firſt ſtood as Warder at my Lord's Chamber-Door, or in my Lord's Chamber, Yeſterday Morning before my Lord died; was it You or *Monday*?

Ruſſel. *Monday*, upon my Lord's Chamber-Door being opened firſt, ſtood at the Door; and after he had been there as long as we uſe to ſtand, he called me up, and then went down and ſtood at the Stairs-foot, at the Houſe-Door, where I did before ſtand.

Jury. Then this Razor you ſaw delivered to my Lord after *Monday* went down Stairs, and whilſt you ſtood as Warder at my Lord's Door?

Ruſſel. It is very true; for I am ſure I ſtood by *Bomeney* when he delivered the Razor, and ſaw it delivered to my Lord.

Jury. What diſtance of Time do you ſay there might be, from the Time this Razor was delivered, to the time of my Lord's Death?

Ruſſel. I am ſure it could not be Half an Hour from the time of the Delivery of the Razor, to the time we found my Lord dead in the Cloſet.

Ruſſel withdraws, and *Monday* is examined.

Jury. Mr. *Monday*, did you ſee my Lord have any Razor in his Hand Yeſterday Morning before his Death?

Monday. Yes, I did.

Jury. What Time was it when you ſaw my Lord have the Razor in his Hand?

Monday. About Seven of the Clock, as ſoon as the Gentleman-Goalor had opened my Lord's Chamber-Door; for I firſt ſtood Warder above Stairs; and as ſoon as the Door was opened, I ſaw my Lord have the Razor in his Hand, aad obſerved him to pare his Nails with it.

Jury. Was this before *Ruſſel* came up to my Lord's Chamber-Door, to ſtand Warder there?

Monday. Yes, almoſt Two Hours.

This is according to their own Informations and Relations. Now, can you believe that this Razor was delivered by *Bomeney* at Eight of the Clock on *Friday* Morning, according to his firſt Oath; and yet not delivered till Eight of the Clock on *Thurſday* Morning, according to *Bomeney*'s ſecond Oath? And can you alſo believe that the Razor was not delivered till about Nine of the Clock on *Friday* Morning, according to *Ruſſel*'s Information; and at the ſame time give Credit to *Monday*, who declared, My Lord had the Razor by Seven of the Clock, Two Hours before *Ruſſel* came up to ſtand Warder at my Lord's Chamber-Door?

Theſe Three are of equal Credit, and conſequently you have as much reaſon to believe *Bomeney* as *Ruſſel*; and *Monday* deſerves equal Credit with either of the former: But all cannot be credited; neither can *Bomeney*'s Contradiction be reconciled: Or can One of theſe be thought True, without giving the Lye to the other Two?

Therefore, upon the whole Matter, you cannot reaſonably believe there was any Razor at all delivered.

If any ſhall ſay, that all Three in the main agree, That my Lord had a Razor delivered him to pare his Nails, and their Contradictions is only in Point of Time:

I anſwer, 'Tis true, it's a Circumſtantial Contradiction in Point of Time; and the Contradiction of the Two Elders in the Hiſtory of *Suſanna*, was a Circumſtantial Contradiction in Point of Place; for the firſt ſwore they took *Suſanna* in Adultery under a *Maſtick-tree*, and the ſecond under a *Holm-tree:* Both theſe agree in the main, *viz.* That they found her in Adultery; but by this Contradiction, as to the *place where*, *Daniel* convinced all then preſent, that theſe Two Elders were perjured in their Evidence, (and conſequently *Suſanna* innocent of her Charge) and thereupon theſe two Accuſers juſtly ſuffered, what by Perjury they would have unjuſtly cauſed to be inflicted upon the Innocent. And I never yet heard any deny *Daniel*'s Wiſdom in this Detection; or arraign his Juſtice in the Puiſhment thoſe Two Falſe Accuſers thereupon ſuffered.

Secondly, That my Lord's Body was not locked into the Cloſet. I will now ſuppoſe that *Bomeney*, *Monday* and *Ruſſel*, were to anſwer as to the opening this Door, according to their former Informations, and you will find their Contradictions, as to this, as groſs as the former.

Bomeney firſt appears.

Jury. Mr. *Bomeney*, was my Lord's Body locked up into the Cloſet, when he was firſt found dead?—*Bomeney.* Yes.

Jury. Who opened the Door?

Bomeney. When I had knocked at the Cloſet-Door, my Lord not anſwering, I did open the Door, and there ſaw my Lord lying a-long in his Blood, and the Razor by him, and I then called the Warders.

This according to his firſt Information, taken (as before) by the Coroner.

About an Hour after this, the Jury did again examine him as to this Point; and he anſwering according to the Information, which (as before) he writ in the Room next the Jury, and then you will find it as followeth.

Jury. Mr. *Bomeney*, Did you firſt open the Cloſet-Door upon my Lord's Body?

Bomeney. No, I did not, but *Ruſſel* did; for after I had knocked at the Door thrice, calling, My Lord; my Lord not anſwering, I took up the Hangings, and peeping through a Chink, I ſaw Blood, and part of the Razor, whereupon I called the Warder *Ruſſel*, and the ſaid *Ruſſel* puſhed the Door open.

At my Trial, *Bomeney* being aſked who did firſt open the Door, upon Oath anſwered, he knew not who opened the Door.

Jury. Mr. *Ruſſel*, Did you find the Cloſet-Door lock'd upon my Lord's Body?

Ruſſel. Yes.

Jury. Who firſt opened the Cloſet-Door?

Ruſſel. When *Bomeney* ſaw my Lord's Body through the Chink, he cried out, my Lord was fallen down ſick; whereupon I went to the Cloſet-Door, and opened it, the Key being on the out-ſide.

Here *Ruſſel* makes no Difficulty in opening the Door; but obſerve *Monday*'s Anſwer.

Ruſſel withdraws, and *Monday* is called.

Jury. Mr. *Monday*, Where were you when my Lord was firſt found dead?

Monday. I was ſtanding at the Foot of the Stairs, and hearing a great Noiſe of my Lord's Death, I ran up Stairs, and found *Bomeney* and *Ruſſel* endeavouring to open the Door; but the Body being ſo cloſe and ſtrong againſt the Door, neither could.

Jury. Who then opened the Door?

Monday. I being much ſtronger than either of theſe Two, put my Shoulder againſt the Door, and puſhing with all my might, I broke it open.

Upon the whole Matter you find, firſt *Bomeney* opened the Door before he called either of the Warders, according to *Bomeney*'s firſt Information taken (as before) by the Coroner; and ſecondly, That he did not open the Door, for *Ruſſel* opened it, according to *Bomeney*'s ſecond Information (which himſelf writ) and *Ruſſel*'s Depoſition: And thirdly, That neither *Bomeney* nor *Ruſſel* could open the Door, becauſe the Body lay ſo cloſe againſt it, and ſo *Monday* broke it open. This according to *Monday*'s Account of the Matter.

Theſe Contradictions before obſerved of themſelves, are as (I do humbly conceive) ſufficient to convince the Man not biaſs'd, that this Unfortunate Lord was treacherouſly murdered; for our Law ſuppoſes every Man, deſtroy'd by violent Means, to be murdered by others, unleſs the contrary appears to the Coroner, and his Jury; now thoſe which in this Caſe come to teſtify the contrary, are ſo notoriouſly ſelf-deſtructive in their Evidence by their groſs Contradictions, that all theſe Three appear treacherouſly falſe; and therefore theſe Men's Evidence thus contradictory, cannot prove the Self-murder, but rather demonſtrate the contrary; for theſe three being the only Men, who by their *Stations near* my Lord at the Time of his Death; could then be ſuppoſed capable of giving any Account how my Lord came by his Death; (for *Bomeney* attended upon my Lord in his Chamber; and *Monday* and *Ruſſel*, the Two Warders, which alternately kept my Lord's Chamber-Door, for when *Monday* kept my Lord's ChamberDoor, *Ruſſel* ſtood at the Stairs-Foot-Door, and this by turns;) and ſeeing theſe Men's Relations, for the Reaſons before obſerved, are notoriouſly falſe, there was *a Truth* which theſe Perfidious Men thought neither convenient or ſafe to declare, which would have detected the *true* Manner of my Lord's Death, and in what Parts theſe Three ſtood related thereunto.

I would fain aſk the Coroner and his Jury, What Inquiſition they would have brought in upon my Lord's Body, in caſe *Bomeney*, *Monday* and *Ruſſel* ſhould have declared they would not diſcover what they knew with relation to my Lord's Death? I am apt to have ſuch a charitable Opinion of the Diſcretion and Integrity of theſe Gentlemen, as to believe they would have been ſo far from finding my Lord *Felo de ſe*, that they would have found him murdered by others, and theſe three concerned therein: for by their reſpective Stations at the time of my Lord's Death, they could not be ignorant of the *true* manner thereof; and by their Refuſals to diſcover their knowledge therein, they (tacitly) would have confeſſed their Guilt, either as Actors in that cruel Tragedy, or privy and conſenting to it. Now as ſuch their firſt poſitive Refuſal would have rendered them Guilty before the Coroner and his Jury; ſo their falſe and contradictory Account makes ſome of them more Criminal, by ſo great an Addition to their firſt Offence. For in the firſt, by their ſilence they would have endeavoured to conceal the Murder, and their Guilt therein; So here by their many falſe Relations (which have ſo plainly appeared, for Contradictions cannot be true) have they deſigned to attain the ſame End.

And for my own Part, (admitting what is ſworn againſt them to be true) I think theſe Three are worſe Criminals than thoſe Ruffians who cut my Lord's Throat. For ſome of the latter were not ſo intruſted with my Lord's Body, as properly to be termed treacherous, neither have they appeared by Falſities to conceal their Guilt, by perfidiouſly transferring the ſame on him whom their own Hands have deſtroyed; But two of the three Former, (*viz.*) *Ruſſel* and *Bomeney*, if what is ſworn againſt them be true, have ſuperadded the greateſt Treachery and Falſity to Blood, and therefore ſtand Guilty of a complicated Villany, by which they have, as much as in them lay, murdered his Lordſhip's Honour, and ſtained his Family with ſuch Guilt, as nothing but the Diſcovery of Truth, and a juſt Recrimination of thoſe Treacherous Men can wipe off.

But as a farther Argument of the Cloſet-Door's not being locked upon my Lord's Body; it appears, That when *Bomeney*, *Monday* and *Ruſſel* pretended my Lord was lying in that Poſture wherein they firſt found him, his Lordſhip's Legs were part out of the Cloſet-Door. This is declared by *William Turner* and *Samuel Peck*, who before the Lords have in Subſtance depoſed, ‘ That theſe two Informants were Servants to the late Earl of *Eſſex* at the Time of his Death, and brought ſome Proviſions into the *Tower* juſt upon the firſt Diſcovery of my Lord's Death, of which as ſoon as they heard, they ran up Stairs, and found my Lord's Legs lying upon the Threſhold of the Cloſet-Door, and a Print of a bloody Foot upon my Lord's Stockings.’ This proves not only that the Cloſet-Door could not be lock'd (as was ſworn and declared by *Bomeney* and *Ruſſel*), but likewiſe that Somebody had been with the Body in the Cloſet, or otherwiſe how came the Print of a bloody Foot upon my Lord's Stockings, as theſe ſwear to have obſerved.

In the *third* and laſt Place, I ſhall diſprove that Part of theſe Men's Relations which ſaith, *That the Razor was lock'd into my Lord's Cloſet, when his Lordſhip was firſt by them ſeen dead.* Thoſe Three have all depoſed, or often declared, ‘ That the Razor was found by my Lord's Body lock'd into the Cloſet; and all three denied that there was any bloody Razor thrown out of my Lord's Chamber-Window juſt before my Lord's Death was firſt diſcovered to thoſe out of the Houſe.’

William Edwards, aged about Eighteen Years, and *Jane Lodeman*, aged about Eighteen Years, have both before the Lords in Subſtance depoſed, ‘ That a little before my Lord's Death was diſcovered, they ſaw a bloody Razor thrown out of my Lord's Chamber-Window, and that juſt after there came a Maid in a White Hood out of Captain *Hawley*'s Houſe; which Maid, *William Edwards* hath depoſed, ‘ took up the Razor, and ran with it into Major *Hawley*'s Houſe, and up Stairs, crying out Murder; and immediately hereupon was it firſt ſaid, that the Earl of *Eſſex* cut his Throat.’

Thomas Edwards, Father to the ſaid *William Edwards*, *Sarah Edwards*, *Ann Edwards*, and *Elizabeth Edwards*, Siſters to *William Edwards*, (in Subſtance before the Lords) have depoſed, ‘ That the very Morning of my Lord's Death, when *William Edwards* came home, he did give this Information (in Subſtance) to theſe Informants.’

William Edwards did farther depoſe to this effect, ‘ That the very Morning Mr. *Speke* and I were tried, going into *Weſtminſter-Hall* to be an Evidence at that Trial, he met with Major *Hawley*, who in a threatning manner told him, That if he might have the Management of him, the ſaid *William Edwards* ſhould be whipt once a Fortnight, for ſeven Years together; which Threat of the ſaid Major *Hawley* did ſo terrify this Informant, (he being then about Thirteen Years of Age) that he was afraid to ſpeak the Truth at that Trial, leſt he ſhould ſeverely ſuffer for ſo doing.’

Mrs. *Smith*, Aunt to *Jane Lodeman*, and Mr. *Glaſbrooke*, did depoſe, ‘ That this Relation *Jane Lodeman* gave as ſoon as ſhe came from the *Tower* that Morning.’ Mrs. *Gibbons* hath before the Lords (in Subſtance) depoſed the ſame.

Here are two Children (aged then about Thirteen Years) altogether Strangers to each other, and whoſe Relations were as much Strangers to one another, that gave the ſame Relation, exactly agreeing in ſeveral Circumſtances, and this Story by them was told when there could not poſſibly be any uſe made of it to prove my Lord's being murdered. For here are Seven or Eight Witneſſes have (for both Parties) depoſed, That this Story was related by theſe two about Ten of the Clock the very Day my Lord died, when it could not poſſibly be known what would be ſworn before the Coroner's Jury the then next Day. Now the only uſe made of it, is to contradict the Depoſitions of thoſe which before the Coroner would have proved the Self-Murder. Which Depoſitions (as before obſerved) were not taken till the *Saturday* (which was the Day after theſe two Children had given this Relation), and not publiſhed before the then next *Monday* Morning. Nay, theſe two Children were firſt ſo far from uſing it as an Argument of my Lord's being murdered, that both of them (to their reſpective Relations) when check'd for ſaying that my Lord cut his own Throat; in their Childiſhneſs and innocent Simplicity, urged this as an Argument of my Lord's Self-Murder; *For they declared they were ſure 'twas true, for they ſaw him throw the Razor out of the Window.* But theſe two Children were not the only Perſons that ſaw this Razor thrown out; for ſeveral others that very Morning my Lord died, declared, That the bloody Razor was thrown out of my Lord's Chamber-Window before my Lord's Death was known, and that a little Boy did endeavour to take up this Razor, but was prevented by the Maid, who took it up, and ran with it into the Houſe, and up Stairs, immediately whereupon my Lord's Death was diſcovered. This Relation *Robert Meake*, before mentioned, did give the very Day of my Lord's Death, to *Bampton* and his Wife, (as they have depoſed before the Lords). The ſame Account did the aforeſaid *Ruddle* give before Twelve of the Clock the Day my Lord died, to *Hughes* and *Gladwin*, as they have teſtified before the Lords. This Relation of theſe Two you find agrees exactly with what *William Edwards* declared. And that the throwing out this bloody Razor was commonly reported in the *Tower* juſt after my Lord's Death was known, appears by the Teſtimony of ſeveral Perſons; for *John Saliſbury* hath depoſed, ‘ That being ſent as one of my Lord *Ruſſel*'s Guard to the *Old-Bailey*, as they were returning to the *Tower* that Morning, one met them in great haſte, and declared he juſt then came from the *Tower*, and that the Earl of *Eſſex* had cut his Throat in the *Tower*, and thrown the Razor out of the Window; upon which one replied to this effect, That my Lord had a good Reſolution, firſt to cut his Throat, and after to throw the Razor out of the Window. He farther teſtifieth, That when he came into the *Tower*, he heard it declared by ſeveral, that the bloody Razor was thrown out of my Lord's Chamber-Window before his Death was known.’ *Grimes* and *Boſtick* both, likewiſe in the *Tower* that very Morning, have depoſed, ‘ That the throwing out of this bloody Razor was talked of by ſeveral then in the *Tower* upon the firſt Diſcovery of my Lord's Death, ſome then and there declaring, That they ſaw this bloody Razor ſo thrown out.’ But if theſe many Teſtimonies will not ſatisfy, I ſhall next give you the Confeſſion of him who declared he threw it out, and of the Sentinel who ſtood by my Lord's Lodging-Door, and confeſſed he ſaw it thrown out.

Mr. *Samuel Story* did farther depoſe, ‘ That the very Day Major *Webſter* was taken up, to wit, the 21ſt of *January* 1688, as ſuſpected to be concerned in my Lord's Murder;’ the ſaid *Webſter* being then charged as concerned in my Lord's Murder, declared, ‘ He did nothing but throw the Razor out of my Lord's Chamber-Window.’ Being aſked, What made him throw the Razor out? He ſaid he was under ſuch a Conſternation, that he knew not what he did. Upon this Confeſſion of Major *Webſter*, *Lloyd* confirm'd the ſame, ſaying, ‘ That it was indeed true that the bloody Razor was thrown out; for it was thrown out juſt over his Head, and a little Boy did endeavour to take it up; but the Maid came out of the Houſe, and took it up, and ran immediately in with it, and then diſcovered my Lord's Death:’ That this Maid did carry up the Razor, and then diſcover my Lord's Death, farther appears by the Teſtimony of *John Nuthill*, who depoſeth, ‘ That juſt before my Lord's Death was known, he was leaning over the Pales before Major *Hawley*'s Houſe, and aſked my Lord's Sentinel how his Lordſhip did? To which the ſaid Sentinel anſwered, Very well: And this Deponent did then obſerve a Maid run into the Houſe in great haſte, and up Stairs (when a Warder and another were coming down my Lord's Stairs, but declared nothing of my Lord's Death, as this Deponent could hear, who ſtood about ſix Foot from them) but ſhe immediately came down, and cried, My Lord had cut his Throat. And this Informant did obſerve the ſaid Maid to have a Razor in her Hand, either as ſhe ran up Stairs, or as ſhe came running down.’

The ſeveral large Notches in the Razor, were Self-Evidences of its Fall from ſome Height upon an hard Body; for thoſe Notches could not be made by my Lord againſt his Neck-bone, as a Surgeon fooliſhly or knaviſhly ſuggeſted to the Coroner's Jury.

To ſum up all in a Word with relation to this Particular. Major *Webſter* (one of the ſuppoſed Ruffians [a]) confeſſed he threw the bloody Razor out of my Lord's Window. *Lloyd* the Sentinel likewiſe [b] own'd that he ſaw it thrown out. *Edwards* and *Lodeman* have depoſed, That they did ſee the bloody Razor thrown out of my Lord's Chamber Window; [c] four have depoſed, That *Edwards* declared (juſt as he came from the *Tower* that Morning) he ſaw it thrown out. [d] Three have ſworn that *Lodeman* gave this Relation as ſoon as ſhe returned from the *Tower* that very Morning; (and theſe Children, and their Relations, far diſtant from, and altogether Strangers to each other;) [e] Two Soldiers in every part of their Relation, the very Day of my Lord's Death, did at two Places, far diſtant from each other, declare this Matter; and [f] three more have depoſed, That the throwing out of the Razor was generally diſcourſed in the *Tower* juſt upon the firſt Diſcovery of my Lord's Death. This I do humbly conceive to be ſufficient to convince any but Prejudice itſelf, That the Razor was ſeen thrown out, and conſequently that it could not be locked into the Cloſet with the Body, as *Bomeney* and *Ruſſel* have depoſed, or often declared. Whereas *Bomeney* ſwore before the Coroner, That peeping through a Chink of the Cloſet-Door, he ſaw the Razor; this appears to be impoſſible, conſidering the Poſition of the Razor, and the Circumſtances of the Chink.

[a] Mr. *Story*.

[b] Mr. *Story*.

[c] Mr. *Tho. Edwards*, *Sarah Edwards*, *Eliz. Edwards*, and *Anne Edwards*.

[d] Mrs. *Smith*. Mr. *Glaſbrooke*. Mrs. *Gibbons*.

[e] *Bampton* and his Wife as to *Meake*. *Hughes* and *Gladwin* as to *Ruddle*.

[f] *Grimes*, *Saliſbury*, and *Boſtock*.

For the Razor they all declare lay in the upper part of the Cloſet by the Cloſe-ſtool, and the only Chink of the Door is in that part next the Chimney; now looking through that Chink when the Door is lock'd, you cannot ſee within three Foot of the Place where the Razor was ſaid to lie; this was about a Year ſince demonſtrated to the Right Honourable the Lord *Lucas*, now Governor of the *Tower*, and to ſeveral Gentlemen more.

The Maid, who is ſuppoſed to have taken up the Razor, denies it, and in her Defence ſaith to this Effect: ‘ That ſhe went out of her Maſter's Houſe almoſt half an Hour before my Lord's Death was known, and returned not until my Lord's Death was publick, and ſeveral People in the Houſe to ſee my Lord:’ For ſhe tells this Story, ‘ That about half an Hour before my Lord's Death was diſcovered, my Lord's Footman came to her, and told her, the Warder would not open the Wicket to let in my Lord's Proviſions that were brought, and therefore begged her to go to her Maſter (Mr. *Hawley* the Gentleman Porter) to deſire him to go to the Warder that kept the Gate, and order him to let in the Proviſions.’

‘ She did accordingly go to her Maſter, who thereupon order'd the Warder to let in my Lord's Proviſions; and as they (*viz.*) my Lord's Footman, *William Turner*, and one *Samuel Peck*, and a Porter, were bringing the Proviſions, a Sentinel told them they were come too late; upon which, this Maid declares ſhe was ſurpriſed, and aſked *William Turner* what ſhould be the Meaning of that Expreſſion, You are come too late; for ſhe did not underſtand it: whereto *Turner* anſwered, That he did ſuppoſe the Sentinel believed thoſe Proviſions to be my Lord *Ruſſel*'s, who being gone to his Trial, this Soldier might think he would never return again to the *Tower*, and ſo the Proviſions were brought too late. This (ſhe declares) ſhe then believed; but as ſoon as they came in Sight of her Maſter's Houſe, they admired to ſee ſo great a Crowd about the Door; but were ſoon too well ſatisfied in the Occaſion, for it was juſt before diſcovered that my Lord of *Eſſex* had cut his Throat.’

But this is a forged Lye throughout; for *William Turner*, *Samuel Peck*, and the Porter, do all three declare, That the Maid was not with them whilſt they were bringing in the Proviſions, neither did the Warder that kept the Gate in the leaſt ſcruple the letting in my Lord's Proviſions; this they all ſay, they are ready to depoſe.

All Men, I find, are to ſeek of the Reaſon that ſhould move theſe Men to throw the bloody Razor out of the Chamber-Window, before my Lord's Death was diſcovered. But if we conſider the Amazement that might naturally ſeize theſe Men upon the leaſt Diſturbance in this Deed of Darkneſs, we muſt not expect that what is done under ſudden Confuſion ſhould be according to the deepeſt Policy. And you find that *Webſter* did confeſs, That when he threw the Razor out, he was under ſuch a Confuſion, that he knew not what he did. This Diſorder might be occaſioned by ſome one's coming up Stairs, who was not then privy to the Murder, before they had laid all things aſide, as they deſigned they ſhould be found by ſuch as were not immediately concerned in it; and *Webſter* having the bloody Razor in his Hand, which was deſigned to be laid by the Body, as the pretended Inſtrument of the feign'd Self-Murder; upon the coming up of one, of whom he was not aware, he, under a ſurprizing Fear of a Diſcovery, threw the Razor out of the Window, and the Maid was afterwards ſent for it, and then was it laid by the Body as the pretended Inſtrument of Death. For this I have ſome Reaſon, which I think not fit now to publiſh.

That Major *Webſter* was one of the Ruffians, and conſequently might be the Man who threw this bloody Razor out of my Lord's Chamber-Window (as himſelf confeſſed), farther appears probable by his producing (that Day my Lord was murdered) the Earl's Pocket-Handkerchief all bloody, (the Handkerchief was known by the E, and Coronet upon it) and ſhaked it, ſaying, There was the Blood of a Traytor; and the very next Morning a Purſe of Gold of 49 Guineas, and a Piſtole, which, rejoicing, he produced to ſome of his Neighbours, and immediately after my Lord's Death lived at a Rate much above his Quality, (being a poor Alehouſe-Keeper, and Under-Bailiff of the *Tower*-Liberty) and (as I have been credibly informed) in ſome few Months after my Lord's Death, loſt at Gaming ſeveral Hundreds of Pounds, which made thoſe that had well known his Poverty, conclude he robbed. But ill got, ill ſpent; for his Extravagancy and Loſſes ſoon reduced him to his former Neceſſity; whereupon one upbraiding his Wife (or his Whore as he now calls her, for he ſaith he never married her, and therefore though ſhe is living, he keeps or hath married another;) I ſay, upbraiding his Wife with her Huſband's Poverty, ſhe replied, That her Huſband not long before, had Five Hundred Guineas; whereupon the other declared he could not come by them honeſtly, for his Trade would ſcarce find him Bread. In Alehouſe-Keeping he run very deep in the Brewer's Debt; but juſt after my Lord's Murder, he paid his Brewer Thirty Guineas in Part, which made the Brewer wonder how he came by ſo much Gold. But not diſcharging the whole Debt, and beginning to contract new, the Brewer ſued him, and at laſt in Execution ſeized his Goods; whereupon Major *Hawley* (for what reaſon is not unſuſpected) was a daily Solicitor to the Brewer for this *Webſter*, and at laſt offered a conſiderable Sum in diſcharge of the Debt.

This *Webſter* very much abuſing his Wife (or Whore) ſhe told him, 'That he was a Fool as well as a Rogue, to abuſe her ſo, when he knew 'it was within her Power to hang him, and one in the *Tower*, and naming '(as I have been informed) Major *Hawley* for the Man in the *Tower*.' A great part of this is depoſed, and the whole ready to be proved.------But farther, to diſprove my Lord's cutting his Throat in the Cloſet:

Had my Lord cut his Throat ſtanding in the Cloſet, that part of the Wall as high as his Throat would have been all bloody; for the Cloſet being about three Foot and two Inches wide, it could not be otherwiſe; for the Blood out of ſo large an Orifice might have guſhed five Foot. Or, if my Lord had cut his Throat kneeling, the Blood in the Wall would then have been as high as his Throat might have been in that poſture. But there was no Blood a Foot higher than the Floor, therefore he could not cut his Throat either ſtanding or kneeling. Neither can it be ſuppoſed to be done lying along, for then the Wound beginning at the Left-ſide, (and his Lordſhip being Right-handed) and ending at the Right, the Razor would have lain on the Right, whereas the Razor lay on the Left-ſide of the Body. But leſt the Circumſtances of the Body, as firſt pretended to be found, might prove a detection of this Villany, care was taken that before the Coroner's Jury ſaw the Body, the Body ſhould be ſtript, and the Clothes carried away, and the Room and Cloſet waſhed, ſo that the Body might appear as naked of its firſt Circumſtances, as it was of its Clothes. This Particular was ſo notoriouſly irregular, or rather criminal in ſome degree, that all Men know the Law requires the contrary. For by the firſt Poſture of the Body, with the Circumſtances of the Clothes, &c. great Light may be given to the true Manner of his Death. But that in this Caſe was not to be diſcover'd, and therefore ſuch Practices were neceſſary. My Lord's Clothes were not only carried away, but when demanded by the Jury, as what might be ſerviceable in their Inquiſition, the Coroner was upon this Queſtion immediately called into the next Room, and returning, told the Jury, *It was the Body, and not the Clothes, they were to ſit upon; the Body was there, and that was ſufficient.* It is an unhappineſs the Coroner hath forgot (as he ſwears) who thoſe were which were in the next Room, whilſt the Jury ſat, and to whom, whilſt they ſat, he did ſeveral times go; but had the Jury ſeen the Clothes upon the Body in its full Poſture, theſe would of themſelves have convinced them, that my Lord of *Eſſex* was murdered; for how could there be a print of a bloody Foot upon my Lord, and yet none (as they pretended) had been in the Cloſet with him? Or how could his Lordſhip with ſuch an Inſtrument as the Razor, cut twice through the Neck of his Cravat? For *Alice Carter* and *Mary Johnſon*, who (together with Major *Webſter*) ſtript the Body, have declared, as hath been depoſed, the Neck of my Lord's Cravat was cut in three Pieces. The Circumſtances of the pretended Inſtrument of Death gives ſtrong ſuſpicion of the Murder; for the pretended Inſtrument of the Self-murder, was a *French* Razor about four Inches and a quarter in its Blade, and no Spill or Tongue at the end; wherefore this Razor in its uſe muſt be held by the very Blade, and not leſs than two Inches of that could well ſuffice to be held in his Hand for that Strength and Steadineſs the Cutting twice through the Cravat, and afterwards ſo deep in the Neck, required. And then the Wound, if made at once, would not have been above Two Inches and a Quarter deep, no more of the Blade being outſide the Hand, which length could not at once poſſibly make a Wound above three Inches in depth; I do ſuppoſe none do believe his Lordſhip cut twice to effect it.

The largeneſs of the Wound at firſt, did make very ingenious Phyſicians and Surgeons ſay, That they ſuppoſed it impoſſible for any Man to cut his Throat, according as the two Surgeons upon my Lord's Body depoſed, the Wound being ſuch, both Jugulars and Arteries quite divided, and cut to the very Vertebres of the Neck: now in cutting the firſt Jugular Artery, there would immediately have iſſued ſuch a quanity of Blood and Spirits, as would have ſoon incapacitated him from dividing the ſecond; and tho' as ingenious an Anatomiſt as moſt in *England*, before their Lordſhips would not ſay that he thought it impoſſible his Lordſhip ſhould ſo cut his Throat; yet he did confeſs, that he never ſaw or heard of any before, who cut through both Jugulars and Arteries to the Neck-bone, as my Lord's was cut. This Gentleman for ſome Years having been Phyſician to *Bedlam*, he may be ſuppoſed to have as many Inſtances of Self-violences as any Phyſician in *England*; and of all Men, none do it with that good will and vigour as the Diſtracted do, and therefore ſhould make the deepeſt and largeſt Wound. But I think I need not inſiſt in this Caſe upon ſuch Arguments, conſidering what is before ſaid to be proved. Now to proceed with the Jury.

Theſe Gentlemen, had they not been hurried into their Inquiſition (as you will hereafter find they were) by the Body as it was left naked, upon a ſtrict view might well have been ſatisfied his Lordſhip fell not a Self-ſacrifice; for it's proved there were Five Cuts in his Right-hand (*viz.*) * one almoſt on the top of the Fore-finger, and another upon the ſame near the Hand; † one upon the Fourth-Finger, and another upon the Little-Finger, and ‡ a fifth about two Inches long in the very Palm of the Right-hand; can it be ſuppos'd that his Lordſhip made theſe Wounds (and that upon his Right-hand) for trial how ſharp the Razor was, and how well it would perform what he deſigned to execute? Theſe Cuts cannot be ſuppoſed to be made by holding the Razor. No, theſe were previous to that direful Cut; and the effects of his ſtruggling with thoſe bloody Men, when he ſo often cried out, *Murder*, *Murder*, *Murder*; as he then uſed his Tongue to diſcover, ſo did he likewiſe his Hands to prevent that treacherous Wound he perceived deſigned for his Deſtruction; and in thus ſtriving to put off the Inſtrument of Death, did his Right-hand receive theſe ſeveral Wounds.

* Mr. *Shillinsford.*
† *Turner* and *Peck.*
‡ Mr. *Sherwood* the Surgeon upon the Body.

Mr. *Fiſher*, one of the Coroner's Jury, hath depoſed to this effect: 'That 'he aſked *Bomeney*, whether his Lord was not eſteemed a good Man, for 'ſuch he had heard him repreſented? *Bomeney* anſwered, As good a Man 'as lived. Upon which *Fiſher* ſaid, Then it was very ſtrange ſo good a 'Man ſhould be guilty of ſo bad an Action, for nothing could be worſe 'than Self-Murder; whereupon Major *Hawley* told *Fiſher*, Whoever 'thought that Action unlike his Lordſhip, did not know my Lord of '*Eſſex*; for every one that was but well acquainted with the Earl, knew 'it was his Lordſhip's fixed Principle, That any Man might cut his own 'Throat, or otherwiſe deſtroy himſelf, to avoid a diſhonourable and infamous Death, and therefore this was like my Lord of *Eſſex*'s avowed 'Principle.' *Fiſher* believing this to be true, was the more eaſily inclin'd to believe that his Lordſhip had followed ſuch his own fixed Principles. But when Major *Hawley* was queſtioned for this Suggeſtion to the Jury, he poſitively deny'd it, and for Anſwer ſaith, that he was not nigh the Victualling-Houſe in the *Tower* all the time the Jury was there conſidering of their Inquiſition: And as for the Principle, he could not ſay it, for he never heard it ſaid to be my Lord's Principle, till their Lordſhips charged him with having ſuggeſted it. I know it is commonly diſcourſed about Town, that ſuch was his Lordſhip's Principle; and this was induſtriouſly ſpread immediately upon my Lord's Death; but obſerve, Major *Hawley* was the Man that ſuggeſted this to the Jury, that they might the more eaſily believe the Self-Murder. And the Major's now denial of this Suggeſtion, or that he ever heard it ſaid to be my Lord's Principle, when the Matter is poſitively ſworn againſt him (I think) naturally argues that this was a falſe, forg'd, and maliciouſly invented Story by that bloody Party that murdered my Lord, and *Hawley* the Man by them pitch'd upon as the moſt proper Perſon to corrupt the Jury (the then proper legal Judges of the Manner of my Lord's Death) with this treacherous and villainouſly contriv'd Suggeſtion; ſo that the Jury might the more eaſily be inclin'd to believe my Lord's Self-Murder upon Evidence as inconſiſtent as falſe. And the Major's diſowning that he was near the Jury at the Victualling-Houſe whilſt they were upon their Inquiry, implies his being conſcious that he was there for a very ill purpoſe, and therefore thought it not ſafe to own his being with them; but he was too officiouſly there, not to be remembered; for when ſome of the Jury moved for Adjourning their Inquiſition, in order to the giving notice to my Lord's Family; ſo that if any Thing could be proved on my Lord's Behalf, it might be by them heard; *Hawley* immediately enters a Caveat, and prevents it; for he tells the Jury, That they could not Adjourn, but muſt immediately diſpatch their Inquiry; for His Majeſty was then in Council, and had ſent for their Inquiſition, and would not riſe till it was brought him. This further Suggeſtion cauſed the Jury to make more haſte than good ſpeed; and ſo, without that time which was convenient, ended their Inquiſition. But Major *Hawley* denies this likewiſe, and proteſts, He was not nigh the Jury at the Place, or did at all thus haſten them. But this is poſitively ſworn againſt him by ſome of the Jury; and many of the Jury declare they remember the Major with them at the Victualling-Houſe. The Indiſcretion in the Coroner and his Jury, I cannot but obſerve; which was, their ſuffering *Bomeney* and *Ruſſel* to come together, and hear each other's Examination; and, which was more fooliſh, to permit *Bomeney*, when he began to heſitate in his Examination, (which alone gave reaſonable Grounds of Suſpicion that he was telling a Lye; for Truth would have readily occurr'd; but Lies were firſt to be invented, before they could be given in Evidence,) to write his own Examination; and not only ſo, but in the Room next the Jury, where his Tutors were ready to inſtruct him. And yet, after all, this forged Depoſition needed further Amendments at *Whitehall*, (as you will immediately hear) for as it was ſworn, it was not thought fit to be expoſed. All Men muſt agree, That the Circumſtances in which *Bomeney* and *Ruſſel* ſtood related to my Lord at the time of his Death, render'd them highly to be ſuſpected as privy to my Lord's Death, if not acting in it, in caſe my Lord did not deſtroy himſelf: For, could *Ruſſel* keep my Lord's Chamber-Door (as himſelf upon Oath confeſſes), and be ignorant of what Violence was offered to his Lordſhip within the Chamber (the Room not being fourteen Foot ſquare)? Or could *Bomeney* be waiting on his Lord in the very Chamber, and a Stranger to the true manner of his Death? Wherefore, in common Diſcretion and Juſtice, theſe Two (and *Monday*, the other Warder, who firſt that Morning kept the Chamber-Door, with the Sentinel that kept the outward Door) ſhould upon the firſt Diſcovery have been ſeized, and ſeparated, and kept apart, and examined apart, ſo that neither might have been privy to the other's Examination, by which the Truth would have been ſoon detected; for had my Lord deſtroyed himſelf, all their Depoſitions would have ſo harmonized (though ſeparately and croſsly examined) that the Truth would the more plainly have appeared; whereas, on the other hand, in caſe his Lordſhip fell by Treachery, then ſuch Proceedings would have immediately diſcovered it to the Jury; for then theſe Warders, and Servants, and Sentinel, not being able to foretell what Queſtions the Jury would aſk them, conſequently could not previouſly agree upon their Anſwers. And ſhould their Examinations, upon this Management, have materially interfer'd, and thwarted each other, (as it is natural to ſuppoſe they would, for though Truth be ſtill the ſame, yet Lies are almoſt infinite,) theſe Depoſitions would have been ſo far from proving my Lord a Self-Murderer, as they would have plainly diſcovered the contrary, and theſe Men guilty in a moſt perfidious and barbarous Connivance.

For, admitting that theſe Men, upon their croſs and ſeparate Examination, ſhould have anſwered the Jury as it is before repreſented (which is according to their own Oaths, or repeated Relations,) can it be ſuppoſed that any Coroner and Jury could be ſo void of common Senſe and Honeſty, as to give credit to ſuch, and ſo many Contradictions? But, alas! ſuch fair Practices were not to be expected, where ſuch a foul Villany was to be concealed. And therefore, inſtead of ſecuring apart the two Warders, Servant, and Sentinel, poor *William Turner* and *Samuel Peck* (whoſe Depoſitions are before mentioned) were to be locked up cloſe, (with *Bomeney* for a Colour,) as though theſe two Men were more to be ſuſpected than my Lord's two Keepers. And thus in Cuſtody were theſe two innocent Men kept, whilſt the two Warders and Sentinel, more to be ſuſpected Criminals, were permitted to go at large. But this was contrary to his then Majeſty's Command: For as ſoon as King *Charles* the Second (then in the *Tower*) had heard of my Lord's Death, he did immediately ſend the Lord *Allington*, Sir *C*——, and *Thomas Howard*, Eſq; to my Lord's Lodgings, with Orders, That ſuch as were attending upon my Lord at the time of his Death, ſhould be ſecured and examined, and all Things to remain till the Coroner's Jury had ſeen the Body. In Obedience to which Command, Sir *C*---- coming into the Lodgings began to take ſome Examinations; but was ſoon interrupted by one, who told Sir *C*---, His Majeſty did command him immediately to go to the *Old Bailey*, and give notice to the then Attorney-General of my Lord's Death, and to know what was to be done therein. Sir *C*---- by the ſame Gentleman deſired his Majeſty's Leave to finiſh thoſe Examinations he was then upon; but the ſame Meſſenger came the ſecond time, with poſitive Orders (as from His then Majeſty) for Sir *C*----'s immediate going in Obedience to this repeated Command. Sir *C*--- went: But Sir *C*--- remembers not who this Gentleman was, which thus twice came with Orders as from his then Majeſty. It is a great Misfortune, Sir *C*---- remembers not; for by the Meſſenger (it is ſtrongly ſuſpected) it would be ſoon found, His then Majeſty's Authority (in this Command) was uſed by him, who too often abuſed it.

This great haſte to the *Old Bailey*, when that great Patriot, (but unfortunate) Lord *Ruſſel* was there Trying, and the indirect uſe, by malicious Application of this pretended Self-Murder to the taking off him, of whom we were no longer worthy———This gave to an Honourable Perſon then upon the Bench juſt Grounds to ſuſpect, that this Noble Earl was murdered without Form of Law, the more eaſily to deſtroy that Great Lord under colour of Juſtice.

The Coroner's Inquiſition, and the Depoſitions of *Bomeney* and *Ruſſel* being carried in all haſte to *Whitehall*, in order to their immediate publication, they were there peruſed; and it being found that *Bomeney* and *Ruſſel* had point-blank contradicted each other (for the firſt, as before obſerved, had ſworn the delivery of the Razor the Day before my Lord's Death; and the ſecond, that it was not delivered till the Day of his Death): theſe Contradictions were not thought convenient to be expoſed, leſt they ſhould give juſt Ground of Suſpicion that the whole was forged; and therefore a Reconciler was ordered to amend the one, ſo it might be agreeable to the other, it matter'd not how inconſiſtent or contradictory they were in the Original, for thoſe could be ſeen by none but the Coroner himſelf, in whoſe Cuſtody they were; and it was to be ſuppoſed, that the Coroner would not then dare to contradict what Authority had ordered ſo to be printed; and hereupon was that Alteration made, as was before obſerved, in *Bomeney*'s Information, *page* 899, but this done (as ſome Years ſince obſerved by an ingenious Author upon this Occaſion) without the leaſt congruity either to Senſe or Grammar; for nothing can be more apparent, than that the foregoing part of the Information relates wholly to *Thurſday*: but at laſt, without any regard to what *Bomeney* had before ſworn, on *Friday* the 13th Inſtant is foiſted in, contrary to all Rules of Grammar, and common Meaſures of Senſe as well as Juſtice, which juſtly eſteems this printed Information forged. This forged Reconciliation is done with the greateſt incongruity and abſurdneſs, as well as falſeneſs imaginable; and I know not whether the Folly of the Suborner (for without doubt the Suborner and Reconciler in this caſe are the ſame, or of the ſame Stamp) or the Perjury of the ſuborned in that falſe Information, be moſt conſpicuous.

The Soldiers that were in the *Tower* that Morning my Lord was murdered, having made ſuch Diſcoveries as ſatisfied them my Lord was treacherouſly taken off; they uſed too great freedom in their Diſcourſe with relation thereunto; and therefore (as *Robert Meake* declared to two who have depoſed it) ‘ An Officer called ſeveral of them together, and ‘ under ſevere Threatening injoined them not to ſpeak one Word of ‘ what they had either ſeen or heard with relation to my Lord's ‘ Death. Wherefore the ſaid *Meake* deſired his Friends not to divulge ‘ what he had told them; for ſhould it be known, it would prove his ‘ Ruin: But ſome ſhort time after *Meake* declared (as three have depoſed) ‘ That he did believe he ſhould be privately murdered for what he knew ‘ and had ſaid with relation to my Lord's Murder, and therefore he deſired ‘ *Bampton* or *Davidſon* (as they have both ſworn) to keep him Company ‘ that very Day, for he much feared he ſhould that very Day be deſtroyed. But both of them (fearing the Danger themſelves might be in) refuſing, that very Night was the ſaid *Meake* thrown into the *Tower-Ditch*.’ As for *Ruddle* before-mentioned, all the Information I can have of what is become of him, is, That not long after my Lord's Death he was drawn out of the *Tower*, and ſent to the *Eaſt-Indies*, and at *Fort St. George* ſhot to Death, but for what Reaſon I cannot learn. There was one Mr. *Hawley*, a Warder in the *Tower* that very Morning my Lord was murdered, and by what he had obſerved with relation thereunto, he had Reaſon to declare to a Friend, *That it was a Piece of Villainy throughout.* This Mr. *Hawley* being in *Weſtminſter-Hall* whilſt I was upon my Trial, ſaid, *He wondered what made me ſtir in it, when to his Knowledge I knew nothing of the Matter; upon which one Mr.* B. *ſaid, Mr.* Hawley, *if you know Mr.* Braddon *knows nothing in this, what muſt you know? To which Mr.* Hawley *made no Reply.* But this Gentleman's Knowledge in the Matter coſt him too dear; for about *March* next after my Lord's Death, being miſſing, one of the Warders ſuſpected to be a Papiſt, ſaid, *Mr.* Hawley *had been prating about the Earl of* Eſſex's *Death, and therefore was forced to fly.* But ſix Weeks diſcovered how he fled; for he was then found in a River by *Rocheſter* ſo changed through the Barbarity he had met with, that neither his Face or Body could be known by his neareſt Relations; and his Clothes were all taken off except his Stockings and Shoes, by which he was diſcovered to be the Man; for he wore three Stockings upon one Leg, and two Stockings and a Cere-Cloth upon the other, and (as I have been informed) the Lining of the Toes of his Shoes cut out. By theſe remarkable Circumſtances his Wife knew him. She had uſed all poſſible Diligence for finding her Huſband; in order to which ſhe offer'd in ſeveral *Gazettes* an Hundred Pound Reward to any that could diſcover his Body dead or alive, but it was ſix Weeks before he was found. Several of the Soldiers in the *Tower*, that Morning my Lord was murdered, I have been inquiring after, but have been told they were killed in the *Weſt* againſt the late Duke of *Monmouth*.

But conſidering what Fate befel *Hawley*, *Ruddle* and *Meake*, before-mentioned, I have Reaſon to ſuſpect that others may likewiſe have been murdered by Way of Prevention.

Beſides ſuch Addition of Blood, other violent Methods were uſed to prevent a Diſcovery, by puniſhing ſuch Soldiers as ſeemed to diſbelieve (upon very good Grounds) my Lord's Self-Murder: This appears by his Information following:

Richard Jorden declareth, ‘ That (ſome time that Summer the Earl ‘ of *Eſſex* died, and not long after the ſaid Earl's Death) he ſaw a Soldier ‘ tied to the Wooden-Horſe in the *Tower* (by Order of Lieutenant Co‘ lonel *Nichols*) and whipt after a very cruel Manner.’ And this Deponent heard the ſaid Lieutenant Colonel tell the Soldier, he ought to be hanged. This Deponent further declareth, ‘ That he was juſt after in‘ formed by the Marſhal that whipt the ſaid Soldier, that by Order of ‘ Lieutenant Colonel *Nichols*, he gave the ſaid Soldier 53 Stripes (tho' ‘ the uſual Number was but 12), and that the ſaid Soldier had lain a ‘ Fortnight before in cloſe Cuſtody, and been fed with Bread and Water, ‘ and all only for the Offence following; (*viz.*) *Some ſhort Time after the Death of the late Earl of* Eſſex *a Divine coming into the* Tower, *the ſaid Soldier was ſent with him to ſhew him the* Tower; *and as the Doctor was almoſt over-againſt Major* Hawley's, *the Doctor aſked the ſaid Soldier, Which was the Chamber wherein the late Earl of* Eſſex *did cut his Throat? whereupon the ſaid Soldier (pointing to the Chamber in which the Earl had been Priſoner) ſaid, That is the Chamber in which* it is ſaid *the Earl of* Eſſex *cut his Throat. The Doctor then aſked the Soldier, what he did believe? To which the Soldier anſwered, That he did believe in God; but being preſt by the ſaid Doctor to tell him, whether he did believe my Lord cut his Throat? the Soldier then replied, he would not ſay he did believe it; for which only ſaying, the Puniſhment aforeſaid was inflicted.*

Dr. *H.* of *Norfolk*, Prebend of *Norwich.*

And the more effectually to prevent any Diſcourſe that might give the leaſt credit to my Lord's being murdered, our then Miſgovernment took all poſſible Care to puniſh, or rather oppreſs ſuch as ſhould declare their Belief thereof; amongſt which one of the Coroner's Jury upon the Earl's Body, ſuffered under this Tyranny; for this Man, ſometime after my Lord's Death, diſcourſing concerning the Earl's Death, and the ſeveral Irregularities which he obſerved practiſed upon my Lord's Body before they ſaw it, and how they were not permitted to make that Inquiry which was neceſſary; ſaid to this effect: ‘ That he did believe they (*viz.* the ‘ Coroner's Jury) were all infatuated to bring my Lord in *Felo de ſe*; but ‘ he did ſuppoſe, had they not been hurried into their Inquiſition, they ‘ ſhould have found it otherwiſe.’ For this Diſcourſe this honeſt poor Man was proſecuted upon Information, and fined (at firſt I have heard) 300*l.* but it appearing he was very poor, his Poverty prevailed for a mitigation of his Fine; and his Age and great Infirmities of Body (together with the charitable Interceſſion of a Gentleman of Intereſt in the then times) avoided the corporal Puniſhment which he had otherwiſe undergone.

If ſuch Practices as theſe were uſed by our then Court to prevent my Lord's but being ſuſpected to be murdered, it could not be ſuppoſed that any Encouragement ſhould be given to a full Detection, and therefore all Propoſals in order thereunto, were to be rejected; an Inſtance whereof was as followeth, *(viz).*

About ſix Weeks after My Lord's Death, there was a Letter (unſealed) left with one Mr. *Cadman*, then living at *Durham*-Exchange; the Letter was directed to the Right Honourable the Counteſs Dowager of *Eſſex*; the Subſtance of this Letter was, ‘That if her Honour could prevail with the King for the Author's Pardon, he would ingenuouſly make a full Diſcovery, how, by whom, and whoſe Order my Lord was Murdered: and this Letter did aſſure her Honour, that the *DUKE* of *YORK* and —— were authorizing this Murder.’

This Letter was ſubſcribed *P. B.*

By the Hand that writ it, and the Letter ſubſcribed, it was *Paul Bomeney* before-mentioned, who did once blaſphemouſly ſay, ‘That he could as well tell how my Lord came by his Death, as God Almighty himſelf;’ for the Letter was fairly writ, in an Hand between a *Roman* and an *Italian*, and ſuch an Hand *Bomeney*, when he would write fair, did write; beſides, the two Letters ſubſcribed, are the Letters of his Name.

I do ſuppoſe it may be objected, That this Letter cannot be thought to be writ and ſubſcribed by *Bomeney*; for the Letter, had it been brought in Accuſation againſt him, and prov'd to be his, would have coſt him his Life, ſeeing herein he confeſs'd himſelf Guilty of the Fact.

But, with Submiſſion, I think *Bomeney* by this Letter, could it have been proved to be his own Writing, was in no Danger at all of being puniſhed; for had they ſeized *Bomeney*, they would have catched a *Tartar*; ſhould they have proceeded againſt him for this Murder, upon this Confeſſion, the World would have believed the whole Contents of this Letter to be true; and conſequently that the Duke of *York* and —— authorized (or rather commanded) this moſt treacherous Murder. And then pray conſider what that Government could have got by ſuch Proſecution, Conviction and Puniſhment.

This Letter was carried by *Cadman* to a Juſtice of Peace, and by him to the Secretary of State: But this Bookſeller was never ſent for, nor any Enquiry made after the Author.

The Backwardneſs of the then Government in not examining into the Matter, gave juſt Grounds of Suſpicion they were too well ſatisfied in the Truth of the Contents; which was of ſuch a Nature, as it could not bear an Inquiſition; for that would have centered in *His Ruin*, who was then by Blood and Cruelty, and other illegal and oppreſſive Methods, endeavouring the total Subverſion of our Church and State; and this by the Removal of ſome of the Chief of thoſe noble Lords and Worthy Gentlemen, who had ever oppoſed their Arbitrary Deſigns. Amongſt which, this Noble Lord and the Right Honourable the Lord *Ruſſel* they did eſteem two of the Chief.

Had none then in Authority and Power been concerned in this barbarous Treachery, and had our then Government had the leaſt Deſire to know this Truth, in order to a juſt Puniſhment of thoſe bloody Villains; with what Diligence would they have ſearch'd out the Author, who deſired no other Reward than the Security of his Life; and in order to his Indemnity (if they could no otherwiſe have found him out) a Proclamation of Pardon would immediately have been iſſued forth, by which the Author would have been aſſured of his Life; and then, without doubt, according to his Promiſe would have laid open this bloody Deed of Darkneſs? Hath our Age ever ſeen or known recorded, any Murder (admit this one) committed within this Kingdom, that hath been (all its Circumſtances conſidered) attended with ſuch Aggravations? We have ſeen a Reward of 200*l.* (as well as a Pardon) by Proclamation offered for the Diſcovery of thoſe bloody Ruffians, who barbarouſly wounded but (*deſign'd* to have murdered) that worthy Gentleman, Mr. *Arnold.* And was there not 500*l.* and a Pardon by Proclamation promiſed to Him or Them that ſhould detect the Murder of Sir *Edmundbury Godfrey?* Such Means as theſe would have been likewiſe in this Caſe uſed, if ſuch who then miſled *Charles* II. and corrupted the State, had not been the deepeſt in this black Contrivance.----

This *Bomeney*, ſoon after my Lord's Death, gives an eminent Divine an Account to this Effect: *(viz.)* ‘That his Lord did uſe to be taken with ſudden frenſical Paſſions; and in particular, with one that Morning he died, juſt before his Death: For (ſaid this vile *Judas*), as ſoon as my Lord ſaw my Lord *Ruſſel* go to his Trial, he ſtruck his Breaſt, and ſaid, Himſelf was the Cauſe of my Lord *Ruſſel*'s Miſery, ſeeing he had vouched for that Gentleman whoſe Treachery would prove my Lord *Ruſſel*'s Ruin, &c. and hereupon fell almoſt diſtracted'.----But this Fellow's repeated Oaths give the Lye to this Forgery. Before the Coroner, in the Concluſion of his firſt * Depoſition, he ſwears, ‘That on *Thurſday*-Night, (which was the Night before his Lord's Death) the Earl was very merry at Supper, AND DID NOT SEEM TO BE DISCONTENTED THE NEXT DAY.’ And when one of the King's Counſel at my Trial, aſk'd ſuch a Queſtion as ſeem'd either to imply my Lord's being Melancholy, or elſe would have had Mr. *Bomeney*-----for the Queſtion was thus worded, (*viz.*) ‘Did you obſerve your Lord Melancholy, Mr. *Bomeney?* *Bomeney* anſwered, Yes; but we took no Notice of it; for he us'd to be ſo, and we had no Reaſon to ſuſpect any Thing more than ordinary.’

* *Pag.* 918.

Had this Varlet reſted in the general Affirmative, without proceeding farther, his Anſwer would (it's probable) have better ſerved the Deſign of the Queſtion: but by the latter part of his Anſwer, he deſtroy'd that Service which the firſt Word [*Yes*] might have otherwiſe done. And obſerve what a point-blank Contradiction this Evidence at the Trial is to what he depoſed (before the Coroner) the very next Day after my Lord's Death, when (had this been true) it would have been freſh in his Memory, and he would (without doubt) have ſworn it. But this was according to ſome After-inſtruction, not thought of at the Time of the Coroner's Inqueſt.

In the next place, I ſhall give you ſome Account of what was ſworn againſt one Mr. *Holland*, ſo much talked of in this Affair, by which you will have ſome ground to ſuppoſe a more convenient Inſtrument than a Razor gave this barbarous and treacherous Wound.

The Information of *Richard Davis* of the Pariſh of St. *Mary Somerſet, London*, School-maſter, taken before *J. Cardran*, Eſq; Juſtice of the Peace for the County of *Middleſex*.

‘THIS Informant ſaith, That a little after the late Duke of *Monmouth* was routed in the *Weſt*, one Mr. J. E. (to the beſt of this Informant's Remembrance) told this Informant, That it was almoſt univerſally whiſpered amongſt the Acquaintance of Mr. *John Holland*, (formerly Servant to the Earl of *Sunderland)*, That the ſaid Mr. *Holland* had confeſſed to one Mr. *D.* of his intimate Acquaintance, (and afterward concerned with *Holland* in the Robbery of Mr. *Gatford*, for which both were condemned, and the ſaid *D.* executed, but *Holland* pardoned), That the ſaid *Holland* was concerned in the Murder of *Arthur* late Earl of *Eſſex*, in which he was employed by the Earl of *Sunderland*, upon this occaſion, *(viz.)* “The ſaid Mr. *Holland* one Day waiting on my Lord *Sunderland*, his Lordſhip ſeemed much diſturbed with Paſſion; upon which, the ſaid *Holland* told his Lordſhip, That if his then coming to his Lordſhip had ſo diſcompoſed him, he would withdraw, and wait on his Lordſhip ſome more convenient time; whereupon my Lord ſaid, That he ſhould tarry, for it was not with him (the ſaid *Holland)* that he was angry, but with others; and that he was concerned to think that of ſo many Servants his Lordſhip had made, and being ſo very kind to, he had not one he could truſt, or would ſerve him (or Words to that Effect); upon which, the ſaid *Holland* replied, He was then ready faithfully and punctually to obſerve his Lordſhip's Commands in any thing. My Lord then diſcovered to the ſaid *Holland* the deſigned Murder of the ſaid Earl of *Eſſex*, and would have the ſaid *Holland* therein to be engaged, to which the ſaid *Holland* readily conſented; and that the ſaid Earl's Throat was cut with a large Knife, and not with a Razor.” And this Informant was then further informed, That the ſaid *Holland* had further declared to the ſaid *D.* That ſome People were afterwards made away for blabbing what they knew concerning the ſaid Earl's Death; and that the ſaid *D.* had charged the ſaid Mr. *Holland*, before ſeveral of their Acquaintance one Day drinking together, with what the ſaid *Holland* had confeſſed to him the ſaid *D.* as aforeſaid; and that he the ſaid *Holland* being ſo charged, ſeemed much dejected, but could not deny it. This Informant further maketh Oath, that one *D. P.* about three Years ſince, did give this Informant almoſt the ſame Account with Relation to *Holland* and *D.* And the ſaid *D. P.* did further tell this Informant, That when the ſaid *Holland* and *D.* were committed to *Newgate* for robbing Mr. *Gatford*, the ſaid *D. P.* went to ſee the ſaid *Holland* in *Newgate*, to condole his Condition; but the ſaid *Holland* was very chearful, and told the ſaid *D. P.* “He was ſecure of his Life, and likewiſe not to want Money as long as the Earl of *Sunderland* was living.” The ſaid *D. P.* did likewiſe then further tell this Informant, That the ſaid *Holland* (as ſoon as he was committed to *Newgate* for the foreſaid Robbery) ſent to my Lord *Sunderland* for ſome Money, and that his Lordſhip ſent him the ſaid *Holland* ſixteen Guineas. And this Informant hath been told by ſeveral, That the ſaid Lord *Sunderland* hath many times ſupplied the ſaid *Holland* with Money.’

When *Holland* was impriſoned for Mr. *Gatford*'s Robbery in *Newgate*, my Lord *Sunderland* ſent often thither, and took a more than ordinary Care of him; whereupon Major *Richardſon* told my Lord's Gentleman, That he did much wonder his Lordſhip would be ſo kind to ſo profligate a Fellow. To which it was anſwered, That his Lordſhip had a very great Kindneſs for *Holland*, becauſe he had been Servant to my Lord *Spencer* (my Lord *Sunderland*'s Son); but it ſeems ſomewhat elſe was in the Matter; for it's depoſed by *John Waytis*, “That obſerving *Holland* to be frequently furniſhed with Money by my Lord *Sunderland*, and ——, this Informant aſked *Holland* how his Lordſhip became ſo kind to him? To which *Holland* replied (with his uſual Phraſe) *Damn him, he had done that for him, that HE DURST NOT DO OTHERWISE.* And when this Informant was once ſaying, It was whiſper'd that the late Earl of *Eſſex* was murdered; *Holland* ſaid, *Damn him, it was not a Farthing matter if Twenty ſuch were taken off.*” He that ſo little valued the Lives of Twenty, would not in all probability much boggle to be concerned in the murdering One.

Holland writ a Letter to the Earl of *Feverſham*, wherein he repreſented me as endeavouring to ſuborn him to appear an Evidence in the Caſe of the late Earl of *Eſſex*; which Letter was read in the Houſe of Lords. But that which *Holland* falſly called *Endeavours to ſuborn*, I ſhall truly and faithfully (as it can be prov'd) declare, and appeal to every impartial Reader, Whether it deſerves that infamous Name.

Having ſome reaſon to believe *Holland* one of the Ruffians, I did uſe all Means poſſible for his Apprehenſion; but I found that *Holland* lay very private, and, as I had reaſon to believe, deſigned to fly beyond Seas (as his own Letter before mentioned declared). Hereupon I applied myſelf to ſome of *Holland*'s Acquaintance, and by them being brought to Mrs. *Holland*, I told her, That I had reaſon to believe her Huſband was concerned in this villainous Murder, and herein I was confirmed by Mr. *Holland*'s abſconding; for Innocence deſires a Trial, but Guilt ſtill flies from Juſtice. I then told her, That if her Huſband were really guilty of this Fact, and would immediately ſurrender himſelf, ingenuouſly declaring, *how*, *by whom*, *with whom*, and *for what hir'd* to do this barbarous Murder, her Huſband ſhould have a general Pardon, and both Him and Her provided for: But if her Huſband was innocent, (notwithſtanding whatſoever was ſaid to the contrary), and ſhould take upon him a Crime (for any Advantage whatſoever) of which he was not guilty, he deſerv'd to be Hang'd here and Damn'd hereafter, ſeeing by his Perjury he would make Juſtice an Inſtrument of executing the worſt of Murders.-----But if he were indeed the Man, and ſhould ſurrender himſelf, and diſcover the whole Matter, he muſt be ſure to keep within the Limits of Truth; for ſhould he be detected in the leaſt Perjury, no Man was ever more vigorouſly proſecuted, nor any more ſeverely puniſhed, than he (for ſuch his Perjury) muſt expect to ſuffer.

Theſe were the Arguments with which I would have *ſuborn'd* (as that Letter calls it) *Holland* to a full Diſcovery: And I do appeal to all the World, Whether, admitting this to be true, (as it will be proved when the occaſion ſerves) I deſerve this villainous Charge. For the Truth of this, I do appeal to the Conſciences of Mrs. *H.* Mr. *P.* and Mr. *S.* with whom I ſeveral times treated in this Affair.

I ſhall now mention one or two more Objections againſt my Lord's being murder'd, and then draw to a Concluſion. The firſt is this, *viz.* The Right Honourable the Lady Counteſs Dowager of *Eſſex*, having heretofore declared (whether lately, I cannot ſay) That ſhe did believe her Lord cut his own Throat; and being ſo poſſeſſed, ſome time after this Committee had ſeveral times ſat, ſhe deſired ſeveral Lords (amongſt which ſome were of this Right Honourable Committee) to meet at her Houſe; and after her Honour had acquainted their Lordſhips with the occaſion of her Requeſt, an eminent Divine (and now Biſhop) did inform their Lordſhips what were the Reaſons that moved her Honour to believe that her Lord did indeed lay violent hands on himſelf; *the Chief*, if not the *Only* whereof, was, *That ſome ſhort time before my Lord's Commitment to the* Tower, *his Lordſhip ſeemed to be under a great concern of Mind*; *but then declared, That the Trouble he was in did not ariſe from any Thoughts of Self-preſervation, for Himſelf was the leaſt of his Care*; *but the Thoughts of his Family, what would after his Death become of them, was what did indeed trouble him: As for himſelf, he was reſolved what to do*; *SEVERAL TIMES VERY RESOLUTELY REPEATING THAT EXPRESSION*, AS FOR MYSELF, I AM RESOLVED WHAT TO DO. This I was told by a Gentleman then preſent, who (as I have great Reaſon to believe) would have repreſented every Thing to the beſt Advantage (as far as Truth would permit) on the Behalf of ſuch Objections. But, with all Submiſſion to ſuch Judgments as are ſway'd with this Objection, I think it carries not that Force which many imagine: For is there *nothing* to which that Reſolution of his Lordſhip might ſo probably have relation, as a *Self-Deſtruction?* Was that the *only*, or the *moſt likely* thing he was reſolved to do? I do humbly conceive, a little Conſideration may afford us both a more charitable Opinion of his Lordſhip's Reſolution, and ſomewhat *more probable* than Self-Murder to be aſſigned as what his Lordſhip *was reſolved to do.* For when I conſider the Time when his Lordſhip was apprehenſive of the like Danger as threatned him juſt before his laſt Impriſonment, *(viz.)* when my Lord *Shafteſbury* and my Lord *Howard*, *&c.* were committed to the *Tower*, and a Gentleman who had a very great Honour for his Lordſhip, (as all good Men had, who had the Honour to know him) in true Zeal for his Lordſhip's Preſervation (having heard that the Court deſigned likewiſe to commit my Lord of *Eſſex*, and to take off many in Form of Law; or rather, that which they falſly called ſo), went to his Lordſhip, and informed him of what he had been told, and humbly ſubmitted it to his Lordſhip's Judgment, Whether it were not proper for ſome time to withdraw, till the Fury of the Court by time was a little appeaſed? This Gentleman told his Lordſhip, He found by the Papiſts, that they did deſign to take off ſeveral; and his Lordſhip being to their Arbitrary and Popiſh Deſigns as great and profeſs'd an Enemy as any, he did fear his Lordſhip might not be ſafe from their pretended Juſtice, when once within their Power. My Lord hereupon ſmiled, and ſaid very ſedately, and yet very reſolutely, *That he would not ſtir, though he did expect the Court would proceed very far, not only to the Impriſoning, but againſt the Lives of many*; *and if God in his Providence ſhould think fit to ſuffer him to fall a Sacrifice to the Malice and Rage of the Court, he did hope, and did not doubt, but the World ſhould ſee that he could die with as GREAT RESOLUTION as ever his Father did*; *for he was ready at all times, and upon all Occaſions, to lay down his Life for his Country.*

Reflecting therefore on my Lord's declared Reſolution of his not ſtirring, though then under the like Danger, as in this Caſe apprehended, and with what *Readineſs, Courage, and Chearfulneſs he could lay down his Life for his Country*; *and likewiſe the Knowledge that he may be ſuppoſed to have of the then Court-Deſigns (which thoſe Villains, nine Days before his Death declared*; *for it is* * *ſworn the Papiſts then ſaid, The Earl knew ſo much of their Deſigns, and was ſo very averſe to their Intereſt, that they could never carry them on, UNLESS HIS LORDSHIP WAS TAKEN OFF*; *AND HIS LORDSHIP WAS THEREFORE TO BE MURDERED.)* I ſay, when I conſider theſe Things, and that the more this Honourable Lord knew of the black Intrigues of the Court, the more ſo good a Man, and ſo true a Patriot muſt be ſuppoſed to hate them; I can't but imagine that this brave State-Champion, when he had been once ſatisfied that the Court, under Colour of Law, would have taken him off, had RESOLVED AS TO HIMSELF, to lay open thoſe Popiſh Arbitrary Court-Contrivances, and juſtified that juſt Deſign of ſtanding upon their Guard; there was no other Way (under God) to defend what was ſo groſly invaded. Now, though his Lordſhip might ſuppoſe, by dealing thus plainly, he ſhould the more exaſperate the Court; ſo that their Malice would be more inveterately bent in his Deſtruction; *yet that he declared he FEARED NOT, but was ready chearfully to lay down his Life in ſo juſt a Cauſe.* And ſhould this daring true Lover of his Country have thus expired, by his State-Martyrdom, he would have given ſuch Satisfaction in the Truth of what he thus couragiouſly, with his laſt Breath, ſhould have affirmed, as would have raiſed a general Hatred againſt thoſe Arbitrary and Popiſh Court-Reſolutions; and this might ſo ſuddenly have given another ſo general a Reſurrection to that juſt Cauſe, as would have totally routed thoſe true and only Enemies of both Church and State. Our then Enemies, under Colour of Law, were induſtriouſly endeavouring the total Subverſion of our Laws; and whilſt in *ſhew* they ſeemed to maintain the *Proteſtant Church*, they were ſecretly contriving its *total Deſtruction*, by wreſting thoſe very Laws which were chiefly deſigned as *deſtructive* to Popery, and making them *productive of what they were enacted to deſtroy:* For by a malicious and furious Proſecution of all Proteſtant Diſſenters, they did hope to raiſe ſo general Animoſities between the Conforming and Non-Conforming Proteſtants, that they might, through ſuch Diviſion, have an Opportunity to fulfil that notorious Jeſuitical Maxim, *Divide & Impera.*

* *Vid.* D. Smith's Evidence *firſt mentioned.*

The late Earl of *Eſſex* had the leaſt Reaſon to deſpair of the late King's Mercy; for ſhould his Lordſhip have been convicted through Falſe Evidence, or Corrupt Judgment in the Court, by their adjudging that to be Treaſon which the Law never made, or deſigned to make ſo, (as they did in the Caſe of the Right Honourable the Lord *Ruſſel*, and ſome others;) no Nobleman in *England* had better Grounds than his Lordſhip to preſume upon the late King's Mercy, ſeeing his Lordſhip's Father had ſacrific'd his Life in that King's Service; wherefore his then Majeſty had good Reaſon to declare (when His Highneſs, not many Hours before the Earl's Death, ſaid, *the Earl ought to be taken off) that he was reſolved to ſpare his Lordſhip for what his Father had ſuffered*; (this you find before by * two ſworn to be declared by *Ruddle*, who heard it that very Morning my Lord was murder'd;) And this Account of *Ruddle* ſeems the more probable by what his then Majeſty is generally ſaid to have declar'd ſoon after he heard of that deplorable Accident, *(viz.) That he did much wonder his Lordſhip ſhould murder himſelf, and not truſt to his Mercy, ſeeing he ow'd him a Life.*

* *Hughs* and *Gladwin*, 915.

Conſidering therefore that his Lordſhip had ſo good Cauſe for Hopes of Mercy under the greateſt Danger [even Conviction,] there is the leſs Reaſon to believe. *THAT HIS LORDSHIP HAD RESOLVED TO DESTROY HIMSELF.*—I find this Objection from the Right Honourable the Counteſs Dowager of *Eſſex*, hath been generally us'd as what ſhould convince every Man that the late Earl did indeed cut his own Throat.——But I would fain aſk thoſe Gentlemen (who immediately run away with this as what is ſufficient to anſwer whatſoever ſeems to prove the contrary), *Whether it is within the Power of Belief or Diſbelief of a Fact, either to alter the Nature, or deſtroy the Exiſtence of a Fact.* Moſt certainly none will be ſo ignorant as to aſſert, That any Thing becomes true by being believ'd, or falſe by being diſcredited, for then, according to different Perſuaſions, a Thing would be, and not be at the ſame time, which is impoſſible. Wherefore no Man ſhould be *implicitly* ſway'd by the *bare Belief*, or Diſbelief of another, (without knowing and examining the Reaſons of that Belief, or Diſbelief) for this is to act in the Belief of *Matters of Fact*, which we juſtly condemn in the Church of *Rome* in *Matters of Faith.*——But when the Truth of a Fact is queſtion'd, and Reaſons given *pro & con*, every Man is naturally ſway'd by thoſe Teſtimonies which to him ſeem the ſtrongeſt for the *Proof, or Diſproof* of that Fact; *and no Man* (but ſuch as are eaſily impos'd upon, or are willing to impoſe upon others) *will oppoſe to ſuch Evidences as naturally proves a Fact, another's bare Diſbelief of the Fact.* But before any unprejudic'd Perſon will be influenc'd (by another's Diſbelief) againſt the Proof of the Fact, he will know, and well weigh the Grounds of that Diſbelief, and compare their Strength and natural Efficacy with that Evidence that ſeems to prove the contrary; and having judicially weigh'd both in an unprejudic'd Balance, which Side draws down, *MUST* naturally draw his Belief; for no Man *can* believe what he would, but every Man *MUST* believe according as his Judgment ſtands inclin'd to aſſent upon ſuch Evidence as to him ſeems ſufficient.——Prejudice, I muſt confeſs, naturally indiſpoſes and corrupts Men on either Side according as they ſtand affected: *For as ſome are induc'd to ASSENT upon ſuch Evidence as is in itſelf INSUFFICIENT, ſo others many times DISSENT upon ſuch as is SUFFICIENT.* Amongſt the *firſt* of theſe *(viz.)* the *CREDULOUS*, a Reverend B. ſome time ſince rang'd me. For tho' his Lordſhip (heretofore) did charitably excuſe me from any Malice or ill Deſign, yet (as I have been credibly inform'd) he hath been pleaſed to ſay that I am of a *very ſtrong Imagination, and poſſeſſed with a Fancy that a Thing is, without rational Grounds to believe the Thing to be.* But I dare now appeal to his Lordſhip's own Judgment, whether Credulity is more juſtly chargeable on the *Belief* of the Self-Murder, or its *contrary*. That is to ſay, whether ſuch as believe the late Earl of *Eſſex* murder'd himſelf, becauſe his Lordſhip, ſome Days before his Death, ſeveral times declared, *as for himſelf he was reſolved what to do* *. And becauſe *Bomeney* pretended (contrary to what he twice ſwore) that morning of his Lordſhip's Death, my Lord was taken with a Fit of a Frenzy; and becauſe *Bomeney*, *Monday*, *Ruſſel* and *Lloyd* (the three latter being three of thoſe † in whoſe Cuſtody my Lord was, and who, as *Mr. Attorney* in his Information againſt Mr. *Speke*, and myſelf, ſets forth, were conſequently charged with my Lord's Murder) to ſave their own Lives, with Halters about their Necks, endeavour to prove his Lordſhip a *Felo de ſe* by their Relation, which in every Part is contradictory to each other.

* *To an Eminent Divine.*

† Vide *before page* 908.

For *Bomeney* firſt ‡ ſwore he delivered my Lord the Razor about Eight of the Clock in the Morning the very Day of his Death, and within two Hours ‖ depoſed, 'He did deliver this Razor to his Lordſhip about Eight 'of the Clock on *Thurſday* Morning, the Day before 'his Death.' But *Ruſſel* § depoſed, 'That he ſaw this 'Razor delivered by *Bomeney* about Eight or Nine of 'the Clock on *Friday* Morning (being the Day my 'Lord dy'd) and did ever declare, and ſtill aſſerts, that 'this Razor was delivered *AFTER Monday* the Warder had left my 'Lord's Chamber-Door, and that it was delivered * *with*-'*in leſs than half an Hour* of the time they found his Lord-'ſhip dead in the Cloſet;' both which † *Monday* (if Contradictions can) confirmed by declaring that this Razor my Lord had, and pared his Nails with it. When his Lordſhip's Chamber-Door was *firſt* opened that Morning *(viz.)* about Seven of the Clock, *about two Hours BEFORE Ruſſel* came up Stairs to ſtand Warder at the Door; *Bomeney* firſt ‡ ſwore, that he *firſt opened* the Door upon my Lord's Body; in his § ſecond Information depoſed, 'That he *did not*, but (ſeeing Blood, and Part of the 'Razor through the Chink) he call'd *Ruſſel* the Warder, 'and *Ruſſel puſh'd the Door open*;' and in his third Oath declared, 'He knew not who open'd the Door.' *Ruſſel* * depos'd before the Coroner, 'That he firſt open'd 'the Cloſet-Door, the Key being on the Outſide (and 'he mentions no Difficulty in the doing it), but *Monday* '† declared, The Day my Lord dy'd (and afterwards 'confirm'd the ſame) ‡ That my Lord's Body lay ſo 'cloſe againſt the Door, *that neither* Bomeney *nor* 'Ruſſel *could ſtir the Door*; but he, being much ſtronger than either, 'thruſting with all his might, broke it open.

‡ *Before the Coroner.* Vide *the Depoſition, page* 918.

‖ Vide *the Second Depoſition, page* 901.

§ Ruſſel's *Depoſition, p.* 901.

* R's *Depoſition, p.* 901.

† Whitechurch, *and* Jorden, *page* 918.

‡ Bom. *Dep. p.* 918.

§ Bom. *Dep. p.* 901.

* *Page* 901.

† Whitechurch's *Inf. page* 918.

‡ Jord. *Inf. page* 918.

Theſe Men's Depoſitions and Relations *THUS AGREEING in every Part in Proof of the Self-Murder, can't but ſatisfy all Men (except ſuch as are, like myſelf, of ſtrong Imaginations, and too eaſily inclined creduloully to believe the contrary.)* And whereas *Bomeney*, *Monday* and *Ruſſel* have * depoſed, or often declared, 'That the Razor was lock'd into the Cloſet 'with the Body, and no † Razor thrown out of my 'Lord's Chamber-Window before his Death was 'diſcovered'——

* Bom. *Dep. p.* 899. Bom. *Dep.* 918.

† Mond. *and* Ruff. *in their Examination before the Lords.*

It's ‡ proved (I do humbly conceive, to the ſatisfaction of more than the Credulous) that there was a bloody Razor thrown out of my Lord's Chamber-Window (which is about ſixteen Foot from the Cloſet where the Body lay) and the Maid who carried up this Razor, firſt diſcovered my Lord's Death to thoſe out of the Houſe (wherefore the Razor was afterwards laid by the Body for to colour the (pretended) Self-Murder); and when my Lord's Body was ſeen in the very Poſture in which the Warders pretended it was firſt found, his Lordſhip's Legs ‖ lay part outſide the Cloſet-Door (and therefore the Door could not be lock'd), and upon his Stocking the Print of a bloody Foot coming out of the Cloſet; wherefore ſomebody before that, and after my Lord was dead, had come out of the Cloſet.

‡ Vide *Page* 922.

‖ *Turner* and *Peck*, 832, 833.

Is there not rational Grounds from the many Contradictions before obſerved, for any Man (though not poſſeſſed with Prejudice againſt the Self-Murder) to believe that there was no Razor delivered to my Lord juſt before his Death, nor the Cloſet-Door lock'd upon the Body, or the Razor *firſt* found lying by the Body (as theſe have ſworn, whoſe Intereſt and Lives depend upon the Proof of the Self-Murder) *and conſequently their Relation a Forgery throughout, by which they would prove his Lordſhip* Felo de ſe.

But farther, to excuſe from *Partiality ſuch* as diſbelieve the Self-Murder upon the Evidence before obſerved in all Parts contradictory; and from *Credulity*, becauſe they are perſuaded that his Lordſhip fell by Treachery and Violence, ſeeing they find it § ſworn to this effect; (*viz.*) That about nine Days before my Lord's Death, the Papiſts declared, That becauſe the Earl of *Eſſex* knew ſo much of their Deſigns, and was ſo very averſe to their Intereſt, he was to be taken off; and that his HIGHNESS HAD CONCLUDED AND ORDER'D HIS THROAT TO BE CUT, and had promis'd to be there when it was done; and about three Days after theſe Men ſaid that it was reſolved the Earl's Throat ſhould be cut, but they would give it out he had done it himſelf; and if any ſhould deny it, they would take them up and puniſh them for it; and the very Day it was done, after my Lord's Murder, they ſeemed extremely overjoy'd, and confeſſed, THEY HAD DONE THE FEAT, AND COULD BUT LAUGH TO THINK HOW LIKE A FOOL THE EARL OF *ESSEX* LOOK'D WHEN THEY CAME TO CUT HIS THROAT. And that this is not a new-made Story, but long ſince revealed to many who did caution this Deponent to Secrecy, appears by the Teſtimony of * ſix or ſeven Witneſſes; and for a farther Confirmation of the Truth of that Conſult, † three Depoſitions which were made to deſtroy the Credit of that Deponent, are detected, and (by ‡ many Witneſſes) proved falſe in every Part; but as farther rational Grounds (and not Strength of Imagination) for this barbarous Murder, ‖ Eight Witneſſes have proved, That before the Earl's Death, or before his Death could be known, was it reported in many Parts of *England*, that the Earl of *Eſſex* had cut his Throat in the *Tower*; all theſe ſeveral previous Reports agreed in the manner how, (*viz.*) cutting his Throat; and place where, (*viz.*) the *Tower*; (though at ſome of thoſe Places when ſo reported, it could not be known that the Earl of *Eſſex* was a Priſoner in the *Tower*). And one of theſe previous Reports, the next Day after my Lord's Commitment, (*viz.*) the *Wedneſday*, pretended to give the Reaſon wherefore the Earl cut his Throat (that is to ſay) becauſe the King and Duke being in the *Tower*, he was afraid his (then) Majeſty would have come up into his Chamber, and ſeen him; but his Guilt and Shame was ſuch, as he could not bear the Thought of it, and therefore cut his Throat to avoid it: This being ſaid about 60 Miles off, two Days before the King and Duke went to the *Tower*, and the very next Day after my Lord's Commitment; wherefore many that are not of too ſtrong an Imagination credulouſly to believe without Grounds from thoſe very particular previous Reports, as to Manner, Place, and pretended Reaſon, are apt to think that the MANNER HOW, THE PLACE WHERE, AND PRETENDED REASON (to be given out) WHEREFORE, were all previouſly agreed upon ſome Days before my Lord's Death; for they cannot perceive how my Lord's Death, in all its Parts (as it was afterwards pretended to be acted) could be ſo particularly related in ſo many, and far diſtant Places from each other.

§ D. S. *p.* 911.

* *Mr.* Rowden, *Mrs.* Rowden, *Mrs.* Mary Rowden, *Mr.* Adams, *Mrs.* Adams, *Mr.* May, *and Mr.* Tournay, *p.* 911, 912.

† *Mrs.* Hewit'*s*, Chriſtopher'*s*, *and Mr.* Swan'*s*, *p.* 912.

‡ Morris, Dupine, Coldham, Douthwaite, Bond *and Mr.* Welſtead *p.* 912, 913.

‖ *Mr.* Hubland, *Mrs.* Hubland, *Mrs.* Meux, Trehern, Burgis, Savage, *and Mr.* Butteo Maynoe, *will atteſt the ſame*, *p.* 913, 914.

And though thoſe who had my Lord in § cloſe Cuſtody, to excuſe themſelves from a barbarous and bloody Treachery, did declare, That no Men were let into my Lord that Morning he died; yet many rational Men, not credulouſly inclined to believe without Cauſe, are verily perſuaded to the contrary, becauſe it is * proved, That two Soldiers, (who have been prevented from giving their own Relation) the Day of my Lord's Death declared, That they ſaw his HIGHNESS ſend two Men to the Earl's Lodgings to murder the Earl, and that his HIGHNESS did ſend two Men towards the Earl's Lodgings juſt before his Death, and that theſe two Men ſoon after returned, and ſaid, *The Buſineſs was done*, appears by the † Teſtimony of him who ſaw His HIGHNESS ſend thoſe Men, and their Return to His HIGHNESS: And it's farther * proved, that the Sentinel who kept my Lord's outward Door, confeſſed, by ſpecial Order he let in two or three to my Lord, (of which *Webſter* was one, who that Night produced my Lord's bloody Pocket-Handkerchief, and the next Day a Purſe of Gold of 49 Guineas and a Piſtole, tho' he was very poor before) juſt before his Death; and that upon thoſe Men's going into my Lord's Chamber, there was ſo great a trampling and buſtling, that the Sentinel would have forced in after them, but could not, becauſe the firſt Door was made faſt; *and that upon the Buſtle, he heard ſomewhat thrown down like the Fall of a Man, which he did believe to be my Lord's Body*; ſoon after which, it was pretended my Lord cut his Throat: And for what thoſe Men were thus buſtling, appears by the *Murder* which was ſeveral times very loud and very dolefully cried out during this Buſtle; and this heard by † one who ſaw this Buſtling, and ſoon after revealed it, but was cautioned to Secrecy for her Safety, by ‡ him who in this reſpect upon Oath hath confirmed the ſame: And that his Lordſhip made uſe of his Hand to prevent, as well as his Tongue to diſcover, that Villany, which he ſaw deſigned his Deſtruction, is verily believed by thoſe who find it proved, That there were ſeveral Cuts in my Lord's Right-hand, (*viz.*) ‖ One upon his Fore-finger, near the Top; another on the ſame Finger next the Hand; § One upon the Fourth-Finger, another on the Little-Finger, and a fifth * about two Inches long in the Palm of his Hand. And leſt my Lord's Cravat, which was † cut in three Pieces, and the Print of a bloody Foot upon my Lord's Leg, as before obſerved, (with other Circumſtances, which might have been diſcovered, had the Jury ſeen the Body in its firſt Poſture, and the Clothes in which his Lordſhip died) might have occaſioned a Diſcovery, ſpeedy Care was taken that the Body ſhould be ‡ ſtript (though His then Majeſty had ‖ ordered all Things to remain till the Coroner's Jury ſaw the Body) and the Clothes carried away, and the Room and Cloſet waſhed, before the Jury ſat upon the Body. And when § one of the Jury deſired to ſee the Clothes in which my Lord died, the Coroner hereupon was immediately call'd into the next Room, and returning in ſome Heat, told the Jury, it was the Body, and not the Clothes they were to ſit upon; the Body was there, and that was ſufficient; and when it was perceived that * ſome of the Jury were doubtful of my Lord's Self-Murder, becauſe his Lordſhip was (very deſervedly) eſteemed a very good Man, and therefore not to be thought *Felo de ſe*: Major *Hawley*, to remove this Objection, and to corrupt the Jury with a Lye, tells them to this effect, (*viz.*) That whoſoever did believe Self-Murder unlike my Lord of *Eſſex*, did not know his Lordſhip, for every Man that was well acquainted with the Earl, knew that it was a fixt Principle in his Lordſhip, that any Man might cut his Throat, or otherwiſe diſpoſe of his Life, to avoid a diſhonourable and infamous Death; and therefore this Action was according to the Lord of *Eſſex*'s avowed Principles.——But when Major *Hawley* was charged (before the Lords) with this Suggeſtion, he did utterly deny it, and profeſſed that he never heard it ſaid to be my Lord's Principle, till their Lordſhips charged him with having ſuggeſted it, and therefore he could not ſuggeſt it: Beſides, he was not nigh the Jury at the Victualling-houſe any time whilſt they were there upon their Inquiſition: But the Major had given them another reaſon not to forget his being then there; for (it is proved by one, and ready to be proved by many then preſent) that ſome of the Jury were for adjourning their Inquiſition, and immediately to give notice to my Lord's Relations, ſo that if any thing could be proved on my Lord's behalf, it might be heard: This Major *Hawley* ſteps in and prevents it, by proteſting † that his (then) Majeſty had ſent an Expreſs for their Inquiſition; and his Majeſty had declared, That he would not riſe from Council till it was brought, and therefore they could not adjourn, but muſt immediately diſpatch.——In anſwer to this, the Major proteſts that he was not near the Jury at that Houſe, and ſo did not, or could haſten them. But the Major was ſo well known to the Coroner, Surgeons, and Jury, that it is highly improbable all ſhould be miſtaken.

§ *Monday* and *Ruſſel* declare this before the Lords.

* *Hughes* and *Gladwin*, *Bampton* and his Wife, *p.* 915.

† Mr. *Eſſington*, *p.* 916.

* *Lloyd*'s Confeſſion. Mr. *Story*, Mr. *Tempeſt*, *p.* 914.

† Mrs. *Baſcomb*, *page* 914.

‡ Mr. *Perkins*, *p.* 915.

‖ Mr. *Stullingford*, *p.* 924.

§ *Turner* and *Peck*.

* Mr. *Sherwood* the Surgeon, *p.* 924.

† *Mary Johnſon*, who ſtript the Body, confeſſed this.

Johnſon and *Tovey*, *p.* 917. and *Alice Carter* declared the ſame.

‡ This is ſworn by the Coroner, and ſeveral of the Jury.

‖ *T. Howard*, Eſq;

§ Mr. *Fiſher*, *p.* 923.

* Mr. *Fiſher*, *p.* 924.

† *Page* 924.

The timing my Lord's Death, and the ſpeedy hurrying it away to the *Old-Bailey*, and the immediate uſe that was made thereof as an Evidence from Heaven of his Lordſhip's Guilt, and of the Truth of the Charge againſt the Right Honourable the Lord *Ruſſel*, then upon his Trial, and the corrupt Influence it had upon the Court, Counſel and Jury, (ſo that they did at one ſtroke virtually deſtroy two of as great Patriots as this Age or Nation ever knew, and of whom we were no longer worthy;) This might be uſed by impartiality itſelf as a probable Evidence of this treacherous Cruelty.

The unjuſt Methods and Violence uſed to prevent any ſearch after, or diſcovery of this unfortunate Lord's Death, are farther rational Inducements for ſober Men to believe this Murder, when they find that ‡ I was committed as ſoon as I came to *Whitehall* with the Perſons to be ſworn with relation to my Lord's Death, and this before either myſelf, or any Perſon had been examined, and conſequently before any thing criminal could appear againſt me: And afterwards Mr. *Speke* and myſelf proſecuted, and repreſented (eſpecially myſelf) as the worſt of Criminals, tho' nothing like a Crime was proved againſt me, admitting, for true, every thing ſworn at my ‖ Trial, where thoſe in whoſe Cuſtody my Lord was, § and conſequently whom we would have accuſed of my Lord's Murder, were called a CLOUD of Witneſſes to prove the Self-Murder.

‡ Vide *p.* 901.

‖ *I do appeal to the Trial as Printed.*

§ Vide *p.* 908.

The Proſecution of * one of the Coroner's Jury, for declaring, That he believed they *(viz.)* the Jury were all infatuated to find his Lordſhip *Felo de ſe*; but he did ſuppoſe, had they not been hurried, they might have found it otherwiſe; is another Inſtance of the Severity of the Government, with relation hereunto; and the cruel Uſage of an * old Soldier, in feeding him with Bread and Water in the Hole, and afterwards cauſing him to receive Fifty-three Stripes with great Force (tho' the uſual Number was but Twelve,) and then telling him, He ought to be Hanged for ſaying what he did, and ſo diſcarded him; and all this, only for declaring (when preſſed to give his Opinion with relation to my Lord's Death,) Whether he did believe his Lordſhip cut his own Throat? declared, *That he would not ſay he did believe it.* But greater Cruelties than theſe, ſome bloody Men may be ſuppoſed to have uſed to prevent a Diſcovery of my Lord's Murder; for Mr. *Hawley*, who * *KNEW THAT I KNEW NOTHING WITH RELATION TO MY LORD'S DEATH*; *and his too freely imparting his own Knowledge in the Matter, is thought to have cauſed him (not to run away, but) to be murder'd.*

* *Mr.* Colſon, *p.* 926.

* Ab. *Jorden*, *p.* 926.

* Vid. *p.* 926.

And honeſt *Robert Meake* * proteſted, the very Day he was murder'd, that he did fear that ſame Day he ſhould be murder'd for what he knew and had declared concerning my Lord's Murder; and the very next Morning was found dead in the *Tower*-Ditch.

* *Bampton* and his Wife, and *Davidſon*, 926.

And whether poor *Ruddle* was ſhot to Death in the *Indies*, (where I've heard he ſo dy'd) for his knowing and revealing what he knew of this Murder, Time may diſcover.

To proceed no farther.

Now whether that CLOUD of (Three or Four) ‖ Witneſſes, in whoſe Cuſtody my Lord was, to avoid being charged with treacherouſly conſenting to my Lord's Murder, with Halters about their Necks, by Contradictions endeavouring to prove the Self-Murder,——or that GREAT CLOUD of (upwards of Sixty) Witneſſes (for more have been, and will be examin'd with relation to my Lord's Murder) which ſwear not for their own Lives, but ſtand *recti in Curia*, being Perſons unprejudic'd, deſerve the moſt Credit——muſt be left firſt to the Right Honourable the Lords, before whom this Cauſe will (in Convenient Time) be reviv'd; and afterwards to ſuch other Judicatures before which this Matter may hereafter be brought; till when it is not proper to publiſh what might be farther ſaid.————But I do humbly conceive I have herein already furniſh'd you with ſufficient Grounds to ſatisfy ſome (who have been deceiv'd by Miſinformation) that there are more arguments than they could have expected, to clear his Lordſhip's Innocence, and leſs Reaſon for them to believe, that I have us'd ſuch villainous practices as my greateſt Enemies have ſuggeſted, or (as ſome of my pretended Friends would inſinuate) am poſſeſs'd with ſuch heat of Imagination, as crédulouſly to believe a thing to be without rational Grounds to convince me that it is.

‖ *Page* 908.

Sir, As you already have, ſo I doubt not but you will (as becomes a Friend) endeavour to reſcue me from the Slanders of ſuch as have unjuſtly accus'd me; and likewiſe from thoſe Reproaches which have been uncharitably taken up againſt,

SIR,

April 15,
1690.

Your highly obliged, and ever
faithful Friend and Servant,

L. B.

CXXV. *The Trial of Sir* Samuel Barnardiston, *Bar. at* Niſi Prius *at the* Guildhall *of* London, *for a* Miſdemeanour, Feb. 14, 1683. 36 Car. II.

THERE being in *Hillary*-Term laſt, an Information in the Court of *King's-Bench* preferred by His Majeſty's Attorney-General againſt Sir *Samuel Barnardiſton*, for a very great Miſdemeanour: Upon Oath made, that he was ſo extremely indiſpoſed, that he could not appear in Perſon without danger of his Life; The Court were pleaſed to reſpite his Recognizance, (which he by Order of the Lords of his Majeſty's moſt Honourable Privy-Council entered into the laſt Vacation, to appear in Court the Firſt Day of this Term) and to allow him the Liberty of Pleading to the Information by Attorney, which he did. And *Thurſday* the 14th of *February* 1683, being the Seſſion of *Niſi Prius*, after the Term holden for the City of *London*, and County of the ſame, was appointed for the Trial of this Cauſe, and accordingly then the ſame came on, and was tried before the Right Honourable Sir *George Jefferies*, Knight and Baronet, Lord Chief Juſtice of his Majeſty's Court of *King's-Bench*, in this manner.

Clerk. Call away, *Crier*.

Crier. You good Men of *Niſi Prius*, ſummoned to appear here this Day between our Sovereign Lord the King and Sir *Samuel Barnardiſton*, Baronet, anſwer to your Names, and ſave your Iſſues.

Cl. Thomas Vernon and his Fellows. *Vous avez plein Inqueſt.* Call the Defendant Sir *Samuel Barnardiſton*.

Crier. Sir *Samuel Barnardiſton*, come forth, or this Inqueſt ſhall be taken by your Default.

Mr. *Williams.* He appears.

Cl. Gardez voſtres Challenges. Swear *Thomas Vernon.*

Cr. You ſhall well and truly try this Iſſue, between our Sovereign Lord the King and Sir *Samuel Barnardiſton*, according to your Evidence. So help you God.

Cl. Percival Gilburn. Who was ſworn, and ſo the reſt.

The Names of the Twelve were theſe.

JURORS.

Thomas Vernon,
Percival Gilburn,
Edward Bovery,
William Withers, Sen.
James Wood,
Robert Maſters,
Samuel Newton,
George Torriano,
Kenelm Smith,
Thomas Goddard.
Thomas Amy, and
Richard Blackburn.

Then they were counted, and Proclamation made for Information, in uſual manner.

Mr. *Poultney.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; this Cauſe is between the King and Sir *Samuel Barnardiſton*, and it is upon an Information exhibited by *Mr. Attorney-General*, wherein he ſets forth, That there having been lately a horrid Plot diſcovered (as appears by the Convictions of thoſe that have ſuffered juſtly for it, and by the Evidence that has been given of it, has been made ſo apparent, that I do not queſtion, but that no Man, but who either has a Hand in it, or elſe bears a good Will to it, doth at all ſcruple the belief of it,) Sir *Samuel Barnardiſton*, the Defendant, intending to ſcandalize and vilify the Evidence, wrote a Letter, wherein are contained theſe Sentences.

‘ The Return of the Duke of *Monmouth* to *Whitehall*, and his being received into extraordinary Favour of His Majeſty, hath made a ſtrange Alteration of Affairs at Court: For thoſe that before ſpake of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the *Monday*'s *Gazette*, upon which the *Gazetteer* was called to Account for it, who alledged for himſelf, That a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the *Gazette.* Yeſterday being the laſt Day of the Term, all the Priſoners that were in the *Tower* upon the late Sham *Proteſtant Plot*, were diſcharged upon Bail. Mr. *Braddon*, who proſecuted the Murder of the Earl of *Eſſex*, the Information put in againſt him in the *King's-Bench* by *Mr. Attorney*, for a pretended Subornation, &c. was not proſecuted, and his Bail was diſcharged. And the paſſing Sentence upon the Author of *Julian the Apoſtate*, and the Printer of the late Lord *Ruſſel*'s Speech, was paſſed over in Silence. Great Applications are made to His Majeſty for the pardoning *Mr. Sidney* in the *Tower*, which is believed will be attained, and that he will be baniſhed. The Lord *Howard* appears deſpicable in the Eyes of all Men; he is under Guard at *Whitehall*, and 'tis believed he will be ſent to the *Tower*, for that the Duke of *Monmouth* will accuſe him concerning the Teſtimony he hath given, and the *Papiſts* and High *Tories* are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid, the Earl of *Eſſex* was murdered. The brave Lord *Ruſſel* is afreſh lamented. The Plot is loſt here, except you in the Country can find it out amongſt the Addreſſers and Abhorrers. This ſudden Turn is an Amazement to all Men, and muſt produce ſome ſtrange Events, which a little Time will ſhew.’

And then he goes on further, and ſays in another Letter theſe Words:

‘ I am to anſwer yours of the 27th and 29th paſt, and truly I cannot but with great Sorrow lament the Loſs of our good Friend honeſt Mr. *John Wright*; but with Patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the Buſineſs of the Duke of *Monmouth*, that no Age or Hiſtory can parallel. I am now throughly ſatisfied, that what was printed in the *Monday*'s *Gazette* is utterly falſe, and you will ſee it publickly declared ſo ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy-Council to wait upon him, and happy is he that hath moſt of his Favour. His Pardon was ſealed and delivered to him laſt *Wedneſday*. 'Tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council-Table, and to all his other Places, and 'tis reported he will be made Captain-General of all the Forces, and Lord High-Admiral, &c. He treats all his old Friends that daily viſit him with great Civilities, they are all ſatisfied with his Integrity; and if God ſpares his Life, I doubt not but he will be an Inſtrument of much Good to the King and Kingdom. He ſaid publickly, That he knew my Lord *Ruſſel* was as Loyal a Subject as any in *England*, and that His Majeſty believed the ſame now. I intend ſhortly to wait on him myſelf. It would make you laugh to ſee how ſtrangely our High *Tories* and Clergy are mortified, their Countenances ſpeak it. Were my *Sheſorary* to be moved for now, it would be readily granted. Sir *George* is grown very humble. 'Tis ſaid Mr. *Sidney* is reprieved for Forty Days, which bodes well.’

And then, Gentlemen, he goes on further; and in a third Letter ſays,

‘ The late Change here in Publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe what we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſeems to promiſe. The Sham Proteſtant-Plot is quite loſt and confounded. The Earl of *Mackensfield* is bringing Actions of *Scandalis Magnatum* againſt all the Grand Jury-Men that indicted him at laſt Aſſizes.

L. C. J *. This is the only true thing in the whole.

* Sir *George Jefferies.*

[*Mr.* Poultney *reads.*]———‘ And the ſeveral Gentlemen that were indicted in *Cheſhire* and *Northamptonſhire* will bring their ſeveral Action at Law againſt them.’

And, Gentlemen, then in a fourth Letter are contained theſe Expreſſions:

‘ Contrary to all Men's Expectations, a Warrant is Signed at laſt for Beheading Col. *Sidney* at *Tower-Hill* next *Friday.* Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes, but God ſtill governs.’

Gentlemen, All this the Information ſays, he has done againſt the Peace of the King, his Crown and Dignity. To this he has pleaded Not Guilty. We will call our Witneſſes, and if we prove it, we queſtion not but you will find him Guilty.

Mr. Recorder *. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of Counſel for the King in this Cauſe. Upon the opening of theſe Letters to you, you cannot but wonder much more than he does that wrote them. His Matter of Won-

* Sir *Thomas Jenner.*

der was one Way, and I ſuppoſe your Matter of Wonder is another Way, that a Man, ſuch an one as he is, ſhould have that Confidence to write ſuch Letters as theſe are. Gentlemen, I do not doubt but you obſerve in the Series of theſe Letters, how he hath travelled through all the Tranſactions of this horrid Conſpiracy, that was of late contrived againſt the Life of the King, and the Life of his Royal Highneſs, and for the Deſtruction of the Government; and how he does endeavour to turn it all into Ridicule, and to magnify the Men that have come to Publick Juſtice for being concerned in that horrid Conſpiracy, as being very brave Men. The brave Lord *Ruſſel* he is lamented as a brave Man loſt; The Earl of *Eſſex* he forſooth was murdered; and Mr. *Braddon*, who proſecuted that Murder, he is a brave Man, whom I ſuppoſe ſome of you have heard of, and what is become of him, how he is convicted of one of the moſt notorious Facts that ever was acted by Man in any Civil Government, which was, that *Braddon* ſhould go up and down to get Witneſſes to make it appear to the World, as tho' ſome body had murdered that Earl. Thus you ſee he goes through the Conſpiracy from one thing to another, and calls it a Sham Proteſtant-Plot, and all to ridicule the Diſcovery, which by theſe very Letters you may eaſily be ſatisfied of the Reality and Extent of. You ſee how he magnifies his *Julian*, but he likewiſe is come to condign Puniſhment for that moſt pernicious and ſcandalous Libel. In the next places he comes to the Duke of *Monmouth*, and tells you what a brave Man they have in him to be their Captain-General, and he did not doubt but to ſee him come to it; and ſets forth, that he has denied all the Plot, and how he doth perſiſt in that Denial. And this Gentlemen has raiſed his Confidence in theſe Letters to that Degree, that I think any Man, that has lived any time in this Nation, cannot but wonder, that ever there ſhould be ſuch an impudent Action committed in it. Gentlemen, We ſhall call our Witneſſes and prove it poſitively upon him, that theſe Letters he did write, and then I ſuppoſe he will give an account how he came to write them.

Mr. *Herbert*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I have but one Word which I deſire to obſerve; for the opening of the Caſe, and a right Underſtanding of the Matter will have a great Influence upon the Proofs. And I ſhall not inſiſt upon any thing that has been opened at large out of the Letters, but one thing I would obſerve to you, and that is out of the laſt Letter. *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes.* So it ſeems by this that the Faction, the Party, have their Hopes ſtill, and it ſeems likewiſe the Writer of theſe Letters hath a very great Share in them. We have, Gentlemen, nothing to do here before you, but to prove that Sir *Samuel Barnardiſton* was the Author, Writer and Publiſher of the Letters, which contain that which is charged in the Information, and that we queſtion not but to prove clearly without contradiction. Call Mr. *Blathwaite*. [*Who was ſworn.*] Pray give in the Letters. [*Which was done.*]

Mr. Recorder. Pray, Sir, look upon thoſe Letters, and give the Court and the Jury an account where you had them.

Mr. *Blathwaite*. Gentlemen of the Jury, Theſe three Letters Sir *Samuel Barnardiſton*, upon the 10th of *December*, before the King and the Lords of the Council, did own to be of his Hand-writing. I marked them at that inſtant of time, and I am well aſſured they are the Letters he owned to be of his Hand-writing.

Mr. *Williams*. Did he own them to be of his Hand-writing?

Mr. *Blathwaite*. Yes.

L. C. J. * Did he own them all three?

Mr. *Blathwaite*. Yes, my Lord, he did.

Mr. *Williams*. Pray, Sir, who are they directed to?

L. C. J. Mr. *Williams*, He is informed againſt for writing, not for ſuperſcribing.

Mr. *Williams*. My Lord, I aſk that Queſtion for this reaſon, He is indicted for writing and publiſhing, therefore I would know who they are directed to. Did he ſay they were publiſhed by him, or ſent to any one?

Mr. *Blathwaite*. He did not deny but that he had publiſhed and ſent them.

Mr. *Williams*. Did he confeſs it?—Mr. *Blathwaite*. He did not deny it.

L. C. J. I ſuppoſe they on the other ſide will give an Account where they were taken.

Mr. *Herbert*. Yes, my Lord. Swear Mr. *Atterbury*. [*Which was done.*

Mr. Recorder. Hark you, Mr. *Atterbury*, Do you know any thing of theſe Letters?

Mr. *Atterbury*. If you pleaſe to let me ſee them, Sir.

Mr. Recorder. Shew him them.

[*Which was done, and he looked upon them, and gave them in again.*]

Mr. *Herbert*. Did you hear Sir *Samuel Barnardiſton* own them to be his Letters?

Mr. *Atterbury*. My Lord, and you Gentlemen of the Jury, I had a Warrant from Mr. Secretary *Jenkyns*, about two Months, or ten Weeks ago, to apprehend Sir *Samuel Barnardiſton*, and I did, according to Order, by Virtue of that Warrant, apprehend him, and carry him before his Majeſty. When he was there, thoſe three Letters I had juſt now in my Hand, were then ſhewn to Sir *Samuel Barnardiſton*. I marked them, and know them to be the ſame; Sir *Samuel Barnardiſton* did own he wrote them Letters all three.

L. C. J. Were the Superſcriptions upon them all, as they are now?

Mr. *Atterbury*. Yes, they were all as they are now.

L. C. J. What ſay you, Mr. *Blathwaite*?

Mr. *Blathwaite*. Yes, they were juſt ſo, the ſame Superſcriptions.

Mr. *Atterbury*. His Majeſty aſked him, Who ſubſcribed them?———

L. C. J. Superſcribed them, thou meaneſt, they are not ſubſcribed.

Mr. *Atterbury*. Yes, my Lord, ſuperſcribed them; and he looked on them again, and ſaid, They were ſuperſcribed by one of his Servants, and ſo ordered to be carried to the Poſt-Houſe.

Mr. Recorder. Where is *Nehemiah Oſland*?

Juryman. My Lord, We would aſk the Witneſs, Whether he did own that he ſent them to the Poſt-Houſe?

L. C. J. He ſays, he ordered his Man to ſuperſcribe them, and ſo to carry them to the Poſt-Houſe.

Mr. *Williams*. Look you, Mr. *Atterbury*, Did he ſay he directed any of his Servants to carry them to the Poſt-Houſe, upon your Oath?

Mr. *Atterbury*. I am upon my Oath, Sir; I ſay, that he did ſay, that they were ſuperſcribed by ſome of his Servants, he could not ſay which of his Servants it was, and then they were ſent to the Poſt-Houſe.

Mr. *Williams*. Pray, Sir, mind, and anſwer my Queſtion, Did he ſay, he directed any of his Servants to carry them to the Poſt-Houſe?

L. C. J. Did he take any notice to you, or did you underſtand by him, that they were ſent to the Poſt-Houſe by his Conſent?

Mr. *Atterbury*. Yes, my Lord, I did underſtand him ſo.

L. C. J. Did he write theſe Letters to keep them in his Pocket, do you think, Mr. *Williams*?

Mr. *Williams*. I do not know what he deſign'd them for, my Lord; nor do I yet know till they are read, what is in them: But I aſk him this Queſtion, Did he ſay he ſent them to the Poſt-Houſe?

Mr. *Atterbury*. With your Leave, I remember one thing more, my Lord; while he was in my Houſe, (for there he was in Cuſtody two Days or more) talking about theſe Letters, ſays he, I wonder how they were taken, they were ſent to Sir *Skippon*, or ſome ſuch Name he named.

Mr. Recorder. Swear *Nehemiah Oſland*. [*Which was done.*

Mr. *Herbert*. Look upon thoſe Letters, Sir. Shew him them. [*Which was done.*

L. C. J. Is this Man's Name *Oſland*?

Mr. Recorder. Yes, *Nehemiah Oſland*, Do you know any thing of thoſe Superſcriptions?

Oſland. Two of thoſe Superſcriptions I writ by his Order as his Servant.

Mr. Recorder. Which are thoſe two? Then he gave them into the Court.

L. C. J. Can you tell whoſe Hand is the other Part?

Oſland. I did not ſee it writ, but the Hand is ſomewhat like Sir *Samuel Barnardiſton*'s Hand.

L. C. J. You believe it to be his Hand?——*Oſland*. Yes, I do.

Mr. *Williams*. Did you ever ſee the Inſide of thoſe Letters that you ſay you ſuperſcribed?—*Oſland*. No, I never ſaw the Inſide.

L. C. J. What Directions had you about them, after you had ſuperſcribed them?

Oſland. I had no Direction, but to leave them where I uſed to leave his Letters, and that was in a Window that Sir *Samuel Barnardiſton* always left his Letters in, and from thence one of the Boys uſed to carry them to the Poſt-Houſe.

Mr. *Williams*. Sir, Did Sir *Samuel* order you to ſuperſcribe thoſe three Letters, and ſend them to the Poſt-Houſe?

L. C. J. He ſaid he ſuperſcribed them by his Command, and left them in the Place that Letters uſed to be laid that were to go to the Poſt-Houſe.

Mr. Recorder. Pray, Sir, Look upon thoſe Letters again.

L. C. J. Whoſe Hand is the Superſcription? Is that Sir *Samuel's* too?

Oſland. I believe it Sir *Samuel*'s Hand.

L. C. J. Shew that other Letter to Mr. *Blathwaite*: What ſay you to it, Sir?

Mr. *Blathwaite*. Gentlemen of the Jury: This is another Letter that was ſeized and brought before the King and the Lords of the Council, and this Letter was afterwards owned by *Oſland*, to be writ by him by Sir *Samuel Barnardiſton*'s Order.

L. C. J. Did Sir *Samuel* own this Letter to be his Hand-writing too?

Mr. *Blathwaite*. No, he did not, but *Oſland* did own it.

Mr. Recorder. My Lord, We prove it otherwiſe to be Sir *Samuel*'s Letter, becauſe it is not his Hand, but his Man's. You *Oſland*, Do you know who writ that Letter?—*Oſland*. I writ it.

Mr. Recorder. By whoſe Order?

Oſland. I tranſcribed it out of a Copy given me by Sir *Samuel Barnardiſton*, as I was his Servant.

L. C. J. And did you write the Superſcription too?

Oſland. Yes, I writ the Superſcription.

L. C. J. In order to what? To go down into the Country too?

Oſland. In order to go where it was directed, my Lord.

L. C. J. Where was that?—*Oſland*. Into *Suffolk*, to Sir *Philip Skippon*.

L. C. J. This Letter was written at *London*, was it not?

Oſland. In *Biſhopſgate-ſtreet*, at Sir *Samuel*'s Houſe.

Mr. *Williams*. What is your Name, Sir?—*Oſland*. My Name is *Oſland*.

Mr. *Williams*. Your Chriſtian Name?——*Oſland*. *Nehemiah*.

Mr. *Williams*. Then, *Nehemiah Oſland*, I aſk you this Queſtion upon your Oath, when theſe Letters were ſuperſcribed by you, did you lay them in that Window you ſpeak of, or did you give them back again to Sir *Samuel*?

Oſland. Sir, I am not ſo certain as to ſwear to theſe particular Letters; but his uſual Cuſtom was, He would write a Letter, and then give it me to copy: His Cloſet-door was near another Window, and there he would leave it. If it were but one Letter, he would uſe to ſay, Direct ſuch a Letter to ſuch a Perſon, or ſuch a Place, and when it was ſo directed, I was uſed to put my Letters there, and thence one of the Boys came and fetched them to carry them to the Poſt-Houſe. But ſometimes he would ſend me down directly with it away to the Poſt-Houſe, if he had not any other Buſineſs for me to do.

Mr. *Williams*. But, Sir, mind the Queſtion. I aſk you again: Did you deliver theſe Letters, or any of them, back again to Sir *Samuel Barnardiſton*, or no?

Oſland. I cannot tell for theſe particular Letters. I tell you what the uſual Cuſtom was in the Houſe.

Mr. *Williams*. Pray when you had ſuperſcribed them, or Sir *Samuel*, what became of them Letters?

Oſland. They went to the Poſt-Houſe, as I believe.

Mr. *Williams*. How long have you ſerved Sir *Samuel Barnardiſton*?

Oſland. Five Months.

Mr. *Williams*. Did you ſerve any body before?

Oſland. No.

Mr. Recorder. Why, do you think he doth not ſerve him well now, Mr. *Williams*?

Mr. *Williams*. I know very well what I think of it, *Mr. Recorder*.

L. C. J. Well, come read them.

Clerk reads.——*This is directed to Sir* Philip Skippon, *Knight*, at *Ipſwich*, *and dated* Novemb. 29, 83.

(Reads)

* Sir *George Jefferies*.

(Reads) *Sir, The Return of* ———

Mr. *Williams.* That is not Sir *Samuel*'s Hand, I think.

L. C. J. No, but writ by his Order.

Oſland. I tranſcribed it by his ſpecial Order: For he came to me and gave me a Letter, ſays he, Go and make me a Copy of this Letter.

Mr. *Recorder.* And you did tranſcribe it exactly as it was in the Paper he gave you?

Oſland. I examined it after I had writ it my ſelf, and read it over again.

L. C. J. What did you write it out of?——*Oſland.* A Copy he gave me.

L. C. J. Was that Copy his Hand-writing?

Oſland. I did not ſee him write it, but I believe it to be his writing.

L. C. J. Come read it.————*Clerk* reads ——

SIR,

THE return of the Duke of Monmouth *to* Whitehall, *and his being received into extraordinary Favour of His Majeſty, hath made a ſtrange alteration of Affairs at Court: For thoſe that before ſpake of him very indecently, now court, cringe, and creep to him. His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the* Monday's Gazette, *upon which the* Gazeteer *was called to Account for it, who alledged for himſelf, That a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the* Gazette.

Yeſterday being the laſt Day of the Term, all the Priſoners that were in the Tower *upon the late Sham* Proteſtant Plot, *were diſcharged upon Bail. Mr.* Braddon, *who proſecuted the Murder of the Earl of* Eſſex, *the Information put in againſt him in the* King's Bench *by Mr.* Attorney, *(for a pretended Subornation,)* &c. *was not proſecuted, and his Bail was diſcharged. And the paſſing Sentence upon the Author of* Julian the Apoſtate, *and the Printer of the late Lord* Ruſſel'*s Speech, was paſſed over in Silence. Great Applications are made to His Majeſty for the pardoning Mr.* Sidney *in the* Tower, *which is believed will be attained, and that he will be baniſhed.*

The Lord Howard *appears deſpicable in the Eyes of all Men; he is under Guard at* Whitehall, *and believed he will be ſent to the* Tower, *for that the Duke of* Monmouth *will accuſe him concerning the Teſtimony he hath given,* &c.

The Papiſts *and High* Tories *are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid the Earl of* Eſſex *was murdered. The brave Lord* Ruſſel *is afreſh lamented. The Plot is loſt here, except you in the Country can find it out amongſt the Addreſſers and Abhorrers.*

This ſudden Turn is an Amazement to all Men, and muſt produce ſome ſtrange Events, which a little Time will ſhew.

Mr. *Recorder.* Now go on to the next. The Second Letter.

Clerk Reads.——*This is directed, To Sir* Philip Skippon, *Knight, at* Ipſwich, Suffolk.

L. C. J. That is one of his own writing.

Mr. *Recorder.* Yes, my Lord.

Clerk. It is dated *London* the firſt of *December* 1683.

Dear SIR,

I Am to anſwer yours of the 27 *and* 29*th paſt, and truly I cannot but with great Sorrow lament the Loſs of our good Friend honeſt Mr.* John Wright, *but with patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the Buſineſs of the Duke of* Monmouth, *that no Age or Hiſtory can parallel. I am now thoroughly ſatisfied, that what was printed in the* Monday's Gazette *is utterly falſe, and you will ſee it publickly declared ſo ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath moſt of his Favour. His Pardon was ſealed and delivered to him laſt* Wedneſday. *'Tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council Table, and to all his other Places, and 'tis reported he will be made Captain-General of all the Forces, and Lord High-Admiral,* &c. *He treats all his old Friends that daily viſit him with great Civilities, they are all ſatisfied with his Integrity, and if God ſpares his Life, doubt not but he will be an Inſtrument of much Good to the King and Kingdom. He ſaid publickly, That he knew my Lord* Ruſſel *was as Loyal a Subject as any in* England, *and that his Majeſty believed the ſame now. I intend ſhortly to wait on him my ſelf. It would make you laugh to ſee how ſtrangely our High* Tories *and Clergy are mortified, their Countenance ſpeak it. Were my* Sneſorary *to be moved for now, it would be readily granted. Sir* George *is grown very humble. 'Tis ſaid Mr.* Sidney *is reprieved for Forty Days, which bodes well.*

Mr. Kedder *ſat with me ſometime this Evening.*

L. C. J. There is no more in the Record.

Mr. *Recorder.* No, my Lord. Then go on to the Third.

Clerk. This is directed For Mr. Edward Gael, *Linen-Draper, at* Ipſwich.

Mr. *Williams.* Is it likely he ſhould write theſe Letters to a Draper?

L. C. J. It is, it ſeems, the ordinary riff-raff he writes. He thinks it not below him to keep a Correſpondence with all the Scoundrels of his Party in the Country.

Mr. *Recorder.* Ay, all Sorts of Trades he is acquainted with.

Clerk. It is dated the firſt of *December* 1683.

Reads.——Mr. Gael,

This Evening Mr. Kedder *came and ſat with me*—

L. C. J. Will you have it all read?

Mr. *Williams.* No, my Lord, we do not deſire it.

L. C. J. Then read what is in the Record.

Mr. *Recorder.* Look where that Paſſage begins, *The late Change*——

Clerk. Where is it, Sir? It is not marked.

L. C. J. If you cannot find it out, then read the whole.

Clerk Reads——

Mr. *Gael,*

THIS Evening Mr. Kedder *came and ſat with me, when acquainted him what you and others writ me in reference to himſelf, as alſo of the Death of Mr.* Wright, *which he was ſorry for. He proteſted, if could perſuade his Wife, he would accept of* Ipſwich *Choice, notwithſtanding all the Diſcouragement he had met with. One more he acquainted me with, that had ſeen a Letter from Mr.* Cutliffe *to Dr.* Clegat, *extremely diſcouraging him from coming to* Ipſwich, *where if he did come, ſaid, would find himſelf miſtaken, for that would never enjoy Quietneſs or Peace, notwithſtanding his Balſamick Temper,* &c. *as he called it. Theſe Things frights Mr.* Kedder, *who I am now perſuading ſo ſoon as he is up again, to go down for a Month or two, and then if he doth not like the Place and People, may return hither again. This I reſolve to preſs hard on* Monday, *when have promiſed to Dine with me, as alſo Mr.* Hodges. *Be confident, I ſhall think nothing too much to effect this Buſineſs, though one or other ſtill pulls down as faſt as I build up.* ——*Here is now a Door of Encouragement opened for ſober Men to come into publick Employment. You will undo the Town of* Ipſwich *if you bring not ſober Men into play: For God's ſake conſider of it. Perſuade Mr.* Snilling, *or ſome ſober Men, to come in their two Ports-Mens Places void for other Matters, refer you to Sir* P. *the late Change here in Publick Affairs, is ſo great and ſtrange.*

L. C. J. There begins the Paſſage in the Record.

Clerk reads——*The late Change here in Publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe what we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſeems to promiſe. The Earl of* Mackensfield *is bringing Actions of* Scandalis Magnatum *againſt all the Grand Jurymen that indicted him at laſt Aſſizes. And the ſeveral Gentlemen that were indicted in* Cheſhire *and* Northamptonſhire, *will bring their ſeveral Actions at Law againſt them. Acquaint Mr.* Snilling ———

L. C. J. There is all that is in the Record.

Mr. *Recorder.* There are but two Lines more

Clerk reads—*Acquaint Mr.* Snilling *we received the two Barrels of Oyſters, and two Couple of Ducks, and deſire him to take Money of* Buckle *for them.*

I reſt, yours.

Mr. *Recorder.* Now go on to the next.

Clerk. This is the Fourth Letter: it is directed to Mr. *William Cavell,* at *Brightwell* near *Ipſwich* in *Suffolk*, and dated *London* the 4th of *December* 1683. Shall I read it all?

L. C. J. No, no: If you can find that Part that is in the Record, *Contrary to moſt Men's Expectations*, there it begins.

Clerk reads——*Contrary to moſt Men's Expectations, a Warrant is Signed at laſt for Beheading Colonel* Sidney *at* Tower-Hill *next* Friday. *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes, but God ſtill governs. Acquaint* Buckle———

L. C. J. There is all.

Clerk. Here is but a Line more (reads) *Acquaint* Buckle, *here is no News of* Crafton Hoy, *notwithſtanding the Wind is fair, 'tis his Practice always to loiter by the Way.* I reſt, your loving Friend.

Mr. *Williams.* Pray let me ſee that Letter.

Mr. *Recorder.* We have done, my Lord, we leave it here.

L. C. J. Well, What ſay you to it that are for the Defendant?

Mr. *Williams.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel here for the Defendant, Sir *Samuel Barnardiſton*, and the Queſtion now before you is, Whether this Gentleman be knowingly guilty of the writing and publiſhing theſe four Letters that have been read here to you, and which of them he is guilty of writing, and which not? I do not ſee that his Name is put to any of them; nay, the Letters are not ſubſcribed by any body, and that, Gentlemen, you may ſee by looking upon the Letters. For the Evidence that hath been given, I beſeech your Lordſhip to obſerve what it is. As to his publiſhing of them, I ſee no Evidence at all to prove him any way concerned in that: Some of them, indeed, are his own Hand-writing, and proved to be his Letters, by his own Confeſſion before the King and Council; that Mr. *Blathwaite* and Mr. *Atterbury* the Meſſenger ſwear directly, that Sir *Samuel Barnardiſton* did own the Letters, but for the Fourth they ſay he did diſown that to be his Letter, and it is not ſo much as his Hand; but what Proof is it they have brought to apply this to him? You ſee what a Sort of Proof is made: They produce you here a young Man that was (as it happened) his Servant at this Time, and lived in his Family with him in the Nature of a Secretary, it ſeems; and how fit he was to be entertained in that Quality, you, I queſtion not, obſerve. He ſays, he did copy this Letter by the Direction of his Maſter. It is well if he did not keep a Copy himſelf by him of ſuch a Letter as this for a particular Uſe, as ſome honeſt Servants have done before now, that have deſigned ſomewhat of Advantage to themſelves: But that is his Evidence about this Fourth Letter. That then Gentlemen which we would offer on behalf of the Defendant, is this, Whether there be any Evidence of the publiſhing of theſe Letters by Sir *Samuel Barnardiſton*, either of all, or any, and which of them? All the Proof that I hear, comes from *Atterbury*, and the Clerk of the Council Mr. *Blathwaite*, which is but this: *Atterbury* ſays, That Sir *Samuel* ſhould ſay, They were ſent to the Poſt-Houſe; and Mr. *Blathwaite* ſays, he did not deny the publiſhing of them, but he does not ſay, he confeſſed it. As to the ſending to the Poſt-Houſe, if it be true, I ſhall leave it to your Lordſhip, how far that, my Lord, can be a publiſhing of a Libel; Whether that be a publiſhing within the Information, or no? A Gentleman writes a Letter to a private Friend, and ſends it to the Poſt-Houſe; Whether that be a publiſhing of a Libel, I leave it to you? For the Fourth Letter, this ſame truſty Secretary cannot tell you, whether he delivered it back again to Sir *Samuel*, or no; or whether he put it in the Window; or whether he delivered it in at the Poſt-Houſe, only, as he believes, he laid it in the Window as he uſed to do other Letters. But whatever he believes muſt not paſs for Evidence, eſpecially in Matters of this Nature, it being a great Crime, as the Information has ſet it forth. If then there is no Proof (as with Submiſſion I hope there is not) of the Publication of theſe Letters, I ſuppoſe Gentlemen, you will not take it upon your Oaths, that he is guilty of what he is here accuſed of without Evidence. This Information, Gentlemen, doth mention ſeveral Things, which do very much aggravate the Matter, if they were proved. Many Things are laid in it to induce the Information, and which may much enhance the Crime, but of which I ſee no manner of Proof at all. Many Things are mentioned as Facts leading to the main Facts, which is the great Offence; but theſe not being proved upon him, I deſire he may be acquitted of that Part.

L. C. J. What do you mean, Mr. *Williams?*

Mr. *Williams.* Of all your Preamble.

L. C. J. What Preamble do you mean?

Mr. *Williams.* That he being a Perſon of a turbulent and unquiet Spirit———

L. C. J. Why, Mr. *Williams:* Would you have the Jury find that he is not ſo?

Mr. *Williams.* My Lord, There is no Proof of it; or that he did do it with a Deſign ſeditiouſly to diſturb the Peace, that he did it with a ſeditious Intent.

L. C. J. You would have the Jury find, I warrant, that he did it piouſly, and with a good Intent.

Mr. *Williams.* My Lord, There is a middle way——

L. C. J. No, no, Mr. *Williams.* Let us have none of that Doctrine, we muſt have a care of that, and your middle Ways. For certainly the Law ſupplies the Proof, if the thing it ſelf ſpeaks Malice and Sedition. As it is in Murder, we ſay always in the Indictment, He did it by the Inſtigation of the Devil: Can the Jury, if they find the Fact, find he did it not by ſuch Inſtigation? No, that does neceſſarily attend the very Nature of ſuch an Action, or Thing. So, in Informations for Offences of this nature, we ſay, He did it falſly, maliciouſly, and ſeditiouſly, which are the formal Words; but, if the nature of the Thing be ſuch as neceſſarily imports Malice, Reproach, and Scandal to the Government, there needs no Proof but of the Fact done, the Law ſupplies the reſt. If the Fact were indifferent in itſelf, then to make a Crime of it, the accidental Circumſtances muſt be proved, but it needs not where the Thing implies Malice in its own Nature. You would have the Jury find he had no ill Deſign in it; he did it with a good Intent, I warrant you.

Mr. *Williams.* All I would aſk, my Lord, is but this——

L. C. J. Do you think he did it to ſerve the Crown? If the Jury will take it upon their Oaths, that Sir *Samuel Barnardiſton* wrote theſe Letters to ſerve the Crown, you ſay ſomething. Pray aſk them that Queſtion. Try if you can make them believe that, Mr. *Williams.*

Mr. *Williams.* There is no Evidence given about this Malice.

L. C. J. Yes, the very thing is Evidence of itſelf.

Mr. *Williams.* Pray, My Lord, let the Fact lie upon its own weight: There is no Proof given of any of theſe aggravating things.

L. C. J. How ſhall any Man prove another Man's Malice, which is a thing that lies only in a Man's Mind? How ſhould any Man know that I am malicious againſt the Government, but by my Actions.

Mr. *Williams.* I lay it before your Lordſhip and the Jury.

L. C. J. No Proof can be expected, but what the Nature of every thing will bear.

Mr. *Williams.* Then I pray this, my Lord, that I may be at Liberty next Term, if we be convicted, to urge this, and obſerve in mitigation of the Puniſhment, that there was nothing of theſe things proved.

L. C. J. Urge what you can in its proper time, but offer nothing here but what is fit to be offered.

Mr. *Williams.* Here are mentioned in this Information, (tho' it be by way of Inducement, yet they muſt be proved) things that are Matters of Record, but they have proved none of them.

L. C. J. Have you any of thoſe Records here, the Convictions of my Lord *Ruſſel* and Colonel *Sidney?*

Mr. *Recorder.* Thoſe things are ſo well known, I ſuppoſe they will not conteſt them.

Mr. *Williams.* Sir, I muſt lay hold on all Advantages for my Client. You have made them Part of your Caſe, pray prove them.

Mr. *Recorder.* Truly, my Lord, we did not think they would have made that any Queſtion, and we have them not here. They know it well enough to be true.

L. C. J. If you have them not here, go and find them; if they inſiſt upon it, you muſt prove them. I will ſtay till you fetch them.

Mr. *Williams.* My Lord, we would not hinder your Lordſhip's Buſineſs.——

L. C. J. No, no, it will be no Hindrance, I will do ſomething elſe in the mean time. This is a Cauſe of public Example and Conſequence, and I will give it all the fair Hearing I can.

Mr. *Williams.* My Lord, if you pleaſe, there is, I ſuppoſe, no ſuch haſte of trying this Cauſe now, to hinder Buſineſs, and keep you here longer than needs. This Cauſe may as well be tried the beginning of next Term.

L. C. J. No, no, I will make an end of it now, if I ſtay never ſo long for it; indeed the Defendant ſays, *I am down in the Mouth:* 'Tis true, I have got a little Hoarſeneſs, but I thank God my Heart is not down, nor I hope never will be to ſerve the Government.

Mr. *Williams.* If they will, they ſhall find the Letters without the Records.

Mr. *Jones.* No, no, We muſt have the Records, tho' it is true it is but Matter of Form, yet we muſt prove our whole Caſe.

L. C. J. Well, I will ſtay till they are fetched. Let the Jury ſtand by, and I will go on and try another Cauſe, and in the mean Time fetch theſe Records. Do not make two Journies, but bring all that are mentioned in the Record.

Then the Jury were ſet by, and the Court went on in ſome other Cauſes, and about an Hour and an half after the Records were brought, and this Cauſe was reſumed, and proceeded thus.

L. C. J. Well, come, have you thoſe Records now?

Mr. *Recorder.* Yes, ſwear Mr. *Tindal.* [*Which was done.*] Is that a true Copy?

Mr. *Tindal,* Yes, it is a true Copy of the Indictment, Conviction, and Attainder of my Lord *Ruſſel.* I examined it with Mr. *Tanner.*

L. C. J. Well, put it in. [*And then a Word of it was read by the Clerk.*]

Mr. *Recorder.* And here is the Record it ſelf of the Attainder of Colonel *Sidney.* [*Which was ſome part of it read alſo.*

L. C. J. What ſay you now to it, Gentlemen, for the Defendant?

Mr. *Thompſon.* My Lord, I have nothing more than to ſay than has been ſaid.

L. C. J. All this was well enough known.

Mr. *Jones.* Ay, but they would give the Court all the Trouble they could by making them ſend for that which they could not deny.

L. C. J. Gentlemen of the Jury, Here is an Information exhibited againſt Sir *Samuel Barnardiſton,* and the Information ſets forth this Matter. It doth take notice of a horrid Conſpiracy, a damnable Conſpiracy, lately hatched and ſet on foot for the Deſtruction of the King, and for the Subverſion of the Government, That there were divers Perſons who were indicted, and ſtood convicted, and were afterwards executed for this horrid Conſpiracy. Among the reſt, there is notice taken of my Lord *Ruſſel* for one, and Colonel *Sidney* (he went by that Name, *Algernon Sidney* I mean) for another, to be two of thoſe Conſpirators that were engaged in that damnable Conſpiracy for the Deſtruction of the King, and Subverſion of the Government.

Now, Gentlemen, That theſe Perſons according to the Inducement of this Information, were ſo indicted, ſo attainted and executed (as far forth as is cited in the Information) is proved to you by the two Records, which the Counſel on the other ſide inſiſted to have ſhewn, and which have been now produced. The one is ſworn to be a true Copy of the Conviction and Attainder of my Lord *Ruſſel,* and the other which they produced, was the Record itſelf of the Conviction and Attainder of *Sidney.* So that, as to that part it is plain, they were convicted and attainted, both the one and the other, as Actors in that Helliſh Plot.

The next thing, Gentlemen, and which was ſo much inſiſted upon by the Defendant's Counſel, is this: The Information takes notice, that the Defendant Sir *Samuel Barnardiſton,* being a Man of a factious, ſeditious, diſaffected Temper towards the Government, a Man of ill Principles, in order to diſturb, diſquiet, and diſcompoſe the Government, he did cauſe ſeveral Letters, Four in Number, to be writ and publiſhed, which Letters have been read unto you.

It hath been objected, That in as much as the Words, Falſly, Seditiouſly, Maliciouſly, Factiouſly, and the like Words are in the Information, they would have you believe, That there being no Evidence of any ſuch Thing, as Faction, Malice, and Sedition, or that the Man did it Maliciouſly, and Adviſedly, and Seditiouſly, (which are the Words in the Premiſes, as I may call them, or the Preamble of the Information) therefore they muſt be acquitted of that part. Now as to that, I told them then, and tell you now, Gentlemen, That no Man living can diſcover the malicious evil Deſigns and Intentions of any other Man, ſo as to give Evidence of them, but by their Words and Actions. No Man can prove what I intend, but by my Words and Actions. Therefore if one doth compaſs and imagine the Death of the King, that by our Law is High-Treaſon; but whether or no he be guilty of this Treaſon, ſo as to be convicted of it by another, is not proveable, or diſcoverable, but by ſome Words or Actions, whereby the Imagination may be manifeſted. And therefore my Imagining, my Compaſſing, which is private in my own Mind, muſt be ſubmitted to the Judgment that Reaſon and the Law paſſeth upon my Words or Actions, and then the Action it ſelf being proved, that diſcovers with what Mind the Thing was done; as in the Caſe I put before to the Counſel. Suppoſe any Man without Provocation kill another, the Words of the Indictment are, That he did it Maliciouſly, Feloniouſly, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil. Now all theſe things, whether he had the Fear of God before his Eyes, or not; or whether he were moved by the Inſtigation of the Devil, and of his Malice forethought, or no; theſe cannot be known, till they come to be proved by the Action that is done.

So that in caſe any Perſon doth write Libels, or publiſh any Expreſſions which in themſelves carry Sedition and Faction, and Ill-Will towards the Government; I cannot tell well how to expreſs it otherwiſe in his Accuſation, than by ſuch Words, that he did it Seditiouſly, Factiouſly, and Maliciouſly. And the Proof of the thing it ſelf proves the evil Mind it was done with. If then, Gentlemen, you believe the Defendant, Sir *Samuel Barnardiſton,* did write and publiſh theſe Letters, that is Proof enough of the Words, Maliciouſly, Seditiouſly, and Factiouſly, laid in the Information.

The Letters are Factious, Seditious, and Malicious Letters, and as baſe as the worſt of Mankind (tho' he had had all the Provocation that ever could be given a Man to libel another) could ever have invented.

And let Sir *Samuel Barnardiſton* put it under the Countenance, or under the Umbrage, or under the Enamel of his Zeal for the true Proteſtant Religion, if he will; or if he have a mind to it, to give himſelf any fine Name, by calling himſelf one of the Sober Party, or Godly Party, or the Upright Party; let him gild himſelf, and paint himſelf as he pleaſeth, yet the Inſide is rotten, and 'tis Factious and Seditious at the bottom to all Intents and Purpoſes whatſoever. And if he be guilty of it, as you Gentlemen are to try and conſider; the greater the Man is, the greater the Crime; and the more Underſtanding he has, the more malicious he ſeems to be: For your little ordinary ſort of People, that are of common mean Underſtanding, they may be wheedled and drawn in, and ſurprized into ſuch things; but Men of a public Figure, and of ſome Value in the World, that have been taken to be Men of the greateſt Intereſt and Reputation in a Party, it cannot be thought a ſudden Surprize upon them; no, 'tis a Work of Time and Thought, 'tis a thing fixed in his very Nature, and it ſhews ſo much Venom, as would make one think the whole Maſs of his Blood were corrupted. I had thought the Act of Oblivion might have put Sir *Samuel Barnardiſton* in mind, That it was not fit any more to go down to *Whitehall,* to make Uproars, and Tumults, and Hubbubs.

But here is the Matter that he now is accuſed of, and here is in it Malice againſt the King, Malice againſt the Government, Malice againſt both Church and State, Malice againſt any Man that bears any Share in the Government, indeed Malice againſt all Mankind that are not of the ſame Perſuaſion with thoſe bloody Miſcreants, (I cannot give them a milder Name) I mean the Conſpirators in the late damnable Conſpiracy,

ſpiracy, ſome of whom have been attainted and executed for it. Here is the Sanctifying of Traitors, that were juſtly ſentenced to Execution according to the Law of the Land, and at the ſame time there is joined with it the moſt inveterate Inſinuation againſt the Government that can be, as though the King was prevailed with, upon a Sham Proteſtant Plot, to do Things in order to deſtroy the Government it ſelf, and every one of the *Sober Party*, as they call themſelves. For theſe Perſons could not have ſuffered, but as Condemned according to the Rules of Law, but theſe Letters carry an Inſinuation as if they were cut off by a Sham Trick and Deſign. For after the good News of the Reprieve of *Sidney* was contradicted, the Warrant for his Execution is taken notice of, and you ſee the manner of Expreſſion that is uſed, *their Party has prevail'd*, as tho' the putting the Laws in Execution, and hanging of Traitors, were ſuch a Thing that a Party muſt be ſet up to prevail to do it, and Mankind muſt be divided into Parties, their Party and our Party, and the contrary Party, they have prevailed; and truly now our Party, the *Sober Party* as he calls it, are in a very ſad Condition.

Then here is, as I ſaid, the Sainting of Two horrid Conſpirators, here is the Lord *Ruſſel* Sainted, that bleſſed Martyr, my Lord *Ruſſel*, that good Man, that excellent Proteſtant, he is lamented, and what an extraordinary Man he was, who was fairly Tried, and juſtly Convicted and Attainted, for having a Hand in this horrid Conſpiracy againſt the Life of the King, and his deareſt Brother His Royal Highneſs, and for the Subverſion of the Government. And here is Mr. *Sidney* Sainted, what an extraordinary Man he was? Yes ſurely, he was a very good Man, becauſe you may ſome of you remember, or have read the Hiſtory of thoſe Times, and know what Share Mr. *Sidney* had in that black and horrid Villany, that curſed Treaſon and Murder, the Murder, I mean of King *Charles* I. of Bleſſed Memory, a Shame to Religion itſelf, a perpetual Reproach to the Iſland we live in, to think that a Prince ſhould be brought by pretended Methods of Law and Juſtice to ſuch an End at his own Palace. And 'tis a Shame to think, that ſuch bloody Miſcreants ſhould be Sainted and Lamented, who had any Hand in that horrid Murder and Treaſon, and who to their dying Minutes, when they were upon the Brink of Eternity, and juſt ſtepping into another World, could confidently bleſs God for their being engaged in that Good Cauſe, (as they call it) which was the Rebellion which brought that Bleſſed Martyr to His Death. It is high time for all Mankind, that have any Chriſtianity, or Senſe of Heaven or Hell, to beſtir themſelves, to rid the Nation of ſuch Caterpillers, ſuch Monſters of Villany as theſe are.

Nay, In theſe very Letters is contained the very Language of that curſed Murderer and Traitor *Walcot* himſelf, *That God Almighty in his own Time would raiſe up Inſtruments.* I know, Gentlemen, you have heard and read what that bloody Traitor ſaid to that effect; and you hear what Expreſſions like it are in theſe Letters, *I am ſorry for the Death of our Friend, honeſt Mr.* John Wright, *but God can eaſily raiſe up Inſtruments to do his own Work*; the very Language of *Walcot*. And I would have you take notice of it, Mr. *Blackerby*, for I would have you take Warning by theſe Things. [*Speaking to a Gentleman that was taking Notes.*

Mr. *Blackerby*. My Lord, I have neither ſaid nor done any thing that ſhould give you occaſion to ſpeak thus to me.

L. C. J. Theſe Letters tell you, *God will be ſure to raiſe up Inſtruments*, but what Inſtruments do they mean? Inſtruments of Rebellion, and Faction, and Sedition, which they moſt falſly call, *his own Work*. For it is that monſtrous Sin Rebellion, that they mean by it, Inſtruments of Treaſon, under pretence of fighting for God Almighty they would fain be fighting againſt the Government. It was the Language of the former Times, wherewith they deſtroyed the beſt of Kings, and ſubverted the beſt of Governments for a Time, and were very near having totally deſtroyed Three Kingdoms, under pretence of doing God good Service. And when once a People purſue ſuch Principles, and, under the pretence of Religion, endeavour to deſtroy Monarchy and Government itſelf, it is high time for all honeſt Men to look about them.

Nay, and you may obſerve, Gentlemen, another thing in theſe Letters, it is not only the Deſtruction of the Civil Government, the King, and thoſe that are in Authority near Him that are aimed at; but all Perſons that come with humble Repreſentations of their Loyalty to Him, all that Addreſs themſelves to the King to ſhew their Duty and their Diſlike to that damnable Deſign and Conſpiracy againſt Him. *For now* (ſays Sir *Samuel Barnardiſton) all the Sham Plot is quite blown off, and we cannot find any here, 'tis loſt except you can find it among the Addreſſers and Abhorrers in the Country, or amorg a Parcel of Clergymen.*———So that all Mankind, that ever thought themſelves obliged to congratulate that bleſſed and happy Deliverance, either to own our Thankfulneſs to God for it, to whom we owe more than we are able to pay for His great Mercy to us therein, or to expreſs our Joy to the King, in humble Addreſſes, Congratulating His Deliverance from the horrid Conſpiracy lately deſigned againſt Him, His Brother and the Government; theſe Gentlemen, becauſe they are Loyal Subjects, and deſire to ſhew themſelves ſo, muſt be branded with the Names of *Abhorrers*, *Tories*, *Addreſſers*, *Sham-Plotters*, and all the Ignominy they can lay upon them. This ſhews it was not only aimed at the Civil Magiſtracy, but at all that dare be honeſt and oppoſe Faction and Rebellion.

As for any thing that he has ſaid of me, Sir *Samuel Barnardiſton* ſhall write and ſpeak of me as long as he pleaſes. But though he ſays, *I am down in the Mouth*; it is true, I have a little loſt my Tongue by my Cold, yet I hope I ſhall never loſe my Heart nor Spirit to ſerve the Government, nor forbear to uſe my utmoſt Diligence to ſee that ſuch Offenders as theſe Perſons, that entertain Principles ſo deſtructive to the Government, be brought to condign Puniſhment. And be they who they will, were they my own Brothers, I ſhould be of the ſame mind, and ſo in that mind I hope in God I ſhall live and die.

Gentlemen, the Queſtion before you is, Whether the Defendant be guilty of writing theſe Malicious, Seditious Letters; for that they are Malicious and Factious, no honeſt Man can doubt in the leaſt, and I do not find that the Counſel for the Defendant do offer to ſay any thing in Defence of the Letters, or can ſay, but that they are as venomous, malicious, ſeditious, factious, tumultuous Letters, as can be written, and I muſt tell you, tread very near upon the Borders of High-Treaſon itſelf. I am ſure I may venture to call it *Cozen-German* to *High-Treaſon.*

Now that he did write and publiſh them, you have this Proof before you: Mr. *Blathwaite* tells you, That Sir *Samuel* did own Three of them, acknowledge them to be his own Writing, before His Sacred Majeſty in Counſel. *Atterbury* the Meſſenger ſays, He was by too when he did before the King acknowledge the Writing of thoſe Three Letters. As to the Superſcription to one of thoſe Three Letters, you have the Teſtimony of *Oſland*, the young Man that lived with Sir *Samuel Barnardiſton*, he ſwears he writ it by his Direction, being his Servant. And as to the Fourth Letter, this young Man does directly ſwear, That the Original he copied it by (for it is his Writing) he had from Sir *Samuel Barnardiſton*, and it was of Sir *Samuel*'s own Writing (which he knows well, being acquainted with his Hand) and that Sir *Samuel* expreſly directed him to Copy it out, which he did by his Command, and this is the ſame Letter; and ſo though it is not under his Hand, yet it is under his Man's, and written by his Direction. And he ſays, he does believe the other Three to be his Hand-Writing. So as to the Dictating and Writing of theſe Letters, you have as full and as plain a Proof as can be made.

And as to his Publiſhing of them, which is another Part of the Information, and of which Mr. *Williams* ſaid there was no Proof, I would ſay but this to you. Is it not very prepoſterous, abſurd, and ſenſeleſs, to think that ever it ſhould enter into any Man's Imagination, That Sir *Samuel Barnardiſton* would take ſuch a wonderful deal of Pains and Care to write theſe Letters to Sir *Philip Skippon*, and to the other two Men, to tell them of his Endeavours to take off Mr. *Kedder*'s Scruples, and perſuade him to go down to *Ipſwich*, and to deſire them to *take care* of the *Sober Party*, and endeavour to get *Sober Men* into play, and *all will do well*, and that the Duke of *Monmouth* had *denied* all the Plot, and ſo given the Lye to the King and the Courts of Juſtice, and now there was a Door opened for *Sober Men* to come in, and God would *raiſe up Inſtruments*, and the *Sober Party* will up again? Do you think, I ſay, he would write all this Fuſtian Stuff, (for I can call it no better than Stuff, though it be very malicious Stuff) and carry to his Man to Copy out, and Superſcribe them and Seal them, only to put them in his Pocket? If you can believe this, upon my Word you have a Faith able to remove great Mountains; but I aſſure you my Faith cannot get to that Strength.

But for further Proof of the Publiſhing, you hear what the young Man that was the Defendant's Servant ſays. He tells you, the uſual Way of dealing with Sir *Samuel*'s Letters was this, There was a Window near Sir *Samuel*'s Cloſet, and when the Letters were Sealed up, they were uſed to be put there, in order that the Boy, according to the uſual Courſe, might carry them to the Poſt-Houſe. And he doth believe theſe Letters (though he cannot particularly and poſitively ſpeak to them) were ſo uſed.

Beſides all this, you have it by *Atterbury* poſitively Sworn, that about the ſame time that Sir *Samuel Barnardiſton* did acknowledge before the King, that he writ thoſe Letters, being in his Cuſtody, he did ſay they were ſent to the Poſt-Houſe, and he wondered how they came by them. That proves it was done by his Privity. And beyond all there is this Circumſtance, that the Thing ſpeaks it ſelf, they are directed to Men at *Ipſwich*, where Sir *Samuel Barnardiſton* is known to have a Correſpondence; they take notice of the Receipt of Letters from thence, and of the Death of Mr. *Wright*, mentioned in thoſe Letters, which ſhews them to be Anſwers to Letters received; and muſt not theſe think you be ſent, but kept ſtill in his Pocket? There is notice alſo taken in them, of their Country Affairs: Though they ſeemed to have met with ſome Diſappointment in ſuch a Buſineſs about Mr. *Kedder*, yet they were reſolved *to go on*, and deſires them to communicate this Buſineſs of Mr. *Kedder* and Dr. *Cleggit*, to *ſuch* and *ſuch* of our *Friends*, and deſire them to *beſtir* themſelves, and get in *Sober Men*, ſuch as Mr. *Kedder*, among them. For it is mightily for our *Advantage*, that there ſhould be *Sober Men* brought into play at *Ipſwich*, and pray be *ſure* to keep the *Sober Party* up. Theſe Things in their own nature ſpeak, that theſe Letters were intended and written, in order to preſerve a Correſpondence between thoſe of the *Sober Party* in *Ipſwich*, and their Friends here, and therefore you may eaſily conclude what was to be done with them.

So that, *Gentlemen*, this Information ſurely (if ever any was) is fully proved, as it is laid in all the Parts of it.

I would not have given you ſo much Trouble at this Time, in an Affair of this Nature, that has been ſo evidently proved, becauſe your Queſtion that you are to Try, is only, Whether the Defendant be Guilty of this Offence, or not Guilty? (You are not to inflict the Penalty, that is the Province of the Court above;) but only becauſe I ſee it is a Matter of great Expectation and Conſequence. I would not we ſhould be gulled twice in one Age, by the ſelf-ſame Men, and the ſelf-ſame Way, into the ſame Treaſon and Rebellion, and all thoſe other Miſchiefs, that dreadful Chaos and State of Confuſion, Miſery and Deſtruction, that we were brought into in the late Times. And that has made me take ſo much Notice now in this Place of the Tendency of Things of this Nature, that we may learn to beware of, and know theſe Men that carry Sheep's Clothing, pretend Zeal and Religion, but their Inſides are Wolves. They are Traitors in their Minds, whatſoever they are in their outward Pretences.

Then the JURY *laid their Heads together in the Place where they ſtood, and being preſently after agreed upon their Verdict, the Foreman gave it in.*

That the Defendant Sir Samuel Barnardiſton *was Guilty of the Offence and Miſdemeanour, Charged on him by the Information.*

Which Verdict was Recorded by the Clerk.

Afterwards Sir *Samuel Barnardiſton* received Sentence, *That he ſhould pay* 10,000 *l. Fine, be impriſoned till paid, and find Sureties for his Good Behaviour for Life.*

CXXVI.

CXXVI. *Proceedings againſt* JAMES HOLLOWAY[*] *in the* King's-Bench, *on an Outlawry for* High-Treaſon, April 21, 1684. Paſchæ. 36 Car. II.

HIS Majeſty's Attorney General having on *Friday* laſt, moved the Court of *King's Bench* for an *Habeas Corpus* Returnable this Day, directed to the Keeper of his Majeſty's Gaol of *Newgate*, to bring thither the Body of *James Holloway*, then in his Cuſtody, to ſhew Cauſe why Execution ſhould not be awarded upon an Outlawry for High-Treaſon againſt him. The Keeper of *Newgate*, according to the Command of the Writ, brought him this Day to the Bar of the ſaid Court, where he was proceeded againſt in this Manner.

The Return of the Writ of Habeas Corpus *was firſt Read.*

Cl. of Cr. James Holloway, Hold up thy Hand. [*Which he did.* Thou haſt been Indicted in *London*, by the Name of *James Holloway*, late of *London*, Merchant, for High-Treaſon by thee committed, touching the King's Majeſty's Perſon, and the Government of this His Kingdom of *England*, and for not appearing and anſwering that Indictment, by due Proceſs of Law, upon the Indictment thou ſtandeſt Outlawed, and upon that Outlawry thou ſtandeſt Attainted of the ſame High-Treaſon; What haſt thou to ſay for thy ſelf why Execution ſhould not be awarded againſt thee upon that Attainder by this Court according to Law?

Holloway. My Lord, I have been a great while Abſent, and know not what hath been done in this Matter, or proved againſt me.

Sir *George Jefferies.* *L. C. J.* Yes, you have been Abſent ſo long it ſeems, that you now ſtand Outlawed, and thereby Attainted of High-Treaſon; there is nothing now remains with the Court, but only to make a Rule for your Execution.

Holloway. If an ingenuous Confeſſion of the Truth will merit the King's Pardon, then ſure I have done it.

L. C. J. For that Matter we are not to diſpoſe of the King's Mercy, he will diſpoſe of his own Mercy as he ſhall think fit. Is Mr. Attorney in the Hall?

Crier. Yes, my Lord, he is.

L. C. J. Then pray ſend for him.

Which was done, and in a little time after he came into Court.

L. C. J. Mr. Attorney, here is the Priſoner at the Bar, *Holloway.*

Sir *Robert Sawyer.* Mr. *At. Gen.* Yes, my Lord, I ſee he is. Sir *Samuel Aſtry*, have you the Record there?

Cl. of Cr. Yes, Sir.

L. C. J. It has been read to him, Mr. Attorney?

Mr. *At. Gen.* My Lord, I would know what he ſaith that Execution ſhould not be Awarded.

L. C. J. He talks of Diſcoveries and Confeſſions which we, you know, cannot take any notice of; Aſk him again.

Cl. of Cr. Haſt thou any thing to ſay for thy ſelf why Execution ſhould not be awarded againſt thee, according to Law?

Holloway. My Lord, I know not what hath been proved againſt me, but I have made ſuch an ingenuous Confeſſion to His Majeſty of what I know——

L. C. J. Proved againſt you? You are Outlawed upon an Indictment for High-Treaſon; what can you ſay againſt the Court's awarding Execution.

Mr. *At. Gen.* My Lord, has he heard the Indictment upon which the Outlawry was grounded?

Cl. of Cr. No, Sir, only the Subſtance was told him, That he was Indicted of High-Treaſon, and Outlawed for it, and ſtands Attainted by that Outlawry.

Mr. *At. Gen.* If your Lordſhip pleaſe, the Indictment may be read to him, that he may underſtand what it is, and may not go blind to Execution.

L. C J. Ay, Mr. Attorney, if you pleaſe, let it be ſo.

Cl. of Cr. Reads. The Jurors being Sworn to enquire for our Sovereign Lord the King, and the Body of the County of the City of *London*, upon their Oaths preſent, That———[*And ſo the whole Indictment was read.*

Cl. of Cr. That is the Indictment, Mr. Attorney, and upon this he is Outlawed.

Mr. *At. Gen.* And ſo ſtands Attainted. What hath he to ſay to it?

L. C. J. Ay, why ſhould we not award Execution againſt him according to Law?

Cl. of Cr. Have you any Thing to ſay?

Holloway. I have ſaid what I have to ſay.

Mr. *At. Gen.* Pray what is that, my Lord, that he has ſaid, for I was not here?

Holloway. I beg his Majeſty's Mercy.

Mr. *At. Gen.* If the King be ſo gracious as to admit you to your Trial, can you make a Defence againſt the Indictment? Have you any Thing to ſay that you can defend yourſelf by, if the King do admit you to be tried, and that is a Mercy and a Grace, for at Law you are gone.

L. C. J. It is ſo, indeed, Mr. Attorney; if you will on the King's Behalf indulge him ſo far, as I ſuppoſe you have authority from the King to Conſent unto, that if he has a mind to try the Fact, and can defend himſelf, he ſhall have that Liberty, that is a great Mercy, I aſſure you.

Mr. *At. Gen.* My Lord, That is the only reaſon why I did cauſe the Indictment to be read that he might hear it; that ſuppoſing he were not Outlawed, but that were out of the Caſe, if he hath any Thing to ſay that could defend him from it, the King would not exclude him, but admit him to his Trial, and extend his Mercy ſo far to him.

L. C. J. Mr. Attorney, it is exceeding well. Now you underſtand what is ſaid by the King's Attorney, you have heard the Indictment read, it is an Indictment of High-Treaſon, that you with other falſe Traitors, *Hone*, *Rumball*, the *Goodenough*'s, and the reſt, did Conſpire the Death of the King. Now though you are in Law actually Attainted, as much as if you had been Tried and Convicted, and received Judgment of Death upon that Conviction, to all intents and purpoſes, and there is no more for the Court to do, but to award Execution upon this Attainder, and be dealt with as a falſe Traitor. Yet however in as much as you have heard the Indictment read, if you think you have any thing to ſay that would ſatisfy the World, or a Jury, that you are not Guilty of what you are Indicted and Accuſed of, it ſeems the King is pleaſed to ſignify His Gracious Intention towards you by Mr. Attorney-General, that he is contented to wave that other Part the Attainder by Outlawry, and you ſhall have the Liberty to try it, if you think you can defend your ſelf.

Holloway. My Lord, I cannot undertake to defend my ſelf, for I have confeſſed before His Majeſty that I am Guilty of many Things in that Indictment, and I throw my ſelf on the King's Mercy.

L. C. J. Then he Confeſſeth it, and will not undertake to defend himſelf; as for the King's Mercy, that we muſt leave to His Majeſty, who is the Diſpenſer of his own Grace, we are to execute his Juſtice, and muſt give a Rule accordingly.

Mr. Juſt. *Withins.* But I hope every Body here takes notice of his open Confeſſion, when he might try it if he would. Surely none but will believe this Conſpiracy now, after what this Man hath owned.

L. C. J. We were well enough ſatisfied about it before, and ſo was every honeſt Man, I dare ſay.

Mr. Juſt. *Withins.* Yet, perhaps, though he ſaith it, and others have confeſſed it, and the Evidence hath been made Publick, there are many People that ſay they will not believe it.

L. C. J. We do not mightily concern our ſelves what the People ſay. I am ſure not one of all that were concerned in this Conſpiracy, have dared to deny it abſolutely, though ſome have been prevailed upon by ill Advice, to prevaricate about it, and ſhuffle it off. But none of them have had the Confidence abſolutely to deny the Truth of the Fact, notwithſtanding all the Calumnies and Reproaches caſt upon the Government, and all the Arts that have been made uſe of to ſtifle it.

Mr. Juſt. *Withins.* My Lord, I ſpeak it the rather, becauſe we ſee what work Sir *Samuel Barnardiſton* has made of it in his Letters, where he calls it a Sham-Plot, and ſays it is loſt, except it be found among the Abhorrers and Addreſſers.

L. C. J. But now the Plot is found among the Conſpirators and Traitors, he may write to his Correſpondents in the Country the next time: It is found among the Reformers of Government and Religion, that can ſwallow all Things, that can kill Kings and levy War, and do the worſt of Villainies to promote Religion and Reformation, as they call it.—Let us think of ſome convenient Day, and give ſuch Order that the Sheriffs ſee Execution done according to Law.

Mr. *At. Gen.* You muſt firſt pronounce the Judgment, my Lord.

Mr. Juſt. *Withins.* It is never pronounced in ſuch a Caſe, Mr. Attorney.

L. C. J. No, we only give a Rule for Execution, the Outlawry is the Judgment, and that is upon the Record already.

Cl. of Cr. Yes, my Lord, we always enter it ſo.

L. C. J. Captain *Richardſon*, I think, *Wedneſdays* and *Fridays* are your uſual Execution Days in *London*, are they not?

Capt. *Richardſon.* Yes, my Lord, either of them.

L. C. J. Then *Wedneſday* ſeven-night.

Capt. *Richardſon.* Does your Lordſhip appoint *Wedneſday* next?

L. C. J. No, that will be too quick; *Wedneſday* ſeven-night.

Capt. *Richardſon.* What Day your Lordſhip pleaſeth, I ſuppoſe I ſhall have a Rule.

Cl. of Cr. You ſhall have a Rule, and an *Habeas Corpus* to deliver him, as the Courſe is.

L. C. J. In the mean time take your Priſoner back again.

And accordingly he was carried back to Newgate.

After which he ſent the following Petition to the King for Mercy.

Moſt great and gracious Sovereign,

I Your Majeſty's now cloſe Priſoner in Newgate, *and condemn'd for my Crimes, which I have confeſſed myſelf guilty of, in a Paper of my own writing, delivered to the Right Honourable the Lords of your Majeſty's Privy Council, in which is a true and faithful Account of all that I know concerning the late Plot, with the manner how I was drawn into it, and the Reaſons why I did not come in at the firſt Diſcovery, and caſt myſelf at your Majeſty's Feet for Mercy, which I hope your Majeſty hath peruſed, and find no Cauſe to think I have reſerved any thing undiſcovered; for when I was firſt taken, I reſolved to declare the whole Truth, and nothing but the Truth, which I have here done, and will own to be true, before any that ſhall offer to contradict it, or ſay there was no Plot; and if any thing more occurs to my Memory, will not fail to declare it. I have now nothing to ſay for myſelf why I ſhould not be executed according to Condemnation, but do moſt humbly proſtrate myſelf at your Majeſty's Feet for Mercy, acknowledging my hearty Sorrow for all that I have been guilty of, and remain in hopes, that that Fountain of Mercy which hath ſo abundantly flowed from your Majeſty's ſacred Breaſt ever ſince your happy Reſtauration is not yet dry, but that there are ſome Drops left for me, which if I may be ſo happy as to obtain, I ſhall always whilſt I live, endeavour to approve myſelf your Majeſty's moſt true and faithful Subject; and, I hope, will anſwer the Ends of a Pardon. Which that I may ſo do, and for your Majeſty's long Life, peaceable and happy Reign, ſhall ever Pray, &c.*

JAMES HOLLOWAY.

His Petition being rejected, he was Executed *April* 30th, 1684.

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[*] Burnet's *Hiſtory of his own Times, Vol.* I. p. 576. *He had fled to the* Weſt-Indies, *where he was taken, and ſent over to* England.

Being come to the Place of Execution, he ſpoke to the Sheriffs as follows:

Holloway. MAY I have Liberty, Sir, to ſpeak what I deſire to ſpeak?

Sheriff Daniel. Yes, Sir, you may. What you have, I ſuppoſe, will be by way of Diſcovery to the World of what you are brought here to die for.

Holloway. You have my Paper, Captain.

Capt. *Richardſon.* Yes.

Sheriff Daniel. Have it you about you?

Capt. *Richardſon.* I have it in my Pocket.

Sheriff Daniel. Shew it him (which he did.) Is it your own Hand-writing?

Holloway. Yes, Sir.

Sheriff Daniel. Is it your own Hand-writing?

Holloway. That is my own Hand-writing——A Diſcovery of what I knew I made to his Majeſty, but a great many People think that I have not diſcovered what I knew, but I have diſcovered what I knew of the Plot, and I am heartily ſorry I was any way concerned in that way, as to the endeavouring any thing by arms. I do think ſeveral things have been ill-managed in *England*, there have been many things done againſt the King and the Kingdom's Intereſt, and I wiſh the King was well ſatisfied of it, and that a Courſe might be taken to prevent it. And, I think, one way to prevent plotting (according to my weak Capacity) is, that his Majeſty would be pleaſed to call a Parliament, and paſs an Act of Oblivion for all Plotters whatſoever. There was a damnable Popiſh Plot, and I look upon the ſtifling of that, to be the only Cauſe that any Man did any thing in this. Had all the Popiſh Plotters been—

Sheriff Daniel. By the way, Sir, how do you know it was ſtifled?

Holloway. Sir, we have known that the laws could not be ſuffered againſt them, and the Parliament could not be ſuffered in the Proſecution of them. I wiſh the King would conſult his own Safety, and the Safety of the Nation, and that an Act of Oblivion might paſs, for I believe there are many concerned; and that there might be an end put to all News-mongers, that write into the Country Letters of News; I look upon that to do the King and the Kingdom more Hurt than any thing elſe.

Capt. *Richardſon.* Mr. *Holloway*, I beg one thing, have you diſcovered all? I deſire you would declare thoſe (you did not name their Names) that, if Occaſion were, would be ready; but that you had not ſpoke to them. *Wade* and others were to maintain their Poſts.

Holloway. No, Sir, I had not ſpoke to them.

Capt. *Richardſon.* This you did ſay.

Holloway. Yes, Sir.

Sheriff Daniel. And that you promiſed a Number of Men in this Deſign.

Holloway. Promiſe it! I did propoſe I might do it.

Capt. *Richardſon.* What do you know of the contriving the Buſineſs of the *Rye*, for lopping, or taking off the King and the Duke?

Holloway. I was not with them till after the Time a good while; till about a Month or ſix Weeks after the Time I was not acquainted with them. I looked upon it as a Buſineſs not likely to take any Effect at all, for I could never find above five that were concerned in it.

Sheriff Daſhwood. But did they not tell you at ſome one time they were concerned in ſuch a Thing?

Holloway. Yes, Sir, they did ſo. They told me more than once.

Sheriff Daniel. In *Briſtol*, or in *London*?

Holloway. In *London*.

Sheriff Daſhwood. Mr. *Holloway*, you have a Liberty to ſay any thing you have a mind to.

Holloway. I have little to ſay more upon that Account. I am ſorry I was concerned in that way, to do ſuch a thing as to take up arms. But as to the Deſign I had, and the Plot I was acquainted with, it was nothing againſt the King's Life.

Capt. *Richardſon.* Sure it was the ſame Plot, while there was a Deſign to ſeize the King, and take him from evil Company.

Holloway. We had a Deſign to take them that were guilty of the Popiſh Plot, and were Enemies to the Privileges and Liberties of the Subject.

Sheriff Daniel. And as a thing that tended to that, the King was to be ſeized till he conſented to theſe things.

Holloway. It was ſuppoſed by them that told me of it, that many things that have been acted of late, were done contrary to the King's Knowledge, and that the King knew nothing of it; and I am perfectly of that belief too, that many things are done contrary to the King's Knowledge. And I was farther informed, that if the King could be but once acquainted with theſe things, that the King would preſently come into thoſe that ſhould ſtand for his Aſſiſtance, and give up all thoſe Offenders to Juſtice.

Sheriff Daniel. And if you could not tell him otherwiſe, you would take him firſt, and tell him afterwards.

Holloway. You may interpret it how you pleaſe, Sir. It was that all ſuch Differences amongſt the King's Subjects might be prevented for the future; for I believe there were never greater Differences in the Spirits of Men, though ſome think the Times were never better than now, becauſe all things go according to their own Humour; but I ſuppoſe many in the Nation are ſatisfied that many things have been done contrary to Law.

Sheriff Daniel. Was it fit you ſhould ſet up for a Politician, or a Stateſman?

Holloway. No, Sir, I did not take it upon me; that was for the Scribblers that write News. I do not reckon myſelf worthy to direct in ſuch a Caſe.

Sheriff Daniel. Mr. *Holloway*, you don't remember to give the Names of thoſe Perſons you ſpake of.

Holloway. It would be a Folly for me, Sir, to go to abuſe Men that I did not know whether they would be concerned or no.

Sheriff Daſhwood. But that there were Perſons that would be concerned, you ſay.

Holloway. That we did think ſo; and if we ſhould name every one that we thought would be concerned, I believe we might name three Parts of *London*.

Capt. *Richardſon.* I hope you are in a great Miſtake there.

Holloway. For that Deſign, I believe above three Parts would be for. I never had any Deſign but for the King and the Kingdom's Intereſt; though I know that Deſign that was carried on by *Rumſey* and *Weſt* was a very heinous Deſign, but I believe they would not have found many in *England* that would have been for it; I never heard of above five for it.

Sheriff Daniel. Were you acquainted with *Walcot*?

Holloway. I was in his Company once or twice, but I heard him ſpeak againſt it.

Sheriff Daniel. Was you ever with my Lord *Shaftſbury*?

Holloway. No, Sir, I was never with my Lord *Shaftſbury* but once, and that was about a Deſign I was promoting in Parliament, about the Linen-Manufacture.

Sheriff Daniel. Was you ever with my Lord of *Eſſex*?

Holloway. Never but once, and that was about that Buſineſs.

Sheriff Daniel. Were you ever acquainted with my Lord *Ruſſel*?

Holloway. Never with him at all.

Sheriff Daſhwood. You were ſaying you knew the Names of Five; who were they that were to be concerned in that Matter?

Holloway. I have declared them to his Majeſty.

Sheriff Daniel. Did you know *Ferguſon*?

Holloway. I knew him, Sir, but I know *Ferguſon* to be againſt any ſuch Deſign, and, indeed, we did look upon it to be a Thing that would come to no Effect.

Sheriff Daſhwood. Do you mean the ſeizing the King?

Holloway. I mean the Inſurrection.

Sheriff Daniel. Did you know of any Money raiſed or promiſed to buy arms?

Holloway. No, Sir, never. I heard of Money that was to be raiſed, but I did not know who was to raiſe it.

Sheriff Daniel. It is not our Buſineſs to aſk you many Queſtions, if you have any thing to ſay you may.

Sheriff Daſhwood. If you have any thing to ſay for the Diſcharge of your Conſcience, do it.

Holloway. I thank God, I never had any Deſign againſt his Majeſty's Perſon; what I intended was only for the Good of the King and Kingdom, and I did take it that it would have been ſo; and I am very ſorry that any things ſhould have gone contrary to Law, as they have done; and I hope care will be taken to prevent any ſuch things for the future.

Sheriff Daſhwood. The King hath ſaid he will govern according to Law; he hath done ſo, and will do ſo.

Holloway. That I leave to the Judgment of all; many know better than I.

Sheriff Daniel. Such gloſſy Pretences are very ſtrange, to carry on ſuch a Deſign, for the ſeizing a Sovereign Prince, that you have ſworn Allegiance to, or ought to have done.

Holloway. I think thoſe Pretences, the Grounds that we went upon, were no gloſſy Pretences at all.

Sheriff Daniel. I think it is, that when Things are not done as you would have them, you muſt immediately rebel.

Holloway. No, Sir, not that; we did not deſign a Rebellion.

Sheriff Daniel. The ſeizing the King is certainly a Rebellion, and one of the higheſt Steps of Rebellion.

Holloway. We ſay this, that all Ways were uſed againſt Proteſtants; ſeveral Sham-Plots; but no Juſtice could be had againſt Papiſts.

Sheriff Daniel. Several of them were executed here.

Holloway. There were ſome executed at firſt, Sir; but afterwards, when ſo many great Perſons came to be concerned, there was nothing could be had againſt them.

Sheriff Daniel. There were mighty Searches made about *London*, for that great Number of Papiſts talked on.

Holloway. There were a great many ſeized, Sir; but what became of them?

Sheriff Daniel. Generally tried, and brought to condign Puniſhment. You would not have had every *Iriſhman* believed againſt honeſt Men. Some People were called Papiſts in Maſquerade.

Holloway. *Iriſhmen* were believed againſt Proteſtants, after they had turned about, and had ſworn againſt Papiſts, they were believed then. It was well obſerved, that while the *Iriſh* Evidences did continue in the firſt Diſcourſe of the Popiſh Plot, and in the firſt Evidence, then, it is well known, they were ſlighted, and all cried out againſt; but when they came to ſwear againſt Proteſtants, then Things were altered preſently.

Sheriff Daſhwood. I pray God all Mens Eyes may be opened to ſee what is done.

Holloway. I would not adviſe any one to go that Way to work, to do any thing by Force of Arms; and I wiſh the King's Eyes may be opened, that he may ſee his Enemies from his Friends; and I think he hath Cauſe to look for them near his Home.

Sheriff Daſhwood. Have you any Papers to deliver?

Holloway. I have no other Papers; what Paper I wrote the Council had. I did write a Paper, that it might be ſome Satisfaction to the Opinions of People of what I knew, that care might be taken to prevent other Opinions, if there were an Error. And that Paper the Council had; though they took it very heinouſly of me that I ſhould preſume to write ſuch a Thing. I looked upon it that I could not do more for the King, than to acquaint him of what I knew, that if they were miſinformed, there might be care taken to alter the Opinion.

Sheriff Daſhwood. You have delivered no Paper to your Wife, or to any Friends?

Holloway. That, I ſuppoſe, is well known to the Goaler.

Sheriff Daſhwood. You know better than any Body whether you have or not. You may ſay Ay, or No.

Holloway. I could not be admitted to write any, for I could not have Pen and Ink to write any thing but this.

Sheriff Daſhwood. And you have not delivered any Paper?

Holloway. I have written to ſome Friends. I know it is ſuppoſed that I had delivered a Copy of that Paper that the Council had; and, I think if it had been known publickly, it would have done no great Hurt.

Sheriff Daniel. You ſpeak of ſeveral Peoples Opinions; what do you mean?

Holloway. As concerning the Times, Sir, the Management of Affairs.

Sheriff Daniel. Pray, Sir, under what Denomination do you reckon yourſelf?

Holloway. I reckon myſelf a Proteſtant.

Sheriff Daniel. Of what Sort? Of the Church of *England*, or of the Diſſenters from them?

Holloway. I am not a Diſſenter from the Church of *England*.

Sheriff Daniel. Nor joined with them.

Holloway. Nor joined with them altogether. But I thought that if any good had been deſigned for England, that I had done enough to merit a Pardon; for I had wrote ſo much of truth, and was ſo fair and plain in it, that I thought it would have merited a Pardon, if any Good were deſigned. If I could have diſcovered more, that had been for the King and Kingdom's Intereſt, I would have done it; for I did not do it raſhly, but conſidered of it ſome time before I gave it in. I hope it will be a ſatisfaction that there was ſuch a Plot; what other Men's Opinions might be of it I cannot tell, but leave every one to their own judgment. It was feared that arbitrary Government and Popery was deſigned: and truly, I think, at this preſent time, by what I can underſtand, that there is little better deſigned.

Capt. *Richardſon.* This is reflecting upon the Government.

Sheriff Daſhwood. This is not fit.

Holloway. I ſay it is contrary to the King's Knowledge, Sir.

Sheriff Daniel, Sir, we have neither a Reprieve nor a Pardon for you.

Holloway. I do not expect it, Sir; if Truth and Plainneſs would have merited a Pardon, I might have had it.

Capt. *Richardſon.* The King is the beſt Judge of his own Mercy.

Holloway. Had the law been executed againſt Popiſh Offenders, I had never been concerned in any Plot.

Capt. *Richardſon.* You know the King was very earneſt in that, to have the Laws put in execution againſt them; and that he moved it to the Parliament to have it done. Have you any thing elſe to ſay that more nearly concerns you?

Holloway. I wiſh I could have been any otherwiſe ſerviceable to the King and Kingdom, before I left them. I ſhould have been very willing; and it was always my Deſign to promote the King and Kingdom's Intereſt more than my own.

Sheriff Daniel. Well, Sir, you lay ſome things very well; but others ill.

Holloway. What I ſay, Sir, I leave to People's Judgments; if I am miſtaken, I hope they will be otherwiſe.

Sheriff Daniel. Well, Sir, have you any thing farther to ſay?

Holloway. No, Sir.

Sheriff Daſhwood. I ſuppoſe you uſed to keep a Meeting, or Club, at *Briſtol*, with ſeveral there.

Holloway. I know ſome have repreſented a Club very bad in *Briſtol.* A Club we had about the choice of Parliament-men.

Sheriff Daniel. The Horſe-ſhoe Club.

Sheriff Daſhwood. Or the Mermaid-Club.

Holloway. The Horſe-ſhoe Club it was only for carrying on the Election of Parliament-men. If all ſuch things ſhould be called Clubs, there were greater Clubs kept by another party.

Sheriff Daniel. Well, Sir, you had beſt fit yourſelf for death, you have no long time to live.

Then he opened his Bible, and read *Pſalm* 62, and part of two chapters in the *Hebrews*, and afterwards aſked the Sheriffs if he might have Liberty to pray; which being granted, he prayed.

(Then being aſked, Who was in Council at the delivery of the Letter? He anſwered,)

Holloway. There was the Duke of *York*, and the Lord-Keeper; I did not deliver it: It was intercepted in a Letter, or given in. I did not know how it was; for I have been kept, ſo that I had not the Liberty to ſee any Friend, till Yeſterday in the Afternoon I had the Liberty of two or three Hours with my Wife.

Capt. *Richardſon.* You had your Wife with you before, and your Siſter, and ſome other Friends.

Holloway. But that was never without a Keeper, Sir.

Capt. *Richardſon.* You are in the right.

Sheriff Daniel. They do not uſe to allow Men under your Circumſtances ſuch a Liberty as you talk of.

Holloway. I pray God that no other People may concern themſelves with public Affairs, out of their own way; and that the Scriblers might be put down, for they do more Hurt to the Kingdom than any thing elſe.

Sheriff Daniel. Have you any thing more to ſay?

Holloway. No, Sir.

Sheriff Daniel. Then God have Mercy upon your Soul.

Soon after which he was turned off.

The PAPER *delivered to the Sheriffs.*

Apr. 26, 1684.

TO ſtop the Mouths, *&c.* of all Pamphleteers, and News-Scribblers, who have done more Prejudice to his Majeſty and Kingdoms, by their impudent endeavours to ſham all Plots, and to fill the Country with falſe News, than they will ever be able to retrieve; and to ſatisfy all I leave behind me, I thought good to draw up a ſhort Account of what I knew of the late *Proteſtant Plot*, how I came to be concerned, what induced me to it, and how far I was concerned, alſo my now Opinion of it, *&c.*

It was my Unhappineſs to have too public a Spirit for one of my Capacity, and as ſoon as I came to be a free Man, to prefer the King's and Kingdom's Intereſt before my own; for having ſome Knowledge in Linen-cloth, upon the Prohibitions of *French* Linens, *&c.* I thought the Linen-Manufacture might be brought to Perfection in *England*, to the very great Advantage of the Poor, and ſo made ſome Trial of it in *Warwickſhire*, where I employed ſome Hundreds of Poor, and in about eighteen Months time brought it to ſuch Perfection, that I could make as good Cloth as the *French*, and ſo well imitate it, that few could know it from *French*; but the Prohibition being not ſo ſtrict as at firſt ſeemed to be, *French* Cloth was brought in cheaper than ever; ſo that I was forced to leave off with Loſs; but conſidering, that by an Act of Parliament for its Encouragement, in a Method I had thought upon, it might be ſettled much to the King's and Kingdom's Intereſt, advancing the King's Revenue near two hundred thouſand Pounds a Year, and would have employed about eighty thouſand poor People, and about forty thouſand Acres of Land; concerning which I was (about *June* 1680) brought acquainted with the Earl of *Eſſex*, to whom I related the Buſineſs, who immediately had me to the (now) Earl of *Rocheſter*, then Preſident of the Treaſury, and he had me to Sir *Edward Deering*, who (when they underſtood my Propoſals) gave me ſomething to bear my Charges, and encouraged me to attend the next Parliament, to endeavour the Promotion thereof; which I did almoſt the whole Seſſions, and brought to the Speaker's Chamber ſome of the Cloth, which was compared with *French*, &c. and the Deſign well approved of by all; which brought me into too large Acquaintance for one of my Capacity; from whom I heard too much (as hath proved, for my Intereſt) of things that were then in hand concerning the *Popiſh Plot*, which prevented the doing any thing as to my Deſign. So after that I was encouraged to attend the *Oxford* Parliament, which I did; and was deſired there by the Earl of *Clarendon*, and others, to prepare a Bill; the Heads of which I drew up, though it proved to no purpoſe but my Ruin. I wiſh my King and Country might reap the Benefit of what I pay ſo dear for. The more I knew during my Attendance on thoſe two Parliaments, the more I was deſirous to know; and did by ſome Scriblers and News-mongers conſtantly know moſt public Affairs that were acted, which they undertook to repreſent according to their own Humour; many Actions being repreſented very illegal, much againſt the Proteſtant Intereſt, in favour of Papiſts, *&c.* ſhamming the *Popiſh Plot*, and laying Sham Plots upon Proteſtants; abuſing the Rights and Privileges of the Subject, the Truth of which I leave to the Judgment of all; but hearing many ſuch like things, was eaſily prevailed with to be concerned in the Plot, according as it was propoſed to me, viz.

About *July* 1682, I met with a Perſon who then being come from *London*, gave me a relation at large concerning the Election of Sheriffs that had been in *June*, the manner of which is well known to all; he repreſented it to me as a very illegal Action, and that there was a deviliſh Deſign of the Papiſts in it, to cut off the King's Friends, the ſtirring Men in both the laſt Parliaments, as to the Proſecution of the *Popiſh Plot*, who I always took to be both the King's and the Nation's Friends. That there were Witneſſes had been ready a long time to ſwear againſt them, but they could not get Jurors to believe them, but now they had, by force of Arms, *&c.* got Sheriffs who will find Juries to believe them, and ſo hang them up at their pleaſure; that there was none but bad Council about the King, who kept all ill Actions from his Knowledge; and if they proceeded to ſwear *North* and *Rich* at *Michaelmas*, and to chooſe Lord-Mayor, as they had done Sheriffs, the Proteſtant Gentry were reſolved (naming ſome) to remedy what was deſigned, by an inſurrection in ſeveral parts of *England*; and, if poſſible, to get the King off from his evil Council, and bring all Popiſh Offenders to Juſtice, ſaying, That they were ſure that, when the King knew the Occaſion of their riſing, he would preſently give up all Offenders, and come in to them. That it ſhould begin in *November* in *London*, *Briſtol*, *Exeter*, *Taunton*, *Cheſter*, *York*, *Newcaſtle*; and that we ſhould hear more of it in a Month's time; therefore deſired we might conſider how it might be managed in *Briſtol*; which we did; and concluded, that *Briſtol*, with about 350 Men, might be eaſily ſecured by a Surprize, without the Bloodſhed of one Man. About a Month after that, came the Perſon he mentioned we ſhould hear more by; but he could declare no more than the former did, only that the Deſign went on, and there would be timely notice given to all Parts; but we hear of nothing but Diſappointments and Delays, putting it off from time to time. In *April* I heard of another Deſign againſt the King, and Duke of *York*, as they were to come from *New-market*, ſome time in *March*; but when I enquired into that, found it was carried on by three or four; and never could hear the Names of above five that were for it. When I heard it, I declared my Abhorrence of any ſuch thing, and that I was confident none in our Parts would be for ſuch a baſe Action. After that, I enquired further into it, and could find, that although it was intended to be done ſix weeks before, that they had only a parcel of Arms ready, and that they had neither Men nor Horſes; but one ſaid if they could have raiſed 6 or 800*l.* to have bought Horſes, and alſo ſomething to encourage Men, they ſhould have found Men enough; ſo that I looked upon that only to be the Deſign of five or ſix Perſons, and no way likely to be acted; but the general Deſign for the Inſurrection was carried on by others; who, though they had made a great Stir in the Nation, trying the Inclinations of People, and had treated with the *Scots* and *Iriſh*, as I heard, who were to be ready at the ſame Time, yet were never come to any Reſolution, as to any Time or Method, before all was diſcovered; tho' they had been eleven Months contriving of it, from the Time I firſt heard of it. This, I hope, will be enough to ſatisfy all People that there was a Plot; I mention no Names here, having given his Majeſty a more large Account of what I knew of it, mentioning the Names of all that I knew concerned. The Arguments before mentioned, with many others to the ſame effect, not only ſoon prevailed with me, but made me indeed think it my Duty to do what I could for my King and Country's ſafety; being then fully perſuaded, that not only Popery, but Arbitrary Government was intended; not then conſidering, (as I have ſince conſidered) how much Bloodſhed it might have cauſed in the Nation; for then I thought all would have been ended in little time, ſuppoſing things to be as to me was reported. But I do now declare my hearty Sorrow or my yielding thereto, and acting therein; (though I can ſafely ſay I was not for taking the King's Life, but wholly for his Preſervation) yet am ſatisfied that it might have cauſed very much Bloodſhed in the Nation, and am glad it did not take effect. Alſo I declare, that I am ſatisfied it was a very great Sin againſt God, not only in diſtruſting his Providence, but in offering to take the Work out of his Hand, who knows the Hearts, Thoughts and Actions of all, though never ſo ſecret; whoſe Mercy and Pardon I moſt humbly beg, and truſt ſhall have; and in confidence thereof, (through the Merits of the Blood of our Lord and Saviour Chriſt Jeſus) can willingly die. Nothing (next to this and all other my Sins) is more Trouble to me than the Thoughts how (dying) I ſhall leave all my Relations and Friends in Trouble concerning my worldly Affairs; being, by reaſon of this unhappy Concern, not in ſuch a Poſture as they ſhould be: So that by my Death, my deareſt Friends will not only be left in great Trouble, but lie under the Cenſure of many, none underſtanding how Things are; my Wife and Children ruined, and my Creditors great Loſers; whereas might I have been thought worthy to live, I ſhould have taken the Trouble off them all, and hope in time to have paid every Man to a Penny; for I can from my Heart ſay, that as I hope for Salvation, I never deſigned any Fraud to any Man, but to pay every Man his Due. I have heard that ſome ſhould ſay, I took up Money at Intereſt to carry on the Plot; which I diſown;

for I never was at any Charge therein more than common Expences, nor never heard of any Money raiſed upon that Account; though I heard of Ten thouſand Pounds that were to be raiſed for the *Scots*, but ſuppoſe it was not done. I bleſs God I am pretty well ſatisfied, and hope ſhall be fully, as to my future State, and can willingly leave the World; but upon the Account of my Friends and Creditors, conſidering the Condition they will be left in, could gladly have lived ſome Time, that I might have taken off that Scandal that I fear will be laid upon me when I am gone; but God knows my Heart, I am free, and always was from any Thoughts of Fraud or Deceit.

I am ſatisfied that all Means that could be thought on have been uſed to get as much out of me as poſſible, but had it not been My Reſolution to declare all that I knew concerning the Plot, and alſo to do what in me lay to prevent all plottings for the future, that there might be an End put to ſuch Heats, Differences, and Heart-burnings, that is, one againſt another; that his Majeſty and his Subjects might live in ſuch Love and Union, as ought to be between a Prince and his People, I had not wrote what I did; for I was never a Man to be wrought upon by Severity, and what I wrote was not without due Conſideration, being nothing but Truth. I do ſuppoſe, that making ſuch a full and large Confeſſion at firſt, and ſome Expreſſions that might be obſerv'd in my Letters which I perceive were intercepted, may cauſe ſome Thoughts that I ſtill reſerve ſome perſons undiſcover'd; but as to my Confeſſion, it was not raſhly done, I had had ſome Weeks at Sea to call Things to Mind, and as for Perſons, I gave a true Account, and of all Paſſages I could remember, though others do and may come into Mind. What I ſuppoſe was obſerved in my Letters, might be ſome fooliſh Expreſſions concerning ſome of my Acquaintance, and that I would betray no Friend, meaning, that no Severity ſhould cauſe me to accuſe any Friends falſly to ſave myſelf, although (if I had thought the accuſing of a Number of Perſons would have ſaved my Life, and had been one that would do any ſuch Thing to ſave Life) I had the moſt Cauſe of any Man; for when I firſt abſconded, thoſe in *Briſtol*, and elſewhere, that were my moſt intimate Acquaintance, refuſed to do any Thing for me; nay, would not receive Letters when I wrote to them, fearing they ſhould be found to hold Correſpondence with me. When I gave in my Confeſſion, I ſtood not upon Terms of a Pardon, being confident, if Truth would merit Mercy from the King, I ſhould have his Pardon, and that it was the only Way to gain Mercy with God. I find it already that People are paſſing their Cenſures upon me, ſome one Way, and ſome another, for my not pleading, and accepting of another Trial when it was offered, ſaying, that I confeſſed the whole Indictment; which I diſown; for I ſaid thus, What I was guilty of I had confeſſed to his Majeſty, and wholly depended upon his Mercy; beſides, I had ſome other Reaſons why I did not plead, which at preſent I conceal; and alſo why I did not ſpeak what I intended. More I may ſay at the Place of Execution, before I leave the World, which will be according as I find Things; but as to a Diſcovery of any more Perſons (I cannot) than has been already mentioned. Should I mention any whom I thought would have been concerned, I may much abuſe them, though I believe many Thouſand in the Nation would have appeared, for the Reaſons afore-mentioned, which cauſed me to be concerned. I doubt not, but ſeveral that were concerned, who are or may be cleared, for want of ſufficient Proof againſt 'em, or by his Majeſty's Mercy, will blame me for confeſſing what I knew; and not much grieve that I failed of a Pardon, or at my Death. But I repent not my Confeſſion; and could I diſcover more, would do it willingly, though I find no Mercy with Man.

JAMES HOLLOWAY.

CXXVII. *The Trial of* WILLIAM SACHEVERELL, *and Nineteen others, at the* King's-Bench, *for a* Riot *committed at* Nottingham, May 2, 1684. Paſchæ, 36 Car. II.

The Defendants having before pleaded Not Guilty, *were now brought to their Trial.*

Cl. of Crown. CALL the Defendants, *William Sacheverell*, Eſq; and others.

Mr. *Pollexfen.* We appear.

Cl. of Cr. Gardez voſtres Challenges. Swear Sir *Humphry Miller.*

Which was done, and the Twelve being ſworn to try the Cauſe, being Gentlemen of the County of *Kent*, were theſe following:

Sir *Humphry Miller*,
Sir *Henry Boſvile*,
William Lambert,
Charles Wheeler,
Richard Marſh,
Edward King,
Jury
Humphry Stiles,
Walter Hooper,
James Maſters,
Richard Britton,
Ralph Petly, and
Edward Bathurſt.

Cl. of Cr. Gentlemen of the Jury, hearken to the Record: 'Sir *Robert Sawyer*, Knt. his Majeſty's Attorney-General, has exhibited an Information in this Court againſt *William Sacheverell*, Eſq; *George Gregory*, Eſq; *Richard Manſfeild*, Eſq; *Henry Plumptree*, Eſq; *Charles Hutchinſon*, Eſq; *John Greaves*, Gent. *William Greaves*, Gent. *Samuel Richards*, *Robert Green*, *Francis Salmon*, *Arthur Richards*, *Ralph Bennet*, *John Sherwin*. *William Wilſon*, Clerk, *Samuel Smith*, *Thomas Trigg*, *Richard Smith*, *John Hoe*, *William Smith*, *Joſeph Turpin*, *Nathaniel Charnell*, *Humphry Barker*, and *Joſeph Aſtlin*; For that whereas the Twenty-ninth Day of *September*, in the Thirty-fourth Year of the King, there was an Aſſembly at *Nottingham*, in the County of the ſaid Town, duly ſummoned, and called, and met before *Gervas Wild*, then Mayor of the ſaid Town, for the electing and ſwearing of a Mayor of that Town, for the Execution of the Office of Mayor of that Town for the Year then next following, according to the Effect and Tenour of certain Letters Patent in that Behalf before granted, by our Sovereign Lord the King that now is, unto the Mayor, Aldermen, and Burgeſſes of the Town of *Nottingham*, in the County of the ſaid Town; and that in that Aſſembly the ſaid *Gervas*, being then, as aforeſaid, Mayor of the ſaid Town, began to proceed to ſuch Election; and that then and there the ſaid Mayor made, and cauſed to be made, a public Proclamation for the Departure of all Perſons from that Election that were unconcerned therein, and for keeping the King's Peace; and that nevertheleſs, they the ſaid *William Sacheverell*, and the Reſt of the Defendants, being Perſons well knowing the Premiſes, and unconcerned in that Election, but being ill-diſpoſed Perſons, and to diſquiet, moleſt, and trouble the Peace of our Lord the King that now is, and the common Tranquility of that Town, and the aforeſaid Election wholly to hinder, did during the Time of the ſaid Aſſembly, and after public Proclamation made as aforeſaid, *viz.* the ſaid Twenty-ninth Day of *September*, in the aforeſaid Thirty-fourth Year of this King, at the aforeſaid Town of *Nottingham*, in the County of the ſaid Town, with Force, and Arms, *&c.* riotouſly, routouſly, unlawfully, and ſeditiouſly, together with many other ill-diſpoſed Perſons, and Diſturbers of the Peace of our ſaid Lord the King, to the Number of Five Hundred Perſons, to the ſaid Attorney-General as yet unknown, aſſemble, congregate, and unite themſelves together, and themſelves together continued, to diſturb the Peace of our Lord the King that now is; and that then and there the ſaid *William Sacheverell*, and the other Defendants, the aforeſaid unlawful and ill diſpoſed Perſons ſo aſſembled, congregated and united then and there, with Force and Arms, *&c.* riotouſly, routouſly, unlawfully, tumultuouſly, and ſeditiouſly, by the Space of ſeven Hours, to diſturb the Peace of our ſaid Lord the King, and to continue the ſaid Riot, did excite, move, perſuade, and procure, and then and there, by the whole Time aforeſaid, made, and cauſed, and excited to be made, great Rumours, Clamours, terrible Shouts, and unuſual Noiſes; and then and there, with Force and Arms, *&c.* riotouſly, routouſly, unlawfully, and ſeditiouſly one Mace, being the Enſign of Office to the Sheriffs of the County aforeſaid belonging, from one *John Malin*, the ſaid *John Malin* being then one of the Sheriffs of the Town and County of the Town of *Nottingham*, againſt the Will of the aforeſaid *John Malin*, took, had, carried away, and detained, to the inciting of great Danger, and moving of Tumults, and Effuſion of much Blood, to the great Terror, Diſquiet, and Fear of all the Liege Subjects of our ſaid Lord the King, to the Evil Example of all others in like Caſe offending, and againſt the Peace of our ſaid Lord the King, that now is, his Crown and Dignity. To this Information all the Defendants but *Richard Manſfeild* and *Henry Plumptre*, have pleaded Not Guilty, and for Trial put themſelves on the Country. But the Defendants have alledged that the Inhabitants of the Town and County of the Town of *Nottingham* ought not to be drawn out of the ſaid County, and that the County of *Kent* is the next County to the County of the Town of *Nottingham*, and therefore have prayed that a Jury of the County of *Kent* might try the Iſſue; to which the King's Attorney has agreed: And you being Freeholders of the County of *Kent*, and returned, and ſworn to try this Cauſe, your Charge is to enquire whether the Defendants, or any of them, are Guilty of the Offence in this Information, or Not Guilty, and if you find them, or any of them Guilty, you are to ſay ſo; and if you find them, or any of them Not Guilty, you are to ſay ſo; and hear your Evidence.

Then Proclamation was made for Evidence in the uſual Manner.

Mr. *Holloway.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, This is an Information preferred by Mr. Attorney-General, againſt *William Sacheverell* and others, for a moſt notorious Riot: And it ſets forth, that upon the Twenty-ninth of *September*, in the Thirty-fourth Year of this King, at the Town of *Nottingham* there was an Aſſembly duly ſummoned before *Gervas Wild*, then Mayor of the ſaid Town, for the Election and Swearing of a new Mayor of the ſaid Town for the Year enſuing: That the Mayor began to proceed to Election, and made Proclamation for all Perſons to depart that were not concerned in the Election, That the Defendants being no way concerned in the Election, but being ill diſpoſed Perſons, to diſturb the Peace of that Place, and ſet the Town together by the Ears, did in a riotous manner aſſemble themſelves with many other ill-diſpoſed Perſons, to the number of five hundred, and continued in their Riot for the Space of Seven Hours, with a great deal of Noiſe and Tumult, and with Force and Arms did riotouſly carry away and detain a Mace from one *John Malin*, then one of the Sheriffs of the Town, againſt his Will, to the great Terror of his Majeſty's Subjects, to the evil Example of all others in the like Caſe offending, and againſt the King's Peace. If we prove all or any of theſe Defendants who have pleaded Not Guilty, to be Guilty, you will find them ſo.

Mr. *Recorder.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Cauſe for the King, This is an Information againſt a matter of twenty-one Perſons for being in a notorious Riot, and continuing in it for two Days together. If it pleaſe you, Mr.

Sacheverell he is in the Front of them, and he and ſeven more of theſe Defendants, very conſiderable Perſons, were not at all concerned either by any old Charter, or by the new Charter in this Election, but mere Strangers, and yet they muſt needs come on purpoſe to inflame and ſet on the others. I ſhall name them that were not concerned in the Election, *William Sacheverell*, *George Gregory*, *Charles Hutchinſon*, *William Wilſon*, Clerk, *Joſeph Turpin*, *Nathaniel Charnell*, *Humphry Barker*, and *Joſeph Aſtlin*. Theſe Perſons, Gentlemen, had no manner of pretence to be at this Place upon the account of an Election. The matter of it was thus: *Michaelmas*-Day, 1682, the Mayor that then was *Gervas Wild*, was at his own Houſe, with ſome of his Brethren, in order to go to Church that Morning, according to the uſual Cuſtom of that Place, at the Day of Election; but having notice that there was a Charter coming down, and expected every moment, truly the other Side, Mr. *Sacheverell*, and the reſt that were there, for he was preſent himſelf, were very zealous to go to Church very early, but I believe not ſo much out of zeal to go to Church, but more to come to a ſpeedy Election, if poſſible, before the new Charter came down. The Mayor at the ſame time deſired them to ſtay a little, but could not prevail, and thereupon they go to Church, and while they were there, the new Charter comes, and then the Mayor having got the new Charter, goes into the Council-Hall, and ſends for the Books from the Clerk, who was then in the Church, and he came and brought them. When they came to the Council-Hall, the Mayor was proceeding in order to have himſelf ſworn upon this new Charter, and they having ſome notice what was doing at the Council-Hall, were willing to make all the haſte they could out of the Church, and came down to the Council-Hall: And when they came there, the Mayor tells them his buſineſs, that he had a new Charter, and was going to be ſworn according to the King's expreſs Commiſſion; and *Sacheverell* ſtands up in the front of them, and ſays, we will have no new Charter; we will have no ſuch Mayor as you would have; but we will have a *Greaves* Mayor, and that was the Outcry; a *Greaves* Mayor, a *Greaves* Mayor; to that degree, that all the Mayor and Sheriffs could do, could not pacify them. But thus they made a Tumult and an Uproar, by the help of a Parſon, *Wilſon*, who I believe will give you an account by and by, what he had to do there, and how he was concerned in the Election of a Mayor. At length the Mayor was forced to withdraw, and did go down out of the Council-Chamber into the Common-Hall, where he got himſelf ſworn; and by that time he had got that done, they came out of the Council-Chamber into the Common-Hall, and acquaint the Mayor, that truly they had choſen *Greaves* Mayor in the Council-Chamber, and required him to ſwear him. Mr. Mayor ſaid, they had nothing to do to chooſe a Mayor, it was no Election, and they would proceed to Election according to the Charter, he having now taken the oath. This raiſed the Tumult higher, and now there were got together about five hundred Perſons, ſo that at laſt ſome of the Aldermen that attended the Mayor, were fain to withdraw for fear of Miſchief, the tumult was ſo outrageous, ſome crying out the new Charter was not worth one Groat, others crying out, No new Charter, and all crying, A *Greaves*, a *Greaves*; and this they ſtood upon. The Mayor withdrew to his own Houſe, with much ado he got out of the Hall, and when he was got thither, there he proceeds to an Election, and while he was doing that, truly they having gotten one of the Maces away by Force, they went to the Croſs, and there they proclaimed their Mayor, with great Shoutings and Outcries, rejoicing for the new Mayor they had gotten, and the new Charter that they have defeated. While they were there, the Mayor having choſen another according to the new Charter, regularly came down, and proclaimed that Mayor at the Market-Place, as is uſual in ſuch caſes, and made proclamation that the reſt ſhould depart; but inſtead of that they withſtood him, and would not ſuffer the Cryer to make Proclamation, that any body could hear him; but a great Riot they committed in an outrageous manner, reſiſting Anthority, defying it, and deſpiſing it. After this, this would not ſatisfy them yet, but the next Day, being Market-Day, they muſt proclaim their Mayor again, which is a Practice never known upon any Election; but at the open Market there before all the People they proclaim him, with great Rejoicings for the new Mayor they had gotten, and wiſhing the People to ſtand by them: And for their parts, if they had not right done them now, they did not doubt but to meet with a Parliament that ſhould do them right. In this great Diſorder was this Town by this Tumult, which was thus headed by Perſons of Emimency, and popular Perſons, who helping to carry on ſuch a Faction as this was, it was great Odds there had not been real Fighting, and Battle in good earneſt; but it did happen to be better appeaſed, and they went Home, but ever ſince their whole buſineſs has been to uphold this Power, and attend him up and down conſtantly ſince as their Mayor, and oppoſing the Authority of the Mayor by the King's new Charter. We will call our Evidence, my Lord, and they will every one of them ſpeak to the ſeveral Defendants, and the ſeveral Parts of this famous Riot; and when we have done this, we hope you will be ſatisfied, Gentlemen, to find them Guilty.

Mr. North. Will your Lordſhip pleaſe to ſpare me a word of the ſame Side for the King? My Lord, this is a Proceeding of an extraordinary Nature, and if not taken notice of, it will be thought there is no Law in *England*; for it is a Method to have Authorities queſtioned, not in *Weſtminſter Hall* by the Rules of Law and Juſtice, but decided by Noiſe and Rabble, and going together by the Ears. My Lord, this Surrender of the old Charter, and the ſending down of a new one, was not ſecret, but well known, and that occaſioned the great Congregation of theſe Gentlemen that had nothing to do in the Town, and ſo it was a premeditated Deſign to give a Diſturbance in the Place, in Oppoſition and Affront to his Majeſty's Charter. My Lord, I do ſuppoſe they very well knew that Matters of that nature were properly determinable in a way of Law; and if the Mayor had no Authority by the new Charter to do what he did, they knew very well how to queſtion him, and them that joined with him, for it: But they did not think that ſo effectual for their Purpoſe; they did not think fit to take that Courſe, but rather choſe to proceed in the Methods of Diſturbance, and that occaſioned all that Mr. Serjeant has opened. The firſt Step they made, my Lord, was to appear in the Town-Hall, there to make an Election of their own, and there to cry up a Mayor of their own chooſing, without the Authority of the preſent Mayor; which was all irregular from the beginning to the end. When they had done that, then this Mayor muſt be proclaimed up and down the Town upon Market-days, when the Country came in, with great Noiſe and great Rabble. We ſhall call thoſe that were preſent, who will give you an Account of the Proceedings of all this Matter, and ſhew it to be a thing ſo enormous, that there has not been the like, nor can be paralleled by any thing, unleſs by that not far off the Common-Hall at *London*.

Mr. Jones. My Lord, if the Perſons that had been concerned in Election (for the Town of *Nottingham* conſiſts of particular Perſons that are to come and act in this Matter of the Election of the Mayor) had been the only Perſons that were met in this Aſſembly, poſſibly it might have had ſome ſort of Mitigation and Excuſe; but, my Lord, here are mere Foreigners, People that have nothing to do in the matter nor in the Corporation, but Gentlemen that come out of the Country with an armed Multitude, and for them to come where they had nothing to do, and make ſuch a Riot, in ſuch an outrageous tumultuous manner, is the next Act I know to the higheſt Rebellion. For they knew very well what the Matter was, by the Cries of a *Greaves*, a *Greaves*, no *Toplady*, no *Toplady*, no new Charter, and you ſee who were the Abettors. In truth, the Inſurrection ſpread ſo far, that if the Duke of *Newcaſtle*, who is Lord Lieutenant of the County, had not come with Force, they had gone downright to Blows, and been all in Blood. And if ſuch Proceedings be not publickly puniſhed, the King's Authority, and the Peace of Corporations can never be preſerved. We ſhall call our Witneſſes to prove it; *Sacheverell* was the Captain of them, and we ſhall begin with him.

Mr. Powis. My Lord, we ſhall make it ſhort, for we ſhall ſhew without meddling with the old Charter or the new Charter, it was a Riot.

*Mr. Recorder***. Swear Mr. *Wild*, Mr. *Edge*, and Mr. *Hall*.

Mr. Pollexfen. There will be one thing neceſſary to be ſettled in this caſe, my Lord, concerning the Witneſſes; they call *Wild* and other Perſons, they are Members of the new Corporation, and we object againſt them as being Witneſſes in this Caſe, and our Objection, my Lord, ariſes thus: It will appear in this Caſe, that there is a Controverſy betwixt the old Charter and Corporation, and this, that the Information is brought upon the new Corporation, whether the old Corporation be ſtill in being, or was at this time in being; and whether this new Charter be a good Charter in Law: The Matter depends both in this Court and in Chancery; a *Scire Facias* is there brought againſt the new Charter, and a *Quo Warranto* here againſt the old. Now, my Lord, it will ſo fall out, that if ſo be the new Charter, upon which this Information is founded, be not good in Law, we think it goes with the Defendants. So now they call the Members that claim under the new Corporation to be Witneſſes, and thereby they would have a Privilege by their own Teſtimony, to maintain their Intereſt in the new Charter, which we think by Law they ought not to do.

L. C. J. Look you, Mr. *Pollexfen*, though it is not fit for us to interrupt Gentlemen when they are making Harangues, yet we muſt tell you, we do not take notice much one way or other of the difference between the old Charter and the new, for our Buſineſs is to mind that which is before us upon the Information, and we muſt ſet by all things that are not before us, and not take notice of them one way or other. Do you think we intend to try the new Charter or the old Charter upon an Information for a Riot? If in caſe there were a Doubt whether the old one be gone or ſtill in being, take the proper way for the determining thoſe things. You ſhall not think to be let in upon the Buſineſs of a Riot, to try the validity of your Charter; if you have a *Scire Facias* to repeal the new Charter, or if you have a *Quo Warranto* againſt the old Charter, in God's name go on in a regular way. But do you tell me that ſuppoſing the new Charter is an ill Charter, and the old one a good one, that right or wrong is to be tried by Rabble and Noiſe? No, the buſineſs we are to try whether here were a Riot Committed by theſe Defendants againſt the Public Peace or no.

Mr. Holt. My Lord, we are upon the point of Exception to the Witneſſes; and they open it themſelves that there is ſuch a Controverſy in the Town.

*L. C. J.** We will not try that Controverſy here at this Time.

Mr. Holt. My Lord, the Information is Special, it is grounded upon the new Charter, and ſets forth that this *Wild* being Mayor by virtue of this new Charter———

L. C. J. He was Mayor *de facto*, and I do not know but he was ſo *de Jure*. But ſuppoſe a man do take upon himſelf to be Mayor, and it may be according to the Rules of Law he is not Mayor, the way to know whether he be Mayor or no by Law, is to take the Methods and Proceedings that the Law has appointed; but not by Tumults and Riots, we muſt have none of thoſe Things to decide Controverſies, there muſt be nothing of plucking out one another's Throats.

Mr. Juſt. Withins. Pray, Mr. *Holt*, If the King ſends down a Charter to make a Corporation, ſhall all the People riſe in a Body againſt it? No, ſatisfy yourſelf for that; if the King ſends down his Charter, the People ſhan't fly in the Face of them that bring it. It is not come to that yet, nor I hope never ſhall.

L. C. J. No, no, for the Matter of Right, we are not upon this Information to determine whether the old Charter be in being, or the new one be in being; but for that you muſt go according to the Rules of Law, and take your regular Courſe; and I'll tell you by the way, it is not he that has the moſt Company, that has always the greateſt Right: We all know very well, and I have been in a place that has been hinted at the Bar, and there indeed he that had moſt Noiſe, had always moſt Right, as they

thought

* Sir Thomas Jenner.

* Sir George Jefferies.

thought; but we will have none of theſe things, go on for your Right in a regular Way in God's Name; we muſt keep to the Buſineſs before us, this Riot.

Mr. *Pollexfen.* My Lord, we are in a Place now where we hope ſuch things will not be, and we deſire to have Right ſettled by Law.

Mr. Recorder. Swear Mr. *Wild.* [*Which was done.*] Pray give my Lord and the Jury an Account what happened at *Nottingham* upon *Michaelmas-Day* (82.) Tell the whole Matter of it.

Wild. My Lord, and you Gentlemen of the Jury, I was then Mayor when this Buſineſs happened: When the King's New Charter came down, as ſoon as it came to my hands, I went ſtraight to the Town-Hall, thinking to be ſworn by the New Charter, that ſo I might be capable of ſwearing others in their rooms that were turned out. When I came there, I deſired Alderman *Parker* and *Rippon* to go for Alderman *Edge*, who was at the Church, that we might be ſworn regularly, he being Town-Clerk, who ſent me word that he would not come; but in ſome little time afterwards he came, with a great many Perſons with him, as Mr. *Sacheverell*, and a great many others that had no buſineſs there.

Mr. Recorder. Pray name as many of them as you can.

Wild. Mr. *Sacheverell*, Mr. *Hutchinſon*, Mr. *Plumptre*, Mr. *George Gregory*, Mr. *Green*, Mr. *Sherwin*, Sir *Thomas Parkyns.*

Mr. *Pollexfen.* He is not named here.

Mr. Recorder. Don't diſturb him, pray let him go on.

Mr. *Pollexfen.* We only take notice he names ſome that are not down in the Information.

L. C. J. Can't you be contented, what if he does name others that are not there, What hurt is that to you?

Wild. There were ſeveral others, but theſe Gentlemen did not belong to the Town, nor had no Buſineſs there; ſome of them were no Burgeſſes, and they that were Burgeſſes had no Votes there. Sir, as ſoon as theſe Gentlemen came into Court, I was a little amazed to ſee ſo many Gentlemen; I took the King's New Charter out of the Box, and Alderman *Rippon* took it by one ſide and I by the other. Gentlemen, ſaid I here is the King's New Charter, which he has been pleaſed to grant to the Town of *Nottingham*; and ſaid I, Mr. Serjeant *Bigland*, will you be pleaſed to caſt your Eye upon it, and ſatisfy theſe Gentlemen whether it be a New Charter, and what are the Contents of it? Sir, ſays he, do you aſk my Opinion as Recorder, or as a Counſel? Says I, I aſk your Opinion as a Friend. Then ſays he, I won't give you my Opinion. Then ſaid I, Mr. Alderman *Edge*, will you look upon it, and give your Opinion, it is your Duty to read it as Town-Clerk. Sir, ſays he, I know what I was by the Old Charter, but I don't know what I am by the New. Says I, it is your Duty ſo to do. No, ſays he, I will not; ſo, my Lord, and Gentlemen of the Jury, the reſt of the People that were in the Room, cried out, No New Charter, No New Charter. Then ſpoke Mr. *Sacheverell*, Sir, ſays he, this is not our Buſineſs here now, we come here for the Election of a Mayor by the Old Charter. Sir, ſaid I, I know not any Buſineſs you have here, nor a great many Gentlemen that are here; it would better become you to be in another place. Sir, ſays he, Will you proceed to Election or no? Sir, ſays I, I have a great deal more to do before I can proceed to Election; I was to be ſworn myſelf, and to ſwear half a dozen, before I could proceed to Election, in the room of thoſe that were turned out, to make them capable of electing. And ſo they cried, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor. Then they cried, Mr. Alderman *Edge*, take your Book, and proceed to Election. Who are you for, Mr. Mayor? Said I, you cannot proceed to any Election without my Conſent, and I diſclaim it; and ſo, Gentlemen, farewell. My Lord, that was in the Council-Houſe next to the Guildhall.

L. C. J. What Day was that?

Wild. It was *Friday*, *Michaelmas-Day*, (82.)

L. C. J. Well, go on.

Wild. So, my Lord, I adjourn'd the Court into the Guildhall, which was a Room adjoining to that where this Matter happened, and we ſat a while upon the Bench, and made a little Speech to the Burgeſſes of the Town, and told them the King had granted a New Charter, and if they pleaſed to be ſilent, they ſhould hear it read. This was after I was ſworn; for as ſoon as I came there, they gave me my Oath, and ſwore me Mayor by the New Charter. We commanded Silence there ſeveral times, but the Burgeſſes were very tumultuous, and it was occaſioned, as I believe, my Lord, by the coming in of two Gentlemen, Mr. *Gregory* and Mr. *Hutchinſon*, who came to tell me, the Gentlemen in the other Room had elected Mr. *Greaves* Mayor, and deſired me to come and hear him ſworn. Said I, they can't elect without my Conſent, and I diſclaim it, I will have nothing to do in the Buſineſs. With that the Burgeſſes began to be ſo extraordinary tumultuous and outrageous, and keep ſuch a Noiſe and a Stir, that we were afraid they would have plucked us off the Bench; inſomuch, as one that was by, my Brother *Parker*, whiſpered me in the Ear, ſays he, Will you ſtay here to be knocked on the Head? I told him, I hoped there was no Danger of that. We commanded Silence again and again, for the reading of the New Charter; and there was an honeſt Gentleman in Court, one Mr. *Bawd*, a Barriſter at Law, that took it and read it very diſtinctly to the Burgeſſes and the Company, as far as they would give him leave. I made Proclamation for Silence, and keeping the Peace divers times, and for all, that had no Buſineſs there, to depart; but they were ſo outrageous, that Alderman *Parker* went away: He was afraid of his Life, as he told me. I ſtaid ſome little time after Alderman *Parker* went away; but finding there was nothing to be done for the Noiſe, I adjourned the Court to my own Houſe, and did all the reſt of the Buſineſs there, electing and ſwearing the Mayor and other Officers. My Lord, preſently after I was come to my own Houſe, comes Mr. *Charles Hutchinſon*, Mr. *George Gregory*, Mr. *Samuel Richards*, and Mr. *Arthur Riccards*; and they came very impudently and ſaucily to demand the Mace. They ſaid they were ſent to demand the Mace: Said I, I think you have nothing to do with it.

L. C. J. Were they concerned in the Election by the Old Charter?

Wild. No, my Lyrd, they were not by the Old nor New, nor none at all. Said they, Will you pleaſe to give us your Anſwer, whether you will give us the Mace or no? Said I, I received it from a very good Authority; I received it by the King's Authority, and to the King's Authority I will give it again. Said they, Is that all the Anſwer you will give us? Yes, ſaid I, that is my Anſwer: So they went away. After we had ſworn all the Men that were in the New Charter, we went to the Election of a New Mayor, and we choſe Mr. *Toplady*; and when we had choſe him, we went to proclaim him, as the uſual Manner was, and proclaim'd him at the Market-Croſs, the Week-Day-Croſs, as we call it; and as we were proclaiming our New Mayor, there comes *Sherwin* and *Green*, with a great many more, about forty I believe, or thereabouts; and as it grew towards Night, they ſhouted and threw up their Hats, and we thought they would have run in upon us, and they cried out, No New Charter; No New Charter, a *Greaves* Mayor, a *Greaves* Mayor.

Mr. *North.* What became of the Mace?—*Wild.* I kept it.

L. C. J. What is this Gentleman's Name?

Mr. *North.* Mr. *Wild*: He was Mayor then. Have you no more to ſay, Sir?

Mr. Juſt. *Withins.* Pray who was at the Head of all this Rabble? Who was the Chief of them?

Wild. I believe if Mr. *Sacheverell* had not been there, and thoſe other Gentlemen, we had had no Diſturbance.

Mr. *Pollexfen.* Pray, Sir, let me aſk you, had theſe Gentlemen their Swords on?—*Wild.* Yes.

Mr. Juſt. *Withins.* Did they abet and countenance the Tumult?

Wild. Yes, they did abet it.

Mr. *North.* Did any Body ſtrike or threaten?—*Wild.* There are ſome in Court can tell you ſomething of that, I know nothing of it.

L. C. J. I would know of you how many Perſons were preſent at this time when this Tumult was. Pray name as many of them as you can. You have named *Sacheverell*, *Gregory*, and *Hutchinſon* for the firſt Part: You have named about the Buſineſs of the Mace, *Samuel Richards* and *Arthur Riccards.*

Wild. And Mr. *Green* and Mr. *Sherwin* were there at the Market-Croſs.

L. C. J. Who elſe?

Mr. *Powis.* Was Mr. *John Greaves* there?—*Wild.* Yes:

Mr. *Powis.* Was *William Greaves* there?—*Wild.* Yes.

Mr. *Powis.* Was *Ralph Bennet* there?—*Wild.* He was there.

Mr. *Powis.* Was *William Wilſon* there?

Wild. I can ſay nothing to him.

L. C. J. Was *Samuel Smith* there?—*Wild.* Yes.

L. C. J. Was *Thomas Trig* there?—*Wild.* Yes.

L. C. J. Was *Richard Smith* there?—*Wild.* Yes, He was there too.

L. C. J. Was *John Hoe* there?—*Wild.* Yes.

L. C. J. Was *William Smith* there?—*Wild.* Yes.

L. C. J. Was *Joſeph Turpin* there?

Wild. He was in the Hall throwing up his Hat, but I did not ſee him in the Council-Houſe.

L. C. J. Did he abet the Tumult?

Wild. Yes, he cried out, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor.

L. C. J. Was *Nathaniel Charnell* there?—*Wild.* Yes.

L. C. J. Was *Humphry Barker* there?

Wild. I can ſay nothing to him.

L. C. J. Was *Joſeph Aſtlin* there?

Wild. I can ſay nothing to him neither.

L. C. J. Then theſe Three you ſay nothing to; *William Wilſon*, *Humphry Barker*, and *Joſeph Aſtlin.*

Mr. *North.* Pray, Sir, favour me with one Word; I would aſk you this Queſtion: Was there any Proclamation made by your Order to have thoſe depart that had no Buſineſs?

Wild. My Lord, I did order it ſo; and I think the Serjeant is in Court; I ſent him into the other Room, and did order him to make Proclamation; he will give you an Account of that.

Mr. Recorder. How came it about they were got to Church before you came from your own Houſe? Pray tell us what you ſaid to them before they went to Church. Were there any of them before that at your Houſe that Morning, and what did you ſay to them?

Wild. May it pleaſe your Lordſhip, my Lord, and Gentlemen of the Jury, the New Charter was not come till ſomething late in the Day; they had been at my Houſe about Eight or Nine of the Clock, to have me go with them to Church, and they were impatient of ſtaying, but I perſuaded them to ſtay; for, ſaid I, we ſhall have a New Charter by and by. Some of them were my Friends, and I ſpake to them to perſuade the reſt to ſtay. I did perſuade them to ſtay a great while, and went out from them, and came to them again. At laſt News was brought me, that the New Charter was within the Limits of the Town, (for we had a Spy at the Top of the Houſes) and that half a ſcore were come with it; ſo I went to Alderman *Edge*, and told that now the New Charter was come within the Bounds of the Town. When they heard me ſay ſo, they cried, Away, away, let us go to Church, and they ſaid Mr. *Sacheverell* was in the Street, and ſo they followed him to Church. Away they went from my Houſe; but a little before they went, I ſaid to them, Gentlemen, if you will give but a little time, the Charter will be here in a Quarter of an Hour or leſs, therefore pray be pleaſed to ſtay and ſee it before you go, for I tell you I muſt act by the New Charter, and not by the Old.

Mr. Juſt. *Withins.* When you ordered them to make Proclamation of Silence, how did they behave themſelves?

Wild. They were as tumultuous as ever they were.

Mr. Juſt. *Holloway.* If you have any thing more, ſpeak your full Knowledge of it.

Wild. My Lord, I did perceive a great deal of Danger there was; I knew not how it would be the next Day, we were afraid of being knock'd on the Head, ſo I diſpatched a Meſſenger on *Saturday* to my Lord Duke of *Newcaſtle*, that he would pleaſe to come to us and aſſiſt us, for I believed we were in a great deal of Danger. My Lord came to us on *Saturday* Night, and ſtaid there till we were pretty quiet again.

Mr. Recorder. What did they do on *Saturday*, the next Day?

Wild. It was the Day of proclaiming the Mayor at the other Croſs, the Malt-Croſs, it being upon the Market-Day, when the Country People came in, that ſo they may be ſatisfied who is Mayor of the Town.

Mr. Recorder. Did they proclaim their Mayor that Day?--*Wild.* Yes.

Mr. Recorder. Pray ſpeak out, and tell how that was?

Mr. Juſt. *Holloway.* Pray, Mr. Mayor, by the Cuſtom and Uſage of your Corporation, is the Mayor proclaimed any other Day than when he is elected?

Wild. Yes, the next Day after, to ſatisfy the Country who are Mayor and Sheriffs of the Town.

L. C. J. Were both the Mayors proclaim'd that Day?

Wild. Yes, after we had proclaim'd our Mayor, preſently there came a great many Gentlemen, and proclaimed their Mayor.

L. C. J. Name them who they were?

Wild. My Lord, I was not ſo near them, as to tell particularly who they were; but they threw up their Hats, and made a great Noiſe: There are enough in Court can tell who they were.

Mr. *Lovell.* Pray, Mr. Mayor, will you tell us by whoſe Authority and Direction this Aſſembly was called?

Mr. *Thompſon.* Sir, he aſk'd you a plain Queſtion, pray anſwer it; by whoſe Direction was the Aſſembly called?

Wild. Sir, I do not know; they had no Summons from me.

Mr. *Holt.* Is it not uſual to meet of courſe, without Summons, on the Day of Election?

Wild. Never that I knew of without Summons; but our New Charter not being come, I durſt not give any Summons.

Mr. *Lovell.* Is it not uſual for the Burgeſſes to go and wait upon the Mayor to Church?

Wild. Yes, thoſe that are ſummoned; but not without Summons.

Mr. Juſt. *Withens.* Is it uſual that the Multitude ſhould make the Mayor go to Church before he has a mind to it?

Mr. *Lovell.* Did you make any Summons at all for that Meeting?

Wild. I ſent no Summons.

Mr. *Pollexfen.* 'Tis all laid in your Information, that the Aſſembly was ſummoned by you.

Wild. All that I ever ſent for, as I know, was Mr. Serjeant *Bigland.* There were two or three Gentlemen at my Houſe that aſk'd me to ſend for him, he having been Recorder by the Old Charter. Said I, if Mr. Serjeant *Bigland* has a mind to come, he may come if he will; ſo I ſent for him; but there were none of thoſe Gentlemen that I nam'd before, that I ſent for.

Mr. *Pollexfen.* I think you ſay that you went from the Council-Houſe, and afterwards went into the Hall, and there you were ſworn, and then you did proceed to read the Charter; pray, were any of the Defendants, or which of them, in the Hall?

Wild. Sir, I told you that Mr. *Gregory* and Mr. *Hutchinſon* came into the Hall, and Mr. *Charnell*, and Mr. *Turpin* were there in particular.

Mr. *Pollexfen.* What did Mr. *Gregory* and Mr. *Hutchinſon* do there?

Wild. They came, Sir, to deſire me to go into the Council-Houſe, for the Gentlemen had choſen *Greaves* Mayor, and deſir'd me to hear him ſworn.

Mr. *Pollexfen.* Was Mr. *Sacheverell*, or any there, but thoſe that you ſay came to tell you what they had done in the Council-Houſe?

Mr. *Holt.* Who ſtaid behind in the Council-Houſe?

Wild. All but thoſe that came out with me.

Mr. *Jones.* Pray, to ſatisfy them, tell them how far the Council-Houſe and the Hall ſtand at a diſtance: How far aſunder are they?

Wild. But juſt over the Door-Threſhold from one another.

Mr. *Jones.* Are they contiguous to one another?----*Wild.* Yes, Sir.

Mr. *Jones.* Can they come into the Council-Houſe, but they muſt go thro' the Hall?

Wild. No, no, they muſt come from the Hall firſt, and ſo go into the Council-Houſe.

Mr. *Pollexfen.* You were ſpeaking of ſome of the Company that had Swords by their Sides.

Wild. Yes, the Gentleman had.

Mr. *Stanhope.* Did you obſerve Mr. *Sacheverell* and Mr. *Gregory* had their Swords by their Sides?

Wild. Yes, to the beſt of my knowledge they had.

Mr. *Stanhope.* To the beſt of your knowledge; do you ſwear they had or no?

Mr. Recorder. Would you have him ſwear beyond his knowledge?

Mr. *Stanhope.* Had Mr. *Plumptre* a Sword when he came from Church to the Hall?

Wild. I ſee his Face among the reſt, but they were ſo many, I can't ſpeak particularly who had their Swords on, and who not; I believe they might have all their Swords on.

L. C. J. Pray, Sir, what do you mean by that Queſtion? *Plumptre* is not here before us.

Mr. *Stanhope.* He is in the Information.

L. C. J. You had as good aſk if Mr. *Peartree* was there.

Mr. *Stanhope.* My Lord, he ſaid he was there, and his Name is in the Information.

L. C. J. You had beſt aſk us, whether every Man in the Town had his Sword on. Let us keep to the thing before us, and not aſk ſuch impertinent idle Queſtions of People we have nothing to do with.

Mr. *Stanhope.* Is Mr. *Sacheverell* a Burgeſs of the Town?

Wild. Yes, he was a Burgeſs by the Old Charter; but tho' he was a Burgeſs, he was not one of the Electors. He had nothing to do there, nor Mr. *Gregory*, nor Mr. *Plumptre*.

Mr. *Fuller.* Who are the Electors?

Wild. The Electors are the Mayor, Aldermen, Coroners, and the reſt of the Council, by both Charters, and ſo he had nothing to do there.

Mr. Juſt. *Withens.* He was not concerned in the Corporation, but only a Gentleman-Burgeſs.

L. C. J. How long have you been of the Council of that Town?

Wild. I have been there a great while, a dozen or ſixteen Years.

L. C. J. Have you been preſent at the Election of Mayors before that time?——*Wild.* Every Year.

L. C. J. Who were the Perſons that uſed to come to elect Mayors before that time?

Wild. The Old Mayor, the Aldermen, the Council, the Coroners, and the Sheriffs, and thoſe that have been Sheriffs.

L. C. J. Did the other Burgeſſes uſe to come?----*Wild.* No.

L. C. J. Did Mr. *Sacheverell* and Mr. *Gregory* uſe to appear for the Election of Mayors before that time?

Wild. No, my Lord, they had no buſineſs there.

Mr. Recorder. At this time they had, it ſeems.

Wild. They made themſelves Buſineſs.

Mr. *North.* Pray ſwear *John Malin.* [*Which was done.*]

Mr. *Stanhope.* Mr. *Wild*, Pray be pleas'd to tell the Court how Mr. *Hutchinſon* expreſs'd his Saucineſs, for you are pleaſed to ſay, he and Mr. *Gregory* came ſaucily to you?

Wild. So he did, Sir, he came ſaucily to demand the Mace, which he had nothing to do withal.

L. C. J. Is Mr. *Hutchinſon* here?

Mr. *Stanhope.* Yes, he is: Did he demand it himſelf, pray, or did he tell you the other Mayor demanded it?

Wild. He came to demand it.

Mr. *Stanhope.* Did he tell you from whom he came?

Wild. He ſaid he came from Mr. *Greaves.*

Mr. *Stanhope.* Then he did not demand it for himſelf?

L. C. J. And if Mr. *Greaves* had demanded it, he had talked ſaucily; for it was not in his Power to demand it. If he had any right to it, there was a proper Place for him to apply to, if it were detained from him.

Mr. *Stanhope.* My Lord, with Submiſſion, I underſtand no ſuch great Saucineſs in it, to make a demand of an Enſign of Office.

L. C. J. But I ſay it was ſaucy, and I tell you you had been ſaucy if you had done it; for every Man that meddles out of his *Province* is ſaucy: You may carry that away with you among your other Obſervations. Every little prickear'd Fellow, I will warrant you, muſt go to diſpoſe of the Government. Let Mr. *Hutchinſon* and Mr. *Gregory* be as good Men as they will, they had better have ſtudied to have been quiet, and meddled with their own Buſineſs. And I will tell Mr. *Gregory ad Concilium ne accedas antequam voceris*, is a Rule, and ought to be obſerved: But we are wonderfully afraid, forſooth, to tell our Minds: No, I tell you it was ſaucy, and if you had gone upon that Errand, you had been ſaucy.

Mr. *Stanhope.* It may be I ſhould have known better than to have gone on ſuch an Errand.

L. C. J. So you would done well to do, and you ſhould know better than to aſk ſuch inſignificant impertinent Queſtions as you do. It was very ſaucy, I tell you; and if the beſt Man of your Party had gone, it had been ſaucy. You ſhall know our Minds, if you put us upon it, becauſe you are ſo big of it. We are come to a fine paſs, that every little prickear'd Fellow muſt come to demand Maces that are the Badges of Authority, and they muſt not be told, forſooth, that they are ſaucy.

Mr. *North.* Pray, Mr. *Malin*, will you give an Account what you know of this Matter?

L. C. J. We are trying People's Rights by Club-Law: but by Grace of God it ſhall not be ſo, ſo long as I ſit here.

Malin. I was then Sheriff at that time.

L. C. J. What time?

Malin. The time of the Riot, on *Michaelmas*-Day. I then being Sheriff went out to meet the Charter that was coming at that time, and I went as far as *Leiceſter*, and came back with it about Eleven of the Clock, as near as I can gueſs. I came with the Charter on the one ſide of him that brought it, and another that is concerned with us that we left behind, on the other ſide: I met theſe Gentlemen that ſtand in this Cauſe, I'll name them, if you pleaſe.

L. C. J. Do ſo.

Malin. Mr. *Sacheverell*, Mr. *Gregory*, Mr. *Hutchinſon*, Mr. *John Greaves*, Mr. *William Greaves*, *Samuel Richards*, *Robert Green*, *Francis Salmon*, *Arthur Riccards*, *Ralph Bennet*, *John Sherwin*, *Samuel Smith*, *Thomas Trig*, *William Smith*, *Joſeph Aſtlin*, and *Nathaniel Charnell*, I met theſe Men.

L. C. J. Where did you meet theſe Men?

Malin. At the Gate called *Rye-Smith-Gate.* They were a-coming with a great many more, and I ſuppoſe they went before; for I went forward to Mr. Mayor by the New Charter and by the Old Charter too, and I met him, and delivered the Charter to him, and ſtaid there, and the reſt of the Gentlemen that were concerned of our Party by the King's New Charter, and we went from thence to the Guildhall, and from thence we went into the Council-Houſe, and when we were in the Council-Houſe, Mr. Mayor ſent for Mr. *Edge* as Town-Clerk. They were gone then to Church, I was one that went. He was concerned in the New Charter both as Alderman and Town-Clerk. I went for him to come to ſee the Charter read, and that was all. I ſee them ſit in Order, in that Manner and Form as they had uſed to do before in former times, ready to go to the Election in the Veſtry after the way it uſed to be in, by the Old Charter, for I have been concern'd in Elections the former Way ſix or ſeven Years; but I never ſaw any Gentlemen in all that time appear there. There uſed to be none but the Mayor, the Aldermen, and the Clothing. There were none of theſe Gentlemen, as ever I ſaw, and I am of ſeven Years ſtanding, ſix I am ſure, I ſuppoſe ſeven, but only one Gentleman once, which was a Gentleman that Alderman *Edge* brought in to ſee the Formality, a Gentleman of the Six-Clerks Office, as I remember. This being done, I acquainted Mr. Alderman *Edge* with our Errand, but he did not come to us; but ſome time after we had ſat there in the Council-Houſe, theſe Gentlemen came with a great many, I know not how many Hundred came there, and when they ſaw the Mayor was going to read the New Charter, theſe Gentlemen began to ſtir; and when they came in, we wonder'd to ſee ſuch a Buſtle of thoſe that had nothing to do there: And the firſt thing that was ſaid, was ſpoke by Mr. *Sacheverell*, as I do remember, for I ſaw him there; We come here for to elect a Mayor by the Old Charter. Says Mr. Mayor then to them, I know no Buſineſs you have here Gentlemen, any of you; and upon that he made Proclamation, and told them they had nothing to do there, and he would have nothing to do with them. So then they called out for a Poll, and did proceed on as far as their Party went, and one or two of thoſe that were concerned in the new Charter, but not as to any of their Party. There was one of them, Mr. *Hardy*, that gave a Vote for Mr. *Edge*, and this was all. But they would not depart at all; but Mr. Mayor told them they had no buſineſs there, and he had nothing to ſay to them: And with that he took up the Mace, and went with ſome of the Aldermen into Guild-hall. And when they ſaw him going away, they began to cry out, and he had much-ado to eſcape, they were ſo buſy to keep him in there. And as they laid their Hands upon the Mace to ſtop it, the Serjeant got away with it, and went out with the Mayor. Then ſays Mr. *Sacheverell*, Stop the Books, ſtop the Books, two or three ſeveral times. With that there was one of the Coroners, Mr. *Woolhouſe*, laid hold on one of the Books; and whether there was any pulling or tugging, I cannot tell; but I ſuppoſe ſome of the Books were ſtopped.

Mr. *Powis.* Then what was done as to the Mace that belonged to you as Sheriff?

Malin. I was crouded out, and I could not lay hands on my Mace; but the Mace lay upon the Board, and was left there among them: And I was crouded out, and followed Mr. Mayor, for there was no Quietneſs there, unleſs you would ſtay to be knocked on the Head.

Mr. *Powis.* What became of the Mace?

Malin. I ſent the Serjeant for it, and he told me he demanded it, and they would not let him have it.

L. C. J. But ſpeak your own Knowledge, not what another told you.

Malin. I came in afterwards there; when he told me he had been there, and laid his Hand upon it, and they reſcued it from him, and he could not have it, I went in myſelf, and demanded the Mace of the Gentlemen. There was Mr. *Salmon*, Mr. *Richards*, Mr. *Arthur Riccards*; there were four of them that told me they had as much right to the Mace as I had. Gentlemen, ſays I, that is ſtrange, I am by your Charter Sheriff ſtill, there is no body elected in my room, and our uſual Way is to deliver our Maces, you know, in another Place, and not to reſcue them away, and detain them by Violence. Likewiſe the Mace was a thing that I paid for; I was ſo much Money out of Pocket upon it; for that is our uſual Way, it being bought lately, every Sheriff lays down ſuch a Sum, and loſes Ten Shillings by it at the Year's end. I told them then too I was Sheriff by the King's new Grant, and therefore the Mace belonged to me.

Mr. *Powis.* What is that *Arthur Riccards?*

Malin. An Attorney at Law.

Mr. *Powis.* He is none of the Aldermen, is he?----*Malin.* No, no.

Mr. *Powis.* What is *Salmon?*

Malin. He is a Feltmonger, or a Glover; he makes Gloves.

Mr. *Powis.* What had he to do there? Was he one of the Aldermen?

Malin. He was one of the old Council. And there was one *Bennet* too.

Mr. *Powis.* What is *Richards?*

Malin. He is a Bookbinder. He was one of the old Council. He was Coroner.

Mr. *Powis.* What did you ſay of *Bennet?*

Malin. *Ralph Bennet* was one that told me he had as much Right to the Mace as I.

Mr. Recorder. Well, go on to what was done the next Day, the Market-Day, *Saturday*.

Malin. I can't ſay much to that; for I was with Mr. Mayor making Proclamation of thoſe of that were by the new Charter, but I did not ſee them proclaim any thing.

Mr. Recorder. Was you by when Proclamation was made?

Malin. I was by when we were all proclaimed, but not when they were; but then——

L. C. J. Brother, let him go on to tell us what happened on the *Friday*.

Malin. Then Mr. Alderman *Wild*, who was the Mayor, when he came out thence, went into the Guildhall, where there were Abundance of Burgeſſes gathered together; and ſeeing them ſo unquiet, he was ſatisfying them as far as he could; ſays he, if you will hear, you ſhall have the Charter read, either into *Engliſh*, or as it is in *Latin*, and then you will ſee that none of your Privileges are diminiſhed from you, but increaſed rather: And he was about to read it, and ſhewed the Broad Seal to them; when in comes Mr. *Hutchinſon* and Mr. *Gregory*, to deſire, or requeſt, or command, or ſomething, Mr. Mayor to come into the Council-Houſe; they told him they had choſen *Greaves* Mayor, and he was to come to hear him ſworn. With that the Burgeſſes that had been quieted before, and was ſo civil as to hearken, and were about to hear the new Charter read, flung up their Hats, and cried out, No new Charter, a *Greaves* Mayor, a *Greaves* Mayor. Then Alderman *Parker* durſt not ſtay any longer; ſays he, I won't ſtay to be knocked on the head. Then every one was frighted, and the Mayor took up the Mace and ran away.

Mr. Recorder. How many might there be in the Hall?

Malin. I believe three or four hundred.

Mr. Recorder. Did they reſtore the Mace to you?

Malin. They came the next Day, and would have tender'd me Money for the Mace.

Mr. Recorder. What did you ſay to them?

Malin. I told them, I knew no right they had to the Mace, and I would take no Money for it. It was one *Rayner* that came and tender'd me Money for it.

Mr. Juſt. *Holloway.* Pray, Sir, let me aſk you, in the electing of your Sheriffs, do the Sheriffs return the Mace; or can any body require the Mace before the Goal is turned over?

Malin. Yes, my Lord, the Goal may not be turned over in a Month; but the Enſigns of Authority are delivered to them preſently after they are ſworn.

Mr. *Holt.* Pray, Mr. *Malin*, do you know which of theſe Defendants were there at that time when there was toſſing and throwing up of their Caps, as you ſay?

Malin. A great many of them were in the Council-Houſe; they had taken that Room to themſelves, and thruſt us out, and none of them came into the Hall but Mr. *Hutchinſon* and Mr. *Gregory*; and the Burgeſſes were very quiet till they came and demanded Mr. *Wild* to come and hear their Mayor ſworn.

Mr. *Holt.* How long did Mr. *Gregory* and Mr. *Hutchinſon* ſtay in the Hall?

Malin. I do not know; they ſtaid ſo long as as to demand the Mayor to come.

Mr. *Holt.* Did they carry themſelves peaceably and civilly while they were there?

L. C. J. What had they to do there? I aſk you that, Mr. *Holt*; and in caſe you have a mind to have ſome Queſtions aſked and anſwered, I'll put you in mind of a Caſe of a parcel of Apprentices in *London*, that were met together about pulling down ſome Houſes in *Moorfields:* And in caſe you aſk me another Queſtion, I can tell you the Reſolution and Opinion of all the Judges about that Caſe. There is Law for recovering every Man's Right, but Club-Law is not the way to determine Right.

Mr. Recorder. Swear Mr. *Rippon.* [*Which was done.*]

L. C. J. You know what became of ſome of thoſe Apprentices, Mr. *Holt*.

Mr. *Jennings.* Mr. *Rippon*, pray will you tell the Court what you know of this Riot at *Nottingham?*

Rippon. Upon *Michaelmas*-Day, (82,) about Eleven of the Clock, the Charter came to Town; I was then with Mr. Mayor, Mr. *Wild*, ſo we went ſtraight away to the Hall forthwith, and we deſired that he would be ſworn by Mr. *Beverley* that was Steward. No, ſays he, I have no mind to it, till Mr. *Edge*, that was Town-Clerk, came to do it according to his Office; ſo he deſired me and Alderman *Parker* to go to the Church to deſire him to come and do his Office. We did ſo, and ſpake to Mr. *Edge:* Says he, if they will pleaſe to come hither, well and good, I ſhall not concern myſelf any further: Then, ſaid we, will you give us the Books that concern us; they are there, ſaid he, what would you have more? Nay, ſaid I, I am ſatisfied; ſo we came away. As ſoon as we came back to the Hall, we told him the Meſſage that Mr. *Edge* had ſent; ſo Mr. *Wymondſell* that was Deputy-Recorder, was reading the Charter. Says Mr. Mayor, if you pleaſe, I will be ſworn, and proceed to Election. Preſently comes a great Company, Mr. *Sacheverell*, Mr. *Hutchinſon*, and a great many; if you pleaſe to give me leave to look upon my Paper I can tell you; there was *William Sacheverell*, Eſq; *George Gregory*, Eſq; *Charles Hutchinſon*, Eſq; *John Greaves*, Gent. *William Greaves*, Gent. *Samuel Richards*, Gent. *Robert Green*, Gent. *Francis Salmon*, Gent. *Arthur Riccards*, Gent. *Ralph Bennet*, Gent. *John Shervin*, Gent. *William Wilſon*; I don't know, I muſt beg your Pardon, I cannot ſpeak particularly to him; *Samuel Smith*, *Thomas Trigg*, *Richard Smith*, *John Hoe*, *William Smith*, *Joſeph Turpin*, Gent. *Nath. Charnell:* I cannot ſay any thing of *Humphry Barker*, but there was *Joſeph Aſtlin*, Taylor. Theſe Gentlemen came in with Swords by their Sides, ſeveral of them really to the terrifying of thoſe that were there; I was very much afraid myſelf. So Mr. Mayor looked upon Mr. *Edge*, and ſays he, Mr. Alderman *Edge*, will you take the Charter, and read it, for the ſatisfaction of yourſelf and theſe Gentlemen? Says Mr. *Edge*, I do not know what I am by that Charter, whether I am any thing or not; I know what I am by the old Charter. Says Mr. *Sacheverell*, that is not our Buſineſs at preſent, we come to elect a Mayor by the old Charter; and very hot they were, and called out to Election, to Election, *Salmon* and theſe Fellows; ſo that Mr. Mayor could not be heard, and to Election they went; and I aſked Mr. *Wild*, who was then Mayor, who he was for? Says he, I do not underſtand by what Authority ſome of theſe Gentlemen come here: they are excluded by the old Charter, and I think it were better for you to be elſewhere: They then aſked who he was for? Says he, I am for none: Then they aſked Alderman *Parker*, and he ſaid the ſame; and when we ſee they would have nothing done but that, we withdrew into the Hall, and fell upon ſwearing the Mayor. We ſwore him, and juſt finiſhed the Oath, and the People were very ſilent, and he drew out the Charter, and ſhewed the Broad-Seal, and ſaid, Here is the King's New Charter, I am very confident none of your Immunities and your Privileges you are deprived of: and there being ſome little ſtir, ſaid I, Pray be quiet and ſilent, while you hear it read; at laſt they were very ſilent and quiet, and we thought it would have been a very fair Buſineſs; when in comes Mr. *Hutchinſon* and Mr. *Gregory*, to tell Mr. Mayor that they deſired his Company, as the Cuſtom was, to be at the Swearing of Mr. *Greaves* Mayor, for ſo the old Mayor ought to be, or elſe he is no Mayor, unleſs he be ſworn by the preceding Mayor. Says he, I have nothing to ſay to him, I know *no Mayor* that he is; we are about our own Buſineſs, obeying the King's Authority and his Charter. This was no ſooner ſaid, but they had animated the Multitude of People that were there, that they flung up their Hats in a very irreverent Poſture, as I never ſaw the like, ſhouting and crying out, No New Charter, a *Greaves* Mayor. I was fain to ſecure the Charter; and a farrendine Waiſtcoat that I had on, was all rubbed to pieces to ſave the Charter, and I had much-ado to ſave it. My Brother *Parker* he was ſo afraid, he got off the Bench; Prithee, ſaid I, ſtay; for certainly they dare not do theſe things; ſays he, I am afraid of my Life, and fare you well. Mr. Mayor and I ſat a-while, for we knew not which way to take, but at laſt we got away thro' them: But if I touch'd Ground, I wiſh I might never ſee my Wife again.

L. C. J. Now whether that be a Curſe that thou layeſt upon thyſelf or no, I can't tell.

Rippon. Had you been there, Sir, you would have been afraid too.

Mr. Recorder. Pray ſpeak that again.

Rippon. I ſay again, when I went away down with Mr. Mayor, I did not touch the Ground for eight or nine Yards together; for they would not make way, and they pulled me by the Gown, ſeveral of them; and if any body elſe had been there, he would have been affrighted.

Mr. *Powis.* How long did they continue the Rabble up?

Rippon. So, Sir, we got ſtraight away to Mr. *Wild's* Houſe, that was then Mayor, and we did ſwear him accordingly as the uſual way was: For the Charter impower'd us, as Mr. *Wymondſell* told us, that we might elect any where; ſo we fell to the Buſineſs of the Day, and by that time we had three parts done, they had done, and proclaimed their Mayor: But then they come and ſend Mr. *Hutchinſon*, and Mr. *Gregory*, *Samuel Richards*, and *Arthur Riccards*, to demand the Great Mace for Mr. *Greaves*,

Greaves, as he was Mayor: Said Mr. *Wild*, what ſhall I do? Why, ſaid I, go down and give them their Anſwer; tell them they are ſaucy Fellows to do any ſuch thing: Says he, they are Gentlemen; why then, ſaid I, tell them they might know better than to do ſo. So he went down and told them; ſaid he, I receiv'd it by good Authority, and will never part with it, but to as good an Authority as I receiv'd it. So we ſtaid, and went on and did the Buſineſs of the Day; and afterwards, between five and ſix of the Clock, we went to the Croſs, and there proclaim'd the Mayor by the New Charter, according to the Cuſtom, and return'd every one to our own Houſes. The next Day we were afraid of making a Diſturbance; but about Nine of the Clock we went and proclaim'd the Mayor, and about Eleven there came all theſe Gentlemen, and there they proclaim'd Mr. *Greaves* Mayor, which was upon the *Saturday*, accompanied by all theſe Perſons, as near as I can ſay.

Mr. *Powis*. Was Mr. *Sacheverell* there then?—*Rippon*. Yes.

Mr. *Powis*. Were all the reſt there?

Rippon. To the beſt of my Knowledge they were.

Mr. *Holt*. Can you ſay Mr. *Sacheverell* was there?

Rippon. Yes, he was.

Mr. *Holt*. Who was there?—*Rippon*. There was the two *Greaves*'s, and *Green*, and *Richards*, and *Bennet*.

Mr. *Holt*. Did you ſee them there?—*Rippon*. Yes I did.

Mr. Recorder. *Rippon*, Pray will you recollect yourſelf, and tell the Court who was there on the *Saturday*?

Rippon. Mr. *Sacheverell*, *William Greaves*. *John Greaves*, *Samuel Richards*, *Salmon*, *Arthur Riccards*, *Ralph Bennet*, *John Sherwin*, *William Wilſon*.

Mr. Recorder. Was *Wilſon* there?—*Rippon*. Yes, I ſee him myſelf.

Mr. Recorder. What, rejoicing?

Rippen. Yes, he was rejoicing as the reſt did, to the terrifying of us all.

Mr. Recorder. Was he in the Croud?---*Rippon*. Yes.

Mr. *North*. Will you aſk him any thing, Gentlemen?

Rippon. I know nothing, if it pleaſe your Lordſhip.

Mr. *Holt*. Pray, Sir, this; Can you ſay that Mr. *Sacheverell* had his Sword on, on *Michaelmas*-Day?---*Rippon*. Yes, certainly he had one on.

Mr. *Holt*. Can you take it upon your Oath he had?

Rippon. Nay, there will be ſeveral that will ſwear it, I will warrant you; and I am ſure you would have been afraid if you had been there.

L. C. J. Were Mr. *Hutchinſon*, or Mr. *Gregory*, Burgeſſes, either by the New or Old Charter?---*Rippon*. No, they were not.

L. C. J. Were Mr. *Sacheverell*, and any of theſe Gentlemen ever preſent at any other Election?

Rippon. It is poſſible, after the Election is over, they might invite Gentlemen to feaſt at their Houſes, but never to have any Concern in the Election in the leaſt.

L. C. J. How many Elections have you been preſent at?

Rippon. I came into the Council at the King's Coming-in, and I have been Alderman five or ſix Years.

Mr. *Powis*. He came in by the Regulation.

Mr. *Pollexfen*. Pray whereabouts was it the Mayor was ſworn?

Rippon. At his own Houſe.

Mr. *Pollexfen*. Whereabouts were the Sheriffs ſworn?

Rippon. What Sheriffs?

Mr. *Pollexfen*. *Malin*, the Witneſs that was before.

L. C. J. He was the Old Sheriff.

Mr. *Holt*. And where were the New Sheriffs ſworn?

Rippon. At the Mayor's Houſe.

Mr. *Pollexfen*. Was Mr. *Malin* Sheriff by the New Charter?

Mr. *Holt*. Was it before the Election of Mr. *Greaves* Mayor, or after?

Rippon. After.

Mr. *Pollexfen*. Was Mr. *Malin* by the Old Charter, or by the New, Sheriff?---*Rippon*. By the Old.

Mr. *Pollexfen*. And not by the New?---*Rippon*. No.

Mr. *Pollexfen*. He ſays he was, and you ſay he was not.

Rippon. For that Day he was ſo, but then he went out.

Mr. *Pollexfen*. Did the Mayor return to the Hall after he was ſworn, or after you left the Hall in the Fright?---*Rippon*. We went ſtraight to Mr. *Wild*'s before he was ſworn, and then we ſwore him there.

Mr. *Pollexfen*. But the Queſtion ask'd you is, Did Mr. *Wild* return back to the Hall after he had taken his Oath, and was ſworn in his Houſe?

Rippon. No, He ſtaid in his Houſe; it is not uſual for the Mayor to go back to the Hall.

Mr. *Pollexfen*. Did he go to the Croſs afterwards?---*Rippon*. Yes.

L. C. J. It was on *Michaelmas*-Day that he was ſworn; and it was by their Proclamation made at the Croſs, that he was ſworn Mayor that Day?

Rippon. Yes, my Lord.

L. C. J. And was it the Day after that they proclaim'd *Greaves* to be Mayor?

Rippon. Yes, my Lord; 'tis true, to the Terror of us all: I will aſſure you it was a wonder there was no more Miſchief done.

Mr. *Pollexfen*. Theſe Gentlemen were not in Town that Day.

L. C. J. Take you your Liberty to make your Defence afterwards; but you muſt diſtinguiſh, there are two Days, and ſome People were one Day, and ſome the other; ſome People were at the Time of the Election, that were not at the Market-Place; and ſome were at the Market-Place, that were not at the Election.

Mr. Juſt. *Holloway*. That Day *Greaves* was thus choſen Mayor in that tumultuous Manner, did any of theſe Perſons take upon 'em to ſwear *Greaves*, when they had thus choſen him?

Rippon. We went out into the Hall, and in that time they did ſwear him.

Mr. Recorder. Was Mr. *Greaves* ſworn that Day by the pretended Election, *Malin*?---*Malin*. Yes, by the Coroner.

L. C. J. But I perceive by their Old Charter, there was no Mayor to be ſworn, but by the Old Mayor that went out.

Mr. *Stanhope*. Did not the Coroner uſe to ſwear the Mayor by the Old Charter?

Rippon. Yes, but in the Preſence of the New Mayor; he was by always.

L. C. J. What do you mean by ſwearing of him by the Coroner? Hark you, upon your Oath, was there ever any Mayor of *Nottingham*, in your Time, ſworn but in the Preſence of the Old Mayor?

Rippon. No, never, my Lord.

L. C. J. Do you call that Swearing, becauſe he reads the Oath to him?

Mr. *Holt*. The Coroner has Authority ſo to do, as we ſhall ſhew you by and by.

Mr. *Powis*. Then ſwear *Reynolds*. [*Which was done.*]

Reynolds. I brought down the Charter, my Lord.

Mr. Recorder. I would aſk *Rippon* a Queſtion before he goes out: Let us know of you where the Old Mayor was ſworn by virtue of the New Charter?

Rippon. I can't tell that; the New Mayor was ſworn by the New Charter, at the Old Mayor's Houſe.

Mr. Recorder. The other two Witneſſes did ſwear, That the Old Mayor was ſworn in the Hall; but he ſays he was by, when the New Mayor was ſworn in the Old Mayor's Houſe.

L. C. J. It is underſtood upon the Receipt of the Charter, *Wild*, who was the preſent Mayor, was ſworn in the Hall; but afterwards, by reaſon of the Hurly-Burly, and Noiſe, they went away, and choſe the New Mayor at *Wild*'s Houſe; that is the Fact that is ſworn.

Mr. Recorder. It is right, my Lord.

Mr. *Powis*. Pray, *Reynolds*, will you tell my Lord the whole Story; for you it ſeems brought the Charter down.

Reynolds. My Lord, I brought the Charter from *London*; and when I brought the Charter, I was ſent by Mr. Mayor, to acquaint Mr. *Edge*, that the Charter was come, and the Mayor deſir'd him to come and hear it read; Mr. *Edge* ask'd if the Mayor would not come to Church; I told him he was at the Town-Hall. When we came to the Council-Houſe, proceeding to have the Charter read, and all thoſe things, Mr. *Sacheverell*, and a great many others, came to the Council-Houſe; and there the Mayor offer'd to Mr. *Bigland* the New Charter, that if he wou'd, he might read it. Mr. *Sacheverell*, after ſome little Diſcourſe, told him that was not their Buſineſs, they were come to elect a Mayor by the Old Charter: Says Mr. Mayor, I do not know any Authority you have to elect a Mayor: Says he to me, make your Proclamation for all thoſe to depart that have no Buſineſs; which accordingly I did; and then came along, and catch'd up the Mace; and Mr. Alderman *Rippon*, and Mr. Mayor, came into the Common-Hall; and there told the Burgeſſes that were met, that the King had granted them a New Charter, and there was none of their Privileges diminiſh'd; and if they wou'd, they ſhou'd have it read in *Engliſh* or in *Latin*. Then they went to ſwear Mr. Alderman *Wild*, according to the New Grant: Preſently Mr. *Hutchinſon* and Mr. *Gregory* came in, and told him they had elected Mr. *Greaves* Mayor, and if he wou'd, he might come and hear him ſworn: He ſaid, he knew no Authority they had for it, and denied any ſuch Election. Then there were ſuch Shouts, as ſoon as ever the Mayor had given him that Anſwer, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor; that tho' Silence was proclaim'd divers times, yet there was no hearing him ſpeak: Whereupon he adjourn'd the Court, and we went to the Mayor's Houſe, and there they choſe the New Mayor, Mr. *Toplady*, and he was ſworn; and then we came to the Croſs, where they us'd to proclaim the New Mayor, and then came down Mr. *Sherwin* and *Green*, with a great many others, ſhouting, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor. The next *Saturday* following, a great many of them went to proclaim him at the Croſs again, among the reſt Mr. *Pierpont*.

Mr. Recorder. Was *Gregory* there too?---*Reynolds*. Yes, I think ſo.

Mr. *Jones*. Did you make Proclamation at the Common-Hall, for all to depart that had no Buſineſs?

Reynolds. At the Council-Houſe I did, before we came to the Common-Hall.

Mr. *Jones*. Do you remember who was there?

Reynolds. Mr. *Sacheverell* and *Gregory*, and others.

Mr. *Jones*. Did they continue there?---*Reynolds*. Yes.

Mr. *Pollexfen*. Did Mr. *Sacheverell* make any Noiſe there?

Reynolds. There was a great Noiſe in the Hall.

Mr. *S. Ward*. Did you hear any thing concerning the ſtopping of the Books?

Reynolds. I heard Mr. *Sacheverell* cry out, Stay the Books, ſtay the Books.

Mr. *Fuller*. What Books did he mean?

Mr. *Reynolds*. They were ſome of the Books that belonged to the Town.

Mr. *Stanhope*. Were they the Poll-Books?

L. C. J. What do you mean by Poll-Books? There was no need of a Poll that I can hear of.

Mr. *Powis*. What do you know about their coming to demand the Mace?

Reynolds. Yes, there was Mr. *Gregory*, and Mr. *Hutchinſon* came to the Mayor's to demand the Mace, and he aſk'd them who ſent them; they ſaid, Mr *Greaves*, the Mayor that was choſen, had ſent them.

Mr. *Holt*. You ſpeak of a Proclamation, where was it?

Reynolds. Yes, I did make Proclamation in the Council-Houſe, to bid all depart that had no Buſineſs.

Mr. Juſt. *Withins*. How came you to make that Proclamation?

Reynolds. The Mayor bid me, and I did it.

Mr. *Holt*. Was the Mayor ſworn then?

Reynolds. It was before any thing was done.

Mr. *Holt*. Was it before he was ſworn upon the New Charter, upon your Oath?---*Reynolds*. It was in the Council-Houſe.

Mr. Recorder. It was when you were crying up your *Greaves Mayor*.

Mr. *Powis*. Afterwards, did you obſerve they headed the Rabble at any time afterwards?

Mr. Recorder. Swear Alderman *Parker*. [*Which was done.*]

Mr. *Jones*. Are you ſworn, Sir?---*Parker*. Yes.

Mr. *Jones*. Why then will you pleaſe to give my Lord and Jury an Account of what you know of this Matter?

Parker. At *Michaelmas-Day* was Twelve-month, I came to Mr. *Gervas Wild*'s Houſe who was then Mayor. It was about Eleven of the Clock that I was there. There were a great many met that uſed to meet that Day, in order to the chooſing of a New Mayor, and there were a great many others that the Mayor did not know of their coming there; for he gave no order, he ſaid, for ſeveral of them that came, to appear there. They did importune him very much to be gone, in order to the Election of a Mayor. Said I to the Mayor, We do expect a Charter, and if we ſhould go on to the chooſing of a Mayor, we ſhould be all in Confuſion. So after a while, the Diſſenting Party withdrew out of the Houſe. Some Gentlemen it ſeems met with them, and went forward towards St. *Mary*'s Church. Immediately after came the Charter down by him that was laſt ſworn. We were ſent up to the Church to deſire Alderman *Edge*, that was the Town-Clerk, to come and read the Charter, and to let us know how we were to proceed in relation to the Work of the Day. He ſaid he would not come. Afterwards we went to the Town-Hall, into the Council-Chamber; and after ſome little time, ſays Mr. Mayor to me, Brother *Parker*, I would deſire you, and Mr. *Rippon*, and Mr. Sheriff *Malin*, to go up to the Church, and deſire and command my Brother *Edge* to come down, and aſſiſt us in this Buſineſs; ſo we did go up and ſpake to my Brother *Edge*; ſaid I, Mr. Mayor deſires you to come down, the Charter is come, and he would have you come and read it; and ſaid I, if Mr. Serjeant *Bigland*, and Mr. Alderman *Greaves* will come down, they may be ſatisfied there is a Charter, and we cannot act otherwiſe than by that Charter. Alderman *Edge* ſaid, He knew there was an Old Charter, and what he was by that Charter; he did not know of any New One, and would act by the Old Charter, and not by the New One. When we came down to Mr. Mayor, ſaid I, my Brother *Edge* will not come down among you; here is a ſpecial Commiſſion in the Charter directed to four of us, or any two of them, to ſwear you Mayor; we muſt do that the firſt thing we do, and go forward in that, for we can do nothing till you are ſworn Mayor. By and by comes down a great many Perſons, Mr. *William Greaves*, my Brother *Edge*, Mr. *Sacheverell*: If you pleaſe, I will look in my Paper, and read their Names, that I may be more certain.

L. C. J. Ay, look upon your Paper, to refreſh your Memory.

Parker. There was *Sacheverell*, *Gregory*, *Hutchinſon*, the two *Greaves*'s, *Samuel Richards*, *Robert Green*, *Salmon*, *Arthur Riccards*, *John Sherwin*, *Ralph Bennet*, and *Wilſon* the Rector of St. *Peter*'s——

Mr. Recorder. Was he there?

Parker. Yes, *Samuel Smith*, *Richard Smith*, *Trigg*, *Hoe*, *Barker*, *Charnell*.

L. C. J. Was *Barker* there?

Parker. Yes, I have his Name down in this Note.

L. C. J. Well, go on.

Parker. Firſt they forced into the Council-Houſe, and forced us out: So I told Mr. *Sacheverell*, ſaid I, you have nothing to do here.

Mr. Recorder. What ſaid he?

Parker. Said he, I have to do here, I am concerned if I am a Burgeſs. Said I, no Burgeſs acts here but a Gown-Man; for it is only the Mayor, Aldermen, and Clothing that are concerned in the Election, and we never have any Gentlemen among us.

Mr. Powis. Did they behave themſelves ſo, as that you were afraid of Miſchief?

Parker. Said I to ſome of our Friends, Gentlemen, take the Mayor's Mace into your Hands, for they were for ſeizing the great Mace that belongs to the Mayor. And, ſaid I, take care of the Books. Said Mr. *Sacheverell*, Stop the Books. There was Coroner *Woolhouſe* taking them in his Hands. Said I, take notice who dares take the Books; and ſaid I to Mr. *Sacheverell*, you have nothing to do with the Books, the Books belong to us. Says he, take notice, I will—in a menacing way, and then held his Tongue. Said I, I am ſorry to ſee things here this Day: I have been a Member of the Corporation, and been preſent at theſe Elections for Eighteen Years, and I never ſee ſuch a thing as this; and ſaid I, I profeſs I could almoſt cry to ſee theſe Diſſentions made among us. Said I, I muſt go, being one of thoſe that was in Commiſſion to ſwear the Mayor, my Brother *Hall* is not here, and my Brother *Edge* is with them; if they keep me here, the Mayor cannot be ſworn; ſo I pulled off my Gown, and at laſt when they ſee I was reſolved to go, with ſhoving and crouding I got through. But when the Mayor was ſworn, ſaid I, you muſt now act as Mayor, and give order for the People to depart: So he did. Says he, will you ſtay: No, ſaid I, I dare ſtay no longer; the Rabble are buoyed up to that Height, that I am afraid we ſhall be knocked on the Head. So I went to my Brother *Hall*'s, and I ſaid to his wife, Siſter, either give me a Glaſs of Wine or Sack, for I am e'en ſpent.

L. C. J. That was to recover his Heart again that was ſinking; for an Alderman's Heart generally ſinks in ſuch a Fright.

Parker. We did proceed on then, and I went back again: Said I, if they muſt be knocked on the Head, I will go and be knocked on the Head with them.

L. C. J. Ay, his Courage came to him again, when he had a Glaſs of Wine.

Parker. I met them half way: Said I to the Mayor, let us go to your Houſe now, and let us proceed on to chooſe a Mayor, and ſwear him, and all other Officers. But, ſaid I, we have nobody to aſſiſt us, we muſt do as well as we can. And we went thither, and proceeded to chooſe a New Mayor, and then New Sheriffs, and Coroner, and Chamberlain, and we gave them their Oaths. And after all this, we went, according to the ancient Cuſtom, to the Week-Day-Croſs, and there we gave Orders for Proclamation to be made, to give notice to the Corporation who was then Mayor, who were then Aldermen, who were then Sheriffs, who were then Coroners, and who was then Chamberlain for the Year enſuing. Whilſt this was doing, Mr. *Sherwin*, Mr. *Green*, and a great many of them came down hollowing and ſhouting, No New Charter, No New Charter; they car'd not for the New Charter, it was not worth a Groat.

L. C. J. Who ſaid that?

Parker. *Sherwin*, a Man of a good Eſtate. They were going faſt away: No, ſaid I, pray go on the old rate, we are in a good Cauſe, and we don't fear them a Pin; if they do lay on, it will be to their coſt.

L. C. J. Well ſaid, thou had'ſt drank a good Glaſs of Sack, I perceive, for thou wer't in a horrid Fright before.

Parker. The next Day they could command all the Counſel in the Town to attend them with their New Mayor, *Greaves*. There was *Ralph Edge*, *John Sherwin*, and a great many Gentlemen, with Swords by their Sides, walked to the Market-Croſs, and made Proclamation. And after that was done, they continued this on *Sunday*; for on *Sunday* Mr. *Greaves*, the Mayor, came with abundance of People at his Heels, not Gentlemen, but Gown-Men, thoſe that were of that Party, and offered to come into the Seat were the Mayor was; and we were ſo fearful of Diſturbance, that we were forced to have a Guard to preſerve the Mace, and to ſecure it from being taken away by Violence; and we writ a Letter to *London* to my Brother *Hall* to acquaint him with it, and ſent Poſt to my Lord Duke of *Newcaſtle*, to let him know how it was, that we were afraid of being knock'd on the Head; and his Grace was ſo kind, that he immediately came to us, and was there about four or five of the Clock, and then we begun to be a little in hope.

L. C. J. Then you began to be in heart again?

Mr. Recorder. How have they behaved themſelves ſince?

Parker. They have had ſuch Cabals, and Meetings, and Clubs, that we have often been afraid of them.

Mr. Holt. I ſuppoſe they can drink Sack as well as you.

Mr. Jennings. Pray, Sir, had the Burgeſſes at large any thing to do with the Election by the Old Charter?

Parker. No.

Mr. Powis. Mr. Alderman, you have been a long time in that Town.

Parker. My Grandfather was an Alderman of the Town.

Mr. *Powis*. Did you ever know in your Life, that theſe Gentlemen ever uſed to interpoſe themſelves, or concern themſelves in the Election?

Parker. No, we always went into the Council-Houſe, and were called one by one, and the Gentlemen never came in among us, but only one Gentleman that my Brother *Edge* brought in out of Curioſity, to ſhew him the Formality; but never any Burgeſs came, but thoſe that were of the Council, or Clothing, as we call them. I never ſaw it otherwiſe, and I have known a great many.

Mr. *Jennings*. Did not Mr. *Sacheverell*, nor none of the Out-Burgeſſes, uſe to come in?

Parker. No, I told them, ſays I, this Charter cuts you off, you have nothing to do.

Mr. *Jennings*. Did Mr. *Hutchinſon* and Mr. *Gregory* uſe to come?

Parker. No, they were no Burgeſſes. But now you talk of that if you pleaſe, I would ſpeak to that: Mr. *Hutchinſon*, Mr. *Gregory*, *Arthur Riccards* and *Samuel Richards* came up to my Brother *Wild*'s, the Old Mayor, and demanded our Mace. Said I, what have you to do with the Mace? They ſaid, Mr. *Greaves* the Mayor had ſent for it. Said I, if the Mayor took a little Spirit upon him, he would do well to ſecure you, to aſk ſuch a thing, for this requires the good Behaviour; ſaid I, and if I was Mayor, I would ſecure them, and let them take their Advantage againſt me; I would try it with theſe Gentlemen.

Mr. *Lovell*. You ſpeak of ſomething that was done at the Croſs the next Day after the Election; was Mr. *Sacheverell* there?

Parker. I believe he was.

Mr. *Lovell*. Did you ſee him?

Parker. I was in my Chamber, but I cannot ſay poſitively he was there?

Mr. *Lovell*. What, at the Croſs?

Parker. There were all thoſe that I named, there: And I tell you, Sir, the Riot continued there on *Sunday*; for all that bore Office on their Side, came and attended Mr. *Greaves* to Church, and Mr. *Greaves* clapp'd his Hand on the Mayor's Seat: Said I, Mr. Mayor, keep your Seat, and do not ſtir out; and he did not.

Mr. *Blencow*. Pray, tell which of the Defendants were at the Croſs on *Saturday*, or at Church on *Sunday*.

Parker. There was Mr. *Gregory* and Eſquire *Thynn*, his Brother, and *William Greaves*, and *John Greaves*, and *Samuel Richards*, and *Arthur Riccards*, and the *Smiths* and *Sherwin*.

Lovell. Were all theſe at Church?—*Parker*. Yes.

Mr. Recorder. Did they uſe to come to Church before?

Parker. Sir, it is a Cuſtom to wait upon the Mayor the next *Sunday*, and they waited upon him in their Formality.

Mr. *Holt*. Did not you give your Vote for electing a Mayor according to the Old Charter, upon your Oath?

Parker. I will tell you what I did; when they called to the Election, and to the Poll, and aſk'd who I was for, I told them there was no Man capable of being voted for, unleſs it were *Ralph Edge*.

Mr. *Holt*. But did you give a Vote for ſuch an Election, or no?

Parker. I tell you, I ſaid there was no Man capable of a Vote but him, and I could give my Vote for none but *Ralph Edge*: And ſaid I, if you will have it, I will give my Vote for *Ralph Edge*.

Mr. *Lovell*. Was there an Election for Mr. *Greaves*, and Poll taken, pray?

Parker. I cannot tell that, but I was by almoſt to the latter End; for I could not get out, the Croud was too great, till I had pulled off my Gown and crouded out.

Mr. *Lovell*. Who took the Poll?

Parker. Mr. Alderman *Edge*.

Mr. *Lovell*. Was Mr. *Turpin* in the Council-Chamber at that time, or not?

Parker. Yes, he was.

Lovell. Are you ſure of that?---*Parker*. Yes, indeed am I.

Mr. *Lovell*. Was *Barker* there?

Parker. Yes, he was in the Hall, 'tis all under one Roof.

Mr. Recorder. The Books that you ſpeak of, that Mr. *Sacheverell* would have ſecured, what Books were they?

Parker. My Brother *Edge* can give a better Account of that than I; for he kept them.

Mr. Recorder. You can tell what they were?

Parker. They were Books that belonged to the Mayor.

Mr. *Stanhope*. Mr. *Parker*, You ſay Mr. *Wilſon* was there?

Parker. He was in the Hall.

Mr. *Stanhope*. You know it?----*Parker*. Yes.

Mr. *Stanhope*. Are you ſure of it?

Parker. Yes, you know it, Mr. *Stanhope*.

Mr. *Stanhope*. I was not there, Sir, how ſhould I know it? Pray, how did Mr. *Wilſon* behave himſelf?

Parker. He was among all the Rabble when they were ſhouting, and crying out, No New Charter, No New Charter; he was an Abettor among them, ſo I give it you ſworn.

Mr. Recorder. He exhorted them to it, I will warrant you.

Parker. Yes, and has encourag'd it in his Pulpit ſince.

Mr. *S. Ward*. Did you hear any thing of a Standing-Club to carry on this Oppoſition?

Parker. I hear there is a Publick Purſe among them, and they have gathered ſeveral Sums of Money for this Buſineſs.

Mr. *S. Ward*. Does any of the Defendants ſpend Money at Alehouſes, that you know of, to keep up the Spirit of the Rabble?

Parker. I have heard ſo.

L. C. J. That is nothing to the Buſineſs: What do you talk to us of any ſuch thing?

Mr. *Powis*. Swear *Somner*. [*Which was done.*] Were you ſent by the Sheriff to demand the Mace? and pray what happened?

Somner. Sir, at that time I was the Sheriff's Serjeant, and am ſtill, at *Nottingham*, and ſo there was a great Clutter, the one Side going out, and the other calling to Election, and ſtop the Books; and my Maſter the Sheriff coming out, I got in as faſt as I could, and got hold of the Mace that was upon the Council-Table. Mr. *Ralph Bennet*, Mr. *Salmon*, and Mr. *Arthur Riccards* took it from me again, and told me I had nothing to do with it. So I went and told my Maſter *Malin*, and he went and demanded it; but they bid him get him gone about his Buſineſs. But before I went from the Mayor's Houſe, the Mayor call'd me in, and ſaid, *Robin*, do not give any occaſion of Offence to Man, Woman, or Child, to-day.

Mr Recorder. The Jury deſire to know who it was took the Mace from you?

Somner. They did take it from me.

Mr Recorder. Who did?

Somner. Mr. *Ralph Bennet*, Mr. *Salmon*, and Mr. *Arthur Riccards*; Them Three laid hold on me, and told me I had nothing to do with it.

Mr. *Jennings*. Did they force it from you?——*Somner*. Yes.

Mr. *Jennings*. And they did refuſe the Mace to Mr. *Malin* afterwards?

Somner. Yes, they did.

Mr. *Stanhope*. Where was the Mace?

Somner. It lay upon the Table.

Mr. *Stanhope*. I thought you ſaid they took it from you?

Somner. Yes, after I had laid hold of it, and taken it off the Table.

Mr. *Powis*. Were you ſent for it by the Sheriff?

Somner. I was Serjeant to the Sheriff, and it belong'd to me to carry the Mace.

L. C. J. Well, go on.

Somner. When the Mayor came into the Hall, and deſired to have the New Charter read, and heard in Peace; comes in Mr. *George Gregory* and Mr. *Hutchinſon*, and after they came in, they fell a ſhouting.

Mr. Recorder. What did they ſay?

Somner. They told the Mayor they had choſen Mr. *Greaves* Mayor, and if he would come and hear him ſworn, he might. He made them ſome Anſwer, but I did not hear what he ſaid, the Noiſe was ſo great. There was one that ſtood by me, one *Martin Chambers*, whom I ſpake to, and ſaid, Prithee be quiet, or hold thy Tongue, do not make ſuch a Noiſe; and with that he up with his Hand, and hit me a full Swop over the Face.

L. C. J. Who was that?

Somner. One *Martin Chambers*; and that Man they have brought up to be a Witneſs for them.

Mr. *Powis*. Swear *Wortley*. [*Which was done.*]

Mr. Recorder. Pray will you give an Account whether you ſaw *Wilſon* there, and in what Place, and what he did?

Wortley. Yes, I ſaw him in the Council-Houſe, my Lord.

Mr. Recorder. In the Council-Houſe? or in the Hall do you mean?

Wortley. In the Hall.

Mr. Recorder. What did you ſee him do there?——*Wortley*. Nothing.

Mr. Recorder. Was he in the Croud?——*Wortley*. Yes.

Mr. *Powis*. Did you ſee the Mace taken away?----*Wortley*. No.

Mr. *Powis*. What did you ſee any of them do? Or what did you hear any of them ſay?

Wortley. Mr. *Sacheverell* bid them ſtop the Books.

Mr. *North*. My Lord, I hope we have ſufficiently proved our Iſſue.

L. C. J. Did they make any Noiſe, or Hubbub, or Outcries in the Hall?——*Wortley*. Yes.

L. C. J. Did they make any Noiſe in the Council-Houſe?

Wortley. I heard him bid them ſtay the Books, that is all.

L. C. J. How many might there be of them, good Sir?

Wortley. There might be a Hundred.

L. C. J. Were there Two Hundred?

Wortley I can't tell how many there might be.

Mr. *Holt*. Pray, Mr. *Wortley*, before you go, did you give no Vote for the Election of a Mayor upon the Old Charter?----*Wortley*. No, Sir.

Mr. *Pollexfen*. Did not you give a Vote at that time in the Council-Chamber?

Wortley. Yes, there was a Vote, but I gave it for Mr. *Toplady*.

Mr. *Jennings*. Pray ſwear Mr. *Richard Wright*. [*Which was done.*]

Mr. Recorder. Pray will you give an account what you know of this Buſineſs?

Wright. As far as I can give an Account, it was thus: I ſaw when the New Charter came, and was carried to Mr. Mayor's Houſe, and it was given to the Mayor, and it was met before that by the Company that was going to Church, and they were acquainted there was a New Charter, and deſired to return back again; but they would not, but went to Church. Then they were ſent to by *Chriſtopher Reynolds*, and one Mr. ——, and deſir'd to come and hear it read, but they would not.

Mr. Recorder. What did you do in the Council-Chamber?

Wright. I was not there, but in the Hall.

Mr. *Recorder*. What did they do in the Hall?

Wright. I'll tell you what they did: They had the Charter before them, and it was going to be read, and the Burgeſſes were all very quiet, till ſuch time as Mr. *Hutchinſon* and Mr. *Gregory* came to acquaint the Mayor that they had choſen a Mayor, and deſired him to come and hear him ſworn. To which Mr. Mayor anſwer'd, he could not, neither did he know by what Authority they did it. After this, there was a great Tumult there, and ſome cried out, A *Greaves*, A *Greaves*; and others, No New Charter, No New Charter. Several times they were begg'd and perſuaded to be ſilent and quiet, but they would not, but continued in a tumultuous manner for a long time. After this, I was at Mr. Mayor's, when Mr. *Hutchinſon* and Mr. *Gregory*, Mr. *Arthur Riccards* and Mr. *Richards*, came to demand the Mace, whereupon Mr. Mayor told them he would not deliver it but to the ſame Authority by which he had it, otherwiſe he would not deliver it. There was in this Company Mr. *Ralph Bennet*, Mr. *John Sherwin*, Mr. *Samuel Smith*, Mr. *Thomas Trigg*, and *John Hoe*; theſe I took particular notice of. Afterwards, when they came to proclaim the Mayor at the Croſs, there came down this *Hoe*, and *Sherwin*, and ſeveral others, in a great Body, that they could not proclaim the Mayor thoroughly as they ſhould.

L. C. J. Pray what Number were they when they came into the Council-Chamber?

Wright. There might be fifty of them, I believe.

Mr. Recorder. Who was the chief Man among them?

Wright. Mr. *Sacheverell*.

L. C. J. When they were in the Hall, how many were they?

Wright. When they were in the Hall, I believe they were two hundred.

Mr. *North*. My Lord, we reſt it here: We think we have given a ſatisfactory Proof as to all the Defendants named in the Information.

Mr. *Pollexfen*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the Defendants; and, my Lord, notwithſtanding any thing that has been proved, we hope we ſhall make it plainly to appear, that we have done nothing but what became loyal good Subjects and honeſt Men, and that we were far from ſtirring or inciting any Tumult and Diſorder in this Town, or any thing that may be called a Riot. And, my Lord, I muſt beg leave a little to open their Information, that we may come to the Queſtion upon which this Matter does ſtand. My Lord, they have in their Information charg'd a tumultuous Aſſembly upon the Defendants to diſturb the Election of the Mayor upon the New Charter, and that this did continue by the Space of Seven Hours upon that ſame Day, and there is nothing more ſpoken of any other Day; and ſo all that they talk of which happened the next Day, is a Matter wholly out of the Information. My Lord, there is another Matter, another Paſſage, in this Information, about the taking away the Mace from *Malin*, who was then Sheriff. Now, my Lord, our Caſe as to that will ſtand thus: *Malin* was Sheriff by the Old Charter, and not by the New; and then if *Malin* were Sheriff by the Old Charter, then by the Surrender he was out of Office, and was not Sheriff, and ſo the Information fails: For I ſuppoſe they themſelves would not have both Charters to be in Force at one time; and if they would have this to be after the New Charter was granted, then was not *Malin* Sheriff by the New Charter. So that then all the Fact that is laid concerning the taking away the Mace from *Malin* that was then Sheriff, is quite miſtaken, for *Malin* was not Sheriff then, if ſo be the Old Charter was not then in Force, for he was not in the New Charter, or any way elected or ſworn Sheriff: So that therein alſo, my Lord, we think it impoſſible for them to maintain that Part of their Information. My Lord, the next Matter ſtands upon the Aſſembling and Acting of thoſe Perſons that did aſſemble and act under the Old Charter; and therein, my Lord, it will fall out thus: By the Old Charter the Mayor is to be elected, and take his Place on *Michaelmas*-Day, upon which this Fact is alledged to be. *Greaves* was elected before this time, upon the 14th of *Auguſt*, according to the Uſage of the Old Charter. Then, my Lord, according to the Conſtitution of that Old Charter, a Copy whereof we have here to produce, if the laſt Mayor be not preſent, the Coroner has power to ſwear the New one; and that will ſhew that this is the right Day, and all things were done by the Old Corporation, as is uſual and accuſtom'd in all reſpects. There is one thing they ſay, ſome of theſe Perſons are not of the Corporation by the Old Charter, and others had no Voice in the Election; my Lord, for that, ſuppoſing they had not a Voice in the Election, yet to be there was no Crime: for if a Man be a Burgeſs of a Town, and be preſent at the Election of Officers for the Town, and does either adviſe or aſſiſt in the Election (and he is not altogther unconcerned in it neither), this of itſelf will make no Crime. Why then the Day that was *Michaelmas*-Day, that was according to the Uſage; and the Place and Proceedings were all according to the Cuſtom that they always uſed upon the Old Charter. For firſt, they go to the Old Mayor, from thence to Church, from thence to the Council-Chamber, where they uſed to eſtabliſh the Mayor that was before choſen; thither they went, there they did elect this *Greaves* to be Mayor, and when they had elected him to be Mayor, he did ſend, according as is proved by their Witneſſes to the Old Mayor, who was then in the Hall, to come and be preſent at the ſwearing of the New Mayor; ſo that ſtill all was done as is uſual according to the Old Charter; and if that Charter be in force, all is legal, and the Anſwer that the Old Mayor does give, is alſo prov'd. My Lord, for the Defendants, all, beſides four were not in the Hall, but only in the Council-Chamber, for any thing that appears by the Evidence; but if the Evidence be otherwiſe, we have Witneſſes to prove it. When we were in the Council-Chamber, and the Mayor came and brought the Charter, we were far from oppoſing, but did deſire the New Charter might be read, but the Mayor refuſ'd the reading of it, but took it away with him, and went into the Hall: upon which they proceeded upon their Old Charter. My Lord the Controverſy concerning which is the right, and which is the wrong, that is now depending; but this muſt be the Conſequence in this Cauſe; If the Old Charter were then in force, then to act according to the Old Charter, to make an Election, to ſwear their Mayor, to go and demand the Old Mayor to ſwear him, and to demand the Mace muſt be regular, if ſo be that be true, that the Old Charter was ſtill in force. To go afterwards to the Croſs the other Day to proclaim him, was alſo lawful, if that be ſo. And if there were nothing but what is uſual in Matters of this Nature, and according to Cuſtom, then there is no Offence, no Violence nor Force, nor any thing offered by any of theſe Defendants: And that which they ſpeak of the crying, A *Greaves* Mayor, a *Greaves* Mayor, is but a ſort of an Applauſe which in Elections is very uſual; why then if there are but orderly Proceedings, ſuch as are uſual in things of this Nature, I hope it will not be conſtrued to be any Riot, or Breach of the Peace, or Offence in us. My Lord, the Queſtions that will ariſe upon this Information, are thoſe that I have mentioned; for if ſo be this Mace was not *Malin*'s Mace, then they having laid it in the Information that we did take away from *Malin*, then Sheriff, a Mace that belonged to him as the Enſign of his Office, if he were not then Sheriff, they are quite out in their Information. That he could not be Sheriff by the Old Charter, that will be pretty plain; for the Old Charter they ſay was ſurrendered. That he could not be Sheriff by the New, is as plain, for he was not named Sheriff in it. But if he were Sheriff by the New Charter, yet at this Time he had not the Authority of Sheriff, for he had not taken upon him the Office by the New Charter, nor was not ſworn. And there is an expreſs Clauſe in it, that neither the Sheriff, nor any other Officer, ſhall take upon him their Office, till they have taken their Oaths. Now all that was done in the Council-Chamber, of which this about the Mace is part, was before theſe Men had taken their Oaths, and the Oath was taken in the Hall by the Mayor, and where the reſt took them, *non conſtat:* But they were not to act till then, nor could act by their New Charter, and ſo their Information falls ſhort as to whatſoever was done in the Council-Chamber, and we proceeded right upon the Old Charter. For it is expreſly ſaid in the Information, that the Aſſembly was duly ſummoned by *Gervas Wild*, then Mayor of the Town, for the electing and ſwearing a Mayor of that Town, for the executing the Office of Mayor of the Town for the Year enſuing, according to the Effect and Tenor of certain Letters Patents, on that behalf granted, by our Sovereign Lord the King that now is. Then, if ſo be whatever was done, was before he was ſworn as Mayor, then it could not to be an Aſſembly duly ſummoned by him, he having till then no Authority to ſummon it; nor could what the Defendants did, be in Hindrance or Diſturbance of him in the exerciſing of his Office; and ſo their Information is quite varying from the Fact. Then there is this further beſides, my Lord, the aſſembling and meeting, and going on according to the Old Charter, was on the Twenty-Ninth of *September*, the New Charter bears Date the Twenty-Eighth of *September*, and comes down as you ſee the next Day, which was *Michaelmas-Day*, at Eleven of the Clock. And we have it in Proof, that the Surrender of the Old Charter, which they pretend, was not enrolled till the Seventh of *October* after; and under favour, my Lord, the Old Charter could not be determined, till the Surrender was enrolled, which was not till the Seventh Day of *October*; and till that Time the Old Charter continuing in Force, it was fit for them to act under it, as it did ſo continue; and if they had omitted their Election on that Day, they had been faulty, in not proceeding according to the Old Charter. My Lord, we will call our Evidence, and make out our Fact.

L. C. J. But, Mr. *Pollexfen*, as to that you talk of about *Malin*; Was he Sheriff, or was he not Sheriff?

Mr. *Pollexfen*. He was not Sheriff according to this Information.

L. C. J. But was he Sheriff, or not Sheriff?

Mr. *Thompſon*. Not Sheriff by the New Charter, ſay we.

L. C. J. But I pray anſwer me, Was he Sheriff, or not Sheriff?

Mr. *Pollexfen*. I believe he was Sheriff by the Old Charter.

L. C. J. What had you then to do with the Mace?

Mr. *Pollexfen*. Yet ſay we, you are miſtaken in your Information; for if ſo be you lay it to be an Offence, the taking away the Mace from *Malin*, that was Sheriff by ſuch a Charter, and he is not ſo, then the Information is miſtaken.

L. C. J. There is no ſuch thing as his being Sheriff by ſuch a Charter.

Mr. *Lovell*. My Lord, we do come here to juſtify-----

L. C. J. Ay, but let him come here firſt, and anſwer the Objection.

Mr. *Pollexfen*. My Lord, it is expreſly ſaid in the beginning of the Information, that *Wild* was Mayor, and that he had ſummoned an Aſſembly to chooſe a Mayor, according to the Charter granted by this King; that the Defendants did diſturb that Meeting, and that Election; and that they did take away the Mace, being the Enſign of Office, to the ſaid Sheriffs of the County aforeſaid belonging, from one *John Malin*, being then one of the Sheriffs of the County of the Town of *Nottingham*.

L. C. J. All that is true.

Mr. *Pollexfen*. Then they muſt make it to be by one or t'other Charter. We ſay he was not by the New; they deny the Old to be in being, and ſpeak only of the New.

L. C. J. Ay, but I would fain know of you whether he was Sheriff, or not Sheriff?

Mr. *Pollexfen*. I think they that will charge us with an Offence, ought to make out that Charge.

L. C. J. They ſay he is Sheriff, and you ſay he is Sheriff yourſelves.

Mr. *Pollexfen*. That cannot conſiſt with this particular Queſtion, as I conceive.

L. C. J. Why now then let us come yet a little further; it is ſaid, that ſuch a one being Mayor, and ſo he was, take it which way you will; for if the New Charter have no Effect till the Surrender of the Old be enrolled, then *Wild* was Mayor by the Old Charter; and if he was Mayor, it was enough: And then he was met to chooſe a New Mayor by virtue of the ſecond Charter; it is true it is ſo ſaid, though perhaps, according to Strictneſs, it could not take Effect till the Enrollment of the Surrender; yet what is that to this Offence? I would fain know of you, is it not true in Fact, that he was then Mayor, and met in an Aſſembly for the Election of a new Mayor?

Mr. *Pollexfen*. It is true; but that we conceive will not ſupport this Information.

L. C. J. Then I deſire to know, how comes Mr. *Sacheverell*, and theſe ſort of People to meddle in it?

Mr. *Pollexfen*. If it be inſiſted upon that he was Mayor by the Old Charter, then we hope we have done nothing but what by the Old Charter we may juſtify.

L. C. J. What had Mr. *Sacheverell*, Mr. *Hutchinſon*, and my Parſon *Wilſon* to do there?

Mr. *Pollexfen*. By the Old Charter Mr. *Sacheverell* was a Burgeſs.

L. C. J. If he were, was he capable of Electing?

Mr. *Pollexfen*. He might be preſent at an Election, and was concerned as a Burgeſs.

L. C. J. But could he meddle with the Election?

Mr. *Pollexfen*. Then, good my Lord, what have we done---

L. C. J. Wonderfully done! thoſe things you can never anſwer: In *London*, for the purpoſe, it was not an Offence for any Freeman to be preſent at the Election of the Mayor; but if a Parcel of Freemen come that are not Livery-men, and run themſelves into the Buſineſs to give Voices, and give Direction about that they have nothing to do with, and cry out, pray ſtop the Books, and pray, good Sir, deliver the Mace; then they had concerned themſelves, and meddled with an Authority to which they had no Pretence, which is an Offence; and if Men will buſy themſelves in that which does not concern them, they muſt ſuffer for it. Mr. *Sacheverell*, and the reſt, were as capable of giving them Advice about an Election, ſeven Years before as now; What Reaſon had they now to come and make this Hubbub? But ſome Men will ſhew themſelves ſuch wonderful Adviſers before their Advice is aſked or needed.

Mr. *Lovell*. Will your Lordſhip pleaſe to ſpare me one Word----

Mr. *Pollexfen*. Prithee give me leave: My Lord, when you ſee how the Fact does appear upon the Evidence, I ſuppoſe we ſhall not be thought guilty of any Diſorder.

L. C. J. It doth appear very plain, Man, it has been very fully ſworn; it has indeed.

Mr. *Pollexfen*. We hope to ſatisfy you otherwiſe by our Evidence, as to the Fact.

Mr. *Lovell*. Your Lordſhip is pleaſed to object that upon us, which doth lie upon us, and requires an Anſwer———

L. C. J. It does indeed.

Mr. *Lovell*. As to *Malin*'s being Sheriff. But, my Lord, I conceive he was not Sheriff; for if the Old Charter was in force, then he was not Sheriff; for there was a New Sheriff choſen and ſworn, before the Mace was required of him: If the New Charter were in force then he was not Sheriff; for he was not named Sheriff in it.

L. C. J. Who choſe the New Sheriff?

Mr. *Lovell*. He was not choſen by any body, he was named in the Charter.

L. C. J. *Malin* was Sheriff before that time, and was indeed Sheriff till a New One was choſen in his Place; and therefore the detaining the Mace was unlawful, that is our Opinion; and if your Opinion be otherwiſe, it is as idle as the Opinion of the New Charter.

Mr. *Holt*. Will your Lordſhip pleaſe to ſpare me a Word for the Defendants? My Lord, the Information doth conſiſt of two Matters; the firſt is, the diſturbing the Election that was appointed by the Mayor, by virtue of the New Charter; the next is, the taking away the Mace, being the Enſign of Office of *Malin* the Sheriff. Now, with Submiſſion, my Lord, I think they have failed in the firſt Part of the Information; for they have laid it Special, that *Wild* being Mayor, he had at that time, when theſe Defendants did thus aſſemble themſelves, appointed an Election by virtue of the Letters Patents of this King; and after he had ſo appointed it, theſe Defendants did aſſemble themſelves in diſturbance of that Election, and after Proclamation made, continued their Diſturbance. Now if this *Gervas Wild* had no Authority to make or appoint this Election by virtue of any Charter, then had he no Authority to make this Proclamation; and then theſe Defendants are not guilty of this Information, ſuppoſing what they did was not juſtifiable in the main, yet as here laid, they are not guilty; for it is not, nor can be to the Diſturbance of the Election, or Contempt of his Authority.

L. C. J. Come, that has been ſaid, and anſwered over and over again. Call your Witneſſes.

Mr. *Holt*. As to this Buſineſs of *Malin*, and the Mace, we did ſay it did not belong to him; and it is an Uſurpation upon the King, without Authority by any Charter or Grant, and a Novelty. No Man can have any Enſign of Authority, but by Grant from the King.

L. C. J. What is that to you? Why did you take it away? What Authority had you for that?

Mr. *Holt*. This is laid to be an Affront to the King's Authority, and it was not, for the very Mace was an Uſurpation.

L. C. J. He was in Poſſeſſion of it, and that is the ſame thing as to you, whether it be of right or not? You never pretended to keep it for the King.

Mr. *Holt*. If ſo be they among themſelves-----

L. C. J. Pray go on to your Witneſſes, and don't ſpend our Time in ſuch trivial Stuff; for this is all Stuff, meer Stuff.

Mr. *Holt*. My Lord, we wou'd make out our Defence----

L. C. J. Do ſo if you can, call your Witneſſes; we muſt not give Liberty to every one of the Counſel to make Speeches of the ſame thing, over and over again, and all to no purpoſe.

Mr. *Holt*. This Mace did not belong to *Malin*.

L. C. J. How do you know that? Can you tell whether the King had not given them ſuch Power?

Mr. *Holt*. It was never given by the King.

L. C. J. Does the King queſtion them for it?

Mr. *Holt.* We will prove it an Uſurpation, and can ſhew the Time when it was firſt uſurp'd.

L. C. J. This way of Behaviour by Riots, looks more like the Times of Uſurpation, when Rabbles meet to meddle with Government.

Mr. ——. My Lord, I deſire to offer only one Word that has not been yet ſaid.

L. C. J. No, I will hear no more Speeches; call your Witneſſes, if you have any: Sure you take yourſelves to be in your Common-Halls, and Council-Houſes, making Speeches.

Mr. *Holt.* Call *Edward Higley* and Sir *Thomas Parkyns.*

Mr. *Pollexfen.* May we read the Old Charter, my Lord?

L. C. J. Ay, read what you will, and offer what you will in Evidence for yourſelves; but let us not have ſuch Doctrines preach'd among us, as ſettling Governments, and trying Rights, by Club-Law.

Mr. *Pollexfen,* God forbid, my Lord, I am ſure nobody here deſires any ſuch thing.

Mr. *Holt.* Swear *Edward Higley.* [*Which was done.*]

L. C. J. Well, what do you aſk this Man?

Mr. *Holt.* [*Shewing him a Paper-Book.*] Is that a true Copy of the Old Charter?

Higley. Yes, it is.

Mr. *Pollexfen.* We deſire it may be read.

L. C. J. What would you read it for?

Mr. *Pollexfen.* By that it will appear the Election was regular, according to the Old Charter, which we ſay is ſtill in force, and ſo we in no fault.

L. C. J. Shall we enter into a Queſtion of that Nature here, Which is in force? No, we will not. Why did you commit this Riot? anſwer that.

Mr. *Pollexfen.* By the Old Charter, my Lord, the Mayor and Burgeſſes are to elect.

L. C. J. Ay, Mr. *Pollexfen,* and you know the Old Charter of *London,* was to the Mayor, Commonalty, and Citizens of *London,* to chooſe a Mayor; and we know that the Mayor, Commonalty, and Citizens of *London,* have not choſen a Mayor this many hundred of Years. We know very well, that that Election is made by Livery-Men: Now you come and ſay, pray let us ſee how it is by the Charter; why as well may not all the Citizens of *London* claim to be at the Election of the Lord Mayor? If you can ſhew me that heretofore, before this time, that there were other Perſons that us'd to be preſent at Elections, you ſay ſomewhat: But if you have only an antient Right to be preſent, and they have raviſhed this Right from you, you had done exceeding well to have aſſerted your Right in a legal Courſe. But do you think you are to regain your Right by Club-Law, and throwing up your Hats, and Noiſe, and Riots, and oppoſing the King's Authority?

Mr. *Pollexfen.* My Lord, we were never for oppoſing the King's Authority; we never were againſt the King?

Mr. Juſt. *Withins.* Who was that againſt, I pray, When you ſaid, No New Charter, No New Charter? Was not that againſt the King?

Mr. *Lovell.* That was none of us who cried out ſo.

L. C. J. Who knows in a Croud, what Perſon in particular makes a Noiſe, or does not? you were where you ſhould not have been.

Mr. *Pollexfen.* My Lord, we pray the Charter made to this Town, in the Reign of *Henry* VI. which provides, that the Mayor ſhall be choſen by the Burgeſſes, and ſworn by the preceeding Mayor; but if he was not preſent, he ſhould be ſworn by the Coroner. Your Lordſhip objects the Caſe of the Livery-Men by the City of *London*; that is by Virtue of a particular By-Law: But in our Caſe, the Old Charter having preſcribed this Method, you will not take it out of that Method, without their producing ſome By-Law for it.

L. C. J. Yes, yes, we ſhall go according to the conſtant Uſage within Memory, becauſe we will not, upon this Information, try the Right one way or other. Shew us by the Uſage that there was a Pretence for ſuch Perſons as Mr. *Sacheverell,* and the others here, to be preſent at the Elections.

Mr. Juſt. *Withins.* In this Caſe it ſhall be preſum'd there was a By-Law.

Mr. *Pollexfen.* I hope you will preſume nothing to make us guilty of a Crime; they ought to ſhew the By-Law if they have any.

L. C. J. I think we need not trouble ourſelves about that, what By-Laws have been made; but we find theſe Perſons in Poſſeſſion of this Uſage, and ſo they have been for theſe eighteen Years paſt.

Mr. *Pollexfen.* My Lord, that will not make them a Title.

L. C. J. We will not allow the Right to be try'd upon this Information.

Mr. Juſt. *Withins.* Mr. *Pollexfen,* What do you ſpeak of Swearing by the Coroner? That could not be in this Caſe, for the Old Mayor was there.

Mr. *Pollexfen.* Not at the Swearing of *Greaves.*

Mr. *Farewell.* My Lord, I would only obſerve one thing; the Crime charg'd upon us, is for not departing after the Proclamation made; now I do not obſerve that they prove that Mr. *Sacheverell* was ever there after the Proclamation.

L. C. J. I thought indeed you were very full, you were ſo eager to ſpeak; but your Obſervation is very much in the wrong, for the Proof is poſitive that Mr. *Sacheverell* and the reſt of the Company ſtaid after; but becauſe you ſhall obſerve it better, call *Reynolds* again; you were ſo full, you could not let it alone till you were tapt. *Reynolds,* upon your Oath, did you make Proclamation that all Perſons that were not ſummoned, or were unconcern'd in the Election, ſhould depart?

Reynolds. Yes, my Lord, I did.

L. C. J. Did Mr. *Sacheverell,* and the reſt, ſtay there afterwards?

Reynolds. Yes.

Mr. *Stanhope.* My Lord, the Mayor I think ſwears he did not ſummons any one: The Information is laid, that there was an Aſſembly duly ſummoned and called before him.

L. C. J. He told you he ſent to Alderman *Parker,* and *Edge,* and two or three more, to come away and hear the Charter read; and he ſpoke to Serjeant *Bigland,* and he was huffiſh, and did not reckon himſelf concerned in the New Charter: for it ſeems he was not continued in his Place of Recorder by it. He tells you that the Charter was read to them, and with much ado, he that read it, did go through with it: But he was mightily interrupted by the Noiſe that was made by the Defendants and their Rabble; this prov'd that there was an Aſſembly ſummon'd before him, ſure.

Mr. Juſt. *Withins.* Mr. *Stanhope,* don't you obſerve too, that he ſent to Church to ſummon them to come to him, and they would not come when he ſent for them?

Mr. *Pollexfen.* My Lord, they ſhould produce their New Charter, I humbly conceive.

L. C. J. I tell you before-hand, we are not trying the Validity of the New Charter, or the Old, but whether you are guilty of a Riot, or no?

Mr. *Holt.* My Lord, if they were in Poſſeſſion of Government by their New Charter, they ſhould ſhew that New Charter: We ſhall ſhew you an Old Charter to the Mayor and Burgeſſes there----

L. C. J. Can you ſhew a Charter that the Defendants were Mayor, Aldermen, and Burgeſſes?

Mr. *Holt.* Swear *Luke Oldham.* [*Which was done.*] Look over that Book, Mr. *Oldham,* is that a true Copy?

Oldham. This is a true Copy of the Charter that I examined at the *Tower.*

Mr. Recorder. When did you examine it?

Oldham. I can't tell you the particular Day, Sir.

Mr. Recorder. How long ago is it that you examin'd it?

Oldham. 'Tis about a Twelve-month ago.

Mr. *Holt.* Upon your Oath, is it a true Copy?

Oldham. Yes, I read it over three Days ago.

Clerk reads. This is dated ----- of *H.* 6th.

Mr. Juſt. *Withins.* Where would you have it read?

Mr. *Pollexfen.* We deſire he may read that part of the Incorporating the Town, and the Power of chooſing the Mayor.

Clerk. Whereabouts is it, Sir?

Mr. *Pollexfen.* Folio 81. [*Which was read.*]

Mr. *Holt.* Call Sir *Thomas Parkyns.* [*Who appear'd, and was ſworn.*]

L. C. J. What do you aſk this Gentleman?

Mr. *Holt.* Pray, Sir, were you by in the Council-Chamber at *Nottingham* on *Michaelmas-Day* was Twelve-month?

Mr. Recorder. Pray, Sir *Thomas Parkyns,* let me aſk you one Queſtion; Have not you laid out any Money in this Cauſe?

Sir *Tho. Parkyns.* No, Sir, not that I know of.

Mr. *Stanhope.* Pray, Sir, were you preſent in the Council-Chamber, when Mr. *Wild,* the Mayor, was there; and did you ſee Mr. *Sacheverell,* and Mr. *Hutchinſon* come in?

Sir *Tho. Parkyns.* Yes, I was there.

Mr. *Stanhope.* Pray, how did they demean themſelves there?

Sir *Thomas Parkyns.* Very civilly, for any thing I did perceive, without any diſturbance to the Court, or any body elſe.

Mr. *Stanhope.* Did they uſe any Geſtures, or Behaviours, to occaſion the Mayor to go away?

Sir *Tho. Parkyns.* Not as I know of at all, Sir.

Mr. *Stanhope.* Pray, Sir, will you tell all your Knowledge how the thing paſs'd?

Sir *Thomas Parkyns.* I underſtanding there was to be an Election of a Mayor for the Town of *Nottingham,* upon *Michaelmas-Day,* as has been accuſtum'd Time out of mind, a very long while, as I have been inform'd at the Church, I was there, and went to the uſual Place in the Chancel, and there we ſtaid ſome time till after Prayer; and after Prayer, there they thought to have gone to a new Election of a Mayor: There was Notice of a New Charter coming, but then I believe it was not come; but, as they were called, the Old Charter-Men, Alderman *Greaves,* and the Recorder, Serjeant *Bigland,* and Alderman *Edge,* and ſeveral others, forty, I believe I could name, did ſend to Mr. *Wild,* the Mayor that then was, and Mr. *Rippon,* and others, who were then at the Town-Hall, and deſir'd them to come up to the Chancel, as I am inform'd, in order to an Election of a New Mayor; but they did not come: But, as I heard, they ſent Word back again, to deſire Alderman *Greaves,* and the reſt, to come down to the Town-Hall, which accordingly was done.

Mr. *Pollexfen.* And what happen'd there?

Sir *Thomas Parkyns.* I was there along with them, and went into the Town-Hall, and ſo into a Room, which I conceive they call the Council-Chamber; and there upon ſeveral Diſcourſes, there were ſome were for going to voting for a New Mayor, and there were ſome that did ſay, they had a New Charter, and they muſt have a Mayor according to that New Charter; whereupon they deſir'd it might be read, but there was no Anſwer, I think, made to that: I did ſee the Thing they ſaid was the New Charter in a Box: I think it was ſo, but I did not ſee it out.

Mr. *Combs.* Then it was not read while you were there?

Sir *Thomas Parkyns.* I did not hear a Word of it read; but I think there was Alderman *Edge* did ſay, I do not know how I am to act by the New Charter; but I underſtand what I have to do by the Old Charter very well, therefore we will proceed to the Election of a New Mayor; and then upon that Account they did go to voting, and ſeveral Votes there were for ſeveral Perſons, as particularly for Mr. *Edge* himſelf, and ſome for Mr. *Toplady,* but the moſt for Alderman *Greaves*; and when they did underſtand, as I conceive, that Alderman *Greaves* had the Majority of Votes, then they did riſe up, and went away.

Mr. *Pollexfen.* Who did?

Sir *Tho. Parkyns.* The Mayor Mr. *Wild,* and Alderman *Rippon.*

Mr. *Stanhope.* Pray, Sir, did the Mayor ſtay all the while the Poll was?

Sir *Tho. Parkyns.* He was there, I am ſure while they voted; that I am certain he was; I cannot ſay he was there all the time.

Mr. *Pollexfen.* Did he oppoſe the Election?---Sir *Tho. Parkyns.* No.

Mr. *Pollexfen.* Was there any Proclamation made for any-body to depart?

Sir *Tho. Parkyns.* None that I heard of.

Mr. *Holt.* When the New Charter was produc'd, was it deſir'd by any-body there, that it might be read?

Sir *Tho. Parkyns.* Yes, Sir, there was ſome that deſir'd it might be read.

Mr. *Lovell.* Why was it not read?

Sir *Tho. Parkyns.* I can't tell that; but I did hear they ſhould ſhew Mr. *Edge* his Name in the New Charter; and they did believe he was continued in his Place; and I think Mr. *Edge* replied, he had his Place by the Old Charter during Life; and by that Charter he knew how to act; he could not tell what he was in the New Charter.

Mr. *Farewell.* Pray, Sir, did any of the Old Charter-Men oppoſe the reading of the New Charter?

Sir *Tho. Parkyns.* No, indeed, Sir, not that I know of.

L. C. J. Pray, Sir, let me aſk you a Queſtion or two, you are a Burgeſs of this Town, are you not?

Sir *Tho. Parkyns.* Yes, my Lord.

L. C. J. How many Years have you been a Burgeſs?

Sir *Tho. Parkyns.* Several Years.

L. C. J. Were you ever at an Election before?

Sir *Tho. Parkyns.* No, but I have been at ſeveral of their Meetings.

L. C. J. How came you to be there at this time?

Sir *Tho. Parkyns.* Upon no Invitation by any body, but upon my own accord.

L. C J. How came you to accord upon that time more than upon another?

Sir *Tho. Parkyns.* Truly, my Lord, I cannot anſwer you to that.

L. C. J. No, I believe not; but let me aſk you another Queſtion: Who gave their Votes there?

Sir *Tho. Parkyns.* Several gave their Votes.

L. C. J. Did you give any Vote?

Sir *Tho. Parkyns.* No, my Lord, I gave no Vote.

L. C. J. What did you do there?

Sir *Tho. Parkyns.* There were ſeveral other Gentlemen of the Country there beſides me.

L. C. J. Ay, there were ſeveral there that had nothing to do there, and which ſhould not have been there: Did not you hear any Proclamation made at all?

Sir *Tho. Parkyns.* No, my Lord, I did not.

L. C. J. Did you hear no crying out in the Council-Chamber, A *Greaves* Mayor, A *Greaves* Mayor, No New Charter, No New Charter?

Sir *Tho. Parkyns.* I did not hear any Outcry at all.

L. C. J. Did you hear nothing ſaid, Pray ſtay the Books, Pray ſtay the Books?

Sir *Tho. Parkyns.* No, my Lord, I did not.

L. C. J. Pray, did you obſerve any thing in the World about the Mace there?

Sir *Tho. Parkyns.* Yes, I did.

L. C. J. Pray let us hear that, for I ſee you did not hear a great deal, nor any thing indeed that other People heard; now let us know what you did ſee?

Sir *Tho. Parkyns.* The Old Mayor went away with two of the Maces, I think, and one was left behind; and preſently after comes back Mr. *Malin*, and demanded the other Mace.

L. C. J. Of whom?——Sir *Tho. Parkyns.* Indeed, I can't tell, my Lord.

Mr. Juſt. *Withens.* What Anſwer was given?

Sir *Tho. Parkyns.* There were ſeveral, I can't tell the particular Names, that ſaid they had as much Intereſt in it, as *Malin* in the Mace; and the Reaſon was this, it was bought by ſeveral Contributors.

L. C. J. Who was that ſaid ſo?

Sir *Tho. Parkyns.* Indeed, my Lord, I can't tell particularly.

L. C. J. Alack-a-day! now we have forgot all again; pray did not you ſee the Thing call'd The New Charter, as you expreſs'd it?

Sir *Tho. Parkyns.* No, I did not ſee it out of the Box.

L. C. J. Did you obſerve when Mr. *Edge* called to read the Charter?

Sir *Tho. Parkyns.* No, my Lord, I did not.

L. C. J. I mean, when he ſpoke to my Brother *Bigland* to read it.

Sir *Tho. Parkyns.* My Lord, I was there from the beginning to the end. If you pleaſe to hear me, my Lord, I will anſwer you to what you aſk me: I think the Mayor, Mr. *Wild*, did ſpeak to Serjeant *Bigland*, and aſk'd him ſomething of Advice, but what it was I cannot tell; it was ſomething concerning the New and the Old Charter; and Serjeant *Bigland* anſwered him, Do you aſk me as Recorder, or as Counſel? Truly, I forgot what Reply was made.

Mr. *Pollexfen.* This Gentleman, my Lord, was not in the Hall.

Mr. Recorder. Did you ſee any Struggling about getting the Mace away?

Sir *Tho. Parkyns.* No, I did not, Sir.

Mr. Recorder. How came *Somner* to leave the Mace behind him?

Sir *Tho. Parkyns.* I don't know, I can't tell.

Mr. Recorder. Did you hear any thing ſaid by Mr. *Sacheverell?*

Sir *Tho. Parkyns.* No, I did not.

Mr. Juſt. *Withins.* Did not he ſay, Hold the Books, Stop the Books?

Sir *Tho. Parkyns.* No, I don't remember it.

Mr. *Holt.* Pray did you ſtay as long as Mr. *Sacheverell* ſtaid?

Sir *Tho. Parkyns.* I ſtaid as long as they all ſtaid.

Mr. Juſt. *Holloway.* Did you obſerve no Noiſe nor Uproar?

Sir *Tho. Parkyns.* No, by my Soul, not I.

Mr. Juſt. *Holloway.* That is ſtrange.

Mr. *Holt.* He was not in the Hall where the Noiſe was.

L. C. J. But could he be in the next Room, and not hear the Hubbub?

Sir *Tho. Parkyns.* My Lord, I ſaid I was in the Place called the Council-Houſe, and I did not ſtir till they all went out together.

Mr. Recorder. Was not you at the Proclamation at the Market-Place? and was there no throwing up of Hats?

Sir *Tho. Parkyns.* Yes, they did, when they ſaid God ſave the King, the People ſaid *Amen*, and threw up their Hats.

Mr. *Stanhope.* Pray did you hear Mr. *Sacheverell* deſire them to be quiet and peaceable?

Sir *Tho. Parkyns.* Yes, I did ſo.

L. C. J. Did you hear M[illegible] *Sacheverell* when he ſpoke to the Mayor in the Hall?

Sir *Tho. Parkyns.* No, I was not in the Hall at all.

L. C. J. Did you hear him when he ſpoke to the Mayor in the Council-Chamber?

Sir *Tho. Parkyns.* No, not that I do remember.

Mr. Juſt. *Holloway.* You ſay you heard Mr. *Sacheverell* ſpeak to them to be quiet and peaceable?

Sir *Tho. Parkyns.* No, not there, but it was at Mr. *Greaves*'s own Houſe.

Mr. Juſt. *Holloway.* was there any Uproar then there?

Sir *Tho. Parkyns.* No, my Lord, but I'll tell you there was a Multitude of People there, and a great deal of Rabble like to be, and Mr. *Sacheverell* deſir'd the People to do their Buſineſs with all Modeſty; and I think there never was ſo great a Number of People that ever carried themſelves more civilly than they did. I did not hear, by the Oath I have taken, one angry paſſionate Word, or any thing of that kind.

Mr. *Recorder.* They were all of a Side then.

Mr. *Stanhope.* Were you by when Mr. *Hutchinſon* was ſent with Mr. *Gregory?* What was he ſent for?

Sir *Tho. Parkyns.* I can't tell that, but I did hear they did go.

Mr. *Stanhope.* Was he ſent to demand, or deſire the Mace?

Sir *Tho. Parkyns.* Indeed I can't tell how it was.

L. C J. He can tell nothing.

Mr. Recorder. I believe he was worſe frighted than Alderman *Parker*, he has forgot all.

Mr. *Pollexfen.* Swear Mr. *John Thinn.* [*Which was done.*] Pray, Sir, were you preſent on *Michaelmas*-Day, at the Election of the Mayor of *Nottingham?*

Thinn. My Lord, I hear there are ſeveral Gentlemen indicted for a Riot at that Time, I hope I ſhall receive no Prejudice for giving my Information here.

L. C. J. What do you mean, Mr. *Thinn?*

Thinn. My Lord, I underſtand by ſome Perſons, that there is like to be an Information brought againſt me, if I give my Evidence here.

L. C. J. Prithee, Man, we know nothing at all of the Evidence or Information; if you will evidence, you may.

Mr. *Pollexfen.* Pray, Sir, were you preſent when this Matter was tranſacting on *Michaelmas*-Day?

Thinn. I happen'd to be in the Country at that time, about a Buſineſs between Mr. *Edge* and myſelf; we are Copartners in an Eſtate, and we were then upon a Partition; and on *Michaelmas*-Day I went to Church, and being at Church, and ſeeing a great deal of Company in the Chancel, I went to ſee the uſual Ceremony of chooſing the Mayor, and ſo forth. I was there then, and while I was there in the Church, I ſtaid there near an Hour, I believe, after Prayer was done, and there was an Expectation of the Old Mayor, and others, to meet together upon the Election, but nobody came; but at laſt there was ſome Meſſage came down, I know not by whom, nor from whom, but the general Vogue was, that it came from Mr. *Wild*, the Old Mayor, and that he had ſent down to deſire the Company to come down to the Hall, but I can't ſay who brought the Meſſage; and upon this, all the Company went from the Church, up to the Hall, and I went with Alderman *Edge*, who was the Perſon I had Buſineſs with; we went thro' a great Room, the Town-Hall, and then there is a little Room within, I think they call the Council-Chamber, and a great Table within a Rail, as this may be; and I remember I ſat down behind the Alderman: I could obſerve nothing of Heat among them at all, nor the leaſt Word that I obſerv'd, of Jangling. There was a Box upon the Table, which they ſaid was the New Charter, but it was not read; but Mr. *Edge* was offer'd to read his own Name, to ſhew that he had Power to act in it; but he did not know how far he might act by that, and therefore he was proceeding to ſwear the Officer according to the Old one.

Mr. *Pollexfen.* Was there any Cry, or any Noiſe there?

Thinn. I don't know that I heard any one ſay any harſh or ill Word; there was not ſo much as a ſhout.

L. C. J. Did you hear any Hubbub, or Tumult?

Thinn. No, my Lord, not in the Room where we were.

L. C. J. Did you in any other Room?

Thinn. I can't tell that, there was a great many People about the Window.

Mr. *Holt.* Did the Old Mayor, *Wild*, ſtay there while they elected Mr. *Greaves?*

Thinn. He ſtaid there ſome of the time.

Mr. *Stanhope.* Was he there all the while?

Thinn. I cannot ſay but that ſome of the Aldermen ſtaid all the time, and ſome of them gave their Votes for Mr. *Greaves.*

Mr. *Lovell.* What did *Edge* do?

Thinn. He took the Poll, and to the beſt of my Remembrance, Alderman *Parker*, that is one of the Aldermen that has been here, gave his Vote for Mr. *Edge.*

Mr. *Lovell.* Did the Mayor, *Wild*, ſtay till the Poll was caſt up?

L. C. J. Poll, we hear nothing of a Poll; Who gave you Authority to poll?

Mr. *Lovell* He that was in the New Charter appointed Mayor, yet ſtaid to ſee the Election, and then went away.

Mr. *Pollexfen.* Sir did you hear any Proclamation made in the Council-Chamber?

Thinn. No, Sir; I came from Church with Mr. *Edge*, and the reſt of the Gentlemen.

L. C. J. Were you there when *Greaves* was ſworn?

Thinn. Truly, my Lord, I don't remember that I was.

L. C. J. I deſire to know by what Authority Mr. *Edge* ſwore him; let him look upon the Statute of *Præmunire*, and conſider with himſelf about it a little.

Mr. Juſt. *Withins.* As far as I find, this Gentleman was not much concern'd, and did not mind what was done.

Thinn. No truly, Sir, not I, much.

Mr. *Holt.* Did Mr. *Sacheverell* go with you, or ſtay behind?

Thinn. We went all together.

Mr. *Blencow* Pray ſwear Mr. *Pole.* [*Which was done.*]

Mr. *Stanhope.* Pray, Sir, were you in the Council-Chamber at *Nottingham* on *Michaelmas*-Day was Twelve-month? Pray tell us what happened there.

Pole. I have lived in *Nottingham* about twelve Years. I uſed to go and ſee the Mayor and other Officers ſworn: Upon this Day I was at Church, and they went to Prayers, and after Prayers were ended, I think there was Mr. *Gregory* and Mr. *Hutchinſon*, as I take it, ſent by ſome to deſire the Mayor, that was *Wild*, to come to Church, that they might proceed to an Election according to the Old Charter; but what Anſwer was returned I cannot ſay: but after that, as I take it, there was Alderman *Parker* and Alderman *Rippon* did come and ſpeak to the Company, and ſaid, the Mayor deſired them to come down, for they had the New Charter, and he was to have their Advice how to proceed upon it. While they ſat there, I walked from the Church to the Town-Hall; and in a little while the Company from Church came to the Town-Hall: When they were there, the Mayor deſired Serjeant *Bigland*'s Advice how to proceed upon the New Charter; ſays he, do you deſire my Advice as Recorder, or as Counſel? and I think as to that he gave no Anſwer. The like Queſtion he put to Mr. *Edge*; and Mr. *Edge* referred it to Serjeant *Bigland*'s Anſwer, and I think it was a very good one. After a while, ſome of the Company that uſed to be the Electors of Mayors and Sheriffs, being of the Clothing, cried, let us go to the Poll; and I think Mr. *Edge* began to take the Poll, and there was ſeveral that did vote, but that was the general Cry of thoſe that were inclined to the New and to the Old Charters. Some that were in the New Charter, gave their Votes, but not for *Greaves*; I do not remember any one did when the Poll was taking.

L. C. J. Who directed the Poll, pray?

Pole. I think it was ſome that were for the Old Charter; but I think it was the general Deſire to go to the Poll.

L. C. J. Who took the Poll?---*Pole.* Mr. *Edge* took it.

Mr. *Holt.* Did the Old Mayor propoſe the Election, or the New Mayor, or no?

Pole. No, I don't know he propoſed it, but it was put to him.

Mr. *Stanhope.* Was he preſent at the Election?

Pole. Yes, he was.

Mr. *Stanhope.* Was he preſent when the Poll was taken?

Pole. Yes, he was.

Mr. *Stanhope.* Did he contradict it?

Pole. I cannot ſay he did contradict it.

L. C. J. How many of theſe Elections have you been at before?

Pole. I was not by at the Nomination; that I could not be, for they excluded all but thoſe that had Votes.

L. C. J. How came you to be ſo buſy as to be there at this time?

Pole. I went of my own accord, I was not deſired by any body, any more now than other Years, but uſed as much as I cou'd to endeavour to be at the ſwearing of them; for they excluded all People uſually out of the Chancel, where the Election uſed to be, if they were not of the Clothing.

Mr. *Stanhope.* Who gave the Oath to the Perſon elected uſually?

Pole. The Coroner uſed to give the Mayor his Oath.

Mr. *Lovell.* Who uſed to take the Poll at other Elections?

Pole. I can't ſay who took it, becauſe we were excluded the Chancel; but it has been reputed that Mr. *Edge* uſed to take it.

Mr. *Blencow.* Who came to fetch you from Church?

Pole. I think Alderman *Rippon* and Alderman *Parker* did deſire them to come to the Town-Hall, and I think *Malin* was there, but I cannot tell what he ſaid.

Mr. *Blencow.* Who was at Church then?

L. C. J. Pray were you deſir'd to come?---*Pole.* No, I was not.

L. C. J. Was Mr. *Sacheverell?*

Pole. No, I don't know that he was?

Mr. *Stanhope.* When theſe Gentlemen came, did they behave themſelves civilly?

Pole. Yes; I ſaw nothing but civil Behaviour: There was a great Concourſe of People, I believe moſt of the Well-Wiſhers to the Old and New Charter were there that Day.

L. C. J. Can you ſay you did not hear a great deal of Noiſe and Hubbub?---*Pole.* I cannot ſay ſo, nor truly can I ſay I did.

L. C. J. Do you believe you did or not?

Pole. But I believe I might hear ſome Noiſe; but I was in the Council-Chamber, not in the Hall.

Mr. Juſt. *Holloway.* Was Sir *Thomas Parkyns* there?---*Pole.* Yes, he was.

L. C. J. Was Mr. *Thinn* there?

Pole. Yes, I think I ſat next him when they came from Church: I did deſire to ſee the Proceedings of the Day, and I think I dined with the Company, and went in with the firſt.

L. C. J. Did you ſee any thing about a Mace?

Pole. Yes, I think I did ſee ſomething about a Mace.

L. C. J. Why then prithee tell me, as near as thee can gueſs, what thee didſt ſee about the Mace.

Pole. When they went out, *Wild* and his Company, the Room was full of Company; and, as I take it, Mr. *Malin*, or whoever it was that was to take it, did forget the Mace behind him; and ſomebody coming for the Mace, I think there was one of the Gentlemen of the Council did put it from him, and would not let him have it.

L. C. J. Ay, come, who was that one Gentleman of the Council?

Pole. I can't be poſitive, I believe it might be Mr. *Salmon*, or Mr. *B*——.

L. C. J. But, prithee, wilt thou tell me that there was no Shouting, nor Noiſe, nor Hubbub?

Pole. In the Council-Chamber, I am ſatisfy'd as to myſelf, I heard none and believe there was none; I won't ſay there was not in the Hall, for I was not there.

Mr. Juſt. *Holloway.* Did you hear any one cry, ſtop the Books?

Pole. I think there was at that time a Diſpute about the Books.

L. C. J. Ay, tell me now who that Diſpute was between?

Pole. I think it was among the Gownmen that were of the Council.

L. C. J. You ſay well, name me ſome of them now.

Pole. I cannot indeed, my Lord, name any particular Perſon.

Mr. Juſt. *Holloway.* Did you hear Mr. *Sacheverell* ſpeak any thing about the Books?

Pole. I think I did not, I believe it was one of the Clothing.

L. C. J. Prithee, canſt thee not gueſs who that Man of the Clothing was?

Pole. If I do gueſs, my Lord, I cannot ſpeak poſitively.

L. C. J. Prithee don't ſay ſo, I know thee canſt if thou wilt, come, recollect thy Memory.

Pole. My Lord, I would remember it, and fix the Perſon, if I could, but I cannot.

L. C. J. But as near as thee canſt gueſs, I know thee haſt a good Gueſs with thee.

Pole. Indeed, my Lord, I cannot.

Mr. *Powis.* Did you obſerve that he did any ways concern himſelf about the Election, Mr. *Sacheverell* I mean?

L. C. J. What did he do there, Mr. *Powis?* he was preſent there.

Mr. Recorder. Was not he the Head of the Old Charter Party?

Pole. The Old Charter People took it that the Surrender had been ſurreptitiouſly obtain'd, and I think he might ſay they had a good Right to inſiſt upon the Old Charter.

L. C. J. Who ſaid ſo? Mr. *Sacheverell?*

Pole. I believe I did hear him ſay ſomething to that purpoſe, but I cannot poſitively ſay what; I dare not undertake to ſay what particular Perſons ſpoke that Day.

Mr. Recorder. Was not he for reading of the New Charter, upon your Oath?

Pole. I cannot tell whether he was or no.

Mr. Recorder. Did he not bid the People be quiet?

Pole. I can't ſay I heard any ſuch thing.

Mr. *Ward.* Did not you hear him ſay any thing to the Mayor when he came into the Council-Houſe.

Pole. No, I did not.

Mr. *Ward.* Did not you hear the Serjeant make Proclamation for all People to depart that had no Buſineſs there?---*Pole.* I did not.

L. C. J. What ſay you, *Reynolds*, did you make Proclamation in the Council Houſe by the Mayor's Direction?---*Reynolds.* Yes, I did.

L. C. J. And yet you ſaid you ſtaid there all the Time.

Mr. *Blencow.* When the Shout was in the Hall, pray, where was Mr. *Sacheverell?*

Pole. He was in the Council-Chamber: The Occaſion of the Shout to be in the Hall was this, when the Poll was taken, and the Majority appeared to be for *Greaves*, Mr. *Hutchinſon* was ſent to acquaint the Mayor with it, and to deſire him to come, and be preſent at the ſwearing of him.

L. C. J. Who ſent him?

Pole. Mr. *Hutchinſon* and they can tell themſelves.

L. C. J. But who do you ſay ſent him?

Pole I can't tell particularly, they can beſt tell.

L. C. J. But who told you ſo? or did any body tell you ſo?

Pole. I was told ſo by ſeveral Perſons that they were ſent.

L. C. J. Prithee, who told thee?

Pole. I believe I may have heard it from himſelf, that he was ſent.

L. C. J. Who did he tell you ſent him?

Pole. He did not tell me who particularly.

Mr. *Farewell.* My Lord, I deſire to aſk *Reynolds* this Queſtion; Who was there beſides that heard you make the Proclamation?

Reynolds. The Mayor was there.

Mr. Juſt. *Holloway.* They made ſuch a Noiſe, that perhaps every body could not hear it.

Mr. *Pollexfen.* Pray ſwear Mr. *Slater.* [*Which was done.*]

Mr. *Holt.* Were you in the Council-Chamber on *Michaelmas*-Day was Twelve-month in *Nottingham?*---*Slater.* Yes, I was.

Mr. *Holt.* Pray, give me an Account of what paſſed there, and what you obſerved.

Slater. I was at St. *Mary*'s Church with them, and came down from the Church with them to the Council-Houſe; and when they came, they went into the Council-Houſe to the Mayor that was then, Alderman *Wild*, and there they went and ſtaid ſome ſmall time; and then the Mayor and Aldermen came out, and came to the Common-Hall, and ſtaid a pretty conſiderable time; and then came Mr. *Hutchinſon* and Mr. *Gregory* to his Worſhip, and told him, And it pleaſe your Worſhip, the Council deſires you to come and hear Mr. *Greaves* ſworn Mayor; and at that Word, the Mayor replied to them, that he would come to them preſently, if they ſhould have done there: So preſently after, ſome cry'd out, A *Greaves* Mayor, a *Greaves* Mayor; and Alderman *Rippon* and others bid them hold their Tongues, or it ſhould be worſe for them; but ſtill they cry'd, A *Greaves*, a *Greaves*.

L. C. J. Where was that?---*Slater.* In the Common-Hall.

Mr. *Pollexfen.* What, the Burgeſſes cry'd out ſo, did they?

Slater. The People in the Hall.

Mr. Recorder. Was not you one of the Shouters?

Slater. No, I did not ſhout.

L. C. J. Were you one of the Clothing, one of the Council of the Town?---*Slater.* No, my Lord, I was not.

L. C. J. What Buſineſs had you there?

Slater. I went to ſee, as others did.

Mr. Juſt. *Withins.* What Trade are you?---*Slater.* I am a Taylor.

Mr. Juſt. *Withins.* Do you uſe to go to Church?---*Slater.* Yes, Sir.

L. C. J. You ſay the People did ſhout, A *Greaves* Mayor; did you hear them among that Shout, cry, No New Charter, No New Charter?

Slater. I can't ſay any thing of that.

L. C. J. Canſt thee ſay thou didſt not hear any ſuch Shout?

Slater. For my part, I can ſafely ſay I heard nothing of it. Then I ſee Alderman *Wild* take a Book in his Hand, as to take an Oath, and then there was a Shout, A *Greaves* Mayor; and Alderman *Parker* went off from the Bench, and ſaid, A Riot, a Riot.

Mr. *Pollexfen.* Swear *Roger Ryley.* [*Which was done.*]

Mr. *Holt.* Pray, were you at the Election of a New Mayor at *Michaelmas*-Day was Twelve-Month?

Ryley. I was at the firſt Nomination, which was the 14th of *Auguſt.*

Mr. *Holt.* Who was named then?---*Ryley.* Mr. *Greaves.*

Mr. *Holt.* Is that the Cuſtom of the Town to nominate him before?

Ryley. Yes, it is.

Mr. *Holt.* Were you there on *Michaelmas*-Day?

Ryley. Upon *Michaelmas*-Day I was ſummoned in upon the Clothing, and there the New Mayor went to the Old Mayor, and waited there a long time to go with him to Church; at laſt the Old Mayor would not go, but ſtaid waiting for a New Charter; ſo we went to Church, and heard the Prayers, and from the Church we went to the Hall according to Cuſtom; and there was the New Mayor there, Mr. *Greaves*, and he was ſworn Mayor there.

L. C. J. Who ſwore him?------*Ryley.* Alderman *Edge.*

L. C. J. Did you ever know him ſwear a Mayor before?

Mr. Juſt. *Holloway.* Did you ever know a Mayor ſworn before in the abſence of the Old Mayor?

Ryley. I have known many, I have been of the Council theſe Eighteen Years.

L. C. J. You ſay you have been of the Council theſe Eighteen Years?

Ryley. Yes, I have ſo, Sir.

L. C. J. And have you been preſent when the New Mayor has been ſworn?——*Ryley.* Yes, I have.

L. C. J. And do you know that the New Mayor was ſworn when the Old Mayor was not there?

Ryley. I have known many ſworn, I ſay, but I cannot tell whether I ever knew but that the New Mayor was ſworn before the Old Mayor.

L. C. J. Then when *Edge* gave *Greaves* the Oath, was the Old Mayor there?

Ryley. He was in the Room when he was choſen.

L. C. J. Was he there when he was ſworn, or when he was going to be ſworn?

Ryley. They would not abide the Place, but went away.

L. C. J. But, prithee Friend, don't dally, thou art upon thy Oath; was *Wild*, the old Mayor there, when they gave *Greaves* the Oath?

Ryley. I don't know exactly the Moment when he went away, but he was there when they voted him.

L. C. J. Thou art a prevaricating ſhuffling Fellow.

Ryley. If it pleaſe you, my Lord, I won't forſwear myſelf for all the Town and Country.

L. C. J. Speak the Truth, Man, and anſwer my Queſtion.

Ryley. He was there all the while they were voting, and how he went away I don't know.

L. C. J. Was he there when *Greaves* was ſworn?

Ryley. I can't tell that, if it pleaſe your Honour.

Mr. *Farewell.* My Lord, I deſire to aſk him one Queſtion.

L. C. J. But the Man won't anſwer a Queſtion fairly.

Mr. Juſt. *Holloway.* I ſwear, I think both Sides are very careful of anſwering Queſtions.

Mr. *Farewell.* My Lord, I deſire to aſk him what was the Behaviour of the Company all the time they were there in the Council-Houſe; was there any Diſturbance there?

Ryley. None, that I ſaw.

L. C. J. I aſk you again, was there no Proclamation made?

Ryley. I heard none.

Mr. *Farewell.* Did you take notice of *Reynolds* to be there?

Ryley. He might be there, for ought I know.

Mr. *Farewell.* Do you believe he could make a Proclamation, and you not hear it?

Ryley. No, I don't know how he ſhould.

Mr. *Pollexfen.* Call *Thomas Muxlow* and *John Peak.*

Mr. Juſt. *Withins.* Have you any more Witneſſes, Mr. *Pollexfen?*

Mr. *Pollexfen.* We have more, my Lord, if we can get them but in. Swear *Thomas Muxlow.* [*Which was done.*]

Mr. *Lovell.* Were you at the Election of a Mayor at the Town of *Nottingham Michaelmas*-Day was Twelve-month?

Muxlow. I went to the Church, as the Cuſtom was; after Prayer we expected to go to the Election.

L. C. J. Ay, prithee ſpeak out as if thou waſt at an Election; you would have ſhouted then, I warrant you.

Muxlow. When we were at the Church, we waited there, expecting to have Mr. *Wild* and the reſt of the Company, to nominate the Mayor, according to the ancient Cuſtom.

Mr. *Holt.* You ſay you were at the Election on *Michaelmas*-Day was Twelve-month; pray ſpeak how Things were carried there?

Muxlow. Yes, I was there, and it came to an Election, and it came to a Poll.

Mr. Juſt. *Holloway.* Who propoſed the Election?

Mr. Recorder. Were you an Elector?

Mr. *Holt.* Anſwer the Gentleman's Queſtion, were you one of the Clothing?

Muxlow. I was one that had a Vote there.

Mr. *Holt.* Do you know any thing of this Matter?

Muxlow. I know there was a fair Election according to Cuſtom.

Mr. *Stanhope.* Was it peaceable and quiet?

Muxlow. Yes, there was no Diſturbance at all.

Mr. *Stanhope.* Was there no Shouting?

Muxlow. No Shouting that I heard.

Mr. *Holt.* You were in the Inner Room, were not you?

Muxlow. I was in the Council-Houſe.

Mr. *Holt.* Were you not in the Hall?

Muxlow. I was in the Hall, as we went out.

L. C. J. Did you hear nothing of crying out, A *Greaves*, a *Greaves?*

Muxlow. No, I can't remember that.

L. C. J. Were you there when *Greaves* was ſworn?

Muxlow. Yes, I was, when Alderman *Greaves* was ſworn.

L, C. J. Was you there when the Mace was taken away?

Muxlow. No, my Lord, I was not.

L. C. J. Who ſwore the Mayor?

Muxlow. One of the Coroners.

L. C. J. Was the Old Mayor there when the New Mayor was ſworn?

Muxlow. I can't tell that.

Mr. Juſt. *Withins.* None of them can tell that, or will tell it.

Mr. *Pollexfen.* Swear *Burroughs* and *Parker.* [*Which was done.*]

Mr. *Lovell.* What is your Name?

Burroughs. My Name is *Burroughs.*

Mr. *Lovell.* Were you preſent on *Michaelmas*-Day at the Election of a Mayor of *Nottingham?*

Burroughs. I was one of them that were at the Hall; when I was in the Hall, there came a Gentleman, one of the Council-Houſe, and acquainted Mr. *Wild*, the preſent Mayor, that the Burgeſſes had elected Mr. *Greaves* Mayor, and the Coroners were proceeding to ſwear him, and aſked him to come and hear him ſworn; and he ſaid he could not come preſently, they muſt wait a-while: he was aſked how long, he told them by and by; with that, ſome body cried out, A *Greaves*, A *Greaves*, and there was a great Shout.

L. C. J. Where was that Shout?

Burroughs. In the Hall; but then the Gentlemen were in the Council-Houſe.

Mr. *Blencow.* Where was Mr. *Sacheverell* then?

Burroughs. He was in the Council-Houſe.

L. C. J. Well ſaid: now you have made this Fellow ſwear thro' a Wall, that your other Witneſſes could not hear thro'. Prithee, Friend, wer't thou one of the Clothing?

Burroughs. No, my Lord, but I was a Burgeſs.

L. C. J. What did you do there?

Burroughs. There were other Burgeſſes not of the Clothing beſides me.

Mr. *Holt.* Come then, our next Witneſs is *John Parker.*

L. C. J. *Reynolds*, did you ſee this Fellow there, was he one of the Shouters?

Reynolds. Yes, and he flung up his Hat thus.

L. C. J. Were you one of the Shouters?

Burroughs. I cannot ſay I did not ſhout.

L. C. J. Did you fling up your Hat?----*Burroughs.* No, I did not.

L. C. J. Did you do it over your Head?

Burroughs. It may be I might.

Mr. *Juſt. Holloway.* Were you by, when *Greaves* was ſworn Mayor?

Burroughs. No, I was not.

Mr. *Holt.* Well, what ſay you to this Matter *Parker?*

Parker. Going by the Street, I met the New Charter coming down, *Reynolds* brought it; ſo I turned back again to the Mayor, and after he had received it, pray, ſays he, go up and tell Mr. *Sacheverell*, and ſome of them, that they will come up to the Church, and if they will but ſtay there a-while, we will come to them: So I, and another, and two or three more, went up to the Church, and told them the Mayor would come and wait upon them, and bring the New Charter; upon that Mr. *Sacheverell* looked upon his Watch, and ſtaid a conſiderable while, and look'd again upon his Watch, and I heard him ſay he had ſtaid above an Hour, and prſenly a Meſſage came from the Mayor, deſiring them to come down to the Town-Hall to wait upon the Mayor.

Mr. *Stanhope.* Who did the Meſſenger direct his Speech to?

Parker. I ſuppoſe it might be to Alderman *Edge* and Serjeant *Bigland.* Says Mr. *Sacheverell*, we'll go down, and ſee what they ſay to us: So they went down, and we went with them; they got many of them into the Council-Houſe, but I could not; ſo I ſtood in the Hall, and waited all the while the Gentlemen were in the Council-Houſe; then there came out Alderman *Rippon*, the Mayor, and Mr. *Malin*, and by and by after them, Alderman *Parker*, out of the Council-Houſe, and ſat down upon the Bench; Mr. *Malin* had not his Mace, and he was aſked where it was, and they ſaid they had it in the Council-Houſe: So, ſaid they, you had beſt have a care of your Staff; no, ſaid he, before they take my Staff, I'll break it over their Pates; and by and by they proceeded to ſwear *Wild* Mayor, and they were about to give him ſome of the Oaths, I ſuppoſe of Allegiance and Supremacy; but before he ſaid any thing, there came two of the Council-Houſe, and told him, they had elected Mr. *Greaves* Mayor, and deſired the Mayor, and the reſt, that they would pleaſe to come and hear them ſwear the Mayor; he ſaid, he could not come; but come, come, ſays he, we'll go on, and upon this they proceeded to give Mr. Alderman *Wild* the Oath, and when they had gone half way in the Oath, ſome body came and cried out, they were ſwearing Mr. *Greaves* Mayor, and upon that both Parties gave a Shout, and one cry'd, A *Greaves*, A *Greaves*, and another cried, A *Wild*, A *Wild*. And upon this, Alderman *Rippon* had the New Charter by him, and he took it out; look you, ſaid he, we do nothing but by Authority, We have his Majeſty's Order, and the Broad-Seal, and thereupon ſat down again; but ſome body told him it was commonly reported they were deprived of their Privileges; he ſaid, it was not ſo, if 'twas, he would forfeit his Head and his Eſtate: Upon that, they proceeded to ſwear Mr. *Wild*; the Burgeſſes gave another Shout, but not ſo big as the other; with that Alderman *Parker* went out, and I think, cry'd, a Riot, a Riot. They ſat a little longer, and it was deſired to ſend for Alderman *Parker* again, no, ſaid they, he won't come: and ſo they whiſper'd a little upon the Bench, and went all down the Street, and I went down the Hall with them, and in *Street-Gate*, they met with Alderman *Parker*; and he was coming to the Hall again, and he turned back to the Mayor's, and I went to the Council-Houſe; but I could hear nothing, only that afterwards at the Mayor's they called the Gentlemen, and ſwore them according to the New Charter.

L. C. J. Were you one of the Electors?

Parker. No, not I; I was not concerned on any ſide.

Mr. *Pollexfen.* Were any of the Defendants, Mr. *Sacheverell* or Mr. *Gregory* at the Shouting in the Hall?

Parker. Not that I know of.

Mr. *Farewell.* He ſays, my Lord, that the Mayor ſent to Mr. *Sacheverell* and them to come from Church.

L. C. J. How do you know the Mayor ſent to Mr. *Sacheverell?*

Parker. My Lord, they directed their Speech to the Perſons that were there, I can't juſtly ſay to whom in particular.

L. C. J. It has been ſworn they directed their Speech to Alderman *Edge* and Serjeant *Bigland.*

Parker. They told it when Mr. *Sacheverell* was preſent, and ſo he went down with them.

Mr. *Pollexfen.* But this appears by the Evidence, that the Old Corporation is by the Name of Mayor and Burgeſſes, but we know there were Aldermen ſince, and ſo it is according to Truth, as it is laid in the Information; but let them put in their New Charter.

[*Which was done and read.*]

Mr. *Pollexfen.* Is there not a Proviſo in it, that the Mayor ſhould not act till he be ſworn?

L. C. J. Admit it be ſo, what then?

Mr. *Pollexfen.* Then it follows that we muſt be not guilty.

L. C. J. How ſo?

Mr. *Pollexfen.* It is plain, my Lord, that this Man ſhould not take upon him the Office of Mayor till he has taken the Oaths; then ſuppoſe they take it that the Old Charter is gone, by this there is no new Mayor till he be actually ſworn; then all theſe things being done before he was ſworn, it cannot be that this was ſuch an Aſſembly as was laid in the Information.

L. C. J. You miſtake yourſelves ſadly, the Proclamation was after the ſwearing.

Mr. *Pollexfen.* No, no, my Lord, I am not miſtaken in that.

L. C. J. Reynolds, Was not the Proclamation made after he was ſworn?

Reynolds. I can't tell, my Lord.

L. C. J. Where is the Mayor, *Wild?* Upon your Oath, were you ſworn before you gave direction to make Proclamation to depart, or no?

Wild. I can't certainly tell, but I think the firſt Proclamation was made in the Council-Houſe, that was before I was ſworn; the Proclamation afterwards was after I was ſworn.

Mr. *Holt.* Where was the Proclamation after you was ſworn?

Wild. In the Hall.

L. C. J. Did Mr. *Sacheverell* continue there after you was ſworn?

Mr. *Pollexfen.* Good, my Lord, this I think is the Fact upon the Evidence: In the Council-Houſe Mr. *Sacheverell*, and the greateſt part of theſe Defendants were, and then they went on to the Election of *Greaves*; and they ſent out to tell *Wild*, the former Mayor, when he was in the Hall, that *Greaves* was elected, and did deſire him to come in to ſwear him, but he refuſed; but when this was done, he was not ſworn; but upon this, there was the Shout of the People, A *Greaves*, A *Greaves:* All this was, as I think, before he was ſworn.

L. C. J. The Mayor himſelf ſays he was ſworn.

Wild. My Lord, I was juſt come into the Hall before the Meſſenger came in; but I told them they could make no new Election without me, nor at all, becauſe of the New Charter.

Mr. *Pollexfen.* Then as to the Buſineſs of the Mace, I hope the Information will not hold to charge us, becauſe then he was not Mayor.

L. C. J. That does not affect the Mayor but the Sheriffs, the Mace does not.

Mr. *Pollexfen.* But, my Lord, as this Information is laid, he ſays he was Mayor, and called an Aſſembly, and it was held before him, and theſe things were done; but this cannot be true, for by this very New Charter he muſt be ſworn before he can act, and this tumultuous Proceeding, as they call it, and ſeizing upon the Mace was before he was ſworn, and this Information ſuppoſes all the Fact was done while he was Mayor.

Mr. *Holt.* I think it does appear by *Wild*'s own Oath, that he was not ſworn when Proclamation was made in the Council-Chamber; and I think there was but one Proclamation made there, the next was made after, and that was in the Hall: Now, with Submiſſion, that does not affect thoſe that were in the Council-Chamber, becauſe they did not hear the Proclamation; now the Information is laid, that they continued after the Proclamation; therefore we muſt leave it to your Lordſhip and the Jury.

L. C. J. Well then, Gentlemen of the Jury, this Caſe has held long, but the Queſtion is very ſhort: Here is an Information exhibited by Mr. Attorney-General againſt the Defendants, which by particular Names are by ſome of the Witneſſes ſworn to be preſent when the Occaſion of this Fact did ariſe.

Mr. *Coombs.* Pray, my Lord, give me your favour, here is one of the Defendants ſays, he has a Witneſs to prove he was not there; it's Mr. *Turpin.*

L. C. J. Reynolds, upon your Oath, did you ſee *Turpin* there?

Reynolds. Yes, I did.

Mr. Juſt. *Withins.* Mr. Mayor, did you ſee him there?

Wild. Yes, I ſaw him in the Hall.

Mr. Juſt. *Withins.* Was he buſy in the Hall?

Reynolds. Yes, he was ſhaking his Hat, and ſhouting.

L. C. J. Well, now where is your Witneſs?

Mr. *Pollexfen.* Swear Mr. *Flaits.* [*Which was done.*] What ſay you, was Mr. *Turpin* there?

Flaits. He was in the Hall that Day, but not above a Quarter of an Hour.

L. C. J. You were there, it ſeems, pray had you a Vote there?

Flaits. I went to ſpeak with Mr. *Turpin.*

Mr. *Pollexfen.* Was he in the Hall when the Mayor came into the Hall?

Flaits. I never ſaw him there while the Mayor was there.

Mr. *Pollexfen.* I pray ſwear Mr. *Holt.* [*Which was done.*] Pray was Mr. *Barker* either in the Hall, or in the Council-Chamber that Day.

Holt. No, I was at work with him that Day from ſix of the Clock in the Morning till eight at Night.

L. C. J. And he was not out all the time?—*Holt.* No, he was not.

L. C. J. Well, have you done, Gentlemen?

Mr. *Sacheverell.* My Lord here is Mr. Serjeant *Bigland*, I deſire he may be examined.

L. C. J. Ay, with all my heart. Swear him. [*Which was done.*]

Mr. *Pollexfen.* Mr. Serj. *Bigland*, I think you were down at the Election of this Mayor upon *Michaelmas* was Twelve-month; will you be pleaſed to tell the Court and the Jury what was done then?

Serj. *Bigland.* I will give you as ſhort an account as I can. I was in my Houſe when the Mayor and Aldermen ſent to me to deſire me to give my Attendance: They ſent the two Sheriffs to me, and I did attend, and ſtaid an Hour or two, and went to Church, according to the uſual Courſe; and when we had been there a-while, Aldermen *Rippon* came to me, and deſired me that I would go down with them to the Hall; accordingly I did go down, and there was Mr. *Wild* and ſeveral Aldermen ſat there; ſo then they proceeded to that that was done towards an Election.

Mr. *Lovell.* Pray, Sir, how was their Carriage during the time you was there?

Serj. *Bigland.* I ſat then in the Council-Chamber, I think I ſat next the Mayor, and Mr. *Edge*, I think, was next to me, and I ſaw nothing of Diſorder at that time, that I took notice of.

Mr. *Lovell.* Was there any Proclamation made for People to depart?

Serj. *Bigland.* Upon the Oath that I have taken, I don't remember it.

L. C. J. Pray did the Mayor aſk your Advice about any thing?

Serj. *Bigland.* Yes, my Lord, he did; and I ſaid to him, In what capacity, Sir, do you deſire my Counſel, as *Recorder*, or how? and ſo he ſaid no more to that: But he ſaid there was a New Charter, but whether, he deſired me to read it or no, I can't tell.

L. C. J. Was it opened?—Serj. *Bigland.* Some part of it was opened.

L. C. J. Upon your Oath, did you hear Mr. *Sacheverell* ſpeak to the Mayor?

Serj. *Bigland.* No, my Lord, I do not remember any ſuch thing.

L. C. J. Pray let me aſk you, you have been, before this, at Elections of Mayors of this Town?

Serj. *Bigland.* I was Deputy-Recorder in my Lord Marquiſs of *Dorcheſter*'s time; as ſoon as he was dead, I was choſen Recorder, and then I was at one Election at another Day, when they do nominate, which is before *Michaelmas.*

Mr. *Holt.* Pray Sir, was there any Diſturbance?

Serj. *Bigland.* None that I ſaw.

L. C. J. Was there any Shouting that you heard?

Serj. *Bigland.* I was not in the Hall, my Lord; in the Council-Chamber there was none.

Mr. Juſt. *Hclloway.* Did you hear any body cry, A *Greaves*, A *Greaves?*

Serj. *Bigland.* I heard a Noiſe in the Hall, but what it was particularly, I can't ſay.

Mr. *Holt.* How long did you ſtay in the Council-Chamber?

Serj. *Bigland.* I believe I ſtaid as long as moſt of the Company was there.

L. C. J. Did you ſtay while *Greaves* was ſworn?

Serj. *Bigland.* My Lord, I believe I was there then.

L. C. J. Pray what Authority had you to ſwear *Greaves?*

Serj. *Bigland.* All that I know of it was, he was nominated at *Auguſt* according to Cuſtom.

L. C. J. But what occaſion had you to be preſent then, and what Authority had you to ſwear him? You are a Gentleman of the Long Robe, and ſhould have known better.

Serj. *Bigland.* Truly, my Lord, he was choſen by thoſe that had a Right to chooſe in *Auguſt* before.

L. C. J. But what Authority had you to ſwear him? Why did not you ſend for ſomebody out of the Street to ſwear him? I reckon it to be worſe in thoſe People that underſtand the Law, than in others, that they ſhould be preſent at ſuch things, and not adviſe People better. Here is Serjeant *Bigland* and Mr. *Edge* have mighty ſqueamiſh Stomachs as to the reading of the Charter, and nice Queſtions; Do you aſk me as Recorder, or as Counſel? But they would have done well to adviſe People to meddle with their own Buſineſs; let my Brother take that along with him.

Mr. *Pollexfen.* Pray ſwear Mr. *Edge.* [*Which was done.*]

Mr. *Edge.* My Lord, I did not ſwear him.

Mr. Juſt. *Holloway.* Pray who took the Poll?

Mr. *Edge*, I took the Poll.

Mr. Juſt. *Withins.* Pray did you ever know a Mayor ſworn when the Old Mayor was not by?

Mr. *Edge.* I did tell them ſo. Mr. *Sacheverell* and the other Gentlemen would have gotten me to poll in the Veſtry in the Abſence of the Mayor, but I told them I would not have any ſuch thing done; and when the Old Mayor went out of the Council-Chamber, they would have had me read the Oath. Said I, Gentlemen, I will not ſwear him but in the Mayor's Preſence.

Mr. *Ward.* Did not Mr. *Sacheverell* head them all the Day?

Mr. *Edge.* He was among us all the Day.

Mr. *Ward.* Did he peruſe the Charter?—Mr. *Edge.* I can't tell that.

L. C. J. They that once begin firſt to trouble the Water, ſeldom catch the Fiſh.

Mr. *Hutchinſon.* My Lord, I deſire I may aſk Mr. *Edge* one Queſtion, Whether I was not ſent to the Mayor, and did not go myſelf?

Mr. *Edge.* Upon the beſt of my knowledge I did not ſend you to the Mayor.

L. C. J. I thought, Mr. *Hutchinſon*, you had been a Man of greater Quality than to go of his Errands. Have you done, Gentlemen?

Mr. *Holt.* Yes, my Lord.

L. C. J. Then, Gentlemen, as I ſaid, this is an Information againſt ſeveral Perſons, you ſhall have the Names of them deliver'd to you, and it is for a Riot, an unlawful Aſſembly in *Nottingham*; and tho' there are two times that have been ſpoken of, and two Places in the Evidence, yet I muſt tell you, That that Part that does affect theſe Perſons is only that which does relate to *Michaelmas*-Day, and for the other part, about the Croſs, is not compriz'd in this Information; and Perſons that were put at the Croſs, but that were not put at the Hall, are not concerned in this Information: But all, it appears, were concerned, except one, which is *Humphry Barker*; now tho' he was hopping and jumping upon the Croſs, yet not being preſent upon *Michaelmas*-Day, he is not within this Information.

And now, Gentlemen, becauſe the Cauſe has held ſomething long, I ſhall be the ſhorter: Only, for Example ſake, there are ſome things that ought to be taken notice of. The Right of the Charters, whether it be the New, or the Old Charter that is to prevail in point of Law, is not a Queſtion; that is not to be determined in this Cauſe one way or another, for they have a methodical Way to have that Point determined, and ſhould not have proceeded in the Way they went; and 'tis pretty well known they have proceeded in that Way too, for we know there are *Scire Facias*'s and *Quo Warranto*'s depending between them. They would have done well to have purſued the legal Courſe only; for I hope, we ſhall never live to ſee that Law prevail in *England* which is called Club-Law: Let the Right be never ſo much on their Side, they ought to take a rightful Way to obſerve it, and not by any unlawful Means.

Another thing, Gentlemen, is this; they inſiſt upon it, that they could not be guilty upon this Information, becauſe the Mayor was not ſworn. It is plain they are guilty of a very great Crime, becauſe till another was choſen, he was Mayor. They ſay their Mayor was ſworn regularly according to the Old Charter; but according as the Evidence has been given, they could not ſwear him by any Pretence whatſoever; and whoſoever adminiſter'd the Oath to him, were guilty of a very great Fault, as well as he that took it.

Now, Gentlemen, the Law is ſo direct in Point, that they needed not to have gathered themſelves into an Aſſembly about this Matter; for if he that they pretend to be Mayor had been rightfully choſen Mayor, they had a regular Courſe to have brought him into this Office; for they might have come, and of right have demanded a *Mandamus* to admit and ſwear him into the Office, and ſo he muſt have been ſworn Mayor, unleſs they had ſhew'd good Cauſe to the contrary.

Gentlemen, there is no Right but has a lawful Remedy, therefore it had been much better for theſe Gentlemen, if they have a Right, to have gone in a rightful way to obtain that Right.

Now this being premiſed, I muſt tell you, it is very unfortunate, concern it whom it will, and very ſtrange to me, that Men in Matters of Government, where they have nothing to do, that are Country Gentlemen, that never came to interpoſe in any Election before, that they ſhould come to buſy themſelves, and head People where they have nothing to do; nay, they have no pretence of Precedent, for it was never practiſed before.

If in caſe it was only to ſatisfy their Curioſity to ſee the manner of the Election, they had been only there, and patient and quiet, it had been ſomething; but to be there, and to demand People to be ſworn, and calling People to look to the Books, and heading the Mobile, that does not become any Man, let him be as great as he pleaſes: The greater the Man, the greater his Name; and the greater his Influence, the greater is his Offence, and the greater ought to be his Puniſhment.

Then, Gentlemen, to have thoſe other Perſons to come there, Mr. *Hutchinſon* and Mr. *Gregory*, and they muſt be demanding of the Mayor to come and ſwear; pray what have theſe People to do there?

Then, Gentlemen, you ſee the Conſequences of it, it was come to that height in the midſt of this great and populous Town of *Nottingham*, that nothing but flinging up Hats, and hollowing, and ſhouting, and making all the Diſturbance and Interruption in the World; nay, inſomuch, that you may obſerve by one of the Witneſſes for the King, the very Seal was broken off from the New Charter. Nay, to that Height they were grown, that whereas there was a Mace, that is an Enſign that doth belong to the Sheriff, they came and raviſhed it away, and force it from him, and take it away whether he would or no, and bid him go about his Buſineſs, he had nothing to do there: So that here are People without any Authority chooſe a Mayor, that Mayor muſt call and aſſemble together a Meeting of all ſorts of People, and all ſorts of Diſorders muſt be committed under pretence of this Authority; which is ſetting up a kind of a Commonwealth, I can call it no better; and had it been ſuch a general Aſſembly, not with an Intent for doing ſuch one particular purpoſe, it had been High-Treaſon. For if People once think to obtain the Rights they pretend to in a mutinous manner, that in the general is High-Treaſon, or at leaſt ſo near, I'll aſſure you it is pretty hard to diſtinguiſh between them.

Now, Gentlemen, as to the Evidence, I muſt tell you the Witneſſes do ſwear, that all theſe Perſons were preſent, Abettors, and Aſſiſtants in this Matter; the Man that headed the Party had no manner of Concern among them: And ſurely, after you have heard all this Matter, if ever there was a Riot prov'd in this World, this Riot is plainly prov'd upon every one of theſe Men except *Barker*.

But whereas they pretend on the other ſide, and they would have you to believe that the Sheriff was not Sheriff till he was ſworn, ſurely he was Sheriff till another was ſworn: and if you allow him to be Sheriff, then they ought not to take his Mace from him, if he was the Sheriff *de facto*, in Poſſeſſion of the Enſign of this Office, that is enough; for the Right is not to be determin'd in ſuch a way as this.

The next thing they pretend to is this, a-lack-a-day, there was no Proclamation made till after he was ſworn Mayor by the New Charter, when before he came firſt into the Common-Council, the Hubbub was there begun, and the Mayor told them, Gentlemen, you have nothing here to do, pray go about your Buſineſs; and when Mr. *Sacheverell* preſs'd him, he ordered Proclamation for all Perſons that had nothing to do, to be gone. Then afterwards he comes into the Hall, there is ſworn in the Hall, and takes his Oath according to the New Charter, and ſtill after Proclamation made; then the ſame Perſons continue ſtill in the ſame Place, ſo that there is no Obedience given either to the Old Authority or the New; and inſtead of going away upon the Proclamation, that made them the more violent; for you find by Mr. *Edge*, the laſt Witneſs, that even to the time of the ſwearing, Mr. *Sacheverell* continued very earneſt to have him ſworn, though Mr. *Sacheverell* was ſhewn the New Charter, and they could not even by the Old one proceed to ſwear him in the Abſence of the Old Mayor; and the Old Mayor was abſent.

There are indeed ſeveral Gentlemen that are Witneſſes for the Defendants, that happened to be there at that time; there is Sir *Thomas Parkyns*, and he being aſk'd whether he heard any Noiſe at all, why truly he forgot that there was ever a Word ſpoken; and though other Perſons, even ſome of their own Witneſſes, did hear a Noiſe, yet he heard none, but all was a wonderful regular Thing; ſo that the Witneſſes that they themſelves call'd, interfere among themſelves, ſome of them ſay they did hear a Noiſe and Shouting, yet ſuch is the Unhappineſs of ſome People, that they can't hear if they have no mind to it. Then here is Mr. *Thinn*, a Gentleman that came by accident, and he can give no good Account of the Matter: Some Noiſe he did hear, but he came but as a Stranger, and was not concern'd one way or other, as he ſays.

You have heard ſeveral other Witneſſes, that give an Account there was a Noiſe, but they cannot tell whether the Charter was produc'd, or not produc'd; and they cannot tell one Word that was ſaid of a *Greaves*, or no New Charter: And one particular Man, I have forgot his Name, he could not by any means remember any thing of the matter; tho' he was there all the while, he could not tell what Mr. *Sacheverell* ſaid, he did hear him, but not what he ſaid.

This, Gentlemen, is the Subſtance of the Evidence: I can only ſay this to you, you muſt believe all the Witneſſes for the King actually perjur'd, unleſs you believe their Evidence; and for what others ſay, that they did not hear ſuch and ſuch things, yet all theſe other People did hear; and tho' the Witneſſes for the Defendants did not ſee, the others did ſee; and you muſt find theſe Men without any Evidence that does appear, to be guilty of wilful Perjury, or elſe every Perſon that you have had in charge, except *Humphrey Barker*, is guilty of the Riot whereof they have been informed againſt.

Then the Jury withdrew, and the Court broke up, and a private Verdict being deliver'd in the Night, the next Morning it was given in open Court, where they found Twenty of the Twenty One Defendants that were in the Iſſue, Guilty of the Offence and Miſdemeanour in the Information; and the other Defendant, Humphrey Barker, *Not Guilty.*

In *Trinity-Term* following, the Defendants, who had been found Guilty, were Sentenced, as follows:

William Sacheverell, fined	500 Marks.
George Gregory,	300
Charles Hutchinſon,	200
John Greaves,	20 Nobles.
William Greaves,	20 Marks.
Samuel Richards,	20
Robert Green,	20
Francis Salmon,	5 Nobles.
Arthur Riccards,	20 Marks.
Ralph Bennet,	20 Nobles.
John Sherwin,	100 Marks.
William Wilſon,	100
Samuel Smith,	20 Nobles.
Thomas Trigg,	20 Marks.
Richard Smith,	
John Hoe,	20 Nobles.
William Smith,	20
Joſeph Turpin,	100 Marks.
Nathaniel Charnel,	100
Joſeph Aſtlin,	5

And that the ſeveral Defendants do give Security for their Good Behaviour for a Twelvemonth.

The CASE *of the* Corporation *of* Nottingham, *as it was ſtated by the late* William Sacheverell, *of* Barton, *Eſq.*

THE Town of *Nottingham* hath always claimed to have been a Borough by Preſcription: And it cannot well be doubted that it hath been ſo; for that it appears by *Doomſday-Book*, in the Time of King *William* the Firſt, that the Burgeſſes of *Nottingham* then had divers Houſes and Parcels of Land in *Nottingham*; and the Burgeſſes of that Town were One Hundred and Seventy-Three in Number in the Time of *Edward* the Confeſſor.

That Town hath alſo always claimed to have been a Corporation by Preſcription: And it is hard to believe it otherwiſe; becauſe no Charter of its firſt incorporating could yet be found; and the Charters granted to the Burgeſſes of that Town by King *Henry* the Second and King *John*, do imply them as a Body Corporate before thoſe Times.

Yet it appears by the Charter of King *Edward* the Firſt, that there was no Mayor of that Town before his Reign; for that he then was pleas'd to grant the Burgeſſes of that Town a Privilege, that they then after ſhould chooſe a Mayor out of themſelves annually; and ſome of their former Charters, as well as that, ſhew that for ſome time before they had only Bailiffs of that Town. From *Edward* the Firſt's Time, under Mayor and Bailiffs the Town continued till *Henry* the Sixth's Time, who was pleaſed to make it a County, and grant them Sheriff inſtead of Bailiffs, and the Privilege of chooſing out of themſelves Seven Aldermen, and one of them annually to be Mayor; and that the Aldermen (as long as they ſo continued) ſhould be Juſtices of the Peace within that Town; and moreover, that the Burgeſſes of the Town of *Nottingham* ſhould for ever be a Body Corporate by the Name of Mayor and Burgeſſes. Nor hath any Charter ſince, nor any By-Law that can be heard of, given the Aldermen any more Power than they had by that Charter, which was then nothing more than every Burgeſs of that Town had, except being Juſtices of the Peace, and wearing Gowns and Hoods. So that the Aldermen, though of late they have taken upon them to ſit as Members of the Council of that Town, can neither preſcribe to that Power, becauſe there were no Aldermen in that Town before King *Henry* the Sixth's Days; nor can they claim to be of the Council of that Town by force of any Charter, for no Charter either in *Henry* the Sixth's Time, or ſince, hath granted them any ſuch Authority, nor did they pretend to ſit in that Council by virtue of any By-Law of that Town, or ever ſhewed any ſuch By-Law, tho' their Right of ſitting and voting there hath been denied in the Council by Members thereof.

The Aldermen indeed in King *James*'s Time began, tho' they had no Right ſo to do, to take upon them to be part of the Council, and to intermeddle in the Town's Concerns, and to encroach ſo far upon the Burgeſſes, without their Conſent, as to pretend to have a Right in the ſetting and diſpoſing of the Corporation-Lands, and of the Bridge-Lands, and School-Lands: But the Burgeſſes were ſo far from conſenting to their having of any ſuch Power or Authority, that they in the Year 1605, by their Petition to the Lords of the Council-Table, complained of the Encroachments of the Aldermen, and prayed Redreſs. Upon which the Lords of the Council referred the Examination of the Matters in Controverſy to the Judges of Aſſize that went that Circuit, to the End they might be certified and better inform'd by the ſaid Juſtices of ſuch Courſe, as upon good Advice and Deliberation they ſhould find in their Judgments agreeable to Law, and meet to be ſet down and ordered in that behalf. Who accordingly enter'd into Conſideration of the Complaints on both ſides, and adviſed with the reſt of the Judges touching the Charter granted to that Corporation, and all other Matters meet to be conſidered of concerning the Matters in Controverſy; and return'd Certificates of their Opinions of ſuch Order of Agreement as they thought fit and convenient to be obſerved and eſtabliſhed, according to Law and Juſtice, for the publick Good and Government of the ſaid Town. Wherefore the Mayor and the Parties indifferently ſent up to ſolicit a peaceful end of thoſe Controverſies, having taken knowledge, did conſent thereto; and thereupon, by Conſent of the ſaid Parties, it was, amongſt other things, order'd, That there ſhould be a Council in that Town of Twenty Four Perſons only, out of which the Aldermen for the Time being ſhould always be excepted; and that the ſaid Council, with the Mayor, or the greater part of them being at ſuch Aſſembly, without any other of the ſaid Corporation, ſhould ſet and let the Town-Lands, Bridge-Lands, and School-Lands, taking unto them the Chamberlains, Bridge-Maſters, and School-Wardens reſpectively, as their Places for the Lands within their ſeveral Offices ſhould require, as by the ſaid Order and Agreement, which the Burgeſſes have ready to produce when occaſion ſhall require, will plainly appear. So that now all Pretence of the Aldermen being of the Council, or having any thing to do with the Corporation-Lands, the School-Lands, or the Bridge-Lands, was adjudged againſt both by the Judges and the Lords of the Privy-Council, and accordingly was wholly laid aſide, till of late.

The Caſe ſtanding thus, and the Mayor, Aldermen, and Burgeſſes of that Corporation being by their Burgeſs-Oath particularly obliged that the Franchiſes of the ſaid Town they will maintain, ſuſtain with their Bodies, their Goods, and their Chattels to their Power, and them not let neither for Love nor Dread, without Regard of any Man, but maintain the Laws, good Cuſtoms, and Franchiſes of that Town: and divers Burgeſſes of that Town being informed, about the beginning of *Eaſter*-Term laſt, that the Mayor and ſome of the Aldermen of that Town had a Deſign to ſurrender the Charters of that Corporation, it was ſcarce credited by any of the Burgeſſes, that the Mayor or almoſt any of the Aldermen would conſent to do a thing ſo directly contrary to their Burgeſs-Oath. Yet divers Burgeſſes of the ſaid Town conſidering they had taken the ſaid Oath for preſerving the Rights of the Town, thought it but convenient, for the Prevention of the ill Conſequences which they well knew muſt befal that Town, if their Charters ſhould be delivered up, and a New Charter taken without the Privity, Conſent, or Hearing of the Burgeſſes of that Town, to order Four Caveats to be enter'd: And accordingly in *Eaſter*-Term ordered Two to be enter'd at the Lord Chancellor's, and Two at the Attorney-General's. One of which Caveats in each Place was againſt paſſing any New Charter to the Town of *Nottingham* without the Privity, Conſent, or Hearing of the Burgeſſes of that Town; the other againſt the accepting of any Surrender of any Charter of that Town, without the like Privity, Conſent, and Hearing. Which ſaid Caveats were enter'd accordingly.

And ſo the Matter reſted till the 25th of *July* laſt: But upon that Day the Mayor called a Council without giving Notice what the Buſineſs would be, unleſs it was to thoſe of his own Party and Confederacy. But that he had Thoughts of ſurrendering when he came to the Hall, will be pretty manifeſt from what he did after the Queſtion was put to the Vote, and the Poll taken: There appeared at the Hall the Mayor and Five Aldermen, and Two and Twenty of the Council, and Mr. *William Toplady* (who the laſt Year, by Order of Mr. *Gervas Rippon*, the then Mayor, was ſworn in as an Alderman, though Mr. *Sherwin*, who ſtood in competition with Mr. *Toplady*, had near twice as many Votes; upon which Mr. *Sherwin* brought his *Mandamus*, and the Cauſe is yet undecided in the Court of *King's-Bench)*. After ſome Buſineſs in the Hall was diſpatch'd, the Mayor cauſed a Queſtion to be put for ſurrendering of the Charters of that Town; and tho' it was declared by ſome of the Council, That the Aldermen had no Right to vote therein, yet the Mayor cauſed a Poll to be taken, and admitted them and Mr. *Toplady* as Voters, ſave only that Mr. Alderman *Edge* ſuſpended his Vote, and gave it neither way. The reſt voted as followeth, *viz.*

For Surrendering the Charter.

Gervas Wild, Mayor,
Chriſtopher Hall, Alderman,
John Parker, Alderman,
Gervas Rippon, Alderman,
William Toplady, Alderman, *de facto.*
William Mabbot,
Edward Mabbot,
William Petty,
Robert Wortley,
Hugh Walker,
William Woolhouſe,
John Whitby,
Thomas Lee,
John Unwin.

Againſt Surrendering the Charter.

William Greaves, Alderman,
John Greaves, }
Samuel Richards, } Coroners,
Robert Green, Sheriff,
Huntingdon Eyre,
Roger Ryley,
Thomas Walker,
Richard Smith,
Francis Salmon,
Ralph Bennet,
John Sherwin,
Samuel Smith,
Thomas Trig,
William Smith.

So that if the Aldermen ſhould be admitted to have a Right to vote in the Council, yet here was no Majority for the Surrender. But on the contrary, the Aldermen having no Colour of Right, either by Preſcription, or Charter, or otherwiſe, for the Reaſons aforeſaid, to be of the Council; it is plain, there was only the Mayor and Nine of the Council for the Surrender, and Thirteen of the Council againſt it; and conſequently that the greater part of the Council voted againſt the Surrender. Nor can it be imagined that the Council of that Corporation (being neither ſettled by Preſcription, nor veſted in by Charter, but only brought in by conſent and choice of all the Burgeſſes, only for the better Managery of the Revenues of the Corporation, and Diſpatch of ſome other ordinary Affairs, and not intruſted with many Rights of that Town,) can pretend to any Power of ſurrendering the Charters and Liberties of that Town, more than any ſmall Number of Burgeſſes. So that how this Surrender of Fourteen Men againſt the Vote of the greater Number of the Council, and Will of almoſt all the Burgeſſes, ſhould be good in Law, is not yet well underſtood. And if the putting of the Town-Seal to an Inſtrument without the Conſent of the Body Corporate, ſhould be ſaid to be ſufficient in Law to give away the Lands and Rights of any Body Corporate, then any Thief that can but ſteal the Corporation-Seal, will have it in his Power, tho' he be no Member of the Corporation, to give up the Lands and Liberties thereof; which indeed would be a ſtrange Piece of Law and Juſtice to be owned in any Nation that pretends to Senſe and Honeſty. Yet Mr. Mayor, all this notwithſtanding, did, as ſoon as the ſaid Vote was over, pull out of his Pocket an Inſtrument in Writing, purporting a Surrender of their Charters, and cauſed the Town-Seal to be affixed thereto without any further Vote. The Draught of the Inſtrument, as it is commonly ſaid, was firſt made at *London*, and thence tranſmitted to an *Honourable Perſon in Nottinghamſhire*, and by his Order conveyed to Mr. Mayor. But this Report, if it were not for one thing, which it's believed will be proved if there be occaſion, might ſeem not well grounded, becauſe, as it afterwards will appear, this Surrender was not thought ſufficient, and ſo another was ſealed; which yet one of the Aldermen would have to be the very ſame, Word for Word, with that which was firſt ſent up ſealed to *London*; as if twice ſealing would make that effectual, which was not ſo by being once ſealed. But it is likely he had not heard what is commonly reported, and perhaps will be proved when time ſerves, that the firſt Inſtrument for ſurrendering that was ſealed, was drawn ſo as to make a Surrender, by the Right Honourable the Earl of *Hallifax* and Sir *Leoline Jenkins*.

After the ſaid Vote touching the intended Surrender was over, many of the Burgeſſes of *Nottingham*, conſidering their Oath, and that there were many Cuſtoms and Privileges in reference to Trade, which the Burgeſſes of the Corporation held only by Cuſtom and Preſcription; and that as ſome of the Lands which that Corporation held was by Grant from ſome of his Majeſty's Royal Predeceſſors, ſo moſt of their Town-Lands, (which are of great annual Value) were given by private Perſons; thought fit to aſk Advice of Counſel in ſeveral Points.

The firſt Queſtion propoſed to Counſel was, Whether if the Charters were ſurrender'd, and a New one taken, that New Grant would not preſerve the Lands to the Corporation. To which Counſel replied, That if the Charters of any Body Corporate were lawfully ſurrender'd, then the Corporation that held by ſuch Charters was diſſolved; and that if they had any Lands which had been given to that Corporation, the Heirs of thoſe that gave thoſe Lands would, as ſoon as ſuch Surrender was compleated, be entitled to the Lands, and recover the ſame. And they ſaid, Thoſe Lands which had been given to ſuch Corporation by any of his Majeſty's Predeceſſors, his Majeſty might, if he ſo pleaſed, grant them again to the Corporation; but no New Charter of his could, as they conceived, give the Corporation any Title to thoſe Lands which had been given by private Perſons, or enable the Corporation to keep them from the Heirs of thoſe that gave them, in caſe ſuch Surrender ſhould be. And ſo, they ſay, it was reſolved by the Judges when the Monaſteries were ſurrender'd, or diſſolv'd; and that therefore a ſpecial Act of Parliament was adviſed to be made, and accordingly was made, to veſt thoſe Lands in the King, there being no other way to hinder them from going to the Heirs of thoſe that gave them, when by Surrender they had diſſolved thoſe Corporations.

The Second Queſtion propoſed was, Whether if the Mayor and Burgeſſes of a Corporation claim any Right of Common by Cuſtom or Preſcription upon other Men's Lands, as is in the Caſe of *Stafford*, *Derby*, *Coventry*, and Many other Corporations, they can ſurrender their Charters, and yet, by any New Charter to be obtained from his Majeſty, or by any Means, preſerve their Right of Common. To which it was anſwered, That if the Mayors and Burgeſſes of any Corporation claim ſuch Common, and afterwards make ſuch Surrender, and ſo diſſolve the Body Corporate, their Preſcription for Common is deſtroyed; and tho' his Majeſty ſhould pleaſe to incorporate them anew, yet their Title to the Common will, as they conceive, be totally loſt.

The third Queſtion was, Whether the Town of *Nottingham*, being one of the ancienteſt Corporations of *England*, and free of Tolls in moſt Places, ſhould have the ſame Privilege if they ſurrender'd their Charters. To which it was anſwer'd, That if the Town of *Nottingham* ſurrender'd their Charters, and ſo diſſolv'd their Corporation, then in all other Places that had formerly Tolls granted them, and kept their Old Charters, they ſhould have Toll of *Nottingham* Men, and all ſuch Corporations as ſhall ſo ſurrender, notwithſtanding any New Charter that can be granted them.

The laſt Queſtion propounded was, Whether if the Mayor, or any other Members of a Corporation do, without the Conſent of the major Part of the Body Corporate, occaſion the Surrender of the Charters of that Corporation, the particular Perſons that received Damage by that Surrender, may not have an Action at Law for Recovery of their Damages? To which it was anſwered, That it was no queſtion but that every particular Perſon that ſhould be any ways damnified by ſuch Surrender, might by Action at Common Law recover all his Damages of thoſe Perſons that occaſioned the Surrender. Yet it was thought adviſeable, as the moſt proper Way for preventing the ſurrendering of the Charters, and of thoſe Inconveniencies and Suits which might be occaſioned thereby, or by taking of a New Charter, if obtained by the Mayor and a few of the Burgeſſes without the Privity, Conſent, or Hearing of the reſt, that the major part of the Burgeſſes ſhould preſent Mr. Mayor with their Senſe of his Proceedings, and *declare their* Diſſent *from any Surrender.* And accordingly a Writing was drawn, and ſigned by betwixt Three and Four Hundred of the Burgeſſes; and then a fair Copy made and examined with the Original, and ſo with all the Burgeſſes Names to it that had ſubſcribed, was by ſeveral of the Burgeſſes, and in Preſence of ſeveral Gentlemen of Quality that were no Burgeſſes, preſented to the Mayor upon the Fourth Day of *Auguſt*, as the Senſe of moſt of the Burgeſſes of that Town. The Writing ſo preſented was as followeth, *viz.*

To Mr. *Gervas Wild*, Mayor of *Nottingham*.

'SIR,

'WE whoſe Names are hereunto ſubſcribed, being Burgeſſes of the Town of *Nottingham*, and knowing or underſtanding that you and Thirteen more of the Corporation have, without the Conſent of the Burgeſſes of this Town, and againſt their Will, taken upon you to agree to the Surrender of the Charters, Liberties, and Franchiſes of this Corporation, and to cauſe the Corporation-Seal to be affixed to an Inſtrument for making of ſuch Surrender; and being by our Burgeſs-Oath obliged to preſerve, as far as in us lies, all the Rights and Privileges of this Corporation; and conſidering what great Damage it muſt neceſſarily be to the Corporation in general, and to us and every other particular Burgeſs of the Corporation, if the Charters, Liberties, and Franchiſes ſhould be ſo ſurrender'd; have thought ourſelves obliged, in order to prevent ſo great an Evil, to ſignify theſe our Thoughts of what you have done, and are about to do; and that many of your Liberties and Franchiſes, which are only held by Cuſtom, and not by Charter, will certainly be loſt, if you make ſuch Surrender as you have agreed to. We do therefore hereby declare our Diſſent from thoſe your Proceedings; and that we neither do nor ſhall Conſent, or have Conſented, that any Surrender of any Charter, Liberty, Franchiſe, or Privilege of the Corporation of *Nottingham* ſhould be made either by you, or any Members of this Corporation, or other Perſon or Perſons whatſoever; and that we will by all lawful Ways and Means oppoſe and hinder the Surrendering or Vacating of any of the Charters, Rights, Liberties, or Privileges of this Corporation; and that in caſe you occaſion the Surrender of any of the Charters, Rights, Liberties, or Privileges of this Corporation, we ſhall expect from you ſuch Satiſfaction as the Law will allow us.'

The Burgeſſes were alſo adviſed to order, and accordingly did order Caveats in the Names of ſome particular Burgeſſes, on behalf of themſelves and moſt of the Burgeſſes of the Town, to be entered at the Lord Chancellor's, the Lord Privy-Seal's and in the Signet-Office, againſt Surrendering of any of the Charters of that Town without the Privity, Conſent, and Hearing of the ſaid Burgeſſes, and againſt paſſing of any New Charter to that Town without like Privity, Conſent, and Hearing. And the Burgeſſes have had an Account from their Agent at *London*, that he had entered ſuch Caveats at the Lord Chancellor's, and in the Offices of the Lord *Conway* and Sir *Leoline Jenkyns*, it being commonly reported that the Lord Privy-Seal had delivered up the Privy-Seal to the ſaid Sir *Leoline*.

The Burgeſſes were further adviſed to petition the Lord Chancellor to be heard before any Surrender of their Charters ſhould be accepted, or any New Charter to that Town ſhould paſs the Broad-Seal; and accordingly a Petition was drawn and Signed by above Three Hundred and Sixty Burgeſſes, and a Copy thereof fairly engroſſed, with the Names of the Burgeſſes that had ſubſcribed, was ſent and preſented to the Lord Chancellor at *Bath* on *Thurſday* the Tenth of this Inſtant *Auguſt*. Which Petition was in theſe Words following, *viz.*

To the Right Honourable the Lord High Chancellor of England, *the Humble Petition of the Burgeſſes of the Town of* Nottingham, *whoſe Names are hereunto ſubſcribed, on behalf of themſelves and moſt of the Burgeſſes of that Town,*

'Moſt humbly ſheweth,

'THAT the Town of *Nottingham* being a Borough by Preſcription, and an antient Corporation; and the Burgeſſes of that Town (who are a Body Corporate by the Name of Mayor and Burgeſſes) having many Liberties, Privileges, Rights, and Franchiſes, which they hold by Grant and Confirmation from his Majeſty and his Royal Predeceſſors, and many other Rights, Liberties, and Privileges which they hold by Cuſtom or Preſcription; and divers Perſons having given Lands to that Corporation of a very great annual Value: The preſent Mayor, with three or four of the Aldermen, and nine other Burgeſſes of that Corporation, have declared they deſign to take a New Charter, and have taken upon them, without the Conſent of your Petitioners, and moſt of the Burgeſſes of that Town, to agree to the Surrender of the Charters of that Corporation; and have taken the Town-Seal, and affixed it to an Inſtrument, deſigning thereby to make an actual and abſolute Surrender of all the ſaid Charters; which if they have power to effect, it will (as your Petitioners are adviſed) not only diſſolve the Corporation, deprive your Petitioners and other Burgeſſes of that Town of many Rights, Liberties, and Privileges which they held by Cuſtom and Preſcription, cauſe all the Lands given to that Corporation to revert to the Heirs of the Donors, and diſinherit your Petitioners and other Burgeſſes of that Town of all the ſaid Lands, Liberties, and Privileges, which both they and their Predeceſſors, as Burgeſſes of that Town, have inherited, and ought to enjoy, but alſo ſubject your Petitioners and their Freeholds againſt their Will to ſuch Services, Damages, and great Inconveniencies, as may be brought upon them by the Contrivances of the ſaid Mayor and Aldermen, in caſe they can obtain a New Charter to paſs the Broad-ſeal without the Privity, Conſent, or Hearing of your Petitioners.

'Your Petitioners therefore humbly pray your Lordſhip to take into Conſideration the aforeſaid Miſchiefs, Damages, and Inconveniencies that are like to befall your Petitioners and other Burgeſſes of that Town, in caſe ſuch Surrender ſhould be made and accepted, and a New Charter taken by the ſaid Mayor and Aldermen: And that your Lordſhip would pleaſe, before ſuch Surrender be accepted, or any New Charter for that Town be paſſed the Broad-Seal, to grant your Petitioners a Day of Hearing, and to order thereupon as ſhall be agreeable to Equity and Juſtice.

'And your Petitioners ſhall ever pray, *&c.*'

The Petition being delivered as aforeſaid, and Mr. Mayor having been acquainted in manner aforeſaid, by the Generality of the Burgeſſes, that they neither had conſented, nor ſhould conſent to a Surrender of any of the Charters, Rights, or Liberties of the Town, and the Burgeſſes having been adviſed by Counſel that no Inſtrument for making a Surrender of the Charters to the Earl of *Hallifax* and Sir *Leoline Jenkyns* could be effectual in Law; it was hoped that there would not have been any further Progreſs in the Buſineſs, at leaſt before the Burgeſſes were heard upon their Caveats or Petitions. And it was taken for granted, that no new Inſtrument in order to any Surrender could be made and ſealed without calling together the Council of that Town; becauſe, by Cuſtom of that Town, the Town-Seal hath always uſed to be kept under the Cuſtody of three Locks and Keys, and not taken out but in Council; and thoſe three Keys kept by three ſeveral Perſons, for better preventing of any indirect uſe of the Seal. But contrary to the Burgeſſes Expectation, and againſt all ancient Uſage, Mr. Mayor (having, as he ſaid, received Advice from *London* that the Inſtrument he had ſent up for ſurrendering the Charters was not ſufficient) did on *Saturday* the Twelfth of *Auguſt* require of the Senior Coroner to deliver him his Key; which the Coroner refuſing to do, (unleſs, according to the Cuſtom of the Town, a Council was called, and ſhould order ſuch Delivery) it ſeems Mr. Mayor found another way to come by the Seal, if that be true which was ſignified in the publick Prints that came down to *Nottingham* on the Nineteenth of *Auguſt*, viz. *That upon the Fourteenth of* Auguſt *a Surrender of* Nottingham *Charters was made to his Majeſty.* And there is one thing which hath happened ſince, which gives a ſhrewd Light what Mr. Mayor did on that Twelfth of *Auguſt*, without ſo much as ſummoning a Council; for the Party who by Mr. Mayor's Command, as he ſaith, did that Day force open the Lock to which the Coroner's Key belonged, hath ſince confeſſed the Fact. So that now if it ſhould hereafter appear to be true, as thoſe Prints ſeem to intimate, that any Inſtrument for ſurrendering of *Nottingham* Charters to his Majeſty, was preſented to his Majeſty on the Fourteenth of *Auguſt*, it will ſcarce be a Queſtion, by what means, or how lawfully Mr. Mayor came by the Seal, or how valid ſuch Surrender is like to be.

This is the true Caſe of the Burgeſſes of *Nottingham*, who are ready to make good every Matter of Fact, as herein ſtated, whenever there ſhall be occaſion; and doubt not but to prove it, if they may either be heard upon their Petition or Caveats; and however queſtion not but by the Aſſiſtance of the Courts of Juſtice they ſhall ſtill preſerve their Rights, notwithſtanding all theſe Endeavours that have been uſed to give up their Charters and Liberties.

CXXVIII. *Proceedings againſt Sir* THOMAS ARMSTRONG [*] *in the* King's-Bench, *upon an Outlawry for* High-Treaſon, June 14, 1684. Trin. 36 Car. II.

ON the 14th of *June* Sir *Thomas Armſtrong* was brought to the Bar of the Court of *King*'s-*Bench* at *Weſtminſter*, by Virtue of a Writ of a *Habeas Corpus*, directed to the Keeper of the Goal of *Newgate*; which Writ was on his Majeſty's behalf moved for on *Thurſday* laſt by Mr. Attorney-General.

The Return of the Writ was read by the Clerk of the Crown, by which it appeared he was in the Cuſtody of the Keeper of *Newgate*, by a Warrant from the Honourable *Sidney Godolphin*, Eſq; one of His Majeſty's Principal Secretaries of State; which Warrant followeth *in hæc verba.*

Sidney Godolphin, Eſq; of His Majeſty's moſt Honourable Privy-Council, and Principal Secretary of State.

'THESE are in His Majeſty's Name to Authorize and Require you 'to receive into your Cuſtody, from on board His Majeſty's Yatch 'the *Catharine*, Captain *Davies Commander*, the Perſon of Sir *Thomas* '*Armſtrong*, Kt. Outlawed for High-Treaſon, and him ſafely to keep in 'His Majeſty's Priſon of *Newgate*, till His Majeſty's Pleaſure be farther 'known. And for ſo doing, this ſhall be your Warrant. Given under 'my Hand and Seal at *Whitehall*, this 10th Day of *June* 1684. In the '36th Year of His Majeſty's Reign.

S. Godolphin.'

To Captain Richardſon, *Keeper of His*
Majeſty's Priſon of Newgate.

Sir *George Jefferies* *L. C. J.* What would you have, Mr. Attorney?

Sir *Robert Sawyer.* *Mr. Att. Gen.* Have you the Outlawry there?

Cl. of Cr. Yes, Sir, here it is.

Mr. Att. Gen. That which I humbly pray, my Lord, is an Award of Execution for the King againſt Sir *Thomas Armſtrong* upon the Outlawry.

L. C. J. Firſt, we muſt file this Return.

Mr. Att. Gen. I pray it may be filed.

L. C. J. Let it be filed: Now, what do you deſire, Mr. Attorney?

Mr. Att. Gen. My Lord, I pray an Award of Execution upon the Outlawry.

L. C. J. Arraign him upon the Outlawry.

Cl. of Cr. Thomas Armſtrong, Hold up thy Hand. [*Which he did.*]

Thou haſt been indicted in *London*, by the Name of *Thomas Armſtrong*, of *London*, Knight, of High-Treaſon, for Conſpiring againſt the King's Majeſty's Life, and the Government: For not appearing to Plead and Try that Indictment by due Proceſs of Law iſſued againſt thee, upon that Indictment thou ſtandeſt Outlawed, and thereby attainted of the ſame High-Treaſon. What haſt thou to ſay for thyſelf, why Execution ſhould not be awarded againſt thee upon that Attainder according to Law?

Sir *Thomas Armſtrong.* My Lord, I was beyond Sea † at the Time of the Outlawry; I beg I may be tried.

L. C. J. That is not material at all to us; we have here a Record of an Outlawry againſt you, Sir *Thomas.*

Sir *Thomas Armſtrong.* I deſire to be put upon my Trial, my Lord.

L. C. J. We cannot allow any ſuch thing; we have nothing to do upon this Record before us, but to award Execution. Captain *Richardſon*, Which are your uſual Days of Execution?

Captain *Richardſon. Wedneſdays* and *Fridays*, my Lord.

Mrs. *Matthews.* Here is a Statute, my Lord.

L. C. J. What is the matter with that Gentlewoman?

Sir *Thomas Armſtrong.* Hold your Tongue. My Lord, there is a Statute made in the 6th Year of *Edward* the 6th, which I deſire may be read.

L. C. J. To what Purpoſe would you have it read, Sir *Thomas?*

Sir *Thomas Armſtrong.* It giveth the Priſoner, or Perſon outlawed for High-Treaſon, a Year's time to reverſe the Outlawry, if he were beyond Sea. I deſire it may be read.

L. C. J. Ay, let it be read. Where is it, do you ſay?

Sir *Thomas Armſtrong.* It is in the 6th Year of *Edward* VI.

Mrs. *Matthews.* Here is a Copy of it———

[*Shewing a Paper.*

L. C. J. Why, how now? We do not uſe to have Women plead in the Court of *King*'s-*Bench*; pray be at quiet, Miſtreſs.

Sir *Thomas Armſtrong.* Pray, hold your Tongue. My Lord, I could not come to alledge this before, becauſe I have been a cloſe Priſoner, and no body permitted to come at me. I deſire Counſel to be aſſigned me at this Bar.

L. C. J. For what, Sir *Thomas?*

Sir *Thomas Armſtrong.* To argue whether this Outlawry ought not to be reverſed.

L. C. J. Read the Statute he deſires.

Mr. Att. Gen. Ay, let it be read. Sir *Thomas* will not find it to his Purpoſe.

Cl. of Cr. What Chapter is it? ‡

L. C. J. You may eaſily find it about Outlawries for Treaſon.

Cl. of Cr. Reads. 'Provided always, and be it Enacted by the Authority aforeſaid, That if the Party'—

Mr. Att. Gen. Read the Clauſe before that, Sir *Samuel.*

Cl. of Cr. Reads. 'And that all Proceſs of Outlawry hereafter to be 'made and had within this Realm, againſt any Offenders in Treaſon, 'being Reſiant or Inhabitant out of the Limits of this Realm, or in any 'the Parts beyond the Sea, at the time of the Outlawry pronounced 'againſt them, ſhall be as good and effectual in the Law, to all Intents 'and Purpoſes, as if any ſuch Offenders had been Reſident and Dwelling 'within this Realm, at the time of ſuch Proceſs awarded and Outlawry 'pronounced.'

L. C. J. Read on the next Paragraph.

Cl. of Cr. Reads. 'Provided always, and be it Enacted by the Authority aforeſaid, That if the Party ſo hereafter to be Outlawed, ſhall 'within one Year next after the ſaid Outlawry pronounced, or Judgment given upon the ſaid Outlawry, yield himſelf unto the Chief Juſtice of *England* for the time being, and offer to Traverſe the Indictment 'or Appeal, whereupon the ſaid Outlawry ſhall be pronounced as is aforeſaid: That then he ſhall be received to the ſaid Traverſe, and being 'thereupon found not Guilty by the Verdict of Twelve Men, he ſhall 'be clearly acquitted and diſcharged of the ſaid Outlawry, and of all 'Penalties and Forfeitures by reaſon of the ſame, in as large and ample 'manner and form, as though no ſuch Outlawry had been made, any 'thing herein contained to the contrary in any wiſe notwithſtanding.'

Mr. Att. Gen. Sir *Thomas*, I ſuppoſe, now will ſhew he yielded himſelf to your Lordſhip.

L. C. J. This is the firſt time I have ſeen Sir *Thomas.*

Sir *Thomas Armſtrong.* My Lord, I have been a Priſoner, and the Year is not yet out; I now render myſelf.

Mr. Att. Gen. Before he went out of *England* he might have rendered himſelf, and been Tried, if he pleaſed.

Sir *Thomas Armſtrong.* I am within the Benefit of the Statute, I conceive, my Lord.

L. C. J. We think otherwiſe, Sir *Thomas.*

Sir *Thomas Armſtrong.* I think, my Lord, the Statute is plain in the Caſe.

L. C. J. We are of another opinion than you are; it doth not reach your Caſe.

Sir *Thomas Armſtrong.* The Year is not yet out, and therefore I come time enough now; and here I am, and deſire the Benefit of this Act.

L. C. J. Sir *Thomas*, you ſhould have rendered yourſelf to me.

Sir *Thomas Armſtrong.* I do it now, my Lord, and the Year is not yet out.

L. C. J. We cannot take notice of that; we have nothing but the Outlawry, and you did not render yourſelf according to that Act, but are brought as a Priſoner before us now.

Sir *Thomas Armſtrong.* My Lord, I beg I may have Counſel ‖ to plead for me in this Caſe.

L. C. J. For what reaſon? We are of opinion it is not a matter of any doubt. For you muſt not go under the Apprehenſion that we deny you any thing that is right; there is no Doubt nor Difficulty at all in the Thing §.

Sir *Thomas Armſtrong.* Methinks, my Lord, the Statute is plain.

L. C. J. So it is very plain that you can have no Advantage by it. Captain *Richardſon*, you ſhall have a Rule for Execution on *Friday* next.

Sir *Thomas Armſtrong.* I would only take notice of one thing, my Lord, may I ſpeak?

L. C. J. Ay, Sir *Thomas*, very freely what you pleaſe.

Sir *Thomas Armſtrong.* A little while ago there was one in this Place had the Benefit of a Trial offered him, if he would accept of it; that is the thing I deſire now, and I thank God, my Caſe is quite another thing than his, I know my own Innocence; and I deſire to make it appear by a Trial.

L. C. J. Sir *Thomas Armſtrong*, You may go away with what Opinion you pleaſe, of your own Innocency: But you are here Attainted by Outlawry. That which was done to him you ſpeak of, was the Grace and Mercy of the King, and he may, if he pleaſe, extend the ſame Grace and Favour to you; but that is not our Buſineſs: We are ſatisfied that according to Law we muſt award Execution upon this Outlawry.

Mrs. *Matthews.* My Lord, I hope you will not murder my Father; this is murdering a Man.

L. C. J. Who is this Woman? Marſhal, take her into Cuſtody. Why, How now? Becauſe your Relation is attainted for High-Treaſon, muſt you take upon you to tax the Courts of Juſtice for Murder, when we grant the Execution according to Law. Take her away.

Mrs. *Matthews.* God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon thoſe that are Guilty of High-Treaſon.

Mrs. *Matthews. Amen*, I pray God.

L. C. J. So ſay I. But Clamours never prevail upon me at all; I thank God, I am Clamour Proof, and will never fear to do my Duty.

[*Then ſhe was carried away.*]

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[*] Burnet'*s Hiſtory of his own Times, Vol. I. p.* 577. 3. *Mod. Rep.* 47.

† *He was ſeized at* Leiden *in* Holland *by the Scout of that Place, who delivered him up to* Chudleigh *the King's* Envoy *for* 5000 Guilders, *which is ſomething leſs than* 500l.

‡ 5 *and* 6 Edw. 6. *c.* 11. *Sect.* 3. *and* 4.

‖ *Here the Priſoner was denied Counſel upon a Point of Law, in which caſe it was never pretended but he is intitled to it.*

§ King *and* Johnſon, Mich. 2. Geo. II. B. R. *the Priſoner was allowed to be within the Benefit of the Proviſo, and tho' he had eſcaped out of Priſon, and was retaken in* England, *was admitted to prove himſelf beyond Sea at the time of the Outlawry; and upon proving that he was then at* Middleburgh *in* Zealand, *his Outlawry was reverſed, and he was admitted to a Trial, and acquitted:* Armſtrong'*s Caſe was declared a Precedent not fit to be followed.*

Mr. Att. Gen. My Lord, I would only acquaint you with one Thing, in reference to what Sir *Thomas Armſtrong* has ſaid: The King did indulge *Holloway*, that he ſpeaks of, it is true, ſo far as to offer him a Trial, and his Majeſty, perhaps might have ſome reaſon for it, but the Priſoner truly deſerves no ſort of Indulgence or Mercy from the King. For it has appeared by the Evidence that has been given of this late horrid Conſpiracy, that after the Diſappointment that was given by the Providence of God, by the Fire at *New-Market*, to the Meeting at the *Rye*; this Gentleman was one of the Perſons that actually engaged to go upon the King's haſty coming to Town, and to deſtroy him by the Way as he came to Town. And this appears upon a full and clear Evidence, as poſitively teſtified as any Thing can be.* And when he was taken beyond Seas, Letters of Communication with foreign Miniſters and other People were taken about him, and will be ———

L. C. J. We are not to meddle at all with the Evidence, Mr. Attorney; that is not our Buſineſs: here is an Outlawry; upon this Outlawry he is attainted; we have nothing more to do, but to do the Duty of the Court upon this Record before us, to award Execution upon that Attainder, and we muſt give a Rule for it. If the King will be pleaſed to do for Sir *Thomas Armſtrong* what he did for *Holloway*, and indulge him a Trial, and wave the Outlawry, with all our Hearts. We are not Diſpoſers of his Grace and Favour, but the Miniſters of his Juſtice. If the King will pardon him, he may; that is not our Buſineſs; but all we have to do upon what is before us, is to conſider the Record, and what the Priſoner ſays againſt our awarding of Execution. We have conſidered whether this be a yielding within the Proviſo of this Statute, and we think it is not, nor can be, by any Means.

Sir Thomas Armſtrong. My Lord, I am within the Statute. I was outlawed while I was beyond Sea, and I come now here within the Twelvemonth. That is all I know, or have to ſay in this Matter.

L. C. J. We think quite the contrary, Sir *Thomas*.

Sir Thomas Armſtrong. When I was before the Council, my Lord, they ordered that I ſhould have Counſel allotted me, but I could have no Benefit by that Order; for when I was taken, I was robbed of all the Money I had, and have not had one Penny reſtored to me, nor any Money ſince; I know not whether the Law allows Perſons in my Condition to be robbed and ſtripped.

L. C. J. I know nothing at all of that Matter, Sir *Thomas*.

Sir Thomas Armſtrong. My Lord, I know Lawyers will not plead without Money, and being robbed, I could not have wherewithal to Fee them.

L. C. J. Sir *Thomas Armſtrong*, You take the Liberty of ſaying what you pleaſe; you talk of being robbed, no-body has robbed you that I know of.

Sir Thomas Armſtrong. No-body ſays you do know of it; but ſo it is.

L. C. J. Nay, be as angry as you will, Sir *Thomas*, we are not concerned at your Anger. We will undoubtedly do our Duty.

Sir Thomas Armſtrong. I ought to have the Benefit of the Law, and I demand no more.

L. C. J. That you ſhall have by the Grace of God. See that Execution be done on *Friday* next, according to Law. You ſhall have the full Benefit of the Law.

Then the Priſoner was carried back to Newgate, *and afterwards, upon a Petition, the* COURT *ordered Mrs.* Matthews *to be releaſed out of Cuſtody without Fees.*

THE Sheriffs of *London* and *Middleſex*, about Nine o'Clock in the Morning, coming to *Newgate*, and demanding their Priſoner, he was forthwith delivered to them, and put into a Sledge, and drawn to the Place of Execution, attended by a numerous Guard, and as great a Number of Spectators, of all Degrees and Qualities, as have been ſeen on ſuch Occaſions.

He employed the Time he was drawing to *Tyburn* in reading *The Whole Duty of Man*, 'till he came within Sight of the Gallows, and then he laid it by, and with lifted up Hands and Eyes, addreſſed himſelf to Heaven, till he came beneath the Tree, where he remained about a quarter of an Hour in the Sledge; before he aſcended the Cart that ſtood ready for him, he deſired the Sheriff to admit Dr. *Teniſon* to come to him: and having delivered a Paper to the Sheriff, the Doctor kneel'd down with the Priſoner, and prayed with him about a quarter of an Hour, during all which Time the Priſoner preſerved a becoming and heroick Countenance, little daunted with the Terror of that Fate he was in View of; but riſing from his Devotions, he pull'd off his Cravat and Hat, which he gave to his Servant who attended him, and had follow'd him by the Sledge-ſide, when kneeling down himſelf, he pray'd for a ſhort Time with Fervency and Devotion, begging Pardon of his God for thoſe manifold and crying Sins he had been too often guilty of, and concluded with a Reſignation of himſelf to the God of Heaven and Earth, before whoſe Judgment Seat he was forthwith to appear, deſiring that the whole World would forgive him, with whom he hoped he died in Peace and Charity. Having thus ended theſe Devotions, he again ſtood up, and putting off his Periwig, he had a white Cap deliver'd to him, which he put on; and being ſoon after tied up, the chief of his Diſcourſe was addreſſed to a Gentleman who ſtood by him; and after a ſhort Space, holding up his Hands, he again renew'd his Prayers; his Viſage little changing all the Time, till the very Moment the Cart drew away; the Executioner having pull'd the Cap over his Eyes, he continued his Prayers all the Time, and even whilſt he hung, as long as Life was in him, and he had the Command of his Lips; after he had hung about half an Hour, and the Executioner had diveſted him of his Apparel, he was cut down according to his Sentence, his privy Members burnt, his Head cut off, and ſhew'd to the People as that of a Traitor, his Heart and Bowels taken out, and committed to the Flames, and his Body quarter'd into Four Parts, which with his Head, was convey'd back to *Newgate*, to be diſpos'd of according to his Majeſty's Pleaſure; and were afterwards publickly expos'd:

The Subſtance of the Paper deliver'd to the Sheriff was, *That he thanked* Almighty God, *he found himſelf prepared for Death, his Thoughts ſet upon another World, and weaned from this; yet he could not but give ſo much of his little Time as to anſwer ſome* Calumnies, *and particularly what Mr.* Attorney *accuſed him of at the Bar.*

That he prayed to be allowed a Trial *for his Life*, according to the Laws of the Land, *and urged the* Statute of *Edward* VI. *which was expreſly for it; but it ſignified nothing, and he was with an extraordinary Roughneſs condemned and made a Precedent*; tho' *Holloway* had it offered him, and he could not but think all the World would conclude his Caſe very different, elſe why was it refuſed to him?

That Mr. *Attorney* charged him for being one of thoſe that were to kill the *King*, *He took* God *to witneſs, that he never had a Thought to take away the* King's *Life, and that no Man ever had the Impudence to propoſe ſo barbarous and baſe a Thing to him; and that he never was in any Deſign to alter the* Government.

That if he had been try'd, he could have proved the Lord *Howard*'s baſe Reflections upon him, to be notoriouſly falſe——He concluded, That he had lived, and now died of the *Reformed Religion*, a *Proteſtant* in the *Communion* of the *Church of* England, *and he heartily wiſh'd he had lived more ſtrictly up to the Religion he believed:* That he had found the great Comfort of the Love and Mercy of *God*, in and through his *Bleſſed Redeemer*, in whom he only truſted, and verily hoped that he was going to partake of that Fullneſs of Joy which is in his Preſence, the Hopes whereof infinitely pleaſed him. He thanked *God* he had no repining, but chearfully ſubmitted to the Puniſhment of his Sins: He freely forgave all the World, even thoſe concerned in taking away his *Life*, *though he could not but think his Sentence very hard, he being denied the Laws of the Land.* †

Theſe Proceedings were afterwards enquir'd into, and cenſur'd as illegal by the Houſe of Commons in 1689.

Martis, 12. *November*, 1689.

A Petition of the *Lady Armſtrong* and her *Daughters*, was Read; Whereupon a *Committee* was appointed to examine the Matter, and make their Report to the Houſe.

Reſolved,

That it be an Inſtruction to the *Committee*, That they examine who were the *Judges* that gave the Sentence againſt Sir *Thomas Armſtrong*, and who were the *Proſecutors* of him; and who had his Eſtate; and how the *Petitioners* may have Reparation: And alſo to examine what Proceedings were in order to a Writ of *Error* by him deſired, and how it came to be denied, and by whom: And they are to make their Report with all convenient Speed.

Martis, 19 *November*, 1689.

Mr. *Chriſly* reported from the *Committee* to whom the *Petition* of the *Lady Armſtrong*, and the *Daughters* of Sir *Thomas Armſtrong* was referred; an Account of the whole Proceedings againſt him; and that thereupon they had come to theſe *Reſolves*,

1. *That Sir* Thomas Armſtrong's *Plea ought to have been admitted, according to the* Statute of *Edward* VI. *and that the* Execution *of him upon the* Attainder *by* Outlawry, *was illegal, and a Murder, by Pretence of Juſtice.*

2. That the *Executors* and *Heirs* of Sir *Thomas Armſtrong*, ought to have a Reparation of their Loſſes out of the *Eſtates* of thoſe that were his *Judges and Proſecutors.*

3. *That a Writ of Error for the Reverſal of a Judgment in* Felony *or* Treaſon, *is the Right of the Subject, and ought to be granted at his Deſire, and is not an Act of* Grace *or* Favour; *which may be denied or granted at Pleaſure.*‡

To all which *Reſolves* the *Houſe* agreed.

Reſolved,

That Leave be given to bring in a *Bill* to Reverſe the *Attainder* of Sir *Thomas Armſtrong*, and to make Reparation to his *Widow* and *Children*, out of the *Eſtates* of the *Judges* and *Proſecutors:* And the ſame to be without Fees.

Monday the 20th of *January*, 1689.

Mr. *Chriſly* reported from the *Committee*, to whom the Bill for the annulling the *Attainder* of Sir *Thomas Armſtrong* was recommitted; ſome Amendments to the *Bill*; as alſo who were his Proſecutors; and alſo what Loſſes Sir *Thomas Armſtrong*'s Family had ſuſtained, by Reaſon of the *Attainder*; and thereupon it was *Reſolved*,

That Sir *Richard Holloway*, Sir *Francis Wythins*, *the Executors of the late Lord* Jefferies, *and of the late Juſtice* Walcot, Mr. *Graham* and Mr. *Burton*, do attend the Houſe on *Saturday* Morning next, to anſwer to ſuch Matters, as are charged againſt them touching the Proceedings againſt Sir *Thomas Armſtrong.*

Then Mrs. *Matthews*, Sir *Thomas Armſtrong*'s Daughter, was called in, and examined what ſhe knew of the Proſecution againſt her Father; And Sir *Robert Sawyer* (then *Attorney-General*) being named by her, as one of the *Proſecutors*; after ſhe was withdrawn, he was heard in his Place to what was objected againſt him, and then he withdrew, and upon Debate of the Matter, it was *Reſolved, That Sir* Robert Sawyer's *Name be put into the Bill, as one of the* Proſecutors *of Sir* Thomas Armſtrong.

Reſolved,

That Sir *Robert Sawyer* be *expelled* the *Houſe* for the ſame.

Saturday the 25th of *January*, 1689.

The Houſe being acquainted, That according to their Order, Sir *Francis Wythins*, Sir *Richard Holloway*, Mr. *Graham*, and Mr. *Burton*, attended at the Door, they were ſeverally called in, and examined, touching the *Proſecution* and *Proceedings* againſt Sir *Thomas Armſtrong.*

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* *If this had been ſo evidently clear, it can ſcarce be imagin'd they would have been ſo backward to have wav'd the Outlawry, and let him have his Trial; nothing but a Conſciouſneſs of the contrary could, probably, have prevailed to put ſo ſtrained a Senſe on the Statute, in order to deprive him of a Trial.*

† *See the Paper Lady* Armſtrong *deliver'd to Lord Keeper* North, *Lord Chief Juſtice* Jefferies, *and the Attorney-General; alſo Sir* Thomas's *Paper he deliver'd to the Sheriffs: In* State-Trials, *Vol.* VIII. *p.* 454, 455.

‡ *See* Salk. 504.

And alſo the *Executors* of the late Lord *Jefferies*, that were attending at the Door were likewiſe called in, and aſked what they had to ſay, why Reparation ſhould not be made out of the Lord *Jefferies's* Eſtate, to the ſaid Sir *Thomas Armſtrong's* Family.

No Perſons appearing as *Executors* to the late *Juſtice Walcot*; the *Houſe* was acquainted that he *died Inteſtate, and had not left an Eſtate ſufficient to pay his Debts.*

After the Perſons before-mentioned were heard and withdrawn, Mr. *Blaney* was called in, who gave the *Houſe* an Account of the *Proceedings* in the *Court* of *King's-Bench*, upon the awarding Execution againſt Sir *Thomas Armſtrong*.

And then the *Houſe* proceeded upon the Amendments made by the *Committee* to the *Bill*, for annulling the *Attainder* of Sir *Thomas Armſtrong*: And after having inſerted the Name of Sir *Robert Sawyer*, as a *Proſecutor*; and Reſolved, *That the Sum of Five Thouſand Pounds ſhould be paid by the* Judges and Proſecutors, to Sir *Thomas Armſtrong's* Lady, and Children, *as a Recompence of the Loſſes they had ſuſtained by Reaſon of his* Attainder, the *Bill* was recommitted (upon the Debate of the *Houſe*) to the ſame *Committee*.

This Bill not paſſing, the Attainder ſtood in Force till 6 *William* and *Mary*, when it was reverſed upon a Writ of Error in the *King's-Bench*; for that the Record did not mention where the Court of *Huſtings* were held; the Words *pro Civitate London* being omitted. 4 *Mod. Rep.* 366.

CXXIX. *Proceedings on a Writ of Inquiry of Damages between His Royal Highneſs* JAMES *Duke of* YORK, *in an Action upon the Statute* de Scandalis Magnatum, *and* Titus Oates, *in the* King's-Bench, June 18, 1684. Trin. 36 Car. II.

HIS Royal Highneſs the Duke of *York*, having brought an Action againſt *Titus Oates*, grounded upon the Statute *de Scandalis Magnatum*, for very Slanderous and Opprobrious Words, the Defendant ſuffered Judgment to go againſt him by Default, and thereupon a Writ of Inquiry was taken out directed to the Sheriff of the County of *Middleſex*, to enquire by a Jury of that County, what Damages the Plaintiff had ſuſtained thereby, and upon a Motion made at the Court of King's-Bench, a Day was given to the Defendant, to ſhew Cauſe why that Writ of Inquiry ſhould not be Executed at the Bar of that Court, which he not doing, it was ordered, That it ſhould be Executed at the Bar on this Day, and that the High Sheriff ſhould appear and attend the Execution of the Writ in Perſon. Accordingly this Day Sir *Peter Daniel*, Kt. and *Samuel Daſhwood*, Eſq; the then Sheriffs of the County of *Middleſex*, came into this Court, and being placed at the Table at the Judges Feet, were, during the Execution of the Writ, covered. Mr. *Thomas Rous* the then Under-Sheriff managed it, and proceeded in this manner.

Mr. *Under-Sheriff*. Crier, Call Sir *Charles Lee*.

Crier. *Vous avez* Sir *Charles Lee*.

[*Who was ſworn thus.*

Mr. *Under-Sheriff*. You ſhall well and truly enquire of Damages, between the moſt Illuſtrious Prince JAMES Duke of *York* and *Albany* Plaintiff, and *Titus Oates* Defendant, and therein a true Verdict give according to your Evidence. So help you GOD.

The reſt were ſworn thus.

Mr. *Under-Sheriff*. Sir *William Hill*, Sir *Richard Downton*, and Sir *John Berry*; the ſame Oath your Foreman hath for his Part taken, you and every of you for your Parts, ſhall well and truly keep. So help you GOD.

Mr. *Under-Sheriff*. *Thomas Harriot*, *Thomas Row*, and *Walter Brydall*; the ſame Oath, &c. *Edward Guiſe*, *Thomas Done*, and *William Wood*; the ſame Oath, &c. *John Sharp*, *and Nehemiah Arnold*; the ſame Oath, &c.

Will you pleaſe to have any more than Twelve ſworn?

Sir George Jefferies. *L. C. J.* How many do you uſe to have? Pray ſwear an odd Number as you uſed to do.

Mr. *Under-Sheriff*. Then I will ſwear Three more, and that will be juſt Fifteen.

Francis Stevens, *Nicholas Baxter*, *and John Kirk*. The ſame OATH, &c.

The NAMES of them that were upon the INQUIRY.

Sir *Charles Lee*, Kt.
Sir *William Hill*, Kt.
Sir *Richard Downton*, Kt.
Sir *John Berry*, Kt.
Thomas Harriot, Eſq;
Thomas Row, Eſq;
Walter Brydall, Eſq;
Edward Guiſe, Eſq;
Thomas Done, Eſq;
William Wood, Eſq;
John Sharp, Eſq;
Nehemiah Arnold, Eſq;
Francis Stevens, Eſq;
Nicholas Baxter, Eſq:
John Kirk, Gent.

Mr. *Under Sheriff*. Gentlemen, You are ſworn, hear the King's Writ.

L. C. J. Ay, read it to them.

Mr. *Under-Sheriff*. ‘CHARLES II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. to the Sheriff of *Middleſex*, Greeting; Whereas the moſt Illuſtrious Prince JAMES Duke of *York* and *Albany*, one of the Nobles and Peers of *England*, our moſt dear and only Brother, who as well, &c. lately in our Court before Us at *Weſtminſter*, by Bill without our Writ impleaded *Titus Oates*, then in the Cuſtody of the Marſhal of our *Marſhalſea*, before us being: For that whereas in a Statute made in the Parliament of *Richard* II. late King of *England* after the Conqueſt, held at *Glouceſter* in the Second Year of his Reign, amongſt other Things: It is Ordained and ſtrictly Prohibited, *That from thence none ſhould be ſo hardy to deviſe, tell or relate of the Prelates, Dukes, Earls, Barons, and other Nobles and Great Men of* England, *nor of the Chancellor, Treaſurer, or Clerk of the Privy Seal, Steward of the King's Houſhold, Juſtices of the one or the other Bench, nor of other great Officers of the Kingdom aforeſaid, any falſe News, Lies, or any ſuch falſe Things, whereby Scandal or Diſcord within the ſaid Kingdom might ariſe*; and whoſoever ſhould do this, ſhould ſhould incur and have the Penalty otherwiſe thereon ordained by the Statute of *Weſtminſter* the Firſt, as in the Statute aforeſaid is more fully contained. And whereas the 4th Day of *December* in the Five and Thirtieth Year of our Reign, and long before the Yearly Rents, Iſſues and Profits ariſing, or due and payable for or by Reaſon of the General Poſt-Office within this Kingdom of *England*, for the Carriage of Letters, before were erected and yet are eſtabliſhed upon the ſaid moſt Illuſtrious Prince JAMES Duke of *York* and *Albany*. The aforeſaid *Titus Oates* the Statute aforeſaid not conſidering, but the good Name, State, Credit, Dignity, and Honour of the ſaid JAMES Duke of *York* and *Albany*, our Brother, deviſing and maliciouſly intending to hurt and detract, and Him the ſaid JAMES Duke of *York* and *Albany*, our Brother, into the great Diſpleaſure and Hatred of Us, and of the Peers of this Kingdom of *England*, and alſo divers other venerable Perſons our Subjects, to bring, out of his meer Malice and Envy had and forethought, the aforeſaid 4th Day of *December*, in the Year of our Reign the Five and Thirtieth, at the Pariſh of St. *Martin* in the Fields in the County of *Middleſex* aforeſaid, upon a certain Diſcourſe then had and moved by and between the aforeſaid *Titus Oates* and divers of our Liege People, of and concerning the aforeſaid JAMES Duke of *York* and *Albany*, our Brother, and of and concerning a certain Letter in the Hand of the aforeſaid *Titus Oates* at that Time being, divers falſe News and horrible Lies of the aforeſaid JAMES Duke of *York* and *Albany*, our Brother at that Time, and yet being of the Peers and Nobles of this Kingdom, in the Preſence and Hearing of divers venerable Perſons, Publickly, Falſly, Maliciouſly, and Scandalouſly ſaid and related; and with a loud Voice Publiſhed in theſe Engliſh Words following, *viz.* *This Letter* (the Letter aforeſaid, ſo in the Hands of the aforeſaid *Titus Oates* as is beforeſaid being, meaning) *coſt me* (the ſaid *Titus Oates*, meaning) *Nine Pence, and might have been brought for a Penny, I* (himſelf the aforeſaid *Titus Oates* meaning) *know nobody is the better for it, but that Traitor* JAMES *Duke of* York (the aforeſaid JAMES Duke of *York* and *Albany* our only Brother meaning.) And the aforeſaid *Titus* further deviſing and maliciouſly intending the aforeſaid JAMES Duke of *York* and *Albany*, our Brother, into the Hatred of Us, and the Peers of this Kingdom of *England*, and alſo of divers other venerable Perſons, and our Subjects to bring; out of his meer Malice and Envy, had and forethought, the 4th Day of *December*, the Year aboveſaid, at the Pariſh of St. *Martin* in the Fields aforeſaid, in the County of *Middleſex* aforeſaid, upon a certain other Diſcourſe then had and moved by and between the aforeſaid *Titus Oates* and ſeveral of our Liege People of and concerning the aforeſaid JAMES Duke of *York* and *Albany*, our Brother, and of and concerning a certain Letter in the Hands of the aforeſaid *Titus Oates*, at that Time being, divers other falſe News and horrible Lies of the aforeſaid JAMES Duke of *York* and *Albany*, our Brother at that Time, and yet being one of the Nobles and Peers of this Kingdom of *England*, and our only Brother, in the Preſence and Hearing of ſeveral venerable Perſons, Publickly, Falſly, Maliciouſly and Scandalouſly ſaid, related, and with a loud Voice Publiſhed, *viz.* *This Letter* (the aforeſaid Letter ſo in the Hands of the aforeſaid *Titus Oates*, as is beforeſaid being, meaning) *coſt me* (the aforeſaid *Titus Oates* meaning) *Nine Pence, and might have been afforded for a Penny, I* (himſelf the aforeſaid *Titus Oates* meaning) *know no body is the better for it, but that Traitor* JAMES *Duke of* York (the aforeſaid JAMES Duke of *York* our only Brother meaning.) And afterwards, to Wit, the 5th Day of *December* in the Thirty Fifth Year aboveſaid; the aforeſaid *Titus Oates* further deviſing and Maliciouſly intending the ſaid JAMES Duke of *York* and *Albany* our Brother to Scandalize, and into the further Diſpleaſure and Hatred of Us, and of the Great Men of this Kingdom of *England*, out of his meer Malice and Envy, had and forethought, at the Pariſh of St. *Martin*, in the Fields aforeſaid, in the County of *Middleſex* aforeſaid, the ſaid 5th Day of *December*, in the Year aboveſaid, upon certain other Diſcourſe of the ſaid JAMES Duke of *York* and *Albany*, divers falſe News and horrible Lies of the aforeſaid JAMES Duke of *York* and *Albany*, Publickly, Falſly, and Maliciouſly ſaid, related, and with a loud Voice publiſhed, to Wit, that the Letter in the Hands of the aforeſaid *Titus* at that Time being, coſt him the aforeſaid *Titus* Nine Pence, but might have been brought for One Penny, and that he knew *no body to be the better for it, but that Traitor* JAMES *Duke of* York. And the aforeſaid *Titus Oates* further contriving and maliciouſly intending the aforeſaid JAMES Duke of *York* and *Albany*, our only Brother, into the

‘ further Diſpleaſure and Hatred of us, and of the Great Men of this Kingdom of *England*, and alſo of divers other venerable Perſons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the 6th Day of *December*, in the Five and Thirtieth Year abovesaid, at the Pariſh of St. *Martin* in the Fields aforeſaid, in the County of *Middleſex* aforeſaid, upon a certain Diſcourſe at that Time had and moved by and between the aforeſaid *Titus Oates* and ſeveral of our Liege People, of and concerning the aforeſaid JAMES Duke of *York* and *Albany*, our Brother, divers other falſe News and horrible Lies of the aforeſaid JAMES Duke our only Brother, at that Time, and yet being one of the Nobles and Peers of this Kingdom of *England*, in the Preſence and Hearing of divers venerable Perſons, Publickly, Falſly, Malicioully and Scandalouſly ſaid, related, and with a loud Voice publiſhed in theſe Engliſh Words following, to Wit, *The Duke of* York (the aforeſaid JAMES Duke of *York* and *Albany*, our only Brother, meaning) *is a Traitor*. And the aforeſaid *Titus Oates* further contriving, and Maliciouſly intending the ſaid JAMES Duke of *York* our Brother, into the Hatred of us, and of the Great Men of this Kingdom of *England*, and alſo of divers other venerable Perſons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the aforeſaid 6th Day of *December* the Year abovesaid, at the Pariſh of St. *Martin* in the Fields, in the County of *Middleſex* aforeſaid, upon certain other Diſcourſe at that Time had and moved by and between the aforeſaid *Titus Oates* and divers of our Liege People, of and concerning the aforeſaid JAMES Duke of *York* and *Albany*, our only Brother, divers other falſe News and horrible Lies of the aforeſaid JAMES Duke of *York* and *Albany*, our only Brother, and at that Time and yet being one of the Nobles and Peers of this Kingdom of *England*, in the Preſence and Hearing of divers venerable Perſons, Publickly, Falſly and Maliciouſly ſaid, related, and with a loud Voice publiſhed; to Wit, *That the ſaid Duke of* York *was a Traitor*. By reaſon whereof the ſaid JAMES Duke of *York* and *Albany*, our only Brother, in his Reputation, Honour and Dignity is very much hurt and ſcandaliz'd. And the ſaid JAMES Duke of *York* and *Albany*, the Grace, good Opinion and Eſteem which we and others the Great Men of this Kingdom of *England* before towards him JAMES Duke of *York* and *Albany*, did bear, utterly loſt, and divers Rumours and Scandals between very many Nobles and Peers of this Kingdom of *England*, and other our Subjects, by the Occaſions aforeſaid, within this Kingdom of *England*, are ariſen and divulged, and great Scandals and Diſcords by Occaſion of the Premiſes between him the aforeſaid JAMES Duke of *York* and *Albany*, and divers Nobles and Great Men, and other Subjects of this Kingdom of *England*, are ariſen; and Daily more and more in the like may ariſe, to the great Diſturbance of the Peace and publick Tranquillity of this Kingdom of *England*, and in Contempt of us and our Government of this Kingdom of *England*, and to the great Scandal and Grievance of him JAMES Duke of *York* and *Albany*, to the Damage of him the ſaid JAMES Duke of *York* and *Albany*, our moſt dear Brother, a Hundred Thouſand Pounds: As he then ſaid, and thereupon in our Court before us it was ſo proceeded, That the aforeſaid JAMES Duke of *York* and *Albany*, our only Brother, his Damages againſt the ſaid *Titus Oates* by Occaſion of the Premiſes ought to recover: But becauſe it is not known to our Court before us, what Damages the aforeſaid JAMES Duke of *York* and *Albany*, our Brother, hath ſuſtained, as well by Occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this Behalf expended. Therefore We command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently enquire what Damages the aforeſaid JAMES Duke of *York* and *Albany* hath ſuſtained, as well by Occaſion of the Premiſes, as for his Coſts and Charges by him about his Suit in this Behalf expended, and the Inquiſition which thereupon you ſhall take, you ſhall have before Us at *Weſtminſter* on *Wedneſday* next after Three Weeks of the Holy Trinity, under your Seal, and the Seals of them by whoſe Oath you take that Inquiſition, diſtinctly and openly you ſend, and this Writ. *Teſte* Sir *George Jefferies*, Knight and Baronet, at *Weſtminſter*, the Thirtieth Day of *May*, in the Year of our Reign the Six and Thirtieth.

Ri. Swift. *Henley.*

You are to enquire what Damage his Royal Highneſs the Plaintiff has ſuſtained, by means of the Premiſſes; as alſo, what Coſts he has been at in this Suit.

Mr. Hanſes. May it pleaſe your Lordſhip, you Mr. Sheriffs, and Gentlemen of the Jury, His Royal Highneſs the Duke of *York* is Plaintiff, and *Titus Oates* is the Defendant: And this is, in an Action of Treſpaſs and Contempt, grounded upon the Statute of *Scandalum Magnatum*, wherein His Royal Highneſs ſets forth, That whereas ſuch a Statute was made, prohibiting the Slandering the Great Men and Peers of the Kingdom, and the Plaintiff being the King's only Brother, and a Peer, the Defendant upon a Diſcourſe between him the Defendant and ſome other Perſons, about a Letter that the Defendant had then in his Hands, Publickly, Falſly, and with an Intent to Scandalize the Plaintiff, ſpoke theſe Engliſh Words:

This Letter (meaning the Letter then in the Defendant's Hands) *coſt me* (meaning the Defendant) *Nine Pence, and might have been brought for a Penny*; *I* (meaning the Defendant) *know nobody is the better for it, but that Traitor* JAMES *Duke of* YORK, meaning the Plaintiff.

Gentlemen, This is not all, the Declaration goes on further, and ſays, That the Defendant intending further to Scandalize the Plaintiff, the Sixth of *December* in the Thirty Fifth Year of this King upon a Diſcourſe had and moved by and between him the Defendant and ſome other Perſons, in the Preſence of divers venerable Perſons, ſaid theſe Words of the Plaintiff:

The Duke of York (meaning the Plaintiff) *is a Traitor*: And this is laid to the Plaintiff's Damage of One Hundred Thouſand Pounds: The Defendant has not pleaded, and the Plaintiff has ſigned his Judgment; and now you, Gentlemen are to enquire of the Damages.

Sir *Robert Sawyer.*

Mr. Att. Gen. You obſerve, Gentlemen, the Words are acknowledged by the Defendant's Default, and not Pleading; ſo that they were ſpoken is owned by him, and you are to enquire only of the Damages: And, I think, there will need nothing to be ſaid for the Aggravation of them, they are Words of the higheſt Nature, in Reſpect of Slander and Scandal, that can be ſpoken or thought of, accuſing him of Treaſon. We ſhall only call you ſome Witneſſes to prove this way of Diſcourſe to be his conſtant Habit in all Places, and among all Perſons and Company, inveighing againſt the Government, and particularly againſt His Royal Highneſs the Plaintiff; and then you will, I know, give ſuch Damages as may be fit to repair the Plaintiff's Honour.

Mr. *Finch.*

Mr. Sol. Gen. We will call ſome Witneſſes to give you an Accouns how he uſes to treat the Plaintiff in all Companies, and we ſhall begin with Mr. *Smith*. And the Truth is, the proving of the Words, will demonſtrate the Malice of them; and the Manner and Circumſtances of ſpeaking, will make them appear to be ſuch, as need nothing to be ſaid for their Aggravation at all. Swear Mr. *James Smith*.

Mr. *Under-Sheriff*. *The Evidence that you ſhall give to the Sheriffs and the Jury, ſworn about the Matter in Queſtion, ſhall be the Truth, the whole Truth, and nothing but the Truth.*

Mr. Sol. Gen. Mr. *Smith*, pray will you tell the Court and the Jury, what you have heard the Defendant *Oates* ſay of his Royal Highneſs.

Mr. Smith. At the laſt *Weſtminſter* Parliament, as I was ſitting in a Coffee-Houſe, I ſaw Mr. *Oates*, he had a Letter in his Hand, and he ſaid, *This Letter coſt me Nine Pence, it might have been brought for a Penny, I know nobody that is the better for it but a Traitor*, to the beſt of my Remembrance he ſaid, *the Duke of* York.

Mr. At. Gen. Swear Mr. *Penniſton Whaley*. [*Which was done.*] What Words did you hear Mr. *Oates* ſay of His Royal Highneſs?

Mr. Whaley. The Time was either the *Eaſter* or *Whitſuntide* after Sir *Thomas Gaſcoigne*'s Trial.

Mr. Sol. Gen. What were the Words you then heard him ſay?

Mr. Whaley. It was at the Biſhop of *Ely's* Table at *Ely* Houſe. I had received the Sacrament at the Chapel there that Day, and ſo had the Doctor too; it was upon *Eaſter*-day or *Whitſunday*, I ſuppoſe, becauſe I never uſed to receive the Sacrament here in Town, but one of thoſe two Times; and Dr. *Oates* and I were ſitting there, and ſome Diſcourſe happened about Sir *Thomas Gaſcoigne's* Trial, and he fell very foul upon the Jury, and ſaid, *They were a Company of profligate Villains* (or ſome ſuch Expreſſions as he was wont to uſe) and ſaid, *He would have them Attainted.* Then ſaid I to him, Doctor, you are a good Man at a Matter of Fact, but, I doubt, you are not ſo at a Matter of Law. Upon that, we came to ſome high Words about that and other Things, and among the reſt of the Diſcourſe, he ſaid, *The Duke of* YORK *was a Traitor.* Upon that I ſaid to him, Doctor, you lie under a great Error in that, I ſuppoſe, by miſtaking a Statute made againſt Popery; ſays he, *No matter for that, I ſay he is a Traitor.* Then there were ſome other Diſcourſes happened afterwards, and I began to reply, and growing both of us pretty warm, the Doctor called to his two Men, his Myrmidons, that uſed to be always with him, and follow him up and down: Said I to him, Nay, Doctor, you need not call your Men to your Aſſiſtance, there is nobody here will hurt you: Do you think the Biſhop of *Ely*'s Table is not a Protection good enough for any body that comes here?

L. C. J. Where was this, Sir, pray do you ſay?

Mr. Whaley. At the Biſhop of *Ely*'s Table.

L. C. J. Was the Biſhop there, then?

Mr. Whaley. He was at the Table, but at a great Diſtance from us, the Doctor and I ſat at the lower End of the Table. Afterwards I begged the Biſhop of *Ely*'s Pardon, for being ſo hot and loud at his Table; ſays the Biſhop to me, *I thank you kindly for it, none of us dare talk with him.*

L. C. J. And this you ſay was at Dinner after the Sacrament was over?

Mr. Whaley. Yes, it was ſo.

Mr. North. Then ſwear *Edward Johnſon.*

[*Which was done.*]

Mr. Att. Gen. Mr. *Johnſon*, Pray will you give the Court and Jury an Account, what Diſcourſe you have heard from the Defendant, Mr. *Oates*, againſt the Plaintiff.

Mr. Johnſon. Upon the Three and Twentieth of *Auguſt*, 1680, I met Dr. *Oates*, and ſaid, Good-morrow Doctor, all Things will go well now ——

L. C. J. You mean him they call Dr. *Oates*, I ſuppoſe.

Mr. Johnſon. Yes, they uſed to call him ſo; ſaid I, Good-morrow Doctor, all Things will go well now, for there is a Parliament to meet in a little Time. *No*, ſaid he, *not till* YORK *is either Baniſhed or Hanged*; *but of the two, Hanging is the fitteſt for him.* Said I, Do not talk ſo, Doctor: Says he: *I ſpeak nothing but what is true*; *he has a good Brother, but he takes all the Courſes in the World to undo him*: And then the Doctor and my Lord *Howard* went away together.

Mr. Sol. Gen. Swear *Randall Bowring.*

[*Which was done.*]

What have you heard Mr. *Oates* ſay of the Duke of *YORK?*

Mr. Bowring. About the middle of *October*, 1679, there were ſeveral Perſons at Dinner with the Doctor.

L. C. J. What Doctor, prithee?

Mr. Bowring. Mr. *Oates*.

L. C. J. Mr. *Oates* we know very well, but we do not ſo well know who this Doctor is.

Mr. Bowring. They uſed to call him Doctor, or I ſhould not have taken upon me to give him the Title.

L. C. J. Well, go on: There were ſeveral Perſons at Dinner with him, and what then?

Mr. Bowring. There happened ſome Diſcourſe concerning His Royal Highneſs.

L. C. J.

L. C. J. Where was this?

Mr. Bowring. At his Lodgings at *Whitehall:* And a Gentleman that was there, ſaid, In caſe His Royal Highneſs were a Papiſt, how ſhould we be ſecured, that in Caſe he come to the Succeſſion of the Crown, he would not bring in Popery among us? Then the Doctor replied, *I would not have you trouble yourſelf about that, for he ſhall be hanged before that Time.*

Mr. Att. Gen. What have you heard him ſay any where elſe; at *Foſter-Lane*, or any other Place?

Mr. Bowring. After the Sermon he had preached there at *Foſter-Lane* Church, the Church-Wardens, and ſome of the Pariſh, invited him into the Veſtry to drink a Glaſs of Wine.

L. C. J. What? He made as if he would preach there?

Mr. Bowring. He did preach there, and then the Church-Wardens invited him to Dinner; but then he aſked them, *If ever any of them had dined with* JAMES *Duke of* YORK, *at any of the Feaſts of the City, where the Duke uſed to come ſometimes?* To which none of them anſwering a Word, he replied, *He would not dine with any Man that had eat with the Devil.* And ſo would not go to dine with them, but went and dined at a private Braſier's by *London-Wall.*

L. C. J. An excellent Goſpel-Preacher upon my Word.

Mr. Att. Gen. What Braſier was that?

Mr. Bowring. Truly I do not well know his Name.

Mr. Att. Gen. Where did he live?

Mr. Bowring. By *London-Wall.*

Mr. Sol. Gen. Then ſwear Mr. *Fairfax.*

[*Which was done.*

Pray, Sir, tell my Lord and the Jury what Words you heard this Man ſpeak of His Royal Highneſs.

Mr. Fairfax. May it pleaſe your Lordſhip, in *Auguſt* 1679, I happened to come into the Company of *Oates* the Defendant, upon the account of an Election that was to be of Parliament-Men for *Grinſtead* in *Suſſex*, by the means of one *Aukland*; *Oates* was to go down thither in my Lord *Wharton*'s Coach, and then we came firſt to be acquainted, and afterwards we frequently did eat together, and became very well acquainted. And in my Lord *Scrogg*'s Time, when he was Lord Chief Juſtice, there was ſome Preſentment intended to be brought in by the Grand Jury here at the Term, againſt his Royal Highneſs for being a Papiſt, and not coming to Church, and this *Oates* was the main Proſecutor of it. He was uſed often to come up to me, and ſpeak to me when he met me; and I was about that Time walking in the Court that was built up here for the Trial of the Lords in the *Tower*; it was after that Grand Jury were diſmiſſed, which was done a Day or two before they uſed to be diſmiſſed in the ordinary courſe, and walking there I met *Oates*, and ſaid I to him, Doctor, Now you are Nonſuited, what will you do now? *Oh*, ſays he, *We will do well enough*; *there will be a Seſſions after the Term, and there we will at him again*; *and we will have no more Regard for him, than if he were Scavenger of* Kent-Street. And upon that he was called away from me, and he went away.

Mr. Sol. Gen. Swear Mr. *Philips.*

[*Which was done.*

Mr. Att. Gen. Come, Mr. *Philips*, will you acquaint my Lord and the Jury, what you have heard *Oates* ſay of the Duke of *YORK?*

Mr. Philips. In or about *January* (78) may it pleaſe your Lordſhip, I was in the Company of one *Deacon*, at *Oates*'s Lodgings at *Whitehall*, where Mr. *Oates* ſaid, *He hoped to ſee your or our Maſter* JAMES (meaning the Duke of *YORK*, His Royal Highneſs I ſuppoſe) *at the Bar of the Houſe of Commons*; *and it would be no Diſparagement to him to appear there, for there were better Men Members of that Houſe than he was.*

L. C. J. Pray what was the Occaſion of this Diſcourſe?

Mr. Philips. Truly it was a Diſcourſe of his own; he ran it on, we talk'd but little to him.

L. C. J. Who did he apply himſelf to in that Diſcourſe?

Mr. Philips. To us two, Mr. *Deacon* and I.

L. C. J. How came he to mention your Maſter *JAMES*, had you any Relation to the Service of his Royal Highneſs?

Mr. Philips. No, my Lord, we had not; but he ſaid, either our Maſter, or your Maſter: He run on in ſuch kind of Diſcourſe as he uſed to do.

L. C. J. But do you think he intended his Royal Highneſs, when he named your Maſter *JAMES?*

Mr. Philips. I could not imagine he did mean any body elſe.

Mr. Att. Gen. Then ſwear *William Aſhlock.*

[*Which was done.*

Pray will you acquaint my Lord and the Jury, what Words you have heard him ſpeak of his ROYAL HIGHNESS.

Mr. Aſhlock. May it pleaſe your Lordſhip, in *Eaſter*-Term 1682, Dr. *Oates* ——

Mr. Att. Gen. Mr. *Oates*, you mean.

Mr. Aſhlock. Mr. *Oates* went out one Morning, with *Dolben* and *Robin Nichols*, two of his Men, from his Lodgings at *Whitehall*, and while he was dreſſing, he ſaid he went out, in order to draw up a Bill of Indictment againſt the Duke of *York*; but he did not do it, becauſe he was otherwiſe adviſed by ſome Perſons, as I heard. Then at *Michaelmas*, 1682, when he was going to dreſs him, I held the Baſon to him to waſh, as he commonly had two or three every Day to wait upon him to dreſs him, there came in a Gentleman, that came newly out of *Suſſex*, I cannot remember his Name: He aſked him how all Friends did in *Suſſex*, and then fell a talking about the Election of Sheriffs, and abuſing them that were then choſen, and reflected very much upon Sir *John Moor*, and called him Rogue, and ſaid he deſerved to be hanged up as an Example. And afterwards, he ſaid, the City of *London* was fired by the Duke of *YORK*'s Order, and Sir *Thomas Bludworth* had a Hand in it; and the Forces at *Black-Heath* were to have plundered the City, and killed all the honeſt Proteſtant Diſſenters in *London:* And this he would prove, if ever they had a Parliament to their Mind that ſhould ſit. At another Time there was one *Starkey*, *Henry Starkey*, that was concerned in *Colledge*'s Buſineſs at *Oxford*, and one Mr. *Paſchall*, and, I think, Captain *Clare*, and ſome others that uſed to keep him Company, and Mr. *Oates* ſtepped up on a ſudden, and ſaid, *The Duke of* York *was a Son of a Whore, and he ſhould live to ſee him hanged*; *and if they could but get a Parliament to their Mind, they would ſoon ſend the Duke and all his Gang out of* England, *for he muſt never expect to ſucceed to the Crown.*

Mr. Sol. Gen. Pray who did he ſay was to head the Forces at *Black-Heath* that you talk of were to plunder the City?

Mr. Aſhlock. *The Duke of* YORK; *and* London *was fired by his Order*; *and this he would prove, if they could but get a Parliament to their Mind,* And he ſaid, *They ſhould take away the Poſt-Office from the Duke of* YORK, *and give it to the Duke of* Monmouth.

Mr. Sol. Gen. Then call Captain *Creſſett*, and ſwear him.

(*Which was done.*

Mr. Att. Gen. Capt. *Creſſet.* Pray do you remember what Diſcourſe you had with *Oates*, when the Duke went into *Flanders*, what he ſaid of his Royal Highneſs?

Capt. *Creſſett.* It was the laſt Time the Duke went into *Scotland* with her Royal Highneſs, I think it was in *October* 1680. I was commanded over Night to wait at the Duke's Lodgings, till a Paper ſhould be delivered me by my Lord *Rocheſter*; I ſtay'd there till Twelve o'Clock at Night, and not ſeeing my Lord come out, I went away, and came early next Morning. And when the Duke and Dutcheſs went to take Water at the *Privy-Stairs*, I came down through the Guard-Chamber, and Dr. *Oates* was in the Gallery that leads betwixt that and the Gate; when he ſaw me, I bid him, Good-morrow Doctor, or he bid me, Good-morrow; one of the two, I cannot exactly tell which: Says he to me, *You will never leave till you have loſt your Reputation.* Why, what is the Matter now, Doctor, ſaid I, I hope my Reputation is not hung upon ſo ſlender a Thread, as to be loſt for my going any where? Says he, *You have been with* JAMES: Who do you mean by *JAMES*, ſaid I? *YORK*, ſays he. Surely, ſaid I, it might have been the Duke of *YORK*, or his Royal Highneſs: No, ſaid he, *he is a Raſcal, a Papiſt, and a Traitor, and I hope to live to ſee him hanged.* Truly Doctor, ſaid I, now let me give you a little Advice to govern your Tongue and your Paſſions. I aſſure you, they will do neither you nor your Cauſe good; it may do you a great deal of Hurt in Time, if you do not take Care.

Mr. Sol. Gen. Call Sir *William Jennings.*

Mr. Att. Gen. Truly, my Lord, I think we need call no more, though we have Multitudes of them, it is his daily Diſcourſe.

L. C. J. Call whom you will, Mr. Attorney; for though it be the laſt Day of the Term, and it is an unuſual Thing to have a Jury at the Bar on that Day, and more unuſual to have them to Execute a *Writ of Enquiry* here; yet in Regard of the Greatneſs of the Perſon that is concerned, and the extraordinary Nature of the Cauſe, We have ordered it thus, *That all the World may ſee how His Royal Highneſs has been abuſed and ſcandalized by this Perſon.*

Mr. Att. Gen. The Defendant, My Lord, has been a Perſon pretty much talked of too.

L. C. J. Yes, truly, it is done with Regard to him too; for he has been an eminent Man *in his Way.*

Mr. Sol. Gen. Then ſwear Sir *William Jennings.*

[*Which was done.*

Mr. Att. Gen. Now, Sir *William Jennings*, ſpeak out, you hear the Queſtion, What have you heard *Oates* ſay of the Duke of *YORK?*

Sir *William Jennings.* My Lord, at the Time of the Sitting of the Parliament at *Oxford*, I was in a Tavern there with Mr. *Cranfield*, one of the King's Gentlemen-Uſhers, who ſeeing Mr. *Oates* going along by the Room, invites him to drink a Glaſs of Wine, there were a matter of ſome Eight or Nine at the Table; there was a little Partition-Curtain, it being a long Room, and there was ſome Company beyond that Curtain, ſomebody in that Company named *James* Duke of *YORK*, and the KING's Health being drank at our Table, Mr. *Cranfield* began a Health to the DUKE: Says Mr. *Oates*, *Do not you Drink* YORK's *Health.* Why ſhould we not, ſays Mr. *Cranfield*, and a Gentleman or Two more in the Company: *Why*, ſays he, *he has ruined the Nation*; *and if the Devil has a Place in Hell more hot than others, I hope he will beſtow it upon him.* Several Words paſt between Mr. *Cranfield* and him upon it, and the KING was told of it preſently.

Mr. Att. Gen. Swear Juſtice *Warcup.* [*Which was done.*

Pray tell what you know of this Man's Diſcourſing concerning the Duke.

Mr. Warcup. My Lord, I went into the Company where Sir *William Jennings* was that he ſpoke laſt of, and being deſired to drink a Glaſs of Wine with them, I did ſo, and they told me what Dr. *Oates* had ſaid there.

L. C. J. Mr. *Oates*, *Titus Oates* you mean?

Mr. Warcup. Yes, my Lord, the Room had a Partition by a Hanging or Curtain, and I was firſt in the other Company beyond the Partition, and there ſomebody began a Health to His Royal Highneſs the Duke of *York*; this Health went round, and *Oates* was, it ſeems, in the next Room, and heard this Health I ſuppoſe: When I came into Sir *William Jennings*'s Company, *Oates* was gone; the Company there told me what *Oates* had ſaid, as Sir *William Jennings* had declared, they all agreed thoſe to be the Words, *That he had ruined or betrayed the Nation*; *and if the Devil had a hotter place in Hell than other, he hoped he would beſtow it upon him.* I met *Oates* afterwards, and aſked him why he would ſpeak ſuch irreverent Words of the DUKE? His Anſwer was. *He was a Traitor, and was in the Plot*; and he told me, *I was a* Yorkiſt, *and he would remember me for it.*

Mr. Att. Gen. Did not that affright you, Mr. *Warcup*, to have him threaten you ſo?

Mr. Warcup. I had then an Impeachment againſt me, and truly I think I might well be afraid.

L. C. J. You ſay, he owned the Words they told you of?

Mr. Warcup. They did all agree thoſe to be the Words; and I met him afterwards, and aſked him why he would ſpeak ſo irreverently of the Duke, conſidering he was the King's Brother, and as Virtuous a Prince as trod upon the Earth? Says he, *He is a Traitor, and in the Plot*; *and you are a* Yorkiſt, *and I will remember you for it.*

Mr. Sol. Gen. We ſhall only call one more, to ſhew in what Mind he continues to be, ever ſince this Action was brought. Swear Mr. *Charles Chapman.* [*Which was done.*

Pray, Sir, Tell what you know.

Mr. *Chapman.* My Lord, I met Mr. *Swift*, the Duke of *York*'s Attorney, when he was going over, as he told me, to demand a Plea of the Defendant Mr. *Oates*, and he deſired me to go along with him, I did ſo; and when we came to him, Mr. *Swift* told *Oates* the Rules were out, and deſired to know what he intended to do, whether he would plead or no. *Oates* aſked him, *If he were the Duke's Attorney?* He anſwered him, Yes; Says he, *I do not value the Duke nor his Attorney neither*, *I will plead as I ſhall ſee Cauſe according to Law*; *I declare I neither Love the Duke*, *nor fear him:* And ſo turned his back, and was going away, and comes up again, and ſays to him, *It may be I may be in for One hundred thouſand Pounds here*, *but if ever a Parliament ſit*, *I do not queſtion but to have ſombody elſe in my place.* Mr. *Swift* aſked him to explain himſelf who he meant, ſays he, *Do you come to Trepan me?* And away he went.

Mr. Att. Gen. My Lord, we have now done, if the Jury pleaſe to conſider of it.

L. C. J. Is there any body here for Mr. *Oates*, to offer any thing to leſſen the damages? [*To which no body anſwered.*

Then, Gentlemen of the Jury, your Buſineſs now is to enquire what Damages you think fit to aſſeſs to His Royal Highneſs, by reaſon of the ſpeaking of the Words mentioned in the Declaration, there being in this Action Judgment by Default obtained by His Royal Highneſs; and you have nothing now to do, but only to aſſeſs to the Plaintiff ſuch Damages as you ſhall think fit.

Now, Gentlemen, tho' the Acknowledgment of this Judgment (for ſo it is in effect, it being by Default) be a ſufficient Confeſſion of the Words being ſpoken as they are laid in the Declaration, yet they have given you Proof of the very Words.

The Declaration is in an Action grounded upon the Statue *De Scandalis Magnatum*, taking notice that His Royal Highneſs is a great Peer of this Kingdom, and His Majeſty's only Brother; and that *Oates* the Defendant knowing him to be ſo, to bring him under Reproach and Calumny, and to cauſe Diſcord to ariſe between the King and him, and between him and other Great Men, did ſpeak the Words laid in the Declaration which you have heard read, and which are theſe.

The firſt are, *This Letter (Oates* having a Letter in his Hand) *coſt me nine Pence*, *and might have been brought for a Penny*; *I know no body is the better for it*, *but that Traitor* JAMES *Duke of* York. This is laid over again with a very little Variation, *This Letter coſt me nine Pence*, *and might have been afforded for a Penny I know no body is the better for it but that Traitor* JAMES *Duke of* York; which are Words of the ſame ſound, and to the ſame purpoſe with the former; they differ only in ſome minute Circumſtances, a Word or ſo, but import the ſame thing.

The next Words are theſe, *The Duke of* York *is a Traitor*; and theſe Words too are laid two ſeveral ways, differing but in very ſmall Circumſtances, *(Is a Traitor*, and *was a Traitor*,*)* the Subſtance of the Words is the ſame.

Now I ſay, Gentlemen, Tho' it is not your Buſineſs to enquire whether or no *Oates* ſpoke theſe Words, for by letting Judgment go againſt him by Default, he doth in Law confeſs the Words, but you are to enquire what Damages may be fit to be given to the Plaintiff by reaſon of theſe Words; yet in as much as this Caſe is a Caſe of an extraordinary Nature, Weight and Moment, having relation to ſo great a Prince, His Royal Highneſs the King's only Brother, requires this extraordinary Solemnity, it having not been uſual heretofore, that is to have Writs of Enquiry executed at the Bar. But the Occaſion is extraordinary, ſuch as has not happened before this Age, this Corrupt Age, this Profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the Factious Party, have taken the Liberty to reproach and calumniate Magiſtracy and Gorvenment, and the greateſt Perſonages concern'd in it, not ſparing even Majeſty itſelf, nor him, who is next in Degree to His Sacred Perſon, His only Dear and Royal Brother. And therefore as the Caſe is extraordinary in its Nature, ſo ought the Example of it to be made as publick as can be, in order to ſatisfy all People what a ſort of Fellow this Defendant is, who has been ſo much adored and looked upon with an Eye of Admiration, courted with ſo wonderful an Affection, and ſo, I had almoſt ſaid, *Hoſanna'd* among People that have been Factious and Tumultuous to the Government.

Such as he ought to be made publick Examples of; and therefore the King's Counſel have deſired that this Cauſe might be canvaſſed here at the Bar, and the Defendant, as he has made himſelf eminent for ſome particular Qualifications, might be made a publick Example for this Offence.

Thus this Writ comes to be executed here. Now though the Words laid in this Declaration are Words that do import in themſelves ſo much Scandal and Reproach, ſo much Malice and Venom, that they need no Aggravation beſides themſelves; and his ſuffering it to go by Default ſhews they are no way to be extenuated, but are thereby acknowledged: Yet, however, to ſatisfy all People that deſire or have any Inclination to be ſatisfied, that this Profecuton is highly reaſonable, nay abſolutely neceſſary; they come here and give you an account that theſe in the Declaration are but a ſmall Part of the ſcandalous and malicious Words that the Defendant uſeth concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is attended with all the moſt unchriſtian and uncharitable, as well as diſloyal and diſobedient Circumſtances that any thing can be, with deſign to traduce and diſparage a Subject ſo Loyal, and a Perſon ſo Great and Illuſtrious as His Royal Highneſs.

As to the firſt Words, you have the firſt Witneſs Mr. *Smith*, and he gives you this Account, He was in a Coffee-Houſe where he met the Defendant *Oates*; and the Defendant in a vain-glorious huffing ſort of manner takes occaſion, tho' none was offer'd him by any thing ſpoken to him by any body, but only on ſet purpoſe to expreſs his Malice and Venom againſt the Plaintiff. He takes up a Letter that it ſeems came to him by the Poſt, and to gratify his own malicious Inclination, and to give it vent, he proclaims, *This Letter coſt me Nine Pence*, *it might have been brought or afforded for a Penny*; *and I know no body is the better for it but that Traitor* JAMES *Duke of* York.

So you ſee, Gentlemen, he takes hold of every little Occaſion, if he can but happen upon an Opportunity, ſuch as this was in an open Coffee-houſe, to wreck his Malice upon his Royal Highneſs. And ſure there can be no greater Imputation of Scandal brought upon any Man than this upon the Plaintiff. That the firſt and greateſt Subject of the King of *England*'s ſhould be taxed with the greateſt Crime in the Law, Diſloyalty and Treaſon to his Sovereign. And ſo at once not only chargeth him with being perfidious to his only Brother, againſt that Affection which by Nature he is obliged to pay him, and which all that know any thing, cannot but obſerve to have always been extraordinary; but alſo touches that which is much dearer to him than his Life, his Honour, by charging him with the fouleſt of Crimes, Treaſon and Breach of his Allegiance, which as a Subject he owes to his Sovereign. And thus beſides the Defendant's Confeſſion by this Judgment you have the very Words proved that are in the Declaration.

The next Witneſs is one Mr. *Whaley*, and he gives you an Account of another Paſſage which I cannot but take notice of by the way, to ſhew you what a wonderful Chriſtian Temper this Man is endued with. Mr. *Whaley* ſays, That being at the Biſhop of *Ely*'s Houſe upon a Publick Feſtival either of *Eaſter* or *Whitſuntide*, (and he is ſure it was one of thoſe two, *Becauſe*, ſays he, *I never uſe to receive the Sacrament in* London *but upon one of thoſe two Days*; *and therefore I take it upon me to ſay*, *it was one of thoſe two Days that I heard theſe Words) Oates* having, it ſeems, received the Holy Sacrament at the Biſhop of *Ely*'s Chapel with Mr. *Whaley* that Day. When a body would have thought, that if Mr. *Oates* would have been believed to be ſo hearty and pious a Proteſtant as he pretends to be, he ſhould have remember'd that he ought, according to the Proteſtant Doctrine, to have left behind him, at his Approach to the Altar, all Malice and Rancour, and Ill-will and Hatred to every body: But you ſee what kind of Deportment his was,

For after ſuch time as he had been at the Sacrament, he takes occaſion without any Provocation to fall foul immediately upon His Royal Highneſs, giving him the Name of *a Profligate Wretch*, and then particularly he comes to ſay, *The Duke of* York *was a Traitor*. This Gentleman being concerned, as every honeſt and loyal Man ought to be, and I hope every good Subject is, and ever will be, to hear ſo great a Prince, the King's only Brother, ſo traduced and vilified, reproved him for it; but ſo far was he from taking the Correction due to his extravagant Tongue in a becoming manner, that he preſently (as the Gentleman phraſeth it) calls for his Myrmidons, two Fellows that he had along with him, to come to him; upon which the Gentleman was pleaſed to ſay to him, *Nay*, *good Mr.* Oates, *you need not be in ſo very much Fear of yourſelf as to call for your Men*, *no body here intends you any harm.* Nay certainly, Mr. *Oates* did apprehend himſelf to be ſecure from all manner of Correction, or he would never have been ſo impudent to ſpeak ſuch Words.

But you will no doubt take notice, as all Men cannot but do, of what an excellent Goſpel-Spirit, what a delicate Chriſtian Temper the Man is of, after the receiving the Sacrament, that very Morning to come and belch out ſuch extravagant Words of Calumny and Reproach.

And it ſeems this Perſon had obtained to make ſuch a wonderful Figure in the World, that every body was afraid to ſpeak to him; for you hear what the Witneſs ſays when he came to beg the Biſhop of *Ely*'s Pardon for being ſo loud and hot at his Table; the Biſhop gave him Thanks for it, and told him, *None of us dared to ſpeak to him.* Such a conſiderable Man hath he been, that he might rail againſt the King, and the Duke, and the Government without Controul. He was got into ſuch a Poſt that no body durſt meddle with him, but he muſt have liberty to ſay any thing of any body. To what an height of Corruption were we grown, that we could ſuffer ſuch a Fellow's Inſolence, at which no Man living, that has any ſpark of Modeſty or Loyalty left in him, but muſt bluſh and tremble.

Then they produce to you one Mr. *Johnſon*, who gives you an Account, that after ſome Diſcourſe between him and the Defendant *Oates*, about the Duke of *York*, he immdiately told *Johnſon*, That *the Duke was either to be hanged or baniſhed*; it ſeems he was ſo ill a Man in his Eye, *but of the two*, *hanging was the fitter for him.* So the Doctor ſheweth what a wonderful kindneſs and Affection he has for the Duke, and what Thoughts he has of his great Deſerts.

Mr. *Bowring* is the next Witneſs, and he comes and tells you, That the Doctor could not be prevailed with to dine with the Gentlemen of the Pariſh of *Foſter-Lane*, becauſe ſome of them had dined with the Duke, which he calls *Dining with the Devil.* It ſeems he made as tho' he would preach there to them, he got up into the Pulpit and took a Text, and pretended to preach, and if he would have preached according to the Duty of a Church of *England* Divine, he was by that to have preached not only Obedience and Submiſſion to Authority; but Reſpect to Superiors, and Charity among all Subjects towards one another; and if he did preach it, it was worſe in him not to practiſe it. But you ſee after he had performed his painful laborious Preachment, after he had taken ſuch a wonderful deal of pains, as no doubt he did in inſtructing his Auditors, what his Language is in Anſwer to a Civil Invitation to Dinner by the Church-Wardens: *Have any of you dined with* York *at the City Feaſts?* And they not anſwering; but being ſilently amazed at the impertinent Impudence of the Queſtion, *why truly he would not dine with thoſe that had dined with the Devil.* It ſeems His Royal Highneſs had been pleaſed to honour ſome Societies of Loyal Men in the City of *London* with his Company at ſome Entertainments they made, and that is a great Offence to the Defendant; and as for thoſe that had received that Royal Favour from His Highneſs, he takes notice of them as ſuch whom he would neither eat nor drink with, for *truly they had eaten and drank with the Devil*; but immediately the Doctor, in his great Zeal and wonderful Concern for the Proteſtant Religion, broke up from the Company, would neither eat nor drink with them, but choſe rather to dine at a private *Braſier*'s by *London-Wall*; a properer Place in good Truth for him, than any ſuch Converſation they offer'd him.

Then further to ſhew what mean Thoughts he had of the Plaintiff, Mr. *Fairfax* he comes and teſtifies, That there being ſome Talk of a Preſentment or Indictment againſt the Duke of *York* by the Grand Jury here, but that meeting with a Diſappointment, he met *Oates*, and aſked him, *What he would do, for*, ſays he, *now you are Non-ſuited?* That is, You have happened not to obtain the End that you deſigned: *Oh*, ſays *Oates*, *No matter for that, that is all one, we will at him next Seſſions; and for my part, I will have no more regard to him than I would to a Scavenger.* Nay, and becauſe they ſhould ſee the very utmoſt of his Malice, and the low Thoughts he had of His Royal Highneſs, as if it had not been malicious enough to have compared him to a Scavenger of *London* or *Weſtminſter*, no, that was a Station too honourable for him in his Thoughts, but he muſt neceſſarily be compared to a Scavenger of *Kent-ſtreet*; which we all know to be one of the meaneſt, filthieſt, and moſt beggarly Parts of the Town.

The next piece of Evidence is, that which is given by one Mr. *Philips*; and when he came to him, he began to have ſome Reflections about the Houſe of Commons and the Duke; *and truly he did not doubt but he ſhould ſee him at the Bar of the Houſe of Commons; and it would be no Diſparagement to him to come there, for there were a great many Members there that were as good Men or better than he.* And even by this Fancy of his he would fain degrade His Royal Highneſs; for in caſe he had him in no other Conſideration but as a Peer, he ſhould know that no Peer of this Realm can be forced by any Vote or Order of the Houſe of Commons to come to their Bar. But he had a mind to take off his very Privilege of Peerage, and it would be no leſſening of his Greatneſs, ſince that Houſe had in it many Members better Men than the Duke himſelf. I preſume he meant ſome particular Friends of his own in that Houſe.

The next Man is one Mr. *Aſhlock*, and he tells you, That becauſe he would engage all People into an Hatred of the Duke's Perſon, he muſt, as a thing of the greateſt Conſequence in order to it, make it be believed, that the Duke had a great Hand and Concern in the diſmal Fire of *London* in Sixty-ſix, that thereby he might make him obnoxious to the Rancour and Malice of all that ſuffered in that dreadful Calamity. And with what handſome Expreſſion he clothes it? *He fired the City of* London, *he is the Son of a Whore, and we will have him hanged or ſent out of* England *for it, whenever a Parliament meets.*

So that here is not only a Perſonal Reflection, and Malicious Indignity done to His Royal Highneſs, but carries in it a great Reflection upon His Sacred Majeſty himſelf in his Relations; and he is not contented only to belch out his Venom and Malice againſt thoſe that are alive, but even againſt thoſe that are dead too. For you ſee it is a moſt foul Imputation and Slander againſt Her late Majeſty the Queen, Mother to our Sovereign and His Brother, by calling him the *Son of a Whore*; which is an Expreſſion of that impudent and inſolent Nature, as is not fit to be mentioned in a Civil Government.

Theſe things I think myſelf obliged to take notice of for Example's ſake, and to induce all People to conſider to what a height of Corruption we were grown, when ſuch Scoundrel Fellows as this dare to take ſuch baſe Words into his Mouth, of the Royal Family.

Then comes Captain *Creſſett*, and he gives you an Account, That when His Royal Highneſs and the Dutcheſs were going laſt to *Scotland*, as the Captain return'd from the Duke's Lodgings, he met with the Defendant, who fell upon him, *What, you have been with* JAMES? It ſeems he was one of his intimate Acquaintance, and very familiar he was with his Name. Indeed a Man would have thought, if in caſe he had ſpoke as one Man ought to ſpeak of another, that he had been ſpeaking of one of his Myrmidons, and it would have been a very hard matter to have known who elſe he meant by that familiar Appellation. Says the Captain, *What* James? *Why* York. And he was very kind that the gave him that Addition to let him know what JAMES he meant; but when the Captain chid him, and told him, *Sure you might either ſay the Duke of* York, *or His Royal Highneſs*; then immediately, inſtead of that, he flies out, *He is a Papiſt, he is a Traitor, and I hope to live to ſee him hang'd, and you will go near to loſe your Reputation if you go ſo often thither.*

So that I perceive, if he will not be adviſed by this Gentleman, he ſhould loſe all his Credit; and yet I preſume it is wonderfully for the Advantage of Mr. *Creſſett*, to loſe the Credit he could get by any Characters or Commendations ſuch an one as he could give him.

Then Captain *Creſſett* kindly adviſed him to take care of injuring his Party by his Paſſion and his indecent Behaviour, and told him, it would turn to his Prejudice at laſt. And truly now, I think, if all his Party were in his Condition, and made to ſmart for the Laviſhneſs of their Tongues, I think it were a good Accompliſhment of his Prophecy, and if we were rid of them, we ſhould be more at Peace. And we may without offence hope to ſee that ſooner, than what the Defendant ſays he hoped to ſee.

The next is Sir *William Jennings*, who tells you of a Paſſage at the Parliament at *Oxford*, which ſhews his wonderful Goſpel and Chriſtian Temper. When a Company of Gentlemen were met together to drink a Glaſs of Wine, and were wiſhing Health and Long Life to His Sacred Majeſty, His Royal Highneſs, and the Royal Family, he would not be contented to refuſe the Glaſs, but to ſhew how wonderful a Chriſtian Spirit he was of, and to evidence his true Proteſtant Charity (and by his Carriage who was one of the Heads of the Faction, we may gueſs at the Temper of all the Party) he cries out, *He has ruined the Nation, and if there be any hotter Place in Hell than other, I hope the Devil will preſerve it for him.*

I preſume his great Converſation with him he ſpoke of, hath given him ſome Intelligence there is in Hell ſome hotter Places than others, and who they are reſerved for. But, Gentlemen, I ſpeak not this that I think any thing that is thus proved by the by doth in the leaſt aggravate the Damages, for the Words in the Declaration are as bad as bad can be; but to let you ſee the Diſpoſition of this Man that has been ſo much admired and courted.

After him comes Mr. *Warcup*, who tells you, he was not in the Room with *Oates* when the laſt Words were ſpoken; but coming in immediately after, they all told him the ſame Words, and he afterwards meeting with *Oates*, and reproving him for his indecent Behaviour and Expreſſion, inſtead of any Remorſe or Concern that he had upon him, by reaſon of his having ſpoken ſuch Words, he doth ſtill add to it, *The Duke of* York *is a Traitor, he is in the Plot; and becauſe you take his Part you are a* Yorkiſt, *and we will be even with you for it at one time or another.* So he threatens him only for aſking him why he behaved himſelf in ſuch an indecent manner towards His Royal Highneſs.

The laſt Witneſs Mr. *Chapman*, is produced to ſhew what Mind he continues in. After all this is paſt, and a body would have thought he might by this time have been brought to ſome Conſideration and Submiſſion to Authority; yet you ſee how the Man is. The Witneſs tells you ſince the beginning of this Term, the Declaration being delivered, and by the Courſe of the Court he ought to Plead within ſuch a Time, the Attorney goeth to him for a Plea, in order to make his Defence if he could in the Action now before you, but he lets Judgment go by Default; and ſo far is he from repenting of what he had formerly done, that he perſiſts in it, and tells him, *Are you the DUKE's Attorney?* Yes. *Well, I I care not a Farthing for the DUKE nor his Attorney neither; it may be I may be in here for* 100,000 *l.* (and that I believe is one of the trueſt Things he ever ſpoke in his Life) *but ſuppoſe I be, I do not doubt but when a Parliament meets, a Time will come, when ſome other People may come in my Place.* But truly ſince he has declared his Hopes, I think it may not be amiſs for us to declare our's too; and for my Part, to ſay I hope I ſhall never ſee ſuch a Parliament.

Mr. *Under-Sheriff.* Lay your Heads together, Gentlemen, and conſider of your Verdict.

They did ſo ſtanding at the Bar.

Mr. *Under-Sheriff.* Are you all agreed of your Verdict?
Omnes. Yes.
Mr. *Under-Sheriff.* Who ſhall ſay for you?
Omnes. Foreman.
Mr. *Under-Sheriff.* What Damages do you find?
Sir *Charles Lee.* Full Damages, an Hundred Thouſand Pounds.
Mr. *Under-Sheriff.* What Coſts?
Sir *Charles Lee.* Twenty Shillings.

Which VERDICT *being Recorded in an Inquiſition intended, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Inquiry.*

CXXX. *The Trial of* THOMAS ROSEWELL, * *a Diſſenting Teacher, at the* King's-Bench, *for* High-Treaſon, November 18, 1684. Mich. 36 Car. II.

Die Jovis, 23 Oct. *An. Dom.* 1684.

THIS Day, being the firſt of the Term, Mr. Attorney-General moved the Court of *King's-Bench* for an *Habeas Corpus*, directed to the Keeper of the *Gatehouſe*, to bring up the Body of *Thomas Roſewell*, Clerk, to be arraigned upon an Indictment of High-Treaſon, found againſt him at a late Seſſions of *Oyer* and *Terminer*, held at *Kingſton* in the County of *Surrey*; and it was deſired returnable to Morrow, but was not taken out till that Day, returnable *immediatè*, and upon *Saturday* it was returned.

Die Sabbati, 25 *Oct.* 1684. *B. Regis.*

Dominus Rex verſ. Roſewell.

THIS Day Mr. *Roſewell* was brought upon the Writ of *Habeas Corpus*, to the Bar of the Court of *King's-Bench*, and was thus Arraigned:

Cl. of Cr. *Thomas Roſeiwell*, Hold up thy Hand. [*Which he did.*] ‘Thou ſtandeſt indicted by the Name of *Thomas Roſewell*, late of the Pariſh of *Rotherhith*, in the County of *Surrey*, Clerk; For that thou, as a falſe Traitor, againſt the moſt Serene and moſt excellent Prince our Sovereign Lord *Charles* the Second, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* thy Supreme and natural Lord; not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance; but being moved and ſeduced by the Inſtigation of the Devil; the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our ſaid Soveregn Lord the King doth, and of right ought to bear towards him, altogether withdrawing; and contriving and intending to diſturb the Peace and common Tranquillity of this his Kingdom of *England*, and to ſow Sedition and Rebellion within the Kingdom, and to depoſe our ſaid Sovereign Lord the King from the Stile, Honour and Regal Name of the Imperial Crown of this Realm, and to bring our ſaid Sovereign Lord the King to Death and final Deſtruction, the 14th Day of *September*, in the 36th Year of the Reign of our ſaid Sovereign Lord the King that now is, at the Pariſh of *Rotherhith* aforeſaid, in the County of *Surrey* aforeſaid; didſt propoſe, compaſs and imagine to ſow Sedition, and raiſe Rebellion againſt our ſaid Sovereign Lord the King, within this Kingdom of *England*, and to make a miſerable Slaughter among the Subjects of our ſaid Sovereign Lord the King, and to cauſe our ſaid Sovereign Lord the King to be depoſed from the Regal State, Title, and Honour of the Imperial Crown of this Realm, and to put to Death, and final Deſtruction, our ſaid Sovereign Lord the King; and the Government of this his Kingdom of *England* at thine own Will and Pleaſure to change and alter; and the State of this Kingdom of *England*, in all its Parts well order'd and conſtituted, to overthrow and ſubvert; and to levy War againſt our ſaid Sovereign Lord the King, within this Kingdom: And to complete thy ſaid moſt wicked Treaſons, and traiterous Purpoſes, and Imaginations; and to raiſe Diſcord between our ſaid Sovereign Lord the King and his People, Thou the ſaid *Thomas Roſewell*, the aforeſaid 14th Day of *September*, in the 36th Year aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid; falſly, unlawfully, ſeditiouſly, maliciouſly and traiterouſly, in a certain unlawful Aſſembly, and in the Preſence and Hearing of divers Subjects of our ſaid Sovereign Lord the King, then and there unlawfully and ſeditiouſly, and againſt the Laws of this Land, aſſembled and gathered together; didſt ſpeak, aſſert and declare, *That the People* (meaning the Subjects of our ſaid Sovereign Lord the King) *made a flocking to our ſaid Sovereign Lord the King*, *upon pretence of healing the King's-Evil*, *which he* (meaning our ſaid Sovereign Lord the King) *could not do*; *but that we* (meaning thyſelf, and other traiterous Perſons, Subjects of our ſaid Lord the King) *are they to whom they* (meaning the Subjects of our ſaid Lord the King) *ought to flock*, *becauſe we* (meaning thyſelf, and the ſaid other traiterous Perſons) *are Prieſts and Prophets*, *that by our Prayers can heal the Dolours and Griefs of the People*. *We* (meaning the Subjects of our ſaid Sovereign Lord the King) *have had two wicked Kings* (the moſt Serene *Charles* the Firſt, late King of *England*, and our ſaid Sovereign Lord the King that now is, meaning) *together*, *who have permitted Popery to enter in under their Noſes*; *whom* (meaning the ſaid *Charles* the Firſt, late King of *England*, and our ſaid Sovereign Lord the King that now is) *we can reſemble to no other Perſon but to moſt wicked* Jeroboam: *And that if they*, (meaning the ſaid evil-diſpoſed Perſons then and there, ſo as aforeſaid with thee unlawfully aſſembled, and gathered together) *would ſtand to their Principles*, *thou* (meaning thyſelf) *didſt not fear*, *but they* (meaning thyſelf, and the ſaid evil-diſpoſed Perſons) *would overcome their Enemies*, (meaning our ſaid Sovereign Lord the King and his Subjects) *as in former Times*, *with Rams-horns*, *broken Platters*, *and a Stone in a Sling*; againſt the Duty of thy Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.' How ſay'ſt thou, *Thomas Roſewell*; Art thou guilty of this High-Treaſon whereof thou ſtandeſt Indicted, and haſt been now arraigned, or not Guilty?

Mr. *Roſ.* My Lord, I humbly crave the Favour to ſpeak a Word.

Mr. Juſt. *Hol.* What is it you would ſay, Sir? You muſt plead.

Mr. *Roſ.* My Lord, my Charge is very high; and I bleſs my God, I am not conſcious to myſelf of any Guilt as to thoſe Things that you have heard read, and charged upon me——

Mr. Juſt. *Hol.* If you will Plead, Sir, to this Indictment, ſo; that is all you have to do now.

Mr. *Roſ.* My Innocence is my great Comfort under the God of Heaven, who knows they have laid to my Charge Things that I know not. I do proteſt my Abhorrence of theſe Things alledged to be ſaid by me againſt my Sovereign, whom I honour in my Heart, and daily pray for; I bleſs my God for it.

Mr. Juſt. *Hol.* I hope then your Innocence will clear you. But we have nothing to do now but to take your Anſwer to this Queſtion, Whether you are Guilty, or not Guilty, of what you ſtand Indicted for?

Mr. *Roſ.* I humbly crave your Lordſhip's Patience a little. Pray, my Lord, give me Leave——

Mr. Juſt. *Hol.* Sir, you will be heard whatever you have to ſay, at the time of your Trial.

Mr. *Roſ.* Pray hear me a few Words, my Lord; I would not treſpaſs upon your Patience; I have but a few Words to ſay.

Mr. Juſt. *Walcot.* You muſt plead, Guilty, or not Guilty, firſt.

Mr. *Roſ.* My Lord, I beſeech you——

Mr. Juſt. *Hol.* Sir, We cannot hear you in a Caſe of ſo great weight and moment as this, till you have Pleaded. You will have time enough at your Trial to make your Defence; and all we can do now is to take your Plea of Guilty, or not Guilty.

Mr. *Roſ.* May it pleaſe your Honours, You are ſenſible of my great Weakneſs and Ignorance in Matter of Law, and Things of this Nature; I therefore humbly beg I may have Counſel to aſſiſt me in this Buſineſs.

Mr. Juſt. *Walcot.* If there be any thing of Matter of Law doth ariſe upon your Trial, the Court will aſſign you Counſel.

Mr. Juſt. *Hol.* We cannot aſſign you Counſel at preſent, for we have nothing to aſſign it upon. If there do any Queſtion of Law ariſe in your Caſe, then the Court will (as they are bound to do) take care of you, that you ſuffer no Prejudice for want of the Aſſiſtance of Counſel; and in Matters of Fact upon your Trial, the Court are of Counſel for you.

Mr. *Roſ.* I humbly thank you, my Lord: I hope you will pardon my Weakneſs and Ignorance. I crave the Favour to have a Copy of my Indictment.

Mr. Juſt. *Hol.* We cannot allow it. You cannot be ignorant of that, it has been denied in many Caſes of late.

Mr. Juſt. *Walcot.* We cannot grant it, except Mr. *Attorney* will conſent to it.

Mr. Juſt. *Hol.* You muſt poſitively ſay Guilty, or not Guilty. Sir *Samuel Aſtry*, call him to his Plea.

Cl. of Cr. How ſay'ſt thou, Art thou Guilty, or not Guilty?

Mr. Juſt. *Hol.* Look you, Sir, you ſhall not be ſtraitned, you ſhall have convenient Time to conſider what Defence you have to make. In the mean time, we have nothing to ſay, but to know of you what you Plead; Guilty, or Not Guilty.

Mr. Att. Gen. If you deſire to have the Words read again to you, you ſhall. Sir *Robert Sawyer.*

Mr. Juſt. *Hol.* Ay, with all our Hearts.

Mr. *Roſ.* I thank you, Sir, and my good Lords. I deſire, if you pleaſe, to have it read in *Latin*.

Mr. Juſt. *Hol.* Read it in *Latin*. [*Which was done.*]

Cl. of Cr. How ſay'ſt thou, Art thou Guilty, or not Guilty?

Mr. Juſt. *Hol.* Now what do you ſay to it. Are you Guilty, or not Guilty? for indeed we cannot ſpend our Time impertinently, we have other Buſineſs. Here is a Queſtion you ought to make a direct Anſwer to, one way or other.

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* Burnet's *Hiſtory of his own Times*, Vol. I. p. 597. *Mod. Rep.* 52.

Mr. *Roſ.* My Lord, I humbly crave the Favour it may be read once more in *Engliſh.*

Mr. Att. Gen. Sir *Samuel Aſtry*, Read the Words without the Innuendo's.

[*Cl. of Cr.* reads.] 'That the People made a flocking to the King, ' upon pretence of healing the King's-Evil, which he could not do; ' but we are they to whom they ought to flock, becauſe we are Prieſts ' and Prophets, who can heal their Griefs. We have now had two ' wicked Kings together, who have permitted Popery to enter under their ' Noſes, whom we can reſemble to no other Perſon, but to the moſt ' wicked *Jeroboam*: And if you will ſtand to your Principles, I do not ' fear but we ſhall be able to overcome our Enemies, as in former Times, ' with Rams-Horns, broken Platters, and a Stone in a Sling.'

Mr. Juſt. *Holloway.* Now you hear your Charge, both in *Latin* and *Engliſh*; Pray, therefore, let the Court know what you do Plead; Guilty, or not Guilty to it.

Mr. *Roſ.* Not Guilty, my Lord; and I bleſs my God for it.

Cl. of Cr. Culprit, How wilt thou be Tried?

Mr. *Roſ.* By God, and my Country.

Cl. of Cr. God ſend thee a good Deliverance.

Mr. *Roſ.* Theſe are Things that my Soul abhors, I thank my God.

Mr. Att. Gen. Mr. Juſtice *Holloway*, will you pleaſe to appoint ſome time for his Trial?

Mr. Juſt. *Holloway.* What time would you have, Mr. *Attorney?* When can you be ready, Mr. *Roſewell?*

Mr. *Roſewell.* I deſire, my Lord, it may be on the 19th of *November.*

Mr. Juſt. *Holloway.* What Day of the Week is that?

Mr. Clerk. Upon *Wedneſday.*

Mr. Juſt. *Holloway.* Are there no Arguments appointed for that Day?

Mr. Clerk. There is a Jury of *Northamptonſhire* for that Day.

Mr. Juſt. *Holloway.* Then it cannot be that Day.

Mr. *Roſ.* Then, if it pleaſe your Honours, I deſire it may be the next Day; upon *Thurſday.*

Mr. Att. Gen. When it is moſt convenient for the Buſineſs of the Court.

Mr. Juſt. *Holloway.* Sir *Samuel*, you will ſee when it will be moſt convenient at the Return of the *Venire.*

Cl. of Cr. Muſt I return it?

Mr. Att. Gen. No; the Sheriff muſt: And the Courſe is to make it returnable the ſame Day the Cauſe is tried.

Mr. *Roſ.* My Lord, I humbly deſire I may have Counſel allowed to come to me.

Mr. Att. Gen. You can have no Counſel allowed you.

Mr. *Roſ.* My Lord, I requeſt that my Friends may be allowed to come to me in the mean time; I have been a Priſoner above this Month, and not permitted to ſee my Friends, nor they to ſee me.

Mr. Juſt. *Holloway.* What Friends would you have?

Mr. *Roſ.* My Relations.

Mr. Juſt. *Walcot.* That Relations is a large Word.

Mr. Att. Gen. Truly, Sir, I think he may have liberty to diſcourſe with any Perſon in the preſence of the Keeper. I ſhall not oppoſe that.

Mr. *Roſ.* Yes, my Lord, I deſire no otherwiſe.

Mr. Juſt. *Walcot.* Who do you name to come to you?

Mr. *Roſ.* I have poor Children, that deſire and long to ſee me.

Mr. Juſt. *Holloway.* Who do you ſay, you would have come to you?

Mr. *Roſ.* My Wife and Children, my Lord, that are my Bowels.

Mr. Att. Gen. In the preſence of the Keeper I cannot oppoſe it.

Mr. *Roſ.* Will your Lordſhip pleaſe to allow Counſel to come to me?

Mr. Juſt. *Holloway.* We cannot do it by Law. The Court is to be of Counſel for you when you come to your Trial. The Court will not ſuffer any thing to be done to your Prejudice againſt Law.

Mr. *Roſ.* Is there any Statute, my Lord, that forbids the giving of Counſel?

Mr. Juſt. *Holloway.* The Law forbids the allowing of Counſel in Capital Cauſes; unleſs where Matter of Law doth ariſe.

Mr. *Roſ.* My Lord, as I remember, *Fitzharris* had Counſel allowed him.

Mr. Juſt. *Holloway.* That was in a different Caſe, in a Matter where there were Special Pleadings; this is a General Iſſue.

Mr. Att. Gen. That was in a Matter of Law, that was inſiſted upon, but it is not ſo here: If this Gentleman had any Matter of Law to Plead, he ſhould have Counſel aſſign'd him too, But, Sir, I think *Tueſday* the 18th of *November* will be the freeſt and moſt convenient Day.

Mr. Juſt. *Holloway.* Let it be that Day then.

Cl. of Cr. The Eighteenth of *November* is the Day of your Trial.

Mr. *Roſ.* But, my Lord, was not Counſel allowed him before his Trial came on?

Mr. Juſt. *Holloway.* Yes; but that was upon a Special Plea, of a Matter in Law.

Mr. *Roſ.* I hope you will conſider my Caſe as of one that knows not the Law.

Cl. of Cr. Tueſday the Eighteenth of *November* is the Day.

Mr. *Roſ.* My Lord, I humbly requeſt the Favour that any Perſon that can ſpeak of my Integrity, may come and teſtify for me.

Mr. Att. Gen. Ay, ay; you may have *Subpœna*'s out of the Office for any body who you will, that are to be Witneſſes for you.

Mr. Juſt. *Walcot.* The Officers of the Court will do all things that are requiſite and legal for you.

Mr. Juſt. *Holloway.* Then take back your Priſoner, Keeper.

Mr Att. Gen. I do not know truly, whether the Practice of the Court is not to commit to the *Marſhalſea*, being the Priſon of the County of *Surrey.*

Cl. of Cr. Sir, it may be one or th' other way, as the Court thinks fit. As long as the *King's-Bench* ſits in *Middleſex*, he may be Priſoner ſtill in the *Gate-houſe.*

Keeper. Then the Rule of the Court is that he ſhall come agen then.

Cl. of Cr. Yes, he is, by Rule, to appear here the 18th of *November* next.

Whereupon he was carried back to the Gate-houſe.

Die Martis, Nov. 18, 1684.

THIS Day the Priſoner was brought, by Rule, from the *Gate-houſe* to the Bar of the *King's-Bench* Court to his Trial, at which all the Judges of the ſaid Court were preſent.

Cl. of Cr. Thomas Roſewell, Hold up thy Hand. [*Which he did.*] Thoſe Men that thou ſhalt hear called, and do perſonally appear, are to paſs between our Sovereign Lord and thee, upon the Trial of thy Life and thy Death: If therefore thou wilt challenge them, or any of them, thou art to ſpeak unto them as they come to the Book to be Sworn. Sir *George Sheeres*, Baronet.

Mr. *Roſ.* My Lord, I would humbly crave the Favour of your Lordſhip, that I may have the Uſe of Pen, and Ink.

* *Lord Chief Juſt.* Ay, in God's Name, let him have Pen and Ink.

* Sir *George Jeffreys.*

Cl. of Cr. Swear Sir *George Sheeres*, Baronet.

Mr. *Roſ.* I beg I may have Pen, Ink and Paper, before he be Sworn.

L. C. J. Ay, let him.

Crier. Look upon the Priſoner. Sir, you ſhall well and truly try, and true deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge; and a true Verdict give according to your Evidence. *So help you God.*

[Jurat' Sir *George Sheeres.*]

Mr. *Roſ.* My Lord, I challenge him.

L. C. J. That you cannot do now he is Sworn.

Mr. *Roſ.* I was ſurprized, my Lord; I did not know it.

L. C. J. I cannot help it, Mr. *Roſewell*, you muſt mind your Buſineſs. We cannot unſwear him again. Go on.

Cl. of Cr. Sir *St. John Broderick.*

Crier. Look upon the Priſoner, Sir; You ſhall well, *&c.*

Jurat' Sir *St. John Broderick.*

Mr. *Roſ.* I challenge him.

L. C. J. You cannot, Sir; he is Sworn now.

Mr. *Roſ.* I beg your Lordſhip's Pardon, I was ſurprized.

L. C. J. Let us not ſpend Time in ſuch Talk as is to no Purpoſe; I tell you we cannot unſwear him.

Mr. *Roſ.* I deſire, my Lord, my Challenge may be received, I was going to ſpeak——

L. C. J. It cannot be after he is Sworn; we cannot make a New Law for you. Mind what was ſaid to you; if you have a mind to challenge any body, you muſt challenge them before they come to be Sworn.

Cl. of Cr. Sir *Robert Knightly.*

L. C. J. Mind the thing you are about, Man: Speak now, if you have a mind to challenge him.

Mr. *Roſ.* I do not challenge him.

Cl. of Cr. Then Swear him.

Crier. Look upon the Priſoner, *&c.*

[Jurat' Sir *Robert Knightley.*]

L. C. J. Pray now mind the Thing you are about; you are looking about you for ſome private Mark, or Hint to be given you by ſome body, and ſo loſe your Time of Challenging. You muſt challenge them as they come to the Book to be Sworn, and before they are Sworn.

Mr. *Roſ.* I beg your Lordſhip's Pardon; I was minding to ſet down the Names in my Paper, becauſe I am to take notice of thoſe I challenge for their Number.

L. C. J. You ſhall have all the fair Advantages that the Law will allow; you ſhall have your full Number to challenge, which you may do peremptorily, and without Cauſe as to 35; and as many more as you can with Cauſe.

Mr. *Roſ.* Is there any one to note the Number?

L. C. J. There ſhall be ſure to be notice taken that you be not ſurprized that way. You ſhall have all fair Advantages, I tell you.

Mr. *Roſ.* I humbly thank your Lordſhip.

Cl. of Cr. Sir *William Elliot.*

Crier. Look upon the Priſoner.

Mr. *Roſ.* I challenge him.

Cl. of Cr. Sir *George Woodrooffe.*

Mr. *Roſ.* I challenge him.

Cl. of Cr. Sir *Cornwall Bradſhaw.*

Mr. *Roſ.* I challenge him.

Cl. of Cr. Sir *Thomas Bludworth.*

Mr. *Roſ.* I challenge him.

Cl. of Cr. Anthony Thomas, Eſq;

Crier. Look upon the Priſoner.

Mr. *Roſ.* I do not challenge him.

Crier. You ſhall well and truly, *&c.*

[Jurat' *Anthony Thomas.*]

Cl. of Cr. Francis Brend, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. John Weſton, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. James Reading, Eſq;

Mr. *Roſ.* Is it Mr. *Juſtice Reading* of *Southwark?*

L. C. J. Do you challenge him or not? you may if you will.

Mr. *Roſ.* My Lord, my Reaſon is, I have heard much of him, but never had an Opportunity to know him till now. I have no Exception againſt him.

L. C. J.

L. C. J. Then ſwear him. [*Which was done.*]

Cl. of Cr. *Thomas Newton*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Thomas Vincent*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Ambroſe Muſchamp*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Ralph Freeman*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Joſeph Reeves*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Anthony Rawlins*, Eſq;

Mr. *Roſ.* I do not challenge him. [*He was ſworn.*]

Cl. of Cr. *Thomas Overman*, Eſq;

Mr. *Roſ.* I have no Exception againſt him. [*He was ſworn.*]

Cl. of Cr. *George Meggot*, Eſq;

Mr. *Roſ.* I challenge him.

L. C. J. *Crier*, Be ſure you bid them look upon the Priſoner, and the Priſoner look upon them, that he may ſee what he does.

Crier. I do ſo, my Lord.

Cl. of Cr. *Samuel Lewin*, Eſq;

Mr. *Roſ.* I have nothing to ſay againſt him. [*He was ſworn.*]

Cl. of Cr. *Lawrence Marſh*, Eſq;

Mr. *Roſ.* My Lord, I deſire to know how many I have challenged.

L. C. J. He ſhall tell you. Count them.

Cl. of Cr. Twelve. What ſay you to Mr. *Marſh*?

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Ambroſe Brown*, Eſq;

Mr. *Roſ.* I challenge him

Cl. of Cr. *John Halſey*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *John Awburn*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *Henry Flood*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *John Parſons*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *John Pettyward*, Eſq;

Mr. *Roſ.* I do not challenge him. [*He was ſworn.*]

Cl. of Cr. *Richard Coldham*, Eſq;

Mr. *Roſ.* I do not challenge him. [*He was ſworn.*]

Cl. of Cr. *Robert Sanders*, Eſq;

Mr. *Roſ.* I challenge him.

Cl. of Cr. *John Heather*, Eſq;

Mr. *Roſ.* I do not challenge him. [*He was ſworn.*]

Cl. of Cr. *John Auſtin*, Eſq;

Mr. *Roſ.* Pray, Sir, doth this make Twelve, if he be ſworn?

Cl. of Cr. Yes, Sir.

Mr. *Roſ.* Then I do not challenge him. [*He was ſworn.*]

Cl. of Cr. *Crier*, count theſe. *Sir George Sheers.*

Crier. One, *&c.*

Cl. of Cr. *John Auſtin.*

Crier. Twelve. Good Men and true, ſtand together and hear your Evidence.

The Twelve Sworn were Theſe;

JURY.

Sir *George Sheers*,
Sir *St. John Broderick*,
Sir *Robert Knightley*,
Anthony Thomas,
James Reading,
Anthony Rawlins,
Thomas Overman,
Samuel Lewin,
John Pettyward,
Richard Coldham,
John Heather, and
John Auſtin.

Cl. of Cr. *Thomas Roſewell*, Hold up thy Hand. [*Which he did.*] Gentlemen, you of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Thomas Roſewell*, &c. (*Prout*) in the Indictment, *mutatis mutandis.*---Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Trial hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of this High Treaſon, in manner and form as he ſtands Indicted, or not Guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High Treaſon committed, or at any Time ſince, to your Knowledge. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you find him not Guilty, and that he did not fly for it, you are to ſay ſo, and no more, and hear your Evidence. *Crier*, make Proclamation.

Crier. O yes, O yes, O yes! If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now taken, of the High-Treaſon whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard: And all manner of Perſons that are bound to give Evidence on the behalf of our Sovereign Lord the King againſt the Priſoner at the Bar, let them come forth and give their Evidence; for now the Priſoner ſtands at the Bar upon his Deliverance: Or they forfeit their Recognizance.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury----

Mr. *Roſ.* Hold! Hold! I crave the Favour that the Indictment may be read in *Latin.*

L. C. J. Ay, with all my Heart, let it be read in *Latin.* [*Which was done.*]

Mr. *Roſ.* My Lord, I humbly crave leave to ſpeak a Word or two.

L. C. J. What would you have?

Mr. *Roſ.* I beg your Patience for a Word or two. I find, my Lord, as I told my Lords upon the Day of my Arraignment, that my Charge is very black and high: And truly if I were guilty of thoſe Things that are laid to my Charge----

L. C. J. You are now going to be tried for them. I hope you are innocent.

Mr. *Roſ.* I humbly thank your Lordſhip: I beg you would hear me but a Word or two.

L. C. J. You muſt keep up the Method of Proceedings, your time is not yet come. What is it you would have?

Mr. *Roſ.* My Lord, my Soul abhors theſe Things, I thank my God for it. I was going to ſpeak to your Lordſhip, to know whether the Words of a Natural or a Mad-man be Treaſon in Law.

L. C. J. No.

Mr. *Roſ.* Then, my Lord, the Ground of the Queſtion is this, I find by Recollection and Conſideration of the Words laid to my Charge, that my malicious Enemies have accuſed me of what any Man in his Senſes—

L. C. J. This is not proper, Mr. *Roſewell*, at this time; for this is but an Anticipation. You muſt hear what is firſt proved againſt you. We muſt keep up to the Forms of Law, you ſhall have your full time to be heard whatſoever you will ſay for yourſelf; but you muſt not anticipate the Cauſe with previous Diſcourſes.

Mr. *Roſ.* I would only aſſert my own Innocency.

L. C. J. Not yet; you muſt not do it, nor you ſhall not do it. When it comes to your turn to ſpeak, you ſhall have liberty enough to make your Defence as long as you will. Go on, Sir.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn: The Priſoner at the Bar, *Thomas Roſewell*, ſtands indicted, That he, as a falſe Traitor, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, and endeavouring to diſturb the Peace and Tranquillity of the Kingdom, and to depoſe the King, the 14th of *September* in the 36th Year of this King, at the Pariſh of *Rotherbith*, in your County, did falſly, maliciouſly, and traiterouſly, purpoſe and imagine to raiſe a Rebellion within the Kingdom, and to deprive the King, and depoſe, and put him to Death and Deſtruction, and the Government to change and alter, and to levy War againſt the King within the Kingdom: And theſe wicked Purpoſes to bring to paſs, he the ſaid *Thomas Roſewell*, the ſaid 14th of *September* in the Thirty-ſixth Year aforeſaid, at the Place aforeſaid, falſly, unlawfully, maliciouſly, ſeditiouſly and traiterouſly, in a certain unlawful Aſſembly, then and there congregated, did ſay and declare, 'The People make a flocking to the King, upon Pre-'tence of Healing the King's Evil, which he cannot do; but we are they to 'whom they ought to flock: For we are Prieſts, and Prophets, that can heal 'their Grievances. We have now had two wicked Kings together, who 'have permitted Popery to come in under their Noſes; and whom we can 'compare to none but the moſt wicked *Jeroboam.* But if they would 'ſtand to their Principles, he did not doubt, but they ſhould overcome 'their Enemies, as in former Times, with Rams-horns, broken Platters, 'and a Stone in a Sling.' And this is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity; and againſt the Form of the Statute in that Caſe made and provided. To this Indictment he has pleaded not guilty: If we prove him guilty of this Matter, you are to find him guilty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; theſe traiterous Words, that the Priſoner at the Bar is accuſed of, were ſpoken of in a Sermon, or Preachment at a Conventicle. And though the Gentleman does pretend to much Innocency; yet you will find, that in open Defiance of the Law, he takes upon him to preach againſt the Law, not only of the Land, but even againſt the Laws of Almighty God: For he takes upon him to be a Preacher againſt a Rule, than which nothing is more plain in all the Word of God, *viz.* 'That he 'ſhould not ſpeak Evil of Dignities, nor revile the Prince of his People.' He knows this to be the Rule of the Scripture; and yet in his conſtant Diſcourſes, (as we ſhall prove) he makes it his Practice to revile the Government on all Sides. And by theſe doings at this Day, Gentlemen, you will eaſily underſtand what the Deſigns of theſe Conventicles are; only to nurſe up People in Sedition, and train them up to Rebellion; that they may be ready to break out into it when their Teachers adviſe them to it. We ſhall call our Witneſſes, and prove to you, That this is, and has been the conſtant Tenor of his Diſcourſe, *viz.* Reviling of the Government; and there is almoſt no Text of Scripture, but, in his Way of perverting it, he has turned againſt the Government. We ſhall ſhew this to be the habitual Courſe and Practice of him who pretends to be ſo honeſt and ſo innocent a Man. Crier, Call *Elizabeth Smith*, ——*Hilton*, and *Farrar.*

Then ſome of the Counſel at the Bar, being talking among themſelves, the Lord Chief Juſtice reproved them for it.

L. C. J. Look you, Gentlemen, you muſt not have Interlocutions among yourſelves. And you, Gentlemen of the Jury, I muſt tell you, If any one whiſper any of you, you ought to acquaint the Court with it. It is your Duty to be directed by the Court, and the Evidence. Here is a Man's Life in Queſtion, and that is a very weighty Thing: And you muſt not take any private Inſinuations, but only hearken to your Evidence, and mind what is ſpoken publickly, that the Priſoner may be able to give Anſwer to it.

Mr. *Roſ.* I humbly thank your Lordſhip.

Mr. Att. Gen. Where are Mrs. *Hilton* and Mrs. *Smith*? [*They were all ſworn.*]

Mr. *Roſ.* I do humbly requeſt one Favour of the Court.

L. C. J. What would you have?

Mr. *Roſ.* I humbly beg they may be examined *ſeparatim.*

L. C. J. They ſhall.

Mr. *Roſ.* I humbly thank your Lordſhip.

L. C. J. Who do you begin withal, Mr. Attorney?

Mr. *Jones.* My Lord, we ſhall begin with Mrs. *Smith.*

L. C. J. Then you muſt make way, that the other Witneſſes may go out of hearing. You *Crier*, make way for them; and ſee that they be ſet where they may not hear.

[*Which was done.*]

Mr. Att. Gen. Come, Mrs. *Smith*, pray give my Lord and the Jury an Account whether you have been at any Meeting, where this Gentleman has been? Whether you know him? and what you heard of him?

Smith. I heard him ſay this———

L. C. J. Hold a little. What is this Woman's Name, *Elizabeth Smith?*

Mr. Att. Gen. Yes, my Lord. Were you by at any of his Conventicles?

Smith. Sir, I have been ever ſince the 20th of *July*, 'till that Day for which he was taken, but one *Sunday*.

Mr. Att. Gen. Give my Lord an Account of what you heard.

Smith. Yes, Sir.

L. C. J. Where was it that his Meeting-Houſe was?

Smith. He had ſeveral Houſes, private Houſes and a publick Houſe of his own.

L. C. J. Where? In what Place?

Smith. In *Saliſbury-ſtreet*, near his own Dwelling.

L. C. J. Where is that?—*Smith.* In *Rotherhith.*

L. C. J. You were frequently there, you ſay?—*Smith.* Yes, my Lord.

L. C. J. What number of People might be there, as you gueſs?

Smith. I believe there might be Four Hundred People, or Three Hundred commonly.

L. C. J. What ſort of People were they?

Smith. Men and Women, Houſe-keepers.

L. C. J. Well, what did you hear him ſay?

Smith. I can give you an Account of his Sermons ſeveral Days.

L. C. J. Do ſo.

Smith. The firſt Notice that I took of any thing concerning the Government, was upon the 17th of *Auguſt*, and that was concerning His Majeſty; and then in his Prayer after Sermon, he wiſhed he might not offend God in not praying for the King; but that it might pleaſe God to open his Eyes, and the Times might turn.

Mr. Att. Gen. What other Things have you heard him ſay?

Smith. The next time that I heard him was the next *Sunday* again, and that was in *Weſtlane*, in a Houſe there, and then he was ſpeaking of *Sodom* and *Gomorrah*, and he brought in this Proof, not doubting but if there had been ten righteous Perſons, the City had not been deſtroy'd: But he did not mean Recorders, nor Lord-Mayors.

Mr. *Roſ.* What Day was that, Miſtreſs?

Smith. The 22d of *Auguſt.*

Mr. Att. Gen. Well, what did you hear him ſpeak upon the Day in the Indictment, the 14th of *September?*

Smith. He ſaid, *The People made a flocking to the King, to cure the King's-Evil, which he could not do; but,* ſays he, *we are they they ſhould flock unto, for we are Prieſts and Prophets, that by our Prayers can cure their Grievances.* He ſaid, *We have now had two wicked Kings together, which have permitted Popery to come in under their Noſes, and could be compared to nothing but to moſt wicked* Jeroboam. And then after he had preached a good while, again he ſaid, *If they would ſtand to their Principles, he did not fear but they ſhould overcome their Enemies, as in former Times, with broken Platters, Rams-Horns, and a Stone in a Sling.*

L. C. J. When was this?

Smith. This was upon the 14th of *September.*

L. C. J. Where was it?

Smith. At one Captain *Daniel Weldy*'s Houſe.

L. C. J. What is he, a Seaman?

Smith. Yes, and he pray'd for him, being then at Sea, and his Son both, who was ill.

L. C. J. How many do you think might be preſent there at that time?

Smith. There was a low Parlour full, and a little Room up ſix Steps; and where he preached was up one pair of Stairs, there was a large Room and a Garret.

L. C. J. Where did he ſtand?

Smith. In the Door-caſe of that Room, that the ſound might go up and down.

L. C. J. How many People in number might there be, think you?

Smith. I cannot tell, my Lord; a great many.

L. C. J. How many, as nigh as you can gueſs, or think?

Smith. Several Hundreds of them.

L. C. J. Do you know any of them? Were they People of any Quality?

Smith. Yes, I know a great many of them; ſeveral of them are in the Court, and about the Hall now.

L. C. J. Who ſtood at the Door and let you in?

Smith. One Mr. *Paul Shed*; and he was angry at my coming with Pattens, for they made an Impreſſion in the Ground, and gave notice to others, that there was Company there: And I promiſed him I would come no more with them.

Mr. J. *Walcot.* Was he Door-keeper? What is he?

Smith. A Braſier, I think.

Mr. J. *Holloway.* Had you any notice of a Conventicle that was to be there?

L. C. J. Ay; Tell us how you came thither?

Sir *Thomas Jenner.*

Mr. Recorder. How came you to find it out that there was a Meeting at ſuch a Place?

Smith. At firſt I found it by dogging of People as they went along; and afterwards, there were People ſet commonly at a Place called *Cherry-garden Stairs* to give notice; and ſometimes I aſked there, and ſometimes I went to Mr. *Shed*'s Houſe to enquire.

L. C. J. *Shed*, you ſay, was preſent there then?

Smith. Yes, he let me in.

L. C. J. What, he was the Man that managed the Conventicle. He was Clerk, I ſuppoſe; was he not?

Smith. I never heard him ſay Amen; but I have heard him expound in the Conventicle ſometimes.

L. C. J. Oh, he was a Journeyman Preacher, it ſeems.

Mr. Recorder. Pray was there any ſtore of Watermen and Seamen there?

Smith. Yes, abundance from *Rotherhith*, or thereabouts.

L. C. J. Which way came all the People that were there?

Smith. From *Deptford* and *Rotherhith*, and all thereabouts.

L. C. J. Was it near the Water-ſide?

Smith. Yes, not far from it.

L. C. J. Well, Mr. Attorney, have you any more Queſtions to aſk her?

Mr. Att. Gen. No, I think not. Mrs *Smith*, you have heard him, you ſay, at other Days; how did he uſe to treat the Government in his preaching at other times?

Mr. *Roſ.* My Lord, I beſeech your Lordſhips to tell me whether theſe Queſtions are proper to be put, it not relating to the Matter that I am accuſed of?

L. C. J. Yes, yes, to give an Account of the Diſpoſition of your Mind; very proper as can be.

Mr. *Roſ.* Becauſe it is not part of my Charge, and I cannot be prepared to anſwer it.

L. C. J. When the King's Counſel have done with her, you may aſk her any Queſtions; but you muſt let them go on firſt.

Mr. Att. Gen. My Lord, it is charged that he ſpoke theſe Words with a traiterous, malicious Mind; and what better Evidence of ſuch a Mind than his uſual Diſcourſes?

Smith. The 31ſt of *Auguſt*, I heard him preach at *Paul Shed*'s Houſe; and there he preached that there was a certain great Man, that lived at the Upper-end of *Grace-church-ſtreet*, about this time Eighteen Years agone; I name no body, ſays he, you all know him whom I mean: And there came a certain poor Man to him; he was not a poor Man neither, but a Carpenter by Trade, one that wrought for his Living, a labouring Man; and told that great Man, if he would take his Advice, he would tell him how to quench the Fire; but he piſh'd at it, and made light of it, and would not take his Advice. Which if it had not been for that great Man, and the Lord Mayors and Sheriffs that have been ſince, neither that Fire in *London*, nor the Fire at *Wapping*, nor the Fire at *Southwark*, had gone ſo far, or come to what they did.

L. C. J. There was a great Man that lived at the Upper-end of *Grace-church-ſtreet!*———Who did he mean by that?

Mr. Recorder. He meant, we ſuppoſe, Sir *Thomas Bloodworth*, that was Lord-Mayor at the Fire-Time.

L. C. J. He did not live there then.

Mr. Recorder. It ſeems he ſaid ſo.

Mr. Att. Gen. Pray Mrs. *Smith*, let me aſk you one Queſtion. How far were you off from him; and where did you ſit this 14th Day of *September*, when you heard him ſay thoſe Words you ſpeak of?

Smith. I ſat upon the Bed, and he was ſtanding at the Door.

Mr. Att. Gen. My Lord, we have done with this Witneſs at the preſent.

L. C. J. Now, Mr. *Roſewell*, if you will, you may aſk her what Queſtions you pleaſe.

Mr. *Roſ.* My Lord, I was before going to beg your Pardon for my Weakneſs, being altogether unacquainted with theſe Things; and that you would look upon me as one that is *inops conſilii*, and pardon any thing that comes from me impertinently. I cannot ſpeak to her as a Lawyer to ſift her, and ſearch out the Truth; will your Lordſhip give me leave to ſpeak to her as a Divine?

L. C. J. Aſk her what Queſtions you will, but we will not have any of your Preachments here. You muſt conſider where you are, you are not now in your Pulpit, but at the Bar; I aſſure you we do not intend to make a Conventicle of the *King's-Bench* Court.

Mr. *Roſ.* My Lord, I meant only to endeavour to convince her, by putting ſome Queſtions, like a Divine, to her. For I pity them, tho' they envy me; and I bleſs my God, have pray'd for them many times ſince my Impriſonment.

L. C. J. Well, well; do not ſtand to commend yourſelf now, this is not your time of making your Defence: Only, if you will aſk this Witneſs any Queſtions, you may.

Mr. *Roſ.* You are under an Oath, Miſtreſs.

Smith. I am ſo, Mr. *Roſewell.*

Mr. *Roſ.* Are you ſenſible what an Oath is, and the great Obligation you are under by it to teſtify nothing but the Truth? As you will anſwer it to the great God———

L. C. J. Look you, Mr. *Roſewell*, aſk her any Queſtions to the Buſineſs that ſhe has here teſtified; but do not preach to her. It is not your Work to Catechiſe the Witneſſes, that is the Duty of the Court, and we ſhall, no doubt, take care to do our Duty. And I will tell her, to ſave your Preachment, ſhe is in the Preſence of the great God of Heaven and Earth, before whom we muſt appear at the Great Day of Judgment, to give an Account of every Word we ſpeak. And you are under an Oath, and if in Caſe you tell one Tittle of a Lye in your Teſtimony againſt the Priſoner at the Bar, who ſtands now to be tried for his Life, it will be juſt with the Great God to ſink you down into Hell-Fire immediately. Therefore, I require you, upon your Oath, not to ſpeak one Word but what is Truth.

Smith. My Lord, I aſſure you, I will rather ſay leſs, than add any one Tittle.

L. C. J. Mr. *Roſewell*, aſk her what you will, but do not give yourſelf, nor us, the trouble of a Preachment to teach her the Obligation of an Oath; for ſhe very well knows, it ſeems, what it is, and ſays ſhe will rather ſpeak leſs than more than the Truth.

Mr. *Roſ.* I humbly thank your Lordſhip for what you have ſaid to her. Mrs. *Smith*, Pray was you at *Rotherhith* the 14th Day of *September?*

Smith. Yes, that I was.

Mr. *Roſ.* Did you come alone? or who came with you?

Smith. Mrs. *Hilton* came along with me, and another Gentlewoman, and Mr. *Shed* let us in all together.

Mr. *Roſ.* Who is that Mrs. *Hilton?*

Mr. Att. Gen. You will ſee her by and by, Mr. *Roſewell.*

Mr. *Roſ.* Where did you meet together?

Smith. Mrs. *Hilton* lay with me all Night, and we were together the Day before.

Mr. *Roſ.* What time did you come thither, pray, Miſtreſs?

Smith. I came thither before Seven of the Clock, before you came, Sir.

Mr. *Roſ.* And I pray whoſe Houſe came you to at *Rotherhith?*

Smith. We were informed it was Captain *Weldy*'s Houſe.

Mr. *Roſ.* Are you ſure it was his Houſe?

Smith. As they did tell us, it was Captain *Daniel Weldy*'s.

Mr. *Roſ.* I pray, Miſtreſs, what Room were you in there?

Smith. We were up one pair of Stairs. There is a little Room we come at ſooner; but we were in the Room with the Bed; and there was one Mr. *Atkinſon* there that was in Mourning, and there were two or three Boys of his with him that ſat upon the Bed, and their Shoes were plucked off, that they might not dirt the Bed; and I gave him his Boy's Shoes from under the Bed.

Mr. *Roſ.* Pray where did I ſtand, Miſtreſs, do you ſay?

Smith. In the Door-Caſe.

L. C. J. What Boy is that you ſpeak of?

Smith. Two Boys that came in with one Mr. *Atkinſon*; his Relations, I ſuppoſe they were.

Mr. *Roſ.* Pray how did the Service begin?

Smith. You took your Text out of the 21ſt of *Geneſis*; that was the Chapter, to the beſt of my Remembrance.

Mr. *Roſ.* But I aſk you, *Mrs.* how did the Worſhip, the Service begin?

L. C. J. You mean your Prayer, you do not uſe to call it Service.

Smith. You made a Prayer.

Mr. *Roſ.* Was it begun with a Chapter, or a Pſalm, or how?

Smith. There was no Pſalm; a long Prayer you made, as you uſed to do formerly.

Mr. *Roſ.* How long was that?

Smith. It was always uſed to be about three quarters of an Hour long.

Mr. *Roſ.* Was there any Chapter read?

Smith. There was no Chapter before you took your Text, as I heard, and I was there before you.

Mr. *Roſ.* Upon what Occaſion then were theſe Words ſpoke, if there was no Chapter read?

Smith. I ſay there was none till you took your Text, and then you ſpoke thoſe Words.

Mr. *Roſ.* But how came thoſe Words in?

Smith. You always took a whole Chapter, and expounded all along.

Mr. *Roſ.* A long Text for one Sermon, Miſtreſs.

L. C. J. Yes, yes, We know you have a fine Way of Preaching.

Mr. *Roſ.* Well, Miſtreſs. Upon what Verſe of the Chapter were theſe Words ſpoke, about flocking to the King to cure the King's Evil?

Smith. I cannot be punctual to the particular Verſe.

L. C. J. Nay, I ſuppoſe you ſeldom keep to your Text. I am ſure there was never a Verſe in any Chapter that warranted the ſpeaking of any ſuch Words as theſe.

Smith. My Lord, I cannot be punctual to the particular Verſe. It was within five or ſix Verſes of the beginning, I believe.

Mr. *Roſ.* Then upon what Occaſion came in the Words about the two wicked Kings?

Smith. In Preaching you brought it in by other Proofs.

L. C. J. Why, Man, there can be no Occaſion for ſpeaking of thoſe Words. You ſpoke them without any Occaſion at all. No body can tell what Occaſion you had to ſpeak them.

Mr. *Roſ.* But, my Lord, I ſuppoſe there may be ſome coherence in my Diſcourſe. I would know how they were brought in?

L. C. J. Who can tell the Occaſion? Do you aſk me what Reaſon any Man has to ſpeak Treaſon? I tell you there is none at all to be given for it.

Smith. One of your Proofs in your Preaching was concerning *Dalilah* and *Sampſon*, and you brought in that Proof concerning the King's uſing of Women, it was out of the *Judges*. And he ſaid he did not queſtion, but that in the end the Whores would ſerve the King, as that Whore *Dalilah* did *Sampſon*.

L. C. J. Was this at the ſame time, upon the ſame Day?

Smith. Yes, it was upon the 14th of *September*.

Mr. *Roſ.* If it pleaſe you, my Lord, theſe are not Words that are charged in the Information———

L. C. J. You draw it upon yourſelf by your Queſtions.

Mr. *Roſ.* If they were ſpoken, (upon that *Hypotheſis*, I ſay, *if* they were ſpoken; but I deny the *Theſis*, I abhor the thoughts of them) I would know how they were brought in, under what Verſe?

L. C. J. Ay, I take you right as to that, you do deny it; and they are not in the Indictment.

Smith. I cannot be punctual as to the Verſe.

Mr. *Roſ.* Pray upon what account did come in the two wicked Kings?

Smith. I cannot tell the Verſe, truly.

Mr. *Roſ.* How came in that about *Jeroboam?*

L. C. J. How can ſhe tell how you bring in Treaſon?

Mr. *Roſ.* My Lord——

L. C. J. Nay, pray, Sir, hear me a little. You ſhall have all the Liberty to defend yourſelf that the Law can allow of. We are accountable to the Law upon our Oaths to do Juſtice, and are as much accountable to Heaven for our Actions, as you or any Priſoner that comes to this Bar is to the Law for your Actions. But do you aſk what Reaſon you ſpoke Treaſon for? I tell you no Reaſon can be given for it.

Mr. J. *Hol.* Do you think any of your Auditors can give an account of the Connection of your whole Sermon?

L. C. J. When you talk beſides the Cuſhion, do you think any Man alive is able to give an account how you come to ramble and talk Treaſon?

Mr. *Roſ.* Can you tell, Miſtreſs, when that was ſpoken, of ſtanding to their Principles, and their Rams'-horns, *&c.*

Smith. That was at the latter end of your Sermon.

L. C. J. When you had ſaid there were two wicked Kings, then preſently you were for ſtanding to your Principles, and overcoming your Enemies.

Mr. J. *Hol.* It ſeems ſhe was very intent upon your Sermon.

L. C. J. For my part, I wonder ſhe can remember ſo much as ſhe does. It is much ſhe can remember ſuch Stuff as this.

Mr. *Roſ.* The God of Truth, my Lord, I hope will manifeſt the Truth. Pray, Miſtreſs, were theſe Words ſpoken one juſt after another in my Diſcourſe?

Smith. No, they were not; but they were all ſpoken at that time.

Mr. J. *Hol.* Have you done with her?

Mr. *Roſ.* No, my Lord, I humbly beſeech your Favour and Patience a little. Pray, Miſtreſs *Smith*, did you write?

Smith. I did not write till I came home, and after I came home I did write it down. Several that were there did write down your Sermon.

Mr. *Roſ.* Several of whom, do you mean?

Smith. Several of your Congregation, Sir.

Mr. *Roſ.* Did your Companions write? And pray where did you firſt write down theſe Words?

Smith. After I came Home I ſet them down, Word for Word to a Tittle, as they were ſpoken, as near as I could remember what you ſpoke.

Mr. *Roſ.* Was any body with you when you ſet them down?

Smith. Yes, my own Family ſaw me write them down; and the other Witneſs was with me; and afterwards we went to the *Bull* and *Mouth*, the Quaker's Meeting-Houſe.

Mr. *Roſ.* What other Witneſſes were by when you ſet them down?

Smith. There was my Huſband, my Apprentice, and my Child.

Mr. *Roſ.* And did you ſet them down juſt exactly as you have ſworn them upon this Indictment?

Smith. Yes, to the beſt of my Knowledge.

Mr. *Roſ.* Upon your Oath, in the preſence of the great God, did you ſet them down as they were ſpoken?

Smith. Yes, I tell you.

L. C. J. Ay, I would aſk you that Queſtion; Did you (I ſpeak to you as in the Preſence of the great God, and upon your Oath) ſet down his Words juſt as he ſpoke them in Subſtance?

Smith. Yes, I did to the ſame Subſtance as near as I could remember.

Mr. *Roſ.* Pray what other Words were ſpoken between theſe Words in the Indictment, if they were not all ſpoken together?

Smith. One thing I do remember more that you ſaid that Day. You ſaid there was a Word they called Canting; but for your Part you did not underſtand what it meant, unleſs it were this; You ſaid, you chanced to go by one of the great Churches; where peeping in, you ſaw a Man with a white Surplice, and the Organs were going, and they were canting, and ſinging the *Litany*, the *Creed*, and the *Ten Commandments*, with a Ha-ha-ha-ha-ha. For your part, you were aſhamed to hear it: and this you ſaid was all the Canting you knew.

Mr. Att. Gen. You will draw this upon yourſelf.

Mr. *Roſ.* I am ſorry to hear this indeed, my Lord.

L. C. J. So am I too, with all my Heart, I'll aſſure you.

Mr. *Roſ.* You ſay you ſet down the Words the ſame Day, when you came Home?

Smith. Yes, I reſolved ſo to do, when I came away from the Meeting, to write them down as ſoon as I came home.

Mr. *Roſ.* Did you confer with any body about theſe Words?

Smith. Not till I came to a Juſtice of Peace, and diſcovered it.

Mr. *Roſ.* What Juſtice of Peace was that whom you diſcovered it to?

Smith. The *Recorder* of *London.*

Mr. *Roſ.* And you ſwear theſe were the Words that I ſpoke?

Smith. Yes, as near as I can remember.

L. C. J. If ſhe ſwear the ſubſtantial part of them, it is enough, tho' the very exact Words ſhe doth not ſwear: For the Words are laid in this Indictment in *Latin*, and by way of Aſſertion.

Mr. *Roſ.* Your Lordſhip will pardon my Weakneſs, I am ignorant of the Law.

L. C. J. And we will take care you ſhall have nothing done to your Prejudice that is againſt Law.

Mr. *Roſ.* I humbly thank your Lordſhip. Miſtreſs *Smith*, upon your Oath, you ſay Mr. *Shed* was at that Conventicle?

Smith. Yes, he let me in at the Door, and was angry with me that I would come ſo near the Place with my Pattens; he ſaid it might give occaſion of Suſpicion.

Mr. *Roſ.* You were ſaying you heard him expound. Where was that, pray?

Smith. Yes, that I did, at Mr. *Crookſhanks*'s Houſe; and I heard him another time——

Mr. *Roſ.* What was the Day in *Auguſt* that you ſay you came firſt to hear me?

Smith. I do not ſay it was in *Auguſt*, but in *July*, that I came firſt to hear you, the 20th of *July*.

Mr. *Roſ.* You ſay I preached in the Publick Meeting-Place; What Day was that, pray?

Smith. The 10th of *Auguſt*, to the beſt of my Remembrance; it was the fourth Sunday, as I remember, that I heard you there.

Mr. *Roſ.* Have you not ſworn againſt Conventicles in other Places?

Smith. Yes.

Mr. *Roſ.* What Conventicles?

Smith. If my Lords pleaſe to aſk me, I ſhall give an account.

Mr. *Roſ.* Have you, or have you not?

Smith. Yes, ſeveral; tho' I never heard any thing ſpoken in any of them againſt the King, but at your's.

Mr. *Roſ.* Did you ſwear a Conventicle againſt one Mr. *Hales?*

Smith. I ſwore it by Confeſſion.

Mr. *Roſ.* Were you at that Conventicle?

Smith. No, I was not, but I ſwore it by Confeſſion.

Mr. *Roſ.* What day was that Conventicle?

Smith. As they told us, it was the 13th of *July*.

Mr. *Roſ.* Was there any thing done upon that Conviction?

Smith. Yes, he paid his Money that was ſet upon him, and never made any Appeal; his Wife confeſſed it.

Mr. *Roſ.* What other Conventicles have you been at?

Smith. Concerning you, do you mean?

Mr. *Roſ.* No, any other Conventicles of the *Fanaticks* that you have ſworn againſt?

Smith. I do not know whether that be a proper Queſtion.

Mr. *Roſ.* What ſay you, Miſtreſs *Smith?*

L. C. J. No, no; that you muſt not aſk her, that is to accuſe herſelf.

Mr. J. *Hol.* You muſt not aſk her to any thing but that you ſtand here charged with.

L. C. J. You muſt not aſk her any thing that may make her obnoxious to any Penalty.

Mr. J. *Walcot.* Do you aſk her any other Queſtions?

Mr. *Roſ.* I will preſently, my Lord, I beg your Patience.

L. C. J. Ay, ay, take your own time.

Mr. *Roſ.* Pray, Miſtreſs *Smith*, were you a Witneſs againſt a Conventicle at one Miſtreſs *Batho*'s?

Smith. Yes, that I had by Confeſſion of her own Mouth.

Mr. *Roſ.* Was there not ſome Money offer'd her——

L. C. J. That is not to be aſked, you muſt not aſk her any Queſtion that may make her accuſe herſelf criminally.

Smith, Never by me, Mr. *Roſewell.*

Mr. *Roſewell.* I beg your Lordſhip's Pardon----

L. C. J. I'll tell you the Reaſon for it, and it is that which ought to be ſatisfactory to you or any body. They are not bound to anſwer any Queſtions that you aſk the Witneſſes, whereby they charge themſelves with any Crime, or by anſwering may ſubject themſelves to any Penalty. Whether it be ſo, or no, you muſt not aſk them, but prove it.

Smith. I never did offer any, my Lord.

Mr. *Roſ.* I thought I might offer any thing againſt what ſhe had ſworn.

L. C. J. Prove what you can in your Time; but do not aſk her any ſuch Queſtions. The Law is ſo, and the ſame for you as it is for every body elſe.

Mr. *Roſ.* Miſtreſs *Smith*, you ſwear theſe Words were ſpoken in the Forenoon upon that place, the 21ſt of *Geneſis*, one after another?

Smith. Yes; thoſe Words, as near as I can ſpeak them, were ſpoken then.

L. C. J. Are thoſe the Words you heard at that time?

Smith. In Subſtance they are, my Lord; as near as I can diſcover.

Mr. *Roſ.* I have no more Queſtions to aſk her at preſent, my Lord.

Mr. Att. Gen. Pray, Miſtreſs *Smith*, ſince he has ſtarted ſuch a Queſtion; Have you been tamper'd with, and been offer'd any Money; and what, and for what?

Smith. There came one *Cartwright*, and one *Norton* to me one Day, I cannot give an account exactly what Day it was; and firſt they ſpake to me about Miſtreſs *Batho*'s Buſineſs, and afterwards they fell into Diſcourſe about Mr. *Roſewell*, and they told me, They wonder'd I would have my hand in any Man's Blood. Said I to them, Suppoſe you had heard what I did, what would you have done? Says Mr. *Norton*, you had better take 20 Guineas, and not appear againſt him, ſaid he; not that any body that I know of that he is concerned with, will give you that Sum of Money, but you had better take it. Says I, What is the Truth no Money nor Gold ſhall buy me off from telling. What was Truth I would ſpeak, and no more; and I had already given Evidence of it, and would not retract it. Said Mr. *Cartwright* then to me, But if you had not diſcovered it, no body elſe would Said I, Yes, others heard it as well as I.

Mr. Att. Gen. Has any body elſe tamper'd with you? Have you had any Letter ſent to you?

Smith. Nothing till Yeſterday Morning: A Letter came then.

Mr. Att. Gen. What was that?----*Smith.* I ſuppoſe my Lord ſaw it.

Mr. Att. Gen. Ay, but you muſt tell the Jury what it was.

Smith. One came to my Brother's, and brought a Letter thither, which I read over; and he ſaid to my Brother, if I could be any ways Aſſiſtant to Mr. *Roſewell* in not coming in againſt him, I might have 200*l.* paid down To-morrow; not that Mr. *Roſewell* knew of it, or would give it me, but it was a wager that was laid. Some laid he would be hang'd, and ſome laid he would not; and ſo he ſaid he would come and give me an account who it was that ſpoke to him.

Mr. Att. Gen. My Lord, we have done with her now. Call Miſtreſs *Hilton.*

Mr *Roſ.* Will your Lordſhip pleaſe to indulge me ſo far, that I may aſk her another Queſtion or two?

L. C. J. What is it you would have, Sir?

Mr. *Roſ.* I deſire her before ſhe goes out to recollect one thing.

L. C. J. Nay, nay, ſhe ſhall not go away: If you have a mind to aſk her any thing before ſhe goes away, do ſo; or ſhe ſhall come again, if you have any Queſtions to put to her.

Mr. Att. Gen. My Lord, ſhe is big with Child, and cannot well crowd in and out.

L. C. J. If ſhe be with Child, then let her ſit upon the Stool there.

Mr. *Roſ.* With your Lordſhip's Indulgence, I would aſk Miſtreſs *Smith* this Queſtion; The Gentlewoman that was with you, Miſtreſs *Hilton* I think you call'd her, did ſhe agree with you as to the ſame Words, and as to Time and Place?

Smith. If you pleaſe to examine her, I ſuppoſe ſhe will give you an account.

Mr. *Roſ.* Then I would aſk her this Queſtion, with your Leave, my Lord; whether was that other Gentlewoman with you in the ſame Room?

Smith. Yes, ſhe was, and ſat upon the Bed with me, and I pulled her by the Sleeve when the Words were ſpoken, to take notice of them.

Mr. Att. Gen. Come, Miſtreſs *Hilton*, give my Lord and the Jury an account; have you been at this Conventicle at any time, and what have you heard there?

Hilton. I came to Miſtreſs *Smith*'s on *Saturday* Night, and on *Sunday* Morning I went with her to this Place; I was never there before in my Life, they ſaid it was one *Daniel*'s houſe, one Captain *Daniel*'s; it was near *Weſt-Lane* in *Rotherhith.* And when we came there, there was one that Miſtreſs *Smith* knew, that ſtood at the Door, they call him *Paul Shed*, a little Man: And when we came to the Door, he ſaid to us, Pull off your Pattens, ſays he, for they will give too much Occaſion of Diſtruſt of People's coming: So we pulled off our Pattens, and ſaid we would take care the next time. When we came in, we went through a kind of a Hall, and when we came there into the Hall, there were a little Parlour againſt it: We went up the Stairs, and when we came up Stairs, there were two more Rooms; that Room we came into was hung with ſad-colour'd Paper, and upon the Left-hand there ſtood a Sweetwood kind of Cheſt, a little Cabinet, and a little Glaſs over that. Mr. *Roſewell* came, and ſtood at the Entrance in of the Door; ſo there was a little Child in bed when we came up, and we ſat down on the other ſide of the Bed; and the Child was taken out of the Bed preſently afterwards. Mr. *Roſewell* preached upon the 20th or 21ſt Chapter of *Geneſis*, I cannot be poſitive which of them, but one of them it was——

Mr. *Roſ.* But upon your Oath cannot you tell which it was?

L. C. J. You muſt not interrupt her, Sir; you ſhall have your time to aſk her what you will.

Hilton. It was the 20th or 21ſt of *Geneſis*, I will not be poſitive which of them it was. But the thing was as to *Abraham* and *Sarah*; that was the Contents of the Chapter that Mr. *Roſewell* was then pleaſed to preach upon. After he had took his Text, and preached a little while, he ſaid, *The People went flocking to the King to cure the King's Evil, which he could not do; for they ought to flock to them, that were Prieſts and Prophets, who by their Prayers could cure their Grievances.* Then he preached a great while of the Chapter following again; and then ſays he, *We have had two wicked Kings that have ſuffered Popery to come in under their Noſes, which I can compare to nothing but the moſt wicked* Jeroboam. There was another King named, and I think it was *Rehoboam.* I cannot be poſitive as to that, but *Jeroboam* I am ſure was named. Then he ſaid, *If the People would ſtand to their Principles, he did not queſtion but to overcome all their Enemies with broken Platters, Rams-Horns, and a Stone in a Sling.* Theſe were the Words Mr. *Roſewell* was pleaſed to ſay.

L. C. J. Can you remember what day of the Month this was?

Hilton. It was the 14th of *September*, my Lord.

L. C. J. Do you remember what number of People were there?

Hilton. I believe there were four or five hundred People; there was a Garret full, and two Rooms below, the Parlour full, and the Hall full; and one *Paul Shed* (as Mrs. *Smith* told me his Name was) let us in. I did not know any of them; nor ever had Convicted any of them; that was the firſt time I ever was at a Meeting in my Life, and I had enough of it then.

L. C. J. You ſay you came on *Saturday* Night to Miſtreſs *Smith*'s Houſe?

Hilton. Yes, my Lord.

L. C. J. What time that Night?---*Hilton.* About eight or nine o'Clock.

L. C. J. What time in the Morning did you go along with her to this place?

Hilton. We went by ſeven o'Clock in the Morning.

L. C. J. Did Mr. *Roſewell* come before you, or after you?

Hilton. No, he came preſently after we were there.

L. C. J. Do you remember any other Words he utter'd there that Day?

Hilton. He was pleaſed to talk of ſeveral things between whiles in his Sermon; among the reſt, I heard him ſpeak about Canting. He ſaid there was a Word they called Canting, but he did not underſtand what that Word meant, except it were the Fellows in their white Gowns. For he was going by one of their Churches, where he heard them ſing the *Lord*'s *Prayer*, the *Creed*, and the *Ten Commandments*, with a Ha-ha-ha-ha-ha; for my part, ſays he, I was aſhamed to hear it.

L. C. J. Do you remember any other part of the Diſcourſe?

Hilton. He had a great many other of thoſe things, that I cannot now remember; it affrighted me to hear it out of my Wits.

L. C. J. Where did you go from thence?

Hilton. We went Home to Mrs. *Smith*'s. It was two o'Clock, and we had not eat a bit of Bread all the while; and as ſoon as ſhe came Home, Miſtreſs *Smith* took her Pen and Ink preſently, and writ down thoſe Words; her Huſband and I and ſhe were together; and when we had done this, we went to the *Quaker*'s Meeting.

L. C. J. What *Quaker*'s Meeting is that?

Hilton. It is that by *Cheapſide*; I do not well remember the Name, I think it was called the *Bull* and *Mouth.*

Mr. Juſt. *Hol.* What time of the Day was it that the Meeting was done at Mr. *Roſewell*'s?

Hilton. We came from Mr. *Roſewell*'s a little after two o'Clock.

L. C. J. From Seven to Two did he hold? that is pretty long-winded.

Hilton. No, he went in to Dinner, and left us there, and abundance in the Congregation eat Sweet-Meats, or Biſkets, or ſuch things as they had. But I am ſure we had nothing there. I was never among you before, nor ever Convicted any of you.

Mr. *Roſ.* I humbly beſeech your Lordſhip to make her ſenſible of the Obligation ſhe is under by her Oath.

L. C. J. Ay, Ay; I will. Look you Miſtreſs, you muſt take notice, here is the Life of a Man in queſtion, which is a thing of great

Conſideration. And for you to have any Concern in taking away the Life of a Man, if it be upon falſe Grounds, is a very diſmal thing; beſides, that there is a thing which is yet of greater Weight and Moment to you yourſelf, it concerns your own immortal Soul. You muſt conſider what Guilt you contract upon yourſelf if you tell a Lye; but there is a much greater Guilt contracted, if you offer to ſwear a Lye in a Court of Juſtice, upon a Cauſe of this Concernment. Conſider, I tell you, you are in the Preſence of Almighty God, that ſeeth into the Hearts of all Mankind; that is the Avenger of all Lying and Perjury; that may juſtly ſink you into Hell, if you offer to ſwear a Falſhood. Therefore, I charge you, in the Name and Preſence of that great God, the Judge of Heaven and Earth, to anſwer me truly to this Queſtion: Are theſe things that you have ſworn here true?

Hilton. My Lord, they are every Word true. There is a Gentlewoman here, one Mrs. *Collingwood*, that ſhall witneſs I ſet them down that Day; and went away to the Recorder, and gave him an Account of them.

Mr. Att. Gen. Well, if you have done, go over.

L. C. J. No, hold, Sir, will the Priſoner aſk her any Queſtions?

Mr. *Roſ.* Yes, my Lord, with your Leave.

L. C. J. Ay, in God's Name, what you will, that is fitting to aſk.

Mr. *Roſ.* Miſtreſs, what is your Name?

Hilton. My Name is *Hilton.*

Mr. *Roſ.* Was your Name ever *Shaftoe?*

Hilton. Yes, but my Name now is *Hilton.*

Mr. *Roſ.* Or otherwiſe *Smith*, I ſuppoſe: for I have heard ſo.

Hilton. No, Sir.

Mr. *Roſ.* Then, Mrs. *Hilton*, upon the Oath you have taken (for I hope you have obſerved what my Lord has ſaid to you about the Sin and Danger of falſe ſwearing)——

Hilton. Mr. *Roſewell*, God forbid I ſhould ſtand here to tell ſuch a Lye as this, if it were not all Truth to my Knowledge; I would rather ſpeak leſs than more.

Mr. *Roſ.* Were you at *Rotherhith* that 14th Day of *September?*

Hilton. Yes, I was. I was with Mrs. *Smith* at her Houſe over Night, and went with her to *Rotherhith* at Seven o'Clock next Morning.

Mr. *Roſ.* Whoſe Houſe were you at there?

Hilton. I cannot ſay at whoſe Houſe it was of my own Knowledge, for I was never there before in all my Life; but they ſaid it was one Captain *Daniel*'s Houſe.

Mr. *Roſ.* What Street was it in?

Hilton. I do not know what Street it was in, it was near *Weſt-Lane.*

Mr. *Roſ.* What kind of Buildings were there in the Street?

Hitlon. Over-againſt it, a little way from the Houſe, is a Bridge, that we went over; I believe it may be ſome ten or twelve Doors from the Houſe.

Mr. *Roſ.* In the Street, you ſay, over-againſt the Houſe?

Hilton. A little way from it. Mr. *Roſewell*, if you do remember (I can remember theſe things very well) there were Shutters in the Windows, and the Sun came in, and you were afraid leſt the People that went by ſhould hear you. *Firſt*, There was not light enough, and you deſired that one part of the Shutters might be opened; which was done: And then you deſired that half might be ſhut again, for fear the People ſhould over-hear you.

Mr. *Roſ.* What kind of Entrance is there into the Houſe?

Hilton. There is an Entry, and from the Entry we went into a little Hall, the Rooms were but of a low Height.

Mr. *Roſ.* Was it in an upper Room, or a lower Room that I preached?

Hilton. It was in an upper Room, you were up two pair of Stairs, the Chamber was hung with ſad-coloured Paper, and a ſad-coloured Bed was in the Room; upon the Left-hand, as you ſtood, there was a Cheſt of Sweet Wood ſtood, and a little Cabinet upon it, and a Glaſs over that; and upon the Right-hand, on the ſide of the Chimney, was a Cloſet; I took very good Notice of all theſe things.

Mr. *Roſ.* Two pair of Stairs, upon your Oath, you ſay it was?

Hilton. Yes, it was two pair of Stairs, upon my Oath, Sir.

Mr. *Roſ.* How many Steps, Mrs. *Hilton*, were there?

Hilton. They were low Stairs, eight or nine to a Pair, I think; I did not number them, Mr. *Roſewell.*

Mr. *Roſ.* The other ſays, there was a little Room up ſix Steps; and that I was but one pair of Stairs high.

Hilton. And there was a Garret, my Lord; which I am ſure there was above four Hundred People there at that Meeting.

Mr. *Roſ.* Did you ſee that Number of People there?

Hilton. Yes, I did.

Mr. *Roſ.* If you were within in the Room, how could you ſee them all there that were below, and in the Garret, as you ſay?

Hilton. When you went down to refreſh yourſelf, to Dinner, as I ſuppoſe; ſaid I to Mrs. *Smith*, for the Lord's ſake, let me go out, for I am affrighted out of my Wits to hear ſuch Stuff as this.

L. C. J. Frightful Stuff indeed.

Hilton. Says ſhe, You cannot go out till they all go; there is no body to let you out; but I would fain have been got out thence.

Mr. *Roſ.* What time did you come thither, ſay you?

Hilton. We came by Seven o'Clock in the Morning.

Mr. *Roſ.* How did the Exerciſe begin?

Hilton. Between Seven and Eight.

Mr. *Roſ.* I do not aſk you what time, but how it began?

Hilton. You made a kind of a Prayer, I do not underſtand your way, for I never was uſed to your Meetings, I never was at any before in my Life. You took your Text (I cannot be poſitive which, but it was) either out of the 20th or 21ſt Chapter of *Geneſis.*

Mr. *Roſ.* But can you remember theſe Words, and not the Chapter?

Hilton. I can tell you more that you ſaid, if you pleaſe.

Mr. *Roſ.* Mrs. *Hilton*------

L. C. J. Let her go on; you aſk her a Queſtion, and will not ſtay for an Anſwer, but go to another thing. She is telling you what was done.

Hilton. This I am poſitive in, it was the 20th or 21ſt Chapter of *Geneſis*: the Story was about *Abraham* and *Sarah*, how he bid her call herſelf his Siſter.

Mr. *Roſ.* That is the 20th Chapter.

L. C. J. Nay, I ſuppoſe you can remember the Text better than this, Woman.

Hilton. I believe it was the 20th, that you did moſt expound upon that Day; for you ſaid at laſt *Abimelech* made *Abraham* a Preſent, which you did think might be about 20 Guineas.

Mr. *Roſ.* I ſee you are thorough-paced.

L. C. J. Methinks ſhe brought away much of your precious Stuff for one time, upon my word.

Mr. *Roſ.* How long did you ſtay there, Mrs. *Hilton?*

Hilton. I ſtaid there from the time you came in to the end of all: about eleven or twelve o' Clock you went down to Dinner; They that were there ſtaid till you came up again, which was in the Afternoon; and then you began upon a Text which you took in the *Pſalms*, I think; I cannot poſitively ſay where; but a new Text you did take, that you did.

Mr. *Roſ.* In the *Pſalms* did you ſay?

Hilton. And if it pleaſe you, Sir, I never ſaw you but then, and now, in my Life.

Mr. *Roſ.* What Habit was I in?

Hilton. You had a Camblet Cloak on that had an Eye of blue in it, and a mourning Hatband about your Hat; and upon the Bedſide by me ſat Mr. *Atkinſon* in a mourning Cloak, and his two Boys.

Mr. *Roſ.* There was ſome ſtop or Pauſe you ſay; you call it a Dinner?

Hilton. You went to Dinner, I ſuppoſe; I know not where you were.

Mr. *Roſ.* Pray how did the Exerciſe begin in the Afternoon?

Hilton. I cannot very well tell.

Mr. *Roſ.* Was you there to the End of it?

Hilton. To the very end of all.

Mr. *Roſ.* What *Pſalm* was read, or what Chapter that I preached upon?

Hilton. Sir, I cannot remember what your *Pſalm* is. Theſe are the Words that you ſaid, and that you preached. Sir, I cannot remember how all theſe came in, nor all the Stuff that was ſaid.

L. C. J. She ſays ſhe cannot remember all your Stuff.

Hilton. I was never uſed to a Conventicle in my Life: and I would I had not been there then.

Mr. *Roſ.* What was the Text I preached upon?

Hilton. In the Morning it was, I tell you, the 20th or 21ſt Chapter of *Geneſis.* But the Heads of your Sermon, and after you had talked about the King, and all thoſe things, was about *Abraham* and *Sarah*----

Mr. *Roſ.* But what was the Text in the Afternoon?

Hilton. I cannot tell that truly.

Mr. *Roſ.* Then upon what Occaſion were thoſe Words in the Morning about flocking to the King to cure the Evil?

Hilton. Sir, you ſaid----

L. C. J. How can any Body tell what occaſion you could have. You had no occaſion from that Text, nor any other Text that I know of, to talk of the King or the King's Evil.

Mr. *Roſ.* But I ſpeak of the Coherence of the Diſcourſe, my Lord.

L. C. J. You preach without any Coherence, or you never had been brought here. When you give yourſelf the Liberty to talk of theſe things, you ramble from your Text.

Mr. *Roſ.* I mean by it, my Lord, what Part of the Chapter it was that did lead to it?

L. C. J. No Man living can tell; it was the Devil led you to talk Treaſon: The Indictment tells you ſo, that you had not the Fear of God before your Eyes, but were moved and ſeduced by the Inſtigation of the Devil to do it. Who leads People to do all ſorts of Wickedneſs but the Devil? You can give no Reaſon for it yourſelf, nor no one elſe.

Mr. *Roſ.* Were theſe Words delivered in the Forenoon Diſcourſe?

Hilton. I do not know what you call Forenoon, or Afternoon: I am ſure we had no Dinner.

Mr. *Roſ.* But was it all before, or after I broke off, and went down?

Hilton. Before, Sir.

L. C. J. She ſays it was before you went to Dinner; but for her part ſhe had no Dinner at all, ſhe ſays. If you have done with her, then go on, Mr. Attorney.

Mr. Att. Gen. Where is Mrs. *Joan Farrar?*

Far. Here I am, Sir.

Mr. Att. Gen. Pray, will you tell my Lord and the Jury, were you preſent at this Houſe when Mr. *Roſewell* preached there?

Far. Yes, Sir, I was.

Mr. Att. Gen. What did you hear him ſay?

Far. Do you aſk me of the 14th of *September*, firſt, Sir?

Mr. Att. Gen. Yes.

L. C. J. Why, were you there at any other time?

Far. Yes, ſeveral times.

Mr. Att. Gen. Well, take your own way of delivering your Evidence, and give an Account of what you know of the Priſoner.

L. C. J. But, hark you, be ſure you tell nothing but what is Truth. You muſt conſider, here is the Life of a Man at the ſtake, and your own immortal Soul is at ſtake too. You are in the Preſence of the great God of Heaven and Earth, that ſeeth into all your Actions and Thoughts, and ſearcheth the Hearts of all Mankind, and therefore have a care of contracting any Guilt upon yourſelf by telling any Lye; be ſure to ſay nothing but what is Truth.

Far. Sir, I was not in the Room with him; I was in a Parlour or Hall, what do you call it, a low Room; and he was up Stairs above it.

Mr. Att. Gen. But were you in the Congregation? Were there any other of the Hearers in that Room among whom you were?

Far. Yes, Sir; there were a great many of them there, Sir.

Mr. Att. Gen. Well, what did you hear him ſay?

Far. Sir, concerning the Evil was the firſt thing I heard him ſay;

and he made it ſo, that it was not the King that cured it, but it was they they ſhould flock to. It is we they ſhould flock to, ſays he; for we are they which are the Prieſts and the Prophets, that by our Prayers do cure the Grievances of the People.

Mr. Att. Gen. What did you hear him ſay more in that Diſcourſe?

Far. The next that I obſerved was, he ſaid, we had now two wicked Kings together; but I could not tell who he compared them two wicked Kings to; but he bid the People ſtand to their Principles, and in time they ſhould overcome their Enemies.

Mr. Recorder. Pray, have you heard him at any other time?

Far. Yes, I have heard him at other times.

Mr. Recorder. Did you take notice of any thing he ſaid againſt the Government?

Mr. *Roſ.* I beſeech your Lordſhip, may theſe leading Queſtions be aſked?

L. C. J. Yes, I have told you already; to ſhew your Practice. It is not at all a leading Queſtion. What did you hear him ſay at any other time about the Government?

Far. In a Mill, it was by *Rotherhith-Wall*, at one *Hudſon*'s, he prayed that he might not offend the Lord in not praying for the King; but the Lord might pleaſe to open his Eyes, or turn the Times.

L. C. J. Can you remember when that was?

Far. It was the 17th Day of *July*,----no, of *Auguſt*, to my beſt Remembrance; and upon the 17th Chapter of *Geneſis*.

L. C. J. That he preached upon there, did he?

Far. Yes, Sir.

L. C. J. Did you hear him ſay any thing at any other time?

Far. Yes, Sir.

Mr. Recorder. What do you remember about People in Scarlet?

L. C. J. Tell us what you heard him ſay elſe?

Far. At *Weſt-lane* end, at one *Paul Shed*'s, I heard him preach concerning the Fire of *London* about eighteen Years ago. That there was a certain great rich Man, that lived in *Grace-church-ſtreet*; he ſaid, he needed not name him, he ſuppoſed they all knew who he was; and he ſaid there went a poor Man to him, not a poor Man neither, but a *Carpenter*, an Houſe-keeper, a labouring Man, and told him how to quench the Fire; and then he preached, that if it had not been for that great Man, that Fire had not been, nor the Fires in *Southwark* or *Wapping*, if it had not been for the Lord Mayors and Sheriffs ſince.

L. C. J. Have you any more to aſk her?

Mr. Recorder. What have you heard him ſay elſe?

Mr. Att. Gen. No, my Lord, we have done, I think.

L. C. J. Anſwer my Brother *Jenner*'s Queſtion.

Mr. Recorder. What about People in Scarlet?

Far. Then after he had preached concerning the Fire, he ſaid it was a fine Sight to ſee Fools in Scarlet Gowns; and he heard the *Recorder* was to be made a Judge.

L. C. J. He hears ſtrange Stories it ſeems. What do you make of this, Brother *Jenner?*

Mr. *Roſ.* God forbid, my Lord, this ſhould be true.

L. C. J. You ſee ſhe ſwears it.

Mr. Juſt. *Withins.* Mr. *Roſewell*, will you aſk her any Queſtions?

Mr. *Roſ.* Miſtreſs, you ſay you were at the Meeting on the 14th of *September*; pray in whoſe Houſe was it?

Far. It was at a Houſe at the end of *Weſt-lane*; there are a Row of Houſes that face to the Fields.

Mr. *Roſ.* But whoſe Houſe was it?

Far. They ſaid it was one *Daniel*'s Houſe.

Mr. *Roſ.* In what Room of the Houſe were you?

Far. In the lower Room.

Mr. *Roſ.* Did you ſee me there?

Far. Sir, you were gone up Stairs before I came in.

Mr. *Roſ.* You did not ſee me there upon your Oath?

Far. No, my Lord, I did not ſee him.

L. C. J. She ſaid at firſt, you were gone up before ſhe came, and ſhe was in a lower Room.

Far. But I knew his Voice.

L. C. J. Did you know his Voice?

Far. Yes, Sir; I had heard him ſeveral times.

Mr. *Roſ.* Did not you tell ſomebody that you heard none of theſe Words?

L. C. J. Were you aſleep all the while?

Far. No, Sir, I was not aſleep, I did not ſleep while I was in the Room. I never ſlept in your Preſence in my Life.

Mr. *Roſ.* Were you there at the beginning? What time came you in?

Far. Sir, I believe you had read half your Prayer; I was at the beginning of the Sermon.

Mr. *Roſ.* Who came along with you?

Far. I came alone; my Child was not well, and ſo I came late.

Mr. *Roſ.* What was the Chapter I was upon?

Far. It was upon the 21ſt of *Geneſis*, Sir.

Mr. *Roſ.* Upon what Verſe of the 21ſt of *Geneſis* was it, that you heard theſe Words?

Far. I cannot tell what Verſe it was.

Mr. *Roſ.* I aſk, my Lord, becauſe I went diſtinctly upon Verſes.

L. C. J. Prithee, Man, I care not how thou went'ſt on.

Mr. *Roſ.* Cannot you tell how they came in?

Far. No, Sir.

L. C. J. Nor any one elſe, I dare ſay, how ſuch Words can come in?

Mr. *Roſ.* Were the Words ſpoken together in that Exerciſe that you have ſworn?

Far. Yes, in that Exerciſe.

Mr. *Roſ.* How long did you ſtay there?

Far. Till you had done, I believe it was Two o'Clock.

Mr. *Roſ.* Was it in the Forenoon?

Far. We had no Dinner at all; I cannot tell what you call Forenoon, or Afternoon.

Mr. *Roſ.* Was it all ſpoken upon that Chapter, upon your Oath?

Far. Truly, Sir, I think it was upon your firſt Text.

L. C. J. If you have done with her, let her go over.

Mr. Att. Gen. We ſhall call one or two more of his Auditors at other times, that will give ſome account of his Way. Where is your Man, Mr. *Atterbury?* What is his Name?

Mr. *Atterbury. Peter.* But here is one of the Witneſſes.

Mr. Att. Gen. Swear him then. What is his Name?

[*He was ſworn.*]

Mr. *Atterbury. Robert Cook*, he ſays.

Mr. Recorder. Were you an Officer in this Place?

Cook. Yes, in St. *Mary Maudlin*'s I was; St. *Mary Magdalen, Bermondſey* Pariſh.

Mr. Recorder. Were you at the executing of any Proceſs againſt *Roſewell*'s Conventicle?

Cook. If it pleaſe you, my Lord, I had a Warrant from Sir *Thomas Jenner*, to ſerve at one *Wildy*'s Houſe, a Bricklayer in *Rotherhith*; and when I came to the Houſe to ſerve it, there was abundance of People, and a great Riot was made, but no Blows I confeſs; but a great Tumult of People, that had not I and the Beadle, one *Samuel Bennet* by Name, cauſed the People to ſtand clear, I do not know but there might have been Miſchief done. Of which we upon that gave an account to Sir *Thomas Jenner*, and he hath bound ſome of the People over to the Seſſions.

L. C. J. What do you mean by this, Gentlemen?

Mr. Att. Gen. My Lord, we have done; this is only about ſome Diſturbances that the King's Officers meet with, in executing Proceſs againſt theſe Conventicles.

L. C. J. But what is this to the Priſoner?

Mr. Att. Gen. Here is ſome would have him called; but I confeſs we cannot make any uſe of his Evidence againſt the Priſoner, only as to what is hinted in the Indictment, that he did it to diſturb the Peace-----

L. C. J. Piſh, that is nothing, the Officer did his Duty; but what is that to this Buſineſs? Have you done, Gentlemen, for the King?

Mr. Att. Gen. Yes, my Lord, we have done.

L. C. J. Then, Mr. *Roſewell*, now is your time to make your Defence; and you ſhall have time to make it as full as you will.

Mr. *Roſ.* My Lord, may I have the Favour to have the Indictment read again in *Latin?*

L. C. J. Yes, yes, if you will. Read it again.

Mr. *Roſ.* I humbly thank your Lordſhip, only the Words, my Lord.

Cl. of Crown [reads.] *In quadam illicita aſſemblat', in præſentia & auditu diverſorum ſubdit' dicti Domini Regis, adtunc & ibidem illicite & ſeditioſe aſſemblat' & congregat', aſſeruit & declaravit quod* populus (ſubdit' dicti Domini Regis nunc, innuendo) coadunationem fecere *(Anglice* made a flocking) dicto Domino Regi nunc, *ſub prætextu ſanandi morbum regni* (*Anglice* the King's Evil) *quod ipſe* (dictum Dominum regem nunc, iterum innuendo) *facere non poteſt*; *ſed nos ſumus illi* (ſeipſum Thomam Roſewell & al' ſeditioſas & proditor' perſon' innuendo) *ad quos illi* (ligeos ſubdit' dict' Domini regis nunc, innuendo) *debent accedere* (*Anglice*, flock to) *quia nos* (ſeipſum prædict' Thomam Roſewell & al' ſedit' & proditor' perſon' iterum innuendo) *ſumus Sacerdotes & Prophetæ, qui precibus dolores ipſorum* (ligeos ſubdit' dicti Domini regis nunc, iterum innuendo) *ſanaremus. Nos* (ſubdit' & ligeos hujus regni Angliæ innuendo) *habuimus nunc duos iniquos reges* (Sereniſſimum Carolum primum nuper regem Angliæ, & dict' Dominum regem nunc, innuendo) *inſimul, qui permiſerunt Romanam ſuperſtitionem (Anglice* Popery) *ingredi* (infra hoc regnum Angliæ, innuendo) *in eorum conſpectu (Anglice* under their Noſes) *qui* (prædictum Carolum primum nuper regem Angliæ, & dictum Dominum regem nunc, innuendo) *aſſimulari poſſunt ad nullam perſonam niſi ad nequiſſimum Jeroboam. Et ſi ipſi* (divers' malediſpoſit' & ſedit' perſon' adtunc & ibidem cum prefat' Thomam Roſewell illicite & ſeditioſe aſſemblat' & congregat' exiſten' innuendo) *ad fundamental' ipſorum permanerent (Anglice* would ſtand to their Principles) *ipſe* (ſeipſum Thomam Roſewell innuendo) *non timebat quin ipſi* (ſeipſum Thomam Roſewell & prædict' malediſpos' & ſedit' perſon' ſic ut prefertur aſſemblat' innuendo) *inimicos ſuos* (dictum Dominum regem nunc, & ligeos ſubdit' ipſius Domini regis nunc, innuendo) *vincerent, ſit ut in priſtino tempore cum cornubus ariet', patinis fractis (Anglice* broken Platters) *& lapide in funda* (*Anglice* Sling) *&c.*

Mr. *Roſ.* If it pleaſe you, my Lord, that which I object againſt, and deſire to be ſatisfied in by your Lordſhip, is this; I am charged with ſpeaking Words about flocking to the King to cure the King's Evil; and it is in the Indictment called *Morbus Regni Anglici*, that is the Diſeaſe of the *Engliſh* Kingdom------

L. C. J. No, no; it is *Morbus Regni*, *Anglice* the King's Evil.

Mr. *Roſ.* I do not anderſtand how *Morbus Regni* can be the King's Evil.

L. C. J. Therefore becauſe there is no apt Word in the Law for that Diſtemper, they help it up by the Word *Anglice*, to ſhew what they meant.

Mr. *Roſ.* But, my Lord, I underſtand there are proper Words for the Diſeaſe; as *Struma*, and *Scrofula*, thoſe are proper Words for it, not *Morbus Regni.*

L. C. J. Not at all in Law, thoſe may be the Words uſed among Phyſicians; but in legal Proceedings we are to keep up exactly to the legal Names and Phraſes; and where we have not an uſual Word, then we help it up by *Anglice*'s: and ſo we here expreſs that very Diſtemper, which is called by the Name of the King's Evil, by a Word framed as near to a Law Phraſe as we can; and to ſhew our meaning in it, we add, *Anglice* the King's Evil.

Mr. *Roſ.* My Lord, is that the Phraſe that is proper for it in Law?

L. C. J. Yes, yes, it is very well expreſſed to ſhew what is meant.

Mr. *Roſ.* But, my Lord, *Morbus Regni*, is in *Engliſh* properly the Diſeaſe of the Kingdom.

L. C. J. It is ſo, the Diſeaſe of the Kingdom; if they had gone no further, but left it there, it might have had ſuch an Interpretation put upon it. But becauſe the Words are ſo ambiguous in *Latin*, they are reduced to a certainty, by putting an *Anglice* to them.

Mr. *Roſ.* I thought it had been *Anglici*. My Lord, there is another Phraſe that I object againſt, it ſays, *Nos habuimus nunc duos iniquos Reges inſimul.* My Lord, this cannot be underſtood of two Kings one after another; but *inſimul* makes it to be both at once.

L. C. J. No, we have had now together two wicked Kings.

Mr. *Roſ.* That we do not uſe to expreſs ſo in *Latin*.

L. C. J. The Words do thus ſound in *Engliſh*.

Mr. *Roſ.* Here are two Words *Inſimul* and *Nunc* that do ſignify the preſent time. My Lord, I am now only ſpeaking all this while upon the *Hypotheſis* that theſe Words were ſpoken by me; for I ſtill do, and always muſt deny the *Theſis*.

L. C. J. We take it ſo.

Mr. *Roſ.* It ſhould have been *Succeſſivè*.

L. C. J. Then it had not agreed with your Words. For the Witneſſes ſwear that you ſaid, We have now had two wicked Kings together, and not ſucceſſively.

Mr. *Roſ.* If that be an Angliciſm, this cannot be true *Latin*.

L. C. J. Nay, if it be a Blunder in the *Latin*, it was a Blunder of your making; for you ſpoke it ſo in *Engliſh*, and the Indictment in *Latin* muſt exactly purſue your *Engliſh*.

Mr. *Roſ.* Then, my Lord, here is another Expreſſion, that they ſuffered, *Romanum ſuperſtitionem*, Popery, to come in.

L. C. J. Ay, is not that well expreſſed?

Mr. *Roſ.* My Lord, there may be Superſtition in the Worſhip of the Church of *Rome*, and yet that not be the thing we call Popery.

L. C. J. There may ſo, you ſay right; but then this comes under the ſame reaſon, as the former Phraſe you objected againſt about *Morbus Regni*. Becauſe *Romana Superſtitio* is ſuch a general Word, and becauſe there are ſeveral Superſtitions in the Romiſh Church, abundance of them; and this may make it uncertain; and becauſe we have no other Word to expreſs what we call Popery by, therefore there is an *Anglice* put in, to ſhew what is meant.

Mr. *Roſ.* Then, my Lord, it is ſaid *in eorum conſpectu*: is that right, my Lord?

L. C. J. Yes, *Anglice* under their Noſes?---Mr. *Roſ.* That is in their Sight.

L. C. J. Pray, how would you put that into Latin, under their Noſes?

Mr. *Roſ.* My Lord, if I ſhould ſpeak according to the other parts of the Latin of this Indictment, which your Lordſhip ſays muſt exactly purſue the Engliſh, I would render it *ſub naribus illorum*.

L. C. J. Such People ſuffer Conventicles under their Noſes, *in eorum conſpectu*.

Mr. Juſt. *Holloway*. 'Tis not your Noſe that ſees.

L. C. J. Suffer Rebellion under your Noſes; are theſe things *Sub naribus*, or *in conſpectu?*

Mr. *Roſ.* My Lord, this could not poſſibly be ſpoken of the late King, and this King; when the precedent King died a profeſſed zealous Proteſtant; and his preſent Majeſty has ſo often, and earneſtly declared againſt it.

L. C. J. We know that very well; but yet withal we know, 'twas the Pretence of Popery and Arbitrary Power, and thoſe things, that brought that bleſſed Martyr to the Scaffold; and the great Cry now at this Day, by all factious and ſeditious buſy Fellows, is againſt Popery; as if it were juſt breaking in upon us, and the Government abetted it; when it is all falſe, nothing more untrue: the Indictment calls it ſo, ſays theſe Words are ſpoken *falſo & malitioſe*; and all Treaſons are ſo.

Mr. *Roſ.* Then, my Lord, there is another thing, *Si ipſi ſtarent ad Fundamentalia eorum*, *Anglice*, If they would ſtand to their Principles, or Principals; for I know not how it is in the Indictment. Pray, my Lord, how comes *Fundamentalia* to ſignify Principles?

L. C. J. Their Principles, that is, their Foundations, or Fundamentals. *If the Foundations be deſtroyed, what can the righteous do?* ſays the Pſalmiſt. The Latin Bible expreſſeth it by *Fundamentalia*.

Mr. *Roſ.* Then it is *ſi ipſi* in the third Perſon; now, my Lord, in common Senſe that muſt needs refer to the two wicked Kings that were ſpoken of juſt before, or to the King, and his Subjects ſpoken of afterwards; and then ſure it cannot be Treaſon.

L. C. J. No, *they*; that is, I and you that are here. 'Twas ſpoken to your Congregation. If they would ſtand to their Principles, then come the broken Platters, *&c.*

Mr. *Roſ.* If it were ſpoken to them, and of them, it muſt have been *you* or *we*. Then it is added in the end, my Lord, *Fractis Patinis*, broken Platters: Your Lordſhip has remembered me of that Word. My Lord, I did hear that Mrs. *Smith* did ſwear at *Kingſton* Aſſizes, it was *Pewter* Platters.

L. C. J. I do not know what ſhe ſwore there; now I am ſure ſhe ſwears as it is in the Indictment.

Mr. *Roſ.* Miſtreſs *Smith*, Pray did not you ſwear it was Pewter Platters at *Kingſton?*

Smith. No, I never ſaid otherwiſe than I do now, and that is, broken Platters.

Mr. *Roſ.* I did hear ſhe ſwore *Pewter* then. But, my Lord, I conceive, if it refers to me, and the People that were there, it ſhould have been, as the former Sentence is, in the firſt Perſon? *We* have had, *&c.* but here it is changed into the third Perſon, and therefore cannot be ſo meant.

L. C. J. But it plainly ſpeaks its own meaning, that it is meant of the People there.

Mr. *Roſ.* My Lord, then as to the *Innuendo*'s, I ſee there are Eight or Ten of them. Whether are theſe to make ſuch a Conſtruction of a man's meaning, which doth not otherwiſe ſufficiently appear, as to bring a man under the guilt of Treaſon?

L. C. J. I tell you the meaning is plain; if you and we, ſuch falſe Traitors as are ſaid to be there aſſembled with you, will but ſtand to our Principles, we ſhall overthrow and deſtroy our Enemies with broken Platters and Ram's-horns.

Mr. *Roſ.* It is ſaid here *ipſe non timebat quin*--- Of whom ſhould I ſpeak that *ipſe?*----

L. C. J. You were ſpeaking of yourſelf and your Congregation.

Mr. *Roſ.* But that is in the third Perſon, and the ſingular Number.

* *Mr. Sol. Gen.* No, the Jurors that find this Indictment ſay, that he ſaid ſo, and that muſt be in the third Perſon.

* Mr. *Finch*.

Mr. *Roſ.* That is not according to the reſt.

Mr. Juſt. *Withins. They*, is the People with him; and *he*, is he himſelf; that is plain, and can have no other Conſtruction.

Mr. *Roſ.* Now, my Lord, will your Lordſhip pleaſe to accept a free Declaration of the Truth of this Matter?

L. C. J. Ay, ay, go now to the Fact; now we are got over the Exceptions to the Indictment. To anſwer the Fact is moſt proper at this time.

Mr. *Roſ.* Then here in the Preſence of the great God of Heaven, the righteous Judge of all the Earth; before whom you and I, and all that are here, muſt one Day appear, at that terrible Bar of impartial Juſtice (and a glorious Tribunal it will be), to give an account of all things that we have done in the body, whether they be good or Evil: and I am told by my bleſſed Redeemer (who ſhall alſo be my Judge that Day), that an account muſt be given of every idle Word that I ſhall utter, how much more for Lying and Perjury, and Falſe-witneſs bearing? as your Lordſhip (I humbly thank you for it) did very ſeaſonably ſuggeſt to thoſe that have witneſſed theſe things againſt me; I ſay in the Preſence of that great God, and this Honourable Bench of Reverend Judges, and you Gentlemen of the Jury, and my dear Countrymen, that have been now ſworn, as well as returned by the Proceſs of Law for that end; I do here moſt ſolemnly declare the Truth unto you, as in the Preſence of this God I ſhall anſwer it hereafter. And I ſhall begin with the latter part of theſe Words firſt, where this Indictment ends; for that ſeems to refer to ſome things of the late Times, and alſo to my Treaſonable Intentions now. My Lord, and dear Countrymen, becauſe I heard ſomething mentioned as to the late unhappy Civil Wars in theſe Nations; I can declare, my Father was no ways concerned in thoſe Wars, for he was dead before they began; and I was then but a Child, and did not underſtand the thing. But for the Death of the King, (Death did I ſay? that is too ſoft a Word; the Murder, the barbarous Murder of his Majeſty King *Charles* the Firſt, whom I had once the Happineſs to ſee the Face of, or rather the Unhappineſs to ſee in reſpect of his Condition at that time, being at Dinner under a Tree, with ſome few Perſons about him, which very much affected my Heart, tho' then but young. So far was I from being one that would compare him to *Jeroboam*, &c. as your Lordſhip will hear, that) I always bewailed and abhorred that Act. For my preſent Sovereign, I declare in the Preſence of God, I honour him with my Soul, and daily pray for him; and if I could do him any real good, I would ſacrifice my Life moſt chearfully to do it; I would die at his Foot to do him any real good. My Lord, I was once threatened with the loſs of my Life for declaring for his Majeſty in his Exile; when it is well known, few durſt appear in thoſe Days on the behalf of an injured Prince. It was objected againſt me, that I never prayed for *Oliver Cromwell*, that had uſurped the Government. My Lord, I knew he ſtood upon a falſe Bottom; he was an Uſurper. And for declaring, that the Kingdom would never be at Peace till the Right Heir, our Sovereign that now is, were reſtored to his Right, I was threatened that a Gibbet ſhould be ſet at my Church-Porch, and I hanged upon it, or at my own Door. I preached upon that place of Scripture, *Ezek.* 21. and the 27th Verſe, *I will overturn, overturn, overturn; and it ſhall be no more until he come whoſe Right it is, and I will give it him.* And I declared in my Sermon the ſeveral overturnings that God had given them then in Power. And tho' they threatened me, yet God preſerved me then here at Home, as he did my dear Sovereign abroad; for whom I have prayed many hundreds and thouſands of times. And it is well known, immediately after his Majeſty's happy Reſtoration, I did upon one of His Majeſty's Days preach upon that Subject: *For the Tranſgreſſions of a Land many ſhall be the Princes thereof.* I preached concerning the Excellency of Monarchy, which I ſhewed to be the chiefeſt and beſt of Governments, practiſed almoſt every where: And I proved it from the Example of the great God of Heaven, the Monarch of all the World, down to ſome of the meaneſt Species of Creatures. I ſhewed it was the Government God had ſet up in his Church, appointing the Lord Chriſt to be the King there: Among the Angels there was the Prince of them: Among the Celeſtial Bodies, the Sun in the Firmament—

L. C. J. Mr. *Roſewell*, I am very unwilling to give you any Interruption, becauſe of the Condition you ſtand in, being a Priſoner pleading for your Life, upon an Accuſation of High-Treaſon. But I tell you, theſe things that you have now inſiſted upon are not at all to the purpoſe as to what you are brought here for. You are not here arraigned for your good Works, but for your evil Works. If you commend yourſelf for two Hours together it ſignifies not one Farthing; and the Gentlemen of the Jury muſt let it go for nothing. It only ſerves to pleaſe your Humour of talking, and captivate the Auditory; but it is not at all to the purpoſe. Keep cloſe to the matter, that it is incumbent upon you to anſwer; to the Buſineſs you are upon here. It is our Duty, who are upon our Oaths, and who are accountable to the Government and the Law for what we do, to ſee that things be done according to Law. You are not here called in Queſtion for your good Works or Actions, but for Treaſonable and Seditious Words. I would to God, you had never done worſe than what you have ſaid of yourſelf. But here is an Indictment for Traiterous Preaching at one particular Place and one particular Time; anſwer to that. The Jury muſt go, not according to your way of ſpeaking; but according to the Evidence relating to the Matters laid in this Indictment. Do not talk of your Preaching for Monarchy; and your Overturn, Overturn, Overturn, for if this be true, that the Witneſſes have ſworn againſt you, you have at once overturned all the good you ever did, or ſaid in your Life before.

Mr. *Roſ.* My Lord, I know very well, one ſuch evil Action is enough to marr a Life of former good ones. But this that I have ſaid, was to ſhew, how inconſiſtent thoſe things that they have ſworn, are with my conſtantly declared Judgment and former Practice.

L. C. J. There are abundance of People to whom the King has formerly extended Mercy, not only his Pardon, but even all the Promotions their ambitious fancies could make them pretend to: But 'tis well known, the Devil has not had more ready Inſtruments to carry on bloody deſigns for the Murdering this Gracious King, their

Princely Benefactor, than theſe very Men that were thus gratified and advanced by him. Therefore, we can ſay nothing to what is alledged of former Loyalty; the Devil ſurprizes Men into theſe things; they do them, as the Indictment ſays, by the Inſtigation of the Devil. Keep to the Matter before you.

Mr. *Roſ.* Well then, my Lord, to cut ſhort. As to the Buſineſs ſince his Majeſty's Return: I have been a conſtant Obſerver of his Days, and particularly the 30th of *January* I have always obſerved as a Day of Humiliation: And I did upon one of thoſe Days preach upon that Text——

L. C. J. And all this ſignifies juſt nothing, and upon that Day you went to a *Conventicle* againſt the Law, and preached there; which ſhews, what a conformable Man to the Government and the Law you are. You can have your Congregation of Hundreds of People, and I know not what; now I tell you all this makes nothing againſt you, nor doth all your Commendation make any thing for you.

Mr. *Roſ.* My Lord, I do not know any Law of the Land that is againſt Preaching the Goſpel.

L. C. J. Yes, in *Conventicles* to preach, is againſt the Law of the Land.

Mr. *Roſ.* My Lord, I humbly conceive it is the Circumſtance of Number that makes the Tranſgreſſion.

L. C. J. It is not only a Circumſtance, but the Subſtance to preach in a *Conventicle*, and all againſt Law.

Mr. *Roſ.* If you call that a Tranſgreſſion to preach the Goſpel, I humbly acknowledge myſelf a Tranſgreſſor.

L. C. J. I tell you it is a Tranſgreſſion; but it is not ſuch a Tranſgreſſion as that for which you are here indicted: But becauſe you commend yourſelf ſo much; a Man, I muſt tell you, that every Day doth notoriouſly tranſgreſs the Laws of the Land, need not be ſo fond of giving himſelf Commendations for his Obedience to the Government and the Laws.

Mr. *Roſ.* My Lord, I was only ſaying that upon the 30th of *January* I preached upon that Text; 1 *Tim.* ii. 1, 2. *I exhort, therefore, that firſt of all, Supplications, Prayers, Interceſſions, and giving of Thanks be made for all Men; for Kings and all that are in Authority; that under them we may lead quiet and peaceable Lives, in all Godlineſs and Honeſty.*

L. C. J. Amen! I ſay to that Petition.

Mr. *Roſ.* Amen! I am ſure I ſay to it, with all my Soul; and it is my daily Prayer to my God for my Sovereign. And here I ſhewed, that it was the Duty of Subjects to pray for their Prince——

L. C. J. I tell thee, I care not a Farthing what thy Text was, nor thy Doctrine; I wiſh you had been at Church tho', and been conformable to the Laws. But this is nothing to our Buſineſs.

Mr. *Roſ.* I had therein a ſharp Reproof and Invective againſt thoſe that inſtead of praying for their Civil Head, cut it off; and thoſe that deſign and plot againſt the Government.

L. C. J. You did abundance of good by your Sermon, no doubt; I ſhall not now ſtand to examine that.

Mr. *Roſ.* So far was I from harbouring any Traiterous Thought——

L. C. J. Come, Come; All this is beſides the Cuſhion; come to the Matter that is here before us, Man. I would not reſtrain you of any part of your Defence, either in Time, or any thing elſe; but let us not have the time taken up with that which no way concerns our Queſtion. Our Buſineſs relates to what was ſaid at your Meeting, at that Time the Witneſſes ſpeak of.

Mr. *Roſ.* Then, my Lord, as to the Truth of this particular Caſe, I ſhall now declare all that paſt then; as in the Preſence of that God who ſearcheth the Heart, and trieth the Reins, and who ſhall judge us all. Upon the 14th Day of *September* laſt, I did preach to ſome People that were met at a Friend's Houſe, one Capt. *Daniel* in *Rotherhith:* and as my Courſe hath been to expound the Scriptures (to make them underſtand them), I was, my Lord, that Day upon the 20th *Chapter* of *Geneſis*. The Chapter is about *Abraham* and *Abimelech* King of *Gerar*. Now, my Lord, will you pleaſe that I ſhall deliver to you what was ſaid, by repeating it by Word of Mouth, or read it?

L. C. J. No, no; I do not deſire any of your Expoſitions, or Preachments: Anſwer to the Indictment, and what is charged upon you there.

Mr. *Roſ.* My Lord, I am about it, in telling you what was really ſaid; and I aſk the favour of delivering in Court what I then delivered to them. My Lord, it was thus: In the 2d Verſe it is ſaid, *And Abraham ſaid of Sarah his Wife, She is my Siſter*; from whence I obſerved, that he had been guilty of this once before, in the 12th Chapter, when he told the very ſame Lye to *Pharaoh* King of *Egypt*. And thence I raiſed this Note, *That a Good Man, or a Friend of God, might fall into the ſame Sin once and agen.* And in proof of it, I brought three or four Inſtances. That of *Lot* in the foregoing Chapter, his falling twice into the ſame Sins of Drunkenneſs and Inceſt with his own Daughters. That of *Sampſon*, in the 16th of *Judges* (and there came in the mention of *Dalilah*, that ſhe ſpoke of, which ſhe only remembers the Name of, and not the Truth of the Quotation), That of *Peter*'s denying his Maſter, Once, twice, and agen; firſt, with a Lye; ſecondly, with an Oath; and thirdly, with an Imprecation. But the Proof which they in this Point have moſt diſtorted, is that of *Jehoſhaphat*, who ſinfully joined with two wicked Kings: Firſt, with a wicked Father *Ahab* in his Expedition into the Land of the *Syrians* againſt *Ramoth-Gilead*, 2 *Chron.* 18th Chapter; for which he is reproved as a great Tranſgreſſor, and threatned by the Prophet in the 19th Chapter, and the beginning: And yet he afterwards joined with another wicked King, *Ahaziah*, *Ahab*'s wicked Son, to go to *Tarſhiſh*; as we may ſee in the 20th Chapter, and the latter end. And here, my Lord, is the whole of the Buſineſs concerning the two wicked Kings. In the Preſence of the Holy and Great God there was not one word ſpoken of the Kings of *England*, either King *Charles* the Firſt, or his preſent Majeſty. This was as to the two wicked Kings. And then, my Lord, I came to the 7th Verſe, which has theſe Words, *He is a Prophet, and he ſhall pray for thee, and thou ſhalt live.* Upon this I obſerved, *That the Prayers of God's Prophets have been very prevalent for the healing, and helping of others in a time of need.* And three Proofs I brought of this: The laſt of which, was that of the Prophet *Iſaiah*'s praying for King *Hezekiah* in the time of his great and dangerous Sickneſs. But that which has reference to this Buſineſs, was that out of the 1 *Kings* 13. and the beginning; *When the Prophet came to* Bethel, *and there rebuked* Jeroboam, *and propheſied againſt the Altar there*; Jeroboam *put forth his hand, and ſhook it at him, and ſaid, Lay hold of him; upon which the King's hand was dried up. Thereupon the King intreated the Prophet, that he would pray unto the Lord his God for him, that his hand might be reſtored, which the Prophet did; and the King's hand was reſtored again, and became as it was before.* And here is the Buſineſs of *Jeroboam*. In the Preſence of God, I ſpeak it, there was not any the leaſt Compariſon of my Dear Sovereign to that accurſed wicked Prince *Jeroboam, who made Iſrael to ſin:* No, my very Soul trembled at the Thoughts of it when I heard it. Upon this Head I had this Sentence, or Obſervation (which I will give you to a Word) If I were to die the next Moment, and appear before the glorious Tribunal of the Heavenly Majeſty, I tell not the leaſt Lye, or Equivocation, or Prevarication, *That a Godly Man's Prayer is a ſovereign Cure of the King's Evil; whereby the meaneſt, or the pooreſt Chriſtian may gratify, and ſerve the greateſt Monarch.* And this is not my Saying neither, but the ſaying of an Expoſitor upon that very place of Scripture, out of whom I did quote it. Nor did I ſpeak of it, or he write of it, with reſpect to that particular Diſeaſe that the Indictment calls *Morbus Regni*, but the King's Evil as the King's own Diſeaſe, in reference to *Abimelech*; who was King of *Gerar*. For it followeth in the Cloſe of the Chapter, *God heard* Abraham's *Prayer, and healed* Abimelech *and all his Houſe.* But as for that Word they ſpeak of; *of the People's flocking to his Majeſty to cure the King's Evil, which he could not do; and that we were Prieſts and Prophets to whom they muſt come for Cure*; in the Preſence of the Eternal God there was not a Word of it. Then, my Lord, for that of the Rams-horns; I ſhall obſerve how that came in by and by; but firſt I will premiſe, That all this that has been now ſpoken of, was upon the Expoſition of that Chapter in the Morning. In the Afternoon I preached upon a particular Text; I began with the reading of a Pſalm and a Chapter; and ſo far I conceive it was after the manner and uſage of the Church of *England*, which enjoins the reading of the Scriptures as Part of its Worſhip. I preached upon the 11th of the Epiſtle to the *Hebrews*, and the 12th Verſe (though one of the Witneſſes ſaid it was a Pſalm)——

L. C. J. She would not be poſitive, but ſhe thought a Pſalm, ſhe could not tell.

Mr. *Roſ.* My Lord, it was the 11th of *Heb. ver.* 12. the Words are theſe, *Therefore ſprang there of one, and him as good as Dead, ſo many as the Stars of the Sky in multitude, and as the Sand which is by the Sea-ſhore innumerable.* Upon which I had this Note, *That the great God can effect great Matters by very ſmall and unlikely Means:* As here *(of one)* what was leſs than one? None at all: And *this one too as good as Dead*; and yet from him to raiſe as many as the Stars in the Sky, and the Sands on the Sea-ſhore. What great things did God effect by the Rod of *Moſes?* which was but a little Wand in his Hand, and yet a Sign and Symbol of Authority; *as our Sheriffs white Staves are.* Never was there any great Plague to be ſent upon the Enemy of God, and his Church, *Pharaoh* and his *Egyptians*, but upon the ſtretching forth that little Rod, it came. And ſo, at the Siege of *Jericho*: What dreadful Dilapidations in that great City did the Sound of the Rams-horns make? What a terrible Army of the Enemies of the *Iſraelites* did *Gideon*'s ſmall Hoſt deſtroy with a few broken Pots or Pitchers? (much leſs did I mention Platters, or Pewter Diſhes; as I have been informed they firſt ſwore). And what a tremendous Champion did *David* ſtrike down with a Stone in a Sling? And what a glorious Work did our Lord *Chriſt*, the Son of *David*, do in his curing the Blind Man with a little Clay and Spittle; more likely to dam up the Eyes of one that could well ſee, than to open the Eyes of one that was born blind. Now here, my Lord, is the whole truth in the Preſence of the Eternal God. Here your Lordſhip ſees is mention made upon the ſecond Verſe of the Twentieth of *Geneſis* of two wicked Kings; but how, not (as they have repreſented it) with any Reflection upon the Kings of *England*; nor were they ſpoken in that order as they have ſworn them, but as I have now repeated them. Here is mention of healing the King's Evil, and of *Jeroboam*; but no way in that manner as they ſay. And here is likewiſe mention of Rams-horns, broken Pitchers, and a Stone in a Sling; but not with the leaſt application to the Government, or reference to it, or Reflection upon it, or the King: and this is the Truth. I have made an ingenuous Confeſſion of the whole as it paſſed, that your Lordſhip may ſee how much I am abuſed by theſe falſe Wretches. And if they have ſo good Memories as really and indeed to remember what was then ſaid, their Memories and their Conſciences cannot but go along with me, and confirm what I have ſaid; that all that was ſpoken by me that Day, was as I have related it, without the leaſt Reflection upon, or Application to his former Majeſty and our preſent Sovereign, or either of them, or any thing relating to the Goveenment. And if you be not convinced here, I am ſure there will be a Day come wherein you will find and ſee, that theſe are none of the King's Friends, but his Enemies, that thus have falſly accuſed an innocent, faithful, loyal Subject of Treaſon; a Crime which my very Soul abhors the thoughts of. In Proof whereof, if your Lordſhip will give me leave, I will now call my Witneſſes to teſtify the Truth of all this Matter. And after this free and ingenuous Confeſſion of the Truth, and what the Witneſſes I ſhall call will teſtify about it, I hope, and truſt in my Good God, that he will let you, my Dear Countrymen, ſee the Truth and Sincerity of my Heart in whatever Words were ſpoken by me. Had I been guilty of thoſe Things that are laid to my Charge, I were not worthy to live. Pray, Mr. *Crier*, call Mr. *Thomas Hudſon*.

L. C. J. Ay; Come call your Witneſſes.

Mr. *Roſ.* My Lord, One thing I would deſire to ſpeak to your Lordſhip. Your Lordſhip was ſpeaking, that what I declared of my former Loyalty was nothing to what the Witneſſes have depoſed; My Lord, I have read in a true Hiſtory (I think the Scriptures will be owned by all Perſons that are here to be ſuch) of two falſe Witneſſes, they were ſuch; they are called Sons of *Belial* (I pray God theſe be not accounted Daughters of *Belial*) that ſwore *Naboth did blaſpheme God and the King.* Doth your Lordſhip believe it?

L. C. J. What would you have of us, Man, by that Queſtion?

Mr. *Roſ.* I am confident, my Lord, your Lordſhip and the Court do not believe he did ſo.

L. C. J. The Scriptures tell us it was not true; Do you think we do not believe the Scriptures, becauſe we do not hear you preach in your Conventicles? We do believe the Scriptures, Man; and we believe too they have been perverted by you, and other People, to very ill Purpoſes. Yes, I do remember the Story of *Naboth*; and to ſhew you that I can remember ſome Holy Hiſtory as well as you, I can tell you of another Story, and that is the Story of *Suſanna* and the Elders, and there was Circumſtance of Time and Place teſtified to; but it ſeems they were defective in their Proof, and thereby diſcovered. You would do well to detect the Witneſſes, if you can, in ſome Contradiction, or Falſhood; that will do you more Service, than all your Harangues and Speeches.

Mr. *Roſ.* The God of Heaven will do it this Day, I truſt; for to him I have opened my Cauſe.

L. C. J. Well, well, call your Witneſſes, and prove what you can.

Mr. *Roſ.* My dear Redeemer himſelf was ſerved ſo; nay, condemned by the Teſtimony of falſe Witneſſes. [*Mr.* Hudſon *came in.*]

L. C. J. Come, here is your Witneſs; What ſay you to him?

Mr. *Roſ.* Mr. *Hudſon*, were you preſent at the Meeting at *Rotherhith* on Lord's Day the 14th of *September* laſt?

Mr. *Hudſon.* Yes, Sir, I was ſo.

Mr. *Roſ.* Here is Mrs. *Smith* hath ſworn, that ſince the beginning of *Auguſt* we had a Meeting in our Publick Meeting-Houſe: Was there any, pray Sir?

Mr. *Hudſon.* There was none ſuch, that I know of.

Mr. *Roſ.* She ſwears, that we were at the Houſe of Captain *Daniel Weldy*'s the 14th of *September.* Was it ſo?

Mr. *Hudſon.* No, Sir.

Mr. *Roſ.* What place was it then?

Mr. *Hudſon.* It was one Captain *Daniel*'s.

L. C. J. That is the ſame, as they ſay.

Mr. *Roſ.* The firſt Witneſs, Mrs. *Smith*, ſaid Capt. *Weldy*'s; indeed, the other ſaid, Captain *Daniel*'s.

L. C. J. She ſaid ſhe was told ſo, but ſhe could not tell; but ſhe remembers you prayed for him, and his Child too, who was then ill.

Mr. *Roſ.* Pray Sir, as to the truth of the Buſineſs; Did you hear me ſpeak of two wicked Kings? That, my Lord, came in, I ſay upon the ſecond Verſe of the 20th of *Geneſis*, which I then was expounding.

L. C. J. Nay aſk him in general what he heard you ſay; and whether he heard you ſay any thing of two wicked Kings, and what it was.

Mr. *Roſ.* Ay, about *Ahab*, and *Ahaziah* his Son——

L. C. J. Nay, nay, I muſt have none of thoſe Things, we muſt have fair Queſtions put; for, as you ſee we will not admit the King's Counſel to put any Queſtions to the Witneſſes, nor produce any Witneſſes againſt you, that are leading, or not proper, ſo nor muſt you: But if you have a mind to aſk him any Queſtions, what he heard concerning two wicked Kings generally, do ſo.

Mr. *Hudſon.* Upon the 2d Verſe he was then.

L. C. J. Of what Chapter?

Mr. *Hudſon.* Of the 20th of *Geneſis.* I was then in the Place, and writ. He was upon the ſecond Verſe, and concerning *Abraham*'s denying of *Sarah* his Wife. Says Mr. *Roſewell*, Doth *Abraham* here fall agen into Lying? I thought he had ſmarted enough in the 12th Chapter, for the ſame he told to *Pharaoh:* And doth he fall agen, and not take warning by it? From that you may take notice, that *the beſt of God's Children may fall agen and agen into the ſame Sin.* And there you quoted what Miſchief good *Jehoſhaphat* had like to have brought upon himſelf, by joining with two wicked Kings: Firſt, with wicked *Ahab* King of *Iſrael*; and after he was reproved for it by the Prophet, yet he fell into the ſame Sin agen, by joining with *Ahab*'s wicked Son King *Ahaziah.* And ſo he quoted *Sampſon*, who got Miſchief by taking a Wife among the Daughters of the *Philiſtines*; and yet after he had felt ſome ſmart and hurt by it, yet like good *Jehoſhaphat*, and good *Abraham*, he falls into the ſame Sin agen, by going to *Timnah*, and taking *Dalilah.*

Mr. *Roſ.* What ſaid I, pray, upon the Seventh Verſe?

Mr. *Hudſon.* The ſeventh Verſe was concerning God's appearing to *Abimelech* in a Dream; where God ſays, *He ſhall pray for thee, for he is a Prophet, and thou ſhalt be healed.* And there Mr. *Roſewell* ſpoke concerning the Worth and Value of the Prayers of God's Prophets; wherein he inſtanceth in one thing, that they were good to cure the King's Evil. And he quoted ſeveral Texts of Scripture of the Worth and Value of them; and among the reſt was that in the Firſt Book of *Kings*, the 13th Chapter, and the 6th Verſe, wherein the Prophet came to reprove *Jeroboam* at the Altar at *Bethel*; and the King ſtretched forth his Arm, and bid lay hold on him, and the King's Hand was dried up: Upon which the King ſaid to the Prophet, *Intreat now the Face of thy God for me*, and he did ſo; the Prophet prayed unto the Lord, and the King's Arm was reſtored whole as the other. And he did quote that of *Hezekiah* too.

Mr. *Roſ.* My Lord, this Man did take Notes; and therefore may be the more exact.

Mr. *Hudſon.* Yes, my Lord, I have my Notes, and can read them at large; and I did generally write, my Lord.

Mr. *Roſ.* Then pray, Mr. *Hudſon*, will you declare, whether you heard any thing in that Expoſition or Diſcourſe, concerning Rams-horns, broken Platters, and a Stone in a Sling?

Mr. *Hudſon.* That was in the Sermon, Sir, in the Afternoon.

Mr. *Roſ.* She ſwears it was all in the Morning Diſcourſe.

Mr. *Hudſon.* There was not ſuch a Word in that, as I know of. The Sermon was not in the Morning; you did only expound, as you uſed to do in the Morning.

L. C. J. If you have done with him, I ſhould aſk him a Queſtion or two. Hark you, Sir, Pray what time did this Exerciſe begin?

Mr. *Hudſon.* It begun about Eight o'Clock.

L. C. J. What number of People do you think there were there?

Mr. *Hudſon.* I cannot judge how many they were.

L. C. J. How many do you think?

Mr. *Hudſon.* I believe there were a matter of Forty or Fifty there.

L. C. J. No more than Forty or Fifty?

Mr. *Hudſon.* Alas, we could ſee but in one Room.

L. C. J. What Room were you in?

Mr. *Hudſon.* I was in one of the Chambers.

L. C. J. How many Pair of Stairs high?

Mr. *Hudſon.* Two Pair of Stairs high.

L. C. J. Did you ſee Mr. *Roſewell?*

Mr. *Hudſon.* No, I could not ſee him at all.

L. C. J. Was there ever a Bed in the Room where you were?

Mr. *Hudſon.* No, my Lord, there was not.

L. C. J. Was there a Dinner-time between?

Mr. *Hudſon.* There was at Noon a Reſting a little while.

L. C. J. Did Mr. *Roſewell* go down?

Mr. *Hudſon.* Yes, my Lord, he did, I believe, go down Stairs.

L. C. J. Do you remember any thing that was ſpoken of *Sampſon* and *Dalilah?*

Mr. *Hudſon.* Yes, as I ſaid before, there was about *Sampſon*'s going down to *Timnah* to take *Dalilah*; ſhewing his failing, how he fell twice into the ſame Sin.

L. C. J. Did you hear any Diſcourſe about Canting? Did you obſerve he uſed that Word Canting?

Mr. *Hudſon.* No, not that Day, as I know of.

L. C. J. Did you ever hear him uſe that Word?

Mr. *Hudſon.* Yes, I did one Day.

L. C. J. Ay; What did he ſay that Day about Canting?

Mr. *Hudſon.* I am not able to tell you very exactly.

L. C. J. You muſt, you muſt indeed.

Mr. *Hudſon.* I do aſſure your Lordſhip, I know not how to repeat his Expreſſions about it.

L. C. J. For look you, Sir; though you are not upon your Oath, becauſe the Law doth not allow it; yet the ſame thing that I told thoſe Witneſſes before, the ſame I muſt tell you; you muſt conſider, Friend, you come here to ſerve no Turn, nor Party; you are in the Preſence of the great God of Heaven and Earth, who will call you to Account for every thing you teſtify here; and therefore without any Subterfuges tell us the Truth, and the whole plain Truth without Welt or Guard.

Mr. *Hudſon.* My Lord, I will not deny one Tittle of the Truth, nor tell any thing that is untrue; I know I am in the Preſence of a great Court of Juſtice, and in the preſence of the God of Heaven.

L. C. J. Tell us then, what the Priſoner ſaid about Canting.

Mr. *Hudſon.* He was ſpeaking of the wicked Men of the World, that when they ſpoke concerning ſerious Religion, called it Canting, and ſays he, What is Canting? Canting, ſays he, is a whining Tone.

L. C. J. Did you hear him ſpeak any thing concerning Organs, and Surplices, and white Gowns?

Mr. *Hudſon.* No, my Lord; nothing of Surplices nor white Gowns.

L. C. J. Nor any thing concerning Organs?

Mr. *Hudſon.* No; but ſomething he had concerning the Cathedrals, and their canting Tone there.

Mr. *Roſewell.* Will your Lordſhip accept an ingenuous Confeſſion from me myſelf about this Matter?

L. C. J. No, no, Mr. *Roſewell*, that will not be Evidence; you can neither acquit, nor condemn yourſelf by theſe Things either confeſſed or denied. It is your Witneſſes that I muſt aſk, and that I expect an Account from. Therefore I aſk you, Friend, and pray recollect yourſelf, How was it that he talked concerning the Canting in Cathedrals?

Mr. *Hudſon.* Truly, my Lord, I cannot give a better Deſcription of it than I have done. For I neither do particularly remember what time it was that I heard him uſe that Expreſſion, nor can I tell you where it was; neither where, nor when.

Mr. *Roſewell.* Shall I tell your Lordſhip the Occaſion——

L. C. J. Why do you think I believe any Word you ſay, notwithſtanding any Imprecations or Aſſeverations you make about yourſelf? It muſt neither weigh with the Court nor the Jury: we muſt go according to the Evidence. St. *Peter* himſelf, that you ſay you talked of, denied all with a great many Aſſeverations; but that Denial did not make him Innocent, no, it was his Sin. So all your Imprecations, and Aſſeverations, and Affirmations of your own Innocence, do not ſignify one Farthing to this Cauſe.

Mr. Att. Gen. Hark you, Mr. *Hudſon*; Let me aſk you one Queſtion, Pray when Mr. *Roſewell* had explained thoſe Texts of Scripture, did he not uſe frequently to make Application of his Quotations?

Mr. *Hudſon.* Yes, my Lord.

Mr. Att. Gen. Then, pray, Sir, after he had ſpoken of the two wicked Kings, how did he apply that?

Mr. *Hudſon.* My Lord, I will tell you how he applied it. After he had made thoſe Quotations, ſays he, Take notice, if *Abraham* fell, and good *Jehoſhaphat* fell, and *Sampſon* fell, and *Peter* fell, then what are we? *Let him that ſtandeth take heed leſt he fall:* and that was the Application he made of it.

Mr. Att. Gen. Do you ſpeak to all that Mr. *Roſewell* ſpoke in that Diſcourſe at that time touching theſe Matters?

Mr. *Hudſon.* No, Sir, not all; I cannot remember all: But the Subſtance of the diſtinct Heads I do remember.

Mr. *Roſewell.* Then about the King's Evil; how did you apprehend it was meant?

Mr. *Hudſon.* My Lord, I do not believe he ſpoke it with reſpect to that Diſeaſe which we call the King's Evil; becauſe he ſpoke it with reference to the Diſeaſe that the King was under.

Mr. *Roſewell.* Did you hear any thing about Twenty Guineas?

Mr. *Hudſon.* No, I did not hear a Word of any Guineas that Day.

Mr. Sol. Gen. Did you hear him ſay any thing about the People's flocking to the King?—Mr. *Hudſon.* No indeed, Sir, not I.

Mr. *Roſ.* Pray, Mr. *Hudſon*, did I name the Word *Prieſts?*

Mr. *Hudſon.* No, Sir, I did not hear you name Prieſts, but Miniſters and Prophets; and what a Judgment it was to have the Prophets taken away.

Mr. Att. Gen. Pray recollect yourſelf; Is that a Phraſe they uſe, Miniſters and Prophets; or do not they call themſelves Prieſts?

Mr. *Hudſon.* Miniſters and Prophets, my Lord, are the uſual Words.

Mr. Att. Gen. Prieſts is the Word I am told they have.

Mr. *Roſ.* Then, Sir, pray will you give an Account how that about the Rams-horns came in?

Mr. *Hudſon.* That, my Lord, was upon that Text, xi. *Heb.* 12.—

Mr. *Roſ.* Do you remember what time it was; Forenoon, or Afternoon?

Mr. *Hudſon.* I do remember it was in your Sermon in the Afternoon. The Words are theſe, *Therefore ſprang there even of one, and him as good as Dead, ſo many as the Stars in the Sky in multitude, and as the Sand by the Seaſhore innumerable.* From whence he *raiſed this Note, or Doctrine*; *That the great God could by very ſmall Means bring great things to paſs.* And then he came to prove his Doctrine, by ſeveral Inſtances. Says he, What Works did God do by *Moſes*'s Rod? And by *Gideon*'s broken Pitchers routing a whole Army? What great Works has God done by ſmall Means? That by the ſounding of Rams-horns the Walls of *Jericho* ſhould fall down! And what great Wonders he wrought when *David* ſlew the tremendous Giant *Goliath* with a Stone out of a Sling! And what great Works and Wonders did the Son of *David*, our Lord Jeſus Chriſt do, in opening the Eyes of him that was born blind, with a little Clay and Spittle? The Application of that was, *A little Grace*——

L. C. J. We do not deſire to hear your Applications.

Smith. My Lord, if your Lordſhip pleaſe, Mr. *Hudſon* uſed to expound himſelf.

Mr. *Hudſon.* My Lord, I uſed to repeat what I writ, in my own Family, that is all.

L. C. J. Yes, no doubt he is a moſt excellent Expoſitor; there are ſeveral People take upon them to expound, that can neither read, nor write. But pray, Friend, let me aſk you one Queſtion more; Was the Captain, at whoſe Houſe you were the 14th of *September*, at Home or at Sea?

Mr. *Hudſon.* My Lord, he was not at Home, but at Sea; and is ſtill at Sea.

L. C. J. Do you remember that he prayed for him at that time?

Mr. *Hudſon.* Yes, my Lord, 'twas his common Practice to pray for the Family wherever he came.

L. C. J. And did he pray for his Son that was ſick?

Mr. *Hudſon.* I cannot tell whether he were ſick, or no, I do not remember that; but he prayed for the Father and all his Children, the whole Family.

Mr. *Roſ.* Pray did you hear any one Word mentioned of the Kings of *England*, or of his preſent Majeſty, but only in Praying for him, as I bleſs God I daily do, that God would give him Grace, and all good Things here, and his Glory hereafter?

Mr. *Hudſon.* Not one Word did I hear named of the Kings of *England*; nor of any Kings, but thoſe mentioned in the Scriptures, that were quoted, the Kings of *Iſrael*, and the like.

Mr. *Roſ.* Was there any Word ſpoken about Popery being permitted to come in under their Noſes?

Mr. *Hudſon.* Not one Word of that was ſpoken, that I know of.

L. C. J. Did you hear the King of *England* mentioned at all that Day?

Mr. *Hudſon.* Yes, in his Prayer. It was his conſtant courſe to pray for the King.

L. C. J. Ay; what did he pray for?

Mr. *Hudſon.* He uſed to expreſs himſelf very heartily in Prayer, that God would enable him to rule and govern the People under his Charge, and bleſs him. And he uſed to ſay, God forbid that he ſhould ſin againſt God in neglecting to pray for the King.

Mr. *Roſ.* It was *Samuel*'s Speech to *Saul.* Pray, Sir, did you hear that?——

L. C. J. Nay, nay, aſk him what he did hear you pray.

Mr. *Roſ.* Did I pray about opening the Eyes———

L. C. J. But you muſt not open your Witneſſes Eyes: Do not lead him.

Mr. *Hudſon.* It was his Common Practice to pray for the King, that God would preſerve him from all his Enemies.

L. C. J. And we ſay the ſame thing too.

Mr. *Hudſon.* And that God would remove all Evil Counſellors from him.

L. C. J. Ay, no Queſtion.

Mr. *Hudſon.* And eſtabliſh his Throne in Righteouſneſs, and lengthen his Life, and proſper his Reign; and he uſed to pray as heartily and as ſavourly for the King, as ever I heard any Man in my Life.

L. C. J. So there was praying in this Hall, I remember, for his late Majeſty; for the doing of him Juſtice: We all know what that meant, and where it ended.

Mr. *Roſ.* Mr. *Crier*, pray call Mr. *George Hall.* [*Who came in*] Mr. *Hall*, Were you preſent this 14th Day of *September* at *Rotherhith?*

Mr. *Hall.* Yes, Sir, I was.

Mr. *Roſ.* When I expounded upon the 20th of *Geneſis?*

Mr. *Hall.* Yes, you did ſo, Sir.

Mr. *Roſ.* Pray will you inform my Lords what you heard me ſay?

Mr. *Hall.* I will inform them to the beſt of my Memory.

L. C. J. What Trade are you, Friend?

Mr. *Hall.* I am a Mealman, my Lord.

L. C. J. Well, what ſay you?

Mr. *Hall* The 14th of *September* laſt it was my Lot to hear Mr. *Roſewell* expound the 20th Chapter of *Geneſis*; as it was his uſual Courſe to expound a Chapter.

Mr. *Roſ.* It was not of Choice, but taken in Courſe. And pray what do you remember was ſaid by me about two wicked Kings?

Mr. *Hall.* Sir, I remember you brought a Scripture concerning *Jehoſhaphat* joining with two; firſt of all with wicked *Ahab*, and afterwards with wicked *Ahaziah* his ſon; and you proved it out of 2 *Chron.* xviii. Chap. and 19th and 20th Verſes.

Mr. *Roſ.* Do you remember there was any one Word ſpoken of the Kings of *England?*

Mr. *Hall.* There was not one Word of his preſent Majeſty, nor his Father, nor any of the Kings of *England*; but of the Kings of *Iſrael*, *Ahab* and his ſon.

Mr. *Roſ.* Well then, concerning *Jeroboam*, what do you remember of that?

Mr. *Hall.* As to *Jeroboam*---* You were expounding from the 7th Verſe of the 20th Chapter of *Geneſis*---And in the opening of that 7th Verſe among ſeveral Texts of Scripture, Mr. *Roſewell* had this Note,—Hold—*Jeroboam*—

L. C. J. Ay, about *Jeroboam.*

Mr. *Hall.* My Memory fails me——

L. C. J. Ay, ſo I perceive it doth wonderfully.

Mr. *Hall.* As to *Jeroboam*, he brought a Text from the 2d Book of *Kings*, the 13th, and the former part of the Chapter. There was a Man of God that came to *Bethel*, and propheſied againſt *Dan* and *Bethel*, and there were theſe Words, that *Jeroboam*——

Mr. *Roſ.* He had his Hand dried up——

L. C. J. What do you mean by that? If your Witneſs be out in his Story, muſt you prompt him? Go on, Friend.

Mr. *Hall.* He propheſied, that the bones of the Prieſts ſhould be laid upon the Altar and burnt, as we read in that Text of Scripture, 2 *Kings* 13. and the beginning. And *Jeroboam* was there, and put forth his Hand —and bid ſome body take hold of him—whereat the Hand of *Jeroboam* dried up.

Mr. *Roſ.* If it pleaſe your Lordſhip, I will call another.

L. C. J. Ay, ay, you may ſet him going, for he is out.

Mr. *Hall.* If it pleaſe you, I can go a little further. I have ſomething to ſay as to that——

L. C. J. You had beſt go out, and recollect yourſelf; you have forgot your Cue at preſent.

Mr. *Roſ.* Mr. *Crier*, pray call Mr. *James Atkinſon.* [*Who came in.*]

L. C. J. You, Mrs. *Smith*, I will aſk you, (I will not aſk him himſelf, becauſe he may accuſe himſelf by it) Is this the Miller, at whoſe Houſe one of the Meetings was?

Smith. No, my Lord, the former Witneſs *Hudſon* is the Miller where he preached.

L. C. J. Well, what do you aſk this Witneſs?

Mr. *Roſ.* Mr. *Atkinſon*, were you at our Meeting the 14th of *September* laſt?—Mr. *Atkinſon.* Yes, I was there the 14th of *September*.

Mr. *Roſ.* Were you there at the Beginning?

Mr. *Atkinſon.* I was there from the Beginning to the End.

L. C. J. Pray, what Trade are you, Sir?

Mr. *Atkinſon.* My Lord, I am a Mathematical Inſtrument-Maker.

Mr. *Roſ.* What Chapter was I upon?

Mr. *Atkinſon.* The 20th of *Geneſis* in courſe, and not out of Choice. His uſual Cuſtom was to expound a Chapter before he preached.

Mr. *Roſ.* Pray, what do you remember was ſaid by me of two wicked Kings?

Mr. *Atkinſon.* Of two wicked Kings! I remember that was upon the ſecond Verſe; how *Abraham* ſaid of *Sarah* his Wife, *She is my Siſter:* And upon that Mr *Roſewell* had this Note, That *a Child of God may fall into the Commiſſion of the ſame Sin again and again, after he had been reproved and ſmarted for it.* And he quoted ſeveral Inſtances: As that of *Lot* committing Inceſt over and over again; that of *Peter* denying his Lord three Times; that of *Sampſon* out of *Judges* taking two Wives among the *Philiſtines*, one after another; and then quoted that of *Jehoſhaphat* joining with two wicked Kings; *Ahab*, in the 2d of *Chron.* xviii. Chap. and afterwards, though reproved by the Prophet *Jehu*, he joined with *Ahab*'s wicked Son *Ahaziah*.

Mr. *Roſ.* Pray, what did you hear of the King of *England?*

Mr. *Atkinſon.* Not a Word, unleſs it were in his Prayer; in which he always uſed to pray earneſtly for the King.

Mr. *Roſ.* What do you remember was ſpoken about the King's Evil?

Mr. *Atkinſon.* There was an Expreſſion concerning the Evil, upon the 7th Verſe; *He is a Prophet, and he ſhall pray for thee, and thou ſhalt be healed.* And he had this Expreſſion, or to this ſame Effect, for I hope you cannot expect I ſhould ſpeak every Word exactly; but I ſhall endeavour to ſpeak the Senſe, and the Truth, as near as I can, and nothing elſe. He ſaid, the Prayers of God's Prophets were very prevalent for the healing and helping others in time of need. And he quoted ſeveral Inſtances; as that out of the Prophet *Jeremy*, xxvii. Chap. and 18th Verſe, to the beſt of my Remembrance. And he alſo quoted that of the 1 *Kings* 13. concerning *Jeroboam.* The Prophet came to reprove him, and *Jeroboam* ſtretched out his Hand againſt him, and it dried up; and then he deſired of the Prophet to pray for him; which he did, and his Hand was healed.

L. C. J. Look you, what you ſay may be true, and ſo may what they ſay too; for he might ſay both. You uſed to ſay abundance of good things, as well as ſome bad ones; therefore I would aſk him this Queſtion, whether he heard any thing of the King's Evil, or that had any Reference to the King of *England?*

Mr. *Atkinſon.* This is all that I heard that comes to my Memory concerning the King's Evil: *That a godly Man by his Prayers may help to cure the King's Evil, and thereby the pooreſt Chriſtian may gratify the greateſt King*, as ſays our *Engliſh* Annotator upon that 7th Verſe; but I never underſtood him to mean it of the Diſeaſe of the King's Evil.

Mr. *Roſ.* Do you remember that I preached in this Diſcourſe about Rams-horns, or broken Platters?

Mr. *Atkinſon.* I did not hear of any ſuch thing upon all that Chapter.

L. C. J. But did you hear him ſpeak of any ſuch thing at all that Day?

Mr *Atkinſon.* Yes, my Lord, I did.

L. C. J. Come then, let us have it. What was it?—Mr. *Atkinſon.* His Courſe was, after the Expoſition, to preach a Sermon.

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* *This Witneſs was wont to ſay, that ſome Perſon or Perſons pinch'd his Legs as he was giving his Evidence, which occaſioned thoſe frequent breaks.*

Mr. *Roſ.* Was it in the Forenoon, or in the Afternoon?

Mr. *Atkinſon.* It was after the Expoſition; he prayed, and then ceaſed for a quarter of an Hour.

Mr. *Roſ.* Was it diſtinct in the Afternoon?

Mr. *Atkinſon.* It was another diſtinct Diſcourſe after the People had received ſome Refection in the Afternoon; I cannot tell exactly the time. But the Diſcourſe was preached from *Heb.* xi. 12. I ſuppoſe that I need not repeat the Words.

L. C. J. No, no, I care not for that.

Mr. *Atkinſon.* But he thence raiſed this Doctrine, *That the great God can effect great Matters by very unlikely means*; and he inſtanced in ſeveral Particulars to prove it. As the Miracles of God wrought by *Moſes*'s Rod; and the Walls of *Jericho* falling down at the ſound of Rams-horns, in the 6th of *Joſhua*; and then he quoted that of *Gideon*, a dreadful Rout of a great Army by a few Earthen Pots and Pitchers; and what a tremendous Champion did *David* ſmite down with a Sling and a Stone!

Mr. *Roſ.* I have this one Queſtion more to aſk you; Did you hear me ſpeak any thing of ſtanding to their Principles?

Mr. *Atkinſon.* Not one Word; and I was there all that live-long Day, from beginning to end.

L. C. J. Then, Sir, I would aſk you a Queſtion or two, if Mr. *Roſewell* have done with you?—Mr. *Roſ.* I have, my Lord.

L. C. J. Pray, what Room were you in?

Mr. *Atkinſon.* I was in the ſame Room that Mr. *Roſewell* was, he ſtood at the Door.

L. C. J. What, one Pair of Stairs?—Mr. *Atkinſon.* Yes.

L. C. J. Is there not another Room between the Floor, or the ground Room, and that you were in?

Mr. *Atkinſon.* Yes, Sir; there is another little Room, a little lower than that.

L. C. J. Was there a Bed in that Room you were in?

Mr. *Atkinſon.* Yes, Sir.

L. C. J. Did you ſit upon the Bed?

Mr. *Atkinſon.* I did ſit upon the Bed ſometimes.

L. C. J. Had you a mourning Cloak on that Day?

Mr. *Atkinſon.* Yes, I had.

L. C. J. Had you a mourning Hatband?—Mr. *Atkinſon.* Yes, I had.

L. C. J. Do you remember who ſat by you?

Mr. *Atkinſon.* No, my Lord, I do not know.

L. C. J. Do you remember any Body gave you your Boys Shoes from under the Bed?

Mr. *Atkinſon.* Yes, my Lord; but I cannot tell who.

L. C. J. Well then, I aſk you, did you hear any mention made that Day about *Dalilah* and *Sampſon*?—Mr. *Atkinſon.* Yes, my Lord.

L. C. J. You did?—Mr. *Atkinſon.* Yes, my Lord, as an Inſtance of a good Man's falling twice into the ſame Sin.

L. C. J. Did you hear any mention made at that time concerning any other matter that you remember?

Mr. *Atkinſon.* My Lord, that of *Sampſon* and *Dalilah* was one of the Inſtances that I repeated before.

L. C. J. Mrs. *Smith*, was it the ſame Day that he ſpoke about Canting?

Smith. Yes, it was.

L. C. J. Do you remember, Friend, any thing that was ſpoken by him that Day concerning Church-muſick?

Mr. *Atkinſon.* No, my Lord, not a Word that Day that I know of.

L. C. J. Did you hear any thing about Canting that Day?

Mr. *Atkinſon.* No, not a Word.

L. C. J. Did you hear him talk any thing of Surplices or white Gowns?

Mr. *Atkinſon.* No, my Lord, not one Word all that Day; but that of *Sampſon* and *Dalilah*, my Lord——

L. C. J. You remember that?

Mr. *Atkinſon.* Yes, it was one Inſtance of a good Man's committing the ſame Crime once and again.

Mr. *Roſ.* Yes, I own it was ſo; but not as the other Witneſſes ſwear.

Mr. *Atkinſon.* Truly, my Lord, I would not tell one tittle of a Lye; to the beſt of my Remembrance——

Mr. Sol. Gen. Pray, Sir, let me aſk you one Queſtion: I ſee you are very perfect in the Proofs of the Sermon; Did you take Notes that Day?

Mr. *Atkinſon.* No, I did not, Sir.

Mr. Sol. Gen. Can you remember then any one Obſervation that he made upon any other Verſe? Pray what Obſervation did he make upon the eighth Verſe?—Mr. *Atkinſon.* None at all.

Mr. Sol. Gen. What upon the 12th or 13th Verſes?

Mr. *Atkinſon.* I cannot tell; I can upon the 5th.

Mr. *Roſ.* Will your Lordſhip give me leave to acquaint you with that?

Mr. *Atkinſon.* He only explained that which was difficult; but when it was a little Hiſtorical, he only read it. But what he obſerved upon the ſecond and the ſeventh Verſes, was the ſubſtance of the whole Expoſition almoſt.

Mr. Att. Gen. Has no body read the Notes of that Sermon to you ſince?

Mr. *Atkinſon.* I endeavoured to recollect myſelf, after I heard Mr. *Roſewell* was accuſed; and writ, what I could remember, down.

Mr. Att. Gen. But did any body read their Notes to you ſince?

Mr. *Atkinſon.* No, indeed, there has no body read any Notes to me.

Mr. Att. Gen. Upon your Oath how came you to remember the word *Tremendous*?—*L. C. J.* He is not upon his Oath, Mr. Attorney.

Mr. *Atkinſon.* Becauſe when he made ſuch ſhort Notes, I endeavoured to remember them; I thank God I have a pretty good Memory.

Mr. Att. Gen. Ay, upon my Word, a very ſtrong one.

Mr. *Atkinſon.* He did uſe the Word Tremendous Champion.

Mr. Recorder. Had you and Mr. *Hudſon* any Diſcourſe about this Matter ſince?

Mr. *Atkinſon.* Yes, Sir, we might talk what we did remember to one another.

Mr. Sol. Gen. Did he write down the Sermon?

Mr. *Atkinſon.* Yes, I ſuppoſe he did; but I did not ſit by him.

Mr. *Roſ.* Mr. Crier, Pray call Mr. *William Smith.* [*Who came in.*]

Mr. *Smith.* Were you at this Meeting the 14th of *September* laſt?

Smith. Yes, I was, Sir.

Mr. *Roſ.* Pray will you acquaint my Lords, what you heard me ſay there? What Chapter did I expound?

Mr. *Smith.* The 20th Chapter of *Geneſis.*

Mr. *Roſ.* What do you remember of it?

Smith. I remember the Chapter concerned *Abraham* and *Abimelech.*

Mr. *Roſ.* What did you hear of the People's flocking to the King to cure the King's Evil?—Mr. *Smith.* I heard no ſuch Word.

Mr. *Roſ.* ~~Or that~~ his Majeſty could not cure the King's Evil?

Mr. *Smith.* No, Sir, not a Word of it.

Mr. *Roſ.* Did you hear any thing at all concerning the King's Evil?

Mr. *Smith.* Sir, you did quote ſomething out of the Annotator about the King's Evil.

Mr. *Roſ.* Do you remember what that was?

Mr. *Smith.* I cannot remember it fully at length, Sir.

Mr. *Roſ.* Pray did you underſtand it as meant of the King's Evil; or of the Evil of *Abimelech* King of *Gerar*?

Mr. *Smith.* I did not underſtand it of the Diſeaſe ſo called; but of the Evil of *Abimelech.*

Mr. *Roſ.* What did you hear concerning Prieſts and Prophets?

Mr. *Smith.* You ſaid it was the Function of the Prophets to pray for the People.

Mr. *Roſ.* What do you remember was ſaid of two wicked Kings?

Mr. *Smith.* You did make mention of two wicked Kings, *Ahab* and *Ahaziah*; that *Jehoſhaphat* ſinned, in joining with them one after another.

Mr. *Roſ.* Was there any thing of the Kings of *England*, or of my Sovereign?—Mr. *Smith.* No, not at all, Sir.

L. C. J. Did you hear any thing concerning *Jeroboam*?

Mr. *Smith.* Yes, that *Jeroboam* ſtretched forth his Hand, and his Hand withered; and the Prophet prayed for him, and his Hand was reſtored.

L. C. J. Did you hear any thing in the Expoſition of broken Pitchers, I mean in the Forenoon?—Mr. *Smith.* No, I think not.

L. C. J. What did you hear of them? and when?

Mr. *Smith.* To the beſt of my Remembrance it was in the Afternoon; That God could do great matters by ſmall means; and you quoted ſeveral things. I did not ſtand well, ſo that I could not hear all the Particulars.

L. C. J. But what did you hear?

Mr. *Roſ.* Pray did you hear any Word of ſtanding to their Principles, or of overcoming, that Day?

Mr. *Smith.* No, I did not.

Mr. Juſt. *Hol.* It ſeems you did not ſtand in a good Place to hear.

Mr. *Roſ.* Mr. Crier, Pray call Mr. *William Bates.*

[*Which he did, but he did not appear.*]

Crier. He is not here, Sir.

Mr. *Roſ.* Pray, Sir, call Mr. *George Hales* then. [*Who came in.*]

Were you this 14th Day of *September* at this Meeting, Sir?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Roſ.* Were you there from the Beginning to the End?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Roſ.* Pray then will you tell my Lord what you heard me ſay, with reference to flocking to the King, or curing the King's Evil.

Mr. *Hales.* I heard nothing that you ſhould ſay of People's flocking to the King; but you were ſpeaking of the King's Evil, and that was thus: My Lord, it was from the 7th Verſe of the 20th Chapter of *Geneſis*, *He is a Prophet, and ſhall pray for thee, and thou ſhalt be healed.* God is ſpeaking to *Abimelech* in a Dream; and after a little Paraphraſe upon the Words, Mr. *Roſewell* ſaid, That *a godly Man's Prayer was a Sovereign Cure for the King's Evil*; and quoted ſome Scripture Inſtances, as in 1 *Kings*, where God having ſent a Man of God to reprove *Jeroboam* for his Idolatry, he ſtretched out his Hand, and his Hand withered; and he deſired the Prophet to pray to the Lord his God, that his Hand might be reſtored; and accordingly it was accompliſhed.

Mr. *Roſ.* Did you hear any thing of the Kings of *England*?

Mr. *Hales.* No, not one Word all that Day; only you prayed for His Majeſty, as you uſed to do.

Mr. *Roſ.* What do you remember was ſaid about Rams-horns?

Mr. *Hales.* I remember you were preaching out of the xi. *Heb.* 12. and the Words were theſe, *Therefore ſprang there of one, and him as good as dead, as many as the Stars in the Sky for Multitude, and as the Sand upon the Seaſhore innumerable.* From whence he had this Obſervation, *That God is able to bring great Matters to paſs by ſmall Means.* And ſo accordingly Mr. *Roſewell* inſtanced how the Walls of *Jericho* were ſhook down by the ſounding of Rams-horns; or ſomething to that Purpoſe.

Mr. *Roſ.* What do you remember of broken Platters?

Mr. *Hales.* I remember you brought in an Inſtance concerning *Gideon*: and I think it was thus, that by breaking a few earthen Pitchers he routed a great Army.

Mr. *Roſ.* And ſo of a Stone and a Sling. But was there any thing of ſtanding to Principles?

Mr. *Hales.* Not a Word.

L. C. J. As you heard?

Mr. *Hales.* That I heard.

L. C. J. Or that you remember?

Mr. *Hales.* Yes, my Lord. But you ſaid, What a Tremendous Champion did *David* ſlay with a Sling and a Stone!

L. C. J. Did you take Notes?

Mr. *Hales.* No, my Lord.

L. C. J. Then pray how came you to remember that Word Tremendous?

Mr. *Hales.* I do remember he did uſe that Word.

L. C. J. Have you had any Diſcourſe about this matter ſince?

Mr. *Hales.* Yes, I have.

L. C. J. With whom?

Mr. *Hales.* With ſeveral Friends.

L. C. J. Did you diſcourſe with *Atkinſon* about it?

Mr. *Hales.* Yes, I did.

L. C. J. Did you with *William Smith?*

Mr. *Hales.* No; I do not remember I did.

L. C. J. Did you diſcourſe with *Hudſon?*

Mr. *Hales.* I cannot ſay I did.

Mr. Att. Gen. Nor you cannot ſay you did not.

L. C. J. Did you hear any Notes read?——Mr. *Hales.* I think I did.

L. C. J. Whoſe Notes were they you heard?

Mr. *Hales.* *Thomas Hudſon*'s Notes, I think; I am not ſure of it.

L. C. J. It is ſo hard and difficult to get out the Truth from this ſort of People; they do ſo turn and wind. How long after the Sermon was preached was it that you heard the Notes read?

Mr. *Hales.* I was in the Country when Mr. *Roſewell* was taken; and when I came home agen, I heard of it.

L. C. J. But you did not remember it till after he was taken?

Mr. *Hales.* No, my Lord; and I read the Chapter myſelf, and remember'd theſe things.

Mr. Sol. Gen. Pray is the Word Tremendous in *Hudſon*'s Notes, or no?

Mr. *Hales.* I cannot tell whether it be, or no.

Mr. Att. Gen. Pray, when was the next Day after this?

Mr. *Hales.* I cannot tell, I was in the Country.

L. C. J. Did he take Notes in Long-Hand, or Short?

A Stranger that ſtood by. In Characters, my Lord.

Mr. Att. Gen. Have you not heard him preach ſince that time?

Mr. *Hales.* Sir, I went into the Country ſoon after.

Mr. Att. Gen. Where was his Text at any other time, can you tell?

Mr. *Hales.* No, I cannot readily.

Mr. Att. Gen. Nor what he diſcourſed upon?

Mr. *Hales.* As to any particular time I cannot.

Mr. Att. Gen. Do not you remember his Text at any other Time?

L. C. J. When was the time before this 14th of *September*, that you did hear him preach? You have heard him before?

Mr. *Hales.* Yes, my Lord, I have.

L. C. J. Was that upon a *Sunday?*——Mr. *Hales.* Yes, it was.

L. C. J. Did you hear him the *Sunday* before?——Mr. *Hales.* Yes, I did.

L. C. J. Well, what did he preach upon then?

Mr. *Hales.* This I know, that in his Courſe of Reading and Expoſition, he was upon the 19th of *Geneſis.*

L. C. J. What was his Diſcourſe upon that Chapter?

Mr. *Hales.* That I cannot tell.

L. C. J. Nor the Day afterward?——Mr. *Hales.* No, my Lord.

L. C. J. Upon my word, you have a lucky Memory for this Purpoſe; to ſerve a turn, it can juſt hit to this very Day. You are very punctually inſtructed.

Mr. Sol. Gen. Do you remember any other part of the Sermon of this Day than what you have related?——Mr. *Hales.* Yes.

L. C. J. Ay; tell us what you remember beſides.

Mr. *Hales.* I muſt conſider a little; I am not ſo ready at it.

L. C. J. Ay, come, let us hear it.

Mr. *Roſ.* Theſe Things he might have more occaſion to recollect by reaſon of my Charge.

L. C. J. You ſay right, juſt occaſion for this Purpoſe. But I thought theſe Men that have ſuch ſtupendous Memories as to tell you they remember the Chapter, and the Verſe, and particular Words, when it ſerves a Turn, might remember ſomething before or after, at leaſt in the ſame Sermon. Why do you think they were enlightened to underſtand and remember that one Day more than any other? They can remember particularly as to ſuch things, and can clan it together to anſwer ſuch particular Queſtions; but as to any thing before or after, they are not prepared.

Mr. Juſt. *Withins.* Have you any more Witneſſes, Mr. *Roſewell?*

Mr. *Roſ.* Mr. Crier, pray call Mr. *John Wharton.* [*Who came in.*]

Mr. Juſt. *Holloway.* Where do you dwell, *Wharton?*

Mr. *Wharton.* At *Rotherhith.*

Mr. Juſt. *Holloway.* What Calling are you of?

Mr. *Wharton.* A Gardener.

Mr. *Roſ.* Were you at the Meeting the 14th of *September?*

Mr. *Wharton.* Yes, I was, Sir.

Mr. *Roſ.* What do you remember, pray, of the Expoſition then concerning Flocking of the People to the King to be cured of the King's Evil?

Mr. *Wharton.* Sir, I do remember upon your Expoſition of the 20th of *Geneſis*, you were ſpeaking concerning *Abimelech* King of *Gerar*; and you took your Expoſition thus, That *Abimelech* had taken away the Wife of Faithful *Abraham*, that I do remember very well; and that you did ſay in your Expoſition, that the Prayers of the Prophet were prevalent for the curing of the King's Evil. And then you brought your Proof, to the beſt of my remembrance, concerning King *Jeroboam*; that *Jeroboam* ſtretched out his hand againſt the Prophet of the Lord, and that the King cried, Lay hold of him, when he came to cry againſt the Altar at *Bethel*, and his Hand dried up; whereupon the King deſired the Prophet to pray to the Lord, that his Hand might be reſtored; and he did ſo. This was the Expoſition that you made upon that Verſe in Part.

Mr. *Roſ.* Do you remember any thing of comparing the King of *England* to *Jeroboam?*

Mr. *Wharton.* I do not remember any ſuch Paſſage.

Mr. *Roſ.* Do you remember any thing about two wicked Kings?

Mr. *Wharton.* I do remember this Paſſage, concerning *Jehoſhaphat*, that he had fallen twice into the ſame Sin, by taking part, firſt, with wicked *Ahab*, and then with his wicked ſon *Ahaziah.*

Mr. *Roſ.* Was there any thing of the Kings of *England* mentioned in this Diſcourſe?

Mr. *Wharton.* No, nothing, Sir. It was but an accidental thing that I heard you then. I heard nothing of the King of *England* in your Expoſition or Sermon, but only in your Prayers; when you pray'd for his long Life and happy Reign.

L. C. J. Did you ever hear him before that time?

Mr. *Wharton.* Yes, my Lord.

L. C. J. Did you ever hear him ſince?

Mr. *Wharton.* Yes, once ſince.

L. C. J. Now let us know his Text, and the Subject Matter he was upon ſince.

Mr. *Wharton.* Truly, as to the time ſince I did not take much Account; for I did not write.

L. C. J. Canſt thou tell us of what paſt at any time before?

Mr. *Wharton.* Once before I heard him upon the xix. of *Geneſis*, where he made his Expoſition——Truly, I have not any Notes——

L. C. J. Then hark you, Friend, have you ſpoken with any Body ſince that 14th of *September* that did take Notes?

Mr. *Wharton.* I am not acquainted much with them that were his conſtant Hearers, that did take Notes.

L. C. J. But anſwer my Queſtion that I aſk you; did you ever diſcourſe at all about this Matter, and with whom?

Mr. *Wharton.* I came thither by myſelf, I ſay; I had not much Acquaintance with them.

L. C. J. Nay, do not prevaricate, Friend, with the Court, but ſpeak the Truth out plainly. I aſk you in the Preſence of Almighty God, did you ever ſpeak with any Body ſince the 14th of *September* about this Buſineſs?

Mr. *Wharton.* Mr. *Hudſon* did ſpeak with me about it.

L. C. J. Did he read his Notes to you?

Mr. *Wharton.* Yes, he did.

L. C. J. It is a ſtrange thing, Truth will not come out without this Wire-drawing. You cannot help this Canting for your Life; this is Canting, if you would know what Canting is. Did you ever ſpeak with *Hales*, or *Atkinſon*, or *Smith* about it?

Mr. *Wharton.* I do not know *Atkinſon*, or *Hales.* I know Mr. *Smith*; but I never ſpoke with him about it; nor he with me.

L. C. J. When was it that *Hudſon* and you ſpoke together of this thing?

Mr. *Wharton.* It was laſt *Thurſday.*

L. C. J. Did he come to you, or you to him?

Mr. *Wharton.* I met him.

L. C. J. Where did you meet him?——Mr. *Wharton.* At *Rotherhith.*

L. C. J. Did he ſpeak to you of it firſt, or you to him?

Mr. *Wharton.* He ſpoke to me.

L. C. J. Then I aſk you (and remember, though you are not upon your Oath, yet you are to teſtify the Truth, as if you were upon your Oath) did he mention any thing of *Jeroboam?*

Mr. *Wharton.* Yes, he did.

L. C. J. Of *Jehoſhaphat?* and of *Abimelech?*

Mr. *Wharton.* Yes, he did.

L. C. J. Did you mention any of theſe things to him?

Mr. *Wharton.* Yes, Sir, I repeated more then, than I have done now.

Mr. Att. Gen. Was your Meeting accidental, or appointed?

Mr. *Wharton.* It was accidental in the Street; I dwell below him a great deal.

Mr. Att. Gen. And where was it?

Mr. *Wharton.* We were talking in the Street.

Mr. Juſt. *Withins.* Did not you go into ſome Houſe?

Mr. Sol. Gen. Had you any Diſcourſe at that time of being preſent at the Trial of Mr. *Roſewell?*

Mr. *Wharton.* No, I did not know any thing of it till I ſaw the *Subpœna.*

Mr. Sol. Gen. Before you diſcourſed with him, did you remember all theſe things?

Mr. *Wharton.* Yes, I could remember them as well as he; and a great deal more then.

Mr. Att. Gen. Then cannot you remember what was done the next Day?

Mr. *Wharton.* No, I cannot.

Mr. Att. Gen. How came you then to remember ſo well what was ſaid that Day?

Mr. *Wharton.* Becauſe there was a remarkable Paſſage, that I had never heard before expounded. I had not ſtaid at that time, but that he was expounding of a very remarkable thing, which I had never heard expounded before.

L. C. J. Have you any more Witneſſes, Mr. *Roſewell?*

Mr. *Roſ.* I have ſome Witneſſes to call more, if your Lordſhip pleaſes, to teſtify concerning my Life; and that I always prayed for the King, that God would crown him with Grace here, and Glory hereafter; and that he would remove all his Enemies from him.

L. C. J. Ay; Mr. *Roſewell*, firſt remove all his Friends from him; and then remove his Evil Counſellors.

Mr. *Roſ.* Pray, *Crier*, call Mr. *Charles Arthur.* [*But he did not appear.*]

Mr. Juſt. *Withins.* Come, it ſeems, he is not here, call another.

Mr. *Roſ.* Call Mr. *Thomas Jolliff.* [*Who appeared.*]

L. C. J. What do you call this Man to?

Mr. *Roſ.* My Lord, this Perſon I call to teſtify with reſpect to my Converſation and Carriage towards His Majeſty and the Government.

L. C. J. What is your Name, Sir?——Mr. *Jolliff.* *Thomas Jolliff.*

Mr. Juſt. *Hol.* Where do you live, Sir?

Mr. *Jolliff.* In *Mary Magdalen*'s Pariſh.

L. C. J. Why not St. *Mary Magdalen*'s?

Mr. *Roſ.* He is my Neighbour, my Lord.

L. C. J. But, I ſuppoſe, he thinks that would have made the Name ſo much the longer; or elſe, he thinks that there is *Popery* in calling it ſo.

Mr. *Jolliff.* No, my Lord, I have called it a Hundred times, and a Hundred times, St. *Mary Magdalen.*

L. C. J. Prithee then do it again, it will never be the worſe for thee, I dare ſay. Well, Mr. *Roſewell*, what do you aſk him?

Mr. *Roſ.* Pray, Sir, will you teſtify what you know of my Converſation towards the Government, and particularly towards His Majeſty?

Mr. *Jolliff.* My Lord, in the time of Indulgence I have heard Mr. *Roſewell* once, or twice, or more; and I heard him pray for the King, and the Peace and Welfare of the Nation, as heartily as ever I heard any Miniſter in *England* in my Life.

Mr. *Roſ.* Pray, Sir, for my Converſation; Did you ever hear any thing of my Diſloyalty or Diſaffection to his Majeſty, or the Government?

Mr. *Jolliff.* No, Sir, I never heard any thing of any Diſloyalty, or any ſuch thing in my Life; but all the Pariſh will give you an Account, that you have behaved yourſelf as an honeſt Man; and I never knew that, either in Word or Deed, you were accuſed of any Diſloyalty. And, my Lord, if you pleaſe to give me my Oath, I will ſwear it; for it is the ſame thing to me to teſtify here in ſuch a Court under an Oath, or without it; for I ought, I know, to teſtify the Truth.

Mr. *Roſ.* My Lord, I am confident that what he ſays he would ſwear; and he is a very honeſt Man.

L. C. J. Well, Mr. *Roſewell*, if you have any more Witneſſes, call them; and make what Remarks upon the Evidence you pleaſe afterwards, for this is not the time for making Remarks.

Mr. *Roſ.* I humbly thank your Lordſhip for your great Favour.

L. C. J. I do not ſpeak it to cramp you in your time; but call your Witneſſes, and then make what Remarks you will: For God forbid we ſhould hinder you from taking your full time; for you ſtand here for your Life.

Mr. *Roſ.* Is Mr. *Winnacott* here? [*He did not appear.*]

Then pray call Captain *Richard Cotton.* [*But he did not appear.*]

Call *Mr. Thomas Fipps.*

[*Then Capt.* Cotton *appear'd.*]

Mr. *Roſ.* This Gentleman, my Lord, hath known me for ſeveral Years. Captain *Cotton*, I pray, Sir, will you ſpeak what you know of my Converſation, and Life, and Loyalty, with reſpect to the King and Government?

Capt. *Cotton.* My Lord, and Gentlemen of the Jury, of late I have not frequented Mr. *Roſewell*'s Company, or his Congregation; but when the Door ſtood open, without oppoſition, I have been there; and have heard him pray for the King and Government ſeveral times; and bleſs God, that we lived under ſo peaceable a Prince, when all our Neighbours were in Blood and War.

Mr. *Roſ.* Pray, Sir, have you ever heard, that either in Word, or Deed, I ſhould ever declare againſt his Majeſty or the Government?

Capt. *Cotton.* No, I never heard any ſuch thing in my Life; but what I heard now upon this Trial up and down the Hall, as I was walking below.

Mr. Juſt. *Withins.* How long ago is it, that you ſpeak of, Mr. *Cotton?*

Capt. *Cotton.* I was abroad moſt of the time at Sea; but this was three, or four, or five Years ago.

Mr. Juſt. *Withins.* What time was that?

Capt. *Cotton.* It was in the time of the Indulgence.

Mr. Juſt. *Withins.* Ay, then, it may be, he could ſpeak kindly enough of the Government.

Mr. *Roſ.* He has known me theſe ten Years. Have you not, Sir?

Capt. *Cotton.* Yes, I believe I have, ever ſince you came thither.

[*Then* Mr. Fipps *came in.*]

Mr. *Roſ.* This Gentleman hath known me ſeveral Years, have you not, Sir?

Mr. *Fipps.* Yes, Sir.

Mr. *Roſ.* Pray, Sir, will you give my Lord and the Court an Account what you know of my Life and Converſation, and of my Loyalty or Diſloyalty to the King or Government?

Mr. *Fipps.* My Lord, I have known this Gentleman divers Years. He lived in *Wiltſhire*, and there he had the Reputation of a very honeſt Man, a good Scholar, and a pious Man. I never heard him preach in my Life, becauſe I never go to Conventicles; but I have been in the Houſe, where I have heard him pray in the Family; and there he prayed very earneſtly for the King and Government, for the Proſperity of it. Since I came to *London* he came to *London* too, and has been here in *London* about ten Years; and has been often in my Company ſince, and in the late Times, *the Bethelitiſh Times*, when every Body did take Liberty to ſay what they would of the King and Government; I have been often in his Company, and heard him ſpeak with a great deal of Reſpect of the King, and of the Government, and thank God for the Liberty he did enjoy, and the Protection he had from the Government; but I never heard him ſpeak an ill Word of the Government in my Life; and I have known him as much (I believe) as any other Man that was not his Hearer; he was always reputed a very ingenious Man; and that is all I can ſay. I never heard or knew any thing of ill of him in my Life.

Mr. *Roſ.* Pray call Mr. *Caleb Veering.* [*Who came in.*]

Sir, you have known me ſeveral Years. Pray be pleaſed to teſtify to my Lord, and the Court, what you have known of my Converſation with reſpect to his Majeſty and the Government.

Mr. *Veering.* My Lord, I have known Mr. *Roſewell* theſe ſeveral Years; and I have been in Company with him upon the Occaſion of receiving Money on Account of Rent for a Friend of mine; and likewiſe have heard him formerly, when he preached publickly; and never heard any thing from him that reflected upon the Government, or ſhewed any Diſreſpect to the King. I have heard him pray often very heartily for the King, and he never meddled with any publick Buſineſs, nor ſpoke of any News while I was concern'd with him.

Mr. *Roſ.* Pray, Sir, did you ever hear of any ill I ſhould ſpeak of my Sovereign?

Mr. *Veering.* I have heard him often pray for the King and Government; and I never heard any Man ſay that he did otherwiſe, or that ever he ſpoke an ill Word concerning any of them.

Mr. *Roſewell.* Call Mr. *John Hitchcock*——[*Who came in.*]

Sir, you are a Gentleman that have known me for ſeveral Years; pray, will you teſtify what you have known concerning me? And if you have heard or known any ill of my Converſation towards the King, pray ſpeak it out, and let me be ſhamed before God, and this great Aſſembly.

Mr. *Hitchcock.* I have known him, my Lord, ſeveral Years, and have heard him formerly, though not of late; and when I heard him, he uſed conſtantly to pray for the King and Government; I never knew him to ſpeak any thing againſt the King and Government in my Life, but always ſpoke very worthily of them.

Mr. Roſ. Have you heard me often pray for the King?

Mr. *Hitchcock* I have ſo, Sir, a great many times.

Mr. *Roſ.* How long is that ago?

Mr. *Hitchcock.* About two or three Years ago, my Lord; and I never knew him to be but a very worthy Gentleman.

Mr. *Roſ.* Pray call Mr. *Michael Hinman*——[*Who came in.*]

My Lord, here is another Gentleman that hath known me ſeveral Years. Pray, Sir, will you ſpeak what you know of my Converſation, with reſpect to His Majeſty and the Government?

Mr. *Hinman.* My Lord, I have known him many Years, and been in his Company ſeveral times, and never heard him ſpeak any thing of ill relating to the King or Government.

Mr. *Roſ.* Pray, Sir, have you not been (upon ſome Occaſions) preſent where I have prayed?

Mr. *Hinman.* Yes, Sir, I have heard you pray; and I have heard you pray for the King very heartily.

Mr. *Roſ.* Have you heard of any Evil I ſhould either ſay, or do? Or any thing by Word or Deed againſt the King or Government?

Mr. *Hinman.* No, never in all my Life, one way or other.

Mr. *Roſ.* Pray call Mr. *Nicholas Wanley.* [*Who came in.*]

Sir, you have known me for theſe many Years; pray will you be pleaſed to ſpeak the Truth of what you know of my Converſation, with reſpect to the King and Government.

Mr. *Wanley.* My Lord, I have known the Priſoner at the Bar ſeveral Years; I have been frequently in his Company; and never heard him ſpeak an ill Word againſt the King or Government in my Life; but have often heard him wiſh that the King might live, and have a long and proſperous Reign: I never heard him ſay one ill Word of the Government in my Life; but always, when he ſpoke of it, it was with all the reſpect that any Perſon could do.

Mr. *Roſ.* Did you ever hear from any other Perſon, directly or indirectly, that I have ſpoken reflectively upon His Majeſty?

Mr. *Wanley.* Never in my Life, my Lord.

Mr. *Roſ.* One way or other?

Mr. *Wanley.* No, not any way at all.

Mr. *Roſ.* Pray, call Mr. *John Strong*——[*Who appeared.*]

Sir, you are a Gentleman that have known me many Years too, ten or twelve Years, I believe.------Mr. *Strong.* Yes, Sir.

Mr. *Roſ.* Pray, will you tell my Lord, and the Jury, what you know of me with reſpect to my Behaviour in Word or Deed, in reference to his Majeſty, or the Government?

Mr. *Strong.* Sir, I have heard you teach *ſeveral* times formerly; I was not at this time indeed (for which you now ſtand accuſed) at that Place: But I never heard you ſpeak a Word againſt his Majeſty, or the Government; but you always prayed very earneſtly for his Majeſty.

Mr. *Roſ.* Did you ever hear that I ſhould ſay any thing ill of the King or Government?---- Mr. *Strong.* No, never.

Mr. *Roſ.* Call *Mr. John Cutloe*-----[*Who appeared.*]

Sir, You have known me too very many Years: What do you know, pray, concerning my Behaviour towards his Majeſty and the Government?

Mr. *Cutloe.* My Lord, I never knew him ſpeak one Word diſreſpectfully of the Government, or the King, in my Life; tho' I have known him ſome Years.

Mr. *Roſ.* Did you ever hear from any Body elſe, that I did ſpeak ill of the King or Government, directly or indirectly?

Mr. *Cutloe.* No, never a Word, I aſſure you, Sir.

Mr. *Roſ.* Have you been where you have heard me pray for his Majeſty?

Mr. *Cutloe.* Yes, Sir; I remember at *Briſtol* once occaſionally I heard you in the time of Liberty; otherwiſe I cannot ſay I have heard you. But I never heard any thing againſt the Government; but you always behaved yourſelf Loyally and Peaceably that I know of.

Mr. *Roſ.* Call Mr. *Charles Melſum*----[*Who appeared.*]

My Lord, I call this Gentleman, who will acquaint you that he lived with me many Years in an honourable Family, a Perſon of Quality of this Nation, one of the *Hungerfords*, where, my Lord, I was Tutor to Sir *Edward*'s Son for near Seven Years; a Gentleman well known for his great Loyalty to the King and Government: So that if I had been ſuch an Enemy to the King, or ſo diſaffected as theſe People would make me to be, ſure he would never have entertained me. Pray, Mr. *Melſum*, will you pleaſe to acquaint my Lord, and the Jury, how many Years I was in that Family?

Mr. *Melſum.* Seven Years; and I was above Fourteen myſelf.

Mr. *Roſ.* Pray, what do you know of my Carriage in that honourable Family, with reſpect to the King and Government?

Mr. *Melſum.* As far as I know for my Life, I will declare. I do not remember he did trouble himſelf, or meddle or make with any Man's Buſineſs but his own. He was a Man that kept much to his Study: And when he came up to Prayer, he prayed heartily for the King; and had the good Word of all his Neighbours thereabout.

Mr. *Roſ.* Have you often heard me pray for the King?

Mr. *Melſum.* I have heard him a Hundred times pray for the King; I never miſt Prayers when I was at Home; and it was his conſtant Practice.

L. C. J. Did he pray in the Family then?

Mr. *Melſum.* Yes, he did.

L. C. J. Did he uſe to go to Church?

Mr. *Melſum.* Yes, he went to Church, to the beginning of the Prayers; he did frequently attend Divine Service.

L. C. J. Did he receive the Sacrament in all that time?

Mr. *Melſum.* Yes, I believe he did; I cannot ſay it directly.

Mr. *Roſ.* I was a conſtant Attender upon the Publick Miniſtry. It is now above a Dozen Years ago; it was in the Year 1664, my Lord, and ſo downward. Sir, You know I was a conſtant Attendant upon the Miniſtry of the Church, and the Worſhip of God there.

L. C. J. Did you ever hear him make uſe of the *Common-Prayer* himſelf in the Family?

Mr. *Melſum.* I cannot ſay he did.

L. C. J. Well; have you any more Witneſſes, Sir?

Mr. *Roſ.* Yes, my Lord. Pray call Mr. *Robert Medham.*

[*Who appeared.*]

Here is another Gentleman, my Lord, that lived in that Family. Pray, Mr. *Medham*, how long did you live in that honourable Family?

Mr. *Medham.* About four Years.

Mr. *Roſ.* Was that in the Time that I was there?

Mr. *Medham.* Yes, it was.

Mr. *Roſ.* Pray then, Sir, will you declare what you know of my Converſation in that Family with reſpect to the Publick?

Mr. *Medham.* My Lord, it is a great while ago; but at that time Mr. *Roſewell* did always keep to the Pariſh-Church. He was Chaplain to my Lady *Hungerford*; and always pray'd for the King at every time of Prayer.

Mr. *Roſ.* Did you ever hear that I ſhould ſpeak or declare any thing againſt the King or Government, in all my Life, all my time, or your time that I was there?

Mr. *Medham.* I muſt needs ſay, I never did hear any ſuch thing in my Life.

Mr. Juſt. *Hol.* But it was not the Prayers of the Church that he uſed?

Mr. *Medham.* I cannot ſay that.

L. C. J. Did you ever hear him uſe the Prayers of the Church?

Mr. *Medham.* The Prayer that I heard, was that which was uſually made in the Family.

L. C. J. But pray, ſpeak plain; Did he uſe the *Common-Prayer?*

Mr. *Medham.* No, my Lord; I cannot ſay he uſed the Common-Prayer.

L. C. J. I tell you what I mean; Did he pray out of the Book of the Common-Prayer.

Mr. *Medham.* No, my Lord, I cannot ſay that.

L. C. J. Doſt thou take his *EXTEMPORE* Prayer to be the Prayers of the Church?

Mr. Juſt. *Withins.* My Lord, he does not know the Difference, I believe; I believe he does not go to Church.

Mr. *Medham.* Yes, I uſed to attend upon the Public; and ſo did Mr. *Roſewell.*

Mr. Juſt. *Withins.* Well, Sir, have you any more Witneſſes?

Mr. *Roſ.* Yes, my Lord: Pray call Mrs. *Anne Broadhurſt.*

[*Then Mr.* Winnacott *appeared and offered himſelf.*]

Mr. *Winnacott.* My Lord, I heard I was call'd; and am come as ſoon as I could get in.

Mr. *Roſ.* Ay, Mr. *Winnacott*, you have known me many Years; I deſire you would teſtify what you know concerning my Converſation and Behaviour.

Mr. *Winnacott.* Formerly, when I heard him, I never heard him ſpeak a Word againſt the King or Government; and it is ſome three Years ago ſince I heard him.

Mr. *Roſ.* Have you heard of any Evil that I have ſaid or done againſt the King or the Government?

Mr. *Winnacott.* No; but I have heard him often pray for his Majeſty.

Mr. Juſt. *Withins.* Well, there is your other Witneſs *Anne Broadhurſt*; what aſk you her?

Mr. *Roſ.* My Lord, this was a Servant that lived ſeveral Years in my Family. Pray, *Nan*, how many Years did you live there?

Anne Broadhurſt. Four Years, my Lord.

Mr. *Roſ.* Pray declare what you know of me in my Family, with reſpect to the King and Government.

Anne Broadhurſt. I have generally heard you twice a-day pray in your Family; and I never heard you pray in my Life, but I heard you pray as earneſtly for the King as you did for your own Soul. This I can declare during the time that I lived there.

Mr. *Roſ.* Did you ever hear me ſpeak Evil of the King in my Family; or reflectively on the Government?

Anne Broadhurſt. No: You always pray'd for the King (as I ſay) as earneſtly as for your Self or your Family.

Mr. *Roſ.* If you know any ill Carriage in Word or Deed towards my Sovereign, I deſire you to ſpeak it out, without favour or affection, or any reſpect to me in the World.

Anne Broadhurſt. No, I never did; but have often heard you heartily pray for him.

Mr. Juſt. *Withins.* Pray, how long ago is this?

Anne Broadhurſt. Two Years ago I lived with him.

Mr. *Roſ.* Pray, tell my Lord again, how long it was, and when that you lived there.

Anne Broadhurſt. I lived there four Years; and it is two Years ago ſince.

Mr. Juſt. *Withins.* Pray, how often were you at Church in that time?

Anne Broadhurſt. When I had occaſion to go, I did go; but I did uſually hear my Maſter, when I dwelt with him.

Mr. Juſt. *Withins.* Well, who is your next Witneſs?

Mr. *Roſ.* Call *Anne Manning.* [*Who came in.*] You lived with me in my Family ſeveral Years?

Anne Manning. Three Years, Sir.

Mr. *Roſ.* Pray, will you declare what you know of my Carriage and Behaviour towards the King and Government, in my Family, while you were there?

Anne Manning. My Lord, he prayed for the King, for his long Life, in his Family Duties, Morning and Evening; and in private, when Nobody heard him but myſelf.

L. C. J. What! you and he were at Exerciſe together?

Anne Manning. My Lord, I have gone by his Study-door, and have heard him pray for the King's long Life, when he knew not that any Body heard him.

Mr. *Roſ.* This, my Lord, is more than I expected; for I little thought that any Body could give a Teſtimony of my private Devotion; tho' I never then omitted to pray for the King, and never ſhall as long as I live.

Anne Manning. My Lord, he pray'd as heartily for the King's Life as for his own Soul; and I have heard him often praying, and deſiring God to preſerve him in his Kingdom, and give him long Life; and have heard him inſiſt upon that Scripture, *Speak not Evil of the King, no, not in thy Bed-Chamber; for the Birds of the Air ſhall declare it.*

Mr. Roſ. Pray ſpeak the Truth. Did you ever hear me utter an ill Word or Reflection upon his Majeſty or the Government?

Anne Manning. No, my Lord, he was always mightily for the King.

Mr. *Roſ.* Speak the Truth of what you know; I hope you would ſpeak the Truth, and nothing more than the Truth, as if you were upon your Oath.

Anne Manning. I do ſpeak the Truth, and it is what I can declare, and would, if I were to die the next Moment; and I can ſafely ſwear it.

Mr. *Roſ.* Then, pray, call *Iſabella Dickeſon*—— [*Who appeared.*]

My Lord, ſurely I would not ſpeak Evil of his Majeſty, or the Government, in publick in the Congregation, when I prayed for him in my Family and my Cloſet. But here is another Servant that liv'd in my Family: Pray will you ſpeak what you know concerning my Behaviour in my Family, with reſpect to the King and Government?

Iſabella Dickeſon. He uſed to pray twice a-day in his Family, Morning and Evening, and he always pray'd earneſtly for the King, for his good Health, long Life, and Proſperity.

Mr. *Roſ.* Did you ever hear me ſpeak any Evil of the King or Government in any Reſpect?

Iſabella Dickeſon. No, never, Sir, in my Life; nor do I believe you ever had an evil thought of the King.

Mr. *Roſ.* Pray then will you call Mr. *James Atkinſon?*

Mr. Juſt. *Withins.* We have had him already, and I ſuppoſe he is gone; he is not here.

Mr. *Roſ.* I call him now to teſtify another Thing, if your Lordſhip pleaſes; and he is at hand, my Lord, I ſuppoſe.

L. C. J. You ſhould examine your Witneſſes together, but we will not ſurprize you; we will ſtay.

Mr. Juſt. *Hol.* Pray call any Body elſe, in the mean time, if you have any other.

L. C. J. Nay, Brother, it may be he hath obſerved a Method to himſelf; he is for his Life; let him take it.

[*Then Mr.* Atkinſon *came in.*]

Mr. *Roſ.* That which I call you now for, Sir, is to teſtify what you heard upon the 30th of *January* from me, about praying for the King, and all that are in Authority.

Mr. *Atkinſon.* My Lord, he kept that Day, the 30th of *January*, as a Day of Faſting and Prayer; and he preached from that Text on the 1 *Tim.* ii. 1. *Pray for Kings, and all in Authority:* And then he did aſſert that Kingly Government was moſt agreeable to the Word of God, and the Conſtitution of the Government of *England*, which was the beſt in the whole World; and had been ſo approved by Writers, both Foreign and of our own Country: And he did urge it as a Duty incumbent upon all People to pray for the King and Magiſtrates, that they might *live a peaceable and quiet life under them in all Godlineſs and Honeſty.*

[*Then he ſeem'd a little faint and ſtopp'd.*]

Mr. *Roſ.* Pray, Sir, will you recollect yourſelf? My Lord will indulge you a little.

Mr. *Atkinſon.* I have been acquainted with Mr. *Roſewell* theſe ten Years.

Mr. *Roſ.* But pray, Sir, what do you remember of the Application of that Sermon upon the Text, about praying for Kings and all in Authority?

Mr. *Atkinſon.* That Perſons were to pray for them, and to obey them, and that it was their Duty. This is all that I can remember.

Mr. *Roſ.* What do you remember of my Invectives againſt thoſe that practiſed the contrary?

Mr. *Atkinſon.* Why, truly, as to thoſe Things, he did highly condemn thoſe Perſons that had any way acted againſt it. And I have heard him, both in publick and private, inveigh againſt thoſe that had any hand in the Murder of the late King, and condemned the Fact as a diabolical Deſign.

Mr. *Roſ.* Is Mr. *Smith* there?

Mr. *Atkinſon.* I was very ill on Sabbath-day laſt, and I thought I ſhould not have come out now; and I would not, to the beſt of my remembrance, ſpeak a Lye, as I am in the preſence of this honourable Court, and in the preſence of God, to whom I muſt give an Account another Day.

Mr. *Roſ.* God will reward you for what you come to do for an innocent Perſon this Day.

Mr. *Atkinſon.* I never heard an ill Word aginſt the King or Government drop from Mr. *Roſewell* in my Life. I am not upon my Oath, but know myſelf to be bound to declare and tell the Truth, and nothing but the Truth.

Mr. *Roſ.* I am confident, my Lord, he would not ſpeak what he would not ſwear.

L. C. J. The Jury are Judges of that, Mr. *Roſewell*, I muſt leave it to them.

Mr. *Roſ.* Pray, Mr. *Atkinſon*, was Mr. *Smith* with you?

Mr. *Atkinſon.* Yes, and I have ſent one to call him.

Mr. *Roſ.* Pray, Sir, let me aſk you as to what Miſtreſs *Smith* ſays, that I ſhould ſay of the Recorder being made a Judge?

Mr. *Atkinſon.* I never heard you ſpeak any ſuch Words in my Life.

Mr. *Roſ.* Upon the laſt Day of *Auguſt* laſt, at Mr. *Shed*'s Houſe, ſhe ſays, that I did uſe that Expreſſion.

Mr. *Atkinſon.* As to *Shed*'s Houſe, I was then ſick, and was not there. If my Lord will give me leave to look upon my Note-book, I can tell what Day I was there.

Smith. It was at one *Daniel Weldy*'s Houſe, as I think, that you ſpoke about the Mayors and the Sheriffs; but what you ſaid about Fools in Scarlet Gowns was at *Shed*'s Houſe.

Mr. *Roſ.* Was there any Meeting at the Meeting-Houſe, ſince *July* laſt, upon the Sabbath Day?

Mr. *Atkinſon.* Truly, I be not able to remember; but if my Lord pleaſe to give me leave to look upon my Note-Book, I can give an account; for I writ down every Day the Place where we met.

L. C. J. Prithee, look upon thy Note-Book; for I have a mind to know ſomething out of that Note-Book. Prithee tell me what was inſiſted upon the 14th of *September?*

Mr. *Atkinſon.* My Lord, I only have a Note of the Day, of the Place, and of the Text.

Mr. *Roſ.* Pray, Sir, did you hear me ſpeak of a Great Man in *Gracechurch-ſtreet* at the upper end; and that if it had not been for him, the Fire had been quenched?

Mr. *Atkinſon.* I never heard that Expreſſion from you in all my life.

[*Then Mr.* Smith *came in.*]

Mr. *Roſ.* Pray, did you hear any ſuch thing, Mr. *Smith?*

Mr. *Smith.* No, my Lord.

Mr. *Roſ.* My Lord, I can bring all the reſt to teſtify the ſame thing, if your Lordſhip will let me call them over again.

L. C. J. Do as you will, I would not reſtrain you from any thing of a legal Indulgence, that is fit to give to any Man in your Condition.

Mr. *Atkinſon.* What Day of the Month do you ſay it was, Sir, that you ſpake of the Recorder?

Mr. *Roſ.* The 31ſt of *Auguſt*, I think.

Mr. *Atkinſon.* At that time I was ſick, and was not there.

Mr. *Roſ.* Pray, Mr. *Smith*, have you ever heard me preach upon the 30th of *January?*

Mr. *Smith.* Yes, Sir; I have heard you upon that Day, and upon that Text, that we ſhould *pray for Kings and all in Authority.* You kept it as a Day of Humiliation, and you abhorr'd the Action of that Day. It was kept very ſolemnly, for the bewailing the horrid Murder of our late King. And you were ſo far from giving any Countenance to the Action of that Day, that you deteſted it, and preached very much againſt it, and you have always preached up kingly Government.

Mr. *Atkinſon.* Sir, you were aſking me, if there were a Meeting ſince *July*, in the Meeting-houſe?

Mr. *Roſ.* Yes, becauſe ſhe ſays there was one upon the 10th of *September.*

L. C. J. If you look upon your Notes again, Mr. *Roſewell*, you'll find it was the 10th of *Auguſt.*

Mr. *Roſewell.* Where were you upon the 10th of *Auguſt?*

Mr. *Atkinſon.* I was at home ſick then; it is written down, your Lordſhip may ſee it.

L. C. J. Do you take notice where you heard the Meeting was, when you were ſick?

Mr. *Atkinſon.* Yes, my Lord, I have a ſhort Note of it.

L. C. J. Where was the Meeting then?

Mr. *Atkinſon.* In the Meeting-houſe, as I heard.

L. C. J. Pray, recollect yourſelf, and look upon your Book, how is it enter'd there?

Mr. *Atkinſon.* Myſelf at home the 10th of *Auguſt.*

L. C. J. When didſt thou take that Note, upon your Word, now?

Mr. *Atkinſon.* When my Family came home, ſome body did tell me that day, or the next day.

L. C. J. Well, where was it the time before?

Mr. *Atkinſon.* The 3d of *Auguſt*, at Mr. *Crookſhank*'s; the Text was the *Heb.* xi. 7. The 10th at the Meeting-houſe, myſelf at home; and *Canticles* the viiith and 13th.

Mr. *Roſ.* My Lord, theſe Gentlewomen ſay, they were at ſeveral Meetings. I deſire, my Lord, that theſe Witneſſes may be called.

L. C. J. Call whom you will. Who do you call firſt?

Mr. *Roſ.* *Thomas How.* My Lord, I could bring Hundreds of Witneſſes as to this Point.

L. C. J. Well, there is *Thomas How*; to what purpoſe do you call him?

Mr. *Roſ.* My Lord, to teſtify that ſhe ſhould ſwear before Sir *George Treby*, that Mr. *How* was at a Conventicle ſuch a time, when he was not. And therefore I deſire him, that he would pleaſe to teſtify the Truth of that matter.

Mr. *How.* My Lord, I will teſtify the Truth as far as I know it; ſhe ſent three Ten—

L. C. J. How do you know that?

Mr. *How.* So they ſaid.

L. C. J. That is no Evidence; and I care not what they ſaid: If you know any thing yourſelf of your own Knowledge, ſpeak it.

Mr. *How.* They offered-----

L. C. J. I tell you their offering ſignifies nothing.

Mr. *How.* My Lord, it is an Year and an half ago.

L. C. J. Let it be never ſo long ago, if it be only what they ſaid, it ſignifies nothing, it is no ſort of Evidence; but if you can ſay any thing of your own Knowledge, you ſay well; in God's Name we will hear it.

Mr. *Roſ.* Then my Lord, ſome Queſtions I deſire I may have leave to put to Mr. Recorder.

L. C. J. If Mr. Recorder be ready to anſwer your Queſtions, with all my heart.

Mr. *Roſ.* Mr. Recorder, I deſire you would pleaſe to do me the Juſtice to teſtify, whether you know any thing concerning Miſtreſs *Bathoe?*

L. C. J. Who is ſhe?

Mr. *Roſ.* My Lord, it is whether there was not a Conventicle ſworn before Mr. Recorder againſt one Miſtreſs *Bathoe?*

Mr. Recorder. I can't well tell, Mr. *Roſewell.* There was a Conviction before me (as I remember) of one Mrs. *Bathoe* for a Conventicle; and, as I take it (as the Witneſs told you juſt now) ſhe had it from her own Confeſſion.

Mr. *Roſ.* Do you know any thing, pray, Sir, of a Compoſition that was made upon that Conviction?

Mr. Recorder. No, Sir; you don't think, ſure, that I make Compoſitions, or know any thing of them.

Mr. *Roſ.* Was not the Money, Sir, paid back again?

Mr. Recorder. Not a Penny that I know of, or any Agreement for it.

Mr. *Roſ.* Pray, Sir, will you acquaint the Court, how that Matter was really?

Mr. Recorder. Miſtreſs *Bathoe* came to me, and ſaid, ſhe was miſtaken if any ſuch Words did paſs from her; for indeed there was never any ſuch Conventicle as Miſtreſs *Smith* ſwore ſhe had confeſs'd. Upon that I ſent for Miſtreſs *Smith*, and bid her conſider of it, whether there was really any ſuch Conventicle; and Miſtreſs *Bathoe* had brought her Appeal, and it is depending now, and will be heard the next Quarter-Seſſions.

Mr. *Roſ.* Pray, Sir, did you tell her, that ſhe might have her Money again?

Mr. Recorder. I did tell her, Miſtreſs *Smith* was miſtaken, and did not inſiſt upon it, and ſhe would have her Money return'd again.

Mr. *Roſ.* Pray, Sir, did you ſend your Warrant for one *Cartwright* under your hand?

Mr. Recorder. You aſk me a hard Queſtion; I might ſend a Summons for ſeveral Perſons, I cannot remember all their Names.

Mr. *Roſ.* By whom, I pray, Sir?

Mr. Recorder. I can't tell who I ſend all my Summons by.

Mr. *Roſ.* Was it not by theſe two Women, Miſtreſs *Smith* and Miſtreſs *Hilton?*

Mr. Recorder. I can't tell; it may be it might be ſo.

Mr. *Roſ.* Pray, Sir, what did you ſay to Mr. *Cartwright* when he came thither?

Mr. Recorder. I can't remember particularly.

Mr. *Roſ.* Sir, did you not aſk him what he had to ſay againſt theſe Witneſſes that are produc'd againſt me?

Mr. Recorder. My Lord, I remember, when Mr. *Cartwright* came to me, I did aſk him ſome ſuch Queſtion; for they had told me that he had, by a Perſon, been tampering with them, to take them off from proſecuting a great many Perſons.

Mr. *Roſ.* By whom were you told ſo, Sir?

Mr. Recorder. By themſelves. I know nothing of it: But I tell you the reaſon why I ſent for him; becauſe they told me, they went in Danger of their Lives; that they could not walk the Streets in Safety, but they had Stones thrown at them; and they were reproach'd as common Informers, and were beſet hard with Applications of Money, to take them off from proſecuting. And, among the reſt, they complain'd of one *Cartwright*, that he had been dealing with them; and it was upon that account that I ſent for him, to know what he had to ſay againſt them; and he ſatisfied me, that he had nought to ſay againſt them.

L. C. J. Theſe Queſtions, Mr. *Roſewell*, perhaps, may be better let alone.

Mr. Recorder. I have ſeen a Letter that does threaten them very much; but I cannot ſay whence it comes.

Mr. *Roſ.* My Lord, I deſire to aſk Mr. Recorder, whether or no he did not ſend for ſome of my Witneſſes?

Mr. Recorder. I don't know your Witneſſes, Sir.

Mr. *Roſ.* Did you ſend for one *Richard Gibbs* of *Rotherhith?*

Mr. Recorder. Yes, he was Conſtable at *Rotherhith.*

Mr. *Roſ.* Pray, Sir, upon what account did you ſend for him?

Mr. Recorder. I did it, becauſe I heard the Conſtables of your Side durſt not execute their Warrants, for fear of the Rout of the People.

L. C. J. I tell you, theſe Queſtions were better let alone.

Mr. *Roſ.* Mr. *How*, that which I call you for, is, whether Mrs. *Smith* has not offered to ſwear before a Juſtice, that you were at a Conventicle when you were not?

L. C. J. She ſays ſhe does not know any thing of her own Knowledge.

Mr. *Roſ.* She offered it a Year and a Quarter ago, before Sir *George Treby.*

L. C. J. Were you by when ſhe offered any ſuch thing?

Mr. *How.* I was by, when ſhe was before Sir *George Treby*; and ſhe went into a Yard, and offered to inform againſt one Mr. *How* for being at ſuch a Conventicle; but I was not the Man, ſhe ſaid.

Mr. *Roſ.* My Lord, ſhe had ſworn it.

L. C. J. No, no, ſhe had not ſworn it, ſhe only offered it, and for aught I perceive, ſhe is a very careful Witneſs, to ſee that ſhe does not fix upon the wrong Perſon.

Mr. *Roſ.* Then, if it pleaſe your Lordſhip, I deſire *John Townſend* may be called.

[*Who came in.*]

Pray, will you teſtify what you know concerning Mrs. *Smith*'s ſwearing that Mr. *How* was at a Conventicle?

Mr. *Townſend.* Sir, I will tell the Truth as near as I can; I cannot tell the Day, it was about a Year and an half ſince, that he was out of Town of the Lord's Day, and that Day was remarkable; for I met him coming to Town, and it was about Evening, about five of the Clock, and that Day they had brought him ſome notice of a Warrant for the ſeizing of his Goods, for that he had been at a Meeting: Now he, underſtanding when they were to make Affidavit of it before Sir *George Treby*, he deſired me to go with him thither, and I went with him, and he aſked her if ſhe knew the Man. There he was, and I was, and one more, and there came one Stranger: And we went out to the Light, and ſhe look'd upon all of us, and knew never an one of us.

L. C. J. You uſe to go to Conventicles, all of you, I warrant you?

Mr. Juſt. *Withins.* She was not much out in her Conjecture, I dare ſay.

L. C. J. But ſhe ſeems to be very careful, that ſhe did not ſwear againſt the wrong Perſon. And (*ſpeaking to Mr.* Townſend), If ſhe had ſworn that thou hadſt been there that Day, I warrant you ſhe had ſworn true.

Mr. *Roſ.* Is Sir *George Treby* here?

[*He did not appear.*]

Then I deſire Mr *Thomas Harvey* may be call'd.

L. C. J. There he is; what do you aſk him?

Mr. *Roſ.* My Lord, to prove that this *Elizabeth Smith* ſwore that ſeveral Perſons were at ſeveral Conventicles, which ſhe afterwards confeſs'd in truth they were not; and made Applications to compound for the Forfeitures, and they ſhould have their Money again.

L. C. J. Prithee, aſk him in general, what does he know of her?

Mr. *Harvey.* *Elizabeth Smith* came to a Friend of mine in *April*, or *May* laſt——

Mr. Att. Gen. Were you by?

Mr. *Harvey.* Yes, I was by. She came to a Friend of mine, I ſay, and ſhe told him, that ſhe could ſwear againſt him, and ſome others, for a conſiderable Value of Forfeitures upon Conventicles—

L. C. J. What Friend of thine was this?

Mr. Att. Gen. Where does that Friend live?

Mr. *Harvey.* In *Southwark.*

L. C. J. What's his Name?-----Mr. *Harvey.* One *Games.*

L. C. J. What Trade is he?-----Mr. *Harvey.* A Sail-maker.

L. C. J. Whereabouts does he live in *Southwark?*

Mr. *Harvey*. By St. *Mary Overy*'s Dock. And he came to me, and deſired me, that I would meet and ſpeak with her; I met her, I think it was about the Exchange, at the *Roe-buck*; there was ſhe, and another fellow with her. She told me ſhe could ſwear againſt ſuch and ſuch; and deſired me to give her a Cup of Drink, which I did; and then ſhe told me her Story, and demanded either 10 or 20 Pounds; and that that ſhould take her off from ſwearing againſt them. I told her, I could ſay nothing to it; but I would acquaint them, which I did, particularly Mr. *Games*. They thought not fit to give her any thing; which Anſwer I returned to her. She told me ſhe was very Poor, and if ſhe could have but ſomething, ſhe would declare who it was that would ſwear; but upon reaſonable Compoſition (though ſhe had offer'd to ſwear) ſhe would not. But ſhe had taken the Copy from a Siſter of her's; and, I think, ſhe ſaid her Siſter's Name was *Mary Farrar*, as I remember.

L. C. J. Did ſhe offer to ſwear any thing againſt you?

Mr. *Harvey*. No, my Lord.

L. C. J. You know that *Games* very well, don't you?

Mr. *Harvey*. Yes, my Lord.

L. C. J. Does he uſe to frequent the Church conſtantly?

Mr. *Harvey*. I don't know that, my Lord; I have known him many Years.

L. C. J. Do you live near him?—Mr. *Harvey*. No, I do not.

Mr. *Roſ.* Pray call Mr. *John Cartwright*, and Mr. *George Norton*.

[*Mr.* Cartwright *appeared.*]

Mr. *Cart.* I deſire you would pleaſe to teſtify what you know here concerning Mrs. *Smith*, who hath teſtified againſt me.

Mr. *Cart.* My Lord, may it pleaſe your Honour; the 22d of *July* laſt, Mrs. *Smith* and I were together from Seven o'Clock in the Morning till half an Hour after Eleven; and that Morning we went to a Conſtable, one *Alexander Venner* in *Alderſgate-ſtreet*; and from thence we went to *Moorfields* to look for a Meeting in *Petty-France*; but there was none: And from that place we went into *Moorfields* again, and followed an ancient Man, whom we ſuppoſed was going to a Meeting; and this Man we followed the ſpace of almoſt an Hour's time, that it was almoſt this time of Day that it now is that I am ſpeaking. That Day ſhe convicted Mrs. *Bathoe* for having a Meeting in her Houſe; when ſhe owned to me, and another Man, that ſhe never was in the Houſe of Mrs. *Bathoe*; and then for the ſame Morning there was one *Rice Bowing*, that was convicted of a Conventicle at *Bermondſey*, upon her Oath.

L. C. J. How do you know that?

Mr. *Cart.* As I was told.

L. C. J. But it may be you were told a Lye; you muſt only ſpeak what you know yourſelf.

Mr. *Cart.* Then, my Lord, ſeveral times ſhe has aſked me to convict with her, when I never had been at a Meeting; and alſo, ſhe has offered to convict with me, when I have been there, and ſhe hath not been there; and ſhe alſo aſked my Wife to convict one *Dod*'s Meeting at *Shoreditch*, and my Wife refuſed it, becauſe ſhe was not there.

L. C. J. Were you by when ſhe aſked your Wife to do it?

Mr. *Cart.* Yes, and pleaſe your Honour.

L. C. J. Who did you tell this firſt to? Becauſe I ſee you hunted along with her, why did not you go and complain, when ſhe had ſeveral times propoſed ſuch a thing to you?

Mr. *Cart.* My Lord, I did not ſo well underſtand it at that time.

L. C. J. Who did you firſt of all tell it to, I aſk you?

Mr. *Cart.* I firſt of all told it to one *Smith*.

L. C. J. Was this before Mr. *Roſewell* was taken, or after?

Mr. *Cart.* It was afterwards.

L. C. J. Did you go to *Smith*, or did he come to you?

Mr. *Cart.* It was through another's means that I came to ſpeak with Mr. *Smith*.

L. C. J. Who was that?

Mr. *Cart.* It was through a Goldſmith's means.

L. C. J. What is his Name?

Mr. *Cart.* His Name is *Ferne*; he lives in *Newgate-ſtreet*.

L. C. J. How came he to underſtand it, to bring you together?

Mr. *Cart.* Becauſe he underſtood that I was with Mrs. *Smith* that time that ſhe convicted Mrs. *Bathoe*, and was concerned with her. I did not know any thing of Mr. *Roſewell* at that time at all.

Mr. *Roſ.* Did ſhe not tell you, ſhe would do as much for me?

Mr. *Cart.* She did offer me this; that if I would go and diſcover any Meeting, ſhe would convict them, though ſhe was not there.

L. C. J. Who didſt thou tell a thing of this Nature to; only to Mr. *Smith*, and that Goldſmith?

Mr. *Cart.* I told it firſt to that Mr. *Smith*.

L. C. J. When theſe Witneſſes and things drop out of the Clouds, I never put any great Value upon them. Theſe come to ſerve a Turn, and never make any Diſcovery till you are taken.

Mr. *Roſ.* My Lord, you may obſerve it was her common Practice to convict upon a Report, not having any Eye or Ear Witneſs.—

L. C. J. Well, I will obſerve what he has ſaid; but I tell you what I think of it.

Mr. *Cart.* She has aſked me to do it ſeveral times.

L. C J. All that I can ſay to it, is, it ſeems ſhe looked upon thee as ſo very a Knave, as that thou wouldſt have done ſuch a thing; and, it may be, ſhe was not miſtaken.

Mr. *Roſ.* Then call Mr. *George Norton*. [*Who appeared.*]

I call you as a Witneſs, to declare what you know of Mrs. *Smith*'s importuning you or any one to ſwear againſt Meetings.

Mr. *Norton*. Yes, ſhe has offered to ſwear, but I cannot ſay with him; for I was not preſent all the time. All that I can ſay, is, that ſhe owned ſhe was never at Mrs. *Bathoe*'s Houſe.

L. C. J. So ſhe ſays ſtill; and it agrees with all the reſt of the Evidence: It was only Hear-ſay.

Mr. *Roſ.* Then pray, will you pleaſe to call *John Hobſon*?

L. C. J. There he is: What ſay you to him?

Mr. *Roſ.* My Lord, I bring this Witneſs to teſtify, that Mrs. *Smith* ſwore there was a Conventicle at ſuch a Place, when there was none.

Mr. *Hobſon*. Sir, there was none ſince I came into the Houſe, to my Knowledge.

L. C. J. What Houſe?

Mr. *Roſ.* At Mr. *Hales*'s; ſhe ſwore there was a Meeting upon the 13th of *July*.

Mr. *Hobſon*. There was none, to the beſt of my Knowledge.

Mr. Juſt. *Withins*. We muſt not convict People of Perjury upon ſuch Evidence. Indict her of Perjury, if you have a mind to it.

L. C. J. Where is the Inſtrument-Maker, *Atkinſon*? Bid him ſend me his Book. [*Which was done.*]

L. C. J. Were you at every Meeting always that he preached at?

Mr. *Hobſon*. No, my Lord.

L. C. J. Then there might be many Meetings that you do not know of?

Mr. *Hobſon*. I live next Door to this Mr. *Hales*.

L. C. J. You uſed to go frequently to hear Mr. *Roſewell*, did not you?

Mr. *Hobſon*. No, Sir.

L. C. J. [*Having looked upon the Book.*]

Was there any Meeting that you know of, the 13th of *July*?

Mr. *Hobſon*. None there: He lives the next Door to me.

L. C. J. Was there no Meeting no where there-away?

Mr. *Hobſon*. Not that I know of.

L. C. J. She ſwears to that Day, at Mr. *Hales*'s.

Mr. *Roſ.* Ay, and to the very Place.

L. C. J. Do you know one *Hodgeſon*?

Mr. *Atkinſon*. It is *Hudſon*, my Lord.

Mr. *Hobſon*. No, my Lord; I do not know him.

L. C. J. Were you ever at his Houſe at any Meeting?

Mr. *Hobſon*. No, my Lord; I never was at any Meeting theſe two Years.

Mr. *Roſ.* He lives next Door to the Houſe.

L. C. J. There may be a Meeting next Door to my Houſe twenty times over, and I not know it.

Mr. *Roſ.* Then, pray, call *John Crook*. [*Who came in.*]

Pray, Sir, do you know whether there was any Meeting at Mr. *Hales*'s the 13th of *July*?

Mr. *Crook*. No; I never heard of any ſuch thing, but what was according to his own uſe amongſt his Family. I live under his Roof, and never yet did know that there was a Meeting there.

Mr. *Roſ.* Pray, call *Sarah Whibby*. [*Who came in.*]

I deſire ſhe may be aſked, whether Mrs. *Smith* did not ſwear there was a Conventicle at Mr. *Hales*'s the 13th of *July*; and whether there was any ſuch thing?

Mrs. *Whibby*. There was none.

L. C. J. That you know of, you mean.

Mrs. *Whibby*. I am certain of it.

L. C. J. How came you to remember the Day particularly?

Mrs. *Whibby*. I can tell you by a very good Token; becauſe the Chimney of my Houſe was on Fire that Day.

L. C. J. How do you recollect it was the 13th of *July*?

Mrs. *Whibby*. Becauſe there was a Neighbour of our's, that is a Waterman, that was ſent for to wait upon His Majeſty; and I went that Day to call him to quench the Fire; not finding him at home, I went further to call more Help.

L. C. J. How can you tell that it was the 13th? It might be the 20th, for aught you know.

Mrs. *Whibby*. No; it was the 13th.

L. C. J. How can you tell that?

Mrs. *Whibby*. Becauſe there was another Meeting on the 20th Day, for which I paid 20 Shillings; and I can remember my Chimney was on Fire that Day.

L. C. J. What Day of the Week was it?

Mrs. *Whibby*. It was *Sabbath-Day*.

L. C. J. Why, if my Chimney was on Fire the 14th or 15th, it may be I can remember it a little while, but how came it that you do remember it ſo long?

Mrs. *Whibby*. It was the 13th of *July*.

L. C. J. How can you be ſure of that?

Mrs. *Whibby*. Becauſe it was the *Sunday* before the Meeting at Mr. *Bowen*'s.

L. C. J. Where was the Meeting that Day your Chimney was on Fire?

Mrs. *Whibby*. I did not know then; but I knew ſince, it was at Mr. *Hudſon*'s.

L. C. J. Then you have been inſtructed about it. But pray don't think you come here to ſerve a Turn.

Mrs. *Whibby*. It was at Mr. *Hudſon*'s.

L. C. J. Was there a Meeting on the 13th of *July*?

Mrs. *Whibby*. By Relation there was; but I was not at it.

Mr. *Roſ.* My Lord, I bring her to teſtify there was no Meeting at Mr. *Hales*'s that Day.

L. C. J. We know well enough you ſnivelling Saints can lye.

Mrs. *Whibby*. I have anſwered the Truth, as far as I know.

Mr. *Roſ.* I only aſk her about Mr. *Hales*.

L. C. J. She ſhall anſwer ſuch Queſtions as the Court ſhall think fit to aſk her.

Mr. *Roſ.* How far is your Houſe from Mr. *Hales*'s?

Mrs. *Whibby*. Next Door.

L. C. J. How far is your Houſe from Mr. *Hudſon*'s?

Mrs. *Whibby*. A great Way.

L. C. J. Was it half ſo far as you went to fetch the Waterman?

Mrs. *Whibby*. That was but three Doors off; but Mr. *Hudſon*'s is half a Mile, I believe, or a Mile.

Mr. *Roſ.* Then, pray, call *Anne Collins*. [*She appeared.*]

Mr. Juſt. *Withins*. Well; what do you aſk her?

Mr. *Roſ.* Mrs. *Smith* hath ſworn, that there was a Conventicle at Mr. *Hales*'s the 13th of *July*; I deſire to know of you, whether there was ſuch an one, or no?

Mrs. *Collins*. The 13th of *July* there was none,

Mr. *Roſ.* Upon your certain knowledge?

Mrs. *Collins*. Upon my knowledge there was none; I can juſtify it.

L. C. J. Not there you mean, at Mr. *Hales*'s: But do you know there was any any where elſe?

Mrs. *Collins*. No, not to my knowledge.

L. C. J. Do you know Mr. *Hobſon?* Was there any there that Day?

Mrs. *Collins*. I know one *Hudſon*.

L. C. J. I thought you had ſaid *Hobſon*.

Mrs. *Collins*. No, it was *Hudſon*.

L. C. J. Was there any Conventicle there?

Mrs. *Collins*. I cannot tell any thing as to that.

Mr. *Roſ.* Then, pray, call *Sarah Bathoe*, and *Suſan Bathoe*.

[Sarah Bathoe *appeared.*]

L. C. J. Well, what ſay you to this Witneſs?

Mr. *Roſ.* That which I call Mrs. *Bathoe* for, is to prove that Mrs. *Smith* was miſtaken, when ſhe ſwore that Mrs. *Bathoe* permitted a Conventicle at her Houſe the 20th of *July*: Upon which Mrs. *Bathoe* was convicted, and brought her Appeal.

L. C. J. You do miſtake, Mr. *Roſewell*. She ſays, that *Bathoe* confeſs'd that there had been a Conventicle at her Houſe, as ſhe heard.

Mrs. *Bathoe*. She has convicted me.

L. C. J. Ay, but it was upon your own Confeſſion.

Mrs. *Bathoe*. No, I never confeſs'd any ſuch thing; for I had none there at that time, nor did confeſs any ſuch Thing.

L. C. J. Had you ever any Conventicle at your Houſe?

Mrs. *Bathoe*. That is not it that I am to anſwer to now. I deſire to be excuſed from anſwering that Queſtion.

L. C. J. Then I will not believe her, if ſhe talked as long as you preach.

Mr. *Roſ.* There was an Appeal brought, my Lord.

Mr. Att. Gen. She is not a Witneſs, it is in her own Caſe. It would be a fine thing if an old Woman's Story ſhould prevail here againſt poſitive Teſtimony. [*Then* Suſan Bathoe *came in.*]

Mr. *Roſ.* Mrs. *Smith* hath ſworn, that Mrs. *Bathoe* had a Conventicle at her Houſe the 20th of *July*.

L. C. J. No; ſhe only ſwears that Mrs. *Bathoe* confeſs'd it; but herſelf was not there, ſhe ſays.

Mr. *Roſ.* Did you confeſs it?

L. C. J. No matter what ſhe ſays; it all agrees with that Teſtimony that ſhe has now given: This Matter, it ſeems, is depending upon an Appeal, and ſo ſhe teſtifies for herſelf. And when I aſk her whether ſhe ever had any Conventicle at her Houſe, ſhe will not tell me; which induces a Suſpicion, that ſhe does not come for a fair Purpoſe, but only to ſerve a Turn.

Mr. *Roſ.* Pray, Mrs. *Suſan Bathoe*, was there any ſuch Conventicles?

Mrs. *Bathoe*. There was none.

L. C. J. Why, I tell you, you miſtake ſtill. Mrs. *Smith* ſwears that Mrs. *Bathoe* confeſſed to her, that ſhe had a Conventicle, but ſhe ſwears ſhe was not there. And take all together, ſeeing ſhe will not anſwer whether ſhe ever had a Conventicle; and ſo it may be only a miſtake juſt of the Day: Or ſhe might tell her ſo, for any thing appears; and for ought I know *Hales* has had Conventicles: And what is all this to the purpoſe of which you are accuſed?

Mr. *Roſ.* Call Mr. *John Ferne*. [*He did appear.*]

My Lord, I deſire Mrs. *Bathoe* may not go away.

L. C. J. Let her ſtay then. What do you call this Man for?

Mr. *Roſ.* It is to prove ſhe has compounded Convictions. Pray, Sir, do you know whether Mrs. *Smith* hath compounded with Mrs. *Bathoe*, ſince the Conviction, to ſet by the Proſecution; and Mrs. *Bathoe* was prevailed with ſo to do?

Mr. *Ferne*. Mrs. *Bathoe* came to me about 8 or 10 Days ago; ſays ſhe, I muſt get you to go with me to the Recorder's. I am promiſed my Money again that was paid upon the Appeal I brought. I was glad to hear it, and went with her; the Time appointed was five or ſix o'Clock. I was there a little after five; and Mrs. *Smith* was not there, that was one of the Witneſſes upon her Conviction, *Elizabeth Smith*, for I ſerved her with a notice to attend the Recorder. We were there a ſecond Time at the Recorder's Chamber about ſix o'Clock; ſhe was not come. We waited hard by, and went a third Time; and then ſhe was there, and deſired my Siſter to excuſe her that ſhe was not there earlier; but ſhe did not doubt but ſhe ſhould have her Money; and waited to ſee the Recorder. Mr. Recorder had ſeveral above with him. We waited an Hour, or better. Mrs. *Smith* went up, and my Siſter went up with her, or followed her: And, ſays the Recorder to her, Are not you the Woman that was with me ſuch a Time, with Mrs. *Williams?* Yes, Sir, (ſays ſhe) I was. Says he, What made you make ſuch haſte away? Upon that, Mr. *Courthope* ſteps forward with the Book; Sir (ſays he) I have paid it in to the Clerk of the Peace. Then, ſays the Recorder, It is out of my Hands, I can go no further: but promiſed afterwards to ſpeak with Sir *William Smith*, the Chairman of the Seſſions, about it.

L. C. J. I can make nothing of all this. What a Buſineſs is here!

Mr. *Ferne*. She ſeems to be a raſh Woman, ready to ſwear any thing.

L. C. J. Oh dear, Sir! and you ſeem to be a grave, prudential ſort of a Man.

Mr. *Roſ.* If ſhe did not ſwear that this Meeting was at Mr. *Hales*'s, why was he convicted for that Meeting?

L. C. J. I know nothing of the Conviction at all; it is the firſt time that I have heard of it.

Mr. *Roſ.* Then if your Lordſhip pleaſe, we deſire to have the Record of it read; here it is.

L. C. J. Make it appear that ſhe ſwore, and that what ſhe ſwore was falſe; and then you ſay ſomething.

Mr. *Roſ.* We deſire to have theſe Copies of Records read. Here it is *per Teſtimonium Elizabethæ Smith*, or *per Sacramentum*.

L. C. J. Prove that ſhe ſwore it.

Mr. *Roſ.* My Lord, we had a very gracious Anſwer concerning the Petition that my poor Wife delivered to His Sacred Majeſty in reference to her coming to me; which His Majeſty granted with a great deal of Compaſſion. He remitted it to your Lordſhip, and your Lordſhip did ſecond it, for the having the uſe of what Records ſhould be neceſſary for my Defence. And upon what Application we made to the Attorney-General, it was readily granted: But for the ſearching of the Records, we have deſired the Recorder, and cannot have it.

L. C. J. You are much miſinformed in that. I'll tell you how it was: Your Wife and a young Man came to me, a matter of a Fortnight ago, and did tell me, there were ſeveral Records, that were neceſſary for your Defence, and the Recorder refuſed to let you have Copies of them. I told her then, God forbid but that you ſhould have all manner of Helps from Records, that were neceſſary for your Trial; and thereupon I did require my Brother *Jenner*, who is Recorder, to attend to ſhew Cauſe, why he did refuſe to let you have any Records that you thought neceſſary for your Defence: And he gave me this for Anſwer, That they were Records of Convictions, and were returned to the Seſſions of Peace; ſome to *Surrey*, and ſome into *Middleſex*, and ſome were in the Clerk of the Peace's Hands. Whereupon I told your Wife, if ſhe would go to the Clerk of the Peace for Copies of the Records, if they did not readily give you Copies at your Charge, I would make them do it, if ſhe came to complain to me; and if they would not, I would lay them by the Heels. When my Brother *Jenner* came to me, ſaid I, I believe that which they have a mind to, is to know upon whoſe Teſtimony the Convictions are made. Now that is no part of the Conviction; and that we thought ought not to be granted. Nor is there any Law for it; for that is to open a Way to the tampering with the King's Witneſſes. After this, there was Mr. *Wallop*, that came and moved the Court of *King's-Bench* about this matter; and we gave him the ſame Anſwer, that for any one to diſcover the King's Witneſſes before they come to Trial was not to be allowed by Law. If Mr. Attorney had come here, and ſaid, Pray, give us a Liſt of all the Witneſſes that Mr. *Roſewell* will make uſe of at his Trial; we ſhould have denied his Motion. God forbid but that the Witneſſes you bring ſhould be heard; and that the Witneſſes they bring ſhould be heard; but we muſt prevent tampering with the Witneſſes on all ſides.

Mr. *Roſ.* If the Witneſſes are ſuppreſs'd, it is impoſſible to encounter their Teſtimony.

L. C. J. What do you mean by ſuppreſſing the Witneſſes? They are here produced.

Mr. *Roſ.* Their Names, my Lord, upon the Records.

L. C. J. Their Names are never expoſed, nor ought to be.

Mr. *Roſ.* My Lord, it is that which muſt enable me to make my Defence. If we could have their Names, we could prove them perjured.

L. C. J. It cannot be by Law. You have the ſame Benefit that all the reſt of the King's Subjects have. If any one be convicted of Treaſon by Witneſſes (twenty in Number) we never enter them upon the Record; and if any be acquitted, the Teſtimony of the Evidence upon that Acquittal is never entered upon Record. It may be in your Matter, it was not upon the Teſtimony of Witneſſes that the Conviction was; but upon the Notoriety of the Fact, or by Confeſſion, as in the Caſe of Mrs. *Bathoe*; that was by Confeſſion, and Witneſſes. The Notoriety of the Fact, or the Confeſſion of the Party, are all, and each of them ſufficient to make a Conviction by Record. You have the ſame Liberty that every Subject has.

Mr. *Roſ.* Mr. *Courthope* is the Recorder's Clerk, that ſaw the Convictions in the Clerk of the Peace's Hands.

L. C. J. We cannot tell that, without the Clerk of the Peace was here.

Mr. *Roſ.* Pray, where is Mr. *Charles Walker?* [*He appeared.*]

I deſire you, Sir, to teſtify what you know concerning the Conviction of *Elizabeth Smith* upon Mr. *Hales*, for a Conventicle at his Houſe the 13th of *July*.

Mr. *Walker*. You had a Copy of it from the Clerk of the Peace; I made it out.

Mr. *Roſ.* Of Mr. *Hales* and Mrs. *Bathoe*, do you mean?

Mr. *Walker*. No, only of Mrs. *Bathoe*.

Mr. *Roſ.* Then I ſuppoſe we may have it; and the Clerk will teſtify it to be a true Copy.

Mr. *Walker*. This is a true Copy.

L. C. J. Then make what uſe you pleaſe of it. Will you have it read?

Mr. *Roſ.* No, my Lord, not yet. If your Lordſhip pleaſe, I deſire *Richard Drew* may be called; but however, if your Lordſhip will, let him read that Paſſage in it, that I cannot ſo well read, 'tis in Court Hand.

[*Clerk of the Crown reads.*]

Memorandum quod ad generalem Seſſionem pacis pro Com' Midd' ſeptimo die Octobris, triceſimo ſexto, &c.

L. C. J. What do you make from this? Here is a Record of the Conviction, which ſays, that by two credible Witneſſes, and the Notoriety of the Fact, ſhe was convicted.

Mr. *Roſ.* Pray call *Richard Drew*. [*Who came in.*]

Pray, Sir, what do you know about Mrs. *Smith*'s Practice in relation to Conventicles?

Mr. *Drew*. Upon the eleventh of *July* laſt there was an Acquaintance of mine, that ſhe did pretend was at a Meeting———

L. C. J. Who was that that did pretend ſo?

Mr. *Drew*. *Elizabeth Smith*; and ſhe would have had ſome Money of him. He came to me, and aſked my Advice. Yes, ſaid I, I think you had better give her Money, than to run the Hazard of ſwearing againſt you: So he did. He took me along with him to a Place where they were to meet, where ſhe took ten Snillings, and promiſed he ſhould come into no further trouble about it.

L. C. J. Had he been at a Conventicle, or not?

Mr. *Drew*. That I cannot ſay.

L. C. J. Do you believe he was, or was not?

Mr. *Drew*. My Lord, I cannot ſay that he was, or was not.

L. C. J. But that is not the Queſtion I aſk you: for you would not perſuade him to give her Money, if he had not been at a Conventicle.

Mr. *Drew*. My Lord, I did not know whether he was, or was not.

L. C. J. I aſk you again, did you believe he was, or was not?

Mr. *Drew*. I believe he might, by his being ſo willing to take my Advice; though he ſaid it was a baſe thing to give her any Money in ſuch a matter.

Mr. *Roſ.* Pray, call *James Howard.*

L. C. J. There he is; what would you have with him?

Mr. *Roſ.* My Lord, I crave leave firſt to aſk Miſtreſs *Shaftoe*; Are you Mr. *Hilton*'s Wife?—*Smith.* Yes.

Mr. *Roſ.* Then I deſire Mr. *Howard* may teſtify what he knows concerning this Miſtreſs *Smith*: But firſt, which *Hilton*'s Wife are you?

Smith. George Hilton's.

Mr. *Roſ.* What then do you know of her, Sir?

Mr. *Howard.* I was once drinking a Cup of Ale in *Grub-ſtreet*, where ſhe did take a parcel of Money in the Concern of the King, my Lord.

L. C. J. Prithee, ſpeak up: In what Concern?

Mr. *Howard.* She took a Bribe in the Concern of the King.

L. C. J. What doſt thou mean?

Mr. *Howard.* Of a Perſon that had been at a Meeting.

L. C. J. Prithee, what Bribe was it?

Mr. *Howard.* About 11 or 12 Shillings.

L. C. J. Prithee, of whom was it?—Mr. *Howard.* The Man I never ſaw, nor the Woman before; I came in by chance.

L. C. J. How long ago is this?

Mr. *Howard.* About the middle of *July* laſt.

L. C. J. Who did you diſcover this matter unto?

Mr. *Howard.* My Lord, I was only drinking a Cup of Ale; and I diſcovered it to Mr. *Drew*, that was call'd laſt.

L. C. J. Was Mr. *Drew* one of them?

Mr. *Howard.* No: Mr. *Drew* I am acquainted with; he is my Neighbour.

L. C. J. When were you at Church laſt?

Mr. *Howard.* The laſt Lord's Day.

L. C. J. When did you receive the Sacrament there?

Mr. *Howard.* My Lord, I never did. We have no Pariſh-Church at preſent; it is now a-building.

L. C. J. Where do you live?—Mr. *Howard.* In *Mugwell-ſtreet.*

L. C. J. Have you no publick Preaching in the Pariſh?

Mr. *Howard.* I do hear Dr. *Fowler*, and Mr. *Smythies* too, ſometimes.

L. C. J. That is, when there is no Conventicle (I ſuppoſe) in the way. That Mr. *Smythies* and Dr. *Fowler* are both very well known.

Mr. *Roſ.* Is Mrs. *Anne Farry* here? [*She did not appear.*]

Pray call Mrs. *Anne Higgenſon.* [*Who appeared.*]

Do you know Mrs. *Shaftoe*, or Mrs. *Hilton*, as ſhe is call'd?

Mrs. *Higgenſon.* My Lord, I have very little Knowledge of her; I have known her but a very little while.

Mr. *Roſ.* What Teſtimony can you give of her Converſation?

Mrs. *Higgenſon.* Since I have known her, I have heard ſome ill things of her: But I cannot ſpeak to any thing of mine own Knowledge.

L. C. J. Why, ſo People may ſay a great many ill things of you that you do not deſerve, nor know any thing of.

Mr. *Roſ.* Call *Anne Carter.* [*She did not appear.*]

I deſire Sir *John Talbot* would pleaſe to be examined.

L. C. J. Here is Sir *John Talbot* by me.

Mr. *Roſ.* Sir, I deſire you would pleaſe to teſtify to the Court and the Jury what you know concerning the Converſation of Miſtreſs *Shaftoe*, otherwiſe called Mrs. *Hilton.*

Sir *John Talbot.* She was a Servant, that liv'd in my Houſe a great many Years; but I did not uſe to converſe with her.

Mr. *Roſ.* No, Sir *John*; but what do you know of her Converſation while ſhe lived in your Houſe?

Sir *John Talbot.* All that I know of her, is, ſhe had no very good Character in the Family.

L. C. J. Do you know any thing of your own Knowledge?

Sir *John Talbot.* As to any thing of my own Knowledge, I cannot ſpeak; it is all no other than Hear-ſay from all the Family.

L. C. J. But I aſk you what you know of your own Knowledge, Sir *John.* Tell us the Particulars you yourſelf know.

Sir *John Talbot.* It was the Complaint of all the Servants of the Houſe, that ſhe was guilty of telling Lies and Stories in the Family.

Mr. *Roſ.* Was ſhe reported in the Family a frequent Lyar?

Sir *John Talbot.* She had that Character in the Family; all the Servants complain'd of it. I only know of other things ſince ſhe was gone out of the Family; and that ſhe has been concern'd in an odd ſort of Practice, about attempting to ſteal away a young Lady.

L. C. J. Do you know of it of your own Knowledge?

Sir *John Talbot.* I had it from herſelf, and upon her own Affirmation.

L. C. J. What was that?

Sir *John Talbot.* It was about the Practice that had been ſet on foot of cheating People of money for procuring Fortunes; particularly concerning the Daughter of one Sir *Harry Jones.* And there have a great many Gentlemen been abuſed about Town in that matter, and made believe that this Woman had an Intereſt in her, and would put this great Fortune into their Hands: I have not been privy myſelf to any of the Negotiations, but I have underſtood there were ſuch Practices; there was one *Salem* and ſhe that were engaged.

L. C. J. Look you, Sir *John*, Do you know this of your own Knowledge? For we muſt not hear Evidence to take away People's Reputation by Hear-ſay: If ſhe hath confeſſed any thing to you, you may ſpeak that; and let us know it.

Sir *John Talbot.* My Lord, if it be not too long to give you the Circumſtances how I came to know it, I will tell you what I have been informed about it.

L. C. J. No, that is not Evidence, Sir *John*; unleſs you know it yourſelf, or had it by her Confeſſion.

Sir *John Talbot.* My Lord, I do not come here as a voluntary Evidence, but I am here called upon. And, my Lord, I think I ought to give my Teſtimony, if a man's life be concerned.

L. C. J. And ſo ought we who are upon our Oaths, to inſiſt upon it, that you give legal Evidence, what you know of your own Knowledge; and I aſk you here again, whether what you relate be of your own Knowledge, or what was by Hear-ſay?

Sir *John Talbot.* My Lord, I had notice ſent me by a Letter, That there was a Gentleman come to *Thiſtleworth* with a Coach and four Horſes, with a Deſign to ſteal Mrs. *Jones.* I cannot remember whether there was any Name to the Letter, but ſuch a Letter was ſent, and I was to inquire about it of this *Ellinor Shaftoe*, who was engaged in the Deſign. I ſent to her to come to me, and ſhe did come; and told me that there had been ſuch a Practice of one *Salem*, and ſhe would bring a Gentleman to diſcover the whole Buſineſs, and ſhe did ſo; and brought this *Hilton* (by whoſe Name, as her Huſband, ſhe owns herſelf), and he came to me, and gave me a Note of ſeveral Gentlemen's Names that were concern'd in it; and, I believe, I have a Book wherein their Names are. I then aſked, Why ſhe did let it ſo long run, and the Buſineſs go on ſo far? Mr. *Hilton* did confeſs, that one particular Gentleman had been kept in Treaty, who was a Country-man, and came to live in Town, and was in Town the greateſt Part of the Winter upon this Deſign; and did walk that Way, expecting that this *Nan Carter* ſhould bring down this Heireſs, ſo that they might have an Opportunity to ſteal her. Mr. *Hilton* had no other way of Application to me but by this *Shaftoe*; and he confeſs'd himſelf, that he was a Party concern'd in the Deſign.

L. C. J. Ay; but what did *Hilton*'s Wife ſay? For what he ſaid is nothing to the Purpoſe in this Point.

Sir *John Talbot.* She is one that I had no Communication with, nor Converſe, while ſhe was in my Family, otherwiſe than as an ordinary Servant; but this ſame Mrs. *Jones* was my Ward.

L. C. J. Did ſhe confeſs ſhe had any Deſign in this matter; or was to have a Reward for ſetting the matter on foot?

Sir *John Talbot.* No, my Lord; ſhe did not particularly confeſs ſhe had any hand in the Deſign; but it was that which ſeveral other Perſons have come and inquired ſince of my Family about; who have told me, that there was one *Shaftoe*, otherwiſe *Hilton*, that was concern'd in it.

L. C. J. That is no Evidence, Sir *John*, I muſt tell you again.

Sir *John Talbot.* My Lord, I can't make the Evidence otherwiſe than as it is. I tell you what I know.

L. C. J. You underſtand yourſelf ſo well, Sir *John*, that you know it is not Evidence; and you are not to talk of what other People have told you.

Mr. J. *Withins.* How long did ſhe live in your Family?

Sir *John Talbot.* I can't tell how long, my Lord, but I believe ſhe was there ten Years.

Mr. J. *Withins.* That's a ſtrange thing, that you ſhould keep an ill Woman ſo long.

Sir *John Talbot.* My Lord, with your Permiſſion, ſhe was a Servant when that Child came to me, and when the Mother died; and my Wife did not think fit to put her away; ſo ſhe came and ſtaid with the Child as long as my Wife could keep her; but at laſt ſhe did foment Differences in the Family, Lies, and Stories, and was found to be a Perſon not fit to live in the Family; and therefore my Wife was afraid to keep her any longer, and put her away.

L. C. J. Well, Mr. *Roſewell*, have you any other Witneſſes?

Mr. *Roſ.* Pray call *Anne Dillingham.*

L. C. J. Well, what do you aſk her?

Mr. *Roſ.* My Lord, I bring this Witneſs to prove concerning Mrs. *Shaftoe*, alias *Hilton*, that ſhe offered to ſwear againſt People, as being at Conventicles, whom ſhe had never ſeen.

Mrs. *Dillingham.* She lodged in my Houſe, and is a very ill Woman; and aſked me to ſwear of Meetings that I never knew any thing of at all in my Life. I never was at Meetings but about Thirteen Years ago. I aſked her why I ſhould ſwear, or what I could ſwear to? She told me, I ſhould have a ſhare of the Money, if I would ſwear to what ſhe ſaid, whether it were right or wrong, I ſhould have a ſhare, if I would but ſwear.

L. C. J. How long ago is this?—Mrs. *Dillingham.* Two Years ago.

L. C. J. Who did you tell this to firſt?

Mrs. *Dillingham.* My Lord, I am ſubpœna'd here to give my Teſtimony.

L. C. J. That's true; but who did you tell this, that you talk of, firſt to?

Mrs. *Dillingham.* My Lord, I never told it to any body but her, except it was to my own Huſband.

L. C. J. But why would you keep this as a Secret, and not tell it to any body?

Mrs. *Dillingham.* Why, my Lord, I don't ſpeak it for any Malice to her at all, I aſſure you.

L. C. J. Where do you live?

Mrs. *Dillingham.* In *Long-Acre*, at the *Golden Ball.*

L. C. J. If you live in *Long-Acre*, how came you to diſcover any thing of a matter that was tranſacted at *Rotherhith?*

Mrs. *Dillingham.* My Lord, I know nothing of it, of my own Knowledge; but what ſhe would have perſuaded me to.

L. C. J. But how came ſhe to talk to you about a matter at *Rotherhith?* Or, you to know any thing about her? That I deſire to know; and how you came here?

Mrs. *Dillingham.* One Mrs. *Peirce*, that is a Neighbour, aſk'd me what I knew of her; and ſo would ſubpœna me, becauſe ſhe lodged at my Houſe.

L. C. J. How long did ſhe lie at your Houſe?

Mrs. *Dillingham.* I can't tell; I believe about half a Year.

L. C. J. Well, what became of her? How did ſhe behave herſelf?

Mrs. *Dillingham.* My Huſband turn'd her out of the Houſe, and would not entertain her; becauſe ſhe kept Company with a Man that was none of her Huſband.

L. C. J. Why, can you tell when they were married?

Mrs. *Dillingham.* She went as the Wife of Mr. *George Hilton*, when ſhe was not married.

L. C. J. How! Was ſhe not married then?

Mrs. *Dillingham.* No, they were not married then. He was not her Huſband then. There are a great many of our Neighbours that can ſay more than I. She is a naughty, filthy Woman; a very ill Woman; if I ſhould call her Whore, I believe ſhe might trouble me for it; but I believe it to be true.

L. C. J. Have you any more Witneſſes, Mr. *Roſewell?*

Mr. *Roſ.* No, my Lord; but I hope your Lordſhip will give me leave to ſay ſomething to the Court and Jury.

L. C. J. Mr. Attorney, have you any more Witneſſes to call for the King?

Mr. Att. Gen. My Lord, we have ſome Witneſſes to ſupport the Credit of theſe Witneſſes that we have produced: But we don't think there is any need; nor that it is any way diminiſhed by the Defence of the Priſoner at the Bar.

L. C. J. Do as you pleaſe, Mr. Attorney; go on your own way.

Mr. Att. Gen. No, my Lord; we ſhall trouble your Lordſhip no further with any Evidence.

L. C. J. Then, Mr. *Roſewell*, let's hear what you have to ſay further for yourſelf; for all the Witneſſes have been heard, of one ſide and t'other.

Mr *Roſ.* My Lord, and dear Countrymen, who are to be my Judges in this Cauſe this Day, what I now ſpeak, is with reſpect as much to their precious Souls, who are concern'd either in Proſecution, or trying of me, as my own Safety. There is not a Man of you of the Jury, tho' you are Strangers to me, but I would lay down my life to-morrow to ſave one of your Souls, if I might be an Inſtrument therein: How much more then all of them, if the Conſideration be taken of the Worth of an immortal Soul? Your Lordſhip knows, and I am ſenſible, how unfit I am now to do ſuch a thing as this is, in the Company of ſo many learned Gentlemen of the Long Robe. I have betrayed already too much of my ignorance in ſuch Affairs, and I beg your Pardon for it; and I humbly thank your Lordſhip, and the Court, for the Indulgence that you have ſhewed towards me in my Infirmities. You are, my Lord, as in the Preſence, ſo in the Place of the great God, the Judge and Lord of all, at this Day: You are *Elohim*, *I have ſaid ye are gods*; whoſe Property it is to help the weak, and compaſſionate the innocent; therefore I make this Apology in reference to my own Innocency, and my great inability to ſum up the Proofs that have been in this Cauſe. If you will put my Weakneſs in competition with their vaſt Abilities, who are of Counſel for the King againſt me, and my ignorance in the Laws of the Land againſt their great Knowledge; I cannot but expect to be overthrown, notwithſtanding my Caſe is very innocent, and I have declared in the Preſence of God the Truth of my Heart this Day. And if I were to be called to the Bar of the great God, the Judge of all the Earth, before I ſleep, I ſhould ſpeak the ſame thing, and muſt, and no other. I am ſenſible a Lye is both a baſe, and a very wicked thing; and that the Lake that burneth with fire is prepared for all Liars. And I pray God convince theſe Gentlewomen wherein they have wronged and abuſed me, that they may repent of their Sin; which (I bleſs God) I have prayed for them moſt Days ever ſince I was confined, and begged it of God with Tears, in Charity to their poor Souls. And I believe I have prayed more for His Majeſty in one Week, than they have done in all their Lives. They are not the King's Friends, but his Enemies, in bringing ſuch Allegations againſt thoſe that are his true, faithful, and innocent Subjects, as I am, my God knoweth.

And here, my Lord, I would firſt obſerve the Variations that are in their Evidence. In the firſt place, Mrs. *Smith* ſwears, That the Text I preached upon was the 21ſt Chapter of *Geneſis*. And here is Mrs. *Hilton* comes, and ſhe ſwears afterwards, that it was the 20th: herein they vary. Then I ſuppoſe, my Lord, if they vary and differ, in Law they are not two Witneſſes, but differing ſo are both of them incredible: And I think the *Statute Law* of this Land is, that a Man muſt be convicted upon the Oath of two Credible Witneſſes.

Next, my Lord, here's Miſtreſs *Smith* ſwears, that theſe Things were delivered, which are charged in the Indictment, all together in the Morning-Exerciſe, in the Forenoon: Whereas your Lordſhip has heard from ſeveral Witneſſes (and I do not know one Man of them but fears a Lye; and would have ſworn to the Truth of what they have ſpoken. They tell you) how every Paſſage that theſe People would pervert, muſt come in, and how it was divided. I hope your Lordſhip will pardon the Infirmity of two or three, a few illiterate Men, that are weak, and could not ſo well inſtruct themſelves to ſpeak in a Court of Juſtice upon ſuch an Occaſion: But upon the whole matter, they give ſuch an account, all, that it cannot be preſumed, or thought, that they ſhould agree to ſpeak any thing that was not true. And I am confident, there is not a Man of them, but would take his Oath (as I ſaid) of the Truth of what he has here declared. And they have declared that there were two diſtinct Exerciſes, as I have proteſted in the Preſence of the great God. That in the Morning was upon the 20th of *Geneſis:* And the other in the Afternoon (there being an Hour that paſt between) was upon one particular Verſe of a Chapter in the Epiſtle to the *Hebrews*, quite diſtinct from the other Diſcourſe that was in the Morning. She not only varies from the Truth, but alſo from her Fellow-witneſs, that it was all in one Exerciſe. This I ſubmit to your Lordſhip's and the Jury's Conſideration (theſe worthy Gentlemen that are to judge of my Life and Death) whether they are two Credible Witneſſes, thus varying.

There be ſeveral other Things, my Lord, that becauſe of my preſent Infirmity, I may not ſo readily call to mind; but which ought to be recalled and recollected, as in reference to the Perſon, whoſe Houſe we met at. One ſays it was one Capt. *Daniel Weldy*'s: Another that it was one Mr. *Daniel*'s. Therein again they vary in reference to the Perſon; and if they are out in one Thing, they may be out in another.

Smith. I can ſay nothing about his Name: I never was there in my Life before.

L. C. J. Mrs! Mrs! You muſt not interrupt him; he is upon his Defence for his Life.

Mr. *Roſ.* Then, my Lord, ſhe ſays that my Text in the Afternoon was upon a *Pſalm*; and there was no ſuch thing, as your Lordſhip has had it particularly made appear to you. I have ingenuouſly told you the Text, and the Truth; I have ſpoken it from my heart in the Preſence of the Great God; and upon what occaſion every Paſſage that they have wreſted was ſpoken: And your Lordſhip may thereby perceive how moſt abominably they have perverted my Words. Now, they having wreſted my Words, that are innocent in themſelves (ſo far from being Treaſon, that I do not know there was any Fault or Crime in them; being only plain Scriptural Proofs of Doctrinal Propoſitions in Divinity, without thoſe Applications that they have pretended to), certainly your Lordſhip and the Gentlemen of the Jury will conſider what is moſt probable or likely; what they have declared, or what you have heard from the ſeveral Witneſſes that have come in to teſtify concerning me.

My Lord, I was going to ſpeak ſomething to your Lordſhip of the great Wickedneſs of their making the Application of what was innocently ſpoken and meant, to the late King of *England*, and his preſent Majeſty, whom I daily pray for, and always did, whatſoever theſe Witneſſes have declared concerning me. And your Lordſhip has heard my Maid teſtify (which I little expected) that I uſed to pray for the King every Morning and Evening in my own Houſe; and God knows that to him I have addreſſed myſelf for him daily: And more than that, ſhe heard me (when I thought none but the God of Heaven himſelf had heard me) pray for him in my Cloſet. I would deſire your Lordſhip and the Jury to conſider, whether theſe are not the Criminals (and not I), that have made application of innocent Paſſages, and wreſted the Words, that were plain and innocent in themſelves, to a wrong meaning, to make me Guilty of High Treaſon; applying them to His Majeſty, when I never intended, or thought the leaſt of any ſuch thing.

My Lord, I doubt not but there have been ſeveral that have joined in it, that have helped to frame and forge this Accuſation againſt me. And there is that, which I ſuggeſted to your Lordſhip in the Morning, in the beginning of this Cauſe: Theſe Perſons have not only, or ſo much ſworn me a Knave, but a perfect Fool and a Madman, to ſpeak ſuch abſurd, incoherent, inconſiſtent, ſoleciſtical, and nonſenſical Things. I believe there is no Man of common Senſe and Reaſon, no Gentleman that's here this Day, that can imagine that a Perſon, that had the uſe of Common Senſe and Reaſon, ſhould ſpeak ſuch abſurd Things as theſe are. Beſides, my Lord, I have brought Witneſſes, ſeveral of them, to teſtify there never was any ſuch Thing ſpoken by me, as they have teſtified againſt me, and miſapplied. I have likewiſe produced ſeveral Perſons to give Evidence of my uſual and conſtant Practice with relation to the King and Government all along; my contending for Monarchy, and againſt Anarchy, which did too much reign in theſe late Days of Confuſion, which I remember by very ſad Experience, tho' I was then indeed but a Child. And when I came to be a Man, I uſed always to obſerve the 30th of *January*, and the 29th of *May*; preaching upon thoſe Days, and preſſing People to Obedience; and inveighing againſt thoſe that had acted againſt their Principles, and were Rebels either againſt his preſent Majeſty, or had been concerned in that barbarous Act againſt his Royal Father; which I did utterly abhor.

And, my Lord, methinks it ſhould have been very unlikely that a Man, that ſhould make it his common Practice ſo to do, as I have teſtified concerning myſelf, ſhould fall under ſuch a Suſpicion and Accuſation, as I now am; or, that ſuch an one ſhould fall into ſuch a Soleciſm, as the Words that are teſtified againſt me muſt import; it is very unlikely. I leave it to the great God of Heaven to vindicate my Innocency in the Matter; which I do not queſtion but he will do.

Then, my Lord, here are ſeveral Gentlemen of the *Church of England*, that have teſtified concerning my Converſation. They have had Acquaintance with me many Years, ſome of them near 20 Years; the leaſt 8, 10, or 12. They never heard an indecent Word, with reſpect to His Majeſty, or the Government, fall from me; any unworthy Reflection upon either of them: But my conſtant Practice was to pray for His Majeſty with all earneſtneſs and ſolicitude. There are ſeveral of them Gentlemen of repute in the City. There are particularly two Perſons, that belonged to an honourable Family in which I lived ſo many Years, who give a Teſtimony what my Converſation there was, and my conſtant Practice of praying for the King, while I was there. This your Lordſhip, and the Gentlemen of the Jury, have heard and obſerved, I doubt not.

But, beſides that; your Lordſhip and the Jury, I hope, obſerve as to theſe People, who ſwear againſt me, what my Witneſſes have teſtified, that they would ſwear any thing, and forſwear it: And what a Character is given concerning one of them particularly, your Lordſhip has heard from that worthy Gentleman, Sir *John Talbot*, whoſe Face I never ſaw before it was in this place. And by the laſt Witneſs, you have a Teſtimony concerning her lewd Converſation. And ſeveral other Witneſſes prove ſhe would ſwear any thing for them, if they would ſwear for her. So that it appears ſhe would, and does ſwear at a venture ſuch and ſuch Conventicles; only upon Hear-ſay, and mere report: And that ſhe has taken Money, and made ſome Compoſitions too. Theſe things I muſt refer to your Lordſhip, and theſe worthy Gentlemen who are of the Jury.

If then, my Carriage and Converſation (ſo well known in the World) be compared with that Character that is given of theſe Perſons, I muſt humbly ſubmit it to your Lordſhip, and the Jury, how far they are to be believed againſt me; and might argue from the Incredibility of their Teſtimony: but your Lordſhip cannot but remark it.

My Lord, it is very ſtrange, that theſe two Women ſhould exactly remember theſe Words. They agree in every particular Circumſtance. I durſt appeal to your Lordſhip, and the Jury, particularly to the Jury, if now they would undertake to repeat upon their Notes, the Words that have ſo often been repeated here; and whether there is any of them would be able to agree in all the particular Words? They have an incredible Memory, that could ſo exactly agree together, that theſe were the Words. I do humbly ſubmit this to your Lordſhip. For, my Lord, I lay the ſtreſs of my Defence very much, not only upon the incredibility and improbability, but even the impoſſibility of the

Evidence that they have given. I humbly ſubmit it, I ſay, to your Lordſhip, and theſe Gentlemen; and leave it with them, and the great God of Heaven, whom I pray to direct them. I hope they will conſider the Life of a Man, and the worth of Blood. My Lord, however I am repreſented this Day, I know myſelf to be a faithful Subject to His Majeſty; and to the great God of Heaven, whoſe I am, and whom I deſire to ſerve.

My Lord, I will now, if you pleaſe, ingenuouſly confeſs my Crime, if it were any. I have been frequently preaching in my Congregation, out of the Scriptures, and it is true, as your Lordſhip ſees, the Chapter came then in courſe to be expounded: Which I uſed to do, to let the People underſtand the Scripture, as well as I could; for the People periſh for lack of Knowledge; and it is by the knowledge of Jeſus Chriſt, that they muſt come to Life and Salvation; for him to know is Life Eternal. It has been my way to Expound the Scriptures to them.

In the Preſence of the great God, before whom I ſpeak, to whom I can appeal for the truth and integrity of what I ſay, that God before whom we muſt all ſtand (all, whoſe Faces I ſee here ſhall meet, and ſee one another at the great Tribunal), it is to this God that I appeal as to the Truth of my Heart in theſe Things. And, my Lord, I ſhall continue, as I have done, however God diſpoſeth of me, to pray for the Life and Happineſs of His Majeſty; my uſual Prayer, Morning and Evening, being, that God would crown him with Grace here, and Glory and Honour hereafter. And this I ſhall do by the Grace of God unto my Dying-day; for my Soul does abhor ſuch Things as have been teſtified againſt me this Day.

Thus, my Lord, I have dealt as plainly with your Lordſhip, and the Jury, as I can. My Infirmities are great. I deſire to leave my whole Cauſe with the Lord, and with theſe worthy Gentlemen my Countrymen, who, I do not queſtion, will have a juſt compaſſion and conſideration of my Caſe, under theſe Circumſtances wherein I ſtand, and to all the Circumſtances that have been made out in this Cauſe this Day.

L. C. J. Mr. *Attorney*, will you pleaſe, or any of the King's Counſel, to ſay any thing in this Matter?

Mr. Att. Gen. No, my Lord, we leave it entirely to your Lordſhip.

L. C. J. Gentlemen of the Jury, this Caſe has held a long time; and, Gentlemen, I muſt tell you, no body ought to think Time too long in a Caſe of this Nature, wherein the Government is ſo much concerned on the one ſide, and the Life of the Priſoner at the Bar on the other. *Et de vita hominis nulla eſt cunctatio longa.* I think no Man ought to apprehend his patience too much tired in finding out the truth in the caſe of a Perſon that is tried for his Life. However, Gentlemen, by the way, becauſe the Caſe has been long, it is fit that there ſhould be ſome recollection made of it; and in order, as near as I can, that I might help your Memories in the Evidence that hath been given, both for and againſt the Priſoner at the Bar; I would endeavour, as well as I can, to repeat at leaſt the ſubſtantial Part of it to you; and in caſe any thing that is material be omitted, God forbid but it ſhould be ſupplied by any one that is able for to give any Aſſiſtance of that kind; for I cannot pretend to be ſo exact, as to give an account of the whole Evidence myſelf. But, Gentlemen, I muſt tell you it is a Duty incumbent upon the Court, to give you all the Aſſiſtance that can be in a Matter of this Nature, and I will do it with as much Integrity, and with all the Care and Caution of doing no Injury, either to the Priſoner, or to the King, between whom we are to be indifferent, both you, and the Court, as poſſible can be, that there may be no wrong done on the one ſide, or on the other; and, according as the Priſoner himſelf hath ſaid, what I ſhall ſpeak, I know I ſpeak in the Preſence of the great God of Heaven and Earth, who is to be the Judge of all Men. We are upon our Oaths, and you are upon your Oaths; and we are all of us bound by our Oaths that we have taken, to be guided in this weighty Affair (for ſo I muſt call it) by the Evidence that has been given to us at this time, both againſt the Priſoner, and for him. For certainly there cannot be a thing of greater concern, nay, even in point of Compaſſion, than to ſee any Man come to be accuſed of ſo high a Crime as the Priſoner at the Bar is now tried for. And he muſt have a ſtrange obdurate Heart and Conſcience, that cannot ſo far participate of the common ſympathy of human Nature, and his Fellow-Creatures, as to compaſſionate any one that ſtands in ſuch Circumſtances as the Priſoner does. But then, on the other hand, the Denials of the Priſoner at the Bar, with all the Imprecations that he has made, and all the Affirmations that he has offered of what he has formerly done; and all theſe things of his appealing to the great God of Heaven about his Innocency, that I muſt tell you, of themſelves, they are not to weigh with you; for your buſineſs is to know, according to the Oath that you have taken, whether you have Evidence given to you (ſince you are ſworn upon this Trial) to ſatisfy you that he is guilty according to that Evidence. So that if the Affirmation of the Perſon accuſed, tho' attended with never ſo many Imprecations one way or other, be offered to Perſons that are in your caſe, as Jurymen, it is not to weigh with you at all one way or other, if it be only the Affirmation of the Party accuſed; for if ſo, then there would never be any guilty Perſon brought before any Jury whatſoever; or any Criminal could come to ſuffer any Judgment, or be convicted of any Crime, if his own Affirmations concerning himſelf, and his own Commendations of himſelf, would be ſufficient to acquit him, and ſet aſide his Accuſation. So that now you are to go according to the Evidence offer'd, and ſo are we, againſt this Perſon that is here before you.

Gentlemen, I muſt ſay that it is very untoward, and, I hope, by this Cauſe there will be a Warning given, at leaſt, to other Perſons, that there have been too many notorious Tranſgreſſors of the Law in this Matter of Conventicles. I ſpeak that, not to affect this caſe at all; but I ſpeak of what the Nation hath had but too woful Experience of, as to theſe ſeditious Meetings, that are, and have been continually kept up in oppoſition to the Laws; and I ſpeak nothing as to the Meeting that was at this time; but I ſpeak it, that others may be warned for future Times; for always Miſchief attends the open and publick Tranſgreſſion of the Law. God forbid, but that People ſhould worſhip God, and ſerve him, according to their own conſciences; therefore the Law has been ſo indulgent to them, as to give them leave to exerciſe their Religion in other manner than as is done in the Church of *England*; provided there be not any occaſion of Tumult; but that there be not above Five, except thoſe of the ſame Family, meeting together; which you know the Act of Parliament hath provided for. And the truth of it is, the Reaſon of the Law is very plain: For you all know, who are Gentlemen of Quality, that this Law, as well as another Law, that has ſo great a relation to the Caſe before you, does declare, that from theſe Seminaries of Sedition and Faction Conventicles, and the Clubs and Cabals of diſcontented, irregular People, diſaffected to the Laws both of Church and State, was the great Miſchief and Confuſion that was brought upon us, and which at length brought us into the Diſtractions of the late Times.

Gentlemen, I muſt ſay likewiſe this to you, that whatſoever the Priſoner at the Bar thinks now, that bleſſed Martyr King *Charles* the Iſt, was by ſuch means brought to that horrid, accurſed, murderous Death and End; I cannot call it leſs than ſo, in relation to the Perſons that brought him to it, under the Pretence of Religion. It was the Cry of Popery and Arbitrary Power, of which he was no way Guilty, tho' that was inſinuated into the Minds of ſilly People, thoſe ignorant Souls, that were eaſily captivated with a baſe Lye; but that was the Occaſion. Many of you, Gentlemen, that are yet in being, remember it yourſelves; and many of you have, and cannot but have ſeen and read the Hiſtory of thoſe Times, and have been ſo converſant with the Practices of theſe People ſince, that you are able to make a Judgment in the Matter. All theſe ſorts of Things are but pretences, and fair ſhews of dangerous and ſeditious People; that which was moſt dangerous to us at that Time, and I am apt to believe will be ſo to the World's end. For when People come to gild over their bitter Pill of Sedition, it is always under pretence of Religion. For, a-lack-a-day! perhaps there were as many Rebels againſt the late King raiſed by the beating of the Cuſhion in the Pulpit, as by the beating any Drum in the Street; for it is well known theſe are the Bell-weathers of the Faction, that under pretence of Religion, come there to incenſe the People to commit all theſe Villanies that ſometimes they are incited to do, as we know; and to prepare the way to bring us into that condition that we were in in the late Times: And, particularly, were uſed as Inſtruments to bring that bleſſed Martyr, King *Charles* the Firſt, to the Block. Theſe Pulpiteers took occaſional Texts of binding their Kings in Chains, and their Nobles in Fetters of Iron; and raiſed up ſuch Doctrines from Texts of Scripture, that were certainly intended for quite far other Purpoſes, to countenance their Practices, to make People kill and ſlay God's Anointed, under pretence of ſaving and protecting the Anointed of God. But who did they mean by it? Pray, how did theſe People come to take upon them to preach againſt Popery, when indeed they were preaching down all manner of Religion, under the Pretence of that? So that you grew to have as many Religions, as there were Sects or Diſſenters in the Nation; and never any could be tolerated that were not grown into the Party, but they came all into Office, and the more extravagant the more preferr'd; ſo that without the Bleſſing and immediate Providence of God, by a ſecond Reſurrection, reducing us into ſome ſort of Order, in reſtoring his Sacred Majeſty (whom I pray God grant long to reign over us; and ſo ought all Loyal Subjects to pray), what a miſerable condition had we been in! And I may call it a ſecond Reſurrection, it being the Reſurrection of our Religion: we were turned all into Confuſion; we had no other Religion, at leaſt apparently predominant, but that that had the ſtrongeſt Army to ſupport it, and that had force enough to contribute to what the luxurious, debauch'd Profeſſors of it would make to be Religion; for they were the Profeſſors at that time of all things.

Gentlemen, I ſpeak this, becauſe even the Laws, that have been made ſince the Reſtoration of the King, have taken notice, that the beginning of all the Miſchief hath been this; and that the great Incendiaries of all ſorts of Rebellion were theſe, who took upon them in their Pulpits, under colour of Religion, to countenance Rebellion and Treaſon, Confuſion and Anarchy. Now how far theſe things have been known to you all, that I muſt leave to you; and muſt betake myſelf a little nearer to the Caſe, having premiſed theſe things; to which I would add this as a Warning to all People, that they would not abet or aſſiſt in any Meeting againſt Law, or that is known to be againſt Law, whatſoever they think; for there will Miſchief come upon it one time or another, let them pretend what they will. As that Gentleman ſays, he undertook to expound, and teach his People the Knowledge of the Lord: the Knowledge of the Lord is a very good Leſſon to be learnt, and to be taught all People; but bleſſed be God, we thank him for it, we have Churchmen of as great Learning (without any reflection upon the Gentleman at the Bar) as he can pretend unto, and men as pious and virtuous; and perhaps we may ſay at this time, with a little more Confidence than ordinary, that we have as learned a Clergy as ever was ſince Religion was known within this Kingdom. And, God be thanked, theſe Men are not only learned for themſelves, but they exert themſelves for the good of others, for the Satisfaction of that Duty in which they are employed, by their due and conſtant attendance upon the Worſhip of God, in their places of Worſhip, the Churches, which are by Law appointed for it; and we need not run into Holes, and Corners, and Conventicles, and Clans, to underſtand the Word of God, and the Practice of our Duty towards him, or towards Men; becauſe we have Churches to apply ourſelves to, where we may learn to know God, to obey him, and them that are put in Authority under him; which I am ſure is a Duty incumbent upon every Preacher of the Word of God to inſiſt upon, and preſs, and urge. And I am ſure, whoſoever preaches at a Conventicle, cannot with a ſafe Conſcience preach Obedience to the Civil Magiſtrate; becauſe, while they are in that very Preaching, they are acting Diſobedience againſt his Laws, in regard what they do, is againſt the Authority of thoſe Laws under which they live; and no Man can preach well againſt that, which he knows in his own Conſcience, at the ſame time, he is practiſing himſelf.

So that, Gentlemen, I muſt tell you this is a wonderful dangerous thing; and therefore I give it as a Caution to all People to beware how they break the Laws, by going to ſuch Meetings and Conventicles as theſe are; for it will have at the long-run, one time or other, a very dangerous Iſſue. And there is another thing, which is wonderful dangerous too, to ſee what Shoals and Crouds of People come to theſe Sorts of Meetings; People of all Sorts of mean Trades and Profeſſions. And how eaſy is it, if a Man has a Mind to inſinuate into ſome ſilly, ignorant People, common, illiterate Fellows, that can neither write nor read ſome of them, yet thereby to feel their Pulſe, to ſee whether they will ſwallow down ſuch a Thing, or ſuch a Pretence at firſt? For they did not in the late Times begin with open Rebellion, and preaching the Doctrine of depoſing of Princes, or bringing them to the Block; but they tried with ſeveral previous Ways, and as the Bait ſunk, and was ſucked in, they attempted to try further. They applied themſelves perpetually to purſue the Temper of their Auditory; and therefore we muſt have a great deal of Care to prevent all ſuch Miſchiefs as theſe are for the future, that they may give no Countenance to ſuch, who pretend to be Expoſitors, but are very ill ones of the Scripture; and thereby inſtil into the Minds of Men ſuch dangerous and pernicious Doctrines; that the Scripture may not be perverted, to give an Authority to ſuch deſperate Things as theſe are; for we have known over and over how eaſily People are drawn into Miſchief in this Age, even by the very ſame Train that they were in the Time of the late Rebellion.

Now, Gentlemen, theſe Things being premiſed, I would take Notice to you, that the Thing now before you, is a Queſtion of a different Nature from what I have now ſpoken of. It is not the Queſtion that you are to try, Whether he preached at a Conventicle or not? or whether the doing of that which he did in ſo preaching, is againſt the Law or not? but whether he did at any Meeting (eſpecially as to the Time that is particularly ſpecified) ſpeak Words of the ſame Subſtance, to the ſame Effect and Intent that are compriſed in the Indictment? For though he did preach at a Conventicle, and thereby did tranſgreſs the Law; yet in Caſe he did not preach to the Subſtance of what is contained in this Indictment that hath been read unto you, and that he is accuſed of, he muſt be acquitted. That I muſt declare to you for Law, as no doubt it muſt be acknowledged by me to be; therefore you are to take Care, upon your Conſciences, to try and conſider whether or no you believe theſe three Witneſſes, that have been produced againſt him, ſwear true, or are guilty of wilful Perjury. For, in downright plain *Engliſh*, they are guilty of Perjury, if he be not guilty of the Words laid in the Indictment. One of the two is certainly true; either they are guilty of Perjury, or the Priſoner at the Bar is guilty of the Treaſon laid to his Charge: I pray God direct you in your Enquiry; for it is a Queſtion, I muſt needs ſay, of very great Difficulty.

Gentlemen, for the Intention of a Man's Heart, I muſt tell you this for Law, as to the compaſſing and imagining of the Death of the King, it is not to be diſcovered but by ſome Action; ſome Word, or Overt-Act, there might be to interpret the ſecret Imagination of the Heart. It is impoſſible to diſcover or diſcloſe the Imagination of any Man's-Heart, except we be directed to that Diſcovery by Words or Actions.

Now, Gentlemen, Words that in themſelves may bear a good Conſtruction, and are good Words, yet coupled with Actions that are Evil, or other Words that are Evil, theſe very Words may be a Diſcovery of the evil Imagination that is in a Man's Heart. As to expreſs myſelf in a very familiar Example, for the Purpoſe, that I may make Things as plain as I can, for that is my Deſign, and ought to be every one's that is concerned in ſuch a Matter as this. Becauſe we have had ſome Diſcourſe concerning the late bleſſed Martyr King *Charles* the Firſt, he was here brought to a Shambles of Juſtice; for I cannot call it a Court of Juſtice, however they called it a High Court; and there was a kind of Mockery or Pageantry of a Trial. He was arraigned and tried for Treaſon, and a new national Treaſon, never yet invented nor known of before amongſt us, Treaſon againſt his People; I ſay, now and never thought of till theſe Butcherly Fellows that ſprung out of the Shambles, came to put it in Practice; erecting what they called a High Court of Juſtice, but which was truly to be called a High Court of Injuſtice; and there they were to have ſome come and cry Juſtice, Juſtice, Juſtice upon the King. Gentlemen, Juſtice is a good Word; but if that Word be uſed and ſpoken as it was in that Caſe, in order to bring the King to his Death, that which was a good Word, and if otherwiſe uſed, had been a proper Word even at that Time; that is, if applied to good Purpoſe, to ſet the King and the Nation free; yet being applied to the bringing that Sacred Martyr to ſo horrid and barbarous a Death, that was plain downright Treaſon; and I make no Difficulty in the World (nor can any Man that underſtands any Thing) that it was ſo by Law; and it was an Overt-Act ſufficiently indicating the Intention of all Perſons that were therein concerned to put and bring the King to utter Death and Deſtruction; and all theſe Fellows that made Uſe of that good Word, Juſtice, Juſtice, Juſtice, were all undoubted Traytors; making Uſe of it for that ill Purpoſe.

Gentlemen, again; ſuppoſe if Mr. *Cook* was a Man of Law, that was Solicitor of what they called the Commonwealth at that Time, Solicitor to the State (I only ſpeak this to explain my Mind,) if he comes (when the King had juſt Ground to diſpute the Authority of that Court of Injuſtice, that he was dragged to, and refuſed to plead) and does pray Judgment againſt the King, as he did, and it was proved at his Trial, Judgment alone might be there meant as tending to excuſe the King, as well as to ſentence him to Death; yet he being there praying Judgment againſt the King, and which was afterwards at his Prayer ſo pronounced; that ſhewed what his Opinion of the Word he uſed was at that Time; and that made him a Traitor, and was an Overt-Act to diſcover his Guilt.

Why ſo, Gentlemen, I am to tell you, though theſe are Words that may be uſed in a Scriptural Way very well, and to very good Purpoſe; yet if they be applied to an ill Purpoſe, they may be a ſufficient Indication of a Man's compaſſing and imagining the Death and Deſtruction of the King. Therefore, Gentlemen, you are the Judges, whether if in this Caſe, he ſpeaking theſe Words, of deſtroying our Enemies, and ſtanding to our Principles, they have not an Alluſion to the former Words; and whether they are not Expoſitors of the Mind of this Perſon, the Priſoner at the Bar, of compaſſing and imagining the Death and Deſtruction of the King; and I do this on Purpoſe to remind you of what is neceſſary to let you into the Queſtion.

Now for the Teſtimony againſt the Priſoner at the Bar you have three Witneſſes. Firſt, you have Mrs. *Smith*, ſhe does directly ſwear that ſhe did frequently, ſeveral Times, go between the 13th of *July* and the 14th of *September*, to hear the Priſoner at the Bar preach at ſeveral Conventicles or Places of Meeting. She tells you the particular Days: She tells you as to one, that ſhe heard him the 20th of *July*: She heard him another Time the 10th of *Auguſt*, according to the beſt of her Remembrance. She heard him again the 17th of *Auguſt*, the 24th of *Auguſt*, the 31ſt of *Auguſt*; and ſhe heard him the 14th of *September*; that is according to the beſt of her Remembrance. She both tells you the Time and the Place, and ſhe heard him preach at theſe Conventicles. All that ſhe ſays as to this, is introductive to what ſhe ſpeaks of the 14th of *September*, which is the Day to which the Indictment does refer; and this ſhe does ſay poſitively, that upon the 17th of *Auguſt*, he prayed that he might be forgiven for not praying for the King; and by that ſhe would have you to underſtand, as ſhe would inſinuate, that he did not uſe to pray for the King.

Mr. Roſewell. [*Turning to the Jury.*] I made Uſe of the Words of *Samuel*, God forbid that I ſhould ceaſe to pray for him.

L. C. J. Sir, you muſt not talk to the Jury now; I am directing of them.

Mr. Roſewell. My Lord, I beg your Pardon; it was to ſet the Matter right. It was miſ-apprehended.

L. C. J. All this is antecedent to the Matter for which he is accuſed; and you ſee his Anſwer to it, from a Text of Scripture that he offers to you, which he did not repeat with Diſlike to pray for the King; but that he thought it his Duty always ſo to do.

Then ſhe tells you particularly at another Time, which, I think, was at the Houſe of one *Paul Shed*, I cannot particularly tell directly the Name, there was a talk of the Recorder, and of the Lord Mayor of the City of *London*; but that was before this Time. And afterwards, the firſt and the ſecond Witneſs, two of them more, give you an Account tho' they were never there but then: That he began to talk about the Fire, and that he ſhould ſay there was a great Man at the corner of *Grace-church-ſtreet*, I need not name his Name, for you all know him very well; that he met with a poor Man, though indeed he was not a poor Man, he was a labouring Man, a Carpenter; and they began to talk much concerning the Fire, and he did ſay, that in Caſe it had not been for that great Man, there had been no ſuch Thing as the Fire in *London*; nor if it had not been for the Lord Mayors and Sheriffs afterwards, there had been no ſuch Thing as the Fire in *Southwark* and *Wapping*. And I take Notice too, that at the ſame Place, which was *Shed*'s Houſe, that they ſpoke of, there is Mrs. *Farrar*, againſt whom there is not the leaſt Objection that I can hear of; She agrees both in the Circumſtance of Place and Time, and of the Words, and to the Dialogue about *Grace-church-ſtreet*, and the Carpenter, and to the previous Words, that he was not a poor Man, and the like, and about the Diſcourſe relating to the Fires of *London*, *Southwark*, and *Wapping*, and likewiſe relating to the Lord Mayors, and Aldermen, and Sheriffs; theſe Diſcourſes were at that Time.

Gentlemen, the next Teſtimony you have, is of theſe Witneſſes that ſpeak of the Time that is in the Record; which all the three Witneſſes that you have heard, ſpeak to; tho' the moſt of what I mentioned before, was another Time: And this is at the Houſe of one Captain *Daniel*; one ſays, Captain *Daniel Weldy*. But that it was a Captain that was then at Sea, is plain; for this Gentleman himſelf, Mr. *Roſewell*, does not deny that this was at Capt. *Daniel*'s Houſe; and that he did pray for him, as being then at Sea, and for all his Family; and all the Witneſſes ſpeak to the ſame Time. Tho' indeed the firſt Witneſs did ſay, that ſhe did not know but it might be Capt. *Daniel Weldy*; but ſhe likewiſe ſaid, ſhe did not directly know his Name. But ſhe directly ſwears to the very Words that are mentioned in the Indictment. She does directly ſwear that Mr. *Roſewell* preach'd upon the 21ſt of *Geneſis*. Says ſhe, as I remember; though Mr. *Roſewell* did think, there was a Difference between the Evidence of the one and the other Woman about the 20th or 21ſt, yet it was only upon her Remembrance, as well as ſhe could, and ſhe did not poſitively ſwear it was in that Place, but according to the beſt of her Remembrance. And the ſecond Witneſs, Mrs. *Hilton*, when ſhe came to ſwear, ſhe ſaid it was either the 20th or 21ſt; but in ſo many Words ſhe did directly ſwear, that he ſhould preach, *that the People made a Flocking to the King on Purpoſe for the curing of the King's Evil*; *but the King could not do it*; *but we are they that the* People *ſhould flock to for the Curing of all their Evils*. Which are the very ſame Words in Subſtance that are in the Indictment.

The very ſame Words in Subſtance, ſays that other, the ſecond Witneſs; the ſame Day, in the ſame Place, did I hear Mr. *Roſewell* then ſpeak theſe Words; and they go further, and the ſame Witneſſes both ſwear, *Hilton* and *Smith*, that Mr. *Roſewell* ſhould ſay, *We have had two wicked Kings together, who have ſuffered Popery to come under their Noſes, who can be compared to no other Perſons but wicked* Jeroboam. Mrs. *Smith* ſwears theſe Words directly, and Mrs. *Hilton* ſays, ſhe thinks there was the Name of *Rehoboam* mentioned; but ſhe is ſure there was mention of two wicked Kings in the ſame Words as Mrs. *Smith* ſpeaks. They go yet further, and ſay, both the one and the other of them, that he ſaid, *If the People would ſtand to their Principles, he did not doubt but they ſhould overcome their Enemies as in ancient Times with Rams-horns, broken Platters, and a Stone in a Sling* The two Witneſſes, both Mrs. *Smith* and Mrs. *Hilton*, ſwear to the very Words, and at leaſt to the Subſtance of them; and if there ſhould be ſome little Variance in ſome few of the Words, that will ſignify nothing, if the Subſtance be the ſame.

But now, Gentlemen, beſides theſe two Witneſſes, there is a third Witneſs, Mrs. *Farrar*, againſt whom (that I can ſee) there is not the leaſt Exception in the World, if you remember any, you would do well to conſider of it; you may be better able to recollect what has been ſpoken or offered, than I can in ſo long a Time; and you ought to endeavour (being Men of Underſtanding, and good Quality) to refreſh one another's Memories, and make what Obſervations you can; which I perceive you have taken Notes about, ſome of you at leaſt.

She does directly ſwear as to the Buſineſs of the King's Evil, the ſame Words that the other two have ſworn, about *flocking to the King to cure the King's Evil, which he could not do: But they were the Prieſts and Prophets that could cure the Maladies of the People.* And as to the ſecond Words, ſhe ſwears that he ſaid, *there had been two wicked Kings* *that had ſuffered Popery to come in under their Noſes.* And ſhe ſwears in the Third Place, *That there was likewiſe an Exhortation to ſtand to their Principles, and that they ſhould overcome their Enemies.* She does not indeed particularly tell you about *Rams-horns, and the Platters, and the Stone in the Sling*, but only of *ſtanding to their Principles, and overcoming their Enemies:* Which I would have you particularly to take Notice of, it being the material Part of the Indictment, to make theſe Words Treaſon.

Now, Gentlemen, give me leave to tell you, there is great Regard, and very great, to be had to the Circumſtances in this Caſe, to ſee how far theſe Things are to be tack'd together. Firſt, you remember the Witneſſes were examined apart; and it does not appear that they have talked together; and there was all the Care taken that poſſibly could be, they ſhould be out of the Court, and out of one another's Hearing; ſo that there was as much Endeavour to detect the Falſhood of their Teſtimony (if it could be) as poſſible in any Caſe, even in the very moſt minute Circumſtance. Mrs. *Smith* ſwears, That Mrs. *Hilton* came to her Houſe on *Saturday* Night; that they went together to the Houſe of this Capt. *Daniel* upon the 14th, about Seven of the Clock; that they were there before Mr. *Roſewell* came in; that there was a Lower Room in the Houſe; and a little higher there was a little Room; and then there was a Room up Two Pair of Stairs, where there was a Bed; that Mr. *Roſewell* ſtood upon the Stairs, but they both ſat upon the Bed, together with one of Mr. *Roſewell*'s own Witneſſes, which was the Mathematical Inſtrument-maker, and that he was in a Mourning-Cloke; and that there was particular Notice taken of a Pair of Shoes given by Mrs. *Smith* from under the Bed to the Child of that Mathematical Inſtrument-Maker; and that there was Prayer made for Capt. *Daniel*, the Maſter of the Houſe, who was then at Sea, and for his Child and Family. There were theſe Circumſtances, every one particularly aſked of the Witneſſes, and ſworn to by them in the very ſame Words, the ſame Manner of Poſture, the ſame Things done both as to the Room, the Bed, who ſat upon the Bed, the Mourning-Cloke, the plucking off and delivering of the Shoes; that I may appeal to your Memories, if they did not agree to a Tittle exactly.

Then they began to enquire further concerning other Expreſſions of Mr. *Roſewell* at other Times: Something about People in Scarlet, and ſomething about Canting: And Mrs. *Smith* tells you, that he did ſpeak ſomething about Canting; that he was talking concerning that Word; ſays he, I will tell you what that Canting means: I went not long ago thro' a Cathedral, where the Organs are, and there the People were gathered together; and they were ſinging the Lord's Prayer, and I don't know what; I heard them ſing, and I could not but laugh out; and he broke out in his Sermon into a He! he! he! that is Canting. This, they ſay, was his Expreſſion at that Time.

When Mrs. *Hilton* came in, ſhe tells you the very ſame Words, even to a very particular Phraſe, which I had forgot before, that he ſaw the Men in White Gowns that were ſinging, and which he counted Canting. It is very true, there is no ſuch Thing mentioned in this Indictment; but only it is offer'd by the King's Counſel to ſhew the Temper of the Man, and how he uſually uſed to preach.

As concerning the Story of *Sampſon* and *Dalilah*, that's ſworn by both Witneſſes, that there was ſuch a Diſcourſe; for he began to talk of our King's keeping of Women, and he hoped they would bring the ſame Deſtruction upon him, that they brought upon *Sampſon*; he hoped it would ſo fall out with our King. How far it is true (they both having ſworn it) you are the Judges; they have directly ſworn it, and to all the Circumſtances both of Time and Place.

Gentlemen, There is yet another Thing that is material too, tho' a ſmall minute Circumſtance, and that is about this ſame *Paul Shed*, that they have ſpoken of. When the firſt Witneſs came in, he chid her for coming in her Pattins, and bid her pull off her Pattins, for they would leave ſuch an Impreſſion there, that People would be apt to diſcover that there was, or would be a Meeting; and therefore ſhe promiſed, when ſhe came any more, that ſhe would be ſure to leave off her Pattins. And it is proved, that Mrs. *Hilton* and Mrs. *Smith* were in the Room above, and Mrs. *Farrar* was in the Room below, and it does not appear that ſhe was acquainted with the reſt. She had heard him ſeveral Times, and tho' ſhe did not ſee him that Day, he being up Two Pair of Stairs higher, yet ſhe ſwears directly to the ſame Words, the ſubſtantial Part of them that the other two Witneſſes ſpoke of. So that I muſt ſay, if in Caſe they have contrived this Story to take away the Life of the Priſoner at the Bar, they have contrived it with all the deviliſheſt Subtilty that ever any could do, or that could enter into the Minds of any People. You are the Judges of the Fact, I pray God to direct you, that you may detect the Truth; far be it from the Court, or any Body, to deſire that any thing but Truth ſhould prevail; for it were far better a thouſand Times that a Hundred guilty Men ſhould eſcape, than one innocent Man ſhould ſuffer. But on the other Side, far be it from any Man, that is upon his Oath to do his Duty between the King and the Subject, to be moved by Compaſſion, or any Thing of that Nature, to do againſt the Evidence that is given in open Court; unleſs he be ſatisfy'd that the Evidence is falſe. For in this Caſe, I ſay again, either you muſt find the Priſoner guilty of what he ſtands charged with in the Indictment; or elſe you muſt find theſe three Witneſſes guilty of wilful Perjury: And I pray God again to direct you what you are to do in it.

Gentlemen, as to the Teſtimony that has been offered on the Behalf of the Priſoner (I would follow the ſame Method that has been taken, both in the Evidence given by the King and the Priſoner, as near as we can): Firſt, you have had brought by him Half a Dozen (for I would not injure him as near as I could one Tittle) that have given you an Account of what he ſaid at that Time. There was *Hudſon*, *Hall*, *Atkinſon*, *Smith*, *Hales*, and *Wharton*; I took their Names, as near as I could; and all theſe People do directly ſay, they were preſent at that Time, and they heard nothing ſpoken of the late bleſſed Martyr King *Charles* the Firſt, or of Reflection upon the Government; but all that was ſaid of the King's Majeſty, that now is, was in his Prayer, wherein he did pray for him; that they heard nothing come from Mr. *Roſewell* concerning the King's Evil in the Manner that the Witneſſes ſpeak of; but what was ſpoken, was ſpoken of another King, in relation to *Abimelech* King of *Egypt*, and not relating any way to the Diſeaſe they call commonly amongſt us the King's Evil. It is true, one of them does ſay (which is a Word that has obtained very much amongſt ſome Sort of People), that when he prayed for the King, he pray'd for his Deliverance from evil Counſellors: And under theſe Words, evil Counſellors, and Deliverance from them, we know what became of that ſo often mentioned Prince now, King *Charles* the Firſt. Under that Pretence they would remove all his Friends from him; and when he was left alone, they could eaſily do what they pleaſed with him. Many, with Pretence of great Pity and Zeal for the King, cry out, that all that they complain of, is not of what the King does; him they think to be a wonderful good Man; it is not he, but his evil Counſellors, that they reflect upon; and ſo we muſt fight aginſt theſe evil Counſellors; and when we have laid them aſide, and he ſtands alone, then it will be eaſy to ſerve him as they did his Father. Whatſoever the Pretenſions of ſuch Words are, we know what the Deſigns of the People, that made the ſame Pretence heretofore, came to; and I pray God, that there are not the ſame Deſigns on Foot ſtill; nay, that that was not the Deſign of this Prayer of the Priſoner at the Bar.

Gentlemen, they give you a particular Account how he Preached upon the 20th of *Geneſis*; and they ſpeak as to the 2d and 7th Verſes of that Chapter, and what Diſcourſe he had upon them. But truly, it is pretty ſtrange (as Mr. *Roſewell* himſelf objected even to you of the Jury very well), can any one of you remember ſo exactly the Words that were ſpoken as theſe Witneſſes have ſworn? And truly he puts a very material Queſtion: But then the Queſtion turns t'other Way; how come all your Witneſſes to give ſuch an exact Account; all except the ſecond Man, who indeed did commit a Blunder or two, your Six Witneſſes, even to the Texts of Scripture, to the very Phraſes that were uſed, particularly to the Word *Tremendous?* They are all as exact as can be. It is ſtrange that Five People ſhould agree in all the Circumſtances; but why ſhould it not be as much believable that Three ſhould have as exact a Memory as the other Five? Nay, and I will tell you, what is pretty ſtrange too, that theſe People muſt hear, and remember juſt what was ſaid upon the 14th of *September*; but that which was ſaid upon the Text the Time before or after, that they cannot ſo well remember. It is plain, they have been dialogueing with one another; and it is plain, that ſome People can neither write or read, nor remember, but how they ſhall be ſure to ſerve the preſent Purpoſe. That ſeems to carry an Objection in it on the other Side, as the King's Counſel ſay; and it ſeems the more reaſonable on our Side, why they ſhould remember ſo exactly, as they have ſworn; becauſe (ſay they) that Day, when we came home, we called for Pen, Ink, and Paper, and ſet down theſe Words, the Subſtance of which we have now here ſworn: So that that does ſhew you we had Reaſon to remember, what we have teſtified againſt this Perſon. But what is yet greater than all this, it cannot be imagined (ſay the King's Counſel) that the Priſoner's Witneſſes are ſo much to be believed, ſince they give no Account of what was ſpoken at any Time before, nor any Time ſince.

Then, Gentlemen, there is another Reaſon, ſays Mrs. *Smith*, I came on Purpoſe to ſee who was at the Conventicle; tho' I had been at ſeveral Conventicles before, yet I never heard ſuch Words ſpoken. Says Mrs. *Hilton*, I was glad to be gone; and tells you of her Unwillingneſs to ſtay there, having never heard ſuch Words ſpoken againſt the Government before; and therefore ſhe ſet them down immediately as ſoon as they came home; and they went together to the *Bull* and *Mouth*, the *Quakers* Meeting near *Alderſgate* afterwards; and that that Day, or the Day following, they went to Mr. *Recorder*, and gave him an Account of what had paſt in their Knowledge. This is the Anſwer that is given by them to what the Priſoner's Witneſſes ſay: But you are to weigh this Teſtimony of both Sides. For I muſt tell you, Gentlemen, tho' theſe Witneſſes, that are for the Priſoner, are not upon their Oaths, yet they are as much under the Obligation of giving true Teſtimony, as they can be by Law; and you ought to have Regard to their Teſtimony, how far it is conſiſtent with Reaſon and with Truth. Some Things they differed in; ſome Things they heard in another Manner; whether you may believe ſuch Things may ſlip out of their Memories, or how that is, you are to conſider of it. This, Gentlemen, is the Firſt part of the Evidence that the Priſoner hath given for himſelf.

Next, Gentlemen, there is another Part of the Evidence, and that is from the Fifteen Witneſſes, one Mr. *Jolliff*, Captain *Cotton*, Mr. *Fipps*, Mr. *Veering*, Mr. *Hitchcock*, Mr. *Hinman*, Mr. *Wanly*, Mr. *Strong*, Mr. *Cutloe*, Mr. *Melſum*, Mr. *Medham*, Mr. *Winnacott*, *Anne Broadhurſt*, *Anne Manning*, *Iſabella Dickeſon*; all theſe were called to his Reputation as to his Behaviour and Converſation towards the Government. They tell you they have known him a long Time. It ſeems they frequented the Hearing of him ſometimes, when there was an Indulgence and a Diſpenſation for ſuch Meetings, then they went to hear him, and then he uſed to pray for the King; and it has been obſerved, that, it may be, meeting with Favour and Kindneſs from the King and Government, he might be very well pleaſed with the King at that Time; tho' that turned to the Prejudice of the Government (as we all know). But whether his Complexion altered towards the Government, when it was thought fit to reſtrain that Indulgence, that you have to conſider. They ſay, they know nothing of Harm by him, and that may be true; no more do I; and I preſume you do not; if you do you will tell us. You and I, pray God we had never heard of any thing of Harm come from him, with Relation to the King and Government; but you have heard what has been teſtified by theſe Witneſſes.

Then there came two Witneſſes, that lived at Sir *Edward Hungerford*'s when the Priſoner at the Bar lived there; one of them lived Ten Years there, the other Four. And they give you an Account, how he was uſed to pray (not according to the Common-Prayer) but he uſed to go to Church, and he did pray for the King very earneſtly, and heartily, as they ſay; he came there in the Year 1664, and he continued there Seven Years, and they always looked upon him to be well-inclined to the Government.

Then you have an Account of Three Servants that lived in the Houſe; one lived Four Years with him, and that ſhe frequently heard him pray for the King (for I would not willingly forget a Word that ſhould make for the Priſoner's Advantage), ſhe ſaid he prayed as earneſtly for the King as for his own Soul, with as much Zeal and Earneſtneſs as he could do; this is what ſhe ſays. And the ſecond lived with him three Years, and ſhe does remark particularly, that one Time being in private in his own Cloſet, at Prayer by himſelf, ſhe heard him very earneſt in praying for the King: So that he would urge it as improbable, and unreaſonable, to believe, that if he, in his private Family, and by himſelf, ſhould ſo earneſtly pray for the King (which was never intended to be heard by any Body, and came to be thus heard by Accident), he ſhould in publick, before a great Congregation, utter ſuch Words againſt the King and Government as are pretended againſt him. This is the Uſe he makes of that.

Then, Gentlemen, you have likewiſe afterwards, the Teſtimony of thoſe two Witneſſes that have been examined before, that is, Mr. *Atkinſon*, and Mr. *Smith*; that whereas you ſeem to ſay, ſays he, I made a great Reflection upon the late King, and his preſent Majeſty; it was ſo far from that, that I uſed to teach upon the 30th of *January*, and then to preach Obedience to the King, and to pray for the King, and make ſharp Invectives and Reflections upon thoſe that had been concerned in that horrid, barbarous Murder of the late King, of bleſſed Memory; ſo that I cannot be thought to encourage ſuch Things as theſe, when I uſed to preach to my Auditory ſuch Doctrine, as I now tell you of. This is the Subſtance of that part of the Evidence, as near as I can remember, and recollect; you have taken Notes, Gentlemen, yourſelves; you will be able for to make Obſervations, according to what Notes you have taken.

Then, Gentlemen, here are eighteen Witneſſes, that he has called, to endeavour to perſuade you to a Diſbelief, and gain a Diſcredit as to the Witneſſes that are produced againſt him. Now as to that, which was offered by the firſt Witneſs, *How*; that was but by Hear-ſay, he knows nothing of his own Knowledge; for my Brother, Sir *Thomas Jenner*, he gives you an Account of all the Queſtions that he was aſked about; that ſhe never did ſay that ſhe was preſent at the Conventicle, but that Mrs. *Bathoe* had confeſſed it to her; and upon that Confeſſion ſhe was convicted. Now, Gentlemen, it is a very untoward Thing in this Matter, that Mrs. *Bathoe*, it is plain, uſed to have Conventicles, and ſhe is the Widow of a Non-conformiſt Preacher, and this Woman was ſo far from ſaying, that ſhe was there, that ſhe only inſiſted upon it, that Mrs. *Bathoe* had confeſſed it to her. So likewiſe you have been told concerning that Buſineſs of Mr. *Hales*, the Conventicle at his Houſe, on the 13th of *July*; it was ſo far from her ſwearing that Mr. *How* was there, that tho' he was mentioned, yet ſhe refuſed before Sir *George Treby* to ſwear that there was any ſuch Conventicle, or that he was the Man; ſhe did not know the Man, and could not ſay any Thing to him. And my Brother *Jenner* being convinced that there might be a Miſtake, that there might be no ſuch Conventicle at Mrs. *Bathoe*'s, went as far as he could to retrieve it; but it ſeems it was paſt from him into the Clerk of the Peace's Hands; I cannot ſay any Thing to it: But if you are ſatisfied that there was no ſuch Conventicle at all, all that can be ſaid, is, that the Old Woman belied herſelf, and my Brother *Jenner*, as to an Accommodation between them, did reſolve to do what he could, and promiſed to ſpeak to the Clerk of the Peace: Not but that, for any Thing yet appears, this Woman, that is here brought as a Witneſs againſt Mr. *Roſewell*, did ſwear true, That that other Woman did confeſs to her, that there was ſuch a Conventicle; they indeed have endeavoured to evince there was no ſuch Conventicle. I muſt leave it to you; for nothing appears clear of the one Side, or the other.

Then, Gentlemen, as concerning her talking with, and about one *Games*; wherein you had an Account given you by one *Harvey*, and he adviſed to give Money, rather than to be troubled; but they would not give Money. Now, for that the whole Anſwer (that it may be given together) is, that you know the Proſecutor, in theſe Caſes, has a Share out of the Penalties that are incurred by Conventicles; and tho' it may be that it was not ſo well done by ſuch Informations to compound Penalties, yet it is no evil Thing: For if I will chooſe to inform, or not inform, there is a Right in me to a Part of the Penalty ariſing from the Offence: And tho' it be not a commendable Thing, yet it is not a criminal Thing for me to compound it; for I do not obſerve that they are proved to be People that do uſe to go to Conventicles.

Then, Gentlemen, there is ſomething to be obſerved concerning the Evidence of *Cartwright*: He comes and tells you, that he was by, and one of the Perſons that went along with Mrs. *Smith* to ſeveral Places, in order to make Convictions of Perſons for Conventicles; and ſhe would have him ſwear ſuch and ſuch Conventicles, that ſhe would dictate to him; and ſhe promiſed, and offered to ſwear for the Conviction of Conventicles, when ſhe was not there: And this was a great while ago; but nobody heard a Word of it till now, and that when Mrs. *Smith* was engaged in this Proſecution againſt Mr. *Roſewell*. Now when we meet with this Sort of People, we ought to conſider of the Nature of their Evidence. It is certainly a very improbable Thing, that any Perſon ſhould come and tell him, I will be guilty of Perjury, I will be forſworn for you, if you will be forſworn for me. It can hardly be believed that any body ſhould ſay ſo to a Fellow, that you ſee is likely enough to detect any ſuch Thing if it ſhould be for his Advantage: And it had been his Duty (if he had been an honeſt Man) to have diſcovered this to a Magiſtrate immediately, and detected it, ſo as that the Villainy ſhould have been puniſhed; not to come and ſerve a Turn upon ſuch a Trial, juſt as this is. And therefore, Gentlemen, I do not like ſuch accidental Witneſſes, that ſeem to drop (as it were) out of the Clouds, and we can have no Account of them before. You have no ſatisfactory Reaſon how he comes in now to make this Diſcovery. Here you have ſeveral other Witneſſes, that were before, that give ſome Account of her Behaviour in theſe Matters.

As to the Conviction that they talk'd of, upon the 13th of *July*, ſeveral Witneſſes give you an Account of the Matter. Firſt of all, it is very apparent by that Book that is produced, that there was a Conventicle the 13th of *July*, and it was at Mr. *Hudſon*'s; but indeed it was not at Mr. *Hales*'s; and it is not alledged here by her that it was ſo. And for that other, my Brother *Jenner* gives you an Account, that upon the Confeſſion of Mrs. *Bathoe* there was a Conviction; but there was no ſuch Conviction of *Hales* in the Caſe, but only of *Bathoe*; as appears by the Record which hath been produced.

Then, Gentlemen, the next Queſtion is concerning the Clerk of the Peace, and the Writing that they talk of; which makes nothing one Way nor t'other. Then there are two Witneſſes, *Drew*, and the other Man, that met with this Woman, Mrs. *Smith*, in *Grub-ſtreet*, in order to make a Compoſition for Penalties for going to Conventicles; and they find out a Fellow that uſed to go to Conventicles, and they frighten him into a Compoſition, and ſo much as they ſay, were paid perhaps, and he ought to have paid more: But it's plain, he uſed to go to Conventicles; and it's pretty odd that he ſhould be picked up on a ſudden there, on this Side the Water, to diſcover theſe Practices, at the Inſtigation of the Priſoner at the Bar, who lives at ſuch a Diſtance on t'other Side of the Water.

Then, Gentlemen, as for Mrs. *Higgenſon*, I can only ſay this, ſhe ſays nothing to the Purpoſe, that is either material for, or againſt the Priſoner; for ſhe ſaid, ſhe knew nothing of her own Knowledge; and all that ſhe did ſay, was but Hearſays and Reports, not by Way of downright Accuſation againſt the Perſon ſhe was produced againſt. And, Gentlemen, you are to conſider, that Hear-ſay and Report is no Evidence at all; but it muſt be what the Witneſſes know, and ſay of their own Knowledge.

The next is a worthy Gentleman, Sir *John Talbot*, and as to whatſoever he ſaid, or any of his Family told him, except he knows it of his own Knowledge, that's no Manner of Evidence at all to take off the Credit of Mrs. *Hilton*. But what ſhe herſelf did ſay (if it can be teſtified) is Evidence againſt her. If ſhe confeſt that ſhe had any Deſign, or was engaged in any Practice to betray the young Lady Sir *John Talbot* talks of, that indeed is a very evil Thing. But whatſoever were the Apprehenſions of others concerning her Share in that Matter, or any of the little Things that they talked of concerning Miſtreſs *Hilton*, before ſhe intermarried, it can ſignify but very little in this Matter. And when we aſk Sir *John Talbot* the Queſtion, he cannot give any ſatisfactory Account of it; for he ſays plainly, he had no Converſation with her. It ſeems it was not a Contrivance while ſhe lived there for Ten Years together; and it is pretty hard to imagine in ſuch a Caſe, if ſhe had been ſuch an evil Perſon, as they would repreſent her, in that Time, that it had not appeared, ſo far at leaſt, as that ſhe had been diſcharged the Service long before: For Sir *John Talbot* is a Perſon that cannot be thought to permit any Thing of ill in his Family. But yet withal, he can't know all that paſſed, any more than any of you, of Irregularity in the Family. If indeed they had queſtioned any of the Servants, that were more converſant with her, and taxed her of any Thing that was evil, then it had been a much more probable Exception; but to have People's Reputations blaſted barely by Tittle-tattle, and Stories, after Perſons are gone out of a Family, where they have lived for many Years, is a Matter of very dangerous Conſequence; and any Man in the World may be injured in his Credit, if ſuch a Thing be permitted. What Sir *John Talbot* ſpeaks of his own Knowledge, that is Evidence, and we would hear it, and give all due Regard to it: But what was ſpoken of concerning *Hilton*, before ſhe was married; what the reſt of the Servants ſaid concerning her; or the general Reputation that ſhe had in the Family; that's no Evidence at all.

Gentlemen, in the laſt Place there is a Witneſs produced, one *Dillingham*; and ſhe pretends that ſhe is a Woman of a very ill Reputation; and that ſhe would have hired her (as ſhe would have it believed) to have ſworn againſt ſeveral People. Now as to that, ſhe would have done exceeding well to have made a Diſcovery of this before this Queſtion; and it had been her Duty ſo to do; and not now to come, and drop in, juſt when this Queſtion comes to be debated before you: That, Gentlemen, draws a Suſpicion along with it, and a very great one: But I muſt leave the whole Matter to you, which I do not queſtion but you will examine, and look into, as well as you can. Thus I have offered the Evidence that has been given on the one Side, and on the other, in Point of Fact.

Now, Gentlemen, there are ſome Remarks made by the Priſoner at the Bar (as God forbid, but he ſhould have the Advantage of whatſoever can be obſerved upon the Evidence given againſt him), that is, he makes a Difference between the Teſtimony of the one and the other of theſe Witneſſes, about the 20th or 21ſt of *Geneſis*; that the one ſaid the 21ſt, the other the 20th. Now, it is to be obſerved, as has been ſaid, that ſhe that ſaid the 20th, which was the ſecond Witneſs, ſaid it was either the 20th or the 21ſt; and Mrs. *Smith* ſaid it was ſo to the beſt of her Remembrance; but it appears to be, and ſo I perceive, by all the Witneſſes, upon the 20th; ſo that as to her it cannot be very material, becauſe ſhe does not ſwear poſitively either the one or the other.

Then, Gentlemen, there is another Thing, that is, that ſhe ſhould talk of one *Weldy*, Captain *Weldy*, or Captain *Daniel Weldy*, when it ſeems his Name was not *Weldy*, but his Name was Captain *Daniel*; which I think can go no great Way in the Caſe. She is not acquainted with the Man himſelf; ſhe tells you one Part of his Name right; deſcribes the Houſe in all the Parts of it; and ſpeaks of the Circumſtance of his being at Sea, and being prayed for by Mr. *Roſewell*; therein they do both agree: So that, tho' ſhe apprehended that his Name might be *Daniel Weldy*, yet it is ſo far right enough that it was one Captain *Daniel*; and that there is a very ſmall minute Difference, that will make little one Way or other.

Then, Gentlemen, he inſiſts upon the Difference between their Evidence about that Circumſtance, whether it was all upon one entire Subject; or Part one Part of the Day, and Part the other. One of them ſays, it was not an entire Diſcourſe; for that about the Rams-horns, and the broken Platters, and the Stone in a Sling, was after Two o'Clock, after the Interval that had been, and the Space of Time between the Diſcourſe of the King's Evil, and thoſe other Things; and therefore, ſays Mr. *Roſewell*, whereas ſhe pretends that it was all ſpoken at the ſame Time, juſt as it is laid in the Indictment, that cannot be; and ſo it appears upon his own Evidence. Now, ſays that Woman, I can't ſo well tell, whether it was Forenoon or Afternoon, and truly they might call it Forenoon, becauſe they had neither eat nor drank; and

ſays

and ſays the Woman, we reckon that it's Forenoon till after we have dined; and ſhe cannot tell whether it was in the Pſalms, or whether it was upon the Chapter; but it was in that Diſcourſe that he held that Day. She does generally apply it to the whole; and that in that Day's Diſcourſe (all which Time ſhe ſtayed, till all was over) ſuch Words did paſs. You have heard the Difference that is between the two Witneſſes, and you will do well to conſider of it, if you think there is any thing material in it.

Gentlemen, I muſt confeſs it carries a notable Sort of Teſtimony in it, of which you are Judges, and will weigh it according as it ought to be weighed: *Firſt*, That theſe People ſhould luckily hit together concerning the King's Evil, and that there was ſuch a Diſcourſe as is laid in the Indictment about it, and of the Prophet's praying for the People for the Cure of the King's Evil, and then they ſhould be immediately heal'd. And on the other Side it is pretty ſtrange (as he urges for himſelf) that that ſhould be perverted, which he ſpoke concerning the Prophet's praying for the King, and thereupon his Hand being healed, whereby the Prophets have the Honour (as he ſays) ſometime by Prayer, of curing the King's Evil: So that ſomething or other there is in the Matter, that gives a mighty Countenance to what the Witneſſes ſpeak. There is a certain Sort of Occaſion given (as one would ſay) for ſuch Expreſſions, as they have teſtified, in his Diſcourſes.

Then, when they come to talk concerning the Rams-horns, and the Platters, the Witneſſes ſay, we heard nothing concerning Platters, much leſs of Pewter-Platters; no, it was broken Pitchers, and that was occaſioned by, and had Relation to a Text (ſays Mr. *Roſewell*) about *Gideon*, how eaſily he diſcomfited the *Philiſtines* Army, and there was no ſuch Thing as any Diſcourſe concerning the King, or the Government, or any Relation thereunto; it was only a Phraſe uſed by me in the Pulpit, to ſhew how great a Matter might be done by little Means. And ſo likewiſe concerning the Stone in the Sling, that being an occaſional Inſtance too what great Miracles have been brought about by little Means and Circumſtances: I have inſtanced in that (ſays he) how *David* killed *Goliath* with a Stone out of a Sling, and that our Saviour Jeſus Chriſt cured the blind Man by a little Spittle mingled with Clay. So that he would inſinuate, that thoſe Words that were ſpoken were not with any ſuch Intention as the King's Counſel would make it, and as the Indictment inſinuates; but only in a common, ordinary Preachment, as Inferences from ſuch and ſuch Scriptures. And whether this that he talks of, was the Diſcourſe he held at that Time; or what the Witneſſes ſpeak, muſt be left to you; they having ſworn it. And this, as I take it, is the Subſtance of the Evidence given by the one and the other Side.

Then, Gentlemen, Mr. *Roſewell* put the Queſtion in the Morning, and he ſeemed to inſiſt very much upon it in Point of Law, that the Diſcourſes of a Madman cannot be Treaſon. It is true, that ſuch Diſcourſes cannot be Treaſon, if you take Madmen in the true Senſe that the Law commonly takes it. All Traitors, all Knaves, and Villains, are ſome Way, and in ſome Senſe, Madmen; for no Perſon can act with any Reaſon in any ſuch Affairs. Treaſon is not to be committed upon the Foundation of Reaſon. Therefore upon his aſking of the Queſtion of the Witneſſes, what Reaſon there was for him to uſe ſuch Expreſſions; I told him, you did it, according as the Indictment ſays, which is drawn according to the Preſcripts of the Law, by the Inſtigation of the Devil; you did it, not only without Reaſon, but againſt Reaſon. But if the bare ſaying that it was againſt Reaſon, and that therefore a Man was a Madman, would ſerve the Turn, there would be no Traitor according to that Rule; becauſe every Traitor would be a Madman. Every Traitor is a Madman; but every Madman is not a Traitor. A Madman, in our common Acceptation, is one that is captivated in his Senſes, not one that is corrupt in his Will and Affections, which muſt be the Definition of a Traitor: So that the Argument, I muſt tell you, is fallacious. Every Man, that is depraved in his Mind and Affections, is a Madman, ſo as to be an Enemy to the Government, or to Mankind; but he is not ſuch a Madman, as is commonly meant by that Word; one whoſe Words may be miſtaken, becauſe of ſome Diſorder in his Underſtanding, ſo as to be excuſed from the Accuſation of Treaſon. Therefore whatſoever Conſequence there may be of the Thing, I muſt tell you, all Men that talk after this Rate, that this Perſon is accuſed to talk in his Pulpit, they are every one Traitors, and ſo Madmen; for every Traitor is a Madman: And if in Caſe Mr. *Roſewell* be Guilty, he is in that Senſe a Madman. It is true, in other Things you find him a Man of very notable Underſtanding, a Man of a very great Inſinuation, one that has a great deal of Knowledge in the Tongues, looked upon to be a very learned and ingenious Man, who was thought fit to be a Tutor to Sir *Edward Hungerford*'s Children; and has had very many learned Diſcourſes, and ſhewn himſelf to be a Man of very great Parts. Tho', if he be a Traitor upon this Evidence that is given, he is, *eo nomine*, a Traitor, and conſequently a Madman, for Preaching and Publiſhing ſuch Doctrine as this, that will not ſerve to excuſe him from his Treaſon: But the rather, becauſe he is a Man of ſo much Learning, it aggravates the Treaſon, as it muſt needs do to any Body in the World that conſiders it. For he under that Pretence offering to preach his Doctrine as Goſpel-Truth to ignorant People, it ſeems, 300 or more, of all Trades and Perſuaſions, whoſe Duty it was, according to Law, to have been then at Church; Men of Strength and Ability of Body, as they appear to be, for the Service of the Government; for theſe People to be debauched into ſuch Doctrines as theſe, of *ſtanding to their Principles* againſt the Government; the more Learned the Man is, the greater and blacker is the Crime of that Man that is Guilty of it. God knows whether that be Mr. *Roſewell*'s Caſe, and you that are of the Jury are to try it: To do it under Pretence of Preaching the Goſpel is the worſt Way of doing it that could be taken; to quote Scripture for Rebellion adds to the Crime; as it did to that of thoſe Black Villains that were concerned in the Murder of our late dread Sovereign, who has been ſo often mentioned; they were generally the Preachers of the late Times that contributed to that horrid Villainy.

Gentlemen, it is notoriouſly known to you in this accurſed late helliſh Conſpiracy againſt his Sacred and moſt Merciful Majeſty, our Sovereign that now is (whom I pray God long to reign over us) thoſe that had an Hand in the Intention to deſtroy him, and his Royal Brother, were a great many of them Black-Coat Diſſenters to the Church of *England*; and I cannot ſay I know any one Member of the Church of *England* that had any Hand in it at all. How many of them ſtand now convicted by Outlawry for that Bloody Treaſon, I won't ſay all Parſons, but generally all of them Diſſenters; and we know theſe are thoſe baſe, profligate Villains, always made Uſe of in theſe baſe Sinks of Rebellion. And they are the common Sewers of Faction, theſe Conventicles are, and of Treaſon and Conſpiracy againſt the Government in Church and State. God be praiſed, we have a Religion that teaches us much better, a Religion eſtabliſhed by the Laws of the Land, and with that Decency of Worſhip, and Care of the Souls of Men, that may bring us all to Heaven, by the Grace of God, if we pleaſe to hearken to the Dictates of it, and to mind what is injoin'd us, our Duty by the Law; but when People are once deluded by the Inſinuation of ſuch falſe Teachers, and run into Faction and Diſcontent, then they'll ſoon run into Rebellion too. And I ſpeak this, the rather to deter and give Warning to other People, to have a Care how they come near ſuch Places, and ſuch Practices, than to affect you.

Gentlemen, here you have had three Witneſſes examined againſt the Priſoner, who ſtands accuſed for a Crime of High-Treaſon. I muſt confeſs, I have taken up a great deal of the Time; and a great deal of the Time was taken up before; but there's no Time too long, wherein a Queſtion of ſo mighty Moment as this is, is to be decided: The Government, the Preſervation of our King, the Preſervation of our Religion, the Preſervation of our Laws, are all concerned: For by the Deſtruction of our King, and of our Government, our Religion, and all that is near and dear to us in the World, will run a great Hazard, if not come to a total Deſtruction; and I am ſure it did come near to it in a former Time, by this very Sort of way. Therefore I injoin you, in the Preſence of the Almighty God, let neither Diſpleaſure, nor any Sort of perſonal Animoſity, in any Thing, that has been contracted by Hearſay from abroad, nor any Imaginations that have been ſuggeſted here without Proof, any Way direct you in the Conſideration of this Cauſe againſt the Priſoner at the Bar: But go according to the Evidence that has been here before you, on the one Side and on the other Side. For as on the one Side you are not to be corrupted by common Talk, or any Prejudice againſt a Party or a Faction; ſo are you not to be miſled by any Affirmation, or Reflection, or Comment that the Priſoner has made or ſaid for himſelf, other than what is ſupported by the Teſtimony of theſe Witneſſes that he has produced, and whoſe Evidence is left to you to conſider: For you muſt not be led by any Circumſtances, or by Diſcourſes, but what's ſworn on the one Side for the King, or teſtified on the other for the Priſoner. And therefore I can with all Freedom and Zeal for the Government, and all due Compaſſion to the Priſoner at the Bar (whom with all my Soul I am ſorry to ſee accuſed, or indeed any Man, of ſuch a Crime) leave this Matter entirely upon the Evidence that has been given. And tho', I ſay, I am ſorry to ſee him accus'd; yet ſuch Tranſgreſſions are aggravated now, when we live in an Age, wherein we have all Peace and Plenty, while the reſt of our Neighbours are wallowing in their Blood round about us; ſome we have heard of, are brought to the Neceſſity of eating the moſt filthy and baſeſt Animals, that never was deſigned for the Food of Man; I ſay, when all our Neighbours are groaning under the Miſeries of War (bleſſed be God), we live and ſleep quietly under our own Vines; we enjoy the Benefit of being Subjects to a gracious King; we enjoy the full Extent of our Laws, which are ſufficient to ſecure our Liberties and Properties; and no Man can be brought (no, not one of the meaneſt Subjects the King has) to ſuch an untimely End, but by the true Methods of Juſtice.

He is to be tried by you, Gentlemen, who are Gentlemen of Quality of the County where the Fact is alledged to be committed; againſt whom he might have made his Challenges and Exceptions, if he had any Reaſon, as he did againſt the others (according to the Liberty the Law allows him) without any Reaſon. So that you ſtand indifferent between the King and the Priſoner at the Bar, to try this Cauſe, whether he be guilty, or not guilty of the Treaſon of which he ſtands accuſed. In Caſe the late intended Rebellions and Inſurrections had taken the deſigned Effect, according to the Doctrine preached in theſe Sermons, of ſtanding to Principles, and overcoming Enemies; and what ſeveral of his Brethren, who ſtand now accuſed of, and are upon Proſecution (and for ought I know every one of them might be actually engaged), I ſay, in Caſe ſuch a Thing had been, there had been nothing but cutting of Throats; there had been no Juſtice for any Subject to have expected; no Methods, or Proceedings of Law; but Deſtruction would have come upon us like an armed Man.

Therefore, Gentlemen, as the Evidence has been long, ſo I hope you will give me your Pardon, that I have been the longer in inſiſting upon it; and, according to my beſt Underſtanding and Memory, I have given you the beſt Account I can, both of the Evidence for and againſt the Priſoner. You are Judges of the Fact; and I pray God direct you, and guide you and your Conſciences, that the Truth may be diſcovered by your Verdict.

Mr. Roſewell. May a loyal Subject ſpeak, my Lord?

L. C. J. No, Mr. *Roſewell*; after the Jury are charged by the Court, you are not to ſay any Thing. Swear an Officer to keep the Jury. [*Which was done.*

Then the Jury withdrew into the uſual Room for ſuch Purpoſes, to conſider of their Verdict; and afterwards they returned into Court.

Clerk of the Crown. Crier, take the Appearance of the Jury.

Crier. Sir *George Sheers.*

Sir *George Sheers.* Here.

Crier. Vous avez Sir *George Sheers*, &c.——— [*And ſo of the reſt.*

Cl. of the Crown. Gentlemen, are you agreed in your Verdict?

Jury. Yes.

Cl. of the Crown. Who ſhall ſay for you?

Jury. Our Foreman. *Clerk of the Crown.* *Thomas Roſewell*, Hold up thine Hand. [*Which he did.*] You of the Jury, look upon the Priſoner. How ſay you? Is he Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. What Goods or Chattels, Lands or Tenements, had he at the time of the High-Treaſon committed, or at any time ſince, to your Knowledge?

Foreman. None, that we know of.

Mr. *Roſ.* Then the Lord have mercy upon the Jury! My Lord, I humbly requeſt this Favour, that they may be aſked *ſeparatim*, whether they be all of the ſame Opinion.

L. C. J. That's never done, Mr. *Roſewell*, unleſs there be any Difference ſuggeſted from amongſt themſelves.

Mr. *Roſ.* I aſk it in regard to them themſelves; for I have heard many times the Jury go by the major part; and I would know whether they be all of that Opinion. Therefore I beg they may be aſked that Queſtion.

L. C. J. You muſt be contented, Mr. *Roſewell*; in caſe there were any difference, we ſhould hear of it from amongſt themſelves.

Cl. of Cr. Then hearken to your Verdict, as the Court has recorded it. You ſay that *Thomas Roſewell* is guilty of the High-Treaſon whereof he ſtands indicted; but that he had no Goods, Chattels, Lands or Tenements, at the time of the High-Treaſon committed, or any time ſince, to your Knowledge, and ſo you ſay all?

Omnes. Yes.

Cl. of Cr. Gentlemen, the Court diſmiſſeth you.

L. C. J. Marſhall, you muſt take him into your Cuſtody, being now convicted.

Mr. *Roſ.* My Lord, I would heartily beg, for the Jury's ſake themſelves, that that Queſtion may be aſked of them.

L. C. J. We muſt not indulge any Innovations. It is not uſual. You may aſk them, if you pleaſe; ſee whether they will anſwer you. We muſt go according to the Forms of Law.

Mr. *Roſ.* Then, my Lord, if all theſe Gentlemen's Eſtates were joined in one, I would not change Conditions with that Man of them, who ſhould poſſeſs the Whole.

L. C. J. Mr. *Roſewell*, we muſt have no Reflections upon the Jury.

Then the Priſoner was taken away, and the Court broke up.

Die Lunæ 24 Nov. *An. Dom.* 1684. B. Regis.

Dominus Rex verſus Roſewell.

THIS Day Mr. *Roſewell* being brought up to the Court, to receive Sentence, the Court proceeded as follows.

L. C. Juſt. Brother *Jenner*, have you any thing to move?

Mr. Serj. *Jenner.* My Lord, we wait upon the Priſoner at the Bar, to deſire Judgment upon the Conviction that was here the other Day for High-Treaſon.

L. C. J. Againſt the Priſoner at the Bar, do you mean?

Mr. Serj. *Jenner.* Yes, Sir.

L. C. J. Then call him to his Judgment.

Cl. of Cr. Thomas Roſewell, hold up thy Hand. [*Which he did.*] Thou haſt been indicted for High-Treaſon, in compaſſing and imagining the Death of the King, and the Subverſion of the Government: Upon that Indictment thou haſt been arraigned: Upon that Arraignment thou haſt pleaded Not Guilty: And for thy Trial thou haſt put thyſelf upon God and thy Country; which Country has found thee Guilty. What haſt thou to ſay for thyſelf, wherefore Judgment ſhould not be given againſt thee, to die according to the Law?

[*Then he was made to kneel and riſe again.*]

Mr. *Roſewell.* My Lord, I humbly hope that your Lordſhip will not give Sentence againſt me upon this Indictment, conſidering the Circumſtances of it. I have, my Lord, proteſted to this honourable Court, in the Preſence of the great God, the Searcher of Hearts, my Innocency in this Caſe; but I have been found Guilty by the Jury, on whom the Lord have Mercy. I do ſtill proteſt my Deteſtation and Abhorrence of the Fact, even in my very Soul; and I do humbly beg your Lordſhip and the Court to compaſſionate my preſent Condition; and, with humble Submiſſion to your Lordſhip, I would enter into my Diſcourſe upon that *Hypotheſis*; for I would be ſtill taken thus, even in this Conviction to deny the *Theſis*, That I ever was guilty of ſpeaking ſuch Words as are laid in the Indictment. But upon the *Hypotheſis*, ſuppoſing that I were Guilty, I do humbly conceive that theſe Words, as they are laid, are not Treaſon. They are very fooliſh and ugly Words; and may be a very great Miſdemeanour in Law (if true, which ſtill I muſt over and over again inſiſt upon), but they are not Treaſon. And I beg your Lordſhip will do me the Favour to let the Indictment be read once more.

L. C. J. Ay, with all my Heart.

Mr. *Roſ.* I humbly thank your Lordſhip; I deſire it may be read in Latin.

L. C. J. Read it to him in Latin.

Surrey *ſſ. Juratores pro Domino Rege ſuper Sacramentum ſuum præſentant*, &c.

[*The whole Indictment was read.*]

Mr. *Roſ.* I humbly thank your Lordſhip. There are ſome things that I ſhall offer to your Lordſhip in Arreſt of Judgment out of this Indictment; and I requeſt your Lordſhip to hear me with Patience, being here for my Life. I pray Judgment may be arreſted for theſe Cauſes: That there is not any Crime ſufficiently ſet forth for your Lordſhip to give Judgment upon. My Lord, I humbly take it for granted, that in all Indictments of Treaſon there muſt be ſome particular Matter of Treaſon aſſigned; and that it is not a ſufficient Indictment in general, that a Man did intend to depoſe the King, or to raiſe Rebellion, without ſome *Overt-Act* poſitively aſſerted to be done by that Perſon; the general Intention being only an Inducement to the Charge. The ſpecial Matters that ſet forth the particular Acts of Treaſon, are thoſe that make the real Charge, upon which the Court and the Jury are to proceed. Now, my Lord, if that ſpecial Matter, that is alledged, be inſufficient, with an humble ſubmiſſion, tho' there be never ſo many ſuch Sorts of Facts proved, and found by the Jury, the Party cannot be convicted of High-Treaſon: For, in this Caſe the Party has the ſame Advantage to except againſt the Particulars alledged, to prove the general ſuggeſted Treaſon, as againſt the general Treaſon itſelf. Now, with humble Submiſſion, my Lord, again I ſay, that the Matter here ſuggeſted is inſufficient, as will evidently appear by what I am going to offer to your Lordſhip.

The firſt and principal Objection that I have, is againſt the Innuendo's; which are ſo many, and ſo ſtrange, in theſe Words that are alledged againſt me. Theſe Innuendo's, my Lord, I ſay, are nought and void; and I preſume that it will be allowed to me, upon reading of the Words by themſelves, as bad and as fooliſh as they are. Without theſe Innuendo's there could nothing be made out of ſuch Words as theſe are, neither Treaſon, nor any thing elſe.

Then, my Lord, in the ſecond Place, laying aſide the Innuendo's, I muſt inſiſt upon the repugnancy and inſenſibility of the Words laid in the Indictment, being in *Latin*, and ſuch *Latin*, as I believe your Lordſhip never ſaw; and upon theſe two Points, I deſire that Judgment may be arreſted, and I humbly pray Counſel may be aſſigned me to make them out in better Form.

L. C. J. What ſay you to it, Brother *Jenner*, and the King's Counſel?

Mr. Serj. *Jenner.* I cannot ſee that he has alledged any Objection, which here requires an Anſwer from any of us, that are of Counſel for the King.

L. C. J. Yes, Brother; methinks he does.

Mr. Att. Gen. If he does pretend to object againſt any of the Overt-Acts alledged in the Indictment; your Lordſhip obſerves, this Indictment is upon the Statute of the 13th of this King, wherein Words are made Treaſon, if they intend any Hurt or Impriſonment to the King's Perſon. For his Objection as to the Innuendo's, he does not aſſign wherein they are repugnant, or inſufficient. He does aſſign in particular, indeed, that it is inſufficient, being a general Crime; which yet he does not ſay is not ſufficiently laid; for it is ſaid, that he did compaſs and imagine the Death and Deſtruction of the King: And, to effect that compaſſing and imagination, he did ſpeak ſuch and ſuch Words, which by the Statute are made Treaſon, if they tend to attempt, by Preaching or Writing, any Impriſonment or Harm to the King's Perſon. Then for him to come to talk of *Standing to their Principles*, after he had ſpoken of *two wicked Kings together*, meaning the late King, and the preſent, and that *then we ſhould overcome our Enemies*; what is that but Preaching in order to raiſe a Rebellion and Inſurrection, tending to the Deſtruction of the King, and his Government? All this is laid in the Indictment; the Jury find it ſpoken maliciouſly, and with ſuch an Intention as we have laid; and therefore we think that it is ſufficient.

L. C. J. But, if I take the Gentleman right (for I tell you beforehand Juſtice muſt be done to all People impartially. The Crime is a very great Crime that he ſtands accuſed of; and the Jury have found him guilty of the Crime laid in the Indictment: But, if I take him aright) he does not ſay that Words are not ſufficient to create a Treaſon, but the Words here, as they are laid in this Indictment, are not ſufficient: And as I take it, there is no great difficulty in the Matter; but the Words would have been ſufficient to have ſupported the Accuſation, if they be well laid. But the Queſtion is, Whether the Words, that you have laid here, be ſo poſitively affirmed to have been ſpoken by the Priſoner, and to relate to the Government, as they ought to be in an Indictment of High-Treaſon?

Mr. Att. Gen. That the Indictment muſt make out; and the Jury have found him Guilty, according to the Indictment.

L. C. J. But that is his Objection, they are not ſo in the Indictment.

Mr. Att. Gen. My Lord, they are laid as the Witneſſes ſwore them; as your Lordſhip can't but remember.

L. C. J. That they are not poſitively affirmed, but only alledged under an *Innuendo*; that is, he ſpoke ſuch and ſuch Words, whereby he compared the King to *Jeroboam*, and the like; and we had two wicked Kings together, but if we would ſtand to our Principles, we ſhould overcome our *Enemies*, *Innuendo* the King. The alledging of the Words ſpoken in the Indictment is poſitive, if there be ſufficient Matter in the Words to make them applicable to the Government, ſo as to make it Treaſon. But if you only ſay, he ſpoke them, *Innuendo* ſo and ſo, that is not poſitive enough to make the Indictment good. I take it the Objection runs that way.

Mr. *Roſ.* My Lord, I humbly thank your Lordſhip for explaining my meaning: It is ſo.

L. C. J. In an Action on the Caſe, if you ſay the Defendant ſpake ſuch and ſuch Words, if you do not lay it that he ſpoke them of the Plaintiff; *Innuendo*, The Plaintiff, in repeating the Words won't do. So here, if you had brought it in the Indictment, that having diſcourſe of the late King and this King, he had ſpoken theſe Words, *We have now had two wicked Kings*, &c. you then had brought it home to him: But you do not lay it that it was ſpoken of them at all, but only in the *Innuendo*; whereas you ought to ſay, firſt, That he ſpoke of the late King, and this King; and then ſaid, We have had two wicked Kings together, *Innuendo* the late King, and this King.

Mr. Att. Gen. My Lord, I do not know how we could have done it better than we have done.

L. C. J. Look ye, we give no Opinion; but the Objection has Weight in it, upon my Word. As I told you before, in common Caſes an Action of the Caſe for Words, or the like, you muſt lay a Communication concerning the Plaintiff, or an *Innuendo* will not be a ſufficient Averment of its being ſpoken of him. In an Action of the Caſe for Words, till within theſe Seven or Eight Years, they were obliged to lay a *Colloquium* of the Plaintiff, and of his Trade; and that to defame him, were ſpoken of him at ſuch a time ſuch Words, as that he was a Cheating Knave; where the Word Knave would bear an Action, a bare *Innuendo* would not do, that was not enough. But, now I confeſs, ſince Declarations are made a little more conciſe, you need only ſay *dixit de Quærente*, ſuch and ſuch Words without a *Colloquium*, but you muſt aver it to be ſpoken of the Plaintiff. I never thought it good in ſuch a Caſe, to ſay of a Merchant, he is a Bankrupt Knave (*Innuendo* the Plaintiff), unleſs he ſay he ſpoke of his Trade and Merchandiſe. So that the Objection does ſeem to carry very much Weight in it.

* *Mr. Solicitor.* My Lord, if your Lordſhip would give me leave, I would endeavour to anſwer the Caſe as your Lordſhip has put it; for, my Lord, no doubt in all common Actions of the Caſe for Words, it muſt be averred that the Words were ſpoken *de Perſona* of the Plaintiff; but the firſt Part of the Indictment, in this Caſe, ſhews that the Words muſt be ſpoken of the Perſon of the King, and of the late King; for it ſays, he did conſpire the Death and Deſtruction of the King, and to depoſe him from his Government, and to manifeſt that traiterous, wicked Intention of his; *Ea intentione* he did ſpeak theſe Words of the Government, *We have had two wicked Kings together*, meaning this King and the late King.

* *Mr. Finch.*

L. C. J. If you had ſaid ſo, that he ſpoke theſe Words of the King, you had anſwered my Objection; but the Conſpiracy of the Death of the King being only a general Form for Treaſon, will not make good an Indictment of High-Treaſon; but you muſt ſhew ſome Acts or Words to evince and prove that that was his Intention; that he did either ſpeak ſuch and ſuch Words, or did ſuch and ſuch Actions. It is not a good Indictment to prove that he did conſpire, for he ſpoke ſuch and ſuch Words; but that to carry on his Conſpiracy he did ſpeak ſuch and ſuch Words of the Government, that muſt be poſitively alledged.

Mr. Solicitor. We do ſo, my Lord; for we ſay, *& ad eaſdem nefandas proditiones*, &c. *perimplendas*, he ſpoke ſuch and ſuch Words, We have had two wicked Kings together, *Innuendo* this King and the late.

L. C. J. You have *Innuendo'd* it too much, I do doubt; for all the Facts are laid under an *Innuendo*, without a poſitive Averment.

Mr. Att. Gen. My Lord, I think it is as fully laid, as it poſſibly could be.

L. C. J. Come, *Mr. Attorney*, if in Caſes of common Actions for Words there be ſuch Strictneſs required, ten times more ought there to be in an Indictment of Treaſon, where a Man's Life, and All, is ſo much concerned. I am not ſatisfied, I aſſure you, that this Indictment is well laid, though I give no Opinion; but in all Juſtice we ought to aſſign him Counſel to make out his Objection.

Mr. Att. Gen. All this, my Lord, is only in delay.

L. C. J. Mr. Attorney, De vita Hominis nulla eſt cunctatio longa. I think we ought to aſſign him Counſel, and the reſt of my Brothers are of that Opinion too.

Mr. Att. Gen. Let them read Colonel *Sidney*'s Trial, and the Indictment there, and they'll find it the ſame thing.

L. C. J. I cannot tell whether there are any ſuch *Innuendo*'s there, I believe not; but I know not if there were, if in caſe it had been moved in Arreſt of Judgment, what the Court would have done then. But I think we ought to aſſign him Counſel to make out his Objection.

Mr. Solicitor. The very Fact that makes this Treaſon, is his ſtirring up Sedition and Rebellion within the Kingdom; and we ſay, to effect it, he had theſe Expreſſions in his Pulpit, We have now had two wicked Kings together, meaning this King and the late, who have ſuffered Popery to come under their Noſes; but, if you will ſtand to your *Principles*, meaning the People, we ſhall overcome our Enemies, meaning the King and Government.

L. C. J. Ay, but you do not ſay that he ſpoke theſe Words of the King: This you ſhould have ſaid at firſt, becauſe the ſpeaking of theſe Words is the very Overt-Act; and if he did not ſpeak them of the King, which you ought to affirm, but only by way of *Innuendo*, that cannot, we think, be ſo good, nor ſufficient.

Mr. Juſt. *Withins.* I take it that theſe are the main Words that are to maintain this Indictment of Treaſon; and the Queſtion is, Whether they ought not to have been averred that they were ſpoken of the two Kings?

L. C. J. We do not give any Opinion, *Mr. Attorney*, but becauſe there ſeems to be ſome reaſonable doubt and weight in the Objection, we deſire to have it argued, and therefore will aſſign him Counſel.

Mr. *Roſ.* I humbly thank your Lordſhip.

L. C. J. We do think it fit to look into it, before we proceed any farther in a Caſe where a Man's Life is concerned.

Mr. *Roſ.* I pray God to bleſs your Lordſhip.

L. C. J. Nay, you have no need to thank me; for I deſire to do Juſtice to all Men.

Mr. *Roſ.* But I deſire to return my hearty Thanks to your Lordſhip, for explaining and making out what my unſkilfulneſs in the Law would not permit me to do. God be your rewarder for it.

L. C. J. Well, who would you have to be your Counſel?

Mr. *Roſ.* If your Lordſhip pleaſes, Mr. *Wallop*, Mr. *Pollexfen*, and Mr. *Thomas Bampfeild*.

L. C. J. Let them be aſſigned of Counſel for him. But, Mr. *Roſewell*, I think it is not improper for me, upon this Occaſion, to take notice of this that is in my Mind, relating to your Affair, becauſe I obſerve it is a Matter of great expectation, and ſo was at your Trial, and here is a great Croud of People now; that as this Fact is found, if the Indictment falls out to be a good Indictment, which is the Queſtion that now depends before the Court, ſo that you come to have Judgment of High-Treaſon paſſed upon you, and to ſuffer according to that Judgment, what will become of theſe 400 People that were your Auditors at the time that theſe Words, that are thus found and adjudged to be Treaſon, were ſpoken? And I ſpeak it for the ſake of all Conventiclers, and Frequenters of ſuch Meetings, as theſe are. If you, that are the Preachers, and Teachers, the Mouths of ſuch Congregations, do utter Treaſon, and ſo they conceal that Treaſon, what a Condition are they in? What are they guilty of? Therefore, if People will conſider, they would do well to think, that when they go to ſuch Places, they go at a great Peril; being to anſwer for Themſelves, their Lives and Eſtates, upon the Prudence of the Expreſſions, to ſay no more, that come from the Teachers. I only put you in mind of this, becauſe I would have all Standers-by, and the Auditory, which I ſee is very great, in mind, what Danger and Riſque they run in thus offending the Law.

Mr. *Roſ.* My Lord, I do believe, that no one in the World, beſides theſe Witneſſes, that here were produced againſt me, can ever teſtify the leaſt diſreſpectful Word ſpoken by me of the late King, or of his preſent Majeſty.

L. C. J. Well; when will you be ready, Gentlemen?

Mr. *Pollexfen.* My Lord, we deſire to have as much time to prepare ourſelves as we can.

L. C. J. Two or three Days time will ſerve.

Mr. Att. Gen. It is fit we ſhould know what Points they intend to inſiſt upon, that we may prepare to anſwer them.

L. C. J. Yes, yes, that muſt be, but I perceive his main Objection is, what I tell; let him be brought by Rule hither, upon *Thurſday*, becauſe the Court may have time to conſider of what ſhall be ſaid on both Sides.

Mr. *Roſ.* My Lord, theſe Gentlemen are Strangers to me; but I dare rely upon them, from the Character I have heard of them, that they will do me all the Juſtice that they can.

L. C. J. Well, they are aſſigned of Counſel for you. But I could not forbear giving that hint that I did, that this might be a Warning to People, how they tranſgreſs the Law in going to ſuch Meetings.

Die Mercurii, 26 Novembris, 1684.

Rex verſus Roſewell.

L. C. J. MR. *Pollexfen*, have you any thing to move?

Mr. *Pollexfen.* My Lord, I have one Word to move for myſelf, and the others that are appointed to be of Counſel for Mr. *Roſewell.* We think it our Duty to apply ourſelves to your Lordſhip for this Favour; that, to enable us the better to do our Duty for the Perſon for whom we are aſſigned, your Lordſhip and the Court would pleaſe to order that we may have a Copy of the Indictment. We do acknowledge, that it is not an uſual thing to have Copies granted (tho' there be no expreſs Law that we know againſt it) in capital Matters, but where any Doubt does ariſe upon the Penning the Indictment, and Counſel is aſſigned to enable them to do what is fitting for them to do for their Client, Copies of the Indictment have been granted; as particularly in the Caſe of *Fitzharris*, in order to the Plea that he was to put in; and I myſelf was one of the Counſel at that time.

L. C. J. Mr. Pollexfen, I make no doubt in the World, it is in the Power of the Court to order a Copy of the Indictment, if they ſee Cauſe; but, if you remember (for you were of Counſel in that Cauſe too), it is not to be granted, becauſe it is aſked. For my Lord *Ruſſel* had no Copy of the Indictment, tho' he inſiſted very much upon it: And it was in the Caſe of *Fitzharris* granted, that he might particularly apply his Plea (if he had a mind to it) to the Indictment itſelf.

Mr. *Pollexfen.* My Lord, I do not deſire a Copy of all the whole Indictment; but of ſo much thereof, as may be enough for us to know the Foundation upon which we are to go. I do remember we were called in, in my Lord *Ruſſel*'s Caſe, upon the Point of Challenge, for want of Freeholders; but that was not in the Point of the Indictment, and there I cannot ſee what we had to do with the Indictment; but here we muſt underſtand how it is laid really in the Indictment, that we may apply our Arguments to the Caſe; and that I believe was never denied.

L. C. J. Look ye, if you ſpeak to me privately, as to my own particular Opinion, it is hard for me to ſay, that there is any expreſs Reſolution of the Law in the Matter; but the Practice has been always to deny a Copy of the Indictment. And, therefore, if you aſk me as a Judge, to have a Copy of the Indictment delivered to you in a Caſe of High-Treaſon, I muſt anſwer you, Shew me any Precedents where it was done: For, there are abundance of Caſes in the Law, which ſeem hard in themſelves; but the Law is ſo, becauſe the Practice has been ſo, and we can't alter the Practice of the Law without an Act of Parliament. I think it's a hard Caſe, that a Man ſhould have Counſel to defend himſelf for a Two-penny-treſpaſs, and his Witneſſes examined upon Oath; but if he Steal, commit Murder or Felony, nay, High-Treaſon, where Life, Eſtate, Honour, and all are concerned, he ſhall neither have Counſel, nor his Witneſſes examined upon Oath: But yet you know as well as I, that the Practice of the Law is ſo; and the Practice is the Law.

Mr. *Pollexfen.* My Lord, we heard the other Day the Indictment read, and ſo may have ſome little Account of the Indictment; but we deſire ſuch a Copy as may enable us to argue as we ought to do, and as the Court will expect from us, being aſſigned by the Court.

Mr. *Wallop.* My Lord, if we ſhould offer any thing that is not in the Indictment, it's all one as if we held our Tongues; and if we have only a looſe Account of the Indictment, that may be as bad as if we had a falſe one: And therefore we deſire, to the End that we argue *ad idem*, that your Lordſhip will pleaſe to favour us, that we may have a Copy of ſo much of the Indictment, as upon which our Objections may be grounded.

L. C. J. Mr. *Pollexfen*, you may remember a particular Caſe, I have forgot the Name, but I believe you may remember it; where a Priſoner at this Bar deſired to have the Indictment delivered to him to read, but it was denied him. It is hard, I confeſs, and ſo are many other things in the Law; but I am wonderfully tender of making Precedents: And therefore, if it has not been practiſed, I do not ſee how we can do it.

Mr. Juſt. *Withins.* That is the uſual Practice, my Lord; but it is in the Power of the Court ſure to grant a Copy; or, at leaſt, of ſo much as is neceſſary for them to apply themſelves to. There have been many Caſes of Murders, where they have had Copies of the Indictment in order to move in Arreſt of Judgment, as this Caſe is.

Mr. Juſt. *Walcot.* But have there been any in High-Treaſon?

Mr. Juſt. *Withins.* I do not take it that there is any difference between the one Caſe and the other, they being both capital Crimes; and Counſel being aſſigned, they muſt know what they are to ſpeak to.

L. C. J. I would know when ever a Copy was granted to enable the Party to move in Arreſt of Judgment.

Mr. Juſt. *Withins.* My Lord, when there is a Motion in Arreſt of Judgment, and Counſel aſſign'd, that is a Thing they ought to know, how to demean themſelves in their Arguments.

Mr. *Polexfen.* My Lord, we ſubmit it to you. We deſire the Favour that we may acquit ourſelves as we ought to do, and as the Court (we know) expects from us.

L. C. J. As far forth as I could do, being in the Caſe of Life, I would indulge you: But I tell you, I am loth to be the Author of Precedents in Caſes of this Nature, one way or other; eſpecially in this Caſe, where I know you cannot but underſtand, by what was ſpoken here t'other Day, what the Objection is, and where the ſtreſs of it lies: Every man at the Bar muſt needs underſtand it.

Mr. *Pollexfen.* My Lord, we know People have various Underſtandings; and the caſe is many times variouſly ſtated, not only in our Minds, but in our Books.

L. C. J. Well, we know you underſtand lourſeyves well enough: And what we could grant, we would.

Mr. Juſt. *Withins.* It may be Mr. *Pollexfen* does it only to make way for an excuſe, when he comes to argue, that he is not ſo well prepared as he ſhould have been; but we know him well enough.

Mr. *Pollexfen.* But, my Lord, if we miſs the Words of the Indictment, we hope your Lordſhip will not think us impertinent, in having made this Motion, which is for Ourſelves, not for our Client: And therefore, we hope you will pardon us, if in caſe we miſtake; which we could have had no colour to have deſired, if what we had to ſay, were guided by a true Copy of the Record.

No Copy was granted, nor Rule made.

Die Jovis, 27 Novembris, 1684. B. Regis.

Dominus Rex verſus Roſewell.

THIS Day Mr. *Roſewell* was brought to the Bar, and the Court aſked the Counſel aſſign'd for him, what they had to ſay?

Mr. *Wallop.* May it pleaſe your Lordſhip, I am of Counſel for Mr. *Roſewell*, by your Lordſhip's Appointment, he being here a Priſoner now at the Bar. My Lord, I am informed (for I have not ſeen the Proceedings, nor heard the Indictment read), that it is an Indictment for treaſonable Words; and many treaſonable Words; and likewiſe, as I take it by Information, theſe Words are applied by divers Innuendo's; ſo that, for aught I can apprehend by what I am informed (which I muſt ſtill keep to) it is ſo uncertain, inſenſible, involved, and intricate, that no ſafe Judgment, as I humbly conceive, can be given upon it.

My Lord, to conſider theſe Words; Firſt, if you pleaſe, I ſhall ſtate them as diſcharged of the Innuendo's, and put them to your Lordſhip barely and nakedly, as they are in the Indictment, and as they were ſworn, and are to be ſuppoſed by the Conviction to have been ſpoken. The Words are theſe, as they ſtand diſcharged of their Innuendo's: That ‘the People make a flocking to the King, under pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, becauſe we are Prieſts and Prophets, that by our Prayers can heal the Dolors and Griefs of the People. We have had now two wicked Kings together, who have ſuffered Popery to enter under their Noſes; who can be likened to no other Perſon but the moſt wicked *Jeroboam:* And if they would ſtand to their Principles, he did not fear but they ſhould overcome their Enemies, as in former times, with Rams-horns, broken Platters, and a Stone in a Sling.’

Theſe, my Lord, are the Words nakedly in themſelves; and theſe are ſaid to be ſpoken in a Publick Aſſembly, where they were likely to do hurt to the Government. Thus, I ſay, they ſtand without any of the Innuendo's. Now, tho' your Lordſhip will have, and juſtly ought to have, a good Account given you of ſuch Words as theſe, how they came to be ſpoken, even taking them as they ſtand diſcharged of the Innuendo's; yet I humbly conceive, with Submiſſion, they do not contain any intention of depoſing or deſtroying the King, and ſo can have no treaſonable intention in them: And then your Lordſhip, I ſuppoſe, will likewiſe expect to have a good account of theſe Words, in another reſpect, how Words, which in the hearing of them barely and nakedly ſpoken, could not carry a treaſonable Intention; I ſay, how it comes to paſs that in the writing of them down in an Indictment, they become High-Treaſon.

My Lord, theſe Words, as they ſtand diſcharged of the Innuendo's, are looſe, extravagant, inſenſible Words, ſounding rather towards Phrenzy, than Treaſon. So that as they ſtand without further Explanation by an Innuendo, they are perfectly inſenſible, and one cannot tell what they refer to, or whom; and if the Words, *Ex vi termini*, without further Averment, contain no treaſonable intention and meaning, and ſo conſequently have no Treaſon; it may ſeem very difficult and hard to maintain, how, out of the Aſſembly in which they were ſpoken, being put into Latin in an Indictment, they ſhould become Treaſon: They not being Treaſon at *Rotherhith*, where they were ſpoken; how they ſhould be made Treaſon at *Kingſton*, or here, where they are dreſſed up in another Form. Indeed, I know no way that it can be done, but by adding ſome other Words, by ſome other Hand. And, my Lord, I ſuppoſe it was ſo done by thoſe who framed this Indictment that is before your Lordſhip, by inſerting and adding this Multitude of Innuendo's.

But I ſuppoſe, then, they that would inſert theſe Innuendo's, muſt have a good Warrant to inſert them: For if they are inſerted without Warrant in Law, then it muſt be acknowledged to me that the Indictment is not good; and I humbly conceive it to be a Rule in Law, that no Innuendo can warrantably be inſerted in an Indictment, Information, or Declaration, upon an Action of the Caſe for Words, unleſs the Defendant firſt himſelf be averred, and that directly, to have mentioned a Perſon in certain, to whom thoſe Words may be referred; and it muſt not ſlide in by Suppoſition, but it muſt appear in the Body of the Diſcourſe of the Defendant. And the Reaſon is evident in all Caſes of Slander, and particularly in theſe of treaſonable Words; for how could the Hearer underſtand whom the Preacher meant, or he that diſcourſed ſo and ſo, and ſo be influenced to Rebellion, unleſs he had named the Perſon of whom he ſpoke, as here, unleſs the Defendant had named the King, to whom the Words he ſpoke ſhould be referred?

My Lord, the Treaſon of the Words is in ſtirring up Sedition and Rebellion; and if then the Words cannot terminate upon the King, and the Hearers could not collect that to be the Intention of the Speaker, theſe Words could not influence a People to Rebellion and Sedition. And according to this Rule, I conceive that moſt of the Innuendo's in this Indictment are not warrantable.

For, my Lord, as to the firſt Words, to take them in order, tho' I take it, that that is the moſt remote Matter from the Crime charged; yet let us ſtrike off theſe Innuendo's as we go along, if we can. There it is, *Quod Populus*, &c. *The People* (meaning the Subjects of our Lord the King) *keep a-flocking to the King to cure the King's Evil, which he cannot do*, &c. Here the firſt Innuendo is *the People* (meaning the Subjects of our Lord the King). Now he had never before named the People of *England*; but the Innuendo faſtens that meaning upon the Word *(People)*. Which, with Submiſſion, my Lord, is always a Sign of a naughty *Innuendo*; and it is without Warrant of Law; an endeavouring to give an original certainty to uncertain Words; which is more than the Office of an Innuendo will allow or warrant. I ſay, my Lord, it always bears a bad face, where Words firſt appear with an Innuendo; and have no certainty even in the Beginning of them, but by the Innuendo; that with Submiſſion is to be rejected, the Innuendo not doing its proper Office for which it ought to be uſed in Law: For *Populus* may intend any People, it may intend the *French* People flocking to the *French* King (and he does heal the King's Evil in the ſame manner: nay, pretends to it, as a ſole Gift to him, his Predeceſſors, and Succeſſors: But I only put that for an inſtance); and all the Innuendo's, if you obſerve them, are of this Nature. The Words firſt appear without any light, but what theſe Suppoſitions give them, and therefore, I ſay, they are to be rejected.

But now, my Lord, I come to that which is more particular, *Nos habuimus nunc duos iniquos Reges inſimul*; *We* (meaning the Subjects of the King) *have had two wicked Kings* (meaning King *Charles* the Firſt, and this King) *together*. Now that we ſay is altogether void, for there was no mention of any Kings, wicked Kings or good Kings, pious or bad, before in the Diſcourſe, to which, according to the Office of an Innuendo, theſe Words are to be applied. My Lord *Coke* in his 4 *Rep*, *fol.* 17. *B.* has this Caſe:

John Jeames brings his Action againſt *Alexander Rutlech*, for ſpeaking the following words concerning him, to one *John Bonner*. “*Hang him* (prædictum Johannem Jeames innuendo) *he is full of the Pocks* (innuendo the French Pocks) *I marvel that you* (prædictum Johannem Bonner innuendo) *will eat or drink with him* (prædictum Johannem Jeames innuendo) *I will prove that he is full of the Pocks* (innuendo the French Pocks). Upon a Motion in Arreſt of Judgment, it was reſolved by the Court, that in every Action of the Caſe for Slander, *two things* are requiſite. *Firſt*, That the Perſon who is ſcandalized be certain. *Secondly*, That the Words ſpoken be *apparent* Slander. The Office of an *Innuendo* is to deſign the ſame Perſon that has been named before: And is in Effect, inſtead of a *Prædict'*. But it cannot make the Perſon certain, that was uncertain before. In the preſent Caſe, it was evident that the Plaintiff did ſpeak the Words of the Defendant. But as to the *ſecond* Thing, it did not appear that the Words ſpoken did mean the *French* Pocks; and Words are to be taken *in mitiori ſenſu*.”

12\.

Mich. 41. & 42 Reginæ Eliz. en bank le Roy, entre John Jeames pl. & Alex. Rutlech def.

Le plaintiffe count que le defendant, & un John Bonner ayant conference de le plaintiffe; Le defendant dit del plaintiffe al dit John Bonner ceux parols; Hang him (prædictum Johannem Jeames innuendo) he is full of the Pocks (innuendo the French Pocks) I marvaile that you (prædictum Johannem Bonner innuendo) will eat [*B*] or drink with him (prædictum Johannem Jeames innuendo), I will prove that he is full of the Pocks (innuendo the French Pocks). *Le defendant plead non culpable, & fuit trove pur le plaintiffe, & damages aſſeſſe: Et fuit move en arreſt de judgement que les dits parols ne fueront actionable. Et fuit reſolve que en cheſcun action ſur le caſe per ſlanderous parols, deux choſes ſont requiſite.* ¶ 1. *Que le perſon qui eſt ſcandalize ſoit certain.* ¶ 2. *Que le ſcandal ſoit apparent per les parols meſmes. Et pur ceo ſi un dit ſauns aſcun precedent communication, que l'un des ſervants de J. S. (il ayant divers) eſt un notorious Felon ou Traitor, &c. icy pur le incertaintie del perſon nul action giſt; & un* (innuendo) *ne poit faire ceo certain: Iſſint ſi un dit generalment*: I know one near about I. S. that is a notorious Thief, *ou tiels ſemblables. Mes quant le perſon eſt un ſoit noſme en certaine, come ſi deux parlant enſemble de J. S. l'un dit*, He is a notorious Thief: *La J. S. en ſon count poit monſtre que la fuit parlance de luy entre les deux, & que l'un dit de luy:* He (innuendo prædictum I. S.) is a notorious Thief. *Car le office de un* innuendo, *eſt a container & deſigner meſme le perſon que fuit noſme en certaine devant: & en effect eſtoit en lieu de un* (prædict') *mes un* (innuendo) *ne poit faire perſon certain que fuit incertain devant: Car ſerra inconvenient que actions ſerra maintaine per imagination d'un entent que n'appiert per les parols ſur que l'action eſt fondue, mes eſt tout incertain & ſubject al deceivable conjecture: Mes ſi un dit a J. S.* Thou art a Traitor, &c. *la* conſtat de Perſona, *& action giſt: Iſſint icy en le caſe al barre, quant le defendant & Bonner ad parlance del pl' donques quant le defendant dit* hang him: *La* (innuendo) *voyle denote meſme le perſon noſme devaunt: Mes ſi le defendant ſauns aſcun parlance del plaintiffe ad dit*, hang him, *&c. la nul* innuendo *voyle aver fait le perſon certain.* ¶ *Quant al* 2. *ſi come* (innuendo) *ne poit faire le perſon certain que fuit incertain devant, iſſint un* (innuendo) *ne poit alter le matter ou ſence des parols meſmes: Et pur ceo quant le defendant en le caſe al barre dit al plaintiffe:* That he was full of the Pocks (innuendo the French Pocks) *ceſt* innuendo *ne fait ſon propre office, car ceo contende a extender les general parols*, the Pocks, *ale* French Pocks, *per imagination d'un entent que n'eſt apparent per aſcun precedent parols, a que le* innuendo *referrer; Et les parols meſmes ſerra priſe* in mitiori ſenſu.

And I humbly conceive this Book is a moſt pregnant Authority, that ſtates the Matter truly, with a Judgment of Law, and the Reaſon of it; and all the Books that come after this, borrow their Light from what is laid down as the Rule of Law is in this Caſe: as there are an infinite

Number of them, which I ſhall not trouble your Lordſhip with particularizing; only juſt to name ſome of them. 5 *Co.* 20 *Hob.* 45. and 2 *Cro.* 126. wherein they ſay, That altho' the Plaintiff be particularly named by a ſpecial Name; yet if the Declaration comes to name him in an Action of the Caſe for Words, at the firſt appearance with an Innuendo, then that Innuendo is void; tho' his Name be expreſly alledged in the very Words, yet they will reject that Innuendo, as not doing the proper Office of an Innuendo; and that Judgment ſhall be arreſted, tho' the Jury found that the Party ſpoke ſuch Words: And this is upon the Rule in 4 *Co.* before-mentioned.

Now, my Lord, to apply this Rule in the 4*th* Report, to the Caſe before your Lordſhip, we ſay there was no mention at all before of any two Kings; nay, not of any King, in his Diſcourſe, to which the Innuendo ſhould refer; and the Innuendo being joined to the Words firſt ſpoken, without any Diſcourſe laid concerning ſuch a Perſon, or Averment to be ſpoken of ſuch an one before, the Innuendo cannot give any certainty to that, which had no ſuch original certainty; that being againſt the Office of an Innuendo, and ſo is to be rejected. And the meaning of the Books, and of that great Rule, which I firſt cited, is this, That the Defendant muſt himſelf, in his Diſcourſe, firſt ſet up ſuch a Light about the Words of the Perſon concerning whom they are ſpoken, that the Intention of the Speaker may with eaſe be collected; then comes the Innuendo with a Beck or a Nod, as it were; and that Collection is to be the *nutus*, to ſhew who was meant; but it is not ſufficient to give an original certainty, where ſuch a certainty is not fixed before the Innuendo comes. The Defendant himſelf muſt ſet up ſuch a Light as will carry the Intention to the End of the Diſcourſe.

Then it is ſaid, *Duos iniquos Reges*, in the Plural Number; meaning the late King *Charles* and his preſent Majeſty; now King *Charles* the Firſt was never pretended to be mentioned before; why then, according to that Rule, as to him the Innuendo ſignifies nothing at all; and then it muſt be taken in common underſtanding, *We have now had two wicked Kings together*, Innuendo, our Sovereign Lord the King that now is, againſt whom the Treaſon muſt be ſaid to be committed: But this is very harſh, and inſenſible, and impoſſible; it is harſh, in all reſpects, both of Grammar, and Reaſon, and Law; it is inſenſible, becauſe it is impoſſible; and it is impoſſible, becauſe you muſt elſe make two Kings to be one, or one King to be two, and the Innuendo muſt ſerve both ways; which, I believe, your Lordſhip will hardly undertake to do.

And beſides, my Lord, there is another Inconſiſtency in theſe Words, *habuimus nunc*, that's contradictory; *habuimus* refers to the Time paſt, and draws one Way; *nunc* to the Time preſent, and draws another Way: and when there are ſuch Inconſiſtencies and Incoherences, how can any Man make a Judgment in this Caſe, where the Life of a Man eſpecially is concerned?

But, my Lord, if *habuimus* be that which being firſt ſhall take place, then theſe Words refer to any two Kings that we have had, under whom Popery hath been let in; and ſo we muſt run back from *Harry* the 8th, up to the Conqueſt, nay, beyond the Conqueſt, to the *Saxons* and other former Kings, to the firſt that eſtabliſhed the Chriſtian Religion, which was then ſubject to the Papacy. And it will be hard to conſtrue them wicked Kings for ſo doing at that Time; as any Man's reading, that knows any thing of the Hiſtory of *England*, will eaſily tell him. So that it is unintelligible and inſenſible, even that way; and, to be ſure, if it be ſo, that we have had two wicked Kings together, referring ſo far back, it cannot at all concern the preſent King.

My Lord, I ſhall be ſhort: I only ſtate theſe things before you, and recommend them to your Lordſhip's Conſideration. Then come theſe Words, which it ſeems are moſt relied upon, *If they would ſtand to their Principles*, he did *not queſtion*, *but they ſhould be able Inimicos ſuos vincere*, Innuendo the King and the Government. This is the moſt inſenſible, as I apprehend, of all; and it is in the fatalleſt part, it being there that the Treaſon muſt lie, if there be any. Now, my Lord, we firſt ſay, there is no mention at all of any Enemies throughout all the Words precedent; there is no Averment that the King was Enemy to any body, or any body to him; and therefore the Innuendo, for this reaſon, is to be rejected; and the rather, in that it makes the King and his Subjects to be Enemies one to another; which is an Imputation that ought not to be admitted; and I dare ſay, will not be by your Lordſhip. Therefore, in this Caſe, to put ſuch a Senſe in ſuch a Weighty Matter, being a Matter of Fact, upon ſuch Uncertainties, without any further Averment of the Intention and Meaning of the Speaker to be ſo and ſo, and without any thing but ſuch Innuendo's, is very hard: For now perhaps the Jury only from this Innuendo were perſuaded that all theſe things pointed upon the King and the Government; and did take it that the Law was ſo; that the Words intended as much: Then do they give their Verdict of a Matter that was never averred, and for want of an Averment could never be put in iſſue, ſo that the Party could have a Trial, whether he were guilty as the Indictment ſays.

My Lord, I ſhall cite no Books more than I have done. I humbly conceive, that putting that great Rule in the Book I firſt mentioned, and the Reaſon of the thing together, and the ſubſequent Authorities that I have cited; and they ſtand ſo fair and clear to avoid this Indictment, that to trouble your Lordſhip further were to embroil the Caſe; therefore I ſhall ſay no more out of the Books. But the Rule is a firm, reaſonable, undeniable Rule, which muſt rule all Caſes that come under the Reaſon of it. And I never heard that Book was ever contradicted; but all ſubſequent Judgments were agreeable thereunto.

Mr. Juſt. *Withins*. What Folio is it, Mr. *Wallop*, in the 4th Rep.?

Mr. *Wallop*. Folio 17. *B*.

Mr. Juſt. *Holloway*. It is -----'s Caſe, is it not?

Mr. *Wallop*. Yes, Sir. My Lord, I have ſtripp'd the Words of the Innuendo's. You will not, I am ſure, put, nor can an Innuendo put ſuch a Violence or Force upon Words, as to make them Treaſon, when in themſelves they have no ſuch Meaning. Innuendo's are to follow the Meaning of the Words as they lie in the Record, and not to draw the Meaning of the Words after the Innuendo; for you will never (eſpecially in Caſe of Life) preſs Words, or ſtrain them to ſpeak more than willingly they mean or intend. It is not the practice of the Law ſo to do, to make any ſuch Stretches. *Qui nimis emungit, elicit ſanguinem*, he that wrings the Noſe too hard, will draw forth Blood; that is the Rule of that great Lawyer, my Lord *Coke*, who applies that Saying to the forced Straining of Words beyond what in themſelves they naturally and eaſily will bear. And it is plain that God is not well pleaſed with ſuch Emunctions: Nor does the Law of the Land at all allow it, but abſolutely forbids it, for the Law of *England* ſpeaks thus, *In dubiis & generalibus, benignior ſenſus eſt præferendus*, in all dubious, uncertain, and general Caſes, the moſt benign and candid Interpretation is to be taken: So that if there ſhould be a doubt about theſe Words, what Senſe they be taken in, the Law of *England* does injoin your Lordſhip to take the Way that lies on the right hand, and make the moſt favourable conſtruction, that can be of them. We ſay then, the Words, as I conceive, ſtanding quite otherwiſe, and without the Innuendo's, are inſenſible, at leaſt uncertain, to what they ſhould be applied, or to whom; and then if there ſhould be a Doubt, though indeed in one reſpect I think there is none, yet if there ſhould remain a Doubt, I ſay, your Lordſhip and the Court are to take that which is the moſt mild and gentle way of conſtruing theſe Words.

My Lord, I ſhall not trouble your Lordſhip further in the matter, for I think it is ſeen by its own Light, and theſe few Touches, that I have given of that general Rule, as applied to the particular Caſe before your Lordſhip: And I do not queſtion, but they will be applied by your Lordſhip and the Court in their Conſideration of the Caſe: Therefore I lay it at your Lordſhip's Feet, and humbly pray, that the Judgment may be arreſted.

Mr. *Pollexfen*. My Lord, I am aſſigned by the Court to be of Counſel for Mr. *Roſewell*, the Priſoner at the Bar, and therefore humbly deſire your Lordſhip would pleaſe to ſpare me a Word of the ſame Side with Mr. *Wallop*. The Caſe, that is, this Part of the Indictment, hath been put, according to what our Information is, right by Mr. *Wallop*; but becauſe there may be many Words in the Indictment, and there are ſo, ſome of a higher Nature than others, therefore I beg leave to put the Words diſtinctly as they lie, and I ſhall endeavour, with Submiſſion to your Lordſhip, to ſhew what Words are in themſelves Treaſon, and what are not Treaſon, tho' they may be a great Miſdemeanour, and highly puniſhable by the Law, and by the Court.

My Lord, though the Statute of the 25 *Edw.* 3. does provide, that for the Convicting of any for Treaſon, there ſhall be an Overt-Act, yet I do not hold, nor do I think, but that there may be Words that are an Overt-Act, and conſequently Treaſon, within that Statute; but then what ſort of Words theſe are, is that which I would humbly offer to your Lordſhip to diſcourſe of: For, my Lord, it plainly appears that Words in themſelves, that are very evil and wicked, yet are not Treaſon, nor are to be puniſhed by virtue of that Statute of the 25 *Edw.* 3. As in one *Cro.* 117. & 125. *Hugh Pine*'s Caſe. The Words there ſpoken by *Pine* are moſt evil and wicked Words, yet by all the Judges of *England* they are agreed not to be Treaſon.

But, my Lord, for a further Determination of this Point, what Words are Treaſon, and what not, give me leave to mention the Statute of 13 *Car.* 2. which I underſtand to be the Statute upon which the Priſoner is indicted, and the two Branches of that Statute: for the firſt tells what is Treaſon, and the ſecond what is not Treaſon, but only Miſdemeanour; and that ſecond Branch of the Statute ſays, that if any perſon ſhall maliciouſly and adviſedly publiſh or affirm the King to be an Heretick or a Papiſt; or that he endeavours to introduce Popery, or, maliciouſly and adviſedly by Writing, Printing, Preaching, or expreſly Speaking, publiſh, utter, or declare any Words, Sentences, or other Things, to ſtir up the People to hatred or diſlike of the King's Perſon, or the eſtabliſhed Government; then he is diſabled to have or exerciſe any Place or Office, civil or military, and be liable to ſuch further Puniſhment, as by the common Laws or Statutes may be inflicted in ſuch Caſes; by which, I take it, the meaning to be Fine and Impriſonment, or bodily Puniſhment; but not the Puniſhment that is appointed to the Judgment of High-Treaſon, or loſs of Life or Member.

Mr. Att. Gen. My Lord, I humbly crave your Lordſhip's Judgment whether this ſhall be permitted, that the Counſel ſhould enter into ſuch a Diſcourſe as this. The Queſtion, I take it, that your Lordſhip appointed to be ſpoke to, is, Whether this Indictment as to Form be ſufficient for your Lordſhip to give Judgment upon? But Mr. *Pollexfen* is going into that which is a far greater Point; Whether theſe Words abſtracted from all their Innuendo's are Treaſon, or no? My Lord, the Priſoner did not move that in Arreſt of Judgment; and whether your Lordſhip expects any ſuch thing ſhould be ſpoken unto, that was not moved or ſtirred by him, I muſt ſubmit it to you. The Jury found that theſe Words were ſpoken with an Intent to depoſe the King. Whether that your Lordſhip will permit it to be argued, whether ſuch Words are Treaſon in their own Nature, is of quite another Conſideration.

Mr. *Pollexfen*. Good Mr. Attorney, Pray, ſpare us. We come to ſhew that if in their Nature they import not Matter of Treaſon, then the Innuendo's cannot help them, ſo as to make Treaſon of them.

Mr. Att. Gen. Truly, my Lord, I did not underſtand that it was your Lordſhip's Pleaſure the Counſel ſhould have liberty to argue any ſuch thing, as whether the Words be Treaſon, being found to be ſpoken with ſuch an Intention; but whether theſe Innuendo's have ſufficiently been laid to maintain the Indictment in point of Form.

Mr. *Pollexfen*. If you leave out the Words Innuendo'd, then ſure we may ſpeak to the Words themſelves.

L. C. J. Look you, Mr. Attorney, either you miſtake Mr. *Pollexfen*, or I do: For I take it, that he is entering into the Conſideration of theſe Words as they are laid in the Indictment; that are uncertainly laid, ſo as that they will not ſupport an Indictment of Treaſon.

Mr. Att. Gen. My Lord, he is arguing, that if they were ſpoken of the King, yet they would not be Treaſon.

L. C. J. Will he ſay ſo? I dare ſay, he will not.

Mr. Att. Gen. He is arguing upon the Statute, what Words are Treaſon, tho' ſpoken of the King, and what not; which I take it, is not the Queſtion now.

Mr. Sol. Gen. My Lord, We humbly offer it to your Lordſhip, whether it be according to your Lordſhip's Rule and Intention, that he was to argue whether the Words were Treaſon; or only whether the Form of the Indictment, as to the Innuendo's, was good and ſufficient.

L. C. J. Taking the Words to be ſufficiently ſet forth in the Indictment, and found by the Jury to be ſpoken of the King, eſpecially the laſt Words: Do you think we would ſuffer that Queſtion to be debated, whether they were Treaſon or not? God forbid. I will not ſit here to hear that Queſtion at all ſo much as made or put, I'll aſſure you. I took him not to argue at all any thing that way.

Mr. *Pollexfen.* Pray, my Lord, hear me; I am going only to this; for I would not offer any thing beyond what is fit for me to offer, and for the Court to hear: But this we ſay, that the Words, the effective Words, are not ſo ſufficiently laid in this Indictment, as to make them amount to Treaſon, I am only going to that.

L. C. J. Ay; that's the ſtinging Part of the Queſtion, and ſo I underſtood him before.

Mr. *Pollexfen.* My Lord, I only mentioned that of the Statute, that there were two Sorts of Words there taken notice of; to ſhew that I thought theſe Words were not within that Branch that is ſaid to be Treaſon.

L. C. J. Well, go on.

Mr. *Pollexfen.* I will keep myſelf to the firſt Clauſe of the Statute; for what I mean, is this, That if theſe Words come not within that firſt Branch, which makes the Treaſon, then your Lordſhip cannot give Judgment upon this Indictment. For tho', my Lord, it may be theſe Words are extraordinary ill, and being ſpoken or preached, may have an ill Senſe or Meaning with them; yet I would obſerve to your Lordſhip, there are other Penalties and Puniſhments provided for ſome ſort of Words, than there are for others.

But then, my Lord, let us conſider the Words of the firſt Branch of this Statute. If ſo be any Perſon does compaſs the Death, or bodily Reſtraint, or other harm to the King's Perſon, or to deprive the King, or levy War againſt the King, *&c.* and this compaſſing and imagination does expreſs by Printing, Writing, Preaching, or malicious and adviſed Speaking, they ſhall ſuffer Judgment of High Treaſon. Now then, all that I would come to, is this, that this ſame treaſonable Printing, Writing, Preaching, or Speaking, muſt be of ſuch Words as ſhall intend the Death, bodily Hurt, Reſtraint, or Impriſonment of the King's Perſon, or levying of War.

My Lord, having ſaid this, the next thing is to come to the Words themſelves, and to take them as they are in themſelves, without the Innuendo's, and ſee what the natural Senſe of them will be: And we'll take them in the natural Order as they are laid in the very Indictment, and found by the Jury.

The firſt Paſſage of them is, *quod Populus*, &c. (meaning the People of *England*, the Subjects of our Lord the King) *made a flocking to the King* (meaning our ſaid Lord the King that now is) *to cure the King's Evil, which he could not do*; *but we are they to whom they ſhould come, being Prieſts and Prophets, that by our Prayers can heal the Griefs of the People.* Now, my Lord, with humble Submiſſion, it is plain that as to theſe Words, they have not in themſelves any tendency to Treaſon at all, whatſoever Reflection they may make upon the King; they are the Words of a Prieſt magnifying his own Office, and his Power with God Almighty; but they do not come up (I think) to this Crime, for which the Priſoner at the Bar ſtands accuſed.

Then the next Words that follow, are theſe, *Nos habuimus nunc duos iniquos Reges inſimul, qui permiſerunt Romanam ſuperſtitionem intrare in eorum conſpectu*, &c. *and who can be liken'd to none but wicked* Jeroboam. My Lord, theſe, I do acknowledge, are very wicked and bad Words, eſpecially if they muſt be applied, as the Indictment has ſet them forth, to the late King, and his preſent Majeſty: Yet theſe very Words (under favour) will not amount to the Charge of High Treaſon. They deſerve very ſevere Puniſhment; but they ſeem not to come up to any thing of an Intention, or compaſſing, or deſigning the Death, bodily Hurt, or Impriſonment of the King; or the levying War againſt him. This I ſpeak, my Lord, with Submiſſion, and I believe your Lordſhip may be of the ſame Mind.

But then, my Lord, the next Words that follow, are the Words (I ſuppoſe) that are rely'd upon, to make out this Accuſation; *Quod ſi ipſi ſtarent ad fundamentalia, ipſe non timebat*, &c. *That they ſhould overcome their Enemies, as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling.* Theſe, my Lord, ſeem to be the Words in which the Crime conſiſts. Now, my Lord, if theſe Words in themſelves are ſo uncertain, or ſuch as do not tend or relate to the preſent King, or the preſent Government, to ſtir up Sedition or Rebellion againſt them, then they will not be Treaſon, becauſe they do not ſo relate.

Now, my Lord, theſe Words, if you take them alone without the former Clauſe, *Nos habuimus nunc duos iniquos Reges inſimul, &c.* cloſed with the Innuendo, that he meant the late King, and this, I ſee not poſſibly how they can be ſaid to relate to the preſent King and Government, to make them Treaſon within this Act. Which way can it be? If they would *ſtand to their Principles, they ſhould overcome their Enemies*: How can they be intended to be meant of the King, and his loyal Subjects? Then let us conſider the Words that go afore, whether they will help any thing or no; *habuimus nunc duos iniquos Reges inſimul.* Theſe Words of themſelves, ſtript of the Innuendo, do not expreſs what two Kings are meant by them. If you take the Words ſtrictly, that *We have had two Kings now together, inſimul*, as the Word ſignifies, it muſt be two Kings at one and the ſame time: But take it in the *Engliſh* Phraſe (as perhaps they would have it turned into *Engliſh*) *We have had now two wicked Kings together*, (meaning the late bleſſed Martyr, and his now Majeſty), then it muſt be, We have had now two Kings ſucceſſively; but it is a ſtrange thing to render ſuch *Latin* into ſuch *Engliſh*, which ſeems to be, in the Nature of the Words themſelves, ſuch as will bear no ſuch Senſe or Conſtruction as that. And then, the *qui permiſerunt Romanam ſuperſtitionem intrare in eorum conſpectu*; if the firſt Words do not in themſelves expreſs what Kings were meant, theſe Words that follow can give no manner of certainty to them at all: For here's not ſo much as any Innuendo; nor can the Words that follow them (*qui aſſimilari poſſunt*, &c. *which can be liken'd to none but wicked* Jeroboam) in any ſort, ſhew any certainty to whom the Words are to be applied, or illuſtrate whom the Speaker meant.

But now that which is the next Clauſe, is the worſt Clauſe of all, *Sed ſi ipſi ſtarent ad fundamentalia*, &c. *Ipſi* in all ordinary Conſtruction of Speech in all Language, being coupled to the former Words (and ſo I think the Rule in the Grammar is, and will be read by any reaſonable Perſon that reads) muſt refer to the next Antecedent. And then, who are *they* that are laſt ſpoken of? It muſt be the two wicked Kings, let them be who they will, that were meant by thoſe wicked Kings; for there is no other Perſon that does intervene, as ſpoken of, to whom they ſhould be referred. The former Words are ſpoken in the firſt Perſon, and plural Number; *We have had*, ſpeaking in the Name of himſelf, and they that were his Auditors, and then to come with *Ipſi*, after he had mentioned two Kings, who had ſuffered Popery to come in, and were to be likened to *Jeroboam*, changes the Form of the whole Speech. It ſhould ſeem, according as it is laid in the Indictment, to run thus, and then I deſire your Lordſhip to conſider the Senſe and Grammar of them; *We had now two wicked Kings together, who have ſuffered Popery to come under their Noſes, we cannot compare them to any but wicked* Jeroboam: *And if they would ſtand to their Principles, then he did not doubt but they ſhould overcome their Enemies, as in former times*, &c. Why then, if *Ipſi*, according to Grammar, and ordinary reading, being a Relative, muſt refer to that which went laſt before, there is nothing in all the Sentence before, but, *We*, that is, he and the People that heard him, and the two Kings that he ſpoke of; and the two Kings being laſt ſpoke of, it muſt in all Grammar, I ſay, and Senſe, be underſtood of the Kings. Then let us ſee, what Senſe we can make of it; *We have had two wicked Kings, that have permitted Popery under their Noſes, that they can be compared to none but wicked* Jeroboam: *and if they ſtand to their Principles, he did not fear but they (the Kings) ſhould overcome their Enemies.* In all ordinary and fair reckoning, I cannot ſee how they can mend it, but the *Ipſi* muſt refer to the *Reges*; and the *Eorum fundamentalia, ipſorum Regum*, if you take theſe Words, as they do lie; and if they have any Senſe or Meaning at all in them, this is the proper and natural Senſe and Meaning of them.

For it is pretty hard to apply the *Nos habuimus nunc duos iniquos Reges*, to the *ipſi qui ſtarent ad fundamentalia.* In all Probability he ſpoke it thus, if it continued on in a Diſcourſe, which I can ſay nothing to, being only to ſpeak to the Words as they are laid in the Indictment, *And if we do but ſtand to our Principles, I do not doubt but we ſhall overcome our Enemies as formerly*, &c. But *Ipſi* is a Variation of the Perſon, and, according to all Grammatical Conſtruction, we know how it muſt be expounded. The other ſeems to be the natural reading of the Words; but the Indictment has not purſued them, but has made them inſtead of that, to be quite Nonſenſe, ſuppoſing them to have been ſpoken as the Jury have found them.

But, my Lord, if they do not well bear that Senſe, which I think they ſhould properly and naturally bear, if they had been right laid, the Queſtion then is, Whether we can make theſe Words, as they are laid, to bear any ſuch Senſe, as the King's Counſel, by their Innuendo's, have placed upon them? that is, *if they*, meaning his Auditors, *ſhould ſtand to their Principles, then they ſhould overcome their Enemies*, meaning the King and his loyal Subjects. Truly, my Lord, I cannot ſee how that can be, how *Ipſi* ſhould be me; I and mine Auditors ſhould ſtand to their Principles.

But ſetting that aſide, come we then to the main Words: *He did not fear but they ſhould overcome their Enemies.* The great force of theſe Words lies in the word *Enemies.* What is meant by Enemies? For all the reſt without that, would not ſignify any great Matter, with Submiſſion to your Lordſhip, as I think: And therefore here comes the great Burden, and that which is the ſharp Sting of all this Indictment. And to make *Enemies* to ſignify the King and his Subjects, my Lord, is a very wonderful Innuendo, as I believe ever was attempted to be made. So it ſeems to me, with Submiſſion to your Lordſhip; the word *Enemies* itſelf is a Word of ſo large Comprehenſion, that it reaches to a great Part of the World. God knows, Mankind is ſo very unhappy, as that every one hath very many, and too many Enemies. Who is not an Enemy? A Man ſcarce knows; 'tis well if he does. And this is a thing that's mighty hard, that ſo general a Word ſhould have ſo heinous a particular Application.

There then reſts the Burden of the Caſe, whether *Inimicos* ſhould ſignify the King and his loyal Subjects. If in the natural Grammar, the former Words of *Ipſi ſtarent ad fundamentalia*, be, as I have ſhewn, to be referred to the *duos Reges* as the laſt Antecedent, then it muſt mean, that the *duo Reges* would overcome their Enemies, and then there is no hurt in all theſe Words, but whatſoever was ſpoken is very commendable, and very allowable: But if you would take it otherwiſe, I ſee not how it can be done without the greateſt Strain in the World of ſo general a Word, to make *Inimicos* mean the King and his Subjects.

Now, my Lord, let us ſee how they intend to help it out, and that is, by theſe Innuendo's. The Nature of an Innuendo hath been already opened to your Lordſhip by Mr. *Wallop.* I ſhall not repeat any thing of that which was ſaid before, for that I cannot take to be any Service to the Priſoner at the Bar, to take up your Lordſhip's time in Repetitions. The Books have been cited, and Reaſon itſelf will direct to that; for muſt not a Man be convicted by his own Words, as well as puniſhed for them? It is not, ſure, the ſkill of the Clerk to put in an Innuendo, or of any one elſe, that ſhall be conſtrued to make my Words to have any other Senſe, than I that ſpake them intended them in. If the Words are not clear, why then they cannot affect the Auditory, ſo as to have any evil Influence upon them, to incite them to Sedition or Rebellion: for ſenſible Words muſt influence ſenſible Men: But Words that are inſenſible, can have no Influence at all upon rational Creatures. Then ſhall an Innuendo make that an Offence, which without it was not an Offence; eſpecially ſo great an Offence as that of High-Treaſon? Surely not.

Beſides, my Lord, all our Books are againſt making any ſuch Conſtruction. *Rol's Abr.* 1. *Part* 84. There is a whole Bead-Roll of them to prove, that Innuendo's will not help, where the Words in themſelves have any Incertainty in them. The bare ſetting down the Words with Innuendo's are not an Averment ſufficient to maintain an Action, or an Indictment. The Caſes there are indeed upon Actions of the Caſe for Words, which in reaſon are under the ſame Rule.

For, my Lord, there are two Ways to apply Words that are uncertain, to bring out the true Intent and Meaning of them, to whom they are to be applied; the one is by a *Colloquium* precedent, and where there is a *Colloquium* precedent of ſuch Matter as will lead in the Senſe of the Words, which without it were not to be underſtood, there the laying that *Colloquium* makes the Words come to be ſenſible, and there is this Reaſon for it, whenever that's done, the *Colloquium* muſt come in Evidence, and muſt be proved: But I never yet knew an Innuendo offered to be proved. Another Way is this, where Words are laid in a Declaration with an Averment precedent to be ſpoken of ſuch a perſon, then the words, with an Innuendo after that Averment, ſhew ſufficiently what is meant by them. If ſo be ſcandalous Words are ſpoken, as to ſay, *Thy Landlord, your Brother, your Maſter, your Servant, your Son, is a Thief*, or the like: In theſe Caſes the Words in themſelves do not expreſs the Man of whom the Scandal is raiſed, but they give ſuch a Denomination of the Man, that may by the Hearers be ſufficiently known. Why then, in that Caſe, if in the Declaration it is averred that the Plaintiff was his *Landlord*, was his *Brother*, was his *Maſter*, was his *Servant*, was his *Son*, and that theſe Words were ſpoken of him, and thereby it comes to be made apparent to the Court what is meant, and who is meant, that is well, and all that muſt be proved to the Court upon Evidence, or the Action cannot be maintained. By ſuch means as this it is made plain and demonſtrable, that there can no doubt remain, either with the Court or the Jury, to whom the Injury is done, and of whom the Scandal is uttered. And theſe are the only two Ways that ever I could obſerve were allowed to be ſufficient to maintain any ſuch Action: And there the Innuendo comes very properly in to aſſiſt the Averment, or the *Colloquium*.

But now, my Lord, here in this Caſe, here's nothing of that kind but only a bare Innuendo, that ſuch and ſuch were meant, without either a *Colloquium* that there was a Diſcourſe concerning ſuch and ſuch Perſons, or an Averment that the Words were ſpoken of the Perſons.

My Lord, I cannot tell what Precedents they will offer to your Lordſhip of former or latter times. We have had but a very little time to look into it, and have not that recourſe to the Precedents on the Crown's ſide that the King's Counſel have. But, my Lord, for Precedents that may have paſt *ſub ſilentio*, without having the queſtion ſtirred, I ſuppoſe, will not be allowed by your Lordſhip, and the Court, as Precedents againſt us. But I think there will be no Inſtance given, where-ever any ſuch thing came in queſtion, that ever Judgment was given againſt the Defendant.

My Lord, this ſeems to be the Senſe and Nature of the Words as they are laid in this Indictment, ſtript of the Innuendo's, and your Lordſhip knows what a Caſe we have now before you. We are in the Caſe of the Life of a Man, which is much favoured in Law, and if there be any doubt or uncertainty, your Lordſhip will lean rather towards the favourable ſide; and if, according to the Rules of Law, Words to make Men criminal ſhall not be ſtrained, or forced beyond their plain, natural meaning, ſure they ſhall not to make a Man capitally ſo: For the greater the Crime is, the greater Conſideration the Court will have to ſee that there be no ſtrained, forced Conſtructions to bring the Life of a Man in danger: And therefore I humbly pray that Judgment may be arreſted.

Mr. Att. Gen. May it pleaſe your Lordſhip, I am of Counſel in this Caſe for the King: and notwithſtanding any thing that has been ſaid, I do conceive, that there is High-Treaſon well alledged in this Indictment, of which the Priſoner is found guilty, againſt whom I muſt demand your Judgment. My Lord, there is a great difference in this Matter; that is, whether the Words are Treaſon, as they were ſpoken by him, and whether or no this Treaſon, admitting it to be Treaſon, be well diſcloſed by this Indictment: For, my Lord, I think to preach in a Publick Aſſembly, that *we have had two wicked Kings together, who have permitted Popery to come under their Noſes*, and then to go on with it to *Stand to their Principles* (for ſo the Words are laid in this Indictment) *and they ſhould overcome their Enemies, as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling*, is a very high Aggravation of ſuch Words. And, my Lord, if you remember the Evidence, as I doubt not you do, it was all ſpoken in a publick Aſſembly, before 4 or 500 People, and they were ſpoken without any Words intervening whatſoever. Theſe were the only Words that were ſpoken relating to this Matter: So that theſe muſt carry their own pregnant Senſe with them, of exciting the People to ſtand to their Arms againſt the wicked Kings, or elſe they are of no ſignification. And thus they are laid in the Indictment, and found by the Jury to be ſpoken poſitively to ſtir up the People againſt the King, to depoſe him, and to raiſe Rebellion within the Kingdom. This, I ſay, is poſitively affirmed, and laid down in the Indictment. But now, whether or no theſe Words are in point of Form ſo laid, that the Court muſt underſtand them with relation to the King and Government, and as an Argument to ſtir up the People, is the Queſtion: For if they be ſo, then they are well laid to ſupport this Conviction of Treaſon.

Now for that, my Lord, I would only firſt ſay, they muſt either import Treaſon in themſelves, or they do not. If they do import Treaſon in themſelves, no Addition of the Perſon concerning whom they were ſpoken, as that they were ſpoken of the King, will mend the Caſe, or make it better. Tho' it be laid never ſo much to be ſpoken of the King, and that be never ſo much averred, yet if it be not ſpoken to diſturb the Government, or to raiſe Rebellion and Inſurrection, the adding a thouſand times that it was ſpoken *de Domino Rege*, would not avail. They confeſs they have no Precedents to produce, and I believe truly they have not: And ſo they only go by way of Argument, taken from Actions upon the Caſe for Words: Whereas there is a great Diſparity in the Caſe between Actions of the Caſe for Words, and Informations or Indictments for Words that are Criminal or Capital; and I know if they will look into the Precedents that are in Print, in the Entries, and in the Reports of Informations or Indictments, they will find it is never, or very ſeldom, or rarely done, it being looked upon as to no Purpoſe, or as perfect Surpluſage, to lay that ſuch or ſuch a thing was ſpoken, *de Domino Rege de Gubernatione*. But in Criminal Caſes, and not Capital, it is commonly thus, of which there are multitudes of Inſtances: That ſuch a one being of an ill Mind, to raiſe Commotion in the Kingdom, and ſtir up Sedition, ſpoke theſe and theſe Words. This was the conſtant Form in your Lordſhip's time, as your Lordſhip can remember, in the Informations that were, or the Indictments of Perſons that had ſpoken Words relating to the Duke of *York*. I can remember when your Lordſhip uſed to ſay, *Never conſult me, but follow the ancient Precedents*, which I dare undertake to ſay are all thus, and ſo I ſhall ſhew by and by, it has been in Indictments of Treaſon: And though, perhaps, one or two might at any Time be otherwiſe drawn (of which yet we can find none), yet, this hath been the conſtant Form for any thing that I can find, and it is of very great Conſequence to ſay at this time of Day, That what has for 100's of Years together been the conſtant Practice, and way of Indictments and Informations, is not good, it were to turn all things *topſy turvy*, and to make great confuſion in Proſecutions, and the Practice of the Law, in Criminal Matters. I ſhall therefore ſhew your Lordſhip that here is ſuch a Certainty as the Law does require, and as is uſually practiſed, and that the Words in themſelves are ſuch, that they muſt have Relation to what we have laid down in the Indictment, and to nothing elſe.

But then they do lay down this for a Ground, which I think I may grant them very eaſily, and yet it will ſignify nothing to what they mean; I would wipe off all theſe Innuendo's, leave them out of the Caſe, for I never expect any help from them at all; and then I do agree that an Innuendo, without a ſtrong, urgent Averment that the People which hear the Words ſpoke, and the Court that are to paſs Judgment upon them, ſhall ſay forcibly appears from the Words themſelves, who was meant, and what was meant, will not ſupport the Indictment, nor has the Verdict fortified it at all.

But they tell you in Actions of the Caſe, if *John-a-Stiles* be called a *Bankrupt*, if he will bring an Action againſt the Party that ſpoke theſe Words, he muſt aver and affirm, that they were ſpoken *de Querente*, of that particular Perſon that doth bring the Action; and ſo it is, the Law is ſo, and the Reaſon's plain, becauſe there are many *John-a-Stiles*'s perhaps, and the Plaintiff that brings the Action is but one; and therefore, if he does not ſhew that the Diſcourſe was of that *John-a-Stiles*, who brings the Action, it is uncertain who was meant, and cannot be ſupported by a bare Innuendo. But I take it in theſe Caſes, wherever the precedent Averment is neceſſary, there muſt be a diſtinct Proof of that Averment, as if *John-a-Stiles* be called Bankrupt (in the Caſe I mentioned), and he brings his Action, and avers the Diſcourſe to be *de Querente*; and he calls Witneſſes, who prove the Words to be ſpoken, that the Defendant did ſay *John-a-Stiles* was a Bankrupt; and the Court demands this Queſtion of the Witneſſes, But do you know what *John-a-Stiles* the Defendant meant? and he ſhall anſwer, No, we only heard the Party ſay, *John-a-Stiles* is a Bankrupt: It is apparent that Evidence will not ſupport the Action; for that Averment muſt be proved, that he that brings the Action was intended, and that there was a Diſcourſe concerning him. There muſt be, I ſay, the Proof of the Averment to make up that certainty of the Application of the Words, which the Law requires. And therefore in what Caſe ſoever it be, if the Words be the only Proof, or if the Words carry ſufficient in themſelves to ſhew of whom they were ſpoken, it is ridiculous to ſay there muſt be an Averment that they were of ſuch a one; becauſe Words cannot prove themſelves.

For, my Lord, where-ever Words by ſtrong and pregnant Intendment do carry Slander, and of ſuch a particular Perſon, there the Books are expreſs that there needs no Averment, that they were ſpoken of ſuch a one; as in the Caſe of *Fleetwood* and *Curle*, *Hob.* 267. which is a Rule for all Caſes upon Actions of the Caſe for Words. Sir *Miles Fleetwood* being Receiver of the Court of Wards, brought an Action of the Caſe againſt *Curle*, for that he (having Speech with one *Whorewood*) did ſpeak of the Plaintiff theſe Words, *Mr. Deceiver* (Innuendo the Plaintiff) had deceived and cozened the King, *&c.* He did there alledge the Words to be ſpoken of the Plaintiff. In that Caſe, upon Not Guilty pleaded, it was found for the Plaintiff, and it was moved in Arreſt of Judgment, that it did not appear by the Words ſpoken, that they were ſpoken of the Plaintiff: For, *Mr. Deceiver* had no Propriety to that Purpoſe; and the Innuendo would not make it certain, when it appeared to the Court, that the Words would bear no certainty, tho' he did alledge the Words to be ſpoken of the Plaintiff in that Caſe; becauſe there may be many Deceivers, or Receivers, and he muſt prove it particularly ſpoken of himſelf. But then the Book is expreſs, that after a Verdict, tho' he did not aver it was ſpoken of him in his Office, yet Judgment ſhould be given for the Plaintiff, becauſe there is a pregnant, violent, certain Senſe, that may lead the Court and Hearers to take it ſo to be meant, and cannot be otherwiſe imagined; and therefore the Court will not imagine it. As if a Man ſpoke of an Attorney, that he is a Knave, and ſpoke not of his Practice; why then the Action won't lie: But if he be named an Attorney in the Declaration, and the Hearers knew him to be an Attorney; in that Caſe, it was ruled not neceſſary to have any ſuch Averment; for the Words themſelves did import it in the Original Caſe, that it was ſpoken of him in his Office, by the Word Deceiver; that having an Alluſion and ironical Reſemblance to the Name of his Office; and in the other Caſe, becauſe the Hearers knew him to be an Attorney.

So, my Lord, upon theſe Grounds, Judgments have gone in thoſe Caſes, which they themſelves do ſo much rely upon; Actions for the Caſe for Words; wherever the Words import pregnantly ſuch a Senſe, there does not need ſuch an Averment. But I ſhall ſhew that in Informations and Indictments this cannot be neceſſary, and the Reaſon ſeems plain: For here, as we have laid it, and as the Truth is, we all know it, there is but one King and one Government; and when Words are laid to be ſpoken to excite Commotions, or Rebellions, or Inſurrections, they are but external Declarations of the Mind; the Treaſon that he is charged with, that is inward, it is the Thoughts that are Treaſon. But it is true, the laying that alone, that he did ſo compaſs and imagine, without ſome outward Declaration, would not be good in an Indictment, any more than the outward Declaration without the inward Intention. But the Treaſon is, that he did imagine to raiſe Rebellion and War within the Kingdom, to ſtir up the People againſt the King, and to depoſe the King, and bring him to Death, and deprive him of his Crown and Dignity; and then goes the Indictment on, and ſays, to the End that he might effect this Treaſon, he ſpoke ſuch and ſuch Words, which by that new Law (that *Mr. Pollexfen* mentioned) will amount to Treaſon in Speaking, as well as Writing. I ſay, it is poſitively charged in the Indictment, that he did thus and thus ſpeak to ſtir up the People to Rebellion and War againſt the King; and then come the Words. If indeed any collateral Words be ſpoken, which in their own Nature import not a Tendency to incite and ſtir up the People againſt the King, it would be naught with Innuendo's; and ſo it would be, if there were twenty Averments. But I think that this is as ſtrong an Averment as can be (what we all know to be true), that there is but one King, and one Government. And then he ſpoke the Words in a Publick Aſſembly, *We have had ſo and ſo, and if they would do ſo and ſo*; which carries forcibly and pregnantly this Senſe, that it cannot be intended to be ſpoken againſt any one elſe, but againſt the King and the Government; eſpecially now after the Verdict, when the Jury find that he did all this to raiſe up the People againſt the King. All the Diſcourſe is in itſelf pregnantly and forcibly tending that way.

My Lord, we are now upon the Form of the Indictment. Put the caſe there are many idle Expreſſions in it, as I may grant there are; yet, if the greateſt part import Treaſon, Sedition and Rebellion, and are laid to be done to incite the People to Rebellion, and ſo found by the Jury; then the Indictment is well laid, and Judgment muſt be given for the King. The firſt Words are highly derogatory to the King, and muſt be underſtood to be ſpoke of him. If the Priſoner had thought theſe Words would not have been Treaſon, if he had demurr'd in the Caſe, by that, as the Jury find it now here, he would have confeſs'd it to have been ſpoken of the King; for it is ſaid, He ſpoke it to the People, and he ſpoke it of the People of *England*; and to ſay that *Populus* may mean the King of *France*'s People, as Mr. *Wallop* would have it, certainly no Man can think that: For when he ſpeaks in *Engliſh*, to an *Engliſh* Auditory in a Publick Aſſembly, *That the People make a flocking to the King*, how can that King mean the King of *France?* And how can the Word *People*, by any Intendment, but a very foreign and ſtrange one, be interpreted to mean that the *French* People ſhould come over hither, for to be cured of the King's Evil, when (as he himſelf ſays) the *French* King claims ſuch a Power? No, That does fix it particularly upon our own King.

Pray, let's conſider then, what poſſibly can the Intendment of theſe Words be, that follow, *We have had now two wicked Kings together?* As for that Objection of the Word *inſimul*, that it means together at one Time, that ſure can have very little in it, it being to be taken according to common underſtanding in our Dialect; and in *Engliſh*, to ſay we have had now two wicked Kings together, every one will underſtand it, we had them one after another, becauſe we have but one King at a Time.

And then, my Lord, if the latter Words were left out, with ſubmiſſion, I conceive upon the Authorities that are in our Books, theſe Words would have been Treaſon upon the Statute of 25 *Edw.* 3. For, my Lord, in a Publick Aſſembly of People, which is an unlawful Aſſembly, as this was, to ſpeak ſuch Words of the King, would be Treaſon. For put the caſe, he had collected a number of armed Men at *Hounſlow-Heath*, and there exhorted them to ſtand together; that the King was a wicked Prince, and had miſgovern'd himſelf in the Adminiſtration of the Government; I think that would be Treaſon within the Law. By the new Statute, to ſay the King is a Papiſt, plainly is a *Præmunire*; but to ſay the King is a wicked King, and has miſgovern'd himſelf in introducing Popery; that's a ſtep further than what the Act makes a *Præmunire*; for theſe are Words to ſtir up the People againſt the King, eſpecially preached in a Publick Aſſembly.

Then, My Lord, you'll take all theſe Words together; firſt, after he had drawn away that great Authority, and great Power that the God of Heaven hath given to the King, in curing the King's Evil, and declared him to be a wicked Prince, by ſuffering Popery to come under his Noſe, and that he was to be compared to none but wicked *Jeroboam*; and then, to exhort the People to ſtand to their Principles, and he did not doubt, but they ſhould overcome their Enemies, what can be plainer Treaſon? For it is plain, that he did ſpeak to the People, to the Congregation; and that can never be underſtood otherwiſe by the Court, nor by the Hearers. For that Interpretation, that the King ſhould overcome his Enemies, it is foreign and ridiculous, and not to be imagined by any body, that has either Senſe or Reaſon about them.

But, my Lord, I ſhall leave all this (the Jury having now found it), to ſhew what Precedents we could prepare for your Lordſhip; how things of this Nature have been uſed to be drawn: For we have made, for the little time we had, as good a Search as we can; and I have found ſeveral: And indeed, I cannot find one otherwiſe, than as this is. And for late Informations and Indictments, if you examine the Clerks that now are, they'll tell you, that there is not one otherwiſe: But that if it be ſaid to be done with an intent to raiſe Rebellion or War againſt the King, or Sedition, or the like; and then ſay, he ſpoke ſuch and ſuch Words, that is ſufficient. But I will ſhew your Lordſhip ſome ancienter Precedents, ſome few which will ſhew how the Practice was heretofore.

The firſt is 3 *H.* 8. *Rot.* 17. in the Indictment againſt my Lord *Grey* of High Treaſon; after the general Charge of machinating the Deſtruction and Death of the King, and Subverſion of the Government; it is ſaid there, that *Proditorie* he did ſpeak theſe Words, '*That the King's Grace* '*ſhould be driven out of the Realm, and the Prince's Grace ſhould never ſucceed.*' And it is not averr'd that theſe Words were ſpoken of the King, and of the Prince; nor was there any need it ſhould be averr'd; for the Words plainly import they were ſpoken of them; and the laying it, that it was to raiſe Sedition within the Realm, was ſufficient to make them High-Treaſon.

Then the next is my Lord *Cobham*'s Caſe, 2 *Jac. Seſſione 1ma*; for it is one of the great Records that lie in the Cheſt, amongſt the *Arcana.* But by the Book in the Office, we have a Copy of it; but there is the Record in the Cheſt, and there it is, '*Poſteaque* 12 *die Junii, ultimo præterit. ac diverſis aliis diebus & vicibus, tam poſtea quam antea, dixerunt*, &c.' (for there are other Defendants) *Proditorie* '*there will be no good till the* '*King*' (meaning our Sovereign Lord the King) '*and all his Cubbs*, (meaning the Children of our ſaid Lord the King) '*were quite taken away*, &c.' I leave out the General Charge of the Machination and contriving of the Death of the King; but to the intent to effect that Treaſon, ſuch Words were ſpoken without any averment, that they were ſpoken *de Rege.* There was no mention of the Progeny of the King before; or that the Cubbs that were ſpoken of were the King's Children; neither would the Words *Regalis Progenies* anſwer the Engliſh Word *Cubbs*; which was a Word abuſively mentioned by him. But in that Caſe it was held to be a good Indictment; and Sir *Walter Raleigh* was condemned upon it.

Another is *Williams*'s Caſe; and that's very like our Caſe in the firſt Part; that is, the firſt Words inſiſted upon are laid poſitively to be ſpoken of King *James*, by an Innuendo. *Paſch.* 17. *Jac. Rot.* 40. there, after the *Machinans & intendens, &c.* it is laid, that he, ſuch a Day of *September*, *Proditorie deviſavit* a treaſonable Book called *Balaam*'s *Aſs*; wherein there are ſuch and ſuch Paſſages applied to the King by the Innuendo. There is nothing ſaid of that, to be ſpoken of the King, *de Rege*; but the Words of the Book carrying their own plain Senſe and Meaning in them, that they muſt be intended of the King, and the Government, that was ſufficient to maintain the Indictment; and he was Executed. The Innuendo's are not material. If it can have no other Senſe, that is enough to maintain the Indictment.

My Lord, in *Fitzharris*'s Caſe, which your Lordſhip and all the Court remember; part of the Libel related to the Duke of *York*, by the Letters *D.* of *Y.* and ſometimes only called by the Letter *Y*, and the King himſelf by the Letters *Ch.* And the Innuendo is, meaning our Sovereign Lord the King; and there is nothing averred in that Caſe, and indeed there can be nothing averred; for by the Import of the Thing it muſt have that Senſe.

Colonel *Sidney*'s Caſe, my Lord, you'll find to be the ſame: There's no Averment; but the Words of the Libel are brought in with an Innuendo.

And you have another Indictment at *Salop*, 31 *Car.* 2. One *Pitt* was indicted of High-Treaſon, and convicted for theſe Words, '*If the King* '*ſhould hang or baniſh any of the Papiſts, his Throat ſhall be cut.*' This is laid in the ſame Form in the Indictment, as we have it here in our Caſe. If you pleaſe it may be read that he did *adviſate, proditorie*, ſpeak ſuch and ſuch Words, *if the King*, meaning our Sovereign Lord the King, without any previous Diſcourſe of the King, or ſaying it was ſpoken *de Rege*, *ſhould hang or baniſh any of the Papiſts* (*quaſdam perſonas male diſpoſitas*, &c. Innuendo) *his Throat ſhall be cut.* He was Convicted, I ſay, and I think was Executed, tho' I cannot directly tell that: But this is the Record of his Conviction.

So I take it, it is, with Submiſſion, that the Precedents go all along, both in Criminals that are not Capitals, in Indictments and Informations; and alſo in Indictments for High-Treaſon. The charging the Words to be ſpoken to ſtir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatſoever, is ſufficient; that is a ſtrong Implication that they are ſpoken of the King and Government.

And, my Lord, as to theſe Words they could not be laid otherwiſe, than they are in this Indictment; for this is all that the Perſons that are the Witneſſes ſwore was ſpoken. Your Lordſhip remembers it, it was ſo, when they were here, they could ſwear no more. So that to have averred that he ſpoke to them *de Rege & Gubernatione*, would have put a Proof upon us, that our Witneſſes would not have come up to. We muſt have proved a Diſcourſe of the King and Government, and a ſwearing of the Words would not have been a Proof of that. The Jury has found that this was done to ſtir up Sedition, and to levy War; therefore, I conceive, according to the conſtant courſe of the Precedents, there is no need of any Averment; but the Words are well laid, and well proved, and he well convicted.

To ſay, that Enemies is a very general word, and that we have Enemies of all ſorts, and that therefore a bare Innuendo cannot make it mean one more than another, is odd in this Caſe: For I would fain have any Man aſſign me what ſort of Enemies he could be thought to mean. In ſuch a Diſcourſe he could not mean ſpiritual Enemies; becauſe the Inſtruments that they were to be deſtroyed with, were carnal Weapons, broken Pitchers, and a Stone in a Sling. Theſe are not fit for overcoming ſpiritual Enemies; but they muſt be ſuch Enemies as can be deſtroyed by ſuch Inſtruments, Carnal Enemies that are to be vanquiſhed by outward Force. And then what Enemies can ſuch a publick, unlawful Aſſembly have, but the Government? All that are of their own Side and Party are none of their Enemies. And it cannot be taken diſtributively, that every particular Man has his Enemy, that's a foreign Underſtanding: But when he ſpoke to the Congregation in a Conventicle, that they *ſhould overcome their Enemies*, being ſo unlawfully aſſembled, that muſt be the Government. And had he not told you before, who were the Enemies that he plainly meant? He had ſaid, that the King was a wicked Man; and according as he repreſented him, an Enemy to God and Man by introducing Popery into the Kingdom. And you are to conſider the Time when, and the Place where theſe Words were ſpoken. We know that in theſe Conventicles it has been the conſtant Cry, that we ſhould be all over-run with Popery, and the like: And therefore, that is conſiderable in the Caſe.

My Lord, I make a great Difference between Words ſpoken in private, and Words ſpoken in a great and large Aſſembly. It is the ſame Thing as if it had been ſpoken at the Head of an Army; eſpecially when People meet contrary to the Laws of the Land in Defiance of the Government, and gather together in ſuch great Multitudes; and have ſuch Diſcourſes and Opinions broached amongſt them. I cannot ſee truly, how it is poſſible to have been better laid, being ſworn directly as it is laid; and eſpecially being found to be all ſpoken to diſturb the Government, and to raiſe Sedition and Rebellion. Therefore I muſt ſubmit it to your Lordſhip; and pray your Judgment againſt the Priſoner for the King.

Mr. Sol. Gen. My Lord, I beg leave to add one Word on the ſame Side. That which I ſhall apply myſelf to, is to ſhew that this is a very good Indictment, in the Form of the Indictment, and that upon this Matter which the Priſoner is proceeded againſt; for it could not be better.

My Lord, the Fact charged upon the Priſoner is as Mr. Attorney has opened. Theſe Words were ſpoken in a Conventicle, *The People make a flocking to the King to cure the King*'s *Evil, which he cannot do*, &c. Theſe are the Words upon which the Priſoner was committed: Theſe are the Words upon which he is proceeded againſt; and theſe are the Words which have been found againſt him. And, my Lord, more Words than theſe are not alledged to be ſpoken by the Priſoner, nor proved to be ſpoken by him at his Trial upon this Indictment. Therefore, if theſe

Words are High-Treaſon, this is a good Indictment in Subſtance, if it proves ſo too in Form. And whether theſe Words are not themſelves Treaſon, I ſhall not now ſpeak, but ſhall only go to ſhew, as I ſaid, that it is a good Indictment in Point of Form. For theſe Words are his Crime, as ſpoken in that Conventicle; and the only Crime of which he was accuſed, and of which he is found guilty.

Now, my Lord, let us ſee how the Indictment is. He is charged with compaſſing, imagining, and intending to raiſe Rebellion, and levy War in the Kingdom, and to depoſe the King; and to bring the King to Deſtruction: That is the Charge of High-Treaſon, in the Kind of it. Now, as that is the Charge, it is of abſolute Neceſſity to alledge an Overt-Act, which muſt be proved too; and if there be not an Overt-Act, the Indictment is naught. Well, then, the Treaſon is compaſſing the Death of the King, and intending to raiſe Sedition, and levy War. What is the Overt-Act charged upon him? Why, to bring ſuch his wicked Purpoſes to paſs, he did traiterouſly ſpeak, publiſh, and utter [*the Words of the Act of Parliament, in* 13 Car II.] in an unlawful Aſſembly, in the Preſence of divers of the King's Subjects, theſe Words that I repeated before to your Lordſhip.

Now, my Lord, I aſk; Are theſe Words Treaſon in themſelves, or are they not? If they are Treaſon of themſelves, then the Indictment is certainly good in Form, without ſaying, that he ſpoke the Words of the King, or of the People of *England*, Subjects of the King. For either they do import that of themſelves, or they do not. If they do import it of themſelves, the ſaying that he did ſpeak them of the King, and of the People, would have been impertinent and idle, becauſe it is a thing manifeſtly plain of itſelf. If they do not import this of themſelves; then had it been charged, that they were ſpoken of the King and of the People, this muſt have been proved.

To go on then, my Lord: If it muſt have been proved, it muſt have been proved either by the Words themſelves, or by ſomething elſe. If it were to be proved by the Words themſelves; why then it returns to the old Queſtion, and we need not alledge it. If it were to be proved by ſomething elſe, then the Fault is not in the Indictment, but it muſt be want of other Matter than what our Witneſſes would prove; which, I am ſure, would have been a very great Fault in us to have drawn upon ourſelves. But if the Words import of themſelves the Meaning to be of the King, and of the People of *England*; then it is plain they make the Treaſon of themſelves, and there requires no Averment.

As now, for Inſtance, my Lord, to change the Words a little, to illuſtrate the Caſe; as ſuppoſe it had been charged in the Indictment, that to bring his wicked Purpoſes forth to effect, he did ſpeak theſe Words in ſuch an Aſſembly, *Procure to yourſelves Arms, and make yourſelves ready by ſuch a Day, and go to* Whitehall, *and kill the King*; would any Man have ſaid here, that it was neceſſary that we ſhould ſay in the Indictment that he *dixit de Populo, vel de Rege*, ſo and ſo? No certainly, it is not neceſſary, becauſe the Words plainly import their own Meaning.

So here in this Caſe; if the Words themſelves neceſſarily import to be ſpoken of the King, it is as impertinent here to ſay, *dixit de Rege, dixit de Populo*, as in that Caſe; becauſe it is no more than what they neceſſarily and naturally import of themſelves: Which ſhews that this Averment, that they would have, is abſolutely immaterial; and, if it had been charged, would have required ſome other Proof than the Words themſelves. And ſo the Fault cannot be, as they would alledge, in the Form of the Indictment; but in the Subſtance of the Words, that they do not import in themſelves ſuch a Meaning. And therefore, I think, with Submiſſion, I have maintained the Form of this Indictment beyond all Contradiction; and, notwithſtanding all their Objections, it is a very good Form without the Words *dixit de Rege, vel de Populo.*

As Mr. Attorney ſaid, it is neceſſary, my Lord, in Actions on the Caſe for Slander, to aver, *dixit de querente*, becauſe he muſt aſcertain the Perſon of whom the Words are ſpoken, to be the very Plaintiff; for there may be divers of the ſame Name: And you muſt always, upon a Record, aſcertain the Perſon, to entitle the Plaintiff to the Action: But where Words are pregnant, and full of themſelves, there needs no Averment in ſuch a Caſe; which without ſuch Pregnancy would be neceſſary, and, if not done, the Action would fail. As in that Caſe that was cited by Mr. Attorney of Sir *Miles Fleetwood*; if it had been that the Words were, Sir *Miles Fleetwood has deceived the King*, it would not have borne an Action, unleſs it had been averred to have been ſpoken of him as of *cozening* the King in his Office: Becauſe generally to ſay a Man has *cozened* the King, will not bear an Action, it is ſo looſe. But when he ſays, *Mr. Deceiver*; the Ironicalneſs of that ſhall not excuſe him, but rather demonſtrate both who, and what he meant; that it ſhall be applied to him, as doing it in his Office. And, being ſo, it muſt neceſſarily be underſtood to be a very great Slander; and then it needs no Averment. So ſays the Book.

So that where Words are plain and full, even in an Action on the Caſe, there requires no Averment: But in Indictments, they being for Offences againſt the Government, the very ancient Forms uſed will govern the Caſe, as well as the Reaſon and Nature of the thing; that no one can be meant, by ſuch ſort of Words, but the King and the Government: And for that I rely upon the Precedents that have been cited, that the Forms were always thus. The Precedents, with humble ſubmiſſion, where the Overt-Act laid in the Indictment, is by Words ſpoken, that it is ſaid, *dixit de Domino Rege*, &c. There is not one that does ever carry it ſo, but the Forms are conſtantly in the ſame Manner with this that is now before your Lordſhip, without ſuch Averment, as carrying plain Surpluſage, to aver that which the Words neceſſarily import.

To ſay, my Lord, in this Caſe, as we hear it objected on the other Side, That theſe Forms paſſed *ſub Silentio*, and no ſuch Objection was ever made, I ſay, that is no Objection to our Indictment; for the Argument ſure turns the other way; becauſe the Forms have been conſtantly in this Manner that ours is, therefore it is aſſigned, that what they offer, is no Objection at all; for, doubtleſs, in ſo long a tract of Time, when ſo many learned Men ſat on the Bench, and ſo many learned of the King's Counſel attended the King's Courts, and ſo many Perſons have been indicted, tried, and ſuffered upon ſuch Indictments, who would have ſaved their Lives, no doubt, if they could, by making ſuch Advantage of ſuch an Exception; that is a ſtrong Argument, that it was never thought an Exception. So that, beſides the Reaſon of the thing, the Precedents are all with us, which hath always been accounted a good Argument.

My Lord, a great many of us remember the Indictments of latter Times; particularly that of Colonel *Sidney*: Tho' there is another Overt-Act laid in that Indictment too, yet that is nothing to this Caſe. If there be but one Overt-Act laid in the Indictment, it muſt be proved by two Witneſſes; but if there be ſeveral Overt-Acts laid in the Indictment, and one is proved by one Witneſs, and the other by another Witneſs, that is ſufficient to maintain the Indictment. In Mr. *Sidney*'s Caſe there was to one Fact but one Witneſs; and therefore it was neceſſary to lay another Overt-Act, which was proved by other Witneſſes. And one Overt-Act comes to this point that's now in Queſtion before your Lordſhip. It is in this Form directly, without any Averment that the Words were ſpoke or written *de Rege* or *de Regimine*, but that the Book contained ſo and ſo: And the Thing itſelf ſpeaks itſelf of whom it was meant. If therefore the Words in that Caſe, being proved, were neceſſarily to be applied to the Government of *England*, there need no Averment: No more does there here.

My Lord, not to trouble your Lordſhip further in ſo plain a Caſe, the Precedents being thus, and it being known to be the conſtant Practice in point of Form, I would fain know what they would have had us done. The Witneſſes ſwear theſe are the Words, and there are no more; how then can we frame a better Indictment, than upon the Words that they ſwear were ſpoken? My Lord, we pray your Judgment for the King.

L. C. J. Well, have you done on both Sides?

Mr. Attorney. Yes, my Lord.

L. C. J. Truly for my part, I think this is a Caſe of great Conſequence on the one ſide, and on the other. I hear it's ſaid there are abundance of Precedents in the Caſe, ſome have been mentioned, and it is neceſſary we ſhould look upon theſe Precedents, before we deliver any abſolute Opinion. But, truly I muſt ſay, Mr. Attorney's Precedents have with me very little weight. And I muſt differ from Mr. Attorney in another Thing: For if in caſe the laſt Words were out of the Caſe, of *ſtanding to their Principles, and overcoming their Enemies*, do you think, that becauſe it is ſaid in the fore part of the Indictment that he intended the Death of the King, and to raiſe Rebellion, and therefore ſaid, there *were two wicked Kings* who ſuffered *Popery under their Noſes*, and were to be likened to *Jeroboam*; that that would be a good Indictment for High-Treaſon? Then it were plain the Act of Parliament, 13 *Car.* II. was made to no Purpoſe. For tho' I doubt not in the leaſt, words may be an Overt-Act of High-Treaſon, in compaſſing the Death of the King, upon the Stat. of 25 *Edw.* III. I make no Difficulty in the World of that: So was my Lord *Cobham*'s Caſe, and ſo were the Caſes in *Harry* the Eighth's Time, '*We will drive the King out of* England,' or any thing of that Nature: I ſay, that would be an Overt-Act ſufficient to bring a Man within the Compaſs of the Statute of 25 *Edw.* III. becauſe thoſe are expreſs words tending to the Death and Deſtruction of the King, the depoſing him and depriving him; and they call him the King. But if a Man comes and ſays, That ſuch a one; with a Purpoſe and Intent to deſtroy the King, ſaid theſe Words, That *the King could not cure the King's Evil*; that's not ſuch an Overt-Act as to make good an Indictment of High-Treaſon. And to ſay, that the King introduces Popery under his Noſe into the Kingdom; why it's a very high Crime, but it is preſcribed by the Act of Parliament to be proſecuted only as a Miſdemeanour, and puniſhed by *Præmunire*. If you look into that Statute, you will find which way the Words ſhall have a Tendency, that are to convict a Man of Treaſon; that is, that tend to the Impriſonment, bodily Harm, Death, or Deſtruction of the King, or raiſing Inſurrection, and Rebellion; or levying War within the Kingdom, that is High-Treaſon. But Words that do not neceſſarily tend to any ſuch thing; as to ſay the King is a *Papiſt*, introduces *Popery*, is *Popiſhly affected*, Phraſes that ſome People delight in; that has a peculiar Puniſhment appointed to it by this Act. And this is all taken care of, to ſhew the Judges how they ſhould proceed, being careful of leaving it looſe, in ſo great a Caſe as High-Treaſon. And the Parliament ſeems to be the more careful in it, becauſe they make the treaſonable words ſuch an offence, during the King's Life only. Now, as Mr. Solicitor puts the Caſe, by way of Illuſtration, in other words; I make no difficulty, but to bid Men prepare Arms, and go to *Whitehall*, and kill the King, would be rank downright Treaſon. Would any Man in the World doubt to aver, that that were an Overt-Act? No man living would. But if I will ſay, that to compaſs and imagine the King's Death, he bid them riſe up and go to *Whitehall*, and they ſhould overcome their Enemies, does that import the King? There's no neceſſity of that. The King cannot be ſaid to be an Enemy, unleſs it be plainly declared by the Party himſelf who he meant. And then to ſay, How could it be made better? No doubt of it, it might eaſily be made better, if it had been conſidered of. For if you had come and averred, that theſe Words were ſpoken concerning the King, and the People of *England*, certainly it would have made it more certain. I don't bind myſelf now in my Opinion, by what I now tell you; but I am only breaking the Matter. If you had ſaid, that he ſaid, If we will ſtand to our Principles, we ſhall deſtroy them, I think it had made the Caſe ſtronger ten times; but you have not ſo done. Indeed, I am not ſo fond in my Imagination, as the Counſel for the Priſoner ſeem to be; That *we have had two wicked Kings together, who have ſuffered Popery to come under their Noſes*; that therefore we muſt run it up to King *Ethelbert*, and I don't know who; no, that plainly in common *Engliſh* ſpeaking, means two Kings ſucceſſively; and it muſt be made a ſtrange, forced Conſtruction, if we ſhould interpret it, that he did not ſpeak theſe Words of the late bleſſed Martyr, and his preſent Majeſty. And becauſe *Enemies* is in the Plural Number, therefore to make it Nonſenſe, becauſe one is deſtroyed, if the words had been well laid, as they might, therefore it could have no relation to him that was left, I ſay, would make a ſtrange forced Conſtruction. That might be well enough, if the words had been properly laid. But when you come to ſpeak of Enemies, innuendo, the King and his Subjects? how can that poſſibly be? For you had talked of no body before that they are ſaid to have a Diſpleaſure to; and therefore, without ſaying that the King is an Enemy, to ſay, *Stand to your Principles, and you ſhall deſtroy your Enemies*, innuendo, *The King*, is, I doubt, to ſtretch it a little too far. But whereas I have put the words, how I think they ſhould have been laid; ſays Mr. Solicitor, The Truth is, they were not ſo ſpoken as you would have them laid, but they are laid as they were ſpoken, and as they were ſworn; and that's a Point of Fact to be left to the Jury, whether they aimed at the King and Government, or not. Do you think that an Anſwer? For it would be the ſame Argument in an Action of the Caſe for Words: Where it's plain it muſt be *dixit de querente*, you do ſo and ſo. My Declaration muſt aver it, and I muſt prove it too. If I do not ſay it, tho' I prove it, that won't maintain the Action: if I do ſay it, and not prove it, it will not maintain the Declaration; all's naught: and what is there more in this Caſe? If you had ſaid it, that would have directed the Jury plainly, upon finding the words as laid in the Indictment, to have found what was the Intention of the Party by theſe words. Theſe are things (I muſt confeſs) that wonderfully weigh with me. It is in a Caſe of a capital Offence, where the Life of a Man is concerned. If the Precedents have all gone ſo, there is ſome Weight in that: But if the Precedents be only ſuch as you have ſpoken of, Words directly telling who is meant, they have no manner of likeneſs to the Words in this Indictment, becauſe there they could never import any thing elſe.

In the next place, I am ſtumbled at another thing, Mr. Attorney, and that is, the difference of the Perſons in one part of the Words, and t'other. You have begun in the firſt Perſon Plural, *We have had two wicked Kings together*, and as the Latin Words are, *Nos habuimus nunc duos iniquos Reges inſimul*, but afterwards you ſay, and *if they, Ipſi*, will ſtand to *their Principles, he did not doubt but they ſhould overcome their Enemies.* It had been beſt to have laid them, as (certainly in common underſtanding) they muſt be believed to be ſpoken, *If you or we will ſtand to our Principles*; and then the very Innuendo would have been more ſenſible and applicable.

Mr. Sol. Gen. But, my Lord, it was ſworn ſo by the Witneſſes, that he ſaid, *If they.*

L. C. J. The words ſay he preached, *We have had*, that is, he and the Congregation aſſembled, and then it is afterwards turned to *they*. I make no difficulty in the World, but that *we have had two wicked Kings together*, was intended of the late King and this; and if it had been alledged, that afterwards he had ſaid, *We ſhall overcome them*, and a Jury had found that theſe words were ſpoken with ſuch an Intention, as is laid in the Indictment, it would have been Treaſon. But both in Grammar and Reaſon, when you come to ſay, and *ſi ipſi, &c.* pray, to whom ſhould that relate? What's the *Engliſh* of *ipſi?* Is it *we* or *they?* If it be *they*, in the third Perſon, there are no third Perſons ſpoken of, but the two Kings, and they are the laſt Antecedent. For my part, it does ſtumble me, it is a thing of great Conſideration. I ſpeak not, as I ſaid, to bind myſelf in Opinion; but I think, if ye had put the word *Nos* inſtead of *Ipſi*, it had come nearer to the underſtanding of Men, both in Grammar and Senſe. For I exclude myſelf, and them I ſpeak to, if I put it in the third Perſon, and your Innuendo (I ſaid) can no way help it.

Mr. Att. Gen. Truly, my Lord, I did not think that that did reſt upon your Lordſhip at all, as any Objection.

L. C. J. It does reſt, I aſſure you, Mr. Attorney.

Mr. Sol. Gen. If we had done otherwiſe, we ſhould not have laid it as the Truth is, and the *Latin* does not alter the Caſe, for the word ſpoken was *They*.

L. C. J. Ay, but certainly he ſaid (no doubt) *You* or *We*, if *you will ſtand to your Principles*, it's Nonſenſe elſe.

Mr. Sol. Gen. My Lord, I take that to be well enough, for here are three Sentences. The firſt is, *That the people make a flocking to the King*, &c. *Quod Populus*, &c. The next is, *Quod nos habuimus*, &c. And then the third is, *Quod ſi ipſi.* Now *Quod* governs the particular Sentence, and it being a particular Sentence by itſelf, with humble Submiſſion, it is good in Grammar, and in Senſe too.

L. C. J. Suppoſe you were to ſpeak it in *Engliſh*. Mr. *Solicitor*, ſuppoſe you were to ſpeak it, *Now we have had two wicked Kings together, who have ſuffered Popery to come in under their Noſes* (meaning the late King and this), there perhaps the Innuendo is ſenſible, and, no doubt of it, then he muſt mean them: But to ſay, *If they* will *ſtand to their Principles, they ſhall overcome their Enemies*, pray to whom does that *they* relate?

Mr. Sol. Gen. My Lord, with humble Submiſſion, you put the Caſe of an entire Speech, made in the Perſon of the Preacher, and the Congregation, and as the Words were ſpoken all at one time. I would make it an entire Speech too; but it ſeems to be ſeveral Sentences, and therefore that differs the Caſe. For taking it that theſe are three diſtinct Sentences, they might be ſpoken in a ſeveral manner by varying the Perſon, and ſo they were ſworn. And ſuppoſe he had only ſpoke the laſt Words, an Indictment for this in the third Perſon had been a good Indictment: And if it had been charged in that Caſe, *Quod dixit & aſſeruit, quod ſi ipſi*, &c. and then in Evidence, come and prove theſe Words, would not that have been good?

L. C. J. Truly, I think, Mr. *Solicitor*, if the Indictment for theſe laſt Words alone had been in the third Perſon, it is a Queſtion whether that might have been a good Indictment, if you had come in Evidence, and proved, that he had ſaid of the King and Government, *If you will ſtand to your Principles, you ſhall overcome your Enemies.* Tho' I deliver no abſolute Opinion of that, becauſe there ought (I think) to have been an Averment, that they were ſpoken of the King, and the People.

Mr. Sol. Gen. In an entire Speech (my Lord) there the Relative muſt be applied to the laſt Antecedent, according to Grammar.

L. C. J. And I think it muſt be taken to be an entire Speech, and you lay it in the Indictment to be ſo, and then the Relative muſt go to the laſt Antecedent, or elſe Dr. *Buſby* (that ſo long ruled in *Weſtminſter-School*) taught me quite wrong, and who had tried moſt of the Grammars extant, and uſed to lay down that as a poſitive Rule in Grammar, that the Relative muſt refer to the next Antecedent.

Mr. Juſt. *Withins.* Mr. *Solicitor*, if you make it ſeveral Speeches, then it's ten times worſe, for then the latter Part is ſo uncertain, without an Averment of whom the Words were ſpoken, that ſure it can never be made good.

Mr. Sol. Gen. Suppoſe it had been *Ulterius dixit*, would that have made it a diſtinct Sentence? If it would, our Proof it may be was, that it was an entire Speech, but yet conſiſting of ſeveral Sentences, and muſt have the common underſtanding, as to their relation one to another.

Mr. Att. Gen. This Objection of *quod ipſi*, &c. was not moved by the Priſoner at the Bar, and therefore we did not expect to ſpeak to it.

L. C. J. It is ſtarted here now by the Counſel. And it is a Queſtion truly with me, whether this can be any way ſenſibly applied, as you would have it. Surely the Innuendo can never make it good.

Mr. Att. Gen. My Lord, I ſay fling all the Innuendo's out of Doors, the Words in themſelves will do it.

L. C. J. Why then we muſt ſee whether it be a good Indictment in point of Form, or rather in point of Subſtance, as you have laid theſe Words, without ſaying they were ſpoken *de Rege*. It is a Queſtion of great Weight and Concernment both to the King and to the Priſoner, and therefore we muſt take good time to conſider of it, before we deliver a ſettled Opinion. But Mr. *Solicitor*, you very well remember that *Staley*'s Caſe was otherwiſe. For, tho' the Words were, the King of *England* is a *Tyrant*, &c. yet there it is ſaid, and expreſly averred, that he ſpoke the Words *de Rege*.

Mr. Att. Gen. Could Colonel *Sidney* have moved in Arreſt of Judgment this that the Priſoner now ſtarts? No, he could not ſure. He might have moved for a new Trial------

L. C. J. Certainly (Mr. *Attorney General*), that Caſe comes not up to this. Where the Words import in themſelves that the King is meant, or any way circumſtantially, it does neceſſarily imply they could be meant of no one elſe, and that would be good without the Averment. Which was the Caſe of Colonel *Sidney*, where the Matter declared in the Libel was plainly down-right relating to the Government, that *if he did ſo and ſo he muſt renounce his Crown*, and the like. How can that be applied to any but the King? *The People of* England *have committed the Kingdom to his Power*, &c. Why, how can it be interpreted that any Body elſe is meant?

Mr. Att. Gen. When will your Lordſhip pleaſe to give Judgment?

L. C. J. Mr. *Attorney*, we will conſider of it. It is uſual, in Caſes of leſs Difficulty than this, to take time of Conſideration. I do not ſay, but that looking upon the Precedents, perhaps I may alter my Opinion, and therefore do not ſpeak this to bind myſelf: But we will conſider of it.

Mr. Att. Gen. I look upon it that the Government is greatly concerned in this Matter, more than ten ſuch as the Priſoner at the Bar.

L. C. J. It is true, Mr. *Attorney*, the Government is greatly concerned, and the Priſoner is greatly concerned, for his All is at Stake. I do ſay a good Indictment might have been made, I am ſure.

Mr. Sol. Gen. This is the beſt we could make, for we had no Proof to make out any Averment, becauſe theſe were all the Words he ſaid.

Mr. Att. Gen. After the Jury have found the Words as laid in the Indictment, was it ever aſked of a Jury, *Theſe Words were ſpoken of the King, or they were not, but you have not ſaid that they are ſpoken of the King, for it is not laid in the Indictment?* Would that ever vitiate the Verdict?

L. C. J. Mr. *Solicitor*, pray, would you have us give Judgment, that the Jury could not find that the Words were ſpoken of the King?

Mr. *Pollexfen.* The Jury have not found that they were ſpoken of the King, for there is no ſuch thing averred.

Mr. Att. Gen. Nor they have not found them to be not ſpoken of the King; but they have found them to be ſpoken to ſtir up Sedition.

Mr. Solicitor. We are never bound by Law to aver *that* that we cannot prove. And therefore I put all upon that *Dilemma*; Either the Words import of themſelves to be ſpoken of the King, or they do not. If they do not, if we had ſaid, *dixit de Domino Rege*, it muſt have been proved, and that would have been to have left it to the Jury whom he did mean. And if they be not ſelf-evident, God forbid the Jury ſhall be charged to find out ſuch a Meaning; but if they are ſelf-evident, they need no Averment.

Mr. Juſt. *Hol.* Truly, we think it may be good Evidence to a Jury and it is every Day done in Caſes of Actions for Words. It is left to the Jury to conſider, whether he meant the Plaintiff, *John-a-Stiles*, or any other: And the Evidence is helped by this, or that circumſtance, where the Words do not naturally import it.

Mr. Juſt. *Walcot.* I do think that the Averment that theſe Words were ſpoken of the King, is a point of Fact that ought to be averred and proved. Might not the Jury in this Caſe have found that they were not ſpoken of the King? If they had found that, why they would have acquitted him; if they had found they were, and you had not alledged it, why then they had found more than the Indictment would lead them to.

L. C. J. Well, this is only by way of Diſcourſe, not that we bind ourſelves by our preſent Opinion. We muſt look upon it. We will not give our Judgment ſuddenly in a Caſe of this Nature.

Mr. *North.* Will your Lordſhip pleaſe to ſpare me one Word?

L. C. J. Ay, Sir, let every Man be heard, in God's Name.

Mr. *North.* My Lord, as to this Objection, *quod ipſi* relates to the two wicked Kings ſpoken of juſt before, that cannot be: For you take notice that theſe Words of the two wicked Kings relate to the late King, and to the preſent, as the Indictment ſays. One of the Kings is dead, ſo that you cannot underſtand it to be of the two Kings, that ſhould overcome their Enemies, and therefore it muſt be the People. This *Populus* being a Noun of Multitude, and taken in the Plural Number, *Ipſi* will very well relate to it.

L. C. J. Mr. *North*, the Argument turns both Ways upon that, and certainly he did not expreſs himſelf after that rate. It is ſo looſe a hung-together Indictment, as truly I have ſcarce ſeen. For my Part, I would know how it come to paſs, that we ſhould not have as much Certainty in Indictments, as we have in Actions upon the Caſe?

Mr. Att. Gen. My Lord, there muſt be Certainty in all Caſes, and we think there is Certainty enough in this for your Lordſhip to give Judgment upon.

L. C. J. Mr. *Attorney*, I believe if you ſat in our Places you would not think ſo. All our Books require greater Certainties in Indictments, than in Actions on the Caſe: Nay, in Cauſes of this Nature, we are bound by our Law Books to be of Counſel for the Priſoner, which we are not in civil Cauſes, where the Priſoner may chooſe his own Counſel. And we have not one Act of Parliament to help the defect of forming Indictments, as we have in Civil Actions, but ſtill in all the Statutes made in *Jeofails*, there is an Exception of capital Offences, to ſhew that our Anceſtors would not help Uncertainties or Inſufficiencies in Form, where the Life of a Man was concerned. This ſeems to carry a great Conſideration with it.

Mr. Att. Gen. My Lord, I was very willing and deſirous your Lordſhip ſhould aſſign the Priſoner this learned Counſel, becauſe we did ſuppoſe they would have produced ſome Precedents of a better Form than this: But they have cited none.

L. C. J. And you have cited never ſuch a Caſe as this, Mr. *Attorney*. And if we can find no other like Caſe, we muſt be governed by the Reaſon of the thing.

Mr. Att. Gen. My Lord, we hope you will expedite it, for the ſake of the Government.

L. C. J. Certainly, I think it is very uncertain who are meant by *Enemies*; it may be Mr. *Solicitor*, Mr. *Attorney*, it may be the Court, no body knows who it is: For every body knows, that to Preachers in Conventicles, and to thoſe that meet there, the Judges, and all that are for the Support of the Laws, may be reckoned to them as *Enemies*. But when it is ſo uncertain who are meant, how can we ſupply it by ſuch an Innuendo? That there might have been a good Indictment framed upon ſuch Words as theſe, as he in all Probability ſpoke them, and he juſtly found guilty, is no Queſtion with me at all. And (as I ſaid the other Day, for the Sake of the Auditory) if he be guilty of ſpeaking ſuch Words, and of Treaſon in ſpeaking them; what will they be guilty of that were preſent, and heard the Words ſpoken? They may thank God, that we have a gracious King, that does not take all the Advantages the Law gives him againſt thoſe that break his Laws.

Mr. Sol. Gen. My Lord, your Lordſhip was pleaſed to mention *Staley's* Caſe to me. As I do remember it, it is not as your Lordſhip ſays: But it is, *That he, to perfect his wicked Treaſon (ſpeaking of the King) ſaid ſo and ſo.* Now, if an Averment be neceſſary, this is a naughty Averment; for it is not poſitively averred that he did ſpeak of the King.

L. C. J. Well, we will look upon it. And I would aſk you, Mr. *Solicitor*, Whether if he ſaid (as it is moſt likely he did) *If you will ſtand to your Principles*; and you put in *ſi ipſi*, whether that would be good?

Mr. Sol. Gen. My Lord, we put it in as the Witneſſes ſwore it.

L. C. J. They did ſwear the Words according to their Apprehenſion; but, no doubt of it, in common Form he muſt ſpeak them as I ſay.

Mr. Att. Gen. They ſwore the Words ſo; and we could lay them no otherwiſe.

L. C. J. Well, Mr. Attorney, will you move any thing?

Mr. Att. Gen. No, my Lord.

L. C. J. Then we will conſider of it. And take you back the Priſoner; and you ſhall have a Rule of Court to bring him, when the Court is ready for Judgment.

Then the Priſoner was carried back to the King's Bench; *and no Judgment was given that Term; But the next Term Mr.* Roſewell *pleaded the King's Pardon* * *at the Bar of the Court of* King's Bench; *and was diſcharged.*

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* See the Pardon in the Appendix.

CXXXI. *The Trial of* JOSEPH HAYES * *at the* King's Bench *for High-Treaſon, in correſponding with Sir* Thomas Armſtrong, *an Outlaw for High-Treaſon.* Nov. 21, 1684. Mich. 36. Car. II.

MR. *Hayes* was brought by *Habeas Corpus*, upon the 3d of *November*, 1684, from the *Gate-houſe*, and was arraigned upon an Indictment, to this Effect, *viz.*

That he being a falſe Traitor againſt the King, &c. *the 31ſt of* Auguſt, *in the 35th Year of the King, knowing Sir* Thomas Armſtrong *to have conſpired the death of the King, and to have fled for the ſame, did traiterouſly relieve, comfort, and maintain him; and for his Relief and Maintenance, did pay the Sum of* 150*l. againſt the Duty of his Allegiance,* &c. To this he pleaded *Not Guilty.*

Upon the 21ſt of *November*, 1684, He was brought to Trial, before the Lord Chief Juſtice *Jeffreys*, Judge *Holloway*, Judge *Withins*, and Judge *Walcot*; and the Jury being called, he challenged the following Perſons.

Sir Thomas Griffith,
Richard Ellis,
Thomas Langham,
Henry Whiſtler,
Nicholas Smith,
Thomas Soper,
Thomas Paſſenger,
Henry Minchard,
Peter Jones,
William Crouch,
Peter Devet,
Henry Lodes,
William Fownes,
Charles Gregory,
William Peele,
Richard Weedon,
Thomas Pory,
Thomas Piercehouſe,
Richard Burden,
John George,
John Steventon,
Robert Watkins,
George Twine,
Thomas Short,
Robert Townſhend,
James Buſh,
Walter Maſters,
Thomas Larkham,
Edward Cooke,
William Faſhion,
John Flowerdew,
John Greene,
John Grice,
Charles Fowler, and
James Smith.

In all 35.

The Jury ſworn were,

Samuel Sheppard,
Daniel Allen,
Rowland Platt,
Adam Bellamy,
Daniel Templeman,
William Dewart,
Edward Piggot,
Thomas Brailsford,
Edward Cheeke,
Edward Underwood,
Robert Maſters, and
William Warren.

Then the Indictment being read, Mr. *Dolben*, as Counſel for the King, opened it to the Jury.

Mr. Attorney General *. After Sir *Thomas Armſtrong* had fled, the Priſoner relieved and aided him with Money, and that, after he was indicted, and ſued to the *Exigent*; beſides, a Proclamation followed upon his Flight, which was a ſufficient Notice to all the King's Subjects. Sir *Thomas* went by the Name of *Henry Lawrence* beyond Sea; by that Name the Priſoner held a Correſpondence with him, and ſent him a Letter, dated the 21ſt of *Auguſt*, and tells him, he had ſent him a Bill of *Exchange* for 165 *l.* drawn upon his Brother, *Iſrael Hayes*, who was acquainted with Sir *Thomas*.

If it were not for theſe receiving and nouriſhing of Traitors, they would not lurk at *Amſterdam*, as they do. The Letter was taken about Sir *Thomas*, and we ſhall prove it is the Priſoner's Hand-writing, and that Sir *Thomas* received the Money.

I hope, you will take care, by convicting this Gentleman, to ſtop the Fountain, which iſſues ſo much Supply to theſe Traitors who lurk abroad.

Mr. *Hayes* then affirmed, that he never knew Sir *Thomas* in his life.

Then the Indictment againſt Sir *Thomas* was read, which was found the 12th of *July*, and Mr. *Glover* proved a Copy of the King's Proclamation againſt Sir *Thomas*, dated the 28th of *June*, 1683.

Then *Ezekiel Everis* was ſworn, and teſtified, that in *Auguſt*, 1683, he was at *Cleve* in *Germany*, with the Lord *Grey*, who went by the Name of *Thomas Holt*, and Sir *T. A.* came thither by the Name of Mr. *Henry Laurence*, and ſhewed him a Bill of *Exchange*, from *England*, upon Mr. *Iſrael Hayes* in *Amſterdam*, for 160*l.* odd Money; and that it was for 150 *Guineas*, paid in *England*; and he told him, it was drawn by *Joſeph Hayes*, and it was ſigned *Joſeph Hayes*; and the Bill was accepted, and he ſaw *Iſrael Hayes* his Letter to Sir *Thomas*, by the Name of *Laurence*, which mentioned the ſending the ſaid Sum to *Cleve*.

The Common Serjeant *(Criſpe)* then delivered a Parcel of Letters into the Court, and ſwore that he received them of the Lord *Godolphin*, and they had been ever ſince in his hands.

The Lord *Godolphin* then teſtified, that he received three Letters produced in Court, from Mr. *Conſtable*, Mr. *Chudley's* Secretary, who told him they were taken about Sir *Thomas*, that one of them, without any Name, mentioned 150 *Guineas* returned to *Henry Laurence*.

Conſtable teſtified, that he was preſent, when the Scout of *Leyden* apprehended Sir *T. A.* and that the Letters were taken out of his Pocket, and he himſelf delivered them to Mr. *Chudley*, who ſealed them up, and ſent them by him, to the Lord *Godolphin*.

Charles Davis teſtified, that taking Boat from *Amſterdam* to *Rotterdam*, he met *Iſrael Hayes* and Sir *Tho. A.* coming to take Boat, and Sir *Thomas* went with him in the Boat, and he told him his Name was *Henry Laurence*.

Davis added, that he lodged a Month in one *Briſcowe's* Houſe at *Amſterdam*, where there was a Club every *Thurſday*: There were Mr. *Iſrael Hayes*, Mr. *Henry Ireton*, one *Wilmore*, *Emerton*, *Dare*, and ſome other *Engliſh* Merchants; and he heard them ſeveral Times abuſe the King at Table.

The Attorney-General then ſhewed Mr. *Hayes* a Letter, ſaying, It may be he will ſave us the labour of proving it; but Mr. *Hayes* diſowning it, Mr. *Walpole* was called, and Mr. *Hayes* ſaid, He was my Servant, and went away after a rate that poſſibly would not be allowed.

Walpole teſtified, that he ſerved Mr. *Hayes* almoſt four Years and three Quarters, and did believe the Letter to be Mr. *Hayes's* Hand.

Mr. *Hayes*. My Lord, in Matters of Treaſon, I hope you will not admit of Compariſon of Hands and belief, for Evidence.

L. C. J. Yes, no doubt of it.

Mr. *Hayes*. It has not been ſo in other Caſes, that have not been capital; as particularly in the Lady *Carr's* Caſe.

L. C. J. This is a Miſtake, you take it from *Algernon Sidney*; but without all doubt it is good Evidence.

Judge Withins. Compariſon of Hands was allowed for good Evidence in *Coleman's* Caſe.

Mr. *Hayes*. That, with Submiſſion, vaſtly differs: Thoſe Letters were found in his own Cuſtody; this was not found in my Poſſeſſion, but in another Man's, and in another Nation.

Sir *John Trevor*, Counſel for the King. This Gentleman was a Trader with the *Eaſt-India* Company, and made Contracts with them, which are entered in their Books: We will compare them with the Writing in this Letter.

The Common Serjeant then called *Harman* and *Brittle*, and demanded of them where the Books were; and they produced them.

Harman teſtified, that he knew Mr. *Hayes*, and that he made ſeveral Contracts in 1683, and that he ſaw him in *September*, 1683, ſubſcribe his Hand to a Book of the Company's, ſhewn to him.

Brittle teſtified, that he is Porter in the Street to the *Eaſt-India* Company, and that he ſaw Mr *Hayes* write his Hand to a Book ſhewn to him.

Capt. *Piercehouſe* produced a Note, which he ſaid was Mr. *Hayes's*, and that he ſuppoſed it to be his Hand, and compared it with the Hand in the Book, and ſaid, that he delivered the Goods upon it: and *Walpole* then ſaid, he believed it to be Mr. *Hayes's* Hand.

Then Mr. *Sturdivant* was called, and they ſhewed him the Letter, and he ſaid, Here is *Joſeph Hayes* writ, but I do not know it to be his Hand.

The Common Serjeant ſaid, that Mr. *Sturdivant* ſwore he did know Mr. *Hayes's* Hand, before the Grand Jury; but Mr. *Sturdivant* affirmed, the Common Serjeant was under a Miſtake.

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* Sir *Robert Sawyer*.

* *Burn.* Hiſt. of his own times, Vol. I. p. 599

Then Sir *John Trevor* called for Mr. *Hardreſſe*; but the Common Serjeant anſwered, That he was out of Town before he could be ſerved with a *Subpœna.*

Then the Letter was read, it was ſubſcribed *Joſeph Hayes*, and dated the 31ſt of *Auguſt*, 1683, directed to Mr. *Henry Laurence*, ſenior, at *Amſterdam*, and began thus, *Sir, at your deſire I have ſent you a Bill*, &c.

The Letter and the *Eaſt-India* Books were then ſhewn to the Jury, and to the Priſoner.

Mr. *Hayes* denied the Letter to be his Writing, and ſaid, 'Tis very ſtrange I ſhould not know my own Hand; may not Counſel be admitted to plead, Whether compariſon of Hands and belief are any Evidence in criminal Cauſes? I have been informed, it hath been denied to be Evidence.

Chief Juſtice. You are under a Miſtake; ſome body has put it into your Head, and puffed you up with a vain Story; there's no ſuch thing, 'tis a Fiction, a meer Whim, only ſaid by Mr. *Sidney*, and no ground in the World for it.

Mr. *Hayes.* Was it not ſo in the Caſe of my Lady *Carr?* There is a Record of that I ſuppoſe.

Chief Juſtice. It was not ſo. Don't talk of it*, there was no ſuch Thing at all —— Compariſon of Hands was allowed for good Proof in *Sidney*'s Caſe. We muſt not alter the Law for any body.

Mr. *Attorney-General.* Beſides this Compariſon of Hands, we ſhall give an Account of the Correſpondence of the Priſoner's Brother, and that he received the Money of him. Mr. Common Serjeant, Where had you this Paper?

Com. Serj. I had them from my Lord *Godolphin.* This is an Account of the Receipt and Diſburſement of the Money; ſhew it Mr. *Conſtable.*

Conſtable. This is one of the Papers, which was taken out of Sir *T. A*'s Pocket.

It being ſhewn to the Jury, one of them demanded, whether any one proved the Hand that was in that Note?

Mr. *Attorney.* No; but *Everis* ſwears, that Sir *T. A.* ſhewed him a Bill, ſubſcribed *Joſeph Hayes*, for ſo many Hundred *Guilders.*

Common Serjeant. He ſays, it was 160 odd *Pounds*; now, the Sum of this Note is 161 *l.* 5 *s.* which is the change of 150 *Guineas.*

Mr. *Hayes.* Here is nobody proves this Letter to be my Hand, poſitively: They only prove it by Similitude, and Compariſon, and Belief.

I conceive there is but one Witneſs, that that Letter was found in Sir *T. A*'s Hands. *Everis* ſays, he ſaw a Bill had my Name to it. Sir, you did not know me, nor ever ſaw my Hand?

Everis. No, never in my Life.

Mr. *Hayes.* Tis only an evidence of Reputation, he heard it was my Bill; you ſaw no Money paid upon it, did you?

Everis. No; but I ſaw a Letter from Mr. *Iſrael Hayes*, that gave ſome Account of it.

Mr. *Hayes.* All this is but Similitude and Circumſtance; and I thought in caſe of Treaſon there ought to be two Witneſſes, and hope you will let it be ſo here——here is no Evidence but the Letter, and that is not two Witneſſes; there is no body has proved the *knowingly* in the Indictment, that runs, that I knew Sir *T. A.* and his Treaſon; that ought to be proved, but I am ſure 'tis not. Your Lordſhip ſays, that the Indictment and the Proclamation are ſufficient Notice that he was a Traitor; that may admit of Counſel to debate it; there ought to be Witneſſes that could ſhew me to be concerned with him; which nobody in the World can prove, or that I ever ſaw him; and that Witneſs, who ſays, he ſaw the Bill, or this Letter, does not know that I wrote it; there are them that ſay, they heard of Money paid upon this Bill, but there is not one of them ſays, he ſaw any Money paid; and theſe are ſeveral Witneſſes, every one to a ſeveral thing.

Here is no Proof, but by the *Eaſt-India* Porters, and thoſe who ſay, they believe this Letter to be my Hand; no body ſays, he ſaw me write this Letter, or had any Correſpondence with Sir *T. A.*

If they pretend there was Money paid beyond Sea; is this Indictment well laid, for it is laid to be paid in *London?* The Payment of Money beyond Sea can be no Evidence of Fact upon this Indictment; for the Jury of *London* are to enquire of Matters ariſing in *London* only. If I am to be tried for Payment of Money beyond the Sea, the Fact ſhould have been laid there, and the Trial ought to proceed upon the *Statute* of 35 *H.* 8. *cap.* 2. The Indictment ſhould be taken by Special Commiſſion from the King, and the Trial be in the County that the King ſhould chooſe. I deſire Counſel upon this point.

L. C. J. No, 'tis an idle Whim, and I would fain know the Counſel that put that fooliſh Notion into your Head.

Mr. *Hayes.* If you will allow me Counſel, you ſhall hear who they are; I have been informed the Law is ſo.

L. C. J. We are of another Opinion: If any whimſical Notions are put into you, by ſome *Enthuſiaſtick* Counſel, the Court is not to take notice of their *Crotchets.*

Mr. *Hayes.* The Witneſſes are Strangers to me; there is one that has been ſworn, to whom I have paid ſeveral Thouſands of Pounds, who ſays, he does not believe it to be my Hand.

Then he called Mr. *Sturdivant*, who looking upon the Letter, ſaid, I do not believe it to be his Hand, I have had dealings with him, and he hath given me many Receipts.

Mr. *Hayes.* There have been a great many Forgeries; and this Letter is forged: there have been Forgeries ſo like, that the Perſons themſelves have not known their own Hands.

Every body knows that a Hand may be counterfeited very like: in Mr. *Sidney*'s Caſe, Mr. *Wharton*, a young Gentleman, not above one or Two and Twenty, ſaid, He could undertake to counterfeit any Man's hand whatſoever.

I am not a Man of that Quality, to give Sir *T. A.* 150 *Guineas.*

L. C. J. We all know you have been a very active Man, a buſy Fellow about the City; as forward a Spark as any I know of a great while. I don't know what you talk of your Quality, but we know your Qualifications; you have always been factious and turbulent againſt the King and Government.

Mr. *Hayes* then affirmed, that he neither gave, nor lent, nor returned any Sum of Money to this Perſon; and then called Mr. *Langley*, who teſtified, that a Letter was counterfeited, and a Bill of *Exchange* for 450 *l.* and ſo exactly like, that if he had not known of it before he ſaw it, he muſt have owned it for his Hand; and the Party that paid the Money, paid it in his own wrong; for he never drew any ſuch Bill. Mr. Common Serjeant had my Books ſeveral Days in his Hands, where there is an Account of 20,000 *l.* between my Brother and me; and if I would ſet my Hand to ſuch a Letter and Bill, and write my Name at length, is it not as reaſonable that I ſhould put the Name of *Laurence* in my Books? And if it were there, it would appear.

Indeed here is an Account produced of divers Parcels of Money diſburſed in little Sums; but I appeal to the Merchants, whether any Bill of *Exchange* was ever paid in ſuch Parcels? No foreign Bill was ever paid by 3 *l.* or 5 *l.* or 20 *l.* at a time: it muſt be paid at the day, or it will be proteſted.——Here is a Computation of a Sum like to the Sum in the Bill; but theſe are Suppoſitions, and not Proof.

Then Mr. *Hayes* called Alderman *Jeffreys*, to ſpeak to his Reputation and Converſation; who ſaid, That he had known him many Years, and never knew any hurt of him.

L. C. J. Have you been at any of the Elections at *Guild-Hall* for Mayors or Sheriffs, when Mr. *Bethel*, and Mr. *Corniſh*, and them People were choſen; and have you ſeen Mr. *Hayes* there, and how he behaved himſelf? A very forward active Man, I will warrant you.

Alderman *Jeffreys.* I ſuppoſe I may have ſeen him there, but I cannot ſay any thing to his Behaviour.

Then Mr. *Hayes*, called Mr. *Pellet*, Mr. *Lloyd*, Mr. *Withers* ſenior, Mr. *Withers* junior, and Mr. *Hugh White*, who gave a fair Account of his Dealing and Converſation. He then ſaid, that he would trouble the Court with no more Witneſſes.

Mr. Attorney-General then ſaid, that he would call one Witneſs more againſt him; and ordered *Atterbury* the Meſſenger to be ſworn, and the Letter was ſhewed to him.

Atterbury. I apprehended Mr. *Hayes*, and brought him before the King, and was preſent when the Letter was ſhewed to him; and the King and Lord Keeper *North* preſſed him to own whether it was his hand, or no; and he ſaid, he ſhould ſay nothing to it, if they could prove it upon him, well and good.

Mr. *Hayes.* His Majeſty was not there.

Atterbury. As I remember, the King was there; I imagine the King was there.

L. C. J. I was there, what he ſays is true; you ſaid, I am not bound to accuſe myſelf; 'tis true, you did deny that you knew *Laurence* or *Armſtrong*; and 'tis as true, you would not abſolutely deny the Letter, but ſaid, you were not bound to accuſe yourſelf.

Mr. *Hayes.* My Lord, I did hope, that in point of Law, my Counſel ſhould have been heard to thoſe things I mentioned, and I wiſh you would favour me in it; *but that being denied him, he addreſſed himſelf to the Jury:* Nothing has more troubled me, ſince my Confinement, than the Imputation of High-Treaſon, a Thing I always deteſted; I never knew any, the leaſt thing of the Conſpiracy, but by the Trials, or other printed Papers; not one of the Conſpirators, who have come in, or been taken, have charged me in the leaſt; nor did he himſelf accuſe me, with whom I am charged to have this Correſpondence. Gentlemen, I deſire you to conſider, that 'tis my Life is concerned, and I beg you would conſider what theſe Witneſſes have teſtified; they are not poſitive in any reſpect, nay, there are not two to any one thing that is charged: *Conſtable* ſays, the Letter was found among Sir *T. A*'s Papers; he ſays no more; and here are not two Witneſſes to that: *Everis* tells you, he ſaw this Bill, but did not know my Hand; there is no body tells you I wrote this Letter, but it is found in another Man's cuſtody, in another Nation.

Gentlemen, 'tis very hard, that by compariſon of hands a Man's Life ſhould be in danger; when, in leſſer Crimes, it has been denied to be good Evidence; and none of you can eſcape the ſame danger if this be allowed to be Evidence; for your hands may be counterfeited as well as mine.

If there had been any Probability of my knowing him, it had been ſomething; but there is not one that teſtifies that ever I knew him, nor indeed did I: There is a great deal of Circumſtance made uſe of, upon the account of his Acquaintance with my Brother in *Holland*; but 'tis ſtrange, there ſhould not be ſome Evidence of a further Correſpondence between him and me, if there were that Intimacy that ſuch a Letter as this doth import.

I muſt, with Reverence to the Divine Majeſty, ſay, and I call God, Angels, and Men to witneſs the truth of it, as I ſhall anſwer it to him, before whom, for ought I know, I am quickly to appear, that I never in my Life ſpoke with Sir *T. Armſtrong*, nor was ever in his Company, nor ever wrote to him, by the Name of *Laurence*, or any other Name; and I do ſolemnly ſay in the preſence of God, that I never gave, ſent, lent, paid, or ordered to be paid, any Money, directly or indirectly to Sir *T. A.* or *H. Laurence*, or to him by any other Name, or to his Uſe; I ſpeak it without any counterfeiting or equivocation.

Gentlemen, there have been Overtures, if I would ſay ſome things, that my Life might be ſaved; and 'tis not to be believed, that I would run the Riſque of my Life, if by ſpeaking the Truth I could ſave it.

The Chief Juſtice did here appear enraged, and interrupted him, ſaying, What do you mean by this?——*Mr. Hayes.* I ſay——

L. C. J. Ay, but you muſt ſay thoſe things that are decent and fit for us to hear; you muſt not inſinuate, as if the Government would make any ſuch Compacts as you talk of.

Mr. *Hayes.* I ſay, that Mr. *Foſter* told me——

L. C. J. If you offer that, I can tell you a Story, that perhaps you will be very unwilling to hear; on my word, 'twill be very unpleaſant to hear it; you had better let thoſe things alone, for you will but draw a load upon you.

Mr. *Hayes.* I beſeech your Lordſhip to hear me.——

L. C. J. Yes, I will hear you, provided you keep within due bounds; but we muſt not ſuffer theſe things.

Mr. *Hayes.* I ſay nothing but this, it has been told me, that the way to ſave my Life is to confeſs.

L. C. J. As you repreſent it, 'tis a reflection upon the Government—you talk of Overtures having been made you; don't make me ſay what I have no mind to ſay.

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* *It was in Trinity-Term* 1669. *Anno* 21 Caroli II. 1 Sid. 418.

Mr. *Hayes.* I ſay, Mr. *Forſter* by Name told me, there was no way for me to eſcape, but by Confeſſion.

Lord Chief Juſtice. You had beſt call Mr. *Forſter*, to know how he came to tell you ſo; if you do, I will tell you of another thing of * 4 or 5000 *l.* that was offered for your eſcape; you had better forbear, or elſe I ſhall put you in mind of a Brother of ſome Body that is at the Bar.

Mr. *Hayes.* My Lord, I was told, that was the way: Gentlemen of the Jury, I have declared to you the whole truth, with all the Solemnity that becomes an innocent Man, and not an ill Man.—Beſides, what you have heard, in all this Evidence, is nothing but Circumſtance and Hear-ſay; and ſhall a Man's Life be taken away, for *I believe*, and *I think*, or *I have heard?*

Gentlemen, I know you are my Fellow-Citizens and Fellow-Chriſtians, and of the ſame reformed Religion that I am; and I hope you are ſworn into this Service without any Prejudice againſt me, but with an impartial Reſolution to do Juſtice: and therefore I chearfully leave the matter with you; I am ſure, that if God help me, and deliver me in this Exigency, that it is he, and you under him, that preſerve my Life.—

Gentlemen, The great Incertainties, Improbabilities, and Conſequences in this Caſe, I hope will be weighed by you, and make you the better to conſider the Proof, which is made by none but ſuch as are Strangers to me; ſince, then, they know me not, I hope you will weigh it, before you give it againſt me: We muſt all die, and I am ſure it will be no grief to you to acquit a Man that is innocent. I leave it with you; the Lord direct you.

Sir *Thomas Jenner*, the Recorder. The Treaſon charged on the Priſoner is of that ſort, that if he be guilty, he will be a juſt example to terrify others from doing the like; for if Traitors had not Perſons to ſupply them with Money abroad, it may be, they would not have ſo much Courage to run away. We have ſatisfied you that Sir *Thomas Armſtrong* was indicted; that an Exigent was gone againſt him upon that Account; here was a Proclamation, and Sir *Thomas Armſtrong* named in it; *and ſo the Recorder repeated the Evidence of the Witneſſes, and concluded:* Gentlemen, We think that his Defence has been ſo little, and our Proof ſo ſtrong, that you have good ground to find him guilty.

The *Chief Juſtice* then ſummed up the matter to the Jury.

Gentlemen of the Jury, This is an Indictment of High-Treaſon againſt the Priſoner at the Bar; and you are to try it according to your Evidence. The Priſoner's Affirmation of his Innocence is not to weigh with you. Nay, I muſt tell you, I cannot but, upon this Occaſion, make a little Reflection upon ſeveral of the horrid Conſpirators, that did not only, with as much Solemnity, imprecate Vengeance upon themſelves if they were guilty of any Treaſon; but thought they did God Almighty good Service in that helliſh Conſpiracy: It is not unknown, one of the Perſons proſcribed in this Proclamation did declare, they ſhould be ſo far from being eſteemed Traitors, that they ſhould have Trophies ſet up for them; and all this under the pretence and enamel of Religion: Nay, I can cite to you an Inſtance of another of the Conſpirators, [Lord *Ruſſel*] that after a full and evident Proof, and plain Conviction, of having an Hand in it, when he comes upon the Brink of Death, and was to anſwer for that horrid Fact, before the great God, he bleſſed Almighty God, that he died by the Hand of the Executioner, with the Ax, and did not die by the Fiery Trial: He bleſſed God, at the Place of Execution, that he died a Traitor againſt the King and Government, rather than died a Martyr for his Religion. I think it neceſſary to make ſome Reflection upon it; when Men, under the Pretence of Religion, are wound up to that height, to foment Differences, to diſturb and diſtract the Government, to deſtroy the Foundation of it, to murder his ſacred Majeſty, and his Royal Brother, and to ſubvert our Religion, and Liberty, and Property; and all this carried on upon pretence of doing God good Service. You are to go according to Evidence; as the Blood of a Man is precious, ſo the Government alſo is a precious thing; the Life of the King is a precious thing, the preſervation of our Religion is a precious thing, and therefore due Regard muſt be had to all of them. I muſt tell you, in this horrid Conſpiracy there were ſeveral Perſons that bore ſeveral Parts; ſome that were to head and to conſult; there was a Council to conſider; others were deſigned to have a hand in the penetrating of that horrid Villainy, that was intended upon the Perſons of his Sacred Majeſty and his Royal Brother, and with them, upon the Perſons of all his Majeſty's Loyal Subjects that acted with Duty, as they ought to do; there were others, that were to be aiding and aſſiſting (as in the Caſe of the Priſoner, if you find him guilty) aiding, abetting, aſſiſting by Money, or otherwiſe, or harbouring any of thoſe Perſons that were concerned therein. *Then he recounted the Evidence given againſt the Priſoner, and made ſuch Remarks upon the ſame, as he thought fit.*

The Jury withdrew, and ſpent two hours in conſideration of the Matter; and then returning, gave their Verdict, that the Priſoner was not guilty.

Mr. Att. Gen. My Lord, tho' they have acquitted him, yet the Evidence is ſo ſtrong, that I hope your Lordſhip and the Court will think fit to bind him to his good Behaviour during his Life.

L. C. J. Mr. Attorney, that is not a proper Motion at this time.

So the Priſoner was diſcharged, after he had been impriſoned five Months.

* *The Story of the* 4 *or* 5000*l. was this: An eminent Papiſt, very acceptable to King* Charles *the ſecond, undertook to ſome of the Friends of Mr.* Hayes, *that a Pardon ſhould be had for* 4000 Guineas *to the King, and* 1000 *to himſelf; but he afterwards declared, that the King had refuſed him therein, and told him, that he was adviſed, that he had better give that Popiſh Friend* 4000 *l. out of the* Exchequer, *than pardon* Hayes; *but that he gave his Royal Word, that the Overture ſhould not hurt Mr.* Hayes.

CXXXII. *The Trial between Sir* WILLIAM PRITCHARD *Plaintiff, and* THOMAS PAPILLON, *Eſq; Defendant, at* Niſi Prius *at the* Guild-hall *of* London, *in an Action upon the Caſe for a* falſe Arreſt, Nov. 6, 1684. Mich. 36 Car. II.

London, ſſ. SIR *William Pritchard*, late Lord Mayor of the City of *London*, having in *Eaſter Term* laſt, brought an Action upon the Caſe, for falſly, maliciouſly, and without probable Cauſe, procuring him to be arreſted and impriſoned in his Mayoralty, againſt *Thomas Papillon*, Eſq; the Defendant pleaded, Not Guilty, and thereupon Iſſue being joined, it came this Day to be tried before the Lord Chief Juſtice *Jefferеys*; and the Jury ſworn to try this Cauſe, were theſe:

Bartholomew Ferryman,
Thomas Blackmore,
Thomas Symonds,
William Whatton,
John Green,
Thomas Amy,

Jur.

Joſeph Baggs,
Daniel Chandler,
John Reynalds,
John Allen,
Joſeph Caine, and
William Withers, *jun.*

Mr. *Munday.* May it pleaſe your Lordſhip, and you Gentlemen of this Jury, Sir *William Pritchard* Knight, late Lord Mayor of the City of *London*, is Plaintiff, and *Thomas Papillon* Eſq; is the Defendant: And this, Gentlemen, is in a ſpecial Action upon the Caſe, wherein the Plaintiff does declare, That whereas the 12th of *February*, in the 35th Year of this King, and before and after for ſeveral Months then next enſuing, he was Mayor of the City of *London*, being duly elected and ſworn into the Office of Mayoralty of the ſaid City; and according to the Cuſtom of the ſaid City, time out of Mind, he ought daily to attend the ſaid Office, in the diligent Government of the ſaid City, according to the Duty of his ſaid Office, which he was to execute to the Honour and Dignity belonging thereunto: That the Defendant, *Thomas Papillon*, being one of the Commonalty of the ſaid City, and under the Government of the Plaintiff, by Virtue of his Office aforeſaid, not being ignorant of the Premiſſes, but contriving, and falſly and maliciouſly envying the happy Eſtate of the Plaintiff in his ſaid Office, as alſo unjuſtly to diſturb the Plaintiff in the Execution of his ſaid Office, the ſaid 12th Day of *February*, in the 35th Year aforeſaid, the Defendant for Vexation to the Plaintiff, not having any lawful or probable Cauſe of Action againſt the Plaintiff, falſly and maliciouſly did proſecute the King's Writ of *Alias Capias* out of the Court of *King's Bench*, againſt the Plaintiff, by the Name of Sir *William Pritchard*, Knight, directed to the then Coroner of the City of *London*; by which Writ it was commanded the ſaid Coroner to take the Plaintiff, if found within the ſaid City, and ſafely keep him, ſo as to have his Body before that Court at *Weſtminſter*, upon *Wedneſday* next after 15 Days of *Eaſter*, then next following, to anſwer the now Defendant in a Plea of Treſpaſs: And that the Defendant of his further Malice againſt the Plaintiff, afterwards, and before the Return of the Writ, to wit, upon the 24th Day of *April*, in the 35th Year aforeſaid, at *London*, to wit, in the Pariſh of St *Mildred* the Virgin, in the *Poultry*, in the Ward of *Cheap*, *London*, delivered the ſaid Writ of *Alias Capias* to one *John Brome*, Gent. then being Coroner of the ſaid City, to be executed; and then and there the Plaintiff, then being Mayor of the ſaid City, by Virtue of that Writ, maliciouſly and unjuſtly did procure to be taken, and arreſted, and detained in Priſon, under the Cuſtody of the ſaid Coroner, for the ſpace of ſix Hours, to the Diſgrace and Scandal of the Plaintiff and his ſaid Office, as alſo to the manifeſt Damage, Prejudice, and Grievance of the Plaintiff: Whereas, in Truth and in Fact, the Defendant, at the Time of the taking, arreſting, and detaining of the Plaintiff in Priſon, as aforeſaid, had not any juſt or probable Cauſe of Action againſt the Plaintiff in the Premiſſes, whereby the Plaintiff ſays he is injured, and for which he lays to his Damage, 10,000 *l.* To this the Defendant has pleaded, Not Guilty. If we that are of Counſel for the Plaintiff, ſhall prove this Matter unto you, Gentlemen, that we have laid in the Declaration that has been opened unto you, you are to find for the Plaintiff, and I hope will repair him in Damages for this Affront and Injury.

Mr. Att. Gen. * May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the Plaintiff; and this Action is brought, Gentlemen, to vindicate the Honour of the Chair from ſuch Affronts as theſe, which in no Age, till of late Days, our Times of Faction and Confuſion, it ever met with: That by a Perſon that is a Citizen of *London*, and one of the Commonalty, that ought to have paid Submiſſion to the Lord Mayor as his chief Magiſtrate, and was bound ſo to do by his Oath, as a Freeman, ſhould, without cauſe of Suit, arreſt the Lord Mayor of the City. That there was no probable Cauſe, is evident by his not proceeding in the Action, that he had thus brought. But, Gentlemen, we ſhall ſhew you in the Courſe of our Evidence, that there lay a further Malice in this Caſe, and that there was a Deſign in it againſt

* Sir *Robert Sawyer.*

againſt the Government. For we ſhall give you Evidence, that this Deſign was laid to carry on the great Plot againſt the Lives of the King and his Brother, and for the Subverſion of the Government. For they contrived it ſo, that they would impriſon the Mayor, and then, thought they, the loyal Citizens will interpoſe to reſcue him, and then the Party ſhould riſe to aſſiſt the Officer, he having the Countenance of Authority, and being in the Execution of the King's Writ, (eſpecially if it be conſidered then who was Coroner) and ſo a public Commotion would be made a general Mutiny, and that would be a fit Opportunity, in the Confuſion of the City wanting its Chief Governor, of doing what they deſigned. Gentlemen, we ſhall prove all that is laid in the Declaration; and likewiſe that the End of this Buſineſs was to have had a Commotion for the accompliſhing their great Conſpiracy, as has been opened. That Sir *William Pritchard* was arreſted in his Mayoralty, I ſuppoſe will be agreed, or elſe we ſhall prove it.

Mr. *Ward.* Yes, yes, we agree it.

* *Mr. Sol. Gen.* Then we will go on and prove the Manner of it. Swear Mr. *Gorges*, and Mr. *Keeling.* [*Which was done.*] Mr. *Keeling*, pray, will you tell my Lord, and the Jury, were you made a ſpecial Bailiff to arreſt Sir *William Pritchard*, when he was Lord Mayor, and what did you do upon it? Tell all you know of it, and what was deſigned by it.

* Mr. *Finch.*

Keeling. My Lord, all that I know of it is this: It was upon the 24th Day of *April*, I have the Warrant here to ſhew, I met with Mr. *Goodenough*, at Mr. *Ruſſel*'s the Cook, in *Ironmonger-lane*, and ſeveral others were there; and I went away a little while, and came again: While I was gone from them, they put my Name into the Warrant, and upon that Warrant, I did arreſt Sir *William Pritchard*, who was then Lord Mayor, at the Suit of Mr. *Thomas Papillon*, I ſuppoſe this is the Gentleman [*Pointing to the Defendant.*] I had no Order for it from Mr. *Papillon*, nor ever ſpoke with him about it; but I had order from the Coroner, who, upon the arreſting him, took my Lord Mayor into his Cuſtody.

Mr. Att. Gen. Where was my Lord Mayor then?

Keeling. At *Grocer*'s-*Hall.*

Mr. Att. Gen. Was that the Place he kept his Mayoralty in?

Keeling. Yes, it was ſo.

Mr. Sol. Gen. What was he doing when you arreſted him?

Keeling. There was ſome Diſturbance upon it, among the Officers and People there. The Coroner came up to him and ſaid, Sir, I have a Writ againſt you, I pray you would pleaſe to give an Appearance at the Suit of Mr. *Thomas Papillon*, and another at the Suit of Mr. *John Dubois*, and ſome Words there paſſed between him and the Coroner; and my Lord Mayor refuſing to give any Appearance, the Coroner, Mr. *Brome*, bid us execute our Warrants; upon which I came up to my Lord Mayor, and touched him upon the Shoulder, and ſaid, I arreſt you at the Suit of *Thomas Papillon*, Eſq; and one *Ferdinando Burley* arreſted him again, at the Suit of Mr. *John Dubois.*

Mr. Att. Gen. What did you do with him, when you had arreſted him?

Keeling. The Coroner diſmiſſed us, and, as I take it, carried him home to his Houſe.

Mr. Att. Gen. What Inſtructions had you what to do, in caſe he made any Reſiſtance, and did not ſubmit to the Arreſt?

Keeling. I know of no Inſtructions about any ſuch thing.

Mr. Sol. Gen. Who was by, pray, when Orders were given you to arreſt my Lord Mayor?------*Keeling.* Both the *Goodenoughs.*

Mr. Att. Gen. He in the Proclamation, you mean, and his Brother?

Keeling. Yes, *Richard* and *Francis Goodenough.*

Mr. Sol. Gen. And who elſe, pray?

Keeling. Several that I did not know.

Mr. Att. Gen. Can you remember any body beſides the *Goodenoughs* in particular?

Keeling. There was one   a Tallow-chandler, and a great many that I did not know.

Mr. Sol. Gen. How many do you think there were? And where was it?

Keeling. I believe there were about thirty or forty, and it was at *Ruſſel*'s the Cook, in *Ironmonger-lane.*

Mr. Att. Gen. Did they all come along with you to *Grocer*'s-*Hall*, to arreſt my Lord Mayor?-----*Keeling.* No, my Lord, they did not.

Mr. Sol. Gen. Did any of them, and which, pray?

Keeling. Sir, I will tell you who did come to my Lord Mayor's. There was the Coroner, *Francis Goodenough*, *Ferdinando Burley*, and my ſelf: And after my Lord was arreſted, the Coroner bid us be gone, and he would look after my Lord Mayor.

Mr. Sol. Gen. Whither did you go after that?

Keeling. I went to Sir *Harry Tulſe*'s directly.

Mr. Att. Gen. Did not you expect an Oppoſition? And had you not ſome Diſcourſe what you ſhould do in caſe there was an Oppoſition?

Keeling. No, I cannot tell any thing of that.

Mr. Att. Gen. You ſay, there was a Meeting, or Conſult, at *Ruſſel*'s, of forty People; had you not there ſome Conſultation what was to be done, if my Lord Mayor did not obey the Arreſt?

Keeling. I do not remember any thing about that, at that time.

Mr. Att. Gen. Was there at any other time before? Or did you hear any of thoſe People diſcourſe the *Goodenoughs*, or any of them, what they would have done in caſe they were reſiſted?

Keeling. I do not remember any Diſcourſe of ſuch thing, before or after.

† *L. C. J.* Pray, Mr. *Keeling*, let me aſk you a Queſtion or two. Were you ever employed by the Coroner to be a ſpecial Bailiff to arreſt any Body, before this time you ſpeak of, that you arreſted Sir *William Pritchard*?

† Sir *George Jefferys.*

Keeling. No, my Lord, I never was.

L. C. J. Then pray recollect yourſelf, who were at that Meeting, when, as you ſay, your Name was put into the Warrant for this Arreſt?

Keeling. My Lord, when I went away for a little while, I left theſe Perſons particularly that I did name, the two *Goodenoughs*, and one *Burton*, I think, and one *Crompton*, and that Tallow-chandler; there were to the Number of thirty or forty, that I did not know their Names.

L. C. J. But pray, how came you to be employed in this Service then? Were you a Tradeſman in Town then?

Keeling. Yes, at *Wapping.*

L. C. J. Good now, how came you to be employed in arreſting my Lord Mayor, more than any other of thoſe thirty or forty that you ſay were there then?

Keeling. I went there among them, but did not know then that I ſhould be concerned in this Buſineſs; and I went away a little while, and when I came back they told me, that my Name was put into the Warrant.

L. C. J. Pray, tell us the whole Story, how you that were a Tradeſman at *Wapping*, ſhould come to be employed as a Bailiff to the Coroner of *London*, to arreſt my Lord Mayor? There muſt be ſome particular End in it.

Mr. Att. Gen. Mr. *Keeling*, tell the Court and the Jury the whole Story, and what it was that brought you into this.

Keeling. My Lord, Mr. *Goodenough* told me I muſt be concerned.

L. C. J. Ay, prithee tell us what *Goodenough* deſired you to be concerned in.

Keeling. Upon my coming back to the Company that was at *Ruſſel*'s, Mr. *Richard Goodenough* told me I muſt be concerned in the Buſineſs of arreſting my then Lord Mayor, Sir *William Pritchard*: Said I to him, Mr. *Goodenough*, this is foreign and remote to my Buſineſs, to be concerned in ſuch a Matter as this, it will ſeem very ſtrange for me to do it. He preſſed it upon me to do it, and ſays he, If you will not do it, you will be a Man looked ill upon, and it will be taken ſtrangely from that Party; he meant, I ſuppoſe, the diſcontented Party, the Faction, or what you pleaſe to call it, that were not contented with the Adminiſtration of the Government in the City at that time; and he urged it upon me with a great many Arguments. I oppoſed it with much Vigour a good while, but at laſt he prevailed upon me to go along with the Coroner; and *Frank Goodenough*, his Brother, ſaid he would go with me, and he did ſo; and we came and arreſted my Lord Mayor, as I told you before.

L. C. J. Where did Mr. *Goodenough* preſs you to be concerned in this Buſineſs, as you ſay?

Keeling. At Mr. *Ruſſel*'s a Cook, in *Ironmonger-lane.*

L. C. J. How came you thither?

Keeling. He ſent me a Letter to meet him there. He was at me before to be concerned in it, but I did not comply with him in it. Mr. *Richard Goodenough* it was, and Mr. *Aſhburſt*, I think it was Alderman *Corniſh*'s Son-in-law, was by.

L. C. J. Was *Neltborp* there?

Keeling. No, my Lord, he was not there; but they did not proceed then, becauſe my Lord and his Brethren were gone out of Town, to wait upon the King, I think; and this was ſix Weeks or two Months before this Meeting at *Ruſſel*'s.

Mr. Sol. Gen. Pray, Mr. *Keeling*, recollect yourſelf. Had you any Diſcourſe with *Goodenough*, or any body elſe, what the Conſequence of ſuch an Arreſt would be?

Keeling. They told me, my Lord Mayor, and Court of Aldermen, had made an ill Return to the *Mandamus*'s that were ſerved upon them, for the ſwearing of Mr. *Papillon* and Mr. *Dubois* Sheriffs, and therefore Mr. *Papillon* and Mr. *Dubois* had good Cauſe of Action againſt them; and *Goodenough* ſaid, he had order from them to arreſt my Lord Mayor upon an Action, and deſired me to be concerned.

Mr. Sol. Gen. But pray, remember what you ſaid before, Mr. *Keeling*, why ſhould the diſcontented Party, as you call them, be concerned, and be angry with you, if you did not arreſt my Lord Mayor?

Keeling. The particular Argument that he uſed with me to perſuade me to it, was this, That I having a Trade and Dealing among that Sort of People, they would think ill of me if I did not do it.

Mr. Sol. Gen. But why ſhould the Party be angry with you, if you were not a Bailiff to arreſt my Lord Mayor, at the Suit of Mr. *Papillon*?

Keeling. I did not know the Reaſon of their Anger, he might have ſomething in his Head that he did not reveal to me. But that was the Argument he uſed, The Party would think ill of me.

Mr. Serj. *Maynard.* If you have done with this Witneſs, I would aſk him a Queſtion. You ſay, Sir, that *Goodenough* told you, the diſcontented Party would be angry with you if you did not do it. Upon your Oath, was the diſcontented Party named?

Keeling. No, Sir, but that Party of which Mr. *Goodenough* and I then was; and they were the diſcontented Party, I think; for they were ſo diſcontented, that they would have killed the King and the Duke.

Mr. Att. Gen. That is an Anſwer, I hope, to your Queſtion, Mr. Serjeant.

L. C. J. I think, when he names the *Goodenoughs* to be of the Party, no body queſtions but they were diſcontented.

Mr. Sol. Gen. He has explained well enough, ſure, what he meant by the diſcontented Party, thoſe that were ſo diſcontented, that they would have killed the King and the Duke. Thoſe were the Promoters of this Action, and Mr. *Keeling* muſt engage in it, or they would be diſpleaſed. Now, my Lord, we ſhall call Sir *Harry Tulſe* and Sir *Robert Jefferies*, to ſhew what the Coroner did.

Keeling. I arreſted Sir *Harry Tulſe* afterwards.

Then Sir Harry Tulſe *was called.*

Mr. *Ward.* My Lord, we deſire Sir *Harry Tulſe* may not be ſworn, we have an Exception to his Teſtimony.

L. C. J. What is your Objection?

Mr. *Ward.* We are informed, he and the reſt of the Court of Aldermen have joined their Purſes to carry on this Suit, and then, with Submiſſion, he is not a good Witneſs.

L. C. J. Aſk him that Queſtion upon a *Voyer dire.*

Then he was ſworn upon a Voyer dire.

Mr. *Williams.* Pray, Sir, is there any Order of the Court of Aldermen to lay out Money for this Cauſe, out of their Joint Purſes, or the Publick City Stock?

Sir *Harry Tulſe.* Not that we know of.

Mr. Williams. Pray, Sir, do you know whether Sir *William Pritchard* laid out Money in it, or who elſe doth ?

Sir *Harry Tulſe.* I cannot give a poſitive Anſwer to that, who layeth out money upon it, nor do I know of any ſuch order as you ſpeak of.

Mr. *Ward.* Sir *Harry Tulſe*, though you know of no ſuch formal Order of the Court of Aldermen, yet is there not ſome Direction by the Court of Aldermen about expending Monies in a joint way ?

Sir *Harry Tulſe.* I aſſure you, Sir, I know nothing of it.

L. C. J. Come, he has given a full anſwer to your Queſtion, ſwear him. [*Which was done.*

Mr. Holt. Sir *Harry Tulſe*, now you are ſworn, pray, will you give an Account of what happened about this Matter, within your knowledge? Pray, tell the whole Story.

Sir *Harry Tulſe.* My Lord, about four of the Clock in the Afternoon, this Gentleman, and two more, came to me to my own Houſe, and he did arreſt me (I mean, Mr. *Keeling*, that was ſworn here before me) at the Suit of Mr. *Papillon*; and another of them did arreſt me at the Suit of Mr. *Dubois*: Said I to them, I do not know that I owe them, or either of them, a Farthing. But what muſt I do? He told me, it was only to give an Appearance. Said I, Gentlemen, I ſhall conſider of that. Then, ſays he, you muſt go to my Lord Mayor. Why, where is he, ſaid I? Said he, He is in the Cuſtody of the Coroner, at his Houſe. Where, ſaid I? He is gone to *Skinners-Hall*, ſaid he. This is well, ſaid I. So I called for my Man to bring my Cloke. Then they told me, if I pleaſed, they would take my Word 'till to-morrow Morning, if I would promiſe to appear. I told them, they might do as they pleaſed. So they left me; and I went firſt to my Lord Mayor's Houſe, but found him not there; ſo I went down to *Skinners-Hall*, and there I found my Lord Mayor all alone, and no Alderman, only the Officers. I aſked his Lordſhip how he came there? He told me, he was arreſted by the Coroner. I aſked him how long he had been detained? And he ſaid, But a little time: And indeed I think it could not be long, for I met his Coach coming back from *Skinners-Hall* when I went. After that, he was detained there 'till about Eleven of the Clock or thereabouts. This is all that I know of it.

L. C. J. What became of the Government of the City all that time?

Sir *Harry Tulſe.* There was preſently a great Noiſe all about the City concerning my Lord Mayor's being arreſted, and abundance of People were gathered together about the Door, but there came a Company of Soldiers of the Trained Bands, and they kept all quiet. There were great apprehenſions of an Uproar. I ſaw nothing of hurt done, though. And I aſked Mr. *Brome*, the Coroner, who was by, Am I a Priſoner too? For I was arreſted to-day, by a Warrant pretended to be from you. Says he, I have a Writ againſt you, and now you are here, I cannot let you go, 'till you have given an Appearance. So I took myſelf to be detained there with my Lord Mayor in Cuſtody, and ſtaid as long as he ſtaid, and went away with him.

† *Mr. Recorder.* Swear Mr. *Wells*, the Common Crier, and Sir *John Peak.*

† Sir. *Thomas Jenner.*

Mr. Wells *was ſworn.*

Mr. Recorder. Mr. Common Crier, were you at my Lord Mayor's Houſe when this Hubbub was made? Pray tell my Lord and the Jury what you know of it.

Mr. Wells. Yes, I was there.

Mr. Holt. Then tell what paſt.

Mr. Wells. I was not in the Hall where my Lord Mayor was, but in another Room by: And the Officers came running in to me, and told me, I muſt come to my Lord Mayor quickly, for he was arreſted by ſome People. When I came, I found there were none of the Sheriffs Officers that uſed to arreſt People, but the Room was full of other Perſons. My Lord Mayor bid me take the Sword, and go along with him, for the Sword-bearer was not then juſt at hand. I aſked his Lordſhip whither he was going? The Coroner ſaid, he was his Priſoner, and muſt go along with him to his Houſe. My Lord Mayor bid me preſently ſend out the Officers to ſummon a Lieutenancy, which I did. I deſired the Coroner and his Men to be gone; ſaid I, Cannot you let my Lord alone, and go about your Buſineſs? No, he ſaid, except my Lord would give an Appearance, he muſt go along with him. I then aſked him whither my Lord muſt go? He ſaid, he had no Place but his own Houſe to carry him to, and thither we went; where when we came, my Lord was put into a little Room by himſelf, where were none but myſelf and the Coroner, as I remember. My Lord Mayor bid me go and ſee for Sir *James Edwards* and Sir *Harry Tulſe*, and my Lord Mayor that now is, and ſo I went; but I found they were arreſted too before I came.

L. C. J. How did my Lord go away from thence?

Mr. Wells. In his Coach.

Mr. Att. Gen. Were you by when he went away? And who was there?

Mr. Wells. Mr. *Brome*, the Coroner, was not there when my Lord Mayor went away, but there was *Goodenough.*

L. C. J. Ay, he was in truſty Hands, upon my Word.

Mr. Att. Gen. The Soldiers prevented the Deſign, and ſo they let him go again.

Mr. Recorder. Swear Sir *John Peak.* [*Which was done.* Sir *John*, what can you ſay to this Buſineſs?

Sir *John Peak.* My Lord, I had order from the Lieutenancy, to raiſe my Regiment upon the News of my Lord Mayor's being arreſted, which I did in a very little time, and came with my Soldiers to *Skinners-Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was feared there would have been. But Mr. *Keeling*, I believe, can tell ſomething more of the Deſign than he has ſpoken, for I remember at the Trial of the Traitors at the *Old Baily*, he did ſay, That after my Lord Mayor was arreſted, they did intend ſomething, but their Hearts miſgave them when the Regiment was up.

L. C. J. That is nothing to this Cauſe what he ſaid there; now he remembers nothing of it. Have you done, Gentlemen, or will you call any more Witneſſes?

Mr. Att. Gen. We reſt it here, my Lord, 'till we hear what they ſay to it.

L. C. J. Come then, what have you to ſay that are for the Defendant?

Mr. Serj. Maynard. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe with the Defendant, Mr. *Papillon.* I ſee, Gentlemen, it is a Cauſe of great Expectation, and by that means they would make it greater by far, than indeed it is in itſelf. But I ſuppoſe, you who are upon your Oaths to try this Iſſue, will duly weigh and conſider what it really is. Gentlemen, the record tells you what it is, an Action upon the Caſe, wherein the Plaintiff declares, that the Defendant did arreſt him, being then Lord Mayor, without any probable Cauſe, and out of Malice. Now as to that, Gentlemen, I conceive and think, I may appeal to my Lord Chief Juſtice in it, for Direction in Point of Law, that my Lord Mayor, if he do miſtake in his Office, and do not do that which belongs to him to do, he is as much ſubject to the Proceſs of Law and Actions, as any private Perſon in the City of *London.* If he does any Man an Injury, or does that which is not right in his Office, by which another Perſon is grieved, he is liable to the Proſecution of any particular Subject the King has, that is ſo grieved by him. Then they alledge, that this particular Action and Arreſt thereupon was proſecuted and done out of Malice, and without probable Cauſe. Now what have they proved of that? They prove the Thing done, that he was arreſted at the Defendant's Suit, and that he was kept in Cuſtody ſix Hours. But if we can give you any Account of a probable Cauſe for it, that is ſufficient to juſtify us from this Action. Gentlemen, the Queſtion that you are to try is not, Whether this Man or that Man were duly choſen into ſuch an Office; but whether there were any probable Cauſe for the Defendant to conteſt about the Choice? And herein the Caſe will fall out to be thus: There was a difference in the City of *London*, as is very well known to every body, about the Choice of Sheriffs for the City, wherein the Defendant was one of the Competitors; there were, upon the Nomination and Election in the Hall, a great many more voices or ſuffrages for one than for the other, which was certified to the Court of Aldermen and Lord Mayor, as is uſual; but ſome Conteſt being, a Poll was demanded and granted, and upon that Poll, my Lord Mayor was pleaſed to declare the Election on one Side againſt Mr. *Papillon*, who yet was apprehended, by the firſt Choice, to be one that had moſt ſuffrages. But ſeveral meetings there were, and ſeveral Common Halls aſſembled, ſo that it was a conteſted Matter, and, as I ſaid, there had been a Report made on the Defendant's behalf. We inſiſt not upon the Right of Election; that has been otherwiſe determined. But when he is put in Nomination by the Electors in the City, and has many ſuffrages, and he conceives himſelf rightly choſen, and they that are the Managers of the Election give ſuch an Account that in their Judgment he was choſen, that ſurely was a probable Cauſe for him to proceed upon it. And if there be but a probable Cauſe to bring this to a queſtion, no doubt he might very well take the courſe the Defendant took. Here is no Arreſt without legal Proceſs; nay their own Witneſſes ſay, there was an Offer to take an Appearance without putting it on ſo far as an Arreſt: If my Lord Mayor would have but given an Appearance, there had been an end, but he did not think fit to do that, and ſo the Proceſs of Law was executed upon him. Then here is the Caſe in ſhort: A Man thinks himſelf rightly and duly choſen into an Office, and has probable reaſon ſo to think, for the Judges of the Election think ſo too, and deliver that as their Opinion; ſo that though he is miſtaken, as the Event proves, yet he is not alone in his Miſtake, nor without ground of his Apprehenſion: then if it be (under favour) ſuch a Man has no other Proceedings to take in the World for ſettling this Matter, but to appeal to your Lordſhip, and that great Court where your Lordſhip ſits, to have a Writ to command the Mayor, or other proper Officer to ſwear ſuch a Man into the Office, or ſhew good Cauſe why he doth not. If the Mayor, upon the Receipt of the Writ, thinks fit to obey it, and ſwears the Man, all is well: If not, he muſt make a Return of the Writ, with the Cauſe why the Command of the Writ is not obeyed. Now the Suggeſtion of the Writ is, that he was duly choſen into ſuch an Office, and therefore he had a fair way to put this Matter to an end; if he would have returned he was choſen, or not choſen, there had been an end of the buſineſs, which he ought (under favour) to have done in Obedience to the King's Writ. What then follows upon his not doing ſo? The Party that is grieved hereby, has no other Courſe to take, but to bring his Action againſt the Mayor for it. This Courſe the Defendant took, by taking out a Writ againſt the Plaintiff: And what was the Effect of that Writ? It is indeed charged here by the Counſel on the other Side, That there was a Deſign of a diſcontented Party in it, and I know not what, and a great deal of Stir made, that a Coroner of the City of *London* ſhould arreſt my Lord Mayor. It may be it was not ſo reverently done, but yet if he thought he had good Cauſe of Action againſt him, he might do it lawfully. Doth this prove to you, that this was maliciouſly and unreaſonably done? Malice muſt be to the Perſon; Zeal and Earneſtneſs to have Right done to a Man's ſelf or another, in a legal Courſe of Juſtice, is not Malice, nor will make the Proſecution of the Action unreaſonable and groundleſs. Have they proved to you, Gentlemen, any particular Diſcontent and Malice that is between the Plaintiff and Defendant? No truly, I think, by all the Proof that has been offered, the quite contrary does appear. The Defendant took out a *Mandamus*, directed to the Plaintiff, which was not duly returned: What then doth he do next? Doth he moſt violently arreſt him? That, with Submiſſion, he might do, and no Offence in Law: No, but he doth not do it, but only deſired from time to time, as we ſhall prove anon, that he would but give an Appearance, that would have put a Concluſion to this Diſpute. There is no Appearance given: Whereupon he is arreſted, and detained in Cuſtody ſix Hours. If a Man be once in the Officer's Hands taken upon legal Proceſs, how long ſoever the Officer keeps him, is not at all to be laid upon the Perſon that brings the Suit; that is to be looked after by the Officer himſelf. Whatſoever was the Uſage in that Matter, we are not to anſwer for (though it is plain an Appearance would have done all preſently), we ſhall prove we gave order to uſe all Deference and Reſpect in the World. And beſides (though I would not ſpeak it to invalidate any of the Evidence given about the Right of Election one way or other, yet) there being a Return of the Defendant's Election by the Sheriffs to the Court of Aldermen; but they being of another Opinion, gave Order, that thoſe that thought themſelves aggrieved ſhould take their Remedy at Law: Which Order we have purſued in that regular Courſe that the Law has preſcribed. And I hope it will never come to that, that a Man (though miſtaken) conceiving himſelf to have a Right of Action, and ſuing out the King's Writ, ſhall ſuffer for ſo doing, unleſs particular

Malice be made to appear. Here is a great Noiſe of Damage, and Diſrepute, and Diſgrace to the Plaintiff and his Office, and he has been pleaſed to reckon his own Damages at 10,000*l.* We ſay he has ſuſtained no Damage by any thing we have done, but we are quite not guilty of this unreaſonable and malicious Proſecution laid to our Charge. And that we are not guilty, the Matter that has been opened, we think, will ſufficiently declare. For if there was a Conteſt about the Election, and the Sheriffs returned it as their Opinion that the Defendant was choſen, though they and he too were miſtaken, yet that might give a probable Ground for his purſuing the Courſe he did take, and the very Court of Aldermen, and the Lord Mayor, bidding them take their Courſe at Law, we ſure ſhall not be puniſhed for it. We did not proſecute our Queſtion in any malicious way, but in that Courſe that the Law allows, by taking out the King's Writ, and we hope the Law will protect us for it.

Mr. *Williams.* Will your Lordſhip be pleaſed to ſpare me a Word on the ſame ſide with Mr. Serjeant *Maynard.* I am of Counſel, Gentlemen, with Mr. *Papillon*, the Defendant, in this Action. We do not inſiſt upon it, nor now offer any thing to aſſert our Election: We did apprehend we were elected, but that is ruled againſt us, and we reſted ſatisfied with it. But we come here now before you upon this Queſtion: Whether we had any probable Cauſe of Action, upon which we might take out this Proceſs mentioned in the Declaration, which is a *Capias* upon a *Latitat?* And we do inſiſt upon it, that this Action of the Plaintiff's muſt fall upon the Iſſue joined, if we can ſatisfy you, and ſhew that it was not malicious, and without probable Cauſe. And tho' our Cauſe of Action againſt the Plaintiff falls out in the Event not to be a good and ſufficient Cauſe, yet if it were probable, it will evade this Action, and that is all we labour for. They do not attempt to prove, at leaſt-wiſe I have not heard any thing of it, that there was any expreſs Malice, any thing either ſaid or done by the Defendant, more than the cauſing him to be arreſted upon this Writ. It is very well known, it was in the City of *London* a very much controverted Queſtion, Whether Mr. *Papillon* and Mr. *Dubois*, or Sir *Dudley North* and Mr. *Rich*, were choſen Sheriffs of *London?* I would not run over the Hiſtory of it, it is but too well known and remembered, the Diviſions that were in the City about it. Some were ſo much diſſatisfied with the ſwearing Sir *Dudley North* and Mr. *Rich*, Sheriffs, as thinking them not duly elected, that they would have the Court of *King's-Bench* moved, for the Writ of *Mandamus* to ſwear Mr. *Papillon* and Mr. *Dubois.* This *Mandamus* was moved for, and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not elected Sheriffs of *London*, which Return was apprehended to be falſe; and really to try the truth of this Return, was the Action brought againſt the Plaintiff. A Man that is injured by a Falſe Return, hath indeed no other way to right himſelf, but by bringing an Action againſt them that made it. Upon this Action brought, I hope you are ſatisfied, Gentlemen, from the Evidence that has been already given, the Defendant proceeded regularly and orderly, in a decent manner applying himſelf to get an Appearance to his Action. And we ſhall prove he did ſo: For, firſt, he took out a *Latitat* againſt my Lord Mayor, and by the Attorney gave him notice of it, and deſired an Appearance; ſo that the Queſtion in diſpute might come to ſome Determination. But he was not pleaſed to give us an Appearance to that Writ, ſo we took out a *Capias*, gave him notice of it, and deſired an Appearance, but could have no Appearance; whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration: And the Coroner, who has been named, was then told, he ſhould be called upon to make ſome Return to his Writ; which he acquainted my Lord Mayor with, and deſired him to give an Appearance, which he refuſed to do; the Officer was conſtrained to arreſt him, to execute the King's Writ, and you hear how he treated him with all due reſpect, and carried him to his own Houſe, where he ſtaid ſome Hours, and then went away. All this time were we ſatisfied with what was done, we expected no more than an Appearance, which at laſt was given. Upon that Appearance we did declare, in the Beginning of *Hilary* or *Eaſter* Term (83): But it fell out, that in *Eaſter* Term (83) there was an Information for a Riot upon *Midſummer-day* before, about this conteſted Election, came to be tried. And that coming to trial, 10 *Maii*, and being found to be a Riot, and the Sheriffs ſworn to be duly elected, thereupon we were abundantly ſatisfied that we were miſtaken, and under miſapprehenſions, and that our Cauſe of Action would not hold, and we did diſcontinue it. Indeed, if we had proſecuted our Action after that, it would have been more like an angry and a ſilly Proſecution, and the whole have had a worſe Conſtruction, than the thing in itſelf would bear. But when we found the Opinion of the Court to be againſt us about our Election, we immediately diſcontinued our Action. Gentlemen, we ſhall prove theſe to have been our Proceedings, and that, I hope, will ſatisfy you, we are not guilty, according as we have pleaded.

Mr. *Ward.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, I am of Counſel on the ſame ſide, for the Defendant, and deſire to be heard one Word, as to ſome Things that have been ſaid on the other ſide on this Cauſe. There have been ſome Queſtions aſked, that do very much reflect upon the Defendant, and which I would take out of this Cauſe. I ſhall take notice, firſt, what the Queſtions were, and then give them that Regard and Anſwer which they deſerve. That which is urged, Gentlemen, by way of Crimination, in this Caſe, againſt the Defendant, and an unjuſt as well as foreign Reflection, not at all concerning the Cauſe, is, as if the Defendant were acquainted with the Inſurrection and Conſpiracy that was intended againſt the King's Life, and for ſubverſion of the Government, and procured the Plaintiff, then Lord Mayor, to be arreſted, to further and promote that Inſurrection. But as that was inſinuated only for Reflection's ſake, ſo I hope you, Gentlemen, will be pleaſed to take notice, that not one Word of any ſuch thing is proved at all, that the Defendant ever knew of any intended Inſurrection, nor that this was done with any ſuch Deſign: For even their firſt Witneſs, *Keeling*, from whoſe being employed by the Coroner in the Execution of the Writ upon Sir *William Pritchard*, the Plaintiff, they would argue that ſomewhat elſe was deſigned in it, doth give a poſitive Denial of any ſuch thing now upon his Teſtimony here. And Mr. *Papillon* the Defendant never knew him in his Life, nor employed him in this Buſineſs, nor ordered that he ſhould be employed in it, nor ever ſaw him; but the Coroner gave him his Warrant to execute. If, therefore, *Keeling* and *Goodenough* were concerned in any ill Buſineſs, and have taken upon them to do that which they ought not to have done, that doth not ſignify any thing in this Caſe, nor ought to turn to the Defendant's Prejudice. Nor, if any thing were done by the Officers, that were to execute this Proceſs, that were a *Misfeſance*, or a Male-execution of their Office, that ought not to be imputed as a Fault in the Defendant. But for this Matter now before you, the Caſe will depend upon this Point chiefly, Whether the now Defendant had a reaſonable Cauſe, or probable Ground, to bring an Action againſt the Plaintiff at the time when it was brought, and this Arreſt made? For there is many a Man, that at the Commencement of his Action, doth conceive in himſelf, he had a good probable Cauſe of Action againſt another Man, that in the Event of Things finds he was miſtaken, and hath no ſuch Cauſe; and thereupon deſiſts the Proſecution of it. Therefore the Probability of the Cauſe, at the time when this Fact was done, is the Queſtion you now are to try. For we are not now conſidering, whether that probable Cauſe did continue and prove a good Cauſe; the event of this Matter has proved it quite otherwiſe. Indeed the original Queſtion of this whole Cauſe was, Who were only elected Sheriffs? And that at the time of ſuch Election made, a great Number of Votes paſſed for the Defendant, is, I think, very notorious, both upon the lifting up of Hands, and upon the Poll. Theſe things we ſhall offer to you, and ſhall make it out that theſe gave occaſion to the Defendant to conteſt the Election, and conſequently to the bringing of the Action that the Plaintiff was thus arreſted upon. If then there were ſuch things as theſe that we have opened, which gave a colour to controvert the Right, and the Defendant purſued the Method preſcribed by the Law to bring it to a Determination, and there was no particular Diſreſpect or Incivility offered to my Lord Mayor, then ſure there was no reaſon to bring this Action againſt us. And that there was no indecent Behaviour uſed towards the Plaintiff, doth appear from the Evidence that hath been given of the whole Tranſaction. All that was deſired of my Lord Mayor was but an Appearance. For this was indeed an Action that did not require Bail, but an Appearance; tho', I muſt needs ſay, I never knew any one ſo averſe to give an Appearance to an Action as the Plaintiff was; for after a *Latitat* and *Capias* taken out, and being frequently acquainted with it, and at length, upon application after the taking out of the *Alias Capias*, and many Attendances, with all the Deference and Reſpect imaginable, both to his Perſon and Office, not ſo much as a bare Appearance could be obtained. Upon the opening of the Declaration and the Cauſe, you have been told of the great Dangers that were in the Caſe, as to the Infringement of Publick Peace, and the Government, which has been very much aggravated on the other Side. But had the reaſonable Requeſt of the Defendant by his Attorney, or the Officer, ſo often repeated, been but complied with, it had been but ſending to any Attorney, and ordering an Appearance, and then, I hope, the Peace of the Kingdom had been in no Peril from ſuch a Deſign as this Arreſt. Which I would not have mentioned, nor ſhould have taken to be at all concerned in the Iſſue now before you to be tried, but that I find them to be taken into the queſtion, when I hope you will conſider they are no way material to the Point in Controverſy. Now, Gentlemen, in our Defence againſt this Suit of the Plaintiff's, we ſhall call our Witneſſes to prove what we have opened. And our Defence will be in theſe Steps: Firſt, To ſhew the Inducement to our Action againſt the Plaintiff: which will ſhew there was a probable Cauſe. Secondly, Give an account of the reverent Carriage and Behaviour towards the Plaintiff in the Proſecution; how with reiterated Applications it was only deſired that the Plaintiff would give an Appearance, which he was not pleaſed to do; and that thereupon, with great Civility, the King's Writ was executed, as indeed I ſee no Proof to the contrary. For neither the Coroner, nor thoſe other People that gave their Aſſiſtance to him, were at all rude in their Carriage to my Lord Mayor; but as ſoon as the Arreſt was made, they were all turned off, and the Coroner ſtaid alone with my Lord, and went with him in his Lordſhip's own Coach to the *Skinners-Hall*, which was the Coroner's Houſe. Neither was there any thing ill done, after all this was paſt: For, upon the Plaintiff's Appearance, the now Defendant declared in his Action, and intended to purſue it; but it happened that afterwards, in a ſhort time, theſe things ſuffered ſome Debate, in a Trial that was here about a Riot at this Election, where the Queſtion of the Right and Election was determined on the other ſide, which gave the Plaintiff in that Action, the Defendant in this, ſatisfaction that he was in a Miſtake; and ſo he thought fit to diſcontinue that Action, and proceeded no further—

L. C. J. No, Mr. *Ward*, that was not the Queſtion determined then.

Mr. *Ward.* My Lord, I humbly conceive the Iſſue of that Cauſe did determine that Queſtion------

L. C. J. No, no, I tell you it was not the Queſtion.

Mr. *Ward.* I muſt ſubmit it to your Lordſhip-----

L. C. J. I perceive you do not underſtand the Queſtion that was then, nor the Queſtion that is now. You have made a long Speech here, and nothing at all to the purpoſe: you do not underſtand what you are about, I tell you it was no ſuch Queſtion.

Mr. *Ward.* My Lord, I was only giving an account of what we ſhould prove as to the Fairneſs of our Proceedings----

L. C. J. But I muſt interrupt you, and tell you, all you have ſaid ſignifies nothing. And as to what you mention of the Trial for the Riot, I ſay, if there be any Election to an Office at any time, that is controverted or doubtful, you have Forms and Methods of Law to determine the Controverſy-----

Mr. *Ward.* And we ſay, with Submiſſion, my Lord, we have only purſued ſuch Form and Method.

L. C. J. You are not to try Rights by Club-Law, by Riots, by Noiſe, and by Tumults. Therefore, you are miſtaken, to ſay, that was the Queſtion upon the Trial of the Riot. No, it was not the Queſtion, but the Defendants there were tried for a notorious Offence, and diſorderly tumultuous Aſſembly, an Aſſembly that had like to have ſet us together by the Ears. Therefore you muſt not talk after that rate. If you will ſpeak, apply to the Buſineſs in hand. Do not make ſuch Excurſions, *ad captandum Populum*, with your Flouriſhes; for that is all that is deſigned by your long Harangues. But I muſt not ſuffer it. I will none of your Enamel, nor your Garniture. The

Buſineſs of the Court, is, and by the Grace of God, it ſhall always be my Buſineſs, and ſo it ſhould be the Counſel's too, *Servare jus illæſum.* But I ſee you do not underſtand the Queſtion, and that makes you ramble ſo much in your Diſcourſe.

Mr. *Ward.* My Lord, I deſire always to do my Duty; and do it as well as I can. I know very well, and hope to apply it to this Caſe, that in a Queſtion of Right there are Forms and Methods of Law to be purſued, and I would defend my Client from this Action, by proving he did purſue that Method; and when he apprehended he had been before miſtaken, he deſiſted from what he had begun---

L. C. J. I tell you, I perceive you do not underſtand the Queſtion.

Mr. *Ward.* If your Lordſhip will give me leave to explain myſelf, I hope I ſhall ſatisfy your Lordſhip.

L. C. J. Indeed, Mr. *Ward*, you do not underſtand the Queſtion at all, but launch out into an Ocean of Diſcourſe, that is wholly wide from the Mark. I ſee you do not underſtand it.

Mr. *Ward.* Will your Lordſhip pleaſe to hear me——

L. C. J. Ay, if you would ſpeak to the purpoſe; but I cannot ſit here all Night to hear you make florid Speeches about Matters that are foreign to the Point before us. Come to the Queſtion, Man; I ſee you do not underſtand what you are about.

Mr. *Ward.* My Lord-----

L. C. J. Nay, be as angry as you will, Mr. *Ward*, I do tell you again, All you have ſaid is nothing to the purpoſe, and you do not underſtand the Buſineſs.

Then there was a little Hiſs begun.

L. C. J. Who is that? What in the Name of God! I hope we are now paſt that time of day, that Humming and Hiſſing ſhall be uſed in Courts of Juſtice; but I would fain know that Fellow that dare to hum or hiſs while I ſit here; I'll aſſure him, be he who he will, I'll lay him by the Heels, and make an Example of him. Indeed, I knew the time when Cauſes were to be carried according as the *Mobile* hiſs'd or humm'd; and I do not queſtion but they have as good a Will to it now. Come, Mr. *Ward*, pray, let us have none of your Fragrancies, and fine Rhetorical Flowers, to take the People with.

Mr. *Ward.* My Lord, I do not do any ſuch thing; but if your Lordſhip would pleaſe to hear me, I would explain myſelf, I hope to your Lordſhip's Satisfaction, and the Satisfaction of the Gentlemen of the Jury.

L. C. J. Hear you? Why, I did not interrupt you, Man, till you came to launch out into extravagant things that did not at all concern the Cauſe. Keep cloſe to the Queſtion we come here to try, and I will hear you as long as you will. The ſingle Queſtion is here, Whether there were a probable Cauſe for your arreſting the Plaintiff, or not?

Mr. *Ward.* My Lord, we did apprehend, I ſay, that we had a probable Cauſe; but when we found our Miſtake, we diſcontinued our Action, paid Coſts, and have a Receipt for them. This was it I was ſaying———

L. C. J. Say what you can, in God's Name, that will conduce to the Point in hand; but do not make the People believe as tho' the Right of Sheriffs, or not Sheriffs, were determined upon the Trial of a Riot.

Mr. Serj. *Maynard.* There are theſe things that are proper to be conſidered in this Queſtion: Whether the Cauſe were probable, or not probable? And if not probable, whether malicious, or not?

L. C. J. True, Brother: If People will but underſtand their Buſineſs, it is reduced to a narrow Compaſs; but if they will not underſtand what it is they come about, they will ramble from the Point, and who can help it? But we muſt keep to what is before us.

Mr. *Williams.* We ſhall make it out, that nothing was done but very civilly.

L. C. J. You muſt make it out, that nothing was done but what you had probable Cauſe at leaſt for.

Mr. *Williams.* We will, my Lord, apply ourſelves to that which your Lordſhip directs. Call Mr. *Brome*, Mr. *Courthope*, and Mr. *Corniſh*.

Mr. Brome *ſworn.*

Mr. *Ward.* Mr. *Brome*, are you ſworn?——Mr. *Brome.* Yes, Sir.

Mr. *Ward.* Have you the Writs here? The *Latitat* and the *Capias*?

Mr. *Brome.* Truly, Sir, I have not; I did not bring them with me, they are at home at my Houſe; if you pleaſe, I will fetch them.

Mr. *Ward.* Pray, can you tell, Sir, when the firſt Writ was returnable?

Mr. *Brome.* In *Hilary* Term.

Mr. *Ward.* When you had that Writ brought to you, Sir, what did you ſay to my Lord Mayor about it?

Mr. *Brome.* I went to my Lord Mayor with Mr. *Goodenough*, and deſired my Lord that he would appear to it, as Mr. *Goodenough* told me he had deſired of him himſelf before. But he ſaid he would give no Appearance. If I would take him upon the Writ, I might do as I pleaſed, and he would conſider, and do as he ſhould think fit; but he would not give any Appearance. I told him, I had Writs againſt ſeveral of the Aldermen upon the ſame account, and that I would wait upon them alſo; and I did ſo, and deſired them to appear, and offered to take an Appearance from them, and gave my Lord Mayor and them time to conſider of it, and came again; but they told me, they had conſidered of it, and would give no Appearance.

Mr. *Williams.* When was this, Sir?

Mr. *Brome.* In the beginning of *Hilary* Term, to the beſt of my remembrance.

Mr. *Brome.* What time did you give my Lord Mayor to conſider of it?

Mr. *Williams.* About a Week, or ſome nine or ten Days time, as I remember.

Mr. *Ward.* Where was it that you had that Anſwer, that he had conſidered of it, and would give no Appearance?

Mr. *Brome.* It was at the Court of Aldermen.

Mr. *Williams.* Were the Writs brought again to you?

Mr. *Brome.* There was not time to make a Return then, and ſo they let all alone till a little before the beginning of *Eaſter* Term, and then one Day Mr. *Goodenough*, the Attorney, brought me the Writs again, and threatened to complain to the Court of me, and acquaint them, that I had neglected the Execution of the King's Writs, two of them.

Mr. *Ward.* Upon your Oath, Sir, did he threaten you, that if you did not make a Return of the Writ, he would complain?

Mr. *Brome.* He ſaid I had expoſed him to the Complaint of his Client; and if I did not do it, he would complain to the Court of me: If I would make a Return, as I ought to do, well and good, if not——

Mr. *Williams.* If not, what then? Did he uſe any other threatenings, pray, Sir, but that he would complain to the Court?

Mr. *Brome.* He did threaten to complain of me.

Mr. Att. Gen. You ſay, Sir, he threatened you; what Anſwer did you make to him?

Mr. *Brome.* I did not uſe to execute Writs myſelf, I told him: Thereupon he did propoſe two Perſons to me, Mr. *Keeling*, and one Mr. *Burleigh*, for he told me the Sheriffs Officers would not do it.

Mr. Att. Gen. Pray, Sir, did you endeavour to get any of the Sheriffs Officers to do it?

Mr. *Brome.* He told me he could not get any of them to do it.

Mr. *Ward.* Mr. *Brome*, what did you do after he had propoſed thoſe two Perſons to you?

Mr. *Brome.* After I had given thoſe Warrants to the Officers he had named, I told him, I was willing to go once more to my Lord Mayor, to ſee if I could get an Appearance of him without arreſting him; ſo I waited on him at his Houſe at *Grocer's-Hall*, but found him then at Dinner; ſo I went away, and came again about four o'Clock, and I firſt ſpoke to Mr. *Gibſon*, and intreated him to let my Lord Mayor know, that I deſired to ſpeak with his Lordſhip at his leiſure: Afterwards, when I came up to my Lord Mayor, he aſked me, what was my Buſineſs? I told him the Writs were renewed, at the Suit of Mr. *Papillon* and Mr. *Dubois*, and I was preſſed to make a Return; and I deſired his Lordſhip that he would be pleaſed to give an Appearance. He told me he was ready to ſubmit to the KING's Writ, but would not give an Appearance; thereupon the Officers named in the Warrant by my Command did arreſt him.

Mr. *Ward.* How often did you wait upon my Lord Mayor for an Appearance upon both the Writs, before he was arreſted?

Mr. *Brome.* Several times; I cannot exactly tell how often.

Mr. *Williams.* Had you Directions, if he would pleaſe to give an Appearance, to take an Appearance, and not to arreſt him?

Mr. *Brome.* I had Directions to take an Appearance, if he would give it.

Mr. Att. Gen. From whom had you that Direction, Mr. *Brome*?

Mr. *Brome.* From the Attorney *Goodenough*.

L. C. J. Now, Mr. *Brome*, let me aſk you a Queſtion or two: How long had you been Coroner before?

Mr. *Brome.* About two Years before, or thereabouts.

L. C. J. Had you ever made any Warrants upon Writs of *Capias* before?

Mr. *Brome.* Yes, my Lord, ſeveral.

L. C. J. Who did you uſe to make your Warrants to, to be executed?

Mr. *Brome.* I never keep my Warrants; they that execute them have them.

L. C. J. But anſwer me, To whom did you make them?

Mr. *Brome.* To one of the Sheriffs Officers commonly.

L. C. J. Then I aſk you, upon your Oath, did you before this Time ever make any Warrants to any other Perſon, till ſuch time as you made theſe Warrants to arreſt Sir *William Pritchard*?

Mr. *Brome.* I have made ſeveral to the Sheriffs Officers, that I cannot remember now particularly.

L. C. J. But mind my Queſtion, Man, and anſwer me directly; for I expect you ſhould anſwer me poſitively to it. Have you ever at any time made any Warrants to any other but the Sheriffs Officers till this time?

Mr. *Brome.* I cannot remember that I have.

L. C. J. How then came you at *Ruſſel*'s Houſe to diſcourſe with Mr. *Goodenough* about who would be fit to execute the Writ, when you uſed to employ the Sheriffs Officers, and there were ſo many of them?

Mr. *Brome.* He told me he could get no one of them to execute it.

L. C. J. But there muſt be ſomething more in it than ordinary, that you and *Goodenough*, and all thoſe other People, ſhould come to meet about ſuch a thing as this, to diſcourſe and conſider who ſhould be fit to be put into a Warrant to make an Arreſt upon a *Capias*, when before that time you uſed to make it to thoſe that are verſed in thoſe Matters.

Mr. *Brome.* When the Attorney came with a Writ, and deſired a Warrant upon it, it is uſual to take whom he nominates, and make him the Officer to execute it.

L. C. J. Then give me, if you can, any one ſpecial Inſtance, wherein you have taken the Direction of the Attorney, whoſe Name to put into the Warrant.

Mr. *Brome.* Yes, my Lord, I can.

L. C. J. Do then, let's hear it, when was that?

Mr. *Brome.* I did it in the Caſe of His Royal Highneſs againſt Mr. *Pilkington*: Mr. *Swift* came for a Warrant, and directed me whom to put into it.

L. C. J. What Directions did he give you?

Mr. *Brome.* He gave me the Names in writing.

L. C. J. Where is *Keeling*?

Keeling. Here, my Lord.

L. C. J. What was the meaning of that Word that was uſed by you, that the Party would be angry, if you did not arreſt my Lord Mayor; for that is it, which makes me ſo inquiſitive into this Matter, how theſe People came to be employed?

Mr. Sol. Gen. Ay, pray conſider with yourſelf, and recollect, Mr. *Keeling*; when you were firſt mentioned to be a ſpecial Bailiff to arreſt my Lord Mayor, you ſay you oppoſed it: How then came you to be drawn in, and engaged to do it?

Keeling. I will tell you, my Lord.

L. C. J. Ay, and tell us what Number of People were there.

Keeling. There were about thirty or forty.

L. C. J. Was *Brome* among them?

Keeling. He was there ſome part of the time.

L. C. J. Well, what was the Reaſon that you ſhould be engaged about this Thing?

Keeling. I went away a while, and came again: Mr. *Brome* came in, and I was away an Hour and half, as I remember, or ſome conſiderable time. Mr. *Brome* cannot forget, that, when I came again, I found my Name inſerted in the Warrant, as a Bailiff to the Coroner, to arreſt Sir *William Pritchard*, then Lord Mayor. I diſputed it, as being never concerned in any ſuch thing before, and was very unwilling to be employed in the Affair. Says Mr. *Goodenough* to me thereupon, You will diſoblige the Party in caſe you do not do it.

L. C. J. Was Mr. *Brome* in the Company when *Goodenough* ſaid ſo to you?

Keeling. I know not that truly, but he was before in the Company.

L. C. J. How many were then in the Room?

Keeling. About twenty, or more, as near as I can remember.

L. C. J. You, *Brome*, did you ever, when you received a Writ to arreſt a Man, and were to give a Warrant upon it, call a Conſult of Twenty or Thirty, how to do it, before this Time?

Mr. *Brome.* I did not do it now.

L. C. J. No, no, a-lack-a-day, thou wert as innocent in all this Matter as a ſucking Child.

Mr. *Williams.* Was Mr. *Papillon* in the Company, Mr. *Keeling*?

Keeling. No, he was not.

Mr. Att. Gen. Mr. *Brome*, pray anſwer me; When you had my Lord Mayor in your Cuſtody, how came you to diſcharge him out of Cuſtody?

Mr. *Brome.* I was taken into Cuſtody myſelf.

Mr. *Ward.* Did my Lord Mayor give an Appearance?

Mr. *Brome.* I was committed to the Compter myſelf.

Mr. *Williams.* Were you by when it was agreed that my Lord would give an Appearance?

Mr. *Brome.* I believe not; it was afterwards as I have heard.

L. C. J. A-lack-a-day, it went ſtrangely againſt Mr. *Brome*'s Stomach, all this did. I know it very well, he had no mind to it at all.

Mr. Att. Gen. Mr. *Keeling*, did you hear any Diſcourſe between the Twenty or Thirty that were in that Company about this Buſineſs?

Keeling. I cannot ſay who in particular diſcourſed of it, or what was ſaid.

Mr. Sol. Gen. Was it diſcourſed of in the whole Company?

Keeling. There was ſome Diſcourſe about it in the Company.

L. C. J. You, *Brome*, were you ever acquainted with *Keeling* before?

Mr. *Brome.* I had the Misfortune, my Lord, to be concerned with him about ſome Coal-Works.

L. C. J. Did you know that Mr. *Burleigh* before, that was the other Bailiff?

Mr. *Brome.* I knew him by ſight; I had no great Acquaintance with him.

L. C. J. Pray where lived *Keeling*?

Mr. *Brome.* At *Eaſt-Smithfield.*

L. C. J. And where lived *Burleigh*?

Mr. *Brome.* Truly, my Lord, I know not; I think at the other End of the Town.

L. C. J. But, prithee, how came you to join theſe two People together in this Buſineſs; the one from *Wapping*, the other from *Weſtminſter*?

Mr. *Brome.* Where the Sheriffs were concerned, as they were in this Matter, and therefore it came to me, I thought it not ſo proper to pitch upon the Sheriffs Officers, nor would they do it, as he told me; and eſpecially it being to arreſt my Lord Mayor, I did not think proper to employ any one that lived in the City.

L. C. J. But there were abundance of People that were not Citizens, that were nearer at Hand, and nearer together, and fitter for ſuch a Purpoſe than a Tradeſman fetched out of the Eaſt, and I know not who out of the Weſt, to arreſt a Man: There muſt be ſome other meaning in it.

Mr. *Brome.* I gave them the Nomination, as I uſed to do in like Caſes.

L. C. J. Upon your Oath, Sir, was it you or the Attorney that named theſe Perſons?

Mr. *Brome.* He told me he could get none of the Sheriffs Officers to do it; and I did not think it indeed proper for any of them.

L. C. J. And why, good Sir?

Mr. *Brome.* I did think ſo, truly, my Lord.

L. C. J. Why? Why? What Reaſon had you for it?

Mr. *Brome.* It was reaſonable, as I apprehend, my Lord, for me to think ſo, it being in a Matter wherein the Sheriffs were ſo much concerned.

Mr. Sol. Gen. But did you propoſe it, or any one elſe in the Company, upon your oath? and who was it?

Mr. *Brome.* The Attorney named them.

Mr. Com. Serj. It ſeems here were a great many Perſons met at *Ruſſel*'s about this Buſineſs. I deſire, my Lord, that Mr. *Brome* may name as many of them, as he can, that were there.

L. C. J. Ay, as near as you can, name the twenty or thirty Perſons that were there; for you living in the City, and having an Acquaintance among that Sort of People, muſt needs know moſt of them.

Mr. *Brome.* Why, my Lord, there were both the *Goodenoughs*, and *Mr. Nelthorp*, and who in particular elſe, I cannot well remember.

L. C. J. Yes, yes, I am ſure you can tell more of them.

Mr. *Brome.* My Lord, I cannot ſwear that I remember any other in particular.

Mr. Com. Serj. It ſeems he has named ſome of thoſe that are in the Proclamation; pray, Sir, do you remember any others were there, that were in the Proclamation?

Mr. *Brome.* I do not remember any other of thoſe in the Proclamation were there.

Mr. Att. Gen. Can you remember any that were not in the Proclamation?

Mr. *Brome.* There were ſeveral People that I knew by ſight; but I cannot remember their Names.

L. C. J. Nay, nay, pray open your Eyes a little, and recollect your Memory, and tell us who were there; I know you can do it.

Mr. *Brome.* My Lord, there were many Citizens that I knew by ſight; but had no particular Acquaintance with them.

Mr. Sol. Gen. Did you know any of the Company beſides the *Goodenoughs*, and *Keeling*, and *Nelthorp*?

Mr. *Brome.* I had little Acquaintance with him.

Mr. Sol. Gen. How come you to remember him ſo particularly?

Mr. *Brome.* I verily believe he was there.

Mr. Recorder. Was Mr. *Weſt* there?

Mr. *Brome.* I cannot poſitively ſay whether he was or not.

Mr. *Williams.* Swear Mr. *Corniſh* then. [*Which was done.*]

L. C. J. You, *Brome*, was Mr. *Corniſh* there?

Mr. *Brome.* Not that I know of.

Mr. Att. Gen. It is ſtrange we cannot learn who thoſe Perſons were that met there.

L. C. J. Oh theſe Fellows have ſtrange Memories for their Purpoſes. Well, what do you call him for?

Mr. *Ward.* My Lord, we call Mr. *Corniſh* to give an Account what he knows of this Matter; what Directions were given by the Plaintiff to his Attorney, how he ſhould carry on this Matter.

Mr. *Corniſh.* My Lord, That which I particularly remember, I ſhall fully and very faithfully declare. I was with Mr. *Papillon*, and Mr. *Dubois*, at my Houſe. The Occaſion of their coming thither I knew not, nor did expect either of them there; I myſelf came from *Guild-Hall*, either from a Court of Aldermen, or from a Committee; and when I came Home, I found them there. We had not been many Minutes together, but in comes Mr. *Goodenough* the Attorney; and he applied himſelf particularly to Mr. *Papillon* and Mr. *Dubois*, to receive their orders what he ſhould do; for he ſaid the Time was almoſt ſpent, and he had addreſſed himſelf from time to time to my Lord Mayor, and ſome of the Aldermen, to get them to appear, but they would not. They told him then, they had given him what orders they had to give him already; that it was fit the Matter ſhould be brought to ſome Trial or Iſſue, that there might be an end of it. He preſſed them then earneſtly to know what he ſhould do: Said they, You are to deſire an Appearance to the Action, and if he will give it, take it, and remember my Lord Mayor is the chief Magiſtrate of the City; and pray, carry it with all reſpect and regard imaginable to him.

Mr. *Williams.* You ſay, Sir, they bid him to take an Appearance, if he could get it?

Mr. *Corniſh.* Yes, and they declared, that their Deſign was only to bring it to an Iſſue to be tried, and they would not inſiſt upon any thing but an Appearance, if it might be had.

L. C. J. Wonderful careful and civil they were, no doubt of it.

Mr. *Corniſh.* This is the Truth, and the whole of the Truth, that I know of, relating to this Matter.

L. C. J. Mr. *Corniſh*, you ſpeak of ſome of the Aldermen, that he ſaid he had been with: What Aldermen were thoſe?

Mr. *Corniſh.* There were ſeveral of them, that he ſaid he had Writs againſt.

L. C. J. You were an Alderman then; pray, had he any Writ againſt you?

Mr. *Corniſh.* I know not whether he had or no.

L. C. J. But he did not require an Appearance of you, I ſuppoſe?

Mr. *Corniſh.* If he had, I muſt have taken Notice of it to defend myſelf as well as I could.

L. C. J. Ay, no queſtion but you would; but were you aſked for an Appearance, or no?

Mr. *Corniſh.* I was told I ſhould be ſued among the reſt.

L. C. J. But was there any Writ ſhewn to you?

Mr. *Corniſh.* No, my Lord.

L. C. J. Then pray let me aſk you a Queſtion or two. Did you ever know any Man before bring an Action, or ſue to be Sheriff of *London*? You have been Sheriff yourſelf we know.

Mr. *Corniſh.* This was a Matter that had been much diſputed in the City; and a Queſtion had been depending upon it, whether the Right was to my Lord Mayor, or in the Sheriffs.

L. C. J. But the Queſtion of Right between my Lord Mayor and Sheriffs, what was that to Mr. *Papillon*? Did you ever know a Man bring an Action, or ſue to be Sheriff?

Mr. *Corniſh.* Truly, he that experienceth the Trouble of it, will, I believe, never be deſirous of it.

L. C. J. But that is no Anſwer to my Queſtion, anſwer me directly: Did you ever know any ſuch thing before?

Mr. *Corniſh.* I never did hear of any ſuch that I know of.

L. C. J. How then came Mr. *Papillon* ſo officiouſly to deſire it?

Mr. *Corniſh.* I cannot anſwer; what his Reaſons were, I know not.

Mr. *Williams.* It was an Action to determine the Queſtion that was at that time ſo much litigated in the City of *London.*

Mr. Att. Gen. Mr. *Corniſh*, Pray, will you anſwer me one thing; Were you never in no Company, wherein it was agreed this Suit ſhould be brought and carried on in their Names?

Mr. *Corniſh.* *Mr. Attorney-General*, I never meddled nor managed it.

Mr. Att. Gen. Did you never hear it was ſo agreed?

Mr. *Corniſh.* It is known to Thouſands, as much as I know of it; the Matter was diſputed of in all Companies in the City.

Mr. Att. Gen. But you do not anſwer to my Queſtion; Were you ever in any Company when it was agreed that ſo it ſhould be?

Mr. *Corniſh.* Sir, I tell you as well as I can, the Matter that was to be diſputed by that Action, was the general Diſcourſe of all Societies of Men whatever in the City at that time.

L. C. J. It is a ſtrange thing, that one cannot get a direct Anſwer from theſe People, to any thing one aſks them; I deſire to know one thing of you, Mr. *Corniſh*: you have known Mr. *Papillon*, the Defendant, before this time?

Mr. *Corniſh.* Yes, my Lord, I have known him ſeveral Years.

L. C. J. Was he ever choſen Sheriff of *London* before?

Mr. *Corniſh.* Yes, my Lord, I ſuppoſe he was.

L. C. J. How chance he did not hold then?

Mr. *Corniſh.* I have heard he fined, as was common and uſual, when Perſons' Occaſions would not permit them to attend the Service of the Place.

L. C. J. He did ſo, it is known to Thouſands, as you ſay, that he did. Now, pray, let me aſk you another Queſtion: Was Mr. *Bethel* ever choſen Sheriff before that time you and he were Sheriffs together?

Mr. *Corniſh.* I do not know that he was choſen before.

L. C. J. How is that?

Mr. *Corniſh.* My Lord, I do not underſtand what the Queſtion is, or elſe I know nothing of it.

L. C. J. How, did you never hear of that before? For, Mr. *Corniſh*, I do not ſpeak of a thing that no body knows; alas, thouſands, and ten thouſands of People know that too.

Mr. *Corniſh.* My Lord, upon my Oath, I do not know that ever he was.

L. C. J. Did you ever hear it?

Mr. *Corniſh.* I do not know that ever I did.

L. C. J. Did you never hear that Mr. *Bethel* ſwore himſelf off, as they call it? You know what I mean.

Mr. *Corniſh.* I do not remember any thing of it.

L. C. J. Nay, nay, it is to the Matter, I aſſure you, Mr. *Corniſh*, whatever you think of it. I aſk you then another Queſtion, that lies ſomething nearer your Memory: Upon your Oath, when you two were elected upon *Midſummer-day*, was not that Election vacated, and you choſen again within a Week, or ſome little time after? And was it not becauſe you had not taken the Sacrament, and the Corporation-Oath?

Mr. *Corniſh.* My Lord, I do remember there was a ſecond Election.

L. C. J. And we remember it too well enough.

Mr. *Corniſh.* That was ſo lately, that any Citizen of *London*, or any one that lived here, may remember the Paſſages of thoſe Times.

L. C. J. And you have as much Cauſe to remember it as any Man, I aſſure you, for ſeveral Reaſons that I know.

Mr. *Corniſh.* My Lord, I think I have Reaſon to remember it.

L. C. J. Leſt you ſhould forget it, I will enlighten you, and refreſh your Memory a little: I aſk you again, upon your Oath, was not your firſt Election ſet aſide, becauſe you had not taken the Oaths and the Sacrament?

Mr. *Corniſh.* There were two Elections, my Lord, I ſay, I do remember.

L. C. J. Sir, do not prevaricate with me; I expect a poſitive Anſwer: Was not that the Reaſon, upon your Oath?

Mr. *Corniſh.* I cannot ſay that was the poſitive Reaſon.

L. C. J. Then I aſk you upon your Oath, had you taken the Oaths and the Sacrament, as the Law requires?

Mr. *Corniſh.* My Lord, Mr. *Bethel* was a Stranger to me, I did not know him before that time.

L. C. J. Gentlemen, Men muſt not think to dance in a Net, and blind all the World. As to my own ſelf, I know theſe things very well, without any of their aſſiſtance, and I only aſk theſe things by the by, to let the World be ſatisfied what ſort of Men theſe are, that pretend to Saintſhip; and yet, you ſee, one can hardly get one Word of Truth out of them: Let the Law, in God's Name, take place, and let every Man proſecute his legal Actions; but when, under the Umbrage and Countenance of Law, Men ſhall deſire to put themſelves into Offices, and Places of Truſt, on purpoſe to diſturb the Government; Do you think the Government will ever ſuffer itſelf to be ſnivelled at, and overthrown by a Company of ſuch whining Fellows? Let them hiſs and hum, and make a Noiſe and ado as they will; thanks be to God, 'tis not that time of Day now: Such things have paſs'd too much uncontroul'd in the body of this City heretofore. What, Gentlemen, are you baffling the Law with ſuch Pretences as theſe, now-a-days, and do you think to ſham People into Offices? No, I tell you, Villany was the Foundation of it, and Knavery the Superſtructure; and it is high time it ſhould be told out, ſince I hear People begin to doubt of it as a queſtion.

Mr. *Ward.* Where is Mr. *Serjeant?* Swear him.

[*Which was done.*]

L. C. J. Do not I know, as ſure as I ſit in this Place, that *Bethel* did once before ſwear himſelf off? and that there were two Elections of theſe two very Men that Year? and that one of the Reaſons was, becauſe they had not taken the Oaths and the Sacrament according to Law? Nor would they ever have done it, we know them, neither *Bethel*, nor that very Fellow that ſtands there, *Corniſh*, neither, till they found it would contribute to the deſign of ſubverting the Government; then theſe Raſcals could qualify themſelves for an Office, only to put the Kingdom into a Flame.

Mr. *Corniſh.* When the City choſe me, I had good Reaſon for what I did.

L. C. J. Reaſon! I tell you, the City was in great Happineſs and Quiet, ever ſince the late Times of Rebellion and Confuſion; every one knew his Duty to his Superiors, and did it chearfully and conſcientiouſly, till ſuch time as a couple of buſy Fellows came to get into the publick Offices. Let the whole Party go away with that in their Teeth, and chew upon it, if they will.

Mr. *Williams. Mr. Serjeant*, will you pleaſe to tell my Lord and the Jury, what Directions you heard the Defendant, Mr. *Papillon*, give about the Plaintiff, how they ſhould treat him?

Mr. Serjeant. My Lord, I was in the Counting-houſe at Mr. Alderman *Corniſh*'s Houſe, when Mr. *Papillon* and Mr. *Dubois* were there; I went into the Parlour to them, and *Goodenough* coming in, they fell into a Diſcourſe about this Action, that was brought by them againſt Sir *William Pritchard*, then Lord Mayor, and ſome of the Aldermen; and *Goodenough* gave them an account how far he had proceeded in it; he ſaid, he could not get any of them to give an Appearance, and the Time was near ſpent, and he deſired to know of them what he ſhould do. Mr. *Papillon* and Mr. *Dubois* both did declare to him, over and over again, that it was their mind only to have the Matter brought to a fair Trial; and they charged him to look to it, to do nothing but what was legal, and carry it with all reſpect imaginable to my Lord Mayor, as the Chief Magiſtrate of the City; that he ſhould by all means get an Appearance from him, if he could, and get the Coroner, who was an Officer of the City, to go with him, and carry all Things fairly and decently.

Mr. Att. Gen. Who gave theſe Directions, Sir, do you ſay?

Mr. Serjeant. Mr. *Papillon* and Mr. *Dubois*, both of them did.

Mr. *Ward.* Now, my Lord, we ſhall ſhew that we proceeded ſo far in the Action as to declare; but afterwards apprehending ourſelves to be under a miſtake, we diſcontinued our Action.

Mr. *Williams.* And the Coſts upon the diſcontinuance were received by my Lord Mayor's Attorney. Here is the Declaration as it was filed.

L. C. J. Ay; it may be there was a Declaration filed; but not regularly.

Mr. *Williams.* My Lord Mayor after appeared.

L. C. J. How doth that appear in Evidence? For the Coroner ſays he himſelf was in Cuſtody, and knows no more of the Matter afterwards.

Mr. *Williams.* I believe your Lordſhip doth remember there were many Motions made in Court about this Matter, on the one ſide and the other, and at length in Court it was compromiſed, and my Lord Mayor promiſed to give an Appearance.

L. C. J. Prove what you can; prove the Appearance enter'd, and Declaration received.

Mr. *Williams.* My Lord, I only offer this as an Evidence of an Appearance.

L. C. J. A Record, I know, is a good and fair Evidence, ſhew that if you can.

Mr. *Ward.* It is not uſual to declare till the Defendant appears.

L. C. J. A Declaration may well be upon an Appearance; but becauſe it cannot be good without an Appearance, therefore it cannot be a ſufficient Evidence of it.

Mr. *Ward.* We will prove the Coſts of the Diſcontinuance paid and accepted. Swear Mr. *Baker.* [*Which was done.*] What do you know, Sir, of any Coſts that were taxed and paid for a Diſcontinuance in this Caſe?

Mr. *Baker.* My Lord, Mr. *Aſton* told me he appeared for Sir *William Pritchard*, then Lord Mayor, and had a Declaration from the now Defendant's Attorney: So I entered up a Diſcontinuance, and paid the Coſts, and have Mr. *Aſton*'s Receipt for them.

L. C. J. He ſays well. Go on then.

Mr. *Williams.* My Lord, it is a thing that hath frequently happened, that after a Man has brought an Action againſt another, he finds he was miſtaken, and hath no Cauſe of Action, and thereupon relinquiſheth his Suit: But ſure that will not make him liable to a Suit.

L. C. J. Well, pray go on with your Evidence.

Mr. *Ward.* My Lord, we are not now offering to try the Right of Election, tho' that really was the Foundation of the Action that we brought, but we apprehended that Queſtion to be determined, and we acquieſced in it, when that Trial was over. Now, my Lord, we ſhall ſhew, that apprehending ourſelves really choſen, we did in a due Courſe of Law ſue forth our *Mandamus*, directed to the Plaintiff and the Aldermen; and there is a Return made. I pray theſe may be read.

The Mandamus *and* Return *were read.*

Mr. *Williams.* Then that which we ſhall next ſhew, is the Grounds and Reaſons why we thought this Return was falſe, and thereupon brought our Action. We ſhall ſhew, that at a Common Hall, held for the Election of Sheriffs, the Defendant was in Nomination, and had a great Number of Hands and Voices for him. Pray, call Mr. *Gilbert Nelſon*, Mr. *William Wightman*, and Mr. *Leonard Robinſon.*

[*Who all appeared, and were ſworn.*]

Mr. *Ward.* Mr. *Nelſon*, Pray were you at the Common Hall for Election of Sheriffs, in the Year 1682?

Mr. *Nelſon.* I was at the Common Hall in *June*, 1682, on *Midſummer-day.*

Mr. *Williams.* Pray, Sir, will you tell us who were then in Nomination, and how they did proceed?

Mr. *Nelſon.* There were in Nomination for Sheriffs, he that is now Sir *Dudley North*, then Mr. *North*, Mr. *Box*, Mr. *Papillon*, and Mr. *Dubois.*

Mr. *Ward.* Pray, Sir, who had the Majority of Hands?

Mr. *Nelſon.* I did ſee the Poll Books after they were caſt up.

Mr. *Williams.* But did you obſerve the holding up of the Hands?

Mr. *Nelſon.* Upon the holding up of the Hands, the Election was by the Sheriffs given to Mr. *Papillon* and Mr. *Dubois.*

Mr. *Williams.* But pray, Sir, upon your View, and in your Judgment, were there many Hands for Mr. *Papillon?*

Mr. *Nelſon.* I gueſs there were the moſt Hands for him and Mr. *Dubois.*

Mr. *Ward.* What ſay you then to the ſumming up of the Poll-Books, that you ſpoke of?

Mr. *Nelſon.* I did ſee the Books after they were caſt up.

Mr. *Ward.* Was there a great Number for Mr. *Papillon?*

Mr. *Nelſon.* Yes, there was the greateſt.

Mr. Com. Serj. What Books do you mean, Mr. *Nelſon?*

Mr. *Nelſon.* The Books in the Sheriffs Cuſtody, Sir.

Mr. Com. Serj. But did you ſee my Books?

Mr. *Nelſon.* That was upon the ſecond Poll.

Mr. *Ward.* Then which is Mr. *Wightman?*

Mr. *Wightman.* Here I am, Sir.

Mr. *Ward.* Were you preſent at this Common-Hall? Did you ſee this Election?

Mr. *Wightman.* I can ſay nothing to the Election.

Mr. *Williams.* Were you at the Common Hall on *Midſummer-day*, 1682?

Mr. *Wightman.* I cannot ſay that, Sir.

Mr. *Ward.* Then what is it you can ſay to this Matter in queſtion? Did you take any Poll?

Mr. *Wightman.* I did take the Poll in one of the Books.

Mr. *Williams.* Was there any Number for Mr. *Papillon?*

Mr. *Wightman.* There were 2400 and odd for *Papillon* and *Dubois.*

Mr. *Thompſon.* Who were in Nomination, Sir? Who were the Perſons polled for?

Mr. *Wightman.* Sir *Dudley North*, Mr. *Papillon*, Mr. *Dubois*, and Mr. *Box.*

Mr. *Ward.* What ſay you, Mr. *Robinſon?* Were you at this Common-Hall in 1682?

Mr. *Robinſon.* Yes, I was.

Mr. *Williams.* Who were named to be Sheriffs then?

Mr. *Robinſon.* Mr. *North*, now Sir *Dudley North*, Mr. *Ralph Box*, Mr. *Thomas Papillon*, and Mr. *John Dubois*, they four.

Mr. *Williams.* What Number had Mr. *Papillon* for him?

Mr. *Robinſon.* I never ſaw the Poll.

Mr. *Ward.* But upon the View in the Hall, in your Opinion, did you look upon it as a doubtful Caſe which was elected?

Mr. *Robinſon.* By the Hands, I judged the majority was much more for Mr *Papillon* and Mr. *Dubois*, than for the other two.

Mr. *Williams.* So you think in your Judgment?

Mr. *Robinſon.* Upon my Oath, that was my Opinion.

Mr. *Williams.* Well, my Lord, we muſt reſt it here, unleſs they give us further Occaſion.

Mr. Att. Gen. You ſay the majority was for *Papillon* and *Dubois:* Pray was the Election declared at that time by the Mayor and Aldermen, or was there a Poll demanded?

Mr. *Robinſon.* Mr. Attorney, Firſt the Queſtion was put for the Perſons, then the Sheriffs declared their Opinion, and a Poll was demanded, and a Poll was granted, and the Sheriffs went with the Common Serjeant up to the Court of Aldermen, and acquainted them with it; and then they all came down again, and declared that there ſhould be a Poll.

Mr. Sol. Gen. Who were Sheriffs then, pray, Sir?

Mr. *Robinſon.* Mr. Alderman *Pilkington*, and Mr. *Samuel Shute*; and in the Evening, after the Poll was cloſed, the Books were numbered up, the Sheriffs came down upon the Huſtings, and declared the Numbers; and then, as I remember, the Number declared for Mr. *Papillon* and *Dubois* was above 2000, and the Number declared for the other two, was ſome Hundreds under 2000.

Mr. *Ward.* My Lord, we leave it here.

L. C. J. Will you, that are for the Plaintiff, ſay any thing more to it?

Mr. Att. Gen. Yes, my Lord, We have more Evidence to bring in anſwer to what they have brought here. My Lord, that which they would excuſe themſelves by, is, that there was a probable Cauſe; but that will fail them, if it be but obſerved what doth appear upon their own Evidence. It is true, where a Man hath a probable right, he may ſue. But this matter here contended for, was never ſuch a right as a Man may ſue for. No Man can ever ſhew, that for the Shrievalty, an Office of Burden, an Office of Hazard, and an Office of Charge and Expence, any Man did ever ſue, ſo little ground of Reaſon had they to bring this Action for this Office. And then for their Title to the Office, that will appear but very weak. They pretend that my Lord Mayor and Aldermen could not try the right who was elected truly and rightfully, and they bring this Action to try it, and then they produce ſome of the Men that held up their Hands, and in their Opinions, Gentlemen, they ſay, the Election fell upon *Papillon* and *Dubois.* But, Gentlemen, that my Lord will tell you, is nothing at all of Title, but a Poll was demanded, and by that it muſt be decided. Then one of their Witneſſes tells you a Story of what the Sheriffs did upon the Poll: But all that is nothing too. For we tell you, and ſhall prove it, That thoſe Sheriffs did, in a riotous manner, aſſume, and take upon themſelves the Supreme Government of the City, and would have excluded my Lord Mayor from it. But all their Proceedings, and all that they call a Poll, was void, and can make no Title to any thing at all. It was a bare Diſpute of a factious Party, to ſubvert the orderly Government of the City. There was no probability of Title or Right could be gained by it. For the Chief Magiſtrate of the City, for the time being, ever did direct the Poll, and all the Proceedings upon Election of Officers. And when he did ſo in this Caſe, we ſhall prove to you there was not any conſiderable Number (that is, not twenty Men) to give any pretence of Title to this Gentleman, that thus ſued for this Office. But indeed in that moſt riotous Aſſembly one of them that ever was, they do pretend to be elected: But we ſhall ſhew that for that riotous Aſſembly they were convicted here as Rioters upon an Information, and fined to the King for it. And I could tell them of a like Caſe of an illegal Title; a Man goeth by a falſe Oath to get a Poſſeſſion of Goods, takes out a *Capias*, and with others, getting into a Houſe to arreſt the Party, he then carries away all the Goods, and upon this Poſſeſſion would ſet up a pretence of Title. But upon an Information for a Riot, he was ſeverely puniſhed for it. Mr. *Papillon*, if he had thought he had had a good Title, or Cauſe to bring this Action, he would have employed better Inſtruments to have proceeded in it. The Attorney he makes uſe of, who is it but Mr. *Goodenough?* One who did not live within the City, nor had any thing to do in it, till brought into Office as the great Inſtrument of Mr. *Bethel* in his Actions, and a great Plotter in the late horrid and dreadful Conſpiracy. And this Cauſe, how is it managed? Not by any Counſel of worthy Men of the Robe, or grave Citizens, but by a Cabal of thirty or forty Rioters, moſt of them in the Proclamation proſcribed as Traitors, and run away from Juſtice upon the Diſcovery of the Plot. All this ſpeaks Malice, and the worſt of Malice, the thing itſelf ſpeaks it, to pretend a Title with ſo little or no ground. For you plainly obſerve, there is no Title but this riotous Aſſembly to ground their pretences upon. In the Proſecution of this Action there was no Order, whatſoever they pretend, for to take an Appearance, I mean by thoſe that really were at the bottom of the Deſign. For the forty Men at the Conſult at *Ruſſel*'s did not meet, to be ſure, to give Order for an Appearance. No, they had other Work to do. An Appearance would not do their Work: For, as Mr. *Keeling* at large could explain it, they took all Opportunities to riſe and make a Mutiny, and take Advantage of the *Mobile* and Diſturbances to bring about their main Plot. They did not care five-pence for the Appearance: But when the Soldiers were up, then the Plot was ſpoiled, and then my Lord Mayor may go home, if he will. Gentlemen, we ſhall prove what I have opened to you, tho' I am perſuaded not one of you but know it as well as I.

Mr. Sol. Gen. Shew the Records of the Conviction of the Riot.

L. C. J. Hold, Mr. *Solicitor*, I tell you before hand, that as I ſtopped them from urging the Trial for the Riot as any Determination of the Right of Election, or as any ways tending to the Queſtion now before us; ſo I muſt not let you neither enter into that matter. The Buſineſs of the Indictment, Conviction, and Sentence upon the Rioters, makes nothing, either to the Right of Election, or this Right of Action. And therefore, and I ſaid to Mr *Ward*, it was nothing to the Purpoſe to mention it on that ſide: So it is to no Purpoſe, I muſt tell you, to mention it on the other ſide. For it was no Determination of the Point of Right one way or other. And he could not give it in Evidence, that that was a *Litigation* of the Matter in Diſpute, and upon the Deciſion of that Indictment (till which he apprehended he had a Right) he found it was againſt him, and ſo deſiſted. No, the Right, I ſay, was not at all affected by that Trial, one way or other. For admitting they had a Right, or you had a Right, yet the gaining your Right muſt not be attempted in a wrongful manner, but they had a lawful Way to come by their Right, and if they purſued that, well and good; if not, then they muſt take what comes of it.

Mr. Att. Gen. My Lord, that right was inſiſted on by them as the probable ground of their Action; and that, we ſay, was no Right.

L C. J. Therefore it is to no Purpoſe to urge it.

Mr. Sol. Gen. But, my Lord, with Submiſſion, our Anſwer to their Title is, That there was no Colour of Pretence; and this Conviction proves it.

L. C. J. No, *Mr. Solicitor*, that is not any Evidence one way or other.

Mr. Sol. Gen. If your Lordſhip pleaſe, it deſtroys their very Title, which is the Number of the Poll.

L. C. J. Lord! the thing is as plain, Gentlemen, as any thing can be. You or they may have a good Title, and yet do a thing that is unlawful to bring the Title into Poſſeſſion. But then the puniſhing you for that unlawful Act is not an Evidence, either againſt or for the Title, nor doth determine it for you, or againſt you.

Mr. Sol. Gen. My Lord, we ſubmit to your Lordſhip's Directions in it. But then this we ſay to it, the Queſtion now is reduced to this Point: Whether there were any probable Cauſe for the Defendant's Suit againſt the Plaintiff? They have inſiſted upon it that there was, from two grounds. They call Witneſſes, who declare they were of Opinion, that the Defendant had the Right of Election by the holding up of the Hands. That is one of the probable Cauſes of their Suit. Now that is clearly gone by this ſingle Point, whether the Election was determined upon that holding up of the Hands, or they went to a Poll to decide it? If they went to a Poll, then it is clear the Right of Election was not determined; and he could have no Right to be Sheriff upon the holding up of the Hands. Then they went a little further, and offered in Evidence the Sheriffs Poll books, or the Numbers taken out of them, wherein they ſay, the Majority was for Mr. *Papillon*, and ſo thereupon, ſay they, we brought our Action. Now, to that Objection it is proper for us, with Submiſſion, my Lord, to anſwer it, that that can be no manner of Cauſe of Action in the World; becauſe, ſay we, that was no Part of the Election at all, nor was it at all to govern the Queſtion of Right one way nor other, 'twas a Number of Names taken out of the regular Courſe upon Elections by Perſons that had no legal Authority; nor was it ſuch a Method, as was a Foundation to ground any Opinion upon one way or other, much leſs, ſuch a one, as would be a Cauſe of Action. Theſe are all the grounds they went upon. The firſt, by their own ſhewing, was no ground at all; for there was no Determination of the Right upon the View, but a Poll was agreed upon: The other, we ſhall call Witneſſes to prove was irregular, and ſo not legal. Swear Mr. Town-Clerk.

[*Which was done.*]

Mr. Att. Gen. Pray, Sir, will you give my Lord and the Jury an account who is to govern the Poll upon the Election of Sheriffs, or other Officers, at the Common-Hall?

Mr. Town-Clerk. My Lord, I never knew a Poll about Sheriffs till about five or ſix Years ago; and that was the firſt Poll that ever I knew, and it was between Mr. *Jenks* and Sir *Simon Lewis*, and indeed it was the firſt that ever I did read of in any time within the City of *London.* I think, I have ſeen the Entry of all the Elections of Sheriffs, that are extant in our Books in all times; and I think, I did never ſee in any of thoſe Entries one Poll that was ever taken for Sheriffs; it is only mentioned, Such an one elected by the Mayor, by Prerogative, and ſuch an one by the Commonalty. Among other Books of the City's, there is an old Book, that is called by the Name of *Liber Albus*, which, ſpeaking of the Conſtitution of the Common-Hall for Election of Sheriffs, ſays, *Firſt of all the Mayor ſhall chooſe one of the Sheriffs for* London *and* Middleſex, *for whom he will anſwer; and then the Commonalty ſhall chooſe another to join with him, for whom they will anſwer. And if there ariſe any Difference between them, who is elected, or not elected, it ſhall be determined in the ſame manner as it is in Common-Council.* This is all the Notice, that I find in any of the City-Books, that looks like a deciding the Election, when diſputed, by a Poll. Now in another Chapter of that Book, where the Common-Council is mentioned, it is ſaid, *If there be any Diviſion of Opinions in the Common-Council, the Common-Serjeant and the Town-Clerk ſhall examine every Man ſeverally, what their Opinion is, which is by way of Poll at this Day when we had a Common-Council.* But till that time that the Poll was between Mr. *Jenks* and Sir *Simon Lewis*, I never knew any Poll for Sheriffs, and that Poll was taken immediately by telling one and the other. For my Lord Mayor and Aldermen, as ſoon as ever they come upon the Huſtings, make Proclamation to have the Liveries attend for ſuch Elections, and then withdraw, and leave the Sheriffs and the Common Serjeant.

Mr. Att. Gen. Sir, the Courſe is very well known, I ſuppoſe, to the Gentlemen of the Jury. But pray, did any Perſons poll at my Lord Mayor's Books for *Dubois* and *Papillon?*

Mr. Town-Clerk. Not that I know. As to this Poll, my Lord Mayor cauſed the Common-Hall to be adjourned to ſuch a Time, and after that ſent for the Common-Serjeant, and myſelf, and required us to go get Books, to take the Poll for Mr. *Box*, Mr. *Papillon*, and Mr. *Dubois*; as for Sir *Dudley North*, he was not to be polled for, he being choſen before, by the Prerogative of the Lord Mayor, and my Lord Mayor and Aldermen declared him fully elected; and upon that he was called out by publick Proclamation upon the Huſtings, to come and take the Office upon him, as is uſual in ſuch Caſes. But we had Directions to provide Books to take the Poll for Mr. *Box*, Mr. *Papillon*, and Mr. *Dubois*; and we did ſo, and took the Poll for theſe three Gentlemen, and upon cloſing of the Poll, we all of us ſealed up our Books, and delivered them to my Lord Mayor, and at a Common-Hall afterwards he did declare Mr. *Box* to be choſen the other Sheriff, to be joined with Sir *Dudley North:* The Poll was, as it always ought to be, by the Direction of my Lord Mayor, and the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's Direction.

L. C. J. What ſay you to it, Gentlemen? Have you any more Evidence?

Mr. Serj. *Maynard.* My Lord, and Gentlemen, Here has been much ſaid in this Cauſe that is nothing to the Purpoſe. As particularly, that which the Plaintiff's Counſel did laſt inſiſt upon, who took the Poll, and who had right to take the Poll or not, is not any thing to this Queſtion: This Action is not at all concerned in that matter. For whatſoever the Diſpute was, and whichſoever had the right, and becauſe it was a Diſpute, ſome it may be, could not poll at the one, and others would not poll at the other, yet the lifting up of two Thouſand Hands might make him think that he was choſen Sheriff; and there lies the Cauſe of his Action, his Apprehenſion of a Right: Your Lordſhip did object this to us, Whoever before brought ſuch an Action as ours, and did ſue to be Sheriff of *London*, a Place of Charge and Trouble?———

L. C. J. No, I did not make it as any Objection. I aſked your Witneſs, *Corniſh*, that Queſtion indeed, for ſome Reaſons that I know.

Mr. Serj. *Maynard.* That may be objected indeed to the Prudence of my Client, Mr. *Papillon*, to deſire ſuch an Office: But that proves nothing of Malice in him againſt the Plaintiff; for if he were never ſo unwiſe as to deſire it, if he had a Right to it, or thought he had, it is not a malicious thing in the Eye of the Law, for him to take his legal Courſe for it. And then the Objection that is made of the Inſtruments that were uſed: Our Attorney *Goodenough* is in a Plot: What is that to us? There is not the leaſt Suſpicion upon us. He is a bad man: But that doth not make all his Clients bad. But the Queſtion now before you is, Firſt, Whether there were any probability of a Cauſe of Action? Secondly, If there were not a probable Cauſe; yet whether that Action was grounded upon Malice? What Malice, I pray, is there in this againſt my Lord Mayor, to deſire an Appearance of him, when it is conceived, though upon miſtake, that there is Cauſe of Action againſt him? We did not preſs him to give us Bail to our Action, or threaten elſe to arreſt him: No, it was a decent rather than an irreverent Application to him. If, then, there be not both concurring, want of Title, or probable Cauſe, and Malice too, this Action of the Plaintiff's is without ground. No man, that has any Senſe, if he knows he has a clear Title againſt him, will bring an Action; but though it ſhould be clear againſt him, yet if he do bring an Action, but not vexatiouſly and maliciouſly, that cannot ſubject him to an Action; that would frighten men from bringing Actions upon doubtful Matters, which certainly is lawful for any Man to do. Now, what Malice is proved in the Defendant againſt the Plaintiff, the Jury here are Judges of. If we were Criminal in the Manner of our Proceedings, they might come before your Lordſhip in another way; but ſure this is not the way; and if it ſhould be actionable, and we likewiſe ſubject to be puniſhed as a Criminal, then we ſhould ſuffer twice for the ſame Fault. Now, Gentlemen, upon this Action we are not to be fined; but they, if they can, are to ſhew what Damages the Plaintiff ſuſtained by our Action; and if what we have ſaid do not ſatisfy you, that we had probable Reaſon for what we did, then you, upon your Oaths, are to give him what Damages you, in your Conſciences, think he has received by it.

Mr. *Williams.* My Lord, if your Lordſhip pleaſe, I would aſk one Queſtion of Mr. Town-Clerk, as to the Right of managing the Election. Sir, You have obſerved many Common-Halls for Elections?

Mr. *Townclerk.* Yes, Sir, I have for this twelve Years.

Mr. *Williams.* Did the Common-Hall ever go to a Poll upon an Election, before this time, that you know of?

Mr. *Townclerk.* Never but once for the Election of Sheriffs, I ſay.

Mr. *Williams.* I ſpeak, Sir, of any ſort of Poll; for I ſuppoſe you do not call the holding up of hands a Poll.

Mr. *Townclerk.* Mr. *Jenks*'s Poll was the firſt that ever I knew for Sheriffs.

Mr. *Williams.* Well, Sir, was that managed by the Sheriffs, or by my Lord Mayor, or by you, and the Common Serjeant; or who was it by?

Mr. *Townclerk.* Sir, The Mayor and Aldermen withdraw, and leave the Sheriffs to view the Election by the Hands; and the Common Serjeant propounds the Queſtion, *So many of you as will have*, &c.———

Mr. *Williams.* By whoſe Direction doth he propound the Queſtion, pray?

Mr. *Townclerk.* By the Direction of the Common-Hall, I take it.

Mr. *Williams.* But if a Queſtion do ariſe upon an Election, ſo that it cannot be decided by the view, but they go to a Poll, who is to manage that Poll?

Mr *Townclerk.* The Officers of the City, by Direction of the Lord Mayor.

Mr. *Williams.* That Poll you ſpeak of, for *Lewis* and *Jenks*, was that managed by any body but by the Sheriffs?

Mr. *Townclerk.* It was managed by the Sheriffs and the Common Serjeant, in the accuſtomed manner.

Mr. *Williams.* How! in the accuſtomed manner, when you ſay that was the firſt that ever you knew?

Mr. *Townclerk.* It was ſo for Sheriffs; but there have been Polls for other Officers.

L. C. J. Why, Mr. *Williams*, every body knows that well enough, that the Sheriffs are concerned in the management of the Election, or the Poll, as all the reſt of the Officers of the City are, under my Lord Mayor; and the Common Serjeant conſults with the Sheriffs Officers and People about him, upon the view.

Mr. *Williams.* Pray, Sir, do you remember the Election of Mr. *Bethel* and Mr. *Corniſh*?

Mr. *Townclerk.* Yes, Sir, there was a Poll there too, that was the Year after.

Mr. *Williams.* Who managed that Poll?

Mr. *Townclerk.* The Sheriffs, and the Common Serjeant, and I, did agree to take it thus in two Books, whereof one was with the one Sheriff, and the other with the other Sheriff, at the two ends of the Hall.

Mr. *Williams.* That was taken in Writing, Sir, was it not?

Mr. *Townclerk.* Yes, Sir, that other of *Jenks* was only by telling.

Mr. *Williams.* Were you concerned in taking that Poll?

Mr. *Townclerk.* I did aſſiſt at it one Day.

Mr. *Williams.* Who ordered you to take the Poll that Day?

Mr. *Townclerk.* Truly, I did concern myſelf as little as I could in thoſe things: What Report was made to the Court of Aldermen, I cannot tell; but one Day, coming into the Hall, I had no mind to concern myſelf in it; but ſome Gentlemen did pray me to go up to the Poll; and I did go up.

Mr. *Williams.* Sir, upon your Oath, Did the Sheriffs direct you to take it?—Mr. *Townclerk.* I really think they did not.

Mr. *Williams.* Did my Lord Mayor direct you?

Mr. *Townclerk.* No, Sir.

Mr. *Williams.* Did the Sheriffs manage it?

Mr. Common Serj. I did it by Sir Robert *Clayton*'s Order, who was then Lord Mayor.

Mr. *Williams.* My Lord, all that we ſay to it is this, We are not now proving our Right upon which we brought our Action; that we ſubmit unto, it is againſt us, we muſt agree it: But be the Right one way, or other; yet we might, from a ſuppoſed Right, have a probable Cauſe of Action. It ſeems to be a doubtful Buſineſs, by all that Mr Townclerk has ſaid, who has the Right; for all he knows of the Conſtitution is from *Liber Albus*, and that is ſomewhat dark. You, Gentlemen, hear what is ſaid; the Thing was a Queſtion of five or ſix Days, and a puzzling one it ſeems; and therefore we might be miſled into an Apprehenſion, that what the Sheriffs did was right, and ſo not at all concern ourſelves with what my Lord Mayor did———

L. C. J. Mr. *Williams*, you talk of that you do not underſtand; for my Lord Mayor was not there at that time of *Jenks*'s Poll: I was Common Serjeant myſelf, and I know the Sheriffs have nothing to do with it.

Mr. *Williams.* It ſhould ſeem by Mr. Townclerk to be doubtful, ſometimes one, and ſometimes another did direct the taking of the Poll.

L. C. J. But you are out ſtill. But for all that, this is nothing to your Right of Action, one way or other.

Mr. *Williams.* My Lord, I muſt lay it here, it was a doubtful Thing, and we brought our Action to try the Right; but afterwards conceiving we were out, and had no Right, we diſcontinued and deſiſted.

L. C. J. It was ſo far from being their Right, that I deſire you to call me any one Witneſs, that can ſay, before *Jenks*'s time, there was ever a Poll for Sheriffs, or ſuch a Thing thought of.

Mr. *Williams.* We were under an Apprehenſion of a Right in them.

L. C. J. There could be no Colour for any ſuch Apprehenſion in the World.

Mr. *Williams.* We muſt ſubmit to your Lordſhip's Directions.

Mr. Att. Gen. So do we.

Mr. Serj. *Maynard.* Whether this Action brought by us, was malicious?

Mr. *Ward.* My Lord, Mr. Attorney doth challenge the Defendant to ſhew that his Action was brought by advice of Counſel; we ſhall ſhew it was with good Authority of Counſel. Mr. *Baker*, can you tell whether it was by any Advice, and whoſe?

Mr. *Baker.* It was by the Advice of Mr. *Thompſon*, Mr. *Pollexfen*, and Mr. *Wallop*, as I have heard.

Mr. Att. Gen. But you hear what *Keeling* ſays, there was a Party, that were at a Conſult about it, and that were concerned in it.

Mr. Sol. Gen. My Lord, we have done on both Sides, I think, and ſubmit to your Lordſhip's Direction in it.

L. C. J. Will any of you ſay any thing more?

Mr. *Williams.* No, my Lord, we have done, we leave it upon this Evidence to your Lordſhip and the Jury.

Mr. Att. Gen. My Lord, we have no more to ſay for the Plaintiff.

L. C. J. Then, Gentlemen of the Jury, as my Brother *Maynard* ſaid in the Beginning of his Defence in this Cauſe; ſo I ſay now to you, to ſet all Things ſtraight and right: God forbid, that any heat, or tranſport of the Times, ſhould bring us into that Condition, but that every Subject of the King's, that hath a right of bringing an Action at Law againſt another, ſhould have free Liberty ſo to do. And the Courts of Juſtice are now, and, I hope, always will be ſo open, that every one that would take a Remedy preſcribed by the Law for a Wrong done him, may be received to bring his Action, which is a legal Remedy.

And I am to tell you, Gentlemen, that much has been ſaid in this Caſe (which I perceive is by the Concourſe of People a Cauſe of great Expectation, as my Brother likewiſe ſaid) which is not at all to the Caſe. I am ſorry truly at this time of Day, that we ſhould ſtand in need of ſuch Cauſes as theſe, to ſettle and keep People in their due Bounds and Limits. But though many Things have been ſaid in the Caſe, that are quite beſides the natural Queſtion; yet they having been made Dependencies upon that Queſtion, and becauſe it ſeems to be a Caſe of ſuch Expectation, I think it will become me, in the Place wherein I am, to ſay ſomething to you, and, according to the beſt of my Underſtanding, tell you what I apprehend to be the legal Part of it, ſtripped of what hath no Relation at all to it. And if I ſhall omit any thing that is material on the one Side or the other, here are Gentlemen that are learned in the Law, who are of Counſel both for the Plaintiff and the Defendant; and I ſhall not think myſelf under any ſort of Prejudice in the World, if they take the liberty, as they may freely do, to interrupt me, and remind me of what I forget, or wherein I may miſtake.

For, Gentlemen, I aſſure you, for my own part, I would not have the Law made ſubſervient to any Purpoſe but the exact Rule of Juſtice. I would, to the beſt of my Underſtanding, in all Caſes *ſervare jus illæſum*, preſerve the Law and the Right of every man inviolable. I would have the Law of the Land to be the Meaſure of my own and all other men's Actions. And I hope no man can juſtly (I am ſure I do not know they can) complain of any Breach or Invaſion that is made in the Courts of Juſtice, either upon Law or Right. But all thoſe that have the Adminiſtration of Juſtice committed to them by the Government, do behave themſelves with all Equity and Impartiality towards all the King's Subjects; and the Law has as full and free a Courſe, and Juſtice doth every where take place as much as can be deſired by any honeſt and good Man.

Gentlemen, In this Caſe, that you now are to try, I muſt firſt of all tell you, that this Buſineſs of the Right of Election, one way and the other, hath been too much inſiſted on on both ſides. And I ſpeak it, becauſe tho' I myſelf in my own mind know what of it is true, and what not; yet I conceive it not ſo proper to be mentioned in this Caſe, it being no legal Evidence to the Point in queſtion. Now it is a Duty incumbent upon you to obſerve, and upon the Court to ſuffer nothing to be urged ſo as to have any Weight with you, but what is legal Evidence. That you are only to mind, Gentlemen. So that if I mention to you any Point of Fact, that hath not been given in Evidence, as having a true Relation to this Iſſue, you are not to mind what I ſay to you about it. On the other ſide, I muſt likewiſe acquaint you, if there be any Difficulty in Point of Law in the Caſe; you are to obſerve the Directions of the Court, who will be always ready to aſſiſt and direct you in it. Or the Gentlemen, that are of Counſel on the one ſide, or the other, may have the Matter found ſpecially, if they think there is Fact enough to be found to ground a Queſtion upon.

Therefore, Gentlemen, for the Cuſtoms of the City of *London*, as to the manner of Elections, or who hath the Right to manage them, they are not at all material to this Buſineſs; and if they were, there is never a one of you, but know it as well as we, or any body doth. I my ſelf had the Honour to ſerve the City of *London* in the Places of Common-Serjeant and Recorder ſeveral Years: So long ago, that not above one or two, that ſit upon the Bench in the Court of Aldermen, have been longer converſant in *Guild-hall*, or know the Cuſtoms of *London* in thoſe Matters better than I do.

It is notoriouſly known to all that have had any Dealing in *London*, or been acquainted with any thing there, that till within theſe ſix or ſeven Years laſt paſt, the Lord Mayor and Court of Aldermen, and the Common-Hall uſed to go a-birding for Sheriffs (you very well know what the Phraſe means), and perhaps it was not once in ten times, that thoſe that were choſen Sheriffs, held; but generally every Year, there were I know not how many Elections upon fining off, or ſwearing, or ſome Reaſon or other; ſo that now and then there was but one Sheriff choſen for a great while together; and now and then never a one from *Midſummer-day* till near *Michaelmas.* And the way was to conſider, ſuch a one hath moſt Money in his Pocket; Oh, then put him up for Sheriff: And then, if he went off, then another would be found out. And there was one old Deputy *Savage*, that uſed to keep a black Book, that would furniſh Names for I know not how many Elections. And who ſhould be Sheriff, ſo as to divide into Parties, and Poll, was never a Queſtion before ſuch time as Mr. *Jenks*, that they ſpeak of, came to be put up, and there the Diſpute began; then the Faction began to appear.

Now, if any Man offers to tell me, I apprehended always it was the Sheriffs Right to manage the Poll; I would aſk him how that can be a Right that never was done before? Let them ſhew me any one Inſtance of a Poll for Sheriffs before that time. No, it was notoriouſly known when the Polls began, Perſons did not think the Shrievalty ſuch an Office, that it was ſo earneſtly to be coveted and deſired. Polls, indeed, uſed to be heretofore for the Bridgemaſters Places, that are Places of Profit and Advantage; and ſo for Aleconners, and the like, thoſe have been often in your Time and mine, Gentlemen, we may very well remember them. But this Office of Sheriff, People were not heretofore ſo ambitious of, as to poll for it; but the City was glad if they could get any worthy and fit Perſon to accept of it.

And for the Management of the Election, we all can tell the manner of it, as well as any thing in the World. After my Lord Mayor and the Court of Aldermen were gone off the Huſtings, and retired to this Place, the Common-Serjeant ſtaying there with the Sheriffs, uſed to make a Speech to the Common-Hall, a Rehearſal of what had been before ſaid by the Recorder; and then received the Nomination of ſuch Perſons as were to be put to the Queſtion for Election from the Common Hall. And upon the putting of the Queſtion, every Man held up his Hand for thoſe that he deſired ſhould be choſen; and if it could be decided by View of the Hands, well and good; and the Common-Serjeant, conſulting with the Sheriffs and thoſe about him, declared their Opinion, that the Election fell ſo and ſo, on the one ſide or on the other; but if doubtful, or a Poll demanded by any one, then they uſed to acquaint my Lord Mayor what was done in the Common Hall; and thereupon they gave Order for declaring the Election, or granting the Poll, and uſed to come down to the Huſtings for that Purpoſe; and no one ever thought that either the Common-Serjeant or the Sheriffs, or any body elſe, but my Lord Mayor, had the Power of thoſe Courts. For the Common Hall was always ſummoned by Precept from the Lord Mayor; and when the Buſineſs was done, or was to be put off to another Day, the Common Crier by Command from the Lord Mayor makes Proclamation, *You good Men of the Livery*, &c. *may depart for this time, and give your Attendance here again ſuch a Day*, or *upon further Summons.* No body ever talked of ſummoning a Common Hall by any body but my Lord Mayor. He did it by Virtue of his Office, and he diſſolved it, or adjourned it by Virtue of his Office. All this is as notoriouſly known to all Men, that know any thing of *London*, as the Faces of you of the Jury are to the People here, or to one another. And this never came to be a Queſtion, till the Buſineſs of the Poll between Sir *Simon Lewis* and *Jenks* came about, which you have heard of. Mr. *Papillon* himſelf, when he was choſen Sheriff before, and fined for it, was choſen in this manner, and no other.

Mr. *Corniſh*, he comes and gives Evidence that the Common-Serjeant was reckoned to be the Man that managed the Choice by Command and Direction of the Sheriffs. And ſome of thoſe Gentlemen, that have been produced on the Defendant's ſide, they ſay, they have looked upon it as the Sheriffs Buſineſs. But alas-a-day, it belongs to neither of them, they are but Officers to the Lord Mayor. The Common-Serjeant's Buſineſs is but to put the Queſtion into the Mouth of the Common Crier. In ſo much, that when I myſelf was Common-Serjeant, as I uſed to paſs by the Shops in *London*, they uſed to cry, There goes *So many of you as would have.* It was as plain a Road of things, that every body knew it before theſe things untowardly have come to be imbrangled by our Factions and Diviſions, and the heat of ſome buſy Fellows. Here are a great many ancient Citizens, that I ſee, that know, and ſo you do all, Gentlemen, that this is true. So that all the Diſcourſe of this Matter is but Flouriſh and Garniture, and doth not affect this Caſe at all, one way or other.

Another thing, Gentlemen, hath been mightily talked of, and urged, and inſiſted upon both by Plaintiff and Defendant; and that is, the Defendant's Right, or not Right of Election to the Office of Sheriff, and that the Majority was on his ſide, ſay his Counſel: On the other ſide, ſay the Plaintiff's Counſel. And for the ſettling that Right, he brought his Action againſt the Plaintiff; but it being determined upon the Conviction for the Riot, There is no ſuch thing, Gentlemen, as that it was therein determined: That cannot be a Determination of any Right at all. For tho' I may have a Right to an Office, or any ſuch thing; yet I muſt purſue a legal Method to attain to that Right, and not go irregular Ways to work.

As if I have a Right to come into your Houſe, becauſe you have not paid me your Rent (to make my thoughts and meaning intelligible to you by a familiar Inſtance, which will ſhew what I intend) I muſt not make a Riot, and turn you by Violence out of Poſſeſſion. For I have a legal Courſe to come by my Right, to wit, by bringing an Action, and evicting you. But if any Man attempt to get a Right in an unjuſt Manner, and he be puniſhed for it by an Indictment or Information, that, I ſay, doth not determine the Queſtion of Right, one way or other.

To come then to the Iſſue, that here you are to try, The Point of this Action before us reſolves itſelf into a narrow Compaſs, and is only this in ſhort, which you are to enquire of, Whether or no the Plaintiff was arreſted by the Defendant without probable Cauſe, and maliciouſly?

Now Matters of Malice are things that remain in a Man's Heart; and it is impoſſible for me to diſcover, whether another Man hath a Malice againſt me, if I do not ſee it in his Actions. Malice being a thing that is internal, is not elſe diſcernible.

Therefore you muſt conſider the Circumſtances that do attend this Action of the Defendant, and if ſo be they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumſtances, that can prove, or convince you, that he had any Probability of a Cauſe of Action, and that not attended with a malicious Proſecution of that probable Cauſe, then the Iſſue is with the Defendant.

This is the right Queſtion, and the Law of this Action; and the Fact to make it out one way or other is now in Judgment before you, upon the Evidence that hath been given on both ſides.

Now, in point of Law, I am to tell you, and that you muſt obſerve, That tho' I have a probable conjectural Cauſe of Action againſt another Man; yet if, to obtain my End in that, I proſecute him maliciouſly, with a Deſign to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick, or put a Hardſhip or Difficulty upon him (I mean Hardſhip and Difficulty in point of Time), when it is probable the Remedy may be had at another time, and the ſame thing done with leſs injury and leſs trouble; then an Action will lie againſt me, for bringing my Action in ſuch a manner; tho' it be true, that I had a conjectural Cauſe of Action againſt him.

As in the Caſe that was here in this Court the other Day, of Mr. *Swinnock* againſt the Serjeant, that came to him, and told him in his Ear, that he had an Action againſt him; and this was upon the Exchange: Thereupon Mr. *Swinnock* brings his Action for this, againſt this Man, for whiſpering this in his Ear: If he had proved any malicious Intention to diſgrace him, no doubt the Action would have lien. For tho' there might be a Cauſe of Action againſt *Swinnock*, yet if that be maliciouſly purſued to get him arreſted, and held to Bail, where no Bail is required by Law; or with an Intent to diſgrace him upon the Exchange, when it might have been done elſewhere, or at another time, this irregular malicious Proceeding will bear an Action. The purſuing malicious Ways to obtain a Right, makes a Man obnoxious to the Action of the Party ſo proſecuted. I deſire to expreſs myſelf by Words, that may declare my Meaning as plainly as can be: And I hope I do ſo.

Then, Gentlemen, taking it thus as the Counſel for the Plaintiff ſay, to ſhew that the Defendant had no probable Cauſe of Action againſt the Plaintiff; they endeavour to anſwer what is alledged on the other ſide as their probable Cauſe. And therefore, that we muſt conſider firſt, what is ſaid by the Defendant.

They tell you, here was an Election for Sheriffs of *London*, at *Guildhall*, where thoſe Perſons that they have nominated, were Candidates, and put in Nomination for that Office. And upon that Nomination, as ſay thoſe three Witneſſes, we were the Perſons that had the Majority of Voices; and thereupon we apprehended ourſelves choſen, which gave us the Right of Action: So the Defendant, ſay they, ſheweth ſome Probability of a Cauſe of Action; and if he have not purſued it with Malice, but in a regular Way, the Probability of the Cauſe doth take off from the Malice, that elſe the very bringing of an Action without Cauſe, would imply in itſelf. And they ſay true, for I muſt repeat it again; if I have, *prima facie*, a probable Cauſe, and purſue it legally, no Action will lie againſt me for it.

But then, ſay they on the other ſide for the Plaintiff, That is no probable Cauſe; for you could from thoſe Tranſactions have no ſuch Apprehenſions of a Right; for that is not the Meaſure of a Right of Election, or a Rule to gueſs who is elected by: For there being no Deciſion of the Election upon the holding up of the Hands, and a Poll being demanded; whereas the uſual Method is to have, by the Lord Mayor's Order and Direction, the Poll taken by ſuch as he ſhall appoint; you went another Way to work, you go your ways, and take Books to yourſelves, and come not to the fair Determination of the Queſtion: And they bring Mr. Town-Clerk to prove. You have heard what the Evidence is, and you are Judges of it.

Now take it, that this were in the Caſe of an Office of Profit; as ſuppoſe it were a Queſtion between me and *John-a-Stiles*, for the Place of Bridgemaſter, for the Purpoſe, and a Poll is demanded, and granted; if they, that have no Authority, ſhall go after the Court is adjourned by him that has Power, and take a Number of Names in the Way of a Poll by themſelves, and upon that come and ſay, *J. S* has four and twenty hundred, and I have but ſo many, that ſure is not any probable Cauſe, nor a Right; for you have gone here out of the known and uſual method of ſuch Matters, and depend upon that which can give no Foundation of Right at all. This is the Anſwer that is given to that by the Counſel for the Plaintiff.

You may have fifty thouſand Names for you after that rate, and yet not be elected, nor have probable Cauſe of any ſuch Apprehenſion. We all remember Sir *Samuel Sterling*'s Caſe, which was upon the Denial of a Poll for a Place of Profit, that is to ſay, the Bridgemaſter's Place: But this is upon a wrong Poll.

Suppoſe there had been a Poll granted (as there was) in this Caſe, and upon that Poll thus managed, Sir *Dudley North* and Mr. *Box* had had the majority but by a very few, and there had been an Action brought in ſuch a Caſe, here was a probable Cauſe as good as in this Caſe, as it now ſtands, becauſe ſome of them might happen not to have legal Suffrages, yet the taking the Poll by Perſons of their own Heads, after the Court was adjourned, avoids all: ſo that that would have ſignified nothing. You are to conſider of this Anſwer of theirs.

Then the great thing, Gentlemen, that you are to obſerve, is this: To bring an Action alone will ſcarce amount to a Proof of Malice; therefore Malice being in this Iſſue a great Point of Fact, you muſt weigh the Evidence whether the Circumſtances do ſhew it, that there was Malice in Mr. *Papillon*. If the Circumſtances are enough to amount to a Proof of Malice, you then are to find for the Plaintiff, and you are the Judges what Damages it is fit to give him for that Injury: He has laid Ten Thouſand Pounds; but you muſt do what you, that are Judges of it, think fit in it.

Come, Gentlemen, it is beſt to be plain, and no Man needs to be thought wanting of an Apprehenſion, what is the meaning of all theſe things. It is commonly and univerſally known to all Mankind:

Firſt, That no Man ever did purſue ſuch an Action as this is, to be Sheriff, till theſe unhappy Times, wherein we are, and wherein we have loſt that Quiet and Felicity, which I pray God we may be reſtored unto. And tho' it is true, a Man may lawfully ſue for ſuch an Office, and it is no Offence, yet it looks ſomewhat extraordinary, and that a Man has a mind to do ſomething unuſual in the Place, 'tis for ſome ſtrange purpoſe or other, eſpecially when a Man has fined for the Office once before, as we all know Mr. *Papillon* did.

Again, It is notoriouſly known, That for ſeveral Years laſt paſt the Government hath been beſet: And that which is a baſer Thing than ever was thought of, or acted in the higheſt times of Villany in theſe Kingdoms (I mean thoſe of the late Rebellion), the very Methods of Juſtice have been corrupted, and all to ſerve the main Deſign of ſubverting the Government.

Gentlemen, this is ſo black a Wickedneſs, that no honeſt Man, that has any Senſe of Loyalty, Religion, or common Juſtice, but muſt tremble at the very thoughts of it. When we ſee ſuch Fellows as are obnoxious to the Government, known Diſſenters from the Eſtabliſhed Worſhip, and that never thought of conforming to the Government, or the Laws, Civil or Eccleſiaſtical, or complying with the Church, but only to capacitate them to deſtroy it; nay, when Men, that are taken notice of to be common Reproaches to the Government under which they live, ſhall get into Office to make *Ignoramus Juries*, and to enable People to commit and be guilty of all the Falſities and Baſeneſſes that Human Nature is capable of, no Man living, that has any Ingenuity or Goodneſs in him, but muſt cry out againſt it.

When Men begin to take Oaths to ſanctify Villany, and enter into Clans, and Clubs, and Cabals, to deſtroy the moſt Merciful of Kings, and to diſturb, diſtract, and overthrow the beſt of Governments, What ſhall we ſay? And all this you, all of you, Gentlemen, know to be true. Was it not more ſafe to commit Treaſon in the City, than to ſit upon a Bench of Juſtice to bring the Traitors to Judgment? Was it not more ſafe to conſpire the Death of the King and his Brother, than to give the leaſt Frown, or look of Diſpleaſure againſt one of theſe ſnivelling Saints? Did not we know that Men were ſanctified to be Jurymen, to enquire of Conſpiracies againſt the King's Life and Government, that before that time were never thought fit to be truſted with the common Diſcourſes or Society of honeſt Men?

When Men were thought fitteſt for Offices of ſuch high Truſt, according to their being thought capable of, and well-intended, to the overthrow of the Government: Do not we all know this to be as true as that the Sun ſhines at Noon-day? When Traitors at the Bars were in leſs danger of being convicted of their Treaſons, than the Judges were of their Lives?

Mr *Papillon* knows all this to be true eminently. When packed Juries were grown to that height, and though ſeven or eight Witneſſes came and ſwore poſitive downright Treaſon, the Traitor could not be by theſe Men ſo much as thought fit to be accuſed by an Indictment; to that Stupidity in Villany were things brought by theſe Fellows: Nay, ſo far were the Proceedings in Courts of Juſtice tainted, that in no common Action whatſoever, that came here to be tried, but cropped Hair, and a demure Look, were the beſt Signs of a good Evidence, and the Buſineſs of an Oath ſignified nothing, provided the Party were to be propped up, and the Faction to receive an Advantage by it.

For God's ſake, Gentlemen, let any Man but ſeriouſly conſider and believe that there is a God in Heaven, and a dreadful Day of Judgment, when every one of us muſt anſwer for every Thought of our Hearts, every Word of our Mouths, and every Action of our Lives; and then tell me, what horrid Impieties theſe are; ſuch as any ordinary ingenuous Perſon would bluſh and tremble at.

And I would have Mr. *Corniſh* to conſider, whether ever, till that time of famous, or rather infamous Memory, that he and his Fellow-Sheriff Mr. *Bethel* came into that Office, there were ever in *London* ſuch Things as Tavern-Returns of Juries, or Clans and Cabals how to pack Fellows together for ſuch wicked Purpoſes as theſe?

Do not moſt of you here know this? And doth not every one of your Hearts and Conſciences agree with me in it? How far unlike the Proceedings of thoſe Times, in reference to Juries, were from what they anciently were? I have had the Honour to practiſe in this Place among you in my Profeſſion, when without any diſturbance, or mixture of Faction and Sedition, we were all quiet, and every one knew his Duty, and Juſtice was done in this Place ſo regularly, that it was grown to a common Proverb: if there were any Cauſe of any Difficulty, they would uſe to ſay to one another, *Come, we will be ſo fair with you as to try it by a* London *Jury*. So far was it then from being thought, that in the City of *London* Juſtice ſhould be corrupted, that the Ordinary Juries of *London* were thought the beſt Judges, and moſt impartial of any in the Kingdom. I appeal to all the Practiſers of thoſe Times that hear me, if what I ſay be not true.

But when once they had begun to pick and cull the Men that ſhould be returned for a Purpoſe, and got this *Factious Fellow* out of one Corner, and that *pragmatical, pricked-ear'd, ſnivelling, whining Raſcal* out of another Corner, to prop up the Cauſe, and ſerve a Turn, then truly People's Cauſes were tried according to the Demureneſs of the Looks on the one Side or the other, not the Juſtice of the Cauſe.

Gentlemen, I take myſelf bound to tell you of theſe Things, and I wiſh I had no reaſon for it; and eſpecially in this Caſe I ſhould not do it, it being a private Action between Man and Man, were it not for the Ingredients that are in the Caſe, and that any Man, that has any Senſe, may perceive.

Now, then, for this Caſe before you, Gentlemen, I deſire, if poſſible, to be ſatisfied in one Thing or two: My *Lord Mayor* of London, it is true, is not, nor no Perſon whatſoever, be he of never ſo great Quality, is exempt from the Law: If he owe any Man any thing, he is bound to anſwer it to him, as much as any the meaneſt Citizen of *London*, or pooreſt Subject the King has. But is he to be arreſted juſt at ſuch a Time, becauſe he is Chief Governor of the City, and the Action will ſound the greater? And the Court of Aldermen, are they to be arreſted, becauſe they are his Miniſters, and neceſſary ſubſervient Aſſiſtants to him in his Government, in ſuch a Time as this was, when the Government, both in the City and elſewhere, was ſurrounded with Difficulties, and in great Danger on all Sides? What occaſion was there for ſuch haſte and ſpeed in this Action to be done juſt then? Would Mr. *Papillon* and Mr. *Dubois* have ſtarved, if this Action had been ſuſpended for a while? Sir *William Pritchard* would have been as anſwerable to this, or any Man's Action, when the Year of his Office had been out: But it carrieth Vengeance and Malice in the very face of it; it ſpeaks, that therefore they would do it, becauſe he was then *Lord Mayor*, the chief Perſon in the City for the Time, and thereby they ſhould affront the Government, in arreſting and impriſoning the King's Lieutenant, in one of the higheſt Places both of Truſt and Honour. And this would be ſure to make a great noiſe, and the Triumph of the Action would make their Party then to be uppermoſt, having got the chief Governor of the City in their own Clutches.

Nay, and becauſe they would be ſure their Malice and Revenge ſhould take place, they take the very *Scoundrels* of the Party to be employed in this great Work. For before that time, the Coroner (as he tells you himſelf) uſed to make his Warrants to the Officers that uſually are verſed in that Buſineſs; but here he muſt have the Direction of the Attorney, and who is that but *Goodenough*, a Man we have all heard enough of; and then *Burleigh* and *Keeling* muſt be employed, and by whoſe Advice, but by *Goodenough*'s and *Nelthorp*'s? And all theſe Raſcals, who now ſtand attainted of Treaſon, muſt be fetched in to conſult about a fit Man to make an Arreſt: And there they pitch upon this Man *Keeling* for one, who was one of the principal Conſpirators in that damnable, helliſh Plot againſt the King's Life, and that of his Royal Brother; but, by the Bleſſing and Providence of Almighty God, was made uſe of as a great Inſtrument of preſerving thoſe precious Lives, and with them our Government and Religion, and all that is dear to us, which by that Conſpiracy was undermined, and I wiſh we had not Reaſon to ſay, and think, the Conſpiracy ſtill to be going on. But I hope in God the Government, as eſtabliſhed both in Church and State, will always be able to prevail, maugre all Deſigns, and thoſe that are engaged in them, for its Deſtruction.

Now *Keeling* tells you he ſcrupled the Employment: No, ſaid he, I deſired not to have my Name put in, becauſe I was never concerned in any ſuch Thing before, and my Buſineſs was of another Sort. But then Mr. *Goodenough* (and Mr. *Brome* the Coroner no doubt had a Hand in it, though now he has a very treacherous Memory, and has forgot all that was done) comes and tells him, You muſt concern yourſelf, and do this thing; for you have a Trade with the Party, and it will be ill taken if you do not do it. And being aſked, whom he meant by the Party? He tells you, the diſcontented Party; and he explains their Diſcontent to be ſuch, that they would have killed the King and the Duke. Now how far he was engaged with that Party is pretty well known, and therefore if he boggled at ſuch a thing as this, which that Party it ſeems was engaged in, they would ſuſpect him, and ſo, for the Party's ſake, he was drawn in.

But then, when this Thing is done, pray, Gentlemen, do but conſider what the Conſequences might have been, and which, perhaps, (nay upon what has happened to be diſcovered ſince, doubtleſs) they did deſign it. But, God be thanked, thoſe Conſequences were prevented, and they themſelves have Cauſe to be thankful to God Almighty for it. For here all the Magiſtrates of the City, that had any Care for the good Government of it, were to be taken up, and then here was a Body without a Head, a Town full of Faction without any Government, and if the heady Rabble had been once up, without thoſe that had Authority to reſtrain them, where then had been your Liberties or Properties, Gentlemen, or any Man's; nay, theirs that were engaged in this Deſign, if they had any? For thoſe were Things much talked of by them. In what Danger had you, and all you had, for Life, Eſtate, Relations, and every thing been? But it pleaſed God in his infinite Mercy to ſhower down upon us, and upon this City, and the Government, in a mighty Preſervation, putting it into the Hearts of ſome in Power, to bring the City-Militia ſome of them together, and prevent this Miſchief, or elſe, God knows, this whole City might have been by this time once more in Aſhes, and moſt of the King's Subjects wallowing in their own and one another's Blood; and their Party too would have felt the ſad Effects of it, no doubt, as well as others. So that the Conſequence of it was to deſtroy the Government, and that appears by the Party's being engaged in it; it could not be to gain a Right, to make this Hubbub and Ado to arreſt the Magiſtrates of the City, and then take Advantage for ſome other wicked Purpoſe.

Another Point of Circumſtance that is conſiderable in this Caſe, is the particular Perſons that were to be ſued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen; and there is a Return made, not by this, or that, or the other Man, but in the Name of them all, the whole Court. How comes it then to paſs, that my Lord Mayor, Sir *Henry Tulſe*, and thoſe other Gentlemen, muſt be ſued and arreſted? But I warrant you Mr. *Corniſh*, or his Party, were not to be meddled with. No, he had ſo much Zeal for Juſtice, and to do the Defendant Right, that if he ſhould have been called upon to appear, he would not have ſtood out an Arreſt; ſo juſt a Man he is, and ſuch a Lover of Right without all doubt: but he was in no danger, I dare ſay; they loved one another too well to ſue one another. That, I ſay, Gentlemen, is another Circumſtance, that carrieth Malice in it. For I muſt tell you, theſe Things cannot be ſmothered, they are as apparent as the light! And though it falls to my Turn in this Cauſe, to remind you of them; yet they are as well known to you all, as the Paſſages in your own Families.

No, Gentlemen, there was not a Purſuit of Right in the Caſe; it was a deſigned Piece of Villany on purpoſe to affront the Government; nay, to deſtroy it, and ſet us all together by the Ears. And if he were ten thouſand times Mr. *Papillon*, I would, and muſt tell him ſo; and if it were not for ſome ſuch deviliſh End and Purpoſe, he would never have been ſo greedy of an Office he had before declined and fined for; and which he was only called to by a turbulent, ſeditious, factious Party, that had further Aims in it. Otherwiſe, I know Mr. *Papillon*'s Humour ſo well, that I am confident, he would much rather have been contented to ſit in his Counting-houſe, than in *Guildhall* in a Scarlet Gown. Alack-a-day! I know Mr. *Papillon* knows how to ſpend his Time to better Advantage to himſelf.

Ay, but ſay the Counſel for the Defendant, We did go on very tenderly, and civilly, and reſpectfully; for there met at Mr. *Corniſh*'s Houſe—Who, I pray? Mr. *Papillon*, and Mr. *Dubois*, and *Goodenough*, the prime Attorney in this Cauſe: And there, forſooth, they tell *Goodenough*, Be ſure you do nothing but what is exactly according to Law; and be ſure you carry it very civilly and reſpectfully to my Lord Mayor, good Mr. *Goodenough*. Alack-a-day! how wonderful pious and conſiderate theſe People are! If Mr. *Corniſh* had gone to my Lord Mayor, as it was his Duty to do, being then an Alderman (we know it full well) and ſaid to my Lord Mayor, There were ſuch Perſons at my Houſe talking of ſuch a Matter, and I come to advertiſe you of it, and deſire you would conſider of it, he had ſhewn his Piety and Zeal, and Love for Juſtice, much more in that, than in admitting ſuch Cabals in his Houſe. But we know very well, as well as if we were in them, that they muſt go hand in hand in all theſe ſeditious and factious Buſineſſes.

It is plain, Gentlemen, what the Deſign was from the Beginning to the End; nothing but to cauſe a Tumult and Confuſion in the City, in order to put that damned helliſh Conſpiracy, for the Deſtruction of the King and his Brother, and every Man that was honeſt and loyal, in Execution. This is certainly known to you all; and that there ſhould be ſuch a Parcel of People untowardly linked together in this Matter, not one Man of which that they can pretend to be in any wiſe a Well-wiſher to the Government, or to any that have any ſhare in it: No, they are all Perſons that are obnoxious to the Government, that had any Hand in it; but none of them Church of *England*-men, or Friends to her eſtabliſhed Worſhip; notorious Diſſenters, or profligate Atheiſtical Villains that herd together.

This, Gentlemen, is plain *Engliſh*, and neceſſary to be uſed upon all theſe Occaſions: So that it remains now upon your Conſciences, whether upon all theſe Circumſtances that have been mentioned, you think the bare obtaining of a Right in a Legal Courſe, or ſome worſe Thing was deſigned.

We all know Mr. *Papillon* to be a wealthy Man, an able Merchant; one that had rather have minded his Affairs Abroad, or at the *Exchange*, than the expenſive, troubleſome Office of Sheriff of *London*, but that ſomething was to be done to wreak a damned Malice and Revenge upon the Government. And ſure, he muſt think, as his Party it ſeems did, that they would not be ſufficient to ſubvert the Government, unleſs he could get into that Office.

This I tell him openly; and let him or his Party make their Remarks upon it as they pleaſe. But you are to judge whether theſe Things be a ſufficient Evidence of Malice to ſupport the Plaintiff's Action.

There was queſtionleſs a deviliſh Malice fixed in his heart and mind, and he wanted an Opportunity to effect it; and he thought it for his own Security to be beſt to take this Courſe, and nothing elſe was in it. For abundance of People have a mind to do Miſchief, but want Opportunity and ſafe Ways to do it in: And, Oh! they rejoice, if they hit upon a Project, that ſhall carry a ſpecious Pretence and Colour of Law; for then they think they are ſafe enough.

As in caſe I have a mind to do any particular Man an Injury in his Reputation and Buſineſs; the Buſineſs muſt not be done downright, by going to every body, and ſaying, Such an one is Poor, or a Beggar, and do not truſt him; but I muſt cunningly and ſlily inſinuate it, I am ſorry for ſuch a Man, I believe he is an honeſt Man, but however he oweth Money; and under this Sort of Snivelling, Canting, Whining, ſly Rate, do a Man any Injury whatſoever: And yet, forſooth, he ſhall have no Advantage againſt me for it: I ſhall ſtrike a Dart into the very Heart of that Man's Credit, and yet he have no Remedy.

So, if I have a mind to talk againſt the Government, I will not do it aloud, and ſpeak what I mean openly; but I will whine, and ſnivel, and cant, and make People believe I have dreadful Apprehenſions of what is deſigning, and yet not bring myſelf in any Danger; for I will keep within Bounds all the while, though I do more Miſchief than if I dealt fairly and above-board. *Alack-a-day!* (as Mr. *Pilkington* ſaid) *I am for the Preſervation of the Liberty and Properties of the Subject, and I am for the Law; but I find the City is ſtrangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preſerve the Privileges of the City; and I will rather ſubmit to the Inconvenience of a troubleſome Office, than let all run thus:* And immediately he ſets himſelf Cock-a-hoop, as if there were no one that took care of the City beſides himſelf, and he were ſuch a Patriot, that there were none like him: And he, and Mr. *Bethel*, and Mr. *Corniſh*, forſooth, are the only Men of the times; the only good Men; Men that are for the Liberties and Properties of the Subject, and the Rights of the City: Whereas theſe are the only Men that have made an Invaſion upon them, and done what they could to deſtroy them; and God knows we might all of us have enjoyed very quietly every Man his own, if theſe conteſting Rioters, and buſy factious Fellows, had not come among us. Every honeſt Man, I tell you, knows this to be true.

Gentlemen, As to the Buſineſs concerning the Damages, that, if you find for the Plaintiff, is left to your Judgments to conſider of, and give what you ſhall think fit upon ſuch an Occaſion. It is very true, it is not ſo eaſy a matter to aſcertain particular Damages in ſuch a Caſe; nor is it in an ordinary way ſo eaſy to prove, that becauſe Sir *William Pritchard* was in Priſon but five or ſix Hours there, he could ſuffer ſo much Damage as comes to ten thouſand Pounds. As in the Caſe of a Perſon of great Quality and Honour, it is not eaſy to prove his particular Damage; nor in the Caſe of any of you, that are wealthy, able, ſufficient Citizens, to ſay you are a Bankrupt, when we all know it is impoſſible to be true; and ſo no particular Damage doth enſue that can be proved; yet, however, if the thing for which the Action is brought were deſigned with Malice, tho' the ill Deſign be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious Deſign muſt govern you.

Now, here I have taken notice to you, that the Malice of this Deſign here was not againſt Sir *William Pritchard* as ſuch a particular Man, but againſt my Lord Mayor, that this Clan that met at *Ruſſel*'s was an Overflowing of that Gall or Malice that was in his Heart.

If Mr. *Papillon* had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to ſue for a bad Debt, that if he had ſtaid would have been loſt, it had been ſomething: But you ſee what it was, and it is as apparent why it was, in that Mr. *Goodenough* ſaid to *Keeling*, threatening him with the diſpleaſure of the Party if he did not do it; and Mr. *Goodenough* and Mr. *Brome* were ſuch Strangers to one another, that he muſt threaten *Brome* to complain of him, if he did not execute his Writs preſently. Do they think all Mankind are ſo dull or blind, as not to ſee through ſuch thin artificial Stuff as this?

Gentlemen, this is the Matter: The Government is a Thing that is infinitely concerned in the Caſe, that makes it ſo popular a Cauſe: The Government of the City, the Honour of your Chief Magiſtrate, and indeed the Honour of the King, whoſe Subſtitute he was, is concerned, and that puts a Weight upon your Inquiry into the Damages of this Caſe. You are to conſider you give Damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your Severity in this Caſe will deter all People from entering into Clans and Cabals to make Diſturbances, and affront the Government.

It is a thouſand times better to keep within their own Bounds, mind their Callings and Employments, and concern themſelves with their own Affairs, and leave the Adminiſtration of the Publick to them to whom it belongs, and is intruſted with. And according as we ſay in the Law Maxim, ſo ſay I to Mr. *Papillon* and all the Party, *Ad Concilium ne accedas, antequam voceris.* And do not be ſcared with imaginary Dangers, and groundleſs Jealouſies, into tumultuous and diſorderly Courſes. You had much better keep in your Counting-Houſe, I tell you again, and mind your Merchandize. Nay, and I do not doubt but you would much rather have done ſo, if there had not been ſome further fetch in it. It was not, I dare ſay, out of a frank, generous Humour to oblige the City, that Mr. *Papillon* would have ſpent his Time and Money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the generous Mind of Mr. *Bethel*, that called him on to be Sheriff of *London*, to entitle him to ſpend his Money; but on purpoſe to be one of the firſt, that ſhould turn all things upſide down in the City, and diſturb the Government: And they that ſucceeded him, carried on the Project; and they that would have been in, but could not, had a mind, no doubt, to follow ſo worſhipful an Example as he laid before them.

Then the Jury withdrew to conſider of their Verdict, and after half an Hour's Stay, returned, and found for the Plaintiff, and aſſeſſed Damages to Ten Thouſand Pounds, and Coſts to Four Marks.

L. C. J. Gentlemen, You ſeem to be Perſons that have ſome Senſe upon you, and Conſideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.

CXXXIII. *The Trial of* Robert Baillie [*] *in* Scotland, *for* High-Treaſon, December 3, 1684.

36 Car. II.

Curia Juſticiariæ S. D. N. *Regis tenta in prætorio Burgi de* Edinburgh *vigeſimo tertio die menſis* Decembris, 1684, *per Nobilem & Potentem Comitem* Georgium *Comitem de* Linlithgow, *Dominum* Livingſtown, *&c. Juſticiarium generalem totius Regni* Scotiæ, *& honorabiles viros Dominos* Jacobum Foulis *de* Colintoun *Juſticiariæ Clericum*, Joannem Lockhart *de* Caſtle-hill, Davidem Balfour *de* Forret, Rogerum Hoge *de* Harcarſs, Alexandrum Seaton *de* Pitmedden, *&* Patricium Lyon *de* Carſs, *Commiſſionarios Juſticiariæ dicti* S. D. N. *Regis.*

Curia legitime affirmata.

Intrat

Mr. Robert Baillie *of* Jerviſwood, *Priſoner,*

INDITED and accuſed, that where notwithſtanding by the Common Law of this, and all other well-governed Nations, the Conſpiring to overturn the Government of the Monarchy, or of the Eſtabliſhed Government of this Kingdom, or the concealing, and not revealing of any Treaſonable Deſign, Project, or Diſcourſe tending thereto; or the aſſiſting, aiding, or abetting ſuch as have any ſuch Deſigns, does infer the Pains and Puniſhment of Treaſon. And by the third Act of the firſt Parliament of King *James* I. *The Rebelling openly againſt the King's Perſon*; and by the thretty-ſeventh Act of His ſecond Parliament, *The Reſetting, Maintaining, or doing Favours to open or notour Rebellers againſt the King's Majeſty, is declared Treaſon, and puniſhable by Forfaulture.* And by the hundred fourty and fourth Act of the twelfth Parliament of King *James* VI. *It is declared Treaſon to Reſet, Supply, or Intercommune with Traitors.* And by the firſt Act of the firſt Seſſion of His Majeſty's firſt Parliament, *It is declared, That it ſhall be High-Treaſon for the Subjects of this Realm, or any number of them, leſs or more, upon any ground or pretext whatſomever, to riſe, or continue in Arms, to make Peace or War, without His Majeſty's ſpecial Approbation.* And by the ſecond Act of the ſecond Seſſion of His Majeſty's ſaid firſt Parliament, *To Plot, Contrive, or Intend Death, or Deſtruction, or to put any Reſtraint upon his Majeſty's Royal Perſon, or to Deprive, Depoſe, or Suſpend him from the Exerciſe of His Royal Government, or to levy War, or take up Arms againſt his Majeſty, or any Commiſſionated by Him, or to intice any Strangers or others to Invade any of his Majeſty's Dominions, or to Write, Print, or Speak any thing that may expreſs or declare ſuch their Treaſonable Intentions, is declared Treaſon, and puniſhable as ſuch.* Likeas, by the ſecond Act of His Majeſty's third Parliament, *It is declared High-Treaſon in any of the Subjects of this Realm, by Writing, Speaking, or any other manner of way, to endeavour the Alteration, Suſpenſion, or Diverſion of the Right of Succeſſion, or debarring the next lawful Succeſſor.* Nevertheleſs, it is of verity, that the ſaid Mr. *Robert Baillie* of *Jerviſwood*, ſhaking off all Fear of God, Reſpect and Regard to His Majeſty's Authority and Laws, and having conceived moſt unjuſtly, a great and extraordinary Malice and Hatred againſt His Majeſty's Perſon and Government, and having deſigned moſt Traiterouſly to debar His Royal Highneſs, His Majeſty's only Brother, from his due Right of Succeſſion, did, amongſt many other Traiterous Acts, tending to promove that wicked Deſign, endeavour to get himſelf Elected one of the Commiſſioners for negotiating the Settlement of a Colony of this Nation in *Carolina*, in one or other of the Days of the Moneths of *January, February, March, April, or May*, One thouſand ſix hundred and eighty three Years; and that he might thereby have the freer and better Acceſs to treat with the Earls of *Shafteſbury* and *Eſſex*, the Lord *Ruſſel* and others, who had entered into a Conſpiracy in *England* againſt His Majeſty's Perſon and Government, and with Colonel *Rumſey*, *Walcot*, *Weſt*, and *Ferguſon*, and others, who had likewiſe Conſpired the Murder of his Majeſty's ſacred Perſon, and of the Perſon of His Royal Highneſs; and finding that he could not get himſelf Elected one of the ſaid Commiſſioners, he reſolved to go to *London* upon his own Expences, and declared to ſeverals (whom he took great pains to draw in to be his Accomplices) that his Deſign was to puſh foreward the People of *England*, who did nothing but talk, that they might go on effectually; and after he had ſettled a Correſpondency here, he did go up to *London* in one or other of the ſaid Moneths, with Sir *John Cockran* and Commiſſar *Monro*, and did then, and there, tranſact with the ſaid Conſpirators, or one or other of them, to get a Sum of Money to the late Earl of *Argyle*, a Declared Traitor, for bringing home of Men and Arms, for raiſing a Rebellion againſt his Majeſty, and Invading this his Native Countrey; and ſo earneſt was he in the ſaid Deſign, that he did chide thoſe *Engliſh* Conſpirators, for not ſending the ſame timeouſly, and lamented the Delayes uſed in it; and perſuaded the late Earl of *Argyle*, and others in his Name, to accept of any Sum, rather than not to engage; and amongſt the many Meetings that he had at *London*, for carrying on the ſaid Traiterous Deſign, there was one at his own Chamber, where he did meet with the Lord *Melvil*, Sir *John Cockran*, and the *Ceſſnocks* Elder and Younger, and amongſt others, with Mr. *William Veitch.* a Declared Traitor, and there he did treat of the carrying on of the ſaid Rebellion, and of the Money to be furniſhed by the *Engliſh* for *Argyle*, for buying of Arms; and that if the *Scots* would attempt any thing for their own Relief, they would get Aſſiſtance of Horſe from *England*; and from that Meeting, he or ane or other of them did ſend down Mr. *Robert Martin* to prevent any riſing, till it ſhould be ſeaſonable for carrying on of their Deſigns; which Mr. *Robert*, after he came to *Scotland*, did treat with *Polwart*, and others, for carrying on of the ſaid Rebellion, by ſecuring his Majeſty's Officers of State, his Caſtles and Forces, and by putting his Correſpondents here, and their Aſſociates, in readineſs to aſſiſt the late Earl of *Argyle*; and after the ſaid Mr. *Baillie* had engaged many of his Countreymen in *England*, and had aſſured his Correſpondents here, that the *Engliſh* were reſolved to ſeclude His *Royal Highneſs* from his due Right of Succeſſion, thereby to encourage them to concur in the ſaid Rebellion, and Excluſion, he flew to that hight, that he did particularly and cloſly correſpond with Mr. *Robert Ferguſon*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and *Walcot*, who were acceſſory to that horrid Part of the Conſpiracy, which was deſigned againſt the ſacred Life of His Majeſty, and the Life of His Royal Highneſs, and did ſit up ſeveral Nights with them, concerting that bloody Maſſacer; at leaſt the ſaid Mr. *Robert Baillie* of *Jerviſwood* was, and is guilty of having Correſpondence with the late Earl of *Argyle*, and Mr. *William Veitch*, declared Traitors, and of being art and part of an Conſpiracy, for aſſiſting of theſe, who were to riſe in Arms againſt His ſacred Majeſty, and for Excluſion of His Royal Brother, and of concealing and not revealing the Acceſſion and Propoſals of others for that effect. Wherethrow he has committed, and is guilty of the Crymes of High-Treaſon, Rebellion, and others above ſpecified, and is art and part of the ſamine, which being found by ane Aſſize, he ought to be puniſhed with Forfaulture of Life, Land, and Goods, to the Terror of others to commit the like hereafter.

His Majeſty's Advocat produced an Act and Warrand from the Lords of his Majeſty's moſt Honourable Privy Council, for purſuing and inſiſting againſt the ſaid Mr. *Robert Baillie* of *Jerviſwood*, whereof the Tenor follows. *Edinburgh*, the twenty two Day of *December*, one thouſand ſix hundred and eighty four Years: The Lords of his Majeſty's Privy Council do hereby give Order and Warrand to His Majeſty's Advocat to purſue a Proceſs of Treaſon and Forfaulture, before the Lords of his Majeſty's Juſticiary, againſt Mr. *Robert Baillie* of *Jerviſwood*, to morrow at two o'Clock in the Afternoon preceiſely, and the ſaid Lords do hereby Require and Command Sir *George Lockhart* of *Carnwath*, and Sir *John Lauder* Advocats, to concur, and aſſiſt in the ſaid Proceſs with His Majeſty's Advocat, from the intenting, until the End thereof, as they will be anſwerable upon their Allidgeance. Extract by me, *ſic ſubſcribitur*,

Colin Mackenzie, Cls. *Sti. Concilii.*

Purſuers.

Sir *George Mackenzie* of *Roſhaugh*, Our Sovereign Lord's Advocat.
Sir *George Lockhart* }
Sir *John Lauder* } Advocats.

Procurators in Defence.

Sir *Patrick Hume*,
Mr. *Walter Pringle*,
Mr. *James Graham*,
Mr. *Will. Fletcher*,
Mr. *William Baillie*,
Advocats.

The Pannals Procurators produced ane Act of His Majeſty's Privy Council, in their favours, whereof the Tenor follows. *Edinburgh*, the twenty-third of *December*, one thouſand ſix hundred eighty four Years: The Lords of his Majeſty's Privy Council having conſidered ane Addreſs made to them, by Mr. *Robert Baillie* of *Jerviſwood*, now indited at the Inſtance of his Majeſty's Advocat, before the Lords Commiſſioners of Juſticiary, of Treaſon, do hereby require and command Sir *Patrick Hume*, Mr. *Walter Pringle*, Mr. *James Graham*, Mr. *William Fletcher*, Mr. *James Falconer*, Mr. *William Baillie*, Advocats, to Conſult, Compear, and Debate for the Petitioner, in the Proceſs of Treaſon, mentioned in his Addreſs, without any hazard, as they will be anſwerable at their Peril. Extract by me, *ſic ſubſcribitur*,

William Paterſon, Cls. *Sti. Concilii.*

After reading of the Inditement, The Lord Juſtice General required the Pannal to make anſwer thereto.

The ſaid Mr. Robert Baillie, *Pannal, pleaded Not Guilty.*

Mr. *Walter Pringle* Advocat, as Procurator for the ſaid Mr. *Robert Baillie* of *Jerviſwood*, Pannal, alleadges that he ought not to paſs to the knowledge of an aſſize; becauſe he had not got a Citation upon fyfteen Days, or at leaſt on a competent time, which is uſual, and abſolutely neceſſary in all Actions, and much more in Criminal Purſuits, eſpecially, ſeeing, if a competent time be not allowed to the Pannal, he is precludit of the Benefit of an Exculpation, without which he cannot prove his Objections againſt Witneſſes, or Aſſyzers, or any other legal or competent Defences; and by the late Act of Parliament concerning the Juſtice Court, all Pannals are allowed to raiſe Precepts of Exculpation, and thereupon to cite Witneſſes for proving the Objections againſt Witneſſes, and Aſſyzers, which neceſſarily preſuppoſeth, that a competent time muſt be allowed to the Pannal to execut his Diligence, or otherwiſe, how is it poſſible he can prove a Defence of *alibi*, or any other juſt Defence? And as this is moſt conſonant to that clear Act of Parliament, and to material Juſtice, and to the Rules of Humanity; ſo this Point has been already fully and often decided, and lately in the Caſe of one *Robertſon*, in *July* 1673, the Inſtance whereof is given by His Majeſty's Advocat in his Book of Criminals, and Title of Libels, where the Lords found, that albeit *Robertſon* got his Inditement in Priſon, yet he behoved to get it upon fyfteen Days.

His Majeſty's Advocat oppons the conſtant Tract of Deciſions, whereby it is found, that a Perſon incarcerated may be tried upon twenty four Hours; and the late Act of Parliament is only in the Caſe where a Summons or Libel is to be raiſed; but here there is no Libel or Summons, but only an Inditement; nor was any Exculpation ſought in this Caſe, before the Trial, which is the Caſe provided for by Act of Parliament.

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[*] *Burn.* Hiſt. of his own Times, Vol. I. p. 585.

The Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, repel the Defence, in reſpect the Pannal is a Priſoner, and that it has been the conſtant Cuſtom of the Court, and that the Pannal made no former application for an Exculpation.

Sir *Patrick Hume* for the Pannal alleadges (always denying the Libel, and whole Members, and Qualifications thereof), that in ſo far as the Libel is founded upon harbouring, maintaining, and intercommuning with the Perſons mentioned in the Dittay, the Pannal ought to be aſſoylzied, becauſe it is *res hactenus judicata*, he having been formerly purſued before the Lords of his Majeſty's Privy Council for the ſame Crimes, and fined in a conſiderable Sum; and therefore that Crime cannot now be made uſe of as a ground of Treaſon againſt the Pannal.

His Majeſty's Advocat anſwers, That he reſtricts his Libel to the Pannal's entering in a Conſpiracy for raiſing Rebellion, and for procuring Money to be ſent to the late Earl of *Argyle*, for carrying on the ſaid Rebellion; and for concealing, and not revealing; neither of which is re ferred to his Oath; and conſequently was not *res judicata*, there being nothing referred to his Oath; but his Converſe and Correſpondence with ſome Miniſters, and others within the Kingdom, and his own Gardiner, and his writing Letters to my Lord *Argyle*; and oppons the Decreet of Council itſelf, and reſtricts the Libel to all the Crimes not inſiſted on in the Decreet.

Sir *Patrick Hume* replies, That as to the Correſponding with the late Earl of *Argyle* at any time ſince his Forfaulture, was expreſly proponed as an Interrogator to the Pannal in that Purſuit, at His Majeſty's Advocat's Inſtance againſt him, before the Lords of His Majeſty's Privy Council, and that not only his own Correſpondence by himſelf, but alſo by Major *Holms*, Mr. *Carſtares*, *Robert Weſt*, *Thomas Shepherd*, *Richard Rumbold*, and Colonel *Rumſey*, as the Interrogator bears, as appears by a double of the Act of Council, written by the Clerk of Council's Servant, and is offered to be proven by my Lord Advocat's Oath: And as to any Correſpondency with Mr. *Veitch*, it is not relevant, ſince he was not declared Rebel.

Sir *John Lauder* for His Majeſty's Intereſt, anſwers, That he oppons the Decreet of Privy Council, where no ſuch Interrogator was put to the Pannal, and the Decreet muſt make more Faith than any pretended Scroll, and cannot be taken away by His Majeſty's Advocat's Oath, to His Majeſty's Prejudice; and for Mr. *William Veitch*, he ſtands expreſly Forfault in *Anno* 1667, and the Doom of Forfaulture is ratified in the Parliament 1669.

Sir *Patrick Hume* oppons the Reply, That as to the Correſponding with Mr. *Veitch*, it does not appear that he is the Perſon mentioned in the Act of Parliament; and albeit he were, as he is not, he having thereafter come home to *Scotland*, all the Puniſhment inflicted upon him was Baniſhment, not to return under the Pain of Death, which did take off any former Puniſhment; and it was no Crime in any Perſon to intercommune with him, eſpecially in another Kingdom; and by the late Act of Council in *Anno* 1683, even the Converſing and Intercommuning with declared Traitors, is reſtricted to an Arbitrary Puniſhment.

His Majeſty's Advocat oppons the ſtanding Doom of Forfaulture againſt *Veitch*, and the Proclamation, or Act of Council itſelf.

The Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, having conſidered the Libel purſued by his Majeſty's Advocat, againſt Mr. *Robert Baillie* of *Jerviſwood*, with my Lord Advocat's Declaration, whereby he reſtricts the ſame to the Crimes not inſiſted on in the Decreet of Council formerly pronounced againſt the Pannal: They find the ſame Relevant as it is reſtricted, to infer the Pain of Treaſon, and remits the ſame to the knowledge of the Aſſize, and repels the remnant Defences proponed for the Pannal, in reſpect of the Decreet of Council produced, bearing no ſuch thing as is alledged, and of the Anſwers made by his Majeſty's Advocat thereto.

ASSISA.

The Earl of *Strathmore*,
The Earl of *Belcarras*,
Sir *George Skeen*, Provoſt of *Aberdeen*,
Sir *James Fleming*, late Provoſt of *Edinburgh*,
Sir *John Ramſay* of *Whitehill*,
Adam Hepburn of *Humby*,
Andrew Bruce of *Earleſhall*,
John Stuart, Tutor of *Alpin*,
Alexander Miln of *Carrin*,
Mr. *James Elies* of *Stenhopſmilns*,
Sir *William Drummond* of *Halthornden*,
Major *Andrew White*, Lieutenant of *Edinburgh Caſtle*,
Mr. *David Graham*, Sheriff of *Wigtoun*,
Colin Mackenzie, Collector of *Roſs*,
David Burnet, Merchant.

THE Aſſize lawfully ſworn, no Objection of the Law in the contrary.

His Majeſty's Advocat for Probation adduced the Witneſſes and Writs aforementioned; and firſt,

Walter Earl of *Tarras*.

Sir *Patrick Hume* Procurator for the Pannal, objects againſt the Earl of *Tarras*, that he cannot be a Witneſs, becauſe he is *ſocius & particeps criminis*; and it is clear by the 34 *Chap. Stat.* 2. *Rob.* 1. concerning theſe that are excluded from bearing of Teſtimony, that *Socii & Participes ejuſdem criminis, vel incarcerati & vinculati*, cannot bear Teſtimony: As alſo, the Earl of *Tarras* being preſently under an Inditement of High Treaſon, and under the Impreſſions of Fear, and Death, no Perſon in his Circumſtances can be admitted a Witneſs, as is not only clear from the foreſaid Statute, but from the Common Law.

His Majeſty's Advocat anſwers, That it is an Exception from that Rule, both by the Common Law, and ours, that in the Crime of leſe Majeſtie, and eſpecially that Branch thereof which we call a Conſpiracy, *ſocius Criminis* may be a Witneſs, and which is introduced very reaſonably by Lawyers to ſecure the Common Intereſt of Mankind, which is the Chief of all Intereſts; and becauſe Conſpiracies cannot be otherways proved, and not to allow this manner of Probation, were to allow Treaſon, ſince no Man can prove a Plot, but he that is upon it; and how can a Man object againſt him as a Witneſs, whom himſelf truſted with his Life, his Fortune, and their common Plot? Nor is the intenting of the Libel any ſtronger Qualification, ſince every Man that is *ſocius criminis*, is under the ſame Impreſſion, and it would rather ſeem the greater and nearer apprehenſions a Man has of Death, he will be the more ſincere and faithful; nor has the Earl of *Tarras*, nor did he ever ſeek any Security, in order to his deponing. And this has been conſtantly, and latlie, conform to the Common Law, as may be ſeen in the hundreds of Citations ſet down by *Maſcard, de Probationibus, Vol.* 4. *concluſ.* 1318. *Num.* 21. and the contrary Citations prove only, that regularly *ſocius criminis* cannot be a Witneſs.

Sir *Patrick Hume* replies, That the Statutes of *Robert* the firſt is opponed, and *non eſt diſtinguendum, ubi lex non diſtinguit*; and not only was he *ſocius criminis*, which is acknowledged, but he is *incarceratus*, and lying under an Inditement of High Treaſon, and has thrown himſelf on the King's Mercy; and it is not proper he ſhould be a Witneſs, ſeeing he is in the King's Mercy, who may give him his Life, or not; and there was never a Perſon in theſe Circumſtances that ever was admitted a Witneſs.

Mr. *Walter Pringle* adds, That the Earl of *Tarras* is not only in the Caſe of a Perſon who ſtands indited for High Treaſon; but muſt be looked upon as a Perſon condemned for the ſaid Crime, ſeeing he fully and amply confeſt the Crime; & *confeſſus habetur pro convicto*, and never any Lawyer aſſerted, That *damnatus criminis læſæ Majeſtatis* could be admitted as a Witneſs; and there is nothing more clear, than that by the common Law, and the Law of all Nations, this Objection ought to be ſuſtained; for the civil Law is clear, *leg.* 11. *cod. de teſtibus*, and *Matheus* in his Title, *de Probationibus, cap. de Teſtibus*, doth aſſert poſitivlie, that the Cryme of leſe Majeſtie, Hereſie, and generally all theſe Crymes, *quæ ſine ſociis non poſſunt facile admitti*, are not excepted. And he aſſerts, that the Lawyers, *viz. Gomeſius* and *Decianus*, who are of another Opinion, do acknowledge, *nominatum à reo damnandum non eſſe*, and that they contravert only, *An nominatio rei ſit indicium ſufficiens ad torquendum nominatum?*

Sir *George Lockhart* repeats, and oppons the Anſwer, and the Cryme libelled, being a Conſpiration of Treaſon, which of its own Nature is managed and carried on by Secrecie and Contrivance; and which is only known to the Complices of the Treaſon, and which cannot be committed *ſine ſociis*. The Laws of this Kingdom, and of all Nations, do allow *ſocios criminis* to be *teſtes habiles*; and not only are they admitted in the caſe of ſuch Conjurations, but generally *in omnibus criminibus exceptis*, amongſt which the Crime of *Perduellion*, and leſe Majeſtie in the chief; and it is abſolutely impoſſible, that Plots and Conſpirations of Treaſon can be otherways proven, than *per ſocios*, and ſuch as are *participes criminis*, and which is the common Opinion of all Lawyers, as may appear by *Farin. Quæſt.* 45. and the Authorities cited by him, and which is the inviolable Practique of this Kingdom: And as to that Pretence, That the Earl of *Tarras* is under a Proceſs of Treaſon, and has ſubmitted to His Majeſty's Mercy, and that *confeſſus habetur pro convicto*, it imports nothing, and infers no more than that he is *ſocius criminis*, and is ſtill a habil Witneſs: As to Conjuration of Treaſon, *ſocius criminis hoc ipſo*, that it is acknowledged, or proven, being ſtill under the hazard of Proceſs, or Condemnation, which Law regards not in regard of the Secrecie involved in the nature of the Crime, that either Witneſſes *neque actu, neque habitu*, can be preſent; ſo that the Objection amounts to no leſs than that Conjurations of Treaſon cannot at all be proven: And as to the Law cited from the Majeſtie, it imports no more than that the Objection *regulariter procedit*, in Crimes, which of their own nature are not *perdifficilis probationis*, and are not *inter crimina excepta*, ſuch as the Cryme of Conſpiracy and Treaſon is.

Mr. *William Fletcher* oppons the Objection, and Reply, and further adds, that albeit *crimen læſæ Majeſtatis* be reckoned *inter crimina excepta*, and ſo have ſome Privilege, as to the Qualification of Witneſſes; yet it cannot be denied, but there are ſome Objections competent againſt Witneſſes adduced for proving Conſpiracies, and Treaſon; *verbi cauſa*, that a Witneſs is a capital Enemy, or that he is *ſub poteſtate accuſatoris*; and the Objection now pleaded, being taken complexlie, *viz.* That the Earl of *Tarras* is not only *ſocius criminis*, but alſo, that he is *publico judicio reus*, upon the ſame Crime, and that as means to procure his Majeſty's Favour, he has ſubmitted himſelf, and come in his Majeſty's Mercy, by an acknowledgment of the Cryme, before the Diet of Citation, he is obnoxious to a moſt juſt Objection, *viz.* That he is *ſub poteſtate*, and by the Submiſſion and Confeſſion, his Life and Eſtate is now in His Majeſty's Hand, ſo that he is not only in the Caſe of a *reus confeſſus*, but in the Caſe of a Witneſs, who does abſolutely depend upon His Majeſty's Advocat, the Purſuer; and as a private Accuſer could not adduce his own Servants to be Witneſſes, becauſe they are *teſtes domeſtici*, and depend upon him; ſo far leſs ought a Witneſs to be adduced, who not only depends, as to his Eſtate, but as to his Life; and the Law gives a very good Reaſon, and which is mentioned by *Paulus, Lib.* I. *receptarum ſententiarum, cap.* 12. *parag. ult.* in theſe Words, *De ſe confeſſus non eſt audiendus ut teſtis, ne alienam ſalutem in dubium deducat, qui de ſua deſperavit.* And as to the Pretence that a Conjuration is a Crime ſo occult, that it muſt either be proven by ſuch Witneſſes, or otherways the guilty Perſon will eſcape: It is anſwered, That in this Caſe, His Majeſty's Advocat had an eaſie Remedy, for he might have purſued the Pannal, before he purſued the Witneſs; and the Terror and Apprehenſion of the event of a Proceſs for Treaſon cannot be conſtructed otherways, than to have influence upon the Depoſition of the Witneſs: And as to the Citation out of *Farinacius*, it is only in the Caſe of *ſocius criminis*; but when he comes to treat *de teſte accuſato vel carcerato*, *Quæſt.* 56. *articulo quarto,* he ſays *Regula ſit in accuſato, quod is pendente accuſatione a teſtimonio repellitur.* And by the ſecond Rule of the ſame Article, he ſays, it is a Principle *quod carceratus teſtimonium ferre prohibetur*; and he gives this Reaſon, *quia præſumitur, quod falſum teſtimonium diceret pro aliquo, qui ei promiſerit ſe liberare a vinculo,* and limits this Rule, that he muſt be *carceratus propter crimen.*

Sir *Patrick Hume* adds, That it is a certain Principle, that any Perſon that is guilty *infamia juris,* cannot be a Witneſs, no more than a Perſon that is convict, and condemned of Treaſon; and if he were convict, and condemned of Treaſon, he could not be a Witneſs, even in the Caſe of Treaſon: So neither can the Earl of *Tarras* in this Caſe be received a Witneſs, for he being adduced a Witneſs after he received his Indictment, and confeſſed the Crime, is equivalent, as if he had been actually convict; and whatever may be pretended, that *teſtes infames* may be admitted; yet it was never aſſerted by any Lawyer, that a Perſon convict of Treaſon can be admitted a Witneſs.

> Nota, *That the Earl of* Tarras *deponed nothing againſt* Jerviſwood, *but what the other two Witneſſes deponed againſt himſelf before the Tryal, and upon which thereafter they being renewed, the Earl was foreſaulted, ſo that there could be no ground of Suſpicion from his Circumſtances.*

> *The Lords repelled the Objection againſt the Earl of* Tarras, *and ordain him to be received a Witneſs.*

Walter Earl of *Tarras,* aged forty Years, married, purged, and ſworn; being interrogat, if about the Time that Sir *John Cochran,* and Commiſſar *Monro* got their Commiſſion from the *Carolina* Company for *London,* the Pannal, Mr. *Robert Baillie* of *Jerviſwood,* did not deſire the Deponent to ſpeak to Commiſſar *Monro,* to try if he could get him, the ſaid Pannal, added to that Commiſſion, depones affirmative. Being interrogat, If the ſaid *Jerviſwood,* the Pannal, did not tell the Deponent that he was reſolved to go to *London* however, upon his own Expences, and that his and their going about the *Carolina* buſineſs was but a Pretence, and a Blind; but that the true Deſign was to puſh forward the People of *England,* who could do nothing but talk, to go more effectually about their Buſineſs, depones affirmative. Depones, That the Pannal did ſettle a Correſpondence with the Deponent, whereby he was to give an Account to the Deponent, of what ſhould paſs betwixt the Country Party in *England,* and the *Scotſmen* there: And on the other Hand, the Deponent was to write to him what occurred here. Depones, That the Pannal did ſay to the Deponent, if the King would ſuffer the Parliament of *England* to ſit, and paſs the Bill of Secluſion, that that was the only way to ſecure the Proteſtant Religion. Depones, That the Pannal ſaid to him, that the King might be induced to do ſo, if the Parliament would take ſharp or briſk Meaſures with him, or the like. Depones, Theſe Words were ſpoke to him by the Pannal ſince the holding of the laſt Seſſion of this current Parliament; and before the Pannal and Commiſſar *Monro* went for *London.* Depones, That after the Pannal went to *London,* he did give the Deponent an Account by Letters, that Things were in great diſorder there, and that he hoped there would be effectual courſes taken to remeid them. Depones, That Mr. *Robert Martin* did come to Mr. *Pringle* of *Torwoodlie's* Houſe in *May,* 1683, or thereby, and brought a Letter to the Deponent's Lady unſubſcribed; but the Deponent knows it was *Jerviſwood's* Hand-writing, who was then at *London,* and that Mr. *Martin* told the Deponent, that things in *England* were in great Diſorder, and like to come to an Height, and that the Country Party were conſidering on Methods for ſecuring the Proteſtant Religion. And that *Archibald,* ſometime Earle of *Argyle,* was to get Ten thouſand Pounds *Sterling,* whereas Thirty thouſand Pounds *Sterling* was ſought by the *Scotſmen* at *London,* which was to be ſent over to *Holland* to provide Arms; and that the late Earl of *Argyle* was to land with theſe Arms in the *Weſt-Highlands* of *Scotland,* and that the Deponent's Friend, *Jerviſwood* the Pannal, was to be ſent over with the Money. Depones, That *Philiphaugh* and he went to *Gallowſhiels* Houſe, where they met ~~with~~ *Polwart* and *Gallowſhiels,* and that it was talked amongſt them there, that in Caſe thoſe in *England* ſhould riſe in Arms, that it was neceſſary in that Caſe, that ſo many as could be got on the Borders, ſhould be in a readineſs to deal with Stragglers, and ſeize upon Horſes, and that thereafter they ſhould join with thoſe that were in Arms on the Borders of *England.* Depones, That in the Caſe foreſaid, it was ſaid, it was convenient the Caſtle of *Stirling, Berwick,* and ſome other Strengths ſhould be ſeized upon; and it was likewiſe ſpoke amongſt them, that ſome Perſons ſhould be employed, to inquire what Arms was in that Countrey. Depones, That it was ſpoke then, that the beſt time for *Argyle* was to land in the Weſt, when there was a Stur in *England* or *Scotland,* or Words to that Purpoſe. Depones, That every one deſired another to ſpeak to ſuch particular Perſons as they could truſt, by letting a Word fall indirectly upon ſuppoſition, in caſe of the Riſing in *England,* concerning the Affair for preparing of them: And that he was told by *Philiphaugh* thereafter, that there was a Word and Sign to be uſed amongſt them, *viz.* the Sign was by looſing a Button on the Breaſt, and that the Word was, Harmony. Depones, The Pannal ſpoke to the Deponent, to advertiſe *Torwoodlie,* that he might acquaint Mr. *William Veitch,* a forfault Traytor, who was in *Northumberland,* that he might keep himſelf cloſe, and be on his Guard, leſt he ſhould be catched; which was ſince the Pannal was Priſoner in the Tolbooth of *Edinburgh.* And this is the Truth, as he ſhall anſwer to GOD.

Sic Subſcribitur,
Tarras.

Linlithgow. I. P. D.

Alexander Monro of *Bear-crofts,* aged forty-five Years or thereby, *ſolutus,* ſolemnly ſworn and purged. Depones, That the Earl of *Tarras* propoſed to the Deponent, that *Jerviſwood* might be made one of the Commiſſioners for the Affair of *Carolina,* for that he could not ſafely ſtay at Home; and that the Deponent's Anſwer was, That he had no Intereſt in the Affair, and ſo could not be a Commiſſioner. Depones, That the Pannal did wait for the Deponent at *Wooller*; and did go alongſt with him to *London,* and that by the way he heard him regrate his own hazard and others, becauſe of *Blackwood's* Sentence; and that he heard him regrate the hazard our Laws, and Liberties, and the Proteſtant Religion were in. Depones, That the Pannal ſpoke to the Deponent and others, more than once at *London,* for getting of Money from the *Engliſh,* to be ſent to the late Earl of *Argyle,* for bringing home Arms for the ſaid Earl's Uſe, as he underſtood, for carrying on an Inſurrection and Rebellion in *Scotland.* Depones, That at the Time libelled, in *Jerviſwood's* Chamber in *London,* Mr. *William Veitch,* a forefault Traitor, was preſent; and that Sir *John Cockran* did at that Meeting expreſly ſpeak of Money to be ſent to *Argyle,* for bringing Home Arms for invading the Kingdom of *Scotland*; and that at another Occaſion he heard ſome of them ſay, That there would be twenty thouſand Men in *Scotland* who would aſſiſt the Rebellion, and that he heard Sir *John Cockran* and *Jerviſwood* ſpeaking of it, but cannot be poſitive which of the two ſaid it. Depones, That at the Meeting he heard *Jerviſwood* ſpeak, but did not hear him oppoſe that Treaſonable Propoſal, or contradict the Overture propoſed by Sir *John Cockran.* Depones, That Mr. *Robert Martin* was ſent down from that Meeting which was at *Jerviſwood's* Chamber, to *Scotland,* to try what the People of *Scotland* would do for their own Safety: And that it was underſtood that the People of *Scotland* ſhould not riſe 'till there ſhould be a riſing in *England,* and that the Commiſſion was granted to Mr. *Robert Martin,* by all the Perſons preſent, whereof *Jerviſwood* was one, and that there were preſent, the Lord *Melvil,* Sir *John Cockran, Ceſſnocks* elder and younger, Mr. *William Carſtares,* Mr. *William Veitch, Jerviſwood,* and the Deponent; and depones, they did contribute Money for Mr. *Martin's* Journey. Depones, That at his Return, he meeting with the Deponent, told him, that Matters were in that Condition in *Scotland,* and that the Countrey was in ſuch a Condition, as little would kindle the Fire in order to the Rebellion. And this is the Truth as he ſhall anſwer to GOD.

Sic ſubſcribitur,

Alexander Monro,
Linlithgow, I. P. D.

James Murray of *Philiphaugh,* aged 30 Years, married, purged, and ſworn, produces four Leaves of Depoſitions, emitted by him before the Lords of the Secret Committee, and all written and ſubſcribed with his own Hand, which being publickly read, in preſence of the Juſtices and Aſſize, he adheres thereto, in all Points, whereof the Tenor follows. Upon the Day of *May,* 1683, upon a Letter from Mr. *Pringle* of *Torwoodlie,* I came to his Houſe in the Morning, and he preſently led me to a Chamber, where I found Mr. *Robert Martin,* who was lately come from *London,* with whom we ſtayed a little, and diſcourſed of the News, and about the preſent Condition and Temper of *England,* and in particular of *London,* which Mr. *Martin* ſaid, was much irritated through ſome Attempts upon their Privileges, either as to the Concern of the Sheriffs, or their Charter, but that all honeſt Men were of good Heart and very briſk; and after ſome general Diſcourſes to this Purpoſe, *Torwoodlie* and I left him and walked out a little, and he told me, he was expecting the Earl of *Tarras* preſently, for he had ſent to him; and Mr. *Martin* had a Letter to him from *Jerviſwood*; then he told me that there were great Matters in agitation at *London,* and that Mr. *Martin* had come down with a Commiſſion from our Friends there (I do not remember he named any, but that I behoved not to expect he would impart his Inſtructions to me, for he was to communicate them only to *Polwart* and himſelf, at leaſt for theſe Shires) and they were to pitch on ſuch as they thought fit to intruſt with the Affair; whereupon he aſſured me, that he had great Confidence in me, and his Kindneſs to me obliged him to ſend for me, to acquaint me that Matters were now come to a *Criſis,* and that he had Reaſon to think *England* would ſhortly draw to Arms, and ſtand by them, 'till they were ſatisfied anent the Bill of Excluſion, and what other Security they could propoſe for the Proteſtant Religion, and their Liberties; and that it was no Project of any inconſiderable Party, but a Deſign through the Kingdom, and that many of the fineſt Men, and of the greateſt Intereſt and Credit there, had adjuſted almoſt every thing neceſſary for the Purpoſe, and had concerted Matters with our Friends there, in order to Concurrens from this, and had agreed to advance Money for furniſhing Arms here (I do not remember he told me more Particulars at this time); but ſaid, *Polwart* would be at *Gallowſhiels* that Night, and it would be neceſſary that the Earl of *Tarras* and I ſhould confer with him fully on the Buſineſs. About this time the Earl of *Tarras* lighted, and *Torwoodlie* having left us for a little time, being gone to bring Mr. *Martin,* the Earl of *Tarras* aſked me, what News? I told him of Mr. *Martin's* being there, but that he had given me no Account of the Deſign of his down-coming, which perhaps he would acquaint him with, but by what I had heard from *Torwoodlie,* I underſtood it to be, to engadge us to riſe in Arms ſhortly; whereat the Earl of *Tarras* hummed, and ſaid he would look ere he leapt ſuch a leap, or ſome ſuch Expreſſions. Preſently Mr. *Martin* came, and the Earl of *Tarras,* and he retired a little after the reading a Letter he gave him, the Contents whereof was (as the Earl of *Tarras* informed me) only an Order from *Jerviſwood* to deliver ſome Money to the Bearer, which he had left with him, and the Earl of *Tarras* called for his Servant, and bad him bring up the Money. In the mean time, *Torwoodlie* aſked me, if I had acquainted the Earl of *Tarras* with what he ſpoke to me, and I told him, I had let ſomething of it fall to him, but it was not to be thought, that Perſons of Senſe and Quality would engadge in ſuch Deſigns at random; ſo *Torwoodlie* ſaid, that (tho' Mr. *Martin* would not commune with us upon his Commiſſion directly) yet he thought it would be fit we conferred, and without taking Notice of his Commiſſion, diſcourſed of things upon Suppoſitions, and as our own private notions, abſtract from any Proſpect of a preſent Deſign. So after Dinner we four went to a Chamber, and after ſome general Diſcourſes of the Diſcontents of both Kingdoms, theſe Suppoſitions following were diſcourſed (and as I remember Mr. *Martin* ſtarted them all, or the moſt part), *viz.* What if the Countrey-Party in *England* ſhould have Thoughts of going to Arms (whereof he knew nothing, but only ſuppoſed ſuch a thing, for diſcourſing a little freely, and to know our Sentiments, what we thought could be expected here in ſuch a Caſe), would it not be expedient to have a ſettled Correſpondence betwixt that Party there and here? and might not Matters be ſo adjuſted, that both Kingdoms ſhould draw out in one day? and might not as many be expected to undertake in theſe Shires, and about *Edinburgh*, as would ſerve to ſurpriſe, and ſeize our Rulers (I do not remember any named, but the then Chancellor and Treaſurer), and ſome to join with theſe on the *Engliſh* Borders, to aſſiſt them to ſurprize *Berwick?* and if for that effect, any Horſe or Dragoons, that ſhould be in the Bounds, might not be ſurprized, that their Horſe and Arms might be gotten to furniſh the Countrey People, and *Stirling* Caſtle? And if *Argyle* ſhould at the ſame time land in the *Weſt*, and raiſe that Countrey, would not theſe Meaſures contribute much to the Advancement and Security of the Intereſt of that Party here, ſince thereby the Government would be diſordered, and ſuch Steps would encourage all that had an Inclination to the Countrey-Party, to draw to them frankly, and ſcar many of the other ſide to act againſt them, and ſo they might have leiſure to join from all Places? And might it not be expected, there would be as many in this Kingdom, as would be able to deal with the Forces here, at leaſt divert them from troubling *England?* This is the Sum, as I remember, of what was propoſed and diſcourſed of, tho' I cannot diſtinctly ſay, it was in this Method and Expreſſion, nor was all moved at once, but dropped now and then, as the Diſcourſe ſeemed to give Riſe to it; and tho' I cannot fully recount all that was ſpoke on theſe Heads, and tell diſtinctly what this and that Man ſaid, yet I remember theſe following Anſwers were given, and (as I judged) acquieſced to by the whole Company; and they were certainly the Earl of *Tarras* his Sentiments and mine; and every one that ſpoke, uſed this or ſome ſuch Precaution, That if they were concerned, or to give Counſel in any ſuch Cauſe (as they were not, *&c.*) 1. As to the ſettling a Correſpondence, it was confeſſed to be very convenient for thoſe of a common Intereſt, but the preſent Circumſtances of Affairs were ſuch (as we thought) that none could be found here, who was fit to manage it, and would undertake it. 2. As to the Tryſting, at the ſame time it could not be done without the divulging the Deſign to all Ranks of People, which none would undertake, except theſe already in deſperate Circumſtances; and they could not have generally much Influence. 3. The thing was not at all adviſeable for this Kingdom, ſince, if any of *England*'s own Meaſures miſcarried, they would not ſtir for any ſuch Truſt; and the ſpring of their Motions being always at *London*, there might happen an Interruption near the Appointment, whereof theſe here could have no timeous Notice, and ſo might keep Tryſt, whereby they would be expoſed a Prey, and if they ſhould ſubſiſt any time, or prevail (which was hardly poſſible) the multitude that muſt be employed, are tainted with ſuch wild and unruly Principles, that if once they got the Sword in their Hands, they would never be brought to Order, without a greater Force to over-awe them; neither would any Expectation of *Argyle*'s landing be a juſt ground for ſuch a Tryſt, conſidering the Uncertainty of Sea-Voyages; and if *Argyle* were to be the Head, undoubtedly many People would conclude that he were to be ſuſpected of private Deſigns, and that reſtoring him might lay him aſide: As alſo, that Deſpair might blind his uſual Prudence, and prompt him to unſolid and undigeſted Methods, and ſo it was to be expected, that few of the Gentry (except ſuch as he had ſpecial Influence on, or ſuch as were under hard Circumſtances) could embarque with him. 4. As to the ſurpriſing Rulers, *&c.* it was inveighed againſt, as an Action not to be thought of amongſt Proteſtants (eſpecially when the very Deſign of it was pretended to ſecure that Religion, which taught its Profeſſors to abhor and deteſt ſuch Principles as Popiſh, yea Unchriſtian), ſince it could not be effectuat without Bloodſhed of people, ſecure in Peace, which being by all approven Divines and Caſuiſts condemned as unlawful, and meer Aſſaſſination, it was not to be doubted, that as ſuch a Practice would caſt a blot upon the whole Affair, and quite take off any pretence of Defenſive Arms, ſo it would ſcar many from joining. Theſe things were reaſoned again and again; but I do not remember there was any formal Concluſion made, but the Diſcourſe was let fall; and Mr. *Martin* told us, if any of us had a mind for a Suit of Armour, he could provide as many as we pleaſed, from one who had made a great many lately to honeſt Men at *London*, of a new faſhion, very light, and at an eaſy rate; ſo *Torwoodlie* and I gave him our Meaſures; Earl of *Tarras* told he had a Suit already, then *Torwoodlie* ſaid to the Earl of *Tarras* and me, We would meet *Polwart* at *Gallowſheils*, and deſired we might commun with him, anent what we had been diſcourſing; ſo we haſted away, that if poſſible we might both get home that Night, it being *Saturday*, and we unfurniſhed for ſtaying abroad, and *Torwoodlie* whiſpered me juſt as I was mounting (as I think), that he was not clear we ſhould commun before *Gallowſheils*, for he was ſometimes too much Good-fellow, or the like; ſo the Earl of *Tarras* and I rode away together, and upon the way we were both of Opinion, that the Suppoſitions we had diſcourſed of, were in effect Propoſitions; and reſolved, if they were inſiſted on by *Polwart*, as we ſuſpected, we would adhere to the former Anſwer, and would undertake nothing in theſe Methods. When we came to *Gallowſheils*, the Laird was abroad, and *Polwart* was not come; ſo we had Thoughts to go away, being both damped with what had paſſed, and inclining to be free of farder meddling; but the Lady would by no means hear of our going till her Huſband came, who, ſhe aſſured us, was about the Doors, and ſhe having ſent to call him, he would be in preſently; yet it was ſo late ere he came, that the Earl of *Tarras* could hardly have day enough to go home with; ſo *Gallowſheils* would not let him go, and he would not ſtay, unleſs I ſtayed, ſo we both ſtayed: and not being reſolved to diſcourſe with *Gallowſheils* on what paſſed, we went to the Tavern, on pretence I might call the Baillie, and ſeek Horſes or Lime, and ſtayed there till *Polwart* came, which ſeemed unknown to *Gallowſheils*; then we returned to *Gallowſheils* Houſe, and after Supper *Polwart* whiſpered the Earl of *Tarras* and me, and enquired if we had ſeen Mr. *Martin*; and we having told him we had, he enquired if we were free to commun on the Affair before *Gallowſheils*; we told, as he thought fit, for we could truſt him: Then he whiſpered *Gallowſheils*, and (as I underſtood afterwards) aſked if he was free to commun on Matters of great Secreſy and Importance with that Company, to which he aſſented; then we ſat down cloſs together, and, as I remember, *Polwart* began the Diſcourſe; but ſince I am not able to follow exactly the Method of our Conference, or keep the very expreſſions uſed, or repeat all that was ſpoke, or to tell diſtinctly what was every Man's part of the Diſcourſe, I ſhall ſet down the Heads, and moſt remarkable Paſſages thereof, that I remember, in ſome Articles following: 1. *Polwart* ſignified that he was credibly informed (but I do not remember he named his Informer), that the Countrey Party in *England* would draw to the Fields ſhortly, as he heard before *Lambaſs*; wherewith *Gallowſheils* ſeemed viſibly ſurpriſed; and being aſked, if his Heart failed him already, he ſaid he did love it better truly to be walking in his own Parks in Peace and Quiet, than to be meddling in ſuch Matters; however, he aſſured the Company, that if there came any troubleſome World, he would join with them firmly: and the Earl of *Tarras* ſaid, he wondered to hear of any ſuch Reſolution in *England*; for he took it for a Principle amongſt that Party there, that they ſhould make no Stir in the King's Life (which the whole Company owned to be their Opinion and Deſire), becauſe that might ſtrengthen the Duke's Intereſt, and he ſuſpected it was the Project of the Commonwealth's Men, with whom he believed few *Scots* Gentlemen would join; and he was almoſt perſuaded the Duke of *Monmouth* would not concur in any riſing during the King's Life. To which it was anſwered by *Polwart*, that he had indeed heard that Principle had been generally agreed to, but it ſeemed they found they behoved either to do their Buſineſs now, or lay aſide Hopes of doing it hereafter, which might be: That if the Charter of *London* were let fall, they would not only loſe all ſafe opportunity of digeſting Matters, but a great part of their Strength, and he heard all things were concerted mutually betwixt *Monmouth*'s Friends, and the Heads of the Commonwealth Party; and tho' he heard *Monmouth* was ſhy on that Account, yet it was hoped he would engage, for otherwiſe he would be deſerted by that Party. 2. *Polwart* told us the Suppoſitions above-written as Overtures concerted betwixt our Friends at *London*, and the principal Men of that Party there: ſo the Earl of *Tarras* and I renewed our former Anſwers alſo above-written, and maintained them with all our Vigour, wherein *Gallowſheils* joined forwardly with us, and *Polwart* aſſerted, we went on very good grounds, and he was fully of our Opinion, if things were entire; but referred it to be conſidered, whether it were better to comply with ſome of theſe Methods, tho' not ſo proper and juſtifiable as were to be wiſhed, than to diſappoint the Buſineſs totally, which might be of the beſt conſequence to all the Party; yet we did not condeſcend, as I remember, to undertake any of theſe Methods. And there was a further Argument adduced againſt the tryſting above-written, *viz.* That it was talked there was a Day appointed in *England*, lately in *Shafteſbury*'s Time, which did not hold, ſo they were not to be relied upon. 3. It was propoſed to be conſidered, what Methods were moſt proper in the Company's Opinion for *Scotland* to follow in caſe of *England*'s Riſing? Whereanent it was ſaid, That all that could be expected or deſired from *Scotland*, was, that upon the certain News of *England*'s being in the Fields, thoſe in the Southern Shyres, who would own that Party, ſhould preſently riſe, and (how ſoon they could get as many convened as would be able to deal with ſtraggling Parties, or any ſudden Riſing in the Countrey) march to join them, and that it would be fit theſe in the Northern Shyres of *England* waited near the Borders for ſuch; and that they had Officers tryſted there to command; and that then it would be ſeaſonable for *Argyle* to land in the *Weſt*, and theſe Parties on the Borders might divert the Forces, till he had time to put himſelf in a Poſture. Theſe things ſeemed to be the Sentiments of the whole Company, but were not finally determined till the Opinion of others, who were to be communed with by *Polwart*, were known: And it was repreſented, there behoved not to be any wilful and obſtinate adhering to our own Thoughts of things, but an mutual Condeſcendance to others concerned, otherwiſe it were not poſſible to bring a publick Deſign to any good Iſſue. 4. All the Company ſeemed to agree, that they ſhould undertake nothing, or move in that Affair, till they had a full and certain account what *England* propoſed, what Methods they reſolved to follow there, who were to be their Heads; and that if they deſigned any Attempt on the King's Perſon, or overturning Monarchy, they would not be forward or clear to joyn. And it being here inſinuated, that the moſt they could do, at leaſt for which there could be any plauſible Pretence to juſtify, was to draw together, and without any act of Hoſtility, ſend Addreſſes to His Majeſty for Redreſs of the preſent Abuſes of the Government, and for obtaining ſufficient Security againſt the Hazard they apprehended to their Religion and Liberties: It was ſaid by *Polwart*, That he was apt to think, that was their very Deſign; for he had heard it was generally believed by that Party in *England*, that if once they were in a Body, the King would be prevailed with to quite the Duke, to be tried for Popery, Correſpondence with *France*, and Acceſſion to the Popiſh Plot; and then, if the King were once free from the Influence of the Duke's Counſels, they were confident he might be moved to reform their Abuſes, and ſecure their Religions and Liberties for the future to their Contentment. 5. It was reſolved, That till we got the aforeſaid Account from *England*, and were ſatisfied thereanent, and knew others here, who were to be communed with, their Sentiments of what Methods were moſt proper for us, in caſe we ſhould undertake, we ſhould not meddle further; only it was left to the Earl of *Tarras* and me, if we thought fit to acquaint Sir *William Scot* younger, with ſome of the Matter of this Conference overly, without taking notice of our Informers, or ſuch an Conference; and it was recommended to all to be enquiring, at ſuch as they had ſome Truſt in, indirectly about the Affection of our Neighbours, and what Arms there was amongſt them, that if we ſhould get an ſatisfying account, and reſolve to join, we might know where to ſeek Men and Arms ſuddenly. Here it was ſaid by *Polwart*, as I think, that if the Earl of *Tarras*, *Torwoodlie*, *Gallowſheils*, and I, once took Horſe, he thought the moſt part of the *Weſt* end of *Tiviotdale* and *Selkirkſhyre* would ſoon come to us, eſpecially, when they heard *England* was riſen; then we tryſted to meet there againſt *Midſummer* Fair, betwixt which the foreſaid Account was expected; but in caſe it came to any of our Hands ſooner, we promiſed to advertiſe the reſt, that we might meet preſently if the Caſe required. This is the Subſtance and Sum of what paſſed at the foreſaid Conference,

ference, that I can now remember; but I remember, I was likewiſe told theſe following Particulars in privat, by *Polwart* or *Torwoodlie* (which of them I cannot diſtinctly tell) the Day of the aforſaid Conference, or within a ſhort time after. 1. That *Polwart* keeped the Correſpondent with our Friends at *London*; I remember not poſitively of any of them that was named to be on the Intrigue there, except my Lord *Melvil*, Sir *John Cochran*, *Jerviſwood*, and Commiſſar *Monro* (for I hardly knew any of the reſt) and, as I think, Commiſſar *Monro* was called his Correſpondent there. 2. That the Money to be advanced by the *Engliſh* Partie to *Scotland*, was ready when Mr. *Martin* came from *London*; and it was expected, that within few Days after it would be diſpatched with ſome Confident to *Holland* (whether by Bills, or in Caſh, I cannot ſay); it was called ten Thouſand Pound Sterling, and was to be employed (as I was told) by that Confident, at *Argyle*'s Sight, for buying Arms, providing Ships to tranſport them with *Argyle*, to the *Weſt* here, and ſuch other Charges. 3. That how ſoon our Friends at *London* got notice of the ſafe Arrival of the Confident forſaid, and all other things were finally concluded there (which was expected would be about the middle of *June*, as I remember), they would come home, and, as they paſſed, would give them, or one of them, an particular Account of all Reſolutions taken, to be communicat to the reſt, that it was not to be expected by Letters, that behoved to be under Figures and dark Expreſſions; and, as I remember, they were written as it were about the *Carolina* Buſineſs, or ſome Houſhold Furniture, as I was told; for I never remember I ſaw any Letter, either direct to *London*, or ſent from it on that Head. 4. I was told there was a Sign and a Word agreed on by that Party, ſo that Men might know with whom they might uſe Freedom; the Word, as I remember, was *Harmony*; and the Sign, *the opening two Buttons in the Breaſt-coat, and ſhutting them preſently*; this I communicat to the Earl of *Tarras*, but does not mind I ever ſaw it uſed, except when I viſited *Park-Hay* here in Town, about the End of *June*: We diſcourſing a little freely, he aſked if I had the Word and Sign of the *Carolina* Men; and I having given them, he ſaid ſomething to this purpoſe, That he was afraid that the *Carolina* Buſineſs did not go well, for there had been ſome of the Managers expected here (as I think he named *Jerviſwood* or Commiſſar *Monro*) theſe eight Days paſt, but there was none come, nor could he learn that any of their Friends had heard from them for ſeveral Poſts. *Polwort*, *Torwoodlie*, and I, met at *Gallowſheils*, on *Midſummer* Fair; but I mind nothing paſſed but private *Whiſperings*. Dated *September* 15, 1684, and ſubſcribed thus,

James Murray.

Edinburgh, *December* 23, 1684.

The Depoſition above written being read to the ſaid *James Murray* of *Philiphaugh*, in preſence of the Juſtices and Aſſizers, he adheres thereto in all Points upon Oath.

Sic ſubſcribitur,

James Murray.
Linlithgow, I. P. D.

The ſaid *James Murray* further depons, That at their meeting at *Gallowſheils*, it was reſolved, That they ſhould keep up their Ceſs unpayed till their next meeting at Midſummer, which was to be at *Gallowſheils*, and ſhould deal with all theſe they had influence upon to do the like; and that upon the Suppoſition mentioned in his Oath given in, it was ſpoke amongſt them, that the Troopers Horſes ſhould be ſeized upon when they were graſing. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur,

James Murray.
Linlithgow, I. P. D.

Hugh Scot of *Gallowſheils*, aged 36 Years, married, purged, &c. and ſworn; Depons, That the Earl of *Tarras*, and *Philiphaugh*, did come to the Deponent's Houſe, in *May*, 1683, and *Polwart* came likewiſe there, where there were Diſcourſes and Propoſals, that if the *Engliſh* would riſe in Arms, their Friends in the South Shires ſhould riſe with them; and that they ſhould ſeize the Horſes belonging to the King's Troops, where they grazed; and the Town of *Berwick*, and the Caſtle of *Stirling*: And likewiſe it was there diſcourſed anent the late Earl of *Argyle*'s coming to invade *Scotland*; but becauſe of the uncertainty of Sea Voyages, there was not much ſtreſs laid upon it. Depons, It was alſo propoſed, that ſome of the South Countrey, whom they truſted in, ſhould be acquainted with it, and that Endeavours ſhould be uſed to learn what Arms was in the Countrey. Depons, There was ſome Diſcourſe there, as that the Earl of *Tarras*,' *Philiphaugh*, *Torwoodlie*, *Polwart*, and ſome others ſhould draw to Horſe with the firſt, when the riſing ſhould be in readineſs, that it might be expected that the South Parts of *Teviotdale* and *Selkirk* Shire would join with them. And this is the Truth, as he ſhall anſwer to GOD.

Sic Subſcribitur,

Hugh Scot.
Linlithgow, I. P. D.

His Majeſty's Advocat produced other Depoſitions, emitted by *Gallowſheils*, before the Lords of the Secret Committee, whereof the Tenor follows.

Edinburgh, the 14th of *September*, 1684.

Gallowſheils Depons, That the Earl of *Tarras* and *Philiphaugh*, being in his Houſe in *May*, 1683, diſcourſed of an intended riſing in *England*, and of Propoſals made to *Scotſmen* to riſe with them, and of *London* in particular, and that *Polwart* was preſent at that Meeting; and told he was ſure the *Engliſhmen* intended ſo, and that it was diſcourſed at that Meeting amongſt them, that it were fit to ſeize *Berwick* and *Stirling*; and that it was talked amongſt them of bringing the Duke of *York* to Trial, and that the King would abandon him.

Sic ſubſcribitur,

Hugh Scot.

Perth Cancel.

Queensbury. *Jo. Drummond.*
George Mackenzie. *George Mackenzie.*

Edinburgh, *October* 29, 1684.

Sederunt

Lord Chancellor, *Lord Preſident*,
Lord Secretary, *Lord Advocat.*

The Laird of *Gallowſheils*, Priſoner in the Tolbooth of *Edinburgh*, being called and examined upon Oath, Depons, that in the Moneth of *May*, 1683, the Earl of *Tarras*, *Hume* of *Polwart* Elder, and Laird of *Philiphaugh*, came to the Deponent's Houſe, himſelf being abſent; at his coming Home, they were ſpeaking of the Security of the Proteſtant Religion; and of a Party in *England*, who would ſecure or ſeize the King or Duke; and that if any ſhould riſe in Arms to defend them, or to reſcue the King and Duke, here was another Party who would riſe in Arms againſt them; it was propoſed, that ſome Country-men ſhould be ſpoken to to try their Reſolutions, and that the Reſolutions of *England* ſhould be told them, to ſee if they would concur. But the Deponent does not remember that this Propoſition was approved, or undertaken to be done by any preſent; nor does he remember who managed the Diſcourſe. It was likewiſe propoſed to ſeize the Officers of State, eſpecially the Chancellor and Theſaurer; and the ſaid Sir *John Cochran* was to come to the Weſt from *England*, for advancement of the Deſign; and that the Earl of *Argyle* was to land in the Weſt-Highlands, and to raiſe that Country. Of theſe Matters all theſe who were preſent, diſcourſed as of an Affair that they were agitating, and wherein themſelves were particularly concerned, though at that time they did not conclude what their Carriage ſhould be. The reaſon why the Deponent cannot be more particular is, becauſe he was ſometimes going out, and ſometimes walking up and down the Room; and though the Deponent cannot be poſitive of the very Words, yet he is poſitive they were either theſe Words, or Words to that purpoſe.

Sic ſubſcribitur,

Hugh Scot.
Perth Cancellarius.

Edinburgh, *December* 23, 1684.

Hugh Scot of *Gallowſheils*, being ſolemnly ſworn, in preſence of the Juſtices and Aſſize, adheres to the Depoſitions within and above written in all Points.

Sic ſubſcribitur,

Hugh Scot.
Linlithgow, I. P. D.

His Majeſty's Advocat, in fortification of the former Probation, adduces the Printed Copy of Mr. *William Carſtares*'s Depoſitions, emitted before the Officers of State, and other Lords of Privy Council, and leaves the ſame to the Aſſize, and uſes it as an Adminicle of Probation; for though it was capitulat, that he ſhould not be made uſe of as a Witneſs; yet it was agreed, that the Depoſition ſhould be publiſhed: And likewiſe produces the principal Depoſition ſigned by himſelf, and the ſaid Lords.

> The Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, admit the Paper produced as an Adminicle, and refers the Import thereof to the Inqueſt, and ordains the Printed Paper, as it is collationed, to be taken in and conſidered by the Inqueſt.

Sir *William Paterſon*, and Mr. *Colin Mackenzie*, Clerks of his Majeſty's Privy Council, being interrogat, if they heard Mr. *William Carſtares* own the Depoſitions read, Depons, they ſaw and heard him ſwear, and own the ſame upon Oath, and they collationed the Printed Copy with the Original formerly, and now they heard it collationed.

Sic ſubſcribitur,

William Paterſon.
Colin Mackenzie.

The Depoſition of Mr. William Carſtares, *when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath, upon the 22d of* December, 1684, *in preſence of the Lords of His Majeſty's Privy Council.*

Edinburgh-Caſtle, *September* 8, 1684.

Mr. *William Carſtares* being examined upon Oath, conform to the Condeſcenſion given in by him, and on the Terms therein mentioned; Depons, That about *November*, or *December*, 1682, *James Steuart*, Brother to the Laird of *Cultneſs*, wrote a Letter to him from *Holland*, importing, That if any conſiderable Sum of Money could be procured from *England*, that ſomething of Importance might be done in *Scotland*: The which Letter the Deponent had an inclination to inform *Shepherd* in *Ab-church-Lane*, Merchant in *London*, of; but before he could do it, he wrote to Mr. *Steuart* above-named, to know from him, if he might do it; and Mr. *Steuart* having conſented, he communicat the ſaid Letter to Mr. *Shepherd*, who told the Deponent that he would communicat the Contents of it to ſome Perſons in *England*; but did at that time name no body, as the Deponent thinks: Sometime thereafter Mr. *Shepherd* told the Deponent, that he had communicat the Contents of the Letter abovenamed to Colonel *Sidney*, and that Colonel *Danvers* was preſent; and told the Deponent, that Colonel *Sidney* was averſe from imploying the late Earl of *Argyle*, or meddling with him, judging him a Man too much affected to the Royal Family, and inclined to the preſent Church Government; yet Mr. *Shepherd* being put upon it by the Deponent, ſtill urged, that one might be ſent to the Earl of *Argyle*; but, as Mr. *Shephard* told him, he was ſuſpected upon the Account of his urging ſo much; yet afterwards he preſſed, without the Deponent's knowledge, that the Deponent being to go to *Holland*, however might have ſome Commiſſion to the Earl of *Argyle*; which he having informed the Deponent of, the Deponent told him, that he himſelf would not be concerned; but if they would ſend another, he would introduce him; but nothing of this was done: Upon which the Deponent went over, without any Commiſſion from any body, to *Holland*, never meeting with *James Steuart* above-named: He was introduced to the Earl of *Argyle*, with whom he had never before converſed, and did there diſcourſe what had paſt betwixt Mr. *Shephard* and him; and particularly about remitting of Money to the ſaid Earl from *England*; of which the ſaid Mr. *Steuart* had written to the Deponent, namely, of 30 000 Pounds *Sterling*; and of the raiſing of 1000 Horſe and Dragoons; and the ſecuring the Caſtle of *Edinburgh*, as a Matter of the greateſt Importance. The Method of doing this was propoſed by the Deponent, to be one Hour, or thereby, after the relieving of the Guards: But the Earl did not reliſh this Propoſition, as dangerous; and that the Caſtles would fall of Conſequence, after the Work Abroad was done. *James Steuart* was of the Deponent's Opinion for ſeizing the Caſtle, becauſe it would ſecure *Edinburgh*, the Magazines and Arms; as to the 1000 Horſe and Dragoons, my Lord *Argyle* was of Opinion, that without them nothing was to be done; and if that Number were raiſed in *England* to the ſaid Earl, he would come into *Scotland* with them; and that there being ſo few Horſe and Dragoons to meet them, he judged he might get the Country without trouble, having ſuch a ſtanding Body for their Friends to rendezvous to; and the ſaid Earl ſaid he could ſhew the Deponent the convenient Places for landing, if he underſtood, and, as the Deponent remembers, where the Ships could attend. The Deponent remembers not the Names of the Places. The Deponent ſpoke to the Lord *Stairs*; but cannot be poſitive that he named the Affair to him, but found him ſhy: But the Earl of *Argyle* told him, he thought *Stairs* might be gained to them; and that the Earl of *Lowdoun* being a Man of good Reaſon, and diſobliged, would have great Influence upon the Country, and recommended the Deponent to Major *Holms*, with whom the Deponent had ſome Acquaintance before, and had brought over a Letter from him to the Earl of *Argyle*; but the Deponent had not then communicated any thing to the ſaid *Holms*. *James Steuart* laid down a way of Correſpondence by Cyphers and falſe Names, and ſent them over to *Holms* and the Deponent, for their Uſe (which Cyphers and Names are now in the Hands of His Majeſty's Officers, as the Deponent ſuppoſes), and did deſire the Deponent earneſtly to propoſe the 30,000 Pound *Sterling* above-named to the Party in *England*, and did not propoſe any leſs; for, as the Earl told the Deponent, he had particularly calculated the Expence for Arms, Ammunition, *&c.* But *James Steuart* ſaid, that if ſome leſs could be had, the Earl would content himſelf, if better might not be; but the Earl always ſaid, that there was nothing to be done without the Body of Horſe and Dragoons above-mentioned. During the time of the Deponent his Abode in *Holland*, though he had ſeveral Letters from *Shephard*, yet there was no ſatisfactory Account, till ſome time after the Deponent parted from the Earl of *Argyle*, and was making for a Ship at *Rotterdam*, to tranſport himſelf to *England*, *James Steuart* wrote to him that there was hopes of the Money. The next Day after the Deponent came to *England*, he met with Sir *John Cochran*, who, with Commiſſar *Monro*, and *Jerviſwood*, was at *London* before he came over; and depons, that he knows not the Account of their coming, more than for the perfecting the Tranſaction about *Carolina*: And having acquainted Sir *John Cochran* with the Earl's Demands of the 30,000 Pounds *Sterling*, and the 1000 Horſe and Dragoons, Sir *John* carried him to the Lord *Ruſſel*, to whom the Deponent propoſed the Affair; but being an abſolute Stranger to the Deponent, had no Return from him at that Time; but afterwards having met him accidentally at Mr. *Shephard*'s Houſe, where the Lord *Ruſſel* had come to ſpeak to *Shephard* about the Money above-named, as Mr. *Shephard* told the Deponent: The Deponent (when they were done ſpeaking) deſired to ſpeak to the Lord *Ruſſel*, which the Lord *Ruſſel* did, and having reiterate the former Propoſition for 30,000 Pounds *Sterling*, and the 1000 Horſe and Dragoons, he the Lord *Ruſſel* told the Deponent, they could not get ſo much raiſed at the time; but if they had 10,000 Pounds to begin, that would draw People in; and when they were once in, they would ſoon be brought to more; but as for the 1000 Horſe and Dragoons he could ſay nothing at the preſent; for that behoved to be concerted upon the Borders. The Deponent made the ſame Propoſal to Mr. *Ferguſon*, who was much concerned in the Affair, and zealous for the promoving of it. This Mr. *Ferguſon* had in *October*, or *November* before, as the Deponent remembers, in a Converſation with the Deponent in *Cheapſide*, or the Street ſomewhere thereabout, ſaid, That for the ſaving of innocent Blood, it would be neceſſary to cut off a few, inſinuating the King and the Duke: but cannot be poſitive whether he named them or not. To which the Deponent ſaid, That's Work for our wild People in *Scotland*, my Conſcience does not ſerve me for ſuch things; after which the Deponent had never any particular Diſcourſe with *Ferguſon* as to that Matter; but as to the other Affair, *Ferguſon* told the Deponent that he was doing what he could to get it effectuate, as particularly that he ſpoke to one Major *Wildman*, who is not of the Deponent his Acquaintance. *Ferguſon* blamed always *Sidney*, as driving Deſigns of his own. The Deponent met twice or thrice with the Lord *Melvil*, Sir *John Cochran*, *Jerviſwood*, Commiſſar *Monro*, the two *Ceſſnocks*, *Montgomery* of *Landſhaw*, and one Mr. *Veitch*, where they diſcourſed of Money to be ſent to *Argyle*, in order to the carrying on the Affair; and though he cannot be poſitive the Affair was named, yet it was underſtood by himſelf, and, as he conceives, by all preſent, to be for riſing in Arms for rectifying the Government. Commiſſar *Monro*, Lord *Melvil*, and the two *Ceſſnocks*, were againſt meddling with the *Engliſh*, becauſe they judged them Men that would talk, and would not do, but were more inclined to do ſomething by themſelves, if it could be done. The Lord *Melvil* thought every thing hazardous, and therefore the Deponent cannot ſay he was poſitive in any thing; but was moſt inclined to have the Duke of *Monmouth* to head them in *Scotland*, of which no particular Method was laid down. *Jerviſwood*, the Deponent, and Mr. *Veitch*, were for taking Money at one of theſe Meetings. It was reſolved, that Mr. *Martin*, late Clerk to the Juſtice-Court, ſhould be ſent to *Scotland*, to deſire their Friends to hinder the Country from riſing, or taking raſh Reſolutions upon the Account of the Council, till they ſhould ſee how Matters went in *England*. The ſaid *Martin* did go at the charges of the Gentlemen of the Meeting, and was directed to the Laird of *Polwart* and *Torwoodlie*, who ſent back Word that it would not be found ſo eaſy a Matter to get the Gentry of *Scotland to concur*: But afterwards in a Letter to Commiſſar *Monro*, *Polwart* wrote that the Country was readier to concur than they had imagined, or ſomething to that Purpoſe. The Deponent, as above-ſaid, having brought over a Key from *Holland*, to ſerve himſelf and Major *Holms*: He remembers not that ever he had an exact Copy of it, but that ſometimes the one, ſometimes the other keeped it, and ſo it chanced to be in his Cuſtody, when a Letter from the Earl of *Argyle* came to Major *Holms*, intimating, that he would join with the Duke of *Monmouth*, and follow his Meaſures, or obey his Directions. This Mr. *Veitch* thought fit to communicate to the Duke of *Monmouth*, and for the underſtanding of it was brought to the Deponent, and he gave the Key to Mr. *Veitch*, who, as the Deponent was informed, was to give it and the Letter to Mr. *Ferguſon*, and he to ſhew it to the Duke of *Monmouth*; but what was done in it the Deponent knows not. The Deponent heard the Deſign of killing the King and Duke, from Mr. *Shephard*, who told the Deponent ſome were full upon it. The Deponent heard that *Aaron Smith* was ſent by thoſe in *England*, to call Sir *John Cochran*, on the Account of *Carolina*; but that he does not know *Aaron Smith*, nor any more of that Matter, not being concerned in it. *Shephard* named young *Hambden* frequently as concerned in theſe Matters.

Signed at *Edinburgh-Caſtle*, the 8th of *September*, 1684, and renewed the 18th of the ſame Month.

William Carſtares.
PERTH Cancell. *I. P. D.*

Edinburgh Caſtle, 18th September, 1684.

Mr. *William Carſtares* being again examined, adheres to his former Depoſition, in all the Parts of it, and depones he knows of no Correſpondence between *Scotland* and *England*, except by *Martin* before-named; for thoſe Gentlemen, to whom he was ſent, were left to follow their own Methods. *Veitch* ſometimes, as the Deponent remembers, ſtayed ſometimes at *Nicolſon*, Stabler's Houſe at *London-Wall*; ſometimes with one Widow *Hardcaſtle* in *Moor-fields*. The Deponent did communicate the Deſign on foot to Doctor *Owen*, Mr. *Griffil*, and Mr. *Mede*, at *Stepney*, who all concurred in the promoting of it, and were deſirous it ſhould take effect; and to one Mr. *Freth* in the *Temple*, Counſellor at Law, who ſaid that he would ſee what he could do in reference to the Money; but there having gone a Report, that there was no Money to be raiſed, he did nothing in it; nor does the Deponent think him any more concerned in the Affair. *Nelthorp* frequently ſpoke to the Deponent of the Money to be ſent to *Argyle*, whether it was got or not; but the Deponent uſed no Freedom with him in the Affair. *Goodenough* did inſinuate once, that the Lords were not inclined to the Thing, and that before, they would ſee what they could do in the City. The Deponent ſaw Mr. *Ferguſon* and Mr *Rumſey* lurking, after the Plot broke out, before the Proclamation, having gone to *Ferguſon*, in the back of *Biſhopſgate-ſtreet*, at ſome new Building, whither he was directed by *Jerviſwood*, who was deſirous to know how Things went. *Rumſey* was not of the Deponent his Acquaintance before, but they knew as little of the Matter as the Deponent. This is what the Deponent remembers; and if any Thing come to his Memory, he is to deliver it in betwixt the firſt of *October*. And this is the Truth, as he ſhall anſwer to GOD.

William Carſtares.
PERTH Cancell. *I. P. D.*

At *Edinburgh*, the 22d of *December*, 1684.

Theſe foregoing Depoſitions, ſubſcribed by Mr. *William Carſtares*, Deponent, and by the Lord Chancellor, were acknowledged on Oath by the ſaid Mr. *William Carſtares*, to be his true Depoſitions; and that the Subſcriptions were his, in Preſence of us Underſubſcribers,

William Carſtares.
David Falconer, PERTH Cancell.
George Mackenzie. *Queensberry*,
Athol.

His Majeſty's Advocat for farther Probation adduces the Examinations of Mr. *Shephard*, taken before Sir *Leolin Jenkins*, Secretary of State for *England*, with the Information or Depoſition of Mr. *Zachary Bourn*, relating to the Plot, ſigned by him and Secretary *Jenkins*, of which Depoſitions the Tenors follow.

The Examination of Thomas Shephard *of* London, *Merchant, taken upon Oath before the Right Honourable Sir* Leolin Jenkins *Knight, His Majeſty's Principal Secretary of State, the 23d Day of* December, 1683.

The Deponent ſaith, That *Ferguſon* told him, on or about the Month of *April* laſt, that an Inſurrection was intended both in *England* and in *Scotland*; and that for the ſettling that Affair betwixt the two Nations, Mr. *Baillie*, Mr. *Monro*, Sir *John Cochran*, Sir *Hugh* and Sir *George Campbells*, with ſome others (whoſe Names this Deponent heard not) were come to *London*.

That the Deponent had ſome Acquaintance with Mr. *Baillie*, Mr. *Monro*, and Sir *John Cochran*, and none at all with Sir *Hugh* and Sir *George Campbells*; that Mr. *Baillie* told the Deponent, that the Earl of *Argyle* demanded thirty Thouſand Pounds of the *Engliſh* to capacitat him to begin the Buſineſs effectually in *Scotland*, and that he the ſaid *Baillie* likewiſe told the Deponent, that having concerted Things with the Lord *Ruſſel*, and others, he the ſaid *Baillie* found an impoſſibility of raiſing that Sum; after which the ſaid *Baillie* had acquainted the Deponent, that they were certainly promiſed ten Thouſand Pounds, which Sum was agreed to be payed into the Deponent's Hands, in order to be remitted into *Holland*, for the providing of Arms; and that the ſaid *Baillie* told the Deponent at divers times, that the ſaid Sum, or at leaſt one half of it, would be payed ſuch a Day, and ſuch a Day; and ſometimes aſked the Deponent, if he had received any Part of the ſaid Money; to which the Deponent replied that he had not, and that he the Deponent ſcarce thought any would be payed.

And the Deponent alſo ſaith, that having had ſome little Converſation with Sir *John Cochran*, he remembers well, that both of them did ſometimes lament the Delays in not paying in the Money; and ſaid, that altho' the ſaid ten Thouſand Pounds were payed in, they, the ſaid Sir *John Cochran* and Mr. *Monro*, feared it would be too little; and this Deponent further ſayeth not as to any new Matter. But the Deponent being aſked to explain what he thought was meant by the Words above-written, *viz.* to capacitat him, the Earl of *Argyle*, to begin the Buſineſs, he this Deponent ſayeth, that he did underſtand by the Word *Buſineſs*, an Inſurrection in *Scotland.*

Sic ſubſcribitur,
Thomas Shephard.

Jurat' coram
L. Jenkins.

The Information of *Zachary Bourn*, of *London*, *Brewer*, taken upon Oath, the 10th Day of *December*, 1683, before the Right Honourable Mr. Secretary *Jenkins.*

The Informant depoſeth, and ſayeth, That Mr. *Baillie* ſat up one Night, if not two, with Mr. *Ferguſon*, and went ſeveral times in the Evening with him to the Duke of *Monmouth*, and the chief Managers of the Conſpiracy: That *Ferguſon* told the Deponent, that he the ſaid *Baillie* was the chief Man for the *Scots*, next to the Lord *Argyle*; that the ſaid *Baillie* did ſit up the greateſt part of one Night with the ſaid *Ferguſon*, at which time this Deponent believeth they were buſy in preparing the intended Declaration, which the Deponent has the more reaſon to believe, in as much as the ſaid *Ferguſon* did go about to ſhew him the Deponent ſuch a Paper, wherein the ſaid *Ferguſon* was hindered by the coming up Stairs of ſome Perſon, to ſpeak with the ſaid *Ferguſon*; that the ſaid *Ferguſon* told the Deponent, that the main Buſineſs of the ſaid *Baillie* in meeting the ſaid Conſpirators, was in order to get from them the ten Thouſand Pounds, promiſed for the buying of Arms, for the Inſurrection intended in *Scotland.*

That the Deponent ſaw Mr. *William Carſtares* come often to the Lodgings of the ſaid *Ferguſon*; but that the ſaid *Ferguſon* never told the Deponent of any Diſcourſe held by him with the ſaid *Carſtares*; and further this Deponent ſaith not.

Sic Subſcribitur,
Zac. Bourn.

Jurat' coram
L. Jenkins.

His Majeſty's Advocat likewiſe produced ſeveral Warrands, and Papers, to prove that thoſe Depoſitions are ſigned by Sir *Leolin Jenkins.*

His Majeſty's Advocat alſo produced the Books of Adjournal, bearing Mr. *William Veitch* to be a forfault Traitor, and the Act of Parliament whereby the Forfaulture is ratified.

His Majeſty's Advocat's Speech to the Inqueſt.

My Lords and Gentlemen,

YOU have now a Conſpiracy againſt his Majeſty's Sacred Perſon and Royal Government, ſo fully diſcovered, that they muſt want Reaſon as well as Loyalty, who do not believe the Diſcovery; and they muſt be Enemies to Sincerity, as well as to the King, who do not acknowledge it. Beſide that the Councils of all the three Nations thought the Proof ſufficient for Indicting a General Thankſgiving through all theſe Nations, and that the Judges of *England* thought the ſame ſtrong enough to infer Forfaulture of Life and Eſtate againſt ſome of all Ranks there; you have a Diſcovery made here from the late Earl of *Argyle*'s own Letters, and the Confeſſion of his own Emiſſaries, the two ſureſt Proofs that Law ever invented, or the Nature of humane Affairs can allow; and I am this Day to add to all this, a new ſet of Proofs in the Proceſs that I now lead againſt this Pannal, from the Confeſſions of Noblemen and Gentlemen, who have been engaged in this wicked Conſpiracy; and who, from a Senſe of their Guilt, are content freely to depoſe againſt their neareſt Relation, and their moſt intimate Friend; in which having thus cleared to you, that there was really ſuch a Conſpiracy, I ſhall, in the next place, proceed to prove this Pannal's Acceſſion to it.

It cannot be imagined, that we would willingly involve our Countrymen in it, without a Conviction ſtronger than our Kindneſs to *Scotland*, nor did his Majeſty's Servants accuſe this Pannal, without the Opinion of the ableſt Lawyers of the Kingdom, who did with them concur to think, that there was not the leaſt Occaſion of doubting left to the moſt indifferent Inqueiſt of his Guilt, after they had ſeriouſly and with Reflection read over and pondered the Probation now laid before you.

The Perſon accuſed of Acceſſion to this Cryme, is the Ringleader of all thoſe who in this Kingdom concurred with the *Engliſh* Conſpirators, as you may ſee by the Teſtimonies of all who have depoſed; and it was indeed fit and juſt to begin with the moſt guilty; ſo that if he be not convicted, there ſhould no Man be puniſhed for this Conſpiracy; all the Noiſe we have heard of it, is but a Cheat, the King's Judges have been Murderers, all the Witneſſes have been Knaves, and ſuch as died for it have been Martyrs.

The Acceſſion charged on the Pannal is not an accidental Eſcape, nor is it proved by Witneſſes, who can be ſuſpected of Unkindneſs to his Perſon, or his Cauſe; for it is a long Tract of a continued Deſign, gone about with the greateſt Deliberation and Concern imaginable, and proved by his neareſt Relations, and Perſons ſo deeply engaged in that Cauſe, for which he ſuffers, that they were content with him to venture their Lives and Fortunes in that Quarrel. He is not accuſed of a Cryme that can amount only to a ſingle Murder, tho' that be a dreadful Cryme, but a Rebellion, which was to draw upon us a civil War, that Murder of Murders, in which hundreds of thouſands were to fall; and to crown all, he was to begin, and to be the Chief Promoter of a Rebellion, in which one of the firſt Steps was to kill His Sacred Majeſty, and his Royal Brother: and one of the chief Witneſſes, which I have led againſt him, is *Bourn*, which *Bourn* confeſſed that he was to kill the King, and who confeſſes the Pannal ſat up ſeveral Nights with *Ferguſon*, the other Contriver of the King's Murder: and ſo familiar was he with him, that *Bourn* depones, that the ſaid Pannal had been with *Ferguſon* at the drawing of the *Manifeſto*, whereby he was not only to be an Actor, but to be the Juſtifier of that horrid Villany; and therefore *Bourn* depones, that *Ferguſon* (the beſt Judge in that Caſe) looked upon him as the chief Man, next to *Argyle*. But becauſe no Man is preſumed to go to ſuch a height, without previous Inclination and Motives, I ſhall, to convince you that this Gentleman was very capable of all that was libelled againſt him, remember you, that he is Nephew and Son-in-Law to the late *Wariſtoun*, bred up in his Family, and under his Tutory. About the time of his Plot it was undeniably known, and is now ſufficiently proved by two preſent Witneſſes, the Earl of *Tarras* and Commiſſar *Monro*, that he thought himſelf deſperate, knowing himſelf to be guilty of Treaſon by *Blackwood*'s Caſe; and as it is preſumable, that a Man that is guilty of one Point of Treaſon, will commit another, ſo when a Man is deſperate as to his Life and Fortune, he is capable of any thing. He was likewiſe animated to commit this Cryme by the Intelligence he had that there was a Plot in *England*, carried on by Men of ſo great Parts, Fortune, and Influence, and by the too probable Hopes, that they would get all the *Weſtern* Shyres to join with them here, becauſe of the common Guilt in which they had engaged themſelves, by their late Extravagances, they made an Account of an Aſſiſtance of twenty thouſand Men; and by *Philiphaugh*'s Depoſition, that theſe Gentlemen expected the Concurſe of the *Southern* Shyres; and thus I am to prove to you a Cryme, which is in itſelf ſo probable and likley, that it ſhould need little Probation, tho' I have adduced for your Conviction ſufficient Evidences, albeit the Cryme were in itſelf very unlikley.

The Crymes, which I hope I have proved, are, 1. That *Jerviſwood* the Pannal tranſacted for Money to the late Earl of *Argyle*, a declared Traitor. 2. That he deſigned to raiſe a Rebellion. 3. That he intercommuned with the Earl of *Argyle* and Mr. *Veitch*, declared Traitors. 4. That he was preſent where it was treated, either that *Argyle* ſhould have Money from the *Engliſh*, and Aſſiſtance from *Scotland*, or that a Rebellion ſhould be raiſed, and that he did not reveal the ſamine; and all theſe being found relevant *ſeparatim*, it is ſufficient for me to have proved any one of them. And if a Gentleman was lately found guilty of High-Treaſon, by the Opinion of all the Lords of Seſſion, for not revealing, that Sir *John Cochran* ſought fifty Pounds *Sterling* from him, tho' he refuſed the ſame, and tho' he believed it was ſought for a charitable Subſiſtence to preſerve him from ſtarving, what deſerves this Pannal, who ſought thirty thouſand Pounds *Sterling*, to buy him Arms, to invade his native Country?

That *Jerviſwood* was deſigning to carry on a Rebellion, or at leaſt was acceſſory, or (as our Law terms it) was *Art* and *Part* thereof, is clearly proved; but that in this occult and hidden Crime, which uſes not to be proved by clear Witneſſes, I may lead you thorow all the Steps of the Probation, which, like the Links of a Chain, hang upon one another: You will be pleaſed to conſider, that, 1. It is proved that he deſired a blind Commiſſion to go to *England*, not to manage the Affairs of the *Carolina* Company, as he confeſſed, *but to puſh the People of* England *to do ſomething for themſelves, becauſe they did only talk, and not do.* And what he would have them to do, appears too clearly, becauſe he tells the Earl of *Tarras*, it was probable, *that if the King were briſkly put to it by the Parliament of* England, *he would conſent to exclude the Duke from the Succeſſion:* Here is not only a treaſonable Deſign (tho' a Deſign be ſufficient in Treaſon) but here are expreſs Acts of Treaſon proved, *viz.* The treating with the Earl of *Tarras* upon this Deſign, the ſettling a Correſpondence with him for the Proſecution of it, and the writing Letters from *London* to him concerning it, and the ſending down Mr. *Martin* to complete it by a general Riſing. As he deſigned to puſh on the *Engliſh*, ſo he proſecutes cloſely this Deſign upon all Occaſions. On the Road he complains cunningly and bitterly, that our Lives, Laws, and Liberties, and the Proteſtant Religion, were in Danger, the Style and Method of all ſuch as deſign to rebel; after he arrives at *London*, he engages the Conſpirators there to aſſiſt the late Earl of *Argyle*, a declared Traitor, with Money to buy Arms; this was indeed to puſh the *Engliſh* to do the moſt dangerous Things by the moſt dangerous Man, and in the moſt dangerous Methods. He enters alſo in a ſtrict Correſpondence with *Ferguſon* the Contriver, with *Shephard* the Theſaurer, and *Carſtares* the Chaplain of the Conſpiracy.

Alexander Monro, another preſent Witneſs, proves that he argued with him that it was neceſſary to give *Argyle* Money expreſly for carrying on the Rebellion; and that they did meet at *Jerviſwood*'s Chamber where this was ſpoke of, and from which Mr. *Robert Martin* was ſent to their Friends in *Scotland*, to know what they would do; and tho' the ſilly Caution was, that they ſent him to prevent their Riſing, yet a Man muſt renounce Common Senſe, not to ſee that the Deſign was to incite them to Rebellion, and to prevent only their doing any thing in this rebellious Deſign, by which they might loſe themſelves in a too early and abortive Inſurrection here, till things were ready in *England.* For, 1. This Commiſſion was given him in a Place, and by a Company who had been themſelves treating immediately before of ſending Money to the late Earl of *Argyle* to buy Arms, and certainly thoſe Arms were to be bought for Men, and not for a Magazine. 2. They were treating how many Men could be raiſed in *Scotland.* 3. *Carſtares'* Depoſition bears, that *Martin* was ſent to hinder raſh Reſolutions, till they ſaw how Matters went in *England*; and the Return to their Ambaſſy bore, that it would not be an eaſy Matter to get the Gentry of *Scotland*

land to concur, but afterwards better Hopes of their Riſing was given, which could not have been, if the true Commiſſion had not been, to raiſe *Scotland.* 4. That Sir *John Cochran* made a ſpeech to that purpoſe, is expreſly proved, and that *Jerviſwood* ſpoke to the ſame purpoſe, is proved by a neceſſary conſequence; for ſince it's proved, that he ſpoke, and that he did not ſpeak againſt it, it muſt neceſſarily follow that he ſpoke for it, tho' the Witneſs is ſo cautious, that he cannot condeſcend upon the Words after ſo long a time, and it is againſt Senſe to think, that *Jerviſwood*, who in private preſſed the ſame ſo much upon Commiſſar *Monro*, and who was the Deacon-Conveener here, and who, as Mr. *Martin* their Envoy declared, was the Perſon who was to be ſent for the Arms, ſhould not himſelf have been the moſt forward Man in that Deſign. But above all *exitus acta probat*, this Commiſſioner (who being a meer Servant, durſt not have propoſed any thing from himſelf, being a mean Perſon, and being one, who, as the Earl of *Tarras* depoſes, would ſay nothing, but what was in his Paper) does expreſly declare, that he came from *Jerviſwood* and others; and in the meeting with him, a Rebellion is actually formed, and it is reſolved, they ſhould ſeize the King's Officers of State, Garriſons, and Forces, and that they ſhould join with the late Earl of *Argyle*, and put their own Forces in a Condition to join with theſe Forces, that were to come from *England*, and they gave a Sign, and a Word, which uſes only to be done in actual War; ſo here is Treaſon clearly proved, by two preſent Witneſſes, from the firſt Deſign to its laſt Perfection.

Nor can it be objected, that they are not concurring Witneſſes, but *teſtes ſingulares* upon ſeparate Acts; for in reiterable Crimes, Witneſſes depoſing upon different Acts, do prove, if the Deeds tend to the ſame end; as for inſtance, if one Witneſs ſhould depoſe, that they ſaw a Traitor ſit in a Council of War in one place, and in another place they ſaw him in Arms; or that one ſaw him aſſiſt at a Proclamation in one place, and ſaw him in Arms in another; or that one ſaw him write a Treaſonable Paper, and another ſaw him uſe it: Theſe Witneſſes are ſtill conſidered as *Conteſtes*, or concurring Witneſſes; and ten or twelve Inqueſts have ſo found, and upon their Verdict, Rebels have been lately hang'd. The learned Judges of *England* being all met together did expreſly find, that one Witneſs proving, that *A. B.* ſaid, that he was going to buy a Knife to kill the King, and another depoſing, that he ſaw him buy a Knife, without telling for what, that theſe two Witneſſes were *Conteſtes*, and proved ſufficiently the Crime of Treaſon; yet there the one Witneſs proved only a remote Deſign, and the other an Act which was indifferent of its own nature, and became only Treaſonable by the Connection; but no Witneſſes ever depoſed upon things ſo coherent, and ſo connected together, as theſe do; for they depoſe ſtill upon the ſame Perſon carrying on the ſame Deſign of a Rebellion, as to which, in one place, he is exciting his own Nephew, and telling him his Reſolutions, and ſettling a Correſpondence with him; at another time he preſſes Commiſſar *Monro* to the ſame Rebellion; at a third, he holds a Meeting at his own Chamber, and ſpeaks concerning it, and from that Meeting he ſends a Truſty, who forms the Rebellion. Beſides all this, tho' two Witneſſes be ſufficient, I have adduced Mr. *William Carſtares* Chief Conſpirator, and who chooſed rather to ſuffer violent Torture, than to diſcloſe it; he likewiſe depoſes upon all theſe Steps, and connects them together, and this his Depoſition is twice reiterated, upon Oath, after much Premeditation. And I likewiſe adduce two Depoſitions taken upon Oath, by Sir *Leolin Jenkins*, who was impowered by the Law of *England*, and at the Command of the King, and the Council of *England*, upon a Letter from His Majeſty's Officers of State here, in which Depoſition, *Shephard*, one of the Witneſſes, depoſes, that *Baillie* came frequently to him, and deſired him to advance the Money, *and lamented the Delays*; and that there was ſo little to be advanced: and who ſhould be better believed than one who was his own Truſty, and a Perſon who was able to advance ſo great a Sum? *Bourn*, another of the Witneſſes, depoſes, that *Ferguſon* told him, that the Pannal ſpoke frequently to him concerning the ſame Money, and that he ſat up ſeveral Nights with *Ferguſon* upon the ſaid Conſpiracy; and who ſhould be better believed than *Ferguſon*'s Confident, and one who was ſo far truſted in the whole Affair, that he was to take away that Sacred Life, which Heaven has preſerved by ſo many Miracles?

Againſt theſe three Depoſitions you have heard it objected, that *non teſtimonia, ſed teſtes probant*, eſpecially by our Law; in which by an expreſs Act of Parliament, no Probation is to be led, but in preſence of the Aſſiſe and Pannal. To which it is anſwered, That theſe Depoſitions are not meer Teſtimonies; for I call a Teſtimony a voluntar Declaration, emitted without an Oath, and a Judge; but theſe Depoſitions are taken under the awe of an Oath, and by the Direction of a Judge. 2. *Shephard* was confronted with the Pannal himſelf, and he had nothing to ſay againſt him; whereas the great thing that can be objected againſt Teſtimonies (and by our Statute eſpecially) is, that if the Party who emits the Teſtimony had been confronted with the Pannal, the Impreſſion of ſeeing a Perſon that was to die by his Depoſition, would have made him afraid to depoſe laxly; and the Pannal likewiſe might by propoſing Interrogators and Queſtions, have cleared himſelf, and ſatisfied the Judges in many things depoſed againſt him: But ſo it is that Mr. *Shephard* having been confronted with the Pannal, before the King Himſelf, who is as far above other Judges, in His Reaſon and Juſtice, as He is in His Power and Authority: He depoſes that the Pannal was the chief Manager of this Conſpiracy, next to *Argyle*, and that he was ſo paſſionate to have this Money to buy Arms, that he lamented the Delays. And can it be imagined that Mr. *Shephard*, whom he truſted with his Life, and his Fortune, and whom all their Party truſted with their Caſh, would have depoſed any thing againſt him that was not true, eſpecially when he knew that what he was to depoſe, was to take away his Life and his Fortune? or that if the Pannal had been innocent he would not, when he was confronted with Mr. *Shephard* before the King Himſelf, have roared againſt Mr. *Shephard*, if he had not been conſcious to his own Guilt? There is a Surprize in Innocence, which makes the Innocent exclaim; and it inſpires Men with a Courage which enables them to confound thoſe who depoſe falſly againſt them. And in what occaſion could either of theſe have appeared, more than in this, wherein this Gentleman was charged to have conſpired with the greateſt of Raſcals, againſt the beſt of Princes; and that too in Preſence of the Prince himſelf, againſt whom he had conſpired? But Guilt ſtupifies indeed, and it did never more than in this Gentleman's Caſe, whoſe Silence was a more convincing Witneſs than Mr. *Shephard* could be. Mr. *Carſtares* likewiſe knew when he was to depone, that his Depoſition was to be uſed againſt *Jerviſwood*; and he ſtood more in awe of his Love to his Friend, than of the Fear of the Torture; and hazarded rather to die for *Jerviſwood*, than that *Jerviſwood* ſhould die by him: How can it then be imagined, that if this Man had ſeen *Jerviſwood* in his Trial, it would have altered his Depoſition; or that this Kindneſs, which we all admired in him, would have ſuffered him to forget any thing in his Depoſition, which might have been advantageous in the leaſt to his Friend! And they underſtand ill this height of Friendſhip, who think that it would not have been more nice and careful, than any Advocate could have been. And if *Carſtares* had forgot at one time, would he not have ſupplied it another; but eſpecially at this laſt time, when he knew his Friend was already brought upon his Trial; and that this renewed Teſtimony was yet a further Confirmation of what was ſaid againſt him? And albeit the King's Servants were forced to engage, that *Carſtares* himſelf ſhould not be made uſe of as a Witneſs againſt *Jerviſwood*; yet I think this kind ſcrupuloſity in *Carſtares* for *Jerviſwood* ſhould convince you more than twenty ſuſpect, nay than even indifferent Witneſſes; nor can it be imagined, that the one of theſe Witneſſes would not have been as much afraid of GOD, and his Oath at *London*, as at *Edinburgh*; and the other in the Council-Chamber in the Forenoon, as in the Juſtice-Court in the Afternoon.

3. The Statute founded on does not diſcharge the producing of Teſtimonies, otherways than after the Jury is incloſed; for then indeed they might be dangerous, becauſe the Party could not object againſt them: But ſince the Statute only diſcharges to produce Writ, or Witneſſes, after the Jury is incloſed, it ſeems clearly to inſinuate, that they ought to prove, when they are produced in Preſence of the Party himſelf, as now they are. And though the Civil Law did not allow their Judges to believe Teſtimonies, becauſe they were confined to obſerve ſtrict Law, yet it does not from that follow, that our Juries, whom the Law allows to be a Law to themſelves, and to be confined by no Rule, but their Conſcience, may not truſt intirely to the Depoſition of Witneſſes, though not taken before themſelves, when they know that the Witneſſes by whom, and the Judges before whom theſe Depoſitions were emitted, are Perſons beyond all Suſpicion, as in our Caſe. But yet for all this, I produce theſe Teſtimonies, as Adminicles here only to connect the Depoſitions of the preſent Witneſſes, and not to be equivalent to Witneſſes in this legal Proceſs; albeit, as to the Conviction of Mankind, they are ſtronger than any ordinary Witneſſes.

When you, my Lords, and Gentlemen, remember, that it is not the revenge of a private Party, that accuſes in this Caſe; and that even in private Crimes, ſuch as Forgery, or the Murder of Children, &c. many Juries here have proceeded upon meer Preſumptions, and that even *Solomon* himſelf found his illuſtrious Deciſions approved by God Almighty, upon the preſumed Aſſertion of a Mother; I hope ye will think two Friends depoſing, as preſent Witneſſes, adminiculated and connected by the Depoſitions of others, though abſent, ſhould beget in you an intire belief; eſpecially againſt a Pannal, who has been always known to incline this way, and who, though he was deſired in the Tolbooth to vindicate himſelf from thoſe Crimes, would not ſay any thing in his own Defence: and though he offers to clear himſelf of his acceſſion to the King's Murder, yet ſays nothing to clear himſelf from the conſpiracy entered into with the late Earl of *Argyle*, for invading his Native Countrey; which is all that I here charge upon him, and which he inclines to juſtifie, as a neceſſary mean for redreſſing Grievances. I muſt therefore remember you, that an Inqueſt of very worthy Gentlemen did find *Rathillet* guilty, though there was but one Witneſs led againſt him; becauſe when he was put to it, he did not deny his Acceſſion: And two Rogues were found guilty in the late Circuit at *Glaſcow*, for having murdered a Gentleman of the Guard, though no Man ſaw them kill him; but the Murderers having been purſued, they run to the Place, out of which the Pannals then accuſed were taken, none having ſeen the Face of the Runaways; and the Pannals being accuſed, and preſſed to deny the Acceſſion, ſhunned to diſown the Guilt, but deſired it might be proved againſt them. This may convince you that there are Proofs which are ſtronger than Witneſſes; and I am ſure that there were never more proving Witneſſes than in this Caſe; nor were the Depoſitions of Witneſſes ever more ſtrongly adminiculated. Remember the Danger likewiſe of emboldening Conſpiracies againſt the King's Sacred Life, and of encouraging a Civil War, wherein your ſelves and your Poſterity may bleed, by making the leaſt Difficulty to find a Man Guilty, by the ſtrongeſt Proofs that ever were adduced in ſo latent a Crime as a Conſpiracy is. And I do juſtly conclude, that whoever denies that a Conſpiracy can be thus proved, does let all the World ſee, that he inclines that Conſpiracies ſhould be encouraged and allowed. Our Age is ſo far from needing ſuch Encouragements, that on the other hand in this, as in all other Crimes, becauſe the Guilt grows frequent and dangerous, the Probation ſhould therefore be made the more eaſy, though in this Caſe, the King needs as little deſire your Favour, as fear your Juſtice. And I have inſiſted ſo much upon this Probation, rather to convince the World of the Conſpiracy, than you that this Conſpirator is Guilty.

Thereafter the Lords ordained the Aſſize to incloſe, and return their Verdict To-morrow, by Nine a'Clock in the Morning.

Edinburgh, December 24, 1684.

The ſaid Day the Perſons, who paſt upon the Aſſize of Mr. *Robert Baillie* of *Jerviſwood*, returned their Verdict in Preſence of the ſaid Lords; whereof the Tenor follows: The Aſſize, all in one Voice, finds the Crimes of Art and Part in the Conſpiracy, and Plot libelled, and of concealing, and not revealing the ſame, clearly proven againſt Mr. *Robert Baillie* the Pannal, in reſpect of the Depoſitions of Witneſſes and Adminicles adduced.

Sic ſubſcribitur,

Strathmore, Chancellor.

After opening and reading of the which Verdict of Aſſize, the Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, therefore by the Mouth of *James Johnſtoun* Dempſter of Court, decerned and adjudged the ſaid Mr. *Robert Baillie* of *Jerviſwood* to be taken to the Mercat-Croſs of *Edinburgh*, * this twenty-fourth Day of *December* inſtant, betwixt Two and Four a Clock in the Afternoon, and there to be hanged on a Gibbet till he be dead; and his Head to be cut off, and his Body to be Quartered in four, and his Head to be affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Jedburgh*, another on the Tolbooth of *Lanerk*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glaſgow*; and ordains his Name, Fame, Memory, and Honours to be extinct; his Blood to be tainted, and his Arms to be riven forth, and delete out of the Books of Arms; ſo that his Poſterity may never have Place, nor be able hereafter to bruik, or joyſe any Honours, Offices, Titles or Dignities, within this Realm in time coming; and to have forfaulted, amitted, and tint, all and ſundry his Lands, Heritages, Tacks, Steadings, Rooms, Poſſeſſions, Goods and Gear whatſoever, pertaining to him, to our Sovereign Lord's Uſe, to remain perpetually with His Highneſs in Property, which was pronounced for Doom.

Sic ſubſcribitur,

LINLITHGOW.
James Foulis.
J. Lockart.
David Balfour.
Roger Hog.
A. Seton.
P. Lyon.

Extracted forth of the Books of Adjournal, by me Mr. Thomas Gordon, *Clerk to the Juſtice Court,*

Sic ſubſcribitur,

THO. GORDON.

He was executed accordingly the ſame Day; and at the place of Execution perſiſted in denying his Knowledge of any deſign againſt the King's Life, or the Duke's, or of any Plot againſt the Government: He owned, he thought it lawful for Subjects, being under ſuch Preſſurers, to try how they might be relieved from them, and his deſign went no farther; but he refuſed to enter into particulars.

Afterwards, in purſuance of the Sentence, His Majeſty's Heralds, and Purſevants, with their Coats diſplayed (after ſound of Trumpets) did publickly, in face of the Court, conform to the Cuſtom in the Sentences of Treaſon, in his Majeſty's Name and Authority, cancel, tear and deſtroy the ſaid Mr. *Robert Baillie* his Arms, threw them in his Face, trampled them under foot; and ordained his Arms to be expunged out of the Books of Heraldry, his Poſterity to be ignoble, and never to enjoy Honour and Dignity in time coming: And thereafter went to the Mercat-Croſs of *Edinburgh*, and ſolemnly tore and cancelled the ſaid Mr. *Robert Baillie* his Arms, and affixed the ſamine on the ſaid Mercat-Croſs reverſed, with this Inſcription; *The Arms of Mr.* Robert Baillie, *late of* Jerviſwood, *Traytor.*

THE END OF THE THIRD VOLUME.

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* This great Expedition was occaſioned by the Priſoner's bad ſtate of Health, who they feared might avoid his Execution by a natural Death.

BIBLIOTHECA

REGIA
MONACHENSIS.